

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

In the Matter of the Accusation Against:

MICHELLE CHAFFIN, SARA DIXON,
ALICE OLIPHANT, BRETT ROSLOSNIK,
CANDICE RUSS, and JULIE SLATER,

Respondents.

OAH No. 2011031521

PROPOSED DECISION

Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2011, in Eureka, California.

Margaret M. Merchat, General Counsel, School and College Legal Services of California, 5350 Skylane Boulevard, Santa Rosa, California 95403, represented Glen Senestraro, Superintendent, Fortuna Union High School District.

Paul Hagen, Attorney at Law, of Bragg, Perlman, Russ, Stunich & Eads, LLP, 1036 Fifth Street, Suite E, Eureka, California 95501, represented respondents Michelle Chaffin, Sara Dixon, Alice Oliphant, Brett Roslosnik, Candice Russ and Julie Slater. Only respondents Chaffin, Roslosnik and Slater appeared at the hearing of this matter.

On April 14, 2011, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On March 23, 2011, in his official capacity, Glen Senestraro, Superintendent for the Fortuna Union High School District (the superintendent), made and filed the respective accusations regarding respondents Michelle Chaffin, Sara Dixon, Alice Oliphant, Brett Roslosnik, Candice Russ, and Julie Slater.

2. Respondents are certificated employees of the Fortuna Union High School District, who contest the instant proposed teacher layoff action. And the respondents are all tenured (permanent) teachers with the District.

3. On March 8, 2011, the superintendent presented the District's Board of Trustees a recommendation that the District give notice that particular kinds of services

(PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2011-2012).

4. On March 8, 2011, the District's Board of Trustees adopted Resolution No. 6. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to eliminate, no later than the beginning of the 2011-2012 school year, particular kinds of services in the form of nineteen point eight (19.8) full-time equivalent (FTE) certificated positions as well as 20 hours per week Adult Education (ESL) and 20 hours per week Adult Education (CCC) positions as follows:

2.8 FTE	English Teacher positions;
2.4 FTE	Math Teacher positions;
0.4 FTE	Biology Teacher position;
0.2 FTE	Chemistry Teacher position;
0.52 FTE	Anatomy Teacher position;
0.2 FTE	Physical Science Teacher position;
2.8 FTE	Social Science Teacher positions;
1.6 FTE	Resource Teacher positions;
1.2 FTE	Physical Education Teacher positions;
1.0 FTE	Counseling/Pupil Services positions;
0.6 FTE	Art Teacher position;
0.6 FTE	Music Teacher position;
0.4 FTE	Agriculture Teacher position;
0.6 FTE	Spanish Teacher position;
0.4 FTE	Wood/Metal Shop Teacher position;
1.2 FTE	Strongs Creek CDS Teacher positions;
20 hrs./wk.	Adult Ed. Teacher position (CCC) position;
20 hrs./wk	Adult Ed. Teacher position (ESL) position;
1.0 FTE	Academy SSC (Core Support) Teacher position;
1.0 FTE	Director of Alternative Education position;
0.2 FTE	WASC/Testing Coordinator;
1.0 FTE	Continuation High School Teacher.

5. The written preliminary notice to each respondent from the District's superintendent states legally sufficient reasons of the District Board's determination to eliminate or reduce services provided by respondents.

6 Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

7. The District's superintendent timely served upon each respondent the Accusation, dated March 23, 2002, and related documents. Each respondent filed a timely notice of defense.

8. All pre-hearing jurisdictional requirements were met.

9. At the hearing of this matter, the District rescinded the layoff notice and withdrew the resultant accusation against Respondent Alice Oliphant. By its withdrawal of the accusation and rescission of the layoff action against that respondent, the District will retain the services of Alice Oliphant.

Respondents' Contentions

10. Respondent Michelle Chaffin contends that the District has miscalculated the number of special resource teachers that will be required to teach special education classes for the coming school year. Also respondent Chaffin avers that with the reduction of special resource teachers for the ensuing year, high school students impaired by developmental disabilities and other learning impairments will not be appropriately educated because of an anticipated large number of incoming freshmen with Individual Education Plans (IEP's) that will lead to existing teachers monitoring exceedingly large classrooms.

But respondent Chaffin's contentions are without merit.

And respondent Chaffin provided no competent evidence that the District has retained any teacher junior to her for a position which Ms. Chaffin possesses a credential and is currently competent to teach. Nor did respondent Chaffin establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teaching position with the District. Moreover, respondent Chaffin offered no competent evidence regarding the precise number of special education students, that is pupils with prescribed IEP's, who will enroll as incoming freshmen with the District. And the superintendent persuasively asserted that should the District find that the incoming number of freshmen students, who have IEP's, will cause the existing teachers to have class sizes that approach the statutorily prescribed class size then special resource teachers who have received layoff notices will be implored to return to the district.

11. Other than respondent Michelle Chaffin, no other respondent offered evidence, under oath, at the hearing of this matter. Nor did respondents call any expert witness to offer evidence in support of the contentions argued by respondent Chaffin that would affect the layoff action.

12. Respondents offered no argument or presentation of evidence that suggests the District's action is improper insofar as the prospective elimination of 19.8 FTE positions as well as 20 hour per week for teacher positions in Adult Education (CCC) and 20 hour per week for teacher positions in Adult Education (ESL). Respondents did not present evidence that the corresponding layoff of credentialed employees, relative to the elimination of the subject FTE positions of the District, is contrary to law and unnecessary.

Acts by the District's Superintendent and the Assistant Superintendent

13. The superintendent offered credible and persuasive evidence at the hearing of this matter.

The prospective elimination of particular kinds of services for the 2011-2012 school year directly results from a prospective shortfall in money for the District's budget.

In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the superintendent reasonably decided that certain certificated positions be eliminated due to a shortfall of revenue.

The superintendent in his official capacity was reasonable in the exercise of discretion in executing the procedures associated with lay-offs required by the subject resolution.

With regard to the mandated service that are subject to elimination, the District will have sufficient teaching resources to meet the state required level for the provision of service for those reductions for the ensuing year.

Ultimate Findings

14. No competent and credible evidence establishes that as a result of the proposed elimination of the full-time equivalent positions respectively held by respondents, the District will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

15. The decision of the District's Board to eliminate or discontinue a total of 19.8 FTE positions as well as teacher positions in Adult Education as specified in Resolution 6, including the positions held by each respondent, was neither arbitrary, inexact nor capricious. Rather, the District's determination was within the proper exercise of the discretion bestowed by law upon the District.

16. The Board's proposed elimination or discontinuation of the subject full-time equivalent positions, including the positions respectively held by respondents, for the ensuing school year, is related to the welfare of the District and its overall student population.

17. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. At the direction of the Board, the superintendent lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 8.

3. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) The District stipulates to withdraw the Accusation against the certificated employee named in Factual Finding 9. The stipulation is binding on the parties.

4. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non reemployment of respondents.

5. Pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 13 through 15 and 17.

6. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 16.

RECOMMENDED ORDER

1. The Accusation served on respondents Michelle Chaffin, Sara Dixon, Brett Roslosnik, Candice Russ, and Julie Slater is sustained, except that the accusation is dismissed as to respondent Alice Oliphant.

2. Final notice may be given to respondents Michelle Chaffin, Sara Dixon, Brett Roslosnik, and Julie Slater, that their respective services will not be required for the 2011-2012 school year because of the reduction or discontinuance of the particular kinds of services by the Fortuna Union High School District. And the district may reduce the 0.6 FTE Spanish position held by respondent Candice Russ.

DATED: April 25, 2011

PERRY O. JOHNSON
Administrative Law Judge