

BEFORE THE BOARD OF EDUCATION OF THE  
BREA OLINDA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SUSAN COBURN, KARA DIETZ,  
BELINDA DIXON, KATHRYN  
GIVENROD, JONATHAN QUIMING,  
JENNIFER RYAN, CHRISTOPHER  
SCHAADT, AND CHELCIE SKRIFVARS,

Respondents.

OAH No. 2010011285

**PROPOSED DECISION**

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 19, 2010, in Brea, California.

Rutan & Tucker and David C. Larsen, Attorney at Law, represented the Brea Olinda Unified School District (BOUSD).

Reich, Adell, Crost & Cvitan and Kent Morizawa, Attorney at Law, represented Susan Coburn, Kara Dietz, Belinda Dixon, Kathryn Givenrod, Jonathan Quiming, Jennifer Ryan, Christopher Schaad, and Chelcie Skrifvars (Respondents).

The matter was deemed submitted for decision on April 19, 2010.

**FACTUAL FINDINGS**

1. Anne Flesher, BOUSD Assistant Superintendent of Human Services, filed the Accusation in her official capacity.

2(a). The parties stipulated to the allegations in the first four paragraphs of the Accusation. Consequently, that stipulation established the facts set forth in Factual Findings 2(b) through and including 2(f).

2(b). BOUSD employs Respondents as probationary or permanent certificated employees.

2(c). On March 8, 2010, due to the State's budget crisis and an anticipated reduction in State funding, the BOUSD Governing Board (the Governing Board) determined to reduce or discontinue certain services within BOUSD and directed the Superintendent to give notice to those employees who might be affected by that determination.

2(d). On March 8, 2010, the Governing Board adopted resolution number 10-09 to, among other things, direct the Superintendent to notice those certificated employees that would reduce the number of certificated positions, as set forth in Factual Finding 5, effective the 2010-2011 school year.

2(e). By March 15, 2010, pursuant to resolution number 10-09, the Superintendent's designee notified the Governing Board and Respondents, in writing, that it was the Superintendent's recommendation that Respondents be notified that Respondents' services would no longer be required for the 2010-2011 school year. The notice stated the reasons therefor, and informed each Respondent of his or her right to request a hearing.

2(f). In response to the written notice, each Respondent requested a hearing to determine if there is cause to not reemploy him or her for the 2010-2011 school year.

3. BOUSD served the Accusation and other required documents timely on each Respondent.

4. All jurisdictional requirements were met.

5. Resolution number 10-09 reduces or discontinues the following services for the 2010-2011 school year:

<u>SERVICES</u>	<u>POSITIONS (F.T.E.)<sup>1</sup></u>
School Counselor, Grades 7-12	2.0
Self-Contained Multiple Subject, including Class-Size Reduction Program Option 1, Grades K-6	13.0
Class Size Reduction Program Language Arts, Grade 9	2.0
Language Arts, Grades 7-12	4.4
History/Social Science, Grades 7-12	2.0
Mathematics, Grades 7-12	3.0
Biology, Grades 7-12	2.0
Health, Grades 9-12	0.2
Physical Education, Grades 7-12	1.0
Spanish, Grades 9-12	1.0
Visual Arts, Grades 9-12	1.0

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<sup>1</sup> Full-time equivalent.

6. The services set forth in Factual Finding 5 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

7. The Governing Board's decision to reduce or discontinue the particular kinds of services set forth in Factual Finding 5 was due to the anticipated decline in State funding; the Governing Board's decision was not arbitrary or capricious, but constituted a proper exercise of discretion.

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

9. BOUSD identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

10. The recommendation that Respondents be terminated from employment was not related to their competency as teachers.

11. The parties agreed that Respondent Kara Dietz's seniority date is September 19, 2005, and not August 28, 2006.

12. Kathryn Givenrod testified. She thoroughly enjoys teaching at BOUSD. She loves her students. She is saddened by the instant proceeding and wishes to return to teach at BOUSD as soon as possible.

13. No certificated employee junior to any Respondent was retained to render a service that any Respondent is certificated and competent to render.

#### LEGAL CONCLUSIONS

1. The parties met all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. It is appropriate to amend Respondent Kara Dietz's seniority date from August 28, 2006, to September 19, 2005.

3. Cause exists to sustain BOUSD's action to reduce or discontinue the full-time equivalent positions set forth in BOUSD's resolution number 10-09 for the 2010-2011 school year, pursuant to Education Code sections 44949 and 44955, as set forth in Factual Findings 1-13, and Legal Conclusions 1, 2, and 4-8.

4. The services identified in the Governing Board's resolution number 10-09 are particular kinds of services that the Governing Board can reduce or discontinue under Education Code section 44955. The Governing Board's decision to reduce or discontinue the

identified services was not arbitrary or capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of BOUSD's schools and pupils within the meaning of Education Code section 44949.

5. BOUSD properly identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

6. A school district may reduce services within the meaning of Education Code section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

7. BOUSD established cause to not reemploy Respondents for the 2010-2011 school year. Respondents did not establish facts or legal argument to the contrary.

8. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

#### ORDER

1. The Brea-Olinda Unified School District shall amend Respondent Kara Dietz's seniority date from August 28, 2006, to September 19, 2005.

2. The Accusations served on Respondents Susan Coburn, Kara Dietz, Belinda Dixon, Kathryn Givenrod, Jonathan Quiming, Jennifer Ryan, Christopher Schaadt, and Chelcie Skrifvars, providing the particular kinds of services that the Governing Board directed to be reduced or discontinued, are sustained.

3. Notice shall be given to Respondents Susan Coburn, Kara Dietz, Belinda Dixon, Kathryn Givenrod, Jonathan Quiming, Jennifer Ryan, Christopher Schaadt, and Chelcie Skrifvars, that their services will be terminated at the close of the 2009-2010 school year.

Dated: April 28, 2010

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DANIEL JUAREZ  
Administrative Law Judge  
Office of Administrative Hearings