

**COVINA-VALLEY UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION**

Resolution No. 22-23-12

**Emergency Resolution Regarding Potential Concerted Activity
in the Covina-Valley Unified School District**

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

WHEREAS, the fundamental purpose of the Covina-Valley Unified School District (“District”) and its Governing Board (“Board”) is in furtherance of this requirement and is to provide for the education of the students of the District;

WHEREAS, it is the legal responsibility of the Board to take every appropriate action to provide students and staff with safe, secure, and peaceful learning environments on District campuses and ensure safe, secure and peaceful work sites;

WHEREAS, it is also the responsibility of the Board to take action in response to emergencies that occur that impact the students and staff of the District and District operations, and further to take advance action where circumstances indicate an emergency may occur;

WHEREAS, since March 13, 2020, the District and all students, staff and families of the District and the Covina-Valley community has experienced the impact and consequences of the COVID-19 global pandemic, many of which continue;

WHEREAS, the pandemic has had specific adverse consequences for our schools, our students, our staff and our broader school community, including the previous abrupt interruption of in-person learning for our students and the pivot to virtual learning in our schools, the suspension of many after school and other school related activities for our students, new and varying safety requirements from the State for our students and staff as schools reopened for in-person instruction last fall, the adjustment of students and staff to these impacts, as well as the disruption many families experienced because of the pandemic, including the families of our students and staff;

WHEREAS, our District employees, from our classroom teachers, site administrators, counselors, food service workers, clerical staff, custodians, maintenance and so many more, have played, and continue to play, key roles in supporting our students and families throughout the pandemic;

WHEREAS, during this current school year, the ongoing impacts of COVID-19 continue to exist with higher-than-normal employee absences and shortages in the availability of substitutes;

WHEREAS, the ability to provide sufficient staff to school sites to cover classrooms is a paramount health and safety concern at any time but is significantly heightened during this period where health and safety concerns over transmission of COVID-19 remain;

WHEREAS, in the fall of 2021, labor negotiators for the District and for the teachers' union, the Covina Unified Education Association ("CUEA"), commenced bargaining on contract reopeners for the period July 1, 2021; to June 30, 2022;

WHEREAS, on which negotiations an agreement could not be reached, and therefore on May 18, 2022, the District declared an impasse and initiated the statutory impasse procedures with the Public Employment Relations Board ("PERB"), and PERB thereafter appointed a mediator who met with the parties. After no settlement was reached in mediation, the mediator released the parties to pursue Factfinding, which is the next step in the PERB impasse process;

WHEREAS, on November 7, 2022, the Factfinding hearing was held, and the Factfinding Report's non-binding recommendations ("Report") are expected during the week of December 5, 2022;

WHEREAS, once the Report is received by the parties, they will formally consider the recommendations in the Report in an effort to settle the contract dispute;

WHEREAS, on September 27, 2022, the District made a formal proposal to CUEA which included a 5.2% increase effective July 1, 2021 in exchange for implementation of a maximum cap on the District's contribution towards eligible dependent medical benefit premiums only for members of the bargaining unit hired on or after July 1, 2022 as well as a language shifting special education case carrier responsibilities to special education teachers beginning in the 2024-2025 school year;

WHEREAS, CUEA rejected the District's offer on that same day, submitting a counter proposal increasing its demand for increased overall compensation from its last formal proposal to the District on April 20, 2022, and there has been no indication that a settlement will occur, making the potential of strike activity by some CUEA members a distinct possibility in the near future, and any strike, walk-out, slowdown or other type of work stoppage or disruption by the employees of the District would materially disrupt the operation of the schools of the District and pose an imminent and material health and

safety risk to students and other staff, especially as pandemic conditions and the impact of the same continue;

WHEREAS, the Board and District administration hope to avoid any strike or other disruption to schools during this critical period of time, and in the event of a strike or other work stoppage or interruption occurs, the Board has an obligation to take all appropriate steps to ensure schools remain open and available to students to continue their education, as well as to ensure that students who attend school are safe and may continue with their educational activities without disruption; and

WHEREAS, Education Code section 35161 permits the Board to delegate to an officer or employee of the District any of the Board's powers and duties, and the Board desires to delegate to the Superintendent, or her designee(s), those lawful powers and duties and as may be necessary to prevent a strike or mitigate the impacts of a strike or other work stoppage or disruption if one were to occur.

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

BE IT FURTHER RESOLVED that any actual or reasonably imminent risk of a concerted refusal to work by employees, as determined by the Superintendent, shall constitute an emergency. For the purposes of this or other emergency resolutions, the term "concerted refusal to work" shall mean any actual, or reasonably-anticipated, strike, work stoppage, slow-down, sick out, unauthorized leave, or interruptions of work planned or accomplished by employees together.

BE IT FURTHER RESOLVED that when the Superintendent declares that an emergency exists, based on any actual or reasonably imminent risk of a concerted refusal to work by employees, the community, parents and employees shall be notified that the emergency authorizations stated here are operative by the most efficient and expeditious means available publication of this Resolution in a newspaper of general circulation servicing the District. Copies of this Resolution shall also be posted in such places as to make them accessible to all employees.

BE IT FURTHER RESOLVED that "unauthorized leave" is defined as a District employee's nonperformance of those duties and responsibilities assigned to them by the Board and its representatives, including all duties and responsibilities as defined by any applicable collective bargaining agreement, the California Education Code, rules and regulations of the State Board of Education, and policies and regulations of the Board. As used herein, "unauthorized leave" may include, but is not limited to, collective refusals to provide service, whether in attendance or not, unauthorized use of sick leave, unauthorized use of any other leave benefits, nonattendance at required

meetings, and failure to perform supervisory or other adjunct functions at school-sponsored activities. A District employee is further deemed to be on unauthorized leave at such time and on such occasions as the employee may absent themselves from required duties without District approval. Unauthorized leave may also, to the extent allowed by law, constitute a breach and violation of contract, violation of the statutes of the State of California, violation of the rules and regulations of the District, and/or may also result in the loss of salary and certain benefits but not health benefits.

BE IT FURTHER RESOLVED that during the emergency, the Superintendent is granted discretionary authority to take appropriate action, including, but not limited to, all of the following:

1. Ensure the education, welfare, and safety of all students (e.g., including but not limited to, modifying school schedules, cancelling or modifying specific educational programs or courses, cancelling or postponing extracurricular activities, modifying class or school site configurations to ensure safety of students and/or staff, temporarily closing a school or schools to ensure safety of students and/or staff, among other actions);
2. Ensure the rights and safety of all employees, agents, representatives, and others acting for or on behalf of the District;
3. Provide necessary staffing, instruction, and other services (e.g., through use of temporary and/or substitute employees, independent contractors, and/or volunteers under the direction of credentialed employees);
4. Contract, pursuant to Government Code section 53060, for services, including consultant services, as are essential or necessary in order to obtain support for the District staff on strike or as any labor disruption requires;
5. Take such legal action as may be necessary, including but not limited to, filing appropriate documents with the Public Employment Relations Board, the Los Angeles County Superior Court, or other agencies; or such other action necessary to obtain the requisite legal services to defend the District or any employee as appropriate in any litigation arising out of, or related to, any strike, unauthorized leave, slowdown, walkout, etc., of employees of the District;
6. Protect District property (e.g., by requiring that District employees on strike return District property); and
7. Prevent or terminate the emergency.

BE IT FURTHER RESOLVED that the Superintendent shall develop and, through staff, implement appropriate administrative procedures to document District employees' unauthorized leave and ensure that no warrant for compensation shall be drawn in favor of any District employee for any day(s) of unauthorized leave on any day(s) on which the employee has not faithfully performed all of the duties prescribed. (Educ. Code section 45055.) The term "compensation," as used herein, shall not include the District's contribution, if any, toward the cost of any health, welfare or group insurance benefits of the employee and such contributions shall continue, unless subsequent administrative proceedings authorize otherwise, to ensure that any days of unauthorized leave are not reported as creditable compensation for the employee for State retirement purposes under CalSTRS or CalPERS, if applicable.

BE IT FURTHER RESOLVED that the Superintendent or designee may require District employees to file with the Board satisfactory evidence of their entitlement to any of the authorized leaves set forth in any collective bargaining agreement applicable to the employee taken, or sought to be taken, during the period of emergency. Absences for which such satisfactory evidence is not provided may be treated as and deemed to be unauthorized leave.

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

BE IT FURTHER RESOLVED that during the period of emergency, the Superintendent or designee may request District employees to certify in writing, without qualification, prior to 4:00 p.m. on each day of school, whether they will or will not be in attendance to perform their duties on the next school day in order to help determine the need for substitutes and staff to ensure the safety of students on the next school day.

BE IT FURTHER RESOLVED that District employees participating in a concerted refusal to work or who are otherwise on unauthorized leave shall not enter District property. The Superintendent or designee may take all appropriate action against individuals, including District employees, who interfere with the peaceful conduct of the school or disrupt the school or its students or school activities in violation of the California Education Code, California Penal Code or local municipal codes or ordinances.

BE IT FURTHER RESOLVED that in the event an emergency is declared, the Superintendent or designee is authorized to provide for attendance of any District pupil at a school other than the school to which the pupil is normally assigned. Such attendance shall be for the period of time as determined by the Superintendent or designee or until such time as the Board determines the emergency has ended.

BE IT FURTHER RESOLVED that the Superintendent or designee is authorized to employ temporary and/or substitute teaching personnel and to pay such personnel at a daily rate determined by the Superintendent. If necessary, the Superintendent or designee may also authorize reimbursement for mileage in excess of fifteen (15) miles, as well as reimbursement for the cost of registering an applicant's credential with the Los Angeles County Office of Education.

BE IT FURTHER RESOLVED that the Superintendent or designee, in consultation with the District's CBO, is authorized to contract with individuals, firms, or other public entities for services, as needed, to keep the District's schools, facilities, and programs safe and operating during the emergency.

BE IT FURTHER RESOLVED that the Superintendent or designee is authorized to organize the District's personnel and its material resources in any manner necessary in order to keep the schools open and operating during the emergency, including the authority to transfer or assign additional duties to management, supervisory, and confidential employees on a temporary basis so that the District can manage safely and more effectively during the emergency.

BE IT FURTHER RESOLVED that the Superintendent or designee, in consultation with the District's CBO, is granted discretionary authority to remunerate employees beyond the salary schedule (premium pay) for performing additional duties during the emergency.

BE IT FURTHER RESOLVED that at the time the Superintendent or designee declares an emergency, the Superintendent or her designated representative becomes the official spokesman of the Board and shall report to the Board all such actions taken in accordance with this Resolution.

BE IT FURTHER RESOLVED that if any portion of this Resolution is held to be void, voidable, or unenforceable, the remaining portions of the Resolution shall remain in full force and effect.


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

IN WITNESS WHEREOF, we members of the Board of Trustees of the Covina-Valley Unified School District, State of California, have hereunto set our hands this 14th day of November 2022, by the following vote:

The foregoing resolution was introduced by Trustee Maulucci, who moved its adoption, seconded by Trustee Caceres, and adopted by roll call on November 14, 2022 by the following vote:

Trustee Robles yes
Trustee Maulucci yes
Trustee Rodriguez yes
Trustee Caceres yes
Trustee Cruz yes

IT IS SO ORDERED.



President, Governing Board
Covina-Valley Unified School District