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6 Attorneys for LONG BEACH UNIFIED SCHOOL DISTRICT

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9 BEFORE THE GOVERNING BOARD OF THE
10 LONG BEACH UNIFIED SCHOOL DISTRICT

11 In the Matter of the Accusation Against:
12 Certificated Employees
13
14 By
15 Long Beach Unified School District.

OAH No. 2010020244
**DISTRICT'S OPENING
POST-HEARING BRIEF**
Hon. Daniel Juarez
Hearing Dates: April 12 & 15 and
May 3-4 and 24-26, 2010

16
17 **I.**

18 **INTRODUCTION**

19 A reduction in certificated services is painstaking and unfortunate under any circumstances.
20 The Long Beach Unified School District's decision to reduce its certificated staff by more than
21 700 full-time equivalent positions is unprecedented in this District and perhaps in the State. The
22 resulting hearing was long and arduous for all concerned. The matter was heard by the Honorable
23 Daniel Juarez over seven days in April and May 2010. Dozens of Respondents testified regarding
24 various issues, including individual seniority dates, individuals' purported ability to bump less-
25 senior employees, the District's decision to skip employees with particular training, and in some
26 cases, claims of fairness. In this opening brief, the District responds to the arguments made at
27 hearing by Respondents, both represented and unrepresented. The District addressed some of
28 these issues in its prehearing brief, which is incorporated in its entirety by this reference.

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II.

ARGUMENT

The District submitted its certificated seniority list (District’s Ex. 9), which indicates the seniority date of record as of the first day of hearing. A certificated employee is “deemed to have been employed on the date upon which he first rendered paid service in a probationary position.” (Education Code § 44845.¹) Under the District’s consistent practice, service in a probationary position coincides with a teacher’s contracted dates of service as approved by the Board and documented in the contract of employment.

A. Training Days Outside of Contracted Dates of Service Do Not Establish the First Day of Paid Service in a Probationary Position.

Several Respondents testified about attending training prior to commencing classroom service. The majority of ALJ decisions on this subject have held the appropriate determination depends on three factors: (1) whether the training occurred during the contractual work year; (2) whether the training was paid as part of the teacher’s contractual salary or in some separate manner; and (3) whether attendance at the training was mandatory. (See *Santa Clara* (Judson) OAH No. 2005020379 [during orientation days prior to the first day of the contractual school year, teachers are not deemed to be in probationary status whether or not training was mandatory or they received compensation]; *Parlier* (Walker) OAH No. 2006040285 [voluntary orientation day prior to first date of paid probationary service did not count toward seniority]; *Marysville* (Hoover) OAH No. 2003020673 [training not counted toward seniority where attendance was encouraged and paid by separate stipend and there was no penalty for not attending]; *Sunnyvale* (P. Johnson) OAH No. 2003020112 [training not counted toward seniority where it was not part of regular school year, attendance was voluntary, and time was paid by separate stipend and not under regular teaching contract]; but see *Willows* (Engeman) OAH No. 2003030662 [counting *second day* of training where respondent established she was contractually obligated to attend but was not paid for first day]; *Washington* (Roman) OAH No. 2003020643 [training characterized as mandatory by site administrators and compensated by district established seniority dates].)

¹ All statutory references are to the Education Code unless otherwise indicated.

1 Although the District's position is that the New Teacher Institute (NTI) training did not
 2 meet the above three-pronged criteria, the District and Respondents stipulated that those teachers
 3 who attended the NTI training, as verified, would receive credit toward their seniority date. (See
 4 record of hearing 5/4/10.) Thus, any teacher who attended *any* day of NTI training will receive the
 5 same seniority date as all other teachers who attended *any* day of the NTI training the same year.

6 Various Respondents testified regarding attendance at other training sessions, such as
 7 Special Education Institute, GATE, PEACE Academy, Language!, and Reading First. Several
 8 Respondents testified they attended a five-day training in Dallas, Texas. Attendance at these
 9 trainings does not count toward Respondents' seniority.

10 The Respondents who attended the Dallas training were hired when King Elementary
 11 School was operated by Edison, a charter school, in partnership with the District. The Dallas
 12 training was developed, conducted, and financed by Edison; it was not required by the District, nor
 13 did the District have any involvement in that training. (Testimony of Ruth Ashley 5/25/10.²)

14 Unlike the stipulated NTI training, there was no evidence to establish the other types of
 15 training attended by Respondents were mandatory. There was no evidence of any consequence for
 16 failing to attend such training, and Respondents presented no evidence these training periods
 17 occurred during their contractual year. Rather, Respondents testified they attended their respective
 18 trainings prior to the commencement of their contractual year. (See, e.g., Ex. U [Romi Trutanich
 19 (#803) documentation of attendance at Open Court - Reading First on July 13, 2004, paid as "extra
 20 time," proffered to establish seniority date of July 13 instead of official date of September 1,
 21 2004]; Ex. FF [Jisun Chun (aka Jisun Gale #961) documentation of attendance at Lindamood Bell
 22 training August 4-8, 2003, proffered to establish seniority date of August 4 instead of official date
 23 of September 2, 2003]; Ex. MM [Vanessa Quamma (#801) documentation of attendance at High
 24 Point training August 11-12, 2004, proffered to establish seniority date of August 11 instead of
 25 official date of September 1, 2004].)

26 Finally, it was inconclusive whether Respondents were compensated for attending the
 27 training as a part of their contractual salary or in some other manner. Respondents received some

28 ² In the absence of a transcript as yet, citations to the record reflect the date of the testimony.

1 level of compensation for attending training; however, it was evident from testimony and
 2 documentary evidence that this compensation was separate and distinct from regular pay.³ (See,
 3 e.g., Ex. T [Holly Camarillo (#932) Certification of Other Assignments].) Attendance at training
 4 days (other than the stipulated NTI), that were not established as mandatory, and for which
 5 Respondents received supplemental compensation distinct from their regular salary, should not
 6 result in a change to Respondents' seniority dates.

7 **B. Service on "Make-up Days" Prior to the Contract Year Do Not Establish the First**
 8 **Day of Paid Service in a Probationary Position.**

9 Teachers who worked on "make-up days" to ensure a full year of service for purpose of
 10 retirement credit under the State Teachers Retirement System (STRS) are not entitled to seniority
 11 credit for those days. As various Respondents testified, these days were *optional*. Teachers were
 12 given an opportunity to maximize their STRS credit and worked various days *throughout the year*,
 13 at their own discretion. The calendar submitted by various Respondents is aptly entitled "*Flexible*
 14 *Payroll Calendar*." (See Exs. B, F, G, J, K, L, T, BB, CC, DD, EE, NN.)

15 Many of these Respondents testified their service on make-up days consisted of
 16 substituting for other employees. For example, Zariq Schoettler (#971, Ex. BB) testified that on
 17 August 13, 2003, she substituted for teachers who took released time. (5/4/10.) She further
 18 testified she could have worked the make-up days in February 2004. Nikki Dunncliffe (#849)
 19 sought a new seniority date of July 8, 2004 (from July 23, 2004) based on substitute service at a
 20 *different school site*. (5/4/10.) Stacey Wills (#976, Ex. CC) sought to change her seniority date
 21 from September 2, 2003 to July 21, 2003, when she substituted for a half day, although she did not
 22 work again until August 4, 2003, when she substituted for another half day. (5/4/10.) Changing a
 23 teacher's seniority date by 43 days on the basis of such sporadic substitute service would place
 24 similarly situated teachers at an unfair disadvantage.

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 27 ³ Respondents' insistence that the *dates* they received their first paychecks (e.g., Ex. D) establishes
 28 seniority dates must be disregarded. The District operates a number of multi-track schools and
 compensates employees year-round, which results in some employees receiving pay in months before they
 have rendered any service.

1 Substitute service is not properly counted toward seniority. (See § 44913 [summer school
 2 not counted toward attainment of permanent status]; *Vineland School District* (Harman) OAH No.
 3 2009031201 [summer school service did not establish seniority date].) Likewise, days worked to
 4 ensure STRS credit, as a substitute or in some other capacity, prior to the first regular day of work
 5 and at the teacher’s own choosing, should not establish an earlier seniority date.

6 **C. Service as a Substitute Teacher for Less than 75% of a School Year Is Not Included**
 7 **in the Calculation of Seniority.**

8 Some Respondents testified regarding their service as substitute teachers, seeking to have
 9 that service included in their seniority calculation. For example, Pamela Showley (#673) has a
 10 seniority date of September 7, 2004. Ms. Showley requested a date of “January 2004” based on
 11 service as a long-term substitute from January to June 2004, some of which she characterized as
 12 service in a “vacant” position. (5/24/10.) However, her documentation (Ex. II) indicates she was a
 13 long-term substitute teacher during this period.

14 Pursuant to section 44918, a teacher may receive credit toward probationary or permanent
 15 status if he or she serves as a long-term substitute (as opposed to an on-call, day-to-day substitute)
 16 for 75% of the days in a school year, and is employed as a probationary employee “for the
 17 *following* school year.” (Emphasis added.) Accordingly, an employee who commences the school
 18 year as a long-term substitute, and is offered a probationary position prior to serving 75% of the
 19 *same* school year, is not entitled to “tack” the substitute service for purposes of status *or* seniority.⁴
 20 Likewise, an employee who serves *less than* 75% of one school year as a substitute, and is
 21 reemployed the *following* year as a probationary employee, cannot “tack” the previous partial
 22 year’s service for purposes of seniority or permanent status.

23 **D. The District Appropriately Skipped Employees Fully Trained in and Teaching AP,**
 24 **IB, and AVID Courses.**

25 Assistant Superintendent Ruth Perez Ashley testified regarding the District’s need for
 26 teachers trained and serving in Advanced Placement (AP), International Baccalaureate (IB), and
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28 ⁴ Because seniority is based on the first day of paid service in a *probationary* position, the seniority date is not affected by such substitute service.

1 Advancement Via Individual Determination (AVID) courses. According to Ms. Ashley, these
 2 courses provide unique and valuable service to District students. (4/15/10, 5/26/10.) To be
 3 eligible for skipping, the employee must have a certain level of training *and be teaching* in these
 4 services. Specifically, AP teachers must currently be teaching at least one AP course. AVID
 5 teachers must either (1) have completed all three levels of the AVID training (described as
 6 implementation, tutorology, and refining), *or* (2) have at least one level of the three-level training
 7 series *and be teaching* an AVID elective (indicated on the seniority list). The IB skip is limited to
 8 high school (and affects only two teachers within the scope of this layoff), as opposed to the
 9 primary years or middle years programs.⁵ (5/26/10.)

10 As discussed in the prehearing brief, section 44955(d)(1) permits the District to deviate
 11 from the order of seniority if it demonstrates (1) it has a specific need for personnel to teach a
 12 course or provide certain services, and (2) an employee has special training and experience
 13 necessary to teach that course or course of study or provide those services. Skipping
 14 determinations “involve ‘discretionary decisions’ which are within the ‘special competence’ of the
 15 school districts.” (*Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299, citing § 44956.)
 16 The District demonstrated its skipping of AP, IB, and AVID teachers meets these criteria.

17 Recent ALJ decisions have addressed the issue of skipping AVID teachers. In *San Ysidro*
 18 (Hewitt) OAH No. 2009030722, the district skipped employees with AVID certification and who
 19 were expected to teach AVID strategies in their classes in the next school year. The ALJ found:

20 The AVID program includes an elective course that is designed to teach learning
 21 and study skills to students who have the potential to be high achievers but need
 22 help in maximizing their potential (i.e. students “in the middle”); particularly
 23 students from groups that are historically underrepresented at the college level. The
 24 AVID program was originally implemented by the district during the 2008-2009
 school year in the 7th and 8th grades due to historically low numbers of district
 graduates pursuing college degrees. The district is committed to expanding the
 AVID program to the lower grade levels, starting with the 6th grade in the 2009-
 2010 school year.

25 * * *

26 The AVID program provides a “course” and a “course of study” in academic
 27 survival and there is a specific need in the district for the AVID course of study.

28 ⁵ Certificated employees were also permitted to displace less senior employees serving in “skipped” areas
 of service if it was established they have the requisite credentials and competence.

1 Consequently, the district properly skipped those teachers who had current AVID
2 certifications. (See also *Atascadero* (Reyes) OAH No. 2009030194 [upholding
skip where district “demonstrated a specific need for the AVID program”].)

3 Likewise, here, the District recognized the “specific need” for the AVID course of study
4 and properly skipped these teachers, along with the identified AP and IB teachers.

5 **E. The Individual Respondents’ Arguments Lack Merit.**

6 A number of unrepresented Respondents testified on their own behalf. The District
7 addresses here the assertions of four individual Respondents who raised arguments at hearing.

8 **1. Melissa Espinoza**

9 Melissa Espinoza (#1089) is a school counselor with a seniority date of February 11, 2003.
10 Despite her seniority, Ms. Espinoza remains a *probationary* employee, as she has never worked
11 two *complete* consecutive school years, the statutory prerequisite for attaining permanent status.
12 (§ 44929.21(b).) A “complete” school year is defined in section 44908 as service for at least 75%
13 of the number of days the regular schools of the district are maintained. Ms. Espinoza does not
14 dispute that she worked less than 75% of each school year since 2002-2003. Rather, she worked
15 anywhere from 25% to 71% of the total days in each school year. (Ex. E7.)

16 Without specifically articulating the argument, Ms. Espinoza appears to assert the District
17 is *estopped* from maintaining her status as probationary because (1) her 2007-2008 performance
18 evaluation erroneously indicated her status as permanent (Ex. E1), and (2) the District purportedly
19 never informed her that ongoing probationary status would be the result of working a partial
20 schedule (4/15/10). It is well settled, however, that clerical or administrative error cannot serve to
21 supersede statutory limitations on the attainment of permanent status. (*Fleice v. Chualar Union*
22 *Elementary School Dist.* (1988) 206 Cal.App.3d 886.)

23 The second argument is just as untenable. As Ms. Espinoza testified, she was initially
24 granted part-time status at her own request. (4/15/10.) There was no indication the District
25 attempted to *conceal* from Ms. Espinoza the consequence of her elected part-time status. Nor is
26 the District required to explain to an employee every possible consequence of a request the
27 employee herself makes.

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1 “Although in some cases a public entity can be estopped, an estoppel cannot rewrite a
 2 statutory limitation on a benefit or privilege.” (*Smith v. Governing Bd. of Elk Grove Unified*
 3 *School Dist.* (2004) 120 Cal.App.4th 563, 568.) The court in *Smith* declined to apply estoppel
 4 where doing so “would rewrite the statute which excludes time spent teaching under an emergency
 5 permit from the time needed to establish permanency.” Likewise, here, application of estoppel
 6 would rewrite the statute (§ 44929.21(b)) that requires a certificated employee to serve two
 7 *complete* consecutive school years to attain permanent status. Ms. Espinoza's status is
 8 probationary because she has never met the statutory requirement for any other status.
 9 Accordingly, she must be laid off before any permanent employee who is credentialed and
 10 qualified to serve in the position. (§ 44955(b).)

11 **2. Brenda Hoefs**

12 Brenda Hoefs (#21) is an elementary classroom teacher on Catalina Island. As she
 13 testified, Ms. Hoefs was initially employed in 1998 and took a leave of absence for the 2005-2006
 14 school year. When she returned from leave, the District had no vacancies available on Catalina.
 15 She was offered a position elsewhere in the District, which she declined due to the difficulty of
 16 community from her home on Catalina; she then resigned her employment. Ms. Hoefs was
 17 reemployed on September 2, 2008. (Ex. H-1; 4/15/10.) Pursuant to section 44931, she regained
 18 her permanent status when she was reemployed within 39 months of her resignation. Ms. Hoefs is
 19 a permanent employee. (District’s Ex. 9, p. 4.)

20 In an effort to avoid layoff, Ms. Hoefs seeks restoration of her 1998 seniority date.
 21 However, it has long been settled that when a permanent employee resigns and is reemployed
 22 within 39 months, for seniority purposes, the employee does *not* regain her original hire date:

23 We hold that section 44931 provides that the break in service shall be “disregarded”
 24 as to individual rights, burdens and benefits, but not as to seniority rights which
 25 affect other employees. The “except as otherwise provided in this code” provision
 in section 44931 must be read as deferring to section 44848. (*San Jose Teachers*
Ass’n v. Allen (1983) 144 Cal.App.3d 627, 641.)

26 Section 44848 provides that when a certificated employee has resigned and is thereafter
 27 reemployed, the “date of employment shall be deemed to be the date on which he first accepted
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1 reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after
2 June 30, 1947) after his reemployment.”

3 While the District is not unsympathetic to Ms. Hoefs's situation, it is not responsible for
4 her decision to reside on Catalina. The District is legally required to implement this layoff in the
5 order of seniority, subject to statutory exceptions not applicable to Ms. Hoefs, and to recognize
6 September 2, 2008, the date of her reemployment, as her seniority date.

7 **3. Linda Gant**

8 Linda Gant (#487) also teaches on Catalina Island. She has a seniority date of September
9 6, 2005. Ms. Gant proffered a number of arguments and materials (Ex. S) to support the argument
10 that, despite her relative seniority, she should be retained in her position. Primarily, she urges that
11 her bilingual ability uniquely qualifies her to teach English learners in the Avalon community.
12 (5/4/10, 5/26/10.) She argued in effect that she should be *skipped* based on her qualifications.⁶

13 The determination of a teacher's qualifications under the No Child Left Behind Act (20
14 U.S.C § 6301 et seq.) is outside the jurisdiction of this layoff proceeding. The District is
15 accountable to state and federal agencies for its compliance with the NCLB. Ms. Gant offered no
16 evidence that the District would be *out* of compliance with NCLB if a more senior teacher with the
17 requisite qualifications is assigned to her position on Catalina. She offered no evidence regarding
18 the relative qualifications or competence of more senior employees who might be so assigned.

19 The District recognizes the needs of its Catalina students and their schools, and will ensure
20 it assigns appropriately credentialed and qualified teachers to that setting. Ms. Gant's credentials
21 and qualifications, while appropriate to her position, are not unique and do not fall within the
22 skipping criteria applied by the District. She is included in the layoff by virtue of her seniority and
23 the absence of any less senior employee being retained to perform the service she is performing.
24 The District is not asking to skip Ms. Gant.

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27 _____
28 ⁶ Ms. Gant holds a clear multiple subject teaching credential, a bilingual cross-cultural language and
academic development certificate (BCLAD), and a supplemental authorization to teach Spanish in grades
K-9. (Ex. S-1.)

1 **4. Joseph Posard**

2 Joseph Posard is a District social worker who was laid off in 2009. At that time, he was a
 3 permanent employee with a seniority date of August 26, 2002. When a temporary position became
 4 available, Mr. Posard was offered and signed a *temporary* contract of employment for the 2009-
 5 2010 school year. (Ex. P-1.) The temporary contract did not affect Mr. Posard’s reemployment
 6 rights derived from the 2009 layoff, nor did it accord him a permanent position for the 2009-2010
 7 school year or thereafter.⁷ During the current school year, Mr. Posard obtained a clear pupil
 8 personnel services (PPS) credential, authorizing him to serve in the position of school counselor.
 9 (Ex. P-5.) Mr. Posard has never served in the District as a counselor.

10 The District may employ individuals who are on a reemployment list following a layoff as
 11 temporary or substitute employees. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184
 12 Cal.App.3d 399, 402 [recognizing appellant, laid off since 1981, had worked for district “as a
 13 substitute teacher and filled temporary positions”]; 42 Ops.Cal.Atty.Gen. 39 (1963) [a certificated
 14 employee who returns to service within 39 months in a temporary position is not thereby entitled
 15 to the rights, benefits and privileges of a permanent employee].)

16 Because Mr. Posard was laid off in 2009, and was classified as temporary in 2009-2010,
 17 his name did not appear on the District’s seniority list for 2009-2010. In March 2010, Mr. Posard
 18 met with Ms. Ashley, the District’s Assistant Superintendent, Human Resources Services. Ms.
 19 Ashley mistakenly informed Mr. Posard his PPS credential would entitle him to *bumping rights*
 20 into a counseling position in the course of the 2010 layoff. However, Ms. Ashley did not realize at
 21 the time that Mr. Posard had *no bumping rights in 2010*, since he was still on a reemployment list
 22 as a result of his layoff in 2009 and was serving as a temporary employee.

23 The rights of employees on a reemployment list following a layoff are limited to (1) a
 24 “preferred right to reemployment . . . *if the number of employees is increased or the discontinued*
 25 *service is reestablished*” (§ 44956(a)(1)), and (2) “prior opportunity for substitute service” (§
 26 44956(a)(5)). Here, the number of employees in social work and counseling positions has
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28 ⁷ A number of other social workers and school counselors were likewise laid off in spring 2009 and rehired
 on temporary contracts for the 2009-2010 school year. (See Ex. P-1.))

1 *decreased* pursuant to the current reduction in force. (District's Ex. 1(A), p. 2.) The service has
2 not been reestablished. Accordingly, Mr. Posard has no preferred right to reemployment.

3 Section 44956 likewise limits Mr. Posard's purported claim to bumping rights. Nothing in
4 section 44956 suggests an employee who is on a reemployment list has the right to "bump" back
5 into active service on the basis of a new credential, when the service is not being reestablished and
6 the number of employees is being *decreased*.

7 Mr. Posard's claim rests on multiple misinterpretations of the law. Initially, he asserts
8 section 44916 requires that a copy of his temporary employment contract be located in his
9 personnel file. While keeping employment contracts in employees' personnel files may be an
10 appropriate practice, it is not required by section 44916. That section provides:

11 The classification shall be made at the time of employment and thereafter in the
12 month of July of each school year. At the time of initial employment during each
13 academic year, each new certificated employee of the school district shall receive a
14 written statement indicating his employment status and the salary that he is to be
15 paid. If a school district hires a certificated person as a temporary employee, the
16 written statement shall clearly indicate the temporary nature of the employment and
the length of time for which the person is being employed. If a written statement
does not indicate the temporary nature of the employment, the certificated
employee shall be deemed to be a probationary employee of the school district,
unless employed with permanent status.

17 Mr. Posard reads far too much into this provision. He acknowledges signing a *temporary*
18 *contract* of employment, which by definition was a "written statement" that indicated the
19 temporary nature of the employment for 2009-2010. The District's contracts are multipart NCR
20 forms; regardless of where the District's copy of the contract was misplaced, Ms. Ashley clearly
21 recalled giving Mr. Posard the employee copy at the time he signed it. (5/26/10.) Mr. Posard's
22 demands for a copy of his temporary contract do not state a violation of section 44916, in light of
23 his admission that he *signed* such a contract, which he must have *seen*.

24 Ms. Ashley's misstatement regarding Mr. Posard's bumping rights cannot supersede the
25 written contract of temporary employment he admittedly signed. As has long been settled, "A
26 school district acts *through a board* with powers limited both in scope and by the method of their
27 exercise, and is bound by the action of its board only when the latter acts with respect to a matter
28 within a power conferred and in conformance with required formalities." (*Santa Monica Unified*

1 *School Dist. v. Persh* (1970) 5 Cal.App.3d 945, 952, citing *Osborne v. Huntington Beach Union*
2 *High School Dist.* (1969) 2 Cal.App.3d 16, 22.) A statement or assurance that has not been
3 approved or ratified by the governing board “does not comply with the required formalities, and is
4 unenforceable against the District.” (*Ibid.*) Ms. Ashley's statement was neither a promise nor a
5 contract. The operative contract is Mr. Posard's temporary employment contract, the existence of
6 which both parties acknowledge.

7 Mr. Posard’s argument that the District is “estopped” from considering him a temporary
8 employee also fails. “The courts of this state have been careful to apply the rules of estoppel
9 against a public agency only in those special cases where the interests of justice clearly require it.”
10 (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 495, fn. 30.) The “facts upon which such an
11 estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined
12 carefully and rigidly to be sure that a precedent is not established through which, by favoritism or
13 otherwise, the public interest may be mulcted or public policy defeated.” (*Ibid.*) Such a dangerous
14 precedent would be set if statements of staff members were interpreted to “estop” the District from
15 enforcing valid employment contracts. As the *Smith* court held:

16 Although *Smith* infers a general public policy to protect teachers, as explained in
17 the analogous context of civil service reclassification, such a general policy
18 “should not blindly be followed so as to eradicate the clear language and purpose
19 of the statute and allow eligibility for those for whom it was obviously not
20 intended.” (*City of Oakland v. Public Employees' Retirement System* (2002) 95
21 Cal.App.4th 29, 39, 115 Cal.Rptr.2d 151, quoting *Neeley v. Board of Retirement*
22 (1974) 36 Cal.App.3d 815, 822, 111 Cal.Rptr. 841 [a public retirement case].) As
stated more directly in a teacher tenure case, “our holding that [granting relief
would exceed statutory authority] leaves no room to apply the estoppel doctrine.”
(*Fleice v. Chualar Union Elementary School Dist.* (1988) 206 Cal.App.3d 886,
893, 254 Cal.Rptr. 54; see *Medina v. Board of Retirement* (2003) 112 Cal.App.4th
864, 870-871, 5 Cal.Rptr.3d 634 [citing, inter alia, *Fleice*].) (*Smith v. Governing*
Bd. of Elk Grove Unified School Dist., *supra*, 120 Cal.App.4th at p. 568.)

23 Ms. Ashley admitted, and apologized for, her misstatement to Mr. Posard regarding his
24 bumping rights. (5/26/10.) The Board, however, cannot be bound by misrepresentations,
25 accidental or otherwise, of its employees. (Government Code § 818.8) An *error* in classification
26 does not render an individual so classified. Because (1) only the Board can approve or ratify a
27 contract, (2) ordinary principles of estoppel do not apply to a public agency, and (3) oral
28 representations by staff cannot supersede Board-approved contracts, Mr. Posard’s argument fails.

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Mr. Posard retains his reemployment rights as a permanent employee laid off in 2009. He was properly contracted as a temporary employee for 2009-2010 and was not entitled to bump any other employee who is subject to layoff.

III.


CONCLUSION

The evidence demonstrated the District met all procedural requirements in implementing this certificated reduction in force. Seniority dates were duly verified, and changed if supporting documentation came to light, up to and including during the hearing. Skipping criteria were appropriately considered and applied. As the hearing proceeded, accusations were dismissed if Respondents demonstrated they met skipping criteria or were able to bump a less senior employee.

The Administrative Law Judge should find there is cause for not reemploying Respondents for the 2010-2011 school year and sustain the accusation as to each remaining Respondent.

DATED: June 9, 2010

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