

BEFORE THE  
GOVERNING BOARD OF THE  
MCKINLEYVILLE UNION SCHOOL DISTRICT

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

OAH No. 2008030931

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, 2008.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, represented the McKinleyville Union School District.

Paul Hagen, Esq., Bragg, Perlman, Russ, Stunich & Eads, LLP, represented respondents Lisa Cardenas, Adriana Contreras, and Jennifer Nichols.

The matter was submitted on April 21, 2008.

**FACTUAL FINDINGS**

1. On March 12, 2008, the governing board of the McKinleyville Union School District adopted Resolution No. 07-08-09, in which the board resolved to reduce or discontinue particular kinds of services at the end of the 2007-2008 school year. The following particular kinds of services are to be eliminated:

- 0.50 Student Services Position.
- 6.28 Self-Contained Teaching Position.
- 0.50 Intervention Services Position.
- 0.31 Intervention Coordinator Position.
- 0.25 Resource Teaching Position.
- 0.20 District Special Education Coordinator Position.
- 1.00 Music Teaching Position.
- 0.67 Art Teaching Position.
- 0.50 Science Teaching Position.
- 0.60 Counseling Position.
- 0.20 Nursing Position.
- 1.00 Opportunity Class Teaching Position.

The resolution directed the district's superintendent, or her designee, to initiate procedures to not reemploy the equivalent of 12.01 full-time equivalent certificated employees of the district pursuant to Education Code sections 44949 and 44955.

2. On March 13, 2008, District Superintendent Dena McCullough sent notice to 16 certificated employees of her recommendation that their services would be reduced or discontinued for the 2008-2009 school year. Four of those employees requested a hearing to determine if there was cause to not re-employ them. One of the employees withdrew her request for a hearing and the accusation against her was withdrawn. Three employees – Lisa Cardenas, Adriana Contreras, and Jennifer Nichols – 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 12.01 full-time equivalent positions was based on a combination of declining enrollment and an anticipated loss of revenue of \$880,000 from the State of California for the 2008-2009 school year.

5. In determining which certificated employees were to be given notice, the district gave notice in reverse order of seniority. There were no teachers with the same seniority date, and thus there was no application of tie-breaking criteria. Two employees were skipped; one is currently assigned to an administrative position, and one is a speech therapist.

6. Respondents are full-time permanent employees of the district. Each respondent is an elementary classroom teacher at Morris School. For the 2007-2008 school year, they were each assigned to teach in a Spanish immersion classroom.

7. No respondent is certificated or competent to be a speech therapist. 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.

8. Respondents strongly believe in the efficacy of the district's Spanish immersion program, and based on the projected numbers of students entering the district and remaining in the district, they believe that the district will not be able to properly staff the program if they are non-reemployed.

The board has not decided if it will continue to participate in the classroom reduction program for 2008-2009 school year. The district's budget advisory committee has recommended to the board that the district continue to participate in the class size reduction program. The board has not yet acted on that recommendation.

If the board elects to discontinue participating in the class size reduction program, the district will restructure the Spanish immersion program at Morris School utilizing its



remaining teachers. If the board elects to continue to participate in the class size reduction program, the district will need additional teachers and will re-hire respondents in seniority order.

The decision to reduce particular kinds of services is a matter within the discretion of the board. In light of the financial uncertainties facing the district, the board acted in an attempt to allow for maximum flexibility in determining staffing needs for the ensuing school year in view of its available resources and the needs of its students. As such, it has not been shown that the board's decision was either arbitrary or capricious. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

9. 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 Lisa Cardenas, Adriana Contreras, and Jennifer Nichols, 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 Lisa Cardenas, Adriana Contreras, and Jennifer Nichols 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