

BEFORE THE
GOVERNING BOARD
ROMOLAND SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Proceedings Concerning:

*13 Certificated Employees who received
layoff notices:*

OAH No. 2012030941

Wendy Caballero; Melissa Cole; Janet
Cornejo; Yvette Dominguez; Nancy Gaona;
Jordan Hutchison; Jennifer Parks; Sonal
Patel; Carol Patrick; Sherry Perry; Jeffrey
Ramirez; April Sanders; and Stephannie
Steen,

*6 Certificated Employees who received
“precautionary” layoff notices:*

Colette Reyes; Shanyssa Rivera-Babbey;
Derek Rouch; Melodee Schoelen-Morgan;
Margaret Spaulding; and Kyle Stamper,

Respondents

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative
Hearings, State of California, heard this matter in Homeland, California on April 11,
2012.

Mark W. Thompson, Esq. of Atkinson, Andelson, Loya, Ruud & Romo
represented the Romoland School District (the District).

All of the respondents who were present for the hearing were represented by
Marianne Reinhold, Esq. of Reich, Adell & Cvitan.

The matter was submitted on April 11, 2012.

FACTUAL FINDINGS

1. Anthony Rosilez, Ph.D., J.D. (Superintendent), made and filed the Accusation dated March 14, 2012, while acting in his official capacity as Superintendent of the District.

2. Respondents are certificated District employees.

3. On March 13, 2012, the District's Board of Education (Board) adopted Resolution No. 18-2011/2012, 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:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
K-5 Classroom Teachers	10.9
Middle School Core Teachers	1.0
Nurse	0.4
<u>Total FTE's</u>	<u>12.3</u>

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 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 14, 2012, 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 14, 2012, respondents were served with a copy of the Accusation, a blank Notice of Defense, a Notice of Hearing and other related materials.

8. The following 10 of the 19 noticed respondents timely requested a hearing: Wendy Caballero; Melissa Cole; Janet Cornejo; Nancy Gaona; Carol Patrick; Sherry Perry; Colette Reyes; Melodee Schoelen-Morgan; Margaret Spaulding; and Stephannie Steen. The instant hearing ensued.

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

10. All prehearing jurisdictional requirements have been met.

11. 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.

12. Respondent Mellisa Cole (Cole) asserted that she should have been “skipped” based on the Board’s “skipping” criteria. The criteria necessary for “skipping” purposes, as set forth in Board resolution 18-2011/2012, are as follows:

WHEREAS, this Board has determined that a specific and compelling need exists to employ and retain certificated employees for middle school core positions who possess the necessary special training and experience to best serve middle school students, evidenced by possession of a departmentalized [teaching] credential and “Highly Qualified” status under the No Child Left Behind Act (“NCLB”); . . . (Exh. 1, emphasis added)

The Superintendent testified that the District is currently in the process of transitioning to a “Middle School concept” where departmentalization is the preferred teaching method. Consequently, the plain language of the Board resolution reveals that the Board elected to “skip” certificated employees who are highly qualified in a departmentalized area/credential.

Cole testified that although she is highly qualified with regard to her multiple subject credential, she is not highly qualified in a departmentalized area/credential. Cole testified that she is “one class away” from being highly qualified in Introduction to English, and “two classes away” from being highly qualified in Social Sciences. However, as of the date of the instant hearing Cole was not highly qualified in a

departmentalized area.¹ Consequently, Cole did not meet the “skipping” criteria and was properly noticed of potential layoff.

13. Nancy Goana, as was the case with Cole, is only highly qualified in Multiple Subject, not in a departmentalized (supplemental) area. Goana testified that she is in the process of filing paperwork with the District that, upon filing, will reveal that she is highly qualified, with a Supplemental Credential in English; however, at the time of the instant hearing she had not yet filed the paperwork with the District. Thus, as with Cole, Goana was properly noticed of potential layoff.

14. Janet Cornejo testified that she is number 101 on the seniority list and is more senior than all the certificated employees listed from 102 through 135 on the seniority list; therefore, other, less senior certificated employees (i.e. employee numbers 104, 105, 106, 116 and 131) should have been laid off in lieu of her. While this may seem to be the case when just seniority is considered, when the PKS categories along with “tiebreaking,” “skipping,” and “bumping” criteria are applied to the seniority list, the results are as the District has indicated on the layoff list.

15. None of the evidence presented by the three certificated employees who testified during the hearing changes the finding that the District properly applied Board Resolution 18-2011/2012; 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.)

3. California Education Code section 44955, subdivision (d)(1) provides, in pertinent part, that a district may engage in “skipping” for the following reason:

¹ The District is only required to consider those credentials an employee has on file by the time of the March 15 notice deadline. (*Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App. 3d 689.)

The district demonstrates a specific need for personnel to teach a specific course or course of study . . . the certificated employee [proposed to be skipped] has special training and experience necessary to teach that course of study . . . which others with more seniority do not possess.

In the present instance, the District properly applied the “skipping” concept. There exists a need for certificated employees to be qualified to teach a specific course of study (i.e. departmentalized instruction), and the teachers who asserted a right to be retained do not possess the special training and experience necessary to teach the course of study.

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. 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.

6. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District for budgetary reasons.

7. 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.

8. Cause exists to give all named respondents, except for 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 the following 13 respondents that their services will not be required for the ensuing school year due to the budget deficit and the resulting need to reduce and/or discontinue certain services: Wendy

Caballero; Melissa Cole; Janet Cornejo; Yvette Dominguez; Nancy Gaona; Jordan Hutchison; Jennifer Parks; Sonal Patel; Carol Patrick; Sherry Perry; Jeffrey Ramirez; April Sanders; and Stephannie Steen.

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

DATED: April 23, 2012.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings