

BEFORE THE
GOVERNING BOARD OF THE
ROHNERVILLE SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TRACY BENBOW, DAWN CARROLL,
ADRIENNE CROSSWHITE,
LORI HEAD, RONALD SANDERS and
LISA STOCKWELL

Respondents.

OAH No. 2009040068

PROPOSED DECISION

On April 22, 2009, in Eureka, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, 901 Myrtle Avenue, Eureka, California 95501, represented Robert Williams, Ed. D., Superintendent, Rohnerville School District.

Paul Hagen, Attorney at Law, of Bragg, Perlman, Russ, Stunich & Eads, LLP, 1036 Fifth Street, Suite E, Eureka, California 95501, represented Respondents in this matter. However, Respondent Ronald Sanders failed to appear at the hearing of this matter; but, he remained a respondent in this matter.

On April 22, 2009, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On April 9, 2009, in his official capacity, Robert E. Williams, Jr. Ed.D., Superintendent for the Rohnerville School District (Complainant), made and filed the respective Accusations regarding Respondents Tracy Benbow, Dawn Carroll, Adrienne Crosswhite, Lori Head, Ronald Sanders and Lisa Stockwell.

2. Respondents are certificated employees of the Rohnerville School District, who contest the instant proposed teacher lay-off action. Respondents Carroll and Respondent Sanders are probationary teachers in the second year of service to the District. Respondents Benbow, Crosswhite, Head and Stockwell are teachers with permanent or tenured status with the District.

3. On March 12, 2009, the Superintendent presented the District's Board of Trustees a recommendation that the District give notice that particular kinds of services (PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2009-2010).

4. On March 12, 2009, the District's Governing Board adopted Resolution No. 09-11.

The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce or to eliminate, no later than the beginning of the 2009-2010 school year, particular kinds of services in the form of full-time equivalent (FTE) certificated positions as follows:

0.5 FTE	Reading Intervention teacher position;
1.5 FTE	Reading Specialist teacher positions;
4.5 FTE	Grade K-3 teacher positions;
1.0 FTE	Opportunity Education teacher position;
1.0 FTE	English as a Second Language teacher position.

5. The written preliminary notice to each respondent from the District's Superintendent states legally sufficient reasons for the District's Board's intent to eliminate the course as taught by respondents.

6 Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

7. District's Superintendent timely served upon each respondent the Accusation, dated April 9, 2009, and related documents. Each respondent filed timely a notice of defense.

8. All pre-hearing jurisdictional requirements were met.

Respondents' Contentions

9. Respondent Benbow offered evidence at the hearing of this matter that the proposed lay-off's outcome will deprive troubled students, who are enrolled in the Opportunity Class, of essential educational services that are best offered in the setting of specialized service that Respondent Benbow has delivered over the past three years. Furthermore, Respondent Benbow avers that elimination of the Opportunity Class program will result in certain ill-served students leaving the District for their placement in the county community school. Thus with the loss of those students, she contends, the District will be deprived of ADA funding.

Respondent Benbow's contentions are without merit with regard to the layoff action.

10. Respondent Benbow has a first date of paid service to the District as August 23, 2006. She holds a professional clear multiple-subject credential and a CLAD certificate. Respondent Benbow has taught in the District's Opportunity Class over the entirety of her employment relationship with the District. Her work in the Opportunity Class aids 7th and 8th grade students who have poor organizational skills and who have shown substandard academic output. At the current time, Respondent Benbow delivers teacher services for the benefit of 11 students.

However, Respondent Benbow provided no competent evidence that the District has retained any teacher junior to her for which Ms. Benbow possesses a credential and is currently competent to teach. Nor did Respondent Benbow establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teaching position with the District.

11. Other than Respondent Benbow, no other respondent offered evidence, under oath, at the hearing of this matter. Nor did Respondents call any expert witness to offer evidence in support of the contentions argued by Respondent Benbow that would affect the layoff action.

Respondents offered no argument or presentation of evidence that suggest the District's action is improper insofar as the prospective elimination of 8.5 FTE positions. Respondent did not present evidence that the corresponding lay-off of credentialed employees relative to the elimination of the subject FTE positions of the District is contrary to law and unnecessary.

Acts by the District's Superintendent

12. Robert Williams, Ed.D., the Superintendent for the District (the Superintendent) appeared at the hearing of this matter to provide credible and persuasive evidence.

The prospective elimination of particular kinds of services for the 2009-2010 school year directly results from a prospective shortfall in money for the District's budget. In order to partially aid the District in crafting a responsible budget for the ensuing school year, the Superintendent reasonably decided that certain certificated positions be eliminated due to diminished funds for District operations. Also the layoff action is due to a revised method in delivering services in the areas of: the reading intervention program, reading specialist teaching program, the Opportunity Class program, and the English as a Second Language program.

The Superintendent in his official capacity was reasonable in the exercise of discretion in executing the procedures associated with lay-offs required by the subject resolution.

The only mandated service, which is being reduced, is English as a Second language; however, the District has sufficient teaching resources to meet the state requirements for the ensuing year for that service.

Ultimate Findings

13. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents, the District will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

14. The decision of the District's Board to eliminate or discontinue a total of 8.5 FTE positions as specified in Resolution 09-11, including the positions held by each respondent, was neither arbitrary, fraudulent nor capricious. Rather, the Superintendent's determination was within the proper exercise of the discretion bestowed by law upon the District.

15. The District's proposed elimination or discontinuation of the subject full time equivalent positions, including the positions respectively held by respondents, for the ensuing school year, is related to the welfare of the District and its overall student population.

16. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Superintendent lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 8.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non reemployment of respondents.

4. Pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the

particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 12 to 14, inclusive, and 16.

5. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 15.

ORDER

1. The Accusation served on each respondent is sustained.

2. Final notice may be given to Respondents Tracy Benbow, Dawn Carroll, Adrienne Crosswhite, Lori Head, Ronald Sanders and Lisa Stockwell, that their respective services will not be required for the 2009-2010 school year because of the reduction or discontinuance of the particular kinds of services by the Rohnerville School District.

DATED: April 30, 2009

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
State of California