

BEFORE THE
RIVERSIDE COUNTY
OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:
Respondents listed in Appendix A.

OAH No. 2009030540

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2009, in Riverside, California.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo, represented the Riverside County Office of Education.

Ronald Skipper, Attorney at Law, represented the respondents listed in Appendix A.

The matter was submitted on April 15, 2009.

FACTUAL FINDINGS

1. Patrick Kelleher made and filed the accusation in his official capacity as Director II, Certificated Personnel, Riverside County Office of Education, on a delegation of authority from Kenneth Young, Riverside County Superintendent of Schools (“County”).
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the County. Prior to the start of the hearing, the accusations filed against Gordon Armstrong and Kristine Carter were dismissed and these two individuals are not subject to these layoff proceedings.
3. On March 10, 2009, the County adopted Resolution No. 16-09 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action. An unsigned copy of the resolution is attached hereto as Appendix B and by this reference is incorporated herein. This resolution pertains to the termination of services rendered by employees in the Alternative and Special Education programs.

4. On March 10, 2009, the County adopted Resolution No. 17-09 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action. An unsigned copy of the resolution is attached hereto as Appendix C and by this reference is incorporated herein. This resolution pertains to the termination of services rendered by employees in the Regional Occupation Program (“ROP”).

5. Between March 11 and 13, 2009, Director Kelleher gave written notice to approximately nine Alternative and Special Education and 22 ROP certificated employees, of the recommendation that their services will not be required for the 2009-10 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

6. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-10 school year. All prehearing jurisdictional requirements have been met.

7. Before issuing the preliminary layoff notices, the County took into account all positively assured attrition.

8. The County contends that the ROP employees are not subject to the layoff protections afforded permanent and probationary employees under the Education Code and may be terminated at will. However, in light of the holding in *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, the County, out of an abundance of caution, served precautionary layoff notices on the ROP employees. Respondents alleged that the ROP teachers were, at a minimum, probationary employees of the County.

9. The County’s resolutions gave the superintendent the discretion to determine the tie-breaking criteria as between employees with the same seniority date.

10. Respondent Adrian Massi, an ROP teacher with a seniority date of September 14, 2007, was noticed for layoff while Christopher Boman, an ROP teacher with a seniority date of January 24, 2008, was not. Both employees have a Designated Subject Vocational Full Time credential and both have a Multimedia Production CTE Industry Sector Subject. The County explained that CTE has “broad credentials” whereby several related industry fields all share the same credential, however, not all individuals possessing that credential share the same industry experience. In order to determine the qualifications of an individual employee it is necessary to review the employee’s industry experience. In this case, Boman has industry experience in television and video production, which Massi does not possess. Accordingly, in exercising its discretion as to which ROP teacher to retain, the County chose to retain Boman because of his television and video production experience.

11. No certificated employee junior in seniority to any respondent is being retained by the County to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Education Code section 44909 provides in part:

“The governing board of any school district may employ persons possessing an appropriate credential as certificated employees in programs and projects to perform services conducted under contract with public or private agencies, or categorically funded projects which are not required by federal or state statute. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless (1) such person has served pursuant to this section for at least 75 percent of the number of days the regular schools of the district by which he is employed are maintained and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. Such persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees other than [Section 44918](#). . . .”

3. Education Code section 44910 states in part:

“Service by a person as an instructor in classes conducted at regional occupational centers or programs . . . shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district. . . .”

4. The intent of these statutory provisions was to prevent persons from acquiring probationary status solely through teaching in categorically funded programs and to give school districts flexibility in operation of special educational programs to supplement their regular program and to relieve them from having a surplus of probationary or permanent teachers when project funds were terminated or cut back. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260.)

Since service as an ROP teacher does not count towards service as a permanent or probationary teacher, ROP employees do not have the same termination rights (i.e., those arising under sections 44949 and 44955) as those teachers. Thus, the County was permitted to terminate the services of Massi while retaining the services of Boman.

5. Cause exists because of the reduction of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the 2009-10 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

Notice may be given to respondents that their services will not be required for the 2009-10 school year because of the reduction of particular kinds of services.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

The following certificated personnel will receive a layoff notice:

ANDERSON	MALCOLM
BAIZA	JAIME
BIAGAS	DEVELYN
BUSTOS	JOSE
HAYS	KYNDAL
HAZEL	DORA
SANCHEZ	ALMA

The following certificated personnel will receive a precautionary layoff notice:

ANGUIANO	PATRICK
ARMSTRONG	GORDON
BRADY	WANDA
BURKETTE	JAMES
CACANINDIN	SUZANNE
CARLSON	DAVID
CARTER	KRISTINE
DE LEON	JOE
ESPINOSA	DINA
GRAMES	LES
HAMILTON-APODACA	KRISTI
HAY	LAURIE
HENDERSON	KANDACE
HENSLEY	CONNIE
HORN	VICTORIA
JOHNSON	PAULA
MASSI	ADRIAN
MURASHIMA	VICKI
SANCHEZ	LORRAINE
SPLITTSTOESSER	MARK
SUNTREE	LORIE
TUYEN	BARBARA
WILLIAMS	DAHLENE

Appendix B

RIVERSIDE COUNTY OFFICE OF EDUCATION

REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES

RESOLUTION NO. _____

WHEREAS, the Superintendent of Schools of Riverside County has determined that it is in the best interests of the County Office and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Superintendent that because of the aforementioned reason, the number of certificated employees of the County Office must be reduced; and

WHEREAS, the Superintendent does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Superintendent of Schools for Riverside County as follows:

- A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2009-2010 school year:

Home Education Teaching Services	2	F.T.E.
Correctional Education Teaching Services	2	F.T.E.
Cal-Safe Teaching Services	4	F.T.E.
Teacher on Special Assignment - District and School Success Center	1	F.T.E.
TOTAL CERTIFICATED POSITIONS	9	F.T.E.

- B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the Riverside County Office of Education shall be terminated pursuant to Education Code section 44955.
- C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of a valid credential in

the relevant subject matter area, "highly qualified" status under the No Child Left Behind Act, an appropriate EL authorization (if required by the position), and a completed security clearance (if required by the position).

- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by criteria adopted by the Superintendent.
- F. That the Superintendent's designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED by the Superintendent of Schools of Riverside County on March ____, 2009.

Kenneth M. Young
Superintendent of Schools

Appendix C

RIVERSIDE COUNTY OFFICE OF EDUCATION

REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES

RESOLUTION NO. _____

WHEREAS, the Superintendent of Schools of Riverside County has determined that it is in the best interests of the County Office and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Superintendent that because of the aforementioned reason, the number of certificated employees of the County Office must be reduced; and

WHEREAS, the Superintendent does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Superintendent of Schools for Riverside County as follows:

- A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2009-2010 school year:

Instructor, Banking & Financial Occupations	1	F.T. E.
Instructor, Construction Technology	1	F.T. E.
Instructor, Fire Service Occupation	1.5	F.T. E.
Instructor, Floristry Occupations	5	F.T. E.
Instructor, Horticulture	1	F.T. E.
Instructor, Animal Health Occupations	2	F.T. E.
Instructor, Sign Language	3	F.T. E.
Instructor, Digital Imaging and Graphic Design	1	F.T. E.
Instructor, Career Transitions	1	F.T. E.
Instructor, Nursing Assistant Occupations	1	F.T. E.

Instructor, Computer Information Systems	2	F.T. E.
Instructor, Office Occupations	1	F.T. E.
Instructor Law Enforcement Occupations	1	F.T. E.
Instructor, Introduction to Health Careers	1	F.T. E.
Instructor, TV/Video Production	1	F.T. E.
TOTAL CERTIFICATED POSITIONS	23.5	F.T. E.

- B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the Riverside County Office of Education shall be terminated pursuant to Education Code section 44955.
- C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of a valid credential in the relevant Career Technical Education Industry Sector, and the necessary experience as required by the job description.
- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by criteria adopted by the Superintendent.
- F. That the Superintendent's designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED by the Superintendent of Schools of Riverside County on March __, 2009.

Kenneth M. Young
Superintendent of Schools