FACTFINDING PROCEEDINGS

PURSUANT TO THE EDUCATIONAL EMPLOYMENT RELATIONS ACT

CUPERTINO UNION SCHOOL DISTRICT, Public School Employer, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION and its CHAPTER 13, Exclusive Representative. (Reduction of Work Year of Behavior Interventionist I and II.)	PERB CASE NO. SF-IM-3498-E FACTFINDING REPORT AND RECOMMENDATION(S) FOR SETTLEMENT (July 31, 2026)

Chairperson:	Shawn P. Cloughesy, Arbitrator
Public School Employer Panel Member:	Gregory J. Dannis, Attorney Dannis Woliver Kelley Cupertino Union School District
Exclusive Representative Panel Member:	Valerie Hollins Senior Labor Relations Representative California School Employees Association
Representative for the Public School Employer:	Mike Cellini Associate Superintendent, Human Resources Gigi Ko Comprehensive Autism Program Manager Cupertino Union School District
Representative for the Exclusive Representative:	Jasmina Simic Labor Relations Representative Poornima Dilip Chapter 13 President California School Employees Association

PROCEDURAL BACKGROUND

On May 29, 2026, after completing impasse mediation, the Cupertino Union School District (District) filed a request for factfinding pursuant to the Educational Employment Relations Act (EERA)[1] with the Public Employment Relations Board (PERB) regarding its negotiations with the California School Employees Association and its Chapter 13 (CSEA) concerning the proposed reduction of work year of its 75 Behavior Interventionist I and II positions[2] (Behavior Interventionists or BI's) at the District school sites.

On June 8 and 10, 2026, the parties selected their factfinding panel members, and on June 19, 2026, PERB notified the undersigned arbitrator that he had been selected as the Chair of the factfinding panel (Chair).

On June 24, 2026, the parties filed their Joint Statement of Issue and Stipulated and/or Uncontested Facts pursuant to PERB Regulation 32799.[3]

On June 25, 2026, the Chair held an organizational meeting with the parties and their panel members where the agenda of the factfinding proceeding, factfinding proceeding dates, options for closing arguments, and the issuance date of the factfinding report and recommendation(s) for settlement (factfinding report) were discussed. The parties agreed that the factfinding proceeding would be scheduled for

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[1] EERA is codified at Government Code section 3540 et seq.

[2] Of these 75 BI positions, 55 are BI I positions and 20 are BI II positions.

[3] PERB Regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

July 10, 2026; the parties would be submitting oral closing arguments to the panel on July 10, 2026; and the factfinding report would be issued by July 31, 2026.[4]

The factfinding proceeding was held and concluded on July 10, 2026. Both parties presented arguments/exhibits surrounding the issue in dispute to the panel. Both parties made closing arguments at the end of their cases-in-chief.

STATEMENT OF THE ISSUE

The parties were able to jointly stipulate to the issue in this matter which was: should the work year of BI's be reduced?

FACTFINDING CRITERIA

EERA provides statutory criteria in Government Code section 3548.2, subd. (b)(1) through (7), for the factfinding panel to consider, weigh, and be guided by in determining findings and recommendations. Those statutory criteria are:

> "(b) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:
>
>> "(1) State and federal laws that are applicable to the employer.
>>
>> "(2) Stipulations of the parties.
>>
>> "(3) The interests and welfare of the public and the financial ability of the public school employer.
>>
>> "(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

[4] The parties agreed to extend the statutory timeframes under Government Code section 3548.2 and 3548.3 to accommodate this factfinding schedule.

> “(5) The consumer price index for goods and services, commonly known as the cost of living.
>
> “(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.
>
> “(7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.”

Of these evaluative factfinding factors, the parties agreed that the statutory criteria listed in Government Code section 3548.2, subd. (b)(4), was inapplicable to this factfinding proceeding.

FINDINGS OF FACT

Stipulations of Uncontested Facts between the Parties

The parties agreed to the following pertinent uncontested facts in this matter:

“1. [The District] is a public school employer within the meaning of Government Code section 3540.1(k) of [EERA].

“2. CSEA and its Cupertino Chapter 13 is a recognized employee organization within the meaning of Government Code section 3540.1(1) of [EERA] and has been duly recognized as the representative of certain classifications, including [BI’s], in a classified non-management bargaining unit[.]

“3. Following the District's proposal to reduce the work year of [BI’s], the parties engaged in negotiations regarding the proposal and completed the statutory impasse procedures under [EERA].

“4. The issue separating the parties regarding the District’s proposed reduction in the [BI’s’] work year is reflected in the following . . . documents:

“● CSEA’s Last best Offer/proposed MOU[] (LBO) dated April 3, 2026 provided to the District in negotiations on that same date at approximately 10:52 a.m.

“● The District’s LBO which is a negotiated Memorandum of Understanding (MOU) negotiated and initially agreed to by the parties on March 3, 2026 but rejected by vote of CSEA membership on March 11, 2026. This MOU was reintroduced as the District’s LBO in subsequent negotiations on April 3, 2026 at approximately noon.”

Background and CBA

The District is a public school employer which educates students from pre-kindergarten through the eighth grade. The District and CSEA are parties to a Collective Bargaining Agreement (CBA) with a term of July 1, 2024 through June 30, 2027. Pertinent CBA articles provide in part:

“**7.14 BEHAVIOR INTERVENTIONISTS (ABA[5]) WORK YEAR**

“The work year will be a 46-week work year[6] as a standard unless otherwise negotiated. . . .”

“[¶ . . .¶]

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5 “ABA” stands for applied behavior analysis.

6 A 46-week work year is the equivalent to a 230 work-day year. At some point in time, the parties agreed to a 236 work-day year, but the record does not contain any detail as to when or the reason that this occurred. A 236 work-day year includes District holidays, but does not include Saturday or Sunday.

“**26.1 LAYOFF**

“[¶ . . . ¶]

“Layoff procedures as set forth below will be used to bring about reduction in the work force, if the District determines that attrition will not accomplish such reduction to meet desired time and economic requirements.

“Layoffs shall be based on a lack of work and/or lack of funds pursuant to Education Code Sections 45298 and 45308.[7] . . .

“A layoff shall be defined as a reduction in the work force through: (a) a reduction of positions, (b) a reduction of hours,[8] or (c) a voluntary demotion to a lower classification in lieu of layoff.

“26.1.1 NOTICE

“The Union and the District will meet prior to the issuance of layoff notices to discuss the circumstances giving rise to the need for layoff. Following the Board’s adoption of a resolution to layoff, upon written request from CSEA, the District will meet to bargain over the negotiable effects of layoff not already covered by the terms of this Agreement.

“a. Consistent with Education Code section 45117, employees affected by layoffs shall be given notice no later than March 15 that the employee’s services will not be required for the ensuing school year due to lack of work or lack of funds.

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[7] Education Code section 45308, subd. (a), provides:

“Classified employees shall be subject to layoff for lack of work or lack of funds. . . .”

(Emphasis added.)

[8] In this matter, the District argued that a reduction in the BI’s work year fell within the meaning of the category of layoff of “reduction in hours.”

"b. A classified employee may request a hearing to determine if there is a cause for not reemploying the employee for the [ensuing] year.[9]

"[¶ . . . ¶]

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[9] Education Code section 45117, subds. (b), (c) and (c)(3)(A), provide:

"(b) A classified employee may request a hearing to determine <u>if there is cause for not reemploying the employee for the ensuing year</u>. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice, on or before a date specified in subdivision (a), which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, the employee's failure to do so shall constitute a waiver of the employee's right to a hearing. . . ."

"(c) If a hearing is requested by a classified employee under subdivision (b), the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the governing board of a school district shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

> "[¶ . . . ¶]
>
> "(3) (A) 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 <u>related to the welfare of the schools and the pupils of the schools</u>. The proposed decision shall be prepared for the governing board of the school district and shall contain <u>a determination as to the sufficiency of the cause</u> and a recommendation as to disposition."

(Emphasis added.)

"26.1.5 EFFECTS OF LAYOFF

"Following the Board's adoption of a resolution to layoff, upon written request from CSEA, the District will meet to bargain over the negotiable effects of layoff not already covered by the terms of this Agreement. . . ."

(Emphasis added.)

BI's Job Description and Duties

BI's provide one-on-one support for children who exhibit behaviors like hitting, biting, or throwing objects, and employ specialized safety training to insert themselves to calm a child when the child becomes an immediate physical danger to themselves or others. In addition to these duties, a BI provides behavioral instructional services to those students after the conclusion of the school year, otherwise known as extended school year (ESY) services. ESY services are set forth in the students' individualized education plans (IEP)[10] to assist the students to retain developed skills which will assist them to control their behavior in the upcoming school year.[11] The 75 BI's are

[10] An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in a specialized meeting comprised of district personnel and parents, which include in broad terms: a description of the student's disability, how the disability impacts the student's learning, the specific goals to be set for the student, how those goals are to help the student progress in their academics and access to education, and the specific services to be provided to the student, including ESY services. IEPs are to be reevaluated every school year. (See Ed. Code, § 56435, for a more precise statutory definition of an IEP.)

[11] In general terms, ESY services are specified in a student's IEP when interruption of the student's educational programming may cause regression when combined with the student's limited recoupment capacity. (Cal. Code of Regs., tit. 5, § 3043.

supervised by the Comprehensive Autism Program (CAP) supervisors who report to the CAP Manager, who reports to the District Special Education Director.

The job description for the BI I position provides in pertinent part:

"<u>BASIC FUNCTIONS</u>

"Under the general supervision of the CAP supervisor/manager, qualified teachers, school nurses or program specialists, <u>provides specialized instruction, behavior or health service</u> to students in Special Day Classes (SDC) or other appropriate learning environments. The service model may be 1:1, dyad, small group, push-in class support, or pull-out services. The [BI I] will receive direct supervision from CAP supervisors, managers or other administrators as assigned and are expected to have a valid California Driver License and have access to reliable transportation for travel between the sites.

"<u>RESPONSIBILITIES</u>

"1. Assists teachers and other professional personnel by modeling instructional programming and behavior management strategies based on the [principles] of Applied Behavior Analysis and interventions based on a functional analysis of behavior.

"2. <u>Provides specialized instructional programming and behavior management support</u> to individual students or groups of students that is based on the principles of Applied Behavior Analysis and Interventions based on a functional analysis of behavior.

"3. Serves students with an identified need across a variety of settings and in the capacity identified by the supervisor or manager responsible for the student in that setting (e.g., one-to-one, two-to-one, groups, classroom support and recess support).

"4. Provides specialized behavioral services including but not limited to discrete trial training, errorless teaching, verbal behavior training, social skills training, and adaptive life skills training. Records data as specified by the students' individualized programming. Notifies team members when student masters targets or with delays to acquisition of targets.

“5. Reviews individualized programming and behavior intervention plans with instructional personnel; consults with supervisor or teacher regarding students’ progress on IEP goals.

“6. Under the general supervision of CAP supervisor, manager, and/or qualified teachers, provides specialized instruction with fidelity to procedures specified by the supervisor, manager or teacher. Maintains timeliness with respect to start and end times for therapy and transitions during the day.

“7. Under the general supervision of CAP supervisor, manager and/or qualified teachers, provides specialized instruction supporting students’ acquisition of skills outlined in their individualized behavioral programming or IEP goals. Assists with selecting and introducing new targets and the monitoring of skill progress by updating graphs or entering data into digital databases.

“8. Recognizes and intervenes during behavioral crises involving aggressive and/or dangerous behaviors to maintain safety of school personnel and student by implementing behavior support plans or District-approved emergency interventions, providing 1:1 assistance as needed, communicating with relevant school personnel, and documenting and reporting the crisis as soon as possible to appropriate personnel.”

(Emphasis added.)

The job description for the BI II position has many similar duties as the BI I position, except that the BI II plays a lead role to the BI I.

Work Year of BI’s

Currently, the BI work year is a 12-month work calendar or 236 work-day year. The BI’s provide specialized behavior intervention services to students as required by the students’ annual IEP during the 10-month school year and during the summer for those students whose IEPs specify the need of ESY services. The ESY services are provided between the time that the school year ends and the next school year begins.[12] Those ESY services are provided in a minimum of a 20 instructional day periods.[13] ESY instruction takes place for four and one-half hours during instructional days between 7:45 a.m. and 12:15 p.m.[14] The estimated number of BI's needed to instruct eligible students during the 2026 ESY summer instructional time period was 40 to 42 BI's out of the 75 BI positions. The number of BI's needed to instruct eligible students may vary from school year to school year depending on the students and the detailed services set forth in their IEP plans.

Financial Difficulties of the District (Lack of Funds)

For the most part, since school year 2020-2021, the District has engaged in deficit spending as its expenses have exceeded its revenues.[15] In these school years, the District has seen its' reserve balances drop to cover its expenses.

The drop in revenue to the District over the school years has been caused by: (1) a declining student enrollment of 70 percent over ten years prior without a

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[12] California Code of Regulations, title 5, section 3043, subdivision (c).

[13] California Code of Regulations, title 5, section 3043, subdivision (d).

[14] In general, ESY special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided. (Cal. Code of Regs., tit. 5, § 3403, subd. (f)(1).)

[15] Specifically, according to the District's 2026-2027 adopted budget and financial report, the District's expenses have exceeded its revenues in the 2020-2021 school year by $7,944,221, in the 2021-2022 school year by $1,247,320, in the 2023-2024 school year by $10,369,350, in the 2024-2025 school year by $28,194,681, and in the 2025-2026 school year by $11,562,368.

corresponding reduction to the amount of staff to educate the reduced number of students;[16] (2) the expiration of the parcel tax in 2023 which generated at least $8 million in revenue for the District;[17] and (3) the cessation of one-time Covid funds from 2020 to 2025 which accounted for $13.2 million in revenue over these years.

In addition to this drop in revenue, the District has seen a drop in its budgetary reserves. Because of this drop in budgetary reserves, the District Board (Board) passed a policy where it directed that the District maintain a general fund budget reserve of 10 percent of the general fund operating expenditures in order to maintain the District's financial stability.[18] The budgetary reserve had dropped to 5.28 percent of the general fund operating expenditures by the 2026-2027 school year.

Scheduling Inefficiencies for BI's for ESY Services

The District believed that employing 75 BI's to provide ESY services after the close of the school year, when only approximately 40 to 42 BI's were needed constituted an inefficient work schedule model for providing services to its ESY students. On top of the fact that fewer BI's were needed to provide ESY services after the school year, BI's only provided behavioral instructional services to its ESY

[16] This failure to right-size the number of declining student enrollment with the corresponding number of staff is further exacerbated by the fact that 87 percent of the District's expenditures are attributed to employee salaries and benefits. In addition, student enrollment is predicted to continue to decline seven percent over the next five years.

[17] The District attempted to twice pass an extension of the expiring parcel tax only to have the voters reject it.

[18] According to the District, it is required by California state law to maintain a minimum of a three percent reserve of general operating expenses.

students for four and half hours of the eight hours that BI's were paid to be present at the various school sites during the summer. The District believed that it was responsible to the taxpayers to provide a more efficient scheduling model to administer ESY services to its students.

The District believed that the BI work-day year should be limited to those which occurred during the school year or 203 work days. The 203 work-day year during the school year for BI's constituted 180 days of student instructional time while school was in session, 14 District holidays, 3 pre-school preparation days, 3 staff professional development days, and 3 days dedicated to the BI's mandatory recertification.

Fiscal Stabilization Plan

In order to address the District's declining revenue, the District requested the Board approve a reduction of $8 million in expenditures for the 2026-2027 school year. The Board, however, only approved $3 million in expenditure reductions in the 2026-2027 school year, which meant the District needed to spread further reductions over the subsequent two school years (2027-2028 and 2028-2029).

In broad strokes, to reduce expenditures for the 2026-2027 school year by $3 million, the District proposed to lay off 11 full-time equivalent (FTE) certificated employees due to declining enrollment, reduce the work year of the BI's from 236 to 203 work days and hire BI's as needed to provide ESY services during the summer, and provide for an early retirement plan to cause District employees to elect to retire early (a supplement employee retirement plan (SERP)) and thereby create employee vacancies. This decrease to the District's expenditures from laying off the 11 FTE certificated employees, reducing the BI work year and from the vacancies caused by the SERP plan was approximately $ 3 million—$1.3 million, $700,000, and $1.0 million, respectively.

In addition to bringing this decrease in District expenditures, the District forecasted that its budget reserves for the 2026-2027, 2027-2028 and 2028-2029 school years would be 5.28 percent, 5.79 percent and 9.67 percent, respectively.[19]

Bargaining over the Reduction to the BI Work Year and the Administrative Layoff Process for BI's

A. Initial Agendizing of the BI Reduction in Work Year

On or about February 12, 2026, the District presented to the Board that it planned as part of fiscal stabilization plan to propose to reduce the work year for all 75 BI positions from 236 to 203 work days. Subsequent to this February 12, 2026 Board meeting, the District prepared multiple board resolutions for the February 26, 2026 Board meeting.[20] One of these board resolutions was Board Resolution 25-26-09 which concerned the Board authorizing the District to issue initial layoff notices of 10.875 FTE classified employee positions and the reduction of the work year of all 75 BI positions from 236 to 203 work days for the beginning of the 2026-2027 school year.

[19] In comparison with other elementary school districts whose unrestricted general fund budgetary reserve average was 24.52 percent, the District's goal of reaching a 10 percent budgetary reserve was reasonable.

[20] During this time period, the District proposed a number of board resolutions which affected the layoff of District employee positions, but this factfinding report will focus on the board resolutions affecting the reduction in the BI work year.

On February 24, 2026, CSEA submitted to District Associate Superintendent of Human Resources Mike Ghelber (Ghelber) a written demand that the District cease and desist from implementing such a reduction in the BI work year until it provided CSEA with the appropriate notice and opportunity to bargain over the decision of any reduction to the BI work year.

On February 25, 2026, Ghelber responded to CSEA and stated that pursuant to CBA Articles 26.1. and 26.1.1, the proposed reduction in BI work year was considered a “layoff” and that the District only needed to bargain over the “effects” of the reduction in the BI work year. On February 26, 2026, CSEA replied to Ghelber and contended that CSEA had the right to bargain over the “decision” of the proposed reduction of the BI work year pursuant to EERA (Government Code section 3543.2), PERB decisional law, and CBA Article 7.14. CSEA further stated that it was ready to bargain over the “decision” regarding the proposed reduction to the BI work year and threatened to file an unfair practice charge with PERB if the District did not fulfill its statutory bargaining obligation.

After receiving the February 26, 2026 reply from CSEA, the District withdrew the reduction of the BI work year from Board Resolution 25-26-09, in order that the District and CSEA may bargain over the reduction of the BI work year.

B. Bargaining which led to an Initial MOU which was later rejected by the CSEA membership

On March 2, 2026, the District and CSEA began bargaining over the District's proposed reduction to the BI work year.[21] After exchanging proposals, on March 3, 2026, the parties arrived at an MOU. The MOU provided, in broad terms, that: (1) all BI's will be compensated through July 21, 2026—the end of the ESY 2025-2026 program; (2) all currently employed BI's shall have their work year reduced from 236 to 203 work days, effective at the commencement of their August 2026 work year—tentatively scheduled to begin on August 6, 2026; (3) effective July 1, 2026, all BI's, regardless of hire date, shall be placed on a 10-month (203 work days) work year; (4) all BI's may apply for summer employment (ESY) for the 2026-2027 school year and each summer thereafter, but BI's will be hired to provide ESY services according to the BI's seniority according to the District's programmatic needs as to the number of BI's needed to provide ESY services; (5) all BI's hired after the ratification of the MOU will be hired to work a 203 work-day year; (6) the MOU shall remain in effect through June 30, 2027, unless modified by collective bargaining.

The MOU was forwarded to be ratified by the CSEA Chapter 13 membership and approved by the Board. The District set the approval of the MOU by the Board at the March 12, 2026 board meeting. The District also scheduled for approval Board Resolution 25-26-17, which authorized the District to issue initial layoff notices to the 75 FTE BI's in order to reduce the BI's work year from 236 to 203 work days. The

[21] The District clarified in its presentation that it bargained over the "decision" and the "effects" of the proposed reduction in the BI work year and not just the "effects" of the decision of the proposed reduction.

District stated that in the board resolution that the reason(s) justifying the layoff for the BI's under Education Code section 45308 was a lack of work/lack of funds.

On March 11, 2026, the CSEA local membership voted to reject the March 3, 2026 MOU. The MOU was then removed from the March 12, 2026 Board meeting agenda.

C. Subsequent Board Action as to the Reduction in the BI Work Year and BI A's Administrative Appeal of her Layoff Notice

Even though the March 3, 2026 MOU between the District and CSEA was removed from the March 12, 2026 Board meeting, the District kept the approval of Board Resolution 25-26-17 (the layoff of BI's regarding the reduction of their work year) on the meeting agenda. At the board meeting, the District explained that the Board needed to pass this resolution to preserve the District's legal right to layoff, and the District would still need to fulfill its legal obligation to negotiate with CSEA to either reach an agreement or exhaust the legal impasse process before it implemented any reduction in the BI work year. With that explanation, on March 12, 2026, the Board approved Board Resolution 25-26-17.

On March 13, 2026, the District issued initial layoff notices to all affected BI's as to the reduction of their work year, including to BI A.[22] The notice gave BI A the right to appeal the cause of the layoff to an administrative hearing before an administrative law judge (ALJ) with the Office of Administrative Hearings (OAH). The notice further stated that implementation of the layoff was "subject to reaching a negotiated

[22] The name of BI A shall not be set forth in this factfinding report in order to preserve her privacy.

agreement with your exclusive representative (CSEA) or, failing that, exhaustion of the impasse procedure under our collective bargaining law."

On March 23, 2026, BI A exercised her right to appeal that the District did not have cause to deny her reemployment for the following school year pursuant to CBA Article 26.1.1 (b) and Education Code section 45117, subdivision (b).

D. Subsequent Bargaining between the District and CSEA over the Reduction in the BI Work Year after rejection by the CSEA membership

On April 3, 2026, the District and CSEA met again to attempt to come to an agreement over the proposed reduction in the BI work year. CSEA offered that the 236 work-day year be reduced to 223 work days, instead of the number of work days set forth in the initial MOU agreement—203 work days. The District countered by offering the same proposal set forth in the initial March 3, 2026 MOU (that the BI's work year be reduced to a 203 work-day year). The District believed the parties to be at impasse and on that same day filed for a request for impasse determination/appointment of mediator with PERB. On April 8, 2026, PERB determined the existence of an impasse, and a State Conciliation and Mediation Service mediator was assigned to mediate the impasse. One mediation session was held on May 29, 2026, but did not result in an agreement.

E. Layoff Appeal of BI A before an ALJ of OAH regarding the Sufficiency of the District's Cause to lay off BI A

On April 27, 2026, an ALJ with OAH heard the appeal of BI A regarding her challenge to the sufficiency of the "cause" of her layoff for the following school year. CSEA represented BI A at the hearing. On April 29, 2026, the ALJ issued his proposed decision in this matter. In the "Legal Conclusions" section of the proposed decision, the ALJ found:

> "4. The District, through its Board, has discretion to reduce or modify services provided by its classified employees, due to lack of work or lack of funds. <u>The Board's exercise of this discretion as stated in the Resolution is not arbitrary or capricious, and is not an abuse of discretion</u>. . . . This cause solely relates to the <u>welfare of the schools and the pupils</u> thereof within the meaning of section 45117, subdivision [(c) (3) (A)].
>
> "[¶ . . . ¶]
>
> "6. <u>Sufficient cause exists</u> under sections 45117 and 45308 to sustain the District's proposed reduction in force and give notice to respondent that the District <u>will reduce the number of work days required of her services in her current position and classification for the 2026-2027 school year</u>."

(Emphasis added).

On May 12, 2026, a Board meeting was held to consider Board Resolution 25-26-22, which stated that the 75 FTE BI positions will not be reemployed for the 2026-2027 school year in their 12-month capacity and that the District may give final notice of the layoff to the 75 BI's regarding the reduction in their work year for the 2026-2027 school year.

On May 13, 2026, the District issued final layoff notices to the BI's that their positions would be reduced from 236 to 203 work days, effective July 1, 2026. The final notice, however, noted:

> "Implementation of your reduced work year as described above is subject to reaching a negotiated agreement with your exclusive representative (CSEA) or, failing that, exhaustion of the impasse procedure under our collective bargaining law."

According to the District, even though the Board adopted Board Resolutions 25-26-17 and 25-26-22, the District has not implemented any reduction to the BI work year for the 2026-2027 school year.

CSEA's Concern

CSEA stated that it understood that the District was in a financial dilemma, including the District's need to have adequate budgetary reserves, but the reduction in work days from a 236 to 203 work-day year represented a 14 percent reduction in compensation for the BI's which was too heavy of a burden for them to bear. CSEA asserted that some middle ground, such as a 223 work-day year was more reasonable and allowed the District to recoup some of its expenditures, without severely impacting the BI's.[23] In addition, CSEA claims that while the District's goal in increasing budgetary reserves was a worthy goal, to do so at the cost of a permanent reduction in compensation to BI's was untenable. CSEA believed that further negotiations which included a lesser impact to BI compensation could be achieved through negotiations.[24]

APPLICATION OF STATUTORY CRITERIA AND RECOMMENDATIONS

Unlike interest arbitration, where a third-party neutral sets the terms of a new agreement, a third-party neutral in an EERA factfinding report simply provides recommendation(s) as to terms for settlement, which shall be advisory only.

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[23] In addition to the 14 percent reduction in compensation, CSEA contends that the BI's lost further purchasing power as the Bay Area Consumer Price Index (CPI) for April 2026 demonstrated a 3.8 percent increase over the prior year.

[24] As part of its presentation, CSEA asserted that the District did not fulfill its statutory obligation to bargain in good faith. Such an allegation, however, is reserved for PERB as part of PERB's statutory obligation to investigate unfair practices and violations of EERA. (Gov. Code, §§ 3541.3, subd. (i) and 3543.5, subd. (c).)

(Gov. Code, § 3548.3, subd. (a).) In essence, the impasse resolution procedure, which includes the factfinding process, is a continuation of the collective bargaining process. (*Regents of the University of California* (2026) PERB Decision No. 3010-H, p. 5; *San Bernardino County Superintendent of Schools* (2024) PERB Decision No. 2934, p. 16.) Ultimately, the parties must persuade one another of their positions, and the neutral factfinder simply provides an outside perspective to assist the parties to possibly come to an agreement over matters within the scope of representation. (Gov. Code, § 3548; *City of Oakland* (2018) PERB Order No. Ad-462-M, p. 4; *County of Ventura* (2018) PERB Order No. Ad-461-M, p. 5.) Both parties to the factfinding process are statutorily obligated to participate in this process in good faith. (*Regents of the University of California*, *supra*, p. 6; *San Bernardino County Superintendent of Schools*, *supra*, p. 16.)

<u>Reduction in Work Year of BI's</u>

The District has established by a preponderance of the evidence that it is experiencing serious financial difficulties due to its increased decline in revenues that have accumulated from a declining enrollment of students without a corresponding reduction in staffing and the cessation of one-time Covid and parcel tax funds. Such decline in revenues has led to multiple years of deficit spending and a low budgetary reserve.

The District has also established that the current 236 work-day year constitutes an inefficient work schedule model as not all 75 BI's are needed to provide ESY services to those students who have IEP's dictating ESY services during the summer.

In addition, during the summer, BI's only provide four and one-half hours of ESY services per ESY work day to those students in need of those services.

Clearly, it is more efficient to hire 75 BI's to provide behavioral services during the school year and hire the necessary number of BI's to work during the ESY and provide services to designated students during the summer. While some BI's who only work during the school year will have a 14 percent reduction in compensation, those BI's who are to provide ESY services will suffer less than a 14 percent reduction due to the additional summer employment.

CSEA, in short, contends that the decrease in compensation for those BI's who do not work during ESY is too severe. CSEA's point is readily understood by the factfinder. Such a decrease in compensation is very difficult. On balance, however, and in light of the District's current financial woes, low budgetary reserves, future declining enrollment, and the lack of work for the extra BI's during the summer, the 203 work-day year for BI's is the better proposal and is recommended for settlement.

The area of negotiation which may ameliorate the impact of BI compensation is the method in which the ESY work will be assigned to BI's during the summer. The District has proposed that the ESY work be assigned by seniority. While this proposal may be of interest to CSEA, CSEA may prefer other criteria as to the method in which BI's are selected for ESY work other than seniority. In addition, the proposals of both parties do not reflect the actual length of the summer ESY work days.

<u>Recommendation(s) for Settlement</u>: Pursuant to Government Code section 3548.2, subdivision (b)(3), the Chair recommends that the District's proposal

as to the reduction in the BI's work days in a work year from 236 to 203 work days be accepted by the parties.

It is also recommended that the District and CSEA engage in further negotiations as to the selection criteria of the BI's for the ESY summer assignment (whether by seniority, rotation, or other method of selection) and the length of the summer ESY work days (the amount of time a BI provides direct or indirect[25] behavioral services to students, the recordation of these services, and the administrative time needed to complete the BI's other duties).

Lastly, the District and CSEA are free to negotiate changes to the BI work-day year as to the time period subsequent to the expiration of the current CBA.

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[25] By indirect behavioral services, the Chair is referring to those preparatory, conclusory or other activities not covered by person-to-person behavioral services, but are part of the overall behavioral service planned to benefit the student.

CONCLUSION

The Chair is sincerely hopeful that these recommendations will assist the parties in their negotiations going forward and which eventually will result in the parties coming to a resolution of this matter.

Shawn P. Cloughesy
Chair

Gregory J. Dannis, Attorney
Dannis Wolliver Kelley
Public School Employer Panel Representative

X Concur
_____ Concur in Part
_____ Dissent
_____ Dissent in Part
_____ (See attached.)

Valerie Hollins
Senior Labor Relations Representative
California School Employees Association
Exclusive Representative Panel Representative

_____ Concur
_____ Concur in Part
_____ Dissent
_____ Dissent in Part
_____ (See attached.)

CONCLUSION

The Chair is sincerely hopeful that these recommendations will assist the parties in their negotiations going forward and which eventually will result in the parties coming to a resolution of this matter.

Shawn P. Cloughesy
Chair

Gregory J. Dannis, Attorney	____	Concur
Dannis Wolliver Kelley	____	Concur in Part
Public School Employer Panel Representative	____	Dissent
	____	Dissent in Part
	____	(See attached.)

Valerie Hollins	____	Concur
Senior Labor Relations Representative	____	Concur in Part
California School Employees Association	____	Dissent
Exclusive Representative Panel Representative	X	Dissent in Part
	X	(See attached.)

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CSEA FACT FINDING DISSENT OPINION

CUPERTINO UNION SCHOOL DISTRICT Employer -and- CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER 13 Exclusive Representative	PERB CASE NO: SF-IM-3498-E JULY 31, 2026

Dissent in Part - Opinion of Fact-Finding Recommendation

The California School Employees Association and its Cupertino Chapter #13 represent unit members who work as Behavior Interventionists (BI). Cupertino entered into negotiations with CSEA believing that the parties were only negotiating the effects of layoff. When CSEA argued that reductions are in fact negotiable and sent a cease-and-desist letter to the district, the BI reductions were pulled.

The Right to Bargain the Decision to Reduce Hours

The collective bargaining agreement describes reductions as part of layoffs, but it does not expressly waive the right of CSEA to negotiate the decision and effects of a reduction. That would require language such as, "CSEA expressly waives the right to negotiate the decision to bargain reductions.
Waivers will not be lightly inferred. *Barstow Unified School District,* PERB decision No. 1138 (1996) 20P 27044.

Since 1981, PERB has held that the decision to reduce hours, as well as the effects of the decision are negotiable, provided that a union demands to negotiate and does not waive the right to negotiate in the contract.

There is an extensive line of PERB authority that specifically holds that the decision to reduce hours itself is negotiable. *California Public Sector Labor Relations* is the authoritative work on PERB law in California. *California Public Sector Labor Relations* states in "Scope of Bargaining" at section 1105[11][c]:

PERB specifically found that the decision to reduce hours is negotiable in the following cases: *San Ysidro School District* (1997) PERB Decision No. 1198; *San Mateo City School District* (1984) PERB Decision No. 375; *North Sacramento School District* (1981) PERB Decision No. 193; *Eureka City School District* (1985) PERB Decision No. 481; *Huntington Beach Union School District* (2003) PERB Decision No. 1525.

A change in the hours of a position is not the same as a layoff. The decision to lay off is a management prerogative and only the effects of layoff are negotiable. A change in hours is different.

"Hours is a specifically enumerated subject of bargaining under EERA, and while a layoff suspends the employment relationship entirely, a reduction in hours maintains the relationship but alters the terms . . . layoff and reduction in hours are not the same under EERA." *Azusa Unified School District* (1983) PERB Decision No. 374, p. 12.

The Healdsburg Districts in this case are both non-merit districts and assert that the Education Code subsection 45101(g) preempts the right of employees to negotiate a reduction in hours. We find that it does not.

Education Code subsection 45101(g) grants employees, who voluntarily consent to a reduction in hours or reassignment in lieu of layoff, the same procedural rights that they would be afforded by the Education Code were they subject to a layoff itself. We find that, because Education Code subsection 45101(g) is not cast in mandatory terms but makes reduction in hours or reassignment in lieu of layoff voluntary, there is nothing in that section which is inconsistent with the employer's duty to negotiate those issues with the exclusive representative . . . Thus, an employer who wishes to offer employees the opportunity to be reassigned or to have their hours reduced in lieu of layoff, must seek consent from the exclusive representative through the negotiations process.

Accordingly, we find that a reduction in hours is negotiable, and that Education Code subsection 45101(g) does not conflict with the employer's duty to negotiate that issue with the exclusive representative. (Emphasis supplied.)

In *North Sacramento School District* (1981) PERB Decision No. 193 (merit system), and *Healdsburg Union High School District* (1984) PERB Decision No. 375, at pp. 57-58 (non-merit system), the districts claimed that they were reducing hours in lieu of layoff and therefore the decision to reduce hours was not negotiable. PERB held that the decision to reduce hours is negotiable, regardless of whether it is in lieu of layoff and notwithstanding the provisions of the Education Code relating to rights of reemployment. PERB found that the Education Code language was not an inflexible standard and that therefore, the parties could bargain over the issue.

> Unless the union has waived the right to negotiate, the decision to reduce hours is negotiable. It is unlawful for a public-school employer to refuse or fail to meet and negotiate in good faith with an exclusive representative about a matter within the scope of representation. Moreover, a unilateral change in terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate. *Oakland Unified School District* (1983) PERB Decision No. 469, p. 21 (quotations omitted).

FISCAL STABILIZATION PLAN

The report adopts in a footnote that the CUSD's 10% reserve is reasonable. That determination is based on information provided by the CUSD in a presentation, that "other elementary school districts" have an "unrestricted general fund budgetary reserve average" of 24.52%. The CUSD does not provide a source for that average, nor the underlying comparison at work in the calculation, which we therefore do not see as a basis to view the 10% CUSD budget reserve as reasonable. Even if taken from an authoritative source, a budget reserve represented as a percentage disguises the size of the district and the size of the budget. A small-sized district could have a large reserve that isn't as much money comparatively as CUSD's finances, which skews the proportion. Many districts also build up reserves for facilities projects and other large capital projects, which justifies their reserve being over the 3% statutory reserve amount, and it also skews the average. The CUSD's comparison with "other elementary school districts" highlights this problem, because this does not explain what the districts used in the comparison and whether they are similarly sized and are similarly situated with budget constraints and priorities that influence a reserve amount justification. In short, an average is not very instructive as a comparison, and there's insufficient information about the CUSD's "comparison" to use it as a justification. We disagree with the conclusion that the CUSD's 10% reserve is reasonable based on this information.

Layoff Hearings

Every unit member has the right per the California Education Code to request and participate in layoff hearings with the Office of Administrative Hearings (OAH).
This process came from AB 438. The law did not change the standard for district decisions to lay off classified employees: a layoff must be for lack of work or lack of funds, but district discretion in making such decisions can only be challenged if the layoff decision is being made in bad faith (such as for disciplinary or retaliatory reasons) or an employee's statutory rights are being violated. What was not addressed by the ALJ in the OAH hearing referenced, was reductions are negotiable under the law and CSEA was actively attempting to bargain the decision and effects. The OAH decision is fairly typical, and these hearings had been vehicles for teachers for many years before classified employees gained the same rights. Teachers do not experience reductions in hours. A favorable decision for the district on an individual layoff decision has little effect on the course of bargaining.

Conclusion

CSEA engaged in the fact-finding process with the hope that the BI positions would not be cut. The District presented approximately $3 million in savings that came from laying off 11 certificated FTEs, reducing the BI work year, and the SERP.
In addition, Forty-one (41) classified employees were laid off totaling 22.936 FTE. This is landing on the backs of the lowest paid employees in the district. Moving forward, CSEA will focus on bargaining, Unfair Labor Charges, and other means of enforcement to protect the work that will still need to be accomplished.

I concur with the recommendations for future negotiations and effects bargaining from this decision.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Yolo, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Cloughesy Arbitration Services, P.O. Box 301, Davis, 95616.

On July 31, 2026, I served the Factfinding Report and Recommendation(s) for Settlement and Panel Representatives' Responses in Cupertino School District and California School Employees Association and its Chapter 13, PERB Case No. SF-IM-3498-E dated July 31, 2026, on the parties listed below by

_X_ Electronic service (e-mail).

PUBLIC EMPLOYMENT RELATIONS BOARD

Public Employment Relations Board
Email: factfinding@perb.ca.gov

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 31, 2026, at Davis, California.

Shawn P. Cloughesy

(Type or print name) (Signature)