

BEFORE THE  
GOVERNING BOARD  
RIVERDALE JOINT UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

DEBORAH ACOSTA, et al.,

Respondents.

OAH No. 2010031186

**PROPOSED DECISION**

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Riverdale, California, on April 12, 2010.

David A. Moreno, Attorney at Law,<sup>1</sup> represented the complainant, Elaine C. Cash, Superintendent, Riverdale Joint Unified School District.

Joshua F. Richtel, Attorney at Law,<sup>2</sup> represented the respondents. There are seven respondents, and they are listed in exhibit A.

The matter was submitted on April 12, 2010.

**FACTUAL FINDINGS**

*GENERAL FINDINGS CONCERNING STATUTORY REQUIREMENTS*

1. Respondents are certificated district employees.
2. Education Code sections 44949 and 44955,<sup>3</sup> provide for two notices to be given in connection with terminating an employee. The first notice is given by the superintendent. The superintendent makes a recommendation that certain employees be laid off, and the superintendent gives notice of that recommendation to those employees and the governing board. The superintendent must give that notice no later than March 15. That

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<sup>3</sup> All references to the Code are to the Education Code unless otherwise specified.

notice will be referred to as the Superintendent's Notice of Layoff Recommendation. There is no requirement that a governing board take any action in March. But while it is unnecessary, governing boards usually adopt a resolution ratifying the superintendent's recommendation.

3. The second notice is a notice of a governing board's decision to terminate an employee. That notice is provided for in Code section 44955 and must be given before May 15.

4. In this case, not later than March 15, 2010, the superintendent of the district caused the governing board of the district and respondents to be notified in writing that it was recommended that respondents be notified before May 15 that the district would not require their services for the ensuing school year.

5. The Superintendent's Notice of Layoff Recommendation stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

6. A Superintendent's Notice of Layoff Recommendation was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

7. The Superintendent's Notice of Layoff Recommendation advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice was served.<sup>4</sup> And the failure to request a hearing would constitute a waiver of the right to a hearing.

8. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.<sup>5</sup> Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

9. The superintendent gave a Superintendent's Notice of Layoff Recommendation to Marsha Grigsby, and Ms. Grigsby requested a hearing. Before the hearing, however, she withdrew her request. Therefore, she is not a respondent.

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<sup>4</sup> Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

<sup>5</sup> Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

10. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are “particular kinds of services” that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

*SERVICES THE DISTRICT INTENDS TO REDUCE OR DISCONTINUE*

11. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent or probationary employees in the district by 11.83 full time equivalents (FTE).

12. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

1.	Multiple Subject	6.0 FTE
2.	Multiple Subject Reading Resource	1.0 FTE
3.	Secondary Single Subject Art	1.0 FTE
4.	Library Media Teacher	1.0 FTE
5.	Independent Study	1.0 FTE
6.	Careers in Education ROP	.5 FTE
7.	7-8 Keyboarding	.28 FTE
8.	4-8 Leadership	.43 FTE
9.	4-8 Academic Counselor	.14 FTE
10.	4-8 Athletic Director	.14 FTE
11.	9-12 Activities Director	.17 FTE
12.	9-12 AVID	<u>.17 FTE</u>
	TOTAL	11.83 FTE

*STIPULATION TO RESCIND NOTICES*

13. Complainant stipulated that as to Amanda Collier-Mirelez, Karen Googooian, and Jennifer Hosler, the district will rescind the Superintendent’s Notice of Layoff Recommendation.

WITHDRAWAL OF REQUESTS FOR HEARING

14. At the hearing, the remaining respondents – Deborah Acosta, Kjersti Denny-Jordan, Camala Fowler, and Lisette Jost – withdrew their requests for a hearing.

SUMMARY OF FINDINGS REGARDING RETENTION OF EMPLOYEES

15. With regard to respondents who are permanent employees, the district is not retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

16. With regard to respondents who are permanent employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.<sup>6</sup>

17. With regard to respondents who are either permanent or probationary employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent's qualifications entitle him or her to render.<sup>7</sup>

LEGAL CONCLUSIONS

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

2. The Superintendent's Notices of Layoff Recommendation given to Amanda Collier-Mirelez, Karen Googooian, and Jennifer Hosler will be rescinded.

3. The remaining respondents have withdrawn their requests for hearing.

ORDER

1. The Superintendent's Notices of Layoff Recommendation given to Amanda Collier-Mirelez, Karen Googooian, and Jennifer Hosler are rescinded.

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<sup>6</sup> Code section 44955, subdivision (b), provides seniority protection for a *permanent* employee in terms of the services the employee is "*certificated and competent to render.*"

<sup>7</sup> Code section 44955, subdivision (c), provides seniority protection for both *permanent and probationary* employees in terms of the services an employee's "qualifications entitle [him or her] to render."

2. The district may terminate Deborah Acosta, Kjersti Denny-Jordan, Camala Fowler, and Lisette Jost without giving them notices of termination pursuant to Code section 44955.

Dated: May 3, 2010

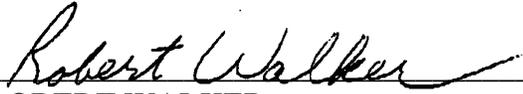
  
ROBERT WALKER  
Administrative Law Judge  
Office of Administrative Hearings

EXHIBIT A  
RESPONDENTS

Acosta, Deborah

Collier-Mirelez, Amanda

Denny-Jordan, Kjersti

Fowler, Camala

Googooian, Karen

Hosler, Jennifer

Jost, Lisette