

BEFORE THE BOARD OF TRUSTEES
DEL NORTE COUNTY UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

ELIZABETH ASBILL, et al.

Respondents.

OAH No. 2010020885

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 20, 2010, in Crescent City, California.

Elizabeth B. Mori, of Fagen Friedman & Fulfrost LLP, represented the Del Norte County Unified School District.

Paul Hagen, of Bragg, Perlman, Russ, Stunich & Eads LLP, represented respondents Elizabeth Asbill, Carrie Crist, Hilary Fahning, Jennifer Garcia, Andrew Hooper, Linda Morin, Kendall Pickenpaugh and Diane Wiese, who were not present.

There was no appearance by or on behalf of respondent Terry Vance.

The matter was submitted for decision on April 20, 2010.

FACTUAL FINDINGS

1. Janice Moorehouse made and filed the accusation in her official capacity as Superintendent of the Del Norte County Unified School District.

2. Respondents Elizabeth Asbill, Carrie Crist, Hilary Fahning, Jennifer Garcia, Andrew Hooper, Linda Morin, Kendall Pickenpaugh, Terry Vance and Diane Wiese are certificated employees of the district.

3. On March 8, 2010, the district's Board of Trustees adopted Resolution No. 09-10-28 reducing or discontinuing particular kinds of services for the 2010-2011 school year and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action.

4. Before March 15, 2010, Superintendent Moorehouse gave written notice to 16 certificated employees, including the nine respondents, of the recommendation that their services will not be required for the 2010-2011 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents each filed a timely request for hearing to determine if there is cause for terminating their services for the 2010-2011 school year. (Six other employees did not file requests for hearing, and the district later rescinded the layoff notice for one employee who filed a request for hearing.) An accusation was served on each respondent, and each of them filed a timely notice of defense. All prehearing jurisdictional requirements have been met.

6. On March 8, 2010, the board took action to reduce or discontinue the following particular kinds of services for the 2010-2011 school year:

Elementary & Itinerant Services	
Elementary Teacher(s)	9.00 FTE ¹
Accelerated Learning Class Elementary Teacher	1.00 FTE
Certificated Librarian	0.50 FTE
Itinerant Physical Education Teacher(s)	1.00 FTE
Alternative Education Services	
Independent Study Teacher(s)	0.60 FTE
Elk Creek Teacher	0.20 FTE
Crescent Elk Middle School Services	
Mathematics Teacher(s)	1.00 FTE
English Teacher(s)	1.00 FTE
Elementary Teacher(s)	1.00 FTE
Del Norte High School Services	
English Teacher(s)	2.00 FTE
Social Science Teacher(s)	1.60 FTE
Mathematics Teacher(s)	1.20 FTE
Physical Education Teacher(s)	0.80 FTE
Career and Technical Education Teacher(s)	0.80 FTE
Leadership Activity Teacher(s)	0.40 FTE
Life Science Teacher(s)	0.40 FTE
Home Economics Teacher(s)	0.40 FTE
Yearbook Teacher(s)	0.20 FTE
World Languages Teacher(s)	0.20 FTE
Sunset High School Services	
Home Economics/Parenting Teacher	0.60 FTE
Life Science Teacher	0.40 FTE

¹ Full-time equivalent positions.

TOTAL:	24.30 FTE
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7. The district will be able to provide all mandated services next year. At the elementary level, physical education will be provided by classroom teachers rather than by a physical education teacher. At the middle school and high school levels, there will be sufficient physical education teachers left to provide the minimum number of minutes of physical education per pupil. Rather than employing a certificated librarian, the district will contract with the Humboldt County Office of Education for library services.²

8. Questions about when respondents Carrie Crist, Hilary Fahning, Andrew Hooper and Kendall Pickenpaugh were classified as permanent employees were resolved at the hearing. These respondents apparently were initially hired into either a categorically-funded position or into a position in the regular (district-funded) educational program held by an employee on assignment to a categorically-funded position. In either case, such employment would not be counted toward permanent status unless certain requirements were met. (Ed. Code, §§ 44909 & 44918.)

9. No certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

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

2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the 2010-2011 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

Notice may be given to respondents that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge

² Education Code section 18100 provides, in relevant part: "The governing board of each school district shall provide library services . . . by establishing and maintaining school libraries or by contractual arrangements with another public agency."

Office of Administrative Hearings