

BEFORE THE  
BOARD OF TRUSTEES OF THE  
EUREKA CITY SCHOOLS DISTRICT

In the Matter of the Non-Reemployment of  
90.2625 Full-Time Equivalent Certificated  
Employees for the School Year 2008-2009,

OAH No. 2008030933

Respondent.

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Eureka, California, on April 21 and 23, 2008.

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

There was no appearance by, or on behalf of, respondents Aaron Feldstein, Margot Genger, Matthew Muldoon or James Smith.

Respondents Aaron Staack and John Crandall represented themselves.

Paul Hagen, Esq., Bragg, Perlman, Russ, Stunich & Eads, LLP, represented all other respondents.

The record was left open for submission of additional matters. A letter from counsel regarding the application of tie-breaking criteria to respondents Sheri Jensen, Mauro Staiano, and Heidi Schlesiger was received in evidence as Exhibit 21. A letter confirming the names of respondents represented by Mr. Hagen was marked as Exhibit A. A letter dated April 16, 2008, confirming the district's withdrawal of accusations against 13 certificated employees was received in evidence as Exhibit 22. A letter dated April 17, 2008, confirming the district's withdrawal of an accusation against a certificated employee was received in evidence as Exhibit 23. The record was closed and the matter was submitted for decision on April 30, 2008.

## FACTUAL FINDINGS

1. On March 11, 2008, the Board of Trustees of the Eureka City Schools District adopted Resolution No. 07-08-022, in which the board resolved to reduce or discontinue the following particular kinds of services at the end of the 2007-2008 school year:

|            |  |
|------------|--|
| 0.6875 FTE | Pre-Kindergarten, Children Center Teaching positions or services;                            |
| 0.275 FTE  | Supervisor of Children positions or services;  |
| 0.8 FTE    | Family Consumer Studies positions or services;   |
| 15.8 FTE   | Grades Kindergarten-6 (includes Montessori), Elementary/Middle School positions or services; |
| 5.0 FTE    | Grades 7-12, Fine Arts positions or services;  |
| 1.0 FTE    | Grades 9-12, Industrial Arts/Technology positions or services;                               |
| 7.4 FTE    | Grades 7-12, Language Arts positions or services;  |
| 8.0 FTE    | Grades 7-12, Math positions or services;   |
| 4.3 FTE    | Grades 4-12, Music positions or services;  |
| 2.0 FTE    | Grades 9-12, NJROTC positions or services;   |
| 1.8 FTE    | Grades 6-12, Physical Education positions or services;                                       |
| 8.8 FTE    | Grades 7-12, Science positions or services;  |
| 3.2 FTE    | Grades 7-12, Social Science positions or services;   |
| 1.8 FTE    | Grades 7-12, World Languages positions or services;  |
| 0.8 FTE    | Grades 9-12, Agriculture positions or services;  |
| 3.8 FTE    | Grades 7-12, Elective positions or services;   |
| 2.0 FTE    | Grades 7-12, Severely Handicapped Special Day Class positions or services;                   |
| 1.0 FTE    | Non-Severely Handicapped Special Day Class positions or services;                            |
| 1.8 FTE    | Resource Specialist positions or services;   |
| 3.2 FTE    | Grades Kindergarten-8, Intervention positions or services;                                   |
| 0.7 FTE    | English Language Development positions or services;  |
| 1.6 FTE    | Health, Grades K-8, positions or services;   |
| 2.3 FTE    | District/Middle School Teacher on Special Assignment positions or services;                  |
| 1.0 FTE    | Grades 7-8, Transitional Opportunity Program positions or services;                          |
| 1.0 FTE    | 9th Grade Opportunity Program positions or services;   |
| 0.5 FTE    | Center for Independent Studies positions or services;  |
| 0.2 FTE    | School Nurse positions or services;  |
| 4.8 FTE    | School Counselor positions or services;  |
| 1.0 FTE    | School Psychologist positions or services;   |
| 1.5 FTE    | Learning Director positions or services;   |
| 1.0 FTE    | Associate Principal positions or services;   |
| 3.5 FTE    | Associate Principal positions or services;   |
| 3.0 FTE    | Principal positions or services.   |



The resolution directed the district's superintendent, or his designee, to initiate procedures to not reemploy the equivalent of 90.2625 full-time equivalent certificated employees of the district pursuant to Education Code sections 44949 and 44955.

2. On March 12, 2008, District Superintendent Gregg Haulk sent notice to 87 certificated employees of his recommendation that their services would be reduced or discontinued for the 2008-2009 school year. Of those employees, 81 requested a hearing to determine if there was cause to not re-employ them. Prior to hearing, 12 employees failed to file a notice of defense; three employees withdrew their request for a hearing; and the district withdrew accusations against 14 additional employees. Four employees failed to appear at hearing or have representation at hearing. There remain 48 respondents in this proceeding who are listed in Attachment A.

3. The parties stipulated that the district has complied with all procedural requirements of Education Code sections 44949 and 44955.

4. The board's decision to reduce 90.2625 full-time equivalent positions was based on a combination of four matters: (1) declining enrollment; (2) an anticipated loss of revenue from the State of California for the 2008-2009 school year; (3) closure of an elementary school; and (4) changes in the manner in which services are provided by the district.

Superintendent Haulk testified that the district anticipates having approximately 300 less students for the 2008-2009 school year, which will have a fiscal impact on the district. The district has had that amount of decline in enrollment in previous years, but the district has not appropriately addressed it. The district anticipates that it will receive a \$2.1 million reduction in state funding, in addition to losses in categorical and special education funding. The district is concerned that if the district does not budget correctly for the 2008-2009 school year, the state budgetary cuts will result in the district being unable to pay its bills and lead to its negative certification. The district is currently under budgetary oversight by the Humboldt County Office of Education.

The board has made the decision to close Lincoln Elementary School, and to relocate its children and services to one of the district's four other elementary schools. The board is considering closure of another school as well. The district is also considering a number of alternative, and more cost-effective, ways in which to offer services to students. Among the things the board is considering for the high school is consolidating the courses offered at the high schools, loading the classes, rather than teaching to a small number of students, and reducing the types of classes offered at the high school, including building a program that teaches to high school graduation requirements.<sup>1</sup> The board is considering district

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<sup>1</sup> The district understands that if it no longer offered the classes required for admission into the University of California or California State Universities, a large number of students might transfer to other high schools in Humboldt County, thereby worsening its financial circumstances.

reorganization, closing additional schools, selling and/or leasing surplus district property. The board is considering discontinuing participation in the class size reduction program. In addition to nonemployment of certificated staff, the district is reducing its administrative and classified staff. Even if the district's enrollment had remained fixed, these avenues would need to be explored by reason of the district's financial problems.

The board has significant decisions to make with respect to the operation of the district in light of its serious fiscal circumstances. The superintendent has planned for the worst case scenario so as to provide the board and the district with the most flexibility. Superintendent Haulk is satisfied that the district has retained a sufficient number of certificated staff to meet the district's projected staffing needs for the 2008-2009 school year. The district's actual staffing needs will depend on the decisions made by the governing board as well as actual student enrollment.

5. In determining the number of teachers to be given notices, the district considered all attrition prior to March 15, 2008, that is teachers who notified the district that they would be retiring or resigning at the end of the school year. As other teachers notified the district of their retirements or resignations, the district took those into account, and withdrew a corresponding number of accusations.

6. Adina Lawson is a full-time teacher at Eureka High School. She has a seniority date of September 1, 1999. Lawson's current assignment is teaching Theater (a Fine Arts position) and Language Arts. The seniority list reflects that Lawson holds a 0.8 FTE Fine Arts position and 0.2 FTE Language Arts position. The parties stipulated that this is incorrect. Lawson holds a 0.6 FTE Fine Arts position and 0.4 FTE Language Arts position. As a result of this error, the district has not properly noticed respondent of its intent to reduce 0.2 FTE of the Language Arts position she occupies.

There are three Language Arts teachers senior to Lawson, Sheri Jensen, Mauro Staiano, and Heidi Schlesiger, who share the same seniority date and thus have equal rights to bump into the 0.2 FTE Language Arts position Lawson occupies. The district applied its tie-breaking criteria, and determined that Jensen is the most senior employee. Jensen is entitled to bump into the 0.2 FTE Language Art position retained by Lawson. The district has so notified Jensen.

7. Lori Gladding is a full-time tenured employee of the district with a seniority date of July 1, 1998. Her assignment is as a part-time teacher of Family Consumer Studies at the high school, and a part-time children's supervisor in the Teen Parent Program. In her words, her assignments are fluid: some semesters she teaches more high school classes, some semesters she spends more time supervising children. This semester, she is teaching three classes at the high school. The resolution called for a reduction of 0.8 FTE of Family Consumer Studies position, and 0.275 FTE Supervisor of Children position.



Gladding challenges her seniority date. She says that she worked as a children's supervisor on a full-time basis in 1997, and for that reason she should retain .8 FTE position as a children's supervisor. The district's records show that July 1, 1998, was the day Gladding signed her first probationary contract. The district will consider any other documentation that Gladding can provide it regarding her service in 1997, and will change her seniority date if that is established by her documentation. A change in her seniority date does not, however, alter Gladding's status in this proceeding. Gladding does not hold a 1.0 FTE position as a children's supervisor. She is therefore not entitled to be retained as she argues.

8. 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 8.0 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. Aaron Staack is a full-time Fine Arts teacher at Eureka High School. He has a seniority date of November 2, 1998. As a result of the 5.0 FTE reduction in Fine Arts positions or services, his 1.0 FTE position is being eliminated. Staack does not agree with the board's decision to reduce the Fine Arts program. 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, supra*, 76 Cal.App.3d at p. 808.)

10. No certificated employee junior in seniority to respondents is being retained by the district to perform services that respondents are certificated and competent to render.

11. The reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the pupils thereof.

### 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 2008-2009 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 2008-2009 school year because of the reduction of particular kinds of services.

DATED: May 2, 2008



MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings

## EUREKA CITY SCHOOLS DISTRICT

### Respondent List

|    |                            |    |                     |
|----|----------------------------|----|---------------------|
| 1  | Bailey, Mark               | 26 | Kuehn, Dustin       |
| 2  | Baugh, Rebecca             | 27 | Lancaster, Marianne |
| 3  | Blackwood, Mark            | 28 | Lawson, Adina       |
| 4  | Boyer, Lucia               | 29 | Levesque, Matthew   |
| 5  | Brittenburg, Pamela        | 30 | Magnuson, Shawn     |
| 6  | Bush, Jamie                | 31 | Merideth, Michelle  |
| 7  | Clower, Dana               | 32 | Perata, Peter       |
| 8  | Crandell, John             | 33 | Richards, Brooke    |
| 9  | DeAndreis, Mary            | 34 | Richards, Mike      |
| 10 | Forbes, Sheila             | 35 | Rohn, Alexander     |
| 11 | Franklin, Brooks           | 36 | Roscoe-Bragg, Lee   |
| 12 | Frey, Nancy                | 37 | Sanchez, Tera       |
| 13 | Gaiera, Heather            | 38 | Schlesiger, Heidi   |
| 14 | Gast, Jamie                | 39 | Smith, Brenda       |
| 15 | Gastineau-Ayoob, Gwen      | 40 | Smith, Darrin       |
| 16 | Gladding, Lori             | 41 | Staack, Aaron       |
| 17 | Gonzalez, Stacey           | 42 | Staiano, Mauro      |
| 18 | Guerrero-Frazier, Patricia | 43 | Stevens, David      |
| 19 | Holmes, Daniel             | 44 | Stone, Pam          |
| 20 | Houseworth, Edward         | 45 | Thornburgh, Joel    |
| 21 | Ireland, Danielle          | 46 | Torres, Margarita   |
| 22 | Jensen, Sheri              | 47 | Trump, Tanya        |
| 23 | Jordan, David              | 48 | Yang, Chi           |
| 24 | Kelly, Carrie              |    |                     |
| 25 | Kleckner, Kevin            |    |                     |