

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

In the Matter of the Accusation Against:

OAH No. 2009030535

Respondents Listed on Exhibit "A"

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Riverside, California on April 29, 2009.

Susan Park, Esq., Fagen Firedman & Fulfroost, represented Complainant Richard L. Miller, Superintendent, Riverside Unified School District.

Bruce E. Disenhouse, Esq., Kinkle, Rodiger & Spriggs, represented Respondent Daniel X. Gonzalez.

Marianne Reinhold, Reich, Adell & Cvitan represented all Respondents except David X. Gonzalez, June Lee and Keri O'Neill.

There was no appearance by or on behalf of Respondents June Lee and/or Keri O'Neill.

The matter was submitted on May 1, 2009.¹

SUMMARY OF PROPOSED DECISION

The Governing Board of the Riverside 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.

¹ The record remained open for receipt of a stipulation and briefs. On May 1, 2009, the Superintendent filed Stipulation (Exhibit 18) and Riverside Unified School District's Closing Brief (Exhibit 19); on the same date, Closing Brief of Certain Respondents was filed and marked Exhibit A.

On May 1, 2009, the record was closed, and the matter was submitted.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping" and breaking ties between/among employees with the same first dates of paid service. Overall, the selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Richard L. Miller made and filed Accusation, dated March 25, 2009, against Respondents listed on Exhibit "A," in his official capacity as Superintendent (Superintendent), Riverside Unified School District (District).
2. Respondents are probationary or permanent certificated employees of the District.
3. The Superintendent notified the Governing Board of Riverside 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 2008/09-47 that reduced or eliminated particular kinds of services for the ensuing school year and established competency criteria and tie-breaking 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 no later than March 24, 2009 and that failure to request a hearing would constitute waiver of the right to a hearing.

Respondents filed a timely Request for Hearing.

An Accusation, Statement to Respondent, 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. There was no appearance by or on behalf of Respondents June Lee and/or Keri O'Neill.

6. Prior to hearing, the District rescinded the layoff notice issued to Respondents Randi Potwardowski and Jennifer Riddle.

7. On March 9, 2009, the Board adopted Resolution number 2008/09-47 and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2009-2010 school year as follows:

Services	Number of Full-Time Equivalent Positions
1. School Librarians	5.0
2. Secondary Counselors	14.5
3. Staff Development Specialist K-12	8.0
4. Adult School Teachers	20.0
5. Health Teachers	10.0
6. Foreign Language Teachers: Spanish	3.2
7. Foreign Language Teachers: French	2.0
8. Visual Arts Teachers	2.0
9. Home Economic Teachers	3.4
10. Business Teachers	3.2
11. Elementary Teachers: Class Size Reduction	84.0
12. Elementary Academic Coaches/Intervention Specialists	73.0
13. Secondary Academic Coaches/Intervention Specialists	16.8
14. Middle School Support Teachers and Instructional Coaches	23.6
15. High School Support Teachers and Instructional Coaches	42.4
16. School Nurse	1.0
17. Adult Education Counselor	1.0
18. Preschool Instructor	3.0
 Total Full-Time Equivalent (FTE) Reduction	 316.1 FTE

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. Glenn A. King, Assistant Superintendent, Human Resources (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 and school site.

The seniority date was based on the first date of paid service rendered.² 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.³

10. 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 them 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.

11. Respondent Elizabeth Marie Copeland (Respondent Copeland) challenged the seniority date that the District reported for her. Respondent Copeland testified that she and Respondent Andrea Ruley (Respondent Ruley) began as teachers on the same date at the same school in the District. However, Respondent Ruley's seniority date is reported as October 19, 2007 and that of Respondent Copeland as October 22, 2007. Respondents Copeland and Ruley each received a layoff notice that has not been rescinded. Therefore, her seniority is not relevant for purposes of layoff, but only with regard to her rehire rights. As such, Respondent Copeland's seniority date is not properly at issue in this matter.

12. In compliance with Education Code section 44955, subdivision (b), on March 9, 2009, the Board adopted tie-breaking criteria to determine the order of termination of employees with the same seniority date as follows:

"Criteria to be Used:

- A. Credentials or Authorization to teach in an identified District shortage area
- B. Earned degrees beyond the BA or BS level

² Education Code section 44845.

³ Education Code section 44918.

- C. Preliminary vs. Clear/Life Credentials
- D. Prior teaching experience in RUSD

Application of criteria:

- A. Math, Science, English, or Special Education Credential or Authorizations
Rating: +2 per credential
- B. BCLAD or equivalent
Rating +2
CLAD or equivalent
Rating +1
- C. Earned degrees beyond the BA or BS level
Rating: +2 for Masters Degree
+1 for Ph.D. or Ed.D.
- D. Preliminary vs. Clear/Life Credentials
Rating: +1 per preliminary
+2 per clear/life credential
- E. Prior teaching experience in RUSD
Rating: +1

After applying the above criteria, if same day of paid service employees have equal qualifications, the District will break ties by utilizing a lottery system.”

13. In Board Resolution No. 2008/09-47, on March 9, 2009, the Board adopted competency criteria which stated, in pertinent part:

“ . . . WHEREAS, it will be necessary to retain certificated employees who possess special training or experience, which other certificated employees with more seniority do not possess, to teach a specific course of study. Said training or experience includes possession of the following:

The certificated employee must have one year of full-time contractual school experience within the last five (5) years in one of the following areas: Continuation High School, Alternative Education Programs, High School Activities Director, High School Athletic Director, or Music Teacher.”

14. Respondent Julie Gibbons (Respondent Gibbons) challenged the District’s issuance of a layoff notice to her and retention of Lindsey Rosa (Rosa); Respondent Gibbons argued that she is entitled to “bump” Rosa, a junior employee who has been retained; it is anticipated that Rosa will be assigned positions of high school health teacher and high school Activities Director for 2009 - 2010 school year. [As discussed below, an issue also exists as

to whether the District properly skipped Rosa with regard to the Activities Director portion of her duties.]

Respondent Gibbon's seniority date is September 4, 1992, and she holds a Single Subject Credential in Home Economics. For the 2008 – 2009 school year, she was assigned to Chemawa Middle School. She teaches Food and Nutrition for four periods; one period she teaches a yearbook/associated student body (ASB) [a combined class], and four periods of Food and Nutrition.

Rosa's seniority date is August 26, 2002, and she holds a Health Science credential. Applying the Board's competency criteria (Finding 13), the District skipped Rosa to provide services as Activities Director at King High School despite the elimination of 10.0 FTE health science teachers, resulting in five teachers with Health credentials receiving a preliminary layoff notice. The District subsequently determined not to reduce the Health teachers and all layoff notices issued to Health teachers were rescinded.

Kathleen Marie Sanchez has been employed by the District for 16 years; she is the Director of Human Resources for Certificated Personnel (Director) and has served in this capacity for the past two years. Sanchez testified as a witness in this case. Prior to her appointment as Director, her experience with the District has included, among other things, serving as a teacher in the elementary school, in the high school, and in a continuation school; in addition, she has worked as a vice-principal. She is familiar with the duties of ASB Director and those of Activities Director. The ASB Director serves students in the middle school and the Activities Director serves those in the high school. The Director testified regarding the distinctions between the duties of the two positions and explained that typically an Activities Director receives Renaissance Training provided by an outside vendor and additional training by the District's Business Office on rules and regulations for handling money and hiring of staff.

15. A 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.⁴

16. Respondent Gibbons argued that, based on her experience as ASB Director for the past ten years and her credential that authorizes her to teach health for homemakers to high school students, she is certificated and competent to perform the services for which Rosa, a more junior teacher, was retained to provide.

The position of Activities Director is not a specific course or course of study as defined in Education Code sections 51014 and 51015. No credential or major is required to perform this service. Though Rosa has experience working as an Activities Director, there is

⁴ Education Code section 44955, subdivision (d).

no evidence of Rosa's qualifications, training or experience beyond the fact that Rosa is assigned as the Activities Director for King High School for the 2008 – 2009 school year. There is no evidence that Rosa has the special training described by Sanchez.

Given the facts in Findings 10, 13, 14, 15 and the foregoing paragraphs of Finding 16, the District improperly skipped Rosa to provide services as Activities Director, and Respondent Gibbons is certificated and competent to provide this service. However, it was not established that Respondent Gibbons' credential in Home Economics authorizes her to teach the Health classes Rosa's Health credential authorizes. Further, the District is not required to split the position between Rosa and Respondent Gibbons. Accordingly, Respondent Gibbons' did not establish that the District improperly issued a layoff notice to her.

17. 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.

18. 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.

19. 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.

20. 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 Riverside 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.

7. Any factual and legal argument not addressed herein is not supported by the facts and/or law and therefore rejected.

ORDER

1. The layoff notice issued to Respondents Jennifer Riddle and Randi Potwardowski is rescinded. The Accusation against Respondents Jennifer Riddle and Randi Potwardowski is dismissed.

2. Except as provided in paragraph one of this Order, the Accusation served on remaining Respondents listed on Exhibit “A” is sustained. Notice shall be given 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 as indicated.

Notice shall be given in inverse order of seniority.

DATED: _____

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings