

BEFORE THE  
BOARD OF TRUSTEES OF THE  
FORTUNA UNION HIGH SCHOOL DISTRICT

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

OAH No. 2008030932

**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 Consortium, represented the Fortuna Union High School District.

Paul Hagen, Esq., Bragg, Perlman, Russ, Stunich & Eads, LLP, represented all respondents, with the exception of Heather Brown, Sara Dixon and Bruce Johnson. All respondents represented by Mr. Hagen were present. Heather Brown was present. Neither Sara Dixon nor Bruce Johnson appeared at hearing.

The matter was submitted for decision on April 21, 2008.

**FACTUAL FINDINGS**

1. On March 11, 2008, the Board of Trustees of the Fortuna Union High School District adopted Resolution No. 7, in which the board resolved to reduce or discontinue the following particular kinds of services at the end of the 2007-2008 school year:

0.20	Music
3.00	Science
3.00	Math
4.40	English
3.60	Social Science
1.40	PE
1.20	Community Day School
1.00	Spanish
0.40	Industrial Technology

The resolution directed the district's superintendent, or his designee, to initiate procedures to not reemploy the equivalent of 18.20 full-time equivalent certificated employees of the district pursuant to Education Code sections 44949 and 44955.

2. On March 12, 2008, District Superintendent Dave Moss sent notice to 23 certificated employees of his recommendation that their services would be reduced or discontinued for the 2008-2009 school year. The notice was withdrawn for one employee on March 14, 2008. Fifteen of the remaining employees requested a hearing to determine if there was cause to not re-employ them. Prior to hearing, the district withdrew accusations against two additional employees, Jennifer Garcia Jauregui and Jonathan Souza. The remaining respondents in this proceeding are Heather Brown, Elizabeth Buchanan, Michael Chatfield, Amy Conley-Samuelson, Gregory Diaz, Sara Dixon, Kathy Harrison, Jennifer Hayes, Rachel Heavilin, Bruce Johnson, Elizabeth McHugh, and Tara Nuth.

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

4. The board's decision to reduce 18.20 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. All possible avenues other than layoffs were considered, but the district was unable to meet projected budgetary reductions without reducing certificated staff. Superintendent Moss planned for the worst case scenario, in order to provide the board and the district with the most flexibility in staffing for the 2008-2009 school year. The board has yet to make decisions regarding continued participation in class-size reduction and the manner in which services will be delivered. The number of students enrolling the district for the school year is still in flux. The district has not made class assignments for the 2008-2009 school year. Nevertheless, Superintendent Moss is satisfied that the district has retained a sufficient number of certificated staff to meet the district's projected staffing needs for the 2008-2009 school year.

5. Teachers were given notices based on seniority. Although tie-breaking criteria were developed, there was no need to apply the criteria in order to determine seniority order. Respondent Bruce Johnson was noticed of a partial (.4 FTE) reduction in his full-time Industrial Technology position, and he therefore will retain a .6 FTE position. 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.

6. Gregory Ryan Diaz is a full-time English teacher. Eric Helms (who is not a respondent) is a full-time Math teacher. Heather Brown is a full-time Math and Science teacher. They each argue that the district has not retained a sufficient number of teachers in order to meet the number of sections that will be required in 2007-2008 school year, based on their projection of enrollment. Diaz also argues that increasing class sizes will cause the district to be in violation of building and fire codes.



The teachers' concerns are, at this time, speculative. The district believes it has retained a sufficient number of teachers in order to meet the needs of the district, based on its projected enrollment. The enrollment number, however, is still in a state of flux. Many additional decisions will need to be made by the board and the district before an accurate assessment of staffing needs can be made. Because of the financial uncertainties of the district, it cannot be said that the board's decision to reduce or eliminate services is either arbitrary or capricious. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

7. 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.

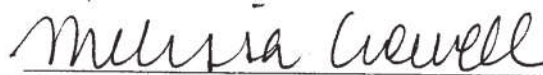
2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to all respondents, except Bruce Johnson, that their services will not be required for the 2008-2009 school year. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

3. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Bruce Johnson that .4 FTE of his services will not be required for the 2008-2008 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 Heather Brown, Elizabeth Buchanan, Michael Chatfield, Amy Conley-Samuelson, Gregory Diaz, Sara Dixon, Kathy Harrison, Jennifer Hayes, Rachel Heavilin, Elizabeth McHugh, Bruce Johnson and Tara Nuth that their services will be reduced or eliminated for the 2008-2009 school year because of the reduction of particular kinds of services.

DATED: May 1, 2008



MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings

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**CORRECTED 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.

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

4. The board's decision to reduce 18.20 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. All possible avenues other than layoffs were considered, but the district was unable to meet projected budgetary reductions without reducing certificated staff. Superintendent Moss planned for the worst case scenario, in order to provide the board and the district with the most flexibility in staffing for the 2008-2009 school year. The board has yet to make decisions regarding continued participation in class-size reduction and the manner in which services will be delivered. The number of students enrolling the district for the school year is still in flux. The district has not made class assignments for the 2008-2009 school year. Nevertheless, Superintendent Moss is satisfied that the district has retained a sufficient number of certificated staff to meet the district's projected staffing needs for the 2008-2009 school year.

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7. 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 all respondents, except Bruce Johnson, 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.

3. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Bruce Johnson that .4 FTE of his services will not be required for the 2008-2008 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 Rachel Aldrich, Heather Brown, Elizabeth Buchanan, Michael Chatfield, Amy Conley-Samuels, Gregory Diaz, Sara Dixon, Kathy Harrison, Jennifer Hayes, Rachel Heavilin, Elizabeth McHugh, Bruce Johnson and Tara Nuth that their services will be reduced or eliminated for the 2008-2009 school year because of the reduction of particular kinds of services.

DATED: May 6, 2008



MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings