

BEFORE THE
GOVERNING BOARD OF THE
SELMA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Accusations against:

Cyndi Guerra and Valita Robison,

Respondents.

OAH No. N2004030681

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2004, in Selma, California.

Mary Beth de Goede, Attorney at Law, represented the Selma Unified School District. Wesely Green, of Tuttle and McClosky Attorneys at Law, represented respondents Cyndi Guerra and Valita Robison.

The matter was submitted on April 15, 2004.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Selma Unified School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees (nurses) for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

The Board's resolution to reduce two School Nurse positions relates solely to the welfare of the school and its pupils, in accordance with the requirements of the Education Code. The District staff carried out the Board's decision by using a selection process involving review of credentials and seniority. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. The Selma Unified School District ("District") operates eleven elementary, junior high and high schools for approximately 5,800 students.
2. Mark Sutton is the Assistant Superintendent of the District. His actions, and the actions of the Board, were taken in their official capacities.
3. Before March 15, 2004, the District personally served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed Resolutions reducing the certificated staff by 2.5 full-time equivalent ("FTE") positions.

Respondents, timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

4. The Superintendent made and filed Accusations against each of the two employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those employees.
5. Respondents timely filed Notices of Defense.
6. Respondents in this proceeding are permanent certificated employees of the District.
7. On March 9, 2004, at a regular meeting of the District's Board of Trustees (the Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated and other employees holding 2.5 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.
8. On March 9, 2004, the Board adopted Resolution No. FY 04-34, providing for the reduction or elimination of the following particular kinds of services:

2 FTE School Nurse Positions
.5 FTE Adaptive Physical Education Teacher
9. The District has a current budgetary shortfall of approximately 1.5 million dollars. The District also anticipated that it would receive less money from the State for the next school year. The District determined that it needed to employ multiple cost cutting strategies and concluded that it would be in the best interests of the students to make budget cuts in areas that did not impact classroom instruction. Thus, the Board resolved to reduce

nursing services. It was established that the Board's resolution to eliminate 2 FTE of nursing services was made in order to balance its budget for the welfare of students.

10. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the District's records.

11. Mr. Sutton and other District employees were responsible for implementation of the technical aspects of the layoff. To assure the accuracy of seniority dates and other data, affected employees were notified of the District's records of their first dates of paid service and credentials. Seniority lists were posted at all of the District's schools. Respondent, Valita Robison, was not included on the seniority list. However, she was advised by telephone of the seniority date and of the credentials the District had in her personnel file. There is no issue concerning the validity of this information. Ms. Robinson suffered no prejudice as a result of her name being omitted from the seniority list.

12. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned to nursing services. The two least senior employees holding the Professional Clear School Nurse Services Credential were respondents. Neither respondent held credentials which would authorize her to provide teaching services to the District.

13. The District's decision to reduce nursing services was based upon the District's determination that it could comply with all statutory mandates with a reduced nursing staff. After reduction of the nursing staff by 2 FTE, the District will have 2.6 FTE registered nurses and 1 FTE licensed vocational nurse on its staff.

14. Respondents contend that the District's reduction of nursing services is not in the best interests of the students, and that the District is reducing nursing services to the point that mandated programs will be affected. Respondents offered evidence of the numerous State mandated services they provide, including, among other services, vision and hearing exams, scoliosis screening, referrals to Children's Protective Services, Height and Weight measurements, tuberculosis testing, and processing and maintaining student health records.

Additionally, nurses provide numerous services not mandated by the State, but necessary for the health and welfare of the students. These services include, among others, unscheduled screenings and follow-ups, first aid, administration of medications, training staff in first aid and medication administration, making appointments for students for medical services, color vision screening, health fairs, counseling of teens, community outreach and disaster planning.

15. Respondents produced evidence that California School Nursing Organization recommends a ratio of one nurse to every seven hundred and fifty students. In the ideal economic circumstances, the District could observe this ratio. However, there is no State

mandated ratio of students to registered nurses. And the District, after examination of services and staff allocations, is confident that the remaining nursing staff can deliver the mandated services. Additionally, the State does not require that every mandated health service be provided by a registered nurse, only that the specified services be provided. While it is clear that the nurses who remain in the District will be working harder due to the reduction of 2 FTE positions, it was not established that the reduction would prevent the District from providing mandated services.

16. The District employees receiving notices that their services would not be required next year have all rendered valuable services to the District.

LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The services identified in Board Resolution No. FY 04-34 are particular kinds of services that could be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

3. 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.

4. An existing budget shortfall and the anticipation of receiving less money from the State for the next school year are appropriate bases for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decisions were a proper exercise of its discretion.

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

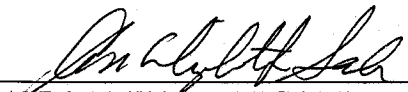
6. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

7. 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. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831. Respondents did not maintain that they had the right to "bump" junior employees, and as the least senior employees providing registered nursing services, they were not entitled to bump other employees providing registered nursing services.

ORDER

Notice shall be given to respondents, Cindi Guerra and Valita Robison, (occupying 2 Full-Time Equivalent School Nurse Positions) that their services will not be required for the 2004-2005 school year because of the reduction and discontinuance of particular kinds of services.

DATED: May 4, 2004


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

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DATED: _____

Jul 29, 2004



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings