

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
FOR THE
GOVERNING BOARD
RAMONA UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceedings Concerning:

26 Certificated Employees,

Respondents.

OAH No. 2012030287

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Ramona, California on April 24, 2012.

Clifford D. Weiler, Esq. of Atkinson, Andelson, Loya, Ruud & Romo represented the Ramona Unified School District (the District).

All of the respondents who were present for the hearing were represented by Jon Y. Vanderpool, Esq. of Tosdal, Levine, Smith, Steiner & Wax, Attorneys at Law.

The matter was submitted on April 24, 2012.

FACTUAL FINDINGS

1. Anne Staffieri, Assistant Superintendent, Human Resources Development, made and filed the Accusation dated March 21, 2012, while acting in her official capacity as the Superintendent's designee.

2. Respondents are certificated District employees.

3. On February 27, 2012, the District's Governing Board (Board) adopted Resolution No. 2011-12-08, 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 2012-2013 school year were the following full time equivalent (FTE) positions:

Particular Kinds of Service (PKS)	Full Time Equivalent (FTE)
Elementary traditional/regular classroom teaching services (K-6; including 0.49 FTE being performed by a teacher funded by Title I categorical funds)	15.49
Elementary special education teaching services, Moderate/severe (K-6)	2.0
Speech therapist services, elementary (K-6)	1.0
Services of Teachers on Assignment	3.0
Vocal music teaching services (K-6 and Ramona Community School (RCS) vocal music teaching services K-8)	3.0
Title I elementary classroom teaching services, temporary/categorically funded employees (K-6)	2.45
Early Start Kindergarten Teaching Services	1.2
Total FTE's	25.54

The services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

4. The Board's decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to substantial decreases in the operating budget and declining enrollment, and is, therefore, a proper exercise of the Board's discretion. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

5. The Superintendent and District 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.

6. On March 5, 2012, the Assistant Superintendent, Human Resources Development, as designee of the Superintendent, timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the District's intent not to reemploy them for the upcoming school year. Accordingly, respondents received written notice, on or before March 15, 2012, notifying them that the Board had recommended they not be re-employed in the upcoming, 2012-2013, school year.

7. On March 21, 2012, respondents were served with a copy of the Accusation, a blank Notice of Defense, a Notice of Hearing and other related materials.

8. 26 Certificated Employees were timely served with the written notices and Accusation packet. The following employees received layoff notices or precautionary layoff notices:

19 Layoff Notices: Anderson, Janessa; Bash, Robyn; Beus, Michele; Brown, Nicole; Butler, Ashley; Ellsworth, Marie Therese; Gammill, Chelsie; Klauda, Jeff; McElroy, Valerie; Meadows, Dallas; Morgan, Elizabeth; Rager, Heather; Rosenbusch, Laura; Scramm, Kimberly; Soltero, Adriana; Stewart, Tracey; Tamburrino, September; Utech, Jeana; and Wrothen, Laura.

7 Precautionary Notices: Buckley, Shirley; Ciulla, Lillian; Hester-Bowman, Nora; Lantz, Darcy; Poortinga, Linda; Shields, Lisa; and Szyjka, Amanda.

9. The following 17 certificated employees (respondents) timely requested a hearing and filed notices of defense: Anderson, Janessa; Bash, Robyn; Beus, Michele; Brown, Nicole; Butler, Ashley; Ellsworth, Marie Therese; Gammill, Chelsie; Klauda, Jeff; McElroy, Valerie; Morgan, Elizabeth; Rager, Heather; Rosenbusch, Laura; Scramm, Kimberly; Soltero, Adriana; Tamburrino, September; Utech, Jeana; and Wrothen, Laura.

10. All respondents were properly noticed of the date, time and place of the instant hearing.

11. All prehearing jurisdictional requirements have been met.

12. Respondents have been selected for notice of layoff pursuant to their seniority date, which is based on the first day of paid service of each respondent in a probationary position. Respondents were ranked for layoff in the inverse order of their seniority dates.

13. Respondent Jeff Klauda (Klauda) currently teaches 8th grade physical education. Damon Baldwin (Baldwin) is the Athletic Director and teaches high school physical education and weight training. Baldwin has been Athletic Director for the past six years and has extensive experience in that regard. Klauda has a seniority date of August 26, 2004. Baldwin has a seniority date of August 23, 2005. Consequently, Klauda believes that based on his seniority and experience he is competent to bump Baldwin. Klauda and Baldwin both testified during the instant hearing. Klauda admitted that he does not have the Athletic Director training and experience that Baldwin has, however, he believes he has enough training and experience to bump into the teaching physical education and weight training portion of Baldwin's job. Baldwin testified that he spends approximately 60 per cent of his time acting in the capacity of Athletic Director and 40 percent of his time teaching physical education and weight training. Baldwin further testified that if he were only retained for a 0.6 FTE position he would have to leave the District and work elsewhere.

The Board's resolution provides that "For purposes of 'competency' as to the rights of senior employees to 'bump' (displace) junior employees within the meaning of Education Code section 44955(b) . . . competency shall be based upon . . . for the position of athletic

director, prior active service in this district as athletic director for at least one full semester.” Based on the unique services, job functions, performed by the athletic director, the Board’s competency standard is justified. Consequently, Klauda lacks the “competency” to bump Baldwin as athletic director and, given the fact that the District will lose Baldwin if they reduce his hours, the District may not be compelled to split his position and allow Klauda to bump into 0.4 FTE of his job.¹ Consequently, Klauda was properly noticed of layoff and Baldwin was properly retained.

On May 1, 2012, subsequent to submission of the matter, counsel for the school district notified the Office of Administrative Hearings that due to further attrition the notice of layoff against Klauda was being rescinded. Based on that representation, the Accusation against Klauda shall be dismissed.

14. Other respondents testified concerning their beliefs that they could bump into other positions; however, they failed to prove that they had the current qualifications/competency to bump any junior seniority certificated employees. One respondent testified that at a January 11, 2012 staff meeting she was told by a District administrator that since the District was not planning to replace retirees, there were no plans to layoff teachers. Those statements are not relevant to the issues to be decided here and, even assuming arguendo that those statements had any relevancy, the statements were made prior to the Governor announcing State budget reductions affecting education and therefore were not binding in any regard.

15. None of the evidence presented by the respondents who testified during the hearing changes the finding that the District properly implemented Board Resolution 2011-12-08; consequently, 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.)

¹ This finding is based on *Hildebrant v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 347 where the appellate court concluded: “We thus agree with the court in *Murray* that appellants do ‘not have the right to force the [district] to divide the full-time position to accommodate [their] desire for a part-time position [citation omitted].”

3. 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.)

4. The services listed in Factual Finding 3 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

5. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District due to declining enrollment and for budgetary reasons.

6. Cause to reduce or discontinue services relates solely to the welfare of the District and its pupils within the meaning of Education Code section 44949.

7. Cause exists to give all named respondents, except for Klauda, and those served with "precautionary" notices, notice that their services are not needed for the ensuing, 2012-2013, school year.

ADVISORY DETERMINATION

The following advisory determination is made:

Prior to May 15, 2012, notice shall be given to all respondents, except Jeff Klauda and those respondents who were served with precautionary notices, that their services will not be required for the ensuing school year due to declining enrollment, the budget deficit, and the resulting need to reduce and/or discontinue certain services.

The Accusation is dismissed as to respondent Jeff Klauda and all respondents who received precautionary notices and the layoff notices as to those respondents are rescinded.

DATED: May 1, 2012

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings