

**BEFORE THE BOARD OF EDUCATION OF
THE MOUNTAIN EMPIRE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:
Certificated Employees:

Amborn, Piper
Barboza, David
Doane, Michael
Macrorie, Tanya
Ponce, Leticia
Robbins, Angie
Sandford, Beth
Sandoval, Briana
Sullivan, Rebekah
Webster, Koby
Wheaton, Kristina
Taylor, Deborah

And Temporary Employees:

Lindsey, James
Richter, Robin
Ward, Cheryl

Respondents.

OAH No. L 2008030394

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on May 2, 2008, in Lakeside, California.

William A. Diedrich, Esq., represented the Mountain Empire Unified School District (District).

Jon Y. Vanderpool, Esq., represented all of the Respondent teachers (Respondents).

The District served a Notice of Layoff on each of the teacher Respondents. At the conclusion of the hearing, the District withdrew the Accusation as to Respondents Macrorie

and Robbins. Therefore, Respondents Macrorie and Robbins are retained as employees. Additionally, Respondent Taylor has a more junior seniority date than some or all of the remaining Respondents. However, at the hearing all of the remaining Respondents decided to not "bump" Respondent Taylor. Thus, she is also retained as an employee.

FACTUAL FINDINGS

1. Donald G. Haught, Interim Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. The parties, by and through their counsel, stipulated that all pre-hearing jurisdictional requirements have been met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 5, 2008, pursuant to Education Code sections 44949 and 44955, the Board of Education of the District (Board) issued a written Resolution which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. On or about March 15, 2008, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below.

6. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2008-09 school year:

<u>Particular Kind of Service</u>	<u>Discontinuance or Reduction</u>	<u>Full time Equivalents</u>
Classroom teaching services, grades kindergarten through 6	Reduction	5.0

Continuation school teaching services	Reduction	1.0
Independent study teaching services	Reduction	1.0
Spanish teaching services (Spanish III)	Reduction	0.2 (1/5 FTE*; one section)
Study hall teaching services, grades 9 through 12	Reduction	0.2 (1/5 FTE*; one section)
Peer tutoring teaching services, grades 9 through 12	Reduction	0.2 (1/5 FTE*; one section)
Sports teaching services, grades 7 and 8	Reduction	1/6 FTE* (one section)
English enrichment teaching services, grades 7 and 8	Reduction	1/6 FTE* (one section)
Math projects teaching services, grades 7 and 8	Reduction	1/6 FTE* (one section)
	SUBTOTAL FTE's:	8 3/30ths*
Categorically funded services as follows**:		
Classroom teaching services, grades kindergarten through 6 (in addition to the above)	Discontinuance	1.0
Reading specialist pullout services, grades kindergarten through 6	Discontinuance	0.5
Algebra teaching services (grade 9)	Discontinuance	0.6
	SUBTOTAL OF CATEGORICALLY FUNDED FTE's:	2.1 (2 3/30ths)*
	TOTAL FTE's	10 1/5 th

* The difference as to fractions results from the differences in the number of periods at the secondary school sites in the school District. The District administration is authorized and directed, as the Resolution is applied, to round the one-sixth up to the one-fifth, and to reduce the one-fifth to one-sixth, if necessary in the process of bumping/displacement rights.

** Inclusion of categorically funded services within the Resolution is not intended to grant those individuals who are impacted any rights greater than provided by law, nor to nullify any provisions within each impacted individual's employment contract, nor to supersede any other Resolution by this Board to release or otherwise terminate the services of any impacted individual.

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but rather, constituted a proper exercise of discretion. The District presently faces an \$800,000 budget deficit. The District's annual budget is presently 16.5 million dollars. Thus, the deficit equates to approximately five percent of the District's annual budget. The District employees approximately 100 teachers at twelve schools. Thus, the 10 positions at issue equate to approximately 10 per cent of the workforce. The District established that this reduction is necessary because some categorically funded services can not be reduced by law and 85 percent of the annual budget is expended on personnel. Further, the District established that it plans to also reduce its administrative workforce and also its temporary employee workforce.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board.

9. The Board properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees as of March 15, 2008. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636.) The District further stated its intent to withdraw layoff notices to the most senior teachers laid off if additional attrition occurs.

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable "tie-breaker" criteria when necessary.

"Skipping" Respondent Taylor

11. The District retained, or "skipped", Respondent Taylor because she works at Cottonwood Community Day School, a school for at-risk students. A teacher must consent to work at this type of challenging school. At the hearing, all qualified Respondents were offered the opportunity to "bump" Respondent Taylor and obtain her job. All Respondents declined. Thus, Respondent Taylor is not subject to layoff and is retained.

Temporary Teachers

12. Respondents Richter, Ward, and Lindsey are temporary employees and are subject to layoff.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.
2. Each of the services set forth in Findings 5-7 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.
3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.
4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code Section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, as requested and listed by the District in exhibit 10, are as follows:

Amborn, Piper
Barboza, David (4/5 FTE)¹
Doane, Michael
Lindsey, James
Ponce, Leticia (4/6 FTE)
Richter, Robin
Sandford, Beth
Sandoval, Briana
Sullivan, Rebekah (2/6 FTE)
Ward, Cheryl
Webster, Koby
Wheaton, Kristina

¹ As indicated, some Respondents are only to be laid-off for a percentage of their employment, as indicated next to their names, where applicable. For example, Respondent Barboza is subject to lay-off for four-fifths of his employment.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2008-2009 school year.

Dated: May ___, 2008.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings