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8 STATE OF CALIFORNIA
9 PUBLIC EMPLOYMENT RELATIONS BOARD

10
11 California Virtual Educators United, CTA/NEA

Case No. LA-RR-1227-E

12 Petitioner,

**RESPONDENTS' DECISION AND DENIAL OF
RECOGNITION - PERB REGULATION 33190**

13 v.

14 California Virtual Academies.

15 Employer.
16

17 1. **NAME OF RESPONDENTS AND CONTACT INFORMATION**

18 California Virtual Academy at Jamestown

19 California Virtual Academy at Kings

20 California Virtual Academy at Los Angeles

21 California Virtual Academy at Maricopa

22 California Virtual Academy at Maricopa HS

23 California Virtual Academy at San Diego

24 California Virtual Academy at San Joaquin

25 California Virtual Academy at San Mateo

26 California Virtual Academy at Sonoma

27 California Virtual Academy at Sutter

28 California Virtual Academy at Fresno

1 Contact Information:

2 Katrina Abston
3 2360 Shasta Way, Suite A
4 Simi Valley, CA 93065
5 805-581-0202

6 **2. REASONS FOR DENIAL OF RECOGNITION**

7 For the reasons stated below, Respondents deny the Petitioner's Request for Recognition in this
8 matter.

9 **A. The EERA Representation Petition Misidentifies the Representative Union.**

10 On or about May 9, 2014, the California Teachers Association ("CTA") submitted its EERA
11 Representation Petition ("Original Petition" -Tab "A") based upon signatures gained by the CTA among
12 Respondents certified teaching staff on a signature petition containing the following operative
13 designation of bargaining authority:

14 We the undersigned, therefore choose the **California Teachers**
15 **Association** to be our exclusive representative and to represent us
16 regarding our professional and employment relations with California
17 Virtual Academies. [Emphasis added.]

18 (Tab "B").

19 Then the CTA apparently yielded to the "California Virtual Education Partners CTA/NEA"
20 which filed a Notice of Appearance in this matter on June 4, 2014 (Tab "C"). Subsequently, yet another
21 purported labor organization calling itself the "California Virtual Educators United CTA/NEA" filed an
22 Amended Notice of Appearance on June 20, 2014 (Tab "D"), naming itself as Petitioner and submitting
23 a corresponding amended EERA Representation Petition ("Petition"—Tab "E"). Although new, the
24 Petition is dated "5/9/2014 Original File Date" apparently referring back to the CTA's Original Petition.

25 Nothing could be more confusing or deceptive to the teachers who signed the Original Petition.
26 With the exception of the CTA, there is no evidence that either the California Virtual Educators United
27 CTA/NEA" or the "California Virtual Education Partners CTA/NEA" ever solicited signatures in this
28 matter, or pursued some other means of gaining employee authorization and support, as "exclusive
representative" of Respondents' certified teachers pursuant to EERA Section 3544.

1 The Petition should be dismissed. Here, employees originally designated bargaining authority to
2 a single, clearly stated, and well-recognized labor organization; namely the CTA, and not any other.
3 Signatory teachers did not authorize the current Petitioner to speak in their behalf, and this “bait and
4 switch” tactic does not further the purpose or intent of the EERA which requires an informed and
5 transparent decision by employees based upon full disclosure of the labor organization seeking their
6 bargaining authority and support. Specifically, EERA Section 3544 requires that a labor organization
7 seeking recognition as the exclusive representative of employees demonstrate majority support by any
8 one of the following means:

9 . . . [O]n the basis of current dues deduction authorization cards, or other
10 evidence such as notarized memberships lists, or membership cards, or
11 petitions **designating the organization** as the exclusive representative of
12 the employees. (Emphasis added.)

13 There is no evidence that the “California Virtual Educators United CTA/NEA” took steps to
14 solicit employee support as the exclusive representative of any of Respondents’ employees. Under the
15 EERA, labor organizations are not interchangeable parts and there is no procedure under the EERA for
16 the mere substitution of one labor organization for another for recognition purposes. This is an important
17 principle both for employees and for labor unions, as the designated representative union, and no other,
18 owes a duty of fair representation to the employees who authorized it to represent them, and may be
19 subject to employee charges if this duty of fair representation is breached. See, Bussman v. California
20 Teachers Association (6/30/09) PERB Decision 2047. Moreover, a labor organization’s affiliation with
21 the CTA does not, in itself, make the affiliated labor organization the exclusive representative on a
22 signature petition originally solicited by the CTA. See, Welch v. California Teachers Association and
23 Oakland Education Association (8/17/06) PERB Decision 1850.

24 **B. The Petitioned for Bargaining Unit Is Inappropriate**

25 According to Section 3544 of the EERA, an employee organization may become the exclusive
26 representative for the employees of an appropriate by:

27 “... [F]iling a request with a public school employer alleging that a
28 majority of the employees in an appropriate unit wish to be represented by

1 such organization and asking the **public school employer** to recognize it
2 as the exclusive representative.” [Emphasis added].

3 The EERA requires that employees who comprise an appropriate bargaining unit, at the very
4 least, work for an identifiable public school employer, such as a lawfully constituted charter school. The
5 EERA itself does not contemplate recognition of statewide units of separate charter schools based upon
6 name commonality or other similar factors. It is simply beyond dispute that “California Virtual
7 Academies” (“CAVA”) is not a charter school, or any other legal entity, nor has CAVA, at any time,
8 represented itself as a charter school. There is also no evidence that the above mentioned Respondent
9 charter schools operate as a single or joint employer.

10 A labor organization seeking recognition and certification as an “exclusive representative” under
11 the EERA must clearly identify a recognized charter school in order to meet the requirements of Section
12 3544. In fact, the California Charter Schools Act recognizes the local character and distinction and of
13 charter schools, each operating under charter granted by the governing board of a local school district,
14 with oversight vested in this local “chartering authority” to visit and monitor the charter school for
15 charter compliance, under penalty of charter revocation in the event of non-compliance. California
16 Education Code Sections 47604-47604.32. In this way, the charter school serves the local educational
17 interest of the school district in a way that meets the needs of pupils and their families. Teachers
18 employed by charter schools share this community of interests in meeting these local school district
19 needs.

20 Moreover, PERB has held that the purposes of the EERA are served and a charter school may
21 stand as a separate employer where it has declared itself a “public school employer” under Education
22 Code Section 47611.5(f) and submits to EERA jurisdiction. Ravenwood City Elementary School
23 District/Edison Brentwood Academy (7/14/04) PERB Decision 1660. Each of the Respondent charter
24 schools in this matter has made this “public school employer” declaration. Each charter is a distinct
25 legal entity, under the governance of a separate and independent charter school board, each with a
26 separate tax identification numbers and payroll for employees. Each governing board has ultimate
27 authority over personnel decisions and the approval of contracts which bind the charter, including
28 collective bargaining agreements. In this later regard, coordinated bargaining statewide bargaining is

1 virtually impossible, both legally and logistically, as the board of each charter school would be obligated
2 to approve or reject a labor contract based upon the best interest of the charter, the local school district,
3 and the local students and family clientele. Simply put, a "CAVA" statewide collective bargaining
4 directive by PERB would substantially impair the very purpose of the Charter Schools Act of 1992,
5 which, in pertinent part is as follows:

6 It is the intent of the Legislature, in enacting this part, to provide
7 opportunities for teachers, parents, pupils and community members to
8 establish and maintain schools that operate independently from the
9 existing school district structure...

10 California Ed. Code Section 47601.


11 **4. SUMMARY**

12 It is the Respondents' position that the Petition in this matter should be dismissed. Therefore,
13 and based upon the foregoing, Respondents request that PERB conduct an investigation pursuant to
14 EERA Section 3544.5(a). In the alternative, as there exists a "question regarding representation" under
15 EERA Section 3547.7(a), PERB should direct a representation election among Respondent Charter
16 Schools at which a majority of certified teachers have authorized union representation pursuant to EERA
17 Section 3544.

18
19
20 DATED: July 28, 2014

Respectfully submitted,
JACKSON LEWIS P.C.

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22 By:



David S. Allen

23 Attorneys for Respondents
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EXHIBIT A

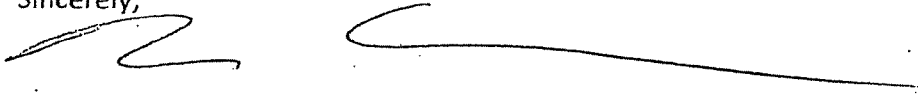
May 9, 2014

Katrina Abston
Head of Schools
California Virtual Academies
2360 Shasta Way, Unit A
Simi Valley, CA 93065

Dear Ms. Abston,

Enclosed please find an EERA Representation Petition and Proof of Service. As per EERA requirements, these documents were also filed with the LA office of the PERB.

Sincerely,

A handwritten signature in black ink, appearing to read 'Muni Citrin', with a long horizontal flourish extending to the right.

Muni Citrin
Organizer
California Teachers Association



EERA REPRESENTATION PETITION

DO NOT WRITE IN THIS SPACE. Case No. _____ Date Filed: _____

INSTRUCTIONS: A request for recognition, severance request or intervention is to be filed with the employer. Proper filing includes concurrent service and proof of service of the request/severance/intervention as required by PERB Regulations 33050 and 33070. Attach additional sheets if more space is required.

1. EMPLOYER (Name, address and telephone number) California Virtual Academics (CAVA) 2360 Shasta Way, Unit A Simi Valley, CA 93065 (805) 581-0202 Ext. _____	Employer's agent to be contacted: Katrina Abston Title: Senior Head of School Address and telephone, if different: (559) 999-1978 Ext. _____
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2. TYPE OF PETITION (Check one) <input checked="" type="checkbox"/> REQUEST FOR RECOGNITION <input type="checkbox"/> SEVERANCE REQUEST <input type="checkbox"/> INTERVENTION	3. PROOF OF SUPPORT (Check one) <input checked="" type="checkbox"/> Majority support filed with PERB <input type="checkbox"/> At least 30 percent support filed with PERB
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4. DESCRIPTION OF PROPOSED UNIT Shall include: All full and part-time certificated employees and all teachers hired pursuant to Education Code Section 47605(1) employed by California Virtual Academics ("CAVA"). Shall Exclude: Any and all managers, supervisors, classified employees, confidential employees, and casual substitutes within the meaning of the Act.	5. IF A CURRENT WRITTEN AGREEMENT EXISTS COVERING EMPLOYEES IN THE PROPOSED UNIT, INDICATE: AGREEMENT EFFECTIVE DATE: AGREEMENT EXPIRATION DATE: <input checked="" type="checkbox"/> NO AGREEMENT IS IN EFFECT.
	6. NUMBER OF EMPLOYEES IN PROPOSED UNIT: 701

7. ORGANIZATION(S) RECOGNIZED OR CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF OR KNOWN TO HAVE AN INTEREST IN REPRESENTING ANY OF THE EMPLOYEES COVERED BY THIS PETITION:		
<u>Name of Organization</u>	<u>Address</u>	<u>Date of Recognition Certification (if any)</u>

8. PETITIONER (Name, address and telephone number) California Teachers Association 1211 Embarcadero, Suite 204 Oakland, CA 94606 (510) 536-5850 Ext. _____	Petitioner's agent to be contacted: Muni Citrin Title: Organizer Address and telephone, if different: () _____ Ext. _____
--	---

DECLARATION

I declare that the statements herein are true to the best of my knowledge and belief.

PETITIONER'S AUTHORIZED REPRESENTATIVE: _____
(Signature)

Title: Organizer Date: 5/9/2014

Los Angeles Regional Office 700 N. Central Ave., Suite 200 Glendale, CA 91203-5219 (818) 551-2822	Sacramento Regional Office 1031 18 th Street, Room 102 Sacramento, CA 95811-4124 (916) 322-3198	San Francisco Regional Office 1330 Broadway, Ste 1532 Oakland, CA 94612-2514 (510) 622-1016
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EXHIBIT B

To: Public Employment Relations Board of the State of California

As educators at California Virtual Academies we support working together with our colleagues to have a stronger voice in decisions that affect our students, our professions and the future of our school. We believe that forming a union with the California Teachers Association will ensure that our contributions to critical decisions count. Together we can make our school the best possible environment to both teach and learn. We the undersigned, therefore choose the California Teachers Association to be our exclusive representative union and to represent us regarding our professional and employment relations with California Virtual Academies, as provided by the Educational Employment Relations Act section 3543.

Name (please print)	Signature	Date	Cell Phone	Personal Email	Job Title/Dept/Region

Circulated by: _____

EXHIBIT C

1 LAURA P. JURAN
Legal Director
2 LAURIE BURGESS
Staff Attorney
3 California Teachers Association
1705 Murchison Drive
4 Burlingame, CA 94010
Telephone:(650) 552-5440
5 Fax: (650) 552-5019

6 Attorney for Petitioner
California Virtual Education Partners, CTA/NEA

7
8 **STATE OF CALIFORNIA**

9 **PUBLIC EMPLOYMENT RELATIONS BOARD**

10 California Virtual Education Partners, CTA/NEA

Case No. LA-RR-1227-E

11 Petitioner,

NOTICE OF APPEARANCE

12 v.

13 California Virtual Academies

14 Employer.
15 _____/

16 TO: PUBLIC EMPLOYMENT RELATIONS BOARD AND PARTIES:

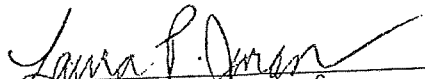
17 You are hereby notified that the California Virtual Education Partners, CTA/NEA
18 designated as its representative the person whose name and address appear below, and has
19 authorized such representative to appear on its behalf in the above-captioned proceedings.


20
21 LAURA P. JURAN
Legal Director
22 LAURIE BURGESS
Staff Attorney
California Teachers Association
23 1705 Murchison Drive
Burlingame, CA 94010
24 Telephone: (650) 552-5440
25 Fax: (650) 552-5019

26 All papers should be served at the address above and directed to Laura P. Juran,
27 who is lead counsel.

1 DATED: June 4, 2014

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Laura P. Juran, Attorney for
California Virtual Education Partners, CTA/NEA


Laurie Burgess, Attorney for
California Virtual Education Partners, CTA/NEA

PROOF OF SERVICE
State of California, County of San Mateo

I am employed in County of San Mateo, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1705 Murchison Drive, Burlingame, California, 94010.

On **June 4, 2014** I served the foregoing document described as Association's **Notice of Appearance in (*California Virtual Education Partners, CTA/NEA v. California Virtual Academies, PERB Case No. LA-RR-1227-E*)** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Katrina Abston, Senior Head of School
California Virtual Academies
2360 Shasta Way, Unit A
Simi Valley, CA 93065

BY MAIL

I am "readily familiar" with the practice of collection and processing correspondence for mailing in this office. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Burlingame, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY OVERNIGHT

By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

BY FACSIMILE

I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number (650) 552-5019 to the above-listed facsimile number(s) prior to 5:00 p.m. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

PERSONAL

I delivered such sealed envelope by hand to the addressee(s) at the above addresses.

Executed on **June 4, 2014** at Burlingame, California, I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Christine M. Jessup

EXHIBIT D

1 LAURA P. JURAN
Legal Director
2 LAURIE BURGESS
Staff Attorney
3 California Teachers Association
1705 Murchison Drive
4 Burlingame, CA 94010
Telephone:(650) 552-5440
5 Fax: (650) 552-5019
6 Attorney for Petitioner
California Virtual Educators United, CTA/NEA
7

8 **STATE OF CALIFORNIA**
9 **PUBLIC EMPLOYMENT RELATIONS BOARD**

10 California Virtual Educators United, CTA/NEA

Case No. LA-RR-1227-E

11 Petitioner,

**AMENDED NOTICE
OF APPEARANCE**

12 v.

13 California Virtual Academies

14 Employer.
15 _____/

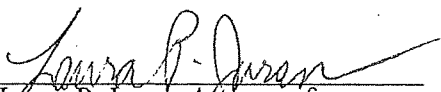
16 TO: PUBLIC EMPLOYMENT RELATIONS BOARD AND PARTIES:

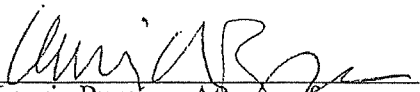
17 You are hereby notified that the California Virtual Educators United, CTA/NEA
18 designated as its representative the person whose name and address appear below, and has
19 authorized such representative to appear on its behalf in the above-captioned proceedings.

20 LAURA P. JURAN
Legal Director
21 LAURIE BURGESS
Staff Attorney
22 California Teachers Association
1705 Murchison Drive
23 Burlingame, CA 94010
Telephone: (650) 552-5440
24 Fax: (650) 552-5019
25

26 All papers should be served at the address above and directed to Laura P. Juran,
27 who is lead counsel.
28

1 DATED: June 20, 2014


Laura P. Juran, Attorney for
California Virtual Educators United, CTA/NEA


Laurie Burgess, Attorney for
California Virtual Educators United, CTA/NEA

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PROOF OF SERVICE
State of California, County of San Mateo

I am employed in County of San Mateo, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1705 Murchison Drive, Burlingame, California, 94010.

On June 20, 2014 I served the foregoing document described as Association's Amended EERA Representation Petition and Amended Notice of Appearance in (*California Virtual Educators United, CTA/NEA v. California Virtual Academies, PERB Case No. LA-RR-1227-E*) on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Katrina Abston, Senior Head of School
California Virtual Academies
2360 Shasta Way, Unit A
Simi Valley, CA 93065

David S. Allen, Esq.
Jackson Lewis
726 South Figueroa Street, # 2500
Los Angeles, CA 90017

BY MAIL

I am "readily familiar" with the practice of collection and processing correspondence for mailing in this office. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Burlingame, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY OVERNIGHT

By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

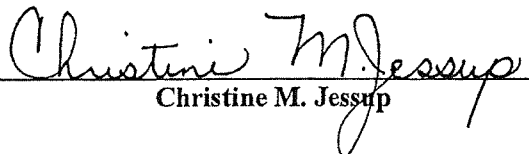
BY FACSIMILE

I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number (650) 552-5019 to the above-listed facsimile number(s) prior to 5:00 p.m. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

PERSONAL

I delivered such sealed envelope by hand to the addressee(s) at the above addresses.

Executed on June 20, 2014 at Burlingame, California, I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Christine M. Jessup

EXHIBIT E



AMENDED
EERA REPRESENTATION PETITION

DO NOT WRITE IN THIS SPACE: Case No.:

Date Filed:

INSTRUCTIONS: A request for recognition, severance request or intervention is to be filed with the employer. Proper filing includes concurrent service and proof of service of the request/severance/intervention as required by PERB Regulations 33050 and 33070. Attach additional sheets if more space is required.

<p>1. EMPLOYER (Name, address and telephone number)</p> <p>California Virtual Academies (CAVA)</p> <p>2360 Shasta Way, Unit A</p> <p>Simi Valley, CA 93065</p> <p>(805) 581.0202 Ext. _____</p>	<p>Employer's agent to be contacted: Katrina Abston</p> <p>Title: Senior Head of School</p> <p>Address and telephone, if different:</p> <p>(559) 999.1978 Ext. _____</p>
---	--

2. TYPE OF PETITION (Check one)

REQUEST FOR RECOGNITION

SEVERANCE REQUEST

INTERVENTION

3. PROOF OF SUPPORT (Check one)

Majority support filed with PERB

At least 30 percent support filed with PERB

4. DESCRIPTION OF PROPOSED UNIT

Shall Include:

All full and part-time certificated employees and all teachers hired pursuant to Education Code Section 47605(1) employed by California Virtual Academies ("CAVA").

Shall Exclude:

Any and all managers, supervisors, classified employees, confidential employees, and casual substitutes within the meaning of the Act

5. IF A CURRENT WRITTEN AGREEMENT EXISTS COVERING EMPLOYEES IN THE PROPOSED UNIT, INDICATE :

AGREEMENT EFFECTIVE DATE:

AGREEMENT EXPIRATION DATE:

NO AGREEMENT IS IN EFFECT.

6. NUMBER OF EMPLOYEES IN PROPOSED UNIT:

701

7. ORGANIZATION(S) RECOGNIZED OR CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF OR KNOWN TO HAVE AN INTEREST IN REPRESENTING ANY OF THE EMPLOYEES COVERED BY THIS PETITION:

<u>Name of Organization</u>	<u>Address</u>	<u>Date of Recognition Certification (if any)</u>
-----------------------------	----------------	---

<p>8. PETITIONER (Name, address and telephone number)</p> <p>California Virtual Educators United, CTA/NEA</p> <p>(510) 536.5850 Ext. _____</p>	<p>Petitioner's agent to be contacted: Laura P. Juran</p> <p>Title: Legal Director</p> <p>Address and telephone, if different:</p> <p>1705 Murchison Drive, Burlingame, CA</p> <p>(650) 552.5440 Ext. _____</p>
--	---

DECLARATION

I declare that the statements herein are true to the best of my knowledge and belief.

PETITIONER'S AUTHORIZED REPRESENTATIVE: Laura P. Juran
(Signature)

Title: Legal Director Date Amended Petition Filed: 6/20/14 Date: 5/9/2014 Original File Date: _____

<p>Los Angeles Regional Office 700 N. Central Ave., Suite 200 Glendale, CA 91203-3219 (818) 551-2822</p>	<p>Sacramento Regional Office 1031 18th Street, Room 102 Sacramento, CA 95811-4124 (916) 322-3198</p>	<p>San Francisco Regional Office 1330 Broadway, Ste 1532 Oakland, CA 94612-2514 (510) 622-1016</p>
--	--	--

1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

2 CASE NAME: VINCENT MUNOZ v. DEFENSE SUPPORT SERVICES LLC

3 CASE NUMBER: S-1500-CV 281153 DRL (Kern County Superior Court)

4 I am employed in the County of LOS ANGELES, State of California. I am over the age of 18
5 and not a party to the within action; my business address is: 725 South Figueroa Street, Suite 2500, Los
6 Angeles, California 90017-5408.

7 On July 28, 2014, I served the foregoing document described as:

8 **RESPONDENTS' DECISION AND DENIAL
9 OF RECOGNITION - PERB REGULATION 33190**

10 in this action by placing a true copy thereof in a sealed envelope addressed as follows:

11 Laura P. Juran, Legal Director
12 Laurie Burgess, Staff Attorney
13 CALIFORNIA TEACHERS ASSOCIATION
14 1705 Murchison Drive
15 Burlingame, CA 94010
16 Phone: (650) 277-0010
17 Fax: (310) 432-0599
18 bswaim@peterlawgroup.com

CALIFORNIA PUBLIC EMPLOYMENT
RELATIONS BOARD
Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95811-4124


19 Muni Citrin, Organizer
20 California Teachers Association
21 1211 Embarcadero, Suite 204
22 Oakland, CA 94606

23 Attorneys for Petitioner
24 **CALIFORNIA VIRTUAL EDUCATORS UNITED,
25 CTA/NEA**

26 **BY FEDERAL EXPRESS (Overnight Delivery):** I am "readily familiar" with
27 the firm's practice of collection and processing correspondence for deposit with
28 Federal Express. Under that practice it would be deposited with Federal Express
on that same day with fees thereon fully prepaid at Los Angeles, California in
the ordinary course of business. I am aware that on motion of the party served,
service is presumed invalid if date of receipt of the document by Federal Express
is more than one day after date of deposit for mailing in affidavit.

STATE:
I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed on July 28, 2014, at Los Angeles, California.


RICK BANDES