

Santa Ana Unified School District
1601 E. Chestnut Avenue
Santa Ana, California 92701

MINUTES

SPECIAL MEETING
SANTA ANA BOARD OF EDUCATION

May 16, 2017

CALL TO ORDER

The meeting was called to order at 8:03 a.m. by Board President Palacio. Other members in attendance were Ms. Amezcua, Dr. Alvarez, and Dr. Rodriguez. Ms. Iglesias was absent.

PLEDGE OF ALLEGIANCE

The meeting was opened with the Pledge of Allegiance led by Vice President Amezcua.

PUBLIC PRESENTATIONS

Ramona Alvarez addressed the Board related to layoffs.

REGULAR AGENDA - ACTION ITEM

- 1.0 CONSIDERATION OF PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE IN OAH CASE NO. 2017030750; APPROVAL OF RESOLUTION NO. 16/17-3192 REGARDING FINAL REDUCTION OR ELIMINATION OF CERTAIN CERTIFICATED SERVICES; AUTHORIZE FINAL NOTICES TO AFFECTED RESPONDENTS AND NON-RESPONDENTS (EDUCATION CODE SECTIONS 44949 AND 44955)

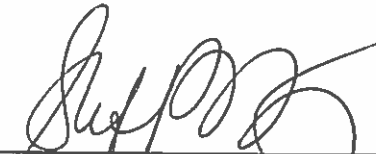
It was moved by Ms. Amezcua, seconded by Dr. Alvarez, and carried 4-0, to adopt the Administrative Law Judge's proposed decision to reduce particular kinds of services, as amended or corrected by the final resolution, immediately rescind certain notices, approve the layoff of approximately 163 certificated employees, and approve the issuance of final notices of layoff.

ADJOURNMENT

There being no further business to come before the Board, the Board meeting was adjourned at 8:42 a.m. by Board President Palacio.

The next Regular Meeting will be held on Tuesday, May 23, 2017, at 6:00 p.m.

ATTEST:



Stephanie P. Phillips, Ed.D.
Secretary
Santa Ana Board of Education

**BEFORE THE BOARD OF EDUCATION OF THE
SANTA ANA UNIFIED SCHOOL DISTRICT
COUNTY OF ORANGE, STATE OF CALIFORNIA**

RESOLUTION NO. 16/17 - 3192

**FINAL RESOLUTION TO REDUCE OR ELIMINATE
PARTICULAR KINDS OF SERVICES PERFORMED BY CERTIFICATED
EMPLOYEES FOR THE 2017-2018 SCHOOL YEAR
(Education Code sections 44949 and 44955)**

WHEREAS, on March 7, 2017, the Board of Education of the Santa Ana Unified School District adopted Resolution No. 16/17 – 3169 reducing or eliminating particular kinds of services performed by certificated employees for the 2017-2018 school year; and

WHEREAS, before March 15, 2017, pursuant to the direction of this Board, the Superintendent and/or her designated representatives served notice to certain probationary and permanent certificated employees, that it has been recommended that each of their services will not be required for the 2017-2018 school year, pursuant to Education Code sections 44949 and 44955; and

WHEREAS, said notices served upon those probationary and permanent certificated employees advised them that they could request a hearing before an administrative law judge to determine if there is cause for not employing them for the 2017-2018 school year and if they failed to timely request a hearing, that failure would constitute a waiver of the right to a hearing, and his/her services would accordingly be terminated pursuant to the recommendation; and

WHEREAS, certain probationary and permanent certificated employees requested a hearing and thereafter became referred to as “Respondents”; and

WHEREAS, certain probationary and permanent certificated employees did not request a hearing and, thereby, became “non-Respondents” who waived their rights under the Education Code for a proposed determination of whether their seniority dates and other pertinent information were accurate, and ultimately, whether they should be laid off from employment with the District; and

WHEREAS, the Superintendent, or her designees in their official capacities, filed a District Statement of Reduction in Force against Respondents, and served Respondents with copies thereof; and

WHEREAS, included with the District Statement of Reduction in Force were related materials, including a Notice of District Statement of Reduction in Force, which explained certain rights to Respondents; a Notice of Participation form, which if returned to the District constituted a demand for a hearing; a Notice of Hearing, which informed Respondents of the date and time of the hearing before an administrative law judge; and various Education and Government Code sections; and

WHEREAS, based on the demand for hearing by certain certificated employees, a full quasi-judicial hearing took place on April 18, 19, and 20, 2017; and

WHEREAS, the administrative law judge reserved the authority to continue the hearing for an additional week, if necessary, to prepare a proposed decision; and

WHEREAS, on May 5, 2017, the District was informed that the administrative law judge was exercising his authority to continue the hearing and extend the statutory deadlines by one week; and

WHEREAS, the administrative law judge had jurisdiction over only the Respondents in OAH Case No. 2017030750, and his continuance of the hearing and extension of the statutory deadlines apply to Respondents; and

WHEREAS, the administrative law judge's action to continue the hearing and extend the statutory deadlines did not apply to non-Respondents, who were required by law to receive notice of their layoff notice prior to May 15, 2017; and

WHEREAS, on May 9, 2017, this Board adopted Resolution No. 16/17-3185 which, as an intermediate action, authorized the issuance of final notices to identified non-Respondents; and

WHEREAS, on May 9, 2017, this Board also provided direction to the Superintendent regarding the levels of service reductions and eliminations to be implemented after receipt of the proposed decision of the administrative law judge; and

WHEREAS, on May 12, 2017, the District received the proposed decision of the administrative law judge; and

WHEREAS, prior to May 15, 2017, certain non-Respondents received notice that their services would not be required for the 2017-2018 school year; and

WHEREAS, based on the Administrative Law Judge action to continue the hearing and extend the statutory deadline for the issuance of final notice to the Respondents is extended one week to May 22, 2017; and

WHEREAS, this Board must take final action regarding whether to lay off certain certificated employees; and

WHEREAS, as part of this consideration, the Board has reviewed and analyzed the proposed decision of the administrative law judge and the evidence submitted during the administrative hearing; and

WHEREAS, pursuant to Education Code section 44949(c)(3), "the governing board shall make the final determination as to the sufficiency of the cause and disposition," and "[n]one of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board"; and

WHEREAS, the Superintendent has recommended, and this Board agrees, that certain probationary and permanent certificated employees be issued final notices of layoff that indicate their services will not be necessary following the 2016-2017 school year; and

WHEREAS, the particular kinds of services to be reduced and/or eliminated as referenced in Resolution No. 16/17 – 3169 are determined to be particular kinds of services within the meaning of Education Code section 44955; and

WHEREAS, the particular kinds of services referenced in Resolution No. 16/17 – 3169 will be reduced and/or eliminated within the meaning of Education Code section 44955 not later than the beginning of the 2017-2018 school year; provided, however, that the Board's current review and analysis of the level at which the identified services should be affected dictates fewer probationary and permanent certificated employees should be laid off as specified Exhibit C to the Board's May 9, 2017 Resolution No. 16/17 - 3185; and

WHEREAS, except as permitted by law and as defined in this Resolution, the services of no probationary or permanent certificated employee are being terminated, while any permanent, probationary, or other certificated employee with less seniority is being retained to render a service which said more senior employee is both certificated and competent to render, within the meaning of Education Code section 44955(b); and

WHEREAS, except as permitted by law, the individuals whose employment is being terminated are not both certificated and competent (within the meaning of Education Code section 44955) to render service being performed by any employee with less seniority who is being retained; and

WHEREAS, sufficient cause exists for the termination of certificated positions, and pursuant to and within the meaning of Education Code section 44949, said cause relates to the welfare of the schools and the pupils of thereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Santa Ana Unified School District:

1. That all of the foregoing recitals are true and correct.
2. That this Board reaffirms the criteria used in determining the order of termination of certificated employees who first rendered paid service to the Board in a probationary position on the same date. The criteria so used are listed in Exhibit B to Resolution No. 16/17 – 3169. To the extent such criteria were unable to determine the order of layoff, this Board hereby ratifies the use of lottery system, as agreed to and carried out by the Superintendent's designees and representative from the Santa Ana Educators' Association.
3. That the proposed decision of the administrative law judge is attached as Exhibit E and incorporated into this Resolution as though fully set forth herein.

May 16, 2017

4. That unless inconsistent with a provision of this Resolution, each of the Factual Findings 1 through 23 contained in the administrative law judge's decision, including subparts, are adopted as the Factual Findings of this Board.
5. That unless inconsistent with a provision of this Resolution, each of the Legal Conclusions 1 through 7 contained in the administrative law judge's decision are adopted as the Legal Conclusions of this Board.
6. That unless inconsistent with a provision of this Resolution, the Order contained in the administrative law judge's proposed decision is adopted as the Order of the Board, except that the Superintendent and her designees shall issue final notices of layoff consistent with Exhibit C to the Board's May 9 Resolution No. 16/17-3185, which shall be deemed to account for the recommendations and order of the administrative law judge, as well as to account for notice or assignment errors discovered during the course of the layoff hearing.
7. That sufficient cause exists for the complete termination of the services of the employees identified in Exhibit F, which constitutes each employee's entire employment with the District, unless specifically stated to the contrary, and in the order indicated. The number references are to the Seniority List which was made part of the record.
8. That the employment of each employee identified on Exhibit F be and hereby is terminated effective upon the close of this school year.
9. That the District Statement of Reduction in Force against all other Respondents, as identified on Exhibit G, is dismissed and the Superintendent, or her designee(s), is directed to convey to these Respondents that they are not subject to layoff or termination.
10. That the Superintendent, or her designee(s), shall take into account the Governor's May Revision to the 2017-2018 Governor's Proposed Budget; all changed circumstances with respect to reinstatement of funds or programs; and all positively assured attrition, that is, all deaths, resignations, and retirements, occurring now through the end of the school year, when determining whether any termination notices may be rescinded and the affected employees reinstated.
11. The Superintendent and her designees shall make assignments and reassignments as necessary in order to effectuate the decision of the Board. The Superintendent and her designees are further directed to ensure that any employee who would have otherwise been subjected to layoff, but who, to avoid layoff, utilized possession of specialized training, specialized experience, or a credential/authorization to obtain a reassignment or displace a less senior employee remains in the assignment requiring the specialized training, experience, or credential/authorization for the duration of time necessary to respect the seniority rights of laid off or displaced employees. Any certificated employee who self-revokes or otherwise relinquishes a credential/authorization that was utilized by the District to engage in its statutory duty to make assignments and reassignments may be subject to disciplinary action, future layoff, or unpaid status as determined by this Board.

- 12. That the actions taken previously within Resolution No. 16/17 – 3169 and Resolution No. 16/17 – 3185 are reaffirmed, that unless specifically stated herein nothing in this current Resolution supersedes the actions taken in Resolution No. 16/17 – 3169 and Resolution No. 16/17 – 3185, and that nothing within this Resolution grants reemployment rights or other rights not otherwise required by law to any certificated employee.

- 13. That this decision is effective immediately without any period for reconsideration, and the Superintendent, or her designee(s), is delegated authority to take all actions necessary and appropriate to the accomplishment of the purposes of this Resolution, including giving appropriate notice to those certificated employees identified in Exhibit F of the termination of their services because of the elimination and/or reduction of particular kinds of services to take effect upon the close of this school year, with these notices being given on or before the deadline

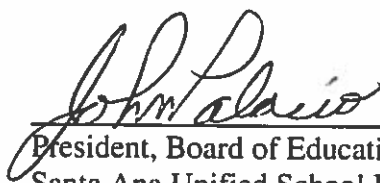
The foregoing Resolution was **PASSED** and **ADOPTED** at a special meeting of the Governing Board of the Santa Ana Unified School District on the 16th day of May, 2017 by the following vote:

AYES: Palacio
Amezcu
Alvarez
Rodriguez

 NOES: _____

 ABSENT: Iglesias
 ABSTAIN: _____

Dated: May 16, 2017

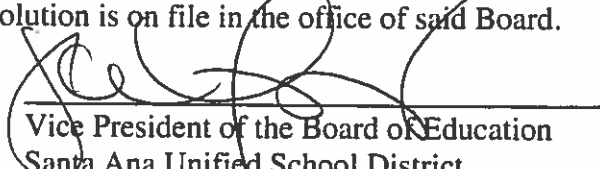


 President, Board of Education
 Santa Ana Unified School District
 County of Orange, State of California

STATE OF CALIFORNIA]
]
 COUNTY OF ORANGE]

I, Valerie Amezcu ^{V.P.} Clerk of the Board of Education of the Santa Ana Unified School District of Santa Ana, California, hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by said Board at a regular meeting thereof held at its regular place of meeting at the time and by the vote above stated, which resolution is on file in the office of said Board.

Dated: May 16, 2017



 Vice President of the Board of Education
 Santa Ana Unified School District
 County of Orange, State of California

EXHIBIT B**Criteria to Be Applied to Determine Order of Layoff for
Certificated Employees with the Same Date of First Paid Probationary Service**

The following criteria will be applied in the priority order indicated to determine which certificated employees meet the particular needs of the District in the event all certificated employees with the same seniority date are not terminated. Each criterion shall be used only if application of the preceding criteria does not resolve all ties between employees having the same seniority date. These criteria meet the particular needs of the District at this time:

1. Credential status in the area of the current assignment, in order of priority:
 - a) Clear professional, standard, life, or general teaching credential.
 - b) Preliminary credential.
2. Possession of a clear or preliminary authorization to teach English Language Learners.
3. Number of verified contract years of certificated employment experience with the District, with the employee possessing the greatest number of years having greater seniority.
4. Breadth of clear and preliminary credentials and authorizations, permitting assignment in the widest range of teaching or service areas, in order of priority:
 - a) Multiple credentials, with the employee possessing the greatest number having greater seniority.
 - b) A single credential with specific subject matter authorization(s), with the employee possessing the greatest number having greater seniority.
 - c) A single credential with introductory subject matter authorization(s), with the employee possessing the greatest number having greater seniority.
 - d) A single credential with specific supplemental authorization(s), with the employee possessing the greatest number having greater seniority.
 - e) A single credential with introductory supplemental authorization(s), with the employee possessing the greatest number having greater seniority.
 - f) A single credential.
5. Possession of a clear or preliminary credential or authorization to teach or serve in the following areas, in order of priority:
 - a) Special Education with moderate to severe authorization.

- b) Special Education with mild to moderate and moderate to severe authorizations.
 - c) Special Education with mild to moderate authorization.
 - d) Mathematics.
 - e) Science.
 - f) Fine Arts.
 - g) Spanish.
6. Number of verified years of certificated employee experience as determined by actual step placement on the District's certificated salary schedule, with the employee possessing the greatest number of years having greater seniority.

EXHIBIT C

Reduction or Elimination of Certain Certificated Services

The following particular kinds of services are to be reduced or eliminated at the end of the 2016-2017 school year:

PARTICULAR KINDS OF SERVICE OR PROGRAM CERTIFICATED POSITIONS	NUMBER OF EQUIVALENTS
K-12 Instructional Services	
Elementary K-6 Instruction	
K-6 Classroom Teaching	100
Secondary 6-8 Grade Instruction	
6th Grade/6th Grade Core	3
7th Grade/7th Grade Core	1
English	17
Foundational Level Math	7
Foundational General Science	2
BioScience	4
BioScience/Computer Concepts	4
Physical Education	6
Social Science	6
Business	3
Secondary 9-12 Grade Instruction	
BioScience	11
Home Economics/Introductory Health Science	1
English	10
English/Social Science	4
Foundational Level Math	4
Industrial & Tech Ed	4
Physical Education	4
Social Science	10
Spanish	6
Business	2
K-12 Special Education Services	
Early Childhood Special Education	6
Elementary Mild/Moderate/Learning Handicapped	15
K-12 Instructional Support Services	
Itinerant Support Teacher	5
Home Hospital Instructor	4
Curriculum Specialist	40
Program Specialist	40
K-12 TOSA	1
Elementary TOSA	35
Intermediate TOSA	9
High School TOSA	2
Elementary Assistant Principal	4
Intermediate Assistant Principal	9
High School Assistant Principal	4
Bilingual Resource Teacher	3
Certificated Administrator District Office	3

EXHIBIT E

BEFORE THE
BOARD OF EDUCATION
SANTA ANA UNIFIED SCHOOL DISTRICT
COUNTY OF ORANGE
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving:

Certain Certificated Employees of the Santa
Ana Unified School District,

Respondents.

Case No. 2017030750

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 18, 19 and 20, 2017, in Santa Ana, California.

Anthony P. De Marco and Shawna M. McKee, Attorneys at Law, represented Mark A. McKinney (McKinney), Associate Superintendent, Human Resources, Santa Ana Unified School District (District), County of Orange, State of California.

Marianne Reinhold, Attorney at Law, represented the certificated employees set forth in Exhibits 1 and 2 (Respondents), with the exception of Respondents Amanda Jones (Jones), Robyn MacNair (MacNair), Jessalyn Ortega (Ortega), Mary Rubin (Rubin), and Brittany Valenti (Valenti), who are also included in references to Respondents. Respondents Jones, MacNair, Ortega, Rubin, and Valenti did not enter a formal appearance at the hearing.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2017-2018 school year.¹ Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2017-2018 school year.

Oral and documentary evidence, and evidence by stipulation, was received at the hearing. The parties worked through the hearing to review and obtain new information in efforts to resolve issues raised by Respondents. As a result, adjustments were made to the seniority of some Respondents and some preliminary layoff notices were rescinded. Exhibit 2

¹ The District also seeks to lay off those individuals set forth in Exhibit 3, who did not request a hearing.

contains the names of Respondents the District is no longer seeking to lay off.

On April 20, 2017, the hearing was continued to allow the parties to submit closing briefs on April 24 and 28, 2017. By reason of the continuance, and without objection by the parties, the dates prescribed in Education Code² sections 44949, subdivision (c), and 44955, subdivision (c), are extended by eight days, the period of the continuance. (Ed. Code, § 44949, subd. (e).)

The District submitted its Closing Brief on April 24, 2017, and the represented Respondents submitted a Closing Brief on April 28, 2017. The matter was submitted for decision on April 28, 2017.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Associate Superintendent McKinney filed the Statement of Reduction in Force in his official capacity.

2. Respondents are certificated employees of the District.

3. On March 7, 2017, the Governing Board of the District (Governing Board), adopted Resolution No. 16/17-3169, entitled "Preliminary Resolution Reduction or Elimination of Particular Kinds of Services performed by Certificated Employees for the 2017-2018 School Year" (Resolution), reducing or discontinuing the following services for the 2017-2018 school year:

<u>Service</u>	<u>FTE³ Positions</u>
K-12 Instructional Services	
Elementary K-6 Instruction	
K-6 Classroom Teaching	100.0
Secondary 6-8 Grade Instruction	
6th Grade/6th Grade Core	3.0
7th Grade/7th Grade Core	1.0
English	17.0

² All further statutory references are to the Education Code.

³ Full-time equivalent.

Foundational Level Math	7.0
Foundational General Science	2.0
BioScience	4.0
BioScience/Computer Concepts	1.0
Physical Education	6.0
Social Science	6.0
Business	3.0
Secondary 9-12 Grade Instruction	
BioScience	11.0
Home Economics/Introductory Health Science	1.0
English	10.0
English/Social Science	1.0
Foundational Level Math	1.0
Industrial & Tech Ed	1.0
Physical Education	4.0
Social Science	10.0
Spanish	6.0
Business	2.0
K-12 Special Education Services	
Early Childhood Special Education	6.0
Elementary Mild/Moderate/Learning Handicapped	15.0
K-12 Instructional Support Services	
Itinerant Support Teacher	5.0
Home Hospital Instructor	4.0
Curriculum Specialist	40.0
Program Specialist	40.0
K-12 TOSA ⁴	1.0
Elementary TOSA	35.0
Intermediate TOSA	9.0
High School TOSA	2.0
Elementary Assistant Principal	4.0
Intermediate Assistant Principal	9.0
High School Assistant Principal	4.0
Bilingual Resource Teacher	3.0
Certificated Administrator District Office	<u>3.0</u>
Total	377.0

⁴ Teacher on Special Assignment

4. On March 13 and 14, 2017, the District provided notice to Respondents that their services will not be required for the 2017-2018 school year due to the reduction of particular kinds of services. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2017-2018 school year.

5. On March 22, 2017, Associate Superintendent McKinney issued the Statement of Reduction in Force and served it and other required documents on Respondents.

6. The parties stipulated that Respondents timely filed a Notices of Participation in the Reduction in Force Hearing, requesting a hearing and challenging the decision of the District not to reemploy them for the 2017-2018 school year.

7. All prehearing jurisdictional requirements have been met.

Reduction of Particular Kinds of Services

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 because of the reduction and anticipated reduction of funding and because of the increase in certain costs, primarily pension costs. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3 is related to the welfare of the District's schools and its pupils, in the context of the loss of revenue, increase in costs, and the need to continue providing services to students in the District, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

Implementation of the Layoff Resolution

11. Director of Human Resources, Certificated Personnel, Bianca Barquin (Barquin) was principally responsible for the implementation of the layoff resolution and testified in great detail about the District's actions. The District considered, and continues to consider, all positively assured attrition, e.g., retirements and other resignations, to reduce the actual number of certificated employees who are laid off. It released all 84 temporary employees, even if not employed in areas being reduced. The temporary employees were serving in categorically funded positions for which funding for the 2017-2018 school year had not been secured or were occupying the positions of certificated employees on leave or performing other assignments. Criteria were applied to determine seniority among employees who first rendered paid service

in a probationary position on the same date (tie-breaking criteria), and the seniority list was updated based on the results of such application. The District made assignments and reassignments to permit certificated employees to displace, or bump, less senior employees serving in an assignment in which the more senior employee was certificated and competent to serve.

Application of Tie-Breaking Criteria

12. The Resolution contains the tie-breaking criteria. In order of importance, the Governing Board designated the following criteria: credential status in the area of current assignment; possession of a clear or preliminary authorization to teach English Language Learners; the number of verified contract years of certificated employment experience with the District; the breadth of clear and preliminary credentials and authorizations; possession of a clear or preliminary credential of authorization to teach or serve in special education with moderate to severe authorization, special education with mild to moderate and moderate to severe authorizations, special education with mild to moderate authorization, Mathematics, Science, Fine Arts, and Spanish; and the number of verified years of certificated employee experience as determined by actual step placement on the District's certificated salary schedule. Any ties remaining after the application of the criteria were to be resolved by random selection.

13. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. Respondents did not raise any specific challenges to the application of the tie-breaking criteria impacting selection for layoff.

Displacement of Less Junior Certificated Employees

14. Barquin testified about the assignments and reassignments made by the District to permit certificated employees to displace less senior employees. The District did not always have the senior employee displace the most junior employee serving in an assignment in which the more senior employee was certificated. The District sought to move the senior employee into an assignment the teacher was also competent to perform. In making its determination of competency and reassignment, the District looked to whether the senior teacher had taught the course or performed the assignment before. The senior employee had to be able to perform the entire assignment of the junior employee, not just a portion, in order for the displacement to take place.

15. Respondents argued that the following individuals should not be laid off because the District failed to have the senior employee displace the much junior employee: Timothy Fredericksen, David Gutierrez, Ana Harvey, Tiffany Pham, Alexandra Pineda, Robin Post, Debora Veitch, Eulalia Wiedrick, and Michelle Zamarripa. However, none of these Respondents were able to show that they were certificated and competent to perform a job that a more junior employee was retained to perform.

Skipping of Junior Employees

16. The District skipped certain junior employees on the basis of specialized training and experience and actual assignment in the following programs or services: Advanced Placement (AP) classes, Advanced Via Individual Determination (AVID) classes, Art teachers, International Baccalaureate (IB) classes, and speech and language pathologists. Barquin testified that these were areas of specific District curricular needs. Each area of service requires special training and experience. For instance, in order to teach an AVID class, the employee must take a type of course called AVID Implementation as well as yearly three-day courses. The latter course allows teachers to implement AVID concepts in their classrooms. In order to teach AP classes, the certificated employee must have his or her syllabus approved by the outside governing body that oversees the AP program.

17. Respondents did not dispute the District's needs in these areas, but some of them argued that they possessed the training and experience to fulfill the requirements of the position that more junior employees had been retained to perform.

18. Respondent Luis Contreras (Contreras) has received AP training in the past and had a syllabus approved while he taught an AP class in another district. Respondent Jessica Erickson (Erickson) has received the requisite AVID training but does not have experience teaching the course. Respondent Daynan Higgins (Higgins) has taken the three-day AVID course and plans to take the AVID Implementation course this Summer. Respondent Michael Hubbard (Hubbard) has taken both AVID classes, but does not teach an AVID class. Respondent Karina Morales (Morales) plans to take the AVID course in July 2017. Respondent Sandy Ta (Ta) acted as an AVID tutor while a student teacher and plans to take the AVID course in July 2017. Respondents Contreras, Erickson, Higgins, Hubbard, Morales, and Ta have not established that they are competent to teach the AP or AVID course junior employees were retained to teach, as they lack the training, experience, or both.

19. The District retained Kathryn Rush (Rush), a probationary employee whose seniority date is August 27, 2015, and who holds a Math credential, because of her trauma-informed instruction training. She teaches at the continuation school, and such trauma training is helpful. Respondents assert that Respondent Israel Martinez (Martinez), a permanent employee whose seniority date is August 27, 2014, and who holds a Foundational Math credential, can also teach the Math assignment at the continuation school. While possession of the trauma training is helpful, the District did not establish that such training was required or even necessary to teach Math at the continuation school. Respondent Martinez is credentialed and competent to teach the Math course Rush was retained to teach and is more senior. Accordingly, Respondent Martinez may displace Rush.

//
//
//

Other Respondents

20. Respondent Hannah Chapman (Chapman) testified that she is certificated and competent to teach either the literacy coach or the teacher effectiveness coach jobs that less senior employees had been retained to perform. Respondent Chapman argued that she performed similar duties as department chair and was therefore certificated and competent to perform the tasks. The literacy coach and the teacher effectiveness coach positions were chosen through a selection process that included interviewing for the position. Incumbents in the former provide remediation to students and those in the latter provide peer assistance to other teachers. Respondent Chapman has never served in either position, and her department chair duties did not involve classroom or peer coaching or demonstration of lesson plans, which constitute an integral part of the duties of the literacy coach and the teacher effectiveness coach jobs. Accordingly, Respondent Chapman did not establish that she is competent to displace the junior employees working as literacy coaches or teacher effectiveness coaches.

21. Several Respondents testified about training they had received while in the District's employment. Respondent Erickson received Agile Mind Training, a specialized math intervention program. Respondents Higgins and Ta received Guided Language Acquisition Development (GLAD) Strategies Training. Respondent Higgins has also received Expository Reading and Writing Course training, as did Respondent Genevieve Lunt. Respondent Hubbard received Project Lead the Way training. Respondent Nicole Kubo has received the Project Lead the Way training and AVID training for science. Respondent Ariana Rodriguez completed Project Based Learning training. Despite the value of the training received, the training was not the requisite type that would have enabled these Respondents to teach in one of the services or programs in which junior employees were retained.

22. Respondent Erickson, who has a seniority date of August 27, 2014 and who holds a Foundational Math credential testified that she was credentialed and competent to teach the math assignment Samantha Helstrom (Helstrom) was retained to teach. However, unlike Respondent, Helstrom has a Math credential and will be assigned to teach a higher level math class in the 2017-2018 school year, an assignment Respondent is not credentialed to perform.

Reduction in Force Seniority

23. Except for Respondent Martinez, no certificated employee junior to any Respondent set forth in Exhibit 1 was retained to render a service which any Respondent set forth in Exhibit 1 is certificated and competent to render.

//
//
//
//
//

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.
2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.
3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 10.
4. Section 44955, subdivision (b), provides, in pertinent part: "[t]he services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is *certificated and competent* to render." (Emphasis added.) "Certificated" is defined by the provisions of the Education Code pertaining to credentials. Although "competent" is not specifically defined, courts have defined it in terms of the teachers' skills and qualifications, specifically, as "relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee." (*Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19. See, also: *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55.)
5. Section 44955, subdivision (c), provides, in pertinent part: "[t]he governing board shall make assignments and reassignments in such manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." Respondents argue that the District did not follow the statutory requirements because in some instances involving reassignments of TOSAs and administrators it failed to have the impacted senior certificated employees displace the most junior employee who could have been displaced. However, the fact that the District could have made assignments and reassignments in a different manner does not render the assignments that were made arbitrary or capricious. Respondents did not establish that any of the assignments or reassignments made by the District, which are required by section 44955, subdivision (c), constituted an abuse of discretion or that they otherwise violated the requirements of sections 44949 or 44955.
6. A district is permitted to deviate from laying off certificated employees in order of seniority if "[t]he district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course of study

or to provide those services, which others with more seniority do not possess. . . ." (§ 44955, subd. (d)(1).) As set forth in factual finding numbers 16 through 18, the District skipped junior employees in five areas because of its asserted special needs for these services.

In *Bledsoe v. Biggs Unified School District* (2009) 170 Cal.App.4th 127 (*Bledsoe*), a district was able to skip two junior employees because of the district's demonstrated need for teachers with experience in instruction in a community day school. The junior teachers possessed special training and experience that enabled them to meet the district's specialized needs for alternative education. They had taken courses in many subjects that covered areas of instruction, had training in areas related to working with difficult students, and had actual experience in dealing with the community day school students. The court concluded that even though the respondent in that case possessed the basic qualifications to teach in the community day school, he lacked the additional special training and experience required for the position.

The District has demonstrated a specific need for personnel to teach AP, AVID and IB classes, by reason of factual finding numbers 16 through 18, and the skipped individuals have the special training and experience necessary to teach the courses of study and to provide the services which the Respondents set forth in Exhibit 1 with more seniority do not possess.

7. The District was unable to demonstrate its specific need for trauma-informed instruction with respect to the continuation school Math class taught by Rush, as set forth in factual finding number 19. Respondent Martinez, who has more seniority, is certificated and competent to teach the class.

ORDER

1. The Accusation is sustained with respect to all Respondents listed in Exhibit 1, with the exception of Respondent Martinez, and the District may notify the Respondents, with the exception of Respondent Martinez, that their services will not be needed during the 2017-2018 school year due to the reduction of particular kinds of services.

2. The Accusation is dismissed with respect to Respondent Israel Martinez.

DATED: 5/16/17

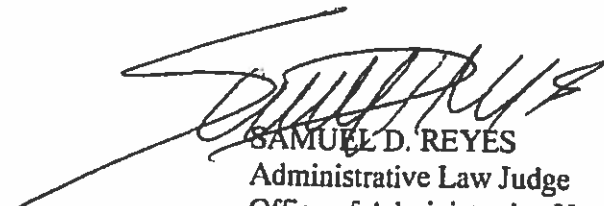

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT 1
Respondents for whom District Seeks Final Notices

Akana, Michelle (413)¹
Aldana, Maria (859)
Almanzar, Kristi (327)
Alvarez, Elizabeth (527)
Amado, Jazmina (391)
Amezquita, Claudia (213)
Andrade, Carolina (435)
Arroyo, Andres (205/462A)
Arroyo, Hazelle (282)
Avila, David (119/166B)
Barajas, Marlyn (92)
Barber, Forrest (286)
Barragan, Ruby (130)
Beltran-Gonzalez, Gabriela (1125)
Berber, Fabiola (1171)
Brainard, Laurin (488/528A)
Bravo-Taylor, Alina (998)
Briz, Janice (875)
Broadhead, Anna (107)
Burgos, Leticia (1064)
Burke, Alison (217)
Buttke, Theresa (542)
Carrigg, Evelyn (194)
Chan, Jenny (204)
Chapman, Hannah (400)
Chavez, Michael (229)
Chirinos, Stephanie (86)
Clearwater, Diana (945)
Clift, Janice (971)
Contreras, Luis (338)
Cox, Kathryn (265)
Cuomo, Sarah (610)
Delgadillo, Jose (613)
Dodge, Patti (509/601A)
Dominguez, Nieves (510)
Eckert, Amy (988)
Eduad, Billy (262)

¹ The numbers refer to the employee's placement on the seniority list. Where two numbers appear, the second number denotes a seniority adjustment made at the hearing and is the correct seniority number.

Elias, Andrea (98)
Erhard, Heidi (434)
Erickson, Jessica (427)
Escalante, Charles (183)
Esquivel Gonzalez, Jessica (531)
Fierle, Nicole (498)
Figueroa, Leonardo (1120)
Fleager, Chad (268)
Flores, Marilu (94)
Floriano, Raquel (193)
Fowler, James (751)
Fredericksen, Timothy (444)
Fuentes, Annette (269)
Galvan, Sylvia (325)
Garcia, Kathi (398)
Garcia, Nancy (1053)
George, Karah (762)
Gomez, Graciela (326)
Gonzales, Aaron (533)
Gonzales, Jordan (382/468A)
Greene, Andrew (209)
Guerra, Andrea (406)
Gutierrez, David (359)
Hamamura, Nicole (994)
Harvey, Ana (549)
Hernandez, Laura (399)
Hernandez, Livier (536)
Higgins, Daynon (436)
Hubbard, Michael (270/304A)
Huddy, Angela (206)
Iobst, Christie (686)
Jack, Jedediah (535)
Jackson, Kori (543/613A)
Johnson, Kristen (396/510A)
Jones, Amanda (432)
Jongerius, Robin (748)
Juarez, Crystal (612)
Kanouse, Monique (461/466A)
Kim, Hannah (596)
Kim, Katharine (395)
Klippel, Ashley (404)
Kubo, Nicole (238)

Lawson, Dalene (995)
Lecuna, Debra (401)
Leyva De La Riva, Maria (378)
Lopez, Edith (993)
Lopez, Humbelina (376)
Lopez, Marcela (539)
Lukoschek, Patricia (547)
Lunt, Genevieve (415/444A)
MacNair, Robyn (336)
Maitino, Sara (999)
Malstead, Jeffrey (192)
Martinez, Israel (421)
Martinez, Maria (492)
Martinez Hernandez, Norma (233)
Mcmullen, Carrie (251/308A)
Melendrez, Genessis (108)
Mendoza, Stephanie (503)
Merritt, Alma (538/679A)
Metz, Zachary (228)
Miller, Melissa (287)
Morales, Karina (392)
Morelos, Maya (375)
Moreno, Edgard (377)
Moreno, Mariana (383)
Moreno, Marlene (386)
Moreno-Resendiz, Ana (989)
Morten, Jessica (615)
Musquez, Tanya (120/164A)
Nava, Esther (452)
Navarro, Oscar (632)
Nedelkow, Alexander (306)
Nemetz, Marisol (414)
Noller, Roberta (384)
Nunez, Jessica (990)
Nunez Jr., Miguel (505)
Ocampo-Lucero, Vanessa (182)
Orozco Robles, Rosie (405)
Ortega, Jessalyn (1115)
Paradis, Greg (1076)
Paramo, Yoani (1060)
Patrick, Mary (443/446A)
Pegan, Andrew (294)

Petrowich, Rebecca (214)
Pham, Tiffany (281/304C)
Pham, Vikki (263/304B)
Pineda, Alexandra (379)
Prado, Rafael (215)
Quintero, Rebecca (616)
Ramirez, Daniel (1000)
Renderos, Sara (544)
Reyes, Patricia (411)
Rocha, Alejandra (347)
Rodriguez, Jessica (476)
Rodriguez, Thalia (241)
Rodriguez Olanda, Arianna (397)
Romeo, Angelica (507)
Romo, Maria (699)
Rossmann, Glennys (380)
Rubin, Mary (191)
Santillan, Marcela (541)
Sarantis, Cheryl (991)
Schrock, Michelle (408)
Serrano, Corin (385)
Seymore, Krysta (441)
Shah, Julie (207)
Shapar, Abdul (529/598A)
Smith, Kathryn (530/605A)
Stahle, Katherine (1152)
Ta, Sandy (357)
Taylor, Daniel (1153)
Thahab, Fabiola (136)
Ulloa, Norma (1061)
Valencia, Gisela (499)
Vasquez-Norman, Elizabeth (128)
Venegas, Cristina (389)
Verdesoto, Karla (252)
Vilfort, Amanda (129)
Villa, Carla (502)
Villalobos-Vargas, Juana (272)
Villasenor, Leslie (321)
Wakely, Alyssa (506)
Wiedrick, Eulalla (987)
Zamarripa, Michelle (992)
Zamora, Esmeralda (508)

EXHIBIT 2
Respondents for whom District Does Not Seek Final Notices

Avram, Sarah (520)
Bailey, Kristy (451)
Case, Cynthia (416)
Chang, Patrick (334)
Christy, Katherine (387)
Camron, Conners (220)
Cozens, Tara (425)
Diulio, Nickolas (344)
Dong, Josephine (485)
Fitzpatrick, Jessica (137)
Gallardo, Eddie (227)
Gardea, Jesenia (514)
Gaytan Sarinana, Maria (453)
Gonzalez, Marisol (949)
Gray, Lucinda (124/166A)
Hamblin, Heather (460)
Hyde, Diane (284)
Lord, Jennifer (106/165A)
Madrigal, Erik (267)
Mc Kinney, Sheryl (954)
McGeeney, Heather (578)
Monette, Jennifer (445)
Nagle, Janelle (477)
Nguyen, Cathy (410)
Nunez, Crystal (102/165B)
Oral, Darya (148)
Peleaux, Candy (446)
Price, Bryan (388)
Reyes, Pedro (394)
Rios, Jesus (976)
Rivera, Zayra (273)
Sills, Stacey (162)
Smith, Kathy (546)
Smith, Sheryl (741)
Sohner, Kelly (266)
Strazzulla, Shannon (161)
Summers, Kathryn (146)
Tarango, Julie (946)
Turf, Michael (402)
Valdez-Garcia, Arturo (197)
Valenti, Brittany (442)

Vazquez-Knox, Joyce (150)
Wambaugh, Kelly (475)
Zavala, Nidia (595)

EXHIBIT 3
Non-Respondents for whom District Seeks Final Notices

Baltazar, Marina (1055)
Barden, Judith (96)
Becker, Katherine (99)
Burks, Gannon (211)
Caddy, Rachel (381)
Case, Clementina (409)
Castro, Jorge (1059)
Castro-Karimi, Patricia (88)
Corral, Cynthia (103)
Delgado, Breana (1057)
Dzul-Baron, Darlene (393)
Espineli, Tabitha (125)
Galaviz, Lucero (95)
Gamez, Christina (131)
Garrett, Deborah (216)
Guilkey, Rachel (390)
Ideishi, Linda (89)
Kriesel, Darlene (179)
Lara, Yuri (225)
Leonard, John (126)
Magdaleno, Saray (486)
Mctigue, Marilena (87)
Murgolo, Kimberly (85)
Nguyen, Ngoc (127)
Orozco, Samuel (403)
Palomino, Carina (592)
Parreco, Nolan (345)
Perez-Pineda, Francisco (165)
Pineda, Claudia (97)
Ramirez, Ryan (307)
Riturban, Vanessa (412)
Rodriguez III, Richard (407)
Sanchez, Rudy (195)
Shin, Catherine (437)
Sosa, Griselda (232)
Tawfik, Hermine (494)
Tinajero, Salvador (169)
Vazquez, Roberto (230)
Vereau, Adriana (986)
White, Molly (178)
Young, Jeffrey (433)

EXHIBIT F
List of Respondents and Non-Respondents Who Are Laid Off

LINE #	LAST NAME FIRST NAME
85	Murgolo Kimberly
86	Chirinos Stephanie
87	Mctigue Marilena
88	Castro-Karimi Patricia
89	Ideishi Linda
94	Flores Marilu
95	Galaviz Lucero
96	Barden Judith
97	Pineda Claudia
98	Elias Andrea
99	Becker Katherine
107	Broadhead Anna
108	Melendrez Genessis
125	Espineli Tabitha
126	Leonard John
127	Nguyen Ngoc
128	Venegas Cristina
129	Villalobos-Vargas Juana
164	Musquez Tanya
166	Avila David
178	Young Jeffrey
179	Kriesel Darlene
182	Ocampo-Lucero Vanessa
183	Escalante Charles
191	Rubin Mary
192	Malstead Jeffrey
193	Floriano Raquel
194	Carrigg Evelyn
195	Sanchez Rudy
204	Chan Jenny
206	Huddy Angela
207	Shah Julie
209	Greene Andrew
211	Burks Gannon
213	Amezquita Claudia
214	Petrowich Rebecca
215	Prado Rafael
217	Burke Alison
225	Lara Yuri
228	Metz Zachary

EXHIBIT F

List of Respondents and Non-Respondents Who Are Laid Off

LINE #	LAST NAME	FIRST NAME
229	Chavez	Michael
230	Vazquez	Roberto
230	Verdesoto	Karla
232	Sosa	Griselda
233	Martinez	Hernandez Norma
241	Rodriguez	Thalia
252	Villa	Carla
262	Eduad	Billy
265	Cox	Kathryn
268	Fleager	Chad
269	Fuentes	Annette
272	Wakely	Alyssa
282	Arroyo	Hazelle
286	Barber	Forrest
287	Miller	Melissa
294	Pegan	Andrew
295	Valencia	Gisela
304	Hubbard	Michael
304	C	Pham Tiffany
304		Pham Vikki
308	Mcmullen	Carrie
325	Galvan	Sylvia
326	Gomez	Graciela
327	Almanzar	Kristi
338	Contreras	Luis
345	Parreco	Nolan
347	Rocha	Alejandra
357	Ta	Sandy
359	Gutierrez	David
375	Morelos	Maya
376	Lopez	Humbelina
377	Moreno	Edgard
378	Leyva De La Riva	Maria
379	Pineda	Alexandra
380	Rossmann	Glennys
381	Caddy	Rachel
383	Moreno	Mariana
384	Noller	Roberta
385	Serrano	Corin
386	Moreno	Marlene

EXHIBIT F

List of Respondents and Non-Respondents Who Are Laid Off

LINE #	LAST NAME	FIRST NAME
390	Guilkey	Rachel
391	Amado	Jazmina
392	Morales	Karina
393	Dzul-Baron	Darlene
395	Kim	Katharine
397	Rodriguez	Olanda Arianna
398	Garcia	Kathi
399	Hernandez	Laura
400	Chapman	Hannah
401	Lecuna	Debra
403	Orozco	Samuel
404	Klippel	Ashley
405	Orozco	Robles Rosie
407	Rodriguez III	Richard
408	Schrock	Michelle
409	Case	Clementina
411	Reyes	Patricia
413	Akana	Michelle
414	Nemetz	Marisol
432	Jones	Amanda
433	Zamora	Esmeralda
434	Erhard	Heidi
435	Andrade	Carolina
437	Shin	Catherine
441	Seymore	Krysta
444	Fredericksen	Timothy
446	Patrick	Mary
462	A	Arroyo Andres
475	Wiedrick	Eulalla
476	Rodriguez	Jessica
486	Magdaleno	Saray
492	Martinez	Maria
494	Tawfik	Hermine
498	Fierle	Nicole
502	Villasenor	Leslie
503	Mendoza	Stephanie
505	Nunez Jr.	Miguel
506	White	Molly
507	Romeo	Angelica
510	Dominguez	Nieves

EXHIBIT F

List of Respondents and Non-Respondents Who Are Laid Off

LINE #		LAST NAME FIRST NAME
510	A	Johnson Kristen
527		Alvarez Elizabeth
528		Brainard Laurin
531		Esquivel Gonzalez Jessica
533		Gonzales Aaron
536		Hernandez Livier
539		Lopez Marcela
541		Santillan Marcela
542		Buttke Theresa
547		Lukoschek Patricia
592		Palomino Carina
596		Kim Hannah
598		Shapar Abdul
601		Dodge Patti
605		Smith Kathryn
610		Cuomo Sarah
612		Juarez Crystal
613		Delgadillo Jose
613		Jackson Kori
615		Morten Jessica
616		Quintero Rebecca
632		Navarro Oscar
679		Merritt Alma
686		Iobst Christie
748		Jongerius Robin
751		Fowler James
859		Aldana Maria
875		Briz Janice
971		Clift Janice
987		Zamarripa Michelle
988		Eckert Amy
990		Nunez Jessica
991		Sarantis Cheryl
993		Lopez Edith

EXHIBIT G

List of Respondents and Non-Respondents Who Are Not Laid Off

LINE #		LAST NAME FIRST NAME
92		Barajas Marlyn
103		Corral Cynthia
128		Vasquez-Norman Elizabeth
129		Vilfort Amanda
130		Barragan Ruby
131		Gamez Christina
136		Thahab Fabiola
137		Fitzpatrick Jessica
138		Johnson Sarah
146		Sumners Kathryn
148		Oral Darya
149		Trupp Christena
150		Vazquez-Knox Joyce
151		McClure Amanda
152		Hanis Susan
156	A	Lord Jennifer
161		Strazzulla Shannon
162		Sills Stacey
165	B	Nunez Crystal
165		Perez-Pineda Francisco
166	A	Gray Lucinda
169		Tinajero Salvador
197		Valdez-Garcia Arturo
198		Gayron Paul
216		Garrett Deborah
220		Conners Camron
226		Gamboa Hector
227		Gallardo Eddie
238		Kubo Nicole
266		Sohner Kelly
267		Madrigal Erik
273		Rivera Zayra
284		Hyde Diane
306		Nedelkow Alexander
307		Ramirez Ryan
321		Wambaugh Kelly
334		Chang Patrick
336		MacNair Robyn
344		Diulio Nickolas
387		Christy Katherine

EXHIBIT G

List of Respondents and Non-Respondents Who Are Not Laid Off

LINE #	LAST NAME	FIRST NAME
388	Price	Bryan
394	Reyes	Pedro
402	Turf	Michael
406	Guerra	Andrea
410	Nguyen	Cathy
412	Riturban	Vanessa
416	Case	Cynthia
421	Martinez	Israel
425	Cozens	Tara
427	Erickson	Jessica
436	Higgins	Daynon
438	Gama	Jessica
442	Valenti	Brittany
444	A	Lunt Genevieve
445		Monette Jennifer
446		Peleaux Candy
451		Bailey Kristy
452		Nava Esther
453	Gaytan	Sarinana Maria
460		Hamblin Heather
466		Kanouse Monique
468		Gonzales Jordan
477		Nagle Janelle
485		Dong Josephine
514		Gardea Jesenia
520		Avram Sarah
535		Jack Jedediah
544		Renderos Sara
546		Smith Kathy
549		Harvey Ana
578		McGeeney Heather
595		Zavala Nidia
699		Romo Maria
741		Smith Sheryl
762		George Karah
945		Clearwater Diana
946		Tarango Julie
949		Gonzales Marisol
954		Mc Kinney Sheryl
976		Rios Jesus

EXHIBIT G

List of Respondents and Non-Respondents Who Are Not Laid Off

LINE #	LAST NAME FIRST NAME
986	Vereau Adriana
989	Moreno-Resendiz Ana
994	Hamamura Nicole
995	Lawson Dalene
998	Bravo-Taylor Alina
999	Maitino Sara
1000	Ramirez Daniel
1053	Garcia Nancy
1055	Baltazar Marina
1057	Delgado Breana
1059	Castro Jorge
1060	Paramo Yoani
1061	Ulloa Norma
1064	Burgos Leticia
1076	Paradis Greg
1115	Ortega Jessalyn
1120	Figueroa Leonardo
1125	Beltran-Gonzalez Gabriela
1152	Stahle Katherine
1153	Taylor Daniel
1171	Berber Fabiola

