

BEFORE THE
GOVERNING BOARD OF THE
EUREKA CITY SCHOOLS
HUMBOLDT COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GEORGE BELARDE, CAROLYN
JOYCE, SAUNDRA PHILLIPS and
RICHARD MONTAGUE TAYLOR,

Respondents.

OAH No. 2009060727

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, heard this matter in Eureka, California on July 10, 2009.

Stephen L. Hartsell, of North Coast Schools Legal Consortium, represented Eureka City Schools.

Paul Hagen, of Bragg, Perlman, Russ, Stunich & Eads LLP, represented respondents George Belarde and Carolyn Joyce, who were present, and respondent Richard Montague Taylor, who was not present.

Respondent Sandra Phillips appeared and represented herself.

The matter was submitted for decision on July 10, 2009.

FACTUAL FINDINGS

1. Gregg Haulk made and filed the accusation in his official capacity as Superintendent of Eureka City Schools (district).
2. Respondents George Belarde, Carolyn Joyce, Sandra Phillips and Richard Montague Taylor are permanent certificated employees of the district.
3. On June 9, 2009, the district's governing board adopted Resolution No. 08-09-045, adopting a schedule of notice and hearing pursuant to Education Code section 44955.5.

4. On June 19, 2009, Superintendent Haulk recommended to the board that it discontinue the following particular kinds of services and authorize him to pursue necessary procedures to terminate the services of certificated employees pursuant to Education Code sections 44955.5, 44949 and 44955:

All Adult Education Services, including:

1.0 FTE¹ Associate Director Adult Education;

1.0 FTE Program Coordinator Adult Education;

All Adult Education Teachers, whether permanent, probationary or temporary.

5. On June 19, 2009, the board adopted Resolution No. 08-09-046, determining that the district's total revenue limit per unit of average daily attendance (ADA) for the 2009-2010 school year has not increased by at least two percent, and that it is therefore necessary to decrease the number of permanent certificated employees and terminate all adult education permanent, probationary and temporary certificated employees effective no later than midnight, August 14, 2009.² The board resolved to discontinue the particular kinds of services set forth above and directed the superintendent to take appropriate action to implement the resolution.

6. Of the 36 certificated employees teaching in adult education, six are permanent employees and the rest are temporary. On June 25, 2009, in accordance with the schedule of notice and hearing adopted in Resolution No. 08-09-045, Superintendent Haulk gave written notice to respondents and the other two permanent employees of his recommendation that their services not be retained for the ensuing year. The reasons for the recommendation were set forth in these preliminary layoff notices. The 30 temporary employees also received notices that they will not be employed for the 2009-2010 school year. The Associate Director of Adult Education received a separate layoff notice.

7. Respondents timely requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year.³ An accusation was served on each respondent, and each respondent filed a timely notice of defense. All prehearing jurisdictional requirements have been met.

8. Last spring, the district went through the certificated employee layoff process under Education Code section 44955, and the services of a number of

¹ Full-time equivalent positions.

² The schedule of notice and hearing adopted in Resolution No. 08-09-045 requires the notice of termination of services to be given before August 15.

³ One other permanent employee filed a request for a hearing, but she later withdrew her request.

K-12 teachers were terminated at the end of the 2008-2009 school year. Because of further funding cuts, the district determined that additional layoffs would have to be made this summer. The authority for summer layoffs of certificated employees is found in Education Code section 44955.5, which provides under subdivision (a):

During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, *if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district*, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board. [Italics added.]

9. Respondents do not dispute that the district's total revenue limit per unit of ADA for the 2009-2010 school year has not increased by at least two percent. As of June 19, 2009, when the board adopted the resolution discontinuing all adult education services, the funded base revenue limit per ADA for the 2009-2010 school year had decreased 1.11 percent from the amount for the 2008-2009 school year. (The funded base revenue limit per ADA is determined by applying the statutory cost-of-living adjustment to the previous year's base revenue limit per ADA, and then applying the deficit factor.) As of July 10, 2009, when the hearing was held, the district expected additional funding cuts to result in almost a 3.45 percent decrease in the base revenue limit per ADA for the 2009-2010 school year. The district is also facing declining enrollment, and a lower ADA will reduce its total funding for the 2009-2010 school year.

10. Respondents dispute that it is financially necessary to discontinue adult education services, pointing out that the district receives funding for adult education separate from revenue limit funds. Respondents offered in evidence portions of the 2009-2010 budget adopted by the district's governing board on June 24, 2009. This budget reflected that adult education would continue to be funded, with an expenditure for certificated salaries of \$693,055 (a reduction of 39.5 percent from the amount for the 2008-2009 school year), and an ending fund balance of about \$2.9 million. This budget also projected that the excess of district general fund revenues over expenditures before

other financing sources and uses would be about \$2.4 million, and the ending general fund balance would be about \$4 million.

Respondents point out that the district will have “federal stimulus” monies to offset funding cuts. Federal funds were provided to the state under the American Recovery and Reinvestment Act, and school districts are receiving State Fiscal Stabilization Funds (SFSF). On July 9, 2009, the district received \$1.2 million, and it expected to receive another \$1.2 million.

11. The district’s chief business official, Richard Hanger, explained that the 2009-2010 budget adopted by the district’s governing board on June 24, 2009, does not accurately reflect the current budget situation. There were entries for the “Prop. 98 Reservation” of about \$2.3 million for 2009-2010 and \$944,447 for 2008-2009, representing revenue limit cuts made pursuant to the May revisions to the Budget Act, but it was too late for these cuts to be reflected in the general fund revenues set forth. Hanger expects the board to amend the 2009-2010 budget once this layoff proceeding is concluded.

The board has not yet determined how the one-time SFSF monies will be used by the district. A memo from the California Department of Education, dated June 23, 2009, makes reference to the SFSF monies having “an intended use to avert layoffs of teachers and other personnel and further education reform in the key areas of teacher quality, standards and assessments, using longitudinal data to improve instruction, and supporting struggling schools.” There is also a reference to these funds being “available to support kindergarten through grade twelve.” Hanger believes that if the board uses SFSF monies to rehire laid off teachers, K-12 teachers would be the first to be rehired.

A school district’s primary mission is to provide K-12 education, and the state recently gave districts more flexibility to use adult education funds for K-12 education. This was a factor in the district’s decision to discontinue adult education services and focus its resources on K-12 education.

12. Education Code section 52540 mandates school districts to provide English classes “[u]pon application of 20 or more persons above the age of 18 years residing in a high school district who cannot speak, read, or write the English language to a degree of proficiency equal to that required for the completion of the eighth grade.” If 20 such persons request English classes, the district will hire a teacher off the adult education seniority list to teach English.

13. As required by Education Code section 44955.5, the district’s governing board determined that the district’s total revenue limit per unit of ADA has not increased by at least two percent, and that it is therefore necessary to decrease the number of permanent certificated employees. How the decrease in certificated employees will be effectuated is a matter within the broad discretion of the board. Although respondents

may disagree with how the board is allocating district funds and its policy decision to focus on K-12 education, the board's decision to effectuate the decrease in certificated employees by discontinuing adult education services is not arbitrary or capricious, but rather a proper exercise of its discretion.

14. No certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSION

Cause exists because of the discontinuation of adult education services pursuant to Education Code sections 44955.5 and 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 Education Code section 44949.

ORDER

Notice may be given to respondents George Belarde, Carolyn Joyce, Sandra Phillips and Richard Montague Taylor that their services will not be required for the 2009-2010 school year because of the discontinuation of adult education services.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings