

BEFORE THE
BOARD OF DIRECTORS
OF
HELIX CHARTER HIGH SCHOOL
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Anthony Agundes, Sara Allsup, Leanna Block, Marc Collins, Rachel Crescitelli, Ali Hafemeister, Jose Islas, Sean Morris, Ruth Ortiz, Jennifer Slusher, Yuchaio Wu, and Lenelle Wylie,

Respondents.

OAH No. 2008030969

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in La Mesa, California on April 22, 2008.

James E. Young, Law Offices of Spector, Middleton, Young & Minney, LLP, represented Helix Charter High School.

Richard J. Schwab, Trygstad, Schwab & Trygstad, represented respondents.

The matter was submitted on April 22, 2008.

FACTUAL FINDINGS

1. Douglas D. Smith, Ed.D., Executive Director of Helix High School,¹ made and filed the accusation dated April 4, 2008, in his official capacity.
2. Respondents are certificated District employees.

¹ Helix High School became a dependent Charter High School in 1998. Under that charter, the Grossmont Union High School District remained the employer of record for the school's certificated employees. In July 2007, Helix High School became an independent Charter High School, and, as such, is now the employer of record for its certificated employees. Helix High School agreed to follow the Education Code framework for the layoff of its certificated employees.

3. In early 2008, in accordance with Education Code sections 44949 and 44955, the Executive Director notified the Charter Governing Board of Helix High School 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.

4. On March 10, 2008, the Board adopted Resolution 2008-02, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2008-2009 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Art	1
Business	.33
Technology	.33
English	1
Foreign Language	.33
Home Economics	.66
Industrial Tech	.66
Math	2
Performing Arts	1.33
Physical Education	.33
Science	1
Social Science	1
Non-Departmental Reductions	
AVID	1.33
Literacy Staff Development	2.5
Senior Project Coordinator	.33
ESL/Sheltered	.33
Counseling/Social Worker	2
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16.46 FTE's	

The proposed reductions total 16.46 full-time equivalent (FTE) positions.

5. The Board directed the Executive Director or his designee to determine which employees' services would not be required for the 2008-2009 school year as a result of the reduction of the foregoing particular kinds of services. The Board further directed the Executive Director or his designee to send appropriate notices to all certificated employees of Helix High School who would possibly be laid off as a result of the reduction of these particular kinds of services.

6. Subsequent to the action the Board took on March 10, 2008 to reduce or eliminate particular kinds of services by 16.46 FTE positions, Helix High School continued to evaluate its personnel needs. After taking into consideration upcoming positively assured attrition, resignations, and retirements, Helix High School has now determined it can meet its fiscal needs by reducing services by a total of 11.16 FTE positions for the 2008-2009 school year.² To accomplish this reduction of services, the District must give final notices of termination to the 12 certificated employees who are the respondents remaining in this proceeding.³

7. On or before March 15, 2008, Helix High School timely served on respondents a written notice that the Executive Director had recommended to the Board that their services would not be required in the upcoming school year. 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 of termination by March 31, 2008, which was more than seven days after the notice of termination 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. Each respondent timely filed a written request for hearing to determine if there was cause for not reemploying that respondent for the upcoming school year. The accusation was thereafter timely served on each respondent. Each respondent timely filed a notice of defense. All pre-hearing jurisdictional requirements were met.

9. The services the Board addressed in Resolution 2008-02 were "particular kinds of services" that could 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.

10. The reduction or discontinuation of particular kinds of services related to the welfare of Helix High School and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of Helix High School as determined by the Board.

11. 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.

² Among the attrition that has taken place since issuance of the preliminary termination notices are two math teacher positions. Three respondents are math teachers, and respondents argued that at least two of those three teachers should have their terminations rescinded as a result of the math-related attrition. However, two more senior school employees presently in other assignments are likely to be placed in math assignments next year, one who would otherwise have been laid off due to the reduction in the number of school counselors, and the other who is expected to return from a temporary assignment at the County Board of Education. Further, the Education Code does not require a district or school to rescind preliminary termination notices served on properly-identified teachers pursuant to the procedures set forth in section 44955, simply because post-notice attrition has taken place.

³ At the hearing, Helix High School withdrew the accusation as to Catherin O'Rourke and Michael Ried.

12. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

13. Leanna Block and Michael Ried, both English teachers with single subject credentials in English, were hired on the same date. The school applied the tiebreaking criteria set forth in Resolution 2008-02 to determine their order of termination. This determination was made solely on the basis of needs of the district and the students. Mr. Ried was accorded higher seniority than Ms. Block because he has a second credential, in social studies, while Ms. Block does not have a second credential. In making this determination, the school properly applied the tiebreaking criteria, properly retained Mr. Ried, and properly gave notice to Ms. Block that her services would no longer be required for the upcoming school year.

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. Cause exists under Education Code sections 44949 and 44955 for Helix High School 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. A preponderance of the evidence sustained the charges set forth in the accusation. It is recommended that the Board give respondents notice before May 15, 2008, that their services are longer be required by Helix High School.

ORDER

The accusation served on respondents Anthony Agundes, Sara Allsup, Leanna Block, Marc Collins, Rachel Crescitelli, Ali Hafemeister, Jose Islas, Sean Morris, Ruth Ortiz, Jennifer Slusher, Yuchaio Wu, and Lenelle Wylie is sustained. Notice shall be given to respondents before May 15, 2008, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: 4-22-08



DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings