

BEFORE THE  
GOVERNING BOARD OF THE  
ROUND VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

TARA BACHMAN,  
CAMERON STALLINGS, and ROBERT  
RUIZ

Respondents.

OAH No. N2006040105

**PROPOSED DECISION**

M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 26, 2006, at the offices of the Willits Unified School District, Willits, California.

Suzanne K. Reed, Senior General Counsel, School and College Legal Services of California, represented the Round Valley Unified School District.

James D. Allen, Attorney at Law, represented respondents, who were present at the hearing.

The matter was submitted on April 26, 2006.

**FACTUAL FINDINGS**

1. The Round Valley Unified School District (hereinafter "the District") provides an elementary/middle school, high school, continuation school and community day school serving approximately 400 students. Joy Muhleck is the Superintendent of the District.

2. On March 13, 2006, the Governing Board was given notice in accordance with Education Code section 44949 and 44955 of the Superintendent's recommendation that 4.0 full-time equivalent (FTE) certificated employees be notified that their services would not be required for the ensuing school year and stating the reasons for that recommendation.

3. Board Resolution No. 05-0313D, adopted on March 13, 2006, provided for the reduction or elimination of the following particular kinds of services:

1.0 FTE Director of Special Education Services

2.0 FTE Elementary Instructional Services

1.0 FTE High School Services to include:

- 2 periods of Physical Education
- 1 period of 2 teachers providing Accelerated Math Support
- 1 period of 2 teachers providing Continuation Services
- 1 period [1 semester] of Health
- 1 period [1 semester] of Drivers Education
- 1 period of Yearbook Journalism

4. On or before March 15, 2006, either by personal delivery or by depositing in the United States registered mail, postage prepaid and addressed to the employee's last known address, the District served affected employees with written notice that it had been recommended that notice be given pursuant to Education Code sections 44949 and 44955 that their services would not be required for the ensuing school year and setting forth the reasons for the recommendation.

The notices further advised the employees of their right to a hearing, including that such a request must be delivered in writing to the person sending the notice of termination, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

5. Respondents Tara Bachman, Cameron Stallings, and Robert Ruiz filed timely Requests for Hearing.

6. Superintendent Muhleck filed Accusations which were timely served on respondents as required by the Education Code, and the information that a Notice of Defense must be filed within five days pursuant to Education Code section 44944, subdivision (c)(1).

7. Respondents Bachman, Stallings, and Ruiz filed timely Notices of Defense.

8. Superintendent Muhleck described that Board Resolution No. 05-0313D was required by the District's fiscal crisis and need to reduce services to balance its budget for the welfare of students. The District's second Interim Financial Report projects that it will have overspent available funds by approximately \$400,000 at the end of the fiscal year.

9. The District maintains a Roster of Certificated Staff that identifies employees' seniority dates (first date of paid service), credentials, and degrees. As provided in Education Code section 44845, seniority generally is measured from the first date on which the employee rendered service as a probationary employee.

The Roster of Certificated Staff, or seniority list, was posted and circulated to certificated staff of the District. None of the respondents identified to Superintendent Muhleck that the information was incorrect or incomplete.

10. The seniority list notes that respondent Bachman has a seniority date of August 22, 2005, and holds a preliminary multiple subject credential with ELD and SDAIE certification. Respondent Stallings also has a seniority date of August 22, 2005, and holds a preliminary multiple subject credential with CLAD certification. Respondent Ruiz has a seniority date of August 28, 1980, and holds a life special education Learning Handicapped and Severely Handicapped credential with SDAIE certification.

11. The Governing Board adopted criteria for determining the order of termination among certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the following:

- A. Credentials and experience to teach or serve in a particular program or provide a particular kind of service of need by the District (e.g. bilingual, special education, math/sciences).
- B. Years of experience previous to current employment as a full-time credentialed teacher in a probationary/permanent K-12 teaching situation in a public school.
- C. Credentials that permit supplementary authorization.
- D. Number of teaching and/or specialist service credentials.
- E. Earned degrees beyond the B.A. or B.S. level (e.g., masters, doctorate).
- F. Multiple language skills relevant to District need (e.g., Spanish).
- G. Preliminary v. Clear/Life Credentials.
- H. National Board Certification.
- I. Good Attendance (not more than 5 days absences (sic)).

The Governing Board's resolution assigned numerical values to the listed factors, and further described that in the event of a continuing "tie" a lottery would be used.

12. Superintendent Muhleck used the seniority list to determine which employees were affected by Board Resolution No. 05-0313D, and whether the affected individuals were entitled to "bump"<sup>1</sup> other employees. Because of the resignation of a certificated employee at the high school, only three layoff notices were sent. Respondent Ruiz will be employed next year as a full-time classroom teacher; his layoff notice addresses only his current assignment as the Director of Special Education Services.

In identifying the certificated employees affected by the layoff Superintendent Muhleck was required to use the criteria to resolve ties between six employees, including respondent Bachman and Stallings, with the same first date of paid service (August 22, 2005).

Ann Marie Bauer holds an internship credential through CalState TEACH<sup>2</sup> and has a bachelor's degree in mathematics, and is bilingual in Spanish. She teaches algebra, advanced algebra, calculus and trigonometry in the departmentalized program at the high school. In determining layoffs skipped her because of her special training and experience that respondents do not have. She was assigned credit under the criteria for her year of teaching mathematics and science as a long-term substitute in the District. Neither respondent Bachman nor respondent Stallings are credentialed to teach mathematics at the high school, an area of need for the District.

William Cull has a clear multiple subject credential and a clear single subject Social Science credential as well as a master's degree in cultural anthropology and prior teaching experience. He is bilingual in Spanish. He was assigned credit for those factors pursuant to the District criteria for resolving ties. Neither respondent Bachman nor respondent Stallings hold comparable credentials or have comparable teaching experience.

Krista Sanders holds a clear multiple subject credential with a supplementary authorization in English. Neither respondent Bachman nor respondent Stallings hold comparable credentials.

Sandra Wake holds a preliminary multiple subject credential with ELD and SDAIE certifications, and is bilingual in Spanish. The District is in the School Assistance Intervention Team, and has the funded position of a High Point Intervention teacher because it is underperforming in test scores for the fifth year in a row, and that assistance is required by the State Department of Education and the No Child Left Behind Act. Ms. Wake completed High Point Intervention Training presented in Fort Bragg by Houghton-Mifflin, the publisher of that reading program, and teaches that program which is directed at students

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<sup>1</sup> Generally speaking, a senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed. That displacement of a junior teacher is known as "bumping." The seniority rule is not absolute, and a junior teacher with a needed credential/skill may be retained even if a more senior teacher is terminated. Such "skipping" is recognized by statute (Education Code section 44955, subdivision (d)(1)) and appellate law (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831).

<sup>2</sup> CalState TEACH is the university intern program of the California State University.

at least two years below grade level in math and language arts. Neither respondent Bachman nor respondent Stallings have experience or training in the High Point Intervention Program.

13. Respondent Stallings is presently a seventh grade teacher. She contends that with her preliminary multiple subject credential she is authorized to teach departmentalized English to the ninth grade. Respondent Stallings acknowledged that at the time she signed her current contract with the District she "did not have the teacher credentialing piece of paper in hand" which reflected a supplemental authorization in English. She had only a "C-19 letter" which indicated that she fulfilled the requirements for the supplementary authorization and that she referred to it in her resume. Neither the letter, nor her resume, nor mentioning a credential in an interview, constitute a credential on file with the District. The District is only required to consider credentials an employee has on file by the March 15 notice deadline. (*Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App.3d 689).

14. Respondent Bachman teaches a combination first and second grade class. She testified that no one from the District reviewed with her the Governing Board's criteria for determining the order of termination among certificated employees who first rendered paid service on the same date, or the application of the criteria to her. Neither the Education Code nor the Governing Board's resolution requires such an interview.

15. Respondent Ruiz is presently a resource specialist and Director of Special Education Services. He has been a District employee for 25 years, and is chairman of the Round Valley Teacher's Association. Respondent Ruiz testified that the District's teachers are paid substantially less than certificated employees of local district. The parties are currently in negotiations. Based upon unaudited documents, from an unknown school year, he opined that when at the conclusion of the 2004-05 fiscal year the District had 18.4% of its budget in reserves. Respondents appeared to argue that the District should not engage in layoffs when having a reserve. The view is not persuasive; maintaining a reserve for unanticipated expenses and emergencies is a prudent exercise of the Governing Board's discretion.

16. The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decision to reduce services in light of its current overspending does address the welfare of students, and was a proper exercise of its discretion. Respondents did not establish that the proposed reductions in services would violate any statutory or regulatory requirement governing the District.

### LEGAL CONCLUSIONS

1. Education Code section 44944, subdivision (a), provides in pertinent part that:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section

44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

2. Education Code section 44955 provides, in pertinent part, that:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever ... a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ... , and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section 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.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would

not exist without such a requirement. ...

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

3. Education Code sections 44949 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

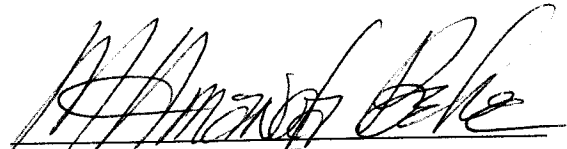
4. The services identified in the Board Resolution are particular kinds of services that could be reduced or discontinued pursuant to Education Code section 44955. The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the expenditures of the District as determined by the Board.

5. No employee with less seniority than any respondent is being retained to render a service which such respondent is certificated and competent to render.

ORDER

Notice shall be given to respondents Tara Bachman, Cameron Stallings, and Robert Ruiz that their services will not be required for the 2006-07 School Year because of the reduction and discontinuance of particular kinds of services as provided in Board Resolution No. 05-0313D,

Dated: May 4, 2006



M. AMANDA BEHE  
Administrative Law Judge  
Office of Administrative Hearings