

BEFORE THE
GOVERNING BOARD OF THE
FORTUNA UNION HIGH SCHOOL DISTRICT
COUNTY OF HUMBOLDT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

HEATHER BROWN, SARA DIXON,
BRUCE JOHNSON, KIM PETERSON
AND GLEN SENESTRARO,

Respondents.

OAH No. N2004030657

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 29, 2004, in Eureka, California.

Richard Smith, Esq., represented the Fortuna Union High School District.

Anne M. Randolph, Esq., represented respondents, who were also present.

The case was submitted for decision on April 29, 2004.¹

FACTUAL FINDINGS

1. Dennis J. Hanson is the Superintendent for the Fortuna Union High School District (District). He made and filed the Accusation in his official capacity as such public officer, and not otherwise.

2. Respondents Heather Brown, Sara Dixon, Bruce Johnson, Kim Peterson and Glen Senestraro have been employed by the District as certificated employees.

3. In March 2004, the Superintendent gave the Board of Trustees of the District (Governing Board) written notice, pursuant to Education Code sections 44949 and 44955, of his recommendation that notice be given to respondents by the Governing Board that their

¹ By letter dated April 30, 2004, respondent Kim Peterson submitted documents from his teacher file. These were marked as Exhibit F for identification only.

services would not be required for the ensuing 2004-2005 school year. Such letter stated the reasons for such recommendation.

4. Respondents duly requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.² Accusations were served on respondents and they filed timely Notices of Defense. All pre-hearing jurisdictional requirements were satisfied.

5. On February 24, 2004, the Governing Board adopted a resolution (Resolution No. 366) reflecting its determination that it was necessary to reduce or eliminate certain particular kinds of services. The resolution provided that the following particular kinds of certificated services would be reduced/eliminated for the 2004-2005 school year:

- | | |
|-------------------------------------------------------------|-------------|
| - The Century Hall Program will be eliminated | 12 sections |
| - The Metal Shop/Small Engines Program will be eliminated | 5 sections |
| - The PAR Program will be eliminated | 1 section |
| - The Curriculum Coordinator Program will be eliminated | 1 section |
| - The Art Program will be reduced by | 2 sections |
| - The Music Program will be reduced by | 1 section |
| - The English Program will be reduced by | 2 sections |
| - The Foreign Language Program will be reduced by | 1 section |
| - The Social Science Program will be reduced by | 1 section |
| - The Math Program will be reduced by | 6 sections |
| - The Science Program will be reduced by | 5 sections |
| - The Physical Education Program will be reduced by | 1 section |
| - The Independent Study Program will be reduced by | 1 section |
| - The Crisis and Drug Counseling Program will be reduced by | 6 sections |
| - The Theater Arts Classes will be reduced by | 2 sections |
| - East High School Programs will be reduced by | 2 sections |

The proposed reductions of 49 sections constitute a reduction of 9.8 full-time equivalent positions for the ensuing 2004-2005 school year. As of the date of hearing the District had reduced the number of employees identified for layoff to five. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

6. The proposed reductions were prompted by anticipated loss of revenue for the 2004-2005 school year.

7. Bruce Johnson. Respondent Johnson is assigned to Fortuna High School where he teaches four sections of wood shop and one section of music (guitar). He holds a clear

² Additional teachers submitted requests for hearings but their individual cases were resolved prior to hearing. These teachers include Laurel Farnham, Jennifer Femenella, Rachel Heavilin, Matthew Kelley, Errin Odell, Wayne Thompson and Gini Wozny.

single subject credential in industrial and technology education and a supplementary credential in music. Mr. Johnson has taught a variety of industrial arts subjects both within and outside the district. He has taught independent study in all core subjects. He received a Bachelor of Science degree from the University of New Mexico and at one time minored in art. Mr. Johnson taught at the court and community schools through the Humboldt County Office of Education. This was ten to eleven years ago and it involved work with at risk students. He taught independent study and art in that setting. Mr. Johnson was licensed in New Mexico as a building contractor in the early 1980's. His date of first paid service with the District was August 21, 1996. As a result of the elimination of five sections of Metal Shop/Small Engines Program a senior teacher will be bumping into Mr. Johnson's four wood shop sections. The one section of music that he is teaching is being eliminated.

Mr. Johnson contends that an employee junior to him, Dan Tangney, is being retained to teach a class that he is credentialed and competent to teach. Dan Tangney is assigned to East High School where he teaches a combined art and industrial arts class. His date of first paid service with the District was March 3, 1997, making him junior to Mr. Johnson. The identical situation arose during the District's layoff hearing for the 2000-2001 school year.³ The District demonstrated at that time that it had a specific need for personnel to teach a specific course at East High and that Dan Tangney had special training and experience necessary to teach that course. Mr. Johnson points to no changes in his credentials or competency to teach since this 2000 decision apart from his having four more years experience teaching wood shop at Fortuna High School.

East High School is a special situation in that it consists of a single large classroom that all enrolled students attend and where each receives individual instruction through the course of the day. As a result of that format, teachers at East High must be capable and "certificated" to teach a variety of subjects to their students. The District earlier determined that Dan Tangney had special training and experience to teach both art and industrial arts simultaneously. He has offered instruction in a variety of art subjects including digital photography, ceramics, murals, painting, drawing and other art projects. Mr. Johnson has some background in art but has no demonstrated competence to teach the art portion of this particular course. The District cannot afford to have two separate teachers teach art and industrial arts simultaneously at East High School.

For these reasons the District has reasonably determined that Mr. Johnson is not competent to teach a combination of industrial arts and art in the setting of East High School.

8. Glen Senestraro. Respondent Senestraro is assigned to Fortuna High School where he teaches five sections in mathematics. His first date of paid service with the District was August 25, 1998. Mr. Senestraro holds a clear single subject credential in mathematics. He has a Bachelor of Science degree in mathematics. The District proposes to reduce his position to two math sections.

³ OAH Case No. 2000030360. Upheld on appeal to the Humboldt County Superior Court (Super. Ct. No. CV000435) and the Court of Appeal, First Appellate District, Division Four (No. A093854) on September 26, 2001.

Mr. Senestraro contends that he is senior to another math teacher, Eric Helms, who is being retained by the District. Eric Helms was hired by the District on January 20, 1998, in a temporary position to cover two periods per day for another teacher, Pam Barkdull, who was transferred to another assignment at that time.⁴ Richard Tomasini was the principal at Fortuna High School who hired Eric Helms. He notes that the assignment was for Spring 1998 only and that the position was intended to terminate when the semester ended. It did so. When two new mathematic positions opened for the following school year, Eric Helms and respondent Senestraro applied and they were both hired. The two math positions were publicly advertised and Eric Helms and respondent Senestraro went through the normal hiring and interview process. Mr. Tomasini notes that if Eric Helms had been a "continuing employee" he would not have had to interview for the position. It appears that respondent Senestraro and Eric Helms should have the same District date of hire, August 25, 1998. No tie-breaking criteria were applied to the two because January 29, 1998, was used as Eric Helms' date of first paid service with the District.

It was established that Eric Helms and respondent Senestraro have the same first date of paid service. The District erred by failing to establish or apply criteria to determine an order of termination between them prior to issuing a layoff notice to respondent Senestraro. Because of this error the layoff notice to him should be rescinded.

9. Heather Brown's Assignment. Respondent Brown is assigned to East High School where she teaches five sections math/science class in a self-contained environment. The District proposes to reduce her position to four sections. She is a probationary employee whose first date of paid service was August 19, 2003. She holds a professional clear single subject credential in biological sciences. She has a Bachelor of Science degree in marine biology. Respondents Kim Peterson and Sara Dixon are senior to Respondent Brown and contend that they are certificated and competent to bump into her position at East High School.⁵

The District Superintendent, Dennis Hanson, also serves as principal at East High School. He notes that students at East High School work with the same teacher on a variety of subjects at the same time. Students typically select a study subject for a set period of time – sometimes for hours, other times for days or even weeks. Respondent Brown teaches life science, physical science, mathematics through algebra and economics. Because teachers at East High are expected to teach multiple subjects at the same time it is not feasible to split the assignments by subject matter between teachers. Mr. Hanson finds that respondent

⁴ Pam Barkdull left her assignment to begin working on the school's Century Hall program. She was not on leave of absence. The District contends that because Eric Helms was not hired to fill a position of a regularly employed person "absent from service" he should be characterized as a probationary employee from January 20, 1998. The clear and express intent of the District was to hire Eric Helms as a temporary employee. His position terminated at semester's end, a de facto non-reelection, and a wholly new hiring process was followed prior to him being hired into the new math position on August 25, 1998.

⁵ Respondent Glen Senestraro makes a similar contention but given the determination of his rights with respect to Eric Helms it is not necessary to include him in this discussion.

Brown has demonstrated the ability to teach multiple subjects at East High School and that based upon his review of District personnel files no respondents senior to her were retained who are certificated and competent to render the service she provides. He also notes that respondent Brown holds a CLAD certificate, something he believes is particularly useful at East High School where he estimates there are twenty-two Hispanic, one Southeast Asian and seven English learners on campus. This was one of the reasons why he opted to retain her. Respondent Brown is fluent in Spanish and she is able to connect well with students.

Respondent Kim Peterson's date of first paid service was August 24, 1999. He is currently assigned to Fortuna High School where he teaches mathematics full time. Proposed reductions in the Century Hall and Math Programs will result in a more senior teacher, Pam Barkdull, bumping into his position. Respondent Peterson holds a clear single subject credential in mathematics and a clear single subject credential in chemistry. He is enrolled in the CLAD Certificate Program and expects to complete it later this summer. He is also pursuing graduate studies involving mathematical modeling. Mr. Hanson does not believe that respondent Peterson possesses the necessary experience or competence to teach the science portion of the East High School assignment. He notes that chemistry hardly fits the setting at East High School.

Respondent Sara Dixon's date of first paid service was August 20, 2002. She currently teaches five sections of science at Fortuna High School.⁶ She holds a professional clear single subject credential in life sciences and has a Bachelor of Science degree in biology. Someone more senior to her will be bumping into her current position. She does not hold a math credential but has some experience teaching math in a junior high level remedial math program. She is enrolled in a CLAD Certificate Program and is expected to receive her certificate by month's end.

10. East High School is structured very differently from more traditional settings such as Fortuna High School. Some of the toughest and most at risk students are enrolled there. Teachers assigned to East High School must possess, in addition to necessary certifications, special training and experience to teach multiple subjects in a self-contained venue. Mr. Hanson is both District Superintendent and East High School Principal. He is well positioned to evaluate whether teachers possess the special training and experience necessary to provide classroom instruction in such a setting. He does not believe that respondent Peterson's chemistry and other science background qualify him to provide the type of hands on outdoor education life science curriculum now being used. In contrast, respondent Brown has a marine biology background with prior independent study outdoor and teaching experience in the Florida Keys and Monterey. She developed a curriculum based on these experiences.

⁶ Until recently she taught three science sections and proposed layoffs related only to these three sections. She picked up two additional sections within a week of this hearing.

Similarly, Mr. Hanson does not believe that Ms. Dixon possesses requisite experience to teach a combination science, math and economics curriculum based on a review of her current assignment and records on file with the District.

11. The District Superintendent has reasonably determined that respondents Kim Peterson and Sara Dixon do not possess the special training and experience necessary to teach the course taught by respondent Brown at East High School.

12. It was further established that the reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services was neither arbitrary nor capricious, but rather a proper exercise of discretion of the Governing Board.

13. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondents are certificated, competent and legally entitled to render.

LEGAL CONCLUSIONS

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

2. The accusation against respondent Glen Senestraro is dismissed pursuant to Finding 8. Respondent Glen Senestraro and Eric Helms have the same seniority date. Under Education Code section 44955 the District must develop and apply tie-breaking criteria to determine the order of termination between employees with the same date of hire. It has not done so here.

3. The services of no permanent employee may be terminated while any probationary employee, or other employee with less seniority, is retained to render a service which the permanent employee is certificated and competent to render. (Ed. Code, §44955, subd. (b).) Under Education Code section 44955, subdivision (d), the District may deviate from terminating employees in order of seniority when it has demonstrated a specific need for personnel to teach a specific course or course of study, and that the retained employee has the requisite special training and experience necessary to do so. (See *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 715; *Moreland Teachers Assn. v. Kurze* (1979) 89 Cal.App.3d 648, 655.)

The District has reasonably determined, as it had done previously, that respondent Bruce Johnson is not competent to teach the combination of industrial arts and art in the setting of East High School currently taught by Dan Tangney. (Finding 7.) Similarly, the District reasonably determined that respondents Kim Peterson and Sara Dixon do not possess the special training and experience necessary to teach the course currently taught

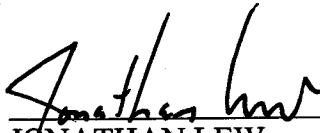
by respondent Heather Brown at East High School. (Findings 9 through 11.) Respondents Bruce Johnson, Kim Peterson and Sara Dixon are not entitled to bump into positions held by any other teachers. The District may properly retain the services of Dan Tangney and Heather Brown to provide services at East High School.

4. Cause exists to reduce the number of certificated employees of the Fortuna Union High School District due to the reduction and discontinuation of particular kinds of services. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusation against respondent Glen Senestraro is dismissed.
2. Notice shall be given to remaining respondents and teachers before May 15, 2004, that their services will not be required for the 2004-2005 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 4, 2004



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings