

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
FOR THE
GOVERNING BOARD OF THE
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceedings Concerning:

46 Certificated Employees,

Respondents.

OAH No. 2013030353

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Temecula, California on April 24, 2013.

Melanie A. Petersen, Esq. and Kelley Anne Owens, Esq. of Fagen, Friedman & Fulfroost represented the Temecula Valley Unified School District (the District).

All of the respondents who were present for the hearing were represented by Jon Y. Vanderpool, Esq. of Smith, Steiner, Vanderpool & Wax.

The matter was submitted on April 24, 2013.

FACTUAL FINDINGS

1. Respondents are certificated District employees.
2. On March 5, 2013, the Governing Board of the District adopted Resolution No. 2012-13/23 recommending a reduction in particular kinds of services provided by the District at the end of the 2012-2013 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>
K-5th Grade Teachers	16.0
6th-8th Grade CORE Teachers	4.0
6th-12th Grade P.E. Teachers	5.0
6th-8th Grade Science Teachers	3.0
6th-12th Grade Social Science Teacher	1.0
6th-12th Grade Spanish Teachers	2.0
6th-12th Grade Math Teachers	3.0
6th-12th Grade Music Teacher	1.0
9th-12th Grade Science-Biology Teacher	1.0
6th-8th Grade Computers Teacher	1.0
Adult Education	1.2
6th-12th Grade Counselor	<u>0.4</u>
<u>Total FTE's</u>	<u>38.6</u>

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

3. The Board's decision to reduce or discontinue the services listed in Finding 2, above, is neither arbitrary nor capricious; rather, it is due to classroom restructuring necessitated, in part, by the return of Charter School Teachers¹ and Teachers on Long-Term Leaves of Absence², and is, therefore, a proper exercise of the Board's discretion. The

¹ There will be 19 teachers returning from Charter Schools to the regular classrooms. These teachers have always been District employees while working at Charter Schools. They have been accruing seniority and are members of the Teacher's Union. The teachers are discontinuing their services at the Charter Schools because the Charter Schools will be hiring their own teachers in the future.

² Pursuant to the Collective Bargaining Agreement teachers on Long-Term Leaves of Absence are entitled to be on leave for two years. Some of the teachers who are on Leaves of Absence have been on Leave of Absence for over two years and the District sent them letters requiring them to either return or resign. As of the date of the hearing the District had not

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.

4. 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.

5. On March 14, 2012, Henry H. Voros, Assistant Superintendent, Human Resources Development, signed the Accusation while acting in his official capacity.

6. On March 14, 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. On March 14, 2013, respondents were served with a copy of the Initial Notice of Reduction in Services, a copy of the Accusation, a Notice to respondent(s), a blank Notice of Defense and Request for Hearing, and other related materials.

8. The following 31 certificated employees timely filed Notices of Defense and Requests for Hearing: 1) Tyler Bettge; 2) Juan Castro; 3) Sandra Cerny; 4) Patrick Dela Cruz; 5) Darren Drago; 6) Andrea Easley; 7) Jolene Eliaba; 8) Jodette Fontes; 9) Aliah Garcia; 10) Christine Grant; 11) Alisha Hanyak; 12) Derek Heid; 13) Jacqueline Hilton; 14) Beverly Lipka; 15) Michael Macur; 16) Timothy Mann; 17) Brian Navarro; 18) Durley Nolen; 19) Sean O'Hara; 20) Marie Owen; 21) Jacob Paino; 22) Kimberly Randall; 23) Beth Russell; 24) Luz Salcido; 25) John Santone; 26) Allyson Sawyer; 27) Theresa Suchanek; 28) Amy Thomas; 29) Michael Walsh; 30) Malissa Wertz; and, 31) Kelsie Woodard.

9. The Following 15 certificated employees failed to file Notices of Defense and Requests for Hearing: 1) Kenneth Anderson; 2) Alicia Brennan; 3) Alicia Cardenas; 4) Sharleen Daly; 5) Celeste Hall; 6) Theresa Hensath; 7) Susan Ingle; 8) Don Jones; 9) Mariah Koehle; 10) Traci McGuire; 11) Cary Pyle; 12) Joe Ruzzamenti; 13) Marie Santos; 14) Susan Strehan; and, 15) Holly Towey.

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

11. All prehearing jurisdictional requirements have been met.

heard from all of the teachers in this category and it may well be that some will elect to resign as opposed to return to their teaching positions. If that happens the Reduction in Force list will be reduced accordingly.

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.

Issues Raised During the Hearing

13. The TOSA Issue: “TOSA” stands for Teacher(s) on Special Assignment(s). The issue raised during the hearing is whether TOSA teachers were being terminated while employees with less seniority, are being retained in a TOSA position the more senior teacher is certificated and competent to render.

Education Code section 44955, subdivision (b), provides, in pertinent part: “. . . Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render”

The evidence established that the District properly exercised its discretion in determining which TOSA teachers were subject to layoff. TOSA positions are not generic. In other words, one TOSA teacher does not necessarily possess the same unique training and experience possessed by other TOSA teachers. This is so because TOSA positions significantly differ. For example, a TOSA Title 1 Literacy Specialist teacher, who is specially trained and experienced as a Literacy Specialist, lacks the specific training and experience possessed by a TOSA Behavioral Health teacher. Therefore, a more senior TOSA Title 1 Literacy Specialist teacher cannot “bump” a less senior TOSA Behavioral Health teacher.

In the present instance the District properly considered the uniqueness of the TOSA positions in determining the order of layoffs. In *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299 the California Supreme Court stated: “. . . The question for the board’s determination was simple, whether [respondent], the senior teacher on layoff status, was ‘certificated and competent’ to render the required service. Such determinations, it has been held, involve ‘discretionary decisions’ which are within the ‘special competence’ of the school districts [citation omitted]. As [respondent] concedes, it was within the power of the board to establish requirements for the vacant position. Such requirements could properly take into account both prior academic preparation . . . and prior experience”

14. Credentialing Issue: Kimberly Randall raised an issue concerning the failure of the District to consider the Single Subject Teaching Credential (credential) which was issued to her on February 1, 2013. The documentary evidence, Exhibit D, established that Ms. Randall’s credential had an “Issue” Date of February 1, 2013. That same document indicated a “Status” of “Granted” on April 3, 2012. Ms. Randall contended that she had her credential as of February 1, 2013, and it should have been considered in the RIF proceedings. The District contended that it did not know about the credential, probably because it was not “Granted” until April 3, 2013. No credentialing expert familiar with Exhibit D testified

during the hearing so the differing dates, the “issue” date and the “granted” date, were not explained.

The current seniority list, which was generated on April 23, 2013, reflects Ms. Randall’s credential and Ms. Randall’s testimony established that the former seniority list, which was used for the RIF proceedings prior to the April 23, 2013 updated list, did not reflect Ms. Randall’s credential.

Credentials must be on file with the District prior to the March 15th deadline; otherwise, the District is not required to consider them in the RIF proceedings. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 814-815; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698.) A preponderance of the evidence established that Ms. Randall’s credential was not “on file with the District” prior to March 15, 2013; consequently, as a matter of law, the District did not consider her newly acquired credential (the District did not know she had been issued the credential as of March 15, 2013).

15. The Physical Education/Weight Training Issue: Michale Walsh, the Physical Education (PE) weight training expert at Great Oaks High School is slated for layoff. Mr. Walsh testified that the weight training program and weight training area/room at the high school were specially designed based on Mr. Walsh’s specialized weight training and experience. Mr. Walsh expressed his concern that the weight training program would be eliminated if his employment is terminated. The District representative testified that any physical education teacher can teach weight training, albeit not to the expert level provided by Mr. Walsh. Consequently, it is found that the District properly exercised its discretion in including Mr. Walsh in the layoff.

16. NCLB Compliance Issue: In determining the order of layoffs the District properly exercised its discretion in giving teachers who are No Child Left Behind (NCLB) compliant priority over non-NCLB compliant teachers. One teacher testified that she had applied for, but had not yet received, a Supplemental Authorization in English. Upon receipt of the authorization the teacher would be NCLB compliant; however, at the time of the hearing she was not NCLB compliant. As previously noted, the District may only consider a teacher’s credentialing and compliance status on file as of March 15, 2013; therefore, the teacher was properly notified of layoff because she is not currently NCLB compliant.

The teacher further asserted that there were two less senior teachers who were retained by the District who were not NCLB compliant; however, the evidence presented during the hearing established that the less senior teachers were, in fact, NCLB compliant.

17. The RVHS Issue: Two teachers testified concerning their disagreement with the District’s decision to layoff some of the teachers teaching at Rancho Vista High School (RVHS). RVHS is an “alternative” high school for youths who have had difficulty in a regular high school setting. Because of the unique needs of the students the RVHS teachers

have developed special skill sets necessary to teach these students and the continuity of staff at RVHS “offers stability” to the programs and the students.

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.)

In this case, the District’s decision to layoff certain RVHS teachers was not palpably unreasonable or arbitrary; accordingly, the layoff decisions were within the District’s discretion.

Overall Evaluation of the Evidence Presented by the Respondents:

18. None of the evidence presented by the respondents who testified during the hearing changed the finding that the District properly implemented Board Resolution 2012-13/23; consequently, 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 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 2 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 restructuring.

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 serve all respondents notice that their services are not needed for the ensuing, 2013-2014, school year.

ADVISORY DETERMINATIONS

Prior to May 15, 2013, notice shall be given to all respondents that their services will not be required for the ensuing school year due to District restructuring 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