

BEFORE THE
GOVERNING BOARD OF THE
BUCKEYE UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-
Reemployment/Reduction in Force of:

ASHLEY BLACK
MARCIE CHARLESWORTH
KRISTIN CHEATHAM
AMY DeOLIVIERA
WENDY DOMINIQUE (HARRIS)
JENNE HATCHER
DARCEY LITTLE
MELODY ROOT
KATHERINE SMILEY
TERESA STELLMACHER
KARINNE ZIEGLER

OAH No. 2009031009

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on April 24, 2009, in Shingle Springs, California.

Diana D. Halpenny, Attorney at Law, represented the Buckeye Union Elementary School District.

A. Eugene Huguenin, Attorney at Law, represented respondents.

Evidence was received, the record was closed and the matter was submitted on April 24, 2009.

FACTUAL FINDINGS AND DISCUSSION

1. Teresa M. Wenig is the Superintendent of the Buckeye Union School District (District). Her actions and the actions of the District Governing Board (Board) were taken in their official capacities.

2. On March 4, 2009, the Board was given notice of the Superintendent's recommendations that certificated employees holding 20.1 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation. The recommendation was made in order to reduce costs in consideration of the expected massive reduction of school funding for the 2009-2010 school year, and in anticipation of a significant decline in kindergarten student enrollment, in a district with 4,800 students.

Board's Resolutions

3. On March 4, 2009, at a special meeting, the Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching services affecting 20.1 FTE positions. The Board adopted Resolution No. 09-07 (Resolution) providing for the reduction or elimination of multiple particular kinds of services (PKS), resulting in the 20.1 FTE reductions. In order to limit the number of reductions, the District offered an early retirement incentive to certificated employees, which resulted in early retirement for 1 certificated employee, and considered positively assured attrition, which resulted in the resignation of 1.5 certificated employees. The PKS reductions and eliminations affecting respondents, and at issue in this hearing, are:

<u>Administrative Positions</u>	
Director	.5 FTE
<u>Assistant Principal</u>	<u>.5 FTE</u>
<u>Certificated Positions</u>	
District Librarian	1.0 FTE
Elementary Physical Education Program	.5 FTE
K-8 Counseling Program	.6 FTE
K-5 Self-contained classrooms	16.0 FTE
<u>Sixth Grade Core classroom</u>	<u>1.0 FTE</u>
Total Certificated Reductions	20.1 FTE

4. On March 4, 2009, the Board also determined that it was necessary to develop tie-breaking criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date (seniority date).

The Board adopted Resolution No. 09-06 providing for the following criteria to be used to determine the order of termination in the event of a tie:

- a. Multiple number of credentials held K-8 4 points
- b. Special education/Specialized Credential 3 points
- c. Math/Science Certification 2 points
- d. Professional Clear Credential 1 point
- e. If two or more certificated employees who first rendered paid service on the same date still have the same number of points after application of points provided above, the ranking of such employees shall be determined by a lottery conducted by the Superintendent or her designee.

As between certificated employees who first rendered paid services to the District on the same date, the order of termination shall be based upon the number of points earned by the application of the criteria set forth ... above. Employees with the fewest points shall be terminated before employees with more points.

5. Respondents are probationary certificated employees of the District. On March 10 and 11, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2009-2010 school year. Each written notice set forth the reasons for the recommendation and attached a copy of the Board's Resolution (No. 09-07) reducing the certificated staff by 20.1 full-time equivalent (FTE) positions. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Three affected teachers did not request a hearing.¹

6. The Superintendent made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusations.

7. On April 17, 2009, respondents filed a Notice and/or Amended Notice of Defense (Amended Notice) to the Accusations. Included in this group Amended Notice was certificated employee, Tammy Lynn Fraser. Ms. Fraser did not request a hearing in response to the March 10, 2009 written notice that her services would be reduced or would not be

¹ The names and dates of hire of the three certificated employees who did not request a hearing are: (1) Dustin Haley - July 10, 2008; (2) Lisa Chormicle-Hester - August 11, 2008; and (3) Tammy Lynn Fraser – August 11, 2008.

required for the 2009-2010 school year, and she was not served by the District with an Accusation. Ms. Fraser, therefore, waived any right she may have had to a hearing to contest her layoff.

District's Layoff Procedures

8. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, FTE hours, employee number and name, current assignment and site of assignment, and credentials, authorizations and qualifications. The data was obtained from the District's records and employees were given the opportunity to correct errors in the seniority list.²

9. At hearing, the District stipulated that the seniority dates for the following certificated employees would be changed from August 13, 2008 to August 11, 2008 as a result of their paid attendance at a new employee orientation meeting:

Marcie Charlesworth
Kristin Cheatham
Lisa Chormicle-Hester
Amy DeOliviera
Wendy Dominique (Harris)
Christine Falconer
Susanna Fong
Tammy Fraser
Jenne Hatcher
Darcey Little
Kerry McFarland
Edie McKeown
Melody Root
Katherine Smiley
Teresa Stellmacher
Adriana Vanhonsbrouck
Karinne Ziegler

10. The Superintendent and other District employees were responsible for implementation of the technical aspects of the layoff. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then employed "bumping," "skipping" and "tie-breaking"

² According to Coleen Johnson, Director of Human Resources, notices were sent to all teachers on January 9, 2009 requesting updates and revisions to the Seniority List. Responses were due back by January 23, 2009. Of the responses received, revisions were made for two teachers who had obtained a Crosscultural, Language and Academic Development (CLAD) Certificate and an English Language Authorization. In addition, respondent Karinne Ziegler's date of hire was revised to a later date of August 11, 2008 as a result of serving less than 75 percent of the prior school year in her position as a temporary Probationary 1 teacher.

criteria to create the final list of certificated employees who would receive preliminary layoff notices.

Certificated Positions

11. With regard to the Board's Resolution to eliminate Certificated Positions, Ms. Johnson testified as follows: Mary Helen Fischer is the District Librarian whose position is being reduced by 1.0 FTE. Ms. Fischer was not served with a layoff notice because she retired.

12. The elementary physical education program is being reduced by .5 FTE. Ms. Johnson identified the certificated employees teaching the elementary physical education program, and determined that **Ashley Black** was the least senior elementary physical education teacher with a date of hire of 1/5/09. Ms. Black received notice of a .5 FTE reduction of her teaching position. The tie-breaking criteria were not applied to Ms. Black because there are no other certificated employees with the same seniority date of 1/5/09. At hearing, the District rescinded the layoff notice served on certificated employee Ashley Black because the district received a resignation notice from a .5 FTE Physical Education teacher.

13. The K-8 supplemental school counseling program³ is a specially funded program that the Board has resolved to reduce by .6 FTE. During the 2008/2009 school year, the state reduced its funding of the supplemental school counseling program by 15 percent, and the district expects the state to further reduce funding by an unknown percentage in the 2009/2010 school year. The district then classified the program as a flexible option program, and terminated the supplemental school counseling program for the 2009/2010 school year. The position was held by temporary employee **Melissa De La Rosa**, who received notice of release in February 2009.

14. The K-5 Self-contained classroom positions were originally being reduced by 16.0 FTE. However, Ms. Johnson testified that due to positively assured attrition, the district only needed to reduce the K-5 Self-contained classroom positions by 12.0 FTE. Ms. Johnson identified the certificated employees performing these services and applied "skipping" and "bumping" criteria to determine whether or not they would receive a layoff notice. As a result of this process, and based on the seniority date and credentials of each certificated employee, Ms. Johnson determined the following:

Karinne Ziegler has a seniority date of 8/11/08. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, a Music Supplemental Authorization, and is highly-qualified in Multiple Subjects/Arts (Music), pursuant to the No Child Left Behind (NCLB) Act. She is currently teaching 2nd Grade at William Brooks. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms.

³ Established by AB 1802 (2007-2008).

Ziegler are being retained to provide services for which she is certificated and competent to provide.

Teresa Stellmacher has a seniority date of 8/11/08. She holds a Clear Multiple Subject Credential, Clear CLAD Certificate, Preliminary Administrative Services Credential, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 6th Grade at Camerado Springs. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Stellmacher are being retained to provide services for which she is certificated and competent to provide.

Katherine Smiley has a seniority date of 8/11/08. She holds a Clear Multiple Subject Credential, Clear CLAD Certificate, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 2nd Grade at Silva Valley. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Smiley are being retained to provide services for which she is certificated and competent to provide.

Melody Root has a seniority date of 8/11/08. She holds a Preliminary Single Subject: English Credential with English Learner Authorization, and is highly-qualified in English, pursuant to NCLB. She is currently teaching Language Arts at Rolling Hills. Her services were not originally eliminated by 1.0 FTE because she is teaching middle school Language Arts. However, Ms. Root was ultimately "bumped" by Susanna Fong, pursuant to the Language Arts tie-breaking criteria set forth in Factual Findings 17. There is no evidence that certificated employees with less seniority than Ms. Root are being retained to provide services for which she is certificated and competent to provide.

Ms. Root claims that as a result of the improper conversion to core classes, she was "bumped" out of her position by Ms. Fong. Ms. Root argues that she would not have been "bumped" if Ms. Fong had remained at Camerado Middle School. The method of delivery of classes is within the discretion of the District and is not at issue in this proceeding.

Darcey Little has a seniority date of 8/11/08. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, Subject Matter Authorization: Introductory English, Social Science Supplemental Authorization, and is highly-qualified in English/ Multiple Subjects, pursuant to NCLB. She is currently teaching Language Arts at Camerado Springs. Her services were not originally eliminated by 1.0 FTE because she is teaching middle school Language Arts. However, Ms. Little was ultimately "bumped" by Jinny Klein, pursuant to the Core Class tie-breaking criteria set forth in Factual Findings 18-20. There is no evidence that certificated employees with less seniority than Ms. Little are being retained to provide services for which she is certificated and competent to provide.

Jenne Hatcher has a seniority date of 8/11/08. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, Introductory Art Supplementary Authorization, and is highly-qualified in Multiple Subjects/Art, pursuant to NCLB. She is currently teaching Art at Rolling Hills. She did not originally receive a layoff notice because her position was not eliminated by the Board's resolution. However, Ms. Hatcher was ultimately "bumped" by Brittany Kamman, pursuant to the core class tie-breaking criteria set forth in Factual Findings 18-20. There is no evidence that certificated employees with less seniority than Ms. Hatcher are being retained to provide services for which she is certificated and competent to provide.

Tammy Fraser has a seniority date of 8/11/08. She holds a Preliminary Multiple Credential Subject with English Learner Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching K/1 Blend at Blue Oak. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Fraser are being retained to provide services for which she is certificated and competent to provide.

Susanna Fong has a seniority date of 8/11/08. She holds a Clear Single Subject: English Credential with CLAD emphasis, World History/US History/History of California Supplemental Authorization, and is highly-qualified in English, pursuant to NCLB. She is currently teaching Language Arts at Camerado Springs. She did not originally receive a layoff notice because her position was not eliminated by the board's resolution. However, Ms. Fong was "bumped" by Heather McIntyre, pursuant to the core class tie-breaking criteria set forth in Factual Findings 18-20, but ultimately "bumped" Melody Root, pursuant to the Language Arts tie-breaking criteria set forth in Factual Finding 17.

Wendy Dominique (Harris) has a seniority date of 8/11/08. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 4th Grade at Silva Valley. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Dominique (Harris) are being retained to provide services for which she is certificated and competent to provide.

Amy DeOliviera has a seniority date of 8/11/08. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, English Supplemental Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 2nd Grade at Oak Meadow. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. DeOliviera are being retained to provide services for which she is certificated and competent to provide.

Lisa Chormicle-Hester has a seniority date of 8/11/08. She holds a Clear Multiple Subject Credential with CLAD Emphasis, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 1st Grade at Oak Meadow. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Chormicle-Hester are being retained to provide services for which she is certificated and competent to provide.

Marcie Charlesworth has a seniority date of 8/11/08. She holds a Clear Multiple Subject Credential with English Learner Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 2nd Grade at Oak Meadow. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Charlesworth are being retained to provide services for which she is certificated and competent to provide.

15. Ms. Johnson testified that she had not identified the requisite 12.0 FTE reductions by the time she reached the list of 14 certificated employees with a seniority date of 8/7/07. As a result, Ms. Johnson continued to identify the certificated employees performing the services subject to the board's reduction, and applied "skipping" and "bumping" criteria to determine who would receive a layoff notice. As a result of this process, and based on the seniority date and credentials of each certificated employee, Ms. Johnson determined the following:

Melinda Spooner has a seniority date of 8/7/07. She holds a Professional Clear Multiple Subject Credential, Clear CLAD Certificate, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 3rd Grade at Oak Meadow. She did not originally receive a layoff notice because she "bumped" Teresa Stellmacher pursuant to the core class tie-breaking criteria set forth in Factual Findings 18-20.

16. The Sixth Grade Core classroom position is being reduced by 1.0 FTE. Ms. Johnson utilized the seniority list to determine the least senior employee currently assigned to perform the services being reduced. As a result of this process, Ms. Johnson determined the following:

Kristin Cheatham has a seniority date of 8/11/08. She holds a Clear Multiple Subject Credential, Clear Single Subject: English Credential, and is highly-qualified in Multiple Subjects/English, pursuant to NCLB. She is currently teaching 6th Grade at Camerado Springs. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that a certificated employee with less seniority than Ms. Cheatham are being retained to provide services for which she is certificated and competent to provide.

7th Grade Language Arts at Rolling Hills (2009/2010 school year)

17. Coleen Johnson, Director of Human Resources, testified that as a result of a 1.0 FTE positively assured attrition, the District will need one certificated employee to teach 7th grade Language Arts at Rolling Hills. Ms. Johnson identified five certificated employees with a multiple subject credential, who had a date of hire of 8/11/08 and were affected by the K-5 Self-contained classroom reductions. In order to determine which certificated employee would qualify for the 7th grade Language Arts position at Rolling Hills, Ms. Johnson applied the tie-breaking criteria set forth in Factual Finding 4 and conducted a lottery to rank these certificated employees for the purpose of developing the following order of seniority:

Seniority #	Certificated Employee	Total Points
1	Susanna Fong	5
2	Kristin Cheatham	5
3	Amy DeOliviera	4
4	Darcey Little	4
5	Melody Root	0

Bumping Into Core Classes (2009/2010 school year)

18. Ms. Johnson also testified that the 7th and 8th Grade curriculum at Camerado Middle School would become a core class in the 2009/2010 school year. As a result, certificated employees with a multiple subject credential with an authorization in Language Arts/History or Math/Science or Elective Exploratory are eligible to teach the position, and more senior certificated employees have the opportunity to “bump” less senior certificated employees. Ms. Johnson identified seven certificated employees with a seniority date of 8/7/07. In order to determine which certificated employees would qualify to bump into the core classes at Camerado Middle School, Ms. Johnson considered the employee’s current assignment, experience and position, and determined the following:

Melinda Spooner has a seniority date of 8/7/08. She holds a Professional Clear Multiple Subject Credential, Clear CLAD Certificate, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 3rd Grade at Oak Meadow. While her services were affected by the 1.0 FTE reduction by the Board for the 2009-2010 school year, she is eligible to “bump” Teresa Stellmacher, who has a date of hire of 8/11/08.

Heather McIntyre has a seniority date of 8/7/07. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 2nd Grade at Silva Valley. While her services were affected by the 1.0 FTE reduction by the Board for the 2009-2010 school year, she is eligible to “bump” Susanna Fong, who has a date of hire of 8/11/08.

Jinny Klein has a seniority date of 8/7/07. She holds a Professional Clear Multiple Subject Credential with English Learner Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 5th Grade at Blue Oak. While her services were affected by the 1.0 FTE reduction by the Board for the 2009-2010 school year, she is eligible to “bump” Darcey Little, who has a date of hire of 8/11/08.

Brittany Kamman has a seniority date of 8/7/07. She holds a Preliminary Multiple Subject Credential with English Learner Authorization, Art Supplemental Authorization, and is highly-qualified in Multiple Subjects, pursuant to NCLB. She is currently teaching 5th Grade at Buckeye. While her services were affected by the 1.0 FTE reduction by the Board for the 2009-2010 school year, her supplemental art credential made her eligible to “bump” Jenne Hatcher, who has a date of hire of 8/11/08.

Kevin Cadden has a seniority date of 8/7/07. He holds a Clear Multiple Subject Credential with CLAD Emphasis, and is highly-qualified in Multiple Subjects, pursuant to NCLB. He is currently teaching 1st Grade at Oak Meadow. While his services were affected by the 1.0 FTE reduction by the Board for the 2009-2010 school year, he is eligible to “bump” Kristin Cheatham, who has a date of hire of 8/11/08.

19. Ms. Johnson confirmed that while Kevin Cadden was eligible to bump into Ms. Cheatham’s 6th Grade position at Camerado Middle School, due to the board’s reduction of the 1.0 FTE Sixth Grade Core classroom position and the 7th Grade retirement, Ms. Cheatham’s 6th Grade position was eliminated. Mr. Cadden was reassigned to the 7th Grade vacant position.

20. Ms. Johnson testified that she applied the tie-breaking criteria set forth in Factual Finding 4 and conducted a lottery for the purpose of developing the following order of seniority for certificated employees bumping into core classes in the 2009/2010 school year:

Seniority #	Certificated Employee	Total Points
1	Nancy Savage	8
2	Kori Carey	1
3	Jinny Klein	1
4	Melinda Spooner	1
5	Kevin Cadden	1
6	Jenelle Carver	1
7	Heather McIntyre	0

Respondents' Defenses to Lay Off

21. Respondents' counsel argued at hearing that there should be additional respondents in this action: Carrie Liebrich, Melissa De La Rosa, Terin Zweck and Teresa Frichtel. Respondents' counsel argued that each of these employees should have been classified as probationary employees pursuant to *Kavanaugh v. West Sonoma County High School District* (2003) 29 Cal.4th 911 because they did not receive their Notices of Employment at the time of their initial employment.⁴ Respondents' counsel also pointed out that the District's February 20, 2009 letters to these four employees imply that they have the credentials and qualifications to perform the services which respondents are certificated and competent to perform and therefore the district should have issued "precautionary notices" to each of these employees.

Respondents' argument is not persuasive. The District issued, and each of the employees signed, an Offer of Temporary Employment setting forth the terms and conditions of their temporary status. Ms. Johnson testified that on February 20, 2009, she sent each of the employees a letter notifying them of their temporary status, and informing them of their release upon expiration of their employment contract. None of these employees have contested their release from the District, and respondents have not established that any of them are being retained to perform services that respondents are competent and certificated to provide. In addition, respondents' counsel does not represent these four employees and they have no standing in this proceeding. Consequently, the issues argued in this matter relating to the classification and release of Carrie Liebrich, Melissa De La Rosa, Terin Zweck and Teresa Frichtel will not be addressed in this decision.

LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have all rendered valuable services to the District.

2. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

⁴ Carrie Liebrich has a date of hire of 8/7/07 and signed her Notice of Employment (Notice) on 10/29/08; Melissa De La Rosa has a date of hire of 8/13/08 and signed her Notice on 10/29/08; Terin Zweck has a date of hire of 8/13/08 and signed her Notice on 10/20/08; and Teresa Frichtel has a date of hire of 1/5/09, but no evidence was presented showing the date on which she signed her Notice.

3. Education Code section 44955, provides in pertinent part:

[¶]...[¶]

(b) ... 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.

[¶]...[¶]

4. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... 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....

5. The services identified in Board Resolution No. 09-07 are particular kinds of services that could be reduced or discontinued under section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

6. No certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render. Legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents final notice that their services will not be required for the 2009-2010 school year.

RECOMMENDATION

1. The Buckeye Union Elementary School District's action to reduce or eliminate the particular kinds of services identified in the Board's Resolution for the 2009-2010 school year is AFFIRMED.

2. Final notices shall be given to respondents that their services will be discontinued in the 2009-2010 school year, due to the reduction and discontinuance of particular kinds of services.

DATED: May 5, 2009

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings