

BEFORE THE
GOVERNING BOARD OF THE
EUREKA CITY SCHOOLS DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment
of:

CERTAIN CERTIFICATED
EMPLOYEES,

Respondents.

OAH No. 2010031902

PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Eureka, California, on April 14, 2010.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, represented the Eureka City Schools District (District).

Paul Hagen, Attorney at Law, Bragg, Perlman, Russ, Stunich & Eads, LLP, represented all respondents identified in Exhibit A.

On April 14, 2010, the record closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. On March 9, 2010, the Superintendent presented the District's Board of Trustees a recommendation that the District give notice that particular kinds of services (PKS) be reduced or eliminated by the District for the ensuing school year (2010-2011).

2. On March 9, 2009, the District's Governing Board adopted Resolution No. 09-10-024. 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 as follows:

a. The equivalent of 4.0 full-time equivalent (FTE) certificated retirements whose positions or services have been eliminated.

- b. All Adult Education Hourly certificated positions have been eliminated.
- c. Decrease in the certificated employees by the equivalent of 36.4 FTE's as set forth below:
 - 1. Eliminate the equivalent of 2.0 FTE, Grades K-6, positions or services;
 - 2. Eliminate the equivalent of 5.2333 FTE, Visual/Performing Arts, Grades K-12, positions or services;
 - 3. Eliminate the equivalent of 2.4667 FTE, Electives, Grades 7-12, positions or services;
 - 4. Eliminate the equivalent of 0.6 FTE, District Health, Growth & Development, Grades K-6, positions or services;
 - 5. Eliminate the equivalent of 1.4 FTE, Social Science, Grades 7-12, positions or services;
 - 6. Eliminate the equivalent of 5.0 FTE, English Language Arts, Grades 7-12, positions or services;
 - 7. Eliminate the equivalent of 5.7 FTE, Math, Grades 7-12, positions or services;
 - 8. Eliminate the equivalent of 0.5 FTE, Economics, Grades 9-12, positions or services;
 - 9. Eliminate the equivalent of 0.3667 FTE, Health/Safety, Grades 7-12, positions or services;
 - 10. Eliminate the equivalent of 2.7 FTE, Life Science, Grades 7-12, positions or services;
 - 11. Eliminate the equivalent of 0.9333 FTE, Science, Grades 7-12, positions or services;
 - 12. Eliminate the equivalent of 2.1 FTE, Physical Science, Grades 7-12, positions or services;
 - 13. Eliminate the equivalent of 1.8 FTE, World Languages, Grades 9-12, positions or services;

14. Eliminate the equivalent of 1.6 FTE, Physical Education, Grades 7-12, positions or services;
15. Eliminate the equivalent of 1.0 FTE, Teacher on Special Assignment, position or services;
16. Eliminate the equivalent of 2.0 FTE, Pupil Personnel Services positions or services;
17. Eliminate the equivalent of 5.0 FTE Administrative position or services;
18. Eliminate all Adult Education Hourly certificated positions.

The resolution directed the District's superintendent, or his designee, to initiate procedures not to reemploy the equivalent of 36.4 full-time equivalent (FTE) certificated employees of the District pursuant to Education Code sections 44949 and 44955.

3. The written preliminary notice to each respondent from the District's Superintendent states legally sufficient reasons for the District's Board's intent to eliminate or reduce the course as taught by respondents.

4. Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying them for the ensuing school year.

5. On April 1, 2010, Gregg Haulk, made the Accusation in his official capacity of Superintendent for the Eureka City Schools District.

6. District's Superintendent timely served upon each respondent the Accusation, dated April 1, 2010, and related documents. Each respondent filed timely a 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 in this proceeding.

8. Respondent Brooks Franklin is a full-time math teacher at Eureka High School. He has a seniority date of August 28, 2000. As a result of the 5.7 FTE reduction in math positions or services, his 1.0 FTE position is being eliminated. Franklin does not believe that the District is retaining a sufficient number of math teachers in order to cover legally mandated math classes. The teacher's concerns are, at this time, speculative. The District believes it has retained a sufficient number of teachers in order to meet the needs of the District based on its projected enrollment. The enrollment number, however, is still in a state of flux. Many additional decisions will need to be made by the board and the District before an accurate assessment of staffing needs can be made. Because of the financial

uncertainties of the District, it cannot be said that the board's decision to reduce or eliminate the service is either arbitrary or capricious. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

9. Adina Lawson is a full-time teacher in the Eureka City Schools District. She has a seniority date of September 1, 1999. Lawson's current assignment is teaching Theater (a Fine Arts position) and Language Arts. Lawson holds a 0.6 FTE Fine Arts position and 0.4 FTE Language Arts position. As a result of the 5.233 FTE reduction in visual/performing arts in grades K through 12, and the 5.0 FTE reduction in English language arts in grades 7-12, the District has eliminated her 1.0 FTE position.

Lawson believes she has bumping rights as to a junior employee, Melinda French, in that Lawson's degree authorizes her to teach Home and Hospital. Lawson admitted she has never taught and has no experience in the Home and Hospital class.

It was established at the hearing that Melinda French has seven years experience teaching and working in the Home and Hospital program. During the 2009-2010 school year two teachers worked in the Home and Hospital program. In 2010-2011 the most senior teacher in the Home and Hospital program is retiring.

In the event French were not retained and Lawson bumped into French's position, there would be no one in the class with any experience or training in Home and Hospital. Consequently, the District has withdrawn its layoff notice and retained French in her position of teaching Home and Hospital because of French's special experience and training. The evidence did not support that Lawson had the necessary experience and training to bump into French's position and as such Lawson was not competent to bump French.

10. Jennifer Dean-Mervinsky, Patricia Guerrero-Frazier, Brenda Smith, Daniel Holmes, Gwen Gastineau-Ayoob, Rebecca Baugh and respondents similarly situated, does not believe that the District is retaining a sufficient number of teachers in order to cover legally mandated classes such as English, science, math and social studies.

Dean-Mervinsky believes that in the event the teachers are laid off pursuant to the Board's resolution, the District will not be able to provide the mandated classes because all teachers are currently at full student capacity settings under the terms of the current contract with the District.¹

The teacher's concerns are, at this time, speculative. The District believes it has retained a sufficient number of teachers in order to meet the needs of the District based on its projected enrollment. The enrollment number, however, is still in a state of flux. Many additional decisions will need to be made by the board and the District before an accurate

¹ As stated at the hearing, there is no jurisdiction in this proceeding as to the teachers' contract with the District.

assessment of staffing needs can be made. Because of the financial uncertainties of the District, it cannot be said that the board's decision to reduce or eliminate the service is either arbitrary or capricious. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

11. The District has withdrawn the layoff notices on the following certificated employees: John Crandell, Sheri Jensen, Ken Pinkerton, Heidi Schlesiger, Jeanne Wilhelm and Melinda French.

12. The adult education teachers Brenda Bertain, Carolyn Joyce and Catherine McNally did not file a notice requesting a hearing. It is presumed these teachers are layed off.

13. The services set forth above in Factual Finding 3, are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

14. 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.

15. The reduction or elimination of services is related to the welfare of the District and of its pupils.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required by law.

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will be reduced or eliminated for the 2010-2011 school year. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents that their services will be reduced or eliminated for the 2010-2011 school year because of the reduction of particular kinds of services.

DATED: May 5, 2010

DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A
Respondents

<u>Last Name</u>	<u>First Name</u>
Bailey	Mark
Baugh	Rebecca
Boyer	Lucia
Kristy	Christiansen
Clower	Dana
DeAndreis	Mary
Dean-Mervinsky	Jennifer
Franklin	Brooks
French	Melinda
Gaiera	Heather
Gastineau-Ayoob	Gwen
Gonzalez	Stacey
Guerrero-Frazier	Patricia
Holmes	Daniel
Joyce	Carolyn
Lawson	Adina
Muldoon	Matthew
Roscoe-	Bragg Lee
Sanchez	Tera
Smith	Brenda
Staack	Aaron
Staiano	Mauro
Thornburgh	Joel
Wilhelm	Jeanne