BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of: Shasta Union Elementary School District, Appellant.	EAAP No.: 04-05 OAH No.: N2004070154

DECISION

The attached Proposed Decision of Administrative Law Judge Muriel Evens is hereby adopted by the Education Audit Appeals Panel as its Decision in the above-entitled matter.

This Decision shall become effective on 28 March 2005

IT IS SO ORDERED 28 March 2005

Thomas E. Dithridge, Chairperson

BEFORE THE
EDUCATION AUDITS APPEAL PANEL
STATE OF CALIFORNIA

In the Matter of the Appeal (Statement of Issues) of:	Case No. 04-05
SHASTA UNION ELEMENTARY SCHOOL DISTRICT, Appellant.	OAH No. N2004070154

PROPOSED DECISION

Administrative Law Judge Muriel Evens, Office of Administrative Hearings, State of California, reviewed this matter in Sacramento, California.

Ana Marie Garza, Staff Counsel, represented Steve Westly, State Controller, State of California

Julie Weng-Gutierrez, Deputy Attorney General, represented the Department of Finance, State of California.

School & College Legal Services, by Joseph C. Kinkade, Attorney at Law, represented appellant Shasta Union Elementary School District.

This audit appeal was tried on a stipulated record. The matter was submitted on October 27, 2004, following the receipt of briefs.

FACTUAL FINDINGS

1. On December 5, 2003, the independent auditing firm of Matson and Isom issued a report on appellant's general-purpose financial statements for the year ended June 30, 2003. The auditor found that a classified aide supervised a class for the substantial portion of the school day during the 2002-2003 fiscal year. The auditor calculated a penalty pursuant to Education Code section 45037, subdivision (b), in the amount of $84,517.00. The District appealed.

2. Education Code section 46300, subdivision (a), permits a school district to include in the average daily attendance (ADA) only those students "under the immediate supervision and control" of an employee with a valid teaching certification. Here, the appellant included in its ADA the students supervised by the classified aide.

3. The particular class in question was a fourth through sixth multigraded class at Shasta Elementary School in Redding. The assigned certificated teacher was also the school principal. His office was located near the classroom, but the majority of the time, the aide was unsupervised in the classroom.

4. Effective October 1, 2003, the Commission on Teacher Credentialing issued an emergency long term multiple subject teaching permit to the aide.

LEGAL CONCLUSIONS

Education Code section 45037, subdivision (a), provides for a penalty assessed against a district when "a person renders service as a teacher" without a valid certification. Here, while the aide was not hired or paid as a certificated teacher, she rendered that service the major portion of time, without the direct or immediate supervision of a certificated teacher.

Education Code subdivision (b), applicable here, sets forth the method for determining the amount of the penalty. The calculation is based, in part, on the "number of schooldays on which the person rendered any amount of the service without a valid certification document."

The District argues that if a penalty is assessed, it should be reduced, as the assigned teacher was nearby, and that Education Code section 54482, requires an aide to be supervised "no less than 75 percent of the time for which he is engaged in the performance of his duties during any day." The District argues that the penalty should be reduced by at least 25 percent, for the time the aide could work unsupervised.

It might be argued that on a day where the aide was directly supervised 75 percent of the time, she did not render service requiring a certification. No evidence was offered that the aide was directly supervised at least 75 percent of the time on particular days or that there were days included in the auditor's count where the aide worked unsupervised no more than 25 percent of the time. There is no provision in Education Code section 45037 that permits the penalty to be reduced where there was no showing that the auditor made an error in the count of the days where the aide rendered any amount of service requiring the certification.

ORDER

The finding of the independent auditor that appellant Shasta Union Elementary School District suffer a penalty of $84, 517.00 is affirmed.

Dated: January 21, 2005

MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings