

BEFORE THE
BOARD OF EDUCATION
OF THE
YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Barbara Caballero, Scott Colin, Jennifer
Eldridge, Hillary Gosselaar, Barbara
Grainge, Scott Pearne, Paul Reynolds,
Amanda Stodelle, Kerry Vizzini, and
Charissa Wieldin,

Respondents.

OAH No. 2008020559

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Yucaipa, California on April 14, 2008.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Yucaipa-Calimesa Joint Unified School District.

Jean Shin, Attorney at Law, Rothner, Segall & Greenstone, represented respondents Barbara Caballero, Hillary Gosselaar, Scott Pearne, Amanda Stodelle, Kerry Vizzini, and Charissa Wieldin.

Robert E. Lindquist, Attorney at Law, California Teachers Association, represented respondents Scott Colin, Barbara Grainge, and Paul Reynolds.

No appearance was made by or on behalf of respondent Jennifer Eldridge.

The matter was submitted on April 14, 2008.

FACTUAL FINDINGS

1. Melissa Moore, Assistant Superintendent, Human Resources of the Yucaipa-Calimesa Joint Unified School District, made and filed the accusation dated February 27,

2008, in her official capacity as the designee of Dr. Sherry Kendrick, Superintendent of the District.

2. Respondents¹ are certificated District employees.

3. In February 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the District Board of Education in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Superintendent stated the reasons for the recommendation.

4. On February 26, 2008, the Board adopted Resolution No. 9, 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 2008-2009 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Physical Education Teachers	4 FTE
High School Agriculture Teacher	1 FTE
Secondary English Teacher	1 FTE
Middle School Math/Science Core Teacher	1 FTE
Elementary Classroom Teachers	10 FTE
	<u>17 FTE's</u>

The proposed reductions totaled 17 full-time equivalent (FTE) positions.

5. The Board further determined in Resolution No. 9 that it would be necessary to retain certificated employees who possess special training and competency that other certificated employees with more seniority might not possess, to wit: Teachers who have authorization to teach English Learner (EL) students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith.

6. The Board directed the Superintendent or her designee to determine which employees' services would not be required for the 2008-2009 school year as a result of the reduction of the aforementioned 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.

¹ The accusation named 16 respondents, six of whom were subsequently dismissed by the District. All collective references to "respondents" in this Proposed Decision encompass the remaining ten respondents, whose names appear in the case caption.

7. Subsequent to the action the Board took on February 26, 2008 to reduce particular kinds of services by 17 FTE positions, the District continued to evaluate its personnel needs. After taking into consideration upcoming positively assured attrition, resignations, and retirements, the District has now determined it can meet its fiscal needs by reducing services by a total of ten FTE positions for the 2008-2009 school year. To accomplish this reduction of services, the District must give final notices of termination to the ten certificated employees, all of whom are respondents in this proceeding.

8. On or before March 15, 2008, the District timely served on respondents a written notice that the Superintendent had recommended that their services 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 the waiver of the right to a hearing. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

9. Each respondent timely filed a written request for hearing to determine if there was cause for not reemploying that respondent for the upcoming school year. The accusation was thereafter timely served on each respondent. Each respondent timely filed a Notice of Defense. All pre-hearing jurisdictional requirements were met.

10. The services the Board addressed in Resolution No. 9 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, but 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 known attrition, resignations, retirements and requests for transfer 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.

14. Respondent Paul Reynolds has a standard secondary credential, with authorization to teach physical education.² Other certificated employees with such a credential and with less seniority than Mr. Reynolds were retained. The District

² The credential also authorizes Mr. Reynolds to teach English. Mr. Reynolds also holds a designated teaching credential with authorization to teach safety and accident prevention.

demonstrated a specific and immediate need for personnel to teach physical education. The District also demonstrated that all retained certificated employees junior to Mr. Reynolds had special training and experience necessary to teach physical education, which Mr. Reynolds did not possess. Specifically, such junior certificated employees all have authorization to teach English Learner students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith.

15. Respondent Scott Colin has a multiple subject (elementary school) credential. Other certificated employees with such a credential and with less seniority than Mr. Colin were retained. The District demonstrated a specific and immediate need for personnel to teach at the elementary school level. The District also demonstrated that all retained certificated employees junior to Mr. Colin had special training and experience necessary to teach at that level, which Mr. Colin did not possess. Specifically, such junior certificated employees all have authorization to teach English Learner students,³ as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes therewith.

LEGAL CONCLUSIONS

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

2. Certain respondents challenged the adequacy of the preliminary notices they received, on the basis that such notices inaccurately described the proposed layoff as based on a reduction of particular kinds of services, when in reality it was based on a decline in average daily attendance. In support of respondents' position, evidence was presented that the District was overstaffed in certain respects, that fewer teachers would be needed for certain positions in the upcoming (2008-2009) school year, and that the proposed terminations may have been motivated in part or related in some sense to a decline in enrollment.⁴ However, Board Resolution No. 9 clear and unambiguously provided that the proposed layoffs were based on a reduction in particular kinds of services, not a decline in average daily attendance. Accordingly, the preliminary notice issued to respondents was accurate, and thus adequate.⁵

³ This Factual Finding is based on the testimony of Assistant Superintendent Melissa Moore. Mr. Colin testified generally that "many" less senior employees who did not possess "CLAD" — one particular type of EL authorization — were retained. Mr. Colin did not, however, testify that any less senior employees holding a multiple subject credential were retained who did not possess some kind of EL authorization.

⁴ This evidence was not, however, undisputed.

⁵ Neither of the two cases cited by respondents are on point or require a different result. *Cousins v. Weaverville Elementary School District* (1994) 24 Cal.App.4th 1846 held that a certificated probationary employee could not be terminated based on economic considerations unless the district complied with the economic layoff procedures prescribed in Education Code sections 44949 and 44955. It was undisputed that the employee was in fact terminated for economic reasons. Under those circumstances, the district could not avoid complying with the economic layoff procedures under sections 44949 and 44955 by serving the employee with a notice of nonreelection

3. Respondents Colin and Reynolds challenged their layoffs on the basis that they were not afforded adequate notice or a reasonable opportunity to secure EL authorization, that they were misled with regard to the likelihood that they would be laid off, and that they are presently in the process of securing such authorization. The evidence established, however, that these respondents were, in fact, afforded both adequate notice and a reasonable opportunity to secure EL authorization during the course of their employment with the District, and that they were not misled with regard to the likelihood that they would be laid off.⁶ No legal authority was presented in support of any due process, estoppel or other similar legal challenge to their terminations. Finally, the District's determination as to which employees held EL authorization on March 15, 2008 — the statutory deadline for serving certificated employees with written preliminary notices — and without regard to the fact that some employees were then *in the process* of securing such authorization, was proper.

4. 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. A preponderance of the evidence sustained the charges set forth in the accusation. It is recommended that the Board give respondents notice before May 15, 2008, that their services are longer be required by the District.

under section 44929.21. *Karbach v. Board of Education of the Lawndale School District* (1974) 39 Cal.App.3d 355 held that a school board had no power to terminate teachers for any reason not specified in the preliminary notice. Since the only ground cited in the notice was a decline in average daily attendance, the board thus could not later amend the accusation and seek to terminate teachers based on a reduction in particular kinds of services. The court reasoned that to hold otherwise would deprive at least some certificated employees of meaningful notice that their jobs were in jeopardy, so that such employees could then immediately begin to seek new employment. Neither the holding nor the interests sought to be protected in these two cases support respondents' contention that District concerns about overstaffing or a decline in enrollment in essence converts proposed terminations based on a reduction of particular kinds of services, as deliberately, explicitly and unambiguously identified as such in the Board resolution, into a proceeding based on a decline in average daily attendance.

⁶ Mr. Reynolds testified that in September 2007, he was assured by the Superintendent that his job was not in jeopardy on the basis that he lacked EL authorization. However, this assurance was provided long before the Governor's proposed budget cuts led the District in early 2008 to determine that a reduction of particular kinds of services was necessary, and cannot be found to constitute a guarantee that at no future time and under no future circumstances — including specifically an unanticipated state budget crisis — could the District identify EL authorization as a criterion on which to seek exemption from layoff of certificated employees.

ORDER

The accusation served on respondents Barbara Caballero, Scott Colin, Jennifer Eldridge, Hillary Gosselaar, Barbara Grainge, Scott Pearne, Paul Reynolds, Amanda Stodelle, Kerry Vizzini, and Charissa Wieldin is sustained and notice shall be given to these respondents before May 15, 2008 that their services will not be required in the next school year because of the reduction or discontinuance of particular services as indicated.

DATED: 4-23-08



DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings