

BEFORE THE
BOARD OF EDUCATION
OF THE
RIM OF THE WORLD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030539

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Blue Jay, California on April 22, 2009.

Sherry G. Gordon, Atkinson, Andelson, Loya, Ruud & Romo, APLC, represented the Rim of the World Unified School District.

Ronald G. Skipper, Esq., represented the respondents listed in Appendix A.

The matter was submitted on April 22, 2009.

FACTUAL FINDINGS

1. Donna Kellogg, Director of Personnel of the Rim of the World Unified School District, made and filed the accusation dated March 12, 2009, in her official capacity as the designee of Ron Peavy, Interim Superintendent.

2. Respondents¹ are certificated District employees.

¹ The District initially identified 43 certificated employees as respondents, five of whom, Elizabeth Caro, Stephanie Ito, Tiffany Minor, Sheila Palmer, and Reid Sullivan, did not request and thus waived their right to a hearing. Another respondent, Lexy Carey, may or may not have timely requested a hearing, but did appear at the hearing, and the district at that time waived any procedural defect with regard to her participation, so that Carey is deemed to have timely requested a hearing and remains a respondent. The district rescinded the lay off notices as to a number of other respondents on the basis of attrition. Accordingly, as of the conclusion of the hearing, 24 respondents remained in this proceeding and are listed in Appendix A. Another individual (Jeffrey Moss) has been designated on a precautionary basis, but in light of the determination below that the district properly designated each

3. On March 5 and 11, 2009, in accordance with Education Code sections 44949 and 44955, the Interim Superintendent (Superintendent) notified the Board of Education of the Rim of the World Unified School District in writing of his 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 March 5, 2009, the board adopted Resolution No. 08/09-17, 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 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Classroom Teachers	20
Secondary Art	2
Secondary Counselor	2
Secondary English	3
Secondary Social Science	2
Secondary Spanish	1
Music Instructor	1
Secondary Physical Education	1
Secondary School Science	2
Special Education SDC Mild Moderate	2
Special Education SDC Moderate Severe	1
Special Education RSP	2

The proposed reductions totaled 39 FTE positions.

5. The board directed the Superintendent or his designee to determine which employees' services would not be required for the 2009-2010 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the Superintendent or his 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.

6. The board further determined in Resolution No. 08/09-17 that "competency," as described in Education Code section 44955, subdivision (b), for the purposes of bumping, "shall necessarily include possession of a valid preliminary or clear credential and Highly

of the 24 respondents for lay off, the lay off of Mr. Moss will not be necessary. The term "respondents" as hereafter used in this Proposed Decision refers collectively to the 24 individuals identified in Appendix A.

Qualified status under NCLB in the relevant subject matter area, and an appropriate EI Authorization.”

7. On or before March 15, 2009, 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. 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. Along with the written notice, the district timely served on respondents the accusation and required accompanying documents.

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

8. Respondents timely filed written requests for hearing and notices of defense to determine if there was cause for not reemploying them for the upcoming school year. All pre-hearing jurisdictional requirements were met.

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

10. The services the board addressed in Resolution No. 08/09-17 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.

11. 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.

12. The board considered attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered.

13. Respondents Stacy Chapman and Bonnie Harris were first employed with the district on August 28, 2006, at which time they were given credit, for salary purposes, for previous teaching experience they had had in other districts. During a certificated employee layoff proceeding in 2008, the district also took the prior teaching experience of both Chapman and Harris (and others) into account as one of the tiebreaker criteria, resulting in the placement of Harris and Chapman in the number one and two tiebreaker positions respectively. With regard to the current (2009) lay-off proceeding, the district did not

include previous teaching experience in other districts as one of the tiebreaker criteria. As a result, Harris and Chapman were placed in the number 9 and 13 positions respectively for tiebreaker purposes.

The concerns expressed by Harris and Chapman (as well as Debbie Bennett, who also testified at the hearing) are understandable. However, the district's decision not to include previous teaching experience as one of the tiebreaker criteria was neither arbitrary nor capricious and constituted a proper exercise of its discretion.

14. Respondent Kristil Baker contended that the district violated its own policies in connection with its hiring of certificated employee Jason Jackson. Baker did not provide evidence in support of her contention. Further, a challenge to the manner in which a certificated employee was hired is outside the scope of this proceeding.

15. 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 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.)

3. 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 directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2009, 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 shall be given to respondents before May 15, 2009, 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. Kristil Baker
2. Eugene Ballantyne
3. Deborah Bennett
4. John Beresford, Jr.
5. Barbara Bertaux
6. Tracy Cairns
7. Stacy Chapman
8. Richard Dyckman
9. Kathleen Flores
10. Galen Garrison
11. Shawna Gray
12. Bonnie Harris
13. Heather Holland
14. Lynn Klopfer
15. Caris Leidner
16. Carey Lexy
17. Brent Lumsden
18. Shalome Nicholas
19. Tracy Olsen
20. Carie Renfro
21. Alicia Scopen
22. Melanie Smith

23. Karen Tomlinson

24. Steven Wallace