

BEFORE THE  
GOVERNING BOARD OF THE  
KINGS RIVER-HARDWICK SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of  
Kings River-Hardwick Certificated  
Employees:

OAH No. 2009060798

LETICIA CAMPOS  
and HOLLI HOPPER,

Respondents.

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on July 10, 2009, in Hanford, California.

Randy L. Edwards, Attorney at Law, appeared on behalf of the Kings River-Hardwick School District.

Josh Richtel, Attorney at Law, appeared on behalf of Leticia Campos and Holli Hopper.

Evidence was received and the matter was submitted for decision on July 10, 2009.

**FACTUAL FINDINGS**

1. Jean Fetterhoff is the Superintendent of the Kings River-Hardwick School District (District). The actions of Ms. Fetterhoff, and the actions of the District Governing Board, were taken in their official capacities.

2. Respondents Leticia Campos and Holli Hopper are certificated employees of the District. On June 10, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949, 44955 and 44955.5 that their services would be reduced or would not be required for the 2009-2010 school year. Each 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 2.0 full-time equivalent (FTE) positions. Respondents

timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. The Superintendent also made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusations.

4. On June 9, 2009, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 2.0 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 June 9, 2009, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 2.0 FTE positions. The District Governing Board adopted Resolution No. 06-09-09-00 providing for the reduction or elimination of the following particular kinds of services (PKS):

<u>Services</u>	<u>Equivalent Positions</u>
Certificated Service of Classroom Instruction by Multiple Subject Credentialed Teachers	2.0

6. The Governing Board's resolution to reduce or discontinue particular kinds of services was made in anticipation of decreased revenues to the District occasioned by the Governor's state budget. Superintendent Dorothy Fetterhoff noted that the proposed reductions are necessary because the total revenue limit for FY 2009-2010, adjusted for a deficit factor (0.82033) and other adjustments, is \$3,192,507.95 in unrestricted revenues. This figure represents a 0.9 percent increase. The District Governing Board therefore determined that its total revenue limit per unit of average daily attendance for the fiscal year has not increased by at least two percent under Education Code section 44955.5.

The District made its assumptions based upon an average daily attendance (ADA) figure of 636.13 students. The District is reimbursed \$6,103.84 per student.

7. The District has other monies in reserve, but has opted not to use these funds for teacher salaries. For example, the District has \$80,000.00 in School-Based Improvement Monies that were previously categorical, and are now available (Flexible Tier 3) for unrestricted use. However, the superintendent was advised not to use these monies for personnel costs because the monies may not be "flexible" in 2012. The District has \$303,847.20 within its fund balance monies designated as "Undesignated/Unappropriated Balance." It also has \$249,000 designated as available reserves for "Economic

Uncertainties.” Total available reserves for FY 2009-2010 are calculated to be \$552,879.98. The District is required to maintain a four percent reserve, or \$176,878.47.

8. Respondents noted that the District has also received State Fiscal Stabilization Funds (SFSF) under the American Recovery and Reinvestment Act of 2009. These “stimulus” monies are intended to be used, among other purposes, “to avert layoffs of teachers and other personnel” according to a May 22, 2009 Department of Education letter sent to all county superintendents of schools. The SFSF unrestricted monies approximate \$163,284. Given the above reserve fund balances maintained by the District, and the SFSF monies allocated to the District, respondents contend that the District has failed to make a showing that it is financially necessary to eliminate their positions.

9. Trish Singh is the District’s Director of Budget and Personnel Services. She noted that the District’s anticipated loss for FY 2009-2010 is \$138,000. The District intends to “backfill” this loss with the SFSF monies. This will leave the District ahead by approximately \$30,000. The District already planned its 2009-2010 budget at a 17 percent reduced level from FY 2008-2009, a reduction of roughly \$700,000.

The superintendent noted that 44 percent of District students reside outside the District, suggesting that even the ADA figure may not be a solid number. The parents of these students elect to have their children educated by the District. Ms. Fetterhoff expects that there will be increased District expenditures associated with special education litigation. She also explained that one reason it is desirable to maintain reserves above the four percent minimum is because she was advised to have up to three months payroll available. The current reserve will not even meet a one month payroll. Ms. Fetterhoff also believes that there will be mid-year cuts again next year. Given all the above matters, and the general economic uncertainty and potential for unanticipated expenditures, Ms. Fetterhoff cautions against dipping into reserves at this time.

10. Ms. Fetterhoff noted that respondents’ continued employment would cost \$127,600. Without the layoffs, she opines that the District would not have enough to address the above matters and other potential needs of the District. The District’s rationale for maintaining reserves above minimum levels, and for not using other unrestricted monies to fund teacher salaries, is not unreasonable. It was well within the discretion of the District Governing Board to make these fiscal policy decisions.

11. No permanent or probationary certificated employee with less seniority is being retained to render a service which respondents are certificated and competent to render.

12. The reduction or discontinuation of the particular kind of service set forth in Resolution No. 06-09-09-00 is related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue this service is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District’s Governing Board.

## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949, 44955 and 44955.5 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them 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 described 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. Education Code section 44955.5, subdivision (a) provides as follows:

During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

3. As noted in Finding 6, the District's total revenue limit per unit of average daily attendance will not increase by at least two percent. The District's Governing Board has determined that as a result it needs to reduce the number of certificated employees in the District. The District's revenue limit will increase by only 0.9 percent.

4. Respondents contend that the District has not demonstrated that it is financially necessary to reduce certificated employees by 2.0 FTE. Education Code section 44955.5 authorizes a public school governing board to "terminate the services of any permanent or probationary certificated employees" where the "total revenue limit per unit of average daily attendance for the fiscal year ... has not increased by at least 2 percent." It is undisputed in this case that the District's total revenue limit per unit of average daily attendance will not be increased by at least two percent. Education Code section 44955.5 makes no mention of the need to also consider other revenue sources, including federal stimulus or other fund balances on reserve. It does appear that once a threshold determination is made that the two percent increase has not been satisfied, the District

Governing Board has discretion to opine that it “is therefore necessary to decrease the number of permanent employees in the district, ....”

5. The “necessity” language is substantially identical to Education Code section 44955, and the determination of the necessity to reduce or discontinue particular kinds of services should therefore be reserved to the discretion of the District Governing Board. The policy making decisions of a district governing board, an elected legislative body, should not be subject to arguments as to the wisdom of their enactment, the necessity of the resolution, the selection of services, or questions as to the board’s motivation. (*California Teacher’s Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529; *Horwath v. Local Agency Formation Comm. of San Mateo County* (1983) 143 Cal.App.3d 177, 182.) The board’s action need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796.) Here, the District articulated its rationale for not using other funding sources to pay teacher salaries. Without the additional layoffs, the District believes it would not have enough monies to address other potential needs of the District. The District’s rationale for maintaining its reserves above minimum levels, and for not using other unrestricted monies to fund teacher salaries, is not unreasonable. It was within the discretion of the District Governing Board to make such fiscal and policy decisions.

6. The services identified in Board Resolution No. 06-09-09-00 are particular kinds of services that could be reduced or discontinued under Education Code sections 44955 and 44955.5. The District Governing Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

7. Cause exists to reduce the number of certificated employees of the Kings River-Hardwick School District due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

## ORDER

Notice shall be given to Leticia Campos and Holli Hopper that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: July 28, 2009

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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings