

BEFORE THE
GOVERNING BOARD OF THE
ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the :

NON RE-EMPLOYMENT OF
CERTIFICATED EMPLOYEES OF THE
ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT;

OAH No. 2009030265

MATTHEW PARRIS
KATIE CAMPBELL-FREDERICK
KATHLEEN SANCHEZ
DAVID ANSBRO
DAVID KOCH

Respondents.

PROPOSED DECISION

On April 27, 2009, in Roseville, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Terry Filliman, Attorney at Law, represented the Roseville Joint Union High School District (District).

Michael N. McCallum, Attorney at Law, assisted by Robin Thompson, Paralegal, represented respondents, David Ansbro, Heather Mc Queen, Leslie “Annie” Robinson, Matthew Parris and Katie Campbell-Frederick. At hearing, the District rescinded layoff notices to Heather McQueen and Leslie “Annie” Robinson.

David Koch did not request a hearing, but the District included him in the action as a “disputed respondent.” He did not appear at hearing nor did anyone appear on his behalf.

Kathleen Sanchez represented herself.

Evidence was received. The matter was submitted and the record was closed on April 27, 2009.

FACTUAL FINDINGS

1. On or before March 3, 2009, District Assistant Superintendent, Personnel Services, Glen De Graw, recommended to the Governing Board of the District (Board) that reduction or discontinuation of particular kinds of services (PKS), was necessary in order to reduce expenses for the 2009-2010 school year. The District expected a budget shortfall as a result of the anticipated loss of state and federal funding for the 2009-2010 school year. Mr. De Graw recommended the elimination of 21.11 full-time equivalent (FTE) certificated positions.

2. On March 3, 2009, the Board adopted Resolution No. 905, authorizing the reduction or elimination of PKS. The Resolution directed the Assistant Superintendent of Human Resources, or his or her designee, to send notices to a corresponding number of certificated employees necessary to effectuate the reduction of 21.11 FTE, that their services would not be required for the 2009-2010 school year.

3. Resolution No. 905 established “competency criteria” for determining whether a teacher affected by the reduction or elimination of services could displace (bump) a junior teacher. The resolution provides:

That “competency” for the purposes of Education Code sections 44955, 44956 and 44957 shall be met based upon current possession of a preliminary or clear credential for the subject matter, grade level or pupil personnel services to which the employee will be assigned at the beginning of the 2009-10 school year. If the proposed assignment is in alternative education, the employee must be “highly qualified” under NCLB in each academic subject to be taught, have previously taught in the specific alternative education program (e.g., continuation high school or independent study) within the District for one full semester as a probationary or permanent employee within the past ten school years (e.g., 1990 or later) and have consented to accept such assignment in the request for hearing notice.

4. The Board also adopted specific criteria to be used in determining the order of termination of certificated employees with the same first date of paid service to the District (seniority tiebreaker criteria).

5. Resolution 905 provides that the following PKS shall be reduced or eliminated not later than the beginning of the 2009-2010 school year as follows:

A. <u>High School Teaching Services:</u>	
1. English	4.00 FTE
2. Math	6.00 FTE
3. Foreign Languages (Japanese)	.66 FTE
4. IB Science	.66 FTE
5. IB Math	.33 FTE
6. IB Social Science	.33 FTE
7. IB English	.66
FTE	
B. <u>High School Certificated Support Services:</u>	
1. School-to-Career Coordinator	1.00 FTE
2. School Counselor	.50
FTE	
3. Literacy Coordinator/Coach	1.00 FTE
4. Lead Teacher	.33 FTE
5. Tech Coordinator	1.00
FTE	
6. Testing Coordinator	.66 FTE
7. WASC Coordinator	.66 FTE
8. Media Coordinator	.33 FTE
9. PLC Coordinator	.33
FTE	
10. AP Coordinator	.33 FTE
11. Staff Development Coordinator	.33
FTE	
C. <u>Administrative Services:</u>	
1. High School Assistant Principal	2.00 FTE

Total 21.11 FTE

6. On March 4, 2009, Tony Monetti, District Superintendent caused to be served on all affected employees, including all respondents, written preliminary notices of the recommendation to the Board that respondents' services would not be required for the ensuing school year due to a reduction or discontinuation of PKS (preliminary notices). The preliminary notices set forth the reasons for the recommendation, as required by Education Code sections 44949 and 44955. The preliminary notices provided respondents with information and deadlines for requesting a hearing and included blank Request for Hearing forms. Respondents filed timely Requests for Hearing.

7. On March 17, 2009, Mr. DeGraw filed and served an Accusation, in his official capacity, against all certificated employees who had requested a hearing. All respondents herein timely filed a Notice of Defense. Thereafter, the matter was set for hearing. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

8. At hearing, the parties stipulated that the District and respondents met all jurisdictional requirements, with the exception of the “disputed respondent” David Koch.

9. Subsequent to the service of the preliminary notices on the affected employees, the District rescinded multiple preliminary notices, after taking into account vacant positions, resignations and retirements resulting from a District offer of early retirement incentives. Additionally, the District rescinded multiple preliminary notices because it received information that the anticipated budget shortfall had been reduced from \$8.1 million to approximately \$5 million.

10. The District created a seniority list of persons occupying the positions affected by reductions in PKS. The most junior employees providing these services were identified, and the credentials of those subject to layoff were reviewed to determine whether those subject to layoff could bump into a position held by a junior teacher. The competency criteria established by Board Resolution No. 905 was employed in instances where employees sought to bump into the alternative education programs.

11. Respondents’ arguments with respect to the legality of the layoff proceedings are discussed below.

12. *Kathleen Sanchez*

The Board authorized the reduction of 2 FTE, High School Assistant Principal. Ms. Sanchez is the Assistant Vice Principal at Adelante High School. She was hired on July 1, 2006 as an administrator. As the least senior certificated employee occupying the Assistant Principal position, she was noticed for layoff. Ms. Sanchez holds a single subject credential in Geography. There are no stand-alone Geography courses being offered in the regular District high schools. The District has combined Geography courses with Economics courses throughout the District high schools, so that only teachers credentialed in Social Sciences or in Geography and Economics are providing instruction in Geography. Ms. Sanchez appears to be arguing that she can teach any courses authorized by a Social Sciences credential and therefore can teach the Geography/Economics combination. Her argument is based on the fact that many years ago, in another District, she taught all Social Sciences courses. Ms. Sanchez was not persuasive. The District is limited by law in teacher assignments. A District may not legally assign a teacher who does not hold a Social Sciences credential or an Economics credential to teach high school Economics.

Adelante High School is a District continuation high school and offers stand-alone Geography courses. Ms. Sanchez maintains that she may bump into the Geography classes taught by a junior employee at Adelante High School. The District maintains that Ms. Sanchez does not meet the competency criteria the Board established in Resolution 905. Resolution 905 provides in pertinent part that “[I]f the proposed assignment is in alternative education, the employee must be “highly qualified” under No Child Left Behind (NCLB) in each academic subject to be taught, have previously taught in a the specific alternative education program (e.g., continuation high school or independent study) within the District for one full semester as a probationary or permanent employee within the past 10 school years (e.g., 1990 or later) and have consented to accept such assignment in the request for hearing notice.”

Ms. Sanchez has consented to accept an assignment in continuation school. At hearing, Ms. Sanchez demonstrated persuasively that she has taught a class, Positive Power, at Adelante High School for at least one full semester in the previous year. Accordingly, she meets some of the competency criteria set forth under Resolution 905. However, it is uncontroverted that Ms. Sanchez has not yet been designated as “highly qualified” under NCLB procedures. Rather, Ms. Sanchez maintains that she has the experience and training to be NCLB qualified¹ and if given the opportunity, will apply for NCLB certification.

Mr. De Graw and Ms. Sanchez presented evidence regarding whether Ms. Sanchez would be deemed highly qualified under NCLB procedures. The Administrative Law Judge has no authority or qualifications to determine whether Ms. Sanchez would be deemed highly qualified if she were to apply to qualifying authorities for NCLB certification.

Ms. Sanchez failed to obtain NCLB certification prior to the layoff proceedings. Her rationale for this failure, that she was unaware she could be slated for layoff, does not excuse her failure to obtain NCLB certification. Nevertheless, there would be no prejudice to the District if Ms. Sanchez is permitted additional time to obtain NCLB certification in the core subjects taught at Adelante High School. However, as Education Code section 44955, subdivision (c), requires the District to

¹ There was no dispute that the Board’s competency criteria were reasonable in respect to requiring NCLB certification for teaching in continuation high school. NCLB certification ensures that those teaching core subjects in continuation high schools are highly qualified to do so, especially because a certificated employee in continuation high school is permitted to teach outside of the subject matter of his or her credential. And, even though Ms. Sanchez would be “highly qualified” to teach Geography, Adelante continuation high school is not organized around the delivery of stand-alone subjects over the school year. Teachers must be able to teach in multiple areas. They must either hold single subject authorizations in Social Science, which allows them to teach in multiple areas, or be deemed “highly qualified” to teach core subjects through NCLB authorization. Given that the Adelante continuation school is organized so that teachers deliver instruction in several core subjects over six week sessions, Ms. Sanchez could not be assigned to teach solely Geography courses at Adelante without significant disruption to the organization of the curriculum and the delivery of other core subjects.

provide final notice of termination of services before the 15th of May, Ms. Sanchez must obtain NCLB certification prior to that date.

13. *David Ansbro*

David Ansbro is a probationary employee with a hire date of January 13, 2009. He holds a preliminary single subject credential in physical education: health science with a supplementary authorization in introductory mathematics and economics. He is currently teaching math and received a preliminary notice for layoff pursuant to the resolution to reduce math teaching services.

Subsequent to the rescission of multiple preliminary notices, on April 20, 2009, the District received information that two certificated employees, one who teaches health and one who teaches physical education, were retiring. The District determined not to fill the two positions vacated by these retirees. Counsel for Mr. Ansbro argued that Mr. Ansbro should replace one of the retiring teachers. However, the District determined that there was no longer a need for the health or physical education positions, and determined not to fill the vacancies.

Counsel for Mr. Ansbro argued that the District's plan to absorb the physical education and health vacancies created by the retirements was not authorized by the resolution. Essentially, he argued that there was no resolution eliminating or reducing these positions. The District argued that no resolution was required because any reduction in PKS achieved by not filling a vacancy did not result in a reduction in the number of FTE certificated teachers.

The District took into account all positively assured attrition at the time the preliminary notices were issued, even though there is no statutory requirement to do so. Respondents offered no authority for the proposition that the District is required to consider subsequent attrition before final notices are issued.² Nor did Respondents offer authority for the proposition that the District must keep vacant positions open so that employees who are subject to a layoff may move into them. No junior employees are being retained to perform services that senior employees can render when a vacancy is not filled.

² In fact, the District did take into account ongoing resignations and rescinded preliminary notices as the resignations were confirmed, up to and including the day of hearing.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of those sections have been met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under Education Code section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board’s decisions were a proper exercise of its discretion.

3. 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.)

4. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen, supra*, 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; See also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

5. The services identified in the Governing Board Resolution are particular kinds of services that can be reduced under Education Code section 44955. The Governing Board’s decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

6. The reduction of the particular kinds of services and the resultant reduction of certificated positions were made for the welfare of the District and the pupils. The decision was made because of factors affecting the District budget for the ensuing school year, including the state budget crisis with the resultant possible loss of revenue from the state.

7. As set forth in Factual Finding 12, Ms. Sanchez failed to obtain NCLB certification prior to the layoff proceedings. Because Ms. Sanchez **may** be certificated and competent to teach core subjects at Adelante Continuation High School, Ms. Sanchez is permitted additional time to obtain NCLB certification in the core subjects taught at Adelante Continuation High School. However, as Education Code section 44955, subdivision (c), requires the District to provide final notice of termination of services before the 15th of May, Ms. Sanchez must obtain NCLB certification prior to that date. If she fails to obtain NCLB certification prior to May 15, 2009, she will not be entitled to perform services at the Adelante Continuation High School.

8. As set forth in Factual Finding 13, there are no junior employees being retained to render services which Mr. Ansbro is certificated and competent to render.

9. As set forth in the Factual Findings, there are no junior employees being retained to render services which any of the remaining respondents are certificated and competent to render.

RECOMMENDATIONS

1. Ms. Sanchez shall provide NCLB certification to the District before May 15, 2009. In the event Ms. Sanchez fails to obtain NCLB certification, final notice shall be given to her that her services will be eliminated, as set forth in the preliminary layoff notices, in the 2009-2010 school year.

2. Final notice shall be given to all other respondents that their services will be reduced or eliminated, as set forth in the preliminary layoff notices, in the 2009-2010 school year.

Dated: May 4, 2009


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings