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Participants and spectators are requested to set cell phones and pagers to silent mode during Board meetings.

**SPECIAL BOARD MEETING
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
LOVONYA DEJEAN MIDDLE SCHOOL
3400 MACDONALD AVENUE
RICHMOND, CA 94805**

MONDAY, MAY 11, 2009

6:30 PM

A. OPENING PROCEDURES

- B.1 Pledge of Allegiance**
- B.2 Roll Call**

B. ACTION ITEM

- * B.1 Resolution No. 87-0809: Resolution to Adopt the Decision of the Administrative Law Judge and Termination of Certificated Employees**

Comment:

Pursuant to Education Code, the Board of Education must adopt a resolution to Adopt the Decision of the Administrative Law Judge and Termination of Certificated Employees so that those affected employees may be notified prior to May 15, 2009. This action is necessary for the District to make the needed budget cuts for the 2009-2010 school year.

Recommendation: Recommend Approval

Fiscal Impact: Reduction of expenses to the general fund

C. THE NEXT SCHEDULED BOARD OF EDUCATION MEETING

Lovonya DeJean Middle School – Wednesday, May 20, 2009

D. ADJOURNMENT

Special Accommodations: Upon written request to the District, disability-related modifications or accommodations, including auxiliary aids or services, will be provided. Please contact the Superintendent's Office at 510-231-1101 at least 48 hours in advance of meetings.


The public may address items which are marked with an asterisk ().*

West Contra Costa Unified School District
1108 Bissell Avenue
Richmond, California 94801
Office of the Superintendent

ITEM REQUIRING ATTENTION—BOARD OF EDUCATION

To: Board of Education

Meeting Date: May 11, 2009

From: Jessica R. Romeo, 
Assistant Superintendent Human Resources

Agenda Item: B.1

Subject: Resolution No. 87-0809: Resolution to Adopt the Decision of the Administrative Law Judge and Termination of Certificated Employees

Background Information:

Pursuant to Education Code, the Board of Education must adopt a resolution to Adopt the Decision of the Administrative Law Judge and Termination of Certificated Employees so that those affected employees may be notified prior to May 15, 2009. This action is necessary for the District to make the needed budget cuts for the 2009-2010 school year.

Recommendation: Recommend Approval

Fiscal Impact: Reduction of expenses to the general fund

DISPOSITION BY BOARD OF EDUCATION

Motion by: _____

Seconded by: _____

Approved _____

Not Approved _____

Tabled _____

**BEFORE THE BOARD OF TRUSTEES
OF THE
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
CONTRA COSTA COUNTY, CALIFORNIA**

Resolution and Decision Not to)	
Reemploy Certificated Employees)	RESOLUTION NO. 87-0809
<hr/>)	

WHEREAS, the Board of Trustees of the WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT adopted a Resolution on March 4, 2009, authorizing and directing the Superintendent or Superintendent's designee, to initiate and pursue procedures necessary to not reemploy the equivalent of 214.55 full-time certificated employees of this District pursuant to Education Code sections 44949 and 44955 because of a reduction and/or discontinuance of particular kinds of services; and

WHEREAS, the Superintendent, or Superintendent's designee, duly and properly served notice on the certificated employees listed on Attachment "A" on March 12, 2009, indicating that the Governing Board did not intend to reemploy them to the extent indicated in the Resolution and Notice for the 2009-2010 school year; and

WHEREAS, the certificated employees listed on Attachment "A" were informed of their right to request a hearing and that failure to do so in writing by March 23, 2009, would constitute a waiver of the right to a hearing; and

WHEREAS, the certificated employees listed in Attachment "B" did request a hearing by March 23, 2009; and

WHEREAS, a layoff hearing was convened on April 27, 2009 by the Office of Administrative Hearings, State of California, for those certificated employees requesting a hearing; and

WHEREAS, a Proposed Decision dated May 5, 2009, has been submitted by Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings, in the matter of Accusations against those employees requesting a hearing, a true and correct copy of which is marked Exhibit "A", attached hereto, and by this reference made a part hereof; and

WHEREAS, a copy of said Proposed Decision has heretofore been served on the certificated employees listed on Attachment "B" on or before May 15, 2009; and

WHEREAS, the Board has duly considered said Proposed Decision and finds that said Decision, including Findings of Fact, Determination of Issues and Order, should be adopted as the decision of this Board;

WHEREFORE, THE BOARD HEREBY FINDS that those matters found in said Proposed Decision do constitute sufficient cause for not reemploying the certificated employees listed on Attachment "B" to the extent indicated in the Proposed Decision and do relate to the welfare of the schools of the WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT and pupils thereof,

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the aforesaid Proposed Decision be, and it hereby is, adopted as the decision of the Board of Trustees of the WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT and said decision shall be effective immediately;

FURTHERMORE, considering the certificated staffing requirements of the WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT for the 2009-2010 school year, as well as the seniority and qualifications of each of the certificated employees of the District, it is necessary that the services of the certificated employees listed on Attachment "C" will not be required for the ensuing school year to the extent indicated in the March 4, 2009 Resolution and March 11, 2009 Notice to the Employee;

BE IT FURTHER RESOLVED that the Superintendent of the WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, or Superintendent's designee, is authorized and directed to notify those certificated employees listed on Attachment "C" pursuant to Section 44949 of the Education Code that their services to the extent indicated in the March 4, 2009 Resolution, will not be required by this District for the ensuing 2009-2010 school year. Said notice shall be given by serving upon the certificated employees listed on Attachment "C" a true copy of this Resolution and Decision Not to Reemploy Certificated Employees.

BE IT FURTHER RESOLVED that this decision is effective immediately.

Duly and regularly adopted this 11th day of May, 2009 by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

President, Board of Trustees of the
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

I, _____, Clerk of the Board of Trustees of the WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, do hereby certify that the foregoing Resolution was regularly introduced, passed and adopted by the Board of Trustees at its meeting held on May 11, 2009.

Clerk, Board of Trustees

ATTACHMENT A

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

LIST OF CERTIFICATED EMPLOYEES SENT INITIAL LAYOFF NOTICES

Aaronian	Michael	Clifton	Robert
Addiego	Jinevra	Coker	Lily
Aidi	Joyce	Coleman	Clifford
Albrink	Sherry	Collins	John
Allred	Jeffrey	Collins	Robert
Allums	William	Constantin	Michael
Azcarraga	Alicia	Cooke	Elizabeth
Balderas	Lourdes	Corcoran	Kevin
Bankston	Richard	Covarrubias-	
Barb	Crystal	Ornelas	Mayra
Barnes	Linda	Cunningham	Rachel
Barrera	Teresa	Daly-Mallard	Ann
Battas	Lisa	De Mulder	
Bell	Sonja	Johnston	Catherine
Benaderet	Leigh	De Oliveira	Jean Pierre
Bennett	Alice	Decarlo	Ellen
Bennett	Jessica	Diaz	Teresa
Bills	Daphne	Diberardino	Christine
Bodwin	Lucas	Dixon	Elona
Bose	Godhuli	D'Onofrio	Christina
Brainerd	Rachel	Duchene	Lucas
Brodie	Andrew	Dunn	Colin
Brown	Ahdam	Eberle	Catherine
Brown	Roland	Eirvin	Jay
Bryant	Cynthia	Estes	Micah
Bushnell	Scott	Estrada	Jessica
Campbell	Alexandra	Fabrizio	Gina
Carothers	Alba	Ferreira	Leatha
Carrico	Tiffany	Flores	John
Cary	Kelly	Fresquez	Anthony
Cassman	Peter	Fuglestad	Tom
Catania	Amy	Gilstrom	Stephanie
Catolico	Jonathan	Gipson	Calvin
Chainey	Lisa	Glasser	Gary
Chakrin	Rebecca	Gomes	Nicole
Clark	Cameron	Greenspan	Judy

Greig	Rica	Mayer	Robert
Hall	Melissa	McCain	Markell
Harrison	Alicia	McCreadie	Lauryn
Hart-Poindexter	Robin	McNally	Lisa
Hata	Heidi	Melancon	Mark
Heath	Leilani	Midney	Barbara
Hebert	Henry	Mitchell	Phyllis
Hillyer	John	Moffitt	Stacy
Hjort	Jessica	Moody	Dominic
Hughes-Tutass	Mary	Morris	Estella
Jackson	Lisa	Morsony	Beverly
Jackson	Nathan	Moses	Kim
Jamsheed	Juliet	Nalic	Amar
Jefferson	Marquita	Nemoyten	Mark
Jensen	Karin	Newton	Akele
Johnston	Emily	Ogier-Marangella	Jenna
Johnston	Michael	Ogura	Patricia
Jones	Liah	O'Neal	Susan
Joseph	Mayra	Oshima	Mary
Jourdenais	Alisha	Owens	Margaret
Jun	Soyoung	Palmer	Jeffrey
Kaplan	Lauren	Parker Carter	Christina
Kellum	Stacy	Paulson	Susan
Kers	Maurice	Pelayo	Richard
King	Gloria	Pipkin	Latasha
King	Stephanie	Porter	Jennifer
King	Tanya	Powell	Connie
King-Randle	Brenda	Prak	Finy
Kozanevich	Sara	Quinonez	Juan
Kunaniec	Frances	Rabier	Avril
Lam	Erica	Radkiewicz	Erik
Larson	Sarah	Rashid	Shukri
Layer	Michelle	Reich	Thomas
LeBlanc	Russell	Richards	Shelene
Leung	Eric	Robinson	D'Andrea
Lowe	Mark	Robinson	Janet
MaClean	Jill	Rodgers	Detrice
Magid	Lisa	Roeske	Christopher
Maier	Julie	Romm	Jeremiah
Mainini	Steve	Scott	Alana
Malone	Angel	Seven	Katherine
Manglona	Thomas	Shearer	Alan
Marangella	Mason	Sheridan	Brian
Mariscal	Rick	Sherr	Chandra
Marshall	Patricia	Shetterly	Jane

Silva	Wesley
Simpson	Gail
Sims	Deirdre
Sims	Israel
Sloan	Jennifer
Smalls	Prince
Sonsten	Melissa
Stewart	Kimberly
Stewart	Matthew
Strickland	Jason
Styer	Melissa
Sutherlin	Guy
Tianero	Paulita
Trujillo	Hector
Valdehueza	Tiffany
Verprauskus	Eric
Vigna	Sarah
Vilchez	Jorge
Villano	Kenton
Vincent	David
Von Buchau	Erik
Watson	Gary
Watson	Morgan
Weems	Tyrone
West-Brown	Lowanda
Whitbeck	Stephanie
Whitson	Elisabeth
Whittaker	Daniel
Williams	Jeannie
Williams	Michael
Wilson	Adrian
Wilson	Leah
Winston	Rashonda
Wong	Nanami
Wood	Alison
Woodhull	Don
Woody	Danielle
Yasaki	Deanna
Yu	Angela
Zobel	Brian

ATTACHMENT B

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

LIST OF CERTIFICATED EMPLOYEES REQUESTING A LAYOFF HEARING

Aaronian	Michael	Corcoran	Kevin
Addiego	Jinevra	Cunningham	Rachel
Aidi	Joyce	Daly-Mallard	Ann
Aidi	Ramtin	De Mulder	
Allums	William	Johnston	Catherine
Azcarraga	Alicia	De Oliveira	Jean Pierre
Balderas	Lourdes	Decarlo	Ellen
Bankston	Richard	Diaz	Teresa
Barb	Crystal	Diberardino	Christine
Barnes	Linda	D'Onofrio	Christina
Battas	Lisa	Duchene	Lucas
Bell	Sonja	Dunn	Colin
Benaderet	Leigh	Eberle	Catherine
Bennett	Alice	Eirvin	Jay
Bennett	Jessica	Estes	Micah
Bills	Daphne	Estrada	Jessica
Bodwin	Lucas	Ferreira	Leatha
Bose	Godhuli	Flores	John
Brainerd	Rachel	Fresquez	Anthony
Brodie	Andrew	Fuglestad	Tom
Brown	Ahdam	Gilstrom	Stephanie
Brown	Roland	Gipson	Calvin
Bryant	Cynthia	Glasser	Gary
Bushnell	Scott	Gomes	Nicole
Campbell	Alexandra	Greenspan	Judy
Carothers	Alba	Greig	Rica
Cary	Kelly	Hall	Melissa
Cassman	Peter	Harrison	Alicia
Catania	Amy	Hart-Poindexter	Robin
Catolico	Jonathan	Hata	Heidi
Chainey	Lisa	Hebert	Henry
Chakrin	Rebecca	Hillyer	John
Clark	Cameron	Hughes-Tutass	Mary
Clifton	Robert	Jackson	Lisa
Coker	Lily	Jackson	Nathan
Coleman	Clifford	Jamsheed	Juliet
Collins	Robert	Jefferson	Marquita
Constantin	Michael	Jensen	Karin
Cooke	Elizabeth	Johnston	Emily

Johnston	Michael	Prak	Finy
Jones	Liah	Rabier	Avril
Joseph	Mayra	Richards	Shelene
Jourdan	April	Robinson	D'Andrea
Jourdenais	Alisha	Robinson	Janet
Jun	Soyoung	Rodgers	Detrice
Kaplan	Lauren	Roeske	Christopher
Kellum	Stacy	Scott	Alana
Kers	Maurice	Shearer	Alan
King	Gloria	Sheridan	Brian
King	Stephanie	Sherr	Chandra
King	Tanya	Shetterly	Jane
Kozanevich	Sara	Silva	Wesley
Lam	Erica	Simpson	Gail
Larson	Sarah	Sims	Deirdre
Layer	Michelle	Sims	Israel
LeBlanc	Russell	Sloan	Jennifer
Lowe	Mark	Smalls	Prince
Magid	Lisa	Sonsten	Melissa
Maier	Julie	Stewart	Kimberly
Mainini	Steve	Strickland	Jason
Marangella	Mason	Styer	Melissa
Mariscal	Rick	Sutherlin	Guy
Marshall	Patricia	Tianero	Paulita
Mayer	Robert	Trujillo	Hector
McCreadie	Lauryn	Valdehueza	Tiffany
McNally	Lisa	Vigna	Sarah
Melancon	Mark	Vilchez	Jorge
Midney	Barbara	Villano	Kenton
Mitchell	Phyllis	Vincent	David
Moody	Dominic	Von Buchau	Erik
Morris	Estella	Watson	Gary
Morsony	Beverly	Watson	Morgan
Moses	Kim	Weems	Tyrone
Nalic	Amar	West-Brown	Lowanda
Nemoyten	Mark	Whitbeck	Stephanie
Newton	Akele	Whitson	Elisabeth
Ogura	Patricia	Whittaker	Daniel
O'Neal	Susan	Williams	Jeannie
Owens	Margaret	Williams	Michael
Parker Carter	Christina	Wilson	Adrian
Paulson	Susan	Wong	Nanami
Pelayo	Richard	Wood	Alison
Pipkin	Latasha	Woodhull	Don
Porter	Jennifer	Woody	Danielle
		Yasaki	Deanna
		Yu	Angela

ATTACHMENT C

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

**LIST OF CERTIFICATED EMPLOYEES
TO RECEIVE FINAL LAYOFF NOTICE**

Allred	Jeffrey	Fabrizio	Gina
Allums	William	Ferreira	Leatha
Azcarraga	Alicia	Flores	John
Bankston	Richard	Fresquez	Anthony
Barnes	Linda	Gilstrom	Stephanie
Barrera	Teresa	Gipson	Calvin
Battas	Lisa	Greenspan	Judy
Benaderet	Leigh	Hall	Melissa
Bills	Daphne	Harrison	Alicia
Bodwin	Lucas	Hart-Poindexter	Robin
Brainerd	Rachel	Hata	Heidi
Brodie	Andrew	Heath	Leilani
Brown	Roland	Hillyer	John
Bryant	Cynthia	Hjort	Jessica
Bushnell	Scott	Hughes-Tutass	Mary
Campbell	Alexandra	Jamsheed	Juliet
Carrico	Tiffany	Jensen	Karin
Cary	Kelly	Johnston	Emily
Cassman	Peter	Jourdenais	Alisha
Catolico	Jonathan	Jun	Soyoung
Chainey	Lisa	Kaplan	Lauren
Chakrin	Rebecca	Kers	Maurice
Clark	Cameron	King	Tanya
Clifton	Robert	Kozanevich	Sara
Collins	John	Kunaniec	Frances
Collins	Robert	Larson	Sarah
Constantin	Michael	Layer	Michelle
Cooke	Elizabeth	LeBlanc	Russell
De Mulder		Magid	Lisa
Johnston	Catherine	Maier	Julie
De Oliveira	Jean Pierre	Malone	Angel
Diaz	Teresa	Manglona	Thomas
D'Onofrio	Christina	Marangella	Mason
Duchene	Lucas	Mayer	Robert
Eberle	Catherine	McCreadie	Lauryn
Estrada	Jessica	Melancon	Mark

Midney	Barbara	Whittaker	Daniel
Mitchell	Phyllis	Williams	Jeannie
Moffitt	Stacy	Williams	Michael
Nalic	Amar	Wilson	Adrian
Palmer	Jeffrey	Wilson	Leah
Parker Carter	Christina	Wong	Nanami
Paulson	Susan	Woody	Danielle
Pelayo	Richard	Yu	Angela
Pipkin	Latasha	Zoble	Brian
Porter	Jennifer		
Powell	Connie		
Prak	Finy		
Quinonez	Juan		
Rabier	Avril		
Radkiewicz	Erik		
Rashid	Shukri		
Reich	Thomas		
Richards	Shelene		
Robinson	Janet		
Rodgers	Detrice		
Scott	Alana		
Sheridan	Brian		
Shetterly	Jane		
Silva	Wesley		
Sims	Israel		
Sloan	Jennifer		
Smalls	Prince		
Sonsten	Melissa		
Stewart	Kimberly		
Stewart	Matthew		
Strickland	Jason		
Styer	Melissa		
Sutherlin	Guy		
Tianero	Paulita		
Trujillo	Hector		
Valdehueza	Tiffiny		
Verprauskus	Eric		
Vigna	Sarah		
Villano	Kenton		
Vincent	David		
Watson	Gary		
Watson	Morgan		
West-Brown	Lowanda		

EXHIBIT A

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

Copy of Proposed Decision by the Office of Administrative Hearings

EXHIBIT A

BEFORE THE
GOVERNING BOARD OF THE
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations
Against:

JOYCE AIDI and Other Certificated
Employees of the West Contra Costa Unified
School District,

Respondents.

OAH Case No. 2009020383

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 27, 2009, in Richmond. Complainant Jessica Romeo, Assistant Superintendent, Human Resources, of the West Contra Costa Unified School District was represented by Laurie S. Juengert, Attorney at Law.

Respondents named and designated in Exhibit A were represented by Margo Feinberg, Attorney at Law.

The following respondents, who were identified by complainant's counsel as representing themselves, did not appear and were not represented at the hearing: Michael Aaronian, Jinevra Addiego, Ramtin Aidi, Sonja Bell, Kim Moses, and Gary Watson.¹

Oral, documentary, and stipulated evidence and oral argument having been received, the Administrative Law Judge submitted this matter for decision on April 27, 2009, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on April 8, 2009, the Accusation was made and filed by Jessica Romeo in her official capacity as Assistant

¹ The preliminary notices not to re-employ and/or accusations issued to some of these non-appearing respondents may have been rescinded or withdrawn by the District.

Superintendent for Human Resources (Assistant Superintendent), West Contra Costa Unified School District, State of California (District).

2. Except for those teachers who are temporary certificated employees, respondents, and each of them, are permanent or probationary certificated employees of the District.

3. The District is a comprehensive school district, which is comprised of 38 elementary schools as well as middle and high schools, that serves and educates students in the area of western Contra Costa County.

4. (A) In a letter or Item Requiring Attention dated March 4, 2009, the Assistant Superintendent recommended to the Governing Board of the District that it adopt a resolution under Education Code section 44955 to reduce or eliminate particular kinds of services and to provide notice to appropriate certificated employees before March 15, 2009, "in order to meet the necessary budget reductions for the 2009-2010 school year."

(B) On March 4, 2009, the Governing Board adopted Resolution No. 70-0809 and, pursuant to Education Code sections 44949 and 44955 and based upon the recommendation of the Assistant Superintendent, determined that it is necessary to reduce or discontinue particular kinds of services being rendered by certificated personnel at the close of the current 2008-2009 school year by a total of 166.95 full-time equivalent (FTE) positions, as amended. As result of this reduction or discontinuance of particular kinds of services, the Governing Board found it necessary to terminate the employment of certain certificated employees at the end of the 2008-2009 school year. The Governing Board therefore resolved that the Superintendent or designee send appropriate notices to all employees whose services shall be terminated by virtue of this action.²

(C) On March 4, 2009, in Resolution No. 68-0809, the Governing Board adopted criteria to be used in determining the order of termination or layoff of certificated employees who first rendered paid service to the District on the same date or have the same seniority date.

(D) On March 4, 2009, in Resolution No. 70-0809, the Governing Board also adopted criteria to allow the District to deviate from terminating or reappointing certificated employees in order of least seniority in order to fill a demonstrated specific need for fully credentialed personnel and for personnel to teach a specific course or course of study which other certificated employees with more seniority do not possess. Criteria included, but were not limited to, currently holding a BCLAD authorization or prior equivalent and current assignment to teach in a bilingual classroom and compliance with NCLB requirements.

² The Governing Board also resolved that its resolution was not deemed to "confer any status or rights upon temporary or categorically funded project certificated employees in addition to those specifically granted to them by statute."

5. On March 13, 2009, the Assistant Superintendent recommended to the Governing Board that certain certificated employees not be re-employed for the 2009-2010 school year and that the Governing Board give notice as required by Education Code sections 44949 and 44955 to the certificated employees that their services will be terminated for the 2009-2010 school year. The reasons for the recommendation and for decreasing the number of certificated employees were set forth in the Assistant Superintendent's letter and Resolution No. 70-089, as set forth in Findings 4(A) – (B) above. The Assistant Superintendent also notified the Governing Board that there will be no probationary or permanent certificated employees with less seniority who will be retained to render services which the certificated employees are certificated and competent to render.

6. Before March 15, 2009, pursuant to the resolution of the Governing Board and the provisions of Education Code sections 44949 and 44955, the Assistant Superintendent gave written notices entitled "Notice of Recommendation that Services Be Terminated" to respondents, who are probationary or permanent certificated employees and temporary certificated employees, that she had recommended to the Governing Board that their services will not be required for the ensuing 2009-2010 school year. The written notices included the resolution of the Governing Board to reduce and/or discontinue certain services, acknowledgement of receipt, pertinent sections of the California Education Code, and a request for hearing.

7. Respondents, who are certificated employees of the District, and each of them, timely filed requests for a hearing to determine if there is cause for not re-employing them for the ensuing school year.

8. The District's Notice of Recommendation that Services Be Terminated dated on or about March 11, 2009, was sufficient in providing notice to respondents under Education Code sections 44949 and 44955. Respondents were not prejudiced by errors in the notice, if any, with respect to the description of their employment status, assignments, home addresses, or any other matters. No claims were raised in the hearing that the notice was, in fact, deficient in any respect.

9. On or about April 8, 2009, the District properly served respondents, and each of them, by certified mail with an Accusation, Statement to Respondent, Resolution No. 70-0809, Request for Discovery, copies of Education Code sections 44949 and 44955 and Government Code sections 11506, 11507.5-11507.7, and 11520, blank Notice of Defense form, and Notice of Hearing. All of the respondents filed timely notices of defense, requesting a hearing to determine if there is cause not to employ them for the ensuing school year and objecting to the Accusation. All prehearing jurisdictional requirements have been met by the parties.

10. On March 4, 2009, pursuant to Resolution No. 70-0809, the Governing Board resolved and took action to reduce or discontinue certain services or programs offered by the District for the 2009-2010 school year in the following FTE positions:

<u>Elementary</u>	<u>Full-Time Equivalent Positions</u>
Elementary Music	9.0
Class Size Reduction K-3	43.0
Class Size Reduction 4-6, High Priority School Grant	8.25
Physical Education	5.8
Art	6.0
Computer	1.0
 <u>Secondary</u>	
Supplemental Counseling Grant--Counselors	5.0
Counseling (Closure of Adams Middle School)	3.0
Librarian (Closure of Adams Middle School)	1.0
Physical Education	12.0
Foreign Language—French	0.6
Foreign Language—German	0.6
 <u>District-Wide</u>	
Curriculum Specialist	2.0
Instructional Support Reading & ELD Coach	16.0
Literacy Coach	1.0
Project Assistant—Homeless	1.0
Project Assistant—ELD	3.0
Project Assistant—Strategic Focus	1.0
Project Assistant—State & Federal	3.0
Teacher on Special Assignment (at school sites)	7.0
Teacher on Special Assignment—BTSA	3.2
Teacher on Special Assignment—Alternative Certification	1.0
Project Assistant—Staff Development	3.0
Program Assistant—Site Based	6.0
Psychologists	4.5

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Administrative

Executive Director—State & Federal	1.0
Director of Career Academics, Career Tech Original Occupational Programs	1.0
K-12 Instructional Specialists	7.0
Principal, Elementary	2.0
Principal, Middle School	1.0
Vice Principal, Secondary	3.0
Vice Principal, Elementary (Grant Funded)	1.0
Coordinator, Educational Services	3.0
Coordinator, State & Federal	1.0

The reduction or discontinuance of the services set forth hereinabove constitute a total of 166.95 full-time equivalent positions.

11. The services set forth in Finding 10 above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Governing Board to reduce or discontinue these services is within its sound discretion and is not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils.

12. The District prepared a seniority list and published the seniority list in two forms: a Certificated Seniority List—Date Order (Exh. 6), which lists certificated employees in order of first date of paid service with the District, and a Certificated Seniority List—Alphabetical Order (Exh. 7), which lists certificated employees in alphabetical order. The seniority list contains information about seniority dates, work site assignments, and credentials of certificated employees. The District solicited information from the certificated teachers in order to verify and update information for the seniority list and then made changes to the seniority list based on information received from them. The District reviewed the seniority list to identify the least senior certificated employees and examined the credentials of certificated employees to determine whether certain teachers are entitled to bump other employees. The District developed a Bumping Chart (Exh. 8).

13. Further, the District has tried to obviate or mitigate the need to reduce or discontinue the employment of all affected certificated employees by taking into account personnel changes due to leaves of absence (Exh. 10) and retirements and resignations (Exh. 11) of individual employees within the District. In addition, the District has given temporary certificated employees their releases from employment (Exh. 9) and recommended to the Governing Board that probationary certificated employees be non-elected and released for the 2009-2010 school year (Exh. 11). The District has determined what will be positively assured attrition for the 2009-2010 school year.

14. (A) As the parties stipulated during the hearing, respondent Eric Von Buchau, a music teacher with a seniority date of August 26, 1998, was not given proper notice that his services will not be needed for the ensuing school year. The District has agreed to rescind the notice and/or Accusation against Buchau who must be retained as a permanent certificated employee.

(B) As the parties stipulated during the hearing, the District agrees to rescind its notice issued to respondent Mark Nemoyten, a music teacher, that his services will not be needed for the ensuing school year. Nemoyten has a multiple subject credential and an earlier seniority date.

(C) Respondent Pierre DeOliveira is named as a German teacher on the District's seniority list. In fact, DeOliveira is a counselor with the second least seniority among the counselors listed on the Bumping Chart. The District agrees to make this change to the seniority list.

(D) Counsel for the District and counsel for respondents conferred extensively prior to the hearing and reached agreements on many issues that obviated the need to litigate those issues during the hearing. There are other issues remaining that respondents will be discussing with the District in the context of a collective bargaining agreement.

15. (A) Respondents' counsel does raise two criticisms of the District's handling of this reduction in force proceeding. First, counsel correctly observes that the exact positions of many respondents in this layoff process have not been determined and the District may still rescind notices issued to respondents or re-employ them for the next school year. The District has not completed its bumping and layoff analysis because it allows certificated employees to apply for positions for which they are credentialed and competent to fill and the second stage of this "transfer round" will not be completed until the next month.

(B) Second, respondents' counsel contends that the District's resolution to reduce or discontinue particular kinds of services is defective on the grounds that the Governing Board did not make any finding or state a reason why the District had to make such financial decision. Respondents' counsel argues that there must be a nexus between the Resolution and the need of the District to curtail its finances or cut its budget. Here, the District did present such evidence. As established by the testimony of the Assistant Superintendent and Associate Superintendent of Business Services, the Governing Board has been apprised of and discussed the impending District budget deficit of \$25.7 million for some time before it adopted the reduction in force resolution. The District is already under the review of a state trustee and, if it fails to balance its budget or cannot meet its financial obligations for the next school year, the District will be subjected to control and supervision by a state administrator. The District's budget and funding is affected by decreasing enrollment as well as the loss or expiration of certain grants and funding sources, including the grant for class size reduction for grades four through six and categorical funds. With the current reduction or discontinuance of particular kinds of services, the Governing Board

hopes to realize a budget savings of \$2.9 million from the class size reduction of kindergarten through grades three and a total budget savings of \$5 million from the current reduction in force proceeding. Despite the current reduction or discontinuance of particular kinds of services, the Governing Board and District expects to continue providing state-mandated services although in different manner. Accordingly, the resolution of the Governing Board to reduce or discontinue particular kinds of services was reasonable and not arbitrary or capricious within the meaning of Education Code sections 44949 and 44955.

16. (A) The District may take action against any certificated employees, who were duly served with preliminary notices of layoff but then did not request a hearing, pursuant to Education Code sections 44949 and 44955.

(B) The District may likewise take action against any respondent, who was duly served with a preliminary notice of layoff and an accusation but then did not file a notice of defense or make an appearance at the hearing after filing a notice of defense, pursuant to Government Code section 11520, subdivision (a), and Education Code sections 44949 and 44955.

17. It was not established there is or will be any certificated employee with less seniority than those respondents or certificated employees, who is being retained by the District to provide services, that respondents or other certificated employees are certificated and competent to render.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 13 above. All notices, accusations, and other related papers and reports required by these Education Code sections have been provided in timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce by 166.95 full-time equivalent positions the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth in Findings 1 – 13 above. With respect to those respondents whose employment has been found to be terminable by the District and any other certificated employees who received notices but did not request a hearing, the causes set forth in the Accusation relate solely to

the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Based on Findings 1 – 17 above, there is no certificated probationary or permanent employee with less seniority than any one of respondents or the certificated employees who is being retained by the District for the 2009- 2010 school year to render services which any one of respondents or certificated employees is certificated and competent to render.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation issued to respondents is sustained, based on Conclusions of Law 1 – 3 above. The West Contra Costa Unified School District may give notice in inverse order of seniority to respondents, and each of them, whose layoff notices have not been rescinded, that their services will not be required for the ensuing 2009-2010 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

2. The West Contra Costa Unified School District may give notice to those certificated employees, who were served with notices and/or accusations that their services will not be needed next year but did not file requests for hearing or appear at the hearing, that their services will not be required for the ensuing 2009-2010 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.

3. Before giving notice to respondents and the other certificated employees who did not request a hearing, the West Contra Costa Unified School District shall determine and take into account any additional positively assured attrition and updated transfers or reassignments among certificated employees in deciding how many and when certificated employees should be terminated before the ensuing 2009-2010 school year.

Dated: May 5, 2009



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings