

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

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

SALLY PAYNE-OTT,

Respondent.

OAH No. 2008030628

**PROPOSED DECISION**

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2008, in Delhi, California.

Elizabeth P. Lind, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Delhi Unified School District.

Joan Marie Maredyth, Esq., Maredyth and Fischer, LLP, represented Sally Payne-Ott.

Evidence was received and the matter was submitted on April 15, 2008.

**FACTUAL FINDINGS AND DISCUSSION**

1. Bill Baltazar is the Superintendent of the Delhi Unified School District (District). His actions and the actions of the District Governing Board were taken in their official capacities.

2. Respondent is a certificated employee of the District. On or before March 15, 2008, the District served on respondent a written notice that it had been recommended that notice be given to respondent pursuant to Education Code sections 44949 and 44955 that her services would be reduced or would not be required for the 2008-2009 school year. The written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 15 full-time equivalent (FTE) positions including elimination of 1.0 FTE Director of Health Services.

Respondent timely requested in writing a hearing to determine if there is cause for not reemploying her for the ensuing school year.<sup>1</sup>

3. The Superintendent made and filed an Accusation against respondent. The Accusation with required accompanying documents and a blank Notice of Defense was timely served on respondent. Respondent timely filed a Notice of Defense to the Accusation.

4. On or before March 15, 2008, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 15.0 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation.

5. On March 11, 2008, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching services affecting employment of 15 FTE positions. The District Governing Board adopted Resolution No. 03-11-2008-E providing for the reduction or elimination of the following particular kinds of services (PKS):

- Middle School Site Principal -- 1 FTE
- Director of ELD -- 1 FTE
- Coordinator of Pupil Services -- 1 FTE
- Counselor -- 1 FTE
- K-8 Elementary Classroom Teachers -- 3 FTE
- ELD/Spanish Classroom Teacher -- 1 FTE
- Special Education Classroom Teacher -- 1 FTE
- High School Alternative Education Teacher -- 1 FTE
- Part Time Support Teachers -- 1 FTE (.5 FTE + .5 FTE)
- Math Coach -- 1 FTE
- Intervention Teacher -- 1 FTE
- Librarian -- 1 FTE
- Director of Health Services -- 1 FTE

Total: 15 FTE

6. The Governing Board's resolution to eliminate and reduce these particular kinds of services was made in order to address a substantial estimated budget shortfall in the ensuing school year.

7. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, and credentials and authorizations. Status, credential and authorization data are obtained from the District's records and employees are given the opportunity to correct errors in the seniority list.

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<sup>1</sup> None of the other affected certificated employees requested a hearing.



8. The Superintendent and other District employees were responsible for implementation of the technical aspects of the layoff. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees.

9. Sally Payne-Ott has a seniority date of September 27, 1997. She holds a Professional Clear School Nurse Services Credential. Ms. Payne-Ott's position is Director of Health Services. Ms. Payne-Ott is the District's only nurse. She is a qualified public health nurse, a registered nurse, and a certified audiometrist (allowing her to conduct hearing examinations). Ms. Payne-Ott was initially hired to work 163 days during the school year. Since then, her contract has been changed to provide 200 days, including approximately two weeks before and after school is in session, and her work day is eight hours.

10. Ms. Payne-Ott's duties are described in her duty statement as providing "direction, implementation, supervision, and evaluation of all aspects of the District's health services program for the benefit of both students and staff." More specifically, she coordinates all mandated school health screenings including vision, hearing, and scoliosis. She prepares mandated reports including those relating to immunizations. She supervises the District's health clerks. She confers on Individual Educational Plans for special education students with health issues and attends between 20 and 40 IEP team meetings each school year. She crafts and helps implement Individual Health Plans for non-special education students with health needs. She works with diabetic, Spina Bifida, and seizure disorder students, including the supervision of their medication regimens. She teaches first aid and CPR courses.

11. The District understands that it must continue to provide legally mandated health services, including hearing, vision and scoliosis screening.<sup>2</sup> The District has not yet determined the manner in which such services will be provided but is focusing on two options. The first option involves contracting with a county office of education to provide nursing services. The District has had discussions with the Merced County Office of Education which can provide nursing services at a projected cost approximately \$30,000 less than the salary and benefits Ms. Payne-Ott receives. The other option is to change the title of Director of Health Services to School Nurse, and reduce the annual contract to approximately 181, 6 hour, days to roughly correspond to the time that students are actually in school. There would be a corresponding decrease in the position salary, although the exact amount has not been determined. The District projects that this option would save it approximately \$27,000.

12. No junior certificated employees are being retained in positions for which Ms. Payne-Ott is certificated and competent. If the District does elect to change the position title and hours rather than contract with a county office of education for nursing services, the District acknowledges Ms. Payne-Ott would be entitled to the School Nurse position by

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<sup>2</sup> The District currently contracts out most of its hearing screening services to a county office of education.



virtue of her credential, qualifications and seniority. Ms Payne-Ott asserts that the elimination of the Director of Health Services is not a proper PKS reduction or elimination under applicable provisions of law. She also asserts, at least by implication, that the District cannot fulfill its legal mandate relating to health services if the Director of Nursing position is eliminated. These assertions are rejected for reasons outlined in the Legal Conclusions below.

## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notice sent to respondent indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide her due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The services identified in the Board Resolution are particular kinds of services that could be reduced or discontinued under section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

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. Education Code section 44955, provides in pertinent part:

¶...¶

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than

a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

¶...¶

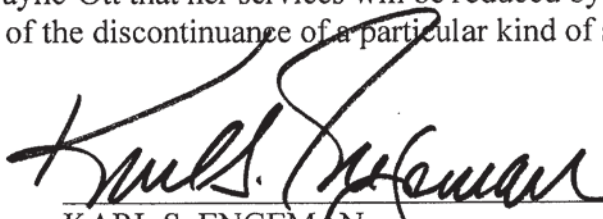
5. District will be required to have a plan in place for the provision of nursing services for the 2008-2009 school year, but it does not have to have a finalized plan in place at the time that it opts to reduce or eliminate nursing services and give notice to affected certificated employees. It must be presumed, absent evidence to the contrary, that the District will comply with its legally mandated obligations (Ev. Code §664, *Degener v. Governing Board* (1977) 67 Cal. App.689, 696.) The District has discretion to determine how and in what manner mandated services are to be provided. (*Campbell Elementary Teachers Assn v. Abbott* (1978) 76 Cal. App.3d 796, 811; *Gallup v. Board of Trustees* (1996) 41 Cal. App. 4<sup>th</sup> 1571, 1582-1590.) Changing the way in which a service is to be performed constitutes a reduction in a particular kind of service, as does having fewer employees available to perform the service. (*Rutherford v. Board of Trustees* (1976) 64 Cal. App.3d 167, 179; *Campbell Elementary Teachers Assn. v. Abbott, supra*, 76 Cal.App. 3d at p. 811.)

6. Turning to Ms. Payne-Ott's contentions, the District has not yet determined the precise manner in which it will provide the legally mandated health services next school year, but it is not required to do so at this point and it must be presumed that District will meet its mandate. The elimination of the Director of Health Services position is a legitimate PKS reduction or elimination. If the District does contract with a county office of education, that will be a change in the manner in which such services are provided which, as noted above, is a permissible PKS change. If the District changes the days and hours of the position but retains Ms. Payne-Ott to perform nursing duties, that change amounts to a reduction in nursing services, also a permissible PKS change.

#### ORDER

Notice shall be given to Sally Payne-Ott that her services will be reduced by 1.0 FTE in the 2008-2009 school year, because of the discontinuance of a particular kind of service.

DATED: April 28, 2008

  
KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings