

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
2 Anthony P. De Marco State Bar Number 217815
Cathie L. Fields State Bar Number 189129
3 Jabari A. Willis State Bar Number 235437
12800 Center Court Drive, Suite 300
4 Cerritos, California 90703
Telephone: (562) 653-3200
5 Facsimile: (562) 653-3333
6 Attorneys for LONG BEACH UNIFIED SCHOOL DISTRICT

7
8 BEFORE THE GOVERNING BOARD OF THE
9 LONG BEACH UNIFIED SCHOOL DISTRICT
10

11 In the Matter of the Accusation Against:

12 Certificated Employees

13 By

14 Long Beach Unified School District.
15
16

OAH No. 2010020244

**DISTRICT'S REPLY TO
CERTAIN RESPONDENTS'
POST-HEARING BRIEF**

Hon. Daniel Juarez
Hearing Dates: April 12 & 15 and
May 3-4 and 24-26, 2010

17 **I.**

18 **INTRODUCTION**

19 Respondents' attacks on the District in this matter are long on rhetoric but extremely short
20 on legal authority. While acknowledging the scale of this proceeding, Respondents ignore the
21 immense burden borne by the District while greatly exaggerating the number of problematic issues
22 and their purported effect.¹ Respondents recognize that "in any reduction in force hearing there are
23 bound to be numerous issues or problems that arise," but contend the scale of this matter
24 compounded the issues to the point of interfering with due process. (RB at 11-17.) By

25 ¹ Respondents' tendency to exaggerate the issues is demonstrated clearly in their Introduction, which
26 claims "there are *countless individuals* who received preliminary layoff notices who do not appear on the
27 District's 'Identification of Final Notices by Service Area.'" (Respondents' Brief ("RB") at 1:27-28,
28 emphasis added.) The number of preliminary notices served is a matter of public record, having been
reported in the media, and the District's Exhibit 23 identifies specified numbers of individuals to receive
final layoff notices. To characterize any aspect of this proceeding as involving "countless individuals" is a
vacuous exaggeration.

1 Respondents' reasoning, no large school district can ever engage in a large-scale reduction in force,
 2 because the inevitable "numerous issues" are increased by the magnitude of the proceeding, thus
 3 resulting in purported due process violations.

4 Respondents also accuse the District of "overnoticing" and assert that by attempting in
 5 good faith to correct errors or misidentifications, the District was indecisive and inconsistent.
 6 These accusations are unwarranted² and similarly devoid of legal support. Each of these
 7 contentions is addressed below.

8 **II.**

9 **ARGUMENT**

10 **A. RESPONDENTS' DUE PROCESS CONTENTIONS ARE WITHOUT MERIT.**

11 To assert that "overnoticing" deprives Respondents of due process flies in the face of the
 12 purpose and function of this proceeding. The fact that a greater number individuals received
 13 notice and the opportunity to be heard in this matter than would ultimately be laid off is a result of
 14 the arcane, wasteful, and unnecessarily painful system of certificated layoffs created by the
 15 California Legislature. The Court of Appeal over 20 years ago recognized the statutory necessity
 16 of giving many more notices than the number of employees who might actually be laid off:

17 Thus, the present process requires preliminary notices to be sent by March 15 to all
 18 certificated employees who may be terminated and requires the final notice to be
 19 given by May 15, even though the school board does not know until the state
 20 budget is chaptered late in June exactly what state funding will be available to the
 21 district for the ensuing school year. Clearly, the present statutory timetable is
 22 unrealistic; however, any changes in that timetable are the responsibility of the
 23 Legislature. Although a teacher who is terminated has preferential rights to
 24 reemployment under sections 44957 and 87745, this provides little solace to the
 25 understandably upset teacher who is given a needless preliminary (and perhaps
 26 final) notice because the school district cannot accurately ascertain its financial
 27 circumstances for the ensuing school year until the chaptering of the state budget.
 28 (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 633, citing
Ozsogomonyan, Teacher Layoffs in California: An Update (1979) 30 Hastings L.J.
 1727, 1759-1760.)

The Legislature has not, in the ensuing years, substantively revised the procedures, leaving
 school districts with no choice but to serve preliminary layoff notices on any teacher who might be

² Likewise, Respondents accuse the District of "unnecessarily prolonging the hearing" and apparently of
 deliberately delaying "until the last few days of the hearing" to articulate certain skipping criteria (RB at
 2:5-6). Respondents should be reminded that days two, three, four, five, and six of the seven-day hearing
 were occupied almost entirely by Respondents' case in chief.

1 laid off at the end of the school year. Issuance of more preliminary than final notices is inevitable,
2 particularly in a large layoff. Moreover, issuance of preliminary notices results in no prejudice to
3 teachers who are ultimately employed for the next school year. The purpose of the preliminary
4 notice is to notify employees of the probability that their services will not be required for the
5 ensuing school year so they may consider looking elsewhere for employment. (*Moreland*
6 *Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 653.)

7 Respondents' due process argument is a red herring in this already complex matter. The
8 key question of due process in the context of an administrative proceeding is whether a respondent
9 is provided with reasonable notice of the contentions supporting the requested action, provided
10 with notice of the time and place of hearing, and afforded a fair hearing. (*Gray v. Medical Board*
11 *of California* (2005) 125 Cal.App.4th 629, 637.) Precisely *because* final notices have not yet been
12 issued to Respondents, they cannot claim their due process rights have been violated by an unfair
13 procedure:

14 In our view, the crucial consideration is whether the hearing that was afforded to
15 appellant was fair *in the sense that the Board members had not already unalterably*
made up their minds to terminate him, so as to render the hearing a sham.

16 Thus, “[a] fundamental requirement of due process is ‘the opportunity to be heard.’
17 [Citation.] It is an opportunity which must be granted at a meaningful time and *in a*
meaningful manner.” (*California Teachers Assn. v. Butte Community College*
18 *Dist.* (1996) 48 Cal.App.4th 1293, 1307, emphasis added, quoting *Armstrong v.*
Manzo (1965) 380 U.S. 545, 552.)

19 The contention that Respondents' due process rights were violated in the course of a seven-
20 day hearing in which scores of individuals testified, some more than once, cannot be credited.
21 Respondents cite no legal authority for their contention they were deprived of due process by the
22 manner in which the District proceeded in this case. This argument must be rejected.

23 **B. THE ARGUMENT FOR THE SO-CALLED "DOMINO THEORY" MUST BE**
24 **REJECTED.**

25 The District has acknowledged instances in which junior employees were not provided
26 with preliminary layoff notices, while more senior employees who could serve in those positions
27 were noticed for layoff. As Respondents acknowledge, the District stipulated it would not issue a
28 final layoff notice to the most senior Respondent qualified to teach the assignment of each such

1 junior employee. (Tr. Vol. VII, p. 118.) Dismissal of a "corresponding number" of accusations is
2 the appropriate and judicially recognized cure for such an error. (*Alexander v. Board of*
3 *Trustees* (1983) 139 Cal.App.3d 567, 576-577.)

4 The current California budget crisis is unprecedented in the memory of any participant in
5 this matter. The Legislature plainly intended for school districts to be able to reduce their
6 certificated workforce in times of budgetary shortfalls. The exacting nature of the process causes
7 undue stress for all concerned, and is fraught with pitfalls for the unwary; however, it is a process
8 with an objective: the reduction in services provided by certificated employees. The Legislature
9 specifically built in a safeguard for the inevitable errors that arise in the process.

10 The administrative law judge in *Rialto Unified School District* (Ahler 2008) OAH No.
11 2008020556 addressed this same argument when the district failed to notice a junior employee:

12 Respondents' argument is frequently made in these kinds of proceedings and is
13 known as "the domino theory."

14 The layoff statutes authorize a reduction in force when, in the opinion of the
15 governing board, it becomes "necessary by reason of any of these conditions to
16 decrease the number of permanent employees in the district" (Ed. Code, §
17 44955, subd. (b).)

18 The fundamental task in construing a statute is to ascertain the intent of the
19 lawmakers so as to effectuate the purpose of the statute. Courts begin by examining
20 the statutory language, giving the words their usual and ordinary meaning. If there
21 is no ambiguity, then courts presume the lawmakers meant what they said, and the
22 plain meaning of the language governs. If, however, the statutory terms are
23 ambiguous, then courts resort to extrinsic sources, including the ostensible objects
24 to be achieved and the legislative history. In such circumstances, courts select the
25 construction that comports most closely with the apparent intent of the Legislature,
26 and avoid an interpretation that would lead to absurd consequences. (*Day v. City of*
27 *Fontana* (2001) 25 Cal.4th 268, 272.)

28 Here, the District's reason for the reduction in force was the probable reduction in
funding from the State of California, most likely in a substantial amount. It would
make no sense to conclude that the District's inadvertent failure to serve [a junior
employee] with required process thereby insulated all senior employees who were
properly served with such notice from being laid off and prevented the District from
being able to lay off these employees. Reaching such a conclusion would defeat the
very purpose of the layoff statutes, which is to permit a school district to terminate
the services of employees when economically necessary. (Proposed Decision at ¶¶
9-11.)

Likewise, here, invalidating potentially hundreds of layoff notices because of the lack of
notice to a handful of junior employees, thus exposing the school district to insolvency, cannot

1 have been the intended result.³ The District's stipulated agreement to dismiss the accusations of a
 2 corresponding number of senior employees appropriately cures lack of notice to junior employees.

3 **C. ASSIGNMENTS AND REASSIGNMENTS ARE PROPERLY MADE *AFTER* THE**
 4 **ISSUANCE OF FINAL LAYOFF NOTICES.**

5 Respondents mischaracterize section 44955(c) in the context of assignments and
 6 reassignments. The first paragraph of subdivision (c) specifically pertains to *final* notices: "Notice
 7 of such termination of services shall be given before the 15th of May." The second paragraph of
 8 subdivision (c), regarding assignments and reassignments, *follows*, rather than precedes, the
 9 requirement of final notices.

10 At this time, *no* Respondent has been "terminated"; final notices will not be issued until the
 11 Administrative Law Judge makes his recommendation and the Governing Board takes final action.
 12 The purpose of the layoff hearing is to vet the process and to *address* Respondents' concerns. If
 13 the District was to be held to a standard of perfecting its seniority list and bumping analysis *prior*
 14 *to* the hearing, as Respondents assert, the hearing would be a mere formality, either rubber-
 15 stamping the layoff or invalidating it on the basis of any minor error.

16 The Legislature never intended such a result. (See Ed. Code § 44949(c)(3)⁴
 17 ["Nonsubstantive procedural errors committed by the school district or governing board of the
 18 school district shall not constitute cause for dismissing the charges unless the errors are prejudicial
 19 errors"]; *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 144 [error in failing to
 20 apply tie-breaking criteria before giving employee a layoff notice was not prejudicial as district
 21 applied the criteria at the hearing, employee had the opportunity to challenge application of the
 22 criteria at the hearing, and there was no evidence the criteria were applied inappropriately or in bad
 23 faith], citing § 44949(c)(3); *California Teachers Assn. v. Butte Community College Dist., supra*,
 24 48 Cal.App.4th at pp. 1305-1306 [where district's first termination notice was a nullity, but district
 25 "retained jurisdiction to proceed to do it right, as long as time still remained," did not attempt to

26 _____
 27 ³ The District possibly could have avoided any errors by simply noticing every certificated employee from
 28 the bottom of the seniority list to a designated cutoff. However, given Respondents' strong objection to
 "overnoticing," and the allegation that both overnoticing *and* undernoticing violate due process, doing so
 would not have satisfied Respondents in any event.

⁴ All statutory references are to the Education Code unless otherwise indicated.

1 use the defective notice to avoid a hearing, and "considered the merits of the matter anew in light
2 of the hearing and the ALJ's proposed decision," there was no prejudice to the employee]; *Greer v.*
3 *Board of Education* (1975) 47 Cal.App.3d 98, 117.)

4 As required by section 44955(c), the District will make assignments and reassignments for
5 the 2010-2011 school year following the determination of which employees will receive final
6 layoff notices and which are to be retained. This determination cannot be made with finality until
7 the administrative law judge issues his proposed decision and the Board acts on it.

8 **1. The District's Skipping Criteria Are Valid.**

9 As noted in the District's prehearing brief, "skipping" is discretionary. (*Moreland Teachers*
10 *Association v. Kurze, supra*, 109 Cal.App.3d at p. 655; *Brough v. Governing Board of El Segundo*
11 *Unified School District* (1981) 118 Cal.App.3d 701, 715.) Respondents' objection to skipping
12 criteria is irrelevant. Skipping is permitted under a three-part inquiry: when (1) the District
13 demonstrates a specific need for personnel to teach a specific course or course of study, (2) a
14 certificated employee has special training and experience necessary to teach that course or course
15 of study, and (3) others with more seniority do not possess that special training and experience.
16 (§ 44955(d)(1).)

17 The fact that not every teacher in the District had the opportunity to obtain certain training
18 does not render the training an invalid skipping criterion. (See *Vassallo v. Lowrey* (1986) 178
19 Cal.App.3d 1210, 1216 [employer is not required to assist instructor in becoming qualified or
20 credentialed to teach a specific course].)

21 Section 44955 suggests no requirement that the "special training and experience" must be
22 available to all employees on an equal basis. Moreover, certificated employees come into the
23 District with a variety of experience, credentials, training, and skills, not all of which are available
24 to every person equally. The District alone determines the special training and experience
25 necessary to teach a course of study.

26 The District addressed the proposed skips of AVID, IB, and AP teachers in its initial post-
27 hearing brief. Each of these skips is based on the teacher's special training and experience in these
28 unique service areas. Respondents offer no legal authority for any of the multiple and inconsistent

1 objections to the skips (e.g., the District should not use AVID as a skipping criterion, must skip
 2 anyone with any level of AVID training, or must alter the manner in which it determined to apply
 3 the skip; RB at pp. 4-5). The objections of Respondents are based on either speculation or mere
 4 disagreement with the District's discretionary determination.

5 Similar objections were made in *Lynwood Unified School District* (Juarez 2009) OAH No.
 6 2009030803. There as here, respondents argued skipping of deans and teachers on special
 7 assignment (TOSAs) was contrary to section 44955(d)(1), because such positions were not "a
 8 specific course or course of study." In *Lynwood*, this ALJ concluded:

9 Respondents interpret the statutory provision too narrowly. "The general rule is
 10 that any reduction in staff is to be made according to seniority. However, the
 11 exception to that rule permits retention of an employee holding a special credential
 12 or needed skill, even though that retention results in termination of the senior
 13 employee." (*Santa Clara Federation of Teachers v. Governing Board of Santa*
 14 *Clara Unified School District* (1981) 116 Cal.App.3d 831, 843 [italics added].) In
 15 *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, the court
 16 considered a college district's standard of teacher competence as it had defined it for
 17 its own needs, and ruled that such discretionary decisions must be left to the special
 18 competence of the district. (*Duax v. Kern Community College District, supra*, 196
 19 Cal.App.3d 555, 565 [citing *Martin v. Kentfield School District* (1983) 35 Cal.3d
 20 294, 299]; see also *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d
 21 1016, 1023.) The law allows the district to skip employees who possess unique or
 22 specialized skills that the district deems necessary to its programs. (*Santa Clara*
 23 *Federation of Teachers v. Governing Board, supra*, at 843.) (Proposed Decision at
 24 p. 8, ¶ 7.)

25 The District's skipping criteria are a valid exercise of its discretion and should be upheld.

26 **2. An Individual Must Be Able to Bump into an Entire Assignment, Not Only the**
 27 **Core Portion.**

28 Respondents argue that any multiple subject credential to teacher may teach a "core
 assignment." Assistant Superintendent Ashley testified regarding the nature of a core assignment,
 which involves teaching the same group of students, typically in middle school, two different
 subjects over two consecutive periods in the school day. Common core assignments include
 Reading and Language Arts, or Science and Math. (See Ex. 9 at p. 112, #570 & #571.)

Ms. Ashley described the requirement that a teacher be credentialed and competent to
 bump into a junior teacher's entire assignment, as the District is not engaging in "partial bumping."
 (Tr. Vol. VII at p. 156.) The example used in Respondents' brief, Monique Robertson (#571),
 illustrates this requirement. While Ms. Robertson teaches a core assignment, she also teaches U.S.

1 History and Geography, which require a specific credential or authorization to teach social science.
 2 (See *Administrator's Assignment Manual* at Appendix-2.)

3 Respondents mischaracterize Ms. Ashley's testimony regarding the so-called "hanging"
 4 period (e.g., period 5 with two core classes comprising periods 1-2 and 3-4). Ms. Ashley did not
 5 testify, as asserted, that an individual necessarily "may teach [the hanging period] using his or her
 6 Multiple Subject credential." (RB at 8:8-9.) This assertion is inaccurate. (See California
 7 Commission on Teacher Credentialing, *Administrator's Assignment Manual* (2007 ed.) at pp. A-2-
 8 A-3 [describing the "core setting" and "hanging" fifth period].) A teacher *may* teach in a core
 9 setting using a multiple subject credential; however, the teacher may use a multiple subject
 10 credential to teach in a departmentalized class only those subjects he or she teaches in the core
 11 assignment. (*Ibid.*)

12 If the hanging period is *not* the same subject or grade level as the core assignment, the
 13 teacher must be appropriately credentialed to teach that subject. Thus, to bump into an assignment
 14 that includes a hanging period, the individual must have the appropriate credential *to teach that*
 15 *course*. As an example, Lisa Marie Weyh (#605) is using a Board Authorization in English K-8.
 16 One period of her assignment is a Journalism class. Respondents argue a more senior teacher,
 17 Lorena Wohlgezogen (#608), "can teach Ms. Weyh's entire assignment using her Multiple Subject
 18 credential." (RB at 10:28, fn. 4.) This assertion is incorrect, as the Journalism class requires an
 19 authorization in English. (*Administrator's Assignment Manual* at p. C-2.) Ms. Weyh holds such
 20 an authorization; by contrast, only two of the various Respondents identified as capable of
 21 bumping into her position⁵ holds a supplementary authorization to teach English.

22 **3. The District's Reliance on Board Authorizations Has Been Consistent and**
 23 **Appropriate.**

24 It is undisputed that a Board Authorization pursuant to section 44263 is valid for one year.
 25 Courts have held that a school district is not required to consider credentials a teacher does not

26 ⁵ Respondents assert, in addition to Ms. Wohlgezogen, four other individuals (Gerritson #1160, Johns
 27 #889, Cavanaugh #622, and Casillas #704) can bump into Ms. Weyh's assignment. Ms. Johns and Ms.
 28 Casillas hold supplementary authorizations in English, which authorize them to teach Journalism. (Ex. 9 at
 pp. 136, 172.) According to Exhibit 23, Ms. Casillas is identified as bumping into the position held by
 Eric Grohman (#569). Neither Ms. Gerritson nor Ms. Johns is identified for layoff. Accordingly, *no*
 respondent is being laid off who is authorized to teach Ms. Weyh's assignment.

1 hold as of March 15. (*Vassallo v. Lowrey, supra*, 178 Cal.App.3d at p. 1216, citing *Campbell*
 2 *Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 814-815.) Teachers who do
 3 not *now* hold a current Board Authorization are not "credentialed and qualified" to bump into
 4 positions held by teachers who do currently hold a Board Authorization. In *Vassallo v. Lowrey*, an
 5 instructor contended that since she would need a new credential to teach anything outside of
 6 biology, the district had a mandatory duty her under section 87743 (the community college
 7 equivalent of section 44955) to help her obtain a "limited service credential" to teach such courses.
 8 The court disagreed and affirmed the trial court's denial of the instructor's petition for a writ of
 9 mandate requiring the district to obtain the credential on her behalf.

10 As Ms. Ashley testified, a Board Authorization requires (1) a specified number of college
 11 units in the subject, (2) Board approval, and (3) the teacher's consent. Issuance of Board
 12 Authorizations is at the Board's discretion. (See § 44263 ["A teacher licensed pursuant to the
 13 provisions of this article may be assigned, with his or her consent"].) Possession of a multiple
 14 subject credential, or even a single subject credential, in no way guarantees that a teacher meets the
 15 requirements for a Board Authorization.

16 Bumping requires that a teacher be both "credentialed and competent" to perform the duties
 17 of the less senior employee. (*Daniels v. Shasta-Tehama-Trinity Joint Community College*
 18 *Dist.* (1989) 212 Cal.App.3d 909, 926, citing Ozsogomonyan, *Teacher Layoffs in California: An*
 19 *Update* (1979) 30 HASTINGS L.J. 1727, 1747-1749.) The court in *Duax v. Kern Community*
 20 *College District, supra*, discussed the term *competent*:

21 While these decisions stress the discretion reposed in a school board in defining the
 22 term "competent," the court in *Forker v. Board of Trustees* (1984) 160 Cal.App.3d
 23 13 [206 Cal.Rptr. 303] added further assistance in stating, "[a]s interpreted by the
 24 *Martin* court, the term 'competent' as used in section 44956 relates to specific skills
 25 or qualifications required of the applicant. Decisions prior to *Martin* have
 26 interpreted that term in a similar manner." (*Id.* at p. 19. See also *Moreland*
 27 *Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 654-655 [167 Cal.Rptr. 343];
 28 Ozsogomonyan, *Teacher Layoffs in California: An Update* (1979) 30 Hastings L.J.
 1727, 1749-1751.) Hence, from these authorities we conclude that ***a board's***
definition of competency is reasonable when it considers the skills and
qualifications of the teacher threatened with layoff. (196 Cal.App.3d at p. 565,
 emphasis added.)

Here, the District determined a current Board Authorization entitles an employee to retain

1 his or her assignment as to senior employees *without any current authorization* to teach in the
 2 assignment. By contrast, a Board Authorization does *not* entitle an employee to bump into an
 3 assignment he or she is not credentialed to teach absent the Board Authorization. This standard
 4 was consistently applied throughout the layoff process and explained in testimony. It is an
 5 objective and valid exercise of the District’s discretion and should be upheld.

6 **4. The Tie-Breaking Criteria Are an Appropriate Exercise of Discretion.**

7 Respondents object to the District's tie-breaking criteria as "not in compliance with section
 8 44955" with respect to the Board Authorizations. (RB at 8:18.) This assertion is unsupported by
 9 legal authority and ignores the fact that tie-breaking criteria are based entirely on the Board's
 10 determination that the criteria meet the "needs of the district and the students thereof." The criteria
 11 in this case do so. Respondents produced no evidence the needs of the District or its students
 12 would be in any way impaired as a result of the adopted tie-breaking criteria.

13 Recent ALJ decisions support the District's right to establish tie-breaking criteria. In *Tustin*
 14 *Unified School District* (Juarez 2009) OAH No. 200902907, this ALJ rejected similar arguments,
 15 finding "The criteria were reasonable and fair. Those discretionary decisions must be left special
 16 competence of [the District]." (Citing *Duax v. Kern Community College Dist., supra*, 196
 17 CalApp.3d at p. 565; *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299.)

18 In *La Honda-Pescadero Unified School District* (Rasmussen 2009), the district's tie-
 19 breaking criteria gave points for a high performance rating (“meets or exceeds standards”) on the
 20 teacher's latest evaluation. Respondents challenged the criteria as unreasonable and argued for a
 21 more individualized approach taking into account the strengths and weaknesses of each employee.
 22 The ALJ concluded a school district has broad latitude in establishing tiebreaking criteria, the
 23 superintendent’s implementation of the resolution was a reasonable exercise of his discretion, and
 24 the individualized approach would be time consuming and open to challenge as overly subjective.
 25 Similarly, the ALJ in *Saddleback Valley Unified School District* (Rosenman 2009) OAH NO.
 26 2009030742 rejected the argument that tiebreaking criteria were “unfair” because points were
 27 given for some positions respondents did not have available to them at their sites and because
 28 other “important services” were not included in the criteria. The ALJ concluded:

1 The contentions relating to the tie-breaking criteria, although perhaps true, are
2 unavailing. Respondents did not prove that the District acted arbitrarily or for any
3 reason other than the benefits of the District and its students by the adoption and
4 use of the tie-breaking criteria used by the District.

5 Likewise, here, Respondents have produced no evidence to support allegations the criteria
6 were unfair or applied inappropriately. The tie-breaking criteria, including the recognition of
7 Board Authorizations, are an appropriate exercise of District discretion and must be upheld.

8 **D. THE INDIVIDUAL BUMPING ARGUMENTS LACK MERIT.**

9 Respondents devote a significant portion of their brief to the contention that various
10 individuals are entitled to bump other, less senior individuals from their assignments.
11 Respondents propose certain teachers be bumped by multiple individuals. For example, five
12 different individuals assert they can bump into the position held by Lisa Marie Weyh (#605); four
13 individuals claim bumping rights as to the position held by Kristy Freund-Mcfeggan (#902); and
14 two teachers each claim they can bump various other individuals (e.g., Jacqueline Gainer (#836),
15 Karla Sorensen (#439), Monique Robertson (#571)). Some of the bumping arguments are entirely
16 unsupported by the record.

17 Many of the bumping arguments are moot, as the individuals asserting the ability to bump
18 have *not* been identified to receive final layoff notices (as indicated by the asterisk next each such
19 individual's name). The District does not respond to those Respondents' assertions; this
20 proceeding is long and complex enough without addressing moot issues. The District responds to
21 the remaining arguments.

22 1. Iyaunna Towery (Seniority #1170K)

23 Iyaunna Towery (#1170K) alleges she should be able to bump Toiya Smith (# 940), who is
24 assigned as a "Program Facilitator." Ms. Towery alleges she meets the three requirements set forth
25 in the "job posting." (RB at 13:8-14; Ex. YYY.) However, the letter of recommendation Ms.
26 Towery submitted, dated the last day of hearing in this matter, was not authenticated, and there
27 was no indication the author recommended Ms. Towery for this particular position or even knew
28 the nature of the position. As a "leadership position," the Program Facilitator assignment requires
skills and experience that must be vetted through an interview process. A layoff hearing is not a

1 substitute for such a process. Ms. Towery conceded she never interviewed for this position; in
2 fact, she testified she participated in the application process in 2007-2008 and was *not selected*.
3 (Tr. Vol. VI at 247:10-24.) Ms. Towery has not established the right to bump Ms. Smith.

4 2. Danielle Salisbury (#428)

5 Ms. Salisbury (#428) alleges she can bump Donnell Wright Jr. (#307) and Hendi Ali
6 (#425) because she possesses full AVID certification. However, both Wright and Ali *currently*
7 teach AVID and as a result, were skipped pursuant to the adopted skipping criteria. Ms. Salisbury
8 did not dispute that she is not currently teaching an AVID course. Ms. Ashley testified that the
9 basis for the AVID skip included “currently teaching an AVID course.” (Tr. Vol. VI at pp. 72-
10 73.) Ms. Salisbury does not have the right to bump #307 or #425, who are properly skipped.

11 3. Megan Kaplinsky (#821)

12 Respondents Megan Kaplinsky (#821), Rosio Osuna (#1067), Maya Oliver (#1188)⁶ claim
13 they can bump several employees because they each hold a Specialist Instruction credential in
14 reading. Ms. Kaplinsky alleges she can bump Francisco Gomez (#513), Michell Brennan (#421),
15 Maria La Costa (#386), Charlotte Bodoh (#338), and Daniel Wellman (#162). Ms. La Costa
16 (#386) is a special education teacher and holds a mild/moderate special education credential. (Ex.
17 9 at p. 76.) Ms. Kaplinsky cannot bump Ms. La Costa from her resource specialist position.

18 The other individuals identified by Ms. Kaplinsky are high school teachers with single
19 subject credentials in English and special training in the Lindamood Bell methodology, which Ms.
20 Kaplinsky lacks. Assistant Superintendent Ashley testified that the District was skipping
21 individuals trained in the Lindamood Bell methodology to teach in the intensive reading settings.
22 (See Tr. Vol. II, p. 254.)

23 The specialist instruction credential in reading does not stand alone; it is a “dependent”
24 credential which requires the holder to first possess another credential such as a multiple subject or
25 single subject credential. (*Administrator’s Assignment Manual* at p. E-7.) Under the District’s
26 skipping criteria, to teach in the intensive reading setting, an individual must also possess the
27

28 ⁶ Although the District disagrees with the claims of Ms. Osuna and Ms. Oliver, the District is not requesting a final layoff notice for these Respondents; thus, only Ms. Kaplinsky’s argument is addressed.

1 specialized Lindamood Bell training. At hearing, Ms. Kaplinsky admitted she did not have
 2 Lindamood Bell training. (Tr. Vol. VI, 32:8-9.) She presented no evidence of the ability to bump
 3 any of these individuals using her multiple subject credential. Her claim to bumping rights should
 4 be rejected.

5 4. Jill Pait (#891)

6 Ms. Pait holds only a multiple subject teaching credential. She alleges she should bump
 7 Marsha Swinford (#652) or Racquel Welch-Kitchen (#393) because she can teach their
 8 assignments. Ms. Welch-Kitchen did not receive a preliminary layoff notice, and the District
 9 rescinded the notice to Ms. Swinford. Ms. Swinford works in a special education program. (Ex. 9
 10 at p. 127.) If it is determined either Ms. Swinford or Ms. Welch-Kitchen should have received a
 11 preliminary layoff notice or been bumped, Ms. Pait is far from the most senior employee facing a
 12 final layoff notice who is competent and credentialed to teach their assignments.⁷ As discussed
 13 *supra*, only the most senior teacher who is competent and credentialed to teach the assignments
 14 should not receive a final layoff notice as a result of a junior employee being retained.

15 5. Erin Vaughn (#678)

16 Ms. Vaughn (#678) holds a multiple subject teaching credential and supplementary
 17 authorizations in English and Social Science. She alleges she should bump four employees: Keira
 18 Malkus (#615), Jessica Kane (#442), Karla Sorensen (#439) and Jeremy Bucko (#417). These
 19 individuals did not receive preliminary layoff notices and teach in middle school assignments.
 20 They are each identified as susceptible to bumping by more than one Respondent.

21 Ms. Vaughn is not the most senior employee facing a final layoff notice who is competent
 22 and credentialed to bump the aforementioned employees. The accusation should be dismissed as
 23 to only the *most senior teacher* who is competent and credentialed to bump each employee who
 24 did not receive a preliminary notice.

25 6. Wendy Cavanaugh (#622)

26 Wendy Cavanaugh (#622) holds only a multiple subject teaching credential. She alleges

27 ⁷ The District issued a preliminary layoff notices to teachers in the elementary grades with hire dates back
 28 to 2001. It is likely the most senior multiple subject teacher to be prejudiced by the failure to issue a
 notice to a less senior individual would have a seniority number above 1100.

1 she should bump Lisa Marie Weyh (#605) and Monique Robertson (#571) because she can teach
 2 “their complete assignments” (RB at 17:1-6). Neither of these less senior employees received a
 3 preliminary layoff notice. As discussed *supra*, Ms. Weyh’s assignment includes a Journalism class
 4 that requires an English authorization. Ms. Cavanaugh does not possess an English authorization
 5 and is therefore not competent and credentialed to teach Ms. Weyh’s entire assignment. Similarly,
 6 Ms. Robertson’s assignment includes U.S. History and Geography, which requires a social science
 7 authorization that Ms. Cavanaugh does not possess. Ms. Cavanaugh is not competent and
 8 credentialed to take the entire assignment of either Ms. Weyh or Ms. Robertson and should receive
 9 a final layoff notice.

10 7. Ingrid Guntner (#604)

11 Ms. Guntner (#604) holds a single subject teaching credential in art. She alleges she
 12 should bump Allison Rockwood (#502), who also holds a single subject teaching credential in art
 13 and whose current assignment includes “Drawing & Painting 1-2” and “Ceramics 1-2.” However,
 14 Ms. Rockwood was skipped because of her AP training; her notice was rescinded during the
 15 hearing. (Tr. Vol. V, p. 82.) Ms. Guntner presented no evidence of AP training or any other basis
 16 for skipping; as a result, she cannot bump Ms. Rockwood and should receive a final layoff notice.

17 8. Olga Galaviz (#485)

18 Ms. Galaviz (#485) holds a multiple subject teaching credential, along with several Board
 19 Authorizations, including one in Mathematics K-8. She alleges she should bump Suzanne
 20 Hennessey (#474) because Ms. Hennessey’s current assignment consists of math classes, which
 21 Ms. Hennessey teaches with a multiple subject teaching credential and Board Authorization in
 22 Mathematics K-8. As discussed *supra*, the District has determined employees may not bump into
 23 the assignment of a less senior teacher solely on the basis of a Board Authorization, which expires
 24 at the end of the school year. Accordingly, Ms. Galaviz is not entitled to bump Ms. Hennessey.

25 9. Steven Hoffman (#153)

26 Mr. Hoffman (#153) holds a single subject teaching credential in business and a
 27 supplementary authorization in introductory mathematics. He alleges he should bump Marcos
 28 Rodriguez (#138), whose assignment includes Algebra 1-2(SS) and Pre-Calculus/Trigonometry at

1 Jordan High School. However, a supplementary authorization in introductory mathematics does
2 not allow him to teach trigonometry at the high school level. (*Administrator's Assignment Manual*
3 at p. C-3.)

4 Mr. Hoffman further alleges his Board Authorization in mathematics K-12 allows him to
5 bump into Mr. Rodriguez's complete assignment. Again, a current Board Authorization entitles an
6 employee to retain his or her assignment as to senior employees *without any current authorization*
7 to teach in the assignment, but does not entitle an employee to *bump* into an assignment he or she
8 is not credentialed to teach absent the Board Authorization. This standard was consistently
9 applied throughout the layoff process and explained in testimony. It is an objective and valid
10 exercise of the District's discretion and should be upheld. Therefore, Mr. Hoffman is not
11 competent and credentialed to bump into Mr. Rodriguez's complete assignment.

12 10. Darin O'Connell (#85)

13 Darin O'Connell (#85), who did not testify or produce any evidence at the hearing, now
14 asserts his duties as a physical education teacher include supervision of the male locker room, and
15 that if he is bumped by the individual identified by the District, Angelina Freligh (#2969), "no one
16 will be supervising the male locker room." There is absolutely no evidence that only a male P.E.
17 teacher can supervise the locker room at Avalon High School. Given the lack of any testimony at
18 hearing regarding the locker room, this claim is entirely speculative. The District will provide for
19 adequate staffing of the locker room at Avalon High School. Mr. O'Connell cannot retain his
20 position on the basis of such an unsupported argument.

21 11. Donna Dean (#1127)

22 Donna Dean (#1127) holds a multiple subject teaching credential and a life secondary
23 teaching credential in drama. She alleges she can bump the following employees: Mary Stewart
24 (#1109), Claudia Reasoner (#1072), Ana Laura Frausto (#1066), Demetra Papadopoulou (#909)
25 and Kristy Freund-Mcfeggan (#902). Ms. Dean fails to consider that each of these employees
26 holds additional teaching credentials that allow them to bump into another assignment; Ms. Dean
27 is not competent or credentialed to do so.

28 Ms. Stewart (#1109) and Ms. Reasoner (#1072) hold supplementary authorizations that

1 allow them to teach mathematics beyond a core assignment. They are each identified to bump into
2 another employee's position. (See Ex. 23 at pp. 1-2.) Respondent does not hold a supplementary
3 authorization in mathematics. Ms. Frausto (#1066) did receive a preliminary layoff notice. She
4 holds a supplementary authorization in social science and is competent and credentialed to bump
5 into the complete assignment of Michael Carroll (#391). Ms. Frausto's assignment is not available
6 for Ms. Dean to bump into, and Ms. Dean does not hold a social science authorization that would
7 allow her to bump a less senior employee.

8 Demetra Papadopoulou (#909) did not receive a preliminary layoff notice. She holds a
9 single subject credential in foreign language (French) that allows her to teach French. She is
10 bumping into the high school French assignment of Lidia Santana (#150; Ex. 23 at p. 1.) Ms.
11 Dean does not hold a foreign language credential and cannot displace Ms. Papadopoulou. Ms.
12 Freund-Mcfeggan (#902) holds a supplementary authorization in English that allows her to teach
13 English beyond a core assignment. Ms. Dean does not hold a supplementary authorization in
14 English and cannot displace Ms. Freund-Mcfeggan.

15 Ms. Dean is not credentialed and competent to take the complete assignment of any of the
16 individuals she identifies as less senior.

17 12. Valerie Munroe (#1094)

18 Valerie Munroe (#1094) holds only a multiple subject teaching credential. She alleges she
19 should bump Claudia Reasoner (#1072), Demetra Papadopoulou (#909) and Kristy Freund-
20 Mcfeggan (#902) because she can teach their complete assignments and each did not receive
21 preliminary layoff notices. Please refer to the discussion under section 11, *supra*, pertaining to
22 Donna Dean (#1127). The identical issues apply to Ms. Munroe's arguments.

23 13. Adrienne Doung (#943)

24 Adrienne Doung (#943) holds only a multiple subject teaching credential. Her current
25 assignment is TOSA (teacher on special assignment) Math Coach. Ms. Doung alleges she can
26 bump Toiya Smith (#940), Joy Fuller (#682), Kristy Freund-Mcfeggan (#902), Allison
27 Bestelmeyer (#845), Tiffany Brodowski (#700); Marsha Swinford (#652), Leanne Handy (#641),
28 Gene Ros (#618), Gerlynn Montiel (#482), and Heather Schaffer (#415).

1 Toiya Smith (#940) and Joy Fuller (#682) hold multiple subject teaching credentials. They
 2 are each currently assigned as “Program Facilitators,” a position that has a required application,
 3 interview, and selection process. Assistant Superintendent Ruth Ashley testified this position
 4 requires “special training and experience.” (Tr. Vol. VII at pp. 80-82.) The District’s job posting
 5 for the position (Ex. YYY) described the eligibility requirements for the position. Respondent
 6 Doung presented no evidence she ever applied, interviewed, or was selected for the position, or
 7 that she held the special training and experience necessary to serve in the position. Ms. Doung has
 8 no right to bump Ms. Smith or Ms. Fuller.

9 Ms. Doung also alleges she should bump Kristy Freund-Mcfeggan (#902), who holds a
 10 supplementary authorization in English that allows her to teach English. Respondent does not
 11 hold a supplementary authorization in English. Ms. Doung also alleges she should bump Allison
 12 Bestelmeyer (#845). However, Ms. Bestelmeyer is subject to layoff as she is being bumped by a
 13 more senior employee, Julio Sanchez (#1321). Mr. Sanchez (#1321) is senior to Ms. Doung; thus,
 14 Ms. Doung has no right to bump Ms. Bestelmeyer.

15 Ms. Doung further alleges she should bump Tiffany Brodowski (#700), Gerlynn Montiel
 16 (#482), and Heather Schaffer (#415) because they teach assignments based on Board
 17 Authorizations and she has the ability to obtain such an authorization. As discussed *supra*, a
 18 Board Authorization does *not* entitle an employee to bump into an assignment he or she is not
 19 credentialed to teach absent the Board Authorization. Accordingly, Ms. Doung is not competent
 20 and credentialed to bump into the assignments of Brodowski, Montiel, or Schaffer.

21 Ms. Doung alleges she should bump Marsha Swinford (#652), who holds a multiple
 22 subject teaching credential and whose current assignment includes kindergarten and preschool.
 23 Ms. Swinford works in a special education program (Ex. 9 at p. 127); she is not a respondent in
 24 this hearing and did not receive a final layoff notice. If it is determined a more senior employee
 25 can serve in Ms. Swinford’s assignment, the District will not issue a final notice to the most senior
 26 employee who is credentialed and competent to do so. However, Ms. Doung is not the most senior
 27 employee who might be able to serve in that assignment.

28 Ms. Doung alleges she should bump Leanne Handy (#641). Ms. Handy was on a leave of

1 absence for the 2009-2010 school year. She has since resigned her employment with the District.
2 Her position as a middle school teacher was not held by a substitute in her absence and is not being
3 filled for 2010-2001. Accordingly, Ms. Doung cannot bump into that position.

4 Ms. Doung alleges she should bump Gene Ros (#618), who teaches middle school
5 mathematics. Mr. Ros holds a current Board Authorization to teach math, which Ms. Doung does
6 not possess. Therefore, she cannot bump Mr. Ros from his position.

7 13. Alma Rios (#865)

8 Alma Rios (#865) only holds a multiple subject teaching credential with a BCLAD. Ms.
9 Rios, like other Respondents, alleges she can bump Monique Robertson (#571). However, Ms.
10 Robertson's assignment includes U.S. History and Geography, which requires a social science
11 authorization that Ms. Rios does not possess. Ms. Rios is not competent and credentialed to bump
12 into Ms. Robertson's complete assignment.

13 Respondent Rios further alleges she can bump Misrak Sykes (#161). Ms. Sykes is
14 currently assigned to the position of "Program Facilitator." As discussed *supra*, the Program
15 Facilitator position requires "special training and experience." Ms. Rios presented no evidence
16 she meets the eligibility requirements for this position. Accordingly, she has no right to bump Ms.
17 Sykes from her Program Facilitator assignment.

18 Ms. Rios alleges she can bump Susan Garate (#706) who possesses the same credentials as
19 Ms. Rios. Ms. Garate was not a respondent in this matter and did not receive a final layoff notice.
20 If it is determined Ms. Rios is the *most senior teacher* facing layoff who could teach the
21 assignment held by Ms. Garate, the District will not issue Ms. Rios a final layoff notice.

22 14. Shannon Brizendine (#710)

23 Shannon Brizendine (#710) holds a single subject teaching credential in Health Science.
24 She alleges she can bump Kristen Beckerdite (#577) or Eleanor Baltazar (#348). Both these
25 teachers hold a single subject teaching credential in Health Science. However, both Ms.
26 Beckerdite and Ms. Baltazar currently teach AVID and therefore were properly skipped; their
27 notices were rescinded by the District during the hearing.

28 Ms. Brizendine also alleges she should bump Carla Valdez (#151), who holds a single

1 subject teaching credential in Health Science and a Board Authorization in Science K-12. Ms.
2 Valdez's current assignment is at K-8 Gompers and includes Health/Science sections, thus she is
3 utilizing her Board Authorization in her assignment. Respondent Brizendine argues she has the
4 ability to obtain such an authorization. As noted *supra*, a current Board Authorization entitles an
5 employee to retain his or her assignment as to senior employees *without a current authorization* to
6 teach in the assignment. By contrast, a Board Authorization does *not* entitle an employee to bump
7 into an assignment he or she is not credentialed to teach absent the Board Authorization.
8 Respondent Brizendine is not currently credentialed to teach the Science portion of Ms. Valdez's
9 assignment and does not have the right to bump into the complete assignment.

10 14. Brandi Janda (#692)

11 Brandi Janda (#692) holds only a multiple subject teaching credential. She alleges she can
12 bump Ethel Smith (#480) because she is competent and credentialed to teach Ms. Smith's entire
13 assignment. Respondent Janda alleges that although Ms. Smith teaches Senior Chorus, that
14 assignment is beyond the scope of the normal school day, is "extracurricular," and should not be
15 considered when determining whether she is competent and credentialed for the entire assignment.
16 Ms. Janda's argument lacks merit. Respondents presented no evidence the Senior Chorus was not
17 a regular assigned class or that it was an extracurricular activity. Ms. Smith holds a supplementary
18 authorization in Music, a credential Ms. Janda does not possess. In teaching Senior Chorus, Ms.
19 Smith is utilizing her supplementary authorization in Music as part of her current assignment. Ms.
20 Janda is not competent and credentialed to bump into Ms. Smith's complete assignment.

21 15. Michele Early (#486)

22 Michele Early (#486) holds only a multiple subject teaching credential. She alleges she
23 can bump Gerlynn Montiel (#482), who also holds a multiple subject credential. However, Ms.
24 Montiel also has a current Board Authorization in Science K-12 and her current assignment at
25 Stanford Middle School includes all science classes. (Ex. 23 at p. 94.) Thus, she is utilizing her
26 Board Authorization for her entire assignment. Ms. Early does not possess a science credential
27 and does not even allege she can obtain a Board Authorization in science. She cannot bump into
28 Ms. Montiel's assignment.

1 16. Mireya Valenzuela (#470)

2 Mireya Valenzuela (#470) holds a multiple subject teaching credential and a supplementary
 3 authorization in English. She alleges she can bump the following employees: Bunthary Mok
 4 (#506), Erika Bolger (#493), Gerlynn Montiel (#482); Jessica Kane (#442), Karla Sorensen
 5 (#439); Michelle Green (#436); Joel Lovelace (#396), Fredrick Dizon (#395); and Joanne Park
 6 (#347).

7 Bunthary Mok (#506), Erika Bolger (#493) and Gerlynn Montiel (#482) are all permanent
 8 employees who are senior to Ms. Valenzuela. Respondent Valenzuela has no basis to bump more
 9 senior employees. Mr. Dixon (#395) and Ms. Park (#347) each hold a single subject teaching
 10 credential in Science: Biological Sciences. Their current assignments include only science courses
 11 that require a science authorization, which Ms. Valenzuela does not possess.

12 Respondent Valenzuela also alleges she should bump Jessica Kane (#442) and Karla
 13 Sorensen (#439), who each hold a single subject teaching credential in English. Their assignments
 14 require an English authorization. As discussed *supra*, they did not receive preliminary layoff
 15 notices. Even if it is determined that Jessica Kane (#442) and Karla Sorensen (#439) should have
 16 receive a preliminary layoff notice, Ms. Valenzuela (#470) is far from the most senior teacher
 17 competent and credentialed to teach their assignments. Only the most senior teacher who is
 18 competent and credentialed to teach in each such assignment should be retained.

19 17. Lisa Ware (previously #477, now #683W)

20 Lisa Ware (previously #477, now #683W) holds only a multiple subject teaching
 21 credential. She alleges she can bump Gene Ros (#618) and Heather Schaffer (#415) because their
 22 complete assignments are based on Board Authorizations in Mathematics K-8 and she has the
 23 ability to obtain such an authorization. As discussed *supra*, a Board Authorization does *not* entitle
 24 an employee to bump into an assignment he or she is not credentialed to teach absent the Board
 25 Authorization. Therefore, Ms. Ware is not competent and credentialed to bump into Mr. Ros's or
 26 Ms. Schaeffer's complete assignment.

27 Ms. Ware also alleges she should bump Kimberlie Smith (#405). However, Ms. Smith is
 28 subject to final layoff notice because she is being bumped by a more senior employee, Patricia

1 Brown (#1157), who is competent and credentialed to bump into her complete assignment. Ms.
 2 Brown is senior to Ms. Ware; accordingly, Ms. Ware cannot bump Ms. Smith.

3 18. Alexandria Moreland (#171)

4 Alexandria Moreland (#171) alleges she can bump Anne Maben (#31), Jolena Stephenson
 5 (#76), Doris Zelaya (#122) and Chelsea McCormick (#166). Each of these employees was skipped
 6 based on their AVID training or assignment, and their notices were rescinded by the District
 7 during the hearing. Respondent Moreland did not provide any evidence she met the criteria to be
 8 skipped based on AVID. Thus, she has no right to bump any of the aforementioned employees.

9 Respondents' individual arguments that they can bump other teachers, with very few
 10 exceptions, are unavailing. The District has acknowledged a handful of teachers should have
 11 received preliminary layoff notices, and will not issue final layoff notices to the most senior
 12 employee who is credentialed and competent to teach the entire assignment of each junior
 13 employee who was not issued a preliminary notice. A corresponding number of the most senior
 14 Respondents will be identified in the District's final closing brief.

15 **E. THE ADULT SCHOOL TEACHERS WERE PROPERLY NOTICED AND HAVE**
 16 **NO BUMPING RIGHTS.**

17 One teacher in the Long Beach School for Adults (LBSA), Greg Spooner (#544), testified
 18 twice at the hearing. (Tr. Vol. IV, pp. 381-388; Vol. VII, pp. 15-32.) While he provided
 19 compelling testimony about the adult education program, Mr. Spooner did not establish he was
 20 entitled to permanent status. Mr. Spooner also testified regarding other employees in the program,
 21 asserting that their contracts contained errors, and that some LBSA employees received permanent
 22 contracts, while others were repeatedly issued temporary contracts. Without any evidentiary
 23 support, these contentions cannot be credited with respect to these individuals.

24 Moreover, Mr. Spooner acknowledged his temporary contract was not issued on the basis
 25 of section 44929.25, relied on by Respondents. (RB at 28:11-22.) Rather, he was designated a
 26 temporary employee because his assignment was funded entirely through categorical money. (Tr.
 27 Vol. VII, pp. 16-17; Ex. 101.) Pursuant to section 44909, employees serving in categorically
 28 funded positions receive no credit toward permanent status, unless they are subsequently employed

1 in a probationary position. There was no indication Mr. Spooner was ever offered a probationary
2 position. Accordingly, despite his length of service in the District, Mr. Spooner is appropriately a
3 temporary employee. Even if categorically funded employees could be considered a probationary,
4 at most he would be entitled to the rights accruing to a first-year probationary employee, not a
5 permanent employee.

6 Respondents urge that Mr. Spooner and other LBSA teachers became permanent
7 employees because the District purportedly did not provide them with temporary contracts "during
8 at least one year of their employment." (RB at p. 29, citing *Kavanaugh v. West Sonoma County*
9 *Union High School District* (2003) 29 Cal.4th 911, 926.) However, the school year at issue, when
10 Mr. Spooner purportedly did not receive a contract, was 2003-2004. (RB at 29:19-20.) Mr.
11 Spooner acknowledged signing a temporary contract for every other year of his employment. (Tr.,
12 Vol. VII, pp. 28-29.)

13 The other LBSA teachers described by Respondents (Ryan De La Vega, Linda
14 Goonetilleke, and Robert Hofius; RB at pp. 29-31) did not testify; instead, Mr. Spooner offered
15 unsupported testimony that these other teachers were not offered written contracts for particular
16 school years. The only evidence submitted on their behalf was the temporary contracts they *did*
17 sign in 2000 or 2001. (Exs. 102, 103, 104.) Mr. Spooner's dubious testimony that other
18 individuals did not receive or sign contracts eight to ten years in the past cannot be credited.

19 In the absence of any evidence to the contrary, the presumption that public officers perform
20 their official duties properly and act in accordance with the law must control. (See Evid. Code §
21 664 ["It is presumed that official duty has been regularly performed"]; *Housing Authority v.*
22 *Forbes* (1942) 51 Cal.App.2d 1, 9 ["There is a presumption, well recognized by the cases, that
23 public officers will carry out their functions and exercise their powers in accordance with the
24 law."]; *Ellis Landing & Dock Co. v. Richmond* (1925) 70 Cal.App. 720, 723 ["It is to be presumed
25 that the council will do its duty and will not attempt to willfully violate the law"].)

26 Teachers' classification as temporary, probationary, or permanent is outside the jurisdiction
27 of a layoff hearing. The purpose of the layoff hearing to "determine if there is cause for not
28 reemploying [the employee] for the ensuing year." (§ 44949(b).) The ALJ makes "a

1 determination as to the sufficiency of the cause.” (*Ibid.*) Nothing in the layoff statutes suggests
2 jurisdiction in a layoff hearing encompasses determinations of employees’ *status*. Administrative
3 law judges in recent layoff hearings have similarly concluded the layoff hearing is not the proper
4 forum to decide that an employee is improperly classified as temporary. In *Alvord Unified School*
5 *District* (Cole 2009) OAH No. 2009030477, the ALJ noted:

6 The power to compel the district to reclassify categorically funded employees and
7 to reinstate them to employment if there was misclassification rests with the
8 Superior Court (e.g., *California Teachers Assn. v. Vallejo City Unified School Dist.*
(Vallejo) (2007) 149 Cal.App.4th 135).

9 Likewise, in *Fontana Unified School District* (Ahler 2009) OAH No. 2009020838, the ALJ
10 rejected the respondents’ argument that “categorically funded employees were actually
11 probationary employees, not temporary employees,” finding no jurisdiction to reclassify employees
12 in the layoff hearing.

13 Even if teachers’ classification could be considered properly within the jurisdiction of this
14 hearing, these teachers’ claims are so stale as to be time barred. The claims are made pursuant to
15 statutory rights; accordingly, a three-year statute of limitations period would apply if these claims
16 were raised in court. (Code Civ. Proc. § 338(a).) The ALJ in a teacher layoff proceeding has no
17 authority to change a teacher’s classification, much less resurrect a stale claim that would be barred
18 by statute in Superior Court.

19 Furthermore, these claims are moot in the context of this proceeding. It is undisputed that
20 each of these LBSA teachers received a preliminary notice of layoff and had the opportunity to
21 participate in the hearing. Accordingly, regardless of their classification, these teachers received
22 all of the benefits of sections 44949 and 44955, which are the *only* provisions at issue here.

23 Appropriately, none of these teachers argue they are entitled to bumping rights into the
24 District’s regular education program. Section 44929.26 precludes service in the adult education
25 program from being included in the attainment of permanent status in the regular day program. At
26 least two courts have appropriately held that adult school teachers do not have tenure or seniority
27 in regular school and cannot bump into it, and regular school teachers do not have tenure or
28 seniority in adult school and cannot bump into it. (*Rutherford v. Board of Trustees* (1976) 64

1 Cal.App.3d 167; *Kamin v. Governing Board* (1977) 72 Cal.App.3d 1014.)

2 Thus, regardless of their status, the District properly did not take the adult teachers into
3 account in its bump analysis and tie-breaking criteria of the regular school teachers. (See also
4 *Redlands Unified School District* (Matyszewski 2009) OAH No. 2009030497 [rejecting the
5 argument that adult school teachers have bumping rights into the district's regular program].)

6 The adult school teachers' claims to permanent status are not at issue. Regardless, they
7 each were properly noticed for layoff and have no rights to an assignment in the regular program.

8 **III.**

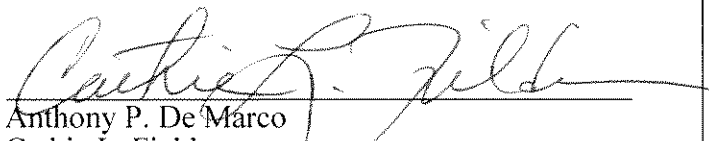
9 **CONCLUSION**

10 Respondents advance no viable legal authority in support of their arguments. The District
11 proceeded in good faith and met all jurisdictional and procedural requirements in this matter.
12 Every Respondent received adequate due process in the form of notice and the opportunity to be
13 heard. The District's criteria were duly adopted and applied and are not subject to challenge.

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

16
17 DATED: June 16, 2010

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

18
19 By: 
20 Anthony P. De Marco
21 Cathie L. Fields
22 Jabari A. Willis
23 Attorneys for LONG BEACH UNIFIED
24 SCHOOL DISTRICT
25
26
27
28