

BEFORE THE
BOARD OF TRUSTEES
RIVERBANK UNIFIED SCHOOL DISTRICT
STANISLAUS COUNTY

In the Matter of the Accusation/Non-
Reemployment of Certificated Employees of
the Riverbank Unified School District:

OAH No. 2011030518

Karen Baker
Zac Wilkins
Rebecca Camarena
Charlotte Bowden
Isela Wesley
Norma Ramirez
Marianne Goularte
Alice Solis

Respondents.

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings (OAH), State of California, heard this matter in Riverbank, California, on April 4, 2011.

Thomas E. Gauthier, Attorney at Law, represented the Riverbank Unified School District (District).

Heidi Primack Talbot, Attorney at Law, represented Alice Solis.

Ernest H. Tuttle, IV, Attorney at Law, represented Karen Baker, Zac Wilkins, Rebecca Camarena, Charlotte Bowden, Isela Wesley, Norma Ramirez and Marianne Goularte.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The record remained open to allow parties to file written briefs. The District's brief was filed on April 13, 2011 and was marked for identification as Exhibit 9. Respondent Alice Solis's brief was filed on April 13, 2011 and was marked for identification as Exhibit G. The matter was submitted for decision on April 13, 2011.

FINDINGS

1. Ken Geisick is the District Superintendent. Norma Gonzalez is the District Manager of Human Resources. Their actions, and those of the District's governing body, the Board of Trustees (Board), were taken solely in their official capacities.
2. The District serves approximately 2,750 students in kindergarten through 12th grade. The District has seven school sites and approximately 125 certificated employees. There is one alternative education (continuation) high school.
3. The District is facing a budget shortfall for the 2011-2012 school year of at least \$900,000.
4. On March 8, 2011, the Board adopted Resolution # 10-11-18 (Resolution) reducing or eliminating particular kinds of services (PKS) affecting 8.3 Full Time Equivalent (FTE) certificated positions.
5. The Resolution was based on the Superintendent's recommendation that it was necessary to reduce or discontinue PKS no later than the beginning of the 2011-2012 school year. In making his recommendation, the Superintendent took into account all positively assured attrition.
6. The Resolution states that the Board determined that it was necessary to reduce the following PKS of the District not later than the close of the current school year:

<u>Services</u>	<u>Number of FTE Positions</u>
1. Multiple Subject	5.0 FTE
2. Counselor	1.5 FTE
3. Social Science	1.0 FTE
4. Mathematics	0.6 FTE
5. Special Projects (Formerly RHS SIP Coordinator)	.2 FTE
Total	<hr/> 8.3 FTE

7. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 9 FTE positions for certificated employees in the District no later than the beginning of the 2011-2012 school year, in accordance with Education Code section 44955.¹

8. The Resolution directed the Superintendent or his designee to send appropriate notices to all employees whose services would be terminated by virtue of the Board's action.

9. Before March 15, 2011, Ms. Gonzales served a letter entitled "Notice of Recommendation That Services Will Be Terminated" (Preliminary Notice) on each of the employees affected by the PKS reductions and/or eliminations set forth in the Resolution. The Preliminary Notice advised that the Superintendent had recommended to the Board that the recipient be given preliminary written notice that his/her services would be terminated at the close of the current school year due to reductions in PKS.

10. The respondents timely filed a Request for Hearing to determine whether there was cause for not reemploying them for the 2011-2012 school year.

11. On March 22, 2011, the Superintendent made the Accusation, and caused it to be served on respondents or their legal counsel. Respondents timely filed Notices of Defense.

Implementation of LayOff

12. In September 2010, Ms. Gonzales and her staff updated the District's seniority list in connection with a computer system upgrade. Certificated staff were notified by letter to update their files. An updated seniority list was created and submitted to the Riverbank Teachers Association so that the teachers could review the seniority list and bring any proposed changes to the attention of the District.

13. Ms. Gonzales used this seniority list in identifying those employees affected by the PKS reductions. District staff identified the individuals serving in the positions affected by the PKS reductions. District staff then identified the least senior persons occupying the positions affected by the PKS reductions.

14. When the least senior persons occupying the positions affected by the PKS reductions were identified, District staff looked at each individual's credentials to determine whether he or she could displace any less senior certificated employees.

¹ All statutory references are to the California Education Code unless otherwise indicated.

15. Before March 15, 2011, District staff served the Preliminary Notice on the most junior employees affected by the PKS reduction.

16. The District identified Karen Baker, Zac Wilkins, Rebecca Camarena, Charlotte Bowden and Isela Wesley, as the least senior certificated employees occupying the Multiple Subject positions affected by the FTE reductions. The District determined that no junior certificated employee was being retained in the 2011- 2012 school year to provide services for which any of these five employees were certificated and competent to provide.

17. The District identified Norma Ramirez (1.0 FTE) and Marianne Goularte (.5 FTE) as the least senior certificated employees whose positions were affected by the 1.5 FTE reductions in Counseling Services. The District determined that no junior certificated employee was being retained in the 2011- 2012 school year to provide services for which Norma Ramirez or Marianne Goularte were certificated and competent to provide.

Challenges by Alice Solis

18. The District identified Alice Solis as the least senior certificated employee affected by the 1.0 reduction in Social Science. Ms. Solis is a permanent certificated employee with a seniority date of March 8, 2008. She holds a Clear Single Subject Teaching Credential in Social Science. She also holds a Clear Administrative Services Credential. Ms. Solis contends that a junior teacher, Carl Hughes, is being retained in the 2011- 2012 school year to provide teaching services which she is certificated and competent to render.

19. Mr. Hughes is a permanent certificated employee with a seniority date of August 18, 2008. He holds a Life Standard Secondary Teaching Credential with a Supplemental Authorization in History and a Subject Authorization in Political Science. He is currently assigned to teach at the Adelante Continuation High School and is expected to teach in this assignment in the 2011-2012 school year. He teaches American government, political science and world history, and will be teaching these subjects next year.

20. The District maintains that Ms. Solis is not competent to teach the classes assigned to Mr. Hughes for three reasons: (1) She is not NCLB (No Child Left Behind) compliant in the core academic subjects: civics and government, political science and history; (2) She does not possess the experience necessary to teach in a continuation high school; and (3) Mr. Hughes possesses special skills and experience necessary to teach in a continuation high school, skills and experience which Ms. Solis does not possess.

NCLB Compliance

21. It is uncontroverted that a teacher assigned to teach core academic subjects in Adelante Continuation High School, including American government, political science and world history, must be NCLB compliant in the core subject areas of civics and government, and history. It is uncontroverted that Mr. Hughes is NCLB compliant in the core subject areas of civics and government, because he holds an undergraduate major in political science, and that he is NCLB compliant in the core subject area of history, because he has an “undergraduate major equivalent” of 32 non-remedial semester units in history.

22. Ms. Solis maintains that her Single Subject Teaching Credential in Social Science qualifies her as NCLB compliant in civics and government and in history because she obtained the credential after completing the Social Sciences Waiver program through California State University Stanislaus (waiver program) in 1992. The waiver program required the student to complete at least 16 courses, a minimum of three credits per course, in the subjects of economics, geography, California history, United States history, world history and political science.

23. Lynda Nicholas is the Title 2 Coordinator for the California Department of Education. In this capacity, she is responsible for overseeing the State’s compliance with the Federal NCLB Act. Ms. Nicholas testified that NCLB requires appropriate state authorizations to teach history, economics, government and geography. California has a “composite credential” which allows teaching in all four of these domains. A Single Subject Teaching Credential in Social Science which is based upon completion of the waiver program renders the holder NCLB compliant in these domains. This is because the waiver program requires that subject matter competency be established in all four domains in order to grant the credential through the program. Ms. Nichols confirmed that California State University at Stanislaus has an approved subject matter waiver program for social science. She testified that the federal government questioned the California State composite credential in 2005 during a federal audit, but ultimately accepted this composite credential in satisfaction of NCLB compliance in these subjects.

24. Accordingly, the evidence is persuasive that Ms. Solis is NCLB qualified to teach the subjects Mr. Hughes is teaching, American government, political science and world history. Thus she is certificated to teach these subjects. But questions remain whether she is competent to teach in Adelante Continuation High School. If so, has the District established that it needs to retain Mr. Hughes because he has special skills and experience necessary to teach in Adelante Continuation High School, skills and experience which Ms. Solis does not possess?

Competency to Teach in Alternative Education

25. The District maintains that certificated employees are not competent to teach in Adelante Continuation High School unless they have, at a minimum, six months² of teaching experience in an alternative education environment in the previous six to seven years. This is because Adelante is a unique and challenging educational setting. The school provides a “second chance” to high school students who are having a difficult time in the typical high school settings. The students have intensive social, academic and learning issues that have prevented them from being successful in a traditional educational setting. Currently, there are 60 students who take modular classes in six-week sessions. Curriculum is personalized and intensive, and there are challenging classroom management issues.

26. Ms. Solis has never held a teaching assignment, much less an assignment teaching in an alternative education setting. She has been a Principal at Cardozo Middle School for the last five years. Between 2002 and 2006, she was employed as the Principal at Robertson Road Elementary (K-6), a Modesto City school. Between 2000 and 2002 she was employed as a Vice Principal at Orville Wright Elementary (K-6), a Modesto City school. In 2000, she was employed as the Summer School Principal at Orville Wright Elementary. Prior to 2000, she was a social worker, a healthy start coordinator and a family self-sufficiency specialist for a housing authority. These positions were not certificated teaching positions.

27. Ms. Solis testified at length about her experience with teaching classes for teachers, substituting for elementary and middle school classroom teachers, preparing classroom curriculum, supervising teachers and assessing their instructional techniques, and teaching two summer school sessions with middle and some high school students. She has extensive experience in these areas, and she has extensive experience as a principal and social worker, working with challenging students and their families.

28. Ms. Solis has never been assigned as a classroom teacher. Her administrative experience has been in elementary and middle schools. Although the “profile” of the continuing education high school student may be familiar to Ms. Solis, the District determined that she “has not delivered five hours of instruction all day every day with these students for a minimum of six months.”

² The testimony varied as to whether six months or one year of teaching in a continuation program would satisfy the minimum requirement of competency. The six month period was chosen for the purpose of this analysis, in keeping with the legislative intent of the Education Code to retain senior employees.

29. Ms. Solis plainly does not meet the District's minimum requirement for competency in teaching high school students at Adelante Continuation High School. The question remains, though, whether the competency criteria established by the District is reasonable and warranted. As set forth in Finding 25, the District has demonstrated that the student population at Adelante Continuation High School requires skilled and experienced high school level classroom instruction. Ms. Solis has never provided this. The District has demonstrated that the student population at Adelante High School requires instructors who are skilled and experienced in managing behavioral, social and academic problems, while delivering high school level instruction. Even though Ms. Solis has worked in the field of social work, she has not employed this experience while delivering high school level instruction. Accordingly, Ms. Solis is not competent to render the services that the junior Mr. Hughes is being retained to render.

Skipping Mr. Hughes

30. The District maintains that it may deviate from terminating (skip) Mr. Hughes pursuant to Education Code section 44955, subdivision (d)(1), because the District has a specific need for Mr. Hughes to teach the courses he teaches at Adelante Continuation High School, and Mr. Hughes has special training and experience necessary to teach these courses, which others with more seniority do not possess. Ms. Solis is the only respondent who maintains that she would be retained if Mr. Hughes were not skipped.

31. As set forth in Findings 25 to 29, Ms. Solis is not competent to render the services Mr. Hughes is performing, and thus the fact that he was skipped does not impact her layoff. Nevertheless, the District demonstrated that it has a specific need for Mr. Hughes to teach at Adelante Continuation High School because he has been successfully teaching at Adelante Continuation High School for the last three years and had previously taught adult education for 15 years and general education for 15 years. The District also demonstrated that there was no certificated teacher with more seniority, subject to layoff, who possesses the special training and experience necessary to teach these courses.

LEGAL CONCLUSIONS

1. As set forth the Findings, all notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of

services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in Resolution # 10-11-18 are particular kinds of services that may be reduced or discontinued under sections 44949 and 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. 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. As set forth in the Findings and Legal Conclusions the District has established that no employees junior to respondents are being retained to perform the services which respondents are certificated and competent to render.

5. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of its schools and pupils.

RECOMMENDATION

The Accusations are sustained.

The District may give notice to respondents in the inverse order of seniority that it will not require their services for the 2011-2012 school year.

DATED: April 15, 2011

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings