

BEFORE THE
BOARD OF EDUCATION
OF THE
REDLANDS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Respondents listed in Appendix A.

OAH No. 2009030497

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 8, 2009, in Redlands, California.

Mark Thompson, Atkinson, Andelson, Loya, Rudd & Romo, represented the Redlands Unified School District.

Jonathan Klar, Rothner, Segall & Greenstone, represented the respondents listed in Appendix A.

No appearance was made by or on behalf of respondents Amanda Betts and James Cordes.

The matter was submitted on April 8, 2009.

FACTUAL FINDINGS

1. Lori Rhodes, made and filed the accusation in her official capacity as Superintendent of the Redlands Unified School District.
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the district.
3. On March 10, 2009, the district's Board of Education adopted Resolution No. 26, 2009-2010, reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the

action. The proposed reductions totaled 77.5 FTE positions. An unsigned copy of the resolution is attached hereto as Appendix B and by this reference is incorporated herein.

4. Between March 11 and March 13, 2009, Superintendent Rhodes gave written notice to respondents, 34 certificated employees, of the recommendation that their services will not be required for the 2009-10 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.¹

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-10 school year. An accusation was served on each respondent. Appendix A notes the 32 respondents who filed timely notices of defense and the two respondents who did not file notices of defense. All prehearing jurisdictional requirements have been met.

6. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition and any corrections to the seniority list based on timely received teacher verifications. The district must issue the final layoff notices before May 15, 2009.

7. The district established tie-breaking criteria to determine the order of termination for those employees who shared the same seniority dates on the district's seniority list.

8. The district also implemented a bump analysis to determine which employees would be permitted to bump into another employee's position.

9. Twelve of the employees who received layoff notices are employed at the Redlands Adult Education School. They argued that their layoffs were veiled attempts by the district to release them from employment and rehire them at reduced salary, hours and benefits in violation of their contracts. They also alleged that the district continues to advertise for adult classes at the school and continues to accept applications and tuitions from prospective and enrolled students, giving the public perception that the school will still exist after the layoffs, despite the fact that all the teachers have received layoff notices. The adult education teachers also argued that they should have been allowed to bump more junior retained employees and that laying them off en masse violated the Equal Protection clause of the United States Constitution. They also claimed that their notices were defective because their notices were the identical ones sent to all layed off employees and if, as the district contended, the adult education teachers were not subject to bumping because a different section of the Education Code applied to them, then their notices should have referenced that code section and not sections 44949 and 44955.

Several adult education employees testified. Patrick Burlingame teaches the EED prep class and the high school credit program. His seniority date with the district is January 30, 1991, but he has been teaching since 1965. He has a master's degree in history with a minor in economics and has completed all coursework towards obtaining his Ph.D. in

¹ Prior to the hearing the district rescinded the layoff notice previously sent to Caleb Rothe.

history with a minor in economics and English. Andrea Haendiges teaches several courses at the adult school and is the chairperson of the high school diploma program. Her Multi-subject, supplemental math credential permits her to teach K-12, including math, at the adult school. At a day school, her credential would only permit her to teach K-9 math but not any other subjects. June Turner is a Registered Nurse who teaches courses for the LVN program. Danielle Elgan is a counselor at the adult school. Her People Personnel Services credential entitles her to provide counseling at the K-12 and the community college and college extension levels. She personally has been instructed to continue disseminating applications to prospective adult education students. Carita Dickson has a clear credential in vocational education with designated subjects in nursing and health programs. She teaches the CNA course which costs \$350 per class which is one-half fee based. She testified the LVN program costs approximately \$6,000 and she is concerned that the students who have already paid for this course will be unable to graduate either on time or at all.

All of the adult education employees would accept a position at the day school. As indicated by these employees' testimony, the future of the adult education school is in flux. No final decisions have been made as to whether the school will exist or in what format. The nursing teachers were especially worried how the layoffs would affect existing students and the area hospitals that rely on those students.

10. During these proceedings, the district initially claimed it had sent teacher verifications to all of its employees. Several adult education teachers testified that they had never received these verifications from the district. Thereafter, in its rebuttal case, the district reversed its position and admitted that teacher verifications had not been sent to any of the adult education teachers. The district's explanation was that as part of the ongoing analysis to determine how to meet the needs of the district in light of the pending budget cuts, adult education teachers were slated for layoffs after the verifications had been sent and returned.

11. The district seniority list gives Pamela Hinckley, an adult education teacher, a seniority date of July 25, 1989. However, Ms. Hinckley testified her seniority date is actually July 1, 1981, and she testified that she verified that date with the district personnel office during a break in these proceedings. The district did not offer any evidence to rebut Hinckley's testimony. Based on the evidence presented at the hearing, it is found that Ms. Hinckley's seniority date is July 1, 1981. All of the other adult education employees who testified admitted that the information pertaining to them on the district's seniority list was accurate.

12. The district's issuance of termination notices was based on its careful and reasonable assessment, constituted a proper exercise of its discretion, and was neither arbitrary nor capricious.

13. No certificated employee junior in seniority to any respondent is being retained by the district to perform services 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. 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 v. 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. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. Education Code section 44929.25 permits the district to reduce the services of tenured adult education teachers in conformity with sections 44955 and 44956.

5. Education Code section 44929.26 provides in part:

“Nothing in Sections 44929.20 to 44929.23, inclusive, shall be construed to give permanent classification to a person in the adult school who is already classified as a permanent employee in the day school. In case a teacher obtains permanent classification in the evening school and later is eligible for the same classification in the day school by reason of having served the probationary period therein, he or she shall be given his or her choice as to which he or she shall take.

“Notwithstanding any other provision to the contrary, service in the evening school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school . . . Service in the day school shall not be included in computing service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the evening school . . .” (Emphasis added.)

This section creates two distinct teacher categories, day school and evening school. Subject to certain exceptions,² service in one category cannot be counted towards service in the other. If a teacher in one category wishes to switch to the other category, he or she must serve a “probationary period” and must then “choose” one category or the other. Therefore,

² None of the exceptions were applicable in this proceeding.

although bumping is not specifically referenced in section 44929.26, it necessarily follows from the fact that service in the adult school is not counted towards service in the day school, that an adult teacher choosing today to switch to the day school would enter the day school at the bottom of the seniority list, making a bump impossible. Section 44929.25 also references sections 44955 and 44956, making termination of services of adult education teachers subject to these two provisions. Finally, two courts have held that adult school teachers do not have tenure or seniority in regular school and cannot bump into it and regular school teachers do not have tenure or seniority in adult school and cannot bump into it. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, and *Kamin v. Governing Board* (1977) 72 Cal.App.3d 1014.) Thus, the district properly did not take the adult teachers into account in its bump analysis and tie-breaking criteria of the regular school teachers.

Respondents' argument that the district's notices to the adult education teachers were improper was without merit. Respondents' reliance on *Karbach v. Board of Education of Lawndale School District* (1974) 35 Cal.App.3d 355 is misplaced. That case held that the Board could not amend its accusation during the hearing to include layoff reasons not listed in the layoff notices. Such did not occur in this proceeding. Here, the district properly cited to sections 44949 and 44955 in the layoff notices and followed those sections' procedures in this hearing, as permitted by section 44929.25. The district's failure to include sections 44929.25 and 44929.26 in the notices did not render them invalid or insufficient as section 44929.26 merely establishes the two teacher categories (day and adult school) and section 44929.25 provides that the services of adult teachers can be reduced in conformity with sections 44949 and 44955 making the district's inclusion of those sections in its notices proper.

Respondent's equal protection arguments were also without merit. Education is not a fundamental right and "strict scrutiny" is not warranted. (*Plyler v. Doe* (1982) 457 U.S. 202, 223; *Darces v. Woods* (1984) 35 Cal.3d 871, 891.) Thus, there need only be a "rational basis" for establishing the teacher categories. As the adult education school involves providing classes for adults seeking higher education, as well as individuals seeking to complete their high school degree, one can easily envision: (i) Why teachers in adult education should be treated as distinct from the teachers at the day school who are primarily providing an education to children and adolescents, and (ii) why time teaching in one school should not be considered transferable for purposes of accruing seniority and securing permanent status in the other.

Finally, respondents' argument that the adult teacher layoffs were a veiled attempt to release them from employment and rehire them at reduced salaries and benefits was also without merit as the district may reduce, discontinue or eliminate a particular kind of service and then provide it to students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571 and *California Teachers Ass'n. v. Board of Trustees of Goleta Union School District* (1982) 132 Cal.App.3d 32.) The district's decision to reduce or discontinue a particular kind of service is a 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 preponderance of the evidence sustained the charges set forth in the accusation.

Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the Board of Education directed be reduced or discontinued. It is recommended that the Board of Education give respondents notice before May 15, 2009, that their services will not be required by the District for the school year 2009-2010.

ORDER

The accusations served on respondents are sustained. Notice shall be given to respondents before May 15, 2008, that their services will not be required for the school year 2009-2010 because of the reduction or discontinuation of particular services as indicated.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

Barton	Trista
Betts	Amanda
Block	Heather
Burlingame	Patrick
Cohen	Lisa
Cordes	James
Crawley	Raylene
Dickson	Carita
Elgan	Danielle
Feinberg	Jenise
Fields	Katie
Fishbeck	John
Fotia	Peter
Fotia Jr	James
Frink	Patty
Galloway	Christopher
Haendiges	Andrea
Hinckley	Pamela
Honeyfield	Marie
Janiskee	Jennifer
Martens	Kathy
McComber	Lisa
Medrano	Sheryl
Mendoza	John
Monaco	Jennifer
Peoples	Carman
Perkins	Theodore
Razor	Frances
Rothe	Caleb
Sheu	Wendy
Sinor	Damian
Stinson	Heather
Turner	June
Whitehurst	Laura

Appendix B

BOARD OF EDUCATION OF THE REDLANDS UNIFIED SCHOOL DISTRICT

REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES

RESOLUTION NO. _____

WHEREAS, the Board of Education of the Redlands Unified School District has determined that it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Redlands Unified School District as follows:

- A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2009-2010 school year:

Middle School Art Teaching Services	1	F.T. E.
High School Art Teaching Services	1	F.T. E.
Middle School Physical Education Teaching Services	2	F.T. E.
Middle School English Teaching Services	4	F.T. E.
Middle School Math Teaching Services	1	F.T. E.
High School Business Teaching Services	1	F.T. E.
High School English Teaching Services	6	F.T. E.
High School Physical Education Teaching Services	1	F.T. E.
High School Biology Teaching Services	1	F.T. E.

High School Social Science Teaching Services	1	F.T. E
BTSA Support Provider Services	2	F.T. E
Elementary K-5 Teaching Services	25	F.T. E
Elementary Physical Education Teaching Services	1	F.T. E
Elementary Student Intervention Teachers on Assignment	6.5	F.T. E
Librarian Services	2	F.T. E
Middle School Core Teaching Services	4	F.T. E
Special Education Teacher on Assignment Services	1	F.T. E
Testing/Evaluation/Intervention Teacher on Assignment Services	3	F.T. E
Elementary Music Teaching Services	1	F.T. E
Adult Education Teaching Services	12	F.T. E
Middle School Social Science Teaching Services	1	F.T. E
TOTAL CERTIFICATED POSITIONS	77. 5	F.T. E.

- B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.
- C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of a valid credential in the relevant subject matter area, "highly qualified" status under the No Child Left Behind Act, and an appropriate EL authorization (if required by the position).
- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.

F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED this ____th day of March, 2009, in the County of San Bernardino, California.

AYES: _____

NAYES: _____

ABSTENTIONS: _____

President
Board of Education

I, Lori Rhodes, Superintendent of the Redlands Unified School District of San Bernardino County, California, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the District's Board of Education at a duly scheduled meeting thereof.

Dated: _____

Lori Rhodes
Superintendent