

BEFORE THE
GOVERNING BOARD
OF THE
RAMONA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009020918

Nicole Brown, Kylee Harris, Ashley Lang,
Emily Maehler, Holly Rivera, Cesar
Rodriguez, Laura Rosenbusch, Susan
Simpson, Tracey Stewart and Jeana Utech,

Respondents.

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Ramona, California on April 30, 2009.

Anthony P. De Marco, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented Complainant Joe Annicharico, Jr., Ph.D., Assistant Superintendent, Human Resources Development, Ramona Unified School District.

Jon Vanderpool, Esq., Tosdal, Smith, Steiner & Wax, represented Respondents Nicole Brown, Kylee Harris, Ashley Lang, Emily Maehler, Holly Rivera, Cesar Rodriguez, Laura Rosenbusch, Susan Simpson, Tracey Stewart and Jeana Utech.

The matter was submitted on April 30, 2009.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Ramona Unified School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," "skipping" and breaking ties between/among

employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Joe Annicharico, Ph.D. made and filed Accusation, dated March 25, 2009, against Respondents Nicole Brown, Kylee Harris, Ashley Lang, Emily Maehler, Holly Rivera, Cesar Rodriguez, Laura Rosenbusch, Susan Simpson, Tracey Stewart and Jeana Utech, in his official capacity as Assistant Superintendent, Human Resources Development (Assistant Superintendent), Ramona Unified School District (District).

2. Respondents are probationary or permanent, certificated employees of the District.

3. The Assistant Superintendent notified the Governing Board of Ramona Unified School District (Board) and Respondents that he recommended that notice be given to Respondents that their services would not be required for the 2009-2010 school year.

On March 9, 2009, the Board adopted Resolution number 2008-09-13 that reduced or eliminated particular kinds of services for the ensuing school year and established skipping and tie-breaker criteria.

Respondents were served on or before March 15, 2009.

The written notice of termination stated that Respondents' services would not be required for the 2009-2010 school year and set forth the reasons for the recommendation. The recommendation that Respondents be terminated from employment was not related to competency. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the Assistant Superintendent's office no later than March 25, 2009 and that the failure to request a hearing would constitute waiver of the right to a hearing.

Respondents filed a timely Request for Hearing.

An Accusation, Notice of Hearing, blank Notice of Defense form, relevant sections of the Education Code and Government Code were served on Respondents in a timely manner.

Respondents filed timely Notices of Defense.

4. All prehearing jurisdictional requirements were satisfied.

5. On March 9, 2009, the Board adopted Resolution number 2008-09-13 and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2009-2010 school year as follows:

Particular Kind of Service or Program (In alphabetical order)	Number of Full Time Equivalent (FTE) Positions for Layoff	Number of Full Time Equivalent (FTE) Positions Positively Reduced through Attrition	Net Total Reduction of Full Time Equivalent (FTE) Positions
Elementary Classroom Teaching Services (Gr. K-6)	6.0	11.2	17.2
English Teaching Services (Gr. 7-8)	1.0	0	1.0
English Teaching Services (Gr.9-12)	0	1.4	1.4
Foreign Language (ASL) Teaching Services (Gr. 9-12)	.80	0	.80
Mathematics Teaching Services (Gr. 9-12)	2.0	0	2.0
School Psychologist Services (GR. K-12)	0	1.0	1.0
Special Education (Mild/Moderate) Teaching Services (Gr. 7-12)	1.0	1.0	2.0
Title I Elementary Teaching Services (Gr. K-6)	0	1.38	1.38
Vocal Music Teaching Services (Gr. 7-12)	.20	0	.20
Total	11.0	15.98	26.98

The proposed reductions totaled 26.98 full-time equivalent (FTE) positions.

6. Prior to hearing, the District rescinded layoff notices previously issued to Respondents Emily Maehler and Susan Simpson.

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

8. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list that contained, among other matters, the teacher's name, seniority date, position/site, status and active credential list.

The seniority date was based on the first date of paid service rendered.¹ A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and who had performed the duties normally required of a certificated employee of the school district was deemed to have served a complete school year as a probationary employee if that individual was employed as a probationary employee for the following school year. The individual was entitled to have that earlier year counted as a year of probationary service. The prior year was “tacked” on for seniority purposes but only one year could be tacked.²

9. The District used the seniority list to develop a proposed order of layoff and “bumping” list to determine the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area that would entitle him or her to “bump” other junior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

10. In compliance with Education Code section 44955, subdivision (b), by adoption of Exhibit “B” to Resolution No. 2008-09-13, dated March 9, 2009, the Board adopted tie-breaker criteria to determine the order of termination of employees with the same seniority date as follows:

“ . . .

1. Persons with preliminary or clear credentials.
2. Persons with preliminary or clear credentials or certificates authorizing services in classes for limited or non-English proficient students’ priority listed as follows:
 - A. Bilingual Cross Cultural Language and Academic Development (BCLAD)
 - B. Cross Cultural and Academic Development (CLAD)
 - C. Language Development Specialist Certificate
 - D. Supplemental Authorization for English as a Second Language
 - E. Specially Designated Academic Instruction in English (SDAIE)
3. Persons with one or more of the following credentials, certificated and/or graduate degrees priority listed as follows:
 - A. Majors in an academic teaching subject possessing more than two teaching Credentials
 - B. Majors in an academic teaching subject possessing two teaching Credentials

¹ Education Code section 44845.

² Education Code section 44918.

- C. Two or more teaching credentials
 - D. Standard Secondary or Single Subject Credential
 - E. Standard Elementary or Multiple Subject Credential
4. Persons with supplemental authorization(s) to their base credential
 5. Persons possessing a doctorate degree in education
 6. Persons possessing a masters degree in education and/or academic teaching subject.
 7. Persons with specialized training/experience in the RUSD/SDSU Math Specialists program
 8. Persons with the most years of teaching experience in current department
 9. Persons with the most years of teaching experience in current grade assignment
 10. Persons with the highest number of completed semester credits/units at an accredited college/university.
 11. Use of the last four digits of the persons social security number with the highest number being the most senior of those with the same date.”

11. As a result of application of the tie-breaker criteria, the District retained September Tamburrino (Tamburrino) and issued a layoff notice to Respondent Tracey Stewart (Respondent Stewart).

Both teachers had the same seniority date of August 24, 2006, hold Multiple Subject Credentials and have taught at the same elementary school since commencement of employment with the District. Respondent Stewart testified that the District laid her off for the 2008 – 2009 school year; when re-employed by the District for the 2008 – 2009 school year, she accepted an assignment to teach second grade. Though Respondent Stewart has more experience teaching in elementary school, as a result of the reassignment, in this case, Tamburrino received more tie-breaker points and retained her position while Respondent Stewart received a layoff notice.

Respondent Stewart argued that the District’s tie-breaker criteria should be “Persons with the most years of *teaching experience*” rather than “. . . most years of *experience in current grade assignment* [emphasis added]”; otherwise, teachers will be reluctant to accept reassignment to another grade.

Though Respondent Stewart’s argument is reasonable, nevertheless, the District properly applied the tie-breaker criteria adopted by the Board.

12. The district may deviate from terminating a certificated employee in order of seniority if the district demonstrates a need for personnel to teach a specific course or course of study, and the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.³

13. Respondent Jeana Utech (Respondent Utech) argued that the District improperly skipped and retained Ashley Lang (Lang) but issued Respondent Utech a layoff notice. Both teachers have a seniority date of August 23, 2007⁴ and hold a Multiple Subject Credential.

The District skipped and retained Ashley Lang (Lang) because she has special training and experience. Lang teaches in the District's Future Bound Independent Study High School, an online program (Education 2020). She received special training in order to do so and has taught Education 2020 for the last two school years; the Assistant Superintendent testified that, during the 2009 – 2010 school year, Lang will teach Education 2020 again. There are a wide range of students who participate in the program, including high school students who are at risk for graduation for a variety of reasons, such as having a disciplinary record, being a teen parent, being on probation or ward of the Court or pursuing a professional career. She has taught secondary students for three years.

Respondent Utech teaches first and second grade students. Previously, she has taught at risk elementary students and has taught high school students for one year in the District. She has no training or education to teach Education 2020.

Given the evidence, the District properly skipped and retained Lang while issuing a layoff notice to Respondent Utech.

14. The services that the District proposed to reduce were “particular kinds of services” that can 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.

15. The District's reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

16. Between the employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of the needs of the District and its students.

³ Education Code section 44955, subdivision (d).

⁴ Prior to the hearing, the District reported Respondent Lang's seniority date as August 21, 2008. During the hearing, the District changed Lang's seniority date to August 23, 2007, the same as Respondent Utech.

17. No certificated employee junior to any Respondent was retained to perform any services which 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 these sections are 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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Ramona 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/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 v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

5. The District has the discretion to determine whether teachers are certificated and competent to hold the position for which said teachers have been skipped and retained. (*King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.) 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 v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.)

6. 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 layoff notice issued to Respondents Emily Maehler and Susan Simpson is rescinded. The Accusation against Respondents Emily Maehler and Susan Simpson is dismissed.

2. The Accusation served on Respondents Nicole Brown, Kylee Harris, Ashley Lang, Holly Rivera, Cesar Rodriguez, Laura Rosenbusch, Tracey Stewart and Jeana Utech is sustained. Notice shall be given to Respondents Nicole Brown, Kylee Harris, Ashley Lang, Holly Rivera, Cesar Rodriguez, Laura Rosenbusch, Susan Simpson and Jeana Utech before May 15, 2009 that their services will not be required for the 2009-2010 school year because of the reduction or discontinuance of particular kinds of services.

3. Notice shall be given in inverse order of seniority.

DATED: _____

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings