

BEFORE THE  
GOVERNING BOARD OF THE  
BERRYESSA UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KAAREN HACK, et al.  
Certificated employees,

Respondents.

OAH No. 2009030620

**PROPOSED DECISION**

Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2009, in San Jose, California.

Pascale-Sonia Roy, Attorney at Law, represented the Berryessa Union School District.

Christopher Schumb, Attorney at Law, represented respondents.

The matter was submitted on April 23, 2009.

**SUMMARY OF PROPOSED DECISION**

The Superintendent of Berryessa Union School District (District) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

It was stipulated by the parties that the selection process was in accordance with the requirements of the Education Code. A list of employees who were served with an accusation packet is attached.

## FACTUAL FINDINGS

1. Marc B. Liebman made the accusation in his official capacity as the Superintendent of the Berryessa Union School District (District).
2. At the hearing the District withdrew five notices<sup>1</sup>.
3. Respondents, Kaaren Hack, Harninder Mehat, and Cecilia Torres-Ruvalcaba are all permanent certificated employee of the District. Each is employed full-time as a school counselor.
4. On March 3, 2009, the Superintendent recommended to the District Governing Board (Board) that the following particular kinds of services be reduced or discontinued for the 2009–2010 school year.

School Counselor K – 8	7.0 F.T.E
Elementary Music Teacher	4.0
Elementary Physical Education Teacher	2.0
New Teacher Advisor	5.0
English Language Development Support Teacher	2.0
Elementary Reading Instruction Teacher	0.5
Total F.T.E.	20.5

5. On March 3, 2009, the Board adopted Resolution No. 08-28, reducing or discontinuing particular kinds of services for the 2009–2010 school year and directing the Superintendent to send appropriate notices to all employees affected by the reduction. On March 10, 2009, pursuant to Education Code sections 44949 and 44955 the Superintendent gave written notice to the respondents, of his recommendation that notice be given to them that their services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

6 All respondents filed timely requests for a hearing. The Superintendent or his designee filed and served the Accusation against respondents, who requested a hearing. The Accusation with required accompanying documents and a blank Notice of Defense were timely served on respondent. Timely Notices of Defense were filed by respondents.

7. The parties stipulated that all prehearing jurisdictional requirements have been met.

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<sup>1</sup> Notices to Doreen Carter, Michelle Flores, Celeste Galvan, Jessica Grumm-Friedrich, and Lauren White were rescinded.

8. Subsequent to adoption of the Board's Resolution, the District identified vacancies in school year 2009-2010 due to retirements, release of temporary teachers, and resignations. In consideration of such attrition the District rescinded five Reduction in Force notices (see footnote 1).

9. The District employs 7.0 F.T.E. school counselors. The District plans to release three counselors. The District will retain 4.0 F.T.E. counselors. Currently, one counselor is assigned to District elementary schools that contract for that service and the remaining six counselors are assigned to the three district middle schools.

10. The District has considered the reduction and plans to reduce the duties now performed by the counselors to accommodate the reduction in F.T.E.'s. The District's plan is sufficiently concrete to meet the requirements of the law<sup>2</sup>.

11. The Superintendent's designee testified that the District will continue to be able to provide all legally mandated services after the reduction. The District's plan to meet legally mandated services is not arbitrary or capricious, but rather was based on reasonable considerations. None of the proposed layoffs will reduce any District services below legally mandated levels.

12. No certificated employee junior to respondents will be retained to perform the services that a more senior employee is certificated and competent to render.

13. The reduction or discontinuance of services is related to the welfare of the District and its pupils.

#### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. Cause exists to reduce the number of certificated employees at the Berryessa Union School District due to the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

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

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<sup>2</sup> The District's plan is in compliance with *Daniels v. Shasta-Tehama-Trinity Junior Community College District* (1989) 212 Cal.App.3d 909.

ORDER

1. Notice may be given to employees occupying 20.5 full-time equivalent certificated positions that their services will not be required for the 2009-2010 School Year because of the reduction and discontinuance of particular kinds of services.
2. Notice shall be given in inverse order of seniority.

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

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RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings