

OAKLAND UNIFIED SCHOOL DISTRICT
Human Resources Services and Support

June 23, 2010

Legislative File.

File ID No.: 10-1711
Introduction Date: 6-14-10
Enactment No.: 10-1141
Enactment Date: 6-23-10
By: BSJ

TO: Board of Education *VBH & TS.*

FROM: Anthony Smith, Ph.D. Superintendent
Delia Ruiz, Executive Officer, Human Resources Services & Support

SUBJECT: Reductions of Particular Kinds of Service Caused By State Budget Revisions
Relating to Adult Education and Child Development Centers

ACTION REQUESTED

Approval by the Board of Education of Resolutions No. 0910-0250 (Adult Education, Reduction of Particular Kinds of Service) and Resolution No. 0910-0251 (Child Development Centers, Reduction of Particular Kinds of Service). These Resolutions enable the District to reduce or eliminate particular kinds of services of the District's Adult Education and Child Development Center programs which are necessitated by the Governor's May revisions to the State's proposed budget eliminating funding for the District's Child Development Center programs.

DISCUSSION

These resolutions are based upon the need for further, drastic reductions to programs and personnel based upon the Governor's May revisions to the State budget which proposed funding cuts to the District's Child Development Center programs by about \$16 million. Prior to such reductions, the District was already anticipating a need to reduce its 2010-2011 budget by \$85 million. As provided in Education Code sections 42127, et seq., the District is required to submit a balanced budget to the County Office of Education (COE), no later than July 1, 2010. The COE has informed the District that the District's budget must (1) account for reductions as provided in the May revisions to the State budget, or (2) have reserves available to cover the cuts required by the May revisions. The District does not have reserves to cover the cuts. Therefore, the District's budget must include the reductions consistent with those provided in the May revisions.

The impacts of the cuts to the Child Development Center program are anticipated to have long-term negative impacts in the preparation of students for K-12 education, which will impact the District K-12 program in years to come. Early Childhood Education plays a major role in not only increasing overall educational attainment, but also in closing the achievement and opportunity gaps separating African-American and Latino students from their White and Asian peers; a divide which perpetuates poverty, inequality, unemployment, crime and a host of pathologies, while reducing California's economic competitiveness. Several million dollars of additional funds would be necessary to significantly mitigate the effects of the State cuts. Although there are no painless options, one way to reduce a portion of the impact to the Child Development Center program is to have the Adult Education program share in some of the reductions. Staff recommends balancing the cuts across these two programs to better support the mission and goals of the District.

California Education Code section 45117 permits the Board of Education to conduct a layoff of employment positions with less than 45 days notice to affected employees in the event of an actual and existing financial inability to pay the salaries of classified employees or resulting from causes not foreseeable or preventable by the Governing Board.

California Education Code section 44955.5 provides that reductions in certificated personnel, including administrative and supervisory personnel may be made by August 15 where the Budget Act does not increase the total revenue limit per unit of average daily attendance by at least 2 percent and reductions in certificated personnel are fiscally necessary. Certificated employees are entitled to a similar notice and administrative hearing procedure as with March 15 preliminary layoff notices, but on a different, shortened timeline to be set by the Board or its designee. The Resolution provides for the following proposed schedule to be followed to the extent possible in conjunction with the Office of Administrative Hearings:

On or before July 15, 2010: proposed date for mailing of Preliminary Layoff Notices
August 3, 2010: proposed date for Administrative Hearing for certificated employees requesting hearing
August 9, 2010: proposed date for Administrative Law Judge's advisory opinion
August 11, 2010: Board of Education Meeting to take action on Certificated Layoffs
August 12, 2010: Final Layoff Notices mailed to affected certificated employees
August 15, 2010: Effective date of Certificated Layoff (Adult Education)

BUDGET IMPACT

Cost Savings/Reduction in Expenditures.

RECOMMENDATION

Approval by the Board of Education of Resolution No. 0910-0250, Adult Education and Child Development Center programs both bear a portion of the budget reductions. This Resolution enables the District to reduce or eliminate particular kinds of services of the District in Adult Education and Child Development Center programs which are necessitated by the Governor's May revisions to the State's proposed budget eliminating funding for the District's Child Development Center programs, or approval by the Board of Education of Resolution No. 0910-0251, Child Development Center programs to bear the full impact of the budget reductions.

Legislative File

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By: BJ

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
Resolution No. 0910-0250**

Reductions of Particular Kinds of Service in Adult Education, Custodial Services,
Operations, Police Services, and Technology Services
Caused By State Budget Revisions

WHEREAS, the Governor’s May revisions to the State’s proposed budget eliminate funding for the District’s Child Development Center programs; and

WHEREAS, prior to the May revisions to the State’s budget, the District was already anticipating a need to reduce its 2010-2011 budget by \$85 million; and

WHEREAS, the District anticipates that the proposed May revisions to the State’s budget will result in a further budget deficit to the District of \$16 million; and

WHEREAS, as provided in Education Code sections 42127, et seq., the District is required to submit a balanced budget to the County Office of Education (COE), no later than July 1, 2010.

WHEREAS, the COE has informed the District that the District’s budget must (1) account for reductions as provided in the May revisions to the State budget, or (2) have reserves available to cover the reductions required by the May revisions. The District does not have reserves to cover the reductions. Therefore, the District’s budget must include the reductions provided in the May revisions; and

WHEREAS, the impact of these drastic reductions on the District’s Child Development Center programs are anticipated to have long-term negative impacts in the preparation and educational achievement of students in K-12, and such impacts can be mitigated in part by further reducing the Adult Education program and transferring funds that were previously budgeted to Adult Education to the Child Development Center program; and

WHEREAS, even with further reductions in Adult Education, reductions to the Child Development Center program will still be necessary, and California Education Code section 8366 requires action by the Board of Education if services at a Child Development Center are to be reduced or eliminated in good faith to permit the layoff of permit Child Development Center employees; and

WHEREAS, California Education Code section 45117 permits the Board of Education to conduct a layoff of employment positions with less than 45 days notice to affected employees in the event of an actual and existing financial inability to pay the salaries of classified employees or resulting from causes not foreseeable or preventable by the Governing Board; and

WHEREAS, California Education Code section 44955.5 provides that reductions in certificated personnel, including administrative and supervisory personnel, may be made by August 15 where the Governing Board determines that its total revenue limit per unit of average daily attendance under the Budget Act has not increased by at least 2 percent and it is the opinion of the Governing Board that it is therefore necessary to decrease the number of permanent employees in the District; and

WHEREAS, there is a direct and specific need within the District for certificated employees in Adult Education who possess a standard or single-subject secondary teaching credential in academic subjects or a reading specialist certificate. Such credentials or certificates are necessary because an emphasis of the significantly reduced OACE Adult Secondary Education program in the 2010-11 school year will be the

support of credit deficient high school students and up to two years of CAHSEE preparation and credit recovery support for high-school non-completers. Teachers who hold secondary academic credentials or a reading specialist certificate have a level of training and expertise that are necessary for the re-focused Adult Secondary Education program to enable it to best serve the needs of the District's students, and **WHEREAS**, there is a direct and specific need within the District for certificated employees in Adult Education who possess a reading specialist certificate, English Learner certification or a multiple subject credential because the Multi-level ESL Family Literacy program will offer embedded classes at certain OUSD elementary school sites and will operate as part of the host school community. Teachers who hold these credentials or certifications have a level of training and expertise that are necessary for the re-focused Multi-level ESL Family Literacy program to enable it to best serve the needs of the District's students, and

WHEREAS, a lack of certificated employees possessing the credentials necessary to provide the services identified above would impair the ability of the District's teachers to serve the best interests of the District's students; and

NOW, THEREFORE, BE IT RESOLVED that the Governing Board finds that, for the budget that it must submit to the Alameda County Office of Education no later than July 1, 2010, its total revenue limit per unit of average daily attendance from the State has not increased by at least 2 percent and it is therefore necessary to decrease the number of permanent employees in the District; and

BE IT FURTHER RESOLVED that, even after considering known attrition, the Governing Board finds there is an actual and existing financial inability to pay the salaries of the employees whose positions are reflected in the tables below; and

BE IT FURTHER RESOLVED that the Governing Board finds that the layoff of these certificated and classified positions resulted from causes not foreseeable or preventable by the Governing Board; and

BE IT FURTHER RESOLVED, by the Board of Education that the following particular kinds of services shall be reduced and/or eliminated due to lack of funds effective as soon as possible following the passage of this resolution:

Classification:

Union	Adult Education Certificated Positions	No. of FTE
OEA	Adult Education – Analysis and Accountability Dept. and Central Support TSA	3.4
OEA	Adult Education – English as a Second Language Dept.	20.0
OEA	Adult Education – Parenting Education Dept.	1.5
OEA	Adult Education – Career Technical Education Dept.	7.0
OEA	Adult Education – Adult Basic Education/ Adult Secondary Education Dept.	6.0
	Total FTE Reduction:	37.9

Union	Adult Education Classified Positions	No. of FTE
SEIU	Instructional Assistant K-12 (K12IA)	4.0
SEIU	Administrative Assistant II (10 month)	3.0
SEIU	Administrative Assistant I (10 month)	3.0
SEIU	Secretary (10 month)	2.0
SEIU	Tech Support Specialist II	1.0
SEIU	Data Analyst II	0.25
SEIU	Service Team Assistant	1.0
AFSCME	Custodians	2.75
SEIU	School Security Officers	3.0
SEIU	Operations Support Coach (Adult Education)	0.5
	Total FTE Reduction:	19.50

BE IT FURTHER RESOLVED that pursuant to Education Code § 44955(d)(1) it will be necessary to retain the services of Adult Education teachers in the 2010-2011 school year regardless of seniority, who possess a standard or single-subject secondary teaching credential in academic subjects, a reading specialist certificate, English Learner certification or a multiple subject credential. Furthermore, competency in OACE programs for purposes of Education Code section 44955 shall be determined as follows:

(1) To teach GED in the OACE Adult Secondary Education program requires at least one complete year of teaching experience in the Adult GED program within the last eight years. This serves the best interests of the District's students because, among other things, the GED test requirements changed significantly in 2002 and GED teachers must be fully proficient in all aspects of current GED test standards;

(2) to teach California High School Exit Exam (CAHSEE) preparation and high school subjects through Independent Study and other modalities to credit deficient high school students and minimally credit deficient adult high school non-completers, requires at least one complete year of teaching experience in adult high school academic subjects in the past five years. This serves the best interests of the District's students because, among other things, the CAHSEE requirements were implemented in 2006 and Adult Secondary Education teachers must be fully proficient in all aspects of preparing students for successfully completing high school graduation requirements; and

(3) to teach Multi-level ESL Family Literacy embedded at District school sites requires at least one complete year of teaching or program support experience in Multi-level ESL classroom settings, Family Literacy Programs, or CBET classroom teaching or program support experience within the last five years. This serves the best interests of the District's students because, among other things the recent implementation of the ESL Family Literacy model and the planned expansion of that model to 17 additional schools and the anticipated shift in emphasis to a full service community school model requires teacher expertise consistent with the demands of those models; and

BE IT FURTHER RESOLVED that the Superintendent of Schools or his designee is directed to send the appropriate notices to all employees whose positions will be lost by virtue of this action, and to take proper steps pursuant to Education Code sections 45101, 45114, 45117, 45298, 45308, 44951, 44955, and 44955.5 to reduce or eliminate the appropriate number of employment positions; and

BE IT FURTHER RESOLVED that the Governing Board adopts the following schedule of notice and hearing for the foregoing certificated layoffs and directs the Superintendent of Schools or his designee to conduct the termination of certificated employees in accordance with that schedule to the extent possible in conjunction with the Office of Administrative Hearings:

On or before July 15, 2010: proposed date for mailing of Preliminary Layoff Notices
August 3, 2010: proposed date for Administrative Hearing for certificated employees requesting hearing
August 9, 2010: proposed date for Administrative Law Judge's advisory opinion
August 11, 2010: Board of Education Meeting to take action on Certificated Layoffs
August 12, 2010: Final Layoff Notices mailed to affected certificated employees
August 15, 2010: Effective date of Certificated Layoff (Adult Education)

Passed by the following vote:

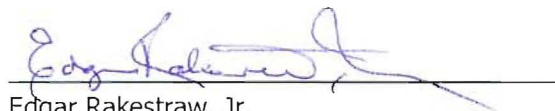
AYES: Jody London, Jumoke Hodge, Noel Gallo, Alice Spearman and Acting President
Christopher Dobbins

NOES: None

ABSTAINED: None

ABSENT: David Kakishiba and President Gary Yee

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted at a Regular Meeting of the Board of Education of the Oakland Unified School District held June 23, 2010.

A handwritten signature in blue ink, appearing to read "Edgar Rakestraw, Jr.", is written over a horizontal line.

Edgar Rakestraw, Jr.
Secretary, Board of Education
Oakland Unified School District

Legislative File

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By: 69

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
Resolution No. 0910-0251**

Reductions of Particular Kinds of Service in Child Development Centers, Custodial Services,
Nutritional Services, Procurement, and Technology Services
Caused By State Budget Revisions Relating to Child Development Centers

WHEREAS, the Governor's May revisions to the State's proposed budget eliminate funding for the District's Child Development Center programs; and

WHEREAS, prior to the May revisions to the State's budget, the District was already anticipating a need to reduce its 2010-2011 budget by \$85 million; and

WHEREAS, the District anticipates that the proposed May revisions to the State's budget will result in a further budget deficit to the District of \$16 million; and

WHEREAS, as provided in Education Code sections 42127, et seq., the District is required to submit a balanced budget to the County Office of Education (COE), no later than July 1, 2010; and

WHEREAS, the COE has informed the District that the District's budget must (1) account for reductions as provided in the May revisions to the State budget or (2) have reserves available to cover the reductions required by the May revisions. The District does not have reserves to cover the reductions. Therefore, the District's budget must include the reductions provided in the May revisions; and

WHEREAS, the impact of these drastic reductions on the District's Child Development Center programs are anticipated to have long-term negative impacts in the preparation and educational achievement of students in K-12, and such impacts can be mitigated in part by further reducing the Adult Education program and transferring funds that were previously budgeted to Adult Education to the Child Development Center program. Balancing the cuts across these two programs best supports the mission and goals of the District; and

WHEREAS, even with further reductions in Adult Education, reductions to the Child Development Center program will still be necessary, and California Education Code section 8366 requires action by the Board of Education if services at a Child Development Center are to be reduced or eliminated in good faith to permit the layoff of permit Child Development Center employees; and

WHEREAS, California Education Code section 45117 permits the Board of Education to conduct a layoff of employment positions with less than 45 days notice to affected employees in the event of an actual and existing financial inability to pay the salaries of classified employees or resulting from causes not foreseeable or preventable by the Governing Board; and

WHEREAS, there is a high need within the District for Child Development permit teachers who are Program Directors and have the lawful ability under Community Care Licensing regulations to open and close a facility; and

WHEREAS, a lack of permit teachers possessing the specialized skills necessary to provide the services identified above would impair the ability of the District to serve the best interests of the District's students; and

NOW THEREFORE BE IT RESOLVED that, even after considering known attrition, the Governing Board finds that, there is an actual and existing financial inability to pay the salaries of the employees whose positions are reflected in the tables below; and

BE IT FURTHER RESOLVED that the Governing Board finds that the layoff of these Child Development Center permit teachers, and classified positions resulted from causes not foreseeable or preventable by the Governing Board; and

BE IT FURTHER RESOLVED, by the Board of Education that the following particular kinds of services shall be reduced and/or eliminated due to lack of funds effective as soon as possible following the passage of this resolution:

Union	CDC Permit Teachers and Classified Positions Relating to CDC Programs	No. of FTE
OEA	CDC Instructional Permit Teacher	6.0
OEA	CDC Site Supervisor Permit Teacher	33.0
SEIU	CDC Instructional Assistant (IACDC)	21.06
SEIU	Instructional Assistant K-12 (K12IA)	4.0
SEIU	Instructional Assistant Bilingual Spanish (IABIL)	1.6
SEIU	Sr. Clerk Typist	12.0
UAOS	Coordinator Custodial Services	1.0
AFSCME	CDC Custodians	7.0
AFSCME	Food Service Assistant I	2.66
AFSCME	Food Service Assistant III	0.53
AFSCME	Food Service Manager IV	1.0
TEAMSTERS	Truck Driver	1.0
UAOS	Food Service Field Supervisor (12 months)	2.0
Total FTE Reduction:		92.85

BE IT FURTHER RESOLVED that it will be necessary to retain the services of Child Development Center permit teachers in the 2010-2011 school year regardless of seniority, who are Program Directors and have the lawful ability under Community Care Licensing regulations to open and close a facility. Furthermore, competency as a Child Development Center permit teacher shall be determined by the holding of a valid permit to teach as well as a valid authorization to open and close a facility under the Community Care Licensing regulations; and

BE IT FURTHER RESOLVED that the Superintendent of Schools or his designee is directed to send the appropriate notices to all employees whose positions will be lost by virtue of this action, and to take proper steps pursuant to Education Code sections 8366, 45101, 45114, 45117, 45298, and 45308 to reduce or eliminate the appropriate number of employment positions by no later than August 1, 2010.

Passed by the following vote:

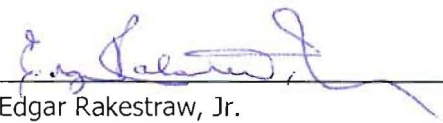
AYES: Jody London, Jumoke Hodge, Noel Gallo, Alice Spearman and Acting President Christopher Dobbins

NOES: None

ABSTAINED: None

ABSENT: David Kakishiba and President Gary Yee

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted at a Regular Meeting of the Board of Education of the Oakland Unified School District held June 23, 2010.



 Edgar Rakestraw, Jr.
 Secretary, Board of Education
 Oakland Unified School District

CALIFORNIA EDUCATION CODES

8366. Each person employed by a public or private agency as defined in Section 8213 in a position requiring a child development permit for the supervision and instruction of children, or for service as a physician, dentist, or nurse, or in the supervision of the child development program, shall be deemed to be employed in a position requiring certification qualifications.

Each other person employed by an agency in a child development program under the provisions of this chapter shall be deemed for all purposes, including retirement, to be a person employed by the agency in a position not requiring certification qualifications.

The provisions of Section 45053 or 45054 shall not apply to employees in child development programs.

A district may lay off an employee required to have such a permit at any time during the school year for lack of work or lack of funds or may provide for his employment for not to exceed 90 days in any one school year on an intermittent basis which shall not be deemed probationary service. The order of layoff shall be determined by length of service. The employee who has served the shortest time shall be laid off first, except that no permanent employee shall be laid off ahead of a probationary employee. A permanent employee who has been laid off shall hold reinstatement rights for a period of 39 months from the date of layoff.

Service performed prior to September 18, 1959, shall not be included in computing the service required as a prerequisite for attainment of, or eligibility to, classification as a permanent child development employee.

A person who is employed by an agency as a probationary employee in a position requiring a child development permit for the supervision and instruction of children, or for service as a physician, dentist, or nurse, or in the supervision of the children's program and who has served in such a position for three complete consecutive school years as defined in Sections 44908 or 87468 and 44975 or 87776 immediately prior to September 18, 1959, may be dismissed only in accordance with the provisions of Section 44949 or 87740.

Other persons who are employed as probationary employees in positions requiring such permits on or after September 18, 1959, may be dismissed in accordance with the provisions of Section 44949 or 87740.

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget and supporting data shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets. The county superintendent shall identify, if necessary, any technical corrections that are required to be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. In addition to his or her own analysis of the budget of each school district, the county superintendent of schools shall review and consider studies, reports, evaluations, or audits of the school district that were commissioned by the district, the county superintendent, the Superintendent, and state control agencies and that contain evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a

CALIFORNIA EDUCATION CODE – 42127. (cont.)

school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. The county superintendent of schools shall either conditionally approve or disapprove a budget that does not provide adequate assurance that the district will meet its current and future obligations and resolve any problems identified in studies, reports, evaluations, or audits described in this paragraph.

(d) On or before August 15, the county superintendent of schools shall approve, conditionally approve, or disapprove the adopted budget for each school district. If a school district does not submit a budget to the county superintendent of schools, the county superintendent of schools shall, at district expense, develop a budget for that school district by September 15 and transmit that budget to the governing board of the school district. The budget prepared by the county superintendent of schools shall be deemed adopted, unless the county superintendent of schools approves any modifications made by the governing board of the school district. The approved budget shall be used as a guide for the district's priorities. The Superintendent shall review and certify the budget approved by the county. If, pursuant to the review conducted pursuant to subdivision (c), the county superintendent of schools determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall conditionally approve or disapprove the budget and, not later than August 15, transmit to the governing board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations, including, but not limited to, the amounts of any budget adjustments needed before he or she can conditionally approve that budget. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. In addition, if the adopted budget is disapproved pursuant to subdivision (d), the governing board and the county superintendent of schools shall review the disapproval and the recommendations of the county superintendent of schools regarding revision of the budget at the public hearing. The revised budget and supporting data shall be maintained and made available for public review.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent identifying all

CALIFORNIA EDUCATION CODE – 42127. (cont.)

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, (3) satisfies all conditions established by the county superintendent of schools in the case of a conditionally approved budget, and (4) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. If no budget is adopted by November 30, the Superintendent may adopt a budget for the school district. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, the date the adopted budget is anticipated, and whether the Superintendent has or will exercise his or her authority to adopt a budget for the school district.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent identifying all school districts for which budgets have been disapproved or budget review committees waived. The report shall include a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's

CALIFORNIA EDUCATION CODE – 42127. (cont.)

recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

44951. Unless a certificated employee holding a position requiring an administrative or supervisory credential is sent written notice deposited in the United States registered mail with postage prepaid and addressed to his or her last known address by March 15 that he or she may be released from his or her position for the following school year, or unless the signature of the employee is obtained by March 15 on the written notice that he or she may be released from his or her position for the following year, he or she shall be continued in the position. The provisions of this section do not apply to a certificated employee who holds a written contract with an expiration date beyond the current school year, or to a certificated employee holding a position that is funded for less than a school year, or to a certificated employee assigned to an acting position whose continuing right to hold this position depends on being selected from an eligible list established for the position, or to the termination of employment pursuant to Section 44955.

44955. (a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the 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.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in

CALIFORNIA EDUCATION CODE – 44955. (cont.)

writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee 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 postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The 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 or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

CALIFORNIA EDUCATION CODE (cont.)

44955.5. (a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive.

45101. Definitions as used in this chapter:

(a) "Classification" means that each position in the classified service shall have a designated title, a regular minimum number of assigned hours per day, days per week, and months per year, a specific statement of the duties required to be performed by the employees in each such position, and the regular monthly salary ranges for each such position.

(b) "Permanent" as used in the phrase "permanent employee" includes tenure in the classification in which the employee passed the required probationary period, and includes all of the incidents of that classification.

(c) "Regular" as used in the phrase "regular classified employee" or any similar phrase, refers to a classified employee who has probationary or permanent status.

(d) "Demotion" means assignment to an inferior position or status, without the employee's written voluntary consent.

(e) "Disciplinary action" includes any action whereby an employee is deprived of any classification or any incident of any classification in which he has permanence, including dismissal, suspension, demotion, or any reassignment, without his voluntary consent, except a layoff for lack of work or lack of funds.

(f) "Reclassification" means the upgrading of a position to a higher classification as a result of the gradual increase of the duties being performed by the incumbent in such position.

(g) "Layoff for lack of funds or layoff for lack of work" includes any reduction in hours of employment or assignment to a class or grade lower than that in which the employee has permanence, voluntarily consented to by the employee, in order to avoid interruption of employment by layoff.

(h) "Cause" relating to disciplinary actions against classified employees means those grounds for discipline, or offenses, enumerated in the law or the written rules of a public school employer. No disciplinary action may be maintained for any "cause" other than as defined herein.

CALIFORNIA EDUCATION CODE – 45101. (cont.)

The provisions of this section shall not apply to school districts to which the provisions of Article 6 (commencing with Section 45240) of this chapter are applicable.

The provisions of this section shall not apply to any school district which, during the 1973-74 school year, had an average daily attendance of 100,000 or more.

45114. Notwithstanding the provisions of Section 45113, the governing board may lay off and reemploy classified employees only in accordance with procedures provided by Sections 45298 and 45308, except the term "personnel commission" therein shall be construed to mean the governing board. "Governing board" as used in this section shall include districts governed by a common board or by different boards but with a common administration. Employees in common board or common administration districts shall, for the purpose of layoff for lack of work or funds, be considered as having been employed in a single district.

45117. (a) When, as a result of the expiration of a specially funded program, classified positions must be eliminated at the end of any school year, and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of the school year shall be given written notice on or before April 29 informing them of their layoff effective at the end of the school year and of their displacement rights, if any, and reemployment rights. However, if the termination date of any specially funded program is other than June 30, the notice shall be given not less than 45 days prior to the effective date of their layoff.

(b) When, as a result of a bona fide reduction or elimination of the service being performed by any department, classified employees shall be subject to layoff for lack of work, affected employees shall be given notice of layoff not less than 45 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.

(c) (1) A classified employee may not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render. This subdivision does not create a 45-day layoff notice requirement for any individual hired as a short-term employee, as defined in Section 45103, for a period not exceeding 45 days.

(2) This subdivision does not apply to the retention of a short-term employee, as defined in Section 45103, who is hired for a period not exceeding 45 days after which the short-term service may not be extended or renewed.

(d) This section does not preclude the governing board of a school district from implementing either of the following actions without providing the notice required by subdivision (a) or (b):

(1) A layoff for a lack of funds in the event of an actual and existing financial inability to pay the salaries of classified employees.

(2) A layoff for a lack of work resulting from causes not

CALIFORNIA EDUCATION CODE – 45117 (cont.)

foreseeable or preventable by the governing board.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240).

45298. Persons laid off because of lack of work or lack of funds are eligible to reemployment for a period of 39 months and shall be reemployed in preference to new applicants. In addition, such persons laid off have the right to participate in promotional examinations within the district during the period of 39 months.

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff or to remain in their present positions rather than be reclassified or reassigned, shall be granted the same rights as persons laid off and shall retain eligibility to be considered for reemployment for an additional period of up to 24 months; provided, that the same tests of fitness under which they qualified for appointment to the class shall still apply. The personnel commission shall make the determination of the specific period eligibility for reemployment on a class-by-class basis.

Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff shall be, at the option of the employee, returned to a position in their former class or to positions with increased assigned time as vacancies become available, and without limitation of time, but if there is a valid reemployment list they shall be ranked on that list in accordance with their proper seniority.

45308. Classified employees shall be subject to layoff for lack of work or lack of funds. Whenever a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Reemployment shall be in the reverse order of layoff.

For purposes of this section, in school districts with an average daily attendance below 400,000, for service commencing or continuing after July 1, 1971, "length of service" means all hours in paid status, whether during the school year, a holiday, recess, or during any period that a school is in session or closed, but does not include any hours compensated solely on an overtime basis as provided for in Section 45128. Nothing in this section shall preclude the governing board of a school district from entering into an agreement with the exclusive representative of the classified employees that defines "length of service" to mean the hire date. For purposes of this section, in school districts with an average daily attendance of 400,000 or more, for service commencing or continuing after January 1, 1986, "length of service" shall be determined by the date of hire.

If a governing board enters into an agreement with the exclusive representative of classified employees that defines "length of service" to mean the hire date, the governing board may define "length of service" to mean the hire date for a classification of employee not represented by any exclusive bargaining unit.

Nothing contained in this section shall preclude the granting of "length of service" credit for time spent on unpaid illness leave, unpaid maternity leave, unpaid family care leave, or unpaid industrial accident leave. In addition, for military leave of absence, "length of service" credit shall be granted pursuant to Section 45297. In the event an employee returns to work following any other unpaid leave of absence, no further seniority shall be accrued for the time not worked.

"Hours in paid status" shall not be interpreted to mean any service performed prior to entering into a probationary or permanent status in the classified service of the district except service in restricted positions as provided in this chapter.