

BEFORE THE  
BOARD OF EDUCATION  
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
Involving the Respondents Identified in  
Appendix A.

OAH No. 2012030407

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 9, 2012, in Yucaipa, California.

Mark Thompson and David Robinette, Atkinson, Andelson, Loya, Ruud & Romo, represented Yucaipa-Calimesa Joint Unified School District (District).

Kent Morizawa, Reich, Adell, & Cvitan, represented all of the respondents except for Susan Reddick who did not appear.

During the hearing the District proposed rescinding the layoff notice issued to Gina Aten and the preliminary layoff notices issued to Susan Reddick and Margaret Stevenson. Based upon the findings contained herein those accusations are withdrawn and their layoff notices rescinded.

Oral and documentary evidence was received and the matter was submitted on April 9, 2012.

**FACTUAL FINDINGS**

*Jurisdiction*

1. Melissa Moore, made and filed the accusation in her official capacity as the District's Assistant Superintendent, Human Resources.

2. Respondents are identified on Appendix A, attached hereto and by this reference incorporated herein. All respondents are certificated employees of the District.

3. On February 28, 2012, the Board of Education of the Yucaipa-Calimesa Joint Unified School District (Board) adopted a resolution which reduced particular kinds of services and directed the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified 35 FTEs to be reduced.

#### *Bump Analysis*

4. The Board also implemented a bump analysis to determine which employees could bump into a position being held by a junior employee. The resolution defined “competency” pursuant to Education Code sections 44955, subdivision (b), 44956, and 44957 for the purposes of bumping as “(1) possession of a valid credential and Highly Qualified status under NCLB in the relevant subject matter area(s); an appropriate EL authorization if required by the position; (3) to bump a single subject credential holder in a secondary assignment, an appropriate single subject credential; (4) to bump the holder of a Specialist Instruction – Reading & Language Arts credential, an appropriate Specialist Instruction – Reading & Language Arts credential; (5) any training and experience necessary to meet the job requirements of specialized positions; and (6) for specialty positions such as Counseling, School Psychologist, Community Day School, Advance placement, and secondary Designated Dual Assignment, at least one (1) complete year of District experience in the same assignment within the last five (5) years.”

At issue in this hearing were the reading certification and reading specialist certifications. Assistant Superintendent Moore testified that a Reading Specialist credential takes approximately twice as long to achieve as a Reading Credential and that the latter is required to obtain the former. Although Moore’s testimony established that the District correctly applied the Board’s bumping criteria, confusion arose because the District uses the term “Reading Specialist” as the job title and it appeared that employees with a Reading Credential were being retained over more senior employees with a Reading Specialist credential when that was not the case. In order to allay any future confusion, the District is encouraged to rename that position.

#### *Layoff Determinations*

5. Consistent with the Board’s Resolution, the District identified certificated employees for layoff. The decision to reduce or discontinue a particular kind of service is matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district’s decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

6. The District considered attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not

considered. The District must issue final layoff notices before May 15, and when it does so it will take into account any additional attrition that has occurred. After that, further attrition will allow the District to rehire laid off employees. A question arose during the hearing regarding the vacancies created by the attrition which has occurred since March 15, but the district is not required to consider those vacancies for purposes of this hearing. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627.)

7. On or before March 15, 2012, the District timely served on Respondents a written notice that the Superintendent had recommended that their services would be terminated at the close of the current school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

8. The District also issued precautionary layoff notices to ensure that it could reduce its force in sufficient numbers as ordered by the Governing Board. There was nothing improper in the District taking this precaution.

9. An accusation was served on each respondent. No evidence was introduced demonstrating that all prehearing jurisdictional requirements were not met.

#### *Davina Correa Issue*

10. Davina Correa possesses the seniority, competence and credential to “bump” Gina Aten, an employee who also received a layoff notice. However, Correa did not want to teach middle school math at this time and elected to execute a stipulation waiving her right to bump Aten. Accordingly, Correa will be noticed for layoff and Aten will be retained.

#### *Final Layoff List*

11. The District is not retaining any employee with less seniority to perform a service that any respondent is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2012-2013 school year. The cause relates solely to the financial welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The District has identified the certificated employees who are providing the particular kinds of services that the Board directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2012, that their services will not be required by the District for the school year 2012-13.

#### RECOMMENDATION

It is recommended that the Board give notice to the respondents whose names are set forth below that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2012-2013 school year.

DATED: April 22, 2012

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MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

### RESPONDENTS

The following certificated personnel will receive a layoff notice:

<b>LAST</b>	<b>FIRST</b>
Anguiano	Keri
Bay	Brittany
Bernier	Kristen
Bickford	Tara
Burton	Jennifer
Caballero	Barbara
Casey	Rebecca
Correa Davina	
Correll	Kimberly
Cross	Traci
Davis	Brittany
DeAntonio	Paula
Evans-Holmes	Kimberly
Farritor	Crystal
Flores	Margaret
Gilsen	Lindsey
Kumanski	Melissa
Lehr	Esther
Majors	Jennifer
Martin	Priscilla
Miller	Kathleen
Monarrez	Stacey
Mullen	Krestin
Ostronic	Janelle
Pennino	Kellie
Ramirez	Brianna
Schoonover	Tamara
Spencer	Michelle
Sullivan	Amy
Young	Sherry
Zanone	William