

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

RESOLUTION NO. 2962

EMERGENCY RESOLUTION IN THE EVENT OF A CONCERTED REFUSAL TO WORK BY EMPLOYEES

RECITALS

WHEREAS, Education Code section 35161 permits the Governing Board (“Board”) to delegate to an officer or employee of the District any of the Governing Board’s powers and duties; and

WHEREAS, the Board is desirous of delegating to the District Superintendent or designee certain powers and duties; and

WHEREAS, students of a school district have constitutionally protected rights, and a public school district must engage in lawful acts in order to afford such constitutionally protected rights to students; and

WHEREAS, the fundamental purpose of the District and its Board and staff is to further the educational mission of the District, protect students, and enforce the rule of law; and

WHEREAS, Article I, Section 28, of the California Constitution declares that “[a]ll students and staff of public, primary, elementary, junior high, and senior high schools . . . have the inalienable right to attend campuses which are safe, secure and peaceful;” and

WHEREAS, it is the moral and legal responsibility of the Board to provide students, staff, and public with safe, secure, and peaceful campuses and worksites as required by the Constitution; and

WHEREAS, it is the further responsibility of the Board to be prepared for all foreseeable emergencies that may occur within the District; and

WHEREAS, the absence of a large number of employees from the District or from any work site will jeopardize the safety and security of students and cause a breakdown in the educational program, which will constitute an emergency; and

WHEREAS, based upon SCTA’s statements throughout the bargaining process that they were prepared to strike if they did not secure the increases in salaries they sought; the statements made in SCTA’s newsletter entitled “The News Messenger” dated September 18, 2017, wherein SCTA admits that prior to bargaining, the SCTA Rep Council authorized the bargaining team to begin strike votes if the bargaining team determined negotiations had stalled, implicitly admitting that they will not bargain in good faith at future bargaining sessions; and most recently, SCTA’s “The News Messenger” on September 22 and 27, 2017 and again on October 5, 2017 explicitly states that strike votes are taking place. District staff reported that strike votes are in fact taking place at school sites as stated in SCTA’s “The News Messenger.” District staff have further reported and confirmed that during a meeting on October 4, 2017 between District staff and SCTA Leadership, SCTA Leadership stated their intent to

walk out and “strike on November 2 and 3, 2017.” Accordingly, there is a good faith belief by this Board that representatives and unit members in the certificated bargaining unit represented by the Sacramento City Teachers Association are considering the possibility of calling a strike.

Strikes and Other Concerted Refusals to Work by District Employees

NOW THEREFORE, BE IT RESOLVED AND ORDERED that the above recitals are true and correct.

BE IT FURTHER RESOLVED AND ORDERED that it is the position of the District that any actual or serious threat of a concerted refusal to work by employees will impede and interfere with the normal operation of the District resulting in great and irreparable damage to the students and the District. For the purposes of this or other emergency resolutions, the term “concerted refusal to work” shall mean any work stoppage, slow-down, sick out, or interruption of work planned or accomplished by employees together that is in violation of present Board policies or state law. The term “concerted refusal to work” shall not mean any lawful work to rule program, rallies, leafleting, peaceful picketing or other conduct protected by law.

BE IT FURTHER RESOLVED AND ORDERED that it is also the position of the Board that any actual or serious threat of a concerted refusal to work by employees will constitute a legitimate emergency, and the Board hereby declares an emergency effective immediately and lasting until the Board takes formal action to rescind this Resolution.

BE IT FURTHER RESOLVED AND ORDERED during the emergency, the Superintendent is empowered to take appropriate action including, but not limited to, any action:

- a. To ensure and protect the welfare, safety and educational wellbeing of all students;
- b. To ensure and protect the welfare and safety of persons working for the District which shall include its agents, employees, representatives and all others acting for or on behalf of the District;
- c. To protect District property;
- d. To ensure and protect the personal property of persons working for the District when such property is on District grounds; and/or
- e. To provide necessary staffing and instruction.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent shall report to the Board all such actions taken in accordance with this Resolution.

Maintenance of the Instructional Program

BE IT FURTHER RESOLVED AND ORDERED that it is the position of the District that in the event of any actual or serious threat of a concerted refusal to work by employees, all schools should remain open to provide an educational program for students. In view of the emergency situation,

however, the Superintendent has the authority to close a school or schools, modify school schedules, cancel or modify specific educational programs or courses, and cancel or postpone any extracurricular activities. Only the Superintendent has such assigned authority, and such assigned authority shall only be utilized when it is the opinion of the Superintendent that the concerted refusal to work has caused or may cause an actual violation of the District's duties and obligations under Article I, Section 28 of the California Constitution, as defined above, or has caused a breakdown in the educational process.

BE IT FURTHER RESOLVED AND ORDERED that once any school is open and students are present, every reasonable effort shall be made to provide a quality educational program. If a site administrator concludes at any time that a school should be closed, this report should be communicated to the Superintendent for action. The Superintendent shall immediately notify the Board and community when such action is taken. The Superintendent shall close a school when it is evident that sufficient staff is unavailable to maintain adequate supervision of students or the safety and welfare of persons or property are in serious jeopardy.

BE IT FURTHER RESOLVED AND ORDERED that when a school is closed before the end of the instructional day, every effort shall be made to provide transportation to those normally assigned busing. If transportation cannot be provided immediately, those pupils shall be held at school until buses arrive. All staff members shall remain in the school for the completion of the work day.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is directed to take and have other administrators take action against individuals who are involved in acts of malicious mischief, vandalism, disturbing the peace, assault, harassment, unlawfully disrupting the educational program, trespass, prevent the normal ingress and egress to school property and other violations of the law.

BE IT FURTHER RESOLVED AND ORDERED that all student grades given during the emergency will stand as recorded and will not be made up or modified at the end of the emergency.

Employee Participation in a Strike

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent shall implement appropriate administrative procedures so that employee participation in any concerted refusal to work shall be documented. In no case shall an employee be allowed to use sick leave, personal necessity, or other authorized leaves when it is apparent that the employee is participating or participated in any concerted refusal to work for that period.

BE IT FURTHER RESOLVED AND ORDERED that no compensation shall be paid to or on behalf of any District employee unless the Superintendent, whose duty is to draw the warrants, is satisfied that the employee has faithfully performed all of his or her prescribed duties (Education Code section 45055). The term "compensation," as used herein, shall include but shall not be limited to, employer contribution, if any, toward the cost of any health, welfare or group benefits, STRS/PERS retirement programs, and unemployment insurance. "Compensation," as used herein, shall not include dues deduction or other rights protected by the Educational Employment Relations Act.

BE IT FURTHER RESOLVED AND ORDERED that, unless otherwise permitted by law, personal necessity leave may only be used by Sacramento City Teachers Association members in

accordance with section D of Article 8 of the collective bargaining agreement. Under that section, personal necessity leave may be used only for the following purposes:

1. Death of a member of a unit member's immediate family. This would be in addition to bereavement leave as granted under the terms of this agreement. Members of the immediate family are defined as the following relatives of the unit member or his/her spouse: mother, father, grandmother, grandfather, son, daughter, niece, nephew, aunt, uncle, grandchild, brother, sister, any relative or person sharing the immediate household of the unit member, or a close friend;
2. Serious illness of a member of the unit member's immediate family as identified in section 2a, or accident involving his/her person or property, or the person or property of a member of his/her immediate family as identified in section 2a;
3. Placement of a child with the unit member through adoption or foster care; or
4. Observance of a religious holiday of the unit member's faith.

District employees who take personal necessity leaves during a strike for one of the above reasons may be required to file with the Board satisfactory evidence of entitlement to such leave.

BE IT FURTHER RESOLVED AND ORDERED that:

- f. In the event there is a suspected concerted withdrawal of services by employees, it shall be District procedure to require a physician's certification from any employee who is absent on the date of said suspected withdrawal of the services and who files a claim for sick leave benefits or other entitlements for the absence.
- g. Said certificate must be filed immediately upon return to work. In the event a District employee fails or refuses to furnish said certificate, said absence shall be treated as and be deemed to be unauthorized absence without pay.

BE IT FURTHER RESOLVED AND ORDERED that all vacations and professional leaves are suspended during the period of the emergency except by special authorization of the Superintendent or his designee.

BE IT FURTHER RESOLVED AND ORDERED THAT reasonable verification of absences may be required in addition to those specified above.

Emergency Replacement Teachers, Substitute Employees, and Independent Contractors

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to employ, subject to only subsequent ratification of the Board and according to law, emergency Replacement Teachers, substitute employees, and independent contractors:

- h. To ensure and protect the welfare, safety and educational wellbeing of all students;

- i. To ensure and protect the welfare and safety of persons working for the District which shall include its agents, employees, representatives and all others acting for or on behalf of the District;
- j. To protect District property;
- k. To ensure and protect the personal property of persons working for the District when such property is on District grounds; and/or
- l. To provide necessary staffing and instruction.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to employ Replacement Teachers employees to be paid whatever rate he deems necessary to assure availability of Replacement Teachers. Such rate shall not exceed \$500 per day unless otherwise approved by the Board.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to employ Replacement Teachers or other substitute employees with bilingual certifications, or other evidence of fluency in the Spanish language deemed sufficient by the Superintendent, at a daily rate that shall not exceed \$500 unless otherwise approved by the Board.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to enter into contracts for performance of supplemental assignments or extracurricular activities, affecting those employees or units of employees participating in or supporting the concerted refusal to work, for the duration of the emergency.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to employ credentialed and classified part-time personnel and special lecturers for the duration of the emergency at the most appropriate rate. Such rate shall not exceed \$500 per day unless otherwise approved by the Board.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to retain whatever additional security, transportation, food, telephone, or other services which are necessary for the duration of the emergency. Such additional services may include the employment of individuals and the contracting with independent contractors which provide such services.

Employment and Authorization of Legal Counsel

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to retain legal services relating to an actual or serious threat of a concerted refusal to work by employees. Any attorney employed by the Superintendent shall be authorized to represent the District at the direction of the Superintendent in any legal action relating to the emergency. The Superintendent shall have the authority to direct the attorney to pursue any available legal remedies deemed appropriate by the Superintendent.

Reorganization of District Administration

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to transfer or assign additional duties to management, supervisory and confidential employees on a temporary basis so that the District can manage more effectively during an actual or serious threat of a concerted refusal to work by employees. No such transfer or assignment of additional duties shall be with loss of compensation or in violation of any law.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized and directed to reassign and replace any management, supervisory and confidential employee who is performing in an unsatisfactory fashion during an emergency.

Use of Volunteers

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent is hereby authorized to allow in his discretion the use of volunteers at any school facility during an emergency; these volunteers will be under the direction of a credentialed employee. All volunteers shall receive clear instructions regarding their responsibilities. The use of and the work performed by volunteers shall be in conformance with all applicable laws and regulations.

Spokesperson for the District

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or his designee is hereby authorized to make public statements regarding the operations of the schools during an emergency.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent shall establish a general information center to provide relevant information about the District during an emergency. The Superintendent's designee is hereby authorized to release any relevant information to students, parents, representatives of the news media, and members of the general public.

The Negotiations Process

BE IT FURTHER RESOLVED AND ORDERED that it is the position of the District that any exclusive representative of employees may negotiate only with the designated negotiating team of the District. No attempt should be made to negotiate with any Board member or administrator who is not on the negotiating team of the District. Only the District negotiating team has authority to meet and negotiate on behalf of the District.

BE IT FURTHER RESOLVED AND ORDERED that the Board hereby supports the efforts of the negotiating team of the District in any attempt to reach a mutually acceptable conclusion to the negotiations process through good faith bargaining.

No Discussion of Negotiations

BE IT FURTHER RESOLVED AND ORDERED that it is the position of the District that students shall not be directly involved in the negotiations process during instructional time in the classroom. No employee or visitor at any school site shall discuss the progress of negotiations nor the merits or lack thereof of any issue in negotiations with students during their instructional periods.

BE IT FURTHER RESOLVED AND ORDERED that the District may take disciplinary action up to and including dismissal against any employee who violates any directive as authorized by this Resolution.

District Property

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or his designee is authorized to secure the necessary legal assistance from County Counsel or retained legal counsel to require that any District property held by District employees be immediately delivered to him or his designated representatives. As used herein, "District property" includes, but is not limited to, keys, audio-visual equipment, instructional materials, grade books, attendance records, posting charts, and pupil scholastic data.

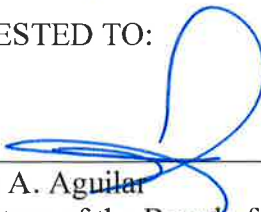
Effective Date and Application of Resolution

BE IT FURTHER RESOLVED AND ORDERED that this Resolution is a declaration of existing law and authority of the Board to comply with the California Constitution.

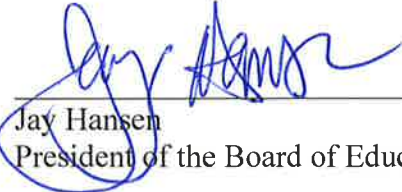
BE IT FURTHER RESOLVED AND ORDERED that should any portion of this Resolution is held invalid, the invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provisions or application and to this end the provisions of this Resolution are declared to be severable.

BE IT FURTHER RESOLVED AND ORDERED that this Resolution is an emergency measure within the mandate and jurisdiction of the Board and is necessary for the immediate welfare of the students and schools thereof. Therefore, this Resolution shall become effective immediately upon its adoption and shall remain in effect until repealed by formal Board action.

AYES: 6
NOES: 0
ABSTAIN: 0
ABSENT: 1

ATTESTED TO:


Jorge A. Aguilar
Secretary of the Board of Education

Date: 10-12-17


Jay Hansen
President of the Board of Education

CC: Dave Gordon, Superintendent, Sacramento County Office of Education