

**MASTER COMPILATION  
2010-2011 ADMINISTRATIVE LAW JUDGE LAYOFF DECISIONS SUMMARIES**

**I. PROCEDURAL ISSUES**

**A. Failure To Request Hearing Or File Notice Of Defense**

1. Where two respondents failed to timely request a hearing but filed a “supplemental notice of defense” through counsel, and district objected to and moved to strike notice of defense at pre-hearing conference, ALJ ordered, on due process grounds, that both teachers be permitted to participate in the layoff hearing. San Juan Unified (Vorters).
2. District objected to proceeding with the one respondent hearing because respondent had not filed a notice of defense. Respondent explained she was unclear and unsuccessfully sought help from her Association. District acknowledged it had not been prejudiced by failure to file notice of defense and was aware of the issues and ready to proceed. The motion to disallow respondent’s participation was denied “in the interest of fairness and because there was not prejudice to the district.” Government Code section 11506, subdivision (c) relied upon. North Monterey County Unified (M. Anderson).
3. Employees who, subsequent to filing a request for hearing, failed to file a notice of defense, were barred from participating in the layoff hearing. Galt (Engemen)
4. Administrative Law Judge continued layoff hearing where attorney initially filed global representation notice that included a teacher that subsequently did not retain attorney. Attorney unsuccessfully attempted to contact teacher prior to initial hearing. Because attorney did not represent teacher, the attorney’s request for hearing on teacher’s behalf was not valid. Compton Unified (Lahr)

**B. Motivation For Reducing Services**

1. Employee asserted Board’s decision to reduce 3.0 FTE Kindergarten-8<sup>th</sup> Grade Teaching Services (classroom teachers) was “arbitrary and capricious” because it was beyond the recommendations of the “District Budget Committee” (recommended elimination of only “one” classroom teaching position), and the Superintendent (recommendation contemplated elimination of only 3.0 total certificated teaching positions). ALJ held argument not persuasive, Board has no obligation to adopt recommendation of “District Budget Committee,” and Superintendent actually recommended elimination of “at least” 3.0 FTE certificated positions. Colfax ESD (Sarli)

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. Folsom Cordova (Vorters)

**C. Service**

1. Service of initial layoff notices deemed completed upon delivery to the post office. Moreno Valley Unified (Hewitt)
2. District erred in not issuing a preliminary notice. Remedy was to rescind the preliminary notice served upon the most senior respondent holding a single subject home economic credential. Fresno Unified (Brandt)

**D. Estoppel**

1. Certificated employees are not estopped to seek redress under the Education Code, contracts notwithstanding; although district sent verification information to employees by first-class mail and asked employees to inform human resources of any errors, there was no evidence respondents acquiesced in district's final determinations or desired for district to act on what respondents believed to be incorrect personnel data; due process afforded respondents a right to be heard and their evidence to be considered as to seniority date and status issues. San Juan Unified (Vorters).
2. District not estopped from changing an employee's seniority date where employee is unable to meet all 5 elements of equitable estoppel. Hollister (Anderson)
3. Estoppel should not be invoked against the government when it would cause harm to a specific public policy or the public interest. [Shoban v. Board of Trustees of the Desert Center Unified School District (1969) 276 Cal.App.2d 534; Fliece v. Chualar Union Elementary School District (1988) 206 Cal App.3d 886, 893]. Education Code 44956.5 provides that employees do not gain time for seniority purposes when they work in an administrative position that is not located at a school site. To apply equitable estoppel would defeat the statutory scheme created by the Legislature and grant the employee with greater rights than other employees. Hollister (Anderson)
4. Employee with prior service who was told she did not need to attend a new hire orientation was not permitted to claim the early seniority date under a theory of estoppel. ALJ concluded the District had no knowledge of an impending layoff when they permitted the employee to miss the orientation. Galt (Engemen)

5. Employer under no duty to advise special education staff that additional credentials will be required for new positions expected to open. Therefore, employer not estopped to issue layoff notices. Riverside COE (Cole)
6. Categorically funded teachers apparently treated, without discussion, as though they were entitled to a layoff notice and hearing. No explanation as to why the employer gave those initial notices. Grossmont Union High (Ahler)
7. Nonreelected teacher was also inadvertently given a layoff notice. Held: No right to participate in the layoff hearing. Alvord Unified (Cole)
8. The “comparable setting” element of the tie-breaking criteria was litigated by the same parties in the Spring of 2009. Collateral estoppel, or issue preclusion, prevents relitigation of legal or factual issues actually argued and decided in a prior proceeding. (*Castillo v. City of Los Angeles* (1982) 92 Cal.App.4<sup>th</sup> 477) Res judicata and its subcategory collateral estoppel are viable affirmative defenses in an administrative hearing. (*People v. Sims* (1982) 32 Cal.3d 468) The Supreme Court held that “collateral estoppel may be applied to decisions made by administrative agencies when an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have an adequate opportunity to litigate.” (*Sims* at p. 479) Rocklin (Engeman)
9. District successfully argued the doctrine of collateral estoppel prevented teacher from re-litigating the challenge to her seniority date. Teacher made same argument during last year’s layoff hearing, based on the same evidence, which was rejected by the ALJ. An administrative decision can have preclusive effect in subsequent litigation. (*People v. Sims* (1982) 32 Cal.3d 468, 479.) A claim or issue raised in the present action must be identical to a claim or issue litigated in a prior proceeding; the prior proceeding must have resulted in a final judgment on the merits; and the party against whom the doctrine is being asserted must have been a party or in privity with a party to the prior proceeding. (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253.) Pasadena Unified (Sawyer)
10. District unsuccessfully asserted doctrines of laches and equitable estoppel. In November 2010 the District notified teachers in writing of the district’s records regarding employment history with the district and allowed teachers to confirm or challenge accuracy of that information. At hearing, two teachers contended they were entitled to retroactive seniority. The ALJ determined the district did not establish the teachers should be estopped from asserting a different seniority date. According to the ALJ, it was not established that the teachers intended their lack of response to the district’s November 2010 verification be relied upon by the district as an agreement that the stated information was correct, or that the district was ignorant of the true facts. The ALJ determined that it was not

established that the district was prejudiced or harmed in presenting its case, or in responding to the testimony of either teacher, simply because they failed to respond to the November 2010 verification letter, or failed to assert a different seniority date before the hearing. The ALJ also determined laches did not apply and the district did not establish the teachers unreasonably delayed in presenting their seniority dates in relationship to the layoff hearing. The November 2010 letter did not indicate layoffs were a certainty. The district did not request the seniority information after the teachers received their preliminary layoff notices and before the hearing. Pasadena Unified (Sawyer)

11. Respondent had been misclassified as a permanent employee when she was actually a probationary employee in her second year. Courts have refused to apply the doctrine of equitable estoppel in teacher tenure cases where the application would contravene statutory limitations. Granting permanents status to Respondent when she did not work at least 75% of the school year would contravene the statutory limitations of section 44918 and would impermissibly enlarge the District's authority under 44918. Fillmore Unified (Reyes)
12. District argued that because same proposed skips were proposed and litigated in past administrative hearing and upheld by ALJs, that arguments against these skips were barred by collateral estoppel. Collateral estoppel not analyzed and not imposed, as skips were determined to be appropriate and no persuasive argument from Respondents against the skips. Orange County DOE (Juarez)

#### **E. Jurisdiction**

1. Respondents assert an adult education teacher was improperly classified as a temporary and released. Respondents argue that because she was improperly released, she must retain her position and the most senior respondent cannot bump her. However, since the released adult education teacher is not a respondent, there is no jurisdiction to address that teacher's classification or release. Hamilton Unified (D. Benjamin).
2. Respondents argued school district was not permitted to classify laid off probationary and permanent teachers as temporary where such teachers served in categorically funded programs. Respondents argued the district's actions improperly prevented teachers from extending their reemployment periods. The ALJ determined he lacked jurisdiction to adjudicate issues regarding the operation of the categorical programs or the teachers' reemployment rights. Capistrano Unified (Juárez)
3. ALJ determined she lacked jurisdiction to require the district to contravene superior court judgment that precluded the layoff of the certificated staff members at specified schools where such layoffs would deprive students

of their constitutional right to a fair education. Arguments regarding the application of Education Code section 44955(d)(2), in relation to the skipping of teachers at the specified schools and its effects on teacher seniority rights, were addressed by the superior court and the ALJ declined to address any arguments regarding the propriety of the superior court's Judgment. Los Angeles Unified (Cabos-Owen)

4. Teacher unsuccessfully argued that he cannot be laid off because of the protections afforded to him as a U.S. Army veteran by the federal Veterans' Preference Act of 1944. Teacher did not establish that the Act bars his layoff from employment under Education Code sections 44949 and 44955. Long Beach Unified (Nafarrete)
5. Respondents argue that the District should eliminate the extra sixth period that some of the Respondents and combine the extra FTE portions to develop the equivalent of at least 1 FTE. The District argued that these periods are offered on an as-needed basis and may be terminated at any time pursuant to section 44923, thus making them not subject to jurisdiction of layoff hearings. Bassett Unified (Juarez)

**F. Existence And/Or Sufficiency Of Resolution And/Or Notices**

1. Where the District faced a budget shortfall for the 2011-12 school year and expected a decrease in revenue due to competition from a recently opened charter school, employee notices of lay-off that the employees services would be terminated due to reductions in PKS, was sufficiently detailed to provide the employees due process because it indicated a statutory basis for the layoff. Willows (Frink)
2. Where board resolution and notices described the services to be reduced as various multiple subject teaching positions, they were deemed to have adequately described the particular kinds of services to be reduced. Willows (Frink)
3. Where the District faced a budget shortfall for the 2011-12 school year and expected a decrease in revenue due to competition from a recently opened charter school it was held that this basis relates solely to the welfare of the District's schools and pupils within the meaning of Ed. Code section 44949. Willows (Frink)
4. Services identified as multiple subject teaching positions are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 44955. Willows (Frink)
5. The preliminary notice issued to a certificated employee is jurisdictional. Hamilton (Benjamin)

## G. Notice

1. At hearing, Superintendent sought to discontinue an additional 3.0 FTE of services that were not listed in the PKS resolution, and would recommend the additional discontinuances to the Board before May 15. ALJ concluded the additional 3.0 FTE of services to be added at hearing for reduction were “not required to be” referenced in the PKS resolution” adopted by the Board in March. Although Boards “typically adopt a PKS resolution in March, they are not required to do so.” The employees effected by the additional 3.0 FTE of services had been properly notified by March 15. ALJ concluded May 15 notice may be given to the 3.0 FTE employees. Dos Palos-Oro Loma JUSD (Owyang)
2. Resolution allowed reduction of .33 FTE for the PKS. However, March 10 notice to respondent reduced her FTE by only .17, not .33 FTE. Rejected district’s attempt to reduce respondent by .33 FTE since prior notice is jurisdictional. Hamilton Unified (D. Benjamin).
3. Notices sent to respondents indicated the statutory basis for the reduction of services, and therefore, were sufficiently detailed to provide the respondents due process. Merced COE (MCOE)
4. District erred in not issuing a preliminary notice. Remedy was to rescind the preliminary notice served upon the most senior respondent holding a single subject home economic credential. Fresno Unified (Brandt)
5. Temporary teachers whose rights “may be affected” by the layoffs were served with precautionary notices but do not possess the rights afforded to permanent and probationary employees under 44949 and 44955. Overnoticing is not arbitrary or capricious. Charter Oak Unified (Agopian)
6. Teachers unsuccessfully argued their preliminary layoff notices should be rescinded where such notices were received after March 15 or not received. District demonstrated the preliminary layoff notices were timely deposited in the US mail, certified with return receipt requested, addressed to the teachers’ addresses of records. Pomona Unified (Sawyer)
7. District failed to properly serve preliminary layoff notice to teacher and therefore the accusation against her was dismissed for lack of jurisdiction. Although the district had timely deposited her preliminary notice in US certified mail, with the proper street address and city, the district omitted her apartment number. The ALJ determined the failure to correctly address a preliminary layoff notice was not a non-substantive procedural error pursuant to Education Code section 44949(c)(3). Pomona Unified (Sawyer)

8. Teacher successfully argued that he was improperly noticed for layoff. District administrator testified the district “missed” any attempt to analyze whether teacher could bump any other more junior employee. Teacher demonstrated he meet the district’s resolution that determined if a senior teacher is credentialed and competency to render the entire service currently being performed by a junior teacher. San Gabriel Unified (Rosenman)
9. Respondent unsuccessfully filed a two-part motion to dismiss based on the number of layoff notices issued by the district. First, respondent unsuccessfully argued the district improperly sent 52 notices because the board resolution reduced services by 338 F.T.E. and the district sent out layoff notices to 390 employees. ALJ rejected this argument based on the term “corresponding percentage” in section 44955, which related to the number of teachers actually performing the particular kinds of services that are to be reduced or eliminated. For example, a 1.0 FTE of English may require the noticing of 4 teachers that combine to teach the 1.0 FTE. Second, the ALJ rejected respondent’s argument that “precautionary notices” were not permitted under the Education Code. The ALJ determined nothing in the Education Code prohibits the common practice of giving of precautionary notices and such notices do not impair the due process rights of teachers receiving these notices. Inglewood Unified (Dash)
10. District failed to properly serve preliminary notice of layoff to Respondent at his last known address. As notice was defective, he could not be laid off. Orange County DOE (Juarez)
11. Respondents made a motion to dismiss accusations against all respondents based on the contention that the Education Code does not provide for precautionary notices and therefore the entire layoff proceeding is not authorized by law. Respondents’ contention is not supported by law or fact and motion was denied. There is authority to over-notice by sending precautionary notices. Los Angeles COE (Rosenman)

## **H. Miscellaneous**

1. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565); stipulation to withdraw accusation against an employee is binding on the parties. Fortuna (P. Johnson).
2. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity have been regularly performed; respondents offered no evidence to rebut the presumption that the district properly performed actions related to the layoff procedures. Fortuna (P. Johnson).

3. Defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay (*California School Employees Association v. Tustin Unified School District* (2007) 148 Cal.App.4th 510, 521); district's affirmative defense of laches based on teachers' failure to object during verification process was not supported by the evidence, where there was no unreasonable delay and employees timely requested a hearing at which to present their evidence. San Juan Unified (Vorters).
4. Administrators are not afforded the same protections as teachers in economic layoffs; administrators whose assignments are being eliminated retain their tenure as classroom teachers and have the right to bump into non-administrative positions provided they have the appropriate credential, competence, and seniority (*Tucker v. Roach* (1985) 163 Cal.App.3d 1051, 1053). San Juan Unified (Vorters).
5. Remedy regarding improper decisions to skip was direction to the district to take necessary steps to identify the most senior teachers who were prejudiced and the district may not lay off those teachers, citing *Alexander* (1983) 139 Cal.App.3d at 576. Gilroy Unified (Crowell).
6. Rejected argument that the layoff is not related to the welfare of the schools and the pupils thereof because the reduction proposed would be detrimental to the district. "It is true that service reductions will likely be detrimental to the students in the District, but the District is required to operate in a fiscally sound manner. Without fiscal integrity, the District cannot adequately serve its schools or its pupils. In circumstances such as these, where a District is facing a multi-million dollar loss of funding, and in the absence of proof that the District acted in an arbitrary or capricious manner, it is necessarily concluded that the service reductions are related to the welfare of the schools and pupils." Gilroy Unified (Crowell).
7. In the absence of evidence or argument that temporary employees were improperly classified under applicable law, claim that District reneged on a commitment to classify temporary employees as probationary was beyond scope of layoff proceeding. Patterson (Frink)

## **II. REDUCTIONS OR DISCONTINUANCES IN SERVICES NOT ALLOWED**

### **A. Services Not Particular Or Not Sufficiently Specific**

1. Held that where a layoff resolution does not address or otherwise authorize a reduction in the number of certificated employees of the District due to a decline in average daily attendance, it may not be used as a basis for employee layoff. Willows (Frink)
2. Resolution described "Opportunities" teachers generally, and is not a specific description. District adequately described services at alternative

high school program, but failed to provide Respondent with notice that she was subject to layoff for health courses taught at continuation high school. Fullerton Joint Union High (Harman)

3. Evidence established that Respondent was the Small Learning Communities (SLC) Coordinator, not the SLC lead teacher as the District sought to reduce. Respondent has coordinating responsibilities and is not the lead teacher and does not fit the description of the PKS seeks to reduce. The District argued the description was a nonsubstantive procedural error that should be affirmed. However, the error here was prejudicial toward Respondent. Respondent should be retained. Bassett Unified (Juarez)

#### **B. Miscellaneous Reductions Or Discontinuances Disallowed**

1. Where the number of FTE employees given preliminary notice of layoff exceeded the number of FTE needed to fulfill the layoff resolution, ALJ orders the district to identify the most senior extra employees noticed and issue rescission notices. Sacramento City (Frink)
2. District, in its layoff analysis, rounded up or down the FTE of individual teachers to be laid off to ensure that only full-time staff would be retained at the high school. ALJ held that while the Board may reasonably over-notice with preliminary notices to ensure that, after bumping and skipping, the designated reductions can take place, the ultimate reduction in force must not be higher than the number of FTEs authorized by the Resolution. Stockton (Sarli)
3. District was not permitted to eliminate 1.0 FTE when authorized to eliminate 0.9 FTE even though District argued it would be impractical for an elementary school teacher to hold 10% of a position, which is not easily divisible. The District testified that it would result in an absurd situation detrimental to the welfare of the students because Respondent would teach only about 1 day every 2 weeks. District cannot exceed the number of FTE positions authorized to be reduced in effectuating the layoff. Respondent must be allowed to retain 0.1 FTE. Mountain View (Sawyer)

### **III. REDUCTIONS OR DISCONTINUANCES IN SERVICES ALLOWED**

#### **A. Services Described With Sufficient Specificity**

1. Courts have allowed school districts significant leeway in describing the particular kinds of services identified for reduction. (See, e.g., *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627) Although the designation, “visual and performing arts,” included more than one credential area in its scope it is not overly broad or unreasonable. Elk Grove (Brandt)

2. Respondents argue that “elementary K-8 multiple subject classroom teachers” was not a PKS within the meaning of 44955. They argue that “elementary” does not encompass middle school teachers and that the District created “illogical” and “confusing” nomenclature by not distinguishing between elementary and middle school teachers. There was no evidence that the wording confused Respondents in any way. Bassett Unified (Juarez)
3. There was insufficient evidence to show that Respondent should be retained for her partial assignment in AVID where the District proposed to reduce her 1.0 FTE English. The seniority list identifies her assignment as only English and she did not testify, so it could not be determined by a preponderance of the evidence that she has a partial assignment in AVID and that AVID as she teaches it, does not constitute an English class. Bassett Unified (Juarez)

**B. Services Reduced Or Performed In A Different Manner**

1. Held that a governing board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another capacity, citing *Gallup v. Board of Trustees* (1996) 41 Cal.App.4<sup>th</sup> 1571. Willows (Frink)
2. Held that a school board may reduce services within the meaning of the statute either by determining that a certain of services shall not be performed at all or by reducing the number of District employees who perform such services, citing *Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167. Willows (Frink)
3. A school board’s decision to reduce or discontinue a particular kind of service “is not tied in with any statistical computation, such as a reduction in the number of students,” and it is within the school board’s “discretion to determine the amount by which it will reduce a particular service.” (quoting *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627) Twin Rivers (Woollard)
4. A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all, or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167) Twin Rivers (Woollard)
5. The anticipation of receiving less money from the state for the next school year is an appropriate basis for reduction in services under Education Code section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, the reduction of particular kinds of services is authorized under that section, and, “in fact, when adverse financial

circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” Rocklin (Engeman)

**C. Services Reduced Or Performed In A Different Manner - Nursing Services**

1. Respondents contend that reduction in credentialed school nurses would prevent District from being able to provide federal and state mandated services to students. District believes that Education Code does not mandate that all health services be performed by a certified school nurse employed by the District. Districts have the discretion to determine how and in what manner services are to be provided. Evidence did not establish that the District would not be able to provide all legally mandated health care services to students. Santa Monica-Malibu Unified (Cohen)

**D. Services Reduced Or Performed In A Different Manner - Other Services**

1. The District’s only female junior high school PE teacher contended it would be inappropriate for a male teacher to supervise the girls’ locker room. District will provide appropriate supervision by other means. Farmersville (Lew)

**E. Services Not Mandatory**

1. Nursing services are not mandated. Colton Joint Unified (Hewitt)

**F. Mandated Services Not Being Discontinued**

1. District-s proposed reduction of one FTE in Departmentalized Mathematics Instruction would have left a Single Math instructor to teach approximately 320 students. Proposed reassignment of retained Multiple Subject teachers was evidence that services of the one FTE Mathematics teacher were not being reduced. Reduction of one FTE teaching position in Departmentalized English and Social Studies instruction would leave 168 students for one teacher. District acknowledged that one teacher could not teach two subjects to 168 students and could not explain how services would be provided to these students after the reduction of one FTE. This indicated that district was not actually reducing English/Social Studies instruction by one FTE. Orland Unified (Engerman)
2. The district properly noticed school nurses for layoff. The district demonstrated that it employs other health care professionals, such as 400 health care assistants who, under the supervision of nurses or physicians, can provide a number of interventions such as catheterization, gastric tube feeding, suctioning and other services that require medically-related training. (Ed. Code § 44923.5.) Furthermore, the five physicians currently

employed by the district may serve in a variety of roles including supervision of practitioners and other health care assistants. The district established that it will be able to provide all of the mandated services after the reduction in the number of nurses. The provisions creating mandates for health services (e.g., Ed. Code, §§ 49452 (sight and hearing assessments); 49455 (vision appraisal on enrollment and every third year until eighth grade); and 49452.5 (scoliosis screening for seventh grade girls and eighth grade boys) do not require that the mandated services be provided exclusively by certificated nurses, and respondents did not cite any provision of law that mandates employment of nurses for these services or that the delegation of duties would result in services falling below the mandated levels. Los Angeles Unified (Cabos-Owen)

**G. Services Not Reduced Below The Level Required By Law**

1. Respondent provided no competent evidence that district miscalculated the number of special resource teachers that would be required to teach special education classes for the coming school year; respondent offered no competent evidence regarding the precise number of special education students who would enroll as incoming freshmen, and superintendent positively asserted that should district find the number of incoming freshmen caused special education classes to approach statutorily prescribed class sizes, laid off resource teachers would be implored to return. Fortuna (P. Johnson).

**H. Librarian Services**

1. District was not prevented from laying off librarians where the result would be one librarian to serve the district's 18 school sites. The governing board is allowed the discretion to decide whether to reduce or eliminate librarian services. Anaheim Unified (Juárez)
2. Respondent, a Naval science instructor, who teaches in the NJROTC program unsuccessfully argued that he could not be laid off because of the number of cadets. He presented a copy of portions of a Unit Inspection Report which references a contract, with the host school, referring to the requirement for a second instructor and recommending that Respondent be retained. The ALJ held that a school district may not reduce services below any statutorily mandated level but this restriction, however, does not apply to a contract, which was not offered in evidence at the hearing. Centinela Valley Union High (Rosenman)

**I. Reductions Upheld Despite Contentions That Services Were Not Actually Being Reduced**

1. Community day school did not have a student at the beginning of the school year but now has one student. District historically maintained a

community day school and has a teacher who is presently assigned and providing those services. District intends to eliminate the community day school. That community day school instructor bumped a continuation school instructor who contests the bump. ALJ rejected the argument that there has not been a reduction in the community day school and rejected the argument that bumping the community day school teacher is not competent to fulfill the demands of teaching 20 or 21 students in the continuation school. “Competency” is not a question of relative work performance, the superintendent determined the community day school teacher was competent to teach at the continuation school, and the evidence failed to establish the determination was wrong. Hamilton Unified (D. Benjamin).

**J. Miscellaneous**

1. Respondent with a 0.4 FTE assignment teaching chemistry, a physical science, was properly noticed when the Board’s resolution eliminated 0.4 FTE in Physical Science. Healdsburg (Crowell).
2. The wisdoms of the board’s decision to reduce service is not a proper challenge to the validity of the layoff proceeding. San Carlos (Crowell)
3. Where the district’s evidence showed that the district projected a \$9,000,000 surplus at the end of the *next* fiscal year, but also projected a \$120,000,000 shortfall for the end of the *present* school year, and thus the beginning of the upcoming school year, the district established that the board’s decision to reduce services was neither arbitrary nor capricious. It was a reasonable exercise of the board’s discretion to reserve \$9,000,000 out of a \$1.1 billion budget to address certain financial risks, rather than to decrease the number of certificated staff to be laid off. San Diego Unified (Cole)
4. Respondents working in categorically funded programs were deemed temporary employees. The district was therefore permitted to dismiss them in the manner allowed by law regarding temporary employees. Cajon Valley Union (Johnson)
5. District’s decision to reduce (13.0 FTE) particular kinds of services was necessary to decrease the number of certificated employees, was not arbitrary or capricious, constituted proper exercise of discretion and was legal within the meaning of Education Code section 44955. Rim of the World Unified (Cole)
6. District’s decision to reduce (17.6 FTE) particular kinds of services was necessary to decrease the number of certificated employees, was not arbitrary or capricious, constituted proper exercise of discretion and was

legal within the meaning of Education Code section 44955. Nuview Union (Cole)

7. Reduction of categorically funded position for teacher who compiled and assembled district's application for WASC accreditation was upheld when reduction in services was due to the categorical funding being discontinued. Orland Unified (Engerman)
8. SCOE properly reduced full-time equivalent certificated positions when two employees who bumped into remaining 200-day positions were currently in 185-day assignments. Those teachers became 185-day employees sitting in 200-day assignments. Sacramento COE (Lew)
9. Teacher with a single subject health science credential and a CLAD who was *not* teaching a home economics class was served a preliminary notice as part of district's layoff of home economics positions. District did not assert legitimate reason why teacher was served with the notice, and the notice was rescinded. Fresno Unified (Brandt)
10. Temporary employees hired to fill categorically funded positions pursuant to 44909 were served precautionary notices. Categorically funded Respondents employed pursuant to 44909 are temporary employees who can be dismissed without the requirement of a dismissal hearing. *Zalac v. Ferndale Unified Sch. District* (2002) 98 Cal.App.4th 838, 840-41; *Bakersfield Elementary Teachers Ass'n v. Bakersfield City Sch. District* (2006) 145 Cal.App.4th 1260. Education Code 44954 permits the District to release temporary employees. ALJ has no jurisdiction to order the layoff of employees beyond the authority provided in 44949 and 44955. ALJ does not make any legal conclusions or issue any order relating to termination of certificated employees currently employed by the District in categorically funded positions. Anaheim City (Flores)

#### **IV. SENIORITY**

##### **A. Entitled To Retroactive Seniority**

1. Teacher who commenced the 2009-2010 school year as a substitute and taught continuously through the end of the school year, replacing a teacher on leave of absence, and became a temporary employee in January 2010, worked 81% of the school year; teacher's seniority date must reflect his earlier service since October 9, 2009. San Juan Unified (Vorters).
2. Part-time teachers accrue credit toward permanent status (*Reis v. Biggs Unified School District* (2005) 126 Cal.App.4th 809, 821); part-time employment as a classroom teacher during the period of probation will result in the right to permanent employment on a part-time basis (*Holbrook v. Board of Education of Palo Alto Unified School District*

(1951) 37 Cal.2d 316; *California Teachers Association v. Santa Monica Community College District* (1978) 79 Cal.App.3d 836). San Juan Unified (Vorters).

3. Part-time teachers' status must be adjusted to reflect permanent status; their service does accrue to establish permanency, and they are not "doomed to perpetual probationary status" but have a vested interest in their part-time employment (*Reis v. Biggs Unified School District* (2005) 126 Cal.App.4th 809, 821; *Hildebrant v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 341). San Juan Unified (Vorters).
4. Part-time teacher was entitled to seniority date reflecting .20 FTE service at one day per week in 2009-2010. San Juan Unified (Vorters).
5. Teacher in shared assignment working two days a week must be classified as part-time permanent employee with a seniority date of August 19, 2002 (although teacher "initially worked full-time in the district," no indication on how long she worked full-time before taking the shared assignment, and no discussion of 75% requirement to attain permanent status). San Juan Unified (Vorters).
6. Nurse who worked .50 FTE (five hours a day for three days a week) from August 2006 through the end of 2009-2010, and .625 FTE in 2010-2011, must be classified as permanent in a .50 FTE nursing position (no discussion of 75% requirement to attain permanent status). San Juan Unified (Vorters).
7. Teacher in split assignment of .20 FTE as a traveling teacher and .45 as a physical education/"kick start" teacher in 2010-2011, who taught in three day/two day .50 FTE assignment during 2008-2009 and 2009-2010 must be classified as permanent for a .50 FTE teaching position pursuant to Education Code sections 44918 and 44929.21 (no discussion of 75% requirement to attain permanent status). San Juan Unified (Vorters).
8. Retroactive tacking of seniority for long term temps who served 75 percent in a prior year is limited to one time, one year of credit. Vista Unified (Johnson)
9. District in prior year had reappointed nine teachers from the layoff preferred rehire list. The nine then received current year notices. Inexplicably, district did not restore original seniority dates as required by Ed Code sections 44956, 44957]. Held: prior dates restored, with the right to remain employed if they could point to anyone in their service area being retained. [Note: ambiguity in the ruling, suggesting that all nine could stay if even one junior person was improperly saved - ala domino theory.] MountainView (Matyszewski)

10. Respondent Preschool instructors became “certificated employees” on the date of their first paid probationary service as preschool instructor/Early Childhood Educator pursuant to Education Code section 44845. Therefore, the District must correct its records to reflect that Respondents are permanent certificated employees, and the Accusations against them must be dismissed. Twin Rivers (Woollard)
11. Many factors are often considered when determining whether attendance during pre-service training days constitutes the first date of paid probationary service, including whether: (1) the pre-service training days are recognized as part of the negotiated school year in a collective bargaining agreement; (2) pre-service training attendance is mandatory or voluntary, and (3) certificated employees receive regular pay, a stipend, or some other form of compensation. Elk Grove (Brandt)
12. Seniority dates of Respondents were changed to reflect when the teachers started working as substitutes, not when they signed their temporary contracts. Fresno Unified (Brandt)
13. Two teachers successfully argued they were entitled to retroactive seniority because of their service under a provisional credential. While time served under a provisional credential does not count toward tenure, i.e., permanent status (§ 44911), a probationary employee, even one with a provisional credential, does accrue seniority based on that employee’s first date of probationary employment. (California Teachers Assn. v. Vallejo City Unified School Dist. (2007) 149 Cal.App.4th 135.) Rosemead (Cohen)
14. Respondent’s seniority date should be changed to her first date of paid service in June 2010 because she was teaching in the Extended School Year (ESY), which is part of the regular academic year and not summer school. Bassett Unified (Juarez)

**B. Not Entitled To Retroactive Seniority**

1. Where ROP teacher was initially employed as temporary and later converted to probationary status, and ROP automotive technology assignment was not a certificated teaching position, teacher was not entitled to retroactive seniority; Education Code section 44918 applies only to a substitute or temporary employee who "has performed the duties normally required of a certificated employee of the district," and ROP teacher was entitled to a seniority date of the date upon which he achieved probationary status. San Juan Unified (Vorters).
2. First probationary contract was January 14, 2008, although respondent worked as a substitute since 1999, and during the 2007-2008 school year was employed as a substitute with an emergency credential. Seniority date

upheld. “There is no provision in the law which requires the district to advance her seniority date to August 20, 2007, based on her employment as a substitute teacher. It is a matter within the discretion of the district. (Ed. Code, § 44914.)” Gilroy Unified (Crowell).

3. No retroactive seniority allowed for long term temporary service while lacking a valid credential and probationary status (citing Education Code section 44918). Coachella Valley Unified ((Meth)
4. Teacher knew she was being hired as a long-term substitute on October 25, 2005. She did not work 75 percent of the school year, and therefore, could not establish her seniority date as October 25, 2005. Fresno Unified (Brandt)
5. Teacher signed temporary contract before beginning work in January 2007. She did not work for at least 75 percent of the 2006-2007 school year. *Kavanaugh* did not apply, therefore seniority date not January 2007. Fresno Unified (Brandt)
6. No evidence to support that Respondent replaced a teacher who resigned and therefore the seniority dated assigned by the District is upheld. Bassett Unified (Juarez)
7. Teachers not entitled to retroactive seniority for attendance at teaching institute prior to the start of the school year. The district demonstrated attendance was not part of the teachers’ contract year and payment was at a “workshop rate” and not at the regular salary rate. Centinela Valley Union High (Rosenman)
8. Education Code section 44911 provides that service under a provisional credential is not included in computing the time required for classification as a permanent employee. Respondent held multiple subject credential with emergency permit to teach special education as a district intern prior to obtaining a Level I Education Specialist Instructor Credential and being hired as a probationary employee in November 2010. Seniority is assigned from the first date on which the employee is paid service in probationary status. District correctly assigned a seniority date in November 2010. Los Angeles COE (Rosenman)

**C. Early Reporting Or Orientation Effect On Seniority**

1. Teacher's seniority date must be adjusted to reflect two paid staff development days and two substitute service days served prior to signing a temporary contract, after which employee served 75% of the school year. San Juan Unified (Vorters).

2. Teacher's seniority date must be adjusted to reflect attendance at in-service training on August 16, 2007 for which she was paid, before she began teaching on August 20, 2007. San Juan Unified (Vorters).
3. Teacher failed to establish she received any pay for attending the orientation or institute days held on August 13, 2007 before starting work on August 16, 2007. Fresno Unified (Brandt)

**D. Prior Temporary Or Substitute Service**

1. Education Code section 44920 does not specify a one-to-one match; a "temporary teacher need not be replacing a particular regular teacher on leave." (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1283.) San Juan Unified (Vorters).
2. Two months' service as long-term substitute must be tacked on when employee later signed a temporary contract and served more than 75% of the school year in long-term substitute and temporary assignments combined (pursuant to Education Code § 44845, no citation to *Kavanagh*). San Juan Unified (Vorters).
3. Combination of long-term substitute and various temporary assignments totaling 85% of school days in 2009-2010 must be tacked on when employee was rehired in a probationary position for 2010-2011. San Juan Unified (Vorters).
4. Respondents rendered one complete year of probationary service during the 2008-2009 school year, and were laid off. During the 2009-2010 school year, Respondents rendered differing amounts of substitute service. Upon their reappointment to vacancies for the 2010-2011 school year, Respondents were properly classified as probationary employees in their second year of probationary service. Lodi (Lew).
5. During the 2006-07 school year teacher was initially hired as a day to day substitute to teach Migrant Education Support. Her position was converted to long-term substitute. During the school year, she worked a total of 171 days, which is more than 75% of the 180 day school year. The district's later seniority date was incorrect and was changed to her first date of paid service that 2006-2007 school year, August 24, 2006. [Section 44918(d) was not discussed although section 44918(a) was recited and relied upon.] Gilroy Unified (Crowell)
6. First probationary contract was January 14, 2008, although respondent worked as a substitute since 1999, and during the 2007-2008 school year was employed as a substitute with an emergency credential. Seniority date upheld. "There is no provision in the law which requires the district to advance her seniority date to August 20, 2007, based on her employment

as a substitute teacher. It is a matter within the discretion of the district. (Ed. Code, § 44914.)” Gilroy Unified (Crowell).

7. District correctly determined multiple teachers’ first paid date of probationary service is later than asserted by said teachers because the temporary teacher contracts did not confer seniority, and the teachers did not provide credentialed services for at least 75 percent of the days that the District’s schools were in session. Adelanto (Ahler)
8. Part-time ROP instructor who taught 12 hours per week was properly classified as a temporary employee. (Pursuant to Education Code § 44954 and § 44919) Court noted if she has served as a temporary employee for at least 75 percent of the school days for her one year service in a temporary position, then pursuant to Education Code section 44918, she would be a probationary employee and her seniority date would then be adjusted. Sacramento COE (Lew)
9. Teacher who started work in February 2007 did not work at least 75 percent of the 2006-2007 school year and was not entitled to tacking. Seniority date not changed. Fresno Unified (Brandt)

**E. Effect Of Resignation On Seniority**

1. Teacher retained permanent status after returning from resignation, but her seniority was reset to her rehire date. She failed to assert the district was retaining any probationary employees who are rendering services she is certified and competent to render. Fresno Unified (Brandt)
2. Teacher unsuccessfully argued she is entitled to retroactive seniority. Teacher had a break in service when she resigned from the district in May 2007 after her first year of probationary service. Teacher was rehired in June 2007 and recommenced her employment in August 2007. Teacher unsuccessfully argued that she only resigned because her principal told her should be “laid off” the following year and it would be “in her best interest” to resign in lieu of being “laid off.” The ALJ would not apply the doctrine of equitable estoppel because it would contravene the district’s discretionary powers under Education Code section 44929.21. Whittier Union High (Agopian)
3. Teacher unsuccessfully argued she was entitled to retroactive seniority date. Teacher resigned from district at the end of the 2003-2004 school year and accepted a teaching position elsewhere. Teacher subsequently returned to the district within six to eight weeks. When a permanent employee resigns and then returns within 39 months, upon re-hire they are “restore[d] to all of the rights, benefits, and burdens of, a permanent employee, except as otherwise provided in the [Education Code].” (§ 44931). It is settled, however, that one exception is the old seniority date.

Section 44948 makes it clear that the first date of paid service upon rehire becomes the seniority date. (San Jose Teachers Assn. v. Allen (1983) 144 Cal.App.3d 627, 641.) Glendora Unified (Montoya)

4. Teacher unsuccessfully argued he was entitled to retroactive seniority based on previous resignation. In 2006, teacher, while permanent, resigned. In 2009, teacher returned and was reemployed. Teacher argued section 44931 requires the district to recognize his original seniority date and section 44848 only applies to “for cause” resignations. The ALJ rejected the interpretation because it is contrary to the plain language of the statute. San Gabriel Unified (Rosenman)
5. Teacher unsuccessfully argued she was entitled to retroactive seniority based on prior employment with the district. Teacher argued her principal should have informed her of the consequences her resignation would have on her seniority date. The ALJ determined the district was not obligated to advise teacher of the consequences her resignation would have on her seniority date. Anaheim Unified (Juárez)
6. The date of employment of a certificated employee who resigns and returns to employment is the date on which the employee first rendered paid service after the reemployment. Respondent was restored to permanent status with the correct seniority date after his resignation and reemployment with the District. Los Angeles COE (Rosenman)

#### **F. Specific Cases**

1. Held that under Ed. Code section 44918(a), a substitute employee who is deemed to have served a fully year as a probationary employee where she was paid for service prior to the start of the school year for in-service training, substituted for an entire school year and was hired the next year as a probationary employee, must be accorded seniority rights dating back to the date he or she first provided service in a probationary capacity, i.e. the date of full-time substitute employment. In making the holding, Judge Frink cited to *California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4<sup>th</sup> 135, 156. Willows (Frink)
2. Held that a layoff notice for a teacher, who was more senior, certificated and qualified to teach a class of a less senior teacher, that his notice was improper pursuant to Ed. Code section 44955. Willows (Frink)

#### **G. Issues Involving Interns, Coaches And Exchange Teachers**

1. University interns are not entitled to layoff notices (per Education Code section 44464). Moreno Valley Unified (Hewitt)

2. Coach did not submit documentation to establish she was paid as a probationary employee for two weeks before her designated seniority date, therefore, seniority date not changed. Fresno Unified (Brandt)
3. University Intern, an intern who is still matriculating and earning university credits for an internship, was correctly classified as a temporary employee. A university intern is not the same as a district intern. Arcadia Unified (Harman)

#### **H. Categorically-Funded Employees**

1. District hired temporary employees to backfill for regular teachers serving in categorically funded positions under Education Code section 44909. However, district could not show that the credentials of the temporary employees matched any of the teachers in categorically funded programs. As a result, district was required to convert a corresponding number of temporary employees to probationary status. Lodi (Lew).
2. Respondents who were made probationary in 2009 after serving a complete temporary year in 2008 had been given one year of retroactive seniority pursuant to EC 44918. However, the ALJ held that those who had served the prior 2007 year in categorical temporary service were entitled to yet another year of retroactive seniority (*citing Bakersfield* (2006) 145 Cal.App.4th 1260 and *Vallejo* (2007) 149 Cal.App.4th 135). Farmersville (Lew)
3. Under *Bakersfield*, “backfill” temporary employees replacing regular employees serving in categorical programs, pursuant to EC 44909, are not entitled to retroactive seniority if hired the next year in a regular probationary position. Farmersville (Lew)

#### **I. Proper Notifications Of Temporary Status (*Kavanaugh Probs*)**

1. Categorical teachers are temps (*citing Zalac/Ferndale*), thus not entitled to a hearing even if given layoff notices. Hemet Unified (Johnson); Lemon Grove (Matyszewski)
2. District failed to notify teachers they were being hired as substitutes “at the time of initial employment.” (*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4<sup>th</sup> 911, 912-922.) Therefore, teachers must be designated as probationary employees. Seniority dates were changed to reflect when the employees started work as substitutes, not when they signed their temporary contracts. Fresno Unified (Brandt)
3. Seniority dates of Respondents were changed to reflect when the teachers started working as substitutes, not when they signed their temporary contracts. (*Kavanaugh*) Fresno Unified (Brandt)

4. Even though teacher signed a temporary contract, teacher deemed probationary because she was not given notice of her classification before she started work. Fresno Unified (Brandt)
5. Under *Kavanaugh* reasoning, teacher was classified as probationary. Even though teacher knew he was being hired as a long-term substitute, he did not sign a contract with the District when he started working, therefore seniority date was retroactively changed. Fresno Unified (Brandt)
6. Teacher not given any written notice of her classification, nor was she asked to sign any paperwork prior to beginning work during the 2006-2007 school year. She was paid as a substitute teacher. She signed a temporary contract the following 2007-2008 school year. Under *Kavanaugh*, teacher classified as a probationary starting from the 2006-2007 school. Fresno Unified (Brandt)
7. Teacher began working in August 2006. She was not given any notice of her classification before she started teaching and she was not asked to sign any documents. Teacher received substitute pay until November 2006 when she signed a temporary contract. She received retroactive pay back to August 2006. Under *Kavanaugh*, teacher classified as a probationary. Fresno Unified (Brandt)
8. Teacher started work in September 2005, but was not told her classification and did not sign any papers. The following year, teacher told she would work as a substitute for 10 days, but worked in that classroom the entire year. Under *Kavanaugh*, teacher designated probationary from September 2005. Fresno Unified (Brandt)
9. Teacher offered to start a position in August 2006, but not told she was going to be a substitute. Later she signed a temporary contract and was retroactively paid the difference between substitute and regular teacher pay. Under *Kavanaugh*, seniority date changed to when she started work in August 2006. Fresno Unified (Brandt)
10. Teacher began work as a long-term substitute for the 2005-2006 school year. She knew she was a long-term substitute, and did not receive a retroactive seniority date for that first year. Second year (2006-2007) teacher began work without notification of her classification, but later signed a temporary contract. Under *Kavanaugh*, she must be deemed probationary for the 2006-2007 school year. Fresno Unified (Brandt)
11. Teacher signed temporary contract before beginning work in January 2007. She did not work for at least 75 percent of the 2006-2007 school year. *Kavanaugh* did not apply, therefore seniority date not January 2007. Fresno Unified (Brandt)

12. Teacher who started work in January 2007 was not told before starting to work that she was a substitute or temporary teacher. After starting work, she signed a temporary contract and received retroactive pay to when she started. She signed a contract in August 2007, contract stating she would be hired as a temporary. Under *Kavanaugh*, seniority date was changed to January 2007. Fresno Unified (Brandt)
13. Teacher who started work in February 2007 did not work at least 75 percent of the 2006-2007 school year and was not entitled to tacking. Seniority date not changed. Fresno Unified (Brandt)

**J. Miscellaneous**

1. Education Code section 44956.5 means that individuals who were hired by a district on or after July 1, 1983 in site administrative positions earn a maximum of three years seniority while serving in that capacity, but individuals hired by the district on or after July 1, 1983 in teaching positions who later were promoted to administrative positions, retain their original seniority date (the three-year limit on accruing seniority in administrative positions does not apply). San Diego Unified (Cole)
2. In determining the layoffs and seniority of school counselors the district properly calculated the individual seniority dates of school counselors by using their first date of paid service for the district in a credentialed capacity (teacher or counselor), as opposed to their first date performing counseling services only. Hesperia Unified (Ahler)
3. Administrator reassignment (Education Code section 44951) issues are not within jurisdiction of a layoff hearing. Moreno Valley Unified (Hewitt)
4. Split assignment (.50 administrator/.50 teaching) administrators receiving layoff notices must also be given a notice under Education Code section 44951. Held: three people allowed to remain half time administrators, but lose teaching positions. Hemet Unified (Johnson)
5. Permanent teachers who were previously laid off in a previous reduction in force should not have been rehired to teach in the district under temporary contracts. The recalled teachers should have been reinstated as permanent employees of the district and, therefore, retained any and all rights that they would have as a permanent employee in the district. Pursuant to the Court's decision in *Poppers vs. Tamalpais Union High School District* (1986) 184 Cal.App.3d 339, the district could not label the returning teachers as temporary employees even though they were in categorically funded positions. South Bay Union (Matyszewski)
6. Noticed administrators unsuccessfully challenged their layoff and their seniority dates. District properly noticed administrators that were

removed from administrative positions pursuant to section 44951. The district properly calculated the administrators' seniority dates differently from other certificated employees because the administrators were initially hired as district administrators pursuant to Education Code section 44956.5. The correct seniority dates in 2008, which is three years before the administrators were reassigned from their administrative positions. Pomona Unified (Sawyer)

## V. CREDENTIALS

### A. **Late Receipt**

1. District verbally informed employees that it would accept and consider additional information that would change the seniority list after March 15. The district did, in fact, allow credentialing information to be submitted and counted after March 15, so long as the credential was obtained before March 15. Accordingly, employees who submitted additional credentials and other seniority-affecting information after March 15 were entitled to have that information accounted for in determining the final layoffs. Adelanto (Ahler)
2. District may, but need not, recognize new information (post-March 15) about a credential earned prior to March 15. Rialto Unified (Ahler)

### B. **Miscellaneous**

1. Respondent's clear single subject credential in chemistry did not authorize him to teach in the subject area of agriculture or agricultural science. Healdsburg (Crowell).
2. Teacher with 1979 seniority date and a Life Development Center Permit, who was certificated and competent to teach developmentally handicapped minors, should have been allowed to bump a more junior teacher in a special education center. San Juan Unified (Vorters).
3. Teacher with 1978 seniority date and a Special Learning Handicapped credential was certificated and competent to bump teacher with 2003 seniority date who taught adult education/handicapped with credentials in Fine Arts, Self-Maintenance Skills for Adults with Disabilities, Basic Skills for Elementary and Secondary Education, and Adaptive Arts and Crafts. San Juan Unified (Vorters).
4. Adult education administrator with Children's Center Permit, who had worked in Early Childhood Education from 1997 to 1999, in a split assignment of adult education and ECE from 1999 to 2007, and from 2007 to 2011 as a vice principal in adult education, had tenure in adult education and two years' service in ECE; by law, her Children's Center

Permit authorized her to bump into an ECE position held by a more junior employee. San Juan Unified (Vorters).

5. Held that the District was not obligated to reassign a teacher certified to teach Spanish to a period of drivers' education taught by a junior teacher to retain the senior teacher's full time status under Ed. Code section 44955. Under Ed. Code section 44955, a district is obligated to make reassignments "in such a manner that employees shall be retained to render any services which their seniority and qualifications entitle them to render." A credentialed teacher's qualifications do not entitle him or her to teach drivers' education because no such credential is required. Hamilton (Benjamin)
6. In the context of bumping issues, respondent's argument that he is so close to obtaining a BCLAD that he should be retained to teach in the dual immersion program over more junior teachers who possess a BCLAD and were skipped, was found unpersuasive and rejected. The junior teachers were properly skipped. Gilroy Unified (Crowell).
7. Issuance of a board waiver to teach 9<sup>th</sup> grade science is discretionary, not mandatory. Board cannot be compelled to do so at layoff time. Calexico Unified (Ahler)
8. District not compelled to obtain emergency CLAD documents in order to save a senior noticed teacher. Fontana Unified (Meth)
9. Teacher's preliminary notice rescinded even after failing to provide information to district before March 15, 2011 stating that she was highly qualified as a multiple subject credential holder to the HOUSSEEd. Fresno Unified (Brandt)

## VI. COMPETENCY

### A. **General Standards**

1. District's determination to include in competency criteria "highly qualified" status to comply with NCLB involved "discretionary decisions which are within the special competence of the school districts." (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) San Juan Unified (Vorters).
2. District's established competency criteria for ROP, career technical education, and other teachers, including consideration of recent teaching experience to ensure teachers are a "good match" for the positions they are bumping into, upheld as legally valid. San Juan Unified (Vorters).
3. District's established competency criteria for ROP and career technical education teachers, requiring (1) a valid credential associated with the

course(s) being taught and (2) having taught the course(s) for at least one semester in the current or either of two preceding school years, upheld as legally valid. San Juan Unified (Vorters).

4. Competency criteria requiring that a teacher teach a subject “within the district for one full year within the past five (5) school years” in order to bump a junior employee struck down where there was no evidence presented to demonstrate that teachers who have not taught in a particular subject in five years or who have not taught to the same level in five years have ineffective teaching skills and strategies. Winters (Westmore).
5. Competency to bump into a particular community college academic discipline can be established by: (a) meeting minimum qualifications established for the discipline pursuant to 5 CCR 53410; (b) grandfathering via credentials obtained prior to 1990; (c) meeting minimum qualifications in effect when the employee was hired into that discipline; and (d) meeting an equivalency test pursuant to 5 CCR 53430, based on related coursework, professional certification, and/or work experience. Yosemite (Lew)
6. There is no provision calling for loss of competency after one has been hired, due to a later change in minimum qualifications. Yosemite (Lew)
7. District applied the following competency criteria for the purposes of bumping, and at least one (1) year of experience within the preceding five (5) years teaching the subject matter at the applicable elementary, middle or high school level. The ALJ concluded that, per Duax, standards of competency are reasonable and valid only if they relate to the skills and qualifications of the teacher threatened with layoff. The ALJ concluded that the requirement of recent experience within a particular grade did not relate to the skills and qualifications of the teachers threatened with layoff, and thus was invalid. The ALJ distinguished the board criteria from that in Duax, which was related solely to experience within a subject matter area. Natomas (Sarli)
8. The district defined competency as holding a preliminary, professional, clear, lifetime or other full credential in the subject matter which the employee intends to displace another employee. Based on this definition, two employees holding Supplementary Authorizations were not allowed to bump less senior employees. The Administrative Law Judge found that the standard was arbitrary and capricious since both teachers were properly credentialed through their Supplementary Authorizations to teach in the positions held by junior employees. The Administrative Law Judge stated that Education Code section 44955, expresses a legislative intent to protect the seniority rights of certificated employees within the context of economic layoffs. Consequently, school district may not erode the statute’s seniority protections by imposing unreasonable competence

requirements on the ability of senior employee to bump into positions held by junior employees.® The competence definition chosen by the board violated the clear mandate of section 44955 that senior teachers be retained wherever possible. Empire Union (Woollard)

9. The District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and the competence to occupy such positions. This obligation must be interpreted in light of the discretion which allows the District to assign Respondent to teach a subject not expressly listed, “if the employing agency has determined its subject-matter content is directly related to the broad subject area.” [Cal. Code Regs. § 8005(a)(3).] Twin Rivers (Woollard)

**B. Competency Standard Upheld B Employee Competent**

1. Employee-s argument that the governing board-s bumping criteria precluded her from being bumped because neither employee had NCLB was inaccurate. District properly applied Education Code section 44955 and permitted a more senior teacher to bump a less senior teacher because each of them held the same credentials and qualifications. Adelanto (Ahler)
2. Teacher’s preliminary notice rescinded even after failing to provide information to district before March 15, 2011, stating that she was highly qualified as a multiple subject credential holder to the HOUSSEd. Fresno Unified (Brandt)

**C. Competency Standard Upheld -- Employee Not Competent**

1. Where district included in competency criteria “highly qualified” status to comply with NCLB, several employees with greater seniority than highly qualified teacher with 2007 seniority date, but who were not highly qualified, were not competent to bump into her position. San Juan Unified (Vorters).
2. Where there was no credential required for assignment of teacher on special assignment in psychiatric services, whose position was not targeted for elimination, to bump into that position a more senior teacher would need to demonstrate subject matter competence through recent experience; no teacher with greater seniority met the competency criteria to bump into the assignment. San Juan Unified (Vorters).
3. Teacher who holds a Special Education Adapted PE Specialist credential and taught under that credential in a .2 FTE assignment for six months did not meet competency criterion of at least one year of experience in the past five years working under that credential in order to qualify for

skipping of special education teachers or for bumping of more junior APE teachers. Sacramento City (Frink)

4. Art teacher with Clear Single Subject Art credential, who consented to work in continuation or opportunity school assignments, was not competent to bump in light of the District's requirement that continuation school teachers possess a credential specific to the core assignment, or state approved VPSS verification of meeting NCLB requirements. Farmersville (Lew)
5. Certificated administrator with a Single Subject Social Science credential, who has never held a classroom teaching position in the District or otherwise, was not competent to bump into a Continuation High School in light of the District's requirement of six months experience in an alternative education environment within the past six years. Riverbank (Sarli)
6. Employee with Single Subject credential in business and a Supplemental Authorization in Introductory English was not competent to teach in Single Subject English position requiring credentialing and competence to teach English in grades 10 through 12. Teacher was also not competent to teach Senior Projects classes. Teacher was not competent and credentialed to teach AVID (Advancement Via Individual Determination) classes where position required teaching classes in grades 10 through 12. Washington Union High (Sarli)
7. Teacher with 1994 seniority date and a Life Standard Secondary, Life Standard Designated Subject Adult, and Life Standard Designated Subject credential was not certificated and competent to bump junior employees because he did not have a multiple subject credential or a single subject science credential. The program to which he wanted to transfer serves fourth through sixth grade students and would require a credential. Sacramento COE (Lew)
8. Employee did not submit adequate evidence by March 15 deadline to demonstrate she was highly qualified in art. Fresno Unified (Brandt)
9. Two self-contained classroom teachers challenged their layoffs on the grounds they should have been allowed to bump less senior certificated employees assigned as Reading Lab Teachers. The previously adopted duty statement for Reading Lab Teachers defined education and experience requirements to include: (1) Reading Specialist Credential; (2) Master's Degree with Reading/Early Literacy emphasis; or (3) a Miller Unruh Reading Specialist credential. Both employees stated they perform and are capable of performing many of the duties and responsibilities performed by Reading Lab Teachers and should not be laid off. No evidence was presented to demonstrate that either employee possessed a

Reading Specialist Credential, Master's Degree with Reading/Early Literacy emphasis, or a Miller Unruh Reading Specialist credential. Eureka Union (Cabatic)

10. District adopted competency criteria that barred a “teacher with a multiple subject credential and supplemental authorization authorizing instruction up to the ninth grade” from bumping into the high school because of the limited ability to be assigned high school courses. A teacher with a clear multiple subject credential with a supplemental authorization in business sought to bump a less senior high school teacher with a single subject credential in business. The ALJ reasoned that a board has broad discretion in determining competency criteria, citing *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555. The competency criteria at issue was reasonable and met the Board’s stated purpose of allowing for maximum flexibility in high school assignments. Woodland (Crowell)
11. Noticed counselors unsuccessfully argued that there is no distinction between counseling positions by virtue of their identical Pupil Personnel Services (PPS) credential authorizing them to provide counseling services in grades K through 12. Counselors who received layoff notices as elementary school counselors and as Pupil Services and Attendance (PSA) counselors sought to maintain their positions by virtue of their relative seniority to all counselors (including secondary counselors). ALJ held that while their credential may authorize them to perform certain services, this does not automatically mean that they are performing those services. The district’s distinction in classification between elementary counselors, PSA counselors and secondary counselors was reasonable and therefore, counselors seeking to bump into secondary counseling positions were required to meet the district’s competency criteria. Los Angeles Unified (Cabos-Owen)
12. School district successfully showed that it has a specific need for teachers currently assigned to two high schools to stay to teach a specific course of study. A school district is not required to demonstrate its specific need for personnel to teach a specific course or course of study by formal written policies, course or job descriptions, or program requirements and may have special needs for personnel to teach a specific course of study that go beyond base qualifications. (*Bledsoe v. Biggs Unified School District*, Ibid, 170 Cal.App. 4th 138.) Course of study may mean the planned content of a series of classes, courses, subjects, or related activities. (Ed. Code, § 51014.) The district demonstrated that it needs teachers with specialized training and experience in performing frequent assessments, data analysis, and collaboration, and using educational strategies and classroom technologies to implement the educational interventions and strategies under the Transformation Model for the purpose of improving two high schools that have been labeled as program improvement and

persistently low achieving schools and have diverse student populations.  
Antelope Valley Union High (Nafarrete)

**D. Employee Competent - No Standard Mentioned**

1. Employee AL, a Graphic Design and Graphic Technology instructor, was denied equivalency by the faculty committee in Computer Graphics. The ALJ found that Computer Graphics and Graphic Design are not separate disciplines, but rather that both fall under the Graphic Arts discipline. The employee meets the minimum qualifications for this discipline and can bump into Computer Graphics. Yosemite (Lew)
2. Employee WG, a Library Science instructor, claims to meet the minimum qualifications to bump into Reading. While she has the required master's degree in Education, she did not offer evidence that her coursework included a specialization in reading. The ALJ directed the District to confirm her specialization and, if confirmed, allow her to bump into Reading. Yosemite (Lew)

**E. Employee Not Competent - No Standard Mentioned**

1. Employee JK, an Industrial Technology instructor, had been denied equivalency in Electronics Technology due to lack of related work experience, and does not meet the minimum qualifications, and therefore cannot bump. Yosemite (Lew)
2. Employee HN does not meet the minimum qualifications for and has not applied for equivalency in Computer Graphics, and may not bump. Yosemite (Lew)
3. Employee LP, a Journalism instructor via equivalency, had been denied equivalency by the faculty committee in Spanish. Her equivalency in Journalism does not equate to equivalency in English, so she may not bump into Spanish or English. Yosemite (Lew)
4. Employee JW, an Engineering instructor, was denied equivalency in Math but should be granted equivalency in Physics despite missing the deadline for applying for equivalency. He does not have equivalency in Computer Applications Systems, nor does he meet the minimum qualifications, nor is he entitled to grandfathering since he was hired in 2005. Therefore, he may not bump into Computer Applications Systems. Yosemite (Lew)
5. Teacher with a single subject credential in home economics did not submit sufficient evidence to establish that her current assignment as an AVID coordinator constitutes cause to rescind notice. Fresno Unified (Brandt)

**F. Particular Cases**

1. Americans with Disabilities Act. District gave timely notice in the prior year that staff needed to obtain EL certification or face layoff. Here, an Art teacher is saved from layoff by asserting at the layoff hearing previously unrevealed learning disabilities which would qualify for accommodation under the ADA. Those disabilities interfered with his ability to pass the EL certification test. Held: teacher was entitled to reasonable accommodation as to his inability to meet the EL requirement. [Note: this case illustrates the maxim that bad facts make bad law.] San Bernardino City Unified (Walker)

**G. Miscellaneous**

1. District distributed survey forms to all staff regarding credentials and teaching experience. One teacher chose to not reveal prior teaching experience in Geography and English. Held: teacher estopped from introducing evidence on that experience at the layoff hearing. Colton Joint Unified (Hewitt)
2. Respondents did not identify any particular employees who are teaching full-time in assignments that more senior home economics teachers are credentialed and competent under the NCLB competency standard to teach. Fresno Unified (Brandt)
3. Employee did not submit adequate evidence by March 15 deadline to demonstrate she was highly qualified in art. Fresno Unified (Brandt)
4. Teacher with 1992 seniority date and a multiple subject credential and a Clear Specialist Instruction Credential (Severely Handicapped) refused to be assigned to a different position because she had been through the ADA interactive process and alleged her physical condition prevented her from working in the proposed sites. SCOE may not consider teacher's physical condition in determining whether she is competent to bump into a teaching position. Sacramento COE (Lew)

**VII. CRITERIA FOR BREAKING SENIORITY TIES**

**A. Criteria Invalid And/Or Not Properly Applied**

1. Tie-Breaking criteria not properly applied where evidence established that district was aware that employee held a master's degree and did not seek to verify or confirm possession of the degree, nor include it when applying the tie-breaking criteria. Winters (Westmore).
2. Final tie breaking criteria of "last four digits of social security" found not to be random and therefore invalid. Natomas (Sarli)

3. Using a lottery as a sole method for breaking ties was invalid and violated Education Code section 44955(b). The fact that the Teachers Union consented to the use of the lottery could not operate to waive the benefits of Education Code section 44955 on behalf of the affected employees. Orland Unified (Engerman)
4. Improper for district to apply a lottery in the first instance of a tie in seniority. The lottery in the first instance precludes the governing board from terminating employees solely on the basis of the needs of the district and the students. District should use lottery only after applying other suggested objective criteria first. (Education Code 44955.) Sacramento COE (Lew)
5. Teacher entitled to an additional two tie-breaker points because she is utilizing her BCLAD in teaching the dual immersion program. She teaches her classes in Spanish, even though her students speak only English. Fresno Unified (Brandt)
6. Teacher holding a clear multiple subject credential with a CLAD and a master's degree should have received one additional tie-breaker point. District offered no evidence of why she was deprived this point. Fresno Unified (Brandt)

**B. Criteria Valid And Properly Applied**

1. District's tie-breaking criteria incorporating point system, including points for having taught at program improvement or Title I school during 2010-2011 school year, were appropriate. San Juan Unified (Vorters).
2. Tie break criteria provided 3 points for each single subject, multiple subject or service credential and 1 point for each supplemental or subject matter authorization. District's interpretation, that employees would not get more than 3 points for a single subject credential, regardless of the number of subject areas in which the employee was credentialed (e.g., single subject credential in English and Foreign Language: Spanish is given 4 points, not 6 points) is upheld as reasonable. Sacramento City (Frink)
3. Mathematics teacher questioned why two other Mathematics teachers with the same seniority date were retained while he was noticed for layoff. Although all three teachers had a Single Subject Math credential, the two Math teachers who were retained had Foundational Math credentials while the teacher who was noticed did not. The two retained math teacher received one more point under the district's tie-break criteria which allows one point for each current, valid credential. The Judge found that the criteria were valid and had been properly applied to the three teachers. Chino Valley Unified (Hewitt)

4. Employee contended that District's random method of resolving a tied seniority date between two employees did not reflect "needs of the District and students thereof." Employee argued that after applying the Board adopted tie-breaking criteria for employees with the first date of paid service, the District should have considered other criteria, such as years of experience, to break the final tie. The ALJ noted that it is permissible to use a lottery as a final tie-breaker after applying other objective criteria based on the needs of the district and its students. The tie-break criteria applied by the Board was within its discretion to adopt and there was no evidence that it was based upon anything other than the needs of the District and its students. Mother Lode (Lew)
5. School district properly applied tie-breaking criteria that granted points for service at a Program Improvement and/or Title I school within the last two years (2009-10 and 201-11). Teacher unsuccessfully argued the district should have awarded her points because of her service with English Language Learners. Placentia-Yorba Linda Unified (Agopian)
6. Teacher unsuccessfully challenged school district's tie-breaking criteria that granted points for service at a Program Improvement and/or Title I school within the last two years (2009-10 and 201-11). Teacher argued the two year time limitation was arbitrary and capricious. The district established that the recency of service at Title I and/or Program Improvement schools is related to the needs of the district and students because training and interventions applicable to these school sites are constantly evolving. Furthermore, it is important for the students at such schools to have continuity with respect to teachers that are providing the services to them. Placentia-Yorba Linda Unified (Agopian)
7. Respondent teacher unsuccessfully argued the district's tie-breaking criteria was invalid where the district required NCLB compliance for the first criterion regardless of the date that compliance was obtained. The district used the date credentials were obtained in its the seventh, eighth and ninth criteria. The ALJ found the district did not abuse its discretion because the district permissibly weighed the value of the skills involved and such determination did not necessarily involve the date when NCLB compliance was obtained. South Whittier (Sawyer)
8. Respondent teacher unsuccessfully challenged district tie-breaking criteria that gave greater seniority to teachers with experience in the "Response to Intervention" program and with experience teaching in a full inclusion classroom in the last two school years. Respondent did not present sufficient evidence that not all teachers had the opportunity to receive "Respondent to Intervention" training and respondent did not present sufficient evidence that only one school within the district contains a full inclusion classroom. The evidence did establish that seniority tie-breaking

criteria was based on the needs of the district and its students. Buena Park (Juárez)

9. District reasonably exercised discretion by giving tie-breaking credit to nurses with experience serving as District Coordinating Nurse pursuant to District resolution. Failure to include Headstart coordinating experience or capabilities as a general matter was not an abuse of discretion. Santa Monica-Malibu Unified (Cohen)

### **C. Miscellaneous**

1. District was permitted to use a lottery to break ties among employees with the same seniority date after application of tie-breaking resolution criteria. Golden Plains Unified (Westmore)
2. District entered into a Charter School Agreement to convert elementary school to a charter school. Before working for the district, teacher taught at Charter Academy that worked in conjunction with the district. Teacher not given seniority date that included time teacher worked for Academy. Fresno Unified (Brandt)
3. Respondents' argument that a lottery violates the Education Code was unpersuasive. It cannot be concluded that a lottery to break seniority ties fails to meet the needs of the school district or its students. It was not established that the lottery was in conflict with the Education Code. Bassett Unified (Juarez)

## **VIII. SKIPPING**

### **A. Skipping Allowed**

1. Education Code section 51014 defines "course of study" as "the planned content of a series of classes, courses, subjects, studies, or related activities." Section 51204 states: "Any course of study adopted pursuant to this division shall be designed to fit the needs of the pupils for which the course of study is prescribed." The implementation of the DataWise training and WriteTools training at priority elementary and middle schools constituted a "particular course of study" within the meaning of section of section 44955(d)(1), in that it fundamentally affected the delivery of instruction to students at those schools in a unique way. The District demonstrated a specific need for personnel to teach this particular course of study, and that special training and experience are required, in the form of intensive instruction in the DataWise and WriteTools training methodologies, the follow-up support, and the experience of collaboration to implement the training in day-to-day classroom teaching and assessment. Sacramento City (Frink)

2. Skipping of counselors and social workers at the six Priority Schools is upheld based on testimony that: (1) by their assignment to Priority Schools during the 2010-11 school year, the counselors and social workers began building relationships of trust that is crucial to the success of the Priority Schools Initiative; and (2) this special experience was not possessed by more senior counselors and social workers, who had not worked in the six Priority Schools. Sacramento City (Frink)
3. Skipping upheld of teachers currently using their BCLAD certifications in their current teaching assignment in the Dual Language Immersion Program or in the District's Bilingual Early Exit Transition Program. No evidence was presented that more senior employees had special training and experience that was also required, i.e., the ability to present content in the "world language," not just an ability to speak, write, and read in that language. Sacramento City (Frink)
4. Skip upheld where district demonstrated specific need for personnel to teach in its hospital program and that junior employee assigned to Psychiatric Hospital as a teacher has specialized training in dealing with aggressive behaviors, which she has obtained through in-services given by medical staff at the hospital; CPR; first aid; HIPAA compliance; and therapeutic modalities to actuate learning. No respondent could provide evidence of comparable training. Sacramento City (Frink)
5. The evidence established that the district's Waldorf schools provide instruction in a unique manner, and that the district has a specific need for instructors to teach in this program who have training and experience in the Waldorf method. Sacramento City (Frink)
6. Skipping of teachers who had the special training in the Aventa computer software program and experience working with the online program, necessary to teach in the district's Accelerated Academy, is upheld. Sacramento City (Frink)
7. Skipping of teachers participating in the federally funded Talent Transfer Initiative (TTI) program is upheld, though the proposed skipping was not included in the district's skipping resolution, based on findings that: (1) the district demonstrated the need for personnel currently participating in the federal study to continue in the study for the next school year, in order to preserve the validity of the study data; and (2) no respondents with the experience necessary to participate in the second year of the study could displace the study participants. Sacramento City (Frink)
8. District may skip junior teacher who held certifications in automotive repairs as well as a single subject credential in industrial and technological education, which enables teaching the green technology courses, in order to teach in the District's Green Academy. Stockton (Sarli)

9. District permitted to skip junior teacher who holds five science credentials and AVID certification to teach in accelerated charter school program in which the school curriculum will be expanding to include anatomy/physiology, physics, AP biology and AP chemistry over the next two years and can be taught by the junior teacher under his multiple credentials. Stockton (Sarli)
10. A facilitator was skipped. That position is not assigned a classroom but models and instructs teachers on the district's six component elementary school educational initiatives and facilitates discussions involving principals and teachers in that school and other schools. This employee will be assigned to this position for the next school year. It was not established that this teacher has undergone special training than teachers more senior to her do not have. The trainings referenced by the superintendent were trainings that were available to all district employees and were taken by many of the respondents. However, this employee has experience in the facilitator position which other teachers more senior do not have. That position provides this employee with special experience other than that of a classroom teacher. As such, the district established cause to skip this teacher. Gilroy Unified (Crowell).
11. Continuation High School teacher with 3 years of alternative education, 15 years of adult education, and 15 years of general education experience could be retained over employee with no alternative education experience. Riverbank (Sarli)
12. The district's layoff resolution authorized it to skip all teachers at one school site regardless of seniority date. The school in question was deemed a "persistently lowest-achieving school" by CDE meaning that it was one of the lowest five percent of schools in California and that the district was mandated to implement remedial measures to improve the school's performance. At hearing, the district established that unique training had been offered to teachers at that school, that identical training had not been offered at other schools in the district, that a unique community outreach program had been used by the teachers at the school, that no other school in the district was deemed a "persistently lowest-achieving school," and that the needs of the district justified its decision to skip the teachers at the school because of CDE's designation and attendant stringent mandates. Escondido Union (Matyszewski)
13. District was allowed to skip teachers in an academy that was a dual immersion program with a goal of providing bilingual education and teachers who were in a visual performing arts program. The senior teachers who were noticed for layoff had not previously served at least one school year in those programs and did not meet the competency criteria. The decision further found that the district had demonstrated a need for those programs. South Bay Union (Matyszewski)

14. Where two teachers had specialized experience and backgrounds required to teach Show Choir and social studies, including assisting students with performances and local, state, and national competitions, skipping was proper. The Show Choir teacher had a master's degree in drama and had created a series of expectations for students to meet, including those related to classroom and outside competition performance. The social studies teacher had taught the program for 11 years, was passionate about it, was president of the California Social Studies Council and the district's social studies committee, and a leader in the field. Jamul-Dulzura Union (Meth)
15. The district established that it had a special need for personnel to teach a specific course of study, that is, algebra to eighth grade students at the Community Day School. It relied upon additional credentials, authorizations, or certifications beyond the multiple subject credential that all teachers possess in order to permit a teacher to teach algebra. When a more senior teacher failed to prove by March 15, 2011 that she was qualified to teach eighth grade algebra either by showing a supplemental authorization, HOUSSE certification, or verification process for special settings, the District established that retaining a junior teacher who met the requirements to teach eighth grade algebra at the Community Day School under Education Code section 44955(d) was within its discretion. Alpine Union (Meth)
16. The determination whether a school district may lay off more senior employees and retain more junior employees involves a two-step analysis: (1) pursuant to Education Code section 44955(b), the school district must first determine whether the senior employees are credentialed and competent to render the services that junior employees have been retained to render; and (2) if the school district determines that the senior employees are credentialed and competent to render these services, pursuant to Section 44955(d)(1), the school district must then decide whether: (i) it has a specific need for the junior employees to teach a specific course or course of study, and (ii) the junior employees have special training and experience necessary to teach that course or course of study that the more senior employees do not possess. Elk Grove (Brandt)
17. District demonstrated it had specific need to retain existing staff at its Persistently Low Achieving Schools (No Child Left Behind Act.) and skip junior teachers. Fresno Unified (Brandt)
18. Teacher designated as part-time .53 FTE was performing all the duties of a language arts teacher and should have been deemed a regular teacher. Notice rescinded. Fresno Unified (Brandt)

19. District established basis for skipping bilingual dual immersion teachers based on special training or experience consisting of possession of BCLAD certificate; experience teaching EL students was not equivalent. Patterson (Frink)
20. District successfully retained two junior teachers holding multiple subject credentials to provide science teacher services at the middle school level. District demonstrated the specific need for science teaching services and the two teachers had the requisite special training and experience to provide the services. The two teachers completed course units that enabled them to teach science at the middle school and had exclusively taught the subject since hired. Little Lake City (Micon)
21. District permitted to skip junior home school teacher holding a multiple subject credential. District demonstrated teacher worked in an alternative education program and built the home school program. Teacher also received special training in all the requirements imposed on independent study programs and was knowledgeable in the regulatory and record-keeping requirements. Glendora Unified (Montoya)
22. District demonstrated that it properly skipped junior teacher and noticed senior teacher in the area of Visual and Performing Arts (drama). While both teachers were properly credentialed, junior teacher held a fine arts degree and an English credential, and taught drama for three years. Junior teacher had extensive experience in theater and film and is a member of the Screen Actors' Guild, proficient in and uses the International Phonetic Alphabet and is experienced teaching facial expression, improvisation and puppetry. He also had training in teaching and performing stage students and stage fighting to avoid injury. Junior teacher also used his extensive contacts in the entertainment industry to obtain monetary donations, stage props, accessories, and small set pieces. Inglewood Unified (Dash)
23. School district successfully showed that it has a specific need for teachers currently assigned to two high schools to stay to teach a specific course of study. A school district is not required to demonstrate its specific need for personnel to teach a specific course or course of study by formal written policies, course or job descriptions, or program requirements and may have special needs for personnel to teach a specific course of study that go beyond base qualifications. (*Bledsoe v. Biggs Unified School District*, Ibid, 170 Cal.App. 4th 138.) Course of study may mean the planned content of a series of classes, courses, subjects, or related activities. (Ed. Code, § 51014.) The district demonstrated that it needs teachers with specialized training and experience in performing frequent assessments, data analysis, and collaboration, and using educational strategies and classroom technologies to implement the educational interventions and strategies under the Transformation Model for the purpose of improving two high schools that have been labeled as program improvement and

persistently low achieving schools and have diverse student populations. Antelope Valley Union High (Nafarrete)

24. School district properly exercised its discretion under Education Code section 44955(d) to deviate from the order of by skipping teachers in the International Baccalaureate (IB), Advanced Placement (AP) and AVID programs. The district properly demonstrated that it has a specific need for personnel to teach in the specific courses of study and that the skipped teachers have the special training and experience necessary to teach those specified courses of study. Long Beach Unified (Nafarrete)
25. District demonstrated by a preponderance of the evidence that the visually handicapped program, the PIES program (interagency support program for parents and their infants and toddlers), the UC Irvine program, the Pacific Coast High School program, and the Sunburst Academy program were all courses of study for which the District had a specific need, and that the identified teachers possessed the necessary special training and experience to teach those programs. Orange County DOE (Juarez)
26. District may skip Respondent as Newcomer Teacher (English immersion program specifically designed for students who have been in the US for one year or less) based on her special training and experience to perform this position. Mountain View (Sawyer)

**B. Skipping Not Allowed**

1. Skipping based on BCLAD authorization must support a particular program requirement. San Juan Unified (Vorters).
2. District improperly skipped less-senior employee with BCLAD where more-senior employee also taught high school Spanish, both teachers were certificated and competent to provide this service, there was no evidence program requirements for the assignment had changed, and there was no evidence either employee would be assigned to an immersion program next year or what the needs of an expanded immersion program would be. San Juan Unified (Vorters).
3. District did not demonstrate that there is a particular course of study at the Priority High School in the form of intensive instruction in the DataWise and WriteTools training methodologies that was sufficiently different from the course of study at the district's other traditional high schools to warrant "special training or experience," within the meaning of section 44955(d)(1). Sacramento City (Frink)
4. District sought to skip all certificated employees at the 6 Priority Schools under section 44955(d)(2), deviation from termination in order of seniority "[f]or purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws." The District's

argument that imposition of layoffs would violate the fundamental right of the students at those schools to “basic equality of educational opportunity” guaranteed by the State Constitution was rejected where the evidence showed that 44 of the district’s 85 schools were currently in PI status, and had been for two years or more. Approximately 68 percent of the district’s students live at or near the poverty line, and an estimated 60 to 65 schools are designated as Title I schools. Many respondents testified to the devastating effect that layoffs will have on District programs with demographics similar to the Priority Schools that are not being skipped. Sacramento City (Frink)

5. District sought to skip junior teacher, who holds a designated subjects career technical credential in public service, a single subject teaching credential in social science, and a law degree to teach AP US History and to serve as the faculty advisor to the student disciplinary court and the assistant mock trial coach. The teacher had created curriculum for numerous classes, including law and society, mock trial and legal studies (a ROP class). ALJ holds the skip is not permitted based on findings that while it may be beneficial to have an attorney teaching law related classes and assisting with the student disciplinary and mock trial programs, neither the law degree nor the career technical credential in public service was required to teach History. Although the junior teacher may have been and may still be the “best candidate” to fill his position, the Education Code does not permit districts in a layoff proceeding to weigh the qualifications of teaching staff and retain junior employees it believes have superior qualifications. Stockton (Sarli)
6. Skipping criteria included dual immersion classes in English/Spanish. Teacher who taught in the dual immersion program but only in English was not within the skipping criterion and therefore improperly skipped. Gilroy Unified (Crowell).
7. GATE skipped, but superintendent admitted error when skipped an employee who did not possess a current GATE certification. Gilroy Unified (Crowell).
8. Opportunity Program teacher was skipped because she had three years of experience in that program. However, another teacher who is returning from leave will be assigned to the Opportunity Program and that teacher has no training or experience in that Opportunity Program. Based on that evidence, the district failed to establish that the experience of the skipped employee is necessary to teach in the Opportunity Program and the district has therefore failed to establish cause to skip that skipped employee. Gilroy Unified (Crowell).
9. The district established it had a need for two teachers who were bilingual due to the substantial number of Spanish-speaking students and families

who attended the district's schools. The district also established that the teachers had special training and experience as they had bilingual skills and BCLADs. But, the district failed to establish there was a course or a course of study that the two teachers were assigned to teach which two more senior teachers could not teach. Instead, the evidence showed that the two junior teachers were not assigned to teach classes that required a BCLAD at all and were merely used as helpful translators in many instances. Therefore, skipping of the two junior teachers was improper. Jamul-Dulzura Union (Meth)

10. The district identified two courses as creating specific needs for personnel in the Community Day School core instructional program and the Technology and Assessment Resource Teacher. As a result, the district created skipping criteria to skip the teachers currently holding those positions. The skipping criteria at issue included a requirement for a certain number of years of service in these positions. This criteria was improper inasmuch as it used specified periods of experience simply to secure continuity in a position and to make it difficult for more senior teachers to bump into those positions. (The district had utilized the same skipping criteria in the previous year, except that the requisite number of years of service had increased to reflect the number of years served by the current teachers.) A district may seek to maintain continuity in a position, but may only do so via skipping if it demonstrates that employees with more seniority do not have the special training and experience necessary to fill the position. In this case, two senior teachers did possess the special training and experience necessary to fill the Community Day School and the Technology and Assessment Resource Teacher positions, respectively. Therefore, the accusations as to them were ordered dismissed. La Mesa-Spring Valley (Walker)
11. While skipping was generally allowed to skip teachers working in the district's dual immersion program (ADI program), because the district demonstrated a specific need for personnel to teach in the DI program and that special training and experience were necessary to teach that course of study, the board's resolution did not identify any specific special training or experience that was necessary to teach in the DI program. Thus, the district could not retain a junior teacher over a more senior teacher who demonstrated that she had the special training and experience necessary to fill the position. Chula Vista Elementary (Walker)
12. Course work still in progress by March 15 toward completion of an additional credential not a basis for skipping or saving. Snowline Joint Unified (Ahler)
13. Effect of absence on active duty military assignment. Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA) protects seniority dates for absent teachers on military duty. But that federal statute

does not apply to acquisition of tenure under the Education Code. The Administrative Law Judge cites *Griego v. LAUSD*, with emphasis on requiring two years of teaching performance. [Note: the Administrative Law Judge's impeccable analysis is well worth reviewing.] Fontana Unified (Meth)

14. If the District cannot show that it now intends to assign the skipped junior single subject credential holders to specific assignments that more senior respondents without such credentials cannot teach, the mandate of Education Code section 44955(d)(1) prevents the District from laying off more senior teachers who are credentialed and competent to teach the classes that the skipped junior single subject credential holders are not teaching. Elk Grove (Brandt)
15. The District did not submit sufficient evidence to establish that the junior single subject credential holders that it has skipped are teaching in courses that required the NCLB subject matter competence that only their single subject credential can confer. The District also did not submit sufficient evidence to establish that the more senior respondents, who are credentialed and competent to teach these courses, are not NCLB-compliant to do so. In addition, the District did not submit evidence to show that it has established competency criteria that mandate NCLB compliance. Elk Grove (Brandt)
16. The District did not demonstrate that it currently has a specific need for the skipped middle school math teachers to teach a specific course or course of study which requires them to have special training and experience that the respondents, who are now also teaching middle school math, do not possess. Elk Grove (Brandt)
17. Four counselors challenged the board's resolution which authorized deviation from terminating in order of seniority in order to skip a less senior counselor assigned to the Continuation School ("CS"). The district identified four criteria in support of skipping the CS counselor: bilingual ability, teaching experience, WASC experience, and experience with alternative education. The ALJ concluded the district failed to establish the CS counselor possessed special training and experience necessary for the position. All counselors are subject to the same job description which does not require bilingual ability, but only lists it as a desirable qualification. Moreover, two of the more senior counselors were also bilingual. The CS counselor's teaching experience and WASC experience do not relate to her PPS credential and may not be relied upon for skipping. While the CS counselor has experience working with at-risk youth, the district did not establish that the more senior counselors do not have equivalent training and experience. Woodland (Crowell)

18. Where District conceded that respondents met all minimum requirements for EL Coach position, District failed to establish basis for skipping based on special training and experience; standard for skipping is not whether employee skipped was the best qualified for the position. Patterson Frink
19. Resolution adopted to skip nurses with special training, skills and experience to provide bilingual nursing services where they can demonstrate that they are (1) bilingual and (2) currently providing services to students whose primary language is not English. Requiring current, rather than recent, use of second language in delivery of nursing services does not rationally distinguish between nurses who are bilingual. Santa Monica-Malibu Unified (Cohen)
20. District proposes to skip a teacher who has been awarded an Endeavor Fellowship with NASA and is presently working to earn a Certificate in STEM (science, technology, engineering, and math) Education pursuant to a skipping criteria for the same. The District's decision to skip Respondent is invalid. District failed to establish that it has a need for Respondent to "teach a specific course or course of study ... which others with more seniority do not possess" because he teaches 8th grade math and science and is expected to teach the same next year. Any certificated employee with a credential allowing them to teach middle school math and science and has the same training and experience for that assignment. Additionally, Respondent has not yet obtained his STEM Certificate. Mountain View (Sawyer)

**C. No Obligation To Skip**

1. Although teachers testified their programs were built at great financial and professional expense, and each expressed the high personal investment in the programs that we want to see in high achieving schools, it is the district's burden to demonstrate a specific need for personnel or services such that those qualifications may be skipped in the layoff process; where there was no evidence any of the challenged assignments were mandated by state or federal law, the district had discretion to identify AVID, VAPA, PLC, and IB program assignments for reduction. San Juan Unified (Vorters).
2. Despite counselor's assertion that her assignment should be skipped because she is fluent in Spanish and 30% of her students speak Spanish, when special consideration was given to teachers with a BCLAD authorization (but BCLAD skip was disallowed), district could properly exercise its discretion to identify counseling as a PKS for reduction or elimination without special consideration for spoken languages. San Juan Unified (Vorters).

3. Teacher who holds a Special Education Adapted PE Specialist credential and taught under that credential in a .2 FTE assignment for six months did not meet competency criterion of at least one year of experience in the past five years working under that credential in order to qualify for skipping of special education teachers. Sacramento City (Frink)
4. In the context of bumping issues, respondent's argument that he is so close to obtaining a BCLAD that he should be retained to teach in the dual immersion program over more junior teachers who possess a BCLAD and were skipped, was found unpersuasive and rejected. The junior teachers were properly skipped. Gilroy Unified (Crowell).
5. District cannot be compelled to skip and save an outstanding science teacher. District made no skips at all. El Centro Elementary (Matyszewski)
6. The district's decision not to skip a principal who had been actively recruited to launch a mostly online independent study high school and who had a great deal of experience, training, and skill, was not an improper exercise of its discretion. The district decided not to seek authorization to skip any employees or groups of employees. A district Amay (but is not required to) deviate from terminating employees in order of seniority. (Education Code section 44955(d)(1).) San Diego Unified (Cole)
7. Teachers cannot require districts or superintendents to skip them. Skipping is within the discretion of the school district. Orange County DOE (Juarez)
8. Respondent argued that AVID program teachers should have been skipped. Skipping decisions are within the sole purview of the governing board pursuant to Education Code section 44955(d). Staff does not have standing to request or demand that categories be added to be skipped. Mountain View (Sawyer)
9. Respondent argued that she should be skipped because the turn-over created by successive layoffs at her school will result in the deprivation of students' constitutional right to a free and appropriate public education. Respondent cited *Reed v. State of California* (Case No. BC 432420, May 13, 2010), in which the LA Superior Court granted a preliminary injunction in favor of a group of students to stop the LAUSD from laying off teachers at three lower income schools in the district. The reliance on *Reed* is unconvincing for several reasons. First, the case is on appeal and is not binding on any school district other than LAUSD. Second, 44955(d)(2) was probably meant to protect the constitutional rights of certificated staff on the basis of gender, race, etc. and not to protect students or other third parties not directly involved in the layoff process.

Third, 44955(d)(2) provides school districts with the exclusive purview of making skipping decisions, not teachers, parents or students. No court order was obtained in the *Reed* case and the ALJ does not have jurisdiction to make such a decision. It was not established as a factual matter that the layoffs in this case will create the type of damage to students' rights to a public education. It was not established that layoffs at that school site were disproportionate relative to that at other sites. Mountain View (Sawyer)

10. District does not have to skip employee who teaches adapted physical education (APE) to students with disabilities when the District Resolution authorizes skipping of personnel who "possess a credential authorizing service in special education, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the" next year. Respondent failed to demonstrate all criteria the District must establish to skip her. Arcadia Unified (Harman)

#### **D. Miscellaneous**

1. A junior GATE employee was skipped. In order to skip that employee, the district must show that none of the more senior teachers possess special training and experience that the junior teacher has which is necessary to teach GATE. (*Alexander* (1983) 139 Cal.App.3d 567.) The district failed to meet that burden. The district has not shown that the more senior employee does not possess the same training and experience as does the junior employee. Gilroy Unified (Crowell).
2. Remedy regarding improper decisions to skip was direction to the district to take necessary steps to identify the most senior teachers who were prejudiced and the district may not lay off those teachers, citing *Alexander* (1983) 139 Cal.App.3d at 576. Gilroy Unified (Crowell).
3. No requirement that skipping criteria be contained in the layoff resolution. El Centro Elementary (Matyszewski)
4. Teacher retained permanent status after returning from resignation, but her seniority was reset to her rehire date. She failed to assert the district was retaining any probationary employees who are rendering services she is certified and competent to render. Fresno Unified (Brandt)

### **IX. BUMPING**

#### **A. Partial Bumping**

1. Teacher with single subject Art credential appropriately bumped 0.23 FTE to teach Digital Imaging course, which was envisioned to encompass photography, manipulation of photographs, and video, and district testified

the course was appropriately taught by a person with an Art credential. San Juan Unified (Vorters).

2. Teacher with single subject credentials in Business, Introductory Mathematics, and Introductory General Science was certificated and competent to bump three less-senior teachers for 0.33 FTE Elementary Classroom, 0.20 FTE Economics, and 0.07 FTE Digital Imaging. San Juan Unified (Vorters).
3. Respondent's full time position is being reduced by .17 FTE (Spanish). Respondent's attempt to bump into other positions is rejected, in part based upon *Hildebrandt* (2009) 172 Cal.App.4<sup>th</sup> 334. Respondent "cites no authority for the proposition that the district is obligated to divide the full-time position of a less senior teacher so that she can maintain a full-time position. The courts have been reluctant to require a school district to divide a full-time position, even where the senior employee seeks an assignment authorized by his or her credential." (Citing *Hildebrandt* "and cases cited therein.") Hamilton Unified (D. Benjamin).
4. Where senior employee held "split" assignment consisting of a .50 FTE reading resources position and a .50 FTE Title I position, and only the reading resources position was subject to reduction, there was not cause for termination of junior respondent beyond a .50 FTE reduction in the reading resources position. *Hildebrandt v. St. Helena USD* did not apply. Dry Creek (Engeman)
5. Respondent teacher unsuccessfully argued that she should not be partially bumped by a senior teacher that was assigned to another school site. Teacher argued that the partial bump would violate the district's policy of not requiring teachers with regular assignments from teaching at more than one site. Teacher asserted the partial bump would require senior teacher to work at two school sites. The ALJ rejected this argument in stating there was no evidence the district will assign the senior teacher to more than one school site next year and that the Education Code does not prevent such bumping. The administrative hearing is no jurisdiction to decide whether such an assignment would violate a collective bargaining agreement and/or be subject to a grievance. Whittier City (Sawyer)

## **B. Bumping Should Have Been Allowed**

1. Teacher with 1979 seniority date and a Life Development Center Permit, who was certificated and competent to teach developmentally handicapped minors, should have been allowed to bump a more junior teacher in a special education center. San Juan Unified (Vorters).
2. District must review its assignments for compliance with vested right to retention of adult education teacher with 1990 seniority date, single

subject Art credential, and stipulated highly qualified status, who was qualified to bump into an Art assignment. San Juan Unified (Vorters).

3. Adult education administrator with Children's Center Permit, who had worked in Early Childhood Education from 1997 to 1999, in a split assignment of adult education and ECE from 1999 to 2007, and from 2007 to 2011 as a vice principal in adult education, had tenure in adult education and two years' service in ECE; by law, her Children's Center Permit authorized her to bump into an ECE position held by a more junior employee. San Juan Unified (Vorters).
4. Interpreting *Bledsoe* (2008) 170 Cal.App.3d 127, pursuant to Ed Code 44865, respondent teachers are permitted to be assigned to teach at a continuation high school with their consent even though his or her credential would not otherwise be sufficient. (Also citing *CTA v. GB* (1983) 141 Cal.App.3d 606.) Per *Bledsoe*, it is the district's responsibility to consider this potential reassignment when it determined which teachers were to be given a March 15 notice. Gilroy Unified (Crowell).
5. Insufficient evidence offered by district to bar middle school teachers holding single subject credentials (good anywhere K-12) from displacing junior teachers serving in a high school. Palm Springs Unified (Cole)
6. The District's competency criteria, which included a "comparable setting" requirement, could not be applied to prevent a more senior PE teacher to bump into a PE position held by a less senior employee. Rocklin (Engeman)
7. Relevant case law supports a school district's right to define the minimum requirements for competency for purposes of bumping, so long as the definition considers the skills and qualifications of a teacher. At first glance, the District's criteria appear to meet this standard. The evidence presented in this case, however, established that the District's definition of competency had more to do with administrative convenience than a good faith application of expertise to require teaching experience in a subject in a "comparable setting." The rationale for the comparable setting requirement provided by the Superintendent was to avoid having a senior teacher displace a teacher with experience in the setting, but the Superintendent provided no explanation for why he believe such displacements were detrimental to the educational system. Rocklin (Engeman)
8. Discretion is abused when a district's action exceeds the bounds of reason, all the circumstances before it being considered. (*Anderson Union High school District* (1976) 56 Cal.App.3d 453) Rocklin (Engeman)

9. The most telling evidence that the “comparable setting” element of the bumping criteria was not supported by fair and substantial reason was the District’s policy not to use the same competency criteria for rehiring and reassignments. Rocklin (Engeman)
10. District reduced ROP FTE of two full-time teachers, thus creating two part-time positions. *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App. 4th, did not apply and teachers should have been allowed to bump more junior employees. Fresno Unified (Brandt)

**C. Inverse Bumping**

1. The ALJ rejected the argument that school district should eliminate extra duty assignments to reduce the number of layoffs. This contention was not supported by sufficient evidence or the law and, therefore, is rejected. Centinela Valley Union High (Rosenman)

**D. Bumping Correctly Allowed**

1. Teacher with 1978 seniority date and a Special Learning Handicapped credential was certificated and competent to bump teacher with 2003 seniority date who taught adult education/handicapped with credentials in Fine Arts, Self-Maintenance Skills for Adults with Disabilities, Basic Skills for Elementary and Secondary Education, and Adaptive Arts and Crafts. San Juan Unified (Vorters).
2. Adult education administrators with appropriate credentials were properly allowed to bump into adult education classroom assignments. San Juan Unified (Vorters).
3. Despite employee’s testimony that she was the only bilingual employee in the district and has implemented substantial changes with the Spanish-speaking parents in the district, her job description did not require bilingual status and there were more senior teachers who were qualified for her position. The district correctly determined that the law does not permit the district to retain a junior employee because she is the most qualified, when there are qualified senior teachers who can take the position. Bear Valley Unified (Cole)
4. Apparently without evidence or discussion of *Bledsoe/Biggs*, senior teacher allowed to bump into an alternative education (opportunity) class assignment. Colton Joint Unified (Hewitt)
5. District may rely on Respondent’s current assignment of PE to bump into his position, even though Respondent teaches health in the fall semester. Respondent has not demonstrated that the District will not be able to offer health courses unless Respondent is retained. Arcadia Unified (Harman)

6. District properly permitted senior teachers to bump where teachers had qualifications to render services provided by junior teachers. Senior teachers were qualified to render services based on holding authorizations under Education Code section 44204(d) and Title 5 California Code of Regulations section 80057.5(a). District was not required to demonstrate senior teachers were competent to teach in new assignments. The competency test in Education Code section 44955(c) only applies when a teacher is to be assigned or reassigned “to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential, or which is not within the employee’s major area of post secondary study or the equivalent thereof.” Alta Loma (Shrenger)

#### **E. Bumping Correctly Disallowed**

1. Where there was no credential required for assignment of teacher on special assignment in psychiatric services, whose position was not targeted for elimination, to bump into that position a more senior teacher would need to demonstrate subject matter competence through recent experience; no teacher with greater seniority met the competency criteria to bump into the assignment. San Juan Unified (Vorters).
2. Probationary teacher in preschool-level special day class consisting of preschool-age and some kindergarten children with autism did not meet competency criteria for purposes of bumping; she was not highly qualified to bump into a preschool teaching position and did not possess the proper credential to teach outside of a special education center. San Juan Unified (Vorters).
3. Regular education employees who did not possess credentials that authorized them to work with handicapped adults could not bump into adult education assignments. San Juan Unified (Vorters).
4. The District is under no obligation to cobble together portions of classes to create teaching positions for teachers subject to layoff. There is no obligation on the part of the District to combine the State Requirements courses, the Skills for Living courses and the AVID courses for respondents. Wheatland UHSD (Cabatic).
5. Teacher who holds a Special Education Adapted PE Specialist credential and taught under that credential in a .2 FTE assignment for six months did not meet competency criterion of at least one year of experience in the past five years working under that credential in order to bump a less senior APE. Sacramento City (Frink)
6. Multiple subject teacher, with significant experience in alternative education and AVID training failed to establish she was certificated and competent to bump into alternative education high school English class

taught by junior employee, as she lacked an English credential and NCLB compliance in English. Stockton (Sarli)

7. On campus suspension position being held by a junior employee who had a single subject intern credential in physical education. All respondents indicated their willingness to be assigned to teach and bump that probationary employee. Bumping properly disallowed based on superintendent's testimony that teachers with a multiple subject credential cannot serve in this high school assignment because the students involved in on-campus suspension range in ages from grades 9 through 12. A teacher with a multiple subject credential is not authorized to teach students above grade 9. Gilroy Unified (Crowell).
8. Community day school did not have a student at the beginning of the school year but now has one student. District historically maintained a community day school and has a teacher who is presently assigned and providing those services. District intends to eliminate the community day school. That community day school instructor bumped a continuation school instructor who contests the bump. ALJ rejected the argument that there has not been a reduction in the community day school and rejected the argument that bumping the community day school teacher is not competent to fulfill the demands of teaching 20 or 21 students in the continuation school. "Competency" is not a question of relative work performance, the superintendent determined the community day school teacher was competent to teach at the continuation school, and the evidence failed to establish the determination was wrong. Hamilton Unified (D. Benjamin).
9. Respondent holding a single subject Spanish credential not allowed to bump into driver's education, studies skills, and health, none of which require a specific credential. Respondent's "qualifications do not entitled her to teach driver's education; she is entitled by virtue of her credential to teach Spanish. [Respondent] cites no authority for the proposition that the district is obligated to reassign her to teach matters outside her certification." Hamilton Unified (D. Benjamin).
10. A claimed right to bump based solely on junior teacher's lack of NCLB highly qualified status is disallowed. Moreno Valley Unified (Hewitt)
11. Protecting junior teachers serving in a dependent charter school allowed where evidence demonstrated rigorous special training and curriculum for that site. No bumping by senior teachers at other sites. Palm Springs Unified (Cole)
12. Senior teachers holding Clear Single Subject credentials were not entitled to bump a less senior probationary teacher with a Clear Multiple Subject credential teaching Community Day School Program. Neither of the

senior teachers with Single Subject Credentials was qualified to teach all of the subjects being taught in the Community Day School self-contained classroom setting. San Pasqual Valley Unified (Hewitt)

13. Teacher with 1994 seniority date and a Life Standard Secondary, Life Standard Designated Subject Adult, and Life Standard Designated Subject credential was not certificated and competent to bump junior employees because he did not have a multiple subject credential or a single subject science credential. The program to which he wanted to transfer serves fourth through sixth grade students. Sacramento COE (Lew)
14. Respondents were unable to bump into position where replacing a teacher with a clear single subject teaching credential with single subject authorizations for both social science and English would compromise charter school's UC A-G Equivalent accreditation and the school would lose its social science subject matter expert. Merced COE (Lew)
15. Respondents did not identify any particular employees who are teaching full-time in assignments that more senior home economics teachers are credentialed an competent under the NCLB competency standard to teach. Fresno Unified (Brandt)
16. Certificated tutors who had at some point in their careers with the district worked full time, gave up their right to return to full-time status when they moved to part-time status. District not obligated to allow its part-time certificated tutors to bump more junior certificated employees who are currently teaching full-time. Fresno Unified (Brandt)
17. Teacher with a clear designated subjects vocational education teaching credential in computer applications and computer maintenance and repair, and a CLAD had been misassigned to teach three classes that were not designated as vocational education. Fresno Unified (Brandt)
18. Teacher with a clear single subject credential in business had obtained a temporary certificate in April 2011 which granted him subject matter authorization in government and civics for one year. Teacher was not teaching a government and civics course, and his temporary certificate did not authorize him to bump a more junior teacher who was teaching in these areas. Fresno Unified (Brandt)
19. Teacher with a clear single subject credential in business, with a supplementary authorization in economics failed to submit sufficient evidence to establish that he was highly qualified under NCLB to teach economics. Fresno Unified (Brandt)
20. Where senior respondent has requisite college units and is eligible for board authorization required to teach assignment for which junior employee is retained to teach, but senior respondent does not actually have

appropriate credentials or other authorization for the assignment, senior respondent is not entitled to bump the junior employee. Dry Creek (Engeman)

21. Respondent teacher unsuccessfully argued she should be permitted to bump a junior counselor. The district's counselor job description required "recent training and/or training or experience in pupil personnel work." Respondent failed to demonstrate she had recent training or experience in pupil personnel work. Torrance Unified (Shrenger)
22. District properly prevented senior teacher from bumping junior teacher assigned to teach English at the high school level. The senior teacher's credential and supplemental authorization permitted her to teach English in departmentalized classes in grades 9 and below. The district determined that it cannot create a master schedule where a teacher is assigned only one grade level of a subject. The district needs high school teachers who can teacher at different grade levels. Torrance Unified (Shrenger)
23. Teachers unsuccessfully argued that they should be permitted to displace junior teacher assigned to alternative education program. There was insufficient evidence that teachers assigned to the alternative education program were doing anything other than teaching their credentialed subject, for which the senior teachers did not possess the appropriate credential. Centinela Valley Union High (Rosenman)
24. Respondents claim they should bump less senior Literary Specialist based on Respondents' experience in diagnosing reading issues. District presented evidence that Literary Specialist position requires a CTC-issued Reading Certificate or Specialist Credential in Reading and Language Arts. The position requires more than reading instruction and diagnosis; it includes training and supervision of other teachers, conducting demonstration lessons and coordination with site administrators. Respondents cannot bump employees currently serving as Literary Specialist. Los Angeles COE (Rosenman)

**F. Bumping Of And By ROP And Adult School Teachers, Consultants And Other Special Employees**

1. Competency standard expressly addressed instructional coach position, with competency to allow bumping including "special training and experience to provide those services, and has at least one (1) year of experience within the preceding three (3) years serving in the assignment for the District." Respondent elementary school principal who had been released and sought bumping into instructional coach position asserted competency standard was written to prevent her from even applying, objecting primarily to the requirement of at least one year of experience in

the assignment within the preceding three years which prevented her from bumping into the position. Held the criterion regarding experience “is too narrowly drawn. The court in *Duax* approved the standard of one year of experience in ten years. More recently, the court in *Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4<sup>th</sup> 127, 142, suggested that one year within the past five years is valid. But the analysis in both cases focuses on the minimum level of experience needed to competently teach the subject, in contrast to a time period that would enable the selection of the most recently hired, lowest paid, or ‘best’ teacher available. And the *Duax* court approved one year in ten by contrasting it to one in the last two or three years: a standard which the court deemed ‘too narrowly defined competency.’ Accordingly the criterion here of working in the position for one year in the last three shall be invalidated.” However, respondent not allowed to bump “as she did not demonstrate that she has the training and experience required by the District for the instructional coach position.” [Query if other analysis was therefore *dictum*.] North Monterey County Unified (M. Anderson).

2. ROP instructor with a 2007 seniority date and a Preliminary Designated Subjects Vocational credential in Landscaping and Ornamental Nursery Operation, was certified and competent to bump a teacher with a 2009 seniority date who taught ROP Horticulture. Senior teacher allowed to bump even though junior teacher argued he had changed the curricula of his class so students could receive college credit. Sacramento COE (Lew)
3. Part-time ROP instructor who taught 12 hours per week was properly classified as a temporary employee. (Pursuant to Education Code § 44954 and § 44919) However, court noted if she has served as a temporary employee for at least 75 percent of the school days for her one year service in a temporary position, then pursuant to Education Code section 44918, she would be a probationary employee and her seniority date would then be adjusted. Sacramento COE (Lew)
4. Teacher holding a public affairs credential and children center permit unsuccessfully argued that she should be permitted to bump into an adult program where she previously taught or a Head Start teaching position because she is currently assigned to the child development center. The district established that the teacher’s child center permit did not authorize her to teach adult education and that Head Start is a permit position allowing for no “bumping” rights. Bellflower Unified (Russell)

## **G. Miscellaneous**

1. Teacher losing a .20 FTE assignment could not bump a junior teacher from her 1.0 FTE assignment, as doing so would result in a greater reduction in services than was authorized by the layoff resolution. Stockton USD (Sarli)

2. Argument of counselors holding PPS credentials that they are credentialed and competent to bump into a classified position, Behavior Support Chairperson, rejected. Even if there was authority that a senior certificated employee could bump into a temporary, classified position, it would still be incumbent upon the District to establish that the senior employee was “certificated and qualified” when making the reassignment. However, Respondents have the threshold duty to alert the District to their interest and qualifications to bump into temporary classified positions that are not ordinarily under consideration in a lay off proceeding. The PPS respondents had an opportunity at hearing to present evidence that they were qualified in behavioral modification planning and intervention and in staff development, but failed to do so. Stockton (Sarli)
3. In the context of skipping issues, respondents assert that they should be able to bump into classrooms of teachers who will be pulled out to teach subject matters that are being skipped. Respondents acknowledged that the teachers were properly skipped, so the district is not improperly retaining junior employees. To the extent respondents argue they have a right to be reassigned if and when the skipped teachers are pulled out and reassigned, “no legal authority has been cited for adjudicating such a right in this proceeding, and none has been found.” There is no jurisdiction in this proceeding to resolve reemployment issues of section 44956. “Even if jurisdiction existed, it would be premature to address respondents’ argument as the 2011-2012 schedules for [the two skipped employees] have not been established.” Hamilton Unified (D. Benjamin).
4. An administrator, whose administrative position was eliminated, was not entitled to bump a less senior teacher because the administrator did not have the proper English Learner (EL) certificate to qualify him to teach in the proposed capacity. Hesperia Unified (Ahler)
5. SCOE properly reduced full-time equivalent certificated positions when two employees who bumped into remaining 200-day positions were currently in 185-day assignments. Those teachers became 185-day employees sitting in 200-day assignments. Sacramento COE (Lew)
6. Teacher retained permanent status after returning from resignation, but her seniority was reset to her rehire date. She failed to assert the district was retaining any probationary employees who are rendering services she is certified and competent to render. Fresno Unified (Brandt)
7. Respondents did not identify any particular employees who are teaching full-time in assignments that more senior home economics teachers are credentialed and competent under the NCLB competency standard to teach. Fresno Unified (Brandt)

8. Teacher with 1992 seniority date and a multiple subject credential and a Clear Specialist Instruction Credential (Severely Handicapped) refused to be assigned to a different position because she had been through the ADA interactive process and alleged her physical condition prevented her from working in the proposed sites. SCOE may not consider teacher's physical condition in determining whether she is competent to bump into a teaching position. Sacramento COE (Lew)

## **X. ASSIGNMENTS AND REASSIGNMENTS**

1. District's reassignment and subsequent layoff of one employee for failing to meet NCLB "highly qualified" requirements deemed improper "use of the layoff process" to "discharge" employee without procedural protections of "for cause" dismissal statutes. The employee's school was out of compliance with NCLB requirements and the District was on NCLB "improvement status." The employee was credentialed and "highly qualified" for PE, but not in English/Language Arts which he had taught since 2007-08 school year. Employee received numerous directives to complete NCLB requirements but failed to comply. District reassigned employee to PE and subsequently eliminated his PE position. ALJ dismissed Accusation. Plumas Lake ESD (Woollard)
2. Where a senior librarian has both mathematics and a multiple subject credentials, district was not obligated to assign librarian to mathematics position (which was occupied by a junior probationary employee) in order to save more senior employees in multiple subject positions. District could assign librarian to multiple subject position and layoff a permanent multiple subject teacher. Lodi (Lew)
3. A district has discretion as to whether assignments and reassignments should be made to save other junior teachers consistent with their qualifications. A district is not obligated to reassign senior teachers who are not losing their positions in an effort to save junior teachers. Wheatland UHSD (Cabatic)
4. Respondents' argument that the Superintendent should select to layoff site administrators in order of seniority is not supported by the Education Code 44951; cause is not required to release an administrator. The Superintendent may use his discretion to decide which administrators to select for release. Bassett Unified (Juarez)

## **XI. ATTRITION**

### **A. Not Necessary In PKS Cases**

1. Attrition occurring after March 15 need not be considered in a PKS layoff, citing *San Jose/Allen*. Calexico Unified (Ahler)

## **B. Attrition Need Not Be Considered**

1. In layoffs based upon a reduction or discontinuance of PKS, the District is not required to consider positively assured attrition that occurs between the date of the preliminary layoff notices and the final layoff notices. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627) Twin Rivers (Woollard)
2. Early retirements under PARS were known to the governing board before preliminary notices were issued, but the board had not approved the financial feasibility of the program until after the preliminary notices had been issued. Therefore, the PARS retirements were not “positively assured” by the deadline for the issuance of preliminary notices. Twin Rivers (Woollard)
3. The board’s resolution eliminated a total of nine (9) FTE in counseling services and the district took into consideration all positively assured attrition prior to issuing preliminary notices of layoff to the counselors. Subsequently, the district was advised that a high school counselor would be submitting an application for early retirement which would go to the board for acceptance or rejection on April 28<sup>th</sup>. The Associate Superintendent of Human Resources testified that he did not know whether the application would be approved and, in any event, the board might elect to not fill the vacancy for salary savings. Five counselors argued that the district must take the retirement application into account when issuing final notices. The ALJ noted the case law is clear that in a PKS layoff, the district is not required to consider attrition occurring after March 15, citing *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.4<sup>th</sup> 327. Woodland (Crowell)

## **C. Attrition Must Be Considered**

1. Because *Lewin v. Bd. of Trustees* (1976) 62 Cal.App.3d 977 (*ALewin@*) was decided by Division Two of the Second Appellate District and *San Jose v. Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 (*ASan Jose@*) was decided by Division Five of the First Appellate District, there is a disagreement between those districts as to whether a school district is required to consider attrition in a PKS layoff. A... [T]he *Lewin* decision is more faithful to the language of [Education Code] section 44955 and should be followed.@ The court in *San Jose* was mistaken in concluding that it is unnecessary to consider positively assured attrition in PKS cases. In both ADA and PKS cases, employees= services may be terminated only when termination has Abecome necessary@ and only when that necessity is Aby reason of@ the ADA or PKS condition. (Education Code section 44955(b).) In both ADA and PKS layoffs, the words of the court in *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648 hold true. A consideration of positively assured attrition results in no prejudice

to the district and spares some employees from *unnecessary* termination. Not to consider attrition would result in a greater decrease in the number of employees than the condition necessitates. Chula Vista Elementary (Walker)

**D. Miscellaneous**

1. District discovered misassignment of multiple subject teacher in a secondary math teaching position before preliminary layoff notices were served. ALJ concludes it would have been appropriate to consider this position as a math vacancy, or as positively assured attrition, because it was known that the position would be vacant in 2011-2012 school year. Stockton (Sarli)

**XII. CONTRACTUAL ISSUES**

1. Public policy requires that statutes trump contracts, express or implied, including memoranda of understanding. San Juan Unified (Vorters).
2. Where district and teachers association entered into a memorandum of understanding that reflects the statutory mandate that temporary employees who serve 75% of the regular school year and who are subsequently appointed to probationary positions receive a full year's probationary credit, and MOU did not specifically mention service as a short- or long-term substitute, Education Code section 44918 controlled and provided for prior year's substitute service to be credited as probationary service. San Juan Unified (Vorters).

**XIII. DOMINO THEORY**

**A. Applied**

1. District in prior year had reappointed nine teachers from the layoff preferred rehire list. The nine then received current year notices. Inexplicably, district did not restore original seniority dates as required by Education Code sections 44956, 44957]. Held: prior dates restored, with the right to remain employed if they could point to anyone in their service area being retained. [Note: ambiguity in the ruling, suggesting that all nine could stay if even one junior person was improperly saved - ala domino theory.] MountainView (Matyszewski)

**B. Not Applied**

1. Where less-senior employee was improperly skipped because of BCLAD authorization and did not receive a layoff notice, layoff notice to more-senior employee without BCLAD for 0.87 FTE must be rescinded (no reference to domino theory). San Juan Unified (Vorters).

2. Inadvertent failure to notice a junior teacher results in saving the most senior notified teacher. (Citing Alexander/Delano). Apparently, no domino theory argued. Coachella Valley Unified (Meth)
3. Where District improperly skipped junior employee, District was required to retain the most senior respondent who had been identified for layoff. Patterson (Frink)
4. School district's inadvertence resulted in the failure to notice junior social studies teacher. The ALJ refused to apply the "domino theory." When a school district inadvertently fails to give notice to one employee, that procedural error should only result in one corresponding respondent having his/her layoff notice withdrawn, since that employee would be viewed as the one suffering prejudice. The other respondents would not be viewed as suffering prejudice from the mistaken failure to give notice to the employee, since they would have been subject layoff even if he/she had been properly noticed. Los Angeles Unified (Cabos-Owen)
5. Domino Theory is unavailing. To cure the result of defective service against one Respondent, the District must retain the most senior employee competent and credentialed to render that Respondent's service. Such an act is an appropriate cure for the district's failure, and has been recognized by the courts. *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 576-77. Orange County DOE (Juarez)
6. Administrative Law Judge did not apply "domino theory" where the district failed to provide preliminary layoff notice to three junior employees. The ALJ required the district to rescind the layoff notices to a corresponding number of senior respondents in the same subject area. Pomona Unified (Sawyer)
7. Domino Theory is not supported by relevant legal authority. Proper remedy is for a "corresponding number of the most senior employees" who did not receive a layoff notice to have their notices withdrawn. Mountain View (Sawyer)