

**BEFORE THE
GOVERNING BOARD
WILSONA SCHOOL DISTRICT**

In the Matter of the Accusations Against:

**Certificated Employees of the Wilsona
School District Listed in Appendix 1,**

Respondents.

OAH No. 2010031394

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 6, 2010, in Palmdale, California.

Peter C. Carton, Esq., Schools Legal Service, represented the Wilsona School District (District).

Richard J. Schwab, Esq., Trygstad, Schwab & Trygstad, represented the Respondents.

The record was closed and the matter was deemed submitted for decision at the conclusion of the hearing on April 6, 2010.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Teresa Grey, the District's Interim Administrator in Charge, made and filed the Accusations in her official capacity.
2. Each Respondent is a certificated District employee.
3. On March 4, 2010, the Governing Board of the District (Board) adopted Resolution No. 2009-10-08, which recommended the reduction or discontinuation of particular kinds of services for the 2010-2011 school year.
4. On or before March 15, 2009, the District served Respondents with written notice, pursuant to Education Code sections 44949 and 44955, that Respondents' services will not be required for the following school year.
5. Respondents were timely served with an Accusation and other required materials, and each were deemed to have timely submitted a request for a hearing.

The Board's Layoff Decision

6. Resolution No. 2009-10-08 specifically provides for the reduction or elimination of the following particular kinds of services:

Services Being Reduced or Eliminated	Net Full-Time Equivalent (FTE) Reductions
Self-Contained Classroom Instruction, Grades K-6	8 FTE
Support Programs, Grades K-6	
EL Coordinator	.5 FTE
Literacy Coach	2.5 FTE
Elementary Admin. Assistant (teacher)	1 FTE
Instructional Teacher/Coach	+2 FTE (increase)
Core Team Instruction, Middle School, Grades 7-8	
ELA	0 FTE
Language Arts/Soc. Stud.	0 FTE
Math/Science	0 FTE
Science	1 FTE
History/Social Science	0 FTE
Math	1 FTE
Physical Education	0 FTE
Electives	
Art	1 FTE
District-Wide Programs	
Special Day Class	0 FTE
Resource Specialist Program	0 FTE
Speech	
Psychologist	0 FTE
RTI Coordinator	0 FTE
Administration	0 FTE
Nurse	0 FTE
Wilsona Achievement Academy- Self Contained 7/8	0 FTE
	0 FTE
Total	13 FTE

7. The services identified in Resolution No. 2009-10-08 are particular kinds of services within the meaning of Education Code section 44955.

8. The Board decided that it was necessary to reduce the above-described particular kinds of services. During the hearing, Interim Administrator in Charge Grey testified that the Board's decision, in part, was based on a projected decline in District enrollment for the 2010-2011 school year.

9. It was not established that the reduction or elimination of the 13 FTE positions will reduce services below mandated levels.

10. It was not established that, prior to the adoption of Resolution No. 2009-10-08, there was any known positively assured attrition, including retirements and resignations, which the Board needed to consider.

11. The District developed a seniority list which contains employees' seniority dates, credentials and authorizations.

12. On February 18, 2010, the Board adopted Resolution 2009-10-09, which established tie-breaking criteria to determine the relative seniority of certificated employees who have the same seniority date. The application of the tie-breaking criteria was not at issue in this case.

13. In determining who would be subject to layoff, the District counted the number of reductions, and determined the impact on incumbent staff in inverse order of seniority. The District then determined whether the least senior employees held other credentials or were otherwise competent to render services being rendered by junior employees. The District determined that none of the certificated employees subject to layoff through the above-described process were able to "bump" junior employees.

Individual Respondents

14. Constance Carr. Respondent Carr is a seventh grade science teacher. She holds a Clear Pupil Personnel Services credential, with an authorized subject in school counseling. Stacy Alvey is being retained as the District's Intervention Coordinator. She holds a Clear Pupil Personnel Services credential, with an authorized subject of school psychology. Respondent Carr is senior to Ms. Alvey, so Respondent Carr contends she should be retained to perform the Intervention Coordinator position. The District requires many responsibilities and qualifications for the Intervention Coordinator position, including the ability "to write assessment and behavior plans." Documents from the California Commission on Teacher Credentialing indicate that Ms. Alvey's credential allows her to perform that function, but that Respondent Carr's does not. Respondent Carr's testimony was not persuasive that she can write assessment and behavior plans. Under these circumstances, it was not established that Respondent Carr is credentialed and competent to perform the District's Intervention Coordinator position.

15. Steven Goodman and Lorrie Jones. These two Respondents contend they are more senior than a teacher being retained to teach next year, Bruce Galler, because Mr. Galler worked outside the District during the 2001-2002 school year. The District assigned Mr. Galler a seniority date of January 28, 1994, which would make him more senior than the two Respondents in question. Although he worked out of the District during the 2001-2002 school year, he did so pursuant to an agreement by the District's then Superintendent that he would have no severance of service if he later returned to the District. Mr. Galler did so. The District honored the Superintendent's agreement and retained Mr. Galler's original seniority date. Under these circumstances, it was not established that a change in Mr. Galler's seniority date is warranted. Because Respondents Goodman and Jones are less senior than Mr. Galler, there is no basis for them to be retained by the District.

16. Raymond Strasser-King. Respondent Strasser-King was not persuasive in his testimony that his seniority date of January 21, 2004, should be adjusted to a date in August of 2003, and therefore, there is no basis for him to be retained by the District.

Overall Findings

17. The Board's decision to reduce or discontinue the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

18. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

19. No certificated employee with less seniority will be retained to render a service that Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. All jurisdictional requirements of Education Code sections 44949 and 44955 were met. (Factual Findings 1-5.)

2. Respondents contend that the Board's layoff decision is invalid, because part of the decision-making included an anticipated decline in enrollment but the District did not undertake the process for laying off certificated employees based on a reduction in average daily attendance (ADA) provided for in Education Code section 44955. A school district has wide discretion in determining whether to employ a reduction in force based on a reduction of particular kinds of services (PKS) versus a reduction based on a decline in ADA. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.) Such decisions may be overruled only if proven to be arbitrary or capricious. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.) In this case, the District proposes a PKS layoff and has determined that such is necessary. In light of the current economic crisis, it is reasonable to assume that various financial problems were involved in the Board's decision-making process, including a projected decline in enrollment next school year. Respondents

did not establish that the Board's layoff decision was purely based on a reduction in ADA. There is nothing in Education Code section 44955 prohibiting an expected decline in student enrollment from being one factor in the overall decision to reduce or eliminate particular kinds of services. Further, ADA refers to a decline in past enrollment, as opposed to a projected decline in future enrollment. (Ed. Code § 44955, subd. (b).)

3. The services identified in Resolution No. 2009-10-08 are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. It was not established that services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44949 and 44955. (Factual Findings 1-18.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-18.)

5. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-19.)

ORDER

The Accusations are sustained against the Respondents. Notice may be given to those Respondents that their services will not be required for the 2010-2011 school year, and such notice shall be given in inverse order of seniority.

Dated: April 20, 2010

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

APPENDIX 1: WILSONA SCHOOL DISTRICT

List of Respondents

Constance Carr
Steven Goodman
Ruth Guess
Joan Hammond
Lorrie Jones
Kyla Love
Pat McGuire
Deborah Poor
David Price
LaShone Scott
Anne Stanley
Raymond Strasser-King