

BEFORE THE
GOVERNING BOARD OF THE
ROHNERVILLE SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

VINCENT ZINSELMEIR,
VICTORIA PUMPKIN AND
MELANIE DOWNING,

Respondents.

OAH No. 2010031901

PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Eureka, California, on April 13, 2010.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, represented Rohnerville School District (District).

Respondents Vincent Zinselmeir, Victoria Pumpkin, and Melanie Downing represented themselves with the assistance of Paul Hagen, Attorney at Law, Bragg, Perlman, Russ, Stunich & Eads, LLP.

On April 13, 2010, the record closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. On April 2, 2010, Robert E. Williams, Ed. D., made the Accusation in his official capacity of Superintendent for the Rohnerville School District.
2. Respondents Vincent Zinselmeir, Victoria Pumpkin, and Melanie Downing, certificated employees of the District, timely requested a hearing to determine whether or not cause exists for not reemploying them for the ensuing school year.
3. On March 11, 2010, the Superintendent presented the District's Board of Trustees with a recommendation that the District give notice that particular kinds of services (PKS), then offered through the District, be reduced or eliminated by the District for the

ensuing school year (2010-2011).

4. On March 12, 2010, the District's Governing Board adopted Resolution No. 10-12. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce or to eliminate, no later than the beginning of the 2010-2011 school year, particular kinds of services in the form of seven full-time equivalent (FTE) certificated positions by eliminating 1.0 FTE opportunity education teacher position and eliminating 6.0 FTE grade K-8 teacher positions.

5. The written preliminary notice to each Respondent from the Superintendent states legally sufficient reasons for the Board's intent to eliminate or reduce services.

6. District's Superintendent timely served upon each Respondent the Accusation, dated April 2, 2010, and related documents. Each Respondent filed a timely notice of defense.

7. It was stipulated at the hearing that all of the jurisdictional requirements of California Education Code sections 44949 and 44955 have been met.

8. The only issue to be decided is the validity of the tie-breaking criteria for purposes of ranking the order of seniority and its proper application to the Respondents. Respondents hold multiple subject credentials, are CLAD certified and all share August 20, 2003, as their first date of paid service.

9. Pursuant to Education Code section 44955, subdivision (b), the Board established criteria for determining the order of termination as among employees who first rendered paid service on the same day as follows:

Criteria Used	Points
A. Credentials and experience to teach or serve in a particular service of need by the District. Rating: +1 per credential	
B. Credentials and experience to teach in a special categorical program (e.g., bilingual, special educational, CLAD, SDAIE). Rating: +1 per credential, +1 per year of experience (ESL, etc.)	
C. Years of experience previous to current employment as a full-time credentialed teacher in a probation/permanent K-12 teaching. Rating: +1 per year.	

D. Number of supplementary authorization. Rating: +1 per supplementary authorization	
E. Number of teaching and/or special service credentials. Rating: +1 per credential	
F. Earned degrees beyond the BA/BS level. Rating: +1 per degree	
G. Multiple language skills relevant to District need. Rating: +1 for Spanish	
H. Emergency vs. Preliminary vs. Clear/Life Credentials Rating: +1 per emergency, +2 per preliminary, +3 per Clear/Life credential	
Total	

11. Respondents Zinselmeir, Pumpkin and Downing share the same seniority date. Following application of the criteria, Respondent Zinselmeir was credited with 12 points and ranked number one. Pumpkin and Downing were credited with seven points each. In order to break the tie, a lottery was implemented and Downing won.

12. Respondents Pumpkin and Downing contend that the criteria chosen by the Board are invalid because seven of the categories award points for the same credentials, certificates, and supplemental authorizations. As a result, a teacher with more of these documents will always rank higher. In addition, they argue that the criteria are invalid because there is no indication that the District requires employees with those credentials, which means that it has not been demonstrated that the criteria are related to the best interests of the students.

13. Respondent Pumpkin further contends that she did not receive as many points as she should have. She points out that the same criteria were used in the 2004 layoff proceedings. At that time, the former superintendent awarded her one point in category C (years of previous experience) and one point in category G (multiple language skills relevant to District need). This year, she was not awarded those two points.

The evidence submitted by Pumpkin did not establish she was entitled to receive an additional two points.

14. In breaking ties, districts have broad discretion to determine the criteria used and to apply the criteria to individuals. The only legal requirement is that they “determine the order of termination solely on the basis of the needs of the district and the students thereof.” (Ed. Code, § 44955, subd. (b).) It was not established that the District created or applied its tie-breaking criteria in an arbitrary or capricious manner. Accordingly, there is no basis to require the District to re-evaluate Respondent Pumpkin’s or Respondent Downing’s position on the seniority list.

15. No permanent or probationary certificated employee with less seniority than Respondents is being retained to provide a service for which Respondents are credentialed and competent to render.

16. The reduction or elimination of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

1. Because of the reduction or elimination of particular kinds of services set forth in Finding 4, cause exists pursuant to Education Code section 44955 to give notice to Respondents Victoria Pumpkin, and Melanie Downing that their services will not be required or will be reduced for the 2010-2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

2. It was not established that the Board's tie-breaking criteria were invalid or applied in an arbitrary or capricious manner.

3. By reason of the matters set forth in Finding 11, cause does not exist as required by Education Code section 44955 to give notice of layoff to Respondent Vincent Zinselmeir.

ORDER

1. Notice may be given to Victoria Pumpkin and Melanie Downing that their services will not be required for the 2010-2011 school year.

2. The accusation against Respondent Vincent Zinselmeir is dismissed.

DATED: May 6, 2010

DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings