

BEFORE THE
GOVERNING BOARD OF THE
BERRYESSA UNION SCHOOL DISTRICT
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KARMIJIT ATHWAL, et al.
Certificated employees,

Respondents.

OAH No. 2011030230

PROPOSED DECISION

Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2011, in San Jose, California.

Pascale-Sonia Roy and Janet Cory Sommer, Attorneys at Law, represented the Berryessa Union School District.

Christopher Schumb, Attorney at Law, represented respondents.

The matter was submitted on April 13, 2011.

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.

FACTUAL FINDINGS

1. Marc B. Liebman, Ph.D., made the accusation in his official capacity as the Superintendent of the Berryessa Union School District (District).

2. At the hearing the District withdrew a number of notices. Most of the withdrawn notices are listed on Exhibit 10, which was entered into evidence. In addition, the District withdrew notices against Mary Wiebe (Computer Technology) and Celeste (Galvan) Wilson (Music).

3. Respondents listed in Attachment A in this matter are certificated employees of the District.

4. On March 7, 2011, the Governing Board (Board) adopted Resolution 10-21. The following particular kinds of services are to be reduced or discontinued for the 2011-2012 school year.

Elementary Music Teacher	4.0 F.T.E.
Elementary Physical Education Teacher	2.0
Middle School Assistant Principal/Co-Administrator	3.0
Teacher Advisor	4.0
Program Specialist	1.0
School Counselor K - 8	4.5
School Librarian	1.0
School Nurse	1.0
School Psychologist	2.0
Social Worker	1.0
Teacher, Computer Technology	1.0
Teacher, Home Economics	1.0
Teacher, 6-8 Core	6.0
Teacher, K-5	35.0
Total F.T.E.	66.5

5. After the Board adopted Resolution 10-21, the District found means, including through attrition, to lower the number of F.T.E. reduction. At the hearing, the District now seeks the following reductions for the 2011-2012 school year.

School Counselor K - 8	4.5 F.T.E.
Elementary Music Teacher	4.0
School Librarian	1.0
School Psychologist	1.3

Social Worker	1.0
Teacher, Computer Technology	1.0
Teacher, Multiple Subject Credentials	25.6
Total F.T.E.	38.3

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.

8. It was necessary to apply tie-breaking criteria as adopted by the Board in Resolution 10-16 (tie-breaking criteria) in order to determine the most senior music teacher with the first date of paid service of August 21, 2007. It was determined that Celeste Galvan Wilson was the most senior music teacher after application of the tie-breaking criteria. The accusation against Ms. Wilson was withdrawn.

9. The District plans to release all of the counselors. 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.

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

11. 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.

ORDER

1. Notice may be given to employees as set forth above that their services will not be required for the 2011-2012 School Year because of the reduction and discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority. A list attached hereto is provided by the District.

Dated: April 15, 2011

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A
Certificated Employees to Receive Final Layoff Notice

144 Karmjit Athwal
84 Doreen Carter
136 Krista Castillou
138 Vanessa Castro
144 Mary Cho
150 Jinhey Choi
144 Sheri Christie
161 Linda Clements
152 Lesley Cubero
162 Johann Deguzman*
160 Maya Donohue*
144 Nancy Foster
67 Jessica Grumm-Friedrich
119 Kaaren Hack
144 Corey Hernandez
144 Angela Jacobson
161 Nicole Kellersberger
144 Lihoe King
154 Anne Lee
144 Heather Lopez
146 Jennifer Low
139 Virginia Lui
144 Debra-Gail Martin
129 Harninder Mehat
144 Ivy Nguyen
144 Tuyet Nguyen
141 Lisa Oliver
152 Sandeep Pabla
144 Nicole Park
150 Maritza Rai
144 Jenene Rice
166 George Schomick*
144 Christina Shem
144 Linda Tanaka
133 Cecilia Torres-Ruvalcaba
144 Minh Tran*
152 Leticia Vasquez
~~68 Mary Wiebe~~
~~135 Celeste Wilson~~
135 Lauren White*

* Did not request a hearing and therefore not a Respondent in this action.