

BEFORE THE
GOVERNING BOARD OF THE
MORGAN HILL UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

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

OAH No. 2019030795

HEIDI RACZ,

Respondent.

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on April 23, 2019, in Morgan Hill, California.

Kelsey Cropper, Attorney at Law, Liebert Cassidy Whitmore, represented the Morgan Hill Unified School District.

David Conway and Vishtasp Soroushian, Attorneys at Law, represented respondent Heidi Racz, who was present.

The record was held open for filing of closing briefs. The briefs were timely received, marked as Exhibits 17 and E, and considered. The matter was submitted for decision on April 26, 2019.

FACTUAL FINDINGS

Introduction

1. Steve Betando made and filed the Statement of Reduction in Force in his official capacity as the Superintendent of the Morgan Hill Unified School District (District).

2. Heidi Racz (respondent) is a certificated employee in the District. She holds an Education Specialist Instruction Credential in the subject area of Early Childhood Special Education. Respondent's credential authorizes her to conduct educational assessments related to a student's access to the academic core curriculum and progress towards meeting instructional academic goals, and provide instructional and Special Education Support to

students from birth through pre-kindergarten (ages three to five) who are eligible for early intervention special education and related services, to individuals with a primary disability in specific learning disabilities, mild/moderate intellectual disabilities, traumatic brain injury, other health impairment, autism, moderate/severe intellectual disabilities, emotional disturbance, and multiple disabilities including developmental delay and disabling medical conditions. The credential does not permit the holder to teach students in kindergarten or older.

3. Respondent teaches in a preschool special day class at a school in the District that provides special education services to students age three to five. The primary disability of the children in the preschool program is autism. Respondent's credential does not allow her to teach in any other class or program in the District.

The Reduction in Force

4. On March 5, 2019, the Governing Board of the District approved a resolution reducing or discontinuing particular kinds of services for the 2019-2020 school year (PKS Resolution), and directing the Superintendent or his designee to send appropriate notices to all employees affected by the reduction or elimination of services.¹

5. The PKS Resolution identified the following services be reduced no later than the beginning of the 2019-2020 school year as:

Education Specialist Instruction Credential:

Early Childhood Special Education: 1.0 FTE²

Career Technical Education Teaching Credential:

Information Technology: 1.0 FTE³

6. On March 8, 2019, Fawn Myers, Assistant Superintendent, Human Resources Division, notified respondent that the Governing Board had decided to reduce particular kinds of services, and that her services would not be required for the 2019-2020 school year. Respondent timely requested a hearing to determine whether cause existed for not reemploying her for the ensuing year. The District timely served respondent with a packet which included a statement to respondent, the statement of reduction in force, copies of

¹ The Governing Board approved a resolution adopting tie breaking criteria for determining the order of seniority of employees with the same date of first paid service in a probationary position on February 5, 2019. The tie breaking criteria were not utilized because there are no employees affected by the layoff notice who became employed on the same date.

² Full-Time Equivalent.

³ The teacher impacted by this reduction in service did not request a hearing.

appropriate Education and Government Code sections, a notice of participation and a notice of hearing. Respondent timely filed a notice of participation. All prehearing jurisdictional requirements have been met.

7. Myers testified with candor at hearing. Myers explained that prior to the March 5, 2019 Governing Board meeting, she met with the Special Education Director, Michael Vogel, to discuss special education needs for the 2019-2020 school year. Vogel advised her that the reduction of one FTE position in the preschool special day class was warranted as a result of projected enrollment and anticipated program changes.

8. Public schools are responsible for providing needed speech and language services to children residing in the district from age three until they enter kindergarten. School districts may, but are not required to, provide preschool special education services to students with disabilities. El Toro Elementary School is a school in the District; the District provides preschool special day classes to disabled students at this school. Respondent teaches in the preschool special day class at El Toro Elementary School; two teachers besides respondent provide special day class services at the District. The number of students in the program varies. At present, there are nine to 11 students total in the morning and afternoon sessions. At times there have been three or less students in a session with a teacher and an aide. There are 10 students pending eligibility; if all 10 were added to the current 11 students, 21 students would be served by three teachers, which is less than the District's expected caseload.

9. Vogel testified with candor at hearing. He works with the Special Education Coordinator to determine staffing needs and placement of special education students. Vogel reported that the Governor's Office and the Department of Education are strongly encouraging school districts to place special needs students in the least restrictive environment; in other words, to provide opportunities for special needs children to attend classes with typical children.

10. Public funds are made available for preschool services (Head Start) for students with income limits to be provided through Child Development Centers (CDC). Districts can recommend students with special needs for inclusion in these programs with typically developing children. Vogel has been discussing a potential partnership with a state-funded preschool program but nothing firm has been put in place. However, the District can, and has, recommended children to be placed in a nearby state-funded CDC when room is available. Because of the State's emphasis on inclusivity, the District intends to recommend more students for placement in state-funded CDC's, requiring fewer staff in the preschool special day class. There are currently eight open spaces at a nearby CDC; Vogel recently asked his team to identify students who could be placed in that program. When the District recommends a student for CDC placement it is discussed in the individualized education program meeting. If the student's parents agree with the recommendation, they complete an application and the student is enrolled.

11. Placing special day class students in a CDC will reduce the number of students in the preschool special day class. The District can maintain appropriate services for its students with a reduction of 1.0 FTE in Early Childhood Special Education. If in the future the District does not have enough preschool teachers to meet the needs of its students, it will rehire a certificated teacher from its list.

12. The District employs three teachers holding an Education Specialist Instruction Credential with a subject area of Early Childhood Special Education. Respondent's first day of paid service was on August 10, 2015. The other two teachers with this credential have more seniority than respondent. Respondent does not dispute that she is the teacher in this preschool special day class program with the least seniority.

Respondent's Contentions

13. Respondent testified with candor at hearing. She has taught full-time as a certificated teacher with the District since the 2015-2016 school year. For two years before that, she worked in the preschool program as a paraprofessional. She has developed close relationships with the students and their families. It has been very satisfying to see her students make more progress on their goals than their parents thought was possible.

14. Respondent contends that the Governing Board's decision to reduce the number of teachers in the preschool program was arbitrary and not based on reduced enrollment or program changes. Respondent argues that she has observed no decline in enrollment in the preschool special day class.

The evidence at hearing established that the Governing Board did not base its decision on declining enrollment. The decision was based on the current and projected number of children in the program, and on its need to follow the State's mandate to place students in the least restrictive environment; for preschool students, that requires that students be placed in CDC's. The Governing Board's decision was not arbitrary. The cause for reducing or discontinuing the services identified in the PKS Resolution relates solely to the welfare of the schools of the District and the pupils thereof.

15. Respondent also contends that the Governing Board's reason for reducing the special day class was not adequately described or definitive in the notices sent to her. This argument is rejected. The notices sent to respondent adequately described the services to be reduced, the anticipated need for the reduction and the reason for the reduction.

16. Respondent further contends that she was prejudiced by not receiving several email messages between Vogel and the CDC coordinator which were requested in discovery. No evidence of prejudice was established at hearing and this argument is rejected.

17. Respondent argues that because the Governing Board adopted "skipping" criteria that included special education and autism certificates, she should have been skipped.

The skipping criteria do not include credentialed employees holding the Education Specialist Instruction Credential held by respondent.

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. (Factual Finding 6.)

2. Whether to eliminate or reduce particular kinds of services is in the sound discretion of the Governing Board, and can only be overturned upon a showing of an abuse of discretion. (*San Jose Teacher Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638-639.) Particular kinds of service may be reduced or eliminated even if the service continues to be performed in a different manner by the District. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 343.)

3. The services referenced in the PKS Resolution set forth in Factual Finding 5 are the kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code, § 44955; *Campbell Elem. Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) The cause for reducing or discontinuing the services identified in the PKS Resolution relates solely to the welfare of the schools of the District and the pupils thereof. (Factual Findings 6 through 11, 14.)

4. Pursuant to Education Code section 44955, subdivision (b), when a governing body reduces particular kinds of services resulting in a decrease in the number of certificated, permanent employees, the services of a permanent employee may not be terminated if another employee with less seniority is retained to render a service that the more senior employee is “certificated and competent to render.”

No permanent or probationary certificated employee with less seniority, and no temporary certificated employee, is being retained to render service for which respondent is credentialed and competent to render. (Factual Findings 2 and 12.)

5. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services of the District, including an Education Specialist Instruction Credential: Early Childhood Special Education at 1.0 FTE, beginning no later than the commencement of the 2019-2020 school year. The cause relates solely to the welfare of the school and the pupils thereof within the meaning of Education Code section 44949.

6. Notice may be given to respondent Heidi Racz that her services will not be required for the 2019-2020 school year.

RECOMMENDATION

Notice may be given to respondent Heidi Racz that her services will not be required for the 2019-2020 school year.

DATED: May 2, 2019

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings