

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. 2010030265

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 14, 2010.

Sherry G. Gordon, Atkinson, Andelson, Loya, Ruud & Romo, APLC, represented the Rim of the World Unified School District.

Ronald G. Skipper, Esq., represented the respondents listed in Appendix A.

The matter was submitted on April 14, 2010.

FACTUAL FINDINGS

1. Donna Kellogg, Director, Personnel, Rim of the World Unified School District, made and filed the accusation dated March 12, 2009, in her official capacity as the designee of Ronald Peavy, District Superintendent.

2. Respondents¹ are certificated District employees.

3. On March 11, 2010, 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 his recommendation to reduce or discontinue particular kinds of

¹ The District initially identified 21 certificated employees as respondents, including one individual (Rebecca Horton) who was designated to receive a "precautionary" layoff notice. By the date of the hearing that number had been reduced to the 19 respondents identified in Appendix A. The term "respondents" as hereafter used in this Proposed Decision refers collectively to these 19 remaining individuals.

services for the upcoming school year. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On March 11, 2010, the board adopted Resolution No. 09/10-17, 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 2010-2011 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Classroom Teachers	5
Secondary Title I Intervention	2
Elementary Title I Intervention	2
Special Education SDC/Mild Moderate	2
Special Education SDC/Moderate Severe	2
Special Education ROP	1
High School Science	1
Secondary Physical Education	.80
High School Math	.80
Junior High Math	.80
High School English	.20
High School Drama	.20
Junior High Language Arts	.60
High School Band	.40
Junior High Computers	.40
Junior High Social Science	1.6
ROP Desktop Publishing, Web Design	1

The proposed reductions totaled 21.8 FTE positions.

5. The board directed the superintendent or his designee to determine which employees' services would not be required for the 2010-2011 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or his 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. 09/10-07 that "competency," as described in Education Code section 44955, subdivision (b), for the purposes of bumping, "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, 2010, 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.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

8. Certain 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.²

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

10. The services the board addressed in Amended Resolution No. 09-10-012 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, including resignations, retirements and requests for transfer, 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. Since that time, the board has become aware of additional expected attrition (e.g., via a number of intent to retire letters). The board has not yet decided to what extent to take this additionally expected attrition into account, as it is waiting for the district’s financial condition to become clearer in the months ahead as a result of the May revise of the Governor’s proposed budget for fiscal year 2010-2011. The board intends to reconsider the issue of attrition after issuance of the May revise. In light of the unprecedented financial uncertainty the district, and every other California school district, faces at this time, the board’s decision to wait is neither arbitrary nor capricious, and constitutes a proper exercise of its discretion. Further, in a particular kinds of service reduction, the district need not take into account attrition that occurs after issuance of preliminary layoff notices. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 634-635.)

² Certain respondents failed to file timely requests for hearing and/or notices of defense. At the hearing, the district waived any jurisdictional defects resulting from such failures.

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 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, 2010, 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.³ Notice shall be given to respondents before May 15, 2010, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

³ 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. Melissa Astle
3. Eugene Ballantyne
4. David Bealer
5. Tracy Cairns
6. Elizabeth Caro
7. Laura Delgrosso (0.8)
8. Shawna Gray
9. Robert Harshberger
10. Rebecca Horton (0.2)
11. Jeannine Jones
12. Jerry Lees (0.4)
13. Caris Leidner
14. Brent Lumsden
15. Tiffany Minor
16. Jeffrey Moss (0.2)
17. Tracy Olsen
18. Sheila Palmer
19. Steven Wallace