

BEFORE THE
BOARD OF TRUSTEES
YOSEMITE UNIFIED SCHOOL DISTRICT
MADERA COUNTY, CALIFORNIA

In the Matter of the Elimination And
Reduction of Particular Kinds of Service for
the 2013–2014 School Year:

OAH No. 2013040335

Tony Misner, Dana Hall and Cheryl
Stansbury,

Respondents.

PROPOSED DECISION

Administrative Law Judge (ALJ) Ann Elizabeth Sarli, Office of Administrative Hearings (OAH), State of California heard this matter on April 23, 2013, in Fresno, California.

Robert Piacente, Legal Counsel, Fresno County Office of Education, represented Yosemite Unified School District (District).

Joshua F. Richtel, Attorney at Law, Tuttle & McClosky, represented Tony Misner.

Dana Hall represented herself.

Cheryl Stansbury represented herself.

FINDINGS

1. James Sargent is the Superintendent of the District. The District has approximately 2,000 students and has had a significant decline in enrollment. The State has certified the District as a “qualified” school district, subject to potential “State takeover,” due to its lack of significant fiscal reserves. Mr. Sargent proposed to the Board approximately \$800,000 in cuts in expenditures for the 2013–2014 school year.

2. On March 11, 2013, at a regular meeting of the District’s Board of Trustees (Board), the Superintendent recommended to the Board that 5.12 full-time equivalent (FTE)

of certificated services would not be required for the next school year. The Board authorized and directed the Superintendent to initiate and pursue procedures necessary to not re-employ for the 2013–2014 school year, the equivalent of 5.12 full-time certificated employees, pursuant to Education Code sections 44949 and 44955, because of the elimination or reduction of particular kinds of services.

3. On March 11, 2013, the Board adopted Resolution # 2012/2013-14 (Resolution), providing for the reduction or elimination of the following particular kinds of services (PKS) for the 2013/2014 school year:

1. Eliminate two full time equivalent (FTE) Elementary K-8 Multi-Subject Teacher positions;
2. Eliminate one .66 FTE ROP Emergency Medical Training/Medical Careers Instructor;
3. Eliminate one .34 FTE Adult Education/Wilderness Program/Concurrent Enrollment Instructor;
4. Eliminate one .60 FTE Adult Education-Independent Studies Instructor;
5. Eliminate one .34 [FTE] ROP Wood\Construction Instructor;
6. Eliminate .34 [FTE] ROP Careers in Education Instructor;
7. Eliminate .50 [FTE] Home School/Independent Studies Instructor;
8. Eliminate .34 [FTE] ROP Theater Arts Production Instructor.

4. The Resolution recited that “for the purposes of bumping, a teacher will be deemed competent for a position if she or he has at least one year’s experience within the last ten (10) years teaching the same subject matter or in special programs such as alternate education, and is ‘highly qualified’ for the assignment as defined under the No Child Left Behind Act and related State law.”

5. The Resolution directed the Superintendent, or his designee, to send notice(s) of recommendation of non-reemployment pursuant to Sections 44949 and 44955 of the California Education Code to any employee whose services would be terminated by virtue of the PKS reductions and eliminations.

6. On March 12, 2012, the District served on respondents a written “Notice of Layoff/Discontinuance of Particular Kinds of Services (Preliminary Notice).” The Preliminary Notice advised that the Board had passed a Resolution reducing or discontinuing particular kinds of services which reduced the certificated staff by 5.12 FTE certificated

positions. The Preliminary Notice stated that pursuant to Education Code sections 44949 and 44955, the certificated employee was advised that his/her services would not be required.

7. Respondents timely filed Requests for Hearing.

8. The Superintendent made and filed an Accusation against respondents. The Accusation, with required accompanying documents and a blank Notice of Defense, was timely served on respondents.

9. Respondents timely filed Notices of Defense to the Accusation.

10. The Superintendent's actions and the actions of the Governing Board were taken in their official capacities.

Dana Hall's Challenge

11. Dana Hall is a permanent employee with a seniority date of February 1, 2011. She holds a Life Single Subject in Physical Education with a Supplement in General Science. She teaches .60 FTE in the Adult Education program. She was affected by the Board's Resolution to eliminate one .60 FTE Adult Education-Independent Studies Instructor. There is no certificated employee junior to Ms. Hall who is being retained to teach a subject which she is certificated and competent to teach. Ms. Hall expressed concern that special education students in adult education programs may not receive an appropriate education with the elimination of Adult Education programming, and therefore the reduction in force would not be in the "best interests" of these students, as required Education Code section 44955, subdivision (b). The Superintendent testified persuasively that the District is aware of its duties to special education students and would continue to meet their needs despite the reductions of services.

Anthony Misner's Challenge

12. Anthony Misner is a permanent employee with a seniority date of August 16, 1994. He holds a Clear Designated Subject EMT, a Clear Multiple Subject Credential and a Professional Clear Designation; Therapeutic. He teaches .67 FTE in ROP EMT and ROP MedCareers in the adult education program. He was affected by the Board's Resolution to eliminate .66 FTE ROP Emergency Medical Training/Medical Careers Instructor and .34 FTE Adult Education/Wilderness Program/Concurrent Enrollment Instructor.

13. Mr. Misner earned his seniority in the adult school program and there is no employee in the adult school program junior to Mr. Misner who is being retained to teach a subject which Mr. Misner is certificated and competent to teach. Even if Mr. Misner were

eligible to bump into the regular school program,¹ due to his Multiple Subject credential, he has not taught in a regular program under his Multiple Subject credential in the last 10 years and would not meet the Board's competency criteria to displace a junior teacher who is teaching with a multiple subject credential.

Cheryl Stansbury's Challenge

14. Cheryl Stansbury is a permanent employee with a seniority date of August 15, 2006. She teaches a .50 FTE in the K-8 Home School. She holds a clear Multiple Subject credential with a supplemental credential in Music. She was affected by the Board's Resolution to eliminate .50 FTE Home School/Independent Studies Instructor. Ms. Stansbury maintains that she should be able to bump junior employee Catherine Talbot, who has a seniority date of September 18, 2006, and who holds a clear Multiple Subject Credential. However, the evidence was persuasive that Ms. Talbot will be assigned to the Child Development Site Supervisor of the First Five program next semester. The Superintendent testified persuasively that Ms. Stansbury holds a supervisory certificate in preschool and directed the First Five Program under that certificate. He testified persuasively that the District intends to return Ms. Talbot to that position in the 2013–2014 school year.

15. There is no certificated employee junior to Ms. Stansbury who is being retained to teach a subject which Ms. Stansbury is certificated and competent to teach.

Welfare of the District and Its Students

16. The Board's decision to reduce or discontinue the particular kinds of services identified in Resolution # 2012/2013-14 was not arbitrary or capricious, but constituted a proper exercise of discretion.

17. The reduction or discontinuation of particular kinds of services relates to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board.

18. No certificated employee junior to any respondent is being retained in the 2013-2014 school year to perform any services which any respondent is certificated and competent to render.

¹ Mr. Misner did not argue that he should be able to bump into a regular school position, but the District anticipated that he would make an argument that he should be able to bump into a regular school program.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections were satisfied. Each respondent is presently a certificated permanent employee of the District.

2. The Board's decision to reduce or discontinue the particular kinds of services identified in Resolution # 2012/2013-14 was not arbitrary or capricious, but constituted a proper exercise of discretion.

3. The services identified in Resolution # 2012/2013-14 are particular kinds of services that may be reduced or discontinued under Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. A District may reduce services within the meaning of Education Code 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.)

5. Education Code section 44955, provides in pertinent part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever ... a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year... and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof....

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed ...

... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render....

6. As set forth in the Findings, there are no certificated employees junior to any of the respondents who are being retained to render services for which any of the respondents is certificated and competent to render.

7. The Board may give Dana Hall final notice that .60 FTE of her services will not be required for the 2013-2014 school year.

8. The Board may give Anthony Misner final notice that .67 FTE of his services will not be required for the 2013-2014 school year.

9. The Board may give Cheryl Stansbury final notice that .50 FTE of her services will not be required for the 2013-2014 school year.

ORDER

The Accusations served on respondents are sustained. Final Notices shall be given to respondents that their services will not be required for the 2013-2014 school year because of the reduction or discontinuation of particular kinds of services.

Dated: April 23, 2012

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings