

BEFORE THE  
GOVERNING BOARD  
OF THE  
DESERT SANDS UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Employment Status of  
116.6 Full Time Equivalent Certificated  
Employees,

Respondents.

OAH No. 2008030255

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Indio, California, on April 24, 2008.

Candace M. Bandoian, Attorney at Law, represented the Desert Sands Unified School District.

Carlos R. Perez, Attorney at Law, represented respondents Elizabeth Aceves-Garcia, Christopher Aguilar, Nicole Blakely, Bridget Burden, Erin Brande, Brenna Carnt, Astria Cota, Darcie Cotton, Michael Daugherty, Amy Diaz, Sean Dougherty, Vanessa Encinias, Jean Emerson, Luz Franco, Jared Goldman, Kimberly Jenkins, Kendra Kamp, Heidi Knigge, Karl Krebs, Erica McDonnell, Jamie McDuffie, Terra Manthey, Robin Markson, Tiffany Martin, Maria Mendoza, Rosa Mesa, Lori Moore, Julia Morgan, Cynthia Mulvey, Paul Murray, John Ohrenstein, Jorge Pareja, Stephen Peterson, Kenneth Petronis, Robert Quintana, Shirley Ramsay, Sheryl Rodriguez, Steven Royal, Wendy Rush, Heather Solis, Phillip Solis, Michelle St. Louis, Christina Taylor, and Ashley Waggle.

No appearance was made by or on behalf of respondents Carol Acker, Timothy Boyajian, Mark Brenner, Kristine Cattedra, Victoria Dougherty, Steven Eelkema, Jennifer Fanton, Eileen Flanary Jones, Tara Grover, George Ihara, James Hutcheson, Linda Knight, Tamara Lindsay, Julia Morgan, Kathryn O'Dowd, Jacelyn Olson, Cilvia Ornelas, Jean Ornelas, Michelle Ostendorf, Belma Pera, Angella L. Plowman, Briana Samuelson, Brooke Shapter, Laura Spradlin, Michael Sugarman, Adela Tili, and Clinton Vallie.

The matter was submitted on April 24, 2008.

## FACTUAL FINDINGS

### *The Desert Sands Unified School District*

1. The Desert Sands Unified School District (the District) is a public school district headquartered in La Quinta, California. The District serves most of Indio, La Quinta, Palm Desert, Indian Wells, Bermuda Dunes, and portions of Rancho Mirage. It provides services to approximately 28,500 students from Kindergarten through 12<sup>th</sup> grades. The District maintains and operates 20 elementary schools, seven middle schools, three comprehensive high schools, two alternative high schools, and several other programs. It employs nearly 1,500 certificated employees.

2. The District is governed by an elected five member Board of Education (the Board). Four rotating appointed students assist the Board.

The Board's Chief Executive Officer is Dr. Sharon McGehee, who is the Superintendent of Schools. Jon P. Gaffney is the District's Assistant Superintendent, Personnel Services.

### *The Fiscal Crisis – Economic Layoffs*

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops. California's current economic crisis has made the budgeting problems far more complicated than they were before.

A school board's obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given to certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority.

A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees



possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

#### *The District's Response*

4. In early 2008, the District's administration (as well as the administrators of most other school districts) became aware of the State of California's massive economic problems. As a result of the financial crisis, the District projected a budget deficit of about \$13 million for the 2008-2009 school year. The District was required to look into ways to balance its projected budget shortfall.

Under the direction of Dr. McGehee and Assistant Superintendent Gaffney, the District's administrative staff prepared a recommendation that was presented to the Board on March 4, 2008, concerning the reduction and elimination of particular kinds of services.

On March 4, 2008, the Board passed Resolution No. 15/2007-2008, which provided that certain services would be reduced or eliminated for the 2008-2009 school year and that certificated employees who possessed highly needed qualifications should be retained in the 2008-2009 school year regardless of seniority. The resolution directed the Superintendent to determine which employees' services might not be required for the 2008-2009 school year and to give notice to those employees as required by law.

5. Exhibit A to Resolution No. 15/2007-2008 (Reducing or Eliminating Certain Certificated Services for the 2008-2009 School Year) provided:

Service	2007-2008 FTEs	2008-2009 FTEs	FTE <sup>1</sup> Reduction
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#### **ELEMENTARY EDUCATION**

Elementary Class Size Reduction, Grades K - 3	70.0	0.0	-70.0
Elementary Counselors	16.0	0.0	-16.0
Elementary Music	0.6	0.0	-0.6
<b>Subtotal – Elementary Program</b>	<b>86.6</b>	<b>0.0</b>	<b>-86.6</b>

#### **SECONDARY EDUCATION**

Secondary Class Size Increase Student to Teacher Ratio 29.0 to 29.5	16.0	0.0	-16.0
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<sup>1</sup> FTE stands for "full time equivalent."

Middle School Counselor	1.0	0.0	-1.0
Middle School Music	0.5	0.0	-0.5
<b><u>Subtotal – Secondary Program</u></b>	<b><u>17.5</u></b>	<b><u>0.0</u></b>	<b><u>-17.5</u></b>

## SPECIAL EDUCATION

Preschool Non-severe Special Day Classroom (SDC)	1.0	0.0	-1.0
Preschool Severe SDC	1.0	0.0	-1.0
Head Start SDC	0.5	0.0	-0.5
<b><u>Subtotal – Secondary Program</u></b>	<b><u>2.5</u></b>	<b><u>0.0</u></b>	<b><u>-2.5</u></b>

<b>Project Facilitators and Teachers</b>	10		-10.0
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<b>Total FTE Reductions – All Programs</b>			<b><u>-116.6FTEs</u></b>
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6. Exhibit B to Resolution No. 15/2007-2008 (Reducing or Eliminating Certain Certificated Services for the 2008-2009 School Year) provided:

“The services of certificated employees who possess credentials and qualifications needed for the following programs shall be retained in the ensuing 2008-2009 school year regardless of seniority:

1. All Regular Special Education Programs and Services excluding services limited to Early childhood Special Education Programs
2. Fully Credentialed and Authorized Single Subject Credentials in the following areas:
  - a. English
  - b. Mathematics
  - c. Science
  - d. Social Science
  - e. Business
  - f. Foreign Language



- g. Music
- h. Art
- i. Home Economics

3. Individuals who possess a Reading Specialist Credential.”

7. The administrative staff reviewed the District’s seniority list, a document listing an employee seniority ranking number (from most recently hired extending to the most senior employee, from 1 through 1424); the employee’s name associated with that rank; that employee’s first date of paid service with the District in a probationary capacity; whether the employee was a first year probationary employee, a second year probationary employee, or a tenured employee; the employee’s teaching credential; and whether the employee had any special certifications such as CLAD (Crosscultural, Language and Academic Development) Certificate.

The District’s seniority list was sent to each school site in February 2008, and employees were invited to make any changes or corrections to the list. The instructions accompanying the seniority list and the request that it be reviewed did not specify that the updated seniority list might be used by the District for purposes of issuing preliminary layoff notices, but the possibility of layoffs was well known within the District and there was no evidence that any employee suffered prejudice by the lack of information related to the possible use of the seniority list. Before issuing the recommendation to serve preliminary layoff notices, the District’s seniority list was revised to accurately reflect new information it received and verified, and all known positive attrition including resignations, retirements and probationary non-reelects was considered to determine the number of layoff notices that needed to be served and upon whom they should be served.

8. On or before March 15, 2008, each certificated employee who is party to this proceeding was given notice that the Superintendent had recommended that his or her services with the District would be terminated at the conclusion of the current school year and that his or her services would not be needed by the District for the upcoming 2008-2009 school year. Each employee was notified of the right to a hearing. The preliminary notices were personally served on employees by the site supervisors, except when an employee was not at the site; for those employees not on site, notices were served by regular mail and by certified mail, return receipt requested. Numerous employees served with preliminary notices timely requested an administrative hearing. The accusation and other required jurisdictional documents were timely served on those employees, most of whom filed a notice of defense. All jurisdictional requirements were met.

### *The Administrative Hearing*

9. On April 24, 2008, the record in the administrative hearing was opened. The District gave an opening statement. Jurisdictional documents were presented, the District dismissed numerous accusations, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

10. The District dismissed the accusations against respondents Clinton Vallie, Veronica Fernandez, Carol Miller, Allison Hillman, Maria Angie Tapia, Christina Taylor, Megan Weitz, Whitney Rosam, Justin Martin, Michael Walsh, Christa Aubry, John Mook, Tiffany Black, Angela Borgen, Lisa Kenmuir, Verdlee Stevenson, Jeanette Rudolph, Nicole Phillips, Meredith Choate, Nancy Chin, Julia Morgan, Richard Keene, Jean Emerson, Theresa McFarland, Jennifer O'Donnell, Amy Pollock, Helen Chang, Karen Tenenbaum, Kira Zabrowski, Nicole Faay Dean, Kristin Walker, Caroline Dourley, Omar Castro, Paul Gilbert, Michael Miller, Cynthia Mulvey, and Carol Carey.

### *The Particular Kinds of Services*

11. The services identified by the Board for reduction or elimination in Exhibit A (Factual Finding 5) were particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The cause for the layoff related to the welfare of the District and the students it serves.

No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

### *The Seniority List*

12. The District maintains a seniority list, a living document that is updated as new employees are hired and as other employees retire or resign. The method by which the District attempted to maintain an accurate seniority list in this matter was described in Factual Finding 7.

13. The amended seniority list finally used by the District in this layoff proceeding was accurate, except for employee Paul Murray, whose correct seniority date was September 10, 2007, and not October 10, 2007, as originally set forth. Corrections were made to reflect that employee's proper seniority date.



## *The District's Layoff Procedure*

14. According to Assistant Superintendent Gaffney, the District determined there was a need to retain junior employees who possessed certain skills or capabilities which their more senior counterparts lacked in order to carry out the District's educational mission. On that basis, the District decided to skip: (1) All employees providing regular Special Education programs and services, excluding services limited to early childhood Special Education programs; (2) employees who were fully credentialed with credentials authorizing them to teach a single subject in English, Mathematics, Science, Social Science, Business, Foreign Language, Music, Art, or Home Economics; and (3) individuals who possessed a Reading Specialist Credential. The District has a high need to retain these individuals. The District sent "skipping" letters to these employees.

The District then looked at the Board's resolution and determined who the most junior employees were who were providing the particular kinds of services that were scheduled to be reduced or eliminated under the resolution. For these employees, the District attempted to determine if an employee could "bump" a more junior employee.<sup>2</sup> The Board adopted a tie-breaking procedure, a method by which employees having the same seniority date could be ranked for layoff purposes, but the use of the tie-breaking procedure was not necessary to resolve any dispute in this matter. Through this elimination process, the District determined which employees should receive preliminary layoff notices.

Preliminary layoff notices were sent to 130 employees. The District sent notices to more employees than the number of FTE reductions because many employees had the same seniority date (August 31, 2006) and had same rank under the tie-breaker. When the budget problems became clearer, the District retained these (and several more senior) employees. The District rescinded several layoff notices that were sent to employees who established that information contained in the seniority list was incorrect.

Ultimately, no junior employee was retained to provide services a more senior employee was available to provide unless the junior employee was "skipped" in accordance with the Board's resolution.

## 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 as to those certificated employees identified herein.

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of

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<sup>2</sup> 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 holds that position.



students. The number of terminations through PKS reductions depends totally upon the district's decision as to how many services to reduce. It is within a board's discretion to determine the extent to which it will reduce a particular service. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by eliminating certain types of service or by reducing the number of district employees who perform such services. A school board's decision to reduce or discontinue a particular kind of service is not unfair or improper simply because the school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute.

4. For employees hired on the same date, Education Code section 44955, subdivision (b) provides:

"As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof."

5. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the "basis of the needs of the district and its students." Senior employees are given "bumping" rights and will not be terminated if junior employees are being retained who render services which the more senior employee is certificated and competent to render. A district may move a junior employee upward from the bottom of a seniority list, "skipping" over more senior employees, so long as the junior employee being retained is certificated and competent to render services which more senior employees are not. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

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 holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

6. In accordance with the District's representations, cause exists to dismiss the accusations filed against respondents Clinton Vallie, Veronica Fernandez, Carol Miller, Allison Hillman, Maria Angie Tapia, Christina Taylor, Megan Weitz, Whitney Rosam, Justin Martin, Michael Walsh, Christa Aubry, John Mook, Tiffany Black, Angela Borgen, Lisa Kenmuir, Verdlee Stevenson, Jeanette Rudolph, Nicole Phillips, Meredith Choate, Nancy Chin, Julia Morgan, Richard Keene, Jean Emerson, Theresa McFarland, Jennifer O'Donnell, Amy Pollock, Helen Chang, Karen Tenenbaum, Kira Zabrowski, Nicole Faay Dean, Kristin



Walker, Caroline Dourley, Omar Castro, Paul Gilbert, Michael Miller, Cynthia Mulvey, and Carol Carey.

This conclusion is based on Factual Findings 9 and 10.

7. As a result of the District's lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents who were served with a preliminary layoff notice who are not identified in Legal Conclusion 6 that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

#### RECOMMENDATION

It is recommended that the Board give notice to all respondents previously served with a preliminary layoff notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year, except for those respondents identified in Factual Finding 10 and Legal Conclusion 6.

DATED: 4/25/08



JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings