

BEFORE THE
GOVERNING BOARD OF THE
DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations against :

LAURA BENJAMIN
ROBERTA BLYNN
JENNIFER BULLER
DAVID CARROLL
JENNIFER CHIESA
RENEE CLARK
CORRINNE CLAY
FRANCISCA DIAZ
KIMBERLY EMMERICH
KARMJEET FISHBURN
MELISSA HANSEN
DANIELLE LAUER
KAREN LONG
MELANIE MACLEAN
CLARE MACLEOD
TUESDAY MAHLBERG
JOSHUA O'GEEN
KATHERINE O'SULLIVAN
BRANDI PAYNE
LISA PHILLIPS
NANCY RIEBEEK
JACQUELINE ROY
MATTHEW SEPAROVICH
KRISTI SEPAROVICH
KELLIE TALLEY
LINDSAY WONG
AIMEE YOCOM,

OAH No. 2011030286

Respondents.

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter in Roseville, California, on April 26, 2011.

Thomas E. Gauthier, Attorney at Law, Lozano Smith, represented the Dry Creek Joint Elementary School District.

Michael N. McCallum, Attorney at Law, represented all of the respondents.

Evidence was received, the hearing was closed, and the matter was submitted for decision on April 26, 2011.

FACTUAL FINDINGS

1. Mark Geyer, Superintendent of the Dry Creek Joint Elementary School District (District), State of California, filed the Accusation in his official capacity as a public officer.

2. On March 3, 2011, the Board of Trustees (Board) of the District adopted Resolution No.2011-01, which reduced and/or discontinued particular kinds of certificated services no later than the beginning of the 2010-2011 school year in the amount of 25.8 full-time equivalent (FTE) certificated employees.

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2010-2011 school year by a corresponding number of FTE positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On or before March 15, 2010, the District served the affected certificated employees including respondents, with written notice, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year (Notice). Each Notice set forth the reasons for the recommendation. The Notice attached and incorporated by reference Resolution No. 2011-01, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 25.8 FTE positions.

5. Requests for Hearing were timely filed by all of to determine if there is cause for not reemploying them for the next school year.

6. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense (Accusation packet) were timely served on the respondents.

7. Each respondent is presently a certificated permanent or probationary employee of the District.

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

Services to be Reduced or Eliminated

9. The District provides educational services to approximately 7000 students from kindergarten through the eighth grade (K-8). The District employs approximately 375 certificated employees. The District is experiencing a decline in student enrollment during which has resulted in loss of revenue to the District and expects a decline in enrollment next school year. The District is facing a budget deficit of approximately one million dollars for the 2011-2012 school year. To accomplish the necessary budget reductions, the District must reduce services for the next school year.

10. Each of the services described in Resolution 2011-01 is a particular kind of service that can be reduced or discontinued within the meaning of Education Code section 44955.

11. In arriving at the number of certificated employees to be noticed for layoff, the District considered all “positively assured attrition” which had occurred as of the date the Notices were sent to certificated employees, i.e. resignations, retirements, and other permanent vacancies and leaves of absence.

Bumping and Skipping

12. The District maintains a seniority list which contains pertinent information such as employees’ date of first paid service, current assignment, and credentials on file. The District used the seniority list to develop a proposed layoff list. The District considered whether senior employees currently assigned in the various services being reduced or eliminated could bump more junior employees. In determining who would be laid off for each kind of service reduced or eliminated, the District first applied known vacancies and then applied in progressive sequence the seniority list in inverse order, from least to most senior. The Board, in Resolution 2011-13 adopted tie-breaking criteria for those certificated employees with the same date of hire. Employees with the same date of hire were laid off according to the needs of the District and its students.

13. Respondents raised two issues relating to bumping. The first relates to the District’s proposed displacement (bumping) of respondent Jacqueline Roy by Sheri Olson. The second relates to respondent Aimee Yocom’s contention that she should have been able to bump into a .50 FTE position to be held by Sarah Soares. There were no other challenges to the proposed lay-off.

Respondent Jacqueline Roy

14. Resolution 2011-01 includes the recommended reductions of particular kinds of services and includes a reduction of 2.5 FTE in “Teacher-Reading Resource/English Language Learner.” There are currently 6.5 FTE positions in this category, so the net effect should be a reduction to 4.0 FTE. However, the evidence established that the actual reduction in this area is .50 FTE. District identified Sheri Olson as the least senior teacher in the affected area. Ms. Olson’s seniority date is August 1, 2003, and she currently teaches .50 reading resources and .50 Title 1 at Antelope Crossing and Coyote Ridge schools. District proposes that Ms. Olson will bump less senior employee Jacqueline Roy who teaches 1.0 FTE of Title 1 at Antelope Crossing School. Respondent Roy has a seniority date of July 26, 2006. Respondent Roy does contend that Sheri Olson is not credentialed or competent to occupy her position and the evidence established that Ms. Olson has the requisite credential to teach Title 1. Rather, respondent Roy contends that District has only reduced Ms. Olson’s position by .50, which should be the limit of Ms. Olson’s ability to displace respondent Roy.

15. District’s Director of Personnel Services Colleen Slattery explained that the District did not reduce Ms. Olson’s Title 1 .50 FTE position, because the District is not sure of funding for the position will be available next school year. Ms. Slattery conceded that if District knew that funds would not be available next year for the Title 1 position, it would have been eliminated as a PKS. Ms. Slattery explained that the .50 Title 1 position now held by Ms. Olson will “still exist,” but will be taught by someone else next year if funded. Ms. Slattery offered that the reason that Ms. Olson is bumping the entirety of respondent Roy’s position is the District’s preference to avoid part time positions. There are other reading resource/English Language Learner teachers employed by the District who are more senior than Ms. Olson and who are credentialed and competent to bump into the Title 1 position occupied by respondent Roy. However, none of them is losing any part of his or her position despite the Board’s resolution calling for as much as a 2.5 FTE reading resources/English Language Learner PKS reduction. Respondents’ counsel suggested that if the .50 position is “saved,” there may be respondents more senior to respondent Roy entitled to bump into the .50 Title 1 position based on the loss of their own positions.

Respondent Aimee Yocom

16. Respondent Aimee Yocom and Sarah Soares have the same first date of paid service, July 27, 2005. After the application of the District’s tie-breaking criteria, respondent Yocom was designated more senior than Ms. Soares on the District’s certified seniority list. Ms. Soares will teach .50 FTE of combined grades 4/5 science next year, after a .20 reduction in this PKS (of the .30 PKS reduction of 4/5 Science identified in the Board’s Resolution). Ms. Soares was given a preliminary notice of the reduction, but she did not request a hearing. Ms. Soares has taught combination fourth and fifth grade class under the Board’s authorization pursuant to Education Code section 44256, subdivision (b). She requires such authorization because the classes taught are taught in a “departmentalized” fashion, rather than in a self-contained setting. This requires a single subject science credential or the equivalent authorization. Ms. Soares is also highly qualified in science

under the federal No Child Left Behind Act (NCLB). Respondent Yocom has the requisite college units in science to be eligible for a similar authorization from the Board. She does not have the appropriate credentials or other authorization to teach the 4/5 science classes. Respondent Yocom has never been told that she could apply for such authorization, but she would teach science with the Board's authorization if offered the opportunity to do so. At present, respondent Yocom is not credentialed to teach the 4/5 science course, nor is she highly qualified under NCLB to do so. Thus, Ms. Yocom is not credentialed to bump into the remaining .50 4/5 Science position to be occupied by Ms. Soares in the ensuing school year.

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.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under Education Code section 44955. As stated in *San Jose Teachers Association 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 District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decisions were a proper exercise of its discretion.

3. The services identified in Resolution No. 2011-01 are particular kinds of services that could be reduced or discontinued under section Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. No employee with less seniority than any named respondent is being retained to render a service which any named respondent is certificated and competent to render. More specifically, respondent Yocom is not credentialed to teach the 4/5 science class to be taught .50 FTE by Sarah Soares in the ensuing school year.

5. District failed to establish legal cause for the termination of respondents beyond a .50 FTE reduction based on the PKS reduction in Ms. Olson's position. District, in closing argument, cited *Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal. App.4th 332 for the proposition that a District may designate a "service" as full time only for bumping purposes. The *Hildebrandt* court held that a school district should be able to designate a position as full time if the district concludes that the assignment cannot be as well performed on a part-time basis. (*Id.* at p. 343). However, the case considered the rights of

two part time school psychologists to bump into a full time position held by a less senior full time school psychologist. The court held that Education Code section 44955, subdivision (b), did not obligate the school district to split the full time position to accommodate the two more senior, part-time psychologists. The holding is inapplicable to this matter. Respondent Roy is not a part time employee seeking a share of a full time position. Neither is Ms. Olson. The “splitting” of Ms. Olson’s position is the result of the District’s uncertainty about Title 1 funding for next school year resulting in its decision not to reduce Title 1 services. The reduction of .50 of reading resources/English Language Learner entitled Ms. Olson to bump into that portion of respondent Roy’s Title 1 position and no more.¹ As noted above, this does not necessarily save .50 FTE of respondent Roy’s position if there are more senior respondents certificated and competent to bump into the remaining .50 FTE of respondent Roy’s position. The reassignments required by Education Code section 44955 are matters within the District’s discretion and expertise, so no particular respondent is identified by the Administrative Law Judge as the beneficiary of the .50 FTE change.

ORDER

1. The Accusations served on respondents are sustained, with the exception of .50 FTE based on the improper application of bumping described above. Except as noted below, notices shall be given to respondents that their services will not be required for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

2. District shall make new reassignments in accordance with Education Code section 44955 to determine which respondent benefits from the .50 FTE improperly attributed to a reduction in the Title 1 services provided by Ms. Olson.

Dated: May 4, 2011

KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

¹ District did not contend that respondent Roy’s position was a service which, by the nature of the position, should remain full time. And even if they had, this would not, as suggested, permit Ms. Olson to occupy the entire 1.0 FTE because no reduction of her service would justify taking the other .50 FTE.