

BEFORE THE
SUPERINTENDANT OF SCHOOLS
RIVERSIDE COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving:

13 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2018031038

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 30, 2018, in Riverside, California.

Todd M. Robbins, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, APC, represented complainant, Steven A. Hovey, Chief Personnel Officer, Riverside County Office of Education (RCOE).

Carlos R. Perez, Attorney at Law, Law Offices of Carlos R. Perez, APC, represented respondents, Elizabeth Aceves, Anna Andrade-Tellez, Christine Farrar, Cassandra Gonzales, Maria Haro, Sonjia McCullough, Robert Oliver, Gerald O'Neil, Jorge Ramirez Vergara, and Sarah Vigil, who were all present except for Ms. Aceves.

There was no appearance by or on behalf of respondents Frank Brueckner, Tamara Griffey, and Dawn Wiley.

Prior to the hearing, complainant rescinded the layoff notices for David Carlson and Gloria Gomez.

The matter was submitted on April 30, 2018.

FACTUAL FINDINGS

1. Judy D. White, Ed.D., is the Riverside County Superintendent of Schools.

2. On February 28, 2018, Superintendent White issued and adopted Resolution No. 06-18 which determined that it was necessary to “reduce or eliminate” certain particular kinds of services (PKS) and to reduce the corresponding number of certificated employees. The Resolution concluded that due to financial considerations, 63.8875 full time equivalent (FTE) positions, must be reduced or discontinued no later than the beginning of the 2018-2019 school year.

Amended Resolution No. 08-18

3. On March 2, 2018, Superintendent White issued and adopted Amended Resolution No. 08-18. The Amended Resolution also determined that 63.8875 FTE positions must be reduced or discontinued no later than the beginning of the 2018-2019 school year but changed the allocation by adding one Digital Photography/Digital Imaging instructor FTE position to the list and removing one of the law enforcement instructor positions from the list, thereby only reducing two, not three law enforcement instructor positions. The amended resolution provided the following PKS to be reduced or eliminated as follows:

Teacher, ID Moderate	10	F.T.E.
Teacher, ID Moderate Pre-K	2	F.T.E.
Teacher, ID Severe	3	F.T.E.
Teacher, SE/Autism	10	F.T.E.
Teacher, SE/Autism Pre-K	4	F.T.E.
Teacher, SE/Emotional Disturbance	1	F.T.E.
Teacher, SE/Adaptive PE	1	F.T.E.
Teacher, SE/Infant Program	1	F.T.E.
Teacher on Special Assignment, Special Education (185 Days)	2	F.T.E.
Teacher on Special Assignment, ALTED/SPED (220 days)	3	F.T.E.
Specialized Academic Instruction Teacher (220 days)	2	F.T.E.
Specialized Academic Instruction Teacher (185 days)	5	F.T.E.
Speech/Language Pathologist	3	F.T.E.
Foster Youth Liaison	1	F.T.E.
Instructor, Retail Sales and Marketing	.4875	F.T.E.
Instructor, CAD/Civil Engineering & Architecture	1	F.T.E.
Instructor, Culinary Arts	1	F.T.E.

Instructor, Digital Imaging/Graphic Design	1	F.T.E.
Instructor, Digital Photography/Digital Imaging	1	F.T.E.
Instructor, Intro to Marketing, Sales and Service	1	F.T.E.
Instructor, Law Enforcement	2	F.T.E.
Instructor, Med. Asst. Clinical/Med. Asst. Admin.	2.4	F.T.E.
Instructor, Production for Music and Visual Arts	1	F.T.E.
Instructor, Retail Merchandising	2	F.T.E.
Instructor, Sports Medicine	1	F.T.E.
Instructor, Technical Theatre	1	F.T.E.
Instructor, TV/Video Prod/Digital Imaging	1	F.T.E.
Total Certificated Reductions	63.8875	F.T.E.

4. Amended Resolution No. 08-18 directed the Superintendent's designee¹ to initiate layoff procedures, identify the employees whose services would not be required for the 2018-2019 school year as a result of the reduction of those particular kinds of services, and send appropriate notices to those certificated employees.

5. Amended Resolution 08-18 included "competency" criteria, as described in Education Code section 44955, subdivision (b), for the purposes of "bumping" which provided:

(1) possession of a valid credential in the relevant subject matter area, (2) possession of both a special education credential and a single subject or multiple subject credential to bump into a Specialized Academic Instruction position, (3) "highly qualified" status (if required by the position), (4) an appropriate EL authorization (if required by the position), (5) possession of either a multiple subject credential or a single subject credential in Math, Science, English, or Social Science in order to bump into a core subjects teaching assignment, (6) a completed security clearance (if required by the position), (7) for Career Technical Education Employees, a valid credential in the relevant Career Technical Education Industry Sector, and the necessary experience and licensing as required by the job

¹ On February 21, 2018, Superintendent White designated complainant to act on her behalf to implement the reduction in force proceedings.

description, and (8) for Career Technical Education Employees, industry or related classroom experience within the last fifteen years.

6. Heather Williams, Ed.D., is RCOE's Executive Director of Personnel Services. Dr. Williams testified that the decision to reduce RCOE's positions was due to lack of need and lack of funding. Certificated personnel at RCOE fall within two separate categories: (1) Student Programs and Services and (2) Career Technical Education. Certificated personnel in Student Programs and Services provide special education services and alternative education services. Certificated personnel in Career Technical Education provide vocational training.

7. Dr. Williams testified that the reductions in Student Programs and Services FTE positions were the result of school districts in the County "taking back" special education positions. She explained that districts often enter into agreements with RCOE for RCOE to provide special education services. However, when a district determines that it will provide the special education services itself, the RCOE positions must be reduced. Dr. Williams noted that many of the special education teachers who received layoff notices from RCOE have been hired by individual districts to continue providing special education services. Dr. Williams also testified that funding cuts by the county probation department required the reduction of teaching assignments in RCOE's alternative education programs, which had been offered through the probation department.

8. Dr. Williams testified that the reduction in Career Technical Education positions was a result of the expiration of contracts with districts to provide those services. RCOE had multiple districts cancel or fail to renew their contract with RCOE to provide these services.

9. Dr. Williams determined which employees were subject to Amended Resolution No. 08-18 and if any of the employees whose positions were being eliminated had bumping rights, allowing them to take the position of a more junior employee. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474 permits a senior teacher whose position was discontinued the right to transfer to a continuing position which he or she is certificated and competent to fill, thereby displacing or "bumping" a junior employee who was filling that position.)

10. Complainant's decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to a projected lack of funding and lack of need for the positions; and is, therefore, a proper exercise of complainant's discretion. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the office as determined by complainant.

Notice of Reduction in Force

11. On February 28, 2018, complainant signed the Notice of Recommendation that Services Will Not Be Required and the Statement of Reduction in Force. On March 2, 2018, complainant signed an amended Notice and Statement of Reduction in Force to reflect the changes resulting from Amended Resolution 08-18.

12. Between February 28, 2018, and March 8, 2018, complainant served 40 certificated employees with written notice that their services would not be required or would be reduced by RCOE for the 2018-2019 school year. These employees were served with layoff packets that included the following documents: Notice of Recommendation that Services Will Not Be Required; Resolution No. 06-18; Notice of District Statement of Reduction in Force; the District Statement of Reduction in Force; a blank “Request for Hearing and Notice of Participation” form; and relevant sections of the Education Code and Government Code. The layoff packets identified the reasons for the recommended reduction in force, advised the certificated employee of his or her right to a hearing, and explained that, if the employee wanted to participate in a hearing, he or she must send a written request for a hearing by March 21, 2018, or the employee’s right to a hearing would be deemed waived.

13. On March 8, 2018, complainant provided all 40 certificated employees with amended Resolution No. 08-18 and Amended Exhibit A, which contained the names of all 40 certificated employees.

14. Of the 40 certificated employees given layoff notices, 15 timely submitted a request for a hearing: Elizabeth Aceves, Anna Andrade-Tellez, Frank Brueckner, Christine Farrar, Gloria Gomez, Cassandra Gonzales, Tamara Griffey, Maria Haro, Sonjia McCullough, Robert Oliver, Gerald O’Neil, Jorge Ramirez Vergara, Sarah Vigil, and Dawn Wiley.

15. In accordance with Government Code section 11509, on April 6, 2018, complainant served all respondents who requested a hearing with a Notice of Hearing, advising those respondents that a hearing had been set for April 30, 2018.

16. All prehearing jurisdictional requirements were satisfied.

The Rescission of Layoff Notices

17. Prior to the April 30, 2018, hearing, complainant rescinded the layoff notices issued to David Carlson and Gloria Gomez.

18. After the record opened, complainant withdrew the layoff notice for Maria Haro.

Default Proceeding

19. When the record was opened on April 30, 2018, 13 certificated employees remained subject to the layoff. Of these 13, Frank Brueckner, Tamara Griffey, and Dawn Wiley were not represented by counsel and did not appear at the noticed hearing. Notice of the date, time and place of the hearing was proper. Pursuant to Government Code section 11520, the matter proceeded against them in default.

Evidence Regarding Sarah Vigil's Position

20. Sarah Vigil is a Specialized Academic Instruction Teacher assigned to the Southwest Detention Center, where she teaches several different programs to adult inmates, including a GED diploma program, a substance abuse re-entry program, and an English as a Second Language program. Out of the 247 certificated personnel in RCOE's Student Programs and Services, Ms. Vigil is the least senior, as she was hired on January 24, 2018. Ms. Vigil testified that her position is funded by the sheriff's department, not the county probation department. Because she works in a correctional facility, she is required to hold a "Level One Clearance," which required her to pass a background investigation. She began this process in September 2017, and the investigation was finalized in January 2018. Ms. Vigil believes that the sheriff's department is going to continue to fund her program. She also believes that no other teacher in the district holds a clearance to enable him or her to work in the adult correctional facility, except for teachers currently assigned to work in adult jails.

21. Ms. Vigil is a Specialized Academic Instruction Teacher with a 220 day assignment. Under the Amended Resolution, two of those FTE positions are to be eliminated. The other eliminated position is vacant. Dr. Williams testified that more senior Specialized Academic Instruction Teachers also have security clearances that allow them to work in juvenile facilities, and they would be able to fill Ms. Vigil's position. In response, Ms. Vigil asserted that a clearance required for a juvenile facility is different than the clearance required for an adult facility.

22. Ms. Vigil has the least seniority of any certificated personnel in Student Programs and Services. Even if her individual position is funded by the sheriff's department and not the probation department, which has cut funding to RCOE for certain programs, other Specialized Academic Instruction Teachers who have more seniority and the same credentials can fill her position. The fact that she had to obtain a security clearance does not make the elimination of her position arbitrary and capricious or entitle Ms. Vigil to be skipped.

Evidence Regarding Christine Farrar's Position

23. Christine Farrar is a Teacher on Assignment in a 220 day assignment. She is one of three teachers in this classification in RCOE. Under the Amended Resolution, all three

positions are being eliminated. Ms. Farrar, who has a seniority date of September 29, 2010, received a partial layoff notice as complainant “bumped” her into a vacant 185-day Specialized Academic Instruction Teacher position. Ms. Farrar testified that in her current position, she works with administrators, teachers, parents, and other school district personnel to develop Individualized Educational Plans. She covers a defined geographic region of the County that includes a number of school districts. During a meeting about the dissolution of her position, Ms. Farrar was advised that RCOE would be creating two administrator positions, providing essentially the same job, for which she could apply. Ms. Farrar’s layoff notice has transferred her into a 185-day position as a classroom special education teacher. Ms. Farrar argued that the three Teacher on Assignment positions provide an invaluable service to the school districts, and they should not be eliminated.

24. The three Teacher on Assignment positions complainant has selected to eliminate may very well have been an important component to assist districts in implementing their special education services. However, complainant’s decision to eliminate the positions, or change the positions so that they are performed by administrators, is within the sound discretion of RCOE and is not arbitrary and capricious.

Additional Findings

25. No employee with less seniority than the 12 remaining respondents is being retained to perform a service that any of these respondents are certificated and competent to render.

26. There was no evidence that RCOE proposes to eliminate any services that are mandated by state or federal laws or regulations. There was no evidence that any RCOE certificated employee junior in seniority to any respondent is being retained by RCOE to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections were satisfied.

2. Under Government Code section 11520, if a respondent fails to appear after timely filing a notice of participation, the agency involved may proceed with a default and take action.

3. Complainant 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. Bd. of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. The decision to reduce or discontinue a particular kind of service is a matter reserved to the discretion of the Superintendent and is not subject to second-guessing in this proceeding. (*Id.* at p.167.) The decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

5. Cause exists under Education Code sections 44949 and 44955 for complainant to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of RCOE’s pupils.

6. Education Code section 44955, subdivision (c), required complainant to make assignments in such a way as to protect seniority rights. Employees must be retained to render any service their seniority and qualifications entitle them to render. Thus, when a senior teacher is certificated and competent to render a service a junior teacher is rendering, the district must retain the senior teacher. The burden of proof is on the district to establish that it is justified in terminating the employment of any senior teacher. (Evid. Code, § 500.)

7. Cause exists to give notice to 12 respondents that their services will not be required, or their hours will be reduced, for the 2018-2019 school year.


ORDER

The Statement of Reduction in Force is affirmed. Complainant may notify the following individuals that services will not be needed or will be reduced during the 2018-2019 school year due to reduction or discontinuance of particular kinds of services:

1. Elizabeth Aceves
2. Ana Andrade-Telez
3. Frank Brueckner
4. Christine Farrar (partial layoff; will remain employed in 185 day 1 FTE assignment)
5. Cassandra Gonzalez (partial layoff; will remain employed in .4875 FTE assignment)
6. Tamara Griffey
7. Sonjia McCullough (partial layoff; will remain employed in 185 day 1 FTE assignment)
8. Robert Oliver
9. Gerald O’Neill (partial layoff; will remain employed in .4875 FTE assignment)

10. Jorge Ramirez Vergara
11. Sarah Vigil
12. Dawn Wiley

Dated: May 7, 2018

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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings