

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

In the Matter of the District Statement of
Reduction in Force Proceedings Against:

Three Certificated Employees,

Respondents.

OAH No. 2015040007

PROPOSED DECISION

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 20, 2014, in Riverside, California.

Todd M. Robbins, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo, APC, represented the Riverside County Office of Education.

Carlos Perez, Attorney at Law, of Reich, Adell & Cvitan, APC, represented respondent Richard Slocum.

There was no appearance by or on behalf of respondents Kyndal Hays or Barbara Tuyen.

Prior to the hearing, the County Office of Education rescinded the layoff notices served on Ashley Bingham, Barbara Fragoso, Ramona Godfrey, Robert Hernandez, Julian Kiler, Thomas Marason, Robert Oliver, Beverly Pope, and Brandy Reeves.

The matter was submitted on April 23, 2015.

FACTUAL FINDINGS

1. Kenneth M. Young is the Riverside County Superintendent of Schools of the Riverside County Office of Education (RCOE).
2. Respondents are certificated employees employed by the RCOE.

3. On March 4, 2015, Superintendent Young issued and adopted Resolution No. 11-15, which determined that it was necessary to decrease the number of certificated employees. The Resolution concluded that due to financial considerations, the following particular kinds of services, which reflect 24.1325 full time equivalent (FTE) positions, must be reduced or discontinued no later than the beginning of the 2015-2016 school year:

STUDENT PROGRAMS AND SERVICES TEACHING SERVICES		
Teacher, Correctional Ed./Adult Jail Program (non-SAI)	3	F.T.E.
Teacher, Adult Education (non-SAI)	1	F.T.E.
CAREER TECHNICAL EDUCATION TEACHING SERVICES		
Instructor, Culinary Arts	3	F.T.E.
Instructor, Medical Assist. - Admin & Clerical	1.5	F.T.E.
Instructor, Automotive Tech.	1	F.T.E.
Instructor, Retail Sales and Marketing	1	F.T.E.
Instructor, Retail Merchandising	1	F.T.E.
Instructor, Construction Tech.	1	F.T.E.
Instructor, Printing Occupations	1	F.T.E.
Instructor, Childcare Occupations	0.77	F.T.E.
Instructor, Medical Front Office	0.375	F.T.E.
Instructor, Intro. To Banking and Finance	1	F.T.E.
Instructor, Nursing Assistant Occupations	1	F.T.E.
Instructor, Medical Assistant Clinical, Medical Assisting Admin.	1	F.T.E.
Instructor, Medical Assisting	0.4875	F.T.E.
Instructor, Emergency Medical Technician	1	F.T.E.
Instructor, Office Occupations	1	F.T.E.
Instructor, Sports Medicine	1	F.T.E.
Instructor, Plant & Soil/Hort./Intro. To Conservation	1	F.T.E.
Instructor, Law Enforcement Occupations	1	F.T.E.
Instructor, Graphic Design and Photography	1	F.T.E.
TOTAL CERTIFICATED POSITIONS	24.1325	F.T.E.

4. The services that the RCOE proposed to reduce were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955.

5. Resolution 11-15 directed the superintendent’s designee to initiate layoff procedures, identify the employees whose services would not be required for the 2015-2016 school year as a result of the reduction of these particular kinds of services, and send appropriate notices to those certificated employees

6. On March 4, 2015, Superintendent Young designated Steven A. Hovey, Chief Personnel Officer, Division of Personnel Services, to act on his behalf to implement the reduction in force proceedings required under Resolution No. 11-15.

Implementation of Resolution No. 11-15

7. Under Education Code section 44955, subdivisions (b) and (c), school districts must retain senior employees over more junior employees and retain permanent employees over temporary employees. Education Code section 44955, subdivision (d), provides an exception and permits a school district to deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

8. Under Education Code section 44955, subdivision (d)(1), above, the RCOE resolved to deviate from terminating employees in the order of seniority. The superintendent identified the courses of study that created a specific need for personnel.

9. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) The RCOE implemented a bump analysis to identify the employees who could bump into a position being held by a junior employee. The RCOE may move a junior employee upward from the bottom of a seniority list, “skipping” over more senior employees, so long as the junior

employee is certificated and competent to render specified services that the more senior employee is not competent to render and the more junior employee is retained to render those services. (*Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, 572-573.)

10. Resolution 11-15 included “competency” criteria for the purposes of “bumping and reemployment,” which provided:

D. That “competency” as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include (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 under the No Child Left Behind Act (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 completed security clearance (if required by the position) and (7) for Career Technical Education Employees, a valid credential in the relevant Career Technical Education Industry Sector, and the necessary experience as required by the job description.

11. On March 10, 2015, Chief Personnel Officer Hovey made and filed the RCOE Notice of District Statement of Reduction in Force.

The Reduction in Force and Issuance of Preliminary Layoff Notices

12. Chief Personnel Officer Hovey and Maribel Escobar, the RCOE Director of Classified Personnel, determined which employees were subject to Resolution No. 11-15 and if any of the employees whose positions were being eliminated had bumping rights. Chief Personnel Officer Hovey and Director Escobar considered all known positive attrition including resignations, retirements and probationary non-reelects.

13. On March 10, 2015, Chief Personnel Officer Hovey made and filed the RCOE Notice of District Statement of Reduction in Force to be served on the most junior employees holding positions that were subject to reduction and elimination.

14. Between March 10, 2015 and March 12, 2015, RCOE personally served the following certificated employees with written notice that their services would not be required by the RCOE for the 2015-2016 school year: Ashley Bingham; Barbara Frago; Ramona Godfrey; Kyndal Hays; Robert Hernandez; Julian Kiler; Thomas Marason; Robert Oliver; Beverly Pope; Brandy Reeves; Richard Slocum; and Barbara Tuyen. These employees were served with layoff packets that included the following documents: Notice of

Recommendation that Services Will Not Be Required; Resolution No. 11-15; 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 California Education Code and California 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 25, 2015, or the employee’s right to a hearing would be deemed waived.

15. None of the twelve identified employees shared the same seniority date. As a result, no tie-breaking criteria were used.

16. Of the twelve certificated employees given layoff notices, nine timely submitted a request for a hearing: Barbara Fragoso; Kyndal Hays; Robert Hernandez; Julian Kiler; Robert Oliver; Beverly Pope; Brandy Reeves; Richard Slocum; and Barbara Tuyen. Ashley Bingham, Ramona Godfrey, and Thomas Marson did not request a hearing.

17. In accordance with Government Code section 11509, on April 9, 2015, the RCOE served all respondents who requested a hearing with a Notice of Hearing, advising those respondents that a hearing had been set for April 20, 2015.

18. All prehearing jurisdictional requirements were satisfied.

The Recission of Layoff Notices and the Hearing

19. On or before the hearing on April 20, 2015, the RCOE rescinded the layoff notices issued to the following certificated employees: Ashley Bingham; Barbara Fragoso; Ramona Godfrey; Robert Hernandez; Julian Kiler; Thomas Marason; Robert Oliver; Beverly Pope; and Brandy Reeves.

20. When the record was opened on April 20, 2015, three certificated employees remained subject to the layoff: Richard Slocum; Kyndal Hays; and Barbara Tuyen. Respondent Richard Slocum was represented by Carlos Perez, Attorney at Law, and was present. He withdrew his request for a hearing on the record.

21. The remaining respondents, Kyndal Hays and Barbara Tuyen, were not represented by counsel. They timely requested a hearing but did not appear at the noticed hearing. Mr. Robbins, as counsel for the RCOE, requested that the administrative law judge prepare a proposed default decision against respondents Kyndal Hays and Barbara Tuyen under the provisions of Government Code section 11520. Mr. Perez, on behalf of respondent Richard Slocum, had no objection. The matter was submitted.

22. The exhibits in support of the layoff procedure were provided to the administrative law judge at the onset of the hearing but were not formally moved into evidence while the parties were on the record. On April 23, 2015, the record was reopened,

and a telephonic proceeding was held. Mr. Robbins appeared for the RCOE; Mr. Perez represented respondent Richard Slocum. RCOE formally moved into evidence the exhibits in support of the layoff. There was no objection to the introduction of the evidence.

Additional Findings

23. The RCOE established that it complied with Government Code sections 11505 (regarding service of documents) and 11509 (regarding notice of the hearing) for respondents Richard Slocum, Kyndal Hays and Barbara Tuyen. This matter proceeded as a default pursuant to Government Code section 11520 as to respondents Kyndal Hays and Barbara Tuyen.

24. The RCOE's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

25. The RCOE's reduction or discontinuance of particular kinds of services related to the welfare of the county office of education and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the RCOE.

26. The District properly issued the layoff notices to respondents Richard Slocum, Kyndal Hays, and Barbara Tuyen.

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. The RCOE 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. The decision to reduce or discontinue a particular kind of service is a matter reserved to the discretion of the RCOE and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District, supra*, 64 Cal.App.3d 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 the RCOE 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 its schools and their pupils.

6. Education Code section 44955, subdivision (c), required the RCOE 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. No employee with less seniority than respondents Kyndal Hays, Richard Slocum, or Barbara Tuyen is being retained to perform a service that any of these respondents are certificated and competent to render.

8. Cause exists to give notice to respondents Kyndal Hays, Richard Slocum, and Barbara Tuyen that their services will not be required for the 2015-2016 school year.

ORDER

The RCOE may give notices to respondents Kyndal Hays, Richard Slocum, and Barbara Tuyen that their employment will be terminated at the close of the current school year and that their services will not be required for the 2015-2016 school year.

DATED: April 30, 2015

_____/s/_____
BETH FABER JACOBS
Administrative Law Judge
Office of Administrative Hearings