

BEFORE THE GOVERNING BOARD
OF THE
MOJAVE UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

DONALD DEPUTY,

Respondent.

OAH No. 2008040404

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Mojave, California, on May 5, 2008.¹

Peter C. Carton, Attorney at Law, Schools Legal Service, represented complainant Larry Phelps, Superintendent of the Mojave Unified School District.

Respondent Donald Deputy represented himself.

The matter was submitted on May 5, 2008.

FACTUAL FINDINGS

1. Larry Phelps made and filed the accusation in his official capacity as Superintendent of the Mojave Unified School District.
2. Respondent is a certificated employee of the district.
3. On March 11, 2008, the district's governing board adopted Resolution No. 031108-2 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action (PKS resolution).
4. On or before March 15, 2008, Superintendent Phelps gave written notice to respondent of the recommendation that his services will not be required for the 2008-2009 school year. The notice set forth the reasons for the recommendation.
5. Respondent filed a timely request for hearing to determine if there is cause for terminating his services for the 2008-2009 school year.

¹ This matter was originally set for hearing on May 1, 2008, and then continued to May 5.

6. An accusation was served on respondent. Although it appears that respondent did not file a notice of defense, he was granted a hearing. All prehearing jurisdictional requirements have been met.

7. In its PKS resolution, the governing board took action to reduce the following particular kinds of service for the 2008-2009 school year:

<u>Particular Kinds of Service</u>	<u>FTE</u>
K-7 Elementary Regular Classroom Teaching Positions (Self-Contained)	5
Continuation School Teaching Positions	1
Woods Teaching Position	1
Director of Educational Services Position	1
Vice Principal Positions	2
Teachers on Special Assignment Positions	2
Instructional Technology Specialist Position	1
Director of Special Education Position	1
Administrative Assistant Position	(Non-certificated)

8. The total reduction of certificated FTE positions in the PKS resolution is 14.

9. Respondent is the least senior employee in the district. His first paid date of service to the district is January 29, 2008.

10. Respondent contends that he should not be laid off when the district is retaining teachers who are not as experienced, as well-trained, or as well-credentialed as he is. Before he joined the district, respondent taught for eight years in the Palmdale School District. He participated in the BTSA program (Beginning Teacher Support and Assessment Project) as early as 2000, and he possesses a Clear Multiple Subject Teaching Credential, which he has held since 2003.

Respondent's accomplishments are not questioned. However, when a district proposes to lay off certificated employees due to the reduction of particular kinds of service, state law requires (with certain exceptions not relevant here) that the employees must be

terminated in the inverse of the order in which they were employed by the district. (Ed. Code, § 44955, subd. (c).)

11. No permanent or probationary employee with less seniority is being retained to render a service which respondent is certificated and competent to render.

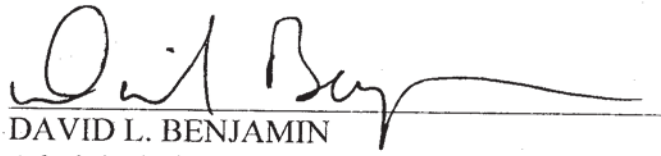
LEGAL CONCLUSIONS

Cause for the elimination of 14 FTE exists in accordance with Education Code sections 44949 and 44955. Cause further exists to give respondent notice that his services will be eliminated for the 2008-2009 school year. This cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

The district may give notice to respondent Donald Deputy that his services will not be required for the 2008-2009 school year.

DATED: May 6, 2008


DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings