

BEFORE THE
RIVERSIDE COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2011030932

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Yucaipa, California on April 13, 2011.

Todd M. Robbins, Attorney at Law, represented the Riverside County Office of Education.

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

The matter was submitted on April 13, 2011.

FACTUAL FINDINGS

1. Patrick Kelleher, Executive Director, Personnel Services, Riverside County Office of Education, made and filed the accusation dated March 10, 2011, in his official capacity as the designee of Kenneth M. Young, Riverside County Superintendent of Schools of the Riverside County Office of Education.

2. Respondents¹ are certificated district employees.

¹ The Superintendent initially identified 13 certificated employees as respondents designated for layoff. The district subsequently dismissed one of these individuals, Kathleen Salaian. Three others, Christina Bold, Karen Earle, and Art Zambrano, did not request a hearing. Accordingly, at the conclusion of the hearing, there remained nine named respondents; these are identified in Appendix A.

3. On March 7, 2011, in accordance with Education Code sections 44949 and 44955, the Executive Director notified the Superintendent in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Executive Director 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 7, 2011, the Superintendent adopted Resolution No. 19-11, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Superintendent determined that the particular kinds of services that must be reduced for the 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
220 Day Correctional Education Teaching Services	12
Cal-Safe Teaching Services	3
185 Day Correctional Education Teaching Services	1

The proposed reductions totaled 16 FTE positions.

5. The Superintendent further determined in Resolution No. 19-11 that “competency,” as described in Education Code section 44955, subdivision (b), for the purposes of bumping, “shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) “highly qualified” status under the No Child Left Behind Act; (3) an appropriate EL authorization (if required by the position); and (4) a completed security clearance (if required by the position).

6. The Superintendent directed the Executive Director to determine which employees’ services would not be required for the 2011-2012 school year as a result of the reduction of the foregoing particular kinds of services. The Superintendent further directed the Executive Director to send appropriate notices to all certificated employees of the County Office of Education who would be laid off as a result of the reduction of these particular kinds of services.

7. On or before March 15, 2011, the County Office of Education timely served on respondents a written notice that it had been recommended to the Superintendent that their services would not be required for the upcoming school year, along with the related accusation. 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.

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. All pre-hearing jurisdictional requirements were met.

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

10. The services the Superintendent addressed in Resolution No. 19-11 were “particular kinds of services” that could be reduced or discontinued within the meaning of Education Code section 44955. The Superintendent’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

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 County Board of Education 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.

13. At least two respondents testified and argued that the County Office of Education did not make it clear to them or give them proper notice that they needed to secure a special education credential in order to be eligible for certain teaching positions that could open up in the future. The Education Code does not require that any such notice be given.

It was suggested that the County Office of Education, by its words or its conduct, should be estopped from laying off these respondents. The elements of a promissory estoppel claim are (1) a promise clear and unambiguous in its terms, (2) reliance by the party to whom the promise is made, (3) the reliance must be both reasonable and foreseeable, and (4) the party asserting the estoppel must be injured by his reliance. (*U.S. Ecology, Inc. v. State of California* (2005) 129 Cal.App. 4th 887, 905.) The elements of equitable estoppel are: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citations.]” (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305, 61 Cal.Rptr. 661, 431 P.2d 245.) The facts presented at the hearing did not establish estoppel under either theory.

14. 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 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. Pursuant to section 44995, 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)

The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist., supra.* at 136-137.)

4. 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.)

5. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the Superintendent 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 County Office of Education due to the reduction and discontinuation of particular kinds of services. The Superintendent identified the certificated employees providing the particular kinds of services that the Superintendent be directed be reduced or discontinued. It is recommended that the Superintendent give respondents notice before May 15, 2011, that their services are no longer required by the County Office of Education.

ADVISORY DETERMINATION

The following advisory determination is made:

1. The accusations served on respondents are sustained. Notice may be given to respondents before May 15, 2011, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: April 18, 2011

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Peter Ainsworth
2. Victoria Burdick
3. Christiane Deaton
4. Daniel Dike
5. Megan Evers
6. Timothy Grisso
7. Mitchell Minnerly
8. Vikki Roberts
9. Debra Turney