

**Santa Monica-Malibu Unified School District
Board of Education Meeting
SPECIAL MEETING**

May 9, 2011

A **special meeting** of the Santa Monica-Malibu Unified School District Board of Education will be held on **Monday, May 9, 2011**, in the **District Administrative Offices**: 1651 16th Street, Santa Monica, CA. The Board of Education will call the meeting to order at 6:00 p.m. in the Board Room.

The meeting will begin at 6:00 p.m.

I CALL TO ORDER

A. Roll Call – Board of Education

Jose Escarce	Laurie Lieberman
Ben Allen	Ralph Mechur
Oscar de la Torre	Nimish Patel
Maria Leon-Vazquez	

B. Pledge of Allegiance

II PUBLIC COMMENTS

Public Comments is the time when members of the audience may address the Board of Education on items not scheduled on the meeting's agenda. All speakers are limited to three (3) minutes. When there is a large number of speakers, the Board may reduce the allotted time to two (2) minutes per speaker. The Brown Act (Government Code) states that Board members may not engage in discussion of issues raised during "III. Public Comments," except to ask clarifying questions, make a brief announcement, make a brief report on his or her own activities, or to refer the matter to staff. This Public Comment section is limited to twenty (20) minutes.

III MAJOR ITEMS

6:00 pm	A.01	Approve the Appointment of New Permanent Superintendent – Effective July 1, 2011	1
	A.02	Adopt Resolution No. 10-44 – Implementing Certificated Layoff (Acting upon Proposed Decision of Administrative Law Judge and Terminating Services of Certificated Employees).....	2-6

IV DISCUSSION ITEMS

6:30 pm	D.01	Pathway Presentations – John Adams Pathway & Alternative Education.....	7-9
	D.02	Consider Revising BP 5131.61 – Controlled Substances	10-14

V ADJOURNMENT

This meeting will adjourn to a regular meeting to be held on **Thursday, May 19, 2011**, at **6:00pm** at the district office: 1651 16th Street, Santa Monica, CA 90404.

MAJOR ITEMS

TO: BOARD OF EDUCATION

ACTION/MAJOR

05/09/11

FROM: JOSE ESCARCE / BEN ALLEN

RE: APPROVE THE APPOINTMENT OF PERMANENT SUPERINTENDENT –
EFFECTIVE JULY 1, 2011

RECOMMENDATION NO. A.

It is recommended that the Board of Education approve the appointment of the following individual to serve as the new permanent Superintendent, beginning July 1, 2011.

NAME

EFFECTIVE

TBD

July 1, 2011

COMMENTS: Mr. Tim Cuneo, SMMUSD's current Superintendent, is retiring in June 2011.

On October 7, 2010, the Board of Education took action to approve the initiation of the executive search process to attract, select, and hire a qualified search firm to assist the Board of Education in seeking a new superintendent. On October 8, 2010, a letter was sent to nine search firms soliciting search proposals. Interviews of the top three search firms were held on December 13, 2010. On January 3, 2011, the board approved Leadership Associates to conduct the search. On January 20, 2011, the board held a public meeting to outline for the consultants what characteristics and traits they would like in a new superintendent. Community forums were held in both cities in early February to elicit what the public would like in a new superintendent. The public was then invited and encouraged to email the consultants with further thoughts regarding this matter. The consultants used this input to create an online brochure and to recruit candidates for the position. Applications were due March 10, 2011. The consultants then completed comprehensive reference and background checks on the applicants. Following a confidential interview process with the top candidates and a site visit, the board entered into contract negotiations with the lead candidate in April 2011.

MOTION MADE BY:

SECONDED BY:

STUDENT ADVISORY VOTE:

AYES:

NOES:

TO: BOARD OF EDUCATION

ACTION/MAJOR

05/09/11

FROM: TIM CUNEO / DEBRA MOORE WASHINGTON

RE: ADOPT RESOLUTION NO. 10-44 – IMPLEMENTING CERTIFICATED LAYOFF
(ACTING UPON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE
AND TERMINATING SERVICES OF CERTIFICATED EMPLOYEES)

RECOMMENDATION NO. A.

It is recommended that the Board of Education adopt Resolution No. 10-44 – Implementing Certificated Layoff.

COMMENTS: At the Board meeting of February 17, 2011, the Board approved a Particular Kinds of Services (PKS) Resolution to reduce 6.0 FTE teaching services and 5.6 FTE nursing services. Subsequently, on March 3, 2011, the Superintendent recommended to the Board that the teaching services be reduced by 3.0 FTE, rather than the 6.0 FTE formally approved, and that the designated employees be given notice that their services would not be required for the upcoming school year. The notices issued represented 3.0 FTE teaching services and 5.6 FTE nursing services. This layoff process was authorized in order to provide maximum flexibility for staffing for the 2011-2012 school year.

The district has received the decision of the Administrative Law Judge from the evidentiary hearing held on April 25, 2011. The Superintendent recommends to the Board of Education that the judge's decision be accepted, with modifications to correct a minor error made by the judge as to seniority between employee #6668 and #2722, which affects the dismissal and partial dismissal of the Accusation as to both employees. The resolution which follows reflects the correction of the clerical error. The Superintendent recommends to the Board of Education that the employees listed in the decision be given appropriate notice that their employment will be terminated effective upon the close of the 2010-2011 school year. Education Code section 44955(c) requires that final board action and notifications to employees be given no later than May 14, 2011.

MOTION MADE BY:

SECONDED BY:

STUDENT ADVISORY VOTE:

AYES:

NOES:

**BEFORE THE GOVERNING BOARD OF THE
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

**RESOLUTION NO. 10-44
RESOLUTION IMPLEMENTING CERTIFICATED LAYOFF**

**(Acting Upon Proposed Decision of Administrative Law Judge And
Terminating Services of Certificated Employees)**

WHEREAS, on February 17, 2011, this Board adopted Resolution No. 10-20 which included discontinuing and reducing particular kinds of services not later than the beginning of the 2011-2012 school year, as described and set forth in that Resolution;

WHEREAS, on March 3, 2011, the Superintendent gave notice to this Board recommending that various employees receive notice that their services will not be required for the ensuing school year (2011-2012), pursuant to Education Code sections 44949 and 44955;

WHEREAS, prior to March 15, 2011, the Superintendent's designated representatives served notices to various employees, including those referenced in this Resolution, that it had been recommended that each of their services will not be required for the 2011-2012 school year pursuant to Education Code sections 44949 and 44955;

WHEREAS, said notices advised the recipients that they could request a hearing to determine if there was cause for not reemploying them for the 2011-2012 school year and that if they failed to timely request a hearing, that failure shall constitute a waiver of the right to a hearing and his/her services will accordingly be terminated pursuant to the recommendation, without a hearing;

WHEREAS, various employees who received notice timely requested a hearing (Respondents), and accordingly an evidentiary hearing was held on April 25, 2011, pursuant to Education Code sections 44955 and 44949 before an Administrative Law Judge in accordance with the California Administrative Procedure Act;

WHEREAS, each employee who did not request a hearing within the time allowed to determine if there is cause for not reemploying him or her for the ensuing 2011-2012 school year has thereby waived any rights to a hearing, and the jurisdictional and statutory prerequisites have been satisfied as to all such employees as required by law;

WHEREAS, on May 3, 2011, the Administrative Law Judge submitted a Proposed Decision related to those proceedings, a copy of which has been provided to the Respondents, and attached hereto as Attachment 1;

WHEREAS, this Board has received and considered the proposed decision of the Administrative Law Judge in OAH Case No. 2011030355 and any arguments submitted by or on behalf of the parties regarding that proposed decision;

WHEREAS, the proposed decision inadvertently lists Sandra Cano as having more seniority than Margaret Mahon, such that this Board wishes to correct Factual Findings, paragraph 30; Legal Conclusions, paragraph 7; and the last two sentences of the Order;

WHEREAS, Education Code section 44949, subdivision (c)(3), provides that this Board shall make the final determination as to the sufficiency of the cause and disposition of the layoff;

WHEREAS, Education Code section 44955, subdivision (c), requires final Board action and notifications to employees no later than May 14, unless that date is extended pursuant to Education Code section 44949, subdivision (e);

WHEREAS, although this Board is not required to consider or account for attrition occurring after March 15, 2011 in the implementation of Resolution No. 10-20, the Board nevertheless has determined that such attrition should be recognized and accounted for in order to reduce the number of employees whose services are terminated;

WHEREAS, the particular kinds of services to be discontinued and reduced as referenced in Resolution No. 10-20 are each determined to be a particular kind of service within the meaning of Education Code section 44955;

WHEREAS, the particular kinds of services referenced in Resolution No. 10-20 will be discontinued and reduced within the meaning of Education Code section 44955 not later than the beginning of the 2011-2012 school year;

WHEREAS, except as otherwise authorized by statute, the services of no permanent employee (or other employee) are being terminated, in whole or in part, while any probationary employee, or any other employee with less seniority is being retained to render a service which said permanent (or other) employee is certificated and competent to render, within the meaning of Education Code section 44955(b); the individuals whose employment is being terminated, in whole or in part, are not certificated and competent (within the meaning of Education Code section 44955) to render the service being performed by any employee with less seniority who is being retained;

WHEREAS, sufficient cause exists for the termination of up to 8.6 full-time equivalent (FTE) certificated positions, and pursuant to and within the meaning of Education Code section 44949, said cause relates to the welfare of the schools and the pupils thereof;

NOW, THEREFORE, BE IT RESOLVED that this Board accepts the attached proposed decision of the Administrative Law Judge and adopts that proposed decision (a copy of which is attached) as the decision of this Board, with the following modifications:

- a. At Factual Findings, paragraph 30, the sentence "Ms. Cano is senior to both Ms. Mahon and Ms. Rand" should be corrected to state, "Ms. Mahon is senior to both Ms. Cano and Ms. Rand";
- b. At Factual Findings, paragraph 30, the sentence "The Accusation is, therefore, dismissed as to Ms. Cano, who is in a 0.5 FTE position" should be corrected to state, "Ms. Cano is in a 0.5 FTE position. The Accusation is sustained as to Ms. Cano with respect to 0.1 FTE only, and is dismissed as to Ms. Cano with respect to a 0.4 FTE position";
- c. At Factual Findings, paragraph 30, the sentence "The Accusation is, therefore sustained as to Ms. Mahon with respect to 0.1 FTE only, and is dismissed as to Ms. Mahon with respect to a 0.7 FTE position" should be corrected to state, "The Accusation is, therefore, dismissed as to Ms. Mahon, who is in a 0.8 FTE position."
- d. At Legal Conclusions, paragraph 7, the sentence "The Accusation may be dismissed as to Ms. Cano, and may be dismissed in part as to Ms. Mahon" should be corrected to state, "The Accusation may be dismissed as to Ms. Mahon and may be dismissed in part as to Ms. Cano";
- e. At Order, the last two sentences stating, "The Accusation is dismissed as to respondent Sandra Cano. The Accusation is dismissed in part and sustained in part as to respondent Margaret Mahon" should be corrected to state, "The Accusation is dismissed as to respondent Margaret Mahon. The Accusation is dismissed in part and sustained in part as to respondent Sandra Cano";

BE IT FURTHER RESOLVED that sufficient cause exists for the termination of the services of the certificated employees listed in Attachment 2 hereto in the amounts of full-time equivalencies specified (all amounts being 1.0 full-time equivalency unless indicated otherwise), and in the order indicated based on seniority number;

BE IT FURTHER RESOLVED that the employment of each of the certificated employees listed above be and hereby is terminated effective upon the close of this school year, i.e., the end of the last working day as to each employee prior to July 1, 2011;

BE IT FURTHER RESOLVED that this decision is effective immediately and that the Superintendent or his designee(s) may take such actions as are necessary and appropriate to implement this Board's decision, including at least giving appropriate notice to those certificated employees listed above of the termination of their services because of discontinuances and reductions of particular kinds of services to take effect upon the close of this school year, with these notices being given on or before May 14, 2011, in the manner prescribed in Education Code section 44949;

BE IT FURTHER RESOLVED that the Superintendent or designee(s) are authorized to rescind final notices given to any of the above-named employees if, prior to the employee's last working day prior to July 1, 2011, the Superintendent or designee(s) determines (a) attrition occurring after the adoption of this Resolution has created a vacancy in a service for which there is adequate funding to fill; and (b) any of the above-named employees is certificated and competent to render such service, provided that any such rescissions shall be in the order of seniority;

BE IT FURTHER RESOLVED that reemployment rights be afforded in accordance with the Education Code, if and when reemployment is offered and to the extent any reemployment rights are applicable to any of the above referenced employees.

The foregoing Resolution was adopted by the Board of Education of the Santa Monica-Malibu Unified School District on the 9th day of May, 2011 by the following vote:

Ayes: _____

Noes: _____

Absent: _____

Jose Escarce, President
Board of Education of the
Santa Monica-Malibu Unified School District

I, Tim Cuneo, Secretary of the Governing Board of the Santa Monica-Malibu Unified School District, do certify that the foregoing Resolution was regularly introduced, passed and adopted by the Governing Board at its regular meeting held on May 9, 2011.

Tim Cuneo, Secretary
Board of Education of the
Santa Monica-Malibu Unified School District

Attachments:

Proposed Decision

List of Employees to Receive Final Layoff Notices

BEFORE THE BOARD OF EDUCATION
OF THE SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force of: OAH No. 2011030355

CERTIFICATED EMPLOYEES
(NURSES) OF THE SANTA MONICA-
MALIBU UNIFIED SCHOOL DISTRICT,

Respondents.

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2011, in Santa Monica.

Elizabeth Zamora-Mejia, Attorney at Law, represented the Santa Monica-Malibu Unified School District (District).

Deborah Eshaghian, Attorney at Law, represented Rachel Bressler Deese, Sandra Cano, JoAnn Housman, Margaret Mahon, Nora McElvain, Aimee Rand, Teri Sachs, and Sherry Waldorf (respondents), all of whom were present at the hearing.

The District has decided to reduce or discontinue certain services and has given respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Oral and documentary evidence was received at the hearing. The record was closed and the matter was submitted for decision on April 25, 2010.

FACTUAL FINDINGS

1. Tim Cuneo, the District's Superintendent, and Debra Moore Washington, the District's Assistant Superintendent, Human Resources, took all relevant actions in their official capacity.

2. Respondents are certificated employees of the District.

//

//

3. On February 17, 2011, the Board of Education (Board) of the District adopted Resolution No. 10-20 (Ex. 1) reducing or discontinuing the following particular kinds of services (PKS) for the 2011-2012 school year:

<u>Services</u>	<u>FTE¹</u>
K-5 Classroom Teaching Services	6.0
Nursing Services	<u>5.6</u>
Total Certificated Positions	11.6

4. Resolution No. 10-20 further provides, among other things, that, due to the need of the District to retain those school nurses with special training, skills, and experience to provide bilingual nursing services to English Language Learners, which more senior school nurses do not possess, the Superintendent or his designee may deviate from terminating those school nurses in order of seniority where they can demonstrate that they are bilingual and fluent in both English and Spanish and that they are currently providing nursing services to District students whose primary language is other than English. Resolution No. 10-20 further provides that due to the need of the District to retain those school nurses with special training and experience to serve in the position of District Coordinating Nurse, the Superintendent or his designee may deviate from terminating those school nurses in order of seniority where they have special training and experience to serve in the position of District Coordinating Nurse.

5. The Board further determined that due to the reduction or discontinuance of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated at the end of the 2010-2011 school year, and directed the Superintendent or his designee to take all actions necessary and proper to accomplish the purposes of Resolution No. 10-20.

6. On or before March 15, 2011, the District provided written notice to respondents, under Education Code sections 44949 and 44955,² that their services would not be required for the 2011-2012 school year. Each written notice set forth the reasons for the District's decision and noted that 11.6 FTE positions, consisting of 6.0 FTE K-5 classroom teaching positions and 5.6 FTE nursing services positions, would be reduced or discontinued.

¹ Full-time equivalent position.

² All statutory citations are to the Education Code, unless indicated otherwise.

7. Between March 18 and March 22, 2011, the District filed and served the Accusation and related documents on respondents.³ Respondents thereafter timely filed Notices of Defense, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 school year.⁴

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in factual finding 3 are particular kinds of services that may be reduced or discontinued within the meaning of section 44955.

10. The Board took action to reduce the services set forth in factual finding 3 because of uncertainty surrounding future state funding. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to reduce the particular kinds of services is related solely to the welfare of the District and its pupils, and is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. For the 2010-2011 school year, the District employed 11 nurses filling 9.8 FTE positions. These individuals provided a multitude of services to approximately 11,500 students at 16 schools and a child development site. A portion of the student population has serious health issues, including asthma and diabetes. Some students require specialized physical or mental health care services. The school nurses develop care plans for students, and coordinate and perform mandated vision, hearing, and scoliosis screening. They also perform federally mandated student assessments as part of the special education process.

12. Resolution No. 10-20 reduces 5.6 FTE nursing services positions. This would leave the District with 4.2 FTE credentialed school nurses. Several respondents contend that the District will not be able to provide federal and state mandated services to students with only 4.2 FTE school nurses.

13. Debra Moore Washington, the District's Assistant Superintendent, Human Resources, was involved in recommending reductions in particular kinds of services, as reflected in Resolution No. 10-20, including the reduction in nursing services. The District acknowledged that it must continue to provide legally mandated health services, including hearing, vision, and scoliosis screening. The District argued that the Education Code does not mandate that all the health care services

³ The District served precautionary written notices and Accusations on respondents Mahon and Rand even though the District proposes to retain the services of those respondents. (See factual finding 20.)

⁴ All respondents provide nursing services. None of the K-5 classroom teachers filed a hearing request.

which the District's school nurses are currently providing must be provided by a certificated school nurse employed by the District. The District believes it will be able to meet its legal obligations to provide mandated services to students with 4.2 FTE certificated school nurses and additional services provided through other means that the District is currently exploring through the use of an ad hoc committee that will make recommendations to the Board. Other means being considered include the use of non-employee licensed vocational nurses or health clerks working under the supervision of registered nurse employees of the District. The District's argument was persuasive.

Seniority

14. At hearing, respondent Housman questioned her seniority date of August 31, 1998. She testified that she was first hired by the District for the 1994-1995 school year as a temporary nurse, working three days per week, and that she accepted other temporary positions at the District between 1994 and 1998. She testified that she does not believe she worked 75 percent of full-time or more in any school year before 1998. The parties agree that the issue of respondent's seniority date is not dispositive of the District's right to lay off respondent in these proceedings. Based on the evidence presented, Ms. Housman's seniority date is August 31, 1998.

Tie-Breaking

15. On February 17, 2011, the Board adopted Resolution No. 10-22 establishing tie-breaker criteria for determining the relative seniority of certificated employees with the same date of first paid service. The criteria provide that the order of layoff shall be determined according to the following criteria:

1. Possession of a Clear School Nurse Services Credential.
2. Experience serving in the position of District Coordinating Nurse.
3. Number of verified years of certificated employee's actual work experience within the District.
4. Number of verified years of employment as a school nurse in other school districts in California.
5. Number of verified total full time years of employment as a licensed nurse.
6. Assuming the preceding paragraphs do not resolve all ties, the tie will be broken by drawing of lots.

16. The tie-breaking criteria of Resolution No. 10-22 were applied in this matter to resolve a tie in seniority amongst certificated personnel, specifically to Lora Morn, who holds a school nurse services credential, and respondent JoAnn Housman. Both have a seniority date of August 31, 1998. The District applied criteria one—possession of a Clear School Nurse Services Credential—and then two—experience serving in the position of District Coordinating Nurse—which broke the tie in favor of Ms. Morn.

17. Ms. Housman testified to her belief that all nurses should be able to take any nursing position in the District, that the nursing coordinator position was once contemplated to be a shared position, and that she has experience in team meetings coordinating the Headstart program, and in ensuring compliance with federal requirements for that program, at the Child Developmental Services preschool.

18. School districts are given wide discretion in determining tie-breaking criteria.⁵ In this case, the District reasonably exercised its discretion by giving credit for tie-breaking purposes to those with experience serving in the position of District Coordinating Nurse, given the need of the District expressed in Resolution No. 10-20 to retain those school nurses with special training and experience to serve in the position of District Coordinating Nurse. It cannot be concluded that the failure to include Headstart coordinating experience or the capabilities of the District's school nurses as a general matter in the tie-breaking criteria was an abuse of discretion or otherwise rendered the tie-breaking process not solely related to the welfare of the District and its students.

Skipping

19. On February 17, 2011, the Board adopted Resolution No. 10-23, which provides in part that, due to the need of the District to retain those individual school nurses with special training, skills, and experience to provide bilingual nursing services to English Language Learners, which more senior school nurses do not possess, the Superintendent or his designee are authorized to deviate from terminating those school nurses in order of seniority in instances where they can demonstrate (a) they are bilingual and fluent in both English and Spanish, or another language that the District determines is utilized as the primary language for a significant number of parents or students, and (b) that they are currently providing nursing services to District students whose primary language is other than English. Resolution No. 10-23 further provides that, due to the need of the District to retain those individual school nurses with special training and experience to serve in the position of District Coordinating Nurse, the Superintendent or his designee are authorized to deviate from

⁵ Section 44955, subdivision (b), requires only that such criteria be based “solely on the basis of needs of the District and the students thereof.”

terminating those school nurses in order of seniority where they have special training and experience to serve in the position of District Coordinating Nurse.

20. The District seeks to retain two respondents, Margaret Mahon and Aimee Rand, who were served precautionary layoff notices and who are junior to other respondents. Both hold credentials that enable them to provide school nursing services.

21. All respondents contested the application of the District's skipping criteria set forth in Resolution 10-23. Respondents Cano and Waldorf argued that they are bilingual and are more senior than respondents Mahon and Rand. Other respondents argued that the criteria are arbitrary in that they are not clearly defined or that nursing services may be provided to Spanish-speaking pupils with the aid of a liaison.

22. In applying those criteria, the District ascertained respondents' experience through a questionnaire asking each respondent whether she speaks a second language, considers herself bilingual, has taken any courses or had any training in a second language or has had any training to help in the delivery of bilingual services, and is currently using a second language in the delivery of services and, if so, the percentage of time she uses that second language in the delivery of services.

23. Respondent Mahon is in a 0.8 FTE position and has a seniority date of August 30, 2002. Ms. Mahon testified that she has performed proficiently in Spanish as a nurse, and worked at the District's Edison Language Academy (Edison), a dual immersion program elementary school, for eight years.

24. Respondent Rand is in a 0.4 FTE position and has a seniority date of September 4, 2009. Ms. Rand is a school nurse at Edison. She testified that she speaks and writes Spanish and that, at Edison, she speaks Spanish about 50 percent of the time she is delivering nursing services.

25. Respondent Cano, who is in a 0.5 FTE position and who has a seniority date of September 2, 2005, testified that she considers herself bilingual. She testified that she studied Spanish in high school and for two years in college, has worked in local hospitals for over 30 years, where she has used Spanish, substituted at Edison about ten times during the 2009-2010 school year, and currently uses Spanish about five percent of the time she is delivering nursing services.

26. Respondent Waldorf, who is in a 1.0 FTE position and who has a seniority date of August 30, 2002, testified that she studied Spanish for two years in college, and once participated in a live-in program in Cuernavaca, Mexico. She testified that she has not needed to use Spanish a lot over the years and, sometimes with the aid of an interpreter, has been able to communicate with students in Spanish.

27. Respondents Bressler Deese, Housman, McElvain, and Sachs admitted that they are not bilingual.

28. A school district may deviate from terminating certificated employees in order of seniority where it demonstrates a specific need for personnel to provide services authorized by a services credential with, in the case of school nurses, a specialization in health that others with more seniority do not possess and that the certificated employee has special training and experience necessary to provide those services.⁶ The District demonstrated a specific need for nurses with special training, skills, and experience to provide bilingual nursing services to English Language Learners.

29. The criteria used by the District to ascertain which school nurses have the requisite training, skills, and experience are neither arbitrary nor capricious but are rather a proper exercise of the District's discretion, except insofar as they require that a school nurse currently be using a second language in the delivery of services. Requiring current, rather than recent, use of a second language in the delivery of nursing services does not rationally distinguish, as to the ability to provide specialized services for the District, between nurses who are bilingual. Nor did the District, although it requested information about the percentage of time spent delivering nursing services in a second language, establish any scoring system or any cutoff below which the nurse's experience would be deemed inadequate.

30. The respondents with greater seniority than the two retained respondents served with precautionary notices failed to demonstrate that they possess the experience and specialized training that would allow them to provide the specialized services, with the exception of Ms. Cano, who did submit evidence sufficient to show that she possesses the required experience and specialized training. The Accusation is, therefore, dismissed as to Ms. Cano, who is in a 0.5 FTE position. Ms. Cano is senior to both Ms. Mahon and Ms. Rand; Ms. Mahon is senior to Ms. Rand. The Accusation is, therefore, sustained as to Ms. Rand, who is in a 0.4 FTE position. Ms. Mahon, who is in a 0.8 FTE position, has demonstrated the requisite training and experience to provide the services. The Accusation is, therefore, sustained as to Ms. Mahon with respect to 0.1 FTE only, and is dismissed as to Ms. Mahon with respect to a 0.7 FTE position.

Other Findings

31. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

⁶ Section 44955, subdivision (d)(1).

32. Except as set forth in factual finding 14, there was no challenge to the order of seniority on the seniority list.

33. The District properly considered all known attrition, resignations, retirements, and requests for transfer in determining the number of layoff notices to be delivered to employees by March 15, 2011.

34. Except as set forth in factual finding 30, the District did not retain any certificated employee junior to respondents to render a service that respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists under sections 44949 and 44955, by reason of factual findings 1 through 8.

2. The services identified in factual finding 3 are particular kinds of services that may be reduced or discontinued under section 44955, by reason of factual findings 3 and 9.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual findings 1 through 34.

4. School districts "shall give diligent care to the health and physical development of pupils, and *may* employ properly certified persons for the work." (§ 49400 (italics added).) School districts must also "maintain fundamental school health services at a level that is adequate to accomplish all the following: [¶] (1) Preserve pupils' ability to learn. [¶] (2) Fulfill existing state requirements and policies regarding pupils' health. [¶] (3) Contain health care costs through preventive programs and education." The Education Code requires school districts to conduct sight and hearing screening (§ 49452) and scoliosis screening (§ 49452.5). The Education Code also contains provisions governing the administration of medication to students (§ 49423) and the delivery of specialized physical health care services and other services that require medically related training (§ 49423.5.)

5. Courts have permitted districts to reduce or discontinue particular kinds of services, including those of school nurses, as long as mandated services continue to be performed. (See *Gallup v. Alta Loma School District Board of Trustees* (1996) 41 Cal.App.4th 1571, 1585-1589; *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 639-640.) These statutory provisions do not, however, require that only certificated school nurses can provide the described health care services. (*Gallup v. Board of Trustees, supra*, 41 Cal.App.4th at pp. 1585-1589, distinguishing *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

6. The District plans to continue to provide state-mandated nursing services, and it was not established that the discontinuation of nursing services set forth in factual finding number 3 will preclude the District from discharging its health care obligations. The District need not have a finalized plan in place for the provision of nursing services for the 2011-2012 school year 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 (Evid. Code § 664; *Degener v. Governing Board* (1977) 67 Cal. App.3d 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, supra*, 41 Cal.App.4th at pp. 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.) The evidence did not establish that the District would not be able to provide all legally mandated health care services to students if it reduces its certificated school nursing staff by 5.6 FTE positions.

7. Respondent Cano shall be retained in a 0.5 FTE position and respondent Mahon shall be retained in a 0.7 FTE position, by reason of factual findings 19-30. The Accusation may be dismissed as to Ms. Cano, and may be dismissed in part as to Ms. Mahon.

8. Cause exists to terminate the services of respondents Rachel Bressler Deese, JoAnn Housman, Nora McElvain, Aimee Rand, Teri Sachs, and Sherry Waldorf, by reason of factual findings 1 through 34 and legal conclusions 1 through 7.

ORDER

The Accusation is sustained as to respondents Rachel Bressler Deese, JoAnn Housman, Nora McElvain, Aimee Rand, Teri Sachs, and Sherry Waldorf, and the District may notify them that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. The Accusation is dismissed as to respondent Sandra Cano. The Accusation is dismissed in part and sustained in part as to respondent Margaret Mahon.

Dated: May 3, 2011


HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

ATTACHMENT 2

Employees to Receive Final Layoff Notices

Probationary Employees:

1. Henry Wadsworth (9/4/09) (1.0 FTE)
2. Aimee Rand (9/4/09) (.40 FTE)

Permanent Employees:

3. JoAnn Houseman (8/31/98) (1.0 FTE)
4. Nora McElvain (10/16/00) (1.0 FTE)
5. Rachel Bressler Deese (10/15/01) (1.0 FTE)
6. Sherry Waldorf (8/30/02) (1.0 FTE)
7. Teri Sachs (9/3/04) (1.0 FTE)
8. Sandra Cano (9/2/05) (0.10 FTE)
9. Elaine Robinson (8/28/08) (1.0 FTE)
10. Jennifer Rodstrom (8/28/08) (1.0 FTE)

DISCUSSION ITEMS

TO: BOARD OF EDUCATION

DISCUSSION

05/09/11

FROM: TIM CUNEO / CHIUNG-SALLY CHOU

RE: PATHWAY PRESENTATIONS – JOHN ADAMS PATHWAY AND
ALTERNATIVE EDUCATION

DISCUSSION ITEM NO. D.01

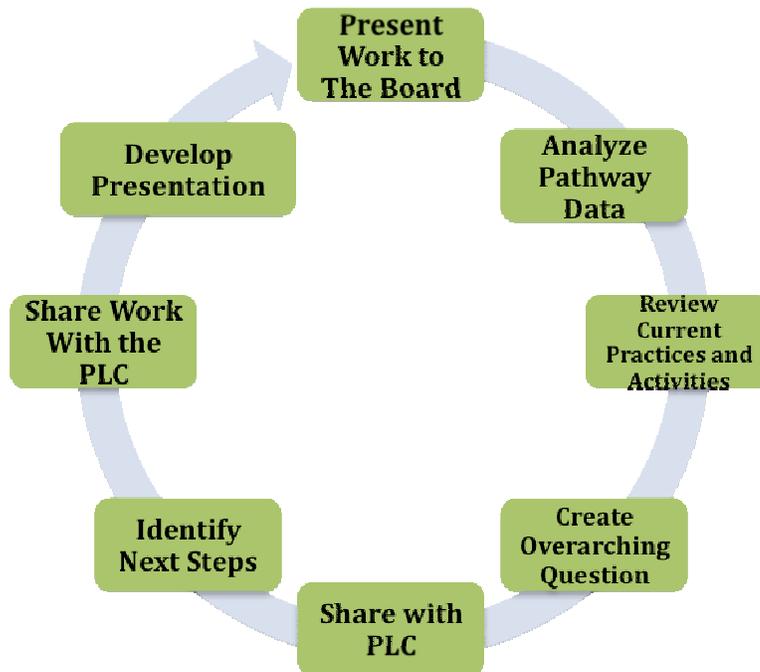
As last year, reports to the Board by the school sites will take the form of a collaborative effort designed and presented by the principals within each of the three pathways. The purpose of these Pathway Presentations is to communicate to the Board of Education and the broader community the thoughtful intentional work that is taking place across each Pathway to accomplish the District's mission of "Providing each student with extraordinary educational experiences while simultaneously closing the achievement gap."

The presentations will be anchored in an analysis of pathway data, and include a discussion of work that is currently in progress, as well as future plans. It is also anticipated that the pathway presentations will prove to be an invaluable tool for the principals as they work together to promote deep and meaningful collaboration among their schools about student performance and practices across the pathway. Through the planning process, principals are afforded time to reflect upon the effectiveness, and alignment of efforts to support increased achievement.

Attached is an overview of the Pathway Presentation Planning Process.

The Lincoln and Malibu pathways presented at the May 2 special meeting, and the John Adams pathway and alternative education will present at the May 9 meeting.

PATHWAY PRESENTATION PLANNING PROCESS



- 1) **Analyze Pathway Data** – Working with the Director of Assessment and Evaluation, principals will collaboratively examine multiple sources of data from their pathway to determine performance trends of each of their subgroups. Data sources to be considered include, but are not limited to, standardized test scores, local assessment results, suspension/expulsion rates, parental involvement information, and student participation profiles.
- 2) **Review Current Practices and Activities** – In this step of the planning process, principals discuss instructional and support practices/ activities that are currently implemented within their pathway in light of information gained through their data analysis. The purpose of this discussion is to identify practices and activities that are positively impacting their work to provide all students with an extraordinary educational experience while simultaneously closing the achievement gap.
- 3) **Create Overarching Question** – Based on insight gained from the first two steps, the group works to define an essential question that will propel their work to increase achievement, and frame their presentation to the Board.
- 4) **Share With PLC** – An important element of principals’ work as instructional leaders is the reflection and deepening of thought that takes place in purposeful conversations with other principals. As the principals work to explore and improve their practices together, they have developed into their own PLC – “Principal Learning Community.” At this step of the process, the Pathway administrators share their work from the first

three steps with the entire PLC for feedback and questions for an “outside” collegial perspective on their thinking.

- 5) **Identify Next Steps** – This step of the process provides principals the opportunity to determine the “next steps” they wish to take as a pathway to enhance/ improve effectiveness with subgroups within their pathway. The determination may include identification of practices that should be:
 - a. Continued or expanded;
 - b. Modified or eliminated;
 - c. Newly created.

- 6) **Share Work with Principal Learning Community** –At this step of the process, pathway principals will again share their thinking with principals from the other pathways. The non-presenting principals will be asked to give feedback to, and ask probing questions of the presenting principals. The presenting team of principals can incorporate the insights that emerge as a result of this articulation into the development of their presentation to the Board.

- 7) **Develop Presentation** – The principals work collaboratively to use understandings gained from the first four steps of this process to formulate their presentation to the Board of Education. Using a template provided by Ed Services, the presentation will tell the story of the pathway’s current and future work to accomplish the district’s mission. The presentation will be approximately one hour in length, and include opportunities for questions from Board members at intervals scheduled throughout.

- 8) **Presentation to the Board** – The Pathway Presentations to the Board of Education will take place at specially scheduled workshops on May 2 and 9. Two pathways will present at the May 2nd session, and the third pathway and alternative education will present at the May 19th workshop. Ed Services staff will introduce the presentations. Pathway principals will collaboratively present their pathway’s work, and facilitate the interaction with the Board.

TO: BOARD OF EDUCATION

DISCUSSION

05/09/11

FROM: LAURIE LIEBERMAN

RE: CONSIDER REVISING BP 5131.61 – CONTROLLED SUBSTANCE

DISCUSSION ITEM NO. D.02

At the May 5, 2011, board meeting, Board Member Lieberman requested that this policy come forward for board discussion.

Attached is the existing policy.

CONTROLLED SUBSTANCE

Policy Statement

Unlawfully possessing, using, selling, being under the influence of or otherwise furnishing to others a controlled substance or alcoholic beverage, or intoxicant of any kind, at any school activity or on any school district or adjacent property, is considered to be a threat to the educational process. For the offenses indicated, the student, under guidelines indicated below, may be subject to suspension, transfer to another school, expulsion and an obligation to complete the district counseling requirement.

Definitions of Evidence

1. Hard Evidence:
 - a. An admission by the student of unlawfully possessing, using, selling, being under the influence of, or otherwise furnishing to others a controlled substance or alcoholic beverage, or intoxicant of any kind.
 - b. Discovery of the controlled substance and/or alcoholic beverage, or intoxicant of any kind, on the student's person or in possessions such as lockers or backpacks under the student's control.
 - c. Eyewitness testimony of any school personnel of the actual unlawful possession, sale, use or furnishing to others.
 - d. Eyewitness testimony of two or more students of the actual unlawful possession, sale, use or furnishing to others.

2. Soft Evidence:

Soft evidence is more subjective; it involves all other forms of evidence and usually based on observation of student behavior.

Discipline and Counseling Procedures for Governing Use, Possession, Being Under the Influence of a Controlled Substance (Grades 1-12)

1. Hard Evidence: - First Offence:

If the Superintendent or designee determines, in the presence of hard evidence, that the student unlawfully possessed, used, sold, was under the influence of or otherwise furnished to others a controlled substance or alcoholic beverage, or intoxicant of any kind, the following steps shall be taken.

- a. The student shall be suspended for a maximum of five days. (Enrollment at Saturday School cannot be used in lieu of suspension.)

The rights and responsibilities section of the school district suspension form shall be observed by the school principal or designee. This includes the parent's right to have access to student records and the parent's or student's right to an appeal following the district's appeal procedures. When make-up work can be reasonably provided, the student shall be allowed to complete all assignments and tests missed during a suspension.

- b. Students in grades 1-12 shall be placed on academic probation for a period of ten weeks.

The terms of probation include loss of privileges from participating in the following: all sports, dramatic, choral or musical performances, dances, cheerleading, graduation and awards ceremonies.

- (1) Students must complete 24 hours of substance abuse counseling in a program offered by the district, or students must obtain preapproval if counseling will be provided by a private agency or therapist. Parents must attend 12 hours of substance abuse counseling designed for parents.
- (2) Students must complete 40 hours of community service from a list of approved agencies provided by the district, or receive preapproval for community services with other organizations.
- (3) The principal has the option of requiring that the student participate in a 12-step program if the behavior warrants additional intervention.
- (4) If the student does not complete and provide documentation for all of the above measures, he/she will remain on probation with loss of privileges until all are completed. If the student fails to complete all of the above by the last day of the semester in which the 10-week probation was scheduled to end, the student will be transferred to another school in the district for the entire next semester. At the end of that semester, the student will be returned to his/her home school.

c. Hard Evidence - Second Offense:

If the Superintendent or designee determines, in the presence of hard evidence, that for a second time within middle school (Grades 6-8) or a second time within high school (Grades 9-12), the student unlawfully possessed, used, was under the influence of or otherwise furnished to others a controlled substance or alcoholic beverage or intoxicant of any kind, the following steps shall be taken:

- (1) The student shall be suspended for a maximum of five days. The rights and responsibilities section of the district suspension form shall be observed by the principal or designee. This includes the parent's right to have access to student records and the parent's or student's right to appeal following the district's appeal procedures. When make-up work can be reasonably provided, the student shall be allowed to complete all assignments and tests missed during the suspension.
- (2) The principal shall recommend that the student be expelled from the district unless it is determined that expulsion is inappropriate under the particular circumstances of the case. During the period when the student is awaiting the expulsion hearing, make-up work will be provided.
- (3) If a student is attending school in the district on an interdistrict permit, the principal will meet with the parents at the end of the five day suspension, the permit will be revoked and the student will be directed to enroll in his/her neighborhood school.

2. The Santa Monica Police Department or the Los Angeles County Sheriff shall be notified.

Discipline Procedures for Providers of Controlled Substances or Alcoholic Beverage, or Intoxicant of Any Kind To Others (Grades 1-12)

In cases where the principal or Superintendent determines, in the presence of hard evidence, that the student sold or provided a controlled substance or alcoholic beverage, or intoxicant of any kind, to others, the following steps shall be taken:

1. The student shall be suspended for a maximum of five days. (Enrollment at Saturday School cannot be used in lieu of suspension.)
2. The Santa Monica Police Department or the Los Angeles County Sheriff shall be notified.
3. The principal shall inform the Superintendent or designee of the incident and actions taken.
4. The Superintendent or designee shall recommend that the student be expelled from school, unless the principal finds, and so reports to the Superintendent or designee in writing, that expulsion is inappropriate under the particular circumstances of the case.

Soft Evidence Procedures

Soft evidence cases will usually involve situations in which the student is suspected of being under the influence of a controlled substance, alcoholic beverage or intoxicant of any kind. In such a case, the administrator may consult with the school nurse and may require the completion of the Behavioral Observation Form shown in the Discipline Handbook.

Distribution Guidelines

1. The above policy and procedure shall be distributed to all students Grades 1-12 at the beginning of each school year and to transfer students at the time of enrollment.
2. Within the first 10 days of school each principal shall implement procedures to ensure that all students have acknowledged that they have received a copy of the above policy and indicated their obligation to share the contents of the policy with the parent/guardian.
3. Each principal will ensure that all middle and high school students are explicitly informed of the provisions of the controlled substance policy through assemblies, presentations and/or direct instruction in appropriate classes.

(Legal references on next page)

Legal Reference:

EDUCATION CODE

44049 Known or suspected alcohol or controlled substance abuse by student

51262 Use of anabolic steroids; legislative finding and declaration

CALIFORNIA CONSTITUTION

Article 9, Section 5 Common school system

CODE OF REGULATIONS, TITLE 5

350 Fees not permitted

COURT DECISIONS

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, (2002) 122 S.Ct. 2559

Vernonia School District v. Acton, (1995) 115 S.Ct. 2385

Hartzell v. Connell, (1984) 35 Cal. 3d 899

Management Resources:

OFFICE OF NATIONAL DRUG CONTROL POLICY PUBLICATIONS

What You Need To Know About Drug Testing in Schools, August 2002

WEB SITES

California Department of Education: <http://www.cde.ca.gov>

Office of National Drug Control Policy: <http://www.whitehousedrugpolicy.gov>

National Institute on Drug Abuse: <http://www.nida.nih.gov>

Partnership for a Drug-Free America: <http://www.drugfreeamerica.org>

U.S. Department of Education: <http://www.ed.gov>

**Policy SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
adopted: August 19, 2009 Santa Monica, California**