

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
FOR THE
BOARD OF EDUCATION
BEAR VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceedings Concerning:

16 Certificated Employees,

Respondents.

OAH No. 2013040190

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Big Bear Lake, California on April 23, 2013.

David E. Robinett, Esq. of Atkinson, Andelson, Loya, Ruud & Romo represented the Bear Valley Unified School District (the District).

All of the respondents who were present for the hearing were represented by Carlos R. Perez, Esq. of Reich, Adell & Cvitan.

The matter was submitted on April 23, 2013.

FACTUAL FINDINGS

1. Tim Larson, Director of Personnel/Educational Services for the District, made and filed the Accusation dated March 12, 2013, while acting in his official capacity. Director Larson signed the Accusation on behalf of Kurt Madden, the Superintendent of the District pursuant to the Superintendent's written delegation of authority.

2. Respondents are certificated District employees.

3. On March 6, 2013, the Board of Trustees (Board) adopted Resolution No. 12-13-015 (the Resolution), 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 2013-2014 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
Continuation High School Principal Services	1.0
High School Math Teaching Services	0.4
High School Computer Based Accounting Teaching Services	0.2
High School Social Studies Teaching Services	0.2
High School Spanish Teaching Services	0.2
High School “On Your Own” Teaching Services	0.6
Middle School Science Teaching Services	0.2
Middle School Math Teaching Services	0.2
Middle School Physical Education Teaching Services	0.2
Elementary (K-6) Classroom Teaching Services	<u>6.0</u>
<u>Total FTE’s</u>	<u>9.2</u>

The services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

4. The Board’s decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to substantial deficits in the operating budget, and is, therefore, a proper exercise of the Board’s discretion. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

5. The District 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.

6. On March 12, 2013, the District timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the District's intent not to reemploy them for the upcoming school year. Accordingly, respondents received written notice, on or before March 15, 2013, notifying them that the Board had recommended they not be re-employed in the upcoming, 2013-2014, school year.

7. On March 12, 2013, respondents were served with a copy of the Notice of Recommendation That Services Will Not Be Required, the Resolution to Reduce or Eliminate Particular Kinds of Certificated Services, the Accusation, the Notice of Accusation, a blank Notice of Defense and Request for Hearing, and other related materials.

8. The following certificated employees were timely served with layoff notices or a precautionary layoff notice:

14 Layoff Notices: Molly Anderson; Eduardo DeAnda; Michael Hahn; Diane Kendall; Jeremy Little; Amy Martinez; Manuel Marquez; Jennifer Maybin; Sharon Meagher; Susan Oberneder; Jana Roberts; Shauna Ward; Katherine Williams; and, Joy Wright.

2 Precautionary Notices: Dottie Jaeger; and, Andrea McLinn.

9. The following 11 certificated employees (respondents) timely requested a hearing and filed notices of defense: Eduardo DeAnda; Dottie Jaeger; Diane Kendall; Jeremy Little; Amy Martinez; Andrea McLinn; Sharon Meagher; Susan Oberneder; Jana Roberts; Shauna Ward; and, Katherine Williams.

10. All respondents were properly noticed of the date, time and place of the instant hearing.

11. All prehearing jurisdictional requirements have been met.

12. Respondents have been selected for notice of layoff pursuant to their seniority date, which is based on the first day of paid service of each respondent in a probationary position. Respondents were ranked for layoff in the inverse order of their seniority dates.

13. During the instant hearing the District reduced the proposed 9.3 FTE reduction by 3.4 FTE based on three (3) retirements and the decision to retain 0.2 FTE in Middle School and 0.2 FTE of physical education. Consequently, the layoff notices issued to the following respondents were rescinded: Molly Anderson; Amy Martinez; Manuel Marquez; and, Susan Oberneder.

Issue Raised During the Hearing

14. Due to the exemplary efforts of counsel all issues were resolved except for the following issue concerning a certificated employee who is teaching two periods of Math without holding an appropriate credential for that assignment. During the 2012-2013 school year Doreen De Nigiris, who holds an “Ed Specialist” credential, was assigned outside her credential to teach two periods of Math. During the hearing counsel for respondents noted that Diane Kendall, who holds Ed Specialist and Multiple Subject credentials with Math Authorization and supplementary certification in Math, is slated for a 0.4 FTE reduction. The District represented that the “missassignment” will be corrected for the 2013-2014 school year but that Diane Kendall had “no priority right” to fill Doreen DeNigiris’ position because the two periods of math being taught by Doreen DeNigiris are not being eliminated; instead, the District will be moving a properly credentialed teacher into the math teaching position(s).

15. The District is correct. Since the 0.4 Math FTE’s being taught by Doreen DeNigiris are not being eliminated the issue is not ripe for consideration in these proceedings.

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. 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.)

4. The services listed in Factual Finding 3 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

5. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District due to budgetary reasons.

6. Cause to reduce or discontinue services relates solely to the welfare of the District and its pupils within the meaning of Education Code section 44949.

7. Cause exists to give the following eight (8) respondents notice that their services are not needed for the ensuing, 2013-2014, school year: Eduardo DeAnda; Michael Hahn; Diane Kendall; Jeremy Little; Sharon Meagher; Jana Roberts; Katherine Williams; and, Joy Wright.

ADVISORY DETERMINATIONS

1. Prior to May 15, 2013, notice shall be given to respondents Eduardo DeAnda; Michael Hahn; Diane Kendall; Jeremy Little; Sharon Meagher; Jana Roberts; Katherine Williams; and, Joy Wright that their services will not be required for the ensuing school year due to the projected budget deficit and the resulting need to reduce and/or discontinue certain services.

2. The Accusation is dismissed as to respondents Molly Anderson; Amy Martinez; Manuel Marquez; and, Susan Oberneder and their layoff notices are rescinded.

DATED: April 24, 2013

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings