

BEFORE THE  
GOVERNING BOARD OF THE  
BEARDSLEY SCHOOL DISTRICT  
COUNTY OF KERN  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

OAH No. L2008040026

Carleen Bolinger-Orr; Kristen Goree;  
Shelley Kennemer; William Michael  
Kimberlin; Ashley Ortiz; Barry Sarver;  
Holly Smith; Lilburn Tracy; Monica West;  
and Jamie Winter,

Respondents.

**PROPOSED DECISION**

Mark E. Harman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2008, in Bakersfield, California.

Peter C. Carton, Attorney at Law, represented Beardsley School District (District).

Paul A. Welchans, Attorney at Law, represented Respondent Kristen Goree, who was present. No other Respondents appeared.

Oral and documentary evidence was taken. The record was closed, and the matter was submitted for decision on April 25, 2008.

**FACTUAL FINDINGS**

1. Dean C. Bentley is the Superintendent of the District and filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. The Governing Board of the District (Governing Board) adopted Resolution Number 4 on February 12, 2008, reducing or eliminating particular kinds of services equal to 14.5 Full-Time Equivalent (FTE) positions for the 2008-2009 school year. The particular kinds of services that will be reduced or eliminated are:

PARTICULAR KINDS OF SERVICES	NUMBER OF FTE POSITIONS
<u>K-6</u> Self-Contained Classroom Instruction	13.0
<u>7-8</u> Departmentalized Instruction Junior High:	1.5
Total	14.5

4. On or before March 13, 2008, the District personally served on each Respondent a written "reduction in force" notice (RIF notice) pursuant to Education Code<sup>1</sup> sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 14.5 FTE positions.

5. Respondents timely requested in writing a hearing to determine if there was cause for not reemploying them for the ensuing school year.

6. Assuming that all certificated employees would file a request for hearing, the District issued and personally served the Accusation on each Respondent. All notices of defense were timely filed or were treated as if timely filed.

7. All prehearing jurisdictional requirements have been met.

8. At the hearing, the District indicated that the District had withdrawn and rescinded the RIF notices as to Respondents Carleen Bolinger-Orr, Shelley Kennemer, William Michael Kimberlin, Ashley Ortiz, Barry Sarver, Holly Smith, Lilburn Tracy, Monica West, and Jamie Winter.

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

10. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 because of the uncertainty surrounding State funding. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

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<sup>1</sup> All further statutory references are to the Education Code, unless specified otherwise.

11. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

12. Kristen Goree (Goree) holds a preliminary single subject credential in Music. She also has a Cross-Cultural, Language, and Academic Development Certificate. In her current assignment, she teaches choir and the color guard at the junior high level. Goree has a seniority date of August 17, 2006, which is senior to at least two employees who received RIF notices but whose notices have been withdrawn and rescinded by the District. Goree contends that certificated employees with less seniority will be retained by the District in the ensuing school year. For example, the District has withdrawn and rescinded the RIF notice served on Lilburn Tracy (Tracy), who has a single subject credential in physical education and is assigned to 7th and 8th grade boys' physical education. Tracy's seniority date is August 16, 2007, which makes Tracy nearly one year junior to Goree. The District, however, established the need for the services of the retained employees, and Goree did not show that she was certificated and competent to perform the services that Tracy or the other junior certificated employee were retained to perform.

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

### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.

2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under section 44955.

3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949, as set forth in factual finding numbers 1 through 13.

4. Cause exists to terminate the services of Respondent Kristen Goree for the 2008-2009 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 13, and legal conclusion numbers 1 through 3.

## ORDER

The Accusation is sustained as to Respondent Kristen Goree and the District may notify Respondent Kristen Goree that her services will not be needed during the 2008-2009 school year due to the reduction of particular kinds of services.

Dated: \_\_\_\_\_

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MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings