

BEFORE THE GOVERNING BOARD
OF THE
DESERT SANDS UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force of
Certain Certificated Employees of the
Desert Sands Unified School District,

OAH No. 2009030544

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in La Quinta, California, on April 28 and 29, 2009.

Candace M. Bandolan, Attorney at Law, represented the Desert Sands Unified School District.

Dana Martinez, Attorney at Law, represented respondents Arleli Amador-Simpson, Christa Aubry, Susan Baker, Keren Broderick, Bridget Burden, Brena Carnt, Haimanti Tanya Chakraborty (on most issues), Astria Cota, Darcie Cotton, Mary Ellen Dahlke, Karen DeNovi, Steven Eelkema, Nicole Faay Dean, Luz Franco, Wende Hamann, Aurora Jimenez, Lisa Kenmuir (on most issues), Heidi Knigge, Lynn Lockard, Tanya Magana, Stephanie Mann, Terra Manthey, Bethany Martinez, Justin Martin, Tiffany Martin, Angelica Martinez, Jame McDuffie, Maria Mendoza, Rosa Mesa, Xochitl, Moore, Belma Pera, Robert Quintana, Shirley Ramsay, Janet Rhodewalt, John Romero, Lindsay Rowe, Brian Sakemi, Rachelle Sakemi, Heather Solis, Philip Solis, Laura Spradlin, Michelle St. Louis, Verdlee Stevenson, Maria Angie Tapia, Christina Taylor, and Adela Tili.

Respondents Elizabeth Aceves-Garcia, Christopher Aguilar, Debra Apple, Phyllis Brown, Haimanti Tanya Chakraborty (on the issue involving her seniority date), Meredith Greenwood, Lisa Kenmuir (on the issue involving her GATE units), Tammie Monroy, Nicole Phillips, Sagrano Rangel, Robert Rojo, Michael Tyler, Anna Velasquez, Megan Weitz, and Kira Zabrowski represented themselves.

Michele Sanchez did not file a request for a hearing after being served with a preliminary layoff notice and was not permitted to participate in this proceeding.

The matter was submitted on April 28, 2009.

FACTUAL FINDINGS

The Desert Sands Unified School District

1. Desert Sands Unified School District (DSUSD or the district) is headquartered in La Quinta, California. The district serves most of Indio, La Quinta, Palm Desert, Indian Wells, Bermuda Dunes, as well as portions of Rancho Mirage. DSUSD provides educational services to approximately 29,000 students from Kindergarten through 12th grades. DSUSD maintains and operates 20 elementary schools, six middle schools, three comprehensive high schools, two alternative high schools, and operates several other programs. DSUSD employs about 1,345 certificated employees and about 1,000 classified employees. The district has an annual budget of approximately \$215 million, about 85 percent of which pays for employee salaries and benefits.

2. The district is governed by an elected five member Board of Education (the governing board). Dr. Sharon McGehee is the Superintendent of Schools. Sherry Johnstone is the Assistant Superintendent, Personnel Services.

The Fiscal Crisis – Economic Layoffs

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since the passage of Proposition 13, public schools have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event often occurring in late June, but sometimes taking much longer, as was the case in 2008 and 2009. Before then, a school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

A school board's obligation to balance its budget often requires that some teachers, administrators and other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees, and the retention of permanent employees over probationary employees and others with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess credentials, special training, experience or qualifications necessary to teach a course of study or to provide services which more senior employees do not possess.

In early 2009, DSUD's administration (as well as the administrators of most other school districts) became aware of the State of California's massive budget deficit and its likely crippling impact on the district. As a result of the crisis, the district projected the need to trim its budget by more than \$20 million for the 2009-10 school year. The district was required to look into ways to balance its budget, including the elimination or reduction of various educational programs and the downsizing of its staff. In reaching the decision to eliminate or reduce particular kinds of services, the district's staff considered all sources of probable revenue including federal stimulus funds, Title I funding, and other revenue.

The District's Response

4. The district's administrative staff prepared a recommendation that was given to the governing board concerning the reduction and elimination of particular kinds of services that were being provided by certificated employees as one of several methods available to help meet the budgetary shortfall.

On March 3, 2009, under Education Code sections 44949 and 44955, Dr. McGehee recommended to the governing board the need to discontinue or reduce particular kinds of services, to notify certain employees that their services would not be required in the 2009-10 school year, and to notify those employees of the reason for the reduction in force.

The Governing Board's Reduction in Force Resolutions

5. On March 3, 2009, the governing board passed the following resolution:

**RESOLUTION NO. 32/2008-2009
TO DECREASE THE NUMBER OF CERTIFICATED EMPLOYEES
DUE TO A REDUCTION OR ELIMINATION OF
PARTICULAR KINDS OF SERVICES**

WHEREAS, Education Code section 44955 permits the Governing Board to reduce or discontinue particular kinds of services not later than the beginning of the following school year; and

WHEREAS, the Governing Board of the Desert Sands Unified School District ("District Board") has determined that it shall be necessary to eliminate or decrease the following programs of the District no later than the beginning of the 2009-2010 school year; and

WHEREAS, it shall be necessary to terminate at the end of the 2008-2009 school year the employment of certain certificated employees of the District as a result of the elimination or reduction of the programs; and

THEREFORE, BE IT RESOLVED, by the Governing Board of the Desert Sands Unified School District that the following services shall be reduced or eliminated no later than the beginning of the 2009-2010 school year:

PARTICULAR KINDS OF SERVICES	NUMBER OF FULL TIME EQUIVALENT (FTE) POSITIONS
ELEMENTARY EDUCATION	
Elementary Class Size Reduction, Grades K - 2	-86.0
<u>Subtotal – Elementary Program</u>	<u>-86.0</u>
SECONDARY EDUCATION	
Secondary Class Size Increase Student to Teacher Ratio 29.5:1 to 30:1	-25.0
<u>Subtotal – Secondary Education</u>	<u>-25.0</u>
COUNSELORS	
Counselors	-7.0
<u>Subtotal – Counselors</u>	<u>-7.0</u>
CATEGORICAL PROGRAMS	
Project Facilitators, Project Teachers, and Teachers on Special Assignment, District	-6.0
Project Facilitators, Project Teachers and Teachers on Special Assignment, School Sites	-6.0
Categorically Funded Teacher, Adult Education Program	-1.0
<u>Subtotal – Categorical Programs</u>	<u>-13.0</u>
ADMINISTRATION	
Assistant Principal	-2.0
Program Specialist	-2.0
Psychologist	-1.0
<u>Subtotal – Administration</u>	<u>-5.0</u>
<u>TOTAL FTE REDUCTIONS – ALL PROGRAMS</u>	<u>-136.0</u>
<u>FOR INFORMATION ONLY</u>	
*PALM DESERT CHARTER MIDDLE	
Assistant Principal	-1.0
Teachers	-2.0
*Pending Charter Board Approval	
<u>TOTAL FTE Reductions - Palm Desert Charter Middle School</u>	<u>-3.0</u>

BE IT FURTHER RESOLVED, that it will be necessary to retain the services of certificated employees in the 2009-2010 school year regardless of seniority, who possess specific credentials and qualifications needed for the following subject matters:

1. All Regular and Pre-K Special Education Programs and Services, except Program Specialists and Psychologists.
2. Authorized Single Subject Credentials in the following areas:

- a. Chemistry
- b. Physics
- c. Earth Science
- d. Geoscience
- e. Physical Science
- f. Music
- g. ROTC
- h. School Nurse
- i. Introduction to Home Economics

BE IT FURTHER RESOLVED, that the Superintendent or her designated representative is directed to send appropriate notices to all employees whose positions may be lost by virtue of this action. Nothing herein shall be deemed to confer any status or rights upon temporary certificated employees or any other employee in addition to those specifically granted to such employees by statute.

PASSED AND ADOPTED by the Governing Board of the Desert Sands Unified School District on March 3, 2009.

