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8 **PERSONNEL COMMISSION**

9 **FOR THE MONTEBELLO UNIFIED SCHOOL DISTRICT**

10 IN THE MATTER OF:

ORDER

11 Appointment of Dr. Anthony J.
12 Martinez to classified position
13 of interim/acting Chief of
Police of the Montebello Unified
School District

Hearing dates: 06/04/2019
06/11/2019

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15 After conducting a public hearing, reviewing evidence, and
16 taking sworn testimony, the Personnel Commission of the Montebello
17 Unified School District (MUSD) finds that MUSD Superintendent Anthony
18 J. Martinez violated (1) the California Merit System, (2) the
19 California Education Code, and (3) the Rules of the MUSD Personnel
20 Commission when he appointed himself to the classified position of
21 interim/acting Chief of Police of the MUSD. The evidence establishes
22 that Dr. Martinez failed to possess the minimum requirements of the
23 position and failed to follow established examination procedures
24 applicable to appointments to classified positions. Further, Dr.
25 Martinez's self-appointment to the position of MUSD Chief of Police,
26 a California peace officer position, also separately violated
27 California Government Code Section 1031 and multiple related
28 California regulations that mandate the minimum requirements

1 applicable to all California peace officer appointments.

2 Accordingly, Dr. Martinez's appointment to the classified position of
3 MUSD Chief of Police is VOID.

4 Pursuant to California Education Code Section 45310 and MUSD
5 Personnel Commission Rule 5.2.16, the MUSD Personnel Commission
6 ORDERS that no salary warrant shall hereinafter be drawn to Dr.
7 Anthony J. Martinez for services of the classified position of MUSD
8 Chief of Police rendered after the date of this Order.¹

9 **A. DISCUSSION**

10 The California Merit System, adopted by the MUSD more than 80
11 years ago - in 1938, is detailed in the California Education Code.
12 Positions in the MUSD classified service are filled pursuant to the
13 California Education Code Merit System provisions² and the MUSD
14 Personnel Commission Rules.³ The cornerstone of the Merit System is
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16 ¹ In 2018, public sources reported that Dr. Martinez was
17 involved in the sale to a former MUSD employee of an MUSD vehicle
18 previously used by the MUSD police. (See
19 [https://www.loscerritosnews.net/2018/06/21/montebello-unified-
20 violated-education-code-in-selling-surplus-property-to-former-
21 director/](https://www.loscerritosnews.net/2018/06/21/montebello-unified-violated-education-code-in-selling-surplus-property-to-former-director/)). Though that vehicle was worth thousands of dollars, the
22 vehicle was sold for less than \$1,000. That non-public sale of MUSD
23 property for less than fair market value likely violated the law.
24 However, because Dr. Martinez's conduct in that matter pre-dated his
25 appointing himself to the classified position of MUSD Chief of Police
26 in late 2018, the Personnel Commission disregarded that previous
27 transaction for purposes of this Order.

28 ² Article 6 of Chapter 5 of Part 25 of Division 3 of Title 2 of
the California Education Code, entitled "Merit System," contains
multiple Merit System Education Code sections.

³ The Personnel Commission's Rules "shall provide for the
procedures to be followed by the governing board as they pertain to
the classified service regarding applications, examinations,
eligibility, appointments, promotions, demotions, transfers,
dismissals, resignations, layoffs, reemployment, vacations, leaves of
absence, compensation within classification, job analyses and
specifications, performance evaluations, public advertisement of
examinations, rejection of unfit applicants without competition, and
any other matters necessary to carry out the provisions and purposes
of this article." (Cal. Educ. Code § 45261(a).)

1 ensuring a fair and transparent hiring process for all classified
2 positions: the selection, retention, and promotion of classified
3 employees on the basis of individual merit and fitness demonstrated
4 by competitive examinations and performance. The Merit System is
5 described as "the concept of employment, continuance in employment,
6 in-service promotional opportunities, and other related matters on
7 the basis of merit and fitness." (Cal. Educ. Code § 45244(c).)

8 As detailed below, MUSD Superintendent Dr. Martinez disregarded
9 and violated the Merit System when he appointed himself to the
10 classified position of MUSD Chief of Police, because he (1) failed to
11 possess the minimum requirements of the position and (2) failed to
12 follow the established examination procedures applicable to the
13 classified service. This appointment was particularly egregious,
14 given that the classified position at issue is a peace officer
15 position responsible for the safety of MUSD's students and employees.

16 **1. Dr. Martinez failed to possess the minimum requirements for**
17 **the classified position of MUSD Chief of Police.**

18 The first step in the Personnel Commission's analysis is to
19 determine whether Dr. Martinez possessed the minimum requirements for
20 the classified position of MUSD Chief of Police. (See MUSD PC Rule
21 4.1.2 ("All applicants must possess all other requirements that are
22 specified in the qualifications established for the class.")) As
23 discussed below, Dr. Martinez did not possess the minimum
24 qualifications for the classified position of MUSD Chief of Police,
25 and he so admitted during his testimony in front of the Commission on
26 June 4, 2019.⁴

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28 ⁴ "The commission may conduct hearings, subpoena witnesses,
require the production of records or information pertinent to

1 MUSD publishes the requirements for classified positions on its
2 website. The Job Description for MUSD Chief of Police available on
3 MUSD's website listed various requirements for the job, including the
4 "MINIMUM QUALIFICATIONS" for the job. During his testimony on June
5 4, 2019, Dr. Martinez testified that before deciding to appoint
6 himself to the classified position of MUSD Chief of Police, he failed
7 to review - or even look at - the established requirements for that
8 classified position; in his words: "I never looked at the job
9 description."

10 Under the "Knowledge of" part of the minimum qualifications, the
11 job description lists as #7, "Proper techniques for evidence
12 gathering, handling, documentation and preservation," and as #8,
13 "Techniques used for conducting a criminal investigation." During
14 his testimony on June 4, 2019, Dr. Martinez admitted that he did not
15 possess the requisite knowledge to meet those job requirements.

16 Under the "Ability to" part of the minimum qualifications listed
17 on the Job Description for MUSD Chief of Police, it lists as #4,
18 "Make criminal arrests and conduct criminal investigations." During
19 his testimony on June 4, 2019, Dr. Martinez admitted that he did not
20 possess those abilities.

21 Under the "Education, Training, and Experience" part of the
22 minimum qualifications listed on the job description for MUSD Chief
23 of Police, it requires either: (1) a master's degree and 4 years of
24 experience as a peace officer; or (2) a bachelor's degree and 6 years
25 of experience as a peace officer. Under either of those options, the
26 job description specifies that a minimum of 3 years of experience

27
28 investigation, and may administer oaths." (Cal. Gov't Code § 45311.)
The Personnel Commission appreciates that at the Commission's
request, Dr. Martinez voluntarily appeared to testify.

1 must have been at the rank of Sergeant or higher, "directly
2 supervising law enforcement." Dr. Martinez testified that he did not
3 have any experience as a peace officer, much less the minimum of four
4 years' experience. Thus, he failed to meet the Training and
5 Experience requirements of this classified position.

6 Aside from the above delineated specific deficiencies,⁵ during
7 his testimony on June 4, 2019, Dr. Martinez admitted that he did not
8 think he met the requirements for the classified position of MUSD
9 Chief of Police at all. Dr. Martinez put in quite succinctly: "I
10 don't meet the qualifications." Later during his testimony, Dr.
11 Martinez reiterated that he didn't have any of the requirements of
12 the classified position of MUSD Chief of Police: "So as I mentioned
13 earlier, if you look at this entire job description, the answer would
14 be 'no.'"⁶

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16 ⁵ Under "Licenses; Certificates; Special Requirements," the MUSD
17 Chief of Police job description requires "[p]ossession of either a
18 California P.O.S.T. supervisory or management certificate." Dr.
19 Martinez does not have either of those POST certificates, which
20 require prior experience as a peace officer. Policy 101 of the MUSD
21 Police Department Policy Manual provides that the MUSD Chief of
22 Police shall as a condition of continued employment "obtain the Basic
23 Certificate by POST within two years of appointment." That internal
24 MUSD Police Department policy does not conflict with the MUSD Chief
25 of Police job description because those are different POST
26 certificates, i.e., "Basic Certificate" versus "supervisory or
27 management certificate." According to POST's website, the Commission
28 on POST issues seven professional certificates to peace officers: (1)
Basic Certificate; (2) Intermediate Certificate; (3) Advanced
Certificate; (4) Supervisory Certificate; (5) Management Certificate;
(6) Executive Certificate; and (7) Reserve Officer Certificate.

29 ⁶ Dr. Martinez testified that he believed that under one
30 subsection of the Education Code dealing with school police officers,
31 he was not required to meet the minimum requirements of the position
32 before he appointed himself to the MUSD Chief of Police position, and
33 that he had one year to meet any requirements. He testified that he
34 did not seek any legal advice to form that opinion, but instead, he
35 testified that he relied solely upon an alleged verbal statement of
36 the LACOE fiscal advisor. Putting aside the exact contours of what
37 he was told, Dr. Martinez misconstrues that subdivision of the

1 Thus, Dr. Martinez does not possess the minimum requirements for
2 the classified position of MUSD Chief of Police. Accordingly, he was
3 completely unqualified to even sit for the examination of - much less
4 appoint himself to - that public safety classified position.⁷

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9 California Education Code. Further, taking an informal statement of
10 one person as the complete basis to bypass the entire Merit System to
11 appoint oneself to a classified position, even though not meeting the
12 job requirements, was unreasonable, particularly without seeking and
13 obtaining written legal advice on the issue.

14 California Education Code Section 38000(c) provides that the
15 minimum qualifications for a school chief of police position should
16 include prior employment as a peace officer or completion of a POST-
17 approved peace officer training course, but further states that the
18 "school chief of police shall comply with the prior employment or
19 training requirement set forth in this subdivision as of ... a date one
20 year subsequent to the initial employment of the chief of security or
21 school chief of police by the school district, whichever occurs
22 later." This specific subsection does not brush as broadly as Dr.
23 Martinez claims. First, by its plain terms, that subsection applies
24 only to the "prior employment or training requirement" of the job
25 specifications - not all job requirements. That subsection does not
26 purport to govern or exempt the other specific requirements of the
27 position, such as applicable here, the 14 "minimum qualifications"
28 and 19 "ability to" requirements specified in the job description
that were independent of any prior employment or training
requirements, which Dr. Martinez testified he did not meet. Second,
that subsection does not address the background investigation,
psychological examination, and other mandatory requirements
separately imposed by California Government Code 1031, which was also
a specific requirement of the MUSD Chief of Police position ("must
meet the requirements of government code 1031."). Last, during his
testimony on June 4, 2019, Dr. Martinez testified that he never
intended to undergo the required training during that one-year
period. And, as explained during Dr. Martinez's testimony, it is
obviously impossible to obtain 4 years of experience as a peace
officer, "supplemented by a minimum of three (3) years experience, at
the level of Sergeant or higher rank, directly supervising law
enforcement" within one year, i.e., a person cannot squeeze four
years of experience into a one year window.

Therefore, Section 38000(c) is inapposite with limited
application here.

⁷ The MUSD Personnel Commission Rules also provide that even
provisional appointees must possess all the qualifications for the
classification before being appointed.

1 2. Dr. Martinez violated the Merit System, the California
2 Education Code, and the MUSD Personnel Commission Rules by
3 appointing himself to the classified position of MUSD Chief
4 of Police without following the required procedures
5 applicable to classified examinations and appointments.

6 The evidence before the Personnel Commission established that in
7 late 2018, sometime after former MUSD Chief of Police L. Dinh
8 resigned from that position (in approximately July/August 2018), Dr.
9 Martinez appointed himself to the classified position of
10 interim/acting MUSD Chief of Police and held himself out publically
11 as the interim/acting MUSD Chief of Police. During his testimony on
12 June 4, 2019, Dr. Martinez confirmed that he had appointed himself
13 into the position of MUSD Chief of Police. Dr. Martinez made that
14 same representation to the Personnel Commission in open session
15 during a Personnel Commission meeting he attended earlier in 2019,
16 which prior statement he confirmed making during his testimony on
17 June 4, 2019.⁸ Further, the 2018-2019 MUSD phone list presented
18 during Dr. Martinez's testimony (Exhibit #1) listed his name under
19 "POLICE SERVICES" as "Interim Police Chief." Other individuals also
20 confirmed that Dr. Martinez held himself out publically as the
21 interim/acting MUSD Chief of Police. Last, during his open session
22 testimony on June 4, 2019, Dr. Martinez continued to assert that as
23 of the date of the hearing, he remained as the interim/acting MUSD
24 Chief of Police.⁹

25 The Personnel Commission was not asked to, nor did it, conduct
26 any recruitment process for the MUSD Chief of Police classified

27 ⁸ Accord 12/11/18 Personnel Commission meeting agenda, item #5
28 ("MUSD Police Department - Chief of Police position").

1 position to which Dr. Martinez appointed himself. The Personnel
2 Commission did not conduct any examination procedures for the MUSD
3 Chief of Police classified position to which Dr. Martinez appointed
4 himself. Dr. Martinez did not take (or pass) a written, performance,
5 or oral examination for the classified position of MUSD Chief of
6 Police. The Personnel Commission did not certify the name of Dr.
7 Martinez on any eligibility list for the classified position of MUSD
8 Chief of Police to which Dr. Martinez appointed himself. In short,
9 there was absolutely no process - much less the recruitment,
10 examination, and appointment procedures required by the Merit System,
11 the California Education Code, and the MUSD Personnel Commission
12 Rules - before Dr. Martinez appointed himself to that classified
13 position and began to hold himself out to MUSD employees and the
14 public as the interim/acting MUSD Chief of Police.

15 Under California law applicable to public school districts like
16 MUSD, vacancies for classified positions must be filled pursuant to
17 the Merit System, as defined by the California Education Code and the
18 MUSD Personnel Commission Rules. (Cal. Educ. Code § 45272(a) ("All
19 vacancies in the classified service shall be filled pursuant to this
20 article and the rules of the commission")). That process involves
21 verifying minimum requirements of the position, fair and transparent
22 recruitment, and fair and objective examination procedures (such as
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24 ⁹ Dr. Martinez first testified that he had appointed himself to
25 the classified position of MUSD Chief of Police and had told others
26 that he had done so. While not dispositive to this Order, when
27 subsequently during that same testimony, Dr. Martinez attempted to
28 minimize and obfuscate the number of persons whom he had informed
about his self-appointment to that position, Dr. Martinez damaged his
credibility before the MUSD Personnel Commission. The Personnel
Commission finds that Dr. Martinez did, in fact, inform multiple MUSD
personnel about such appointment, including personally telling MUSD
police personnel that he was the interim/acting MUSD Chief of Police.

1 written, oral, and performance examinations), which culminate in an
2 eligibility list certified by the Personnel Commission.

3 None of that occurred here. In other words, putting aside that
4 Dr. Martinez failed to meet the minimum requirements for the
5 classified position of MUSD Chief of Police, even assuming he *had*
6 possessed those minimum requirements, the Merit System nonetheless
7 required process and procedures to be followed before appointing
8 himself to the classified position of MUSD Chief of Police. Dr.
9 Martinez failed to follow those procedures and process, and instead
10 completely disregarded and bypassed those safeguards of the Merit
11 System so that he could appoint himself as the MUSD Chief of Police.

12 Thus, Dr. Martinez's appointment of himself to the classified
13 position of MUSD Chief of Police violated the Merit System, the
14 California Education Code, and the MUSD Personnel Commission Rules
15 applicable to recruitment, examination, and appointment procedures.
16 That appointment is even more shocking because during his testimony,
17 Dr. Martinez admitted that before deciding to appoint himself to the
18 classified position of MUSD Chief of Police, he did not even look at
19 the job requirements of that classified position.

20 **3. Dr. Martinez's appointment to the peace officer position of**
21 **MUSD Chief of Police also separately violated California**
22 **law applicable to all California peace officer positions.**

23 In addition to the two violations detailed above (not possessing
24 the minimum requirements for the position and not following Merit
25 System examination and appointment processes), Dr. Martinez also
26 further violated the California laws applicable to all peace officer
27 appointments in the State of California. In other words, because the
28 MUSD Chief of Police position to which Dr. Martinez appointed himself

1 is a California peace officer position, additional California laws
2 apply to that position - above and beyond the Merit System and
3 Education Code provisions that otherwise apply because that position
4 is in the classified service.

5 **California Government Code Section 1031** governs all peace
6 officer appointments in California.¹⁰ It specifies multiple mandatory
7 minimum standards that an individual must possess and undergo before
8 he or she can be appointed to a peace officer position in California.
9 Section 1031 requires that, *inter alia*, all California peace
10 officers: (1) "Be of good moral character, as determined by a
11 thorough background investigation"; and (2) "Be found to be free from
12 any physical, emotional, or mental condition that might adversely
13 affect the exercise of the powers of a peace officer." (Cal. Gov't
14 Code § 1031(d), (f).)¹¹ The California Code of Regulations flesh out
15 those requirements. Title 11, California Code of Regulations,
16 Section 1950 (entitled "Peace Officer Selection Requirements")
17 provides that all California peace officers must satisfy the
18 following minimum selection requirements:

- 19 • Reading and Writing Ability Assessment (Regulation 1951);
- 20 • Oral Interview (Regulation 1952);
- 21 • Background Investigation (Regulation 1953);
- 22 • Medical Evaluation (Regulation 1954); and
- 23 • Psychological Evaluation (Regulation 1955).

25 ¹⁰ Even though Section 1031 applies perforce to all California
26 peace officer appointments, the MUSD Chief of Police job description
27 also specifically incorporated Section 1031's requirements here under
28 its job description's "Education, Training, and Experience" minimum
qualifications: "must meet the requirements of government code 1031."

¹¹ California law specifies that it is a misdemeanor to
impersonate a peace officer. (Cal. Penal Code § 538d.)

1 (11 CCR § 1950(a)(1).) That regulation further provides that "[a]ll
2 requirements specified in these regulations shall be satisfied prior
3 to the date of employment." (*Id.* at (a)(2) (emphasis added.)

4 **Background investigation:** As detailed above, California
5 Government Code 1031(d) requires a background investigation for all
6 California peace officers. In fact, during his testimony on June 4,
7 2019, Dr. Martinez admitted that he knew that one of the requirements
8 to be a police officer was to pass a background investigation. Title
9 11, California Code of Regulations, Section 1953 (entitled "Peace
10 Officer Background Investigation") provides in subdivision (a)
11 (entitled "Government Code Mandate"): "Every peace officer candidate
12 shall be the subject of a thorough background investigation to verify
13 good moral character and the absence of past behavior indicative of
14 unsuitability to perform the duties of a peace officer [Government
15 Code section 1031(d)]." (11 CCR § 1953(a).) Such background
16 investigation is intended to be thorough, including evaluating issues
17 such as a person's "Integrity," "Stress Tolerance," and "Decision-
18 Making and Judgment." (*Id.* at (b).) "Every peace officer candidate
19 shall complete, sign, and date a personal history statement at the
20 onset of the background investigation," which addresses various areas
21 of investigation. (*Id.* at (c).) The areas of investigation include
22 a criminal records check; driving record check; employment history
23 check; relatives/personal check (including former spouses) in order
24 to determine whether the candidate has exhibited behavior at odds
25 with being a peace officer; evaluation of marriage dissolution
26 documents, "reviewed as an indication of personal integrity,
27 financial responsibility, and other relevant aspects". (*Id.* at (e).)

28 **Psychological examination:** As detailed above, California

1 Government Code 1031 requires California peace officers to "be found
2 to be free from any physical, emotional, or mental condition that
3 might adversely affect the exercise of the powers of a peace
4 officer." (Cal. Gov't Code § 1031(f).) Title 11, California Code of
5 Regulations, Section 1955 (entitled "Peace Officer Psychological
6 Evaluation") provides in subdivision (a) (entitled "Government Code
7 Mandate/Evaluator Requirements"): "Every peace officer candidate
8 shall be evaluated to determine if the candidate is free from any
9 emotional or mental condition that might adversely affect the
10 exercise of the powers of a peace officer [Government Code section
11 1031(f)], and to otherwise ensure that the candidate is capable of
12 withstanding the psychological demands of the position." (11 CCR
13 § 1955(a).)

14 During his testimony on June 4, 2019, Dr. Martinez admitted that
15 he did not meet those requirements - he did not undergo a background
16 investigation, he did not submit to a psychological examination, and
17 he did not receive a physical examination.

18 Further, the MUSD Police Department is POST-approved agency.
19 "POST," which stands for the "Commission on Peace Officer Standards
20 and Training," was established by the California Legislature in 1959
21 to set minimum selection and training standards for California law
22 enforcement. POST has determined that an interim Chief of Police
23 must undergo the background investigation and medical and
24 psychological examinations before being appointed, the same as any
25 other peace officer in California:

26 Every appointment to a peace officer position,
27 regardless of rank or expected tenure in the position,
28 is predicated upon the satisfaction of the selection

standards that are prescribed in Government Codes
Sections 1029-1031, and further described in POST
Commission Regulations 1950-1955. The law does not
provide an exemption for an interim chief of police.

All of the selection standards must be satisfied prior
to the appointment of a peace officer, including an
interim chief of police.

(POST, Position Concerning the Interim Chief of Police at 3 (emphasis
added).)

Last, during his testimony on June 4, 2019, Dr. Martinez
admitted that he lacked firearms training or qualification.

Thus, independent of MUSD Superintendent Dr. Martinez's
violations of the Merit System, the California Education Code, and
the MUSD Personnel Commission Rules as detailed above, Dr. Martinez
also violated California Government Code Section 1031 by appointing
himself to the peace officer position of interim/acting MUSD Chief of
Police without first undergoing and passing a background
investigation or clearing a psychological examination.

4. As MUSD Superintendent, Dr. Martinez's failure to abide by
the Merit System and the California Education Code sent a
bad message to the general public and all MUSD employees -
specifically classified employees - about the fairness and
transparency of MUSD's hiring process.

The crux of the Merit System, adopted by MUSD in 1938, is the
fair and transparent hiring process for all classified positions.
Here, as detailed above, Dr. Martinez bypassed that long honored
system of checks and balances by appointing himself to the classified
position of MUSD Chief of Police, even though he failed to possess

1 the minimum qualifications for that position and failed to follow the
2 established hiring process and procedures, including examination
3 procedures.

4 Such conduct by Dr. Martinez - the top cabinet member of the
5 MUSD administration¹² - made a mockery of the Merit System. His
6 violation is even more disturbing because it potentially impacted
7 public safety, given that he appointed himself to a California peace
8 officer position responsible for the safety of MUSD children, even
9 though he admitted he knew that he failed to possess the minimum
10 required qualifications for that position.

11 Therefore, the Personnel Commission strongly condemns Dr.
12 Martinez's appointment of himself to be the MUSD Chief of Police,
13 because by doing so, Dr. Martinez bypassed, violated, and disregarded
14 (1) the long-established California Merit System, (2) the applicable
15 Education Code provisions, and (3) the MUSD Personnel Commission
16 Rules, and he did so for an appointment to a classified position
17 involving the safety of MUSD children and employees.

18 **B. CONCLUSION**

19 MUSD Superintendent Dr. Anthony J. Martinez's appointment of
20 himself to the classified position of interim/acting MUSD Chief of
21 Police violated California law, including the Merit System and the
22 Education and Government Codes, as well as the MUSD Personnel
23 Commission Rules, as they apply to qualification, examination, and
24 appointment procedures in the MUSD classified service. Accordingly,
25 the MUSD Personnel Commission finds the appointment of Dr. Anthony J.
26 Martinez to the classified position of interim/acting MUSD Chief of


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28 ¹² As the Superintendent, Dr. Martinez is the CEO (chief executive officer) of the MUSD board of education. (Cal. Educ. Code § 35035.)

1 Police to be VOID. Therefore, pursuant to California Education Code
2 Section 45310 and MUSD Personnel Commission Rule 5.2.16, the MUSD
3 Personnel Commission ORDERS that no salary warrant shall hereinafter
4 be drawn to Dr. Anthony J. Martinez for services of the classified
5 position of MUSD Chief of Police rendered after the date of this
6 Order.

7 IT IS SO ORDERED.

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9 DATED: 06/11/2019

**PERSONNEL COMMISSION
MONTEBELLO UNIFIED SCHOOL DISTRICT**

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11 
12 Charles E. Pell, Chairperson

13 
14 Yvette L. Fimbres, Vice-Chairperson

15 
16 Fernando Chacon, Member