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**BEFORE THE GOVERNING BOARD OF THE  
LONG BEACH UNIFIED SCHOOL DISTRICT**

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11 In the Matter of the Accusation Against:

12           Certificated Employees,

13                           Respondents.

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] OAH No. 2011020278

] **CLOSING BRIEF OF CERTAIN  
RESPONDENTS**

] Hon. Vincent H. Nafarrete

] Hearing Dates: April 4, 5, 6, 7, & 11, 2011

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**I. INTRODUCTION**

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19           The Long Beach Unified School District (hereafter "District") maintains that due to the  
20 continuing economic uncertainty in this State and the resulting decrease in funding for public  
21 education, it must reduce its certificated workforce by roughly 773.50 full-time equivalent  
22 (hereafter "FTE") positions for the 2011-2012 school year. [District's Exhibit 1, p. 10.] Certain  
23 respondents concede that the determination by the District's Governing Board that it must reduce  
24 its certificated workforce by eliminating particular kinds of services is not subject to challenge  
25 through these proceedings. However, even if the District must reduce particular kinds of services,  
26 Education Code Sections 44949 and 44955 require that prior to their layoff certain respondents be  
27 afforded due process, which requires notice and a *meaningful* opportunity to challenge whether  
28 cause exists for their layoff. As discussed below, the manner in which the District constructed this

1 reduction in force calls into question whether it provided the requisite due process.

## 3 II. ARGUMENT

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5 It is undisputed that the District served preliminary layoff notices on more certificated  
6 employees than necessary to fulfill the FTE reduction in the Governing Board's resolution. As  
7 stated above, that resolution calls for the elimination of 773.50 FTE positions following the end of  
8 the 2010-2011 school year. Despite needing to eliminate 773.50 FTE positions, the District served  
9 roughly 1200 certificated employees with preliminary layoff notices. As the District cannot lay off  
10 more certificated employees than what is stated in the Governing Board's resolution, that means  
11 somewhere around 425 certificated employees who received preliminary layoff notices cannot  
12 receive final layoff notices. 425 is a staggering number in that it represents roughly 35% of all of  
13 the certificated employees who received a preliminary layoff notice. Although from the outset it  
14 was evident that the District engaged in excessive over-noticing, it never articulated which  
15 certificated employees received so-called "precautionary" notices and which did not until the first  
16 day of the hearing. To further complicate matters, the District also failed to articulate why  
17 particular certificated employees received "precautionary" notices and why others did not until the  
18 first day of the hearing.

19 At the first day of the hearing, the District finally identified with certainty which certificated  
20 employees it actually intended to lay off and which it wished to retain (although, it never clearly  
21 articulated why certain employees would be retained) by introducing Exhibit 10, which is the first  
22 version of the Bumping Chart. According to the testimony of Ruth Ashley, all respondents  
23 identified on Exhibit 10 as being unable to bump other employees would receive a final layoff  
24 notice. All other respondents would not. The result of the District's over-noticing coupled with its  
25 "hiding the ball" until the hearing started was that it prevented certain respondents from identifying  
26 all of the junior employees that they could potentially "bump" pursuant to the reassignment  
27 provisions of Education Code Section 44955. For example, the seniority list only distinguishes  
28 between employees who received a preliminary layoff notice and those who did not. It does not

1 identify which individuals received “precautionary” layoff notices. The District’s failure to make  
2 this critical distinction evident on its seniority list deprived certain respondents of an accurate  
3 picture of which junior employees they could bump and which they could not until the hearing  
4 started.

5 During the course of the hearing, certain respondents presented testimony as to junior  
6 employees they believed they should be able to bump. As a result of some of this testimony, the  
7 District realized that Exhibit 10 was inaccurate because some respondents who should not receive  
8 final notice were identified as receiving final notice. However, rather than dismiss the Accusations  
9 as to these respondents, the District simply replaced them with individuals from the pool of 425  
10 “precautionary” respondents. Due to these replacements, on the last day of the hearing Ruth Ashley  
11 testified as to the “corrections” the District made to its Bumping Chart and introduced an amended  
12 Bumping Chart as Exhibit 22.

13 As it stands, the District seeks to issue final layoff notices to the respondents identified in  
14 Exhibit 22 as being unable to bump any junior employees. However, the District identified these  
15 individuals under the assumption that the Administrative Law Judge would uphold all of its  
16 skipping and bumping criteria. At the hearing, a number of respondents made arguments  
17 challenging these criteria.<sup>1</sup> Should the Administrative Law Judge hold any of these criteria invalid,  
18 a number of individuals identified in Exhibit 22 should not receive a final layoff notice. The  
19 correct action by the District would be to dismiss the Accusations as to these respondents.  
20 However, based on the District’s conduct thus far, attorneys for certain respondents believe that  
21 rather than dismissing these Accusations, the District will again amend its Bumping Chart to  
22 “correct” any errors. However, any further modification to the Bumping Chart at this point in time  
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24 <sup>1</sup> Because the District over-noticed to the extent that it did, attorneys for certain  
25 respondents represent respondents on both sides of numerous issues (e.g.  
26 respondents who are being skipped based on their current AVID assignment and  
27 respondents who seek to bump into AVID assignments but do not meet the  
28 District’s bumping criteria) and cannot make argument for either side. However,  
attorneys for certain respondents request that the Administrative Law Judge  
consider all arguments that certain respondents made and rule in accordance with  
the Education Code.

1 to "substitute in" any respondents from the pool of 425 "precautionary" respondents is  
2 inappropriate because "precautionary" respondents were not previously identified as individuals  
3 receiving final notice and therefore not permitted to present argument at the hearing. To subject  
4 any respondent to layoff without first affording him or her the opportunity to present argument is an  
5 impermissible violation of their right to due process and would be in violation of the requirements  
6 of Education Code Sections 44949 and 44955. Therefore, certain respondents request that, in the  
7 event the Administrative Law Judge issues a proposed decision that holds any of the District's  
8 skipping or bumping criteria invalid such that it would affect the Bumping Chart, he also order that  
9 the District be precluded from issuing final layoff notices to any respondents *not* previously  
10 identified as receiving final layoff notices on either Exhibit 10 or Exhibit 22.

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12 **III. CONCLUSION**  
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14 Although individuals with "precautionary" layoff notices will ultimately not be laid off, the  
15 District was never clear in identifying which of the 1200 certificated employees who received  
16 preliminary layoff notices would not receive final layoff notice. Certain respondents cannot do  
17 enough to highlight the stress and anxiety that comes with receiving a preliminary layoff notice,  
18 especially when the District is not forthcoming with how it ultimately intends to issue final layoff  
19 notices. A school district may assert that over-noticing is necessary in reduction in force  
20 proceedings to allow for a "cushion" in the event that any mistakes are identified. Although the  
21 District is asserting that layoffs are necessary because of the State's dire financial situation, these  
22 dire circumstances come as no surprise to the District. As a result, it knew these layoffs would be  
23 necessary and should have taken the proper steps to identify with more particularity exactly which  
24 individuals to whom it would need to issue final layoff notices. To require a 35% cushion suggests  
25 that the District did not put forth the requisite time and effort to make these determinations.

26 Consequently, it would be improper to reward the District by allowing it to substitute in and out

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1 respondents from the "precautionary" pool, especially when the hearing is over and the record  
2 closed.

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4 DATED: April 27, 2011

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By:   
KENT MORIZAWA  
Attorneys for Certain Respondents

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1 **PROOF OF SERVICE**  
2 (Code Civ. Proc. § 1013a(3))

3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of 18 and  
5 not a party of the within action; my business address is 2670 North Main Street, Suite 300, Santa  
6 Ana, CA 92705.

7 On April 27, 2011, I served the document described as **CLOSING BRIEF OF CERTAIN  
8 RESPONDENTS** on the interested parties in this action by placing a true copy thereof enclosed in  
9 a sealed envelope addressed as follows:

10 Anthony P. De Marco, Esq.  
11 Atkinson, Andelson, Loya, Ruud & Romo  
12 12800 Center Court Dr Ste 300  
13 Cerritos, CA 90703  
14 Telephone: (562) 653-3200  
15 Facsimile: (562) 653-3333  
16 E-mail: [ADeMarco@aalrr.com](mailto:ADeMarco@aalrr.com)

17  **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope  
18 was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice  
19 of collection and processing correspondence for mailing. It is deposited with the U.S. postal  
20 service on that same day in the ordinary course of business. I am aware that on motion of  
21 party served, service is presumed invalid if postal cancellation date or postage meter date is  
22 more than one day after date of deposit for mailing an affidavit.

23  **BY OVERNIGHT COURIER:** I sent such document(s) on the above date, by overnight  
24 delivery with postage thereon fully prepaid at Santa Ana, California.

25  **BY FAX:** I sent such document by use of facsimile machine telephone number (714) 834-  
26 0762. The facsimile cover sheet and confirmation are attached hereto indicating the  
27 recipient's facsimile number and time of transmission pursuant to California Rules of Court  
28 Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule  
2003(3) and no error was reported by the machine.

**BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused  
said envelope to be delivered by hand to the above addressee.

**BY EMAIL:** I caused to be sent such document by use of email to the email addressee  
above. Such document was scanned and emailed to such recipient.

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on April 27, 2011, at Santa Ana, California.



Rita A. Pollard