

SPECIAL MEETING

**CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES**

33122 Valle Road
San Juan Capistrano, CA 92675

February 22, 2011

6:00 p.m.

I. PRELIMINARY

Meeting was called to order by _____

Pledge of Allegiance to the Flag

Board consideration and adoption of the agenda.

Motion by _____ Seconded by _____

ROLL CALL:

	Present	Absent
Jack R. Brick, President	_____	_____
Dr. Gary Pritchard, Vice President	_____	_____
John M. Alpay, Clerk	_____	_____
Ellen M. Addonizio, Member	_____	_____
Anna Bryson, Member	_____	_____
Lynn Hatton, Member	_____	_____
Sue Palazzo, Member	_____	_____
Larson Ishii, Student Advisor	_____	_____

CLOSED SESSION

Immediately following Open Session

REPORT ON CLOSED SESSION ACTION

PUBLIC COMMENTS TO AGENDA ITEMS ONLY

RECORDING OF SCHOOL BOARD MEETINGS

In accordance with Board Policy 9324, Board Minutes, all Regular School Board Meetings will be audio recorded.

II. INSTRUCTIONS FOR PRESENTATIONS TO THE BOARD BY PARENTS AND CITIZENS PRESENT AT THIS MEETING

We are pleased you can be with us at this meeting, and we hope you will return often. Your visit assures us of continuing community interest in our schools.

The members of the Board of Trustees of this District are locally elected state officials, who serve four-year terms of office, and who are responsible for the educational program of our community from grades kindergarten through twelve. They are required to conduct programs of the schools in accordance with the State of California Constitution, the State Education Code, and other laws relating to schools enacted by the Legislature, and policies and procedures which this Board adopts.

The Board is a policy-making body whose actions are guided by the school district's Mission and Goals. Administration of the District is delegated to a professional administrative staff headed by the Superintendent.

The agenda and its extensive background material are studied by each member of the Board for at least two days preceding the meeting. Board Members can call the administrative staff for clarification on any item, and many of the items on the agenda were discussed by the Board during previous meetings. These procedures enable the Board to act more effectively on agenda items than would otherwise be possible.

WHAT TO DO IF YOU WISH TO ADDRESS THE BOARD OF TRUSTEES

ITEMS ON THE AGENDA. Any person may address the Board concerning any item on the agenda and may, at the discretion of the Board, be granted three (3) minutes to make a presentation to the Board at the time a specific item is under discussion. However, the time assigned for individual presentations could be fewer than three (3) minutes depending upon the total number of speakers who wish to address a specific agenda topic. Prior to the opening of the meeting, a Request to Address the Board card (located in the foyer) should be completed and submitted to the Secretary of the Board. The total time devoted to presentations to the Board shall not exceed twenty (20) minutes, unless additional time is granted by the Board. All presentations shall be heard by the Board prior to the formal discussion of the agenda topic under consideration. Once an agenda item has been opened for public comment, no additional "Request to Address the Board of Trustees" cards shall be accepted for that topic.

ORAL COMMUNICATIONS (Non-Agenda Items). Citizens may address the Board on any item not appearing on the agenda. Individual presentations are limited to three (3) minutes per individual, with twenty (20) minutes in total being devoted for this purpose, but could be less if there are a large number of Oral Communication speakers. Legally, the Board may not take action on items raised by speakers under Oral Communications. However, at its discretion, the Board may refer items to the administration for follow-up or place topics on a future Board agenda.

PUBLIC HEARINGS. Anytime the Board schedules a separate public hearing on any given topic, it shall not hear speakers on that topic before the public hearing, except as to the scheduling of the hearing, nor shall it hear speakers after the hearing, except as to changes in the policy or recommended actions which are directed at the time of the hearing.

CLOSED SESSION. In accordance with Education Code Section 35146 and Government Code Section 54957, the Board may recess to Closed Session to discuss personnel matters which they consider inadvisable to take up in a public meeting.

REASONABLE ACCOMMODATION

In order to help ensure participation in the meeting of disabled individuals, appropriate disability-related accommodations or modifications shall be provided by the Board, upon request, in accordance with the Americans with Disabilities Act (ADA). Persons with a disability who require a disability-related accommodation or modification, including auxiliary aids and services in order to participate in a Board meeting, shall contact the Superintendent or designee in writing by noon on the Friday before the scheduled meeting. Such notification shall provide school district personnel time to make reasonable arrangements to assure accessibility to the meeting.

III. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered by the Board to be routine and will be enacted by the Board in one motion in the form listed below. There will be no discussion of these items prior to the time the Board votes on the motion unless members of the Board, staff, or the public request specific items to be discussed and/or removed from the Consent Calendar. The Superintendent and staff recommend approval of all Consent Calendar items.

- 1. **CONSULTING AGREEMENT:** Approval, fiscal and financial consultant services, Vavrinek, Trine, Day & Co., LLP. (Supporting Information) 1
Contact: Ron Lebs, Deputy Superintendent, Business & Support Services

- 2. **EMERGENCY FLOOD REPAIR:** Approval, Resolution No. 1011-41, Emergency Flood Repair. (Supporting Information) 14
Contact: Ron Lebs, Deputy Superintendent, Business & Support Services

Motion by _____ Seconded by _____

ROLL CALL:

Student Advisor Larson Ishii _____	
Trustee Addonizio _____	Trustee Hatton _____
Trustee Alpay _____	Trustee Palazzo _____
Trustee Bryson _____	Trustee Pritchard _____
	Trustee Brick _____

NOTE: BY USING A ROLL CALL VOTE FOR THE CONSENT CALENDAR, IT WILL MEET THE NEED FOR ACTION ITEMS WHICH REQUIRE A SIMPLE MOTION OR ROLL CALL VOTE.

IV. DISCUSSION/ACTION

- 3. **REDUCTION OF CERTIFICATED EMPLOYEES–NON-MANAGEMENT:** DISCUSSION/
ACTION
Consideration and approval, Resolution No. 1011-39, certificated layoff of non-management personnel. Vote ____
(Supporting Information) Page 18
Contact: Jodee Brentlinger, Assistant Superintendent, Personnel Services

Motion by _____ Seconded by _____

V. ADJOURNMENT

THE NEXT REGULAR MEETING OF THE GOVERNING BOARD WILL BE HELD ON TUESDAY, MARCH 8, 2011 7:00 P.M. AT THE CAPISTRANO UNIFIED SCHOOL DISTRICT OFFICE BOARD ROOM, 33122 VALLE ROAD, SAN JUAN CAPISTRANO, CALIFORNIA

For information regarding Capistrano Unified School District, please visit our website:

VI. CLOSED SESSION

4. Closed Session (as authorized by law)
 - A. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
(Pursuant to Government Code §54957)

 - B. CONFERENCE WITH LABOR NEGOTIATORS
Dr. Joseph M. Farley/Jodee Brentlinger/Ron Lebs
Employee Organization:
 - 1) Capistrano Unified Education Association (CUEA)
 - 2) Capistrano School Employees Association (CSEA)
 - 3) Unrepresented Employees (CUMA)
 - 4) Teamsters*(Pursuant to Government Code §54957.6)*

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

February 22, 2011

TO: Joseph M. Farley, Superintendent

FROM: Ron Lebs, Deputy Superintendent, Business & Support Services

SUBJECT: **CONSULTING AGREEMENT, FISCAL AND FINANCIAL
CONSULTANT SERVICES – VAVRINEK, TRINE, DAY & CO., LLP**

BACKGROUND INFORMATION

Prior to the winter break, CUSD Business Analyst Philippa Geiger, a key member of the District's budget team, resigned to take a new job in a neighboring school district. Over the past several weeks, staff has been reevaluating the job description, duties, and performance expectations of the Business Analyst position. As a result of this review, staff has revised the job description and will be posting a vacancy for Manager IV, Budget. In the meantime, with the second interim report and 2011-2012 budget development beginning, the District requires someone with specialized skills to work with QSS, the District's financial software, and the Standardized Account Code System, the state accounting software. Assistance is also needed with cash flow projections and the multi-year projection.

To this end, staff has been seeking someone who could assist us on these projects on an as-needed basis. Several retired fiscal directors, the Orange County Department of Education, the auditors, and School Services of California were contacted. Of those contacted, Vavrinek, Trine, Day and Co. (VTD), the District's auditing firm, was the only entity with someone available with the requisite skills. VTD has proposed a daily rate of \$1,200 (\$150/hour) to perform the work, plus mileage. If used sparingly over the next few months, costs for the service can be paid from the savings from the open Business Analyst position with no additional impact to the general fund. There is a current balance from this open position in the general fund budget of approximately \$34,000. This would provide approximately a month and a half of service if the entire amount were used. However, it is anticipated that someone will be needed for only three days a week through May and not necessarily each week.

CURRENT CONSIDERATIONS

This agenda item requests approval of the attached consulting agreement for fiscal and financial consultant services related to fiscal and accounting services, on an as-needed basis – Vavrinek, Trine, Day & Co., LLP (Exhibit A). This consulting agreement has been processed in accordance with the rules and regulations of the Board of Trustees (Board Policies 3300, 3310, and 4126) and applicable legal requirements of the State of California.

FINANCIAL IMPLICATIONS

Financial Impact: Services on an as-needed basis, per fee schedule not to exceed \$34,000
Funding Source: General Fund

STAFF RECOMMENDATION

It is recommended the Board approve the consulting agreement for fiscal and financial consultant services – Vavrinek, Trine, Day & Co., LLP.



Consultant Agreement

This AGREEMENT is hereby entered into between the Capistrano Unified School District, hereinafter referred to as "DISTRICT" and Vavrinek, Trine, Day & Co. LLP

hereinafter referred to as "CONSULTANT."

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, CONSULTANT is specially trained and experienced and competent to perform the special services required by the DISTRICT, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. **Services to be Provided by CONSULTANT:** Fiscal and financial management consulting services as required by District.

2. **Term:** CONSULTANT shall commence providing services under this AGREEMENT on February 23, 2011 and will diligently perform as required and complete performance by June 30, 2011.

3. **Compensation:** DISTRICT agrees to pay the CONSULTANT for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed amount specified by District purchase order as per attached fee schedule Exhibit A and/or proposal Exhibit N/A. DISTRICT shall pay CONSULTANT after receipt of consultant invoice and with approval of a District representative.

4. **Expenses:** DISTRICT shall not be liable to CONSULTANT for any costs or expenses paid or incurred by CONSULTANT in performing services for DISTRICT except as follows: Mileage computed at the current IRS rate per mile.

5. **Independent Contractor:** CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that he/she and all his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of all Federal, State and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONSULTANT's employees.

6. **Materials:** CONSULTANT shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT except as follows: N/A

CONSULTANT's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

7. **Originality of Services:** CONSULTANT agrees that all technologies, formulae, procedures, processes, methods, writings, and ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, submitted to the DISTRICT and/or used in connection with this AGREEMENT, shall be wholly original to CONSULTANT and shall not be copied in whole or in part from any other source, except that submitted to CONSULTANT by DISTRICT as basis for such services.

8. **Copyright/Trademark/Patent:** CONSULTANT understands and agrees that all matters produced under this AGREEMENT shall become the property of DISTRICT and cannot be used without DISTRICT's express written permission. DISTRICT shall have all right,

title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the DISTRICT. CONSULTANT consents to use of CONSULTANT's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

9. **Termination:** DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate CONSULTANT only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by CONSULTANT. Notice shall be deemed given when received by the CONSULTANT or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon written notice of intention to terminate for cause. Cause shall include: (a) material violation of the AGREEMENT by the CONSULTANT; or (b) any act by CONSULTANT exposing the DISTRICT to liability to others for personal injury or property damage; or (c) CONSULTANT is adjudged bankrupt, CONSULTANT makes a general assignment for the benefit of creditors or a receiver is appointed due to CONSULTANT's insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall, upon the expiration of ten (10) days cease and terminate. In the event of such termination, the DISTRICT may secure the required services from another contractor. If the cost to the DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the CONSULTANT. The foregoing provisions are in addition to, and not a limitation of, any other rights or remedies available to the DISTRICT. Written notice by DISTRICT shall be deemed given when received by the other party, or no later than three days after the day of mailing, whichever is sooner.

10. **Hold Harmless:** CONSULTANT agrees to and shall defend, indemnify and hold harmless the DISTRICT, its Governing Board, officers, agents, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention, contractual liability, and damage to property sustained or claimed to have been sustained arising out of activities/services provided by CONSULTANT or its subcontractors,

whether authorized by this Agreement or not. CONSULTANT further agrees to waive all rights of subrogation against the DISTRICT. The provisions of this article do not apply to any damage or losses caused solely by the negligence or willful misconduct of DISTRICT or any of its agents or employees.

11. **Insurance:** Pursuant to Section 10, CONSULTANT agrees to carry a commercial general liability insurance and automobile liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect CONSULTANT and DISTRICT against liability or claims of liability, which may arise out of the AGREEMENT. In addition, CONSULTANT agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No later than the actual start date, CONSULTANT shall provide DISTRICT with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. CONSULTANT agrees to name DISTRICT and its officers, agents and employees as additional insured's by separate endorsement under said policy.

12. **Assignment:** The obligations of the CONSULTANT pursuant to this AGREEMENT shall not be assigned by the CONSULTANT.

13. **Compliance with Applicable Laws:** The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONSULTANT agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONSULTANT, CONSULTANT's business, and personnel engaged in operations covered by this AGREEMENT or accruing out of the performance of such operations.

14. **Permits/Licenses:** CONSULTANT and all CONSULTANT's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this AGREEMENT.

15. **Employment with Public Agency:** CONSULTANT, if an employee of another public agency, agrees that CONSULTANT will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

16. **Entire Agreement/Amendment:** This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT.

17. **Nondiscrimination:** CONSULTANT agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

18. **Non-waiver:** The failure of DISTRICT or CONSULTANT to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this AGREEMENT, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

19. **Notice:** All notices or demands to be given under this AGREEMENT by either party to the other, shall be in writing and given either by: (a) personal service or (b) U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received, if personally served or if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

<u>DISTRICT</u>	<u>CONSULTANT</u>
Terry Fluent, Director of Purchasing Capistrano Unified School District 33122 Valle Road San Juan Capistrano, CA 92675 (949) 234-9441	Vavrinek, Trine, Day & Co., LLP 8270 Aspen Street Rancho Cucamonga, CA 91730

20. **Severability:** If any term, condition or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

21. **Attorney Fees/Costs:** Should litigation be necessary to enforce any terms or provisions of the AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, courts costs, and attorneys' fees.

22. **Governing Law:** The laws of the State of California shall govern the terms and conditions of this AGREEMENT with venue in Orange County, California.

23. **Exhibits:** This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein: (if applicable)

a. Exhibit A Letter of Engagement dated January 31, 2011

b. Exhibit B N/A

c. Exhibit C N/A

CONSULTANT NAME: Vavrinek, Trine, Day & Co. LLP Contract No. C1011117

This AGREEMENT is entered into this 23rd Day of February 2011.

DISTRICT:

CONSULTANT:

By: _____

Terry Fluent, Director of Purchasing

By: _____

Signature

Printed Name

Title

February 22, 2011
Board Approval Date

Social Security or Taxpayer Identification

EXHIBIT A
(7 of 11)

January 31, 2011

Mr. Ron Lebs
Deputy Superintendent, Business and Support Services
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, CA 92675

Dear Ron:

I would like to thank you for opportunity to use the management services provided by Vavrinek, Trine, Day & Co., LLP. I look forward to working with you and your staff on Second Interim and Budget related projects. This letter will serve as our engagement letter for services to be performed during the 2010-11 fiscal year. This engagement letter is in conformance with the Government Accounting Standards (GAO).

The standards to which VTD will conform are intended to better serve the public interest and to maintain a high degree of integrity, objectivity and independence for both audit work and for non-audit work with government audit clients.

The standard for non-audit services for government audit clients is based on two overarching principles:

- Auditors (VTD) should not perform management functions or make management decisions; and
- Auditors (VTD) should not audit their own work or provide non-audit services in situations where the amounts or services involved are significant / material to the subject matter of the audit.

In lieu of these principles, our available resources and considering your needs, our firm offers the following way that we can assist you and your staff. We will provide you with professional accounting assistance within the engagement scope and on the terms stated below.

PURPOSE OF THE ENGAGEMENT

The purpose of the engagement is to assist the District in the any of the following areas:

- Budget and Financial Report Preparation training and assistance
 - Second Interim Reporting
 - Budget Development and Reporting
- Business staff training and advisory services
- Business related workshops

EXHIBIT A
(8 of 11)

SCOPE OF SERVICES

The work will be consulting services as defined by Governmental Auditing Standards issued by the Comptroller General of the United States. Our work will not constitute an audit or review of transactions and should not be relied upon as such.

The District is responsible for the appropriate recording and reporting of financial transactions and management decisions. Accordingly, all work will be conducted at your direction, and/or the direction of your designee, to insure that the work meets the District's objectives. Either you or your designee will be responsible for review and approval of any work product directly prepared by VTD, including any adjustments to the accounting records that may be proposed by VTD, or reports drafted by VTD during the engagement.

Governmental Auditing Standards require that the District be responsible for the substantive outcomes of VTD work and be in a position in fact and appearance to make an informed judgment on the results of the non-audit services and that the Orange County Department of Education.

- Designates a knowledgeable management level individual to be responsible and accountable for overseeing the non-audit services.
- Establishes and monitors the performance of the non-audit services to ensure that it meets management's objectives.
- Makes any decisions that involve management functions related to the non-audit services and accepts full responsibility for such decisions.
- Evaluates the adequacy of the services performed and any findings that result.

In accordance with Governmental Auditing Standards, the County will be required to provide VTD with a letter, signed by you. The letter will affirm that VTD's work has been reviewed and that the County accepts responsibility for any adjustments to the accounting records or reports drafted by VTD during the engagement.

Specific services to be available to the County follow. Any additional services requested, other than routine advice will require an amendment of this agreement.

Assisting District Staff in Preparing Reports

- Assist District staff in the preparation of State Reports from District records with staff input.
- SACS series actual and budget financial reports including cash flows and multi-year projections.
- AB 1200 Negotiation settlement reports.
- Federal and State categorical program expenditure reports.
- VTD analysis includes:
 - Researching questioned items, proposing adjusting entries to actual financial activity.

Budgeting and Interim Reporting

- Assistance and training in enrollment projections and classroom staffing.

- Assist District staff in the preparation of present year and multi-year projections from District financials with District assumptions.

Training and Advice

- VTD will provide training and advice to District staff as requested.
- VTD will audit specific transactions or reports if requested by the District. Such audits will require a separate engagement letter.

STAFFING

The Partner in charge of the engagement will be Dusty Ferguson, with the assistance from Phil Hillman, Consultant and other VTD consultants and staff as necessary. Every effort will be made to delegate work to our accounting staff to minimize the expense to the District and/or meet District deadlines.

FEES

Pursuant to the current rates in the audit contract, fees will be based on the hours worked at a daily rate of \$1,200, plus mileage. Invoices will be submitted monthly and are due upon receipt. ~~In addition to such payment for personal services, VTD shall be reimbursed for such travel as may be necessary, including expenses for hotels, meals and mileage computed at the current IRS rate per mile.~~

TERM OF ENGAGEMENT

The term of the engagement is February 1, 2011 to June 30, 2011.

TERMINATION OF ENGAGEMENT

The engagement may be terminated by either party without cause.

ARBITRATION

If a dispute arises among the parties hereto, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Rules for Professional Accounting and Related Services Disputes before resorting to litigation. The costs of any mediation proceeding shall be shared equally by all parties.

INDEPENDENT CONTRACTOR

VTD is an independent contractor as defined by Federal and State taxing authorities.

INSURANCE

VTD maintains current worker compensation and liability insurance policies.

EXHIBIT A (10 of 11)

If this engagement letter correctly states your understanding of the engagement, please sign below and return a copy for our files.

Capistrano Unified School District

Vavrinek, Trine, Day & Co., LLP.

Ron Lebs
Deputy Superintendent, Business
and Support Services

Dusteen Ferguson
Partner

Date: _____

Date: _____

EXHIBIT A
(11 of 11)

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

February 22, 2011

TO: Joseph Mr. Farley, Superintendent

FROM: Ron Lebs, Deputy Superintendent, Business & Support Services

SUBJECT: **RESOLUTION 1011-41, EMERGENCY FLOOD REPAIR**

BACKGROUND INFORMATION

Early Wednesday morning, December 22, 2010, several CUSD campuses experienced flooding and water-related damages due to a significant regional weather event. Orange County, California received Federal and State disaster designations due to the major impact to our area. Storm damages were experienced districtwide but four schools in San Juan Capistrano sustained the most significant damage: Del Obispo and San Juan Elementary Schools, Marco Forster Middle School, and the Capistrano-Laguna Beach ROP Program. Additionally, several slopes on the Capistrano Valley High School campus sustained damage. On the morning of December 22, CUSD personnel assessed the specific damage and, in consultation with our insurance carrier, Alliance of Schools for Cooperative Insurance Programs (ASCIP), engaged ASCIP-approved contractors and consultants to perform all services necessary to remediate, repair, and restore our damaged facilities immediately so all school site operations and teaching could commence as scheduled on January 3, 2011. Those services included the extraction, dehumidifying and cleaning of water-damaged areas; the cataloging, packing out and reinstallation of all furniture and contents for each impacted area; the performance of indoor air quality tests to ensure safety; debris removal; clean up and mud removal; replacement of ceiling tiles throughout the District; replacement of air filters; carpet removal and replacement; plumbing repairs including replacement of broken sewer lines and hydro-jetting of storm drains, and professional services of structural and geotechnical engineers to assess damage and risk to a pedestrian bridge and various slopes.

CURRENT CONSIDERATIONS

Public Contract Code §20113 states:

(a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding §20114, authorize the use of day labor or force account for the purpose.

This agenda item requests Board approval of Resolution 1011-41, authorizing the emergency services that were necessary to remediate, repair, and restore the facilities and grounds caused by the December 2010 storm, without advertising for or inviting bids, in order to reopen our schools following winter recess on January 3, 2011.

FINANCIAL IMPLICATIONS

The exact financial implications due to the flooding and water damage have not been fully determined at this point. CUSD personnel are working with ASCIP to make sure all coverage-eligible costs above the \$25,000 deductible are borne by the insurance carrier. Those costs associated with remediation and restoration of San Juan Elementary School and the Capistrano-Laguna Beach ROP – Program are excluded from our ASCIP coverage due to the flooding of El Horno Creek. Those costs excluded from insurance coverage have been estimated to be approximately \$400,000. It appears that that the flood-excluded costs may qualify for reimbursement from FEMA. Staff is working with FEMA and Cal-EMA to apply for all eligible funding to offset the financial impact to the District.

The Source of Funds to pay for the ineligible remediation costs have been identified and will come from the general fund.

STAFF RECOMMENDATION

It is recommended the Board approve Resolution 1011-44, Emergency Flood Repair.

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

RESOLUTION NO. 1011-41
EMERGENCY FLOOD REPAIR SERVICES

WHEREAS, severe storm events occurred within Orange County, California, on Wednesday, December 22, 2010;

WHEREAS, the extreme weather and flooding caused considerable damage to several classrooms, administrative areas, and multi-purpose rooms at Del Obispo and San Juan Elementary Schools, Marco Forster Middle School, Capistrano Valley High School, and Capistrano-Laguna Beach ROP;

WHEREAS, the extreme weather and flooding caused considerable damage to areas such as the slopes, shrubs, trees, utilities, athletic fields, bridges, storage areas, and parking areas for Del Obispo and San Juan Elementary Schools, Marco Forster Middle School, and Capistrano-Laguna Beach ROP;

WHEREAS, Public Contract Code §20113 provides that public agencies may, with the unanimous approval of the Board of Trustees and approval of the County Superintendent of Schools, contract for the performance of labor and purchase of materials without advertising for or inviting bids in an emergency when such work is necessary to permit the continuance of existing schools classes or to avoid danger to life and property;

THEREFORE BE IT HEREBY RESOLVED that the Board of Trustees of the Capistrano Unified School District has determined that these circumstances constitute an emergency condition and request approval from the County Superintendent of Schools to enter into contracts for the demolition, clean up, fencing, restoration, security, slope repairs, landscaping, professional testing and remediation services, plumbing, painting, carpet installation, and general contracting work for the reconstruction of Del Obispo and San Juan Elementary Schools, Marco Forster Middle School, Capistrano Valley High School, and Capistrano-Laguna Beach ROP without advertising or inviting bids pursuant to Public Contract Code §20133.

AYES: ()

NOES ()

ABSENT ()

ABSTAIN ()

I, Joseph M. Farley, Ed.D., Secretary of the Capistrano Unified School District Board of Trustees, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at the meeting thereof on the 22nd day of February, 2011, by a roll call vote of said Board.

IN WITNESS THEREOF, I have hereunto set my hand and seal this 22nd day of February, 2011.

John M. Alpay, Clerk

Joseph M. Farley, Ed.D.
Superintendent
Secretary of the Board of Trustees

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

February 22, 2011

TO: Jack R. Brick, President
And Members
Board of Trustees, Capistrano Unified School District

FROM: Joseph M. Farley, Superintendent

SUBJECT: **REDUCTION OF CERTIFICATED EMPLOYEES: NON
MANAGEMENT PERSONNEL, RESOLUTION NUMBER 1011-39**

BACKGROUND INFORMATION

On January 10, 2011, the governor presented his 2011-2012 proposed state budget. This budget attempts to address a \$20 billion shortfall over fiscal years 2010-2011 and 2011-2012 and proposes two budget scenarios based on completely different sets of assumptions. The most favorable scenario assumes that the California electorate will vote to extend certain temporary taxes for an additional five years. Under this scenario additional cuts to education are relatively minor at an estimated \$18 per ADA or approximately \$1 million to the Capistrano Unified School District. The second scenario assumes the taxes are not extended. In this scenario the cuts to the District are projected to be at least \$348 per ADA or \$17.5 million. Districts are being asked to prepare budgets based on the second scenario.

In order to afford maximum flexibility during the budget development process for 2011-2012, the District has no other option but to prepare for the worst case scenario. Because expenses related to personnel are approximately 85 percent of the District's total budget, it is anticipated the District would not be able to achieve cost savings equaling \$17.5 million without reductions in staff, including certificated employees. In addition to the current budget crisis, declining enrollment is projected due to fewer kindergarten students entering our schools than exiting seniors. Further increasing this decline is the potential of current CUSD students enrolling in two proposed charter schools. Due to the potential for fewer students attending District schools, the Board must consider whether to reduce services offered to students in an amount corresponding to this loss of revenue. Preparing for a significant budget shortfall creates the need to consider an increase in class size as well as the possibility of reducing or eliminating programs and services. Therefore, some of the 346 temporary release notices included in this item are due to a reduction in anticipated revenue because of declining enrollment (and the need to reduce services as a result), possible changes in staffing patterns, and to accommodate potential impacts from collective bargaining decisions. California law requires certificated employees be notified no later than March 15 if there is a possibility they may be reassigned or laid off from their current position in the ensuing year.

In addition to California Education Code prescribing legal timelines and processes for reducing the work force (RIF) of probationary and permanent employees, a recent case in 2007,

Bakersfield Teachers Association vs. Bakersfield Unified School District, now requires districts to provide limited due process rights for certificated employees hired on temporary contracts using categorical funding sources as defined in Education Code §44909 (Exhibit D).

Therefore, this item consolidates preparing for the a reduction and/or elimination of particular kinds of service and notification to all temporary employees of their limited due process rights to be released from their employment at the end of this school year.

CURRENT CONSIDERATIONS

This agenda item proposes for Board consideration the reduction or discontinuance of particular kinds of services and programs as identified in Resolution No. 1011-39 (Exhibit A). Such programs and services may include the elimination of grant funded positions (nurses, TOSA's).

Resolution No. 1011-39 allows for an increase in class size pending any necessary negotiations and final Board approval. Further, this item seeks authorization for the Superintendent and/or designee to provide notice to certificated employees who may be laid off or reassigned in accordance with Education Codes §44949 and §44955 (Exhibit E).

FINANCIAL IMPLICATIONS

The overall budget will be reduced in direct proportion to the FTE's identified in this agenda item.

STAFF RECOMMENDATION

It is recommended that the Board of Trustees adopt Resolution No. 1011-39 and authorize the District to issue March 15 notices (Exhibit A).

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

Resolution No. 1011-39

**REDUCTION OR ELIMINATION OF CERTAIN CERTIFICATED SERVICES AND
RELEASE OF TEMPORARY CERTIFICATED EMPLOYEES**
(Education Code §44949, 44954 and 44955)

WHEREAS, §44909, §44918, and §44920 of the Education Code permit the Board of Education to classify certain certificated employees as “temporary,” “temporary categorical,” “categorical,” or other appropriate designation; and,

WHEREAS, the Board of Trustees has, in fact, employed temporary certificated employees pursuant to §44909, §44918, and §44920 of the Education Code; and,

WHEREAS, §44916 of the Education Code requires that any temporary certificated employee receive advance written notification of the temporary nature of the employment; and,

WHEREAS, regardless of designation on such notice as “temporary,” “temporary categorical,” “categorical,” or other appropriate designation, all such employees are temporary certificated employees within the meaning of §44916, §44909, §44918, or §44920 of the Education Code; and,

WHEREAS, time served as a temporary certificated employee is not credited toward the attainment of permanent status unless the temporary certificated employee serves more than seventy-five percent (75%) of school days and is subsequently appointed to a vacant probationary position; and,

WHEREAS, §44954 of the Education Code permits the Board of Education to release temporary certificated employees from employment, with limited restrictions; and,

WHEREAS, with respect to probationary and permanent certificated employees, §44949 and §44955 of the Education Code require action by the Board of Trustees in order to reduce or eliminate services and permit the layoff of certificated employees; and,

WHEREAS, temporary certificated employees are not generally entitled to the due process rights contained in §44949 and §44955; and,

WHEREAS, due to uncertainty under the law with respect to the rights of some temporary or categorical employees, the District intends to provide limited due process rights to such employees as provided in §44949 and §44955 of the Education Code; and,

WHEREAS, certain temporary certificated employees were previously employed by the District as probationary or permanent certificated employees prior to the current 2010-2011 school year; and,

WHEREAS, such employees who were previously employed by the District as probationary or permanent certificated employees who were laid off pursuant to Education Code §44949 and §44955 prior to the current 2010-2011 school year possess and maintain rights to the extent provided by Education Code §44956 (permanent) and §44957 (probationary); and,

WHEREAS, employment during the current 2010-2011 school year as a substitute, temporary, or categorical employee does not constitute a reinstatement of employment or affect any rights possessed by such employees under Education Code §44956 and §44957; and,

WHEREAS, it is the recommendation of the Superintendent of the Capistrano Unified School District that particular kinds of services be reduced or eliminated no later than the beginning of the 2011-2012 school year; and,

WHEREAS, the Superintendent has indicated that the reduction in particular kinds of services is related to the loss or potential loss of revenue limit funding, certain categorical funding, and/or funding for special programs, the possibility of probationary and permanent employees returning from leaves of absence, and other considerations that relate directly to the justifications for employment of temporary certificated employees; and,

WHEREAS, the Board of Trustees has determined a reduction or elimination of particular kinds of services is needed no later than the beginning of the 2011-2012 school year; and,

WHEREAS, the Board of Trustees has considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements and other permanent vacancies, in reducing these services and, in addition to the attrition already assured, finds it necessary to reduce additional particular kinds of services; and,

WHEREAS, in the event of additional positively assured attrition, it is the desire and direction of this Board of Trustees that any resulting vacancies be individually reviewed by Administration to determine whether cost savings are advisable and obtainable through leaving the positions vacant; and,

WHEREAS, temporary certificated employees must be released from their temporary assignments to effectuate this reduction in particular kinds of services.

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

1. That all of the foregoing recitals are true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Board of Trustees hereby determines to reduce or eliminate those positions set forth in **Exhibit B**, attached hereto and incorporated by reference herein, listing by level, subject field or classification, and full-time equivalent, those positions that shall be reduced or eliminated no later than the beginning of the 2011-2012 school year.
2. That because of the elimination and reduction of particular kinds of services listed in **Exhibit B**, it is necessary to terminate at the end of the 2010-2011 school year temporary and categorical certificated employees equal in number to the positions affected in the reduction or elimination of the above-described particular kinds of service.
3. That Administration shall notify all temporary and categorical certificated employees that if they claim they could not be released pursuant to §44954, and they believe they are entitled to a hearing pursuant to §44949 and §44955, they should request a hearing on the merits.
4. That said notices shall state that, in the event they claim they are, in fact, currently probationary or permanent certificated employees of the District, or otherwise believe they may participate in the certificated layoff hearing process, said notices also serve as notices that it has been recommended that each of their services will not be required for the 2011-2012 school year, pursuant to Education Code §44949 and §44955.
5. That there is no relative seniority among temporary/categorical certificated employees.
6. That employees currently classified as temporary or categorical have no right to displace probationary and permanent certificated employees.
7. That this Board hereby affirms that individuals previously employed as probationary and permanent employees prior to the current 2010-2011 school year, maintain the rights and privileges accorded to probationary and permanent employees laid off during any prior school year, to the extent those employees continue to hold a place on a 24- or 39-month reemployment list pursuant to Education Code §44956 and §44957, and that the Board's current action shall in no way be deemed to impair those established rights.

8. That the Superintendent or his designated representative will send appropriate notices to all temporary and categorical certificated employees listed in **Exhibit C** notifying them that the Board of Education has determined to release them from employment pursuant to the above recitals and Education Code §44949, §44954, and §44955.
9. That the Superintendent or his designated representative will take all other actions he deems necessary under the law to accomplish the intent of this Resolution.

ADOPTED by the Board of Trustees of Capistrano Unified School District this 22nd day of February, 2011.

AYES _____

NOES _____

ABSENT _____

ABSTAIN _____

President, Board of Trustees

Superintendent

Date _____ February 22, 2011 _____

c: Superintendent, Orange County Department of Education

PARTICULAR KINDS OF SERVICE OR PROGRAM CERTIFICATED NON-MANAGEMENT POSITIONS	NUMBER OF FULL TIME EQUIVALENTS
<i>Elementary Instructional Services (Self-Contained Classrooms)</i>	
Grades K-6	103
<i>Secondary Instructional Services (Single Subject Course Offerings)</i>	
Art	3
Business	2
Computer Science	1
English	47
Health	2
Math	39
Music	27
Physical Education	12
Science – Life	10
Science – Physical	4
Social Science	24
World Language	7
<i>Special Education Services (Preschool – Adult Classrooms)</i>	
Adapted PE	2
Psychologist	9
SpEd – Deaf and Hard of Hearing (DHH)	2
SpEd – Early Childhood Special Education (ECSE)	3
SpEd – Mild/Moderate	28
SpEd – Moderate/Severe	9
<i>Instructional Support Services</i>	
Counselors	10
Nurses	2
TOTAL	346

EXHIBIT B

16733	27497	17546	12362	20335	26628	20581
26635	24749	20587	20315	23677	24308	28402
18950	18822	20296	22088	28407	20276	20255
27484	24915	28394	20235	28382	28406	24108
28373	28351	20297	24673	26391	27480	26652
27150	25480	25849	26300	24757	25133	24950
28389	20271	27473	28386	15314	28383	17188
22832	24881	20394	26019	28374	26722	18265
23781	20368	28372	28396	22472	27272	18980
24977	17169	25811	22764	27894	18919	24683
25152	20275	25033	27034	28380	18186	20388
19179	23693	16486	25129	28367	21504	24975
25151	28497	23747	28397	27496	21505	25469
12218	22400	23296	26678	16729	24239	28379
28362	28350	22167	19707	11655	25155	18945
22515	25900	24717	18881	27327	19138	28403
25956	28391	26127	26672	20339	27522	25096
25638	20279	25936	20354	24053	24566	25535
13096	25788	16487	23483	18918	28385	28422
26887	27730	24811	27157	22057	25820	27030
22936	20087	20303	20326	20356	14398	20392
20411	21912	26251	28349	25933	19991	24674
25785	27539	27488	17318	28398	24937	28404
20247	26657	20306	21093	18910	27470	28369
21675	18880	16255	22780	20344	16054	25948
18811	23456	28353	25255	25706	26631	16013
27486	21672	18858	20396	24068	27610	24812
19432	25639	25328	18807	28375	17942	24803
27244	19835	20548	25817	27700	19462	20714
22348	24964	28409	22013	24728	18928	20732
28364	18394	25132	20329	28392	27257	23779
18152	20283	25599	27489	22293	25733	27482
28413	23601	20307	21665	27932	24907	25477
26342	28395	22494	25755	24421	24603	23310
22553	22762	26831	20645	26443	16323	27495
26676	19176	21676	20248	25542	20079	22579
28408	26748	26228	26359	26396	17207	24602
26660	28405	18867	24882	18019	23839	28376
25786	26677	22632	18244	28399	26478	24487
20259	25834	27485	22459	24697	19443	28377
28390	28393	17695	26658	20421	26789	20309
19747	25120	21348	23219	23871	21493	23909
18820	18824	25876	28470	18917	19718	21398
21355	26666	28366	19129	28462	20557	26668
16709	20286	24285	18890	26138	22693	24917
27494	20299	28341	21375	28387	20379	25852
28363	28368	25872	21850	25839	24797	
21603	26687	27326	28361	26169	24983	
24413	20290	28378	22833	28196	25835	
25135	26349	21035	18893	22612	18936	

EXHIBIT C

CALIFORNIA EDUCATION CODE

44909. The governing board of any school district may employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies, or categorically funded projects which are not required by federal or state statutes. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless (1) such person has served pursuant to this section for at least 75 percent of the number of days the regular schools of the district by which he is employed are maintained and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. Such persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this **code** respecting the termination of probationary or permanent employees other than Section 44918.

Whenever any certificated employee in the regular educational program is assigned to a categorically funded project not required by federal or state statute and the district employs an additional credentialed person to replace that certificated employee, the replacement certificated employee shall be subject to the provisions of Section 44918.

This section shall not be construed to apply to any regularly credentialed employee who has been employed in the regular educational programs of the school district as a probationary employee before being subsequently assigned to any one of these programs.

CALIFORNIA EDUCATION CODE

44916. The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.

CALIFORNIA EDUCATION CODE

44918. (a) Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

(b) Any such employee shall be reemployed for the following school year to fill any vacant positions in the school district unless the employee has been released pursuant to subdivision (b) of Section 44954.

(c) If an employee was released pursuant to subdivision (b) of Section 44954 and has nevertheless been retained as a temporary or substitute employee by the district for two consecutive years and that employee has served for at least 75 percent of the number of days the regular schools of the district were maintained in each school year and has performed the duties normally required of a certificated employee of the school district, that employee shall receive first priority if the district fills a vacant position, at the grade level at which the employee served during either of the two years, for the subsequent school year. In the case of a departmentalized program, the employee shall have taught in the subject matter in which the vacant position occurs.

(d) Those employees classified as substitutes, and who are employed to serve in an on-call status to replace absent regular employees on a day-to-day basis shall not be entitled to the benefits of this section.

(e) Permanent and probationary employees subjected to a reduction in force pursuant to Section 44955 shall, during the period of preferred right to reappointment, have prior rights to any vacant position in which they are qualified to serve superior to those rights hereunder afforded to temporary and substitute personnel who have become probationary employees pursuant to this section.

(f) This section shall not apply to any school district in which the average daily attendance is in excess of 400,000.

CALIFORNIA EDUCATION CODE

44920. Notwithstanding the provisions of Sections 44917 and 44919, the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave.

CALIFORNIA EDUCATION CODE

44949. (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code** and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government **Code** shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government **Code** shall so indicate. (3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All

CALIFORNIA EDUCATION CODE

44949

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expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government **Code**, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

CALIFORNIA EDUCATION CODE

44954. Governing boards of school districts may release temporary employees requiring certification qualifications under the following circumstances:

- (a) At the pleasure of the board prior to serving during one school year at least 75 percent of the number of days the regular schools of the district are maintained.
- (b) After serving during one school year the number of days set forth in subdivision (a), if the employee is notified before the end of the school year of the district's decision not to reelect the employee for the next succeeding year.

CALIFORNIA EDUCATION CODE

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 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

44956. (a) Any permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:

(1) For the period of 39 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or other employee with less seniority shall be employed to render a service which said employee is certificated and competent to render. However, prior to reappointing any 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.

(2) The aforesaid right to reappointment may be waived by the employee, without prejudice, for not more than one school year, unless the board extends this right, but such waiver shall not deprive the employee of his right to subsequent offers of reappointment.

(3) Notwithstanding paragraph (1), a school district may deviate from reappointing a certificated employee in order of seniority for either of the following reasons:

(A) 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 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.

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

(4) As to any such employee who is reappointed, the period of his absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his service, he shall retain the classification and order of employment he had when his services were terminated, and credit for prior service under any state or district retirement system shall not be affected by such termination, but the period of his absence shall not count as a part of the service required for retirement.

(5) During the period of his preferred right to reappointment, any such employee shall, in the order of original employment, be offered prior opportunity for substitute service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty; provided, that his services may be terminated upon the return to duty of said other employee and that said substitute service shall not affect the retention of his previous classification and rights. If, in any school year the employee serves as a substitute in any position requiring certification for any 21 days or more within a period of 60 schooldays, the compensation the employee receives for substitute

service in that 60-day period, including his or her first 20 days of substitute service, shall be not less than the amount the employee would receive if he or she were being reappointed.

(6) During the period of the employee's preferred right to reappointment, the governing board of the district, if it is also the governing board of one or more other districts, may assign him to service, which he is certificated and competent to render, in said other district or districts; provided, that the compensation he receives therefor may in the discretion of the governing board be the same as he would have received had he been serving in the district from which his services were terminated, that his service in the said other district or districts shall be counted toward the period required for both state and local retirement, as defined by Section 22102, as though rendered in the district from which his services were terminated, and that no permanent employee in said other district or districts shall be displaced by him.

It is the intent of this subsection that the employees of a school district, the governing board of which is also the governing board of one or more other school districts, shall not be at a disadvantage as compared with employees of a unified school district.

(7) At any time prior to the completion of one year after his return to service, he may continue or make up, with interest, his own contributions to any state or district retirement system, for the period of his absence, but it shall not be obligatory on state or district to match such contributions.

(8) Should he become disabled or reach retirement age at any time before his return to service, he shall receive, in any state or district retirement system of which he was a member, all benefits to which he would have been entitled had such event occurred at the time of his termination of service, plus any benefits he may have qualified for thereafter, as though still employed.

CALIFORNIA EDUCATION CODE

44957. Any probationary employee whose services have been terminated as provided in Section 44955 shall have the following rights:

(a) For the period of 24 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, subject to the prior rights to reappointment by all permanent employees as set forth in Section 44956, in the order of original employment as determined by the governing board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service. Except as otherwise provided, no probationary or temporary employee with less seniority shall be employed to render a service which such employee is certificated and competent to render and provided that such an employee shall be given a priority over employees whose right to a position is derived pursuant to Section 44918. However, prior to reappointing any 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.

(b) Notwithstanding subdivision (a), a school district may deviate from reappointing a probationary 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 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.

(c) As to any such employee who is reappointed, the period of his absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his service, he shall retain the classification and order of employment he had when his services were terminated, and credit for prior service under any state or district retirement system shall not be affected by such termination; provided, however, that the period of his absence shall not be counted as a part of the service required for attaining permanent status in the district or, except as provided in subdivision (e), for retirement purposes.

(d) During the period of his preferred right to reappointment, any such employee shall, in the order of original employment, and subject to the rights of permanent employees as set forth in Section 44956, be offered prior opportunity for substitute service during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty; provided, that his services may be terminated upon a return to duty of such other employee, that such substitute service shall not affect the retention of his previous classification and rights, and that such an employee shall be given a priority over employees whose right to a substitute position is derived pursuant to Section 44918.

(e) At any time prior to the completion of one year after his return to service, an employee reappointed under the provisions of this section may elect to

interest in any state or district retirement system and to receive retirement benefits as if no absence from service had occurred. In the event of such election the employee shall pay into the retirement system the amount of his share of contribution and the district's share of contribution attributable to the period of absence and the amount of any contributions withdrawn, plus interest.