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## SCHOOLS LEGAL SERVICE

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OPAD 10-69

To: District Superintendents  
Community College District Chancellors  
Regional Occupational Program Superintendents  
Assistant Superintendents of Business  
Assistant Superintendents of Human Resources  
Directors of Child Welfare and Attendance

From: Ronald D. Wenkart  
General Counsel

Re: Procedure for Production of Records Requested Pursuant to a  
Subpoena Duces Tecum

We often receive inquiries regarding the procedures to be followed when a district is served with a subpoena duces tecum for the production of records in a legal action in which the district is not a party. Where the district is a party, different rules apply and legal counsel is usually representing the district.

In this memo, for the sake of brevity we will often refer to "subpoena duces tecum" generically. In practice, these subpoenas typically bear either the title "Civil Subpoena (Duces Tecum)," for production of documents at trial, or "Deposition Subpoena for Production of Business Records," for production of documents at a pre-trial deposition. The procedures to be followed in complying with either a civil subpoena (duces tecum) or a deposition subpoena are usually identical, but we will highlight those limited circumstances in which the procedures differ.

The procedures for responding to a subpoena duces tecum are generally set forth in Evidence Code sections 1560-1566. These procedures apply to government agencies as well as private businesses. Evidence Code sections 1270 and 1560(a)(1).

Generally, districts are served with a subpoena duces tecum by a process server or a copy service. The documents served on the district should include a civil subpoena (duces tecum) or deposition subpoena for the production of business records (sample copies attached hereto as

Attachment 1) and a declaration or affidavit stating the reason for requesting the documents and describing the documents requested. From these documents, you should be able to determine whether general records, student records or personnel records are requested. The nature of the records requested will determine the procedures to be followed.

### **GENERAL RECORDS**

A civil subpoena (duces tecum) must be served with a copy of an affidavit showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control. Code of Civil Procedures section 1985(b).

A deposition subpoena that commands only the production of general business records (not personnel or student records) for copying shall designate the business records to be produced, either by specifically describing each individual item or by reasonably particularizing each category of item. The subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. Code of Civil Procedure section 2020.410.

The subpoenaing party may either engage a registered professional photocopy service or may assume responsibility for the photocopying himself/herself. Code of Civil Procedure section 2020.420. Unless directed to make the records available for inspection or copying by the subpoenaing party's attorney or representative of that attorney at the witness' business address as stated under subdivision (e) of Section 1560 of the Evidence Code, the custodian of records or other qualified person shall, in person, by messenger, or by mail, deliver only to the deposition officer specified in the deposition subpoena a true, legible copy of the records, and an affidavit in compliance with Section 1561 of the Evidence Code. Code of Civil Procedure section 2020.430.

It should be kept in mind that these records are public records under the Public Record Act, Government Code sections 6250, et seq., and may be obtained without a subpoena.

A deposition subpoena that commands both the attendance and the testimony of a custodian of records, as well as the production of business records, documents, and tangible things, shall set forth a summary of (1) the nature of a deposition, (2) the rights and duties of the custodian of records/witness, and (3) the penalties for disobedience of a deposition subpoena. If the deposition will be recorded using audio or video technology, the deposition subpoena shall state that it will be recorded in that manner. If the witness is an organization, the deposition subpoena shall describe with reasonable particularity the matters on which examination is requested, and shall advise that organization of its duty to make the designation of employees or agents who will attend the deposition. Code of Civil Procedure section 2020.510.

If a civil subpoena (duces tecum) or deposition subpoena requires the attendance of the custodian of records or other witness (who is not a party to the action) to testify only or to testify and produce records, the party at whose request the subpoena is issued, shall pay in cash or by check the amount of \$150 for each day of attendance pursuant to Government Code section 68096.1(b). Local agency employees shall receive the salary or other compensation to which they are normally entitled from that local agency during the time that they prepare for their response and appearance, during the time that they travel to and from the place where the court or other tribunal is located and while they are required to remain at that place pursuant to the subpoena. They shall also receive from that local agency the actual necessary and reasonable traveling expenses they incurred in complying with the subpoena. Government Code section 68096.1(a). If the actual amount of expenses is less than \$150 per day, the local agency shall refund the difference. Government Code section 68096.1(c). If the actual amount of expenses is greater than \$150 per day, the party issuing the subpoena shall pay the local agency the difference. Government Code section 68096.1(d).

### **PERSONNEL RECORDS**

If the subpoena requests the personnel records of a public employee, then the provisions of the Code of Civil Procedure sections 1985.3 and 1985.6 must be complied with. These sections require the subpoenaing party to serve on the public employee (as well as the public agency), a copy of the subpoena duces tecum, a copy of the affidavit supporting the issuance of the subpoena, and a notice to the consumer or employee of the records to be sought and the right of the employee to object to the subpoena (sample copies of Notice to Consumer attached hereto as Attachment 2).

Prior to the district complying with a subpoena duces tecum for personnel records, the subpoenaing party must provide the district with one of the following:

1. A proof of personal service or service by mail to the employee in compliance with Code of Civil Procedure sections 1985.3 and 1985.6, or
2. A written authorization to release the records signed by the employee or by his or her attorney of record.

If the subpoena is a deposition subpoena for the production of business records, the subpoena and the notice to consumer or employee must be served personally or by mail on the consumer or employee at the last known address 20 days before the date set for production. Service on the custodian of records must be 15 days before the date set for production. Code of Civil Procedure section 2020.410(c). Note that the subpoena cannot be served on the custodian of records until 5 days after service on the employee or consumer. Pursuant to Code of Civil Procedure section 1013, if the subpoena is served by mail to either the consumer or employee or the custodian of records to a place of address in California, an additional 5 days is allowed to comply with the subpoena.

If the records subpoena is a civil subpoena (duces tecum), the subpoena, affidavit and notice to consumer or employee must be served personally on the consumer or employee at the last known address not less than 10 days prior to the date of production of documents specified in the subpoena. Service upon the custodian of records must be at least 5 days prior to the date for the production of documents. Code of Civil Procedure section 1985.3(b). Note that the timelines for production of documents under a subpoena duces tecum are shorter than those for a business records subpoena. Again, if the subpoena is served by mail to either the consumer or employee or the custodian of records, the additional 5 days to comply with the subpoena also applies to a civil subpoena (duces tecum).

If the employee or consumer is a party to the action and objects to the records custodian furnishing such records, he/she must file papers with the court prior to the date set for production of documents. If a nonparty employee or consumer objects to the records custodian furnishing such records, he/she must serve written objections by the date for compliance with the subpoena on the records custodian and the party requesting the records. Code of Civil Procedure section 1985.3(g).

If these procedures have not been followed, the subpoena duces tecum may not be valid and we would advise contacting this office or private legal counsel to determine if the subpoena duces tecum is valid.

### **STUDENT RECORDS**

When the records subpoenaed are student records, Education Code sections 49077 and 76244 require school districts and community college districts to make a diligent effort to notify the parent of the student in advance of compliance unless ordered not to do so by the court. Education Code sections 49078 and 76245 set forth virtually identical procedures to those set forth in Evidence Code section 1260, when personal attendance of a district employee is not required.

If the parent or student is a party and objects to the records custodian furnishing such records, he/she must file papers with the court prior to the date set for production of documents. If a nonparty parent or student objects to the records custodian furnishing such records, he/she must serve written objections by the date for compliance with the subpoena on the records custodian and the party requesting the records. Code of Civil Procedure section 1985.3(g).

In cases where no records exist or cannot be found, an alternative declaration should be used (sample copies attached hereto as Attachment 3).

### **COMPLIANCE WITH SUBPOENA**

In the case of personnel records or student records, where the personal attendance of the custodian of records is not required, the district within 15 days (5 days in the case of criminal proceedings) should send a copy of the records to the clerk of the court (when the records are for

a trial), court reporter (when the records are for a deposition) or administrative agency (when the records are for an administrative hearing), with an affidavit or declaration certifying the records (copies of sample declarations attached hereto as Attachment 4). The records should be enclosed in an inner envelope and sealed with the title and number of the case, the name of the witness and date of the subpoena on the outside of the inner envelope (a copy of the subpoena stapled to the outside of the inner envelope will also suffice). Evidence Code section 1560, Code of Civil Procedure section 2020.430. The inner envelope should then be placed in another envelope addressed as follows:

1. To the clerk of the court or the judge if there is no clerk;
2. To the officer before whom the deposition is to be taken, at the place designated in the subpoena;
3. To the officer, body or tribunal conducting the hearing.

Unless the parties to the proceeding agree otherwise, the records remain sealed and are opened at the time of the trial, deposition or hearing. If the subpoena requests the personal attendance of the custodian of records, the attorney requesting the records should be contacted to determine if the personal attendance of the custodian of records is necessary. If personal attendance is required, witness fees should be requested and deposited in the district's general fund.

### **COST OF REPRODUCING RECORDS**

Pursuant to Evidence Code section 1563(b), all reasonable costs incurred in a civil proceeding with respect to the production of business records by a school district, community college district or other public agency which is not a party to the lawsuit may be charged against the party serving the subpoena duces tecum.

Section 1563(b) does not apply if the school district, community college district or other public agency is a party to the lawsuit and one of the other parties in the lawsuit requests records pursuant to a subpoena duces tecum. If such a party sues a school district, community college district or other public agency and requests records pursuant to a subpoena duces tecum, there can be no charge against the party serving the subpoena duces tecum.

In addition, Section 1563(b) does not apply to criminal proceedings and there should be no charges against the party serving the subpoena duces tecum in a criminal proceeding. Criminal proceedings are usually identified by the wording "People of the State of California v...." in the caption of the subpoena duces tecum.

The term "business records" includes government records. Evidence Code sections 1270 and 1560(a)(1).

Thus, pursuant to Evidence Code section 1563(b), a school district, community college district or other public agency may, subject to the above stated limits, charge for the production of records which have been requested pursuant to a subpoena duces tecum.

However, there are restrictions regarding the amounts which can be charged. Evidence Code section 1563(b)(1) provides:

“Reasonable cost,’ as used in this section, shall include, but not be limited to, the following specific costs: ten cents (\$0.10) per page for standard reproduction of documents of a size 8½ by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars (\$24) per hour per person, computed on the basis of six dollars (\$6) per quarter hour or fraction thereof; actual postage charges; and the actual cost, if any, charged to the witness by a third person for the retrieval and return of records held offsite by that third person.”

Therefore, pursuant to Evidence Code section 1563(b)(1), a school district, community college district or other public agency can charge ten cents (\$0.10) per page for standard reproduction of documents of 8½ by 14 inches or less or twenty cents (\$0.20) per page for copying from microfilm. They can also charge the actual costs for reproduction of documents that are larger than 8½ by 14 inches.

If there are clerical costs, such as for locating and making the records available, the party serving the subpoena duces tecum may be billed at the rate of twenty-four dollars (\$24) per hour, or six dollars (\$6) per quarter hour or fraction thereof. Additionally, they may be billed for the costs charged to the school district, community college district or other public agency by a third party for retrieval and return of records held by a third party.

Evidence Code section 1563(b)(6) has been amended to provide:

“Where the records are delivered to the attorney or the attorney’s representative, or the deposition officer, for inspection or photocopying at the witness’ place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars (\$15), plus the actual cost, if any, charged to the witness by a third person for retrieval and return of records held offsite by that third person. If the records are retrieved from microfilm, the reasonable cost, as defined in paragraph (1), shall also apply.”

Evidence Code section 1563(b)(2) states:

“The requesting party, or the requesting party’s deposition officer, shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until payment is made, is under no obligation to deliver the records.”

Therefore, the school district, community college district or other public agency cannot require the requesting party to pay the costs prior to the time that the records are available for delivery, but may demand at the time of delivery that the requesting party pay the costs. If the requesting party does not pay the costs, the school district, community college district or other public agency is not required to (and should not) deliver the records. However, if requested, the school district, community college district or other public agency is required to submit an itemized statement to the requesting party for the costs, setting forth the reproduction and clerical costs incurred by the witness.

If you have any questions regarding these procedures, please contact our office.

VRF:vld

## **ATTACHMENT 1**

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PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

The production of the documents or the other things sought by the subpoena on page one is supported by (*check one*):

the attached affidavit or declaration  the following declaration:

**DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING  
(Code Civ. Proc., §§ 1985, 1987.5)**

1. I, the undersigned, declare I am the  plaintiff  defendant  petitioner  respondent  
 attorney for (*specify*):  other (*specify*):  
in the above-entitled action.
2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified in the *Civil Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing* on page one of this form (*specify the exact documents or other things to be produced*):

Continued on Attachment 2.

3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:

Continued on Attachment 3.

4. These documents or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:

Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....  
(TYPE OR PRINT NAME)

.....  
(SIGNATURE OF  SUBPOENAING PARTY  ATTORNEY FOR SUBPOENAING PARTY)

**Request for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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**PROOF OF SERVICE OF CIVIL SUBPOENA (DUCES TECUM)  
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS  
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

1. I served this *Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:

- a. Person served (name):
- b. Address where served:
  
- c. Date of delivery:
- d. Time of delivery:
- e. Witness fees (check one):
  - (1)  were offered or demanded and paid. Amount: . . . . . \$ \_\_\_\_\_
  - (2)  were not demanded or paid.
- f. Fee for service: . . . . . \$ \_\_\_\_\_

2. I received this subpoena for service on (date):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

Date:

▶ \_\_\_\_\_  
(SIGNATURE)

▶ \_\_\_\_\_  
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <hr/> TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS</b>	CASE NUMBER: _____

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):**

**1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To (name of deposition officer): _____ On (date) : _____ At (time): _____ Location (address): _____
<b>Do not release the requested records to the deposition officer prior to the date and time stated above.</b>

- a.  by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
  - b.  by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
  - c.  by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*
3. **The records to be produced are described as follows:**

Continued on Attachment 3.

**4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

(Proof of service on reverse)

(TITLE)

PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	CASE NUMBER:
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**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR  
PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1)  Witness fees were paid.  
 Amount: ..... \$ \_\_\_\_\_

(2)  Copying fees were paid.  
 Amount: ..... \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**(For California sheriff or marshal use only)**  
 I certify that the foregoing is true and correct.

Date:

Date:

\_\_\_\_\_  
 (SIGNATURE)

\_\_\_\_\_  
 (SIGNATURE)

## **ATTACHMENT 2**

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PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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**PROOF OF SERVICE OF NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION**  
(Code Civ. Proc., §§ 1985.3, 1985.6)

Personal Service     Mail

1. At the time of service I was at least 18 years of age and not a party to this legal action.
  2. I served a copy of the *Notice to Consumer or Employee and Objection* as follows (check either a or b):
    - a.  **Personal service.** I personally delivered the *Notice to Consumer or Employee and Objection* as follows:
 

(1) Name of person served:	(3) Date served:
(2) Address where served:	(4) Time served:
    - b.  **Mail.** I deposited the *Notice to Consumer or Employee and Objection* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 

(1) Name of person served:	(3) Date of mailing:
(2) Address:	(4) Place of mailing (city and state):
- (5) I am a resident of or employed in the county where the *Notice to Consumer or Employee and Objection* was mailed.
- c. My residence or business address is (specify):
  - d. My phone number is (specify):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF PERSON WHO SERVED)

\_\_\_\_\_  
(SIGNATURE OF PERSON WHO SERVED)

**PROOF OF SERVICE OF OBJECTION TO PRODUCTION OF RECORDS**  
(Code Civ. Proc., §§ 1985.3, 1985.6)

Personal Service     Mail

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. I served a copy of the *Objection to Production of Records* as follows (complete either a or b):
  - a. **ON THE REQUESTING PARTY**
    - (1)  **Personal service.** I personally delivered the *Objection to Production of Records* as follows:
 

(i) Name of person served:	(iii) Date served:
(ii) Address where served:	(iv) Time served:
    - (2)  **Mail.** I deposited the *Objection to Production of Records* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 

(i) Name of person served:	(iii) Date of mailing:
(ii) Address:	(iv) Place of mailing (city and state):
  - (v) I am a resident of or employed in the county where the *Objection to Production of Records* was mailed.
- b. **ON THE WITNESS**
  - (1)  **Personal service.** I personally delivered the *Objection to Production of Records* as follows:
 

(i) Name of person served:	(iii) Date served:
(ii) Address where served:	(iv) Time served:
  - (2)  **Mail.** I deposited the *Objection to Production of Records* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 

(i) Name of person served:	(iii) Date of mailing:
(ii) Address:	(iv) Place of mailing (city and state):
  - (v) I am a resident of or employed in the county where the *Objection to Production of Records* was mailed.

3. My residence or business address is (specify):

4. My phone number is (specify):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF PERSON WHO SERVED)

\_\_\_\_\_  
(SIGNATURE OF PERSON WHO SERVED)

**ATTACHMENT 3**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF [TYPE IN COUNTY]

[Type in name of plaintiff]	)	
	)	Case No. [Type in Case #]
Plaintiff,	)	
	)	DECLARATION OF
vs.	)	CUSTODIAN OF RECORDS OF
	)	[TYPE IN NAME OF SCHOOL OR
[Type in name of defendant]	)	SCHOOL DISTRICT]
	)	
Defendant.	)	(Evidence Code § 1561)
	)	
<hr style="border-top: 1px solid black;"/>		

I, \_\_\_\_\_, hereby declare as follows:

1. I am the custodian of records of the \_\_\_\_\_ School District ("District"), and have authority to certify such records.

2. On [type in date], I was served with a subpoena duces tecum and supporting declaration issued out of the Superior Court of the State of California for the County of \_\_\_\_\_ [type in name of County] in the above entitled action calling for [describe the records that were subpoenaed, e.g. education, etc.] records of [type in name of student(s)] for the period of [list dates from subpoena] \_\_\_\_\_, to \_\_\_\_\_ 2010.

3. It is the regular business practice of the District for an employee or representative, with the knowledge of an act, event, condition or opinion, to make a record (handwritten or via computer) or to transmit information thereof to be included in a record. The record is made at or near the time of the act, or reasonably soon thereafter.

4. The records called for in the subpoena duces tecum were searched for by an employee or representative of the District, and by other persons acting under the control of those individuals, in the ordinary course of business.

5. The District was unable to locate any of the records described in the subpoena duces tecum.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: [Type in date signed]

\_\_\_\_\_  
[Type in name of Custodian of Records]  
Custodian of Records  
[Type in name of School or District]

**ATTACHMENT 4**

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF [TYPE IN COUNTY]

[TYPE IN NAME OF PETITIONER] Petitioner,	)	Case No. (Type in Case #)
vs.	)	DECLARATION OF CUSTODIAN OF RECORDS FOR
[TYPE IN NAME OF RESPONDENT] Respondent.	)	[Type in name of School or School District]
		(Evidence Code § 1561)

I, [TYPE IN NAME OF CUSTODIAN OF RECORDS], hereby declare as follows:

1. I am the custodian of records of [TYPE IN SCHOOL NAME] within the [TYPE IN SCHOOL DISTRICT NAME], and have authority to certify such records.

2. On [TYPE IN DATE] I was served with a subpoena duces tecum and supporting affidavit issued out of the Superior Court of the State of California for the County of [TYPE IN COUNTY] in the above entitled action calling for [DESCRIBE THE RECORDS THAT WERE SUBPOENAED] records of [TYPE IN NAME OF STUDENT/EMPLOYEE] for the time period of [LIST DATES FROM SUBPOENA].

3. Enclosed are the records of [TYPE IN NAME OF SCHOOL] called for in the subpoena duces tecum. These records are kept by [TYPE IN SCHOOL NAME] in the course of its regularly conducted business activities. It is the regular practice of [TYPE IN SCHOOL] for an employee or representative, with the knowledge of the act, event, condition or opinion, to make the record (handwritten or via computer) or to transmit information thereof to be included in such record. The record was made at or near the time of the act, or reasonably soon thereafter.

4. The records enclosed are exact duplicates of the originals.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: [TYPE IN DATE SIGNED]

\_\_\_\_\_  
[TYPE IN NAME]  
Custodian of Records, [TYPE IN SCHOOL OR  
SCHOOL DISTRICT NAME]