

BEFORE THE  
BOARD OF TRUSTEES  
COLFAX ELEMENTARY SCHOOL DISTRICT

In the Matter of the Accusation/Non-  
Reemployment of Certificated Employees of  
the Colfax Elementary School District:

OAH No. 2011031078

Jodi O'Keefe

Respondent.

**PROPOSED DECISION**

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings (OAH), State of California, heard this matter in Colfax, California, on April 11, 2011.

Terry Filliman, Attorney at Law, represented the Colfax Elementary School District (District).

Lesley Beth Curtis, Attorney at Law, represented respondent Jodi O'Keefe.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The matter was submitted for decision on April 11, 2011.

**FINDINGS**

1. Fred Adam is the District Superintendent. His actions, and those of the District's governing body, the Board of Trustees (Board), were taken solely in their official capacities.

2. The District serves approximately 345 students in kindergarten through 8th grade. The District is facing a budget shortfall for the 2011-2012 school year of at least \$464,000.

3. On March 7, 2011, the Board adopted Resolution No. 11:10/11 (Resolution) reducing or eliminating particular kinds of services (PKS), affecting 5.59 Full Time Equivalent (FTE) certificated positions.

4. The Resolution was based on the Superintendent's recommendation that it was necessary to reduce or discontinue particular kinds of services no later than the beginning of the 2011-2012 school year. In making his recommendation, the Superintendent took into account all positively assured attrition.

5. The Resolution states that the Board determined that it was necessary to reduce or eliminate the following PKS of the District not later than the close of the current school year:

<u>Services</u>	<u>Number of FTE Positions</u>
Physical Education Teaching Services	1.00 FTE
Kindergarten-8 <sup>th</sup> Grade Teaching Services	3.00 FTE
Resource Specialist Teaching Services	.50 FTE
Administrative Services-Principal	1.00 FTE
Nursing Services	<u>.09 FTE</u>
Total	5.59 FTE

6. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 5.59 FTE positions for certificated employees in the District at the end of the 2010-2011 school year, in accordance with Education Code section 44955.<sup>1</sup>

7. The Resolution directed the Superintendent or his designee to send appropriate notices to all employees whose services would be terminated by virtue of the Board's action.

8. On March 8 and March 9, 2011, the Superintendent served a letter (Preliminary Notice) on each of the employees affected by the PKS reductions and/or eliminations set forth in the Resolution. The Preliminary Notice advised that the Superintendent had recommended to the Board that the recipient be given preliminary written notice that his/her services would be terminated at the close of the current school year due to reductions in PKS.

9. Jodi O'Keefe timely filed a Request for Hearing to determine whether there was cause for not reemploying her for the 2011-2012 school year.

10. On March 28, 2011, the Superintendent made the Accusation and caused it to be served on Jodi O'Keefe. Ms. O'Keefe timely filed a Notice of Defense.

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<sup>1</sup> All statutory references are to the California Education Code unless otherwise indicated.

11. Ms. O'Keefe is a permanent certificated District employee, with a seniority date of August 19, 2002. She holds a Multiple Subject credential with a Supplemental Authorization in Math. She is currently assigned to teach the seventh and eighth grades.

12. The District is not retaining any junior certificated employee to provide services in the 2011- 2012 school year, which Ms. O'Keefe is certificated to teach.

13. Ms. O'Keefe maintains that the Board's decision to reduce 3.0 FTE Kindergarten-8<sup>th</sup> Grade Teaching Services (classroom teachers) was arbitrary and capricious. Ms. O'Keefe maintains that the District Budget Committee recommended the reduction of only one classroom teaching position and that the Superintendent originally contemplated only the reduction of 3.0 total certificated teaching positions, including physical education. This argument is not persuasive. The District Budget Committee merely makes recommendations, and the Board has no obligation to adopt its recommendations. The Superintendent's recommendation to the Board states: "The Superintendent is recommending that the certificated staffing level be reduced from 2010-2011 levels by *at least* 3.0 FTE in order to accommodate recommended budget reductions." (Italics added) The Superintendent clearly recommended to the Board that it reduce a minimum of 3.0 FTE certificated positions. The Board, after due deliberations, resolved to reduce certificated teaching positions by 4.50 FTE in order to address the anticipated budgetary shortfall. This decision was not arbitrary and capricious, but was a well reasoned decision, well within the Board's authority and discretion.

## LEGAL CONCLUSIONS

1. As set forth the Findings, all notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. The notices sent to respondent indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide her with 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 Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services.

(*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in Resolution No. 11:10/11 are particular kinds of services that may be reduced or discontinued under sections 44949 and 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. "...[I]t is within the governing board's discretion to determine the extent to which any service will be reduced. (*San Jose Teachers Assn. v. Allen*(1983) 144 Cal.App.3d 627, 635-636.) The validity of the board's decision "" is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject."" (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

4. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

5. No employee junior to respondent is being retained to perform the services which respondent is certificated to render.

#### RECOMMENDATION

The District may give notice to respondent that it will not require her services for the 2011-2012 school year.

DATED: April 26, 2011

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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings