

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

In the Matter of the Statement of Reduction
in Force of:

SUE ANDERSON,

Respondent.

OAH No. 2014040535

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 29, 2014, in Sacramento, California.

Paul N. Boylan, Attorney at Law, represented the Orland Unified School District.

Lesley Beth Curtis, Attorney at Law, represented Sue Anderson (respondent).

Evidence was received, the matter was submitted and the record was closed on April 29, 2014.

FINDINGS

1. Jeff Scheele is the Interim Superintendent of the Orland Unified School District (District). The District operates five elementary, junior high, community day and high schools for approximately 2,215 students.

2. The actions of Interim Superintendent Jeff Scheele, and the actions of the Governing Board (Board), were taken in their official capacities.

3. The District is facing a budget shortfall for the 2014-2015 school year. Last month, the District declared a fiscal emergency, and is on the brink of insolvency. The Board hired a fiscal advisor, Jan Combes, to analyze the District's financial circumstances. Ms. Combes had discussions with the District regarding its ability to fund its obligations and pay off its debt. Consequently, the District believes it is necessary to reduce a number of certificated positions to address the budget shortfall.

4. On March 10, 2014, the Board adopted Resolution No. 12-13/14, providing for the reduction or elimination of the following particular kinds of services (PKS) for the 2014-2015 school year:

Service	Full Time Equivalent
OUSD School Nurse Position	0.5
OUSD School Librarian Position	1.0
Mill Street Title 1 Teacher Position	1.0
Fairview Title 1 Teacher Position	1.0
Middle School/Alternative Education School Counselor Position	1.0
TOTAL	4.5

5. The PKS resolution recited that the Board finds that it shall be necessary to decrease the above programs and services no later than the beginning of the 2014-2015 school year because it is in the best interest of the District and its students.

6. The services set forth in the PKS resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue the identified services was not arbitrary or capricious. The reduction or elimination of services constituted a proper exercise of the Board’s discretion, within the meaning of Education Code section 44955.

7. On or before March 15, 2014, the Interim Superintendent gave the Board written notice of his recommendations that notice be given to affected certificated employees that their services would not be required for the ensuing school year, and the reasons therefor.

8. The District alleges that on or before March 15, 2014, it served respondent with written notice of its recommendation that notice be given to respondent of the 0.5 FTE reduction of her position for the ensuing school year 2014-2015. The District’s written notice was not introduced into evidence, however, respondent did not deny receiving the notice, and timely filed a request for hearing.

9. The Interim Superintendent made and filed an Accusation against respondent on April 10, 2014. The Accusation with required accompanying documents and a blank

Notice of Participation were timely served. Respondent timely filed a Notice of Participation.

10. Respondent is presently a certificated permanent employee of the District.
11. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.
12. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), and the number of credentials, authorizations and advanced degrees each employee holds.
13. Respondent is the only school nurse in the District, with a seniority date of August 23, 1989.
14. 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 respondent's nursing services by 0.5 FTE, the District will have remaining 0.5 FTE registered nurse services provided by respondent.
15. Respondent 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 a school nurse provides, including vision and hearing exams, scoliosis screening, immunizations, serving as a member of individual education plan (IEP) teams and implementing nursing components of the IEP, carrying out individualized health care plans, medication training, specialized physical health care procedures (Glucagon and EpiPen injections), and maintaining health care records. 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, first aid, administration of medications, and treating children that become ill while at school, i.e., vomiting, headaches, etc., communicating with parents about child's health issues, and coordinating care beyond the school day.
16. Respondent described with particularity the individualized health care plans that she carries out for many students. One student's individualized health care plan involves the student's doctor, who requires respondent, as the only school nurse, to assess and then make the determination if medication for the student's cardiac condition should be given. The doctor would not sign the medication authorization unless respondent assured him that she was the only one administering the medication. Respondent has "raced" to the student's school site approximately 10 times this school year to assess and/or administer the medication. Respondent also performs: twice daily catheterization of a student with spina bifida; administers daily medication for a student with cystic fibrosis; administers daily insulin to one diabetic student and monitors two other diabetic students who administer their own insulin; monitors three students with various allergies requiring EpiPens; monitors 15 students requiring inhalers at school; and monitors four students requiring attention deficit

disorder medications on an “as needed” protocol. Respondent will have an entering kindergarten student requiring daily assistance with blood sugar testing and insulin administration. She will also have two post-cancer treatment students returning to school in 2014-2015. Respondent maintains that nursing services are already below mandated levels and cannot legally be reduced further.

17. The District contended that reducing respondent’s nursing position by 0.5 FTE will not compromise the District’s ability to provide mandated health care services to District students. The District indicated that contracting out is available, if needed, to meet its mandatory nursing requirements, and in case of medical emergencies, District staff is to call 911. The District may provide mandated services by contracting with outside agencies authorized to perform the services by the County Superintendent of Schools. (Ed. Code, §§ 49452.5 (scoliosis screening), 49452 (sight and hearing tests).)

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

19. The Interim Superintendent correctly identified respondent as the certificated employee providing the particular kinds of services that the Board directed be reduced. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

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. 12-13/14 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 0.5 FTE of the school nurse position. Cause for the reduction of nursing services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949.

RECOMMENDATION

Notice shall be given to respondent Sue Anderson that her services will be reduced for the 2014-2015 school year by .5 FTE because of the reduction and discontinuance of particular kinds of services.

Dated: May 5, 2014

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings