

BEFORE THE
GOVERNING BOARD OF THE
RAMONA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondents Identified in
Appendices A and B.

OAH No. 2010030124

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2010, in Ramona, California.

William Diedrich, Atkinson, Andelson, Loya, Ruud & Romo, represented Ramona Unified School District.

Jon Vanderpool, Tosdal, Smith, Steiner & Wax, represented 12 of the respondents listed in Appendix A.

No appearance was made by or on behalf of respondents Joannn Akrawi, Stephanie Andrus, Amanda Benedic, Shirley Buckley, Holly Cross, Chelsie Gammill, Rebecca Harris, Cody Jenkins, Tehra Lynn, Jami McFarland, Dallas Meadows, Stefanie Ortega, Gloria Quinn, and Diana Ramsey, who did not request a hearing.

The matter was submitted on April 14, 2010.

FACTUAL FINDINGS

1. Robert W. Graeff, Ed.D., made and filed the accusation in his official capacity as Superintendent of the Ramona Unified School District.

2. The respondents listed on Appendix A, which is attached hereto and incorporated by reference herein, are permanent or probationary certificated employees of the district.

3. The respondents listed on Appendix B, which is attached hereto and incorporated by reference herein, are temporary certificated employees of the district.

4. On March 1, 2010, the Governing Board adopted Resolution No. 2009-10-09, which reduced particular kinds of services and directed the superintendent to give appropriate notices to those certificated employees whose positions would be affected by the action. The resolution identified the particular kind of service or program to be reduced or discontinued, the number of full-time equivalent (FTE) positions to be reduced or discontinued, the extent of positively assured attrition, and the net total reduction FTE positions. The grand total of FTE positions identified for layoff was 37.37, but since there were 15 positively assured attrition FTEs, the net total reduction in FTE positions was 22.37.

5. On March 1, 2010, the Governing Board adopted Resolution No. 2009-10-10, which released the temporary certificated employees identified in Appendix B at the end of the 2009-2010 school year.

6. On March 8, 2010,¹ Assistant Superintendent Joe Annicharico, Jr., Ph.D., Assistant Superintendent, Human Resources Development, gave written notice to approximately 35 certificated employees, including respondents, of the recommendation that their services would not be required for the 2010-11 school year. The reasons for the recommendation were set forth in these preliminary layoff notices. Many of the respondents timely filed a Request for Hearing and Notice of Defense to determine if there was legal cause for terminating their services for the 2010-11 school year. An accusation was served on each respondent.

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. The district is required to issue final layoff notices before May 15, and before it does so, the district will take into account any additional attrition that occurs. Further attrition occurring after May 15 will allow the district to rehire laid off employees.

8. The district defined “competency” pursuant to Education Code section 44955, subdivision (b), as the possession of (1) a valid credential in the relevant subject matter area; (2) “highly qualified” status under the No Child Left Behind Act in the position to be assumed; (3) an appropriate EL authorization if required by the position to be assumed; (4) the positions which include, in part, AVID, special training and experience to teach AVID classes; (5) for positions which involve instruction based upon the Montessori curriculum, completion of Montessori training; and (6) for positions which include, in part, serving as ASSETS facilitator, at least one complete year of experience in the past five school years serving as an ASSETS facilitator.

9. The district created a bump analysis to determine if a qualified senior employee could bump into a position being held by a more junior employee.

10. A school board may “reduce services” by eliminating certain types of services or by reducing the number of district employees who provide such services. The decision to reduce services is not unfair or improper simply because a school board makes a decision it is

¹ The district introduced a sample of the notices sent to employees.

empowered to make. A district's decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in a reduction in force proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

11. Education Code section 44955, subdivisions (b) and (c), set forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Education Code section 44955, subdivision (d), provides an exception to that general rule and permits the district to deviate from terminating a certificated employee in order of seniority when the district demonstrates a specific need for the service or to comply with constitutional requirements.

12. Under subdivision (d)(1), a district may skip a junior teacher and retain such a junior teacher over a more senior teacher for specified reasons. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 131.) But, junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.) A junior employee possessing special competence can be retained over a senior employee who lacks such competence. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567.)

13. The parties stipulated that 14 respondents had not requested a hearing, that all jurisdictional requirements were met, that the respondents listed in Appendix B were temporary employees of the district, and that the district could issue layoff notices to those respondents listed in Appendices A and B.

14. No respondent testified in this hearing.

15. No evidence established that the district's competency criteria were arbitrary or that the criteria were applied in a capricious fashion, that a junior teacher lacked the required competence to be retained over a senior teacher, that any senior teacher possessing competence was being improperly terminated, or that the district's failure to utilize the same criteria it previously utilized in prior resolutions was erroneous.²

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

² Ashley Butler, the one respondent subject to the "bump," held a position that had been skipped in prior years' resolutions.

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2010-2011 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The district properly identified the certificated employees who are providing the particular kinds of services that the Governing Board directed be reduced or discontinued. It is recommended that the Governing Board give respondents notice before May 15, 2009, that their services will not be required by the District for the school year 2010-11.

5. A preponderance of the evidence sustained the charges set forth in the accusation subject to the recommendations listed in the factual findings. This determination is based on all factual findings and on all legal conclusions.

RECOMMENDATION

It is recommended that the governing board give notice to the respondents whose names are set forth below in Appendix A that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2010-2011 school year.

It is further recommended that the governing board withdraw the accusations and rescind the precautionary layoff notices issued to the respondents whose names are set forth in Appendix B.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

Bash, Robyn

Beus Michele

Brown, Nicole

Butler, Ashley

Cross, Holly

Ellsworth, Marie Therese

Harris, Rebecca

Hill, Christine

Jenkins, Cody

Lynn, Tehra

Mc Farland, Jami

Morgan, Elizabeth

Quinn, Gloria

Schramm, Kimberly

Soltero, Adriana

Stewart, Tracey

Tamburrino, September

Utech, Jeana

Appendix B

RESPONDENTS

Akrawi, Joann

Buckley, Shirley

Benedic, Amanda

Gammill, Chelsie

Meadows, Dallas

Ortega, Stefanie

Ramsey, Diana