

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
FOR THE
BOARD OF EDUCATION
RIM OF THE WORLD UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceedings Concerning:

7 Certificated Employees,

Respondents.

OAH No. 2013040293

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Blue Jay, California on April 25, 2013.

Todd M. Robbins, Esq. of Atkinson, Andelson, Loya, Ruud & Romo represented the Rim of the World Unified School District (the District).

All of the respondents who were present for the hearing were represented by Kent Morizawa, Esq. of Reich, Adell & Cvitan.

The matter was submitted on April 25, 2013.

FACTUAL FINDINGS

1. Josh Hill, Director of Personnel/Pupil Services for the District, made and filed the Accusation dated March 13, 2013, while acting in his official capacity. Director Hill signed the Accusation as the duly appointed designee of the District's Superintendent.

2. Respondents are certificated District employees.

3. On March 7, 2013, the Board of Education (Board) adopted Resolution No. 12/13-11 (the Resolution), 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 2013-2014 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
Elementary Classroom Teaching Services	5.0
Middle School Language Arts Teaching Services	1.0
High School RSP Teaching Services	0.4
<u>Total FTE's</u>	<u>6.4</u>

The services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

4. The Board's decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to substantial deficits in the operating budget, and is, therefore, a proper exercise of the Board's discretion. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

5. The District considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

6. On March 13, 2013, the District timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the District's intent not to reemploy them for the upcoming school year. Accordingly, respondents received written notice, on or before March 15, 2013, notifying them that the Board had recommended they not be re-employed in the upcoming, 2013-2014, school year.

7. All respondents were timely served with layoff notices, an accusation, and other related materials.

8. The following certificated employees were timely served with layoff notices: Jack Allen; Barbara Berteaux; Carie Gorney; Joseph Jurado; Caris Leidner; Shalome Nicholas; and, Stephanie Plemons.

9. Six of the certificated employees (respondents) timely requested a hearing and filed notices of defense. Joseph Jurado was the only respondent who did not request a hearing.

10. All respondents were properly noticed of the date, time and place of the instant hearing.

11. All prehearing jurisdictional requirements have been met.

12. Respondents have been selected for notice of layoff pursuant to their seniority date, which is based on the first day of paid service of each respondent in a probationary position. Respondents were ranked for layoff in the inverse order of their seniority dates.

13. Due to the hard work of the Attorneys, the teachers, the teachers' Union and District representatives, all of the issues concerning the layoff were addressed and no opposition to the layoffs was raised during the hearing.

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. The services listed in Factual Finding 3 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

5. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District due to budgetary reasons.

6. Cause to reduce or discontinue services relates solely to the welfare of the District and its pupils within the meaning of Education Code section 44949.

7. Cause exists to give all seven (7) respondents notice that their services are not needed for the ensuing, 2013-2014, school year.

ADVISORY DETERMINATION

Prior to May 15, 2013, notice shall be given to Jack Allen; Barbara Berteaux; Carie Gorney; Joseph Jurado; Caris Leidner; Shalome Nicholas; and, Stephanie Plemons that their services will not be required for the ensuing school year due to the projected budget deficit and the resulting need to reduce and/or discontinue certain services.

DATED: May 1, 2013

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings