

BEFORE THE
GOVERNING BOARD OF THE
REDWOOD CITY ELEMENTARY SCHOOL DISTRICT
COUNTY OF SAN MATEO
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JERIANNE ALBERTI and various other
certificated employees of the District,

Respondents.

OAH No. 2009031273

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Redwood City, California on April 27, 2009.

Janae H. Novotny, Attorney at Law, represented the Governing Board of the Redwood City Elementary School District.

Christopher Schumb, Attorney at Law, represented all the respondents who were present.

The matter was submitted on April 27, 2009.

FACTUAL FINDINGS

1. Jan Christensen made the accusation in her official capacity as the Superintendent of the Redwood City Elementary School District (District) and not otherwise.

2. Each of the named respondents was at all times mentioned herein, and now is, a certificated employee of the District¹.

3. On March 11, 2009, the Governing Board of the District was given written notice by the Superintendent of her recommendation that notice be given respondents that his/her services will be terminated at the close of the current school year.

4. On March 12, 2009, respondents were given written notice by the Deputy Superintendent (John Baker) that it has been recommended that notice be given respondents

¹ A list of the respondents served with an accusation packet is attached as Attachment 1.

that his/her services will be terminated at the close of the current school year and stating the reasons for the Notice.

5. Respondents timely requested, in writing, a hearing to determine if there is cause for terminating his/her services for the ensuing school year.

6. On March 11, 2009, the Governing Board adopted Resolution No. 9 as set forth in Attachment 2, directing the Superintendent or his designee to give notices to certificated employees that their services will not be required for the 2009-2010 school year.

7. The programs to be reduced or eliminated include 53.25 F.T.E.'s. The Governing Board rescinded 14 F.T.E. notices² at the hearing for teachers that had temporary employees filling their positions while they performed duties in a categorically funded position. All temporary teachers were released and those 14 positions will be filled by the teachers who originally held those positions.

8. It was stipulated that all jurisdictional requirements were met.

9. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying the remaining respondents for the ensuing school year. In the opinion of the Governing Board, it will be necessary to decrease the number of certificated employees in the District because of the above reduction or discontinuance of services. As a consequence, the Board has determined that the services of a corresponding number or less of the certificated employees of the District shall be terminated at the close of the current 2008-2009 school year.

10. Tie breaking criteria were included in the resolution referred to in Finding 6. There were no issues relating to the tie breaking criteria.

11. No permanent or probationary certificated employee with less seniority is being retained to render a service, which the respondents, or any of them, are certificated and competent to render.

12. The cause for not reemploying respondents relates solely to the welfare of the schools in the District and the pupils thereof.

13. The District employs 7.0 F.T.E. nurses. The District plans to release three nurses. The District will retain 4.0 F.T.E. nurses. Currently, one nurse is assigned to particular elementary schools full-time and the remaining six nurses are not assigned to any particular school.

² The District rescinded notices to V. Defouw, K. Evans, J. Fazio, S. Higgins, H. Kestelyn, A. Lucey, C. McManus, E. Metro, J. Norris, B. Robinson, K. Schuyler, L. Stillmaker, T. Walsh-Senz, and E. Whitson.

14. The District has considered the reduction and plans to reduce the duties now performed by the nurses to accommodate the reduction in F.T.E.'s. The District's plan is sufficiently concrete to meet the requirements of the law.³

15. The Superintendent's designee testified that the District will continue to be able to provide all legally mandated services after the reduction. The District's plan to meet legally mandated services is not arbitrary or capricious, but rather was based on reasonable considerations. None of the proposed layoffs will reduce any District services below legally mandated levels.

16. The District employs 3.8 F.T.E.'s Outreach Specialists. The District plans to eliminate this service. While having these Outreach Specialists is a positive thing for the District, the District can eliminate these services and have any mandated services provided by other employees or outside participants such as the police department.

LEGAL CONCLUSIONS

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

2. Cause exists to reduce the number of certificated employees at the Redwood City Elementary School District due to the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

1. Notice may be given to employees occupying 53.25 full-time equivalent certificated positions that their services will not be required for the 2009-2010 School Year because of the reduction and discontinuance of particular kinds of services.

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

DATED: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

³ The District's plan is in compliance with *Daniels v. Shasta-Tehama-Trinity Junior Community College District* (1989) 212 Cal.App.3d 909.