

**NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT
EMERGENCY RESOLUTION IN THE EVENT OF A
CONCERTED REFUSAL TO WORK BY EMPLOYEES
(INCLUDING A STRIKE)**

Resolution 2015-1606

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 seeks to delegate 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, 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 California Constitution; and

WHEREAS, the fundamental responsibilities of the Board are to further the educational mission of the District, protect students, and enforce the rule of law; and

WHEREAS, it is the further responsibility of the Board to be prepared for all 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 the North Monterey County Federation of Teachers’ scheduling of a strike authorization vote on or about October 8, 2015 the Board has a good faith belief that the leadership of the certificated bargaining unit represented by the North Monterey County Federation of Teachers is considering the possibility of a strike (concerted refusal to work) due to their dissatisfaction with the progress of collective bargaining negotiations.

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 any actual or serious threat of a concerted refusal to work by employees as determined by the Superintendent shall constitute an emergency. For the purposes of this resolution, 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, state law and/or applicable collective bargaining contract provisions.

BE IT FURTHER RESOLVED AND ORDERED that 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 or designee 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 in the event of any actual or serious threat of a concerted refusal to work by employees, all schools shall remain open to provide an educational program for students. In view of the emergency situation, however, the Superintendent or designee 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 or designee has such authority, and such authority shall only be utilized when it is the opinion of the Superintendent or designee 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 or designee. The Superintendent or designee 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 or designee is directed to take action and to 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 shall stand as recorded and shall not be made up or modified at the end of the emergency unless alternative procedures are directed in writing by the Superintendent or designee.

Employee Participation in a Strike

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or designee 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 leave, personal leave 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 or designee, 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, salary, employer contribution 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 the District will not permit employees to make up days in which they were engaged in concerted refusal to work activities.

BE IT FURTHER RESOLVED AND ORDERED that, unless otherwise permitted by law, personal necessity leave is authorized for certificated employees only when taken in accordance with the procedures and for the reasons set forth in Article XII, Section C.3 (Use of Sick Leave for Personal Necessity) of the collective bargaining agreement. Authorized reasons are summarized as follows:

- a. Death of a member of his/her immediate family (see definition of immediate family under Bereavement Leave.)
- b. Accident involving his/her person or property, the illness or accident of a member of the immediate family
- c. Appearance in court or in front of an administrative agency as a litigant or as witness under an official order
- d. Graduation of a son or daughter. One day is permitted if ceremonies are held within 150 miles of the employee's home and two days are permitted if the ceremonies are held more than 150 miles from the employee's home. The unit member shall provide written notice to the administrator/supervisor at least three (3) days in advance.

- e. Other personal emergencies (maximum allowable shall be two (2) days per school year not accumulative from year-to-year.) Two of the seven (7) days of personal necessity may be taken without identifying a reason to the principal/supervisor as long as the reason is included in “a” through “e” above.

In the event there is a suspected concerted refusal to work or withdrawal of services by employees, District employees who claim personal necessity leave for one of the above reasons may be required to file with the Superintendent or designee satisfactory evidence of entitlement to such leave.

BE IT FURTHER RESOLVED AND ORDERED that in the event there is a suspected concerted refusal to work or withdrawal of services by employees, the “normal method of proof of illness or injury” shall be deemed insufficient and the Superintendent or designee shall have the discretion to require an employee who is absent on such dates to submit a physician’s verification stating that the unit member was not able to perform his/her normal duties for the specified period, or a written statement by the unit member to the effect that he/she is a member of a religious sect, denomination, or organization and that he /she was ill or injury during the specified period and that he/she was treated in accordance with the practices of his/her religious belief.

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 designee.

Emergency Substitute Employees and Independent Contractors

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

- a. To ensure and protect the welfare, safety and educational well-being 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 or designee is hereby authorized to employ substitute employees to be paid whatever rate s/he deems necessary to ensure availability of substitutes.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or designee 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 or designee 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.

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or designee 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 or designee 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 or designee shall be authorized to represent the District at the direction of the Superintendent or designee in any legal action relating to the emergency. The Superintendent or designee shall have the authority to direct the attorney to pursue any available legal remedies which s/he deems appropriate.

Reorganization of District Administration

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or designee 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 or designee 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 or designee is hereby authorized to allow in his/her discretion the use of volunteers at any school facility during an emergency; these volunteers shall 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 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 or designee shall establish a general information center to provide relevant information about the District during an

emergency. The Superintendent or designee is hereby authorized to release any relevant information to representatives of the news media, parents, students, and members of the general public.

Negotiation Process

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

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

No Discussion of Negotiations During Instructional Time

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 any issue related to ongoing negotiations with students during the student instructional day.

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.

Return of District Property

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent or his designee is authorized to secure the necessary legal assistance from legal counsel to require that any District property held by District employees be immediately delivered to the District. 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 be 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 schools and pupils thereof. Therefore, this Resolution shall become effective immediately upon its adoption and shall remain in effect until repealed by formal Board action.

AYES _____

NOES _____

ABSENT _____

For the Governing Board

Superintendent

Date _____

cc: Superintendent, Monterey County Office of Education