

BEFORE THE
GOVERNING BOARD OF THE
SOUTHERN HUMBOLDT UNIFIED SCHOOL DISTRICT

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

Respondent.

OAH No. 2008030998

PROPOSED DECISION

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

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, represented the Southern Humboldt Unified School District.

Paul Hagen, Esq., Bragg, Perlman, Russ, Stunich & Eads, LLP, represented respondent Patty Radenbaugh, who was present, and respondent Jonathan Dorr, who was not present.

The matter was submitted for decision on April 23, 2008.

FACTUAL FINDINGS

1. On March 6, 2008, the governing board of the Southern Humboldt Unified School District adopted Resolution No. 13-0708, in which the board resolved to reduce or discontinue the following particular kinds of services at the end of the 2007-2008 school year:

- 0.40 Elementary Principal Positions.
- 0.05 Junior/Senior High School Principal Positions.
- 0.60 Assistant Coordinator Special Education Position.
- 2.00 Elementary Teaching Positions.
- 0.50 Independent Study Teaching Position.
- 0.15 Title 1 Resource Teaching Position.
- 1.00 Resource Specialist Teaching Position.
- 0.50 Junior/Senior High School Math Teaching Position.
- 0.45 Junior/Senior High School Life Science Teaching Position.
- 0.30 Junior/Senior High School Physical Sciences Teaching Position.
- 1.00 Junior/Senior High School English Teaching Position.
- 0.50 Junior/Senior High School Social Science Teaching Position.

- 0.25 Junior/Senior High School Music Teaching Position.
- 0.30 Junior/Senior High School Drama Teaching Position.
- 0.15 Junior/Senior High School Special Day Class Adaptive P.E. Teaching Position.
- 0.15 Junior/Senior High School Senioritis Teaching Position.
- 0.15 Junior/Senior High School Natural Exploration Teaching Position.
- 0.30 Junior/Senior High School Physical Education Teaching Position.
- 0.15 Junior/Senior High School Publications Teaching Position.
- 0.15 Junior/Senior High School Social Living Teaching Position.
- 0.15 Junior/Senior High School Film Encounters Teaching Position.
- 0.45 Junior/Senior High School Keyboarding Teaching Position.
- 0.30 Junior/Senior High School Computer Literacy Teaching Position.
- 0.15 Junior/Senior High School Woodshop Teaching Position.
- 0.30 Junior/Senior High School Regional Occupation Program Auto Shop Teaching Position.
- 0.45 Junior/Senior High School Regional Occupation Program Woodshop Teaching Position.
- 0.30 Junior/Senior High School Regional Occupation Program Construction Trade Teaching Position.
- 0.60 Junior/Senior High School Regional Occupation Program Metal Shop Teaching Position.
- 0.15 Junior/Senior High School Regional Occupation Program Computer Assisted Drafting Teaching Position.
- 0.15 Junior/Senior High School Regional Occupation Program Multi-Media Teaching Position.
- 0.45 Junior/Senior High School Administrative Intern Position.
- 1.00 School Nurse Position.

The resolution directed the district's superintendent, or his designee, to initiate procedures to not reemploy the equivalent of 13.50 full-time equivalent certificated employees of the district pursuant to Education Code sections 44949 and 44955.

2. On March 10, 2008, District Superintendent Clifton Anderson sent notice to 86 certificated employees of his recommendation that their services would be reduced or discontinued for the 2008-2009 school year. Eleven of those employees requested a hearing to determine if there was cause to not re-employ them. Five of those employees did not file a notice of defense. Prior to hearing, the district withdrew accusations against four employees, Melinda Bailey, Kyri Cox, Stephen Jones and Aletta Sauer. Two employees – Jonathan Dorr and Patricia Radenbaugh – are the remaining respondents in this proceeding.

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

4. The board's decision to reduce 13.5 full-time equivalent positions was based on a combination of declining enrollment and an anticipated ten percent loss of revenue from the State of California for the 2008-2009 school year.

5. Respondent Jonathan Dorr holds a 1.0 full-time equivalent high school teaching position. On the district's seniority list his credential is listed as "Internship Single Subject - Industrial & Tech. Ed.". Respondent is a first year probationary teacher and is the most junior of all district employees.

6. Respondent Patricia Radenbaugh, R.N., holds a .5 full-time equivalent school nurse position. Radenbaugh has a seniority date of August 26, 2005. She is junior to Robin Correll, R.N., who holds a .85 full-time equivalent school nurse position. Under the resolution, Correll will be reduced to a .35 school nurse position for the 2008-2009 school year. Respondent Radenbaugh's .5 school nurse position is eliminated.

7. The district is providing nursing services through its two school nurses as well as by contracting for nursing services (vision, hearing and scoliosis screening) with the Humboldt County Office of Education. For the school year 2008-2009, the district will provide nursing services through Correll and by again contracting with the Humboldt County Office of Education. Superintendent Anderson has consulted with his Director of Special Education. He believes that even with the reduction of nursing services, the district will be able to provide all nursing services mandated for special education students. He also has determined that the district will be able to provide all required vision, hearing, and scoliosis screening. (Ed. Code, §§ 49452, 49452.5.) In the event that the district cannot provide sufficient nursing services, it will increase Correll's position.

8. Radenbaugh argues that the district will not be able to provide all mandated nursing services for 2008-2009 school year. She argues that she and Correll are already stretched to the limit in covering the district's schools, and she feels compromised in the services that she is providing to students. She believes that the needs of the district's students compel the continuance of her nursing services.

The evidence establishes that many of the nursing services currently being offered by the district to its students are not mandated services. It was not established that mandated services are being reduced below the level required by law by reason of the .5 FTE reduction in school nursing services. With respect to the screening services, it is not required that they be provided by a certificated school nurse. Finally, a particular kind of service of an employee may be eliminated even if the service continues to be performed or provided by the district in a different manner. (See e.g., *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812; accord *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1586-1587; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 639-640.)

9. 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.

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

LEGAL CONCLUSIONS

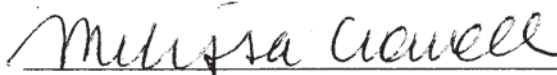
1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required by law.

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 not be required 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 Jonathan Dorr and Patricia Radenbaugh that their services will not be required for the 2008-2009 school year because of the reduction of particular kinds of services.

DATED: 4/30/08



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings