

BEFORE THE GOVERNING BOARD OF THE
EL RANCHO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

OAH No. 2008040027

Teachers of the El Rancho Unified School
District,

Respondents.

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 30, 2008, at Pico Rivera, California.

Edward J. Kunkel, Attorney at Law, represented El Rancho Unified School District (District).

The District served a Notice of Layoff on each of the teachers and administrators (certificated employees) listed on Exhibit A attached hereto; said list is comprised of all certificated employees who requested a hearing. The names of the certificated employees listed on Exhibit A, marked with an asterisk, were present at the hearing.

Lawrence R. Rosenzweig and Brent I. Rosenzweig, Attorneys at Law, represented all certificated employees listed on Exhibit A except for Joanne Brenner, Norma Gisela Castanon, Mark Merjil, and Elias Vargas. None of these certificated employees appeared at the hearing, although due notice thereof was given to each of them as provided by law.

During the course of these proceedings, the parties stipulated to the withdrawal of the Accusation against Adrian Ayala, Cynthia Alvarez, Ruth Baskett, Larry Dean Cochran, Norma Gisela Castanon, John Guzman, Andrea Larios, Mark Matthews, Ricardo Perez-Selsky, Linda Ramirez and Edna Tristan. The parties further stipulated that, based on the testimony of Gabriel Gonzalez, which counsel for the District confirmed with his client as being correct, Mr. Gonzalez' position on the seniority list should have been higher, giving him "bumping rights," and he will not be laid off.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Finding of Facts.

1. Katherine Enloe, Ed. D., Assistant Superintendent of the District, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon

Respondents pursuant to the provisions of Education Code sections 44949 and 44955. The parties, by and through their counsel, stipulated that all pre-hearing jurisdictional requirements have been met. Accordingly, no Findings regarding the timeliness of any notices or requests for hearing are made.

2. On March 13, 2008, the District's Governing Board (Board) adopted an Amended Resolution, superceding a Resolution adopted February 28, 2008, to reduce and discontinue the following particular kinds of services at the close of the current school year (FTE refers to "full time equivalent" positions):¹

1. Reduce Kindergarten through Grade 6 Classroom Teaching Services– 60 FTE
2. ~~Reduce Resource Teaching Services/Program Specialist, Special Education – 1 FTE~~
3. ~~Reduce Resource Teaching Services/ Inclusion Specialist, Special Education – 1 FTE~~
4. Reduce Resource Teaching Services/Independent Studies – 1 FTE
5. Reduce Resource Teaching Services/Technology – 1 FTE
6. Reduce Resource Teaching Services/Bilingual – 2 FTE
7. Reduce Resource Teaching Services/Program Improvement – 1 FTE
8. Reduce Resource Teaching Services/Math – 1 FTE
9. Reduce Resource Teaching Services/ Middle School – 2 FTE
10. Reduce Resource Teaching Services/ BTSA/PAR – 1 FTE
11. Reduce Resource Teaching Services/Adult School – 1 FTE
12. Reduce Middle/ Elementary Math Coaching Services – 3 FTE
13. Reduce Elementary Reading Coaching Services – 5 FTE
14. Reduce Grade 7 through Grade 12 Physical Education Teaching Services – 1 FTE
15. Reduce District-Wide Nursing Services – 1 FTE
16. Reduce Grade 6 through Grade 12 District Counseling Services – 8 FTE
17. Reduce District-Wide Psychologist Services – 2 FTE
18. Reduce District Supervisory Services for Child Care Program – 2 FTE
19. Reduce District Parent Education Advisory Services for Child Care Program – 1 FTE
20. Reduce District Administrative Services /Coordinator, Student Intervention & Support – 1 FTE
21. Reduce District Administrative Services /Coordinator, Special Education/Medi-Cal Funding – 1 FTE
22. Reduce District Administrative Services /Coordinator, Reading First – 1 FTE

1. A number of FTE positions listed in Finding 2 are "categorically funded" by grants from either state or federal sources, grants which expire at the end of the school year. As of the date of the hearing, the District had not received official confirmation that any of those grants would be made available for the next school year.

23. Reduce District Administrative Services /Coordinator, Categorical Programs – 1 FTE
24. Reduce High School Administrative Services/ 9th Grade Dean – 1 FTE
25. Reduce High School Administrative Services/ 10th Grade Dean – 1 FTE
26. Reduce High School Administrative Services/ 11th Grade Dean – 1 FTE
27. Reduce Middle School Administrative Services/ Assistant Principals – 2 FTE
28. Reduce Elementary School Administrative Services/ Principals – 4 FTE
29. Reduce Middle School Administrative Services/ Principal – 1 FTE
30. Reduce Child Development/State Preschool Program/ Director – 1 FTE
31. Reduce High School Math Teaching Services – 1 FTE
32. Reduce High School English Teaching Services – 1 FTE
33. Reduce Middle School English Teaching Services – 2 FTE
34. Reduce High School Physical Education Teaching Services – 2 FTE
35. Reduce High School Science Teaching Services – 4 FTE
36. Reduce High School Health Teaching Services – 1 FTE
37. Reduce High School Computers Teaching Services – 1 FTE

3. These services are “particular kinds of services” that may 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, but constituted a proper exercise of discretion.

4. The reduction or discontinuation of these 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.

5. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

6. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render.

7. Between those employees who first rendered paid service to the district on the same date, the Board determined their order of termination solely on the basis of the needs of the district and the students. The specific criteria used to determine the order of termination were fairly applied to rank those employees hired on the same date.

LEGAL CONCLUSIONS

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Finding 2 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists because of the reduction in particular kinds of services to reduce the District's certificated employee positions by 120 Full Time Equivalents and to give notice to the affected certificated employees pursuant to Education Code Section 44955.

5. Based on the above Findings, including the preamble to this Proposed Decision, except for Adrian Ayala, Cynthia Alvarez, Ruth Baskett, Larry Dean Cochran, Norma Gisela Castanon, Gabriel Gonzalez, John Guzman, Andrea Larios, Mark Matthews, Ricardo Perez-Selsky, Linda Ramirez and Edna Tristan, the names of the affected certificated employees, those as to whom final notices of layoff may be given, are set forth on Exhibit A attached hereto.

ORDER

As a result of the reductions of services, the District may give notice to the certificated employees identified on Exhibit A, except Ricardo Perez-Selsky and Gabriel Gonzalez, that their services will not be required for the 2008-2009 school year.

Dated: May 1, 2008

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings