

BEFORE THE  
GOVERNING BOARD  
MOJAVE UNIFIED SCHOOL DISTRICT  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Brenda Ball and other certificated  
employees of the Mojave Unified  
School District,

Respondents.

OAH Case No. L2009031191

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 24, 2009, in Mojave, California.

Peter C. Carton, Attorney at Law, represented Larry Phelps (Phelps), Superintendent of the Mojave Unified School District (District).

Tamra M. Boyd, Attorney at Law, represented Brenda Ball (Ball), Rachel Boyer (Boyer), Melissa Brunner (Brunner), Sarah Davis-Tate (Davis-Tate), Rachel Ketchell (Ketchell), Angelica McKay (McKay), Deborah E. Oakley (Oakley), Richard B. Ribando (Ribando), and Julia Wolf (Wolf), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

Oral and documentary evidence was presented at the hearing, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Superintendent Phelps filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On March 10, 2009, the Governing Board of the District (Governing Board) adopted Resolution Number 031009-1, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE<sup>1</sup> Reduction</u>
K-6 Elementary Regular Classroom	
Teaching Positions (Self-Contained)	17
Music Teaching Position	1
Departmentalized Instruction, High School	
Science	1
Foods	1
Departmentalized Instruction, Junior High	
Physical Education	1
Math	1
English	1
Social Sciences	1
Dean of Students	1
Principal Position	<u>1</u>
Total	27

4. Superintendent Phelps thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2009-2010 school year due to the reduction of particular kinds of services.

5. On March 11, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

6. On or about March 27, 2009, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

7. All prehearing jurisdictional requirements have been met.

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<sup>1</sup> Full-time equivalent position.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>2</sup>

9. The Governing Board's decision to reduce or discontinue the services set forth in factual finding number 3 is not arbitrary or capricious but is rather a proper exercise of the District's discretion.

10. One of the services eliminated, Foods, is actually a .5 FTE position. The person who fulfills this assignment, Respondent Brenda Ball, also teaches Home Economics as a .5 FTE position. Superintendent Phelps recommended elimination of the Foods program in part because of perceived lack of student interest in the program. However, Mojave High School Counselor George Pulos (Pulos) testified that 60 to 64 students have expressed interest in taking the Foods class in the next school year. Superintendent Phelps did not seem to realize that Respondent Ball, the person given a layoff notice due to the discontinuation of the Foods program, also taught Home Economics. Respondent Ball testified about the importance of both courses, and about the myriad of practical instruction she provides her students. Respondent's instruction methods and subject matter have made it easier for English learners and special education students to participate in the classroom and transition into other education areas. Pulos has observed Respondent Ball's Foods class and has found the environment to be very accepting and accommodative, particularly to special education and foreign students. Students have provided positive feedback about the Foods class.

11. The reduction of services set forth in factual finding number 3, given the anticipated reduction in State funding, is related to the welfare of the District and its pupils, and has become necessary to decrease the number of certificated employees as determined by the Governing Board, with the exception of the non-existent .5 FTE in the Foods program. Home Economics services were not reduced or eliminated in the Governing Board's resolution.

12. Despite the reduction in services, the District anticipates that it will have several vacant certificated positions for the 2009-2010 school year. On April 20, 2009, the District posted an announcement containing 22 open certificated positions, including 10 in elementary school instruction, available for the 2009-2010 school year. None of the positions involve the teaching of Foods or Home Economics. The positions are open to current District certificated employees and had application deadlines of May 20, 2009. Superintendent Phelps explained his understanding that the collective bargaining agreement with the Mojave Faculty Association (MFA) required such posting to enable eligible employees to bid on available assignments. He further testified that Respondents would have preferential hiring rights for unfilled positions for which they were qualified. MFA President David Smith testified that the pertinent provision, Article X, had never been applied when a layoff was contemplated.

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<sup>2</sup> All further references are to the Education Code.

13. a. On February 26, 2008, the Governing Board adopted Resolution 022608-1, setting forth its tie-breaking criteria for employees with the same seniority date. In pertinent part, the Resolution provides: “THIS BOARD RESOLVES that the order of termination as between employees who first rendered paid service to the District on the same date shall be based solely on the needs of the District and the students thereof. The specific criteria used in determining this need shall be as follows, but not necessarily listed in order of importance: [¶] Credentialing [¶] Experience [¶] Extracurricular Activities [¶] Training [¶] Special Education Needs [¶] Competence.”

b. On cross-examination, Superintendent Phelps explained that he did not deem it necessary to consider the competence and training criteria, and that “things like credentials” took precedence.

c. Superintendent Phelps applied the tie-breaking criteria to determine the order of termination for employees hired on August 18, 2005, which include Respondents Wolf and retained employees Andrea Broaddus, Norma McClean, and Desiree See. The District adjusted the seniority date of Norma McClean, to September 3, 2004, after reviewing its records and giving her credit for prior service confirmed to have been rendered in a probationary capacity. It was not established that the District incorrectly applied the tie-breaking criteria with respect to Respondent Wolf.

14. Respondent Ball has a seniority date of September 8, 1994. She holds a professional clear single subject (home economics) credential and a Crosscultural, Language, and Academic Development (CLAD) authorization. She teaches at Mojave High School. One half of her assignment (.5 FTE) involves teaching the Foods classes and the other .5 FTE is spent teaching Home Economics. In the Foods course, she provides instruction regarding food-related matters, such as planning and preparation, nutrition, safety, and necessary equipment. In Home Economics, she teaches a broad curriculum that includes: managing and balancing personal, family and work life; transferring life skills to careers; consumer education; health; food and nutrition; fashion, textiles and apparel; and, survey of home economic related occupations.

15. Respondent Boyer has a seniority date of September 21, 2005, and holds a clear multiple subject credential and a supplemental authorization in art (grades 9 and below). However, she is not presently certificated or competent to teach the open drama position at the high school.

16. Respondent Brunner, who holds a clear multiple subject credential, started working in a certificated position in April 2005. However, she was not employed for the District at the start of the following school year, and obtained a new position starting October 10, 2005, which the District correctly determined was her seniority date.

17. Respondent Davis-Tate, who holds a preliminary multiple subject credential, challenges her seniority date of August 17, 2006. She started working on September 15, 2004, teaching an “overflow” second grade class. On October 1, 2004, she was given her own classroom, where she taught the rest of the school year. However, the following year, she worked as a substitute and took maternity leave for a portion of time, and did work the minimum 75 percent of the school year to earn credit as a probationary employee. Her seniority date is therefore correct.

18. Respondents Davis-Tate, Boyer, McKay, Ketchell, Ribado, Wolf, all of whom hold multiple subject credentials, testified that they possessed sufficient coursework in English, Art, English and Social Studies, English and Social Studies, History, and Sociology, respectively, for the District to certify them pursuant to section 44263 and to assign them to classes more junior employees were retained to teach. They point out that the statute does not contain a “need” requirement and that during the 2008-2009 school year the Governing Board adopted resolutions pursuant to section 44263 to authorize a teacher with a multiple subject credential to teach Art and Drama at Mojave High School.

19. Respondents Boyer, Brunner, Davis-Tate, Ketchell, McKay, Oakley, Ribado, and Wolf established that they are certificated and competent to render services in the vacant elementary school positions set forth in factual finding number 12 and that they are senior to other employees who were also given layoff notices.

20. The District did not retain any certificated employee junior to Respondent Ball to render a service which she is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 20. However, the Foods service consists of only a .5 FTE and not 1 FTE.

4. Cause exist to terminate Respondent Ball's .5 FTE assignment in Foods, by reason of factual finding numbers 1 through 12, 14, and 20, and legal conclusion numbers 1 through 3.

5. The number of certificated employees to be given final layoff notice depends on the service reductions. As Section 44955, subdivision (b) states, “[w]henver 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 become necessary to decrease the number of permanent employees of 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. . . .” (Emphasis added.) In this case, the Governing Board has reduced or discontinued particular kinds of services that account for 26.5 FTE. Inasmuch as there are 22 vacant positions, the District must make the necessary “assignments and reassignments in such a manner that employees shall be retained to render any service from which their seniority and qualifications entitle them to render.” (Ed. Code, § 44955, subd. (c).)

The District concedes that the Respondents must be given preference for the 22 positions, but argues that the collective bargaining agreement prevents reassignment into the vacant positions. However, even if the contract requires such result, the courts have made clear that provisions of a collective bargaining agreement must yield to contrary provisions of the Education Code. (*San Mateo City School District v. Public Employment Relations Board* (1983) 33 Cal3d 850, 864-66; *Raven v. Oakland Unified School District* (1989) 213 Cal. App.3d 1347 (1989); *United Steelworkers of America, Local 8599, AFL-CIO v. Board of Education of the Fontana Unified School District* (1984) 162 Ca.App.3d 823.

Accordingly, the District must retain any Respondent who has the seniority and qualifications to fill any of the 22 vacant positions.

6. Cause does not exist to terminate the services of Respondents Boyer, Brunner, Davis-Tate, Ketchell, McKay, Oakley, Ribando, or Wolf because they are certificated and competent to render services in the vacant positions set forth in factual finding number 12 and they are senior to other employees who were also given layoff notices.

7. Respondents Davis-Tate, Boyer, McKay, Ketchell, Ribado, and Wolf also argue that they should be retained to teach pursuant to section 44263 certifications. The statute permits, not requires, a District, with the consent of the employee, to make a limited assignment for up to one year, based on the employees’ college coursework. In any event, any such discretionary appointment requires the filing of a Declaration of Need, in which, among other things, the District must set forth its inability to recruit qualified applicants. (Cal. Code of Regs., tit. 5, § 80026.) The Declaration of Need has not been filed and Respondents cannot require the Governing Board to issue limited assignment permits to them. Accordingly, Respondents argument is unpersuasive.

8. Cause does not exist to terminate .5 FTE of Respondent Ball's assignment because Home Economics services were not reduced or discontinued, and, consequently, she is senior, certificated, and competent to continue rendering those services for the 2009-2010 school year.

ORDER

1. The Accusation is dismissed with respect to Respondents Boyer, Brunner, Davis-Tate, Ketchell, McKay, Oakley, Ribando, and Wolf.

2. The Accusation is sustained in part with respect to Respondent Ball and the District may notify her that .5 FTE of her services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings