

BEFORE THE
BOARD OF TRUSTEES
COAST UNIFIED SCHOOL DISTRICT
SAN LUIS OBISPO COUNTY, CALIFORNIA

In the Matter of the Reduction in Force of

JERRY CRONIN,

Respondent.

OAH No. 2017030678

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on April 11, 2017, in Cambria, California. The Coast Unified School District (District) was represented by Thomas R. Manniello, with Lozano Smith. Respondent Jerry Cronin was represented by Jacques Soiret, Attorney at Law.

During the hearing of this matter, the ALJ was provided with Exhibits 15 and Exhibits R-4, R-12, R-14, R-15, R-16, R-17, R-18 containing student's names and confidential personal information which is protected from disclosure to the public. Redaction of the documents to obscure this information was not practicable and would not provide adequate privacy protection. In order to protect the students' privacy and prevent the disclosure of confidential personal information, the ALJ on her own motion ordered that, following the preparation of the Proposed Decision, Exhibits 15, R-4, R-12, R-14, R-15, R-16, R-17, R-18, would be placed under seal, and that the exhibit shall remain under seal and shall not be opened, except by order of the District's Board of Trustees, by OAH, or by a reviewing court.

Prior to the hearing of this matter, the parties submitted briefs which were not marked during the hearing, but are hereby marked and lodged as follows: "Respondent's Defense to the District's Statement of Reduction in Force" as Exhibit R-19; "Issue Brief #1: Response to Respondent's Defense to the District's Statement of Reduction in Force" as Exhibit 16; "Hearing Brief of Respondent Jerry Cronin" as Exhibit R-20; "Issue Brief #2: Response to Respondent's Hearing Brief Regarding Labor Code Section 1102.5" as Exhibit 17.

Oral and documentary evidence was received. After testimony concluded on April 11, 2017, the matter was continued until April 25, 2017, for the submission of closing briefs. Pursuant to Education Code sections 44949, subdivision (c), and 44955, subdivision (c), the continuance extended the deadline for submission of the proposed decision until May 19, 2017.

The District's Closing Brief was timely filed, marked as Exhibit 18, and lodged. Respondent's Closing Argument was timely filed, marked as Exhibit R-21, and lodged. The District's Reply Brief was marked as Exhibit 19 and was lodged. Respondent's Reply Brief was marked as Exhibit R-22 and was lodged. The record was closed, and the matter was submitted for decision on April 25, 2017.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Victoria Schumacher, the District's Superintendent, filed the District's Statement of Reduction in Force in her official capacity.
2. Respondent is a certificated District employee.
3. In February 2017, pursuant to Education Code sections 44949 and 44955, Superintendent Schumacher recommended to the District's Board of Trustees (Board) that it should adopt a resolution to reduce a particular kind of service for the 2017-2018 school year.
4. On February 16, 2017, the Board adopted the Superintendent's recommendations in Resolution Number 2016-17-11 (Resolution). In accordance with Education Code sections 44949 and 44955, the Board determined that it was necessary to reduce a particular kind of service at the close of the 2016-2017 school year and to terminate the employment of a certificated employee at the end of the 2016-2017 school year due to the reduction of a particular kind of service. The Board directed the Superintendent to send appropriate notices to all certificated employees whose services would be terminated due to the reduction in a particular kind of service.
5. On about February 17, 2017, and prior to March 15, 2017, the District sent Respondent a Notice of Recommendation that Services will be Terminated informing him that his services were being terminated at the close of the 2016-2017 school year.
6. Respondent timely submitted a request for hearing. Thereafter, he was timely served with a District Statement of Reduction in Force, a blank Notice of Participation in Reduction in Force Hearing form, and copies of pertinent provisions of the Government and Education Codes.
7. Respondent timely filed a signed Notice of Participation in Reduction in Force Hearing.

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Reduction of Particular Kind of Service

8. The Board's Resolution provides for the reduction of the following particular kind of service by the beginning of the 2017-2018 school year:

<u>Services</u>	<u>Number of Full-Time Equivalent [(FTE)] Positions</u>
Spanish Teacher	1.0 FTE
<hr/>	
Total Full Time Equivalent reductions	1.0 FTE

9. The services identified in the Board's Resolution are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. (See also Legal Conclusion 2.)

10. The reduction of the 1.0 FTE position will not reduce services below mandated levels.

11(a). Respondent challenged the propriety of the decision to reduce the 1.0 FTE in Spanish, asserting that his layoff was a pretext for the District's retaliatory termination and attempt to silence him from revealing the District's violations of the Education Code. Respondent's assertions were not proven, as set forth more fully below.¹

11(b). The credible testimonies of Superintendent Schumacher, high school principal Scott Ferguson, library media specialist Shannon Sutherland, computer technician Patti Stroh, and guidance counselor Cheryl Cronis-Seay established the following facts:

(1). The District currently serves 638 students and operates a grammar school, a middle school, a high school, and a continuation high school. The District has been experiencing declining enrollment with diminishing class sizes due to the reduction of students. The District's financial situation prompted the need for budget cuts and teacher layoffs.

(2). The San Luis Obispo County Office of Education (SLOCOE) is required to review the adopted budgets for all public school districts in its county, including the District. On June 30, 2016, the Board adopted a three-year budget plan for the 2016-2017, 2017-2018, and 2018-2019 school years. SLOCOE reviewed the District's adopted budget for those school

¹ Respondent asserted that the District had engaged in a false grading scheme and that it had improperly created a "ghost class" for an administrator's relative who purportedly received a "A" grade for virtually no work. Whether the District actually committed any violations is irrelevant. At issue is whether, in eliminating the 1.0 FTE of Spanish instruction, the District properly exercised its discretion or whether it was motivated by a retaliatory purpose based on Respondent's reporting or anticipated reporting of improper District activity. The facts surrounding the alleged violations are detailed in Findings 11(b)(1)-(11) solely to provide context for Respondent's assertions.

years but did not approve it. At that time, the District was deficit spending, and SLOCOE Superintendent of Schools, James J. Brescia, Ed.D., told Superintendent Schumacher that the Board had to submit a revised budget for approval prior to August 15, 2016. The Board's revised budget, approved on August 11, 2016, addressed the anticipated budget deficits via proposed expenditure reductions including 2.0 FTE teacher layoffs in both the 2017-2018 and 2018-2019 school years. The District anticipated that the certificated staff reduction would include a staff member at the high school level. These budgetary decisions were made before Respondent joined the District.

(3). Principal Ferguson joined the District in June of 2016. The 2016-2017 school year commenced August 24, 2016. At that time, M.L.² was teaching Spanish at the high school, but two weeks into school year he retired suddenly. The District scrambled to obtain substitute coverage during the first quarter, and Respondent was hired on November 7, 2016 to begin teaching in the second quarter of the school year.

(4A). During the second quarter of the 2016-2017 school year, a teacher's Spanish 2 class with only three students had to be reassigned. Respondent taught an English Language Arts/English Language Development (ELA/ELD) class during that period, so the Spanish 2 students were distributed among several classes. A relative of Principal Ferguson, K.F., was among the students being moved. However, the District's remaining Spanish 2 class was offered during the only period when K.F.'s ASB leadership class met. To accommodate her scheduling conflict, the District allowed K.F. to fulfill her Spanish 2 requirement by independent study in the library working through a computerized Rosetta Stone Spanish program. Respondent was K.F.'s teacher of record responsible for monitoring and grading the student. K.F., her counselor, and Respondent all agreed to this accommodation.

(4B). Library media specialist Sutherland was responsible for supervising all students studying in the library, including K.F. Sutherland was also the only authorized administrator for Rosetta Stone. She alone could access Rosetta Stone to determine a student's progress through the program, and she could provide this information to the teacher of record. However, Respondent never asked Sutherland to provide him with information about K.F.'s progress. Additionally, Rosetta Stone provides optional workbooks for teachers to give students supplemental assignments. Sutherland offered to provide Respondent with the workbooks so that he could give K.F. assignments to augment the Rosetta Stone program. However, Respondent never followed up with Sutherland to give K.F. any workbook assignments. Sutherland noted that K.F. regularly attended her independent study sessions and that she logged on and was progressing through the levels.

(4C). Principal Ferguson never had any discussion with Respondent about K.F.'s grades, and the evidence did not establish that Respondent was forced to give K.F. any particular grade.³ Respondent gave K.F. an "A" grade for the first semester. During the third

² The teacher's initials are used in lieu of his name in order to protect his privacy.

³ At the hearing, Respondent produced an email he sent to Cronis-Seay stating, "[K.F.] did nothing for quarter and I will give her an A since I now understand our school's

quarter of the 2016-2017 school year, after Respondent received his February 17 notice of termination, Respondent entered an “F” grade for K.F. in his grade book; however, K.F. had already been transferred into another teacher’s class.

(4D). At no time prior to his receipt of the notice of termination did Respondent ever inform anyone at the District that he was uncomfortable with K.F.’s independent study arrangement or that he believed the arrangement, including how K.F. was graded, constituted a violation of the law.⁴

(5). The District uses a computerized system, Illuminate, which houses all student data, including teachers’ grade books. Teachers are responsible for setting up their own electronic grade books in Illuminate and entering assignments and grades for assignments. Respondent experienced difficulty operating Illuminate, and he needed help from computer technician Stroh to be able to set up and use his grade book.

(6). Once a teacher enters students’ grades in Illuminate, only District employees with administrative privileges may change a student’s grade within Illuminate. Those with such privileges include computer technician Patti Stroh, Principal Ferguson, and District Registrar Carol Adams who also serves as Principal Ferguson’s secretary. Stroh must typically demonstrate the grade-changing process to a new user. Stroh has never shown Principal Ferguson or counselor Cronis-Seay how to perform a grade change in Illuminate, and neither knows how to do so. Neither Principal Ferguson nor Cronis-Seay has ever changed a student’s grade in Illuminate. Registrar Adams knows how to operate Illuminate, and she is able to alter a grade once a teacher submits the requisite paperwork requesting the change.

(7A). At the end of the second quarter, in January of 2017, Respondent entered into Illuminate his students’ semester grades which become part of the students’ permanent transcript grades. Respondent did not teach in the District during the first quarter. The students’ semester grades should have been the average of their first quarter grades (entered by the first quarter teacher) and second quarter grades (when Respondent was the teacher). However, the semester grades entered into Respondent’s grade book consisted only of the second quarter grades and did not combine the students’ first and second quarter grades. This non-integrated grading affected every student in Respondent’s Spanish 1 class, but only three students’ final semester grades were impacted by the failure to average their two quarters’ grades (because averaging the remaining students’ first and second quarter grades resulted in the same grade entered by Respondent).

(7B). A parent of one of the impacted students initiated an inquiry, and Principal Ferguson ascertained that the first and second quarter grades had not been averaged for a final

grading policy.” (Exhibit R-14.) However, the evidence did not establish that anyone forced Respondent to give K.F. the “A” grade.

⁴ There was no evidence that the District engaged in any Education Code violation by accommodating K.F.’s schedule to allow her to complete independent study in the library.

semester grade. Principal Ferguson and Respondent discussed this issue. Additionally, Cronis-Seay informed Respondent that he could not ignore the grades entered by the Quarter 1 teacher of record. Respondent did not object to changing the impacted grades.

(7C). Registrar Adams provided Respondent with forms to request the grade changes, and Principal Ferguson signed the forms after Respondent completed them. Adams made the grade changes in Illuminate after submission of the completed forms.⁵ At no time prior to Respondent's receipt of the notice of termination did Respondent ever inform anyone at the District that he believed these grade changes were a violation of the Education Code.

(8). In about January 2017, Respondent informed Cronis-Seay and Principal Ferguson that he believed his computer had been hacked by a student and that the student's grades on assignments had been changed in Respondent's grade book. His complaint was forwarded to computer technician Stroh. Stroh's research found that Respondent was the only person who had logged into Illuminate to make changes to his grade book. Stroh relayed that information to him, and Respondent did not respond. Although Respondent could have submitted a form to change any incorrect grades entered in Illuminate, he did not do so. At a later point in time, Respondent accused Cronis-Seay of altering the students' grades, but she did not have the authorization or the ability to do so.⁶ There was no evidence that any District employee changed the student assignment grades at issue or that any District employee assisted in the changing of the assignment grades.⁷ The evidence did not establish that at any time prior to his receipt of the notice of termination Respondent informed anyone at the District that he believed these grade anomalies were caused by the District or its employees' violation of the Education Code.

(9). In January and early February, Superintendent Schumacher and Principal Ferguson met to discuss the reduction in PKS. In identifying which PKS could be reduced, they considered the class size and enrollment in Spanish classes, and they determined that the District could reduce 1.0 FTE in Spanish still continue to provide sufficient Spanish instruction

⁵ At the hearing, Respondent asserted that the District violated the Education Code when changing students' grades. Education Code section 49066 governs the changing of a grade given by a teacher. (*Johnson v. Bd. of Educ.* (1986) 179 Cal. App. 3d 593, 599.) Education Code section 49066, subdivision(a), provides that the grade given by the teacher shall be final "in the absence of clerical or mechanical mistake . . ." This case involved a clerical mistake, i.e., the failure to average first quarter and second quarter grades, and there was no evidence that the District violated the Education Code when correcting the students' grades.

⁶ It was undisclosed by the evidence whether Respondent's accusation about Cronis-Seay was made prior to or after he received his notice of termination.

⁷ There was no evidence that the District violated the Education Code when investigating Respondent's allegations of hacking.

to students. In the 2016-2017 school year, Spanish 2 had two classes of three students each, and Spanish 1 had two classes with 11 students and 9 students in each. Respondent was traveling between the high school site (where he taught Spanish and several ELA/ELD classes) and the middle school teaching Spanish to seventh graders. The following school year, credentialed Spanish and French teacher, Olga Arias, who had been with the District for 16 years, could teach the seventh grade class for one period, Spanish 1 and Spanish 2 classes, and French classes.

(10). On February 15, 2017, Principal Ferguson informed Respondent that the layoff was going to affect him because there would be a reduction in language teachers, and Ms. Arias had seniority. Respondent admitted this decision made sense because he had small classes.

(11). Prior to making her recommendation to the Board, Superintendent Schumacher was not aware of any allegations raised by Respondent regarding grading, grade changes, or Education Code violations. Superintendent Schumacher's recommendation to the Board was not motivated by or intended for retaliation against Respondent in any way.

11(c). The Board's decision to reduce the 1.0 FTE in Spanish was not motivated by any retaliatory purpose against Respondent.

12. The Board's decision to reduce the identified particular kind of service was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

13. The reduction or elimination of the identified particular kinds of services relates solely to the welfare of the schools in the District and its students.

The Seniority List and Respondent's Seniority

14. The District developed and used a seniority list to determine which least senior employee was currently assigned in the particular kind of services being reduced. The District determined that nobody less senior than Respondent was being retained to render services which Respondent is certificated and competent to render.

15. Respondent holds a Standard Secondary Teaching Credential from the California Commission on Teacher Credentialing authorizing him to teach Spanish in Grades 7 – 12.

16. Respondent's first day of paid service in the District was November 7, 2016.

17. Respondent is the least senior Spanish teacher in the District.

18. There are no teachers in the District less senior than Respondent who are teaching classes which Respondent is credentialed to teach.

LEGAL CONCLUSIONS

Jurisdiction and General Legal Conclusions

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The service identified in the Board's Resolution is a particular kind of service that can be reduced or discontinued pursuant to Education Code section 44955.

3(a). A school district's decision to reduce a particular kind of service must be reasonable and not fraudulent, arbitrary, or capricious. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 637; *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

3(b). The Board's decision to reduce the identified service was neither arbitrary nor capricious, and was a proper exercise of the Board's discretion.

4. Cause for the reduction of services relates solely to the welfare of the District's schools and students within the meaning of Education Code sections 44955.

5. Services will not be reduced below mandated levels.

6. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of a particular kind of service.

7. Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

8. No junior certificated employee will be retained to perform services that a more senior employee is certificated and competent to render.

9. Cause exists within the meaning of Education Code section 44955 to terminate Respondent's employment for the 2017-2018 school year, as set forth in Factual Findings 1 through 18, and Legal Conclusions 1 through 8.

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ORDER

The Statement of Reduction in Force against Respondent Jerry Cronin is sustained. Notice shall be given to Respondent Jerry Cronin that his services will not be required for the 2017-2018 school year.

Dated: April 28, 2017

DocuSigned by:

Julie Cabos-Owen

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JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings