

BEFORE THE  
KINGS COUNTY SUPERINTENDENT OF SCHOOLS  
KINGS COUNTY OFFICE OF EDUCATION  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TRACY BROWN

Respondent.

OAH No. N 2004030847

**PROPOSED DECISION**

Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Hanford, California, on April 20, 2004.

Lozano Smith, Attorneys at Law, by Robert Piacente, Attorney at Law, represented the Superintendent of Schools.

Tuttle & McCloskey, PC, by Wesley Green, Attorney at Law, represented respondent Tracy Brown.

The matter was submitted on April 20, 2004.

**FACTUAL FINDINGS**

1. Tamara Ravalin, Assistant Superintendent for Human Resources with the Kings County Office of Education, made and filed the Accusations in her official capacity.
2. Respondent is a certificated employee of the Kings County Office of Education teaching adaptive physical education.
3. On March 2, 2004, in accordance with Education Code section 44949 and 44955, the Assistant Superintendent for Human Resources notified the Superintendent in writing of the Assistant Superintendent's recommendation that respondent be notified that his services would not be required for the ensuing school year. The Assistant Superintendent stated the reasons for the recommendation. The recommendation that respondent be terminated from employment was not related to his competency as a teacher.

4. On March 3, 2004, the Superintendent issued Order No. 030304A, concurring with the recommendation of the Assistant Superintendent and ordering the discontinuance of particular kinds of services, as follows:

- a. Eliminate three full-time equivalent (FTE) certificated teaching positions at the Court School.
- b. Eliminate one FTE Resource Specialist Teacher in the Special Education Department.
- c. Eliminate one FTE certificated teaching position at the Community School.
- d. Eliminate one FTE certificated Program Specialist in the Special Education Department.
- e. Eliminate one FTE certificated Adaptive Physical Education Teacher in the Special Education Department.

5. On or about March 8, 2004, a notice of termination was delivered to respondent by personal delivery.

The written notices of termination specifically stated that respondent's services would not be required for the ensuing year. The notice set forth the reasons for the recommendation.

Respondent was advised of his right to a hearing, that respondent had to deliver a request for a hearing in writing to the person sending the notice of termination by March 19, 2004, which was more than seven days after the notice of termination was served, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

6. Respondent timely filed a written request for a hearing to determine if there was cause for not reemploying respondent for the ensuing year. Other persons notified of their termination either did not request a hearing or withdrew their request prior to the hearing.

7. An Accusation was timely served on respondent thereafter. Respondent filed a timely Notice of Defense. All prehearing jurisdictional requirements were met.

8. The services were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Superintendent's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services related to the welfare of the Office of Education and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the Office as determined by the Superintendent.

10. The Superintendent considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

11. No certificated employee junior to respondent was retained to perform any services which respondent was certificated and competent to render

### LEGAL CONCLUSIONS


1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code section 44949 and 44955 for the Kings County Office of Education to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Superintendent give respondent notice before May 15, 2003, that his services are longer be required by the Office.

### ORDER

The Accusation served on respondent is sustained. Notice shall be given to respondent before May 15, 2003, that his services will not be required because of the reduction or discontinuation of particular services as indicated.

Dated: May 6, 2004

  
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MURIEL EVENS  
Administrative Law Judge  
Office of Administrative Hearings