

BEFORE THE  
AMADOR COUNTY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of the Accusation (Reduction  
in Force) against:

Mary Reed

OAH No. 2008040041

Respondent.

**PROPOSED DECISION**

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 5, 2008, in Sutter Creek, California.

Joseph C. Kinkade, Attorney at Law, School and College Legal Services of California represented the Amador County School District.

Thomas J. Driscoll, Jr., Attorney at Law, represented Mary Reed.

The matter was submitted on May 5, 2008.

**FACTUAL FINDINGS and DISCUSSION**

1. Michael Carey, Ed.D. is the Superintendent of the Amador County School District (District). Rosalie McProuty is the District Executive Director of Personnel. Their actions and the actions of the Amador County Unified School District Board Of Trustees (Board) were taken in their official capacities.

2. On March 10, 2008, the District served on Ms. Reed a written notice that it had been recommended that notice be given to her pursuant to Education Code sections 44949 and 44955 that her services would not be required for the next school year. The written notice set forth the reasons for the recommendation and noted that the Board had passed Resolutions reducing the certificated staff by 12.31 full-time equivalent (FTE) positions. Ms. Reed timely requested in writing a hearing to determine if there is cause for not reemploying her for the ensuing school year.

3. The Superintendent made and filed an Accusation against Ms. Reed on April 8, 2008. The Accusation with required accompanying documents and a blank Notice of Defense were timely served. Ms. Reed timely filed a Notice of Defense.

4. Ms. Reed is a permanent certificated employee of the District. She was employed by the District on January 4, 1994. She is a registered nurse and holds a pupil services credential in nursing. She is one of three school nurses providing registered nursing services to the District. She provides 0.8 FTE in nursing services to the District.

5. Prior to March 5, 2008, the Board was given notice of the Superintendent's recommendations that certificated and other employees holding 12.31 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation. The reason for the proposed reduction was the budget shortfall anticipated in the 2008-2009 school year and the need to balance the budget for the welfare of students.

6. On March 5, 2008, at a regular meeting of the Board, the Board adopted Resolution No. 07/2008-18, providing for the reduction and discontinuance of 0.8 FTE School Nurse Position.<sup>1</sup> The Board resolved that the District Superintendent or his designees initiate and pursue procedures necessary to not reemploy 0.8 FTE certificated employees of the District due to the reduction in nursing services.

7. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the District's records.

8. Dr. Carey and Ms. McProuty and other District employees were responsible for implementation of the technical aspects of the layoff. They identified two certificated employees of the District who provided nursing services. Ms. Reed and Patricia Knoblauch hold the Professional Clear School Nurse Services Credential. Ms. Reed's seniority date is January 4, 1994. Ms. Knoblauch's seniority date is November 1, 1983. Ms. Reed is the least senior. Ms. Reed does not hold credentials which would authorize her to provide teaching or administrative services to the District.

9. The District's decision to reduce nursing services was based upon the District's determination that it could comply with all statutory mandates with a reduced nursing staff. After reduction of the nursing staff by 0.80 FTE, the District will have 0.8 FTE nursing services from Ms. Knoblauch and 0.8 nursing services from an employee of the County Office of Education, Gretchen Carlson. As Ms Carlson is not a District employee, she was not considered for layoff.

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<sup>1</sup> The District adopted a separate resolution for each service it reduced. The remaining resolutions are not at issue here.



10. Ms. Reed contends that the District's reduction of nursing services is not in the best interests of the students, and that the District is reducing nursing services to the point that mandated programs will be affected. She offered evidence of the numerous State mandated services the nurses provide, including vision and hearing exams, scoliosis screening, immunizations, serving as members of individual education plan (IEP) teams and implementing nursing components of the IEP, and providing instruction in development and HIV. Additionally, nurses provide numerous services not mandated by the State, but necessary for the health and welfare of the students. These services include, among others, unscheduled screenings and follow-ups, first aid, administration of medications, training staff in first aid and medication administration, making appointments for students for medical services, color vision screening, and organizing health fairs and events.

The nurses also serve as liaisons between numerous agencies and parents, make referrals, train LVNs to administer daily care to students, check the care provided to special needs students by their aides or their LVNs. Additionally, evidence was presented that the District, with approximately 4600 students, is large and the schools far flung, and that travel alone consumes a great deal of the nurses' time.

11. Ms. Reed also argues that the District does not in actuality receive the nursing services of three nurses. Each of the three are .80 FTE. Ms. Carlson is shared with the County Office of Education. She is assigned 0.4 of her time to the needs of the students under the auspices of the County Office of Education. Ms. Knoblauch has multiple administrative duties in addition to her nursing duties. Thus, Ms. Reed maintains that nursing services are already below mandated levels and cannot legally be reduced further.

12. Ms. Reed produced evidence that the California School Nursing Organization recommends a ratio of one nurse to every seven hundred and fifty students. Under ideal economic circumstances, a District could observe this ratio, although there is no evidence that any California School District observes this ratio. However, even though there are State mandated health services there is no State mandated ratio of students to registered nurses. Additionally, the State does not require that every mandated health service be provided by a registered nurse or a certificated nurse, only that the specified services be provided. Additionally, should the District find that it is unable to meet State mandates with 1.60 FTE school nursing in the 2008-2009 school year, it may provide mandated services by contracting with outside agencies authorized to perform the services by the County Superintendent of Schools. (Education Code section 49452.5 (scoliosis screening) and section 49452 (sight and hearing tests).

13. The District, after examination of services and staff allocations, is confident that the remaining nursing staff can deliver the mandated services, especially because enrollment is declining and the District has been able to satisfy State mandates in the past with fewer FTEs in nursing. Specifically, the District plans to reduce or eliminate Ms. Knoblauch's administrative duties if necessary, and examine other methods of providing mandated services. While it is clear that the nurses who remain in the District will be



working harder due to the reduction of a 0.8 FTE position, it was not established that the reduction would prevent the District from providing mandated services.

14. Ms. Reed maintains that the District has not met its burden of showing it will meet State mandates. She maintains that there is no plan to eliminate Ms. Knobelauch's administrative time so that she could devote her full time to nursing. Specifically, she claims that Ms. Knobelauch's administrative duties were not reduced pursuant to a Board resolution and thus it did not intend to move her to nursing. This argument is not persuasive. Ms. Knobelauch does not hold an administrative credential and does not occupy an administrative position. The District may assign and reassign her as it sees fit, within her credential. It need not eliminate her present duties by Board resolution in order to assign her to other duties she is credentialed to perform.

15. Ms. Reed maintains that she may bump Ms. Carlson out of 0.4 FTE of her position because Ms. Carlson is on loan to the District from the County Office of Education on a 0.4 FTE. Therefore, Ms. Reed argues, Ms. Carlson is a 0.4 FTE temporary employee of the District and can be bumped out of this temporary position. This argument is not persuasive. Ms. Carlson is employed by the County Office of Education, and has been for many years. She is not a District employee, temporary or otherwise, and the District is therefore not in a position to lay her off. Ms. Reed is essentially asking that the District terminate its arrangement with the County Office of Education to share Ms. Carlson's services and retain 0.4 FTE of Ms. Reed's services instead. There is no authority to compel the District to do this. In fact, as set forth in Finding 12, the District is authorized by statute to provide mandated services by contracting with outside agencies.

16. Ms. Reed is a longtime and very valued employee of the District. She has at all times been a superior nurse. The District decision to discontinue her services was due solely to the financial circumstances and needs of the District.

#### LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The service identified in Board Resolution No. 07/2008-18 is a particular kind of service that could be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified service was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to



deal with the pupils involved." *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

4. An existing budget shortfall, and expected decline in enrollment and the anticipation of receiving less money from the State for the next school year are appropriate bases for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decision was a proper exercise of its discretion.


5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of nursing services. Cause for the reduction or discontinuation of nursing services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831. Ms. Reed did not maintain that she had the right to "bump" junior employees, and as the least senior employee providing registered nursing services, she was not entitled to bump other employees providing registered nursing services. No junior certificated employee is scheduled to be retained to perform services which Ms. Reed is certificated and competent to render.

#### RECOMMENDATION

Notice shall be given to respondent Mary Reed that her services will not be required for the 2008-2009 school year because of the reduction and discontinuance of particular kinds of services.

DATED: May 12, 2008

  
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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings