

BEFORE THE
GOVERNING BOARD OF THE
WILMAR UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

GINA EVENICH and VIKKI WEILER,

Respondents.

OAH No. 2009031215

PROPOSED DECISION

Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, heard this matter on April 28, 2009, at the Sonoma County Office of Education, Santa Rosa, California.

Carl D. Corbin, Attorney at Law, represented the Wilmar Union School District.

Evan Livingstone, Attorney at Law, represented respondents. Respondent Vikki Weiler was present at the hearing. Respondent Gina Evenich was not present.

The matter was submitted on April 28, 2009.

SUMMARY

The Governing Board of the Wilmar Union School District decided to reduce or discontinue particular kinds of services provided by certificated employees due to decreased enrollment and budgetary requirements. The decision was unrelated to the job performance or dedication of the individuals whose services are proposed to be reduced or eliminated.

The District carried out the Board's decision by using a selection process involving review of credentials, seniority, and experience in providing particular kinds of services. As set forth below, the selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Eric Hoppes is the District's Superintendent. He made and filed the Accusations in his official capacity as Superintendent of the Wilmar Union School District.
2. Respondents Gina Evenich and Vikki Weiler are certificated employees of the District.
3. On March 5, 2009, Superintendent Hoppes recommended to the District's Governing Board that the particular kinds of services set forth below be reduced or discontinued due to decreased enrollment and budgetary needs. This recommendation was made for the welfare of the schools and the pupils.
4. On March 5, 2009, the District's Governing Board adopted Board Resolution No. 0809-15, which reduces or discontinues particular kinds of service for the 2009-2010 school year. Specifically, the Board Resolution provided for the reduction or elimination of the following particular kinds of services:
 1. Eliminate the equivalent of 2.0 (F.T.E.)¹ Regular Elementary Instructional Services.
 2. Eliminate the equivalent of .40 (F.T.E.) Instructional Support Provided by Resource Specialist Program.
 3. Eliminate the equivalent of .40 (F.T.E.) Instructional Support Provided by Special Day Class Services.
5. Before issuing the preliminary layoff notices, the District took into account all positively assured attrition.
6. On or before March 15, 2009, the Superintendent personally served on each respondent a written notice that he had recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. The reasons for the recommendations were set forth in the preliminary layoff notices.
7. Respondents timely requested in writing a hearing to determine whether cause exists for not reemploying them for the ensuing school year.
8. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.

¹ Full-time equivalent positions.

9. Notices of Defense were timely filed by respondents.

Respondent Evanich

10. The District maintains a Seniority List which includes employees' seniority dates (first date of paid service), current assignments, credentials and certifications. The District used the Seniority List to develop a proposed list of the least senior employees currently assigned in the various services being reduced. According to the District's Seniority List, respondent Gina Evenich shared a seniority date of August 22, 2005, with another teacher, Robin Johnson.

11. On February 12, 2009, the District adopted tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The tie-breaking criteria are set forth in the "Wilmar School District Criteria to Determine the Order of Termination Among Certificated Employees with the Same First Date of Paid Service" (tie-breaking criteria). It provides that the needs of the District and the students will be best served by using the tie-breaking criteria to establish the order of termination. The tie-breaking criteria provide that each employee will be awarded points for specified criteria, such as credentials, experience, degrees, certifications and language skills.

12. The District applied the tie-breaking criteria to Evanich and Johnson in order to determine which teacher would receive a layoff notice. On February 12, 2009, the District created a Rating Calculations Worksheet for Common Dates of Hire (rating calculations worksheet). The rating calculations worksheet accurately assigned Johnson a total of 12 points and Evenich a total of eight points.

13. The District's tie-breaking criteria and rating calculations worksheet complied with the requirements set forth in Education Code 44955, subdivision (b).

Vikki Weiler

14. Weiler works full-time at Wilson Elementary School as a Resource Specialist. The District seeks to reduce her position by 0.4 FTE. Weiler has worked at the District since August 28, 2000. She is the only teacher in the District's Resource Specialist Program. As a Resource Specialist, she teaches the children with I.E.P.'s. Her work involves "pulling out" children who have I.E.P.'s from their regular instructional class and teaching them in a small group setting. She teaches anywhere from two to eight children at a time. Weiler also completes I.E.P. reports and performs other tasks related to monitoring the progress of her students. Weiler holds a multi-subject credential, as well as a special education credential and a resource specialist credential. Weiler has not had a teaching assignment in a self-contained general education classroom since 1991, when she was a student teacher.

15. Weiler contends that the District erred when it retained five certificated employees with less seniority than respondent. Weiler claims that the five junior teachers are being retained to perform services which she is certificated and competent to perform. Each of the five junior teachers retained have provided Regular Elementary Instructional Services to the District for at least two of the last five years.

16. The District asserts that Weiler is not being retained because she lacks the requisite experience to provide Regular Elementary Instructional Services in a self-contained classroom. The criteria that the District applied in determining that the junior employees would be retained over respondent are included in the “Resolution of the Board of Trustees of the Wilmar Elementary School District Regarding Criteria to Determine Certificated Personnel Who Shall Be Exempt from the Order of Layoff by Virtue of their Credentials, Competence, Assignment, Experience or Certification (“Skipping Criteria”).” This Resolution was adopted by the District’s Governing Board on March 5, 2009.

17. The “Skipping Criteria” Resolution provides that in order to meet the needs of its students, the District requires “certificated personnel who are competent and experienced to teach instructional services in grades kindergarten through sixth grade.” This Resolution further states that the District determined that “experience teaching a particular instructional service demonstrates competence in that service.” Towards these ends, the District established specific competency standards as follows: “Possessing an appropriate credential authorizing instruction to students in the particular service being provided ... [and] having experience teaching for at least two (2) years of instruction within the last five (5) school years in the particular service being provided ...”

18. Superintendent Hoppes explained that the competency standards are geared to “standards-based instruction” and maintaining academic standards in a regular classroom. He believes the competency standards are necessary to achieve optimum student success. According to Hoppes, different skill sets are required to teach special education students in a small group setting, versus teaching a large group of students in a regular classroom setting. He believes that at least two years of experience teaching in a self-contained regular classroom setting is necessary to provide teachers with experience in establishing classroom routines and maintaining discipline while teaching large groups of students who are working at different levels.

19. Hoppes applied the competency standards to Weiler. He determined that although Weiler possessed the requisite multi-subject credential, she had not taught in a self-contained regular classroom for two out of the last five years. Hoppes, therefore, determined that Weiler lacked the competency to teach a self-contained regular education classroom. He further determined that five employees who had less seniority than Weiler had taught in a self-contained regular classroom for two out of the last five years and possessed multi-subject teaching credentials and CLAD certifications. Hoppes, therefore, determined that each of the junior teachers possessed the requisite credentials and experience to meet the District’s competency requirements.

20. Education Code section 44955, subdivision (b), directs Districts to terminate employees in order of seniority to ensure that no junior employees are retained to provide services that a senior employee is certificated and competent to perform. School Districts have broad discretion in setting competency standards to teach a particular course of instruction. In the instant case, the District established that it needed teachers who possessed experience in providing Regular Elementary Instructional Services in a self-contained classroom. The District's requirement that teachers possess two out of the last five years teaching in a self-contained regular elementary classroom did not constitute an abuse of its discretion to set particular standards of competency.

21. Considering that Weiler did not meet the District's competency standards to teach in a regular elementary instructional classroom, the District did not err when it retained five teachers junior to respondent, when each of the junior teachers met the competency standards developed by the District, while respondent did not.

22. The Superintendent does not propose to reduce or eliminate any services below state-mandated levels. The service reduction, therefore, is properly within the discretion of the Superintendent.

23. The District established that particular kinds of services will be reduced or discontinued in accordance with the Board's Resolution, and that no certificated employee junior in seniority to either respondent is being retained by the District to perform services that either respondent is certificated and competent to perform.

24. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in Board Resolution No. 0809-15 are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services complied with the guidelines set forth in Education Code section 44955. The Board's decision was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2009-2010 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

Notice may be given to respondents that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

Dated: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings