

BEFORE THE
BOARD OF EDUCATION
OF THE
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation
Against:

66 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2009030793

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Yucaipa, California on April 20, 2009.

Mark W. Thompson, Esq. of Atkinson, Andelson, Loya, Ruud & Romo, represented the Yucaipa-Calimesa Joint Unified School District (the district).

72 certificated employees were originally served with Reduction in Force Notices or Precautionary Notices of Termination. Subsequently, the district rescinded the Notices served on five of the certificated employees and one certificated employee failed to request a hearing. Consequently, 66 certificated employees remain as respondents in this matter.

Emeritus Consultant Susan M. Popovich represented the following nine respondents: Kim Jones; Holly Graham; Josh Simon; Heather Seaton; Evan Sternard; Melissa Parker; Steven Stockman; Carat Daniel; and, Jessica Gustafsson.

Lisa C. Demidovich, Esq. of Rothner, Segall & Greenstone represented the remaining 57 respondents.

Oral and documentary evidence was received and the matter was submitted on April 20, 2009.

FACTUAL FINDINGS

1. On February 24, 2009, the Superintendent of the district recommended, with regard to the ensuing school year, that the Board of Education of the district (the board)

reduce or eliminate particular kinds of services (PKS) provided by the district for the 2009-2010 school year.

2. On February 24, 2009, the board adopted Resolution number 10, determining that it would be necessary to reduce or discontinue PKS at the end of the current school year. The board determined that the PKS that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>PKS</u>	<u>FTE</u>
Elementary Teachers	42.0
Counselor	1.0
Teacher on Assignment, Literacy Support	1.0
Teacher on Assignment, Math Specialist	1.0
Special Education Teachers	2.0
Reading Specialist	1.0
Math/Science Core Teacher	1.0
English/Social Studies Core Teacher	1.0
Middle School Math Teachers	5.0
Middle School English Teachers	3.0
Middle School Computer Teacher	1.0
Secondary Health Teacher	0.4
Physical Education Teachers	4.6
Independent Study Teachers	2.0
Secondary English Teacher	1.0
Secondary Social Studies Teacher	1.0
Music Teachers	2.0
Total FTE positions to be reduced or eliminated	<hr/> 70.0

The parties do not dispute the fact that the services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 2, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected, \$7.4 million dollar, budget deficit. Thus the board's decision represents a proper exercise of its discretion.

4. The reduction and discontinuation of services is related to the welfare of the district and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the board.

5. The Superintendent designated the respondents, permanent or probationary teachers employed by the district, by creating a seniority list, first selecting teachers to be laid off in the inverse of the order in which they were employed, then assigning and

reassigning employment in such a manner that all employees to be retained will be retained so as to render any service which their seniority and qualifications entitle them to render.

6. As part of the overall reduction in PKS, the district is releasing its temporary certificated employees. As a general rule, the district releases all temporary certificated employees prior to releasing probationary or permanent certificated employees.

7. Prior to March 15, 2009, all respondents affected by the layoffs received written notice notifying them that pursuant to Education Code sections 44949 and 44955, their services “will not be required for the upcoming 2009-10 school year.” (Exh. 6.)

8. On March 2, 2009, the Assistant Superintendent, Human Resources, acting under delegation of authority from the Superintendent of the district made and filed an accusation in her official capacity.

9. Prior to March 15, 2009, all respondents were served with board resolution number 10, a Notice of Accusation, the Accusation, a Notice of Defense and Request for Hearing, copies of Education Code sections 44949 and 44955 and Government Code sections 11506, 11507.5, 11507.6, 11507.7, and 11520. Additionally, the “Notice of Accusation” advised respondents as follows: **You are hereby notified that unless a written request for a hearing, signed by you or on your behalf, is delivered to the Board of Education on or before March 25, 2009, the Board may proceed on the Accusation without a hearing. If you decline or fail to request a hearing by the above date, such declination or failure will constitute a waiver of your right to a hearing**” (Exhibit 3, emphasis in original.)

10. Sixty-six (66) respondents timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

11. Each respondent who requested a hearing and filed a Notice of Defense was properly noticed of the date, time and place of the instant hearing.

12. All prehearing jurisdictional requirements were met.

13. Respondents are certificated permanent or probationary employees of the district.

14. The following concerns were raised during the hearing:

a. Certain certificated employees were either “skipped” or allowed to “bump” some of the respondents based on the fact that the “skipped” or “bumping” employees possessed single subject credentials rather than supplemental credentials or other authorizations in math and English subject areas;

b. Certain certificated employees were either “skipped” or allowed to “bump” some of the respondents based on the fact that the “skipped” or “bumping” employees possessed authorizations to teach English Learner students;

c. One respondent, Sarah Ring, contended that she was improperly slated for lay off because the district failed to consider her Master of Arts degree and her Pupil Personnel Service (counseling) credential for purposes of the tie-breaking analysis; and

d. There are two vacant Community Day School positions that have not been filled yet.

15. In connection with these concerns the uncontroverted testimony and documentary evidence established the following:

a. Certificated employees with single subject math and English credentials have completed more credit hours of training, have been subjected to competency examinations, and “hold greater understanding of their subject areas” than those employees holding supplemental credentials or other authorizations. For example, single subject credentialed employees have completed 34 credit hours of instruction and have been required to take, and pass, a competency examination while those with supplemental credentials have only completed 20 credit hours of instruction and have not been required to take, and pass, any form of competency examination(s). Employees with supplemental credentials can only teach through the ninth grade while those with single subject credentials can teach through the twelfth grade. Employees with supplemental credentials in math can only teach math to the algebra level while those with a single subject math credential can teach to the calculus level. Consequently, due to these significant credentialing differences, the board’s resolution that “this Board has determined that to adequately serve the needs of its students in providing highly trained teachers, a specific and compelling need exists to employ and retain certificated employees in math and English subject areas who have single subject credentials rather than supplemental or other authorization” (Exh. 3) was justified and reasonable. Therefore, the district’s use of the board’s resolution to “skip” and “bump” based on holding single subject math and English credentials was appropriate.

b. State law mandates that if any classroom contains even one English Learner (EL) student, then the teacher teaching the class must have an EL authorization. If the classroom is taught by a teacher without an EL authorization it is a “misassignment” and the school may be sanctioned by the County Superintendent of Schools. Furthermore, compliance with the No Child Left Behind Act (NCLB) and California Education Code section 44253.1 require that EL students be taught by certificated employees with appropriate EL authorizations. Additionally, the district is in “year 1 corrective action” status because of its failure to meet the Adequate Yearly Progress (AYP) criteria for two consecutive years in 2006-2007 and 2007-2008 for the EL learner sub-group of students. Given these needs for EL authorized teachers, the district and board properly determined that “a specific and compelling need exists to employ and retain certificated employees who have authorization to teach English Learner (“EL”) students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes

therewith.” (Exh. 3.) Consequently, the district’s use of “bumping” and “skipping” based on holding an EL authorization was appropriate.¹

c. Respondent Ring obtained her Master of Arts degree and her counseling credential from the University of Redlands on July 16, 2008, and had the University of Redlands forward a copy of her transcripts to the district. Subsequently, in February of 2009, respondent Ring provided a copy of her transcripts to the district in order to get a “salary column advancement” based on the number of college units she had completed in earning her Master of Arts degree and counseling credential. Although the data from respondent Ring’s transcripts were used to make a salary adjustment, the information was not included on the district’s seniority list and respondent Ring was not credited with having the degree and credential when the tie-breaking criteria were applied. While it is true that respondent Ring did not formally request that her credential information in the district’s files be updated, the district was, nonetheless, aware of the changes. Respondent Ring had supplied her transcripts to the district and even mentioned her counseling credential to district personnel during a March 10, 2009 telephone conversation. Unfortunately, neither respondent Ring, nor district personnel focused on the need to update respondent Ring’s credential information² and respondent Ring did not receive accurate tie-breaking points. This is one of those situations where information simply “fell through the cracks” due to the press of business and was overlooked during the instant lay off proceedings. Consequently, the only fair and equitable way to correct the error is to rescind the lay off notice and dismiss the accusation as it concerns respondent Ring.

d. The Community Day School positions with the district are voluntary positions. Teachers must consent to accept a Community Day School position; the district can not unilaterally assign teachers to those positions. The vacancies in the Community Day School program are not a result of the instant reduction in force (RIF) proceedings. Rather, the vacancies occurred as part of the normal ebb and flow of personnel in the district. Consequently, the issue of filling the Community Day School program vacancies is not appropriately before this tribunal and should be addressed by the district as part of the normal hiring/rehiring process.

16. With the exception of respondent Ring, the services of no permanent employee are being terminated while any probationary employee, or any permanent employee with less seniority, is being retained to render services which such permanent employee is certificated and competent to render.

¹ In order to qualify for “skipping” and “bumping” rights the certificated employee must not only have EL teaching experience, they must actually possess EL authorization to ensure their EL proficiency meets appropriate standards.

² On December 18, 2008, the district sent respondent Ring a letter asking her to review the accuracy of the information set forth in the letter. The “Credentials held” section of the letter indicated respondent Ring held a “Multiple Subject” credential. There was no mention of respondent Ring’s Master’s degree or her counseling credential. Respondent Ring indicated that “all of the above information is correct.” It did not occur to respondent Ring that she could, or should, add her Master’s degree and her counseling degree to the “Credentials held” section of the letter before returning the signed letter to the district. (Exh. 17.)

17. Out of an abundance of caution, the district served the following nine respondents with “precautionary” notices: Kim Jones; Holly Graham; Josh Simon; Heather Seaton; Evan Sternard; Melissa Parker; Steven Stockman; Carat Daniel; and, Jessica Gustafsson. The “precautionary” notices were served just in case it was determined, as a result of the instant hearing, that the district’s “skipping” and “bumping” was improper. Since the district’s “skipping” and “bumping” was found to be appropriate, the “precautionary” notices issued to these nine respondents must be rescinded and the accusation dismissed as to them.

LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided, as required.

2. The services listed in Factual Finding 2 are PKS that can be reduced or discontinued under Education Code section 44955. The board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certificated employees of the District by 70 FTE positions, due to the budget crisis described in Factual Finding 3.

4. Cause to reduce or discontinue services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

5. Except for respondent Ring, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. Based on the modifications set forth in Findings 14, subdivision c, 15 and 16, and Legal Conclusion 5, above, cause exists to notify the remaining 56 respondents that their services will not be needed during the 2009-2010 school year due to reduction or discontinuance of PKS.

ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

1. The Accusation is sustained, in part. The district shall notify the 56 respondents listed in Appendix A that their services will not be needed during the 2009-2010 school year due to lack of funds and the resulting need to reduce or discontinue PKS.

2. The Accusation is dismissed as to respondents Sarah Ring; Kim Jones; Holly Graham; Josh Simon; Heather Seaton; Evan Sternard; Melissa Parker; Steven Stockman; Carat Daniel; and Jessica Gustafsson, and the district may not notify them that their services will not be needed during the 2009-2010 school year.

DATED: April _____, 2009

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

APPENDIX

A

1. Aten, Gina
2. Bermier, Kristin
3. Bensley, Rodney
4. Benware, Michelle
5. Bickford, Tara
6. Burton, Jennifer
7. Caballero, Barbara
8. Chenault, Maronda
9. Clough, Darla
10. Colin, Scott
11. Correa, Davina
12. Correll, Kimberly
13. Crites, Melinda (Blanton)
14. Crosby, Melissa
15. Dawson, Kim
16. DeAntonio, Paula
17. Del Campo, June
18. Farritor, Crystal
19. Fawcett, Tamie
20. Flowers, Gwendalyn
21. Foy, Misty
22. Gilsen, Lindsey
23. Gosselaar, Hillary
24. Hall, Courtney
25. Hanlon-Amini, Lisa
26. Harrison, Lori
27. Holton, Nigel
28. Kennedy, Bridgette
29. Kumanski, Melissa
30. La Canfora, Jennifer
31. Lehr, Esther
32. Lewis, Kevin
33. Martin, Priscilla
34. Martinez, Eric
35. McLaughlin, Christine
36. Meidinger, Jill
37. Meidinger, Kurt
38. Miller, Kathleen
39. Monarrez, Stacey
40. Mullen, Krestin
41. Mussen, Dennis
42. Nelson, Vickie
43. Olufson, Brittany
44. Pitman, Darlene
45. Powell, Carrie
46. Smith, Brandy
47. Spencer, Chad
48. Spencer, Michelle
49. Stewart, Melanie
50. SteinerLund, Susan
51. Stitt, Ruth
52. Stockham, Amanda
53. Velardes, Antoinette
54. Vizzini, Kerry
55. Wiedlin, Charissa
56. Young, Sherry