

BEFORE THE
BOARD OF EDUCATION
OF THE
RIM OF THE WORLD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2011031302

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Blue Jay, California on April 25, 2011.

Todd M. Robbins, Atkinson, Andelson, Loya, Ruud & Romo, APLC, Attorneys at Law, represented the Rim of the World Unified School District.

Michael D. Hersh, Attorney at Law, California Teachers Association, represented the respondents listed in Appendix A.

The matter was submitted on April 25, 2011.

FACTUAL FINDINGS

1. Donna Kellogg, Director, Personnel, Rim of the World Unified School District, made and filed the accusation dated March 11, 2011, in her official capacity as the designee of Ronald Peavy, District Superintendent.

2. Respondents¹ are certificated District employees.

¹ The District initially identified 14 certificated employees as respondents designated for lay off, and three other individuals who were designated to receive “precautionary” layoff notices. Six of the 14 individuals designated for lay off (Kristil Baker, Shawna Gray, Lynn Klopfer, Cynthia Longworth, Jason Stehmeier, and Steven Wallace) did not request a hearing, and one other (Alicia Wilson) was dismissed as a respondent during the course of the hearing. By the end of the hearing the number of respondents designated for lay off had thus been reduced to the 7 respondents identified in Appendix A. The term “respondents” as hereafter used in this Proposed Decision refers collectively to these 7 remaining individuals.

3. On March 3, 2011, in accordance with Education Code sections 44949 and 44955, the superintendent notified the Board of Education of the Rim of the World Unified School District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year.

4. On March 3, 2011, the board adopted Resolution No. 10/11-12, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Classroom Teachers	6
Elementary Inter-Disciplinary Subjects	1
High School English	2
High School Fine Arts	1
High School Math	1
High School Science	2
Elementary Administrator	1

The proposed reductions totaled 14 FTE positions.

The district later rescinded by 1.0 FTE the number of elementary classroom teachers positions (from 6 to 5) it would have to reduce in order to meet its fiscal needs for the 2011-2012 school year. In addition, the district did not serve a preliminary layoff notice on any district elementary administrator, effectively rescinding the proposed 1.0 FTE reduction in that particular kind of service. Accordingly, the revised proposed reductions totaled 12 FTE positions.

5. The board directed the superintendent or her designee to determine which employees' services would not be required for the 2011-2012 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or her designee to send appropriate notices to all certificated employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

6. The board further determined in Resolution No. 10/11-12 that "competency," as described in Education Code section 44955, subdivision (b), for the purposes of bumping and rehire rights, "shall necessarily include possession of a valid preliminary or clear credential and Highly Qualified status under NCLB in the relevant subject matter area, and an appropriate El Authorization."

7. On or before March 15, 2011, the district timely served on respondents a written notice that the superintendent had recommended that their services would not be

required for the upcoming school year. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing. Along with the written notice, the district timely served on respondents the accusation and required accompanying documents.

8. Respondents timely filed written requests for hearing and notices of defense to determine if there was cause for not reemploying them for the upcoming school year. All pre-hearing jurisdictional requirements were met.

9. Respondents are probationary or permanent certificated employees of the district.

10. The services the board addressed in Amended Resolution No. 10/11-1 were “particular kinds of services” that could be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion.

11. 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 number of certificated employees of the district as determined by the board.

12. The board considered all positively assured attrition that were known to the board at the time the accusations were served on respondents, in determining the actual number of necessary layoff notices to be delivered to its employees.

13. No certificated employee junior to any respondent was retained to perform any services which any respondent was 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 those sections were satisfied.

2. A district 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.)

3. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority's discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

4. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

5. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the board directed be reduced or discontinued. It is recommended that the board give respondents notice before May 15, 2011, that their services are no longer required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on respondents are sustained.² Notice shall be given to respondents before May 15, 2011, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: April 26, 2011

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

² Where the lay off of a respondent is less than a full-time-equivalent position, the applicable fraction of a full-time equivalent position is indicated in parentheses opposite the individual's name.

Appendix A

1. Jack Allen
2. Barbara Berteaux
3. Tracy Cairns
4. Shalome Nicholas
5. Tracy Olsen (0.6)
6. Carie Renfro
7. Adrian Williams (0.6)