

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

In the Matter of the Accusations Against:

JINHEY CHOI, et al,

Respondents.

OAH No. 2010030615

**PROPOSED DECISION**

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California on April 13, 2010.

Attorneys Pascale-Sonia Roy and Janet Cory Sommer of Burke, Williams & Sorensen, LLP, represented the Berryessa Union School District.

Christopher E. Schumb, Attorney at Law, represented the respondents, who are identified on Attachment A.

The matter was submitted for decision on April 13, 2010.

**FACTUAL FINDINGS**

1. Dr. Marc B. Liebman made the accusation in his official capacity of Superintendent of the Berryessa Union School District.
2. The respondents in this matter are certificated employees of the district.<sup>1</sup>
3. It was stipulated that all of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.
4. On February 23, 2010, the Governing Board of the Berryessa Union School District adopted Resolution No. 09-24, setting forth criteria for seniority order for certificated employees with the same date of paid service in probationary status ("tie-breaking criteria").

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<sup>1</sup> The district originally served accusations on more than 75 certificated employees. It later rescinded a substantial number of those accusations, including the accusations against Ginger Jenzen, Mario Lam, Shauna Lykam, and Kathleen Spampinato.

The parties acknowledged that the tie-breaking criteria do not affect the number of layoffs or the order of layoff in this proceeding.

5. On March 9, 2010, the governing board adopted Resolution No. 09-27. The Board resolved to reduce or discontinue the following services for the 2010 – 2011 school year:

<u>Services</u>	<u>FTE<sup>2</sup> Reduction</u>
Elementary Music Teacher	4.0 FTE
New Teacher Advisor	5.0 FTE
School Counselor K-8	5.0 FTE
Teacher K-8	60.0 FTE
Total FTE Reduction	74.0 FTE

After the board adopted Resolution No. 09-27, the district found the means, including through the attrition of numerous certificated employees, to lower the number of FTE reductions it seeks. At the hearing, the district stated that it now seeks 22.0 FTE reductions (18.0 FTE multiple subject teachers and 4.0 FTE elementary music teachers).

6. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. None of the reductions is for a mandated service.

7. Jacqueline Durant, whose seniority date is August 18, 2009, was retained (“skipped”) by the district because she is authorized by the board, pursuant to Education Code section 22456, subdivision (b), to teach a departmentalized science class. Respondent Jinhey Choi, whose seniority date is January 5, 2009, does not have such an authorization, but may meet its requisite qualifications. Choi and the district stipulated that Choi will provide to the district her transcript from West Valley College. They further stipulated that if Choi has the requisite 12 units of science and there is a science position open in the 2010 – 2011 school year, the district will give Choi the first right of refusal for that position.

8. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

9. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

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<sup>2</sup> Full-time equivalent.

## LEGAL CONCLUSIONS

Because of the reduction or elimination of particular kinds of services set forth in Finding 5, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2010 – 2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

## ORDER

Notice may be given to the respondents listed in Attachment A that their services will not be required for the 2010 – 2011 school year.

DATED: \_\_\_\_\_

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STEVEN C. OWYANG  
Administrative Law Judge  
Office of Administrative Hearings

## **ATTACHMENT A**

1. Choi, Jinhey
2. Cubero, Lesley
3. DeLa Paz, Marlene
4. Erickson, Crystal
5. Escobar-Ausman, Taran
6. Faust, Dorienne
7. Flores, Michelle
8. Galvan, Celeste
9. Graham, Alison
10. Kim, Kelly
11. Kong, Wynne
12. Low, Jennifer
13. Miller, Shawn
14. Pabla, Sandeep
15. Parodi, Susan
16. Rai, Maritza
17. Vasquez, Leticia