

BEFORE THE
SUPERINTENDENT OF THE
MONO COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Statement of Reduction
in Force of:

OAH No. 2015040061

DIANA TODD,

Respondent.

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2015, in Bridgeport, California.

Dean T. Adams, Attorney at Law, represented the Mono County Office of Education.

Diana Todd (respondent), was present and represented herself.

Evidence was received, the record was closed, and the matter was submitted on April 13, 2015.

FINDINGS

1. Stacy Adler, Ph.D. is the Superintendent of the Mono County Office of Education (MCOE). The MCOE consists of Mammoth Unified School District and Eastern Sierra Unified School District.

2. The actions of Superintendent Adler were taken in her official capacity.

3. On February 26, 2015, Superintendent Adler adopted a Resolution of Intention to Dismiss Certificated Employees (Resolution), providing for the reduction or elimination of particular kinds of services (PKS) for the 2015-2016 school year. In the PKS Resolution, the Superintendent determined that it shall be necessary to reduce the services of a school nurse by .36 full time equivalent (FTE).

The PKS Resolution recited that it shall be necessary to decrease the school nurse services at the end of the 2014-2015 school year.

4. The services set forth in the PKS Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified services was not arbitrary or capricious. The reduction or elimination of services constituted a proper exercise of the Board's discretion, within the meaning of Education Code section 44955.

5. On March 9, 2015, the Superintendent Adler gave respondent written notice, pursuant to Education Code sections 44949 and 44955, of her recommendation that respondent's services are to be terminated at the close of the current school year, and the reasons therefor.

6. Respondent timely filed a request for hearing to determine if there is cause to not re-employ respondent for the 2015-2016 school year.

7. Superintendent Adler made and filed a Statement of Reduction in Force against respondent on March 31, 2014. The Statement of Reduction in Force with required accompanying documents and a blank Notice of Participation were timely served. Respondent timely filed a Notice of Participation.

8. Respondent is presently a certificated permanent employee of the District.

9. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

10. The MCOE maintains a seniority list which contains employees' hire dates, the credentials and licenses held, a position description, and the employees' work location. The list is updated annually.

11. Respondent is the only school nurse employed by the MCOE, with a seniority date of October 8, 2012. Respondent holds a Preliminary School Nurse Credential.

12. The Superintendent's decision to reduce nursing services was based upon the MCOE's determination that a majority of respondent's time was spent on general education nursing duties. The Mono County Special Education Local Plan Area (SELPA), which provides support services of a school nurse for special education students, cannot financially support a school nurse that performs mainly general education nursing functions. SELPA believes that the school districts should be responsible for contracting for general education nursing services. The school districts have agreed to do so. After reduction of respondent's nursing services by .36 FTE, the MCOE will have remaining .25 FTE school nurse services that it will be contracting in the 2015-2016 school year.

13. Respondent's opposition to the MCOE's PKS reduction was due to her misunderstanding of Education Code section 44955, subdivision (b), which provides four different ways in which a permanent certificated employee's services may be reduced or terminated: (1) a decline in average daily attendance; (2) a decline in attendance as a result of termination of an interdistrict tuition agreement; (3) a particular kind of service that is to be reduced or discontinued; or (4) whenever amendment of state law requires modification of curriculum necessitating a decrease of permanent employees. Respondent mistakenly thought that the reduction of .36 FTE for school nurse services was due to a decline in average daily attendance. In fact, the reduction of school nurse services was based upon the MCOE's decision to reduce PKS, that of a school nurse.

14. Respondent made no other assertions at hearing.

15. The MCOE's decision to reduce respondent's services was due solely to the financial circumstances and needs of the MCOE.

16. Superintendent Adler correctly identified respondent as the certificated employee providing the particular kinds of services that Superintendent Adler directed be reduced. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS AND DISCUSSION

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

2. The service identified in the PKS Resolution is a particular kind of service that can be reduced or discontinued under section 44955. Superintendent Adler's decision to reduce or discontinue the identified service was neither arbitrary nor capricious, and was a proper exercise of her discretion.

3. The MCOE 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.)

4. An existing budget shortfall, and expected decline in enrollment and the anticipation of receiving less money from the State for the next school year are appropriate bases for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the

only statutory authority available to school districts to effectuate that reduction.” The MCOE must be solvent to provide educational services, and cost savings are necessary to resolve its financial circumstances. The Superintendent’s decision was a proper exercise of her discretion.

5. Cause exists to reduce .36 FTE of the school nurse position. Cause for the reduction of nursing services relates solely to the welfare of the MCOE’s schools and pupils within the meaning of section 44949.

RECOMMENDATION

Notice shall be given to respondent Diana Todd that her services will be reduced for the 2015-2016 school year by .36 FTE because of the reduction and discontinuance of particular kinds of services.

Dated: April 17, 2015

/s/
DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings