STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LORI E. EDWARDS, Charging Party, v. LAKE ELSINORE UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-5908-E PERB Decision No. 2671 September 27, 2019

Appearances: Lori E. Edwards, on her own behalf; Atkinson, Andelson, Loya, Ruud & Romo by Mark W. Thompson and Todd M. Robbins, Attorneys, for Lake Elsinore Unified School District.

Before Banks, Shiners, and Paulson, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to a proposed decision (attached) by an administrative law judge (ALJ). In the underlying unfair practice charge and complaint, Lori E. Edwards (Edwards) alleged that her employer, Lake Elsinore Unified School District (District), involuntarily reassigned her to teach kindergarten because she engaged in protected activities, and thus violated the Educational Employment Relations Act (EERA).[1] The ALJ dismissed the complaint after concluding that Edwards failed to carry her initial burden to establish a causal relationship between her protected activities and the District's decision to reassign her. In her exceptions, Edwards contends that the ALJ misapplied the law and misapprehended the facts

[1] EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

with respect to the evidence of the District's adherence, or lack thereof, to its policies and contractual commitments.

Based on our review of the proposed decision, the entire record, and relevant legal authority in light of the parties' submissions, we conclude that the ALJ's factual findings are supported by the record and his conclusions of law are well-reasoned and consistent with applicable law. We therefore adopt the proposed decision as the decision of the Board itself, as supplemented by the following discussion of Edwards' exceptions.[2]

BACKGROUND AND PROCEDURAL HISTORY

The relevant facts are adequately set forth in the proposed decision and are not repeated in detail here. Edwards has taught at the District since 2003. At the time of the events giving rise to this charge, she worked at Lakeland Village School (LVS). Edwards was active in her union, the Lake Elsinore Teachers Association (LETA), serving on its executive board, grievance committee, and as a site representative. Edwards has also filed several unfair practice charges against the District and engaged in other protected activities to enforce LETA's contract.

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[2] On November 8, 2018, Edwards filed a request to withdraw this case pursuant to a settlement agreement reached between her and the District. On December 3, 2018, Edwards filed a "Motion to Review Settlement Agreement Due to EERA Violations and [to] Compel the [Respondent] to Lawful [sic] Comply with the Terms and Conditions of the Agreement." (Some capitalization omitted.)

Under EERA section 3541.5, subdivision (b), the Board "shall not have the authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of any agreement that would not also constitute an unfair practice under this chapter." Because the Board has no power to enforce the disputed settlement agreement in this matter, we cannot act on Edwards' Motion. Further, in light of the concerns raised by the allegations in her Motion that the District breached the agreement and that some of the terms of the agreement violated her rights under EERA, the Board denies Edwards' request to withdraw the charge in this case. (See *ABC Unified School District* (1991) PERB Decision No. 831b, p. 3 [the Board itself has discretion to grant or deny a withdrawal request].)

Prior to the 2012-2013 school year, Edwards, who had been teaching fourth grade, was contacted by Deana Steagall (Steagall), a sixth grade teacher whose position was being collapsed.[3] Steagall was slated for reassignment to a first grade opening, a position she did not want to teach. Steagall asked Edwards if she would be willing to teach first grade instead. Edwards agreed and applied for the first grade opening. No one else volunteered for the position, and Edwards was voluntarily reassigned to first grade. Steagall then applied for and was voluntarily reassigned to the fourth grade position left open by Edwards' reassignment.

On May 31, 2013, LVS's principal, Nick Powers (Powers), informed staff of their tentative assignments for the 2013-2014 school year. Edwards was tentatively assigned to teach a K-1 combination class.[4] Powers met with Edwards to inform her that the K-1 combination class was a newly created opening, and she was being reassigned to the position because she had the lowest District seniority among LVS teachers who were qualified to fill the position**.** Edwards stated she did not want to teach kindergarten, but was fine with the reassignment. However, she informed Powers that before she could be involuntarily reassigned, the opening had to be posted to the school site for volunteers. Powers agreed and emailed LVS staff seeking volunteers for the opening. Kimberly Rosales (Rosales), a first grade teacher, was the only teacher to volunteer and was tentatively assigned to teach the K-1 class. Edwards was then tentatively assigned to remain in her first grade assignment.

On the first day of the 2013-2014 school year, Rosales informed Edwards that she would not be teaching the K-1 combination class because kindergarten enrollment did not

[3] Positions are collapsed when there are not enough students to justify a classroom. In those instances, the students are distributed among the remaining classrooms in the grade level.

[4] Combination classes consist of students in two different grade levels.

justify a combination class. As a result, her combination class was reverted to a straight first grade class. Kip Meyer, the District's Assistant Superintendent of Personnel Services, testified that while not specified in the Collective Bargaining Agreement (CBA), the practice in situations where a teacher volunteers for a reassignment and the reassignment does not come to fruition, is that the teacher reverts back to her prior assignment. In these instances, the position the teacher reverts back to is not posted to the school site as an opening.

Powers testified that Rosales' reversion back to first grade resulted in more first grade teachers than were justified by student enrollment, and one of the teachers' classes would have to be collapsed. As it so happened, a kindergarten teacher transferred out of LVS in the middle of September, which created an opening at that grade level. Since Edwards was the least senior teacher at LVS qualified to fill the position, she was slated for involuntary reassignment into the position.

On September 9, 2013, Powers emailed LVS staff seeking volunteers for the open kindergarten position. Since no one stepped forward, Edwards was involuntarily reassigned to the position. According to Edwards, LETA would not let her grieve the reassignment so she instead filed this unfair practice charge.

A formal hearing in this matter was held over four days in late May and early June 2015. The ALJ issued the proposed decision dismissing the complaint on April 11, 2016, concluding that Edwards had not established the necessary causal nexus between the kindergarten reassignment and her protected activities. Edwards filed exceptions,[5] to which the District filed a response.

[5] Initially, we rejected Edwards' exceptions as untimely because of a clerical error. (*Lake Elsinore Unified School District* (2018) PERB Decision No. 2561.) After Edwards moved

DISCUSSION

Although the Board's review of exceptions to a proposed decision is de novo, it need not address arguments that have already been adequately addressed in the same case or that would not affect the result. (*Trustees of the California State University* (2014) PERB Decision No. 2400-H, pp. 2-3; *Los Angeles Superior Court* (2010) PERB Decision No. 2112-I, pp. 4-5; *Morgan Hill Unified School District* (1995) PERB Decision No. 1120, p. 3.) Edwards' exceptions and supporting brief are far from clear,[6] but her principal argument seems to focus on the ALJ's conclusion that she failed to prove the necessary causal nexus between her protected activities and the District's decision to involuntarily reassign her to teach a kindergarten class.[7]

To demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5, subdivision (a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action *because of* the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210, pp. 5-6 (*Novato*).) The charging party has the initial burden of demonstrating the "because of" element, that is, a causal connection or "nexus" between the

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for reconsideration, we acknowledged our error and docketed her exceptions. (*Lake Elsinore Unified School District* (2018) PERB Decision No. 2561a.)

[6] In this regard, Edwards' exceptions suffer from the same defects identified in *Lake Elsinore Unified School District* (2019) PERB Decision No. 2633, pp. 8-10.

[7] Edwards also requests that we review a 2012 arbitration decision regarding the involuntary reassignment of Edwards from the first to the fourth grade at the start of the 2010-2011 school year; we deny this request for the reasons stated in the proposed decision. To the extent that Edwards also seeks repugnancy review of a related appellate court opinion, we deny her request because the Board has no such authority.

adverse action and the protected conduct. (*Ibid*.; PERB Reg. 32603, subd. (a).[8]) Because "retaliatory conduct is inherently volitional in nature," evidence of unlawful motive is the specific nexus required to establish a prima facie case. (*Novato*, *supra*, PERB Decision No. 210, p. 6; *City of Sacramento* (2019) PERB Decision No. 2642-M, p. 20.)

While the Board considers all relevant facts and circumstances in assessing an employer's motivation, we have identified the following factors as being the most common means of establishing a discriminatory motive, intent, or purpose: (1) timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor; (2) the employer's disparate treatment of the employee; (3) the employer's departure from established procedures and standards when dealing with the employee; (4) the employer's inconsistent or contradictory justifications for its actions; (5) the employer's cursory investigation of the employee's misconduct; (6) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague or ambiguous reasons; (7) employer animosity towards union activists; and (8) any other facts that might demonstrate the employer's unlawful motive. (*City of Sacramento*, *supra*, PERB Decision No. 2642-M, p. 21.)

Although she does not identify any of these factors explicitly, Edwards appears to argue unlawful motive is established by the District's departure from established procedures governing involuntary reassignments. But the evidence fails to prove any such departure by the District.

[8] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

First, Edwards contends that the District's transfer decision violated its CBA with LETA and the parties' past practice. For instance, she makes the following claim in her brief in support of her exceptions: "The District had no justifiable business reason to place [] Rosales into first grade without an opening because teachers who voluntarily reassign out of their assignments have no retrieval rights back to their original assignments without there being a (posted) opening as per the CBA and past practice." While the CBA is silent on this issue, the District presented unrebutted evidence that when a teacher is voluntarily reassigned and the reassignment falls through, the teacher is returned to their prior class assignment. Conversely, Edwards presented no evidence that any District teacher whose voluntary reassignment fell through was placed in an open position instead of being returned to their prior class assignment. With no evidence supporting her claimed past practice, Edwards has failed to prove the District departed from established procedure or policy when it returned Rosales to the first grade position. (Compare *San Bernardino City Unified School District* (2004) PERB Decision No. 1602, pp. 22-23 [finding departure from established procedure where employer witnesses testified it was the district's long-established practice to notify a substitute teacher before removing the teacher from the substitute finder system but such notice was not given to the alleged discriminatee]; with *Trustees of the California State University (Sacramento)* (2005) PERB Decision No. 1740-H, pp. 3-4 [insufficient evidence of departure from established procedure where charging party failed to prove university had a policy or practice of conducting a full investigation before giving an employee a warning letter].)

Second, Edwards claims that the District should not have involuntarily reassigned her to teach kindergarten because there were multiple volunteers for that position, and the CBA prohibited involuntary reassignments if there were teachers willing to take the position. While

the CBA does indeed prohibit involuntary reassignment when a teacher volunteers for the open position, Edwards produced no evidence that any other teachers volunteered for the kindergarten position into which Edwards was involuntarily reassigned.[9] Again, Edwards has failed to prove the District departed from established procedure.

We agree with the ALJ that Edwards did not meet her initial burden to show the necessary causal nexus between her protected activities and the kindergarten reassignment. Since Edwards failed to establish a prima facie case of retaliation under EERA, we affirm the dismissal of the complaint.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CE-5908-E are DISMISSED.

Members Shiners and Paulson joined in this Decision.

[9] An example of Edwards' failure to marshal supporting evidence is her citation to the testimony of Victoria Picket, who in fact never testified that she or anyone else volunteered for the disputed kindergarten position.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

LORI E. EDWARDS, Charging Party, v. LAKE ELSINORE UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-5908-E PROPOSED DECISION (April 11, 2016)

Appearances: Lori E. Edwards, in pro per; Atkinson, Andelson, Loya, Ruud & Romo, by Todd M. Robbins, Attorney, for Lake Elsinore Unified School District.

Before Shawn P. Cloughesy, Chief Administrative Law Judge.

INTRODUCTION

This case alleges a public school employer violated the Educational Employment Relations Act (EERA)[1] by involuntarily reassigning a public school employee from first grade to kindergarten and by placing a number of students in her class that exceeded the limit set forth in the collective bargaining agreement (CBA) covering teachers. The employer denies committing any unfair practices.

PROCEDURAL HISTORY

On March 4, 2014, Lori E. Edwards (Edwards) filed an unfair practice charge against the Lake Elsinore Unified School District (District). On September 24, 2014, Edwards filed a first amended charge. On October 1, 2014, Edwards filed a request for injunctive relief, which was denied on October 8, 2014. On November 7, 2014, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging the

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District violated EERA section 3543.5, subdivision (a), when it discriminated against Edwards because she filed unfair practice charges by involuntarily reassigning her from first grade to kindergarten and assigning her a number of students in violation of the CBA with the teachers' union.

On December 1, 2014, the District filed its answer to the complaint denying any violation of EERA. On January 22, 2015, an informal settlement conference was held, but the matter was not resolved.

The formal hearing was held on May 20, 21 and 22, and June 5, 2015. On May 21, 2015, the second day of formal hearing, Edwards discussed the alleged disability of one of the witnesses, when that issue was not pertinent to the case. On May 22, 2015, the third day of formal hearing, the witness with the alleged disability met with the parties and the Administrative Law Judge (ALJ) and expressed her concern that her medical information would be made a part of the public record. The ALJ proposed that the mention of the specific disability be sealed from public inspection and both parties did not object to the proposal. Therefore, those portions of the transcript of the second day of formal hearing which expressly mentions the witness's alleged disability shall be sealed from public inspection. The transcript which is available for public inspection shall be partially redacted on pages 119-120 pursuant to Government Code section 11425.20 and Civil Code sections 1798.14 and 1798.24.

On June 5, 2015, the fourth day of hearing, Edwards filed a motion requesting the ALJ conduct a repugnancy review pursuant to EERA section 3541.5, of an arbitration decision and award written by Arbitrator Robert Bergeson dated May 20, 2012, regarding the involuntary assignment of Edwards from the first to the fourth grade at the start of the 2010-2011 school year. The parties were encouraged to address the matter in their post-hearing briefs.

The matter was submitted for proposed decision with the submission of post-hearing briefs on August 17, 2015.[2]

Request for Repugnancy Review

After reviewing the parties' arguments, Edwards's request for repugnancy review is denied. First of all, it is untimely as it has been more than three years since the arbitration decision has been issued, and it is required that a request for repugnancy review must be filed within a six month period. (EERA section 3541.5, subdivision (a); *Trustees of California State University (Long Beach)* (2011) PERB Decision No. 2201-H, pp. 5-6 [decided under an analogous provision of the Higher Education Employer-Employee Relations Act (HEERA), Gov. Code § 3560 et seq.].) Additionally, Edwards has not established that the arbitration decision was based upon the underlying dispute in the instant case. (*Ventura County Community College District* (2009) PERB Case No. 2082, pp. 4-5 (*Ventura*).) While the arbitration decision was expressly mentioned in a prior case of Edwards (*Lake Elsinore Unified School District* (2014) PERB Decision No. 2353),[3] that underlying charge was dismissed. EERA section 3541.5, subdivision (a), does not provide a means for initiating further proceedings based on a charge that has already been closed. (*Ventura*, *supra*, PERB Decision No. 2082, p. 5.) Accordingly, the Board no longer has jurisdiction to conduct a repugnancy review of the arbitration decision.

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[2] On August 18, 2015, Edwards submitted a correction to her post-hearing brief.

[3] This decision involved *Lori E. Edwards v. Lake Elsinore Unified School District*, PERB Case No. LA-CE-5753-E. The dismissal letter states that a grievance on involuntary assignment was submitted to arbitration and Arbitrator Bergeson issued an arbitration award on May 20, 2012. Edwards filed the unfair practice charge on October 15, 2012, after the arbitration award was issued. The Board upheld the dismissal letter of the Office of General Counsel and therefore did not reach the repugnancy issue. The Board designated its decision non-precedential, pursuant to PERB Regulation 32320, subdivision (d).

FINDINGS OF FACT

Jursidiction

Edwards is a public school employee within the meaning of EERA section 3540.1, subdivision (j), and is employed by the District as a teacher.

The District is a public school employer pursuant to EERA section 3540.1, subdivision (k).

Collective Bargaining Agreement

The Lake Elsinore Teachers Association (LETA or Association) is an exclusive representative within the meaning of EERA section 3540.1, subdivision (e), and represents a unit of certificated employees within the District that includes Edwards.

At all relevant times, LETA and the District were parties to a CBA. Two CBAs are relevant to this case, one with a term between July 1, 2011 to June 30, 2014 (2011-2014 CBA), and another with a term between July 1, 2014 and June 30, 2015 (2014-2015 CBA).

The 2011-2014 CBA provides in pertinent part:

> **ARTICLE 1. AGREEMENT, RECOGNITION AND DEFINITIONS**
>
> [¶ . . . ¶]
>
> 1.3 Definitions
>
> [¶ . . . ¶]
>
> 1.3.3 Assignment is the unit member's grade level and/or subject area, work schedule, and work site.
>
> [¶ . . . ¶]
>
> 1.3.12 Elementary Teacher is a unit member assigned to grades K-5.
>
> [¶ . . . ¶]

1.3.17 Involuntary Transfer is a change of work location to another school or facility not agreed to by the unit member.

[¶ . . . ¶]

1.3.19 Opening refers to a site specific section and/or assignment not currently filled by a unit member.

[¶ . . . ¶]

1.3.21 Reassignment is a change in assignment at the same site.

[¶ . . . ¶]

1.3.24 District Seniority as applied on Contract Articles 2.6.5.2, 2.9.1.2, 6.2.3.1, 6.3.2.2 and 6.6.2.2 shall be determined by the years completed paid service in the District. . . .

[¶ . . . ¶]

ARTICLE 2. TERMS AND CONDITIONS OF EMPLOYMENT

2.5 Kindergarten Assignments (inclusive of Preschool/ Kindergarten)

2.5.1 Kindergarten teachers shall teach one (1) session.

2.5.2 A minimum of (60) minutes daily shall be spent providing instruction to students enrolled in another kindergarten teacher's classroom, beyond their own class schedule, unless the kindergarten teaching team at a site agrees that such time may be assigned to a primary classroom. If there are not other kindergarten classes in which to provide instruction, the kindergarten teaching team at the site shall for assistance or assignment in the instructional program of the primary grades when not involved in the kindergarten program, as per Education Code [section] 46118[,] [subdivision] (d). Combination kindergarten/first grade are not considered part of the kindergarten teaching team.

[¶ . . . ¶]

2.13 Reassignment of Students in Grades K-5

In the event that students must be reassigned from their regular classroom when a substitute teacher is not available, the teachers that receive additional students shall be compensated at $5.00 per student.

Teacher participation shall be voluntary. In the event teachers do not volunteer in sufficient numbers to allow for an equitable distribution of students, school site administration shall attempt to reassign students in an equitable manner among classes.

[¶ . . . ¶]

ARTICLE 5. CLASS SIZE

5.1 Elementary Regular Class Size (Grades K-5)

5.1.1 The maximum size of an individual elementary class will be 33 students. The District-wide staffing ratio will be 1:30 for regular K-5 students.

5.1.1.1 Elementary class sizes at the same site and grade level shall differ no more than three (3) students. Fifteen (15) working days shall be granted to make adjustments. . . .

5.1.1.2 Combination classes shall contain a difference of no fewer than five (5) students. Combination classes shall not have more students than any single class at the grade levels being combined. . . .

[¶ . . . ¶]

5.4 Notice of Excess Class Size

5.4.1 Each school site will post the class size by the individual classes each Friday starting with the third Friday of the site's school year attendance. The posting will be in an area where all teachers may view. A copy will be provided to the Association's site representative.

5.4.2 The principal may recommend, but not require, that the affected teacher(s) sign a waiver request. . . .

[¶ . . . ¶]

ARTICLE 6 ASSIGNMENTS AND TRANSFERS

6.1 Vacancy and Opening Announcement

Announcements of all vacancies shall be provided to all bargaining unit members electronically (via email) and posted on the Lake Elsinore Unified School District Website at least five (5) work days (week days in the summer) prior to the application deadline. Paper copies of all such announcements shall be mailed to the LETA President. Transfer request forms shall be included in all announcements. Transfer requests for a specific vacancy shall be submitted to the District Personnel Office within the appropriate application period.

Announcements of reassignment openings shall be provided electronically (via email) at least five (5) work days (inclusive of modified work days in the summer) prior to the application deadline to all unit members at the applicable site. Paper copies of all such announcements shall be mailed to the LETA President. Reassignment requests shall be provided to the site principal within the appropriate application period.

[¶ . . . ¶]

6.4 Assignment

6.4.1 Such principals shall notify unit members of their tentative assignments prior to, but not less than fifteen (15) working days before the first student attendance day of the school year on each track.

Assignments are considered tentative until the sixteenth (16) day of student attendance on each track.

6.4.1.2[4] Unit members not in agreement with their tentative assignment for the following school year, may request a conference with the site principal.

6.4.1.3 The site principals' decision may be appealed to the Superintendent/Designee.

6.4.1.4 Assignments will be determined by actual student enrollments and student curriculum needs.

[¶ . . . ¶]

6.5 Voluntary Reassignment

6.5.1 Voluntary reassignments will take place before initiating involuntary reassignments.

[¶ . . . ¶]

6.5.3 Reassignments following the sixteenth (16th) day of student attendance on each track shall be based upon student enrollment and curriculum needs.

[¶ . . . ¶]

6.5.6 Reassignment requests to fill a specific opening will be considered on the basis of an interview and the following criteria:

6.5.6.1 Credentials, authorizations, and effective July 1, 2007, Highly Qualified status required to perform the assigned duties.

6.5.6.2 District Seniority.

[4] This subsection was misnumbered and did not have a 6.4.1.1

6.6 Involuntary Reassignment

6.6.1 No unit member will be involuntarily reassigned to fill a vacancy if there is a volunteer who is fully credentialed for the available position.

6.6.2 Involuntary reassignment(s) required by changes in enrollment and/or student curriculum needs will be made in accordance with the following criteria in the order listed:

6.6.2.1 Credentials, authorizations, and effective July 1, 2007, Highly Qualified status required to perform the assigned duties.

6.6.2.2 Least District Seniority. Unit members involuntarily reassigned based upon least District seniority will not be involuntarily reassigned the following school year, if there is another unit member qualified by 6.6.2.1.

6.6.3 The unit member being considered for involuntary reassignment may request a conference before the effective date of the reassignment. If requested, a conference will be held within (5) working days with the unit member and the Superintendent/Designee. The unit member may be represented by an Association representative if the unit member so desires.

[¶ . . . ¶]

6.8 Assistance to Unit Member

6.8.1 Pre-packed teaching materials will be moved to a new work location by maintenance and/or operations, if requested in writing by the unit member.

6.8.2 When a transfer or reassignment involving a substantial change in duties and responsibilities is made during the student attendance year, the affected unit member will be provided release time to prepare the new assignment. . . . Unit members at the elementary level will receive a minimum of

one (1) release day when reassigned to another grade level.

ARTICLE 21. SAVINGS PROVISION

21.1 If any provisions of this Agreement are held to be contrary to law by a court of competent jurisdiction, such provisions will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

[¶ . . . ¶]

ARTICLE 22. SUPPORT OF AGREEMENT

[¶ . . . ¶]

22.2 The Lake Elsinore Unified School District and the Lake Elsinore Teachers Association agree that if either party believes in the intent of the language of the Agreement is being misinterpreted, the parties agree to meet and discuss the interpretation of the Agreement Article(s) in question.

(Underlining and bolding included in quotation.)

The 2014-2015 CBA included mostly rollover language with some changes. Some of those changes include the following sections:

ARTICLE 5. CLASS SIZE

5.1 Elementary Regular Class Size (Grades *TK*-5)

5.1.1 *During the 2013/14 and 2014/15 school years, the District shall staff TK-3 classrooms at 24:1 each year and the site ratio shall not exceed 26:1.*

5.1.2 Elementary class sizes at the same site and grade level shall differ no more than three (3) students. Fifteen (15) working days shall be granted to make adjustments. Overages that occur after the fifteenth (15^{th}) day of the school year shall be granted five (5) days to make adjustments.

[¶ . . . ¶]

5.1.4 *Combination classes shall be formed containing a difference of no greater than five (5) students.* Combination classes shall not have more students than any single class at the grade levels being combined. When a combination class is at a difference of five (5), a meeting shall be held with the grade level teams and site administrator to collaboratively determine a plan of action for future enrollment.

[¶ . . . ¶]

5.3 Notice of Excess Class Size

5.3.1 Each school site will post the class size by the individual classes each Friday starting with the third Friday of the site's school year attendance. The posting will be in an area where all teachers may view. A copy will be provided to the Association's site representative.

5.3.2 The principal may recommend, but not require, that the affected teacher(s) sign a waiver request. . . .

(Underlining and bolding included in quotation, italics emphasize changes.)

Edwards's Employment with the District

Edwards possesses a multiple subject teaching credential, which allows her to teach kindergarten through fifth grade.

On July 1, 2003, the District hired Edwards as a full-time fifth grade teacher at Butterfield Elementary School (Butterfield). Edwards worked in that assignment through the 2004-2005 school year.

In the 2005-2006 school year, Edwards taught fourth grade at Butterfield pursuant to a reassignment. She resigned from the District at the end of the school year and did not teach during the 2006-2007 school year.

Edwards returned to the District in the 2007-2008 school year as a full-time first grade teacher at Butterfield. She taught in that assignment through the 2009-2010 school year.

In the 2010-2011 school year, Butterfield was shut down, and Edwards was relocated to Lakeland Village School (LVS). Although she was initially assigned to first grade, she was involuntarily reassigned to fourth grade in September 2010. She taught fourth grade through the 2011-2012 school year.

Nick Powers (Powers) became principal of LVS in the 2012-2013 school year. Powers testified that it is his responsibility to assign teachers and he does so based on enrollment projections he receives from the District in February. In May, he sends out tentative assignments, which can change based on enrollment or curricular need.

Prior to the 2012-2013 school year, Edwards was contacted by Deana Steagall (Steagall), a sixth grade teacher whose position was being collapsed.[5] Steagall was slated for reassignment to a first grade opening, a position she did not want to teach. Steagall asked Edwards if she would be willing to teach first grade instead. Edwards agreed and applied for the first grade opening. Since no one else volunteered, Edwards was voluntarily reassigned to first grade. Steagall then applied for and was voluntarily reassigned to the fourth grade position left open by Edwards's reassignment.

Edwards's Reassignment to Kindergarten

On May 31, 2013, Powers emailed LVS staff informing them of their tentative assignments. Edwards was tentatively assigned to teach a K-1 combination class.[6] Powers met with Edwards to inform her that the K-1 combination class was a newly created opening, and she was being reassigned to the position because she had the lowest District seniority among LVS teachers who were qualified to fill the position**.** Edwards stated she did not want

[5] Positions are collapsed when there are not enough students to justify a classroom. In those instances, the students are distributed among the remaining classrooms in the grade level.

[6] Combination classes consist of students in two different grade levels.

to teach kindergarten, but was fine with the reassignment. However, she informed Powers that before she could be involuntarily reassigned, the opening had to be posted to the school site for volunteers. Powers agreed and emailed LVS staff seeking volunteers for the opening. Kimberly Rosales (Rosales), a first grade teacher, volunteered. Since no other teachers volunteered, Rosales was tentatively assigned to teach the K-1 class. Edwards was then tentatively assigned to remain in her first grade assignment.

Prior to the beginning of the 2013-2014 school year, Edwards spent two weeks cleaning and setting up her classroom, which included building and painting a new library. She spent $2,000 of her own money purchasing supplies and materials to prepare her classroom.

On the first day of the 2013-2014 school year, Rosales informed Edwards that she would not be teaching the K-1 combination class because kindergarten enrollment did not justify a combination class. As a result, her combination class was reverted to a straight first grade class. Kip Meyer (Meyer), the District's Assistant Superintendent of Personnel Services, testified that while not specified in the CBA, the practice in situations where a teacher volunteers for a reassignment and the reassignment does not come to fruition is to have the teacher revert back to her prior assignment. In these instances, the position the teacher reverts back to is not posted to the school site as an opening.

Powers testified that Rosales' reversion back to first grade resulted in there being more first grade teachers than was justified by student enrollment, and one of the teachers' classes would have to be collapsed. As it so happened, a kindergarten teacher transferred out of LVS in the middle of September, which created an opening at that grade level. Since Edwards was the least senior teacher at LVS qualified to fill the position, she was slated for involuntary reassignment into the position.

On September 9, 2013, Powers emailed LVS staff seeking volunteers for the open kindergarten position. Since there were no volunteers, Edwards was involuntarily reassigned to the position.

On September 19, 2013, Edwards met with Powers for an informal grievance conference. Edwards argued that Rosales should teach kindergarten because she had volunteered for the K-1 combination class the prior year. Powers did not agree, and the meeting ended with Edwards still reassigned to teach kindergarten.

Edwards testified she did not file a formal grievance challenging her reassignment because LETA refused to let her do so. Instead, she filed the instant unfair practice charge with PERB.

Prior to starting her kindergarten assignment, Edwards was provided time to set up her new classroom, which was in a state of disarray. The custodians helped her move large items from her old classroom into the new classroom, and she hired movers to help her with the rest. She also voluntarily spent another $1,200 to buy new supplies appropriate for the grade level.

The report time for kindergarten and first grade teachers is the same. However, kindergarten teachers do not have their students the entire day. There are A.M. and P.M. kindergarten classes, both of which are four hours long. When A.M. teachers' students go home, they assist the P.M. teachers, and P.M. teachers assist A.M. teachers before their students arrive. Edwards is an A.M. teacher.

Edwards testified that she prefers first grade because it is the grade level when children must first know how to read. LVS is a low-performing school and often in higher grade levels Edwards would encounter students who could not read. It was Edwards's hope to reach

students earlier and help them learn how to read so they would be prepared for the upper grade levels.

Edwards testified that she does not like kindergarten because the class sizes are larger,[7] the students do not know the alphabet, they are unable to write their names or most other words, there is increased parent involvement and nitpicking, and the students wet themselves and cry every day. Kindergarten students also require assistance with tasks that older students would not require, including help with eating their meals and tying their shoes.

Edwards's Class Size

LVS has students in transitional kindergarten (TK) through eighth grade. TK is the first year of a two-year kindergarten program and has a different curriculum from standard kindergarten. It is a relatively new program, having come into existence in 2012. The District's Board Policies include TK in the calculation of average class enrollment for kindergarten.

The record reflects TK and kindergarten were treated differently between school sites, with some considering them the same grade level and others considering them different grade levels. In the 2013-2014 school year, LVS treated TK and kindergarten as the same grade level and balanced their class sizes accordingly. For example, as of September 6, 2013, the breakdown in class sizes between TK and kindergarten at LVS were as follows: Smith, as a TK teacher had 22 students; Bartel, Castaneda, and Nhel, as kindergarten teachers with 24, 24, and 25 students, respectively.

As noted above, the District and LETA entered into a new CBA for the 2014-2015 school year. The 2014-2015 CBA acknowledged the implementation of the TK program and

[7] Based on LVS class size data from September 6, 2013, Edwards moved from a first grade class of 19 students to a kindergarten class of 24 students.

substituted “TK” for “K” where appropriate, although there were several places where the substitution was erroneously not made. The 2014-2015 CBA also made a significant change to how combination classes were constructed. Previously, combination class sizes were balanced by ensuring the total number of students in the combination class was within five of the lowest and highest classes in the two grade levels making up the combination class. However, this led to situations where the combination class itself would be severely unbalanced. For example, a combination class with seven fourth graders and 21 fifth graders would be considered balanced even though the discrepancy between fourth and fifth graders in the class created a suboptimal learning environment. To remedy this, Article 5.1.4 of the 2014-2015 CBA required combination classes to have a difference of no greater than five students between the two grade levels.

Meyer testified that as a result of the new language regarding combination classes, the District began receiving questions as to whether TK and kindergarten were considered the same grade level. Part of the confusion stemmed from the language in Article 5.1 that referred to “Elementary Regular Class Size (TK-5).” After some investigation, Meyer became aware that some school sites treated TK and kindergarten as the same grade level whereas others treated them as separate grade levels. The 2014-2015 CBA provided no guidance, so Meyer reached out to LETA to negotiate the issue.

Meanwhile, on August 28, 2014, Powers emailed kindergarten teachers Castaneda, Nhel, and Edwards about an imbalance between the TK and kindergarten class sizes. At that time, Smith had 18 TK students while Castaneda, Nhel, and Edwards had 27, 28, and 27 kindergarten students, respectively. Powers believed these class sizes were not balanced since

LVS treated TK and kindergarten as the same grade level. Powers asked Castaneda, Nhel, and Edwards to sign waivers agreeing to the imbalance, but they declined to do so.

On September 5, 2014, Meyer emailed elementary school principals informing them that TK and kindergarten would be considered separate grade levels and would not have to be balanced within three students under Article 5.1.2. As a result, Powers did not find it necessary to rebalance students between TK and kindergarten at LVS since each grade level was already balanced.

Also on September 5, 2014, Edwards emailed Kathleen Halvorson (Halvorson), an employee of the California Department of Education, inquiring whether TK and kindergarten were the same grade level. Halvorson responded that day, stating in part:

> Pursuant to our phone conversation, in the current California *Education Code* (*EC*), TK is the first year of a two-year kindergarten program that uses a modified curriculum. Therefore, TK is not a separate grade level from kindergarten.
>
> Although the California public school system is under the purview of the State Legislature, many issues are under local control, and the CDE is limited to administering federal and state education law and regulations. Therefore, I shall direct you to California *Education Codes* (*EC*) that pertain to your issue. Note: In the current education code [sic], the term "kindergarten" also pertains to transitional kindergarten (TK).

(Emphasis in original.)

Upon receipt, Edwards forwarded Halvorson's email to Meyer.[8]

On September 16, 2014, Edwards filed a grievance asserting a class size imbalance because TK and kindergarten could not be treated as separate grade levels. She testified

[8] Halvorson's email was admitted for the limited non-hearsay purpose of establishing what information Edwards forwarded to Meyer.

having more students in the classroom was stressful and bad for students because they did not get the right level of attention.

On September 18, 2014, LETA surveyed TK and kindergarten teachers regarding their preference for whether or not TK and kindergarten should be considered separate grade levels.

On October 28, 2014, LETA and the District entered into a memorandum of understanding (TK-K MOU) that stated TK and kindergarten were separate grade levels. Based on the TK-K MOU, Edwards's grievance was denied.

Edwards's Union Activities and Prior Unfair Practice Charges

In the 2010-2011 school year, Edwards served as LETA's K-5 Director, was a member of LETA's grievance team, and served as a site representative.

In the 2011-2012 school year, Edwards was part of LETA's Executive Board in addition to serving as K-5 Director, a member of the grievance team, and site representative. During that school year, Edwards worked on a grievance on behalf of teachers regarding teachers' duty hours on student minimum days.

On October 15, 2012, Edwards filed an unfair practice charge against the District (PERB Case No. LA-CE-5753-E).[9] On September 10, 2013, PERB's Office of the General Counsel dismissed the charge.

In the 2012-2013 school year, Edwards continued to serve as a member of the grievance team, as a member of the Executive Board, and as a site representative. During that school year, she also met with Powers to discuss a teacher's need for a reasonable

[9] The Board has held that it is appropriate for an administrative agency such as PERB to take official notice of its own records. (*Regents of the University of California* (1999) PERB Decision No. 1359-H, proposed decision p. 18, fn. 11, citing *El Monte Union High School District* (1980) PERB Decision No. 142.) Accordingly, official notice is taken of the unfair practice charge in PERB case no. LA-CE-5753-E.

accommodation, represented employees in meetings where they received verbal warnings, and helped teachers draft PERB unfair practice charges.

During the 2013-2014 school year, Edwards represented a teacher in a meeting where the District sought to question the teacher about a parent complaint. She also assisted a teacher regarding the District's requirement that she get an autism authorization, and she corresponded to District administrators and the District's Board of Education regarding a possible reduction in staff at LVS and the effect this would have on the terms and conditions of employment.

ISSUES

1. Did the District retaliate against Edwards by: (a) involuntarily reassigning her from a first grade teaching assignment to a kindergarten teaching assignment; and (b) placing a number of students in her class that exceeded by more than three the total number of students in other kindergarten classes?

2. Should Edwards's unalleged violation that the District interfered with her rights under EERA be considered?

3. Is the District entitled to reasonable attorneys' fees?

CONCLUSIONS OF LAW

Retaliation

To demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5, subdivision (a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210, pp. 5-6 (*Novato*).)

The District does not dispute that Edwards engaged in protected activities, including filing unfair practice charges, serving as a union officer and site representative, and representing employees in meetings with District administrators. The District also does not dispute that it had knowledge of Edwards's protected activities. However, the District asserts Edwards cannot establish a prima facie case for retaliation because it took no adverse action against her and there is no nexus between her protected activity and any alleged adverse action.

A. Adverse Action

In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689, p. 12.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864, pp. 11-12; emphasis added; footnote omitted.)

1. Reassignment to Kindergarten

Edwards's reassignment to kindergarten did not alter her pay and benefits. However, the effect on pay and benefits is not the only determiner of whether a transfer constitutes an adverse action. (*Compton Unified School District* (2003) PERB Decision No. 1518, proposed decision p. 30.) Other factors the Board looks to in transfer situations are increased preparation time to teach a new curriculum, (*Chico Unified School District* (2015) PERB

Decision No. 2463, proposed decision p. 16.), and more difficult students in the new assignment. (*Fresno County Office of Education* (2004) PERB Decision No. 1674, p. 13.)

Here, Edwards's reassignment to kindergarten required her to spend time learning and preparing for a new curriculum since she had never taught at that grade level before. Additionally, kindergarten teachers face challenges that first grade teachers do not because kindergarten students require constant assistance with tasks first grade students are able to accomplish on their own, such as writing their names or tying their shoes. Kindergarten students also require more attention because they have an increased tendency to soil themselves or cry. Edwards also had more kindergarten students than she had first grade students. Finally, teaching kindergarten subjected Edwards to more parental scrutiny because parents of kindergarten students were more active in monitoring their children's progress. In totality, these factors show that a reasonable employee would believe kindergarten was a less desirable assignment than first grade. Accordingly, Edwards established the reassignment from first grade to kindergarten was an adverse action.

2. Class Size

The complaint frames the alleged adverse action regarding class size as the District's discriminatory enforcement of the class size provisions in the CBA. Paragraph 7 of the complaint states:

> On or about August 13, 2014, Respondent took adverse action against Charging Party by placing a total number of students in her class that exceeded by more than three the total number of students in other kindergarten classes. The memorandum of understanding between [LETA] and the District, section 5.1.2 states "Elementary class sizes at the same grade level shall differ by no more than three (3) students."

In *Woodland Joint Unified School District*, the Board held that discriminatory enforcement of a work rule for the purpose of harassing or intimidating an employee in retaliation for having engaged in protected activity constitutes an adverse action. (*Woodland Joint Unified School District* (1990) PERB Decision No. 808, pp. 3-4, citing *Hyatt Regency Memphis* (1989) 296 NLRB No. 36 and 296 NLRB No. 37; *BMD Sportswear* (1987) 283 NLRB No. 4; *NLRB v. S.E. Nichols* (2d Cir. 1988) 862 F.2d 952.) There, a school district required a teacher to submit a doctor's note for four consecutive days of absence. (*Woodland Joint Unified School District, supra*, PERB Decision No. 808, p. 2.) Although the doctor's note requirement was in the CBA, the Board deemed the application of the requirement to the teacher to be an adverse action, since no other teachers were required to comply with the requirement. (*Id.* at pp. 2-4.)

Here, the evidence does not show any discriminatory enforcement of the class size provisions against Edwards because kindergarten class sizes at LVS did not differ by more than three students during the 2014-2015 school year. While kindergarten class sizes fluctuated during the school year, the largest and smallest classes were always within one or two students of each other.

Edwards argues there was an adverse action because her kindergarten class had more than three students compared to the lone TK classroom at LVS. Her argument rests on the assumption that TK and kindergarten are the same grade level for purposes of determining class sizes under the 2014-2015 CBA. However, the TK-K MOU unequivocally states that for purposes of the 2014-2015 CBA, TK and kindergarten are to be treated as separate grade levels. Edwards asserts the TK-K MOU violates Education Code section 48000, which states in pertinent part:

> For purposes of this section, "transitional kindergarten" means the first year of a two-year kindergarten program that uses kindergarten curriculum that is age and developmentally appropriate.

(Cal. Educ. Code § 48000, subd. (d).)[10]

It is unclear how the TK-K MOU violates that Code section. Although the Education Code states that TK is part of a two-year kindergarten program, it is silent as to how TK must be treated when determining class sizes pursuant to a collective bargaining agreement between a school district and an exclusive representative. Edwards also argues the TK-K MOU violates the District's Board Policies that treat TK and kindergarten as the same grade level for purposes of calculating student enrollment. Again, while those policies place TK with kindergarten for purposes of calculating enrollment, they are silent as to how the District must treat TK for purposes of determining appropriate class sizes under the CBA.

Edwards has not established that the Education Code or the District's Board Policies require the District to treat TK and kindergarten as the same grade level for all purposes. In the absence of any conflicting outside authority, the TK-K MOU is a valid addendum to the 2014-2015 CBA and clearly states TK and kindergarten are not the same grade level. Since her class was appropriately balanced with the other kindergarten classes, Edwards did not establish the District took any adverse action against her with regard to class size. Accordingly, she did not establish a prima facie case for retaliation based on her class size, and that allegation is dismissed.

[10] While PERB has no jurisdiction to enforce provisions of the Education Code, it has jurisdiction to interpret the Education Code as necessary to carry out its duty to administer EERA. (*Desert Community College District* (2007) PERB Decision No. 1921, p. 12, fn. 13, citing *Whisman Elementary School District* (1991) PERB Decision No. 868.)

B. Nexus

Edwards's reassignment to kindergarten occurred in close temporal proximity to her protected activity. While the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264, p. 23.), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227, p. 13.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation)* (1984) PERB Decision No. 459-S, p. 6); (2) the employer's departure from established procedures and standards when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104, p. 20); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S, p. 13); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M, p. 17, citing *Coast Community College District* (2003) PERB Decision No. 1560); (5) the employer's failure to offer the employee justification at the time it took action (*Oakland Unified School District* (2003) PERB Decision No. 1529, p. 10) or the offering of exaggerated, vague, or ambiguous reasons (*McFarland Unified School District* (1990) PERB Decision No. 786, p. 12); (6) employer animosity towards union activists (*Jurupa Community Services District* (2007) PERB Decision No. 1920-M, pp. 15-16); or (7) any other facts that might demonstrate the employer's unlawful motive (*Novato, supra*, PERB Decision No. 210, pp. 6-7).

Edwards asserts there is circumstantial evidence of nexus because the District failed to follow its own procedures when it reassigned her. She argues the CBA required the District to post the first grade position Rosales reverted back to as an opening, thereby subjecting Rosales to possible reassignment to a different grade level or even a transfer out of LVS. While Edwards points to the reassignment language in the 2011-2014 CBA in support of her argument, those contract provisions do not specifically address reversions when a voluntary reassignment is no longer needed. Meyer testified that it is the District's past practice to allow a teacher who was voluntarily reassigned to a new position to revert back to her old position if the new position is no longer needed. Edwards did not present any evidence to rebut Meyer's testimony regarding the past practice, and it seems unlikely her interpretation of the CBA is correct since it would essentially punish teachers for volunteering for reassignments. Therefore, Meyers' testimony is credited over Edwards regarding the existence of a past practice, and it is found that the District was not required to post the first grade position Rosales reverted back to when her K-1 combination class was collapsed.

The record reflects the District followed the procedures in the 2011-2014 CBA when it reassigned Edwards to kindergarten. It posted the open kindergarten position to LVS staff for volunteers. When no one volunteered, Edwards was involuntarily reassigned into the position because she was the least senior employee at LVS qualified to fill the position. There is nothing to show a departure from established procedures or any other circumstantial evidence to suggest the District reassigned Edwards to kindergarten because of her protected activity. Accordingly, she did not establish a prima facie case for retaliation based on her reassignment, and that allegation is dismissed.

Unalleged Violation

In her closing brief, Edwards argues the District interfered with her right to represent bargaining unit employee Kimberly Larson when it reassigned Edwards into the kindergarten position Larson was occupying and then terminated Larson.[11] This claim is not in the complaint and must meet the requirements for an unalleged violation to constitute a source of liability for the District. The Board has the authority to review unalleged violations when the following criteria are met: (1) adequate notice and opportunity to defend has been provided to respondent; (2) the acts are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the unalleged violation has been fully litigated; and (4) the parties have had the opportunity to examine and be cross-examined on the issue. (*County of Riverside* (2010) PERB Decision No. 2097-M, p. 7, citing *Fresno County Superior Court* (2008) PERB Decision No. 1942-C.) The unalleged violation must also have occurred within the applicable statute of limitations period. (*Ibid.*)

Edwards did not provide adequate notice to the District that it sought to litigate any alleged interference with her representation of Larson. She did not mention this claim in her opening statement or otherwise put the District on notice of her intent to litigate the issue. Furthermore, the claim is not intimately related to the subject matter of the complaint. While the complaint alleges discrimination based on Edwards's reassignment, there are no facts regarding her representation of Larson or the impact the reassignment had on her representation. Neither Edwards nor Larson's testimony at the hearing suggests the existence of any ongoing representation at the time of the reassignment. Since there was no testimony regarding the representation, the District did not have the opportunity to examine witnesses on

[11] Larson was a long-term substitute in the kindergarten position that Edwards was reassigned to in the 2013-2014 school year.

the subject. Finally, the allegation of interference is untimely since it did not occur within the applicable statute of limitations period. Edwards first raised the allegation in her closing brief, and the alleged interference occurred almost a year prior during the 2013-2014 school year. Accordingly, the District's alleged interference with Edwards's representation of Larson will not be considered as an unalleged violation.

Attorneys' Fees

PERB will award attorneys' fees only if the charge is without arguable merit and pursued in bad faith. (*City of Alhambra* (2009) PERB Decision No. 2036-M, p. 19.) Bad faith includes conduct that is dilatory, vexatious, or otherwise an abuse of process. (*Ibid.*) The District requests that Edwards be ordered to pay its reasonable attorneys' fees and costs incurred in this matter because she engaged in dilatory tactics. Specifically, that her slow pace in putting on evidence extended the length of the hearing for an additional two days. While Edwards's pace was deliberate, that had more to do with her inexperience as an advocate than bad faith. Nothing suggests her conduct was intended to delay or otherwise frustrate the proceedings. To the contrary, Edwards arrived at each day of hearing prepared to prosecute her case. Accordingly, the District's request for reasonable attorneys' fees and costs is denied.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. LA-CE-5908-E, *Lori E. Edwards v. Lake Elsinore Unified School District*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960
E-FILE: PERBe-file.Appeals@perb.ca.gov

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090, 32091 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)