

1 GREGORY ROLEN (SBN 146290)
2 DEBORAH A. COOKSEY (SBN 118197)
3 MT. DIABLO UNIFIED SCHOOL DISTRICT
4 1936 Carlotta Drive
5 Concord, CA 94519-1397

6 Attorneys for Petitioner
7 **MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

8 **BEFORE THE GOVERNING BOARD**
9 **OF THE MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

10
11 In the Matter of the Accusations Against:) OAH Case No. 2010030157
12)
13 The Certificated Employees Identified in) **STATEMENT TO RESPONDENTS**
14 Exhibit "A" Attached Hereto)
15 Respondents.)
16 _____)

17 **TO: RESPONDENTS AND THEIR COUNSEL:**

18 PLEASE TAKE NOTICE THAT on March 25, 2010, a written Accusation against you as
19 Respondent was filed with the Governing Board of the Mt. Diablo Unified School District
20 ("District") charging that cause or causes exist for terminating your employment (via layoff) as an
21 employee of the District. The following documents are enclosed:

- 22 1. Accusation
- 23 2. Copies of Education Code sections 44949 and 44955
- 24 3. Copies of Government Code sections 11506, 11507.5, 11507.6, 11507.7, and
25 11520
- 26 4. Notice of Defense
- 27 5. Notice of Hearing

28

1 You have **five (5) days** after the Accusation is served upon you to request a hearing by
2 delivering or mailing the enclosed Notice of Defense form, by certified or registered mail to the
3 following address:

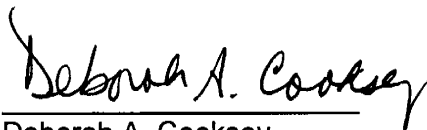
4 James Dent Education Center
5 Mt. Diablo Unified School District
6 Personnel Services
7 1936 Carlotta Drive
8 Concord, CA 94519

9 In addition, you have **fifteen (15) days** from the date of this letter to request discovery
10 pursuant to Government Code section 11507.6.

11 The hearing may be postponed for good cause. If you have good cause, you are obliged
12 to notify the District within ten (10) working days after you discover the good cause. Failure to
13 notify the District within ten (10) working days will deprive you of a postponement.

14
15 Date: March 25, 2010

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

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18 Deborah A. Cooksey
19 Attorney for Petitioner

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1 GREGORY ROLEN (SBN 146290)
2 DEBORAH A. COOKSEY (SBN 118197)
3 MT. DIABLO UNIFIED SCHOOL DISTRICT
4 1936 Carlotta Drive
5 Concord, CA 94519-1397

6 Attorneys for Petitioner
7 **MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

8 **BEFORE THE GOVERNING BOARD**
9 **OF THE MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

10
11 In the Matter of the Accusations Against:) OAH Case No. 2010030157
12 The Certificated Employees Identified in) **ACCUSATION**
13 Exhibit "A" Attached Hereto)
14 Respondents.)
15 _____)

16 **TO: RESPONDENTS AND THEIR COUNSEL:**

17 I, Steven Lawrence, allege as follows:

18 **I.**

19 I am the Superintendent of the Mount Diablo Unified School District ("District"). I make
20 and file this Accusation in my official capacity.

21 **II.**

22 Respondents listed on Attachment A hereto are presently certificated employees of the
23 District. Attachment B reflects certificated temporary employees of the District that the District
24 contends are not entitled to the provisions of Education Code sections 44949 and 44955 and to
25 whom the District did not sent preliminary layoff notices. However, those certificated temporary
26 employees purport to be respondents in this action.

27 **III.**

1 As a result of the District's current financial status, the Board of Education has determined
2 that it must reduce particular kinds of services throughout the organization. On February 9, 2010
3 and March 9, 2010, the Board of Education adopted Resolutions No. 09/10-37 and No. 09/10-45,
4 respectively, initiating reductions and eliminations of particular kinds of certificated services for
5 the 2010-2011 school year. I was directed to notify the appropriate certificated employees who
6 will be affected by the elimination and reduction of particular kinds of certificated services.
7

8 **IV.**

9 On March 9, 2010, pursuant to Education Code section 44949 and 44955, I
10 recommended to the Board of Education that notice be given to various certificated employees,
11 including each of the Respondents identified on Attachment A hereto, that their services might be
12 terminated for the ensuing school year.

13 **V.**

14 On or before March 15, 2010, I provided written notice to each Respondent that his or her
15 services might be terminated for the ensuing school year pursuant to Education Code sections
16 44949 and 44955.
17

18 **VI.**

19 Pursuant to Education Code section 44949, each Respondent identified on Attachment A
20 hereto duly requested, in writing, a hearing to determine if there is cause for not reemploying him
21 or her for the ensuing school year.

22 **VII.**

23 Cause exists within the meaning of Education Code sections 44949 and 44955 for not
24 reemploying Respondents for the 2010-2011 school year in that the Board has decided to reduce
25 or eliminate the particular kinds of services set forth in Exhibit C (Resolution No. 09/10-45),
26 incorporated by reference herein.
27

28 **VIII.**

The District will not retain any certificated employee with less seniority than a Respondent

1 during the 2010-2011 school year to render a service that the particular Respondent is
2 certificated and competent to render, except that teachers with special competencies, such as

3 a. Those teaching courses requiring Bilingual Cross-Cultural Language and
4 Development (BCLAD) certificates, which are highly specialized programs
5 requiring the possession and utilization of additional specialized certificates and/or
6 credentials these qualifications as demonstrated by the possession of a valid
7 certificate and/or credential and/or permit or waiver and use of that certificate
8 and/or credential and/or permit or waiver in the employee's 2010-2011 assignment
9 and/or
10 and/or

11 b. Bilingual School Psychologists who provide services to English Language
12 Learners
13 may be retained if necessary to the school program.

14 **IX.**

15 The cause for terminating Respondents' employment relates solely to the welfare of the
16 school and the students thereof within the meaning of Education Code sections 44949 and
17 44955.
18

19 **X.**

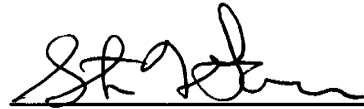
20 Each Respondent is hereby notified that unless a written Notice of Defense is filed with
21 the Board of Education, c/o Mount Diablo Unified School District, Personnel Resources, 1936
22 Carlotta Drive, Concord, CA 94519, within the five (5) day period commencing with service of this
23 Accusation, Respondent's right to a hearing to contest the charges against him or her will be
24 waived and the District may proceed upon the Accusation without a hearing. Currently, a hearing
25 is reserved for the dates April 27-29, 2010 beginning from 1:00 p.m. to 6:00 p.m. at the Willow
26 Creek Center, 1026 Mohr Lane, Concord, California. A form Notice of Defense is enclosed.
27

28 The discovery authorized by Section 11507.6 of the Government Code is available only if
request is made therefore within 15 days after service of the accusation. Copies of Government

1 Code sections 11507.5, 11507.6 and 11507.7 are attached.

2 **WHEREFORE**, it is requested that the Board of Education of the Mount Diablo Unified
3 School District give notice to Respondents, pursuant to Education Code sections 44949 and
4 44955, that their services will not be required for the 2010-2011 school year.

5 Dated: March 25, 2010

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7 

8 _____
9 Dr. Steven Lawrence
10 Superintendent Mount Diablo Unified School District

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PERMANENT TEACHERS

Exhibit A

ID	LAST_NAME	FIRST_NAME
21842	ADLER	DANIELLE
11451	ALBRIGHT	SEAN
23925	ALTMAN	LESLIE
24374	ANDREWS	EMILY
11672	AUSTIN	ELIZABETH
24480	BALDAUF	ANNEMARIE
24346	BATSON	JENNIFER
22582	BECK	DENNIS
21099	BECK	HEIDI
13965	BEDESSIE	NADIA
14367	BEERBAUM	JESSICA
24383	BEYER	JILL
24503	BLYTHE	HALEY
23539	BOHANNAN	ERIN
22607	BORBA	ANN
25730	BRADFORD	JANE
24608	BREAM	JOSHUA
23533	BREASHEARS	BARBARA
21270	BROMLEY	KELLEY
22127	BRUNCKHORST	KERSTIN
11217	BRUNETTO	JERRY
12567	BUCKINGHAM	LYNN
23462	BURNHAM	CYNTHIA
14375	BUTTERFIELD	CHARLES
20545	CADLONI	ROBERT
22124	CAIRNS	JAMIE
24347	CALDERON	MARIE
22131	CAMPOS	REBECCA
21731	CANCERAN	MILLARD
13287	CARROZZI	KATHLEEN
20102	CHECHO	COLLEEN
20578	CHILDRESS	THERESA
22211	CLANCY	NANCY
25711	CLARK	LOUISE
24564	CLASON	RYAN
24469	CLAUSE	MICHAEL
23741	COLLINS	TRICIA
24500	CORBETT	BRIAN
23495	COSTA	KATHERINE
24501	CRUZ	KARNA
10632	CURTIS	PERI
21934	DE LA CRUZ	ELIZABETH
23939	DEAN	JAMES
17229	DELANEY	JAMIE
24688	DIDION	DEIRDRE
25598	DIESTLER	JENNA
22954	DIPPO	LISA

24543	DOLL	SANDRA
23646	DONOVAN	BARBARA
21965	EDDINGTON	HOLLY
24397	ENNIS	ELIZABETH
23377	EXNER	KIMBERLY
23863	FAIRCLOUGH	ELIZABETH
21947	FAJARDO	JUAN
16174	FANUCCHI	MYRNA
23794	FARABEE	JULIE
24429	FIERROS	CARLOTA
17321	FLIER	CATHERINE
10842	FLORES	JOLEN
17201	GABRYSIK	LORNA
11795	GALANTER	RHONDA
13788	GAMEZ	SARAH
22903	GLIEBE	ALEXIS
25733	GRAHAM	EMILY
10695	GRAZE	MARJENE
22625	GREEB	BEVERLY
10276	GREWE	KIMBERLY
17160	GUNCHEON	KERI
23231	HACKETT	AARON
11865	HALL WHITNEY	SUZANNE
24358	HALLQUIST	JOHN
25676	HATCHER	ROSE MARY
24078	HEIN	KIRSTA
11495	HEPNER MARTINEZ	JANICE
22003	HERNANDEZ	JOCENA
23476	HEWITT	GERALD
20530	HILL	KERRY
25670	HIRABAYASHI	JENNIFER
16061	HOLLAND	KELLY
25094	HOSHIDE	SACHIKO
14075	HUMPHREY	ERYN
23839	HUNTER	ANGELA
23583	HUSEN COLLINS	KATHY
23217	JACOBSON	MICHELE
24548	JAQUEZ	MAGIC
21875	JOHNSON	OLLIE
23747	KAHRER	MARTHA
15315	KAPUT	SUSAN
23628	KASDIN	SAMUEL
14093	KENNEDY	JANE
24123	KING	KATHLEEN
10972	KIRSKE	JUNE
23840	KJONAAS	PATTI
24440	KLEINE	DAVID
11419	KNIGHTEN	RAYCHAE
14729	KOBY	CAROL
24565	KOONTZ	KATHLEEN
25588	KRAMER	ALISON

20613 KRESLEY	SUSAN WITHERSPOON
24866 KRIEL	TRAVIS
24571 LATON	KATHRYN
23575 LONGYEAR HAYDEN	GWENDOLYN
24604 LYLES	VALERIE
22132 MACE	DELOS
21599 MARES	MICHAEL
23480 MARIA	LAURA
24169 MARTINEZ	TERRI
24203 MC CLELLAN	MARY
25665 MC CURDY	BRIANNON
24365 MENDOZA	ELISA
23232 MERLETTI	KATHLEEN
25745 MILLS	VIRGINIA
23449 MONTERROSA	LESLIE
22702 MONTGOMERY	RUTH
23451 MONTOYA	LEILANI
24129 MOORE	CAROLYN
24054 MOSES	JONATHAN
23459 NAU	PATRICIA
21190 NELSON	JAY
21743 NESBETH	KEYA
22125 NEWLIN	ALISON
21886 NICOSIA	THERESA
10742 NIXON	DEANNA
24627 NNAJI	CAROLYN
24553 OLIVER	PATRICK
23314 OSTERKAMP	KAREN
24366 OVADIA	KIMBERLY
24350 PARKS	JULIE
26678 PASCUCCI	AARON
23463 PEARSON	JAN
23235 PELKEY	ERIN
12219 PERONA	LINETTE
23433 PHUNG	STACEY
25576 PIOTRASCH	MICHAEL
23357 PITTA	DENA
24055 PRADO	SARA
20581 QUINN	LAURA
22256 RALLS	ANTHONY
20336 RALLS	JENNIFER
25769 REALEGENO	JANIS
23833 REED	KARI
25746 RICHARDS	EMILY
22297 RICHARDS	JUDITH
25772 RICHARDS	MARY LOU
23434 RUSH	LYNDA
24558 SAAKE	JENNIFER
15523 SAFRAN DOIG	MISHA
23740 SALMON	MARY
22593 SANCHEZ	NICHOLAS

22666	SCHNARR	JOAN
23341	SCOTT	ANDREA
25155	SCOTT	JESSICA
17173	SCOTT	JOANNE
13268	SCROSATI	MARIA
20353	SEMPLE	LAURIE
25531	SHAW	BRYAN
21590	SHEDD	LISA
20192	SHEFFIELD	DANIEL
25222	SMIDEBUSH	MICHAEL
22949	SMITH	CORRINE
24141	SMITH	MANDI
23344	SMITHERS	TERRA
20459	SMYTHE	AMANDA
12937	SNOW	JULIE
25695	SOTO	ROBIN
23768	SPINK	PATRICIA
24719	STEVENS	NANCY
23340	STEWART	DEBORAH
21849	STONE	PAUL
23743	SUGDEN	CARISSA
22814	SWEAT	DAWN
23129	SWENSON	LISA
24562	TAYLOR	AMBER
24461	TSURUDA	SHANNON
16816	VARGAS	ALLISON
25771	VILLARS	NIKOLAS
24414	VOSE	KATHERINE
23453	WALKER	ACHILLES
13263	WALSH	SARAH
20447	WARE	MARLA
12930	WEAVER	LAUREN
24419	WEBER	SHAWN
20116	WEITZMAN	D'ANNE
20584	WELCH	JACQUELINE
21348	WHARTON	MICHAEL
25760	WILLNER	STEPHEN
15413	WILSON	LAURA
24567	WINSBY	JANICE
25235	WITH	M
24539	WONG	JANELLE
11714	WOOD	ERIC
13273	YANG	PEGGY
23962	YOUNG	SARAH
21732	ZABALA	MARIA LUZ

PROBATIONARY TEACHERS

ID	LAST_NAME	FIRST_NAME
27137	ABDULLAH	BASHAR
28447	ABELLA	RACHEL
26958	AGUILERA	CLAUDIA
26585	ALCAIDE TUBIO	FRANCISCO
24372	ALLUM	MICHAEL
23630	ALMOND	JOSH
22608	ALUMBAUGH	ARLAN
28405	AMODIO	KATHLEEN
24674	ANDERSON	KIMBERLY
28383	ANDRADE	JACQUELINE
13940	APPLEGATE	JOHNNY
27139	ARCANGELO	KAREN
28450	AYON	GINA
27775	AYRES	SHERRY
28444	AZEVEDO	KATHERINE
27159	BALLARD	BENJAMIN
23655	BANKS	JANELLE
20553	BARABAK	MARIANNE
28324	BARAMBANI	STEPHANIE
28452	BAUTISTA	JAN
20249	BENBROOK	ROSS
27935	BERRY	MEGHAN
24399	BLUBAUGH	ERIN
28454	BOND	ALYSSA
25735	BROOKS	RYANN
13523	CAMPOPIANO	BENJAMIN
26514	CARNEY	BRIDGET
24612	CELIO	KRISTIN
00193	CHEVIAL	MATTHEW
28441	COOK	JULIE
20456	CRISP	JENNIFER
25437	DE ANGELIS	JENNIFER
11748	DEWES	NICOLE
28446	DI MAGGIO	SARAH
21188	DILLON	PAULA
27150	DOLLEY	COREY
28460	DOSTER	DENNIS
27207	EDWARDS	JOHN
25550	EINICHER	MANUELA
25741	EVANS	ROBIN
27151	EVANS	SANDRA
24580	FERNANDEZ	ANYA
24118	FERRIS	DANIELLE
27463	FILIPINIA	MARIA TERESITA
25677	FISHER	ADAM
26173	GAMBLIN	LORI ANN
28449	GARCIA	VANESSA
18006	GILFORD	SPENCER

10729 GREENBLATT	LAURA
13566 GRIFFIN	JUDITH
25781 GUNDELFINGER	PAUL
25604 HALEY	DANIEL
26299 HATCH	SUZANNE
28451 HERALD	NICHOLAS
27906 HILE	GREGORY
28453 HOELLE	ALLISON
15804 HOOD	DENISE
25701 HOOD	JAMES
27152 HUMPHREY	ROBERT
25722 HUNG	EVAN
26017 IGLESIAS	NINFA
26365 JOHNSON	JANELLE
28455 KAMAL	RAJ
28465 KAUR	RAMANPREET
16898 KELLERSBERGER	NICOLE
28008 KELLY	MATT
25732 KLAAS	KARIN
25779 KRAUSE	EMILY
12181 KULUNK	APRIL
24589 LANDESVATTER	HANS
24382 LIEBOW	CHERI
26509 LOUIE	MAMIE
27310 LOWANDE	KAREN
25687 LOWELL	JUSTIN
25767 LUEBKE	CHRISTOPHER
27161 LUTHRA	VANDANA
12739 MALINASKY	JEAN
28463 MAREK	ANDREA
27202 MARTIN	JUAN
10974 MARTINI	NANCY
27158 MC COLLUM	BRYAN
25843 MEDINA	AMANDA
16266 MIKUNI	RONALD
28458 MILLER	ROBERT
26740 MIMBS	KRISTIN
25436 MINGLANA	ERNESTO
24592 MOORE	SHERRIE
10897 MORAGA	AMANDA
27073 MOSELEY	BRENDAN
27228 MOSELEY	JANE
18517 MOSER	MICHAEL
26351 MURPHY	MEGAN
25440 NASSRALLAH	ZOILA
25572 NICHOLS	SANDRA
25596 OKIMURA	SHELLEY
13862 OPSAHL	CYNTHIA
25274 ORTIZ	CESAR
28466 PHAN	KHOA
27209 PRATT	ERICA

27153	PRODOEHL	DANIEL
24061	QUINONES	RUBEN
26475	RAVIN	MONICA
25354	REYES	RAUL
23828	RIGGS	HEATHER
25305	RIVAS	LUIS
27251	ROGERS	JAMES
27025	ROY	BRADLEY
27078	RUNGE	VIRGINIA
21123	RUSCOE	JENNIFER
27133	SABATIER LACHER	CELINE
27288	SAIN	TIMOTHY
28459	SCHOENFELD	ALLISON
26788	SHUMATE	RUTH
27558	SIERRA	JADE
27145	SIKORSKI	JANET
25783	SINQUEFIELD	DANIELLE
26258	SMITH	SUSANNE
27230	SOLINGER	CAROL
28378	SORIA	CHRISTINA
14184	SPARKS	THOMAS
28467	STOYER	NANCY
24721	TABER	MICHAEL
25773	TAFOYA	MONIQUE
16383	TAYLOR	KEVIN
27078	TAYLOR	TRACY
27099	TESSANDORI	IRIS
28468	THOMAS	MARCUS
27311	THOMPSON	ERIC
13824	TORRES	BARBARA
24447	TORRES	LORRAINE
28377	TOWNSEND	DANYA
26848	TRUJILLO	ERIN
20376	ULRICHSEN	CHRISTINE
28395	VALERIO	ELIZABETH
10999	WEIL	CARRIE
25759	WIELAND	ELIZABETH
26643	WILSON	ELIJAH
10002	WINTERICH	ANNE
27157	XIROMAMOS	PAMELA

Librarians

ID	LAST_NAME	FIRST_NAME
25735	BROOKS	RYANN
24078	HEIN	KIRSTA
11419	KNIGHTEN	RAYCHAE
26788	SHUMATE	RUTH
13824	TORRES	BARBARA

Music Teachers

ID	LAST_NAME	FIRST_NAME
15542	ABBOTT	PATRICK
24346	BATSON	JENNIFER
14263	BROMLEY	JOSEPHINE
15452	BROWN	GREGORY
16117	BROWN	STELLA
14501	BULLARD	DEBORAH
15826	CARTER	GEOFFRY
14123	COARTNEY	GARY
13007	CRANDELL	KATHRYN
13006	EMIGH	CHRISTIAN
24548	JAQUEZ	MAGIC
21675	JOHNSON	OLLIE
16898	KELLERSBERGER	NICOLE
12118	KLEIN	JASON
12098	MADSEN	PAMELA
21599	MARES	MICHAEL
15381	MC NULTY	LORETTA
20284	PATTON	EMILIE
14069	RYKEN	JUDY
21590	SHEED	LISA
20459	SMYTHE	AMANDA
12238	SNYDER	LINDA
27311	THOMPSON	ERIC
12997	WHITFIELD	JOFFRIA
15662	WRIGHT	DAVID

Psychologist Layoff Respondents

Hjort, Jessica

Administrator Layoff Respondents

Hymer, Richard

Adult Education Layoff Respondents

BERNSTEIN		JEAN
BURIK		ANTHONY
CRISTEA		CRISTINA
MELONE		LUCIA
MURPHY	W	WENDY
NG	A	MARY
PASCAL	P	JOSIE
SAXTON	A	BEVERLY
SCHIEBER	A	JUDITH

Exhibit B

<u>ID</u>	<u>FIRST NAME</u>	<u>LAST NAME</u>
28559	LILLIE	ALLGAIER
27993	ANGELA	ARDITTI
27165	CRISTINA	BALLARD
27191	GABRIELA	BEREVOESCU
28393	LARKIN	BOERO
28443	DAVID	BORGLUM
28445	SCOTT	BUSHNELL
15994	ELAINE	CAMPBELL
28678	MARCO	CASTRO
28470	KA SHING	CHAN
28554	TREVOR	CHATTERTON
28517	JENNIFER	DABY
24855	LEILANI	DE DIOS
11844	BARBARA	DISKOWSKI
27346	PEDRO	DORADO
13164	PATRICK	EASTERWOOD
28621	NENA	EVANS
11350	ESTHER	GARROTTO
28408	JIORGINA	GUTIERREZ
28462	NANCY	HAGEN
26596	LAIMA	HAIDER
23594	JENNIFER	HANEY
28495	JOSEPH	HEMSLEY
28823	CHRISTIAN	HERMAN
26954	DAVID	HOBSON
28507	MARIE	ISAAC
28157	MICHELLE	KRISKOVIC
28157	MICHELLE	KRISKOVIC
11896	HARRIET	LEE
27010	MELISSA	LEFEVRE
26861	LAURA	LEWIS
15272	ROBIN	LOUCHIS
28622	ELIZABETH	MARTIN
26045	NELSON	MORENO
28475	MIRIAM	MOSCOVICI
24417	HALEH	PEZESHKAN
26499	JILL	RASLAN
27704	WANDA	REALEGENO
12252	IMOGENE	REBER
20368	MELISSA	RIDINGS
11461	SUZANNE	ROBERTS
28458	AMY	ROBINSON
21598	SUSAN	ROSENBERG
28931	JANESE	RUBIN
27860	SHARI	SCOTT
28434	SHELLY	STEVENS
27128	KELLY	SUNSERI
27886	SHERYL	SWEENEY
15161	SARA	TANCREDY
27285	ASKIN	TOPAL
28898	JENNIFER	TRAN

Temps
As of 3/17/10

<u>ID</u>	<u>FIRST NAME</u>	<u>LAST NAME</u>
27990	MISTY	TY
11585	RUTH	VAN HASSELT
28729	JASMINE	WOODS
28610	SASHA	WOODWARD
28171	GLORIA	ZAJDEL

Exhibit C

**RESOLUTION OF THE GOVERNING BOARD
OF THE MT. DIABLO UNIFIED SCHOOL DISTRICT
REGARDING THE REDUCTION OR DISCONTINUANCE
OF PARTICULAR KINDS OF SERVICE (CERTIFICATED LAYOFF)**

Resolution No. 09/10-45

WHEREAS, the Governing Board of the Mt. Diablo Unified School District has determined it is necessary to reduce or discontinue particular kinds of services of the District for the 2010-2011 school year in accordance with Education Code sections 44949 and 44955; and

WHEREAS, due to the reduction or discontinuance of services, the Governing Board has determined that it is in the best interest of the District that the number of regular certificated employees of the District be reduced; and

WHEREAS, the Governing Board has considered all positively assured attrition, including all deaths, resignations, retirements, nonreelections, and other permanent vacancies for 2010-2011 and, but for attrition already assured, the Governing Board would have found it necessary to reduce additional services; and

WHEREAS, the Governing Board is authorized by Education Code section 44955 to establish criteria based upon the needs of the District and its students for determining the order of termination as between certificated employees with the same seniority date; and

WHEREAS, Education Code section 44955 provides that the services of no permanent employee may be terminated while any probationary or other employee with less seniority is retained to render a service which the permanent employee is certificated and competent to render; and

WHEREAS, Education Code section 44955 authorizes the District to deviate from terminating certificated employees in order of seniority where the District demonstrates a specific need for personnel to teach a specific course or courses of study; and

WHEREAS, all temporary employees will be given notice that their services will not be needed in the 2010-2011 school year and no permanent employee will be terminated while any probationary or other employee with less seniority is retained to render a service which the permanent employee is certificated and competent to render.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Mt. Diablo Unified School District that:

1. The particular kinds of service set forth below shall be reduced or discontinued no later than the beginning of the 2010-2011 school year:

District Wide	
Special Education Administrator, DIS	1.00 FTE
Student Services Coordinators	3.00 FTE
DIS Teacher	1.00 FTE
Special Day Class Teacher	1.00 FTE
School Psychologists	2.00 FTE
Resource Specialists	24.50 FTE
Instrumental Music – 5 th grade	7.33 FTE

Vocal Music - Elementary	15.00 FTE
Library Media Teachers	23.00 FTE
Adult Education Teacher	10.00 FTE
Elementary Teaching Positions	
K-5 Classroom Teachers	34.00 FTE
Reading/Language Arts/Math Intervention Teacher	6.53 FTE
Middle School Teaching Positions	
Core	10.34 FTE
Science	1.85 FTE
Spanish	.68 FTE
AIMS	1.17 FTE
Mathematics	1.74 FTE
English	2.28 FTE
Reading	.37 FTE
PE	1.77 FTE
History	1.74 FTE
Academic Literacy	.56 FTE
Hands on Technology (HOT)	.14 FTE
French	.14 FTE
Woodshop	.14 FTE
Academic Success	1.34 FTE
Chorus/Music	.37 FTE
Band	.37 FTE
High School Teaching Positions	
Commercial Art (ROP)	.20 FTE
Advanced Photography (ROP)	.80 FTE
Computerized Accounting and Computer Applications (ROP)	.60 FTE
Biotechnology (ROP)	1.00 FTE
Robotics (ROP)	.40 FTE
Advanced Automotive Technology (ROP)	.60 FTE
Commercial Baking (ROP)	.40 FTE
Restaurant Occupations (ROP)	.40 FTE
AP Environmental Science (ROP)	.20 FTE
Construction Technology (ROP)	.20 FTE
Computer Programming (ROP)	.20 FTE
Journalism Productions (ROP)	.40 FTE
Careers in Teaching and Careers in Teaching Internships (ROP)	.60 FTE
Photography and Art and Animation (ROP)	.40 FTE
Sports Medicine (ROP)	.80 FTE
Creative Writing (ROP)	.20 FTE
Radio Station Broadcasting (ROP)	.40 FTE
Computer Graphics and Web Page Design (ROP)	.40 FTE
Analytical Forensic Science (ROP)	.20 FTE
Sports Medicine and Advanced Sports Medicine (ROP)	.40 FTE

Developmental Psychology of Children (ROP)	.20 FTE
Intro to Law (ROP)	.40 FTE
Art of Video Productions and Computer Art and Animation (ROP)	.40 FTE
Mathematics	2.60 FTE
English	3.60 FTE
Spanish	2.80 FTE
History	2.80 FTE
Sociology	1.20 FTE
Earth Science	1.40 FTE
Chemistry	1.70 FTE
Biology	2.10 FTE
Physics	1.80 FTE
AIMS	.60 FTE
PE	1.40 FTE
Weights	.20 FTE
Work Experience (WEE)	.20 FTE
Foods	.20 FTE
Art	1.40 FTE
Photography	.40 FTE
German	.20 FTE
Zoology	.80 FTE
Ceramics	.80 FTE
Drama	.60 FTE
Auto Shop	.20 FTE
Psychology	1.60 FTE
Science	.80 FTE
Computers	1.20 FTE
Economics	1.80 FTE
Government	1.20 FTE
Athletic Director	.20 FTE
WASC	.20 FTE
Intervention Teacher	.20 FTE
Multiple Subjects (Horizons CIS)	3.00 FTE
Total:	199.36 FTE

2. "Competency" for the purpose of Education Code section 44955 shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee will be assigned at the beginning of the 2009-2010 school year.
3. Except as required by law, the order of termination shall be based solely on the needs of the District and its students as determined by the criteria set forth in Board Resolution 09/10-37, a copy of which is attached hereto, which shall be applied to resolve ties in seniority between certificated employees. The District and the Mt. Diablo Education Association (MDEA) met on February 22, 2010 and applied these criteria as to potentially affected employees and administered any lottery.
4. There is a direct and specific need within the District for certificated employees qualified to serve the needs of K-12 students with respect to the following:

- a. Courses requiring Bilingual Cross-Cultural Language and Development (BCLAD) certificates, which are highly specialized programs requiring the possession and utilization of additional specialized certificates and/or credentials.
- b. Bilingual School Psychologists.

Pursuant to Education Code section 44955(d)(1), it will be necessary to retain the services of certificated employees in the 2010-2011 school year, regardless of seniority, who possess these qualifications as demonstrated by the possession of a valid certificate and/or credential and use of that certificate and/or credential in the employee's 2010-2011 assignment.

- 5. The Superintendent or his designee is directed to send appropriate notices to all employees whose positions may be affected by virtue of this action in accordance with the provisions of the Education Code and to afford all such employees all rights to which they are entitled under law.

PASSED AND ADOPTED by the following vote of the members of the Governing Board of the Mt. Diablo Unified School District of Contra Costa County, State of California, this 9th day of March, 2010.

AYES: 5

NOES: 0

ABSTENTIONS: 0

ABSENT: 0

Paul Strange
President of the Board of Education of
Mt. Diablo Unified School District

Attested to:



Steven Lawrence, Ph.D.
Secretary of the Board of Education of
Mt. Diablo Unified School District

EDUCATION CODE SECTION 44949

§ 44949. Cause, notice, and right to a hearing required for dismissal

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools

and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 606, § 1; Stats.1983, c. 498, § 63, eff. July 28, 1983; Stats.1985, c. 324. § 6.)

EDUCATION CODE SECTION 44955

§ 44955. Reduction in number of employees

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. 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.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by

the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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.

(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, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, 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.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 433, § 4; Stats.1978, c. 898, p. 2827, § 2; Stats.1979, c.1158, p. 4338, § 2, eff. Sept. 29, 1979; Stats.1980, c. 1192, p. 4024, § 5.5; Stats.1981, c. 100, p. 676, § 19; Stats. 1983, c. 498, § 65, eff. July 28, 1983; Stats. 1983, c. 1302, § 15.2, eff. Sept. 30, 1983.)

West's Ann.Cal.Gov.Code § 11506

§ 11506. Notice of defense; grounds; right to hearing

(a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.

(4) Admit the accusation in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

CREDIT(S)

(Added by Stats.1945, c. 867, p. 1629, § 1. Amended by Stats.1963, c. 931, p. 2184, § 1; Stats.1982, c. 606, p. 2588, § 1; Stats.1986, c. 951, § 20; Stats.1995, c. 938 (S.B.523), § 29, operative July 1, 1997.)

West's Ann.Cal.Gov.Code § 11507.5
§ 11507.5. Discovery; exclusive provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

CREDIT(S)

(Added by Stats.1968, c. 808, p. 1561, § 3.)

West's Ann.Cal.Gov.Code § 11507.6
§ 11507.6. Request for discovery; statements; writings; investigative reports

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e) Any other writing or thing which is relevant and which would be admissible in evidence;
- (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing

described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

CREDIT(S)

(Added by Stats.1968, c. 808, p. 1561, § 4. Amended by Stats.1985, c. 1328, § 5; Stats.1995, c. 938 (S.B.523), § 31, operative July 1, 1997.)

West's Ann.Cal.Gov.Code § 11507.7
§ 11507.7. Motion to compel discovery

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it [FN1] matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

CREDIT(S)

(Added by Stats.1968, c. 808, p. 1562, § 5. Amended by Stats.1971, c. 1303, p. 2556, § 8; Stats.1980, c. 548, § 2; Stats.1995, c. 938 (S.B.523), § 32, operative July 1, 1997.)

West's Ann.Cal.Gov.Code § 11520 § 11520. Defaults and uncontested cases

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

CREDIT(S)

(Added by Stats.1945, c. 867, p. 1634, § 1. Amended by Stats.1947, c. 491, p. 1472, § 8; Stats.1963, c. 931, p. 2184, § 2; Stats.1995, c. 938 (S.B.523), § 46, operative July 1, 1997.)

NOTICE OF DEFENSE

By my signature below, I acknowledge service of the Accusation setting forth the reasons for my dismissal by the Board of Education of the Mt. Diablo Unified School District. I have been advised that I may exercise my right to a hearing by signing and returning this Notice of Defense within five (5) days after service of the Accusation. *I have also been advised that failure to file this Notice of Defense form within this time will constitute a waiver of my right to a hearing.* I have received copies of Government Code §§ 11507.5, 11507.6 and 11507.7.

Pursuant to Government Code §§ 11507 et seq., I hereby [*check all that apply*]:

- Request a hearing;
- Object to the Accusation on the ground that it does not state acts or omissions upon which the agency may proceed;
- Object to the form of the Accusation on the ground that it does not state acts or omissions upon which the agency may proceed;
- Admit the Accusation in whole or in part;
- Present new material in my defense;
- Object to the Accusation on the ground that compliance with a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

Dated: _____

By: _____
Signature

Print Name

IN ORDER TO EXERCISE THE RIGHT TO A HEARING, YOU MUST SIGN AND RETURN THIS FORM TO THE FOLLOWING ADDRESS WITHIN FIVE (5) DAYS:

Mt. Diablo Unified School District
Personnel Services
1936 Carlotta Drive
Concord, CA 94519

1 GREGORY ROLEN (SBN 146290)
2 DEBORAH A. COOKSEY (SBN 118197)
3 MT. DIABLO UNIFIED SCHOOL DISTRICT
4 1936 Carlotta Drive
5 Concord, CA 94519-1397

6 Attorneys for Petitioner
7 **MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

8 **BEFORE THE GOVERNING BOARD**
9 **OF THE MOUNT DIABLO UNIFIED SCHOOL DISTRICT**

10 In the Matter of the Accusations Against:) OAH Case No. 2010030157
11 The Certificated Employees Identified in)
12 Exhibit "A" Attached Hereto) **NOTICE OF HEARING**
13 Respondents.)
14 _____)

15 **TO: RESPONDENTS AND THEIR COUNSEL:**

16 You are hereby notified that a hearing will be held before the State of California
17 Office of Administrative Hearings at Willow Creek Center, 1026 Mohr Lane, Concord, CA from
18 1:00 p.m. to 6:00 p.m. on April 27, 28 and 29, 2010, upon the charges made in the Accusation
19 served upon you.

20 You may be present at the hearing. You have a right to be represented by an attorney at
21 your own expense. You are not entitled to the appointment of an attorney to present you at public
22 expense. You are entitled to represent yourself without legal counsel.

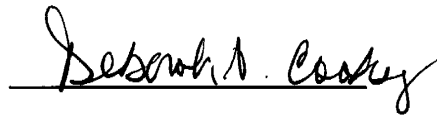
23 You may present any relevant evidence, and you will be given full opportunity to cross-
24 examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to
25 compel the attendance of witnesses and the production of books, documents or other things by
26 applying to the Office of
27

1 Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, CA 94612.

2 Date: March 25, 2010

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

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Deborah A. Cooksey
Attorney for Petitioner