

BEFORE THE GOVERNING BOARD  
OF THE CURTIS CREEK SCHOOL DISTRICT  
COUNTY OF TUOLUMNE  
STATE OF CALIFORNIA

In the Matter of the Accusation for  
Reduction in Services from 1.0 FTE to .14  
FTE Against:

OAH No. 2008030025

KEN HUBEL, a full-time certificated  
employee,

Respondent.

**PROPOSED DECISION**

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter on April 1, 2008, in Sonoma, California.

Curtis Creek School District was represented by Byron C. Smith of the Law Office of Byron C. Smith. District superintendent Britta Skavdahl was present on the District's behalf.

Respondent Ken Hubel represented himself, with assistance from teacher Merv Cancio.

Oral and documentary evidence was presented. After the parties' closing arguments, the record was closed and the matter was submitted for decision on April 1, 2008.

**FACTUAL FINDINGS AND DISCUSSION**

1. Britta Skavdahl is the Superintendent of the Curtis Creek School District (District). Ms. Skavdahl's actions and the actions of the District Governing Board (Board) were taken in their official capacities.
2. The District serves approximately 650 kindergarten (K) through eighth grade students at its two campuses: Curtis Creek (K-8) and Sullivan Creek (K-5).

The Sullivan campus also houses the District's Community Day School (CDS), which is an alternative school, and two state-funded preschools.

3. Respondent is a permanent certificated employee who was hired by the District as a math and computer science teacher on August 25, 1997. Respondent is the least senior of the District's two math teachers.

During his 11 years as a District employee, respondent has typically taught in the seventh and eighth grades. In the 2007-2008 school year, respondent taught three periods of sixth grade math, one period of teacher preparation (prep), and three partial periods of "computers/physical education." During his tenure at the District, respondent has made himself available for other assignments according to the District's needs. Respondent taught courses in basic skills and art, and he taught for three years at the District's Community Day School.

4. On February 22, 2008, the District served respondent with a written statement which advised him it had recommended that notice be given to him, pursuant to Education Code sections 44949 and 44955, that his services would be reduced or not required for the 2008-2009 school year, and that an Accusation to this effect would be filed with the Board on March 11, 2008. A copy of the Accusation with required accompanying documents and a blank Notice of Defense, was served on respondent.

On February 28, 2008, respondent acknowledged receipt of the Accusation and filed his notice of defense.

5. On March 11, 2008, at a regular meeting, the Board was given notice of the Superintendent's recommendation that certificated employees holding a total of 9.13 full time equivalent (FTE) positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation. On March 11, 2008, the Board adopted Resolution 2007-2008-15 to this effect.

6. On March 13, 2008, the Superintendent served respondent with a second revised preliminary notice of reduction in services pursuant to Education Code section 44949 and 44955. Respondent was advised of the Board's Resolution for the reduction of particular kinds of services (PKS) at the end of the school year, and that his services for the 2008-2009 school year would be reduced from 1.0 FTE to .14 FTE. Respondent was notified that, in reducing his services, the Board was "skipping" a less senior certificated employee because respondent did not have the requisite credential or certificate necessary to bump a less senior certificated

employee. Respondent was advised of his right to request a hearing. There is no dispute that respondent timely requested a hearing.<sup>1</sup>

*Resolution to Reduce Particular Kinds of Services (PKS):*

7. On March 11, 2008, the Board determined that it was necessary to reduce and/or eliminate programs and services and that it was therefore necessary to reduce teaching services affecting the employment of 9.13 FTE positions. The District Governing Board adopted Resolution No. 2007-2008-15, which provided for the reduction or elimination of the following PKS:

<u>Services or Programs</u> <sup>2</sup>	<u>Equivalent Positions</u>	
Elementary Level Teaching Services [1 Vacancy]	4.0	FTE
Title I	1.0	FTE
Computer Science	.43	FTE [3 Sections]
Math	.29	FTE [2 sections]
Full-Time Teacher's Prep Period	.14	FTE [1 section]
Spanish [Categorically funded]	.14	FTE [1 section]
Classroom Music [Categorically funded]	.14	FTE [1 section]
Science [Classification Correction]	1.29	FTE [9 sections]
Yearbook [Classification Correction]	.14	FTE [1 section]
Physical Education	.14	FTE [1 section]
History/Social Studies	.14	FTE [1 section]
English Language Blocks	.29	FTE [2 sections]
Fine Arts [Vacant]	.57	FTE [4 sections]

<sup>1</sup> In addition to respondent, the District gave layoff notices to six certificated staff members. The District also eliminated the position of its Superintendent Ms. Skavdahl and its business manager, Ms. Blessing.

<sup>2</sup> The vacancies in the PKS services to be reduced were due to the retirements of two teachers: Ms. McPeeters (fine arts, primary music, drama) and Ms. Emmons (1 FTE elementary teacher). Ms. Skavdahl testified that the District has not been advised of any further attrition since March 15, 2008.



Primary Music [Vacant]	.14	FTE [1 section]
Drama [Vacant]	.14	FTE [1 section]
Band	.14	FTE [1 section]
CDS	[Change in the Manner the Service is Provided]	

The Board's resolution to eliminate and reduce these PKS was made after considering financial reports and information regarding the District's current and projected income from state and federal sources and its expenditures for the current school year and the next two school years. The reduction in PKS was necessary to reduce costs and to address a loss of revenue that places the District at risk of fiscal oversight/intervention by the County Office of Education if the layoffs do not occur.

8. The Resolution provided that due to a reduction in one of the District's Junior High School services, the District is reducing the services of a more senior certificated employee while retaining the services of a less junior employee because the more senior certificated employee does not have the credentials or competency to bump a junior employee. The Resolution did not define "competency."<sup>3</sup>

9. *PKS Staff Reduction at Curtis Creek:* The Board's resolution was based upon recommendations made by Superintendent Skavdahl, who began working with the District in July of 2007. Shortly after her arrival, Ms. Skavdahl became aware of the District's budget problems. After reviewing the staffing ratios in the District's seventh and eighth grades for the 2007-2008 school year, Ms. Skavdahl concluded that these grades could be staffed by the standard ratio of one teacher to thirty students. As a consequence, the seventh and eighth grades were overstaffed by two teachers. Ms. Skavdahl concluded that the needs of the District and its students for the seventh and eighth grades could be met in the 2008-2009 school year by four rather than six FTE teachers.

During the 2007-2008 school year, sixth grade teaching services were provided in a departmental (subject-based) approach. Ms. Skavdahl concluded that the District would still need two teachers for the sixth grade in the 2008-2009 school year; however, the manner of providing these services was changed from a departmental model to a self-contained classroom model. A multiple subject credential is required to teach a self-contained classroom.

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<sup>3</sup> The Board previously adopted Resolution No. 2007-2008 -9, a tie breaker resolution with criteria applicable only for ranking seniority between employees with the same dates of initial paid service with the District.

10. *Change in Manner of Providing Service at CDS:* The District also determined it was the best interest of itself and its students to change the manner of providing services in its CDS for the 2008-2009 school year. The Board's Resolution did not describe the specific manner of change in services to be provided at the CDS.

During the 2007-2008 school year, the CDS was a combined seventh-eighth grade, self-contained classroom taught by a single teacher with a multiple subject credential (S. Keefe: 8/25/97). For the 2008-2009 school year, the District changed the manner of delivering services in the CDS from a self-contained classroom model to a departmental model. Ms. Skavdahl articulated two reasons for this change. First, the single teacher at the CDS was very isolated on the K-5 campus and she believed this was detrimental to the needs of the District. Second, the CDS was intended to be a temporary, alternative educational placement from which students would be able to reenter the regular educational program (mainstream) at Curtis Creek. To ensure that students could return to the mainstream, the District changed its CDC curriculum to dovetail with that at Curtis Creek, and determined it was necessary to provide specialist teachers. Teachers will be assigned to CDS classes in areas according to their seniority and credential. In particular, Ms. Skavdahl emphasized the need for CDS students to be able to meet regular math standards. For this reason, the District added a special CDS math class which respondent will teach in 2008-2009.

11. *Teaching Assignments for 2008-2009 school year:* As of the date of the hearing, the District had not finalized its teaching assignments for the 2008-2009 school year. A tentative class schedule that included CDS classes was prepared by Ms. Skavdahl and reviewed by District teaching staff. The schedule has not been finalized, in part, because the District is involved in pending negotiations with the teachers' union.

12. As a result of the Board's resolution, respondent's FTE for the 2008-2009 school year has been reduced from a full time position (1 FTE) to teaching one math class (.14 FTE) at the CDS.<sup>4</sup> Ms. Skavdahl testified that this is the "worst case scenario," and that the District would offer respondent any additional classes for which he is credentialed and competent if they become available next year.

13. *Math:* The Board's resolution eliminated .29 FTE in sixth through eighth grade math at Curtis Creek for the 2008-2009 school year. These two sections of math were previously taught by respondent. During the 2008-2009 school year, Mr. Parker will teach all sixth through eighth grade math classes at Curtis (six classes). It is undisputed that Mr. Parker has more seniority than respondent (date of first paid service in 1991). The District has no obligation to reassign Mr. Parker to enable respondent to retain additional classes. (*Duax v. Kern Community College District* (1987) 196 Cal. App. 3d 555, 568-9.) Consequently, the District

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<sup>4</sup> A FTE of .14 is given for a subject that is taught one period a day, five days a week.



appropriately implemented the reduction of FTE in math in the inverse order of seniority by reducing respondent's FTE, as the less senior math teacher.

14. *Respondent's Teaching Authorization:* Respondent holds a clear single subject teaching credential in mathematics, with a supplementary authorization to teach photography. As a holder of a single subject math teaching credential, respondent may teach grades twelve and below, including preschool, and in classes organized primarily for adults. With this credential, respondent may be assigned to teach any of the following subjects: basic or general mathematics, algebra, calculus, computer science, consumer mathematics, geometry, mathematical analysis, statistics and probability, and trigonometry. (Educ. Code § 35160, subd. (a)(9).) A teacher with a single subject credential based on a baccalaureate degree and a teacher preparation program may be assigned, with his or her consent, to teach subject-matter classes which do not fall within or are not directly related to the broad subject areas listed, including, but are not limited to, life skills, conflict management, study skills, leadership, teen skills, and study hall. (Educ. Code § 35160, subd. (b).)

15. Respondent does not have a multiple subject teaching credential and cannot teach a self-contained class at Curtis Creek for the 2008-2009 school year. Respondent has passed only one of the three subtests of the California Subject Examination for Teachers (CSET), passage of which is necessary to obtain a multiple subject credential. In December 2007, months prior to implementing the layoff, Superintendent Skavdahl encouraged respondent to complete the CSET and obtain his multiple subject credential to avoid any layoff or reduction in his services. Without a multiple subject credential, respondent was informed that he would be likely to be laid off. Respondent indicated he would complete the credential; however, in February 2008, he advised Ms. Skavdahl that he had decided not to pursue a multiple subject credential. Respondent testified that he did not feel qualified to teach elementary-aged school children, and he could not get an assurance from the District that he would be placed in a self contained class for sixth graders if he had a multiple subject credential.

Respondent's argument that the District should have applied for a waiver on his behalf to authorize him to continue teaching at Curtis Creek pending completion of his multiple subject credential is without merit. As indicated in Education Code sections 44225, subdivision (m), and 44225.7, subdivision (a), the granting of a waiver for a teaching credential is within the discretion of both the District and the Commission on Teacher Credentials (Commission). It is also conditioned on specific findings by the Commission, and requires the passage of a resolution by the Board that it has made reasonable efforts to recruit a fully prepared teacher for the assignment.

Furthermore, respondent was aware that he was at great risk of layoff due to his lack of a multiple subject credential; however, he took no action to request such a waiver from the District and/or Commission.<sup>5</sup> In making its layoff decisions for reduction in services, the District is entitled to rely on respondent's credentials as of March 15, 2008. (*Campbell Elementary Teachers Assn., Inc., v. Abbott* (1978) 76 Cal. App.3d 796, 814-5.)

*Did the District Appropriately Skip Less Senior Teachers at Curtis Creek?*

16. Pursuant to Education Code section 44955, layoffs must take place in the inverse order of seniority. The District has the burden to prove, by a preponderance of the evidence, that its decision to layoff or reduce the services of a more senior teacher, while retaining the services of a less senior teacher, is appropriate. In pertinent part, the statute provides that:

(b) . . . Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

[¶] . . . [¶]

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, . . . , and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent school

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<sup>5</sup> Under Education Code section 44225, individual applicants may also request a waiver from the Commission.



districts from reducing or eliminating the services of senior teachers while retaining junior teachers. Section 44955, subdivision (c), provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

17. *Self-Contained Class*: Respondent taught sixth grade during the 2007-2008 school year. With the retirement of sixth grade teacher Ms. Spizak, respondent hoped to continue teaching sixth grade.

As a result of the reduction of 1 FTE in Title I teaching services, former Title I teacher Beth McIlroy was assigned to teach a self-contained K- 6th grade class for the 2008-2009 school year. Ms. McIlroy's first day of paid service with the District was August 26, 1998; consequently, she has one year less seniority than respondent. Unlike respondent, however, Ms. McIlroy holds a multiple subject credential which authorizes her to teach in a self-contained classroom. Consequently, the District appropriately retained ("skipped") a more junior employee, Ms. McIlroy, to teach self-contained classes that respondent, although a more senior teacher, is not certificated and competent to teach.

18. *Computer Science/Physical Education (PE)*: During the 2007-2008 school year, respondent taught three class periods of computer science/PE a week. Within those periods, respondent's students had a computer science class with alternating days dedicated to PE instruction. The Board's resolution eliminated respondent's three sections (.43 FTE) of computer science for the 2008-2009 school year. As a result of this PKS reduction, each teacher will be responsible for incorporating computer science into their class curriculum. Individual computer classes are a PKS that the District may appropriately eliminate and implementation of this reduction did not involve the skipping of any less senior employee over respondent.

The Resolution also reduced .14 FTE in PE. While respondent taught PE for most of the 2007-2008 school year, he does not have a credential in PE. In late February 2008, Ms. Skavdahl became aware that respondent did not have a PE credential and had been incorrectly assigned to teach three partial sections of PE. On



March 14, 2008, Ms. Skavdahl reassigned respondent's PE students to the class roster of Paul McIlroy, who has a single subject credential in PE. Respondent was then authorized to implement PE activities planned and supervised by Mr. McIlroy for the balance of the 2007-2008 school year. Mr. McIlroy's first day of paid service with the District was August 26, 1998; consequently, he has one year less seniority than respondent. However, respondent does not have the credential necessary to teach PE classes at Curtis Creek. As a result, the District appropriately retained a more junior employee, Mr. McIlroy, to teach PE classes at Curtis Creek that respondent is not certificated and competent to teach.

19. *Teacher Prep:* During the 2007-2008 school year, respondent taught one section (.14 FTE) of teacher preparation period. The Governing Board's resolution eliminated one section (.14) FTE of teacher preparation period for the 2008-2009 school year. This reduction was effectuated by having all teacher preparation periods at the end of the day in a similar manner as in K-3. This action allows more time for teachers to interact across all grade levels and results in cost savings for the District of approximately 1 FTE. This change is currently under negotiation with the teacher's union.

*Did the District Appropriately Skip Less Senior Teachers at the CDS?*

20. Once he was aware of his potential layoff, respondent asked Ms. Skavdahl if he could teach at the CDS for the 2008-2009 school year, but was told he could not do so. He was later offered a single .14 FTE math class at the CDS.

To avoid the reduction of his services, respondent prepared various alternative teaching assignments for 2008-2009 school year for junior high school certificated staff at Curtis and the CDS. Ms. Skavdahl testified that she reviewed those assignments and did not find them to be appropriate alternatives in light of respondent's current credential and the District's needs. Respondent may be asked to teach an elective for an additional .14 FTE during the 2008-2009 school year; however, this will not be determined until the schedule is finalized following the conclusion of union negotiations.

21. By virtue of his single subject credential, respondent is also authorized to teach in the District's CDS, an alternative school, pursuant to Education Code section 44865, which provides, in pertinent part, that a "valid teaching credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher: . . . (f) Alternative schools. . ." Respondent consents to such assignment.

22. The District may change the manner of providing services at the CDS from a self-contained class to a specific subject model taught by multiple teachers. However, as articulated by Ms. Skavdahl, the District's change in the manner of providing services at the CDS contemplates the assignment of certificated staff in a manner that is contrary to Education Code sections 44955 and 44865. The District cannot reduce respondent's FTE, while retaining less senior teachers at the CDS, by requiring that he hold subject specific credentials for CDS classes he is competent to teach.

The District did not meet its burden of proof that respondent's FTE should be reduced while it retains less senior employees to teach distinct classes in the CSD. For example, PE teacher Paul McIlroy, who has one year less seniority than respondent, is tentatively assigned to teach one session (.14 FTE) of CDS PE. Respondent has more seniority than Mr. McIlroy. In addition, respondent has experience in teaching PE throughout the 2007-2008 school year, and he did so competently and with the District's consent. A PE credential is not required to teach CDS PE; accordingly, respondent is competent and credentialed to teach CDS PE and the District cannot skip Mr. McIlroy for this .14 FTE. In addition, Carol Smith has a single subject credential in social science with a supplementary authorization in English. Ms. Smith is scheduled to provide an elective at the CDS for .14 FTE. Respondent has more seniority than Ms. Smith, whose initial date of paid service with the District was on January 6, 2003. Respondent has taught electives and the District cannot skip Ms. Smith for this .14 FTE.

Moreover, respondent's undisputed testimony established that he taught at the District's CDS for three years. It was during this time period that respondent took and passed the CSET subtest that covered reading, language/literature, history and social science. Respondent undertook and passed this examination at the request of the CDS principal to enable him to better teach these subjects at the CDS. No evidence was offered that respondent is not competent to teach these subjects at the CDS. The District has approved of his competence to do so in the past and respondent has extensive experience teaching the CDS population. Nevertheless, these subjects are currently assigned to Alice Leonardo (first paid service: September 1, 1979), a teacher who is more senior than respondent. If Ms. Leonardo's CDS assignment is changed; however, the District must assign respondent to these classes before it assigns them to a less senior teacher.

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23. In summary, the District has met its burden of proof regarding the reduction of respondent's FTE at Curtis Creek due to his seniority and lack of appropriate credentialing. However, respondent is certificated and competent to provide an additional .28 FTE in PE and electives at the CDS that are currently assigned to less senior teachers for the 2008-2009 school year. With his currently



## LEGAL CONCLUSIONS

1. As set forth in Factual Findings 1 through 6, all notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notices sent to respondent indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide him due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. As set forth in the Factual Findings and Legal Conclusions as a whole as a whole, and particularly in Factual Findings 7 through 10, the services identified in Resolution No. 2007-208-15 are particular kinds of services that can be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue these identified services was neither arbitrary nor capricious, was a proper exercise of its discretion, and relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. As set forth in the Factual Findings and Legal Conclusions as a whole as a whole, and particularly in Factual Findings 16 through 19 and 23, the District has established that no employee junior to respondent is being retained to perform the services at Curtis Creek which respondent is competent and certificated to render. Accordingly, cause exists to reduce respondent's FTE to the extent that it is attributable to the reduction and discontinuation of PKS at Curtis Creek.

5. As set forth in Factual Findings as a whole, and particularly in Factual Findings 16 and 20 through 23, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The District may not skip less senior teachers by assigning them to teach classes at the CDS that respondent is certificated and competent to teach. Accordingly, the reduction in respondent's FTE is modified from the recommended reduction (from 1 FTE to .14 FTE) to a reduction from 1 FTE to .42 FTE. As set forth in Factual

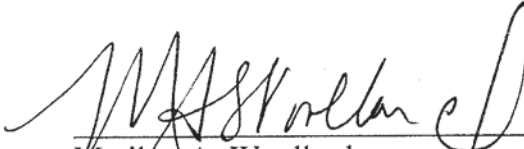
Finding 22, the District is obligated to increase respondent's FTE consistent with this decision after the finalization of the 2008-2009 teaching assignments.

#### RECOMMENDATION

1. Notice shall be given to Ken Hubel that his services will be reduced from 1.0 FTE to .42 FTE in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services. Respondent's .42 FTE is subject to increase as outlined in Order No. 2.

2. No certificated employees junior to respondent shall be retained to teach classes in the Community Day School for the 2008-2009 school year. The District shall assign respondent to teach any classes in the Community Day School not taught by teachers with more seniority, with a corresponding increase in FTE.

DATED: May 1, 2008

  
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Marilyn A. Woollard  
Administrative Law Judge  
Office of Administrative Hearings