

BEFORE THE  
GOVERNING BOARD OF THE  
CARUTHERS UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

SANDRA GOSTANIAN, WAYNE  
MCKEEMAN

OAH No. N2004010539

Respondents.

**PROPOSED DECISION**

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Caruthers, California, on April 14, 2004.

Deborah Garabedian, Legal Counsel, Fresno County Office of Education, represented the Caruthers Unified School District.

Wesley T. Green, Attorney at Law, of Tuttle & McCloskey, represented respondents Sandra Gostanian and Wayne McKeeman.

The matter was submitted on April 14, 2004.

**FACTUAL FINDINGS**

1. Dwight Miller, Superintendent of the Caruthers Unified School District, made and filed the Accusations in his official capacity.
2. Respondents are certificated employees of the Caruthers Unified School District.

3. On March 11, 2004, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Governing Board of the District (the Board) and respondents in writing of the Superintendent's recommendation that respondents be notified that their services would not be required for the ensuing school year. The Superintendent stated the reasons for the recommendation. The recommendation was not related to respondents' competence as teachers.

4. Prior to March 15, 2004, a notice of termination was delivered to each respondent, either by personal delivery or by depositing the notice of termination in the United States registered mail, postage prepaid and addressed to the respondents' last known addresses.

The written notices of termination specifically stated that respondents' services would not be required for the 2004-2005 school year. Each notice set forth the reasons for the recommendation.

Each notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice of termination by March 21, 2004 which was more than seven days after the notice of termination was served, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

5. Each appearing respondent timely filed a written request for a hearing to determine if there was cause for not reemploying that respondent for the ensuing year.

6. Accusations were timely served on respondents thereafter. Each respondent appearing in this matter filed a timely Notice of Defense.<sup>1</sup> All prehearing jurisdictional requirements were met.

7. On February 24, 2003, the Board took action, through Resolution #2004-02, to reduce or discontinue particular kinds of services ("PKS") for the 2004-2005 school year. The Resolution designated reductions in PKS, which would necessitate a corresponding reduction of 15 full time equivalent ("FTE") certificate positions. Ultimately, the number of PKS was reduced to two, and two FTEs were affected. The PKS to be reduced or discontinued are:

| <u>Particular Kind of Service</u>                        | <u>Full-Time Equivalent (FTE)</u> |
|--|-----------------------------------|
| Third Year Physical Education Requirement<br>(BP 6146.1) | 1 FTE                             |
| Wood Shop  | 1 FTE                             |

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<sup>1</sup> Several other employees were notified that their services would not be required in the 2004-2005 school year. Prior to the hearing, the Board rescinded lay off notices of the affected employees, with the exception of respondents.

8. The designated services were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The Board determined that the woodshop class, which is taught by Mr. McKeeman, should be discontinued to allow the Board to replace that class with a Health Careers class. The Board determined that a Health Careers class was more appropriate to the current vocational needs of the students.

10. The Board determined that it would discontinue the third year of physical education requirements at the high school. This reduction did not affect the District's State mandate to provide two years of physical education. Ms. Gostanian is the least senior physical education teacher.

11. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

12. No certificated employee junior to Ms. Gostanian was retained to perform any services which Ms. Gostanian was certificated and competent to render.

13. No certificated employee junior to Mr. McKeeman was retained to perform any services which Mr. McKeeman was certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections were satisfied.

2. Cause exists under Education Code section 44949 and 44955 for the Caruthers Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof. It is recommended that the Board give respondents notice that their services will no longer be required by the District.

## ORDER

The Accusations served on the respondents are Sustained. Notice shall be given to respondents, Sandra Gostanian and Wayne McKeeman, that their services will not be required because of the reduction or discontinuation of particular kinds of services as indicated.

Dated: \_\_\_\_\_

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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings