

**San Bernardino City Unified School District**

Minutes of a Special Meeting of the Board of Education

**MINUTES  
ADOPTED  
7/7/09**

Community Room  
Board of Education Building  
777 North F Street  
San Bernardino, California

May 12, 2009

5:30 p.m.

Present: President Teresa Parra; Vice President Danny Tillman; Board Members Barbara Flores, Judi Penman, and Lynda Savage; Superintendent Arturo Delgado; Deputy Superintendent Judy White; Chief Business and Financial Officer Mohammad Islam, Assistant Superintendents Narciso Cardona, Dayton Gilleland, Yolanda Ortega, John Peukert, Paul Shirk, and Harold Vollkommer. Minutes recorded by Administrative Assistant Jennifer Owens.

Absent: Board Members Louise Ayala and Elsa Valdez, Associate Superintendent Mel Albiso, and Superintendent's Assistant Mary Beth Gosnell.

**SESSION ONE - Opening**

**1.0 - Opening**

**1.1 - Call to Order**

President Parra called the meeting to order at 5:30 p.m.

**1.2 - Pledge of Allegiance to the Flag**

The meeting was opened with the Pledge of Allegiance to the Flag of the United States of America.

**SESSION TWO – Other Matters Brought by Citizens**

**2.0 - Other Matters Brought by Citizens**

Michael Martinez Scott stated that Inghram Elementary School had the lowest test scores in San Bernardino County last year. Mr. Scott stated that he didn't ask Inghram teachers if they would work at his proposed Classical Kids Charter School because he didn't think they would want to give up their tenure. Top charter schools don't use 1090 language because it would add bureaucracy. Mr. Scott doesn't recommend having a CFO and the District would handle his school's finances if the Board approves his petition.

Gil Navarro, San Bernardino County School Board Member, reported that the County has a 25.4 percent dropout rate. Mr. Navarro stated that districts aren't taking advantage of the programs offered by County Schools. Districts should hire more teachers, not lay them off.

Andrea Schindler, Inghram Elementary School teacher, expressed her support for the Classical Kids Charter School petition. She is on the board of directors of Power Teaching, the best method to actively engage students. Ms. Schindler hoped the Board would support the charter.

Liz Madera, District employee, asked for clarification on the change in the election year for Board members. Teresa Parra stated that the change was approved by the County Board of Supervisors. Dr. Delgado stated that the estimated cost of the election is \$350,000.00.

Joyella Beuler stated she is a second grade teacher at Bradley Elementary School and a former School Board member in Yucaipa. Ms. Beuler asked the Board to not lay off the 94 teachers and do what they can to keep them for one more year.

### **SESSION THREE – Administrative Presentation**

#### **3.0 - Administrative Presentation**

##### **3.1 - Budget Update Fiscal Year 2009-2010**

Mohammad Z. Islam, Chief Business and Financial Officer, presented a brief update on the Fiscal Year 2009-2010 budget (see page \_\_\_\_). Dr. Delgado stated that changes have been made to the budget to reflect changes in the way the state allows us to use funding.

Mr. Islam stated that the District will receive half of the stimulus money at the end of May. Danny Tillman stated that this money can be used to pay for the teachers' salaries. Mr. Islam stated that that would be a problem because it is one-time money. Mr. Tillman stated that it could save positions for one year. Barbara Flores requested the written regulations on spending this money. Lynda Savage stated that she would rather risk the District's financial position to keep the teachers for a year. Teresa Parra supported this also.

Dr. Flores stated that middle and high schools need smaller class sizes. Judi Penman stated that she is not planning to lay off teachers. We need to be careful not to hire a lot of new people and fill open positions with people that are losing their jobs. Teachers should be trained for administrative positions.

Dr. Delgado stated that it is our duty to bring all the information to the Board. The latest information from Sacramento is that there will be mid-year cuts. The stimulus money should be used for this. If additional cuts are made because the propositions do not pass, we may have to make additional cuts.

Danny Tillman stated that it is important to be clear. We don't have a choice of when we give layoff notices. Judi Penman asked how many retired principals have we rehired and why can't the teachers be given the jobs that the retired principals are given. Harold Vollkommer stated that three or four administrators have been hired to do special projects and work as substitute

administrators. Teresa Parra stated that vice principals are trying to become principals and asked why we don't use them. Dr. Vollkommer reported that many teachers work on special projects.

Danny Tillman stated that some retiree positions need to be filled and asked if we have positions for those 94 teachers. Dr. Vollkommer reported that due to declining enrollment we would have to find positions for them. The cost to retain the 94 teachers is \$6.1 million.

Mr. Tillman suggested we give no layoffs, do the class size reduction, and leave everything else as status quo until we learn our position after the election. Ms. Parra stated that if we don't give notices and don't get the money, we will be short. Dr. Flores agreed to no layoffs.

#### **SESSION FOUR – Action Items**

##### **4.0 - Action Items**

##### **4.1 - Adoption of Resolution Terminating Services Of Certificated Employees As A Result Of Reduction Or Discontinuation Of Particular Kinds Of Services (Acting On Proposed Decision Of The Administrative Law Judge)**

Upon motion by Member Flores, second by Member Savage, the following resolution was not approved by the following vote: Ayes: None; Noes: Flores, Parra, Penman, Savage, Tillman.

WHEREAS, on March 10, 2009, the Superintendent served notice to this Board recommending that 262 certificated teaching positions be reduced or eliminated, and that a corresponding number of certificated employees receive notice that their services will not be required for the ensuing 2009-10 school year, pursuant to Education Code sections 44949 and 44955;

WHEREAS, on March 10, 2009, this Board took action to reduce or discontinue 262 certificated teaching positions not later than the beginning of the 2009-10 school year, as set forth therein;

WHEREAS, the particular kind of services to be reduced or discontinued by this Board's March 10, 2009 action are determined to be particular kinds of services within the meaning of Education Code section 44955;

WHEREAS, the particular kinds of services impacted by this Board's March 10, 2009 action will be reduced or discontinued within the meaning of Education Code section 44955 not later than the beginning of the 2009-10 school year;

WHEREAS, on or before March 15, 2009, the Superintendent or the Superintendent's designee served notice to 254 certificated employees that it has been recommended that their services will not be required for the ensuing 2009-10 school year, pursuant to Education Code sections 44949 and 44955;

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WHEREAS, the notices served upon the employees advised them that they may request a hearing to determine if there was cause for not reemploying them for the ensuing 2009-10 school year, and that if they failed to timely request a hearing, that failure shall constitute a waiver of their right to a hearing;

WHEREAS, certain certificated employees (Nancy Arroyo, Kimberly Campbell, Vanessa Chamberlain, Dimitrios Chronopoulos, Melody Cooney, Erika Cordova, Kathryn Cure, Diego Fernandez, Marisa Florez, Grisel Garcia, Sofia Garcia, Mary Gillespie, Julio Gutierrez, Lawrence Hardy, Vanessa Johns-King, Sara Kathol, Lauren Kessen, Gregory Kuld, Joseph Lincon, Kassy Mayor, Arlene McGee, Sarah Morales Alfonso, Jessica Pantoja, Janet Parrish, Holly Peterson-Funn, Alba Ramirez-Pena, Julia Reynolds, Erika Rios, Cameron Ruffin, Angela Shih, Jenai Solano, Kimberly Thissen, Sharon Visser, Bonnie Warren, Anja Westerhaus, Kathleen Willis, Jessica Wong, Gina Younglove) did not request a hearing and, pursuant to Education Code sections 44949, they therefore waived their right to a hearing; certain other employees did request a hearing, and accordingly an evidentiary hearing was scheduled for April 13, 2009, pursuant to Education Code sections 44955 and 44949 before an Administrative Law Judge;

WHEREAS, on April 29, 2009, the Administrative Law Judge submitted a proposed decision related to those proceedings which was received by the District on April 30, 2009;

WHEREAS, this Board has received and considered the proposed decision of the Administrative Law Judge, a copy of which is attached hereto, and any arguments submitted by or on behalf of the parties regarding that proposed decision;

WHEREAS, before the evidentiary hearing, the District dismissed the accusations as to 76 certificated employees;

WHEREAS, at the beginning of the evidentiary hearing, the District dismissed the accusations as to employees Jessica Aguilar, Dee Cajiuat, Eric Dorame, Monica Ann Hidalgo, Ramona Rae Phillips, Santos Rodriguez III, Lanaya Marie Silva, and Kristy Annette Williams.

WHEREAS, in his proposed decision, the Administrative Law Judge dismissed the Accusations as to employees Kelly Basoco, Michelle Bracken, Mary Gillespie, and Laura Maruffo and endorsed the layoff with respect to the 166 remaining certificated employees in the Administrative Law Judge's proposed decision;

WHEREAS, the Board has determined that the needs of the District can be met by reducing Elementary Teaching positions to be eliminated from 227 FTE's to 82 FTE's and by proceeding with elimination of the secondary teaching positions impacted by this Board's March 10, 2009 action;

WHEREAS, Education Code section 44949, subdivision (c)(3), provides that this Board shall make the final determination as to the sufficiency of the cause and disposition of the layoff;

WHEREAS, Education Code section 44955, subdivision (c), requires final Board action and notifications to employees no later than May 14, unless that date is extended within a hearing pursuant to Education Code section 44949, subdivision (e);

WHEREAS, the services of no permanent or other employee are being terminated while any probationary employee or any other employee with less seniority is being retained to render a service which the permanent or other employee is certificated and competent to render, within the meaning of, and except as permitted by, Education Code section 44955; the individuals whose employment is being terminated are not certificated and competent (within the meaning of, and except as permitted by, Education Code section 44955) to render the service being performed by any employee with less seniority who is being retained;

WHEREAS, the jurisdictional and statutory prerequisites have been satisfied as to the individuals named in the final layoff list, to the extent required by law; sufficient cause exists for such employees' termination of employment after consideration of facts including but not limited to the employees' seniority and scope of credentials; and that cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949, subdivision (c)(3), to the extent that provision applies; and

WHEREAS, rights to reemployment pursuant to Education Code section 44956 and/or 44957 shall be provided to the certificated employees whose services are terminated as a result of this layoff;

NOW, THEREFORE, BE IT RESOLVED that this Board accepts the proposed decision of the Administrative Law Judge and adopts as its own that proposed decision;

BE IT FURTHER RESOLVED that as a result of the Board's determination that the Elementary Teacher positions to be eliminated shall be reduced from 227 FTE's to 82 FTE's, the Assistant Superintendent, Certificated Human Resources has determined that the 94 certificated employees named on the Final Layoff List have been appropriately designated for layoff, based on their seniority and consistent with the provisions of Education Code section 44949 and 44955.

BE IT FURTHER RESOLVED that the employment of the 94 certificated employees named on the Final Layoff List attached hereto is hereby terminated effective upon the close of the current school year (i.e., the end of such employees' last working day prior to July 1, 2009);

BE IT FURTHER RESOLVED that this decision is effective immediately and that the certificated employees named on the Final Layoff List be given appropriate notice by the Superintendent or the Superintendent's designee(s) of the termination of their services, with said notice to be given on or before May 14, 2009, in the manner prescribed by law; and finally

BE IT FURTHER RESOLVED that reemployment rights shall be afforded in accordance with and to the extent applicable by the Education Code, if and when reemployment is available.

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT**

**FINAL LAYOFF LIST**

The following certificated personnel will receive a final layoff notice:

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1. Abrahamson, Julee
2. Agha, Farah
3. Alas-Negri, Marisela
4. Alba, Maribel
5. Amador, Martha
6. Anderson, Kristin
7. Applegate, Valerie
8. Atencio, Callie
9. Barbu, Diana
10. Barone, Debra
11. Beuler, Joyella Jane
12. Blacksher, Kristina
13. Brink, Jennifer
14. Brown, Eboni
15. Brown, Nicole R
16. Brown, Norma
17. Burg, Kevin
18. Cachu, Laura
19. Camacho, Lisa
20. Camargo, Veronica C.
21. Campbell, Kimberly Leanne
22. Carson, Wendi
23. Castillo, Cynthia
24. Chavez, Patricia
25. Chen, Susan
26. Chronopoulos, Dimitrios
27. Collins, Lori
28. Cooney, Melody
29. Danridge, Victoria
30. Dean, Cassandra
31. Dean, Kristen M
32. Demarco, Ana
33. Duag, Elaine
34. Duran, Samuel
35. Elliott, Lindsay
36. Esquibel, Malissa
37. Fernandez, Diego
38. Florez, Marisa
39. Garcia, Grisel
40. Garcia, Helen
41. Garcia, Sofia J
42. Gutierrez, Julio
43. Gutierrez, Mayra
48. Hendricksen, Matthew David
49. Hodges, Rosario
50. Hudson-Cousins, Shakirah Nar
51. Jimenez-Garcia, Maria
52. Kathol, Sara
53. Kuld, Gregory
54. Licon, Joseph
55. Lingenfelter, Tina
56. Lopez, Elizabeth
57. Manjarrez, Amanda
58. Mao, Elisa
59. Marshall, Renita
60. Martin, Marrina R
61. McGee, Arlene
62. Meaca, Marisol
63. Moneta, Katie
64. Moreno, Denise
65. Morrison, Mary T
66. Murguia, Anna
67. Ortega, Paulette
68. Parrish, Janet
69. Pelayo, Nora
70. Ponsler, Shawn
71. Quezada, Rosalinda Vera
72. Quintero, Alicia
73. Raef, Teresa
74. Ramirez, Melissa Yong
75. Ramirez, Veronica
76. Ramirez-Pena, Alba
77. Reyes, Nancy V
78. Reynolds, Julia
79. Rios, Erika
80. Robinson, Deidre
81. Robles, Rebecca Alexandra
82. Rodriguez, Kimberly
83. Ruffin, Cameron
84. Sanz, Lizette
85. Sargent, Kimbre
86. Sassaman, Sandra
87. Scoggin, Kelly
88. Smith, Kevin
89. Stallings, Amber
90. Thissen, Kimberly Anne

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- 44. Guzman, Cynthia
- 45. Hamner, JoAnn
- 46. Hardy, Lawrence
- 47. Henao, Jennifer

- 91. Torres, Oscar
- 92. Warren, Bonnie S. A.
- 93. Willis, Kathleen M
- 94. Younglove, Gina

BEFORE THE GOVERNING BOARD  
OF THE  
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of  
Certain Employees of the San Bernardino  
City Unified School District,

Respondents.

OAH No. 2009030791

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 13, 2009.

Sherry Gordon, Attorney at Law, and Todd Robbins, Attorney at Law, represented the San Bernardino City Unified School District.

Elizabeth Garfield, Attorney at Law, and Chi-Young Min, Attorney at Law, represented most of the certificated employees who were named as respondents in this layoff proceeding.

Respondents Maria Jimenez-Garcia, Vanessa Johns-King, Dimitrios Chronopoulos, and Maribel Alba represented themselves.

The matter was submitted on April 13, 2008.

**FACTUAL FINDINGS**

*The San Bernardino City Unified School District*

1. The San Bernardino City Unified School District (SBCUSD or the district) is located in San Bernardino, California. The district serves the City of San Bernardino, part of the City of Highland, and the unincorporated areas of Muscoy and Devore. SBCUSD is currently the seventh largest school district in California, with 65 schools in operation and a student enrollment of more than 54,000. SBCUSD employs approximately 7,000 persons, more than 3,000 of whom are certificated employees. Its annual budget is approximately \$600 million, about 85 percent of which pays employee salaries and benefits.



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2. The District is governed by an elected seven-member Board of Education (the governing board). Arturo Delgado, Ed.D. (Dr. Delgado), the Superintendent of Schools, is the Board's Chief Executive Officer. Harold J. Vollkommer, Ed.D. (Dr. Vollkommer) is the Assistant Superintendent of Schools, Certificated Human Resources.

3. For the past several years, the district has taken reasonable efforts to become fully compliant with federal No Child Left Behind<sup>1</sup> (NCLB) standards. On October 16, 2007, SBCUSD's governing board enacted a board policy specifically requiring the hiring of highly qualified NCLB teachers.

In its NCLB policy, the governing board stated its intent to recruit and hire teachers who possessed the subject matter knowledge and teaching skills required by NCLB for educationally disadvantaged students and for students in core academic subjects. Notice was taken of that resolution, which provides in part:

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<sup>1</sup> Notice is taken that the No Child Left Behind Act of 2001 (Public Law 107-110) was signed into law on January 8, 2002. NCLB was designed to improve the performance of primary and secondary schools by increasing the standards of accountability for states, school districts, and schools within the United States. NCLB enacted standards-based education reform (formerly known as outcome-based education) in the belief that setting high standards and establishing measurable goals improves individual outcomes in education. NCLB requires states seeking federal funding to develop assessments in basic skill instruction given to all students in certain grades.

NCLB requires that all teachers teaching in core academic subjects be "highly qualified" no later than the end of the 2005-06 school year. Core academic subjects include reading, English-language arts (including the English language development component of an adopted program), mathematics, science, foreign languages, civics/government, economics, arts, history, and geography. To become NCLB "highly qualified" in California, a teacher must meet three criteria: Possession of a bachelor's degree; possession of an appropriate California teaching credential; and demonstrated core academic subject area competence by means of examination, coursework, advanced certification, or completion of the California High Objective Uniform State Standard of Evaluation (HOUSSE) in the subject area being taught.

Self-contained elementary school teachers (who typically hold a multiple subject teaching credential) must demonstrate competence in those areas generally taught as part of the elementary school curriculum to become highly qualified. NCLB requires that all "new" elementary school teachers demonstrate subject-matter competency by exam. (California Administrative Code, tit. 5, § 6102.) All "new" teachers who receive a Multiple Subject Preliminary, Clear, Professional Clear or an intern credential on or after July 1, 2002, must pass a Commission on Teacher Credentialing (CTC) approved subject-matter exam to become NCLB-compliant (even though that may not be required to receive a credential). Currently, the CSET is the only CTC-approved exam for "new" school elementary teachers. "Not new" elementary school teachers have two options to demonstrate subject-matter competency: the exam option (passing any current or prior CTC-approved multiple-subjects exam), or meeting HOUSSE standards through a process that evaluates the teacher's knowledge and ability based on a high, objective uniform standard of evaluation that meets federally established criteria.

For "new" middle school and high school teachers (who typically hold a single subject credential) there are several ways to become highly qualified: the exam option requires the applicant to pass a CTC-approved subject-matter exam in the NCLB core academic subject area; the course work option requires (a) the completion of CTC-approved single subject matter program in the core area; (b) a major in the core area; (c) a graduate degree in the core area; (d) a major equivalent in the core area (32 non-remedial units earned with a grade of C or higher); or (e) advanced certification (National Board Certification) in the core area. For "not new" middle and high school teachers there are four options to demonstrate subject-matter competency: the exam option (CTC-approved single subject matter program in the core area); the course work option (major or major-equivalent in the core area); advanced certification (National Board Certification) in the core area; or the completion of HOUSSE requirements.

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“All teachers hired after the first day of the 2002-03 school year to teach core academic subjects in a program supported by Title I funds shall be ‘highly qualified’ as defined by federal law and the State Board of Education, upon hire.”

The resolution also provides:

“All teachers who were hired prior to the beginning of the 2002-03 school year in Title I programs shall demonstrate that they are highly qualified not later than the end of the 2006-07 school year . . .

The Superintendent or designee shall monitor the distribution of ‘highly qualified’ teachers among district schools and develop strategies, as needed, to encourage teachers who meet NCLB requirements to teach in schools with the lowest student performance . . .

The Superintendent or designee shall inform teachers of NCLB requirements and shall identify the additional qualifications, if any, that individual teachers need to demonstrate in order to meet the requirements . . . .”

4. On January 22, 2009, Dr. Delgado received notice from the California Department of Education that SBCUSD had “not met the 100 percent Highly Qualified Teacher (HQT) requirement for three consecutive years as mandated by the No Child Left Behind Act (NCLB) of 2001.” The district was placed into Level C of the Compliance, Monitoring, Interventions, and Sanctions (CMIS) program for the 2008-09 school year.

5. SBCUSD currently has a 96 percent compliance rate with the NCLB requirement that its teachers be “highly qualified.”

*The Fiscal Crisis – Economic Layoffs*

6. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June, but sometimes taking much longer as occurred in 2008. Before then, the school district’s governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

A school board’s obligation to balance its budget often requires that some teachers, administrators or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

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The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

*The District's Response*

7. In early 2009, SBCUSD's governing board and administration (as well as the governing boards and administrators of most other school districts) became acutely aware of the State of California's massive budget deficit and its crippling fiscal impact. As a result of the financial crisis, SBCUSD projected a budget deficit of about \$82 million. The district was required to look into ways to balance its budget including the reduction of certificated and classified staff and various programs.

Dr. Vollkommer and the district staff prepared a recommendation for Dr. Delgado to present to the governing board which outlined the reduction and elimination of particular kinds of services being provided by certificated employees.

8. On March 10, 2009, under Education Code sections 44949 and 44955, Dr. Delgado recommended to the governing board that the district notify certain certificated employees that their services would not be required in the 2009-10 school year and the reason for the recommended reduction in force.

9. On March 10, 2009, at a special session, the governing board passed the following resolution:

**"BOARD OF EDUCATION OF THE  
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT**

**REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES**

WHEREAS, the Board of Education of the San Bernardino City Unified School District has determined that particular kinds of services set forth herein must be reduced or discontinued; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the San Bernardino City Unified School District as follows:

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A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2009-2010 school year:

Elementary K-5 Teaching Services	227	F.T.E.
Secondary Teacher	35	F.T.E.
English	10	F.T.E.
Social Studies	8	F.T.E.
Math	5	F.T.E.
Science	5	F.T.E.
Physical Education	5	F.T.E.
Foreign Language	2	
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>262</b>	<b>F.T.E.</b>

B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.

C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.

D. That 'competency' as described in Education Code section 44955(b), 44956, and 44957, for purposes of bumping and reemployment shall necessarily include possession of a valid credential in the relevant subject area.

E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.

F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED this 10<sup>th</sup> day of March, 2009, in the County of San Bernardino, California.

AYES: Flores, Parra, Penman, Tillman, Valdez

NAYES: Ayala"

The governing board's resolution did not refer to an employee's NCLB highly qualified status in defining "competency." Nor did the resolution contain any "skipping" criteria.

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*Non-Exclusive Delegation of Authority/Initiation of Layoff Proceedings*

10. On March 10, 2009, Dr. Delgado designated Dr. Vollkommer to act on his behalf for purposes of initiating and implementing the reduction in force. Dr. Vollkommer and his staff thereafter took those steps necessary to identify certificated employees who should receive a preliminary layoff notice and to identify those employees whose seniority and competence entitled them to bump more junior employees.

11. On and before March 15, 2009, each certificated employee who is a respondent in this layoff proceeding was given written notice that the Superintendent of Schools had recommended that his or her services be terminated at the conclusion of the current school year and that those services would not be needed for the upcoming 2009-10 school year. Each respondent was notified of the right to a hearing. Each respondent who filed a request for a hearing was thereafter served with an accusation and other required jurisdictional documents.

*The Administrative Hearing*

12. On April 13, 2009, the record in the administrative hearing was opened. Jurisdictional documents were presented. Several stipulations were reached, official notice was taken, sworn testimony was given, documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

At the outset of the administrative hearing, and as a result of positive attrition and other matters, the preliminary notices and accusations served on respondents Jessica Aguilar, Dee Cajuat, Eric Dorame, Monica Ann Hidalgo, Ramona Rae Phillips, Santos Rodriguez III, Lanaya Marie Silva, and Kristy Annette Williams were dismissed. There was no objection.

*The Particular Kinds of Services*

13. The services identified in the governing board's resolution were services the governing board could properly reduce or discontinue. The reduction of those services was neither arbitrary nor capricious, and the reduction of services was a matter within the board's discretion. Before issuing preliminary layoff notices, the district's administrative staff considered all known positive attrition including resignations, retirements and probationary non-reelects to determine the number of layoff notices that needed to be issued. No particular kinds of services were lowered to levels below those levels mandated by state or federal law.

*The Seniority List*

14. SBCUSD maintained a seniority list, a living document that was updated as new employees were hired and as other employees retired or resigned. An employee's seniority date was based on the employee's first date of paid service with the district in a probationary position.<sup>2</sup>

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<sup>2</sup> Education Code section 44845 provides:

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A teacher who voluntarily attended the district's new teacher academy, which was held before the employment contracts went into effect, was not given a seniority date related to the dates on which the teacher attended the academy even though the teacher may have been paid a stipend, but was, instead, given a seniority date consistent with that teacher's first paid date of probationary service with the district under the employment contract.

A teacher hired as a probationary employee who had worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and had performed the duties normally required of a certificated employee of the school district was deemed to have served a complete school year as a probationary employee if that teacher was employed as a probationary employee in the following school year. A teacher was entitled to have that earlier year served as a long-term substitute teacher counted as a year of probationary service. The prior year was "tacked" on for seniority purposes.<sup>3</sup>

Before issuing preliminary layoff notices, the district's administration provided to the seniority list to the teachers' association with a request that certificated employees be given the opportunity to review the seniority list and, through the association, notify the district of any changes or modifications to seniority dates. Several necessary changes were brought to the district's attention and the seniority list was updated to reflect those changes.

15. Under Dr. Vollkommer's supervision, the truncated seniority list used in these layoff proceedings (Exhibit 10) was organized to include a reference number, the employee's name, the employee's seniority date (the first date of paid service in a probationary position), the employee's status (tenure, probationary 2, probationary 1, or intern), the employee's assignment, a summary of the employee's teaching credentials and authorizations, and whether the employee had sufficient seniority to bump into an existing position in the event the particular kind of service that employee had rendered was subject to the layoff but that employee was certificated and competent to render services being provided by a more junior employee.

16. There were no temporary employees or substitute employees involved in this layoff proceeding. The use of tie-breaking criteria to determine the order of layoff between employees having the same seniority date was not required. SBCUSD did not skip an appropriately credentialed junior employee to fill a position that was held by a more senior employee, even if the senior employee was not NCLB highly qualified. It was not planned that

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"Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

<sup>3</sup> Education Code section 44918 provides in part:

"(a) Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year."

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any long term substitutes or temporary employees be hired to fill any of the positions being reduced through the layoff proceedings.

*The District's Layoff Notices*

17. In implementing the reduction in force resolution, administrators mistakenly failed to issue a preliminary layoff notice to Thomas S. Muller (Muller), a probationary middle school teacher with a multiple subject teaching credential with a seniority date of July 29, 2008. Several competent and certificated teachers with more seniority than Muller received preliminary layoff notices. As a result of the district's failure to issue a preliminary layoff notice to Muller, Muller's services for the 2009-10 school year were retained.<sup>4</sup>

18. Laura Marruffo, a probationary elementary school teacher with a seniority date of July 2, 2007, was the most senior employee who was competent and qualified to hold the position for which Muller did not receive a notice. As a result of the district's error in failing to serve Muller with a preliminary layoff notice, the preliminary layoff notice issued to Laura Marruffo must be rescinded. No other senior employee was prejudiced by this error.

*Seniority Date Issues*

19. Respondents Kelly Basoco, Callie Atencio, Victoria Dandridge, Ana Demarco, Farah Agha, Bonnie Warren, Melissa Esquibel, Michelle Bracken, and Mary Gillespie asserted that their seniority dates were incorrect.

A. Kelly Basoco claimed she worked for the district as a long-term temporary substitute teacher in the 2005-06 school year and was employed by the district as a school site substitute during 2006-07 school year.<sup>5</sup> On this basis, Basoco asserted she held an earlier seniority date, one that would have avoided her being issued a preliminary layoff notice. During the hearing, the district reviewed its payroll records and confirmed that Basoco's assertion was correct. And, given Basoco's appropriate seniority date, a preliminary notice should not have been issued to Basoco; her services should be retained by the district as a result of her seniority.

B. Callie Atencio claimed she worked for the district as a long-term substitute teacher in 2007 before she was hired as a full-time probationary employee on October 6, 2009, and that her seniority date should be changed as a result of her service as a long-term substitute teacher. Even if Atencio were credited with a different seniority date as

<sup>4</sup> Under Education Code section 44955(c), if "a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year."

<sup>5</sup> Education Code section 44917 provides in part:

"Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status."

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a result of this service, Atencio's position on the seniority list would not change to the extent that she could avoid the issuance of a preliminary layoff notice.

C. Victoria Dandridge claimed she worked for the district as a long-term substitute teacher from January 2007 through February 2009. Dandridge did not work 75 percent of the 2006-07 school year and thus she cannot be credited with a prior year's service. Even if Dandridge were credited with a different seniority date as a result of that service, her seniority position would not change to the extent that she could avoid the issuance of a preliminary layoff notice.

D. Ana Demarco claimed she worked from July 2007 through July 2008 as a long-term substitute teacher, and that she was hired by the district as a full time employee in 2008. Even if Demarco were credited with a different seniority date as a result of this previous service, her seniority position would not change to the extent that she could avoid the issuance of a preliminary layoff notice.

E. Farah Agha testified she worked from July 2007 through July 2008 as a long-term substitute teacher, and that she was hired by the district as a full time employee in 2008. Even if Agha were credited with a different seniority date as a result of this previous service, her seniority position would not change to the extent that she could avoid the issuance of a preliminary layoff notice.

F. Bonnie Warren testified that she had worked for the district since 2002. Warren testified that she separated from the district when her credential lapsed, but that she served as a full-time substitute teacher during her period of separation until her credential was reinstated and she was rehired in December 2008. Warren did not obtain a leave of absence from the district during the period her credential lapsed. Warren did not have the right to a different seniority date in this layoff proceeding, although Warren's previous service with the district was credited for other purposes.

G. Malissa Esquibel began her employment with the district in December 2003, after which she became the district's first resident substitute teacher. Esquibel terminated her employment with the district as a result of her pregnancy. She did not request a leave of absence. She was rehired by the district on a full-time basis in August 2008. Esquibel did not have the right to a different seniority date in this layoff proceeding, although her previous service with the district may entitle her to credit for other purposes.

H. Michelle Bracken was a long-term substitute teacher with the district beginning in January 2006, working more than 75 percent of the school year. She became a full-time employee in July 2007. On this basis, Bracken asserted she held an earlier seniority date, one that would have avoided her being issued a preliminary layoff notice. During the hearing, the district reviewed its payroll records and confirmed that Bracken's assertion was correct. And, given Bracken's appropriate seniority date, a preliminary notice should not have been issued to Bracken; her services should be retained by the district as a result of her seniority.



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I. Mary Gillespie worked as a long-term substitute teacher for the district from October 2006 to July 2007, serving more than 75 percent of the school year. During the hearing, the district reviewed its payroll records and confirmed that Gillespie was entitled to a different seniority date. And, given Gillespie's appropriate seniority date, a preliminary layoff notice should not have been issued to Gillespie; her services should be retained by the district as a result of her seniority.

*Denying Bumping to Non-NCLB Highly Qualified Senior Employees*

20. The most hotly contested issue involved the administrators' decision to permit senior teachers who were NCLB highly qualified to bump junior employees so long as the senior teachers were credentialed and NCLB highly qualified in the subject area being taught by the junior employee, but to not permit a senior teacher who was not NCLB highly qualified to bump a junior employee from an existing position even if the senior employee held an appropriate authorization to teach in the junior employee's subject area. Dr. Vollkommer testified that section D of the governing board's resolution ("... 'competency' as described in Education Code section 44955(b), 44956, and 44957, for purposes of bumping and reemployment shall necessarily include possession of a valid credential in the relevant subject area") specifically authorized the district's implementation of this bumping procedure. The resolution certainly implied the use of objective criteria such as NCLB highly qualified status and it did not exclude the use of relevant criteria.

The district asserted that no certificated employee was laid off as a result of the employee's failure to be NCLB highly qualified, and that the policy precluding non-NCLB highly qualified teachers from bumping less senior NCLB highly qualified teachers was not inconsistent with the statutory directive that the services of no permanent employee be terminated while any employee with less seniority was retained to render a service which the permanent employee was certificated and competent to render, arguing that competence under Education Code section 44955, subdivision (c), included both seniority and qualifications. The administration asserted that the district was entitled to conclude that an employee's NCLB highly qualified status in a subject area demonstrated "competence" for bumping purposes and that NCLB highly qualified status was an objective measure of competence. The administration argued that having NCLB highly qualified status was extremely relevant since the California Department of Education (CDE) placed SBCUSD into a compliance, monitoring, intervention and sanction program for the 2008-09 school year for not being NCLB compliant. The administration asserted that the governing board was not required to establish more specific skipping or bumping criteria than were included in the resolution and that in implementing the reduction in force, the administration was reasonably required to consider NCLB highly qualified status for bumping purposes on the basis of the governing board's 2007 resolution wherein the board stated its intent to recruit and hire NCLB highly qualified teachers.

Respondents contended that the administration's bumping procedure denied non-NCLB highly qualified senior employees the right to bump into positions held by junior employees, even though these senior employees held appropriate authorizations to teach the subjects being taught by the more junior employees. Respondents argued that the governing

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board's resolution made no reference to NCLB highly qualified status, that NCLB highly qualified status was not equivalent to a credential, that the administration's refusal to permit an appropriately credentialed senior non-NCLB highly qualified employee to occupy a junior employee's position amounted to the skipping of junior employees who were NCLB highly qualified, that the implementation of the bumping procedure was arbitrary and capricious, and that the district's failure to permit non-NCLB teachers bumping rights resulted in the improper termination of qualified and competent senior employees, thereby violating the district's obligation under Education Code section 44955, subdivision (c), to "make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render."

21. There is no legal requirement mandating that skipping criteria be contained in a governing board's resolution. SBCUSD's administration was required to implement the governing board's resolution in a manner that was consistent with the board's policies and the district's effort to remain fully NCLB compliant. While NCLB highly qualified status is not the same as a teaching credential, NCLB highly qualified status is an objective measure of competence, and the use of NCLB highly qualified status as a basis to permit bumping did not involve the application of an arbitrary or capricious standard. The implementation of a policy that precluded an employee who was not NCLB highly qualified from taking the position of a junior employee who was highly qualified (whether that process is called bumping or skipping) involved considerations of both seniority and qualifications, and the evidence established that implementation of that policy was in the best interests of the district and the students. The policy that that non-NCLB employees should not be allowed to bump less senior NCLB compliant teachers was not inconsistent with the statutory directive requiring the retention of the most senior qualified certificated employees.

*Core Assignments*

22. Another contested issue was whether several senior middle school teachers who received preliminary layoff notices held the appropriate credentials or authorizations needed to bump into positions that were being retained by more junior employees. According to Dr. Vollkommer, the resolution of the middle school bumping issue required that "core subjects" be distinguished from "core assignments" and then determining if the senior employee possessed the appropriate credential required to bump into a core assignment. Respondents believed the "core subject"- "core assignment" was a false distinction.

Determining what was a "core assignment" and whether teaching a core assignment required a special qualification was an issue that required specialized education, training and experience. Knowledge and familiarity with the concept of a "core assignment" and concerning the various credentials and authorizations issued by the California Commission on Teacher Credentialing (CCTC) was required to sort through and resolve these issues.

23. Most elementary schools, regardless of the grade level configuration, are organized around a self-contained classroom where all, or most, subjects are taught to the same group of children by a single teacher. Most elementary school teachers hold a Ryan Multiple Subject Teaching Credential, although teaching under a Multiple Subject University Internship

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or a Multiple Subject District Internship is not uncommon. These credentials and authorizations permit individuals to teach multiple subjects to students in a self-contained classroom.

24. Middle schools and junior high schools<sup>6</sup> provide a transition from the elementary school's self-contained classroom model to departmentalized programs offered in high schools. As a result, middle schools and junior high schools may incorporate some features not generally present at the elementary school or high school levels, and some authorizations to teach middle school are unique. Many authorizations designed for middle schools do not apply to grade nine.

If a middle or junior high school program is arranged so that one teacher provides instruction in several subjects, it is a self-contained classroom and that middle school or junior high school teacher must have a credential that authorizes that service. But, when a middle school or a junior high school teacher teaches one subject to several groups of students, he or she needs to have a credential that authorizes the teaching the subject in a departmentalized setting.

Within the middle school and junior high school milieu, a "core assignment" exists, as defined in Education Code section 44258.1. A core assignment involves a middle school or junior high school teacher who provides instruction in a self-contained classroom where he or she teaches two or more subjects for two or more periods per day to the same group of pupils, and, in addition, teaches any of those subjects to a separate group of pupils at the same grade level for an additional period or periods, provided that the additional period or periods do not exceed one-half of the teacher's total assignment.

25. Most high schools have departmentalized classes. Most high school teachers hold a single subject teaching credential. Under the single subject teaching credential, a teacher may teach any class within the broad single subject area listed on the document. Departmentalized classes also may be taught by persons holding a Single Subject University Internship or a Single Subject District Internship, but service is restricted to the participating employing agencies.

26. The California Commission on Teacher Credentialing Administrator's Assignment Manual (the CCTC assignment manual) is used by school site administrators, personnel officers, and credential technicians responsible for assigning teachers and other certificated employees to specific positions including "core assignments."

Based on his education, training, and many years of experience as an administrator, Dr. Vollkommer established that he was extremely familiar with the kinds of credentials and authorizations required to teach in various subject matter areas and was knowledgeable about what constituted a core assignment. Dr. Vollkommer was familiar with the kinds of credentials and authorizations required to teach as an alternative teacher or in such specialized programs as AVID and Opportunity. On the basis of his expertise, Dr. Vollkommer concluded the assignment and reassignment of certificated employees providing services in middle schools as set forth in the seniority list and bumping chart was appropriate.

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<sup>6</sup> Middle schools are defined as schools that most frequently include grades six through eight but may have any combination of grades five through eight. Junior high schools often also include grade nine.

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On cross-examination, Dr. Vollkommer was asked if certain middle school assignments classes were core assignments, and whether particular respondents were competent and qualified to teach a core assignment by reason of that respondent's credential or other authorization. When he was uncertain, Dr. Vollkommer was given the opportunity to review the seniority list, the bumping chart, and other relevant documents. Following his review of all relevant documents, Dr. Vollkommer again concluded the layoff order set forth in the seniority list was correct. Dr. Vollkommer explained in detail how he reached the conclusion that no competent and qualified middle school teacher was issued a preliminary layoff notice when there was a position into which that senior employee could bump and why particular respondents were or were not correctly issued preliminary layoff notices. Dr. Vollkommer explained why some respondents who did not hold appropriate credentials were not authorized to teach core assignments, even though those respondents may have been authorized to teach in a core subject matter area, and why junior employees who were properly credentialed to teach core assignments were retained over those respondents.

27. Vanessa Johns-King provides services at Aurora Valley High School as a support teacher in the Reading 180 program. Her seniority date with SBCUSD is August 20, 2007, although she enjoys a wealth of experience as a result of having taught in other districts. Johns-King has a clear multiple subject teaching credential and she was NCLB highly qualified when she was employed by the Anaheim Union High School District, but she was not NCLB highly qualified at SBCUSD. Dr. Vollkommer testified the HOUSSE certification issued to Johns-King by another school district did not make her NCLB highly qualified at SBCUSD, and that she was thus not eligible to bump into a core assignment. Johns-King was bumped by Patricia Jackson, an elementary school teacher with tenure whose seniority date is July 3, 2006. Jackson had the credentials, authorizations and competence required to provide the services Johns-King had been providing.

28. Respondents made an effort to qualify Johns-King as an expert in the area of what teaching credentials and authorizations entitled a certificated employee to teach a core assignment and what, if anything, constituted a core assignment. Johns-King had taken a few courses related to obtain an administrative credential, but she had never served as a site administrator, had no experience in completing a master schedule, and lacked other relevant education, training and experience sufficient to compel a conclusion that Dr. Vollkommer's testimony was incorrect.

*Misassignments*

29. A "misassignment"<sup>7</sup> occurs when a certificated employee teaches a course or provides services without an appropriate credential. Mistakes sometimes happen. The

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<sup>7</sup> California Education Code sections 33126 and 351186 define "misassignment" as follows:

"'Misassignment' means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

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district attempts to correct these mistakes when they are brought to the district's attention, so that a misassignment is not continued from year to year.

Jacqueline Davis (Davis), a probationary middle school teacher (seniority date: August 4, 2008) held a multiple subject teaching credential, but her credential did not permit her to provide services in the core assignment to which she was assigned for the 2008-09 school year, thereby resulting in a misassignment. Another misassignment involved Talena Hill-Jackson (Hill-Jackson), a probationary middle school teacher (seniority date: July 29, 2008) who held a multiple subject teaching credential, whose credential did not permit her to provide service in a core assignment, but who nevertheless was misassigned to a core assignment in the 2008-09 school year.

Several teachers with more seniority than Davis and Hill-Jackson who held exactly the same credentials as Davis and Hill-Jackson were not permitted to bump into the positions held by Davis and Hill-Jackson because, according to Dr. Vollkommer, they (as with Davis and Hill-Jackson) were not qualified to provide core assignment services and bumping those unqualified senior employees into the positions would have resulted in more misassignments. Respondents claimed the failure to permit these senior employees to bump (misassigned) junior employees resulted in the wrongful retention of more junior employees.

30. The district is under a positive duty to prevent misassignment. Authorizing senior certificated employees to bump into a position for which that senior employee does not hold an appropriate authorization would create a misassignment, which would impact the district's accountability and make the district subject to possible sanctions imposed by the CCTC under Education Code section 44258.9. A reduction in force proceeding is not the mechanism by which a school district should correct a misassignment. And, a school district is not required to break the law in order to retain unqualified senior certificated employees over unqualified junior certificated employees.

*The Layoff Procedure*

31. The governing board resolved to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. This decision was not related to the competency or dedication of the employees whose services were proposed to be discontinued.

The district's administrative staff initiated and followed a systematic procedure for identifying employees directly affected by the governing board's reduction and elimination of particular kinds of services. Careful evaluation of each employee's seniority date, credential, and qualifications preceded the determination of what bumping rights, if any, an employee had. Adjustments were made to the seniority list where indicated.

The administrative staff's determination that non-NCLB employees should not be allowed to bump less senior NCLB compliant teachers was lawful, reasonable, and in the best interest of the district and its students. The administrative staff's determination that employees without proper authorization should not be permitted to teach a middle school

“core assignment” was lawful, reasonable, and in the best interest of the district and its students. The administrative staff’s determination to not effect a misassignment by bumping a more senior employee without proper authorizations into a position held by a misassigned junior employee was reasonable, consistent with the governing board’s resolution, required by the Education Code, and in the best interests of the district and its students.

Except as otherwise noted, no junior credentialed employee was retained by the district to provide services which a more senior employee was certificated, competent and qualified to render.

*Teacher Testimony*

32. The heartfelt, painful testimony of respondents including Johns-King, Trimonisha Singer, Jessica Lyon, and Francine Blacksher and others about their love of teaching and their desire to retain their employment with the district was insufficient to overcome the evidence to the contrary. More than anything, this testimony established the frustration, sorrow and inevitable loss that accompany the termination of bright, young, highly skilled, enthusiastic teachers.

LEGAL CONCLUSIONS

*Statutory Authority*

1. Education Code section 44944 provides in part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year . . . the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor . . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with . . . the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

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...

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. 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 errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. . . .”

2. Education Code section 44955 provides in part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

...

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof . . .

...

(c) Notice of such termination of services shall be given before the 15th of May . . . and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the

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provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

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

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

*Jurisdiction*

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondent employees who were identified in Exhibit 1 to the accusation.

*The Reduction of Particular Kinds of Services*

4. A school board's decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. Where a governing board determines to discontinue or reduce a particular kind of service, it is within the discretion of the board to determine the amount by which it will reduce a particular kind of service as long as a district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

*Seniority, Bumping, and Skipping*

The Statutory Scheme

5. Education Code section 44955, the economic layoff statute, provides in subdivision (b), in part, as follows: “Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any



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other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.” Essentially this language provides “bumping” rights for senior certificated and competent employees, and “skipping” authority to retain junior employees who are certificated and competent to render services which more senior employees are not. Subdivision (d)(1) of section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

Bumping

6. The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 136-137.)

Skipping

7. Subdivision (d)(1) of section 44955 expressly allows a district to demonstrate its specific “needs” and there is nothing in the statute that requires such needs to be evidenced by formal, written policies, course or job descriptions, or program requirements. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 138.)

*Cause Exists to Give Notice to Certain Employees*

8. As a result of the governing board’s lawful reduction of particular kinds of service, cause exists under the Education Code for the district to give notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2009-10 school year.

*Determination*

9. The charges set forth in the accusation were sustained by the preponderance of the evidence and were related to the welfare of the San Bernardino City Unified School District and the pupils thereof. SBCUSD’s administrative staff made necessary assignments and reassignments in such a manner that the most senior employees were retained to render services which their seniority and qualifications entitled them to render, except as otherwise noted herein. No employee with less seniority than any respondent will be retained to render a service which any Respondent is certificated, competent and qualified to render.

This determination is based on all factual findings and on all legal conclusions.

RECOMMENDATION

It is recommended that the governing board give notice to respondents whose names are set forth below that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2009-2010 school year.

DATED: 4/29/09



JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings

The following certificated personnel will receive a final layoff notice:

Abrahamson, Julie  
Agha, Farah  
Alas-Negri, Marisela  
Alba, Maribel  
Amador, Martha  
Anderson, Kristin  
Applegate, Valerie  
Arreola, Fiorella A.  
Arroyo, Nancy  
Atencio, Callie  
Back, Tiffany Moree  
Baker, Diana  
Barbu, Diana  
Barone, Debra  
Bautista, Patricia  
Besheer, Rebecca Marie  
Beuler, Joyella Jane  
Blacksher, Francine  
Blacksher, Kristina  
Bogarin, Alexis R.  
Boren, Alba  
Brink, Jennifer  
Brown, Eboni  
Brown, Nicole  
Brown, Norma  
Bruce, Pamela Sue  
Burg, Kevin  
Cachu, Laura

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Cals-Southern, Jennifer  
Camacho, Lisa  
Campbell, Kimberly Leanne  
Carmargo, Veronica  
Carson, Wendi  
Castillo, Cynthia  
Chamberlain, Vanessa C.  
Chavez, Patricia  
Chen, Susan  
Chronopoulos, Dimitrios  
Cooney, Melody  
Cooper, John D.  
Cordova, Erika  
Cote, Marlene  
Cure, Kathryn  
Danridge, Victoria  
Dean, Cassandra  
Dean, Kristen M.  
Demarco, Ana  
Duag, Elaine  
Duran, Samuel  
Eck, Barbara  
Elliott, Lindsay  
Esquibel, Malissa  
Fernandez, Diego Fields, Mary B.  
Fletcher, Rochelle  
Florez, Marisa  
Garcia, Grisel  
Garcia, Helen  
Garcia, Sofia  
Girasek, Berenise  
Goebel, Kristen  
Grajeda, Marie  
Guillen, Karla  
Gutierrez, Julio  
Gutierrez, Mayra  
Guzman, Cynthia  
Hamner, JoAnn  
Hardy, Lawrence  
Harrison, Lisa Marie  
Hart, Cassandra  
Hena, Jennifer  
Hendricksen, Matthew David  
Hewlett, Albert  
Hodges, Rosario  
Hogg, Antonia

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Horta, Naomi  
Hudson-Cousins, Shakirah Nar  
Hunter, Marcia  
Jimenez-Garcia, Maria  
Johns-King, Vanessa  
Kathol, Sara  
Kessen, Lauren  
Kuld, Gregory  
Licon, Joseph  
Lingenfelter, Tina  
Lopez, Elizabeth  
Lopez-Alonso, Monica  
Lovett, Wikitoria  
Luna, Felicia  
Lyons, Jessica Lynn  
Madrigal, Anacelia  
Manjarrez, Amanda  
Mao, Elisa  
Marruffo, Laura  
Marshall, Renita  
Martin, Marrina R.  
Martinez, Alicia  
Martinez-Guzman, Cecilia C.  
Mayor, Kassy  
McGee, Arlene  
McNair, Lisa Renee  
Meaca, Marisol  
Mojica-Mastranzo, Diana  
Moneta, Katie  
Morales Alfonso, Sarah Mary  
Moreno, Denise  
Morrison, Mary T.  
Murguia, Anna  
Ochoa, Mayra  
Ortega, Anna Marie  
Ortega, Paulette  
Pantoja, Jessica  
Parrish, Janet  
Pelayo, Nora  
Perez, Angela I.  
Peterson-Funn, Holly A.  
Podolak, Carolyn  
Ponce, Christine  
Ponsler, Shawn  
Quezada, Rosalinda Vera  
Quintero, Alicia

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Raef, Teresa  
Ramirez, Melissa Yong  
Ramirez, Veronica  
Ramirez-Pena, Alba  
Ramos, Pedro  
Reyes, Nancy V.  
Reynolds, Julia  
Rios, Erika  
Robinson, Deidre  
Robles, Rebecca Alexandra  
Rodriguez, Kimberly  
Romero, Sara Victoria  
Rosales, Crystal  
Roundy, Robin  
Ruffin, Cameron  
Russo, Iris  
Salazar, Mayra  
Sanz, Lizette  
Sargent, Kimbre  
Sassaman, Sandra  
Schlagel, Lacie  
Schmidt, Amy  
Scoggin, Kelly  
Shih, Angela  
Simental-Gladin, Maribel  
Singer, Trimonesha  
Smith, Kevin  
Solano, Jenai  
Sorrell, LaTonya  
Stallings, Amber  
Stephens, Eileen Catherine  
Thach, Hue Thi  
Thissen, Kimberly Anne  
Tornero, Jessica Christine  
Torres, Angela  
Torres, Oscar  
Verduzco, Georgina  
Visser, Sharon G.  
Warren, Bonnie  
Westerhaus, Anja  
Willemse, Brian  
Willis, Kathleen  
Wilson, Danielle  
Wong, Jessica  
Younglove, Gina  
Zapata, Norma Angelica

**SESSION FIVE - Closed Session**

**5.0 - Closed Session**

Canceled.

**SESSION SIX – Open Session**

**6.0 - Action Reported from Closed Session**

None.

**SESSION SEVEN - Closing**

**7.0 - Adjournment**

By the affirmative vote of the members, the meeting was adjourned at 7:15 p.m.

The next regular meeting of the Board of Education of the San Bernardino City Unified School District will be held on Tuesday, March 19, 2009, at 5:30 p.m. in the Community Room of the Board of Education Building, 777 North F Street, San Bernardino.