

BEFORE THE
GOVERNING BOARD
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2010030263

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Yucaipa, California on April 1, 2010.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Yucaipa-Calimesa Joint Unified School District.

Ronald G. Skipper, Attorney at Law, represented the respondents listed in Appendix A., except for those listed immediately below.

Susan M. Popovich, Emeritus Consultant, California Teachers Association, represented respondents William Davidson, Cathleen Groves, Jessica Gustafsson, Catherine Hertel, Albert Opdyke, Myralynn Reichmann, Evan Sternard, and John Taylor.

The matter was submitted on April 1, 2010.

FACTUAL FINDINGS

1. Melissa Moore, Assistant Superintendent, Human Resources of the Yucaipa-Calimesa Joint Unified School District, made and filed the accusation dated February 25, 2010, in her official capacity as the designee of Dr. Sherry Kendrick, District Superintendent.

2. Respondents¹ are certificated district employees.

¹ The district initially identified 73 certificated employees as respondents designated for layoff. The district subsequently dismissed several of these employees so that by the conclusion of the hearing, there remained 65 named respondents. These 65 named respondents are listed in Appendix A. The district also designated a number of employees for precautionary layoffs, in the event that the district's proposed actual layoff list was not upheld in its entirety. In light of the conclusion below that the district properly identified its certificated employees for layoff, the individuals identified for precautionary layoff are excluded from the list of respondents contained in Appendix A.

3. On February 23, 2010, in accordance with Education Code sections 44949 and 44955, the superintendent notified the Board of Education of the Yucaipa-Calimesa Joint Unified School District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On February 23, 2010, the board adopted Resolution No. R-15/2009-2010, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2010-2011 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Teachers	51.5
Drafting/Work Experience Teacher	1
English Teachers	3
Math Teachers	1
Biology Teachers	1
Physical Education Teachers	2
Middle School Science Teachers	1
Middle School Social Science Teachers	1

The proposed reductions totaled 61.5 FTE positions.

5. The board further determined in Resolution No. R-15/2009-2010 that “competency,” as described in Education Code section 44955, subdivision (b), for the purposes of bumping, “shall necessarily include: (1) Possession of a valid credential and Highly Qualified status under NCLB in the relevant subject matter area(s); (2) an appropriate EL authorization if required by the position; (3) to bump a single subject credential holder in a secondary assignment, an appropriate single subject credential; and (4) for specialty positions such as Counseling, School Psychologist, Community Day School, Advanced Placement, and secondary Designated Dual Assignment, at least one (1) complete year of District experience in the same assignment within the last five (5) years.”

An issue was raised with regard to including one year of experience within the past five years as one of the bumping competency criteria. However, the board’s determination in this regard was neither arbitrary nor capricious, and constituted a reasonable exercise of its discretion.

6. The board further determined in Resolution No. R-15/2009-2010 that it would be necessary to retain certificated employees who possess special training and competency that other certificated employees with more seniority might not possess, to wit: teachers who have authorization to teach English Learner (EL) students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes

therewith; teachers who have special training and experience to teach Advanced Placement classes; and teachers who are assigned to Designated Dual Assignments at the secondary level. Based on the evidence presented at the hearing, the board's determinations in this regard were neither arbitrary nor capricious, and constituted a reasonable exercise of the board's discretion.

7. The board directed the superintendent or her designee to determine which employees' services would not be required for the 2010-2011 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or her designee to send appropriate notices to all certificated employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

8. On or before March 15, 2010, the district timely served on respondents a written notice that the superintendent had recommended that their services would not be required for the upcoming school year, along with the related accusation. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

9. Respondents timely filed written requests for hearing and notices of defense. All pre-hearing jurisdictional requirements were met.

10. Respondents are probationary or permanent certificated employees of the district.

11. The services the board addressed in Resolution No. R-15/2009-2010 were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

12. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the board.

13. The board considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

14. Heather Seaton currently teaches high school English, and has a single subject credential in English. She felt she could bump Jessica Gustafson, a high school English teacher with a single subject English credential, who has taught advanced placement language for four years and has also participated in advanced placement training summer institutes. The district properly exempted Gustafson from layoff pursuant to the advanced placement experience skipping criteria. Further, since Seaton does not have a year of advanced placement teaching experience within the past five years, she did not meet the district's bumping criteria.

15. Matthew McIntosh currently teaches science and math at a continuation school. He has a preliminary single subject credential in social science, which authorizes him to teach any subject at that school, based on student need. McIntosh was bumped by Kendall Jarish, an elementary school teacher with a multiple subject credential and a supplementary authorization to teach English. Jarish is also authorized by her credential to teach at a continuation school; Jarish is also competent to bump McIntosh pursuant to the board's bumping criteria.

16. Margaret Stevenson is a reading specialist at a district elementary school. She has both a multiple subject and a reading specialist credential. She was bumped by elementary school teacher Elizabeth Tremain, who has a multiple subject credential, a supplementary authorization in English, and a reading certificate. Last year, but not this year, reading specialists were exempted from layoff pursuant to the board's skipping criteria. Due to the nature of her assignment, and the students she works with, Stevenson does not believe that an individual who only has a reading certificate, and not a credential, should be able to bump her. Stevenson did not, however, assert that she was exempt from layoff under the board's present skipping criteria. Further, Tremain was competent to bump Stevenson pursuant to the board's bumping criteria.

17. Darla Clough teaches in a middle school math and science core assignment. Clough has a multiple subject credential plus a supplementary authorization to teach math. She has taught ASB (associated student body) and science 8 as well as several algebra classes. Her credential and supplementary authorization permits her to teach algebra through the ninth-grade level. She was properly bumped by Monica Grisham, an elementary school teacher with a multiple subject credential, who is credentialed and competent to teach in a core assignment pursuant to the board's bumping criteria.

18. Tamie Fawcett teaches first grade, and has a multiple subject and a PPS (pupil personnel services) school counseling credential. From 2006 to 2009, at her principal's request, she served a half day as a counselor, and a half day teaching. She has completed 350 field hours in counseling at the junior and senior high level in the district. During her two internship years, she served as a counselor in the high school summer school setting. She had other related experience, such as working at the University of Redlands admissions office for three years. She thus feels she is qualified to bump a high school counselor with less seniority than she. However, she has never been assigned as a high school counselor in the district—her (unpaid) summer internship does not constitute such an assignment.

Accordingly, she was not competent to bump a more junior counselor pursuant to the district's bumping criteria.

19. Vickie Lyn Nelson teaches elementary school sixth grade, and has a multiple subject and a PPS school psychology credential. She has extensive experience working with at-risk youth, and also has counseling experience as an unpaid intern. She has never worked in a paid school psychologist position, however. More specifically, she does not have a year of district counseling experience, and is thus not competent to bump a less senior counselor pursuant to the district's bumping criteria.

20. Patricia Buchmiller has been an elementary school assistant principal, but is presently serving in an elementary school teaching assignment. She has both a multiple subject and an administrative services credential. Her seniority date is August 15, 2006. She was hired by the district as a long-term substitute on September 20, 2005, and served as in that capacity for 136 or 137 days during the 2005-2006 school year. She believes she should receive credit for the 2005-2006 year for seniority purposes, based on her understanding that she served 136 out of 180 teaching days, so that she taught 76% (i.e., over three-fourths) of the school days. However, her calculation did not take into account that pursuant to the collective bargaining agreement, the number of teaching days was either 184 or 185, so that she taught at most 74.5%² of teaching days during the school year in question. While Buchmiller's situation is truly heartbreaking, she fell just short of the 75% of school days required in order for her service in the 2005-2006 year to be included for seniority purposes.³

21. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

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. Pursuant to section 44995, 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

² This percentage assumes she worked 137 days and the full school year was 184 days.

³ Even if Buchmiller is given credit for her service in the 2005-06 school year, she would still be laid off; however, the earlier seniority date could be significant for purposes of recall and rehire.

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.) Junior teachers may be given retention priority over senior teachers 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; *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 136-137.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

6. Pursuant to Education Code section 44845, certificated employees are deemed “to have been employed on the date upon which he first rendered paid service in a probationary position.”

7. Pursuant to Education Code section 44918, subdivision (a), “an employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.”

8. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. Cause exists to reduce the number of certificated employees of the district

due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the Board be directed be reduced or discontinued. It is recommended that the board give respondents notice before May 15, 2010, that their services are no longer required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on respondents are sustained. Notice may be given to respondents before May 15, 2010, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Heather Aguilar
2. Jessica Alonzo
3. Cheryl Arthur
4. Gina Aten
5. Deborah Bagg
6. Michelle Benware
7. Kristin Bernier
8. Tara Bickford
9. Melinda Blanton-Crites
10. Patricia Buchmiller
11. Jennifer Burton
12. Barbara Caballero
13. Darla Clough
14. Scott Colin
15. Davina Correa
16. Kimberly Correll
17. Melissa Crosby
18. Paula Deantonio
19. Crystal Farritor
20. Tamie Fawcett
21. Gwendalyn Flowers
22. Misty Foy
23. Lindsey Gilson
24. Lisa Hanlon-Amini
25. Philip Hudec
26. Bridgette Kennedy
27. Amber Kidd
28. Melissa Kumanski
29. Jennifer Lacanfora
30. Julie Lattuca
31. Esther Lehr
32. Debbie Logsdon
33. Priscilla Martin
34. Eric Martinez
35. Matthew McIntosh
36. Christine McLaughlin
37. Jill Meidinger
38. Kurt Meidinger
39. Kathleen Miller
40. Stacey Monarrez
41. Krestin Mullen
42. Vickie Nelson
43. Brittany Olufson
44. Kirsten Paul
45. Carrie Powell
46. Sarah Ring
47. Kasaundra Salinas
48. Juliana Sauvao
49. Heather Seaton
50. Brandy Smith
51. Chad Spencer
52. Michelle Spencer
53. Susan Steinerlund
54. Margaret Stevenson
55. Melanie Stewart
56. Amanda Stockham
57. Cartha Tennille
58. Antoinette Velardes
59. Kerry Vizzini
60. Lindy Ward
61. Charissa Wiedlin
62. Julie Wilson
63. Casey Woodgrift
64. Justin Woodside
65. Sherry Young