

BEFORE THE BOARD OF EDUCATION  
OF THE  
BERKELEY UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

BARBARA BEAL, CRISTI BILLIU,  
STEPHEN CHANG, ELISABETH  
SANDBERG and SUSAN WERD,

Respondents.

OAH No. N2004030325

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on April 27, 2004, in Berkeley, California.

Paul A. Loya, Esq., Atkinson, Andelson, Loya, Ruud & Romo, 5776 Stoneridge Mall Road, Suite 200, Pleasanton, California 94588 represented the Berkeley Unified School District.

Stewart Weinberg, Esq., Van Bourg, Weinberg, Roger & Rosenfeld, 180 Grand Avenue, Suite 1400, Oakland, California 94612 represented all of the respondents except Cristi Billiu. Respondent Billiu was not present or otherwise represented at hearing.

The matter was submitted on April 27, 2004.

**FACTUAL FINDINGS**

1. Michele Lawrence made and filed the Accusation against respondents in her official capacity as the Superintendent (Superintendent) of the Berkeley Unified School District (District).
2. Respondents are all certificated employees of District.
3. On February 18, 2004, the Board of Education of District adopted a resolution finding it was necessary to terminate certain employees due to a reduction or discontinuance of the following particular kinds of services for the 2004-2005 school year:

Counseling	7.0 F.T.E.
Art Teacher	1.0 F.T.E.
Vocational Education Teacher	1.0 F.T.E.
Administrator	<u>1.0 F.T.E.</u>

Total 10.0 F.T.E.

The resolution also authorized the Superintendent to send appropriate notices to all employees affected by the reduction.

4. On or before March 15, 2004, the Superintendent gave written notice to respondents, pursuant to Education Code sections 44949 and 44955, of her recommendation that notice be given them that their services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

5. All respondents except Cristi Billiu made a timely request in writing for a hearing to determine if cause existed for not reemploying them for the 2004-2005 school year. Billiu did not request a hearing.<sup>1</sup>

6. Accusations were timely served on those respondents who requested a hearing and each such respondent filed a timely Notice of Defense.

7. All prehearing jurisdictional requirements have been met.

8. During the 2003-2004 school year District employed 12 counselors, three of whom were temporary employees. District proposes to reduce counseling services for the 2004-2005 school year due to District budgetary constraints. The February 18, 2004, board resolution authorizes release of all counselors who are temporary employees and layoff of 7.0 F.T.E counselors who are regular employees.<sup>2</sup> At hearing Patricia Calvert, Director of Certificated Personnel, testified District has released the three counselors who were temporary employees and one counselor has resigned. In addition, District has been able to identify some categorical funding for counselors, therefore only the three most junior permanent or probationary counselors will be laid off.

9. Respondent Susan Werd holds a Pupil Personnel Services (PPS) credential in counseling. District currently employs Werd as a 1.0 F.T.E. senior high school counselor at Berkeley High School. District has assigned Werd a seniority date of August 14, 2000. Werd is a permanent employee.

<sup>1</sup> Billiu holds the art teacher position that is being eliminated.

<sup>2</sup> The resolution provides that reduction of certificated staff is to be "effected by termination of regular employees, and that temporary and substitute employees also be released from employment, and that the reductions be in addition to attrition due to resignations and retirements."

Respondent Elisabeth Sandberg holds a PPS credential in counseling. District currently employs Sandberg as a 1.0 F.T.E. senior high school counselor at Berkeley High School. District has assigned Sandberg a seniority date of August 16, 2001. Sandberg is a permanent employee.

Respondent Stephen Chang holds a PPS credential in counseling. District currently employs Chang as a 1.0 F.T.E. senior high school counselor at Berkeley High School. District has assigned Chang a seniority date of March 11, 2003. Chang is a probationary employee. Chang, Werd and Sandberg are the three most junior counselors at District.

10. Education Code section 44955, subdivision (b) authorizes the governing board of a school district to terminate the services of certificated employees at the end of the school year whenever it determines a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year. Respondents argue that District is not actually reducing at least one of three counseling positions slated for elimination in 2004-2005. At hearing respondent Werd testified that approximately a week earlier she participated in an informal interview of an individual who was seeking a counseling position for the 2004-2005 school year. Respondents contend that since District is currently interviewing counselors for the 2004-2005 school year it is clear District does not really intend to eliminate three counseling positions.

District denies it is currently hiring counselors for the 2004-2005 school year and suggests that any interviewing of potential counselors is simply part of District's planning process in case categorical funding for additional counselors is obtained. District acknowledges that any counselor laid off pursuant to this proceeding will have priority for rehire over any new counselor. District's actions appear reasonable. Respondents have failed to establish that District does not currently intend to eliminate the three counseling positions held by Chang, Werd and Sandberg.

11. Respondent Barbara Beal holds a Designated Special Subject Vocational Credential in food service and a Child Development Center (CDC) permit. District has assigned Beal a seniority date of September 1, 1982. District employs Beal as a 1.0 F.T.E. teacher at Berkeley High School. She teaches food preparation skills to students enrolled in the Good Food Café training program. Beal primarily serves special needs students. District plans to eliminate the Good Food Café training program.

Beal has also served as substitute teacher at District's child daycare center pursuant to her CDC permit. Beal is more senior than several teachers at the child daycare center. However, District does not allow bumping into child daycare programs by Kindergarten through 12th grade teachers. In *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 849, the court held that certificated employees cannot bump a children's center employee because the statutory grounds permitting termination of the two are different. District therefore acted properly in prohibiting Beal from bumping into a childcare teaching position.

12. The evidence established that the District will be reducing services for the ensuing school year.

13. No certificated employee junior to any respondent is being retained to perform services which any respondent is certificated and competent to render.

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

### LEGAL CONCLUSIONS


1. Each of the services set forth in Finding 3 is a kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code § 44955; *Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Bd.* (1977) 67 Cal.App.3d 689.) The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

2. Cause exists because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

### ORDER

Notice may be given to respondents Barbara Beal, Cristi Billiu, Stephen Chang, Elisabeth Sandberg and Susan Werd that their services will not be required for the 2004-2005 school year because of the reduction or discontinuation of particular kinds of services.

DATED: 5/3/04

  
CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings