

BEFORE THE  
GOVERNING BOARD OF THE  
MORENO VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

Certificated Employees Listed in Exhibit A,

Respondents.

OAH No. L2004030272

**PROPOSED DECISION**

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California on April 21, 2004.

Mark W. Thompson, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Moreno Valley Unified School District.

Marianne Reinhold, Esq. of Reich, Adell, Crost & Cvitan, represented Respondent Mary Keaton.

The matter was submitted on April 26, 2004.<sup>1</sup>

**FACTUAL FINDINGS**

1. On March 10, 2004, Nicholas D. Ferguson, Ed.D., Superintendent (Superintendent), Moreno Valley Unified School District (District), made and filed the Accusation in his official capacity.

2. Respondents listed in Exhibit A are probationary or permanent certificated employees of the District.

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<sup>1</sup> The record remained open for the parties to file written closing argument simultaneously. The documents were filed on April 26, 2004. The Superintendent's Closing Argument and Post-Hearing Brief was marked Exhibit 12. Respondent Mary Keaton's Post-Hearing Brief was marked Exhibit H. On that date, the record was closed, and the matter was submitted.

Respondent Stacy Ivery did not file a Request for Hearing and/or Notice of Defense and thereby waived her right to hearing.

At the commencement of the hearing, on the District's Motion, without objection by Respondents, the Administrative Law Judge dismissed the Accusation against Respondents Darcel Cannady-Jamerson, Cecilia Castino, Gretchen Daley, Michelle Gomez, Christine McCoy, Annie Nguyen, David Patterson, Bryn Ann Pearson, Kristin Shinley and Lisa Woodward.

3. In accordance with Education Code sections 44949 and 44955, on February 24, 2004, the Superintendent notified the Governing Board of the Moreno Valley Unified School District (Board) and Respondent Mary Keaton that he recommended that notice be given to Respondent Mary Keaton that her services would not be required for the ensuing school year.

On March 9, 2004, the Board adopted Amended Board Resolution No. 2003-04-115, In the Matter of the Reduction or Elimination of Certain Particular Kinds of Services for the 2004-05 School Year, reducing or eliminating particular kinds of services for the ensuing school year.

On or before March 11, 2004, the District served Respondent Mary Keaton with written notice, in accordance with Education Code section 44949. The written notice of termination stated that Respondent Mary Keaton's services would not be required for the 2004-05 school year and set forth the reasons for the recommendation. The recommendation that Respondent Mary Keaton be terminated from employment was not related to her competency as a teacher. In addition, the notice advised Respondent Mary Keaton of her right to hearing, that the request for hearing must be delivered to the Board of Education, in care of Dr. Nicolas D. Ferguson, Superintendent, on or before March 31, 2004, not less than seven days after the date the notice of termination was served upon her, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

Respondent Mary Keaton filed a Request for Hearing and Notice of Defense to determine if there was cause for not reemploying her for the ensuing year.

An Accusation was timely served on Respondent Mary Keaton.

4. All prehearing jurisdictional requirements were satisfied.

5. The Board took action to reduce or eliminate the following particular kinds of certificated services commencing in the 2004-05 school year:

Particular Kind of Service

Full-Time Equivalent

Magnet School Assistance Program

Coordinator

1.0 FTE

Magnet School Assistance Program Teacher

on Assignment	10.0 FTE
9 – 12 Keyboarding	2.0 FTE
Fine Arts	1.0 FTE
Business	1.0 FTE
Grant Counselor at elementary level	6.0 FTE
Drug Prevention and School Safety Specialist	2.0 FTE

The proposed reductions total 23.0 full-time equivalent (FTE) positions.

6. The services were “particular kinds of services” that could 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 constituted a proper exercise of discretion.

7. The reduction or discontinuance of particular kinds of services related to the welfare of the schools and its pupils and was necessary to decrease the number of certificated employees of the District, as determined by the Board.

8. The District has considered all known attrition, including resignations and retirements, in determining the actual number of necessary layoff notices to be delivered to its employees.

9. Respondent Mary Keaton contends that James Long (Long) and Linda Burkhart (Burkhart) are junior to her and are being retained to perform services for which she is certificated and competent to render.

Respondent Mary Keaton’s first date of paid service is October 29, 1984. She holds a Teaching Credential that authorizes her to teach data processing limited to keypunch, clerical/office occupations, issued June 13, 1984, valid for life, and that is on file with the District. The foregoing credential does not authorize her to teach computer classes. In addition, she holds an Instructor Credential, issued June 29, 1979, that authorizes her to teach computer and related technologies, office services and related technologies, in grades 11 through 14. Tillie Soliz (Soliz), the District’s employee who, among other things, maintains credentials in the District’s personnel file, testified that Respondent Mary Keaton’s Instructor’s Credential is not on file with the District. She explained that, if the Instructor’s Credential had been on file with the District, it would include the stamp to indicate that it is registered with Riverside County Office of Education; it does not. Respondent Mary Keaton did not remember if she filed this credential with the District. Given the foregoing, insufficient evidence was offered to establish that Respondent Mary Keaton’s Instructor’s Credential is on file with the District.

For the past five years, at Canyon Springs High School, Respondent Mary Keaton has taught a computer course; the title has changed three times; initially it was “Beginning Computers,” thereafter “Introduction to Computers” and finally “Computer Applications I.” The syllabus states that the course includes Keyboarding, Microsoft Word, Microsoft Access and Microsoft Excel. At no time did any District administrator personally verify the course

content but relied on statements from the site administrators. Despite the designation of "Beginning Computers," "Introduction to Computers" or "Computer Applications I" on the Master Calendar and the content of the course syllabus for the past five years, Soliz testified that she believed that Respondent Keaton was teaching a keyboarding class.

Since April 2003, Respondent Mary Keaton has been on medical leave and has not returned to work. For second semester of the 2003-04 school year, an administrator at Canyon Springs High School assigned her to teach a Web Page Design class and requested that she prepare the syllabus for this course; she did so. District administrators notified Canyon Springs High School administrators that her credential does not authorize her to teach this class. Still on medical leave, Respondent Mary Keaton has not returned to her position, did not teach the foregoing class and a substitute teacher has been teaching this class.

Long is being retained to teach "Computer Applications I" (0.8 FTE). His first date of paid service is August 28, 1996. He holds a Single Subject, Business credential that authorizes him to teach this course. Burkhart is being retained to teach "Computer Applications I" (0.2 FTE). Her first day of paid service with the District is July 8, 2002, and she holds a Preliminary Single Subject Credential in Business, with a Supplemental Credential in Math that authorizes her to teach the computer course.

The District is only required to consider credentials that Respondent Mary Keaton had on file by the time of the March 15 notice deadline. *Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App.3d 689. Insufficient evidence was offered to establish that Respondent Mary Keaton's Instructor's Credential was on file with the District on or before March 15, 2004. The credential that she had on file does not authorize Respondent Mary Keaton to teach the computer class. Though junior to respondent Mary Keaton, Long and Burkhart are not being retained to perform services for which she is certificated and competent to render.

10. No certificated employee junior to any Respondent has been retained to perform any services that any Respondent was certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

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 vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

3. Cause exists under Education Code sections 44949 and 44955 for the Moreno Valley Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. *Lacy vs. Richmond Unified School District* (1975) 13 Cal. 3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers vs. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 vs. Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

5. No employee with less seniority than any Respondent is being retained to render a service which any Respondent is certificated and competent to render.

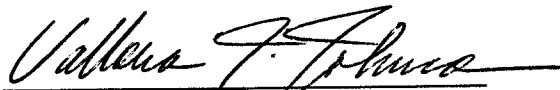
#### ORDER

1. The Accusation against respondents Darcel Cannady-Jamerson, Cecilia Castino, Gretchen Daley, Michelle Gomez, Christine McCoy, Annie Nguyen, David Patterson, Bryn Ann Pearson, Kristin Shinley and Lisa Woodward is dismissed.

2. The Accusation served on Respondents Mary Keaton and Stacy Ivery is sustained. Notice shall be given before May 15, 2004 that their services will not be required for the 2004-05 school year because of the reduction or discontinuance of particular kinds of services as indicated.

Notice shall be given in inverse order of seniority.

DATED: May 6, 2004

  
VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

**MORENO VALLEY UNIFIED SCHOOL DISTRICT**

**EXHIBIT "A"**

The following certificated personnel will receive a layoff notice:

Darcel Cannady-Jamerson  
Gretchen Daley  
Mary Keaton  
Christine McCoy  
Annie Nguyen

The following certificated personnel will receive a precautionary layoff notice:

Cecilia Castino  
Michelle Gomez  
Stacy Ivery  
David Patterson  
Bryn Ann Pearson  
Kristen Shinley