

BEFORE THE
BOARD OF TRUSTEES
BENNETT VALLEY UNION SCHOOL DISTRICT
SONOMA COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LINDA RAE BROWN,

Respondents.

OAH No. 2009070256

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, heard this matter in Santa Rosa, California, on July 17, 2009.

Margaret M. Merchat, Attorney at Law, of School and College Legal Services of California, represented the Bennett Valley Union School District.

James F. DeMartini, Attorney at Law, represented respondent Linda Rae Brown, who was present.

The matter was submitted for decision on July 17, 2009.

FACTUAL FINDINGS

1. Susan D. Field made and filed the accusation in her official capacity as Superintendent of the Bennett Valley Union School District.

2. Respondent Linda Rae Brown is a permanent certificated employee of the district.

3. On June 10, 2009, the district's Board of Trustees adopted Resolution No. 08-019, adopting a schedule of notice and hearing pursuant to Education Code section 44955.5.¹

4. On June 25, 2009, Superintendent Field recommended to the board that it reduce or discontinue particular kinds of services at the end of the 2008-2009 school

¹ All further statutory references are to the Education Code.

year. The services to be reduced or discontinued are identified as “Eliminate the equivalent of .235 F.T.E.^[2] (from .45 to .215 – 84 days to 40 days) Certificated School Nurse.” The superintendent asked the board to authorize her to pursue those procedures necessary to not reemploy the affected employees pursuant to sections 44949, 44955, and 44955.5.

5. On July 1, 2009, the board adopted Resolution No. 09-002. In this resolution, the board determined that the district’s total revenue limit per unit of average daily attendance (ADA) pursuant to the Budget Act 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. The board resolved to reduce or discontinue the particular kinds of services identified as “Eliminate the equivalent of .235 F.T.E. (from .45 FTE to .215 FTE – 84 days to 40 days) Certificated School Nurse,” and directed the superintendent to take appropriate action to implement the resolution. Termination of certificated employees pursuant to section 44955.5 is to be effective no later than midnight, August 14, 2009.³

6. On July 2, 2009, in accordance with the schedule of notice and hearing adopted in Resolution No. 08-019, Superintendent Field gave written notice to respondent of the recommendation that respondent’s services be reduced or discontinued in the amount of .235 FTE for the 2009-2010 school year. The reasons for the recommendation were set forth in this preliminary layoff notice.

7. Respondent timely requested a hearing to determine if there is cause for reducing or discontinuing her services for the 2009-2010 school year. An accusation was served on respondent, and she filed a timely notice of defense. All prehearing jurisdictional requirements have been met.

8. Respondent has been employed by the district as a certificated school nurse for 13 years. Last spring, the district went through the certificated employee layoff process under Education Code section 44955, and respondent’s school nursing position was reduced from .56 FTE to .45 FTE. Because of further funding cuts, the district determined that an additional reduction in school nursing services would have to be made this summer. The authority for summer layoffs of certificated employees is found in 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*

² Full-time equivalent positions.

³ The schedule of notice and hearing adopted in Resolution No. 08-019 requires the notice of termination of services to be given before August 15.

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. Respondent does 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; in fact, the district's total revenue limit has decreased. Respondent contends, however, that it is not necessary to further reduce her school nursing services. The district will be receiving federal stimulus funds, and budget figures indicate the district will have a higher ending balance for the 2009-2010 school year than the ending balance for the 2008-2009 school year.

The district's business manager, Rich Pardee, explained that the higher ending balance for the 2009-2010 school year is primarily due to the one-time federal stimulus funds, and all of that ending balance will be needed to get through the 2010-2011 school year. The district projects that the ending balance for the 2010-2011 school year will be just four percent, the minimum level of reserves required by the state. Pardee believes that spending more money in 2009-2010 would probably put the district in qualified certification status (meaning that it might not meet its financial obligations) in succeeding years.

Superintendent Field has "scoured the budget" looking for expenditures that could be cut. The district's priority is classroom education, and cuts have been made in after-school programs, custodial staff and other non-classroom services. Having a school nurse provide desirable but non-mandated services is a luxury the district can no longer afford.

10. Under a contract between the district and the Kenwood School District, respondent provides nursing services in both districts. The contract was for 17 days of nursing services in Kenwood, but if respondent's position is reduced to .215 FTE (40 days), Superintendent Field plans to reduce respondent's time in Kenwood to 10 days. Field and respondent disagree about whether respondent's mandated services in the district can be performed in the remaining 30 days.

Field plans to use respondent to perform vision and hearing screening,⁴ participate in special education evaluations and look after the specialized health needs of students. Field reviewed the district's IEP's (Individualized Education Plans) for special education students and the specialized health needs of current students. During the last two years, a substitute school nurse performed vision and hearing screenings, because respondent was off for extended absences. Based on how much time these screenings took the substitute nurse, Field has calculated that respondent can perform her "bare-bones" nursing duties in 30 days. Field plans to meet with respondent at the beginning of school to determine how she will accomplish her tasks. Non-mandated services, such as TB skin tests for employees and volunteers, will no longer be performed.

Respondent believes she will be unable to perform the mandated services in the district if her position is reduced to .215 FTE. However, Superintendent Field carefully analyzed the tasks of a school nurse before recommending the reduction, and her assessment that mandated services can still be performed appears to be reasonable.

11. Respondent contends that this summer layoff proceeding under section 44955.5 is defective because the district is reducing a "particular kind of service" (PKS), and a PKS layoff must be conducted under sections 44955 and 44949. Those sections require that employees be given notice of the proposed layoff no later than March 15 and final notice of termination no later than May 15. Respondent's contention is without merit. By stating that "The termination shall be pursuant to Sections 44951 and 44955," section 44955.5 incorporates by reference the reasons specified in section 44955 for terminating the services of certificated employees (including a PKS reduction or discontinuation). Section 44955.5 simply allows for post-May 15 reductions in force, including those based on the reasons in section 44955, when changes in fiscal circumstances make the reductions necessary.

12. As required by 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 employee services will be effectuated is a matter within the broad discretion of the board. Although respondent may disagree with how the board is allocating district funds, the board's decision to effectuate the decrease in certificated employee services by reducing school nursing services is not arbitrary or capricious, but rather a proper exercise of its discretion.

13. No certificated employee with less seniority than respondent is being retained by the district to perform services that respondent is certificated and competent to render. Respondent's argument that this determination cannot be made because the district has never placed her on its seniority list is rejected. The district's seniority list

⁴ Vision and hearing screenings are not required to be performed by a nurse, but Field wants to use respondent for these services.

separates employees by classification, and respondent is not on the main list with teachers because she is not credentialed to provide K-6 classroom instruction.

LEGAL CONCLUSION

Cause exists because of the reduction or discontinuation of certificated school nursing services pursuant to sections 44955.5 and 44955 to give notice to respondent that her services will be reduced or discontinued in the amount of .235 FTE (from .45 FTE to .215 FTE – 84 days to 40 days) 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 respondent Linda Rae Brown that her services will be reduced or discontinued in the amount of .235 FTE (from .45 FTE to .215 FTE – 84 days to 40 days) for the 2009-2010 school year.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings