

**BEFORE THE BOARD OF EDUCATION OF THE  
MT. DIABLO UNIFIED SCHOOL DISTRICT  
COUNTY OF CONTRA COSTA  
STATE OF CALIFORNIA**

**RESOLUTION APPROVING PROPOSED DECISION  
OF ADMINISTRATIVE LAW JUDGE AND IMPLEMENTING  
CERTIFICATED LAYOFF**

**RESOLUTION NO. 10/11 - 58**

**WHEREAS**, on March 8, 2011, this Board of Education of Mt. Diablo Unified School District adopted Resolution No. 10/11-49 to reduce and discontinue particular kinds of certificated services not later than the beginning of the 2011-2012 school year; and

**WHEREAS**, by letter dated March 9, 2011, the Superintendent and/or his designee served notice to this Board of Education that certain certificated employees listed therein receive notice that their services will not be required for the ensuing 2011-2012 school year, pursuant to Education Code sections 44949 and 44955; and

**WHEREAS**, by notice dated March 9, 2011, the Superintendent and/or his designee served notices to those certificated employees, including those listed in Attachment A of the Proposed Decision and others, that their services will not be required for the 2011-2012 school year, pursuant to Education Code sections 44949 and 44955; and

**WHEREAS**, each of those certificated employees was advised that he or she could request a hearing before the Board of Education to determine if there was cause for not reemploying them for the 2011-2012 school year and that failure to request a hearing within the time specified shall constitute a waiver of their right to a hearing and he or she shall accordingly be terminated in accordance with Resolution No. 10/11-49; and

**WHEREAS**, certain certificated employees did not request a hearing and, therefore, waived their right to a hearing; and

**WHEREAS**, certain certificated employees requested a hearing and layoff proceedings were held in accordance with sections 44955 and 44949 of the Education Code before an Administrative Law Judge who conducted an evidentiary hearing and submitted a Proposed Decision relating to those proceedings, which decision is attached hereto; and

**WHEREAS**, pursuant to sections 44955 and 44949 of the Education Code, this Board has received and considered the findings set forth in the Proposed Decision issued on April 20, 2011 by the Honorable Nancy Rasmussen, Administrative Law Judge in the matter of the Teacher Layoff Hearing of Mt. Diablo School District, OAH No. 2011030856; and

**WHEREAS**, the Proposed Decision contains Judge Rasmussen's determination that sufficient cause exists for the elimination of the remaining 180.29 Full Time Equivalent certificated positions whose layoffs were not rescinded and recommends that notice be given to

the employees holding those positions that their services will not be required for the 2011-2012 school year; and

**WHEREAS**, the particular kinds of services to be discontinued and reduced as referenced in Resolution No. 10/11-49 are each determined to be a particular kind of service within the meaning of Education Code section 44955; and

**WHEREAS**, with the exception of courses requiring Bilingual Cross-Cultural Language and Development (BCLAD) certificates, the services of no certificated employee are being terminated, in whole or in part, while any probationary or other employee with less seniority is retained to render a service which said certificated employee is certificated and competent to render; the individuals whose employment is being terminated, in whole or in part, are not certificated and competent (within the meaning of Education Code section 44955) to render a service being performed by any employee with less seniority who is being retained; and

**WHEREAS**, sufficient cause exists for the termination of up to 180.29 Full Time Equivalent certificated positions, and pursuant to and within the meaning of Education Code section 44949, said cause relates to the welfare of the schools and the pupils thereof; and

**WHEREAS**, rights to reemployment are at times provided to certificated employees whose services were terminated as a result of layoff, however, this current Resolution does not supercede any prior resolution by this Board nor reinstates any right to further employment or reemployment, so that any employee previously notified of non-reelection or non-renewal for the following school year possesses no right to reemployment as a result of adoption of this current Resolution.

**WHEREAS**, Section 44949 of the Education Code requires the Governing Board to make the final determination as to the sufficiency of the cause and disposition; and

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Education hereby accepts the Proposed Decision of the Administrative Law Judge and adopts that Proposed Decision as the decision of this Board of Education.

**BE IT FURTHER RESOLVED** that as a result of the adoption or modification of the Proposed Decision, a maximum of 180.29 Full Time Equivalent positions shall be eliminated.

**BE IT FURTHER RESOLVED** that the employment of each of the certificated employees listed in the attached Proposed Decision as well as those who waived their right to hearing is hereby terminated effective June 30, 2011.

**BE IT FURTHER RESOLVED** that this decision is effective immediately and that the Superintendent or his designee(s) is directed and authorized to give appropriate notice, on or before May 14, 2011 in the manner prescribed in Education Code section 44949, to those employees whose positions will be lost by virtue of this action that their services are terminated, and to take such other actions as are necessary and appropriate to implement this Resolution.

**BE IT FURTHER RESOLVED** that reemployment rights be afforded in accordance with the Education Code, if and when reemployment is offered and to the extent any

reemployment rights are applicable to any of the above-referenced employees, unless this Board has previously determined to not reelect that employee.

**BE IT FURTHER RESOLVED** that the adoption of the Proposed Decision shall not be considered procedural in the nature or the promulgation of Board of Education policy. Moreover, any and all principles set forth in the decision shall be strictly limited to the current layoffs and to the individuals in the named decision and shall not be interpreted to apply globally to all District employees outside of the current layoff context.

**PASSED AND ADOPTED** by the following vote of the Board of Education of the Mt. Diablo Unified School District of Contra Costa County, State of California, this 10th day of May 2011.

AYES: \_\_\_\_\_  
NOES \_\_\_\_\_  
ABSTENTIONS: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

BY: \_\_\_\_\_  
Gary Eberhart  
President of the Board of Education of the  
Mt. Diablo Unified School District

Attested to:

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

Attachment: Proposed (Adopted) Decision of the Administrative Law Judge