6. On March 3, 2009, the governing board also passed the following resolution that was used to determine the order of layoff for certificated employees who were hired on the same date:

RESOLUTION NO. 33/2008-2009

CRITERIA FOR DETERMINING ORDER OF SENIORITY FOR THOSE EMPLOYEES WITH THE SAME DATE OF FIRST PAID SERVICE IN A PROBATIONARY POSITION

WHEREAS, Education Code section 44955 provides for the termination of certificated employees because of the elimination or reduction of particular kinds of services;

WHEREAS, the order of termination is generally based on the date a certificated employee first rendered paid service in a probationary position;

WHEREAS, as among employees who first rendered paid service to the District on the same date, the law requires the Governing Board to determine the order of termination solely on the basis of the needs of the District and its students;

THEREFORE, BE IT RESOLVED, that to meet the requirements of Education Code section 44955, the following criteria for determining order of seniority for those hired on the same date shall be applied:

1. Credentials held: Professional Clear Credential, Special Credential, Preliminary Credential, Intern Credential.
2. Special Certification including but not limited to: BCLAD, CLAD, GATE, Advanced Placement, International Baccalaureate, Reading.
3. Professional preparation, i.e., advanced degrees, continuing education in assignment-related subject areas.
4. Total year of teaching experience.

In the event that common day hires have equal qualifications based on application of the above-criteria, the District will break ties by utilizing a lottery.

PASSED AND ADOPTED by the Governing Board of the Desert Sands Unified School District on March 3, 2009.

7. On March 3, 2009, the governing board passed the following resolution as well:

RESOLUTION NO. 34/2008-2009

DETERMINATION OF ORDER OF EMPLOYMENT OF CERTIFICATED EMPLOYEES FOR ELIMINATION OF OR REDUCTIONS IN PARTICULAR KINDS OF SERVICES

WHEREAS, Education Code section 44846 requires the Governing Board to establish the order of employment of certificated employees; and

WHEREAS, the Governing Board has further determined that among employees who first rendered paid service in a probationary position to the District on the same day, the order of employment will be based solely on the needs of the District and the students thereof;

THEREFORE, BE IT RESOLVED, by the Governing Board of the Desert Sands Unified School District that the Seniority List attached hereto as Exhibit "A" is hereby adopted.

BE IT FURTHER RESOLVED, that the Seniority List may be corrected from time to time by the Superintendent or her designee based on valid evidence presented by any certificated employee of any change and said corrected Seniority List shall be valid absent action by the Governing Board.

PASSED AND ADOPTED by the Governing Board of the Desert Sands Unified School District on March 3, 2009.

Service of Preliminary Layoff Notices

8. From March 9 through March 14, 2009, each respondent in this layoff proceeding was given a written preliminary notice that the Superintendent of Schools had recommended that his or her services would not be needed for the 2009-10 school year, as well as the reason for the reduction in services. Each respondent was notified of his or her right to a hearing. Each certificated employee who requested a hearing became a respondent in this layoff proceeding, and he or she was served thereafter with required jurisdictional documents including an accusation. Each certificated employee who requested a hearing had standing in this proceeding, whether that employee filed a notice of defense or not.

The Administrative Hearing

9. On April 28, 2009, the record in the layoff proceeding was opened. Jurisdictional documents were presented, an opening statement was given on the district's

behalf, documentary evidence was received, sworn testimony was taken, closing arguments were given, the record was closed, and the matter was submitted.

The Particular Kinds of Services/Decline in Attendance Issues

10. The services identified in the governing board's resolution to eliminate or reduce particular kinds of services were the kinds of educational services that properly could be discontinued or reduced. The elimination and reduction of those services was not arbitrary or capricious, and the elimination and reduction of those services constituted a matter within the proper exercise of the governing board's discretion. Before issuing the preliminary layoff notices, the district's administrative staff considered all known positive attrition to determine the number of layoff notices that should be served. More layoff notices were issued than full time equivalents were being reduced to protect against the possibility of error and because many secondary employees had the same seniority date. Some believed that the extent of the district's over-noticing was unreasonable, and while that may have resulted in some undue concern and distress for those who received notices that did not result in a layoff, the extent of the over-noticing was not outrageous and it did not result in any prejudice. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

The Seniority List

11. DSUSD maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees resign or retire. The seniority list is a spreadsheet containing the employee's name, a seniority date (listed as "prob. date"), the employee's status (e.g., temporary contract, first year probation, second year probation, tenured, or management), the school site where the employee provides services, the employee's teaching credentials, and any special certificates held by the employee.

In January 2009, when it became apparent that a reduction in force might be required, DSUSD circulated a preliminary seniority list to all employees with the request that each employee review and verify or update the seniority information. In response to that request, all but approximately 50 employees provided verifications or updates. In February 2009, DSUSD contacted those employees who did not respond to the earlier request. Most of those who were contacted in February provided verification or updates.

DSUSD continued to accept newly filed information and to include such information in the seniority list until March 15, 2009, when the list became final. After that date, an error made by the district could be corrected, but new information provided by a district employee was not accepted unless it related to an error made by the district.

Skipping

12. DSUSD experienced difficulty in filling certain positions. For example, special education teachers were difficult to recruit and retain. In addition, there were certain positions at

the secondary level which were difficult to fill including instruction in chemistry, physics, Earth science, geosciences, physical science, music, ROTC, and home economics. It was also difficult to fill the school nursing positions. For junior employees holding appropriate credentials and who had provided teaching or services in these fields, the governing board “skipped” these employees over more senior employees of the basis of the junior employee’s training, experience and qualifications, attributes that the senior employees did not possess. These junior employees became exempt from termination in this layoff proceeding. The skipping of these junior employees was not arbitrary or capricious, was in the best interests of the districts and its students, and was a matter well within the discretion of the governing board and the district.

The District’s Layoff Notices

13. Using the seniority spreadsheets, Johnstone’s staff began the painstaking process of identifying those certificated employees who should receive preliminary layoff notices and those who should not. Whenever an employee was tentatively slated to receive a preliminary layoff notice as a result of the governing board’s resolution, that employee’s seniority and qualifications were considered to determine if that employee was qualified to “bump” into a position held by a more junior employee.

For those employees who first provided service on the same day, Johnstone’s staff applied the governing board’s tie breaking resolution (Factual Finding 6). The criteria set forth in that resolution were reasonable, and the application of the tie breaking criteria was in the best interest of the district and the students.

There were instances in which persons hired on the same date possessed equal qualifications based on application of the tie breaking criteria. For those individuals, DSUSD, in conjunction with the teachers’ association, conducted a random computerized lottery. The lottery was conducted within two weeks of this layoff hearing.

Middle School Teachers

14. A confusing issue involved middle school teachers who held a multiple subject teaching credential without a special authorization. Middle schools and junior high schools¹ provide a transition from the elementary school’s self-contained classroom to departmentalized programs in high schools. As a result, some authorizations required to teach middle school are different from the credentials required to teach elementary school and are unique.

If a middle or junior high school program is arranged so that one teacher provides instruction in several subjects to the same group of students, it is a self-contained classroom and that middle school or junior high school teacher must have a credential that authorizes that service. But, when a middle school or a junior high school teacher teaches one subject to several

¹ Middle schools are defined as schools that most frequently include grades six through eight but may have any combination of grades five through eight. Junior high schools rarely include grades five and six, but often also include grade nine.

groups of students, he or she needs to have a credential or other authorization that allows teaching the particular subject in a departmentalized setting.

Within the middle school and junior high school milieu, a “core assignment” (as defined in Education Code section 44258.1) involves a middle school or junior high school teacher who provides instruction in a self-contained classroom where he or she teaches two or more subjects for two or more periods per day to the same group of pupils, and, in addition, teaches any of those subjects to a separate group of pupils at the same grade level for an additional period or periods, provided that the additional period or periods do not exceed one-half of the teacher’s total assignment.

Several middle school teachers who received preliminary layoff notices (e.g., John Romero, Astria Cota, Christina Taylor, and Stephanie Mann) had more seniority than others who did not receive preliminary layoff notices. According to Johnstone, these middle school teachers taught a “core assignment” which, according to the County of Riverside Department of Education, required specific authorizations including either a single subject credential in the discipline being taught or a multiple subject credential with special authorization in the subject being taught. The middle school teachers who received a preliminary layoff notice lacked the required authorizations and their positions were filled by persons with less seniority who held appropriate authorizations to teach a core assignment. The middle school teachers who received the preliminary layoff notices were qualified to teach at the elementary level, but before the preliminary layoff notices were issued to them it was determined that there were no junior employees providing services at the elementary school level whom these middle school teachers could bump.

DSUSD correctly issued preliminary layoff notices to respondents John Romero, Astria Cota, Christina Taylor, and Stephanie Mann.

Credentialing Issues

15. Debra Apple: Apple, a tenured employee with a seniority date of August 31, 2006 (which was the same date of hire for approximately 80 others), currently teaches Math in a core assignment at the John Glen Middle School. Apple holds a multiple subject teaching credential, but she is not certificated to teach Math. Her situation is similar to Romero, Cota, Taylor, and Mann’s situation (Factual Finding 14). Apple does not possess sufficient seniority to bump into an elementary school teaching position.

DSUSD correctly issued a preliminary layoff notice to respondent Debra Apple.

16. Lisa Kenmuir: Kenmuir, a tenured teacher with a seniority date of August 31, 2006, currently teaches at Dr. Reynaldo J. Carreon Jr. Academy Elementary School.² She holds

² Reynaldo J. Carreon, Jr., O.D., D.O., M.D. (1900-1991) was a co-founder of Indio Community Hospital (now the John F. Kennedy Memorial Hospital) which was constructed on his property at the corner of Dr Carreon Boulevard and Monroe Street in Indio. Dr. Carreon donated land for a people's park in Indio (adjacent to his ranch)

a multiple subject teaching credential. Kenmuir holds the same seniority date as many other elementary school teachers, and the district's seniority list was modified to reflect that she had 64 graduate units on file before March 15, 2009. After March 15, 2008, Kenmuir obtained ten additional units as a result of completing a GATE course. DSUSD was responsible for obtaining the appropriate credential on Kenmuir's behalf; there was no showing that DSUSD was dilatory in obtaining or filing that credential.

Kenmuir sought to amend the seniority list to reflect her as having 74 graduate units, which she believed might assist her in breaking a tie and in retaining her employment. Kenmuir was not authorized to receive credit for the additional units because they were not on file by March 15, 2009, the last date on which the district was authorized to issue preliminary layoff notices.

Seniority Date Issues

17. Haimanti (Tanya) Chakraborty: Chakraborty, a tenured employee with a seniority date of August 31, 2006, was teaching at the Abraham Lincoln Elementary School. Chakraborty held a multiple subject teaching credential.

Chakraborty was employed by DSUSD in the 2004-05 school year as a long term substitute teacher. On September 1, 2005, Chakraborty was again hired as a long term substitute teacher, on this occasion to fill in for Carolyn G., another teacher who was out on leave. Chakraborty taught in Carolyn G.'s classroom from the start of the school year until January 2006, when Carolyn G. returned from leave to resume service in her classroom.

Beginning January 3, 2006, Chakraborty worked with third grade students who were assigned to other teachers, providing "small group support." Chakraborty provided services to these students in their own classrooms or in pullout locations, but she did not have her own classroom and did not have a class of her own. In this capacity, Chakraborty did not perform the duties normally required of a certificated employee of the school district, but instead provided rather unique services. Chakraborty provided small group support through March 23, 2006. Chakraborty signed payroll time sheets reflecting her employment in small group support from January 3 through March 23, 2006, a period of totaling 55 days.

After March 23, 2006, Chakraborty returned to Carolyn G.'s classroom where she remained through the end of the 2005-06 school year.

and wells for Indio's municipal water supply. In 1980, Dr. Carreon helped create the Coachella Valley Mexican American Chamber of Commerce. In 1982, he was honored as the Coachella Valley's Mexican American Citizen of the Year. In 1984 the City of Indio dedicated Dr. Carreon Boulevard in his honor. In 1984, the International Fountain of Knowledge at College of the Desert was dedicated in his honor. In 2003, following his death, the Dr. Reynaldo J. Carreon Jr. Academy Elementary School was dedicated in his honor.

In all, Chakraborty worked in Carolyn G.'s classroom less than 75 percent of the 2005-06 school year, but she always worked in positions during that year that she believed required her to hold a teaching credential. Chakraborty disputed the district's seniority date, claiming she should be given a seniority date of September 1, 2005, based on her service in the 2005-06 school year³ and the fact that DSUSD assigned previously her a September 1, 2005, seniority date in another layoff proceeding.

At all times relevant to this proceeding, California required public schools to provide instructional services for at least 180 days a year, which does not include in-service training days.⁴ A teacher employed under a 190 day contract would be required to be at school 142.5 days in order to work 75 percent of the time.

The fact that DSUSD may have made an error in an earlier layoff proceeding did not entitle Chakraborty to that seniority date unless she established that she reasonably relied on that erroneous date to her prejudice, such that principles of estoppel would apply. Chakraborty failed to make the required showing, and granting her a seniority date to which she is not entitled under the Education Code might result in the unjustified termination of a more senior employee. Chakraborty is not entitled to a seniority date earlier than August 31, 2006, because she did not work 75 percent of the number of days the regular school days in the 2005-06 school year performing the duties normally required of a certificated employee of DSUSD.

18. Meredith Greenwood: Greenwood, a tenured employee with a seniority date of August 31, 2006, was teaching at the Harry S Truman Elementary School. Greenwood held a multiple subject teaching credential. Greenwood was first employed by DSUSD in September 28, 2001, and worked within the district for two years thereafter; however, Greenwood resigned her position, but then returned to work in the district within 39 months. She signed her most recent contract on August 31, 2006. Greenwood wondered if her seniority date with DSUSD should relate back to September 28, 2001.

Greenwood did not obtain a leave of absence from the district for the period was not employed by the district following her resignation. As a result of her resignation, Greenwood did not have the right to a different seniority date in this layoff proceeding, although Greenwood's previous service with the district was credited for other purposes.⁵

³ Education Code section 44918 provides in part:

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

⁴ One of Governor Schwarzenegger's current proposals to meet California's budget deficit is a proposal to reduce a public school's number of required instructional days from 180 days per year to 175 days per year.

19. Tammie Monroy: Monroy, a tenured employee with a seniority date of August 30, 2007, taught at La Quinta Middle School. Monroy holds a multiple subject teaching credential and an introduction to mathematics authorization which allows her to teach Math. Monroy was senior to and qualified to teach in positions held by more junior employees, and was thus entitled to bump into a position held by Linda Arseo, a Math teacher at Indio High School who had less seniority than Monroy. The preliminary layoff notice issued to Monroy should be rescinded.

20. Kira Zabrowski: Zabrowski, a tenured employee with a seniority date of August 30, 2006, taught at La Quinta Middle School. Zabrowski held a single subject teaching credential, authorizing her to teach English at the middle school and high school levels. Zabrowski observed that six high school teachers with similar credentials but who had less seniority than she had were retained and had not been issued a preliminary layoff notice, while she was issued a preliminary layoff notice. DSUSD concede this error. The preliminary layoff notice issued to Zabrowski should be rescinded.

LEGAL CONCLUSIONS

Statutory Authority

1. Education Code section 44944 provides in part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year . . . the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor . . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

⁵ Education Code section 44844 provides in part:

“When any certificated employee shall have resigned . . . and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his reemployment.

When an employee's services are terminated for lack of enrollment or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service, his original order of employment shall stand.”

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with . . . the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

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

. . .

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. . . .”

2. Education Code section 44955 provides in part:

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

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . 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.

...

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof . . .

...

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

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

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

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

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

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondent employees.

The Reduction of Particular Kinds of Services

4. A school board's decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. Where a governing board determines to discontinue or reduce a particular kind of service, it is within the discretion of the board to determine the amount by which it will reduce a particular kind of service as long as a district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

Seniority, Bumping, and Skipping

The Statutory Scheme

5. Education Code section 44955, the economic layoff statute, provides in subdivision (b), in part, as follows: "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Essentially this language provides "bumping" rights for senior certificated and competent employees, and "skipping" authority to retain junior employees who are certificated and competent to render services which more senior employees are not. Subdivision (d)(1) of section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

Bumping

6. The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, supra. at pp.136-137.)

Skipping

7. Subdivision (d)(1) of section 44955 expressly allows a district to demonstrate its specific "needs" and there is nothing in the statute that requires such needs to be evidenced by formal, written policies, course or job descriptions, or program requirements. (*Bledsoe v. Biggs Unified School Dist.*, supra., at p. 138.)

Information Filed with DSUSD after March 15

8. A school district is required to issue and serve preliminary layoff notices no later than March 15. Before then, a district must consider all information on file that assists

the district in making assignments and reassignments based on seniority and qualifications. After that date, however, the district has no authority to issue a layoff notice to an employee who has become junior by reason of another employee's filing of proof of additional qualifications. It was on this basis that the appellate court determined that a credential filed with a district after March 15 could not be the basis for bumping. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698.)

The Effect of Resignation

9. When a permanent certificated employee resigns and is reemployed within 39 months, a reemployment restores all individual rights, benefits and burdens of a permanent employee; however, for seniority purposes, employee does not regain his or her original hiring date. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 641.)

Cause Exists to Give Notice to Certain Employees

10. As a result of the governing board's lawful reduction of particular kinds of service, cause exists under the Education Code for the district to give notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2009-10 school year.

Determination

11. The charges set forth in the accusation were sustained by the preponderance of the evidence and were related to the welfare of the Desert Sands Unified School District and the pupils thereof. DSUSD's administrative staff made necessary assignments and reassignments in such a manner that the most senior employees were retained to render services which their seniority and qualifications entitled them to render, except as otherwise noted herein. No employee with less seniority than any respondent will be retained to render a service which any respondent is certificated, competent and qualified to render.

This determination is based on all factual findings and on all legal conclusions.

RECOMMENDATION

It is recommended that the governing board give notice to the following certificated employees that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2009-2010 school year:

Aceves-Garcia, Elizabeth; Aguilar, Christopher; Amador-Simpson, Areli; Angelo, Christie; Apple, Debra; Arseo, Linda; Aubry, Christa; Baker, Susan; Barragan, Susana; Black, Tiffany; Bluth, Penelope; Bridges, Benjamin; Broderick, Keren; Brown, Phyllis; Burden,

Bridget; Carnt, Brenna; Chakraborty, Haimanti; Champagne-Belmontez, Trina; Clerihan, Tiffany; Cobb, Jacqueline; Cook-Suravallop, April; Cota, Astria; Cotton, Darcie; Cummings, Kathleen; Dahlke, Mary Ellen; De La Luz, Diego; De Novi, Karen; Delgado, Kim; Dougherty, Victoria; Faay Dean, Nicole; Fanelle, Ronald; Fischer, Bradley; Franco, Luz; Gervin, Ashley; Gleeson, Brian; Greenwood, Meredith; Haij, Lynsey; Hamann, James; Hamann, Wende; Hillman, Allison; Hoag, Sigrid; Holtz, Michael; Hrynkiw, Dawn; Jenkins, Kimberly; Jess, Philip; Jimenez, Aurora; Johnston, Kami; Kamp, Kendra; Kenmuir, Lisa; Klimmek, Ramona; Knigge, Heidi; Kopstein, Tisa; Krebs, Karl; Last, Julietta; Lockard, Lynn; Lopez, Claudia; Magana, Tanya; Mann, Stephanie; Manthey, Terra; Marinez, Bethany; Markson, Robin; Martin, Justin; Martin, Tiffany; Martinez, Angelica; May, Steve; McDuffie, Jaime; Mendoza, Maria; Mesa, Rosa; Miller, Morgan; Montes, David; Mook, John; Moore, Xochitl; Morgan, Julia; Mulvey, Cynthia; Murphey, Deirdre; Norton, Tiffany; Ochoa, Alma; Ohrenstein, John; Olson, Jacelyn; Pera, Belma; Phillips, Nicole; Plowman, Angella; Polanco Macias, Victor; Preston, John; Ramsay, Shirley; Rangel, SAGRARIO; Reynolds, Danielle; Reynolds, Janelle; Rhodewalt, Janet; Rojo, Robert; Romero, John; Rowe, Lindsay; Royal Santana, Steven; Rush, Wendy; Sakemi, Brian; Sakemi, Rachell; Salehi, Majid; Sanchez, Michele; Sanderson, Kaitlyn; Santos, Claudia; Scheffler, Marguerite; Shipley, Dannette; Smith, Andrew; Smith, Stephanie; Solis, Heather; Sprankle, Sandi; St Louis, Michelle; Stevenson, Verdlee; Sugarman, Michael; Tapia, Maria Angie; Taylor, Christina; Thomas, Kori; Thompson, Katherine; Tili, Adela; Tucker, Joseph; Velasquez, Anna Maria; Warner, Julie; Weitz, Megan; Winsten, Mark; and Zengler, Meredith

It is recommended that the governing board rescind the preliminary layoff notices that were issued to the following certificated employees:

Monroy, Tammie; and Zabrowski, Kira

Dated:

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings