2009 LAYOFF SUMMARIES

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MASTER COMPILATION
2008-09 ADMINISTRATIVE LAW JUDGE LAYOFF DECISION SUMMARIES

I. PROCEDURAL ISSUES

A. Failure To Request Hearing Or File Notice Of Defense

1. Employee excluded from layoff proceeding when she failed to timely file a request for hearing as required by Education Code section 44949(b). Red Bluff (Kopec)

2. Failure to timely file a Request for Hearing in response to receipt of a preliminary notice waived any right to a hearing. (Govt. Code sections 11505 and 11520.) Failure to timely file a Notice of Defense to Accusation constitutes a waiver of the right to have a hearing on the allegations. (Govt. Code section 11506(c).) Lodi Unified (Smith)

3. The ALJ held that the District was not prejudiced by certain Respondents filing a belated joint Notice of Defense because the District was aware of the intention to file the joint Notice of Defense thirteen days before the hearing. However, those employees who did not file the initial Request for Hearing waived their rights and were not entitled to a hearing. (Finding of Fact No. 11). Newhall (Formaker)

B. Motivation For Reducing Services

1. Respondent offered evidence that the proposed layoff will deprive troubled students enrolled in the Opportunity Class of essential educational services that are best offered in the setting of specialized service that Respondent has delivered for over three years. The ALJ held Respondent's contentions are without merit with regard to the layoff action. Rohnerville (Johnson)

2. Respondents contend that the District's layoff decision will deprive students of devoted teachers who provide valuable services to students. The ALJ held Respondent's contentions are without merit and are rejected. Northern Humboldt (Johnson)

3. Respondent nurse averred that the District made assumptions regarding the provision of nursing services that are erroneous and that the proposed layoff action will thrust the District below state mandated levels for staffing ratios of nurses to students. The ALJ held Respondent's contentions are without merit and are rejected. Northern Humboldt (Johnson)

4. Respondent's objection that the Board's decision to release her from her administrative position as Adult Education Program Supervisor based upon "nebulous" and "inconsistent" criteria was rejected. As an

administrator, Respondent serves at the pleasure of the Board. As such, she may be released from her position at the Board's discretion, upon proper notice. Santa Clara Unified School District (Schneider)

5. Board's decision to reduce services was neither arbitrary nor capricious, and was a proper exercise of its discretion given the State's budget crisis, unprecedented budget cuts which impacted the District's ability to meet its financial obligations for the next school year, and this District's budget cuts. Anaheim Union High (Shrenger)

6. Anticipation of receiving less money from the State for the next school year is an appropriate basis for reduction of services under 44955, citing *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639. When presented with adverse financial circumstances, section 44955 is the only statutory authority available to effectuate reduction of particular kinds of services. Anaheim Union High (Shrenger)

7. Where district estimated a revenue shortfall of approximately $2.6 million for the 2008-2009 school year and $3.2 million for the 2009-2010 school year, decision to reduce particular kinds of services was neither arbitrary nor capricious but was rather a proper exercise of district's discretion. Board took action to reduce or discontinue services (61.4 FTE) primarily because of the uncertainty surrounding future State funding. Las Virgenes (Reyes)

8. Fact that during discussion of pending resolution, one board member raised issue that enrollment was declining, did not require decline in enrollment to be set out in resolution. District ultimately determined to reduce particular kinds of service and could proceed on that basis. Compton (Montoya)

9. Action to reduce or discontinue particular kinds of service due to State of California budget crisis and district's need to balance its budget was proper exercise of discretion. Acton-Agua Dulce (Scarlett)

10. The District demonstrated that the reduction or discontinuance of these particular kinds of services is necessary for the District to have a balanced budget and therefore related to the welfare of the District and its pupils. As such, the determination of the Governing Board to reduce or discontinue these services is within its discretion and not arbitrary or capricious. Manhattan Beach (Nafarrete)

11. "Are the actions of this District arbitrary in this layoff proceeding? Of course they are. They are arbitrary in the same way that two competent surgeons might argue about the relative wisdom of an amputation. One might feel that an above-the-knee amputation was best. The other might opt for a below-the-knee procedure. The disagreement is not over the need

for the operation, but over the exact method. The reference to amputation is not made casually. These layoffs are like an amputation. They are painful and traumatic and change the District in so many different ways. Although the District's actions are arbitrary, they are not 'arbitrary or capricious' as this legal term of art is defined." Del Mar (Hjelt).

12. The Governing Board's resolution to reduce particular kinds of services based on an existing budget shortfall and uncertainty surrounding future funding was neither arbitrary nor capricious and constituted a proper exercise of the Board's discretion. Ocean View (Reyes)

13. Three elementary school districts and one high school district consolidated to form a new Twin Rivers Unified School District ("District") which began operations July 1, 2008. Due to anticipated decrease of revenues, the District could not maintain the excess of personnel created by the reorganization; the resulting layoffs fell solely on certificated employees since classified employees could not be laid-off for two years after unification. The Board's decision to eliminate 321.35 FTE certificated positions was neither arbitrary nor capricious, and was a proper exercise of its discretion. Twin Rivers (Lew)

14. Expert testimony by union officials, regarding the services offered by certificated employees, District records, and financial data, was relevant to the issue of the proposed reduction or elimination of particular kinds of services for the ensuing school year. However, the ALJ concluded that the evidence offered by union representatives was neither persuasive or reliable. Accordingly, the District exercised reasonable discretion in its decision to eliminate or discontinue a total of 6.8 FTE positions. Del Norte (Johnson)

15. Despite the demonstrated value of and high student interest in a course, the decision to reduce or discontinue a PKS is a matter reserved to the District's discretion and is not subject to second-guessing in a termination proceeding. (Finding of Fact No. 20). Chaffey (Matyszewski)

16. Respondents unsuccessfully argued the district was required to conduct an average daily attendance or "ADA" layoff rather than a particular kinds of services ("PKS") layoff. Superintendent testified that declining enrollment was the "primary criteria" for the layoff, he tied declining enrollment to a loss of revenue by the district. The district properly excercised its discretion by electing to address this financial crisis by identifying PKS to be reduced or eliminated. Salida Union School District (Frink)

C. Miscellaneous Reductions or Discontinuances Disallowed

D. Service

E. Jurisdiction

1. County Superintendent had jurisdiction, in accordance with Education Code sections 44949 and 44955, to reduce or discontinue particular kinds of services. All notice and jurisdictional requirements contained in those sections were satisfied. Moreover, the County Office of Education had cause to reduce particular kinds of services and to give notices to respondents that their services were not required for the ensuing school year. The cause related solely to the welfare of the schools and pupils. Merced (Walker)

2. Respondent's claim that there is no jurisdiction for District's reduction or discontinuance of particular kinds of services because the Governing Board did not express any opinion that it was necessary to decrease the number of permanent employees in the District is not persuasive. While man resolutions of governing boards in reducing particular kinds of services under section 44955 do state that financial constraints or budgetary problems of the districts as the reason for a PKS reduction, section 44955, subdivision (b), does not specifically require the Governing Board express an opinion as to the reason for its PKS reduction. Manhattan Beach (Nafarrete)

3. Asserted Brown Act violations, including taking layoff action in closed session, disregarded. King City Union Elem. (Robert Johnson)

4. A district's rehire list need not be examined in a proceeding to determine whether cause exists to reemploy certificated employees for the ensuing school year. Section 44955 directs review of the order of termination, not the order of reemployment. Newark (Flores)

5. A proceeding to determine whether cause exists to layoff certificated employees for the ensuing school year is to review the order of termination, not the order of reemployment. Because the District used the adopted tie-breaking criteria to develop a rehire list only, it was not necessary to address the tie-breaking criteria at the layoff hearing. Santa Maria-Bonita (Reyes)

6. The administrative law judge lacks jurisdiction to determine whether or not the proposed reduction of services violates a Memorandum of

Understanding between the union and the District. (Finding of Fact No. 13). Moreno Valley (Matyszewski)

F. Standing

1. Respondents lack standing to challenge seniority dates assigned to nonparty teachers. Buckeye Union (Westmore)

2. Categorically-funded employees not served with an accusation lacked standing to challenge their classification as temporary employees in the administrative proceeding. The power to compel the District to reclassify categorically funded employees and to reinstate them rests with the Superior Court. (Legal Conclusion No. 7). Alvord (Cole)

G. Notice

1. District provided Respondent only four (or five) days' (rather than ten days') notice between her receipt of Notice of Hearing and the date of actual hearing. Accusation Packet was shoved under doormat in lieu of personal service. Error deemed a "substantive procedural error" which was prejudicial to Respondent. Layoff disallowed. Loleta (P. Johnson)

2. District failed to give employee written notice by March 15. District alleged principal gave employee verbal notice on March 15 in the presence of union representative. District sent written notice on March 17. District argued employee received actual notice of layoff and any error should be deemed "nonsubstantive procedural error." Held, employee deemed reemployed because District failed in material way to fulfill its statutorily mandated noticing requirement and respondent did not waive such requirement. Dos Palos-Oro Loma (Vorters)

3. Jurisdictional requirements were met where, through clerical error, preliminary layoff notices attached tiebreaker resolution instead of layoff resolution, but notices cited and identified layoff resolution with particularity; failure to attach resolution was no more than nonsubstantive procedural error. Compton (Montoya)

4. Contention that proceeding should be dismissed because the district sent approximately five more March 15 notices than were required is rejected as unsupported by law. Alhambra (Rovner)

5. The March 15 notices to two respondents did not, on their face, strictly comply with requirements Section 44949. However, when considered together with the enclosures (copies of Sections 44949 and 44955, layoff resolution, and request for hearing form), were found to provide sufficient notice of the reasons for layoff and of respondents' obligations, and thus constituted non-prejudicial errors. San Gabriel Unified (Foremaker)

6. Respondents did not prevail in argument that District's overnoticing of employees (District noticed 33.5 FTE, actually eliminated only 10 FTE) was an abuse of the statutory layoff process, invalidating the entire layoff. District testified that number of FTE affected changed due to "uncertain" budget situation that become more clearly resolved after initial notices were served. Hearing officer noted there was no evidence of bad faith, nor that the District's notice affecting 33.5 FTE was arbitrary and capricious and that District acted in the proper exercise of its discretion. Needles (Cole)

7. Notice mailed to wrong address was not timely when district had correct address on file for a teacher on maternity leave. Hollister School District (Cohn)

8. The Met Ed combines six Adult Ed and Career Technical programs for six separate school districts. Teachers are hired on an hourly basis but may obtain permanent status. Due to the fiscal crisis and the overall reduction in categorical funds (which is where Met Ed obtains most of its funds), instead of determining which services would need to be reduced or eliminated and to what extent, Met Ed implemented what was in essence a fictional resolution indicating that it would be closing its doors the following year. However, no administrator ever thought Met Ed would be closed for the 2009-2010 school year. Met Ed essentially abdicated its statutory responsibilities and resolved to reduce services to zero although there was no evidence that Met Ed was going out of business. Thus, the March 15 notices were invalid under Education Code sections 44955 and 44949 and the accusations against the employees were dismissed. Metropolitan Education School District (Anderson)

9. Two Respondents successfully argued that they were entitled to reemployment because they were served with their notices of Recommendation that Services will not Be Required after the March 15 deadline. One employee had submitted a change of address information form as of February 3, 2009 and the District mailed the notice to her old address. The other employee's notice was mistakenly sent to another District employee. Although the District argued that no prejudice had occurred due to the delay of eight days for both employees, the ALJ determined Education Code section 44955 clearly required reemployment where the preliminary notice is not provided in a timely manner. Tracy Unified School District (Engeman)

10. Respondents argued that the District over noticed employees in the Multiple Subject above K-3 category. While the ALJ did agree that more than the 15 FTE described in the PKS Resolution were noticed, the ALJ also stated that, "the evidence was persuasive that these teachers were properly noticed due to the rights of senior certificated employees to bump them from their positions." San Juan (Sarli)

11. Temporary employees are not entitled to layoff provisions. Although District provided layoff notices to temporary employees as a precautionary measure, the accusations against those employees appropriately classified as temporary were dismissed. Charter Oak Unified School District (Sawyer)

12. On the first day of hearing the District partially rescinded layoff notices to some employees but a short time before the second day of hearing the District rescinded the partial rescissions. Although Respondents argued the District was estopped from making such rescissions, the ALJ held that the employees could not show detrimental reliance and thus the rescission was appropriate. Charter Oak Unified School District (Sawyer)

13. Initial notice of layoff and issuance of accusation to 88 certificated employees was proper when the Board's resolution prescribed an elimination of 81.4 FTEs. District is not required to match exactly the FTE positions with those receiving notice of layoff. Vacaville (Johnson)

14. Receipt of written layoff notice on or before March 15 is jurisdictional and a failure to meet the requirement cannot be considered an excusable nonsubstantive procedural error under Education Code section 44949(c)(3). Respondent did not receive timely initial notice of layoff due to District's failure to correctly enter Respondent's address into its system. Respondent was deemed reemployed even though Respondent was not prejudiced by the error, learned of her layoff on March 16, and received all other procedural safeguards. (Finding of Fact No. 4). East Side (Astle)

15. District's method of sending all required notices and documents in a single packet did not prejudice any Respondent. There is no specific penalty for deviating from the two-step process contained in Section 44949. Furthermore, even if characterized as a procedural error, Respondents were properly afforded all procedural safeguards. The District provided all the required notices and documents and set filing dates in compliance with the statutory time requirements. (Finding of Fact No. 6). Oak Park (Reyes)

16. Education Code sections 44955 and 44949 were not violated nor were any Respondents prejudiced by the District simultaneously serving the Accusation, board resolutions, request for hearing and Notice of Defense forms, at the same time as the initial layoff notice. (Finding of Fact No. 6, Legal Conclusion No. 3). El Segundo (Lahr)

17. Where Respondent's layoff notice was sent certified mail and returned to the District with the notation "Unclaimed. Unable to Forward" and there was no other evidence of proper notice offered by the District, the Respondent was deemed reemployed. Although the Education Code merely requires the notices to be deposited in the mail, the ALJ held that,

"when a district elects to serve respondents by certified mail and that mail is returned to the district, the district is placed on actual notice that the respondent may have no knowledge of the layoff proceedings, the very thing the service statutes seek to avoid." (Finding of Fact No. 14). Moreno Valley (Matyszewski)

18. Two Respondents were not prejudiced or deprived of due process rights when they received the other Respondents notice inside an envelope addressed and delivered to them. The envelopes were properly addressed, placing each respondent on notice that the District was attempting to serve them with a layoff notice. (Finding of Fact. No. 15). Moreno Valley (Matyszewski)

19. Respondent was served a March 15 layoff notice, a letter terminating her services, and copies of the relevant Education and Government Code sections detailing her rights to a hearing and discovery. The ALJ rejected Respondent's claims that she was deprived of her due process rights because she was told she could not participate in the hearings, did not retain counsel until 48 hours prior to the hearing, and, did not conduct discovery. (Finding of Fact No. 17). Moreno Valley (Matyszewski)

20. Receipt of written layoff notice on or before March 15 is jurisdictional and a failure to meet the requirement cannot be considered an excusable nonsubstantive procedural error under Education Code section 44949(c)(3). East Side (Astle)

21. Where certified mailing of jurisdictional documents to Respondent teacher was returned to the District marked "unclaimed" and the address crossed out, the District was not permitted to continue its layoff procedure against her because the teacher did not receive proper notice. (Finding of Fact No. 5). Chaffey (Matyszewski)

22. District properly served categorically funded employees with notices required by Education Code sections 44949 and 44955. Los Alamitos Unified School District (Lahr)

H. Estoppel

1. Respondent unsuccessfully argued District was estopped from changing her original seniority date to the date she was rehired after resigning. The ALJ determined that Respondent resigned from her tenured position due to her illness and not because she relied on the assistant superintendent of personnel's erroneous advice that she could retain her original seniority date if she rejoined the District within 39 months. Furthermore, estoppel should not be applied as a matter of public policy inasmuch as Education Code section 44848 clearly provides that, when a certificated employee resigns and is re-employed by a school district, the certificated employee's

seniority date is deemed to be the date when he or she rendered first paid service after re-employment. (Finding of Fact No. 16). Covina-Valley USD (Nafarrette)

2. District unsuccessfully argued two teachers were equitably estopped from challenging their seniority dates. The district did not present evidence to establish the teachers made representations or concealed material facts with the intention that the district would rely upon those representations or concealments to its detriment. The teachers' union could not "sign off" on the seniority list because the union could not waive rights held by the teachers without the teachers' express consent. Patterson Joint Unified School District (Brandt)

3. District properly classified teacher as probationary where she taught 50 percent of the school year from 1998 through 2009. ALJ determined teacher is not entitled to permanent classification because she did not work more than 75 percent of the school days for two complete consecutive years. Teacher's equitable estoppel argument did not apply because the Education Code requires two complete years as a probationary employee, and the district cannot waive the statutory requirements. Los Alamitos Unified School District (Lahr)

I. Existence And/Or Sufficiency Of Resolution And/Or Notices

1. District's original resolution on March 4, 2009 did not include a 1.0 FTE reduction for mathematics. The District adopted a second resolution in April incorporating a 1.0 FTE reduction in mathematics. Because the District failed to provide notice to affected employees prior to the March 15 that mathematics was a particular kind of service to be reduced, the District may not reduce 1.0 FTE in mathematics. Red Bluff (Kopec)

2. The failure of the Superintendent to provide the Board of Trustees with a list of the names of teachers who were subject to the layoff, at or near the time the Board crafted the resolution for the elimination or reduction of particular kinds of services did not operate to prejudice the due process rights of the affected teachers, who are respondents in the matter. Fortuna (Johnson)

3. Where the District's Board resolution incorrectly stated that reading teacher services would be reduced by .1 FTE rather than .6 FTE, a .6 FTE reading teacher was properly notified that her position would be reduced by .1 FTE, *however* a second .5 FTE reading teacher was improperly given a layoff notice and that second notice must therefore be dismissed. Hope (Nafarrete)

4. Respondents argued that the District's resolution to reduce or discontinue particular kinds of services was defective on the grounds that the

"Governing Board did not make any finding or state a reason why the District had to make such financial decision."[sic] Respondents further argued that there "must be a nexus between the Resolution and the need of the District to curtail its finances or cut its budget." According to the ALJ, the District did provide such evidence through the testimony of the Assistant Superintendent of Business Services. The ALJ found that, "the resolution of the Governing Board to reduce or discontinue particular kinds of services was reasonable and not arbitrary or capricious within the meaning of Education Code sections 44949 and 44955." West Contra Costa (Nafarrete)

5. It was asserted by Respondents that the District should have identified middle school and elementary school counseling positions as "distinct and separate particular kinds of services." After testimony about the different kinds of activities conducted by middle school counselors as opposed to elementary counselors, the ALJ determined that, "Based on the evidence as a whole, the District's inclusion of all counselors in one PKS category was neither arbitrary nor capricious, and constituted a proper exercise of its discretion." In support of this ruling, the ALJ pointed out that there was only one job description that included both elementary and middle school counselors. He further pointed to the fact that all of these counselors have the same credential and that the distinction in job duties "appears more one of degree than of kind." La Mesa-Spring Valley (Cole)

6. Respondent was identified for layoff because of part of her position as a .833 FTE Music Prep Support teacher. Respondent contends that her remaining .167 is not related to Music Prep Support and that she should retain that portion of her position. The ALJ ruled that, "the District's resolution does not justify laying off Respondent from that portion of her 1.0 FTE position that is not associated with elementary music prep support." San Ramon Valley (Benjamin)

7. District argued that Respondent was a temporary teacher because her position was categorically funded, but, nevertheless, the District served Respondent with a "precautionary" notice in the event Respondent challenged her status as a temporary employee. The ALJ explained that, "Categorically funded positions are those that are financed outside the district's base revenue limit with funds designated for a use specified by the particular program. (Ed. Code § 44909; *Zalack v Governing Bd. Of Ferndale Unified School Dist*. (2002) 98 Cal.App.4th 838). Certificated employees in categorically funded programs are treated as temporary employees for layoff purposes and are not entitled to the protections that Education Code sections 44944 and 44955 grant to probationary and permanent employees." The ALJ pointed out that Respondent's position is funded entirely by parent contributions which are outside the base revenue limit and that since Respondent started with the District she has been a temporary employee released at the end of every year. The ALJ concluded

that, "[Respondent] has never been a probationary employee. The evidence establishes that [Respondent] is a temporary employee under Education Code section 44909." San Ramon Valley (Benjamin)

8. Respondents argued that the PKS Resolution adopted by the board on February 24, 2009, authorized reduction of Resource Teachers and not SIP funded teachers. A later version of the PKS Resolution in April 2009 (Past March 15) reduced some SIP funded positions and the District argued that these SIP funded positions were originally a part of the Resource Teacher category. The ALJ stated that "Since there was no timely Board authorization for reduction of …SIP funded programs, and no timely notice to affected employees, the SIP funded positions cannot legally be reduced. Education Code section 44949, subdivision (a), provides that no later than March 15, and before the employee is given notice that his or her services shall not be required for the ensuing school year, the superintendent shall recommend to the governing board that notice be given to the employee that his or her services will not be required for the ensuing school year **and the reasons therefore**." (emphasis added by ALJ) The ALJ concluded that, "the notice given to Respondents includes a copy of the Board's original resolution to meet the requirement of providing the reasons for the lay off. The original resolution did not specify that SIP funding was reduced. Therefore, the District did not meet its obligation to recommend the SIP funding reduction to the Board no later than March 15. The District also did not meet its obligation to give notice to teachers affected by the SIP funding reduction notice by March 15 as to the reasons for their layoff." San Juan (Sarli)

9. The District initially maintained that a certain teacher was a temporary teacher. At the hearing, the District stipulated that the teacher was a probationary employee and was therefore made a respondent in the action. Respondents maintain that with the addition of a probationary employee affected by layoffs, the most senior probationary employee affected by the layoff should be retained. Basically the argument by Respondents is that there was cause for a certain number of layoffs and now that number has been increased by one and therefore they argue that the District has over noticed by one employee. The ALJ ruled that "the logic of this argument was not refuted by the District. Accordingly, the most senior affected employee's layoff notice should be rescinded." San Juan (Sarli)

10. Teacher successfully argued district could not eliminate her 1.0 FTE position because the board's resolution only referred to .5FTE of her current assignment. Dry Creek Elementary School District (Brandt)

11. District adequately supported its justification for skipping junior employee by demonstrating junior employee was hired as "Teacher/Teacher Leader Mandarin" and received special training and experience for this position. San Marino Unified School District (Harman)

12. District did not improperly "overnotice" individual certificated employees. Evidence demonstrated that to properly account for the bumping rights of administrators into teacher positions for the ensuing years, current certificated teachers were given layoff notices that resulted in a number of teachers being subject to layoff that exceeded the FTE elimination set out in the Board's resolution. Only an average daily attendance reduction action requires a "corresponding percentage" of certificated employees to be identified in such a reduction of staff. Vallejo City Unified School District (Johnson)

J. Evidence

1. Respondents claims alleging arbitrary or unfair tie breaking criteria, detrimental reliance, inaccurate seniority dates, inaccurate status, and qualifications to bump others failed due to insufficient evidence (Findings of Fact No. 12). Tustin (Juarez)

2. Respondents' objected to the District proceeding with layoffs without competent evidence of principle facts where the newly formed District had not completed consolidating and verifying the personnel information from four predecessor school districts to create a single seniority list prior to the hearing. Although the information was not in ideal form, it was not improper for the District to rely upon it in making layoff decisions since Respondents were afforded an opportunity to present documentary evidence and testimony to correct seniority dates. Moreover, Respondents had prior opportunity to provide supporting documentation to the District. (Findings of Fact Nos. 8 and 22). Twin Rivers (Lew)

3. Expert testimony by union officials, regarding the services offered by certificated employees, District records, and financial data, was relevant to the issue of the proposed reduction or elimination of particular kinds of services for the ensuing school year. However, the ALJ concluded that the evidence offered by union representatives was neither persuasive or reliable. Accordingly, the District exercised reasonable discretion in its decision to eliminate or discontinue a total of 6.8 FTE positions. Del Norte (Johnson)

K. Miscellaneous

1. A district may reduce services within the meaning of section 44955 "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved," citing *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167. Pixley (Rosenman)

2. The services at issue, including elementary school teaching reduced due to class size adjustment, have been recognized as particular kinds of services subject to layoff proceedings (*citations*). Pixley (Rosenman)

3. Respondent's lack of receipt of the accusation package does not constitute cause to dismiss the accusation against him. While service of the March 15th notice in accordance with the requirements of the Education Code is a jurisdictional requirement for laying off a teacher (*Karbach* v. *Board of Education* (1974) 39 Cal.App.3d 355, 361-364) service of the accusation packet in accordance with the requirement of the Administrative Procedure Act is not. Subdivision (d)(3) of section 44949 provides that "Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial." Respondent did not demonstrate any prejudice to him by the lack of receipt of the accusation packet. He was afforded the rights to appear, testify and present a defense at hearing. Petaluma City (Crowell)

4. Although the statute — found in the Administrative Procedure Act — allows accusations to be amended even after submission of a case for decision, Education Code section 44949(a), requires a district to notify teachers by March 15 of the intended reduction of their services. Therefore, the district could not amend the accusation as to a teacher to change the reduction in her services from .2 FTE to 1.0 FTE. Brisbane El (Owyang)

5. Layoff notice is not required to release a county office of education administrator who never taught for the Office, citing *Neumarkel*. Lake County Superintendent (Crowell)

6. Layoff notices to senior staff upheld despite evidence that junior teachers are improperly assigned. San Bernardino City (Ahler)

7. Employees classified as temporary by the district failed to offer any evidence to shift the burden of proof to the district to rebut the district's classification of them as temporary employees. Despite the fact that the probationary classification is the catch-all status for teachers not properly classified as something else, the teachers classified as temporary had the burden to establish that the district misclassified them as temporary employees. (See *Bakersfield Elementary Teacher Association v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260.) Walnut Valley Unified School District (Harman)

8. Respondents argued that the District classified a greater number of teachers as "Temp Leave Match" temporary teachers than the District had teachers out on a leave of absence. The ALJ found that, "The evidence established that the number of teachers in the Temp Leave Match program

does not exceed the number of probationary and permanent employees on leave at any one time." (See Ed. Code § 44920 and *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.* (1977) 76 Cal.App.3d 223.) San Ramon Valley (Benjamin)

9. Respondents successfully argued the District did not account for positively assured attrition of two teachers who had resigned earlier in the school year. The District's explanation that the two teachers were on extended leaves of absence and replaced by temporary teachers does not mean that their positions do not exist for layoff purposes and the two vacant positions should have been used to reduce the number of permanent and probationary staff affected by the proceeding. Charter Oak Unified School District (Sawyer)

10. Respondents contended that the District's layoff decision was invalid because part of the decision-making included the anticipated reduced revenue from declining enrollment but the District did not undertake the process for laying off certificated employees based on a reduction in average daily attendance provided for in Education Code section 44955. Nevertheless the District established by a preponderance of the evidence that the layoff decision was caused by overall budget concerns and not just a decline in ADA. Claremont Unified School District (Sawyer)

11. The District properly excluded teachers of a charter school affiliated with the District from the seniority list because the charter school is a separate entity with at-will employees. Orcutt Union ESD (Lopez)

12. District's failure to provide retained teachers' assignments and titles until two days before the hearing was not a denial of Respondents' statutory due process rights. Providing staff assignments is not a statutory right, school districts are not required to provide specific assignments for each retained teacher for the subsequent school year. Fairfield-Suisun (Cohn)

13. As a precautionary measure, prior to issuance of the ALJ's decision, the District may elect not to withdraw preliminary layoff notices or accusations issued to employees it does not intend to terminate. (Finding of Fact No. 14). Covina-Valley USD (Nafarrette)

14. The resolution to reduce particular kinds of services was not expressly modified in the Board's subsequent resolution to reduce class size. Therefore, District was not required to rescind any lay-off notices. (Finding of Fact No. 16). Alvord (Cole)

II. REDUCTIONS OR DISCONTINUANCES IN SERVICES NOT ALLOWED

A. Services Not Particular or not Sufficiently Specific

1. The District resolution stated that it was reducing "Home Econ" and then attempted to reduce three "academic advisory periods" under that designation. Although Districts are allowed some leeway in describing the particular kinds of services being reduced, the District did not provide sufficient evidence to demonstrate that the Governing Board understood that when it approved the reduction of three periods of "Home Econ," it was really approving the reduction of three academic advisory periods. Thus, the District could not reduce or discontinue the three periods of academic advisor service. Sutter Union High School District (Brandt)

B. Services Found not to Have Existed or Not to Have Been Reduced

1. The ALJ determined that a Respondent teaching high school digital photography was a career technical education teacher rather than an art teacher. Respondent held a single subject credential in art and a full-time designated subjects career technical education credential in arts, media, and/or entertainment. The digital photography classes were sanctioned by Regional Occupation Program (ROP). Respondent's classes were not overseen by the art or performing art department of the high school. Therefore, Respondent could not be laid off as part of the reduction or discontinuance of the particular kind of service in art. (Finding of Fact No. 20). Covina-Valley USD (Nafarrette)

III. REDUCTIONS OR DISCONTINUANCES IN SERVICES ALLOWED

A. Services Described With Sufficient Specificity

1. District's plan to reduce nurses from 7.0 FTE to 4.0 FTE was sufficiently concrete to meet the requirements of the law under *Daniels v. Shasta-Tehama-Trinity Junior Community College District*. Redwood City (Astle)

2. Services identified were particular kinds of services within the meaning of Education Code Section 44955. Mojave (Reyes)

3. Services identified were particular kinds of services within the meaning of Education Code Section 44955. Burbank (Cabos-Owen)

4. Services identified were particular kinds of services within the meaning of Education Code Section 44955. Acton-Agua Dulce (Scarlett)

5. Where District resolved to eliminate particular kinds of services over several subject areas, the District described the affected services with sufficient specificity to reduce or discontinue such services for the ensuing school year. Golden Plains (Walker)

6. Where a resolution authorizes the reduction of 7th and 8th Grade teaching services, the fact that a 6th grader has been included in a 7th and 8th grade

class does not change the character of the services offered. Pleasant Ridge (Smith)

7. "Deans" and "TOSA" (Teachers on Assignment) are sufficient descriptions of services to be reduced. Lynwood (Juarez)

8. A PKS layoff resolution listed reductions in the alternative. Resolution delegated to the superintendent the final decision on which to reduce and who to notice. CTA objected, citing *Karbach* [(1974) 39 Cal.App.3d 355]. Notices upheld. ALJ looked to *Santa Clara* [(1981) 116 Cal.App.3d 831], to analyze *Karbach* and *Santa Clara*. *Karbach* does not require that the initial layoff notice specify the precise number of teachers, not specific positions. All that need be shown in the initial notice is that the reduction is based either on ADA or PKS. Los Nietos (Micon)

9. Teachers were unsuccessful in arguing that a reduction of "self-contained classroom teaching services" did not apply to them because they were not teaching in "self-contained classrooms." The teachers were teaching single subjects in a middle school pursuant to Education Code section 44258.1. Education Code section 44258.1 provides that:

> "The holder of a multi-subject credential may teach a single subject provided that they teach two or more subjects for two or more periods per day to the same group of pupils and, in addition, may teach any of the subjects they are already teaching to a separate group of pupils at the same grade level provided that these additional period or periods do not exceed one-half of the teacher's total assignment."

The ALJ held that although the board had not been precise in its use of the term "self-contained classroom," it was clear that the board meant to reduce services being provided under a multi-subject credential. El Monte City School District (Thomas)

10. The district properly identified "teachers on special assignment" as a particular kind of service for reduction. The fact that a teacher on special assignment might be redefined by the district to involve a different type of service in the future does not render the decision to eliminate this type of service arbitrary or capricious. Bonita Unified School District (Thomas)

11. Respondents unsuccessfully argued that District resolution describing services to be reduced as "Instruction: K-12" was insufficient. Tehachapi Unified School District (Rosenman)

12. Respondent teachers unsuccessfully argued the district's uncertainty about courses to be offered and lack of specificity in the district's plan to

implement the PKS reductions invalidated the proposed layoffs. The district established that particular kinds of services would be reduced or discontinued as set forth in the board's resolution. (Findings of Fact Nos. 6 and 13). San Carlos (Rasmussen)

13. The Board's resolution described the particular kind of services being reduced with sufficient specificity even though the resolution failed to state it was closing a particular middle school. The resolution did specify the reduction of 29 FTEs of middle school instruction and two specific services that corresponded with the attached and incorporated master schedule for the middle school to be closed. (Finding of Fact No. 9). Konocti (Crowell)

B. Services Reduced Or Performed In A Different Manner

1. District may reduce services within the meaning of Education Code section 44955(b), either by determining that a certain type of service to students is being eliminated, or by determining that proffered services shall be reduced because fewer employees are made available to deal with the pupils involved (citing *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) Needles (Cole)

2. While district's employment of 3.8 FTE Outreach Specialists was "a positive thing," district could eliminate this service and have any mandated services provided by other employees or outside participants, such as the police department. Redwood City (Astle)

3. "A District may reduce services within the meaning of section 44955, subdivision (b), either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may reduce services by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (See *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179) San Lorenzo (Flores)

4. Cause existed within the meaning of Education Code sections 44955 and 44949 for the district to eliminate all counseling positions. Other employees in the special education department or the administration were scheduled to perform any mandated services that counselors performed in the next school year. A school district is authorized to eliminate a particular kind of service even though the service continues to be performed or provided in a different manner; by utilizing non-counselors the district will be providing services in a different, yet appropriate, manner. San Carlos (Rasmussen)

5. Elimination of all counselor positions was not arbitrary nor capricious even though the district had not developed a plan specifying how some of

the counselors' duties would be performed the following year. San Carlos (Rasmussen)

6. The District's decision to reduce or discontinue a particular kind of service, or offer those services in another way, is a matter reserved to the District's discretion and is not subject to second guessing in a termination proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167; *Hilderbrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 343). Moreno Valley (Matyszewski)

7. Respondents unsuccessfully argued that the layoff would reduce Exit Exam services (Education Code section 37254) and ESL services (Education Code section 52540) below mandated levels. The district presented evidence that it would provide required services, albeit in a different manner and location than has been utilized previously. Santa Rosa City Schools District (Anderson)

8. Respondents unsuccessfully argued there would not be Resource Specialists left in the district to adequately cover program caseloads. District demonstrated the remaining Resource Specialists would be shifted around in the district to provide necessary services. Lemon Grove School District (Hewitt)

C. Services Reduced Or Performed In A Different Manner - Nursing Services

1. Respondent nurse averred that the District made assumptions regarding the provision of nursing services that are erroneous and that the proposed layoff action will thrust the District below state mandated levels for staffing ratios of nurses to students. The Superintendent indicated that the District will retain a sufficient force of nursing personnel to perform the minimum mandated nursing services. The evidence did not show that mandated services are in jeopardy of being reduced below the level required by law. Northern Humboldt (Johnson)

2. District plan to continue to provide State-mandated nursing services through alternative delivery methods allowed because it was not established that the discontinuation of nursing services by school nurses will preclude the District from discharging its health care obligations. Guadalupe (Reyes)

3. Nurses and psychologists challenged the district's decision to reduce those particular kinds of services on the basis that the district will be unable to perform mandated tasks required by state or federal law. The Administrative Law Judge ruled that how the district will fulfill its obligations under state and federal law in the upcoming school year is properly determined by the district. The law does not provide any

minimum standard for guarding the employment of these two types of personnel. El Monte Union High School District (Ruiz)

4. District's decision to reduce nursing services and change the methods of providing mandated services was reasonable and within the District's discretion. The District presented sufficient evidence to establish that the majority of the nurses' services it delivers are discretionary and that the District has developed a plan to ensure mandated nurse services would not be unlawfully compromised by the reduction. Vacaville (Johnson)

5. District must provide the health care services mandated by the Education Code. However, the District is not required to utilize certificated school nurses to provide such services. The evidence did not establish that the District would not be able to provide all mandated health care services following a reduction of certificated school nursing staff from three to one. Thus, the District did not abuse its discretion. (Findings of Fact No. 24, 25, 26, 27, 28, 29, 30). Marysville (Frink)

D. Services Not Reduced Below The Level Required By Law

1. Administrative law judge concluded that "[t]he district's ability to continue operating the library once the only Library Media Facilitator position is eliminated is not an issue that is properly before this tribunal." (Finding of Fact No. 14.g.) The administrative law judge referenced testimony from district personnel to the effect that "these proceedings will not result in the district's inability to provide mandated services and no contradictory evidence was presented. (Finding of Fact No. 14.g.) Barstow (Hewitt)

2. Where superintendent's designee testified that district would continue to be able to provide all legally mandated services after reductions, plan to reduce nurses from 7.0 FTE to 4.0 FTE was not arbitrary or capricious but based on reasonable considerations. Redwood City (Astle)

3. District was not required to determine its post-layoff plan for providing mandated services at layoff hearing; it was reasonable to expect district would have a plan for providing mandated services and would not act in a manner that invites federal or state scrutiny. Respondents' contention district would be unable to provide mandated services was speculation. El Rancho (Shrenger)

4. Respondents' arguments that reclassification of two science courses into a ninth grade course would negatively impact students who aspired to attend institutions of higher learning and that layoff of Spanish teacher would affect high school's designation as "Distinguished School," did not preclude layoff. The only mandated services that were being reduced were physical education, mathematics, science, and social studies;

however, the District had sufficient teaching resources to meet the state required level for the provision of service for those reductions for the ensuing year. Eureka (Johnson)

5. Respondent's argument that layoff's outcome would deprive students, who are enrolled in the music instruction classes, of essential educational services, which are best offered in the settings of the music teaching services that Respondent has delivered over his tenure with the District did not preclude layoff. The only mandated service, which was being reduced, was Physical Education; however, the District had sufficient teaching resources to meet the state requirements for the ensuing year. Fortuna Union High School (Johnson)

6. Nurses and psychologists challenged the district's decision to reduce those particular kinds of services on the basis that the district will be unable to perform mandated tasks required by state or federal law. The Administrative Law Judge ruled that how the district will fulfill its obligations under state and federal law in the upcoming school year is properly determined by the district. The law does not provide any minimum standard for guarding the employment of these two types of personnel. El Monte Union High School District (Ruiz)

E. Mandated Services Not Being Discontinued

1. The District delivers the bulk of school nursing services for its students at its discretion, so the District may eliminate or reduce such services. The Superintendent indicated that the District will retain a sufficient force of nursing personnel to perform the minimum mandated nursing services. The evidence did not show that mandated services are in jeopardy of being reduced below the level required by law. Northern Humboldt (Johnson)

2. Respondent was not persuasive when she cited Education Code section 49400 to support an argument that the District cannot reduce nursing services. On its face, section 49400 neither requires nor recommends any specific services a school district should or may provide. The District delivers the bulk of school nursing services for its students at its discretion, so the District may eliminate or reduce such services. Northern Humboldt (Johnson)

3. Respondent, a school nurse, unsuccessfully argued that the district does not employee a sufficient number of school nurses to maintain fundamental school health services at a level that is adequate to accomplish the matters set forth in Education Code section 49427. There are no specific mandated ratios of students to school nurses under California law. Escondido Union School District (Cole)

F. Special Education Services

1. Argument by certain respondents that less senior Special Education Day Class teacher could not be skipped was rejected by the administrative law judge. (Finding of Fact No. 14.f.) Respondents argued that “there was no provision in the board’s resolution allowing the district to skip” the less senior special education teacher. (Finding of Fact No. 14.f.) The administrative law judge concluded that special day classes were not a particular kind of service identified by the district for reduction, and were not included within the particular kind of service “Elementary Classroom Teaching” even though this particular special day class was at the fourth grade level. (Finding of Fact No. 14.f.) Barstow (Hewitt)

2. District properly considered study considered by Fiscal Crisis Management and Assistance Team (FCMAT) in deciding what special education services to reduce or eliminate. District demonstrated it was able to provide all mandated services and not exceed class size maximums even with reduced services. There is a presumption that the district will perform its official duties and comply with legislative mandates. Travis Unified School District (Tompkin)

G. Librarian Services

1. Administrative law judge concluded that “[t]he district’s ability to continue operating the library once the only Library Media Facilitator position is eliminated is not an issue that is properly before this tribunal.” (Finding of Fact No. 14.g.) The administrative law judge referenced testimony from district personnel to the effect that “these proceedings will not result in the district’s inability to provide mandated services and no contradictory evidence was presented. (Finding of Fact No. 14.g.) Barstow (Hewitt)

H. Elementary Classroom Teaching

1. Argument by certain respondents that less senior Special Education Day Class teacher could not be skipped was rejected by the administrative law judge. (Finding of Fact No. 14.f.) Respondents argued that “there was no provision in the board’s resolution allowing the district to skip” the less senior special education teacher. (Finding of Fact No. 14.f.) The administrative law judge concluded that special day classes were not a particular kind of service identified by the district for reduction, and were not included within the particular kind of service “Elementary Classroom Teaching” even though this particular special day class was at the fourth grade level. (Finding of Fact No. 14.f.) Barstow (Hewitt)

2. Board properly identified particular kinds of services to be reduced or discontinued as "Elementary Teaching"; where curriculum was taught in self-contained elementary school (K-8) classroom setting, district was not

required to specifically include "science" or "history" as particular kinds of service to be reduced. Los Alamos (Scarlett)

3. Teachers' argument that service they provided, teaching science and history to sixth, seventh, and eighth grade students in district with single K-8 school where all teachers hold multiple subject credentials, was not being reduced pursuant to resolution reducing "Elementary Teaching" was not persuasive. District had broad discretion to define particular kinds of services reduced as elementary teaching, particularly in light of the small size and number of teachers (10) in the district. Respondents taught classes that more senior certificated employees with multiple subject credentials were certificated and competent to teach. Los Alamos (Scarlett)

I. Counseling and Psychological Services

1. Nurses and psychologists challenged the district's decision to reduce those particular kinds of services on the basis that the district will be unable to perform mandated tasks required by state or federal law. The Administrative Law Judge ruled that how the district will fulfill its obligations under state and federal law in the upcoming school year is properly determined by the district. The law does not provide any minimum standard for guarding the employment of these two types of personnel. El Monte Union High School District (Ruiz)

2. Respondent counselors unsuccessfully argued that the District did not properly evaluate its needs and the students before deciding to layoff 30 counselors. Although the District decision to reduce the total number of employed counselors from 62 to 30 was difficult, it was not arbitrary or capricious and the District is not required to employ a minimum number of counselors as it is teachers. Santa Ana (Ruiz)

3. Respondents argued that based on the reductions of 18 FTE of Dropout Prevention (DOP) Counseling positions, that the District would not be able to maintain mandated counseling levels. The ALJ ruled that even with an 18 FTE reduction (which were categorically funded), 39 Counselors remained and that this number would be sufficient to meet the needs of the District. San Jose (Anderson)

4. Cause existed within the meaning of Education Code sections 44955 and 44949 for the district to eliminate all counseling positions. Other employees in the special education department or the administration were scheduled to perform any mandated services that counselors performed in the next school year. A school district is authorized to eliminate a particular kind of service even though the service continues to be performed or provided in a different manner; by utilizing non-counselors

the district will be providing services in a different, yet appropriate, manner. San Carlos (Rasmussen)

5. Elimination of all counselor positions was not arbitrary nor capricious even though the district had not developed a plan specifying how some of the counselors' duties would be performed the following year. San Carlos (Rasmussen)

6. Respondents unsuccessfully argued the elimination of the school psychologist slated for layoff would result in the elimination of the only bilingual school psychologist and result in a lack of necessary psychological services for the Latino population. District demonstrated the lack of bilingual ability has not posed any problems for the one non-bilingual psychologist. Most students are bilingual and if any language problems are encountered a bilingual assistant helps the psychologist. Lemon Grove School District (Hewitt)

J. Reductions Upheld Despite Contentions that Services Were Not Actually Being Reduced

K. Services Not Mandatory

1. Where District resolved to eliminate music instruction entirely, cause existed to lay off a teacher with a single subject music credential, where no junior certificated employee was retained to perform services which the music teacher was certificated and competent to render. Buellton (Lopez)

L. Miscellaneous

1. A district may reduce services "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may `reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (Citing *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179) McFarland Unified (Flores)

2. District's original resolution on March 4, 2009 did not include a 1.0 FTE reduction for mathematics. The District adopted a second resolution in April incorporating a 1.0 FTE reduction in mathematics. Because the District failed to provide notice to affected employees prior to the March 15 that mathematics was a particular kind of service to be reduced, the District may not reduce 1.0 FTE in mathematics. Respondent was going to have her assignment in physical education reduced by 0.6 FTE because she was being bumped by a teacher who was herself being bumped by the teacher displaced by the 1.0 FTE math reduction. However, because the District could not reduce 1.0 FTE in math, the District must rescind its

notice to reduce 0.6 FTE of Respondent's physical education assignment. Red Bluff (Kopec)

3. Reduction or discontinuance of particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion. Lodi Unified (Smith)

4. District improperly used layoff vehicle to try to avoid multiple year employment contract obligations to an assistant superintendent. The administrator won at the hearing. However, counsel reports that after winning the layoff hearing, the administrator resigned anyway. La Habra (Sawyer)

5. The District paid for several teachers' classes in order for the teachers to obtain their credentials, and in return these teachers committed to teaching in the District for five years. The ALJ found that these circumstances did not change these teachers' rights in the layoff proceeding. Hayward (Owyang)

6. The ALJ ruled that, "The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under the Education Code section 44955. …The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis." (See *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638-639) San Juan (Sarli)

7. The decision to discontinue the industrial arts program was within the District's discretion despite testimony as to its quality and importance. (Finding of Fact No. 13). El Segundo (Lahr)

8. District established that the services performed by curriculum program specialists at the District Office level were distinguishable from those performed by curriculum program specialists who did not work at the District Office level. Thus, District's decision to reduce curriculum program specialist positions at the District Office level only, was a reasonable exercise of its authority. (Finding of Fact No. 12; Legal Conclusion No. 2). Colton (Meth)

9. Cause existed to sustain the District's action to reduce or discontinue 173.90 full-time equivalent positions pursuant to Education Code sections 44949 and 44955. Los Angeles County Office of Ed. (Juarez)

10. District exercised its discretion to lay off one of its seven speech therapists while continuing its use of the services of a non-district employee who provides speech therapy. The non-district employee is employed by the county office of education, which pays the employee's salary. Respondents unsuccessfully argued district had a duty to reassign certificated employees in a manner that would ensure retention of the

maximum number of employees, which would include refusing services paid for by the county office of education. Respondents cited no legal authority setting for such a requirement and evidence established an alternative funding source for such services could not have been accomplished in time to affect the layoff. Travis Unified School District (Tompkin)

11. District successfully argued that teachers lacking a CLAD were properly noticed for layoff. District persuasively argued that it could not accommodate teacher who do not possess a CLAD and there is no place to put them and to have them teach. If the district were required to keep those teachers who could not be assigned to any classroom in the district, there would be a tremendous waste of scarce or finite public funds. Vallejo City Unified School District (Johnson)

IV. SENIORITY

A. Entitled To Retroactive Seniority

1. Employee who commenced school year as a long-term substitute teachers before accepting "probationary contract" to continue in same position was entitled to retroactive credit. (Finding of Fact No. 14.b.) According to the administrative law judge, "[t]he district's conclusion emanates from construing the 'tacking' criteria too restrictively," because if the employee "is not credited with her service as a long-term substitute then she will, in essence, be improperly penalized for agreeing to become a probationary employee." (Finding of Fact No. 14.b.) The administrative law judge noted that, "[h]ad respondent Crowley continued working the entire school year as a long-term substitute and then taken a probationary position the very next school year there is no question that she would be credited with a seniority date that reflected her first date of service as a long-term substitute . . . ." (Finding of Fact No. 14.b.) A contrary conclusion, according to the Administrative Law Judge, "would fly in the face of logic and would result in an injustice." (Finding of Fact No. 14.b.) Barstow (Hewitt)

2. Respondent who served in a 50% temporary assignment the year prior to becoming permanent entitled to one year of retroactive seniority because, although the assignment was 50%, the Respondent worked more than 75% of the regular days of the school year. Petaluma City School District (Crowell)

3. Equitable estoppel defeats employer's attempt at hearing to reconstruct gaps in personnel files. Wilsona (Reyes)

4. Several respondents challenged their seniority dates arguing that their seniority dates should be earlier based on their service to the District as

substitutes before being hired as probationary employees. Pursuant to Education Code section 44918, where the respondent was able to show that he/she served at least 75% of the number of days in the prior school year, he/she was entitled to the earlier date of seniority. Antelope Valley Joint Union High School District (Cabos-Owen)

5. Because Respondent was required to attend a new employee orientation for which she received her regular salary, the District was ordered to adjust her seniority date to reflect an earlier first date of probationary service. (Finding of Fact No. 17). Oak Park (Reyes)

6. Respondents were entitled to earlier seniority dates based on their attendance at trainings despite being paid a stipend and signing a "Verification and Update of Personnel Information" forms confirming the District's assigned seniority date. Although the principal did not have the authority to mandate such training, Respondents testified that the principal told them they would be required to attend a mandatory training if hired. A letter from the principal was proffered by one of the Respondents confirming that the training was considered "a condition of employment." (Findings of Fact Nos. 17, 18, 19). Fullerton Elem. SD (Juarez)

7. Respondent counselors were entitled to earlier seniority dates because: (1) they were required to start working nine days prior to the first contractual day of service; (2) they performed the duties for which they were hired rather than simply attending orientation or training; and, (3) compensation was pursuant to a provision of the district-union contract. The ALJ refused to give the previous year's layoff decision res judicata effect to bar one Respondent counselor's claim to an earlier seniority date because to do so would result in her being treated differently than the other Respondent counselors and it would not serve the interests of the district. (Finding of Fact No. 18). Berkeley (Rasmussen)

8. Respondent was entitled to an earlier start date based on his attendance at a mandatory training for which he received compensation. (Finding of Fact No. 12). El Segundo (Lahr)

9. Respondents were entitled to have their seniority dates adjusted to reflect the first day of attendance at summer workshops and orientations for which they were paid. Attendance at certain training sessions was required based on the documents mailed to new employees and the statements made to the teachers who inquired about the sessions. Accordingly, Respondents compensated for attending a "required" workshop were entitled to have their seniority date recalculated. (Findings of Fact Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18). Chaffey (Matyszewski)

10. Teacher entitled to retroactive seniority date under Education Code section 44918(a) where evidence demonstrated she worked continually from September 2007 through June 2008 as a long-term substitute, which is considered at least 75 percent of the school year. Pasadena Unified School District (Ruiz)

B. Not Entitled To Retroactive Seniority

1. Employee who started working in certificated position in April, 2005, was not employed at the start of the following school year, and obtained a new position starting October 10, 2005, was correctly assigned the latter date as a seniority date. Mojave (Reyes)

2. Employee who worked all of 2004-2005, then worked as a substitute and took maternity leave for a portion of 2005-2006, was correctly assigned seniority date of August 17, 2006. Mojave (Reyes)

3. Employee who began working as long term substitute August 27, 2007, and was admitted to intern program and began working as probationary employee October 15, 2007, was correctly assigned the latter date as seniority date. Burbank (Cabos-Owen)

4. Employees who worked more than one year as temporary or substitute employees prior to being hired as probationary employees were not entitled to more than one year of credit for temporary service for purposes of calculating seniority date. Education Code Section 44814 [sic][apparent typo in decision -reference should be to 44914] does not mandate that employee who served two years as substitute be credited with two years of probationary service. Burbank (Cabos-Owen)

5. A nonreelection of a PIP (preliminary intern permit) followed by a rehire resets the layoff seniority date to zero. Kern High School District (Flores).

6. University summer school class compensated by stipend does not qualify for an advanced seniority date. King City Union Elem. (Perry Johnson)

7. Several respondents challenged their seniority dates arguing that their seniority dates should be earlier based on their service to the District as substitutes before being hired as probationary employees. Pursuant to Education Code section 44918, where the respondent was able to show that he/she served at least 75% of the number of days in the prior school year, he/she was entitled to the earlier date of seniority. Antelope Valley Joint Union High School District (Cabos-Owen)

8. Respondents contended that their seniority dates should be altered as they attended a new teacher training before classes began. Education Code section 44845 establishes a teacher's seniority date as "the date upon which he first rendered paid service in a probationary position" but neither

the statute nor case law further clarify how to determine a teacher's first day of paid service. However most administrative law decisions have found that the first date of paid service cannot be based on attendance at a training or orientation session held before the beginning of classes when attendance was not mandatory and when those who attended were paid by a stipend rather than a per diem amount reflective of their contract wages. Because respondents' attendance at the training was not mandatory and they were paid only a stipend, the District appropriately determined the employees' first date of paid service. <u>Claremont Unified School District</u> (Sawyer)

9. Newly hired teachers with less than two years of teaching experience were required to attend three additional days of training prior to the mandatory training for all new hires resulting in less experienced teachers receiving an earlier seniority date and greater seniority than the more experienced, newly hired, teachers. (Finding of Fact No. 10). <u>San Carlos</u> (Rasmussen)

10. Attendance at a professional development program before the start of school did not qualify as rendering services for the District despite receiving per diem pay and Respondent's belief it was mandatory. Accordingly, Respondent was not entitled to an earlier seniority date. <u>East Side</u> (Astle)

11. District was not required to amend start dates of Respondents who were paid an additional stipend for attending summer training courses "offered as a convenience" for new teachers. (Findings of Fact Nos. 29, 30). <u>Mountain View SD</u> (Waxman)

12. Respondents did not qualify for an earlier start date where attendance at a half-day new teacher orientation and luncheon was voluntary and the compensation was not based on the terms of the their contracts with the District. <u>Sierra Sands</u> (Harman); <u>Berkeley</u> (Rasmussen)

13. Respondents' participation in pre-service training was unpaid and not mandatory therefore they were not entitled to earlier seniority dates. (Finding of Fact No. 14). <u>Pleasant Valley</u> (Waxman)

14. When four school districts merged to form one unified District, certificated employees were assigned the seniority date on file with their *immediate* predecessor school district. (Finding of Fact No. 21). Respondents with earlier service in more than one of the predecessor school districts were not entitled to "tack back" prior service in all predecessor school districts and unfairly gain seniority through the unification. <u>Twin Rivers</u> (Lew)

15. Respondents were not entitled to retroactive seniority for their paid attendance at new teacher training that was described as "required" in a

letter to the employees. Attendance was not mandatory because there was no consequence for those that did not attend and it was not required as a condition of their employment. (Finding of Fact No. 19). Hawthorne (Shrenger)

16. Respondent who was directed by her principal to attend a math curriculum training in lieu of new teacher training was not entitled to an earlier seniority date because the training sessions were not mandatory or a condition of employment. (Finding of Fact No. 20). Hawthorne (Shrenger)

17. Respondents were not entitled to an earlier start date for their attendance at a week-long training course despite the principal describing the training as mandatory because there was no penalty for non-attendance and the attendees received a stipend beyond their regular salary. (Finding of Fact No. 19). Mount Diablo (Rasmussen)

18. Respondents unsuccessfully argued that K-5 teachers who had taught in preschool programs were not credited with their preschool teaching in calculating their current seniority. Education code section 8360 et seq., establishes a separate program and seniority system for preschool teachers for that of K-5 teachers. Consequently, preschool teachers are not entitled to seniority credit for their preschool teaching when they become employed as K-5 teachers. Lemon Grove School District (Hewitt)

19. Two teachers with prior service as categorically funded service unsuccessfully argued that they were entitled to earlier seniority dates. If a categorically funded employee is subsequently hired as a probationary employee, the employee is entitled to have one year of prior service in a categorically funded position tacked on, so long as the employee worked at least 75 percent of the regular school days during that prior year. Sylvan Union School District (Yeh)

C. Early Reporting Or Orientation Effect On Seniority

1. Upheld seniority date of September 6, 2007, although school started on respondent's campus on September 6 and respondent was on campus attending training and completing paperwork on September 4 and 5. Respondent did not recall whether he was paid for attending training on September 4 or 5, and thereby failed to establish he was paid to attend the District's in-service training. Anaheim Union High (Shrenger)

2. Although employed to teach summer school half-days for a few weeks in 2007, at an hourly pay rate of $30, Respondent has not demonstrated that this constitutes "paid service in a probationary position," citing 44848. The summer school was not a normal class room assignment, she did not

work full days, the assignment did not occur in the regular school year or as part of the employee's annual contract with the District which she later signed. She did not receive the same rate of pay as when she later taught as a probationary employee. Vineland (Harman)

3. There is no basis for characterizing paid attendance ($600 stipend) at a voluntary training course as paid service in a probationary position. Vineland (Harman)

4. Employees were not entitled to retroactive credit for seniority for a New Teacher training that took place prior to the 2007-2008 school year even though they were "led to believe the training was mandatory. (Finding of Fact No. 14.a.) Testimony from the District's Assistant Superintendent established that the training was not required, and employees were compensated with "categorical funds" in addition to their regular contractual compensation. Barstow (Hewitt)

5. Respondent's seniority date was proper where district disputed respondent's contention he was invited to attend new teacher training, which was mandatory and paid for five other employees, and there was no showing it was mandatory for respondent or that he was paid to attend. Hueneme (Rovner)

6. Employees with seniority dates in August not entitled to seniority credit for attendance at professional development courses held in June. District paid stipends for attendance. District "highly recommended" but did not require teachers to take the courses. These training sessions "do not constitute paid service in a probationary position." Panama-Buena Vista (Harman)

7. Where employee helped to prepare a classroom prior to her September 5, 2006, seniority date, but was unsure whether she had been paid for that time, District properly determined seniority date. Burbank (Cabos-Owen)

8. A district had four tracks, A, B, C, and D. The first date of paid service for tracks A, B, and C was July 3, 2006. The first date that teachers assigned to track D were required to provide service was August 4, 2006. A teacher on track D, who voluntarily attended a meeting on July 3, 2009, was properly determined by the district to have a seniority date of August 4, 2006. San Jacinto Unified (Johnson)

9. University summer school class compensated by stipend does not qualify for an advanced seniority date. King City Union Elem. (Perry Johnson)

10. Teachers who attended mandatory summer training before their first probationary year were entitled to earlier seniority date based upon the first date of the mandatory summer training. Teachers who attended training that was not required and paid for by a stipend in addition to their

regular salary were not entitled to an earlier seniority date. A counselor who was paid for extra duty that he volunteered for during the summer was not entitled to an earlier seniority date based upon the extra duty. Centinela Valley Union High School District (Cabos-Owen)

11. Respondent unsuccessfully argued that she was entitled to an earlier seniority date because her principal had requested her to come in to the school prior to her first day of paid service to meet with the teacher she would be sharing a classroom with. Seniority is measured from the first day of paid service and no matter how praiseworthy the precontract activity may have been, it was not part of her contract and does not change her date of seniority. Williams Unified School District (Smith)

12. Two Respondents who had been temps for two years prior to starting their probationary service had a seniority date of August 25, 2005. That date reflected that one year had been tacked on for temporary service. The year both Respondents had started their second year as temporary teachers (the beginning of the tacked year), the District did not require them to attend the new teacher orientation on August 24, 2005, because they had already attended the previous year. Thus, the new teachers who started in the 2005-2006 school year and attended the orientation on August 24, 2005, had a superior seniority date to the two teachers who had been temporary for two years. Despite Respondent's arguments that they should not have lower seniority dates because they were not required to attend the orientation, the ALJ ruled that the seniority dates had been properly determined. Oceanside (Johnson)

13. Certain Respondents argued that they did not receive seniority credit for attending the "New Teachers Academy" (NTA) training which was conducted the summer prior to the commencement of the Respondents teaching pursuant to their employment contracts. The training was considered mandatory and every effort is made by the District to have all new teachers attend the NTA training, but the District allows teachers who missed the training to take it at a later date. In some cases, where new teachers were unable to attend the summer training it did not preclude them from commencing work with the District. Teacher who attended the training were paid an extra stipend, above and beyond what was agreed to in their contracts. The ALJ concluded that, "the fact that teachers who missed the summer training were allowed to take it at some other time, and the fact that the teachers were paid outside their contracts for the training lead to the conclusion that the District acted properly in not counting the date the teachers attended the NTA training for purposes of establishing seniority (i.e. the date of attendance was not the teachers' first date of paid services under their employment contracts)." Hesperia (Hewitt)

14. Respondent who was given a seniority date of August 22, 2007 argued that she should have an earlier date because after the District had offered her the position in April 2007, she attended a professional development day in May and a District Reading Workshop in July of 2007. She was not paid for attending these events. The ALJ ruled that, "Under Education Code section 44845, an employee's seniority date is the date upon which she 'first rendered paid service in a probationary position.' [Respondent] first rendered paid service to the District on August 22, 2007. She is not entitled to an earlier seniority date." San Ramon Valley (Benjamin)

15. One Respondent hired as a Library Media Specialist was listed as having a seniority date of August 22, 2007. Respondent argued that she had placed book orders in March of 2007 and had traveled from out of state to attend staff meetings before August 2007, and that she started working for the District during the last week of July. The work Respondent did prior to August 22, 2007 was, however, not part of her contract with the District for the 2007-2008 school year and she was paid an hourly rate for her work prior to August 22, 2007. The ALJ ruled, "a certificated employee's seniority begins on the date she first rendered paid service to the district in a probationary position." The ALJ further stated that, "The evidence does not establish that [Respondent's] service to the District before August 22, 2007, was a part of her probationary position." It was further noted by the ALJ that Respondent did not claim that the work Respondent performed prior to August 22, 2007 was required by the District. San Ramon Valley (Benjamin)

16. The ALJ determined that a Respondent who, although she had been a part-time temporary teacher for several years, did not serve 75 percent of the days that the District's schools were maintained in the previous school year could not tack on her previous year's service and was thus given a date that reflected the first day she worked as a probationary teacher. San Ramon Valley (Benjamin)

17. Newly hired teachers with less than two years of teaching experience were required to attend three additional days of training prior to the mandatory training for all new hires resulting in less experienced teachers receiving an earlier seniority date and greater seniority than the more experienced, newly hired, teachers. (Finding of Fact No. 10). San Carlos (Rasmussen) 2009030022.

18. Attendance at a professional development program before the start of school did not qualify as rendering services for the District despite receiving per diem pay and Respondent's belief it was mandatory. Accordingly, Respondent was not entitled to an earlier seniority date. East Side (Astle) 2009030096.

19. District was not required to amend start dates of Respondents who were paid an additional stipend for attending summer training courses "offered as a convenience" for new teachers. (Findings of Fact Nos. 29, 30). Mountain View SD (Waxman) 2009030133.

20. Respondents did not qualify for an earlier start date where attendance at a half-day new teacher orientation and luncheon was voluntary and the compensation was not based on the terms of the their contracts with the District. Sierra Sands (Harman) 2009030156; Berkeley (Rasmussen) 2009030220.

21. Respondents' participation in pre-service training was unpaid and not mandatory therefore they were not entitled to earlier seniority dates. (Finding of Fact No. 14). Pleasant Valley (Waxman) 2009030288.

22. Respondents were not entitled to retroactive seniority for their paid attendance at new teacher training that was described as "required" in a letter to the employees. Attendance was not mandatory because there was no consequence for those that did not attend and it was not required as a condition of their employment. (Finding of Fact No. 19). Hawthorne (Shrenger) 2009030298.

23. Respondent who was directed by her principal to attend a math curriculum training in lieu of new teacher training was not entitled to an earlier seniority date because the training sessions were not mandatory or a condition of employment. (Finding of Fact No. 20). Hawthorne (Shrenger) 2009030298.

24. Respondents were not entitled to an earlier start date for their attendance at a week-long training course despite the principal describing the training as mandatory because there was no penalty for non-attendance and the attendees received a stipend beyond their regular salary. (Finding of Fact No. 19). Mount Diablo (Rasmussen) 2009030327.

25. Respondents were entitled to earlier seniority dates based on their attendance at trainings despite being paid a stipend and signing a "Verification and Update of Personnel Information" forms confirming the District's assigned seniority date. Although the principal did not have the authority to mandate such training, Respondents testified that the principal told them they would be required to attend a mandatory training if hired. A letter from the principal was proffered by one of the Respondents confirming that the training was considered "a condition of employment." (Findings of Fact Nos. 17, 18, 19). Fullerton Elem. SD (Juarez) 2009030110.

26. Respondent was entitled to an earlier start date based on his attendance at a mandatory training for which he received compensation. (Finding of Fact No. 12). El Segundo (Lahr) 2009030173.

27. Respondent counselors were entitled to earlier seniority dates because: (1) they were required to start working nine days prior to the first contractual day of service; (2) they performed the duties for which they were hired rather than simply attending orientation or training; and, (3) compensation was pursuant to a provision of the district-union contract. Moreover, the ALJ refused to give the previous year's layoff decision res judicata effect to bar one Respondent counselor's claim to an earlier seniority date because to do so would result in her being treated differently than the other Respondent counselors and it would not serve the interests of the district. (Finding of Fact No. 18). Berkeley (Rasmussen) 2009030220.

28. Because Respondent was required to attend a new employee orientation for which she received her regular salary, the District was ordered to adjust her seniority date to reflect an earlier first date of probationary service. (Finding of Fact No. 17). Oak Park (Reyes) 2009030104.

29. Respondent not entitled to retroactive seniority date where Respondent's attendance at training prior to school year was not part of probationary service. Pleasanton Unified School District (Benjamin)

30. Respondents that attended mandatory staff development training during the summer were not entitled to retroactive seniority dates. While the training was mandatory and had to be taken at some time during employment, attending summer training was voluntary. In addition, teachers electing to attend summer training were paid extra for attending the training. Jurupa Unified School District (Hewitt)

D. Prior Temporary Or Substitute Service

1. Hired as a Long Term Substitute on September 4, 2007; became probationary ("Prob-0") on November 13, 2007. The delay had to do with resolving an issue regarding his credential. Consistent with a ruling in the prior year's layoff, upheld seniority date of November 13, 2007, since teacher did not work more than 75% of the school year in the substitute position, citing 44918. Respondent "has not established sufficient service under his contract as a substitute teacher to qualify for an earlier seniority date." Anaheim Union High (Shrenger)

2. Employment as a substitute or other temporary status may become employment in a probationary capacity in some circumstances. "A year of employment as a temporary teacher may, in some cases, be treated as a year of probationary service for purposes of attaining permanent status if the employee is rehired for the following year 'as a probationary employee

in a position requiring certification qualifications' (§ 44909); 'in a position requiring certification qualifications' (§ 44917); 'as a probationary employee' (§ 44918); or 'in a vacant position requiring certification qualifications' (§ 44920)." (*citing, Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1279.) Lucia Mar (Reyes)

3. Employee who commenced school year as a long-term substitute teachers before accepting "probationary contract" to continue in same position was entitled to retroactive credit. (Finding of Fact No. 14.b.) According to the administrative law judge, "[t]he district's conclusion emanates from construing the 'tacking' criteria too restrictively," because if the employee "is not credited with her service as a long-term substitute then she will, in essence, be improperly penalized for agreeing to become a probationary employee." (Finding of Fact No. 14.b.) The administrative law judge noted that, "[h]ad respondent Crowley continued working the entire school year as a long-term substitute and then taken a probationary position the very next school year there is no question that she would be credited with a seniority date that reflected her first date of service as a long-term substitute . . . ." (Finding of Fact No. 14.b.) A contrary conclusion, according to the Administrative Law Judge, "would fly in the face of logic and would result in an injustice." (Finding of Fact No. 14.b.) Barstow (Hewitt)

4. Employee who worked all of 2004-2005, then worked as a substitute and took maternity leave for a portion of 2005-2006, was correctly assigned seniority date of August 17, 2006. Mojave (Reyes)

5. Employee who began working as long term substitute August 27, 2007, and was admitted to intern program and began working as probationary employee October 15, 2007, was correctly assigned the latter date as seniority date. Burbank (Cabos-Owen)

6. Employees who worked more than one year as temporary or substitute employees prior to being hired as probationary employees were not entitled to more than one year of credit for temporary service for purposes of calculating seniority date. Education Code Section 44814 [sic] [apparent typo in decision -reference should be to 44914] does not mandate that employee who served two years as substitute be credited with two years of probationary service. Burbank (Cabos-Owen)

7. Teacher credited with time for temporary and substitute services under *Bakersfield Elementary School District* (2006) 145 Cal.App.4th 1260 and Education Code section 44918 still did not have enough seniority to avoid layoff. Guadalupe (Reyes)

8. Teacher started service on Day 6 apparently before receiving a written contract labeled "temporary-long." District conceded prior to commencement of the hearing that under *Kavanaugh* the teacher was entitled to be treated as probationary. The employee, however, argued that under 44915 she was entitled to both a full year's probationary service and a full year of layoff seniority. District was ordered to credit the additional six days, which put teacher into a tie-break group. San Rafael Elementary (Owyang).

9. Temps working successive tours of duty do not need repeated *Kavanaugh* notices each time service resumes. Poway (Ahler)

10. Tacking for prior temp service not allowed. King City Union Elem. (Perry Johnson)

11. Employee who is working as a counselor in a categorically funded position pursuant to Education Code section 44909 was not entitled to a seniority date based on her first date of paid service in that position. The counselor was not employed pursuant to a signed contract for the 2008-2009 school year and, therefore, became a probationary teacher as provided in *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911. Her seniority date was set at the beginning of the 2007-2008 school year based on her service as a temporary employee during the year prior to becoming a probationary employee. She was not entitled to a 2005 seniority date corresponding with her first date of paid service as a temporary categorically funded counselor. Bonita Unified School District (Thomas)

12. A probationary employee was entitled to an earlier seniority date based upon her employment for an entire school year in a temporary position during the year preceding her first date of employment as a probationary employee. She was, therefore, entitled to be retained because less senior teachers were retained to perform services which she was certificated and competent to render. Roland Unified School District (Montoya)

13. Employees were not entitled to earlier seniority date on the basis that they served as long-term substitutes for more than 75 percent of the school days in one or more years preceding the year in which the district gave them seniority. The burden was on each employee to establish that they were classified as probationary employees during the year to which they wished to "tack" their long-term substitute year. Status as a "prob 0 employee" does not automatically confer status as a probationary employee within the meaning of Education Code section 44918. Coachella Valley Unified School District (Cole)

14. Employee who began the year as a long-term substitute was not entitled to a seniority date based on first date of paid employment because he later

became an intern during that same school year. Coachella Valley Unified School District (Cole)

15. Respondent argued that her seniority date should be changed from January 8, 2007 to August 9, 2006 because she began teaching as a long-term substitute teacher on August 9, 2006. The Respondent began the school year teaching in a fourth grade class as a long-term sub for teacher who was out on maternity leave. Respondent continued teaching in the same class and in December 2006 she was offered a full time position with the District. Respondent accepted the offer of employment and commenced employment as a probationary teacher in January 2007. The teacher who was on maternity leave did return to the District, however, Respondent remained in the same classroom in which she had taught the first semester. The ALJ determined that the Respondent should be credited with the August 2006 seniority date. Hesperia (Hewitt)

16. One Respondent began working for the District on September 1, 2005 and continued in that position until June 28, 2007, at which time she resigned from the District. In August of 2007, she returned as a substitute teacher was rehired as a probationary employee again on September 18, 2007. Respondent argues that she should have a seniority date earlier than September 18, 2007. The ALJ ruled that "for seniority purposes, the date of rehire controls, and the District properly listed September 18, 2007 as Respondent's seniority date." Hesperia (Hewitt)

17. Respondent argued she should receive seniority credit for the year prior to her beginning probationary service because together with her long-term sub work, her time served as a temporary employee and her day-to-day sub work amounted to over 75 percent of the school year. The ALJ ruled that, "Her work as a day-to-day substitute does not count toward the 75 percent time required by Education Code section 44918. Without counting the days she worked as a day-to-day substitute, she does not meet the requirements of section 44918." San Ramon Valley (Benjamin)

18. Respondent has a seniority date of August 23, 2006 and had worked as a temporary teacher for both the 2005-2006 and the 2006-2007 school years. Respondent now argues that she is entitled to an earlier date. The ALJ ruled that, "Respondent was granted seniority credit for the 2006-2007 school year. No legal basis is apparent, and [Respondent] cites none, to grant her an earlier seniority date.

19. Respondents with prior service as long term or day-to-day substitutes were not entitled to: (1) earlier seniority dates; or (2) receive probationary status based on the earlier service without additional evidence. Placentia-Yorba Linda (Rosenman) 2009030040.

20. District correctly disallowed tacking for prior temporary service where Respondents did not work more than 75 percent of the school days in the year immediately prior to becoming a probationary employee. (Findings of Fact Nos. 14, 15). Furthermore, the District acted properly when it refused to adopt a pro-rated form of tacking for part-time, temporary teachers. (Finding of Fact No. 17). Vacaville (Johnson) 2009030060.

21. Respondents who were initially employed as substitute teachers for less than a full year did not establish that they had worked 75 percent of the school year prior to becoming a probationary employee. Therefore, they were not entitled to an earlier seniority date. South Pasadena (Ruiz) 2009030098.

22. Day-to-day substitute service is expressly excluded from the calculation of days of service when determining whether an employee is entitled to one year's credit for working 75 percent of the school days in the year prior to becoming probationary. (Education Code § 44918). Mountain View SD (Waxman) 2009030133.

23. Where Respondent worked under temporary contract for three years prior to becoming a probationary employee, District correctly backdated her first date of paid service one year in accordance with Education Code section 44918. (Finding of Fact No. 16). Monrovia (Lahr) 2009030192.

24. The District properly disallowed "tacking" within a single year and correctly determined Respondent's first date of paid service as a probationary employee. Respondent served as a temporary employee and as a long-term substitute in the same school year that he was hired as a probationary employee. Respondent did not render any temporary or substitute service in the year prior to becoming a probationary employee. Therefore, Respondent's seniority date was the date he began employment as a probationary employee. (Finding of Fact No. 9). Fairfield-Suisun (Cohn) 2009030194.

25. Respondent was initially hired as a temporary employee for the 2005-2006 school year. She resigned from that position and was subsequently rehired. The District correctly determined Respondent's first date of paid service was August 17, 2006 under Education Code section 44848. (Findings of Fact Nos. 15, 16, 17, 18, 19, 20, 21). Walnut Creek (Schneider) 2009030202.

26. Probationary employees are not entitled to more than one year of credit for prior long-term substitute service. The District properly credited Respondent with one year of probationary service for rendering long-term substitute service for more than 75 percent of the school days in the year prior to being given a probationary position. Mountain View SD (Waxman) 2009030133.

27. Where Respondent worked under temporary contracts for five consecutive years prior to becoming a probationary employee, the District correctly accounted for the one year of temporary service prior to becoming a probationary in determining her seniority date. (Finding of Fact No. 20). Atascadero (Reyes) 2009030194.

28. Respondents with prior service as temporary teachers were not entitled to retroactive seniority dates where there was no evidence district acted arbitrarily and capriciously when classifying Respondents as temporary while other teachers with similar backgrounds and credentials were hired as probationary employees. Pleasanton Unified School District (Benjamin)

E. Specific Cases

1. Respondent was hired initially for the 2007-08 school year, attended new employee orientation, and resigned a month later. She was rehired for the 2008-09 school year and given an August 1, 2008 seniority date. She did not attend the July 30, 2008 new employee orientation because she attended the year before and was told she need not attend by a district official. She was not advised that failure to attend would adversely effect her seniority date. ALJ found elements of equitable estoppel were established to warrant correction of seniority date to July 30, 2008. Keppel Union (Reyes)

2. The fact that the district made an error in an earlier layoff proceeding did not entitle the employee to that seniority date unless she established that she reasonably relied on the erroneous date to her prejudice, such that principles of estoppel would apply. The teacher did not make that showing. Desert Sands Unified (Ahler)

3. Since August 20, 2008, was indisputably the first day of paid service in a probationary position for each of eight teachers, that was their proper seniority date. This was the case although they originally received school calendars which indicated their start date would be August 14, 2008. August 14, 2008, was the start date for new teacher orientation, which the eight were not required to attend because they had prior teaching experience. The eight teachers contended that the district's policy of not requiring new teachers with prior teaching experience to attend the new teacher orientation violated certain provision of the Education Code, as well as the collective bargaining agreement. However, the ALJ found these challenges to the district's policy to be beyond the scope of the proceeding. Morongo Unified (Cole)

4. Nothing in *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, or Education Code section 44909, suggests that teachers in categorically funded programs

retain seniority relative to other probationary employees when the teachers from the categorically funded programs are no longer in the programs. Chico Unified (Engeman)

5. Job share teachers earn two years of seniority (and apparently tenure track progress) whether serving half days daily or 2½ days per week. Chino Valley (Matyszewski)

6. No recognition of concept of overall career layoff seniority (portability) accumulating all work with any district. Chino Valley. (Matyszewski)

7. District in difficult financial straits gave layoff notice to a permanent teacher who had resigned and rehired within 39 months. Evidence showed that as of July 1, 2009, the district would have no probationary teachers. Layoff notice set aside because the district as of the hearing date still retained three probationary teachers with the same credentials. Note: board expressly rejected proposed decision finding that ALJ misread the statute. However, matter mooted when the superintendent reinstated teacher. Taft City SD (Formaker)

8. Corrections to seniority dates did not affect layoff process. Notices upheld. Soquel Union (Anderson)

9. The ALJ rejected an argument by a part time more senior respondent that the employee was entitled to take the position of a more junior full time employee based on *Hildebrandt v. St. Helena Unified Sch. Dist.* (2009) 172 Cal.App.4th 334.) Tehachapi Unified School District (Rosenman)

10. District initially hired Respondent in August 2004 under a temporary contract which the District converted to a probationary position in January 2005. Respondent was told in February 2005 her job was ending and thereafter Respondent served as a day-to-day substitute for the remainder of the school year. Respondent served in various substitute positions throughout the 2006-2007 school year. In August 2007 Respondent was hired as a probationary employee. Because she served as a substitute teacher in multiple assignments the year prior to a becoming probationary teacher, the District correctly assigned an August 2007 seniority date. (Finding of Fact No. 18). Mount Diablo (Rasmussen) 2009030327.

11. The District's probationary classification of Respondent teacher who had previously achieved permanent status in another district was proper under Education Code 44929.28. Moreover, inadvertently indicating Respondent was "permanent" on two District forms did not constitute authorized notice that she was anything other than a probationary employee. Somis Union (Lopez) 2009030300.

F. Categorically-Funded Employees

1. Instructors in a regional occupational program serve in categorically funded positions and do not have rights to a hearing. Fillmore (Lopez)

2. Employee who is working as a counselor in a categorically funded position pursuant to Education Code section 44909 was not entitled to a seniority date based on her first date of paid service in that position. The counselor was not employed pursuant to a signed contract for the 2008-2009 school year and, therefore, became a probationary teacher as provided in *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911. Her seniority date was set at the beginning of the 2007-2008 school year based on her service as a temporary employee during the year prior to becoming a probationary employee. She was not entitled to a 2005 seniority date corresponding with her first date of paid service as a temporary categorically funded counselor. Bonita Unified School District (Thomas)

3. District appropriately treated categorically funded teachers as temporary employees. Education Code section 44909 was intended to prevent a person from acquiring probationary status solely through teaching in a categorically funded program. This permits the hiring of qualified persons for categorically funded positions of undetermined duration without incurring responsibility to grant tenured status based on such teaching services alone. To characterize categorically funded employees as probationary would go against that purpose. Anaheim City School District (Juarez)

4. District argued that Respondent was a temporary teacher because her position was categorically funded, but, nevertheless, the District served Respondent with a "precautionary" notice in the event Respondent challenged her status as a temporary employee. The ALJ explained that, "Categorically funded positions are those that are financed outside the district's base revenue limit with funds designated for a use specified by the particular program. (Ed. Code § 44909; *Zalack v Governing* Bd. *Of Ferndale Unified School Dist*. (2002) 98 Cal.App.4th 838). Certificated employees in categorically funded programs are treated as temporary employees for layoff purposes and are not entitled to the protections that Education Code sections 44944 and 44955 grant to probationary and permanent employees." The ALJ pointed out that Respondent's position is funded entirely by parent contributions which are outside the base revenue limit and that since Respondent started with the District she has been a temporary employee released at the end of every year. The ALJ concluded that, "[Respondent] has never been a probationary employee. The

evidence establishes that [Respondent] is a temporary employee under Education Code section 44909." San Ramon Valley (Benjamin)

5. Respondents employed in District's categorically funded programs that will be continuing the following school year are entitled to be classified as something other than temporary for purposes of the layoff proceeding, and accounted for on the District's seniority list. Section 44904 provides that service under a categorically funded project "shall not be included in computing the service required as prerequisite to attainment of, or eligibility to, classification as a permanent employee." Section 44904 creates an exception to the general rule that service in a probationary position is creditable for attainment of permanent status; it does not compel the District to classify respondents as temporary or to remove their names from the seniority list. Therefore, those Respondents employed in District categorically funded programs that will be continuing in the next school year are entitled to participate in the layoff proceedings. Twin Rivers (Lew) 2009030049.

G. Proper Notification Of Temporary Status

1. District's seniority date of August 8, 2007 and classification of teacher as probationary deemed incorrect. District failed to provide written notice of temporary employment status during 2006-2007 school year, resulting in teacher being deemed probationary for that year. Teacher's classification for 2008-2009 should have been "permanent." Teacher therefore should have been retained. Panama-Buena Vista (Harman)

2. *Kavanaugh* applied where a contract for "temporary-long" status apparently delivered after commencement of service. Service recognized as probationary. San Rafael Elementary (Owyang)

3. Temps, whether long-term under 44920 or categorical under 44909, not entitled to layoff notices. Irvine (Juarez)

4. Employees classified as temporary by the district failed to offer any evidence to shift the burden of proof to the district to rebut the district's classification of them as temporary employees. Despite the fact that the probationary classification is the catch-all status for teachers not properly classified as something else, the teachers classified as temporary had the burden to establish that the district misclassified them as temporary employees. (See *Bakersfield Elementary Teacher Association v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260.) Walnut Valley Unified School District (Harman)

5. District failed to provide Respondent with a contract specifying her status as a temporary employee prior to commencing her employment on September 1, 2005. Accordingly, Respondent was entitled to September

1, 2005 seniority date. (Finding of Fact No. 14). Temple City (Flores) 2009030292.

6. On July 28, 2008, Respondent signed a temporary contract for the period July 1, 2008 through December 31, 2008. Respondent then signed another temporary contract for the remainder of the school year in January. Because she was not initially notified of her temporary status on July 1, 2008, Respondent was a probationary employee. (Finding of Fact 23). Orange County Department of Education (Nafarrete) 2009030093.

7. District unsuccessfully argued teachers were properly classified as "substitutes" during the time period prior to the California Commission on Teacher Credentialing issued their credentials. Golden Valley and Bakersfield provide that a school district could not classify teachers as temporary employees based solely on the fact that they do not yet hold a credential. Patterson Joint Unified School District (Brandt)

H. Adult School Seniority

1. The District correctly determined that an Adult Education Program Supervisor had attained permanent employee status as a classroom teacher, pursuant to Education Code section 44897, which provides, in pertinent part, that a "person employed in an administrative or supervisory position requiring certification qualifications upon completing a probationary period . . . shall . . . become a permanent employee as a classroom teacher." However, The District determined that respondent was not entitled to any seniority as a classroom teacher because she never held a classroom teaching assignment at the Adult School, and she was not entitled to any seniority for her work as an administrator. Santa Clara (Schneider)

I. Children's Center Employees

1. First-year probationary teacher with 1999 seniority date reflecting prior service in Child Development Center as preschool and resource teacher, whose current assignment was teacher's first K-12 classroom assignment, failed to present evidence that prior service entitled her to anything other than Prob 1 status. El Rancho (Shrenger)

J. Issues Involving Interns, Coaches, And Exchange Teachers

1. Contention that school district must classify university interns as probationary and that school districts have no discretion to classify interns as temporary is without merit. The university interns program was created and is governed by the Teacher Education Internship Act of 1967, section 44450, et seq. The evidence did not show that the district hired respondent pursuant to this program. Moreover, it is not clear that

sections 44450 et seq. require a university intern to be classified as probationary. San Mateo (Owyang)

2. Interns acquire layoff seniority unless separated from service. Reef-Sunset (Walker)

3. Respondent successfully argued for an earlier senority date when it was shown she began coaching cheerleaders as of July 1, 2004 and thus, that date was considered her first day of paid service for that year. Sutter Union High School District (Brandt)

4. Pursuant to Education Code section 44464, university interns challenging their layoff notices did not have any rights to a hearing even though the District served them with accusations and allowed them to appear and testify at the hearing. Consequently such employees could not contest their layoff notices. Antelope Valley Joint Union High School District (Cabos-Owen)

5. Respondent was entitled to classification as a permanent employee upon commencement of the 2008-2009 school year, either as a university intern under Education Code section 44466 or as a district intern pursuant to section 44885.5, because: (1) he obtained his preliminary teaching credential through an internship program in June 2007; (2) he served in a probationary position for the 2007-2008 school year; and, (3) he was reelected for the 2008-2009 school year. (Finding of Fact No. 24). Mt. Diablo (Rasmussen) 2009030327.

6. Education Code section 44464 expressly provides that interns do not have the rights provided by Education Code sections 44948 and 44949. District's termination of intern services was not arbitrary nor capricious. (Finding of Fact No. 22.) Moreno Valley (Matyszewski) 2009030216.

7. University intern unsuccessfully argued that he is entitled to protections of Education Code section 44955 and 44958, including the rights to accrue seniority, challenge a layoff, bump junior teachers and reinstatement by seniority. The Teacher Education Internship Act of 1967, ("Act"), states in Education Code section 44464 provides that, "the rights provided by section 44948 and section 44949 shall not be afforded to interns." The Act also expressly provides that "an intern shall not acquire tenure while serving on an internship credential." See Section 44468. The ALJ also held Bakersfield Elementary Teachers Assn. v. Bakersfield School District (2007) 145 Cal.App. 4th 1260 is not applicable. Bakersfield did not address the issue of the rights of university interns under sections 44464 or 44468 and does not confer a right on university interns that the Education Code expressly withholds. Empire School District (Sarli)

8. District improperly classified university intern as a Probationary 0 employee where intern worked under an internship credential for the 2007-2008 school year and began the 2008-2009 school year under the same credential. On December 1, 2008, intern received her Preliminary Multiple Subject credential. Pursuant to Education Code section 44666 teacher is entitled to classification as a Probationary 1 employee but is not entitled to tack on prior year if internship service because she has not taught a complete school year under a preliminary credential. Greenfield Union School District (Cohn)

K. Effect Of Resignation On Seniority

1. Resignations of administrator and high school English teacher after District Board adopted layoff resolution considering all positively assured attrition did not effect seniority of laid off employees. District did not intend to replace teaching position made vacant by subsequent resignation, and the two resigned positions were not identified as particular kinds of service to be reduced or discontinued. Held, vacancies were not relevant to respondents' employment status. Los Banos (Vorters)

2. A permanent teacher who resigned and rehired within 39 months was properly classified as permanent and given a seniority date based on the date of rehire. The ALJ determined that senior probationary teachers should be laid off before the junior permanent employee under Section 44955. San Gabriel Unified (Foremaker)

3. Respondent who was employed with the District from about August 1996 through May 2002 and thereafter took a leave of absence until she resigned in May 2003 and was reemployed by the District on August 28, 2007, was not entitled to a seniority date earlier than August 28, 2007 pursuant to Education Code 44848. Manhattan Beach (Nafarrete)

4. When a permanent certificated employee resigns and is reemployed within 39 months, reemployment restores all individual rights, benefits and burdens of a permanent employee. However, for seniority purposes, an employee does not regain his or her original hiring date. *(San Jose Teachers Assn. v. Allen (1983) 144 Cal.App.3d 627, 641.)* Desert Sands Unified (Ahler)

5. Rule of *San Jose* Teachers *v. Allen* followed. Seniority date resets to zero upon rehire. Garvey SD. (Micon)

6. Formerly permanent teacher's absence after a resignation apparently (and inexplicably) treated by the district and the ALJ as a one-year leave of absence for seniority date assignment. Note: Hopefully this is a typo in the proposed decision, as the result conflicts with *San Jose Teachers v. Allen*. Chino Valley. (Matyszewski)

7. A tenured employee with a break in service that was less than 39 months was entitled to be retained when more senior probationary employees were also retained. Although the employee was properly assigned a new seniority date upon her return to the district, she was still entitled as a permanent employee to be retained if any probationary employees were retained to render a service which she was certificated and competent to render. (Educ. Code § 44955(b).) Roland Unified School District (Montoya)

8. One Respondent previously had a District seniority date in 1996. She resigned from the District in June 2004 for personal reasons. About 17 months later she returned to the District with a new seniority date of November 21, 2005. Despite the Respondent's argument that she should have an earlier seniority date, the ALJ determined that her prior service did not change the November 21, 2005, seniority date. Hayward (Owyang)

9. Based on Education Code sections 44848 and 44931, District correctly assigned Respondent a new seniority date to correspond with the date she was rehired by the District after resignation. Respondent was placed on the seniority list below all other permanent certificated employees but above all probationary employees. (*Dixon v. Bd.* (1989) 216 Cal.App.3d 1269; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 644.) Vacaville (Johnson) 2009030060.

10. Respondents who were hired by the District in August 2002 and resigned in June 2007, were properly credited with permanent status and assigned seniority dates reflecting their August 2008 rehire date. (Finding of Fact No. 20). Palos Verdes Peninsula (Rosenman) 2009030083.

11. Respondent obtained permanent status in 1998 and Respondent resigned in spring of 1999. Respondent returned as a long term substitute in August 1999 and was offered a permanent contract in March 2000. District properly determined Respondent's March 2000 date of re-employment to be her seniority date. (Finding of Fact No. 13). South Whittier (Cabos-Owen) 2009030084.

12. Respondent not entitled to retroactive seniority date where Respondent's attendance at training prior to school year was not part of probationary service. Pleasanton Unified School District (Benjamin)

L. Employee's Failure To Inform District of Error On Seniority List Did Not Constitute Waiver Of Rights Afforded Certificated Employees

1. District circulated seniority list. Employee reviewed the list and had a good faith belief that it was correct. Evidence presented at the hearing reveals that the employee should have been afforded additional service

credit. The employee's failure to decipher this error on the seniority list did not amount to a waiver or an estoppel of the rights afforded her as a certificated employee. <u>Oxnard</u> (Waxman)

M. Miscellaneous

1. District was retaining probationary certificated employees to teach classes that Respondent was credentialed and competent to teach because the first date of paid service by those probationary employees preceded Respondent's first date of paid service. District's classification of probationary employees as being more senior to permanent certificated employee (Respondent), was erroneous, because permanent certificated employee is considered senior to a probationary employee regardless of first date of paid service. Respondent was therefore not subject to layoff. <u>Coalinga-Huron</u> (Sawyer)

2. Employee who was sent nonreelection notice in April 2006 on grounds of being not fully credentialed, and was rehired in 2008, was properly assigned September 9, 2008, seniority date. Taken together, Education Code Sections 44848 and 44845 indicate that when a teacher is nonreelected and then reemployed, seniority date shall be date after reemployment on which teacher first rendered paid service in a probationary position. <u>Burbank</u> (Cabos-Owen)

3. Where employee could not start employment until after start of school year due to delay in processing fingerprint clearance, date on which employee received such clearance was proper seniority date. <u>Burbank</u> (Cabos-Owen)

4. Employee who began paid probationary employment August 20, 2007, but whose employment paperwork reflected a later seniority date, should have been given August 20 seniority date. <u>Burbank</u> (Cabos-Owen)

5. Respondents' argument that they were assigned the wrong seniority date did not change the outcome of the layoff because there was no evidence presented that the seniority dates they claimed as the correct ones would have made any difference as to their layoff status. <u>Needles</u> (Cole)

6. Since service as an ROP teacher does not count toward service as a permanent or probationary teacher, ROP employees do not have the same termination rights (i.e., those arising under sections 44949 and 44955) as those teachers. Thus, the county was permitted to terminate the services of a more senior ROP teacher while retaining the services of a less senior teacher with different experience. *(Bakersfield Elementary Teachers Association v. Bakersfield City School District (2006) 145 Cal.App.4th 1260.)* <u>Riverside COE</u> (Matyszeski)

7. Respondents unsuccessfully argued that prior paid service as para-educators was the equivalent to long-term substitute service for seniority purposes. (Findings of Fact Nos. 21, 22). Orange County Department of Education (Nafarrete) 2009030093.

8. The District properly excluded teachers of a charter school affiliated with the District from the seniority list because the charter school is a separate entity with at-will employees. Orcutt Union ESD (Lopez) 2009030115.

9. Tenure cannot be granted as a matter of law to certificated employee who worked full-time in her first year of employment and 60% of the school year every year after. (Ed. Code §§ 44929.21, 44914, 44908; *Fleice v. Chualar Union Elementary Sch. Dist.* (1988) 206 Cal.App.3d 886, 890-893.) Monrovia (Lahr) 2009030192.

10. Junior teacher unsuccessfully argued district should have noticed a senior teacher without a valid teaching credential. District seniority list demonstrated senior teacher held an "intern credential" which ALJ considered sufficient evidence to establish senior teacher is presently credentialed. Pasadena Unified School District (Ruiz)

N. Emergency/STIP/STSP/PIP/Waiver holders (Prob Zeros)

1. Respondent was worked as a temporary math teacher for multiple years on an emergency credential and the District did not grant him a seniority date until he received his clear credential on November 5, 2008. Respondent argued that he should be able to tack on the 2007-2008 school year in which he worked as a temporary employee. The ALJ ruled that under 44918, respondent "is only entitled to seniority credit for the 2007-2008 year if he was 'employed as a probationary employee for the following school year.' He was not. He was hired as a temporary employee for the 2008-2009 school year, and did not become a probationary employee until November 5, 2008." The ALJ determined that Respondent was not entitled to an earlier date.

2. Respondent who was given a seniority date of August 22, 2007 argued she should have an earlier date because of her previous work as a long-term substitute teacher and as a day-to-day substitute teacher for the previous year. The ALJ ruled that she could not have a seniority date prior to August 22, 2007 for two reasons. First, the ALJ ruled that during the 2006-2007 year, Respondent was working under an emergency credential and the ALJ added that "an employee working under an emergency credential does not accrue credit toward permanent status." Respondent further argued that even if her service under an emergency credential does not count toward tenure, that it should still count toward establishing seniority. The ALJ ruled that Respondent "offers no support for this argument and it is not persuasive. Under Education Code section 44845, a

certificated employee's district seniority is measured from her first date of paid service in a probationary position, that is, from the first day of service that counts toward tenure. If [Respondent's] argument were accepted, teachers who work for three years or four years on an emergency credential could establish greater seniority than fully-credentialed teachers who only worked for two years." The second reason the ALJ gave for not extending the seniority date was that it could not be confirmed that Respondent worked as a temporary teacher or long-term substitute teacher for 75 percent of the days of the 2006-2007 school year. San Ramon Valley (Benjamin)

3. The ALJ determined that one Respondent who was arguing that she was entitled to an earlier seniority date was not entitled to an earlier date because the time "taught on an emergency credential does not count toward seniority," and because it appeared that Respondent did not work 75 percent of the days of the previous year. San Ramon Valley (Benjamin)

V. CREDENTIALS

A. Late Receipt

1. Late correction to seniority list data re M.A. degree allowed where employer concedes clerical error. Yucaipa-Calimesa (Hewitt)

2. Work still in progress on M.A. insufficient to be considered. Fountain Valley (Lahr)

3. Where Respondent received BCLAD certification after layoff notices had been served, the ALJ recommended the District update its records and, if necessary, apply tie-breaking criteria. (Finding of Fact No. 22(c)). Placentia-Yorba Linda (Rosenman) 2009030040.

4. Respondent was properly excluded from the tie-breaking lottery because she did not possess a currently valid and properly filed CLAD certificate at the time the District applied the tie-breaking criteria. (Finding of Fact No. 24). Walnut Creek (Schneider) 2009030202.

5. District properly considered all current credentials existing as of March 15 when determining which employees would receive layoff notices. Establishing a March 15 cutoff date was neither arbitrary nor capricious. (Finding of Fact No. 17). Chaffey (Matyszewski) 2009030481.

B. Miscellaneous

1. Science teacher's clear single subject credential in agriculture and history teacher's pending application for single subject credential in social studies, along with their clear multiple subject credentials, were not determinative

of appropriateness of board's resolution to reduce "Elementary Teaching." A single subject credential was not required to teach science or history to sixth, seventh, and eighth grade students in district's self-contained K-8 elementary school classrooms. Los Alamos (Scarlett)

2. District's retention of probationary employees classified as interns over probationary employees with preliminary credentials held valid. District employed a variety of interns and properly identified them as probationary employees and no intern was retained with less seniority than any other probationary employee. Los Banos (Vorters)

3. Respondents were not entitled to be retained to teach in assignments held by junior employees for which respondents possessed sufficient coursework for district to certify them pursuant to Education Code Section 44263. Section 44263 permits but does not require district to make limited assignments for up to one year based on college coursework, and in any event no declaration of need had been filed by the district pursuant to Title 5, Cal. Code Regs. § 80026. Mojave (Reyes)

4. Respondent with supplemental authorization in social science that only allowed him to teach 9th grade and below was not entitled to displace junior employee retained to teach high school history classes. Burbank (Cabos-Owen)

5. Respondent with health science credential was not entitled to displace junior employee retained to teach Geoscience, where assignment required Introductory Science authorization which respondent lacked. Burbank (Cabos-Owen)

6. The District was entitled to rely on the existing credentials on file on March 15 when determining which employees would receive layoff notices. Moreover, the District did not mislead Respondents into thinking they would not receive layoff notice by telling them they had until the end of the school year to obtain their NCLB credentials. (Finding of Fact No. 20). Moreno Valley (Matyszewski) 2009030216.

7. District correctly disallowed an assistant principal with a single subject credential in Geography to bump into a position that required a credential in Economics or Social Science. If the assistant principal obtained the requisite NCLB certification required to teach at a District continuation school prior to May 15, the ALJ held that the District should retain him in that position. Roseville (Sarli) 2009030265.

VI. COMPETENCY

A. Competency Standard Upheld – Employee Not Competent

1. Competency criterion requiring “experience teaching for at least two (2) years of instruction within the last five (5) school years in the particular service being provided” was upheld. Resource Specialist was not competent to bump junior elementary teachers, even though she possessed a multiple subject credential, because she had not taught in a self-contained elementary classroom for at least two of the last five years. Wilmar (Schneider)

2. Physical education teacher who has never taught dance is not eligible to displace junior dance teacher under district’s competency standard. Lucia Mar (Reyes)

3. Senior respondents who did not satisfy governing board’s adopted competency criteria were not entitled to displace junior employees who were retained. Respondents’ experience teaching in a parochial school was insufficient to satisfy competency criteria. Burbank (Cabos-Owen)

4. Board adopted competency criteria of academic training and one semester of full-time experience within the last five years in alternative education, and skipped junior alternative education teachers. Once the District found senior teachers to lack competency by way of skills and qualifications, the burden shifted to the teachers to present evidence of competency. Several respondents were not competent because they had never taught in alternative education. Two other respondents also were found not competent over evidence that they taught in alternative education for one six-week summer session and for two years in a pupil support program with a similar population of students; none of this service was within the past five years and the pupil support program was found not to equate with alternative education. Alhambra (Rovner)

5. Senior teachers were not entitled to bump a junior teacher when the senior teachers were not highly qualified under the No Child Left Behind Act and the junior teacher was highly qualified in the position in which he served. The board layoff resolution defined competency as including highly qualified status under the No Child Left Behind Act in the position into which the employee is bumping. Palm Springs Unified School District (Meth)

6. District requires that all teachers in its dual language immersion and bilingual classes hold a BCLAD. District proposed skipping holders of BCLAD certificates because it could not otherwise meet its need for competent bilingual instruction that teach. Three respondents held emergency BCLAD certificates and contended they should also be

skipped. However, District appropriately elected not skip them as there are no guarantees that the authorization will be renewed or that the teacher will pass the final tests. Two other respondents asserted that they were fluent in Spanish and would be willing to teach a bilingual class although neither held a bilingual credential. However, the District was well within its rights to not to skip employees without a BCLAD. Monterey Peninsula Unified School District (Anderson)

7. District proposed skipping two less senior employees who taught JROTC programs as the District's contracts with the Army and Navy required that each program be staffed with a minimum of one commissioned and one non-commissioned officer. The District appropriately skipped two employees who were less senior than two non-commissioned officers. Monterey Peninsula Unified School District (Anderson)

8. District resolution did not identify being a highly qualified teacher under NCLB as a standard of competence or skipping criterion, it imposed that requirement in determining whether a teacher would be retained to teach a particular subject. Because the District had been identified as a Program Improvement District, was being monitored to assure that highly qualified teachers teach all classes, and failure to meet this requirement would result in District sanctions, District appropriately skipped employees who were not highly qualified. Napa Valley Unified School District (Cohn)

9. District's competency standard required elementary teachers and counselors to have experience in performing duties in a secondary position within the last five years in order to bump into a secondary position. Despite failing to reference this competency standard in the Board Resolution and failing to reduce the competency standard to any writing, the ALJ concluded that competency requirement fell well within the "special training and experience" requirement contemplated under Education Code section 44955. Citing *Bledsoe v. Biggs Unified School District* 170 Cal.App.4th 127. (Findings of Fact Nos. 14, 18, 19). Twin Rivers (Lew) 2009030049.

10. It was not an abuse of discretion for the District to go beyond base qualifications and impose an additional five-year experience requirement where the District demonstrated a special need to have personnel with such experience teach secondary courses and/or provide secondary counseling services and articulated its rationale. (Findings of Fact Nos. 15, 16, 25, 34, 40). Twin Rivers (Lew) 2009030049.

11. District's competency criteria that required possession of the necessary credential, NCLB compliance, and at least one complete school year teaching the subject matter or performing the particular service within the past 10 years in order to bump a junior teacher out of the assignment was upheld as well as its application to a senior teacher whose one year of

experience was gained while completing her student teaching. (Findings of Fact Nos. 16, 19; Legal Conclusion No. 5). Atascadero (Reyes) 2009030194.

B. Employee Not Competent - No Standard Mentioned

1. Respondents argued they were competent to fill a 0.5 FTE categorically funded ELD Coordinator position to be vacated by a retiree. ALJ found that the district had not determined whether the position would be continued in the next year, and found that the requirements for the position may change. Therefore a competency determination should be made as a part of the rehire process, not the layoff. Geyserville (Crowell)

2. Respondent's argument that layoff's outcome would deprive her of the opportunity to teach reading and that her master's degree in teaching reading should vest her with points for competency to be retained WAS not supported by the evidence. Superintendent offered evidence that there was a teacher who had the same first date of paid service to the District as Respondent and held a record of experience and skills that Respondent did not have. Fortuna (Johnson)

3. District incorrectly allowed a more senior auto shop and woodworking teacher to bump a junior employee teaching an industrial design course which requires the ability to teach computer aided drafting ("CAD"). Because the District indicated it would keep the content of the industrial design course the same and the more senior teacher did not have any experience with CAD nor any interest in learning CAD, the ALJ concluded that he was not competent or qualified to bump into the position. (Finding of Fact No. 9). San Mateo (Astle) 2009030372.

C. Employee Competent – No Standard Mentioned

1. Mathematics teacher with recently acquired credential to teach chemistry, and prior work experience as a chemical engineer, is competent to teach chemistry by virtue of her background, qualifications, training and experience. Santa Ynez (Lopez)

2. Standard must demonstrate "a reasonable relationship between having taught outdoors and being able to teach outdoors." Layoff notices to senior teachers (older, out of shape) in favor of retention of junior (healthy, young) teachers disallowed. Sacramento County Office (Sarli)

3. The District's Competency criteria states, in pertinent part, as follows:

   Teachers are deemed to be "certificated and competent" to teach any class which is:
   a. Authorized by a valid credential issued by the State of California and held by the teacher; or

b. Not associated with a credential issued by the State of California but that the teacher has taught for at least one semester in the current year or either of the two proceeding years.

Two Respondents argued that based on the competency criteria, they were qualified to bump into Study Skills classes. One argued that her prior teaching in the AVID (Advancement Via Individual Determination) program allowed her to teach Study Skills because the courses are similar. The ALJ agreed with this Respondent and held that "there was no evidence introduced that these curriculums varied in any measurable respect." The ALJ went on to add that, "Under the circumstances, application of the Resolution competency criteria to prevent [Respondent] from bumping into a study skills class would be arbitrary and capricious. While a governing board has some latitude in determining what factors contribute to competency for provision of a particular service, those factors must be reasonable. There must be a rational relationship between the competency criteria and a particular service. (*Duax v. Kern Community College Dist*. (1987) 196 Cal.App.3d 555, 565.) Competency criteria must be clearly related to skills and qualifications to teach. (Id. at pp. 566-567) …The District may not declare her incompetent merely because she has not taught study skills in a class entitled 'Study Skills.' To do so would defeat the very clear intent of the Education Code (44955(b)) to prevent the termination of senior employees while employees with less seniority are retained to render services which the senior employee is certificated and competent to render."

The second Respondent testified she taught one period of Study Skills during the 2008-2009 school year, and although the seniority list did not indicate that Respondent taught any course entitled Study Skills, the District did not produce any evidence to rebut Respondent's testimony. Therefore, the ALJ determined that she was certificated and competent to bump into any available Study Skills course taught by a junior teacher. San Juan (Sarli)

4. Respondents holding supplementary authorizations to teach ninth grade courses that met the District's five-year secondary experience requirement were entitled to bump into secondary positions. The ALJ found that the scheduling difficulties caused by reassigning those with a 9th grade only credential to a high school position did not justify disallowing such employees from bumping into positions for which they were certificated and competent to fill. (Findings of Fact Nos. 15, 19). Twin Rivers (Lew) 2009030049.

5. Elementary school music teachers were correctly allowed to bump high school music teachers with less seniority. The differences between teaching music at the elementary school level versus the high school level

were irrelevant because the more senior teachers were qualified to teach at either level. Capistrano USD (Ruiz) 2009030108.

6. Sixth grade teacher, with a Multiple Subject credential and a Single Subject credential in English as well as a CLAD authorization, assigned to a self-contained classroom permitted to displace junior teacher assigned to teach seventh and eighth grade English in a departmentalized program. ALJ held the district's competency criteria requiring a clear credential and one complete school year in the content area within the past 10 school years would be arbitrary and capricious in this situation. ALJ determined teacher was competent because teacher taught English to six grade class and undergoes training each year with the district's seventh and eighth grade teachers. Empire School District (Sarli)

D. General Standards

1. Staff implementation of tie-breaking criteria and competency standards exceeded their authority because they developed and used definitions that were not approved by the Board and had no discretion to do so. District was ordered to re-calculate seniority list in proper accordance with the Board's tie-breaking and competency criteria. Conejo (Waxman)

2. Even though the District's tiebreaking criteria included eight points for participation in the "Plan to Remedy (CLAD)" instituted by the District to assist it with complying with state requirements for teachers to possess a CLAD certificate, because the program expired in 2005 or 2006, the District appropriately did not to award points for those holding such credentials. Monterey Peninsula Unified School District (Anderson)

E. Types Of Credentials

1. K-5 teachers were not automatically competent and qualified to teach sixth grade in middle school setting, despite multiple subject credentials authorizing them to teach sixth grade, where elementary teachers typically teach one group of students throughout the day, while middle school teachers teach one subject to different groups of students during the day. El Rancho (Shrenger)

2. The District set forth competency criteria which included the following: (1) the senior employee, at a minimum, must possess a preliminary, clear, professional clear, lifetime, or other full credential; (2) the senior employee must have at least one semester actual teaching experience in the subject area within the last five years; (3) the senior employee's actual teaching experience within those previous five years must be in a "comparable setting" defined as "elementary, secondary, alternative education"; and (4) the senior employee must be qualified to teach the subject area under NCLB.

Respondent PE teachers successfully argued the imposition of a "comparable setting" requirement as a condition of competency for an elementary PE teacher to bump into a secondary PE position was not reasonable and impermissible undercut seniority rights.

Respondent ELD teachers successfully argued that "comparable setting" was limited by District's definition to elementary, secondary, and alternative education and that definition did not include programs such as ELD. However, ELD teachers were still appropriately skipped as the District met its burden of showing they had special training and experience necessary to teach in the ELD program which more senior classroom teachers did not possess. Rocklin Unified School District (Woollard)

3. Several respondents also unsuccessfully argued that anyone with a multiple subject credential is credentialed and competent to take an open continuation high school position because it is a self-contained classroom teaching assignment. However the continuation high school position is considered a "specialized setting in secondary education," within the flexibility afforded the District by the Education Code as a necessary small school district. The board authorized the flexibility but requires the person assigned to teach be NCLB compliant and none of the respondents had any credential or authorization or any NCLB compliance in any of the core subjects required by the position. Williams Unified School District (Smith)

4. The District's competency criteria states, in pertinent part, as follows:

> **Teachers are deemed to be "certificated and competent" to teach any class which is:**
> **a. Authorized by a valid credential issued by the State of California and held by the teacher; or**
> **b. Not associated with a credential issued by the State of California but that the teacher has taught for at least one semester in the current year or either of the two proceeding years.**

Several Respondents argued that there is no specific credential required to teach at a continuation school and that they were therefore competent to bump a junior teacher out of his position. The junior teacher was teaching Earth Science, Health and Physical Education with a Single Subject English Credential. The District argued that there was no teacher more senior who is competent to take the junior teacher's place at the continuation school, because under the second prong of the competency criteria, none of the more senior teachers wishing to bump had taught in the continuation school for one semester in the last three years. The ALJ stated that, "Education Code section 44865 provides that a teacher is qualified to teach in continuation school if he or she has 'A Valid teaching

credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor's degree, student teaching, and special fitness to perform.' Additionally, assignment into a continuation school can only be made if the teacher consents to the assignment." The Respondents counsel had represented that each of the Respondents would consent to a continuation position. In regards to the competency criteria itself, the ALJ went on to add, "the District's competency criteria must be reasonable if it is to override the Legislatures' clear mandate that senior teachers be reassigned to positions occupied by junior teachers. Competency criteria cannot be used to arbitrarily deny senior teachers statutory seniority rights. However, application of the District competency criteria with respect to assignment to continuation school is not arbitrary. Continuation schools differ significantly from ordinary classroom assignments. For this reason the Education Code provides that the incumbent teacher have a 'special fitness to perform' in the continuation school and teachers must consent to assignments into continuation school. Under these circumstances the District properly exercised its discretion to establish and apply its competency criteria." (See *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555) San Juan (Sarli)

5. The District's competency criteria states, in pertinent part, as follows:

> **Teachers are deemed to be "certificated and competent" to teach any class which is:**
> **a. Authorized by a valid credential issued by the State of California and held by the teacher; or**
> **b. Not associated with a credential issued by the State of California but that the teacher has taught for at least one semester in the current year or either of the two proceeding years.**

More Senior Respondents argued that they should be able to bump a junior teacher who is resource teacher who teaches technology. The ALJ ruled that similar to continuation classes, Technology classes, even though they do not require a particular credential, are also specialized classes requiring specialized knowledge in technology. The ALJ held that the District acted "reasonably in requiring that anyone teaching technology classes have experience in doing so," under the second prong of the competency criteria. San Juan (Sarli)

6. Respondent's argument that she should be assigned to a physical education position because she qualified for a supplemental certificate in physical education was rejected because Respondent did not currently hold a physical education credential, nor had she applied for one. (Finding of Fact No. 11). Willows (Sarli) 2009030153.

7. The District rescinded the layoff notice of a teacher with an industrial arts and education credential to teach two periods in a newly created pre-engineering high school program and three period of industrial arts. The District selected the teacher based on his credential and the recommendation of his site administrator without considering other potential candidates. Despite the District's failure to use its discretion in a careful and deliberate way, the District correctly disallowed the more senior Respondents certificated and competent to teach in the pre-engineering program because they were not certificated and competent to render services in the part-time industrial arts program. (Citing *Hilderbrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334). (Finding of Fact No. 17, 18, 19, 20). Upland (Cole) 2009030224.

F. Particular Cases

1. Under the established competency criteria, more senior .75 FTE music teacher with multiple subject credential and CLAD authorization is "less competent" than junior employee teaching .8 FTE Spanish and .2 FTE English Learners (EL), and therefore he may not bump into her .2 FTE position as an EL teacher. *However*, because more senior music teacher cannot bump less senior EL teacher, and District has decided to skip less senior EL teacher pursuant to a "reasonable exercise of its discretion" under Education Code section 44955(d)(1), there is a certificated employee (the EL teacher) with less seniority than the music teacher who is being retained by the District to provide services that the music teacher is certificated and competent to render. As such, the music teacher may *not* be given notice that his services are being reduced or eliminated for the ensuing school year. Montecito (Nafarrete)

2. Because the employee neither applied for a supplemental authorization nor notified the district in this regard until after March 15, 2009, the district was not required to consider the supplemental authorization for purposes of its lay-off determinations. *(Degener v. Governing Board of Wiseburn School District (1977) 67 Cal.App.3d 689, 698-699.)* Rialto Unified (Cole)

3. ALJ concluded Respondent, who had been assigned to handle secondary expulsions only six-weeks prior to the hearing and would continue training for the remainder of the school year, was competent to serve as a child welfare attendance counselor and therefore, entitled to bump a less senior employee who had worked in the position for 15 years (processing expulsions, conducting trainings on due process and expulsions, and holding expulsion hearings). Although the less senior employee was significantly more experienced than Respondent, the District failed to demonstrate that Respondent lacked the special training and experience necessary for the position. (Finding of Fact No. 36). Twin Rivers (Lew) 2009030049.

4. Respondent with an industrial and technical education credential did not have one year of full-time experience teaching any subject other than woodshop. (Finding of Fact No. 13). Respondent did not meet the District's one-year experience competency requirement to teach keyboarding, computer literacy, or any other subject his credential permitted him to teach. Colton (Meth) 2009030484.

VII. CRITERIA FOR BREAKING SENIORITY TIES

A. Criteria Invalid And/Or Not Properly Applied

1. Staff implementation of tie-breaking criteria and competency standards exceeded their authority because they developed and used definitions that were not approved by the Board and had no discretion to do so. District was ordered to re-calculate seniority list in proper accordance with the Board's tie-breaking and competency criteria. Conejo (Waxman)

2. The needs to which Education Code section 44955 subdivision (b) speaks are *current* needs. Determining the order of termination on the basis of needs a district had at some time in the past would violate the requirement. At some point in the past, the district entered into a collective bargaining agreement with a union representing a majority of the teachers. That agreement provided for tie-breaking criteria. The board, without considering whether the list reflected current needs of the district and students, used it in deciding the order of termination of teacher hired on the same date. The ALJ held that the terms of a collective bargaining agreement cannot displace the requirement of Education Code section 44955. There was no evidence that the list in the collective bargaining agreement, even at the time it was adopted, would have resulted in a determination solely on the basis of needs of the district and students. Porterville Unified (Walker)

3. Tie-break resolution listed criteria which could be used, in no particular order of importance. ALJ insisted that hearing testimony include discussion of all listed tie-break criteria despite testimony that credentials and experience were most important and in this case the only criteria needed. Wilsona (Reyes)

4. District appropriately adopted tiebreaking criteria which included seven areas for rating employees. However, the criteria lacked a weighting system and an ultimate tiebreaking device where employees still remained tied after the criteria was applied. However the superintendent broke the ties based on the criteria which he found most relevant to the District. This tie-breaking method was inappropriate and District was required to re-determine the order of seniority for affected respondents with the same date or seniority and first day of paid service and to create some mechanism to break ultimate ties if employees were still tied after

application of all the criteria. This finding did not affect the number of PKS that could be reduced or the corresponding number of certificated employees that could be given notice that services would not be required for the upcoming year. Oroville Joint Union High School District (Smith)

5. The District abused its discretion when it applied the tiebreaking criteria to two biology teachers with the same first date of service. The criteria listed undergraduate majors in order of preference (mathematics, chemistry, physics, geosciences, and biology). District determined that an undergraduate major in Biological Engineering ranked higher than one in Science Education and Medical Technology. The District's ranking was arbitrary and capricious because there was no basis for the order of preference and the order could have been outlined differently depending on the individual making the determination. (Finding of Fact No. 7). San Mateo (Astle) 2009030372.

6. District ordered to create additional tie-breaking criteria where the ALJ determined the initial criteria failed to consider a number of potential criteria and the use of the lottery came far too early. Central School District (Meth)

7. District improperly proposed to lay-off three permanent teachers who are less senior to similarly credentialed probationary teachers. The ALJ concluded that a plain reading of Education Code section 44955(b) prevents the district from laying off permanent teachers in favor of retaining more senior probationary teachers. Pasadena Unified School District (Ruiz)

8. Respondents successfully argued the district could not skip teachers with music and physical education credentials. The district approved reduction of eight FTE middle school teachers without identifying any particular subjects. Dry Creek Elementary School District (Brandt)

B. Criteria Valid And Properly Applied

1. Tie-break process based on a point system was accurately employed in compliance with Education Code section 44955(b). Wilmar (Schneider)

2. District properly created seniority list using reasonable tie-breaker criteria. If ties could not be broken under the tie-breaking criteria, if necessary the district will use a coin-toss with representatives of a teachers' union present. Anaheim Union High (Shrenger)

3. District allowed to retain three probationary teachers because they held BCLAD certifications although discharged others who held CLAD or similar certifications but not BCLAD. Rejected argument that District improperly retained teaches based solely on their bilingual skills. A district may establish bilingualism as one of the criteria for determining

which employees best meet the needs of a district and its students, citing Ozsogomonyan, Teacher Layoffs in California: An Update (1979) 30 Hastings L.J., 1727, 1749. Factual findings included 61% of its 854 students are English learners and 97 to 98% of its students are of Hispanic descent. Vineland (Harman)

4. Respondent's allegation that District's tie-breaking criteria was unfair and biased, insofar as the deflated number of credits given him for his involvement in the advanced placement program was not proper, was without merit. Assistant Superintendent established by persuasive evidence the reasonableness in the application of the Board-created criteria for tie-breaking regarding determining the District's retention of teachers having the same date of paid service to the District. Eureka (Johnson)

5. District's tie breaking criteria was established via MOU with teacher's union. Use of date employee initially signed contract in the event employees had same hire date was valid criteria. District properly applied criteria based on its needs and needs of students. Los Banos (Vorters)

6. Two courts have held that adult school teachers do not have tenure or seniority in regular school and cannot bump into it and regular school teachers do not have tenure or seniority in adult school and cannot bump into it. *(Rutherford v. Board of Trustees (1976) 64 Cal.App.3d 167, and Kamin v. Governing Board. (1977) 72 Cal.App.3d 1014.)* Thus, the district properly did not take the adult teachers into account in its bump analysis and tie-breaking criteria of the regular school teachers. Redlands Unified (Matyszewski)

7. BCLAD found to be a valid tie-break criterion but not necessary to apply in this case, apparently because district's ELL requirements were already satisfied by non-laid off staff. Exeter Union Elementary SD. (Vorters)

8. District is under no obligation to rank tie-break group members where all are getting layoff notices. CTA conceded they were trying to pre-rank the rehire list. Lynwood (Juarez)

9. Teachers who completed requirements for their credential were not entitled to credit for tie-breaker until the credential was actually awarded. The district could use "highly qualified" status as a tie-breaker where a rational basis existed because the district was in Level C Program Improvement. Hollister School District (Cohn)

10. A counselor was found to have seniority over a second counselor based upon the date on which her Masters Degree was awarded. Junior counselor tried to argue that he had been awarded his Masters Degree prior to the senior employee and that his transcript date of award was in

error. District was entitled to rely upon the transcript date for each employee and retain the employee who had been awarded the earlier Masters Degree according to the transcripts. Palm Springs Unified School District (Meth)

11. In 2004 the Board adopted a broad tiebreaking resolution which stated that the criteria for tiebreaking were: credentialing, experience, education, and performance. During the 2007-2008 school year, the superintendent developed specific criteria to implement the Board's resolution. Each of the following was given one point: 1) clear credential, 2) BCLAD authorization, 3) Advanced degree, 4) Previous teaching experience in other K-12 public school districts, and 5) High performance rating on latest evaluation ("meets or exceeds standards"). Respondents challenged the criteria as an unreasonable implementation of the 2004 resolution and argued that a more individualized approach taking into account the strengths and weaknesses of each employee should be taken. The ALJ concluded that a school district has broad latitude in establishing tiebreaking criteria and that the superintendent's implementation of the resolution was a reasonable exercise of his discretion and that the individualized approach would be time consuming and open to challenge as overly subjective. La Honda-Pescadero Unified School District (Rasmussen)

12. Respondents unsuccessfully argued that the District improperly applied tie break criteria by using a Board regulation when the criteria from the collective bargaining agreement should have been used. However, the ALJ held that the general language of Government Code section 3543.2 does not supplant the specific authority given to the District through 44955 to enact a tiebreak regulation and apply it**.** Tehachapi Unified School District (Rosenman)

13. Respondents argued that there were not enough tie-breaking criteria, thus resulting in the employment of the lottery for a large number of teachers with the same first date of paid service. The tie-breaking criteria established were as follows:

> **The following rating system shall be applied in determining the order of termination of certificated employees:**
>
> **A. Preliminary or Clear Credentials: Rating +1 per credential**
>
> **B. Earned degrees beyond the BA/BS level: Rating +1 per degree**
>
> **In the event that common day hires have equal qualifications based on the application of the above criteria, the District will then break ties by utilizing a lottery.**

The ALJ found that, "The District, however, has broad latitude in establishing and applying tie-breaking criteria. In this case, the Board sought criteria that were objective, clear, useful to the District, and that could be documented easily by District staff. Thus points were given for credentials and advanced degrees." The ALJ went on to find that the District's tie-breaking criteria were not arbitrary or capricious. The ALJ added that, "Respondents may disagree with the number and content of the criteria, but they are rationally related to the needs of the District and its students. In addition, it is noted that no authority was presented in support of Respondent's argument that use of lottery in this instance violated legislative intent or was otherwise not permitted." Finally, the ALJ concluded by stating, "It was demonstrated that the selection and application of the tie-breaking criteria was an appropriate exercise of the District's discretion." San Jose (Anderson)

14. The District's Tie-Breaking criteria included giving points for activities that teachers participated in such as coaching specified sports programs and being an advisor for other specified extracurricular and co-curricular activities. Two Respondents argued that the District improperly applied the tie-breaking criteria by only giving points to employees who provided paid coaching services as opposed to volunteer coaching, despite that language not being stated in the criteria. The ALJ determined that any increase to the points total of either Respondent would not have impacted whether either would be laid off and that for that reason "whether the District properly applied the tie-breaker to [Respondents] was not relevant in this proceeding." Oceanside (Johnson)

15. Tie breaking criteria are discretionary decisions left to the competence of the school district. Therefore, Respondent must produce sufficient evidence to support allegations that the criteria was unfair or applied inappropriately is required. (Citing *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565.) Tustin (Juarez) 200902907.

16. Although Respondent's argument that tie-breaking criteria should be based on "years of teaching experience" rather than "years of experience in current grade assignment" was reasonable, the adopted criteria was properly applied by the district. Ramona (Johnson) 2009020918.

17. Although the school district's process for verifying employee information may have been "unwieldy and did result in some errors," the district's application of the established tie-breaking criteria was neither arbitrary nor capricious. Newark (Flores) 2009030024.

18. The District correctly applied the tie-breaking criteria when it did not award Respondent a point for coaching experience. Under the tie-breaking provision, employees who possessed "coaching experience or qualifie[d] to coach as outlined in District policy..." were entitled to a

point. (Findings of Fact Nos. 9, 10, 11, 12, 13). Respondent had agreed to coach but the program was cancelled due to lack of student interest and Respondent never obtained CIF certification as required by District policy. (Findings of Fact Nos. 14, 15). Mariposa (Walker) 2009030054.

19. District's methodology of conducting one lottery to determine relative seniority between employees holding multiple subject credentials prior to applying a second criteria was upheld. (Findings of Fact No. 20, 21, 22). Marysville (Frink) 2009030335.

20. District's application of tie-breaker criteria and awarding seniority to interns over credentialed teachers was appropriate because intern teachers are probationary employees. (Finding of Fact No. 15). Covina-Valley USD (Nafarrette) 2009030131.

21. District's refusal to consider prior teaching experience outside of the district when determining "subject matter experience" under the tiebreaking criteria was a reasonable exercise of its discretion. District's application of the tie-breaking criteria was not arbitrary or capricious because the Board had expressly rejected proposals to include "additional experience in other districts" in the tiebreaking criteria. (Findings of Fact No. 17, 18, 19). Marysville (Frink) 2009030335.

22. District properly noticed senior science and mathematics teacher with Multiple Subjects credential with science supplemental authorization where competency criteria required the one semester of service in the class for which they will be assigned at the beginning of the 2009-2010 in the past ten years within the district. Teacher had not taught in a self-contained classroom in the past 10 years in the District. Salida Union School District (Frink)

23. Respondents unsuccessfully argued the district's tie-breaking criteria violated Education Code section 44955(b) which provides that the order of termination of employees sharing the same seniority date shall be determined, "solely on the basis of the needs of the district and the students thereof." Respondents contended that because the district's tie-breaking criteria were insufficient to differentiate between most employees, leaving 36 of 39 affected employees still tied after application of the tie-breaking criteria, the order of termination was effectively left to chance. ALJ determined the number of ties was unfortunate but the established criteria were set up to meet the district's needs. Greenfield Union School District (Cohn)

24. District properly applied tie-breaking criteria that included a lottery conducted on the date a teacher is hired and that is independent of any reduction in force. The lottery number is used only if the tiebreaker

criteria dies not break a tie in seniority. Apple Valley Unified School District (Formaker)

25. Respondent, a senior teacher holding a Multiple Subject credential with a special authorization in Physical Education, was properly prevented from bumping into an alternative education program. While Respondent held proper credential to teach in an alternative education program, the district's competency criteria requiring one year of service within the last five years, was found to be reasonable. Travis Unified School District (Tompkin)

C. No Need To Apply Criteria

1. District not required to apply tie-breaking criteria when all teachers with same seniority date will be subject to layoff. Under Education Code section 44955, the District must apply tie-breaking criteria when it affects order of termination, and in this case it did not. Middletown (Crowell)

D. Miscellaneous

1. District did not err in failing to break seniority tie between two Respondents with same seniority date since they were both to be laefd off. ALJ held the tie-break did not affect the order of layoff, and found that the district will apply the tie-break criteria as necessary during the rehire process. Geyserville (Crowell)

2. In context of upholding utilization of reasonable tie-breaking criteria, there were a few situations where ties could not be broken by the tie-breaking criteria and the District had not yet taken action to break the ties. If necessary, the District will use a coin-toss to break the ties, with representatives of the teachers' union present. Anaheim Union High (Shrenger)

3. Respondent argued that she was laid off because of incorrect information regarding her credential. Initial seniority list incorrectly designated her as having a preliminary, but she timely provided information to District proving she had clear credential. Respondent's principal told her she received a layoff notice because she did not have a clear credential. After tie-breaking criteria applied, this Respondent was still subject to layoff, but ranked differently in terms of her reemployment and tie-breaking rank. Anaheim Union High (Shrenger)

4. The governing board's resolution adopting tie-breaking criteria did not specify any order of importance to be given the specified criteria. Although no direct finding as to that particular issue, legal conclusions included that Respondents did not establish that the District improperly applied its tie-breaking criteria in relation to employees who had the same

first date of paid service in the context of BCLAD certification. Vineland (Harman)

5. The district's decision not to include previous teaching experience as one of the tiebreaker criteria, although it had done so the previous year, was neither arbitrary nor capricious and constituted a proper exercise of its discretion. Rim of the World Unified (Cole)

6. When all employees with the same first date of service are to be laid off, it is not necessary for the District to apply its tie-breaking criteria to determine the order of termination. (Finding of Fact No. 11). Konocti (Crowell) 2009030199.

7. Where Respondent received BCLAD certification after layoff notices had been served, the ALJ recommended the District update its records and, if necessary, apply tie-breaking criteria. (Finding of Fact No. 22(c)). Placentia-Yorba Linda (Rosenman) 2009030040.

8. District's failure to credit two Respondents for advanced degrees received and filed with the District prior to March 15 was irrelevant to the layoff proceeding because notices were issued to all employees with the same seniority dates as Respondents. (Finding of Fact No. 21). Val Verde (Hjelt) 2009030459.

9. District is not required to consider teacher's credential for tie-breaking purposes where credential was not on file at the district at the time preliminary notices were mailed to affected certificated employees. It is the responsibility of certificated teachers to file their credentials with the California Commission on Teacher Credentialing, the county office of education and employing school district. See, Campbell Elementary Teachers Assn. v. Abbott (1978) 76 Cal.App.3d 796. Here, there would be substantial prejudice to the district and to other certificated employees if the tie-breaking criteria were re-applied and relative seniority re-established, because of one teacher's failure to follow through with his responsibilities. Empire School District (Sarli)

10. Respondents failed to present sufficient evidence to demonstrate they were improperly classified as temporary teachers in their initial years with the district before they became probationary teachers because of a policy of not hiring new probationary teachers. Central School District (Meth)

VIII. SKIPPING

A. General

1. Under the established competency criteria, a more senior .75 FTE music teacher with a multiple subject credential and CLAD authorization is "less competent" than a junior employee teaching .8 FTE Spanish and .2 FTE

English Learners (EL), and therefore he may not bump into her .2 FTE position as an EL teacher. *However*, because the more senior music teacher cannot bump the less senior EL teacher, and the District has decided to skip the less senior EL teacher pursuant to a "reasonable exercise of its discretion" under Education Code section 44955(d)(1), there *is* a certificated employee (the EL teacher) with less seniority than the music teacher who is being retained by the District to provide services that the music teacher is certificated and competent to render. As such, the music teacher may *not* be given notice that his services are being reduced or eliminated for the ensuing school year. Montecito (Nafarrete)

2. It is permissible to deviate from terminating a certificated employee in of seniority when a school District demonstrates a specific need for a teacher to teach a specific course of study, and the certificated employee has special training and experience necessary to teach that course or course of study, which others with more seniority do not possess. The District has considerable discretion in implementing these procedures in order to meet its educational needs while fulfilling its legal obligations to employees. Yosemite (Kopec)

B. Skipping Allowed

1. Where PKS's to be reduced were Music, Elementary, and Title I teaching services, ALJ characterized as proper "skipping" to retain four junior teachers in Math, Social Science, Special Education, and English. Bella Vista (Lew)

2. District established its special needs for experienced teachers to teach at alternative education or continuation high school. Skipping criteria upheld where senior teacher had not taught at a continuation school and did not possess the special training and experience to provide the teaching services. Lucia Mar (Reyes)

3. Argument by certain respondents that less senior Special Education Day Class teacher could not be skipped was rejected by the administrative law judge. (Finding of Fact No. 14.f.) Respondents argued that "there was no provision in the board's resolution allowing the district to skip" the less senior special education teacher. (Finding of Fact No. 14.f.) The administrative law judge concluded that special day classes were not a particular kind of service identified by the district for reduction, and were not included within the particular kind of service "Elementary Classroom Teaching" even though this particular special day class was at the fourth grade level. (Finding of Fact No. 14.f.) Barstow (Hewitt)

4. Skipping permitted when Superintendent compellingly explained that six certificated employees who were junior to Respondents had unique or

particular skills or experiences in providing discrete services to the District's students that Respondents did not possess. Fortuna (Johnson)

5. District properly skipped over junior employees with BCLAD certificate currently teaching English learners, and laid off more senior teachers without BCLAD certification. District met two-pronged test for skipping under Education Code section 44955(d); demonstration of a specific need for a specific course of study and junior teacher's possession of special training. District serves significant number of students not proficient in English language, and who require instruction for their needs. Skipped employees currently teach English learners, hold BCLAD certification and ELL authorization, and therefore possessed special training and filled a special need. Paso Robles (Reyes)

6. District properly skipped and retained junior employees and terminated senior respondents who had requisite credential for Curriculum Specialist position and who also met governing board's competency criteria, but who lacked specialized training and experience for the position. Education Code Section 44955(d). Burbank (Cabos-Owen)

7. District demonstrated specific need for teachers with EL authorizations, and properly skipped junior employees who possessed such authorization. Senior employee who did not have an EL authorization and noticed for layoff presented evidence that he taught bilingual classes early in his career and took steps to obtain the authorization. However, District presented evidence that teachers received repeated advisories of need to obtain an EL authorization as early as May 2006. Alhambra (Rovner)

8. Skipping of junior employee with training and experience as a GATE teacher is upheld over arguments by more senior employees that they had experience teaching AVID. Keppel Union (Reyes)

9. Skipping of junior employee possessing and teaching under a BCLAD is upheld over evidence from more senior employees who possessed other EL authorizations; neither employee had the training level of a BCLAD or taught English language learners during 2008-09. Keppel Union (Reyes)

10. The Districts established that they were able to skip a less senior teacher who was in the Child Development Program in the layoff of elementary school teachers because there was a separate seniority list for the Child Development Program pursuant to Education Code section 8366. Facts were analogous to case where court rejected contention of school nurses that they could bump into the positions of less senior nurses in a Head start Program. *Rutherford v. Board of Trustees of the Bellflower Unified School District* (1976) 64 Cal.App.3d 167. Santa Barbara (Rosenman)

11. Skipping permitted after District demonstrated that the skipped teachers could teach a specific course or course of study in which they had special training and experience, and which others with more seniority did not possess. Cottonwood (Lew)

12. Skipping permitted when District shows junior teachers possess superior skills or capabilities which more senior teachers lack (citing *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.) Needles (Cole)

13. The skipping of junior employees was not arbitrary and capricious, was in the best interest of the district and its students, and was a matter well within the discretion of the governing board and the district. Desert Sands Unified (Ahler)

14. The district improperly skipped a teacher to provide services as Activities Director when the teacher was certificated and competent to provide this service. However, it was not established that the teacher's credential in Home Economics authorized her to teach the Health classes a less senior teacher's credential authorized. Further, the district was not required to split the position between the two teachers. Accordingly, the more senior teacher did not establish that the district improperly issued a layoff notice to her. Riverside Unified (Johnson)

15. Junior certificated middle school counselor with experience counseling at the high school level could be skipped when more senior elementary school counselor without high school counseling experience was to be laid off. The district demonstrated that it had a specific need for personnel to provide a specific service to its students and that a junior certificated employee had special training and experience to provide that service which a senior certificated employee did not possess. Beaumont Unified (Johnson)

16. Possession of a single subject math credential is a valid criterion for service in a departmentalized middle school math program, apparently when compared to a supplemental authorization. Happy Valley Union Elem. (Lew)

17. Skipping allowed for a "two way language immersion" program at a charter school (presumably a dependent charter operation) where teachers are required to be fluent in Spanish and hold BCLAD certification. Saddleback Valley (Rosenman)

18. Board adopted a skipping criteria resolution, including AVID certification. Skipping upheld. San Ysidro (Hewitt)

19. Gender is permissible BFOQ factor for boys locker room supervision duties. Assigning duties to a woman would violate privacy rights of

teenage boys. Held: retaining a junior male P.E. teacher is appropriate. *Note*: Compare and contrast opposite result reached re BFOQ in *Trinity Alps* (Lew) Bonsall (Hewitt)

20. District appropriately skipped physics teacher as there was no other more senior employee certificated and competent to teach physics. Bassett Unified School District (Ruiz)

21. District appropriately applied bumping rules and allowed skipping after demonstration that the skipped teachers could teach a specific course of study in which they had special training and experience and which no other employee with more seniority possessed. In determining the two teachers that needed to be laid off, District skipped seven teachers believed necessary to teach specific course of study. Respondent, a music teacher, held a single subject credential which did not allow him to teach in any self-contained classrooms and he was neither certificated nor competent to bump into any of the positions of junior certificated employees retained by the District. Butteville Elementary School District (Lew)

22. District properly skipped and retained teacher with special training and experience teaching the District's specialized online program for at risk students. District has discretion to determine whether teachers are certificated and competent to hold the position for which said teachers have been skipped and retained. *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016. Ramona (Johnson) 2009020918.

23. District correctly skipped only those certificated employees whose bilingual skills were a requirement for their respective assignments despite Respondents' assertions that the high proportion of Spanish speaking students in their classrooms created a critical need and demand for their bilingual skills. Citing *Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567. (Findings of Fact Nos. 10, 11, 12, 27, 28, 30, 32, 37, 41, 42, 43, 44, 45). Twin Rivers (Lew) 2009030049.

24. District correctly skipped Respondent teacher with experience in the District's AVID program because the program requires special training to retain her AVID certification. (Finding of Fact No. 18). Atascadero (Reyes) 2009030194.

25. District properly skipped less senior elementary school teachers that had additional authorizations in specific subjects who were being reassigned to teach middle school subjects within their additional authorizations. (Finding of Fact No. 7). Fairfield-Suisun (Cohn) 2009030194.

26. District's decision to skip a more junior physical education teacher to teach a dance class that counted as credit towards the fine arts class requirement for admission to University of California was proper because she had a degree in dance/dance choreography. (Finding of Fact No. 19). Chaffey (Matyszewski) 2009030481.

27. District properly skipped two junior teachers based on their training and experience where District showed it had difficulty in recruiting and retaining teachers in its "Student Success Academy," an opportunity school program for grades 6-12. (Finding of Fact No. 18). Val Verde (Hjelt) 2009030459.

28. District properly skipped Guidance Coordinator and noticed Counselors with more seniority. Guidance Coordinators and Counselors are two distinct employment positions. Although the credentials are the same, the experience gained working in the respective positions differs. Jurupa Unified School District (Hewitt)

29. District properly skipped Dual Immersion Program employees and noticed other bilingual certificated employees with credentials to teach in the Dual Immersion Program. The Dual Immersion Program employees developed specialized knowledge and sill sets that are necessary to competently teach the program. The district demonstrated the Dual Immersion Program employees received specialized training both "in-house" and "outside" and that it retain such employees in order to grow the program. Jurupa Unified School District (Hewitt)

30. District properly skipped teacher with Multiple Subject credential but assigned to teach eighth grade math for the current school year. District demonstrated teacher authorized to teach math, a course outside of his major or minor and was deemed competent to teach math pursuant to the "HOUSSE" method by virtue of five years prior teaching in that subject. Escondido Union School District (Cole)

31. District adequately supported its justification for skipping junior employee by demonstrating junior employee was hired as "Teacher/Teacher Leader Mandarin" and received special training and experience for this position. San Marino Unified School District (Harman)

C. Skipping Not Allowed

1. Respondent's argument that she should be skipped and allowed to teach a 0.4 FTE physical education position because she is needed to supervise the girls locker room is rejected. First, another female physical education teacher is available to supervise the girls' locker room. Second, skipping a more junior employee to provide a specific need that a more senior employee does not possess is within the sole discretion of the District.

Thus, there is no basis to compel the District to retain the Respondent for that purpose. Red Bluff (Kopec)

2. Skipping of junior employee based on possession of a special education credential is rejected where no evidence was presented that the employee would teach under that credential in the following school year, or thereafter. San Gabriel Unified (Foremaker)

3. District exempted from layoff teachers with a clear or preliminary credential and NCLB compliance in the subject area of Chinese. On this basis sought to skip a junior employee who possessed a preliminary single subject credential in Chinese and lay off a more senior employee who taught Chinese for 13 years under a board authorization (per Section 44258.7(c)). The district asserted the preliminary credential was needed for instruction in AP Mandarin and for students to meet the UC foreign language admission requirement. The ALJ rejected these arguments based on: (1) the lack of evidence that AP Mandarin would be offered in the following school year; (2) evidence that the College Board, which administers the AP program, does not have formal requirements for teachers who teach AP courses; and (3) evidence that the courses taught under the board authorization would meet the UC foreign language admission requirement. The ALJ held the junior employee's credential did not confer any special skill or capabilities which the senior employee lacked, so assertions as to lack of competence constituted an abuse of the board's discretion. San Gabriel Unified (Foremaker)

4. Purporting to interpret antidiscrimination laws, ALJ found that gender is not a permissible BFOQ factor to skip and save junior staff to supervise boys locker room. *Query*: Did ALJ have jurisdiction to interpret DFEH and federal antidiscrimination regulations? *Note*: See opposite result reached on similar facts by ALJ in *Bonsall* (Hewitt). Trinity Alps (Lew)

5. Districts cannot create skipping criteria beyond scope of the four listed in section 44955. Reef-Sunset (Walker).

6. Notices to senior staff who hold CLAD disallowed absent any evidence why a BCLAD held by junior staff is a superior authorization. Sweetwater Union HSD (V. Johnson)

7. Hearing Officer rejects CLAD and BCLAD as tie-break (or skipping) criteria where saved teachers are not working in an ELL setting. King City Union Elem (Robert Johnson)

8. Teachers with multiple subject credentials teaching in single subject classrooms pursuant to board authorization were not entitled to be skipped during layoff of more senior certificated employees with multiple subject credentials. Board authorization will not permit the employees to be

skipped despite indisputable evidence that no laid off employee was currently qualified by credential or experience to teach in the single subject classrooms. El Monte City School District (Thomas)

9. District proposed skipping two junior employees assigned as English Learner Literacy coaches. There were other more senior teachers who held the same credentials or certificates including CLAD and BCLAD, however none had received any separate training to act as EL coaches as the two more junior employees had. The District properly skipped one of the employees. However because the other was not going to be assigned as an EL coach during the subsequent school year, he could not be skipped based on qualifications that he was not actually going to utilize. To retain a junior teacher over senior teachers on the basis of qualifications that they will not actually use is antithetical to the precept that seniority, generally, is the controlling factor when determining who must be laid off in a reduction in force proceeding. Lancaster School District (Montoya)

10. The District proposed skipping junior employees with a CLAD even though such employees had never been told at anytime prior to the issuance of their layoff notices that they needed CLAD certification. Limited English Proficient students must be taught by a teacher possessing a CLAD or equivalent. However, District did not simply contend that certain classes by virtue of anticipated enrollment of EL students required a CLAD but instead asserted that all classes require CLAD certification. Thus, District failed to demonstrate a specific need for personnel to teach a specific course of study as required by Education Code section 44955. The lack of timely notice to senior teachers and the Superintendent's refusal to consider a Certificate of Need to facilitate the acquisition of emergency waivers compelled the result retaining the senior teachers. Wheatland School District (Engeman)

11. SCOE inappropriately imposed bumping criteria which skipped more junior employees in the alternative education program who held five or more of the nine highly qualified certifications under NCLB. SCOE failed to show that five or more areas of highly qualified certification were necessary to teach in the program and the evidence established that none of the current sites was 100% NCLB compliant and there was no way of knowing whether the proposed skipping proposal would raise the percentage of compliance at any site or overall. Further, there was no evidence that the skipped teachers lacked competence to teach in the alternative education program. Stanislaus County Office of Education (Engeman)

12. Where the Board's skipping criteria included "employees with a BCLAD certificate – Spanish-English, or a Bilingual Certificate of Competence – Spanish-English," the District correctly disallowed the skipping of a Respondent with experience teaching bilingual Spanish classes, and a

master's degree in Teaching English as a Second Language because she lacked a valid BCLAD certification. (Findings of Fact Nos. 9, 10). Berkeley (Rasmussen) 2009030220.

13. The District improperly retained junior teachers with multiple subject credentials and Board authorization to teach in the sixth grade block-scheduling program. Teaching sixth grade in the block-schedule program did not require special training or qualifications because: (1) the curriculum was the same in self-contained classrooms; (2) it was not included in the Board's skipping criteria; and, (3) the competency criteria was limited to "current possession of a clear or preliminary credential in the subject matter or grade level and an appropriate EL authorization." Pleasant Valley (Waxman) 2009030288.

14. District improperly assumed that no senior teacher had the "rigorous training necessary" to bump into a project specialist position. The District's failure to investigate whether any specific non-project specialists might be competent to bump more junior employees currently in the assignment was arbitrary and capricious. (Legal Conclusion No. 4). Alvord (Cole) 200903477.

15. Respondents unsuccessfully argued a teacher who was trained to teach the Read 180 program was skipped even though the Read 180 program is not listed in the "skipping criteria." However, the "skipping criteria" lists "Scope of Service" which properly includes the Read 180 program. Lemon Grove School District (Hewitt)

D. No Obligation To Skip

1. Physical education teacher built a specialized program in dance at her school and knew of only two other dance teachers in the District. She acknowledged that no other teacher is being retained who has less seniority than her. Layoff upheld. Anaheim Union High (Shrenger)

2. Respondent head football coach taught physical education for four periods and a sixth period for football. His argument that he should be skipped because there is no coaching staff and there are no other employees at his school who can serve in his position, rejected; reliance on section 44955, subdivision (d), is misplaced, as statute does not apply to an employee seeking to avoid layoff. Anaheim Union High (Shrenger)

3. It is clear from Education Code section 44955, subdivision (d), that the decision to continue a particular program or maintain efforts at reaching a particular goal such as racial diversity is vested in a school district's discretion. Under Education Code section 44955, subdivision (d), the district had the authority to skip junior teachers in order to address these matters, but it chose not to do so. There is no requirement that a district

must skip junior teachers in order to advance a program or goals. Lake Elsinore Unified (Meth)

4. District properly noticed dual immersion and special education teachers where layoff resolution identified "All Special Education" and "BCLAD/Dual Immersion" as services to be skipped. The district established teachers serving in Special Education and Dual Immersion assignments were "bumped" by more senior employees, therefore district was not required to skip these junior teachers. Pleasanton Unified School District (Benjamin)

E. Expectation That Teacher Possessing BCLAD Will Use In Subsequent Year Upheld

1. District resolution included the following "skipping" criteria:

> Employees who possess a BCLAD or equivalent, and are expected to teach one or more courses requiring a BCLAD for the District in the 2009-2010 school year.
>
> [¶] . . . [¶]
>
> The Superintendent or designee is authorized to determine which employees qualify to be "skipped" from the Reduction in Force and to determine the manner in which the foregoing criteria shall be applied to each employee.

The District's application of this skipping criteria -- finding that teachers who both possessed *and* were currently utilizing a BCLAD in a classroom where a BCLAD was *required* could be reasonably "expected" to teach courses requiring a BCLAD the next year, was upheld. Oxnard (Waxman)

2. Respondents did not dispute the need to skip employees possessing BCLAD credentials who provide services in the area of bilingual education; however, some Respondents contended that the category of "BCLAD or Authorization Equivalent" was too restrictive and that the District's application was not rational. Respondents argued that teachers with training and experience to teach in the bilingual programs, including those holding emergency BCLADs, were not skipped and that two teachers who hold BCLADs, but are not currently teaching in a bilingual program, were skipped, and thus they contend there was an overly broad application of the skipping criteria. The ALJ found that, "The District has determined that its need is for present holders of a BCLAD and the decision to skip bilingual teachers only if they possessed BCLADs or the equivalent was well within the District's discretion." The ALJ went on to address the argument related to emergency BCLADs by stating, "It is true

that more personnel would have been skipped if the category included those holding emergency BCLADs, but there is no guarantee that those with the emergency certificates will complete the necessary requirements to obtain a BCLAD by next year." Finally, the ALJ addressed the issue of BCLAD holders who were not currently teaching in bilingual programs. The ALJ stated, "there was ample evidence that the two BCLAD holders who did not teach in a bilingual program in the 2008-2009 school year will be utilized in that manner in 2009-2010, because programs are growing." According to the ALJ, "the District did not abuse its discretion when it limited the bilingual education teachers subject to skipping to those teachers who have completed BCLAD training and received their certificates." San Jose (Anderson)

F. Retention Of Less Senior Employees Over Other Competent Employees

1. District attempted to retain three "middle school core class" teachers less senior than three other instructors who, while not currently assigned to a middles school core class, were nonetheless found to be credentialed and competent to do so. District did not present sufficient evidence of specialized training and experience of the less senior teachers who teach middle school core classes, and who were not given layoff notices, to justify their retention over Respondents. Saratoga (Flores)

2. District improperly classified "Core Substitutes" as temporary/substitute employees. ALJ determined the Core Substitutes were not substitute employees under Education Code section 44917 because they are employed on a full-time basis for the entire school year to perform any substitute duties that may be necessary, whether long-term, day-to-day, or otherwise. Core Substitutes were not temporary employees under Education Code section 44920 because there is no evidence that their employment is "based upon the district's needs for additional certificated employees during a particular semester or year because of a certificated employee has been granted leave for a semester or year, or is experiencing a long-term illness." San Francisco Unified School District (Benjamin)

3. District improperly skipped junior teachers with English Language Learner or "ELL" authorization. ALJ determined Education Code section 44253.10 provides that the board shall make "reasonable efforts" to provide limited-English-proficient students in need of English language development instruction with teachers who hold the appropriate credentials. According to the ALJ, the Legislature does not require school district to place each ELL student with and ELL teacher and termination of senior teachers from employment in favor of a junior teacher who holds an ELL certificate is an extreme remedy. Placer Hills Union School District (Westmore)

G. Miscellaneous

1. Although tie-breaking criteria were not assigned either a point value or given an order of importance, the administrative law judge concluded that the criteria "appeared to be based on the needs of the District and the students thereof," and were properly applied. (Finding of Fact No. 11). The administrative law judge noted, however, no respondent objected to the tie-breaking criteria. (Finding of Fact No. 11) Kernville (Formaker)

IX. BUMPING

A. Partial Bumping

1. Music teacher's 1.0 FTE position reduced to 0.4 FTE position after more senior music teacher bumps into 0.6 FTE of the position. Milpitas (Cohn)

2. Under the recent court holding in *Hildebrandt et al. v. St. Helena Unified School District*, 172 Cal. App. 4th 334 (2009), a more senior .75 FTE music teacher with a multiple subject credential and CLAD authorization may not partially bump a junior employee teaching .8 FTE Spanish and .2 FTE English Learners (EL), by claiming her .2 FTE position as an EL teacher. *However*, because the more senior music teacher cannot bump the less senior EL teacher, and the District has decided to skip the less senior EL teacher pursuant to a "reasonable exercise of its discretion" under Education Code section 44955(d)(1), there *is* a certificated employee (the EL teacher) with less seniority than the music teacher who is being retained by the District to provide services that the music teacher is certificated and competent to render. As such, the music teacher may *not* be given notice that his services are being reduced or eliminated for the ensuing school year. Montecito (Nafarrete)

3. District correctly disallowed Respondent teacher whose services were reduced by 0.16 FTE from bumping another teacher with the same seniority date out of 0.16 FTE. The District is not required to carve out portions of a full time assignment to provide a single class to another employee. (Finding of Fact No. 9). Willows (Sarli) 2009030153.

B. Bumping Should Have Been Allowed

1. Respondent, RSP teacher who had only taught RSP with the District, should have been allowed to bump less senior employee into an elementary school teaching position. District unreasonably applied its competency definition with respect to Respondent. District's competency definition required Respondent to have taught at least one full year of elementary classes within "the last 10 years." Respondent had last taught elementary class during 1999-2000 school year. District argued that Respondent's teaching experience was outside "the last 10 years" if calculation made from end of current school year (2009-2010). ALJ ruled

that such calculation is unreasonable and the proper calculation should run from the time in which the Board decided to reduce the particular kinds of services in question and made bumping decisions, in this case March 2009. Therefore, Respondent met competency criteria and should therefore have been allowed to bump less senior employee. Coalinga-Huron (Sawyer)

2. Senior probationary teachers were not entitled to be retained over junior tenured teachers. Education Code section 44955(b) makes it clear that no permanent employee may be terminated while a probationary employee is retained. The proper remedy was a one-for-one exchange, rather than the retention of all permanent employees. Four probationary employees were improperly retained so the four most senior tenured teachers who were certificated and competent to perform instructional services should be retained as a remedy. Centinela Valley Union High School District (Cabos-Owen)

3. Respondents holding supplementary authorizations to teach ninth grade courses that met the District's five-year secondary experience requirement were entitled to bump into secondary positions. Scheduling difficulties caused by reassigning those with a 9th grade only credential to a high school position did not justify disallowing such employees from bumping into positions for which they were certificated and competent to fill. (Findings of Fact Nos. 15, 19). Twin Rivers (Lew) 2009030049.

4. The most senior certificated and competent employee is entitled to bump into the position currently held by an instructor with only an emergency credential when the District created a competency standard for a position in the adult education program. (Finding of Fact No. 12). Konocti (Crowell) 2009030199.

C. Inverse Bumping

1. Contention that school district was required to take course assignments away from senior teachers so that respondents may have those assignments, and those more senior teachers may move into other positions held by junior teachers for which they were qualified to teach, was without merit. ALJ relied on holding in *Duax v. Kern Community College District* (1987) 196 Cal. App.3d 555, which stated that the district's "obligation to make assignments and reassignments…is limited to attempting to place the employee who would otherwise be terminated in a position being held by another employee with less seniority." (Id. at 568.) Atwater (Walker)

D. Bumping Correctly Allowed

1. Two factors used by District in making bumping determinations were credentials and experience teaching subject matter within last five years. District's bumping of three classroom teachers by more senior student support specialists and principal with multiple subject credentials and requisite experience held valid. Dos Palos-Oro Loma (Vorters)

2. Two factors used by District in making bumping determinations were credentials and experience teaching subject matter within last five years. District's bumping of elementary, secondary and high school employees by more senior employees with multiple subject or supplemental credentials and requisite experience held valid. Los Banos (Vorters)

3. The district correctly gave seniority dates to administrators designated for layoff which were based on their first dates of paid service as teachers with the district. The administrators were, therefore, able to bump less senior employees from teaching assignments. El Monte City School District (Thomas)

4. District correctly reassigned a principal, who had never served as a teacher in the District, to a classroom, resulting in the bump of a junior teacher. (Finding of Fact No. 19). South Whittier (Cabos-Owen) 2009030084.

5. Elementary school music teachers were correctly permitted to bump high school music teachers with less seniority. The differences between teaching music at the elementary school level and the high school level were irrelevant because the more senior teachers were qualified and competent to teach at either level. Capistrano USD (Ruiz) 2009030108.

E. Bumping Correctly Disallowed

1. Respondent, RSP teacher, properly not allowed to bump less senior employee. Although Respondent had taught one summer school fifth grade class within relevant period, ALJ determined this experience did not meet District's competency definition requiring that Respondent teach one full year of elementary school classes within the past ten years. The Respondent therefore did not meet competency criteria and was deemed not competent to render the service a junior employee was being retained to perform. Coalinga-Huron (Sawyer)

2. Respondent's claim that she should bump another teacher from position as director of ASSETs program was rejected. Respondent claimed that she had master's degree in education, preliminary administrative credential, and over 13 years of management experience including four years as executive director of an organization where she had experience in budgeting, grant writing, and report writing. Respondent failed to show

that District's exercise of discretion to retain other teacher as director of ASSETs program was unreasonable. Red Bluff (Kopec)

3. Physical education teacher argued he should bump into on-campus suspension position supervising students, currently filled by a long-term substitute. Respondent had eight years of experience in that area. On-campus suspension requires only a teaching credential, which respondent PE teacher possesses. However, no evidence was presented that his level of seniority would entitle him to move into the on-campus suspension position. Anaheim Union High (Shrenger)

4. Respondent taught intensive algebra during a two-period block based upon a credential waiver authorized by the Superintendent. She did not establish that she may bump the least senior teacher on the District seniority list (who did not receive a layoff notice) because she has not demonstrated that she has either a credential or competency to perform the duties currently performed by that junior teacher who is teaching departmentalized eighth grade math classes. Vineland (Harman)

5. K-5 teachers were not automatically competent and qualified to teach sixth grade in middle school setting, despite multiple subject credentials authorizing them to teach sixth grade, where elementary teachers typically teach one group of students throughout the day, while middle school teachers teach one subject to different groups of students during the day. El Rancho (Shrenger)

6. A part-time permanent certificated employee, who does not seek to be employed full-time, may not exercise bumping rights with respect to a less senior full-time employee if the District reasonably and in good faith does not wish to split the full-time position into part-time positions. *Hilderbrant v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334. Accordingly, District was authorized to give final layoff notice to Respondent who only wished to hold a 0.6 FTE part-time position as a counselor, while the District retained a less senior 1.0 FTE counselor. Fortuna (Johnson)

7. Respondents were not entitled to be retained to teach in assignments held by junior employees for which respondents possessed sufficient coursework for district to certify them pursuant to Education Code Section 44263. Section 44263 permits but does not require district to make limited assignments for up to one year based on college coursework, and in any event no declaration of need had been filed by the district pursuant to Title 5, Cal. Code Regs. § 80026. Mojave (Reyes)

8. Respondent with supplemental authorization in social science that only allowed him to teach 9th grade and below was not entitled to displace

junior employee retained to teach high school history classes. Burbank (Cabos-Owen)

9. Respondent with health science credential was not entitled to displace junior employee retained to teach Geoscience, where assignment required Introductory Science authorization which respondent lacked. Burbank (Cabos-Owen)

10. Where respondent earned her CLAD certificate before the District issued her a preliminary layoff notice, but the respondent failed to properly file her CLAD certificate with the District or County Office of Education, respondent was not entitled to receive a tie-breaking point for receiving her CLAD certificate and her employment may be discontinued pursuant to this reduction in force proceeding. Manhattan Beach (Nafarrete)

11. Where respondent possessed a supplementary authorization in speech, but respondent was unable to show that he was competent as well as qualified to teach public speaking and/or debate or that the District offers speech at its secondary schools, and where respondent's credential is valid only until May 1, 2009, and respondent did not demonstrate he had completed at least 150 hours of "planned and approved professional growth activities and one-half of experience as specified in the "California Professional Growth Manual," respondent was not entitled to bump. Manhattan Beach (Nafarrete)

12. Education Code section 44955, subdivision (c), does not require the District to reassign permanent certificated employees with higher seniority who is not subject to a layoff due to the reduction of particular kinds of services, in order to retain a junior employee. Manhattan Beach (Nafarrete)

13. Respondent who was the only qualified teacher to teach video production at the high school was not entitled to be retained because video production is not a service or class mandated by law. Respondent was also not entitled to bump employees who teach art under career technical education credentials at the Regional Occupational Program. Manhattan Beach (Nafarrete)

14. Citing *Hildebrandt v St. Helena Unified School District* (2009) 172 Cal.App.4th 334, Respondents working half-time were not allowed to bump less senior teachers from their full-time positions. Saratoga (Flores)

15. Employer adopted a competency standard for bumping if senior teachers never taught in an outdoor setting. ALJ rejected the attempt absent "a reasonable relationship between having taught outdoors and being able to teach outdoors." Sacramento County Office (Sarli)

16. Senior staff with single subject credentials given partial layoff notices may not use separate multiple subject credentials to displace junior staff in self-contained multiple subject classrooms. No discussion of standards for splitting full day self-contained assignments. Hermosa Beach (Rosenman)

17. Bumping into two anticipated attrition vacancies in alternative education programs disallowed. ALJ ruled that filling the upcoming openings is a personnel recruitment issue. Yucaipa-Calimesa (Hewitt)

18. Possession of math supplemental authorizations insufficient to displace junior staff with single subject math credentials. King City High SD (Anderson)

19. Evidence showed that the employer deliberately misassigned a senior teacher to a program in order to displace and layoff a qualified junior teacher. Layoff of junior teacher not allowed. San Mateo County Office of Ed. (Astle)

20. HOUSSE subject matter designation in English did not allow a senior employee with a single subject credential in social sciences to bump a less senior employee with a single subject credential in English. HOUSSE designation did not satisfy the requirement of Education Code section 44955(b) that an employee be "certificated and competent to render" the services rendered by the less senior-retained employee. Templeton Unified School District (Reyes)

21. Senior teachers were not entitled to bump a junior teacher when the senior teachers were not highly qualified under the No Child Left Behind Act and the junior teacher was highly qualified in the position in which he served. The board layoff resolution defined competency as including highly qualified status under the No Child Left Behind Act in the position into which the employee is bumping. Palm Springs Unified School District (Meth)

22. Respondent Certificated employee working part-time unsuccessfully argued she was entitled to bump into the position of a more junior full time employee. A County office has both the discretion and special competence to define a position as full time. Accordingly, a junior full time employee cannot be bumped by a part time employee notwithstanding the fact that the part time employee is more senior and when a part time employee is laid off he/she is not entitled to a full time position which subsequently opens up. (citing *Hildebrand v. St. Helena Unified Sch. Dist.* (2009) 172 Cal.App.4th 334.) Certificated employee working part-time could not bump a less senior full time employee. Glenn County Office of Education (Lew)

23. Respondent, a .50 FTE art teacher unsuccessfully challenged that she should be able to bump half of a junior full-time teacher's position in order to be retained. A part-time teacher does not have a right to force the District to divide a full-time position to accommodate a teacher's part-time employment. (See *Hildebrandt v St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) Del Mar (Hjelt).

24. One Respondent argued that she could not be bumped out of her position by a person who is not NCLB compliant in science. The ALJ ruled that "the argument was considered and has no merit." San Juan (Sarli)

25. Respondent was not entitled to bump junior employees assigned to teach science at the high school level because her current Board authorization to teach middle school science, even if renewed, would not permit her to teach grades ten through twelve. (Finding of Fact No. 22(b)). Placentia-Yorba Linda (Rosenman) 2009030040.

26. Respondent with a multiple subject credential and a supplemental authorization in English was not competent to bump a junior teacher because Respondent was not NCLB compliant in English. (Finding of Fact No. 14(a), (b)). Alvord (Cole) 200903477.

27. Respondent, an English Language Development teacher with a multiple subject credential who was NCLB compliant and authorized to teach up to ninth grade in a self-contained environment, was correctly disallowed from bumping into a high school level position and requiring BCLAD authorization. (Finding of Fact No. 14(f)). Alvord (Cole) 200903477.

28. Respondent with a supplemental history credential permitting her to teach through ninth grade was not allowed to bump junior teachers assigned to teach tenth through twelfth grades or combined classes that included tenth through twelfth grades. Placentia-Yorba Linda (Rosenman) 2009030040.

29. District properly disallowed a part-time employee with appropriate credentials to bump into a junior employee's full-time assignment. Placentia-Yorba Linda (Rosenman) 2009030040.

30. Where Respondent was NCLB compliant for her multiple subject credential but not in her supplementary authorization in English, District correctly disallowed her from bumping into a middle school English position that required NCLB compliance. Moreover, District does not have an affirmative duty to foresee such a situation and advise Respondent that her supplemental authorization was insufficient to make her NCLB compliant and thus unable to bump less senior middle school English teachers. (Finding of Fact No. 17). South Whittier (Cabos-Owen) 2009030084.

31. Respondent unsuccessfully argued district failed to bump junior teacher into an elementary classroom because the most senior person with a Multiple Subject credential who was being laid off from an elementary school classroom, which would have permitted Respondent to retain his position. The district properly exercised its prerogative to assign teachers which they are certified. Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High School Dist. (1974) 37 Cal.App.3d 35. Travis Unified School District (Tompkin)

32. Respondent unsuccessfully argued district failed to bump junior teacher into an elementary classroom because the most senior person with a Multiple Subject credential who was being laid off from an elementary school classroom, which would have permitted Respondent to retain his position. The district properly exercised its prerogative to assign teachers which they are certified. Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High School Dist. (1974) 37 Cal.App.3d 35. Travis Unified School District (Tompkin)

F. Bumping Of And By ROP And Adult School Teachers, Consultants And Other Special Employees

1. Respondent whose ROP assignment was being reduced by 0.4 FTE was allowed to bump into 0.4 FTE of an AVID class. District could not establish that that a particular competency or credential was required to teach AVID class since a number of teachers holding a variety of credentials have taught the AVID class in the past. Red Bluff (Kopec)

2. The District correctly determined that an Adult Education Program Supervisor had attained permanent employee status as a classroom teacher, pursuant to Education Code section 44897, which provides, in pertinent part, that a "person employed in an administrative or supervisory position requiring certification qualifications upon completing a probationary period . . . shall . . . become a permanent employee as a classroom teacher." However, The District determined that respondent was not entitled to any seniority as a classroom teacher because she never held a classroom teaching assignment at the Adult School, and she was not entitled to any seniority for her work as an administrator. Santa Clara (Schneider)

G. Miscellaneous

1. District correctly disallowed an assistant principal with a single subject credential in Geography to bump into a position that required a credential in Economics or Social Science. If the assistant principal obtained the requisite NCLB certification required to teach at a District continuation school prior to May 15, the ALJ held that the District should retain him in that position. Roseville (Sarli) 2009030265.

X. ASSIGNMENTS AND REASSIGNMENTS

1. Respondent with supplemental authorization in social science that only allowed him to teach 9th grade and below was not entitled to displace junior employee retained to teach high school history classes. Burbank (Cabos-Owen)

2. Respondent with health science credential was not entitled to displace junior employee retained to teach Geoscience, where assignment required Introductory Science authorization which respondent lacked. Burbank (Cabos-Owen)

3. The District was not required to facilitate a request by a senior teacher not being laid off to "transfer" into a less senior position being skipped, effectively bumping the less senior teacher, so that her teacher spouse could fill the resulting vacant position (the teacher spouse was qualified to fill his wife's position but not the junior teacher being skipped). The District has discretion in making assignments and reassignments among certificated employees not being laid off. Cottonwood (Lew)

4. Where prior to March 15 governing board resolved to reduce or discontinue particular kinds of services, and district posted announcement of 22 vacant positions on April 20, district was required to retain respondents who had seniority and qualifications to fill the posted vacancies, notwithstanding any collective bargaining agreement language that might otherwise have required district to post positions for 30 days before filling or to allow other employees to apply. Mojave (Reyes)

5. Respondents were not entitled to be retained to teach in assignments held by junior employees for which respondents possessed sufficient coursework for district to certify them pursuant to Education Code Section 44263. Section 44263 permits but does not require district to make limited assignments for up to one year based on college coursework, and in any event no declaration of need had been filed by the district pursuant to Title 5, Cal. Code Regs. § 80026. Mojave (Reyes)

A. Alleged Violation Of A Collective Bargaining Agreement Or Bargaining Obligations

1. Where prior to March 15 governing board resolved to reduce or discontinue particular kinds of services, and district posted announcement of 22 vacant positions on April 20, district was required to retain respondents who had seniority and qualifications to fill the posted vacancies, notwithstanding any collective bargaining agreement language that might otherwise have required district to post positions for 30 days before filling or to allow other employees to apply. Mojave (Reyes)

B. Miscellaneous

1. District's failure to include 16 administrators being reassigned to classroom positions on the seniority list and in the layoff proceeding was a denial of due process because the Respondents were unable to address the issues concerning reassignments at the hearing. (Finding of Fact No. 12). East Side (Astle) 2009030096.

XI. ATTRITION

A. Voluntary Consideration Of Anticipated Attrition

1. Subsequent to adoption of the Board's Resolution, the District identified vacancies for the 2009-10 school year due to positive assured attrition (confirmed retirements or resignations). (Finding of Fact No. 4) Kernville (Formaker)

2. District properly took into account 17 anticipated resignations and retirements in determining the number of certificated employees to lay off. Las Virgenes (Reyes)

B. Attrition Need Not Be Considered

1. Following the issuance of initial layoff notices on March 15, two teachers resigned from positions not subject to the layoff. The District did not fill the vacant positions. The District was not required to reassign Respondent with credential to teach in area of vacancy because (1) it took into account all positive attrition at the time preliminary notices were issued; and, (2) it was not required to fill or layoff the resigned positions because the decision not to fill the vacancy did not result in a reduction of FTEs. (Finding of Fact No. 13). Roseville (Sarli) 2009030265.

XII. ESTOPPEL

1. District not barred from executing layoff action against Respondent, despite Respondent's claim that district should be equitably estopped from doing so because had the district instructed him of a course of action that would allow him to distinguish himself from other teachers, then he would have pursued a course of action to enable him to excel in the tie-breaking criteria's application. Because District published the tie-breaking criteria for each year, Respondent could not be found to have been ignorant of the true facts that pertain to applying tie-breaking criteria. Moreover, Respondent did not show that the District's tie-breaking criteria injured him in a fashion that was contrary to equity and fairness. Eureka (Johnson)

2. Respondent's argument that the District should be equitably estopped from executing layoff action against him, because District did not inform

him of the best course he should have followed so as to attain points or credits to have attained a level of competency in order to be retained for employment relative to other teachers who have the same first date of paid service to the District, was without merit. Superintendent was reasonable in advancing that the doctrine of equitable estoppel to preclude the layoff action was unreasonable, because the District's tie-breaking criteria had been a public record and the District had no duty to guide certificated employees in improving skills or attaining enhanced certificates so as to amass points in a tie-breaking dispute. Fortuna (Johnson)

XIII. DOMINO THEORY

XIV. CONTRACTUAL ISSUES

A. Improper **Forum**

1. The administrative law judge lacks jurisdiction to determine whether or not the proposed reduction of services violates a Memorandum of Understanding between the union and the District. (Finding of Fact No. 13). Moreno Valley (Matyszewski) 2009030216.

XV. TEMPORARY TEACHERS

1. District correctly converted several temporary teacher classifications to probationary after it determined the number of temporary teachers exceeded the number of certificated teachers on leave. Accordingly, "converted" teachers were added to the seniority list and layoff notices to the most senior teachers were rescinded. The ALJ rejected Respondents' contention that they should be retained because the District originally hired more temporary teachers then permitted by law. (Finding of Fact No. 22(e); Legal Conclusion No.11.) Placentia-Yorba Linda (Rosenman) 2009030040.

2. Respondent was initially hired to teach biology under a full time temporary contract. The District was not required by law to inform her that 0.6 FTE of the position was as a leave replacement and the other 0.4 FTE was in a categorically funded program. After the District discovered it lacked the funding for the 0.4 FTE categorically funded position, it correctly reclassified the position as probationary (Finding of Fact No. 10). San Mateo (Astle) 2009030372.

3. The District is not required to have a one-to-one match between employees on leave and the employees temporarily filling their positions, as long as the total FTE's of temporary employees hired under Education Code section 44920 does not exceed the total FTE's of employees on leave. (*Santa Barbara Federation of Teachers v. Santa Barbara High School Dist.* (1977) 76 Cal.App.3d 223, 232-233; *Paulus v. Board of*

Trustees (1976) 64 Cal.App3d 59, 62-63.) (Finding of Fact No. 19). Berkeley (Rasmussen) 2009030220.

4. Temporary employees serving in categorical positions may be dismissed without a hearing only when the program has expired, Temporary employees were properly included in the hearing process. Tustin (Juarez) 200902907.

5. Categorically-funded employees not served with an accusation lacked standing to challenge their classification as temporary employees at the administrative proceeding. The power to compel the District to reclassify categorically funded employees and to reinstate them to employment if there was misclassification rests with the Superior Court. (Legal Conclusion No. 7). Alvord (Cole) 200903477.

6. Temporary employees serving in categorical positions may be dismissed without a hearing only when the program has expired, temporary employees were properly included in the hearing process. Tustin (Juarez) 200902907.

7. Respondents employed in District's categorically funded programs that will be continuing the following school year are entitled to be classified as something other than temporary for purposes of the layoff proceeding, and accounted for on the District's seniority list. Section 44904 provides that service under a categorically funded project "shall not be included in computing the service required as prerequisite to attainment of, or eligibility to, classification as a permanent employee." Section 44904 creates an exception to the general rule that service in a probationary position is creditable for attainment of permanent status; it does not compel the District to classify respondents as temporary or to remove their names from the seniority list. Therefore, those Respondents employed in District categorically funded programs that will be continuing in the next school year are entitled to participate in the layoff proceedings. Twin Rivers (Lew) 2009030049.

8. The District properly disallowed "tacking" within a single year. Respondent served as a temporary employee and as a long-term substitute in the same school year he was hired as a probationary employee. Respondent did not render any temporary or substitute service in the year prior to becoming a probationary employee. Therefore, Respondent's seniority date was the date he began employment as a probationary employee. (Finding of Fact No. 9). Fairfield-Suisun (Cohn) 2009030194.

XVI. MISCELLANEOUS

A. Uncontested Layoff

1. Respondents, the only two to request a hearing, and their attorney, did not appear for the hearing and were laid off. The ALJ determined that the "matter proceeded as a default hearing under Government Code section 11520." Bella Vista (Lew)

2. Parties stipulated that District is not retaining any probationary employee to render a service that respondents were certificated and competent to render. Golden Valley (Walker)

3. Parties stipulated that District is not retaining any permanent employees with less seniority than any respondent to render a service that the respondents were certificated and competent to render. Golden Valley (Walker)

4. Parties stipulated that District is not retaining any employee with less seniority than any respondent to render a service that the respondent's qualifications entitle him or her to render. Golden Valley (Walker)

5. Where resolution specified 0.5 FTE reduction in Foods, and employee performing that service also taught Home Economics 0.5 FTE, cause existed to terminate services of employee only to extent of 0.5 FTE, not 1.0 FTE. Mojave (Reyes)

B. Cases with nothing new in them.

1. *OAH No. 2009030486 – Grossmont Union High (Hjelt)*