

**Berkeley Unified School District**  
**Personnel Commission Meeting Minutes**

April 7, 2016 - 4:30 pm

**1. Call to Order**

The meeting was called to order at 4:30 pm

**2. Roll Call & Establishment of Quorum**

Chairperson Ortiz, Vice Chairperson Carter and Commissioner Goldstein were present and a quorum was established.

**3. Public Comments**

None

**4. Approval & Adoption of Agenda**

Vice Chairperson Carter requested to pull item 8. a. to discuss in the next meeting. Commissioner Goldstein requested to pull items 6.a. and 6.g for further discussion.

Approved as amended, 3-0

**5. Approval of Meeting Minutes**

a) March 3, 2016, Regular Meeting Minutes

Michelle Payton, Clerical III, commented that she did not say that she “resigned” her FTE but that she “reduced” it. Secretary Perez responded that voluntarily reducing an FTE is considered the same thing as resigning it.

b) March 17, 2016 Special Meeting Minutes

A motion was made to approve both sets of minutes: Approved as amended, 3-0

**6. Consent Items**

a) Instructional Assistant, Special Ed, Attendant

b) Clerical Specialist

c) School Secretary I

d) Administrative Coordinator

e) Maintenance Engineer

f) Parent Liaison

g) Instructional Assistant

Paula Phillips, BCCE President, asked to pull lists a, b, and g for further discussion.

Approval of lists: c, d, e, and f.

Approved, 3-0

Commissioner Goldstein asked if progress was made in obtaining a financial report for substitute activity. Secretary Perez responded that the report was created using an object code that also was used for regular permanent employees who submitted timesheets for that same object code and so the report was not very useful. He said that the requested information regarding limited term and provisional employees could be found in the Board reports. President Phillips said that a sample of the report should be viewed because she believes the District does not report day-to-day substitute activity to the Board. Delia Ruiz, Assistant Superintendent of Human Resources, stated that there is no requirement to report day-to-day substitute work to the Board. Commissioner Carter asked for the sample report and the parameters used to run the

report. Secretary Perez said he would send the report to the Commissioners.

Approval of lists: a and g

Approved, 3-0

President Phillips commented that Michelle Payton has provided a side by side comparison of the job descriptions for Clerical Specialist and Clerical Assistant III. President Phillips commented that the jobs are very similar and she held seniority in the Clerical Specialist position but was misinformed by Human Resources at the time and did not know that she would be permanently resigning her FTE. Vice Chairperson Carter asked her why she did not apply for the Clerical Specialist position when the recruitment was open. Ms. Payton responded that she was more interested in applying to the Senior Personnel Assistant position instead. Secretary Perez commented that Ms. Sacks provided a legal opinion on the matter and said that if the position is at a higher classification with higher pay, then it is not considered a transfer. He also indicated that Ms. Sacks clarified in her legal memo that if an employee resigns from a position, the employee can come back within 39 months at the District's discretion, but that time elapsed a long time ago because Ms. Payton resigned in 2008. President Phillips said that it is a conflict of interest to get a legal opinion from the District's attorney. Vice Chairperson Carter commented that the Commission does not need a legal opinion, because the Merit Rules are very clear. Assistant Superintendent Ruiz said she disagrees because the Personnel Commission has requested a legal opinion several times in the past. Commissioner Carter commented that legal opinions change depending on who is paying the bill. Commissioner Goldstein commented that it is worth re-opening the posting so that Ms. Payton can reapply. Secretary Perez agreed to run a ten day recruitment for the Clerical Specialist position.

A motion was made to run a new Clerical Specialist recruitment and let administrator at Berkeley High School, where the present vacancy exists, know that a new list will be produced.

Approved, 3-0

Commissioner Carter commented that item 8.b. is being addressed with this discussion.

Approval of Clerical Specialist list,

Aye-2 (Chairperson Ortiz, Vice Chairperson Carter)

Abstain- 1 - Commissioner Goldstein

Commissioner Carter made a motion to approve Ms. Payton's transfer request,

Denied, 3-0

## **7. Information Items:**

### **a) Personnel Commission Budget for Fiscal Year 2016-2017**

Secretary Perez commented that there are few differences from last year's budget; the only exceptions are increases to salaries and benefits because of step and salary increases, and funds pulled from other sources to increase the pre-employment physical exam line item. Chairperson Ortiz requested a year to date budget report on a quarterly basis. Commissioner Goldstein asked how hearings are paid for, and Secretary Perez responded that the Merit Rules state that when the Commission appoints a hearing officer, the cost is divided between the District and the Union. Chairperson Ortiz commented that the budget can be discussed at the next special meeting before the hearing is held to discuss and approve the budget.

### **b) Amendment to California's Fair Employment and Housing Act**

Commissioner Goldstein commented that the FEHA was amended and she asked how employees are trained about their rights and expectations in workplace behavior. Secretary Perez commented that he

spoke to the Compliance Officer and Title IX Coordinator and she will be discussing this with the Superintendent. Secretary Perez stated that he would inform the Commission once he received more information.

#### **8. Old Business:**

- a) Noon Supervisors
- b) Agenda Item Request – M. Payton
- c) Proposed Change to June’s Meeting Date  
June regular meeting to be held on 6/7/16 at 4:00 pm.

#### **9. Conference Items**

- a) Agenda Item Request – J. Helton –  
Secretary Perez commented that Janet Helton requested to be extended on the eligibility list for a year and that if a new list is generated, her name would be merged with the new list, but her eligibility will only be in effect for one more year from the date of the Commission’s approval. Commissioner Carter commented that a new recruitment should be made to give current employee’s the opportunity to test. Secretary Perez said that he can post the position as a promotional only recruitment and provide recruitment process information in the next Human Resources newsletter.  
A motion was made to extend Janet Helton on the eligibility list,  
Approved, 3-0
  
- b) Agenda Item Request – M. Ferguson –  
President Phillips commented that Ms. Ferguson is requesting a transfer into one of the vacant School Secretary I positions. Ms. Ferguson sustained several work related injuries and one of them is stress related, so she is deemed to be a disabled employee. She submitted a physician’s note that said that she could return to work but at a different work site under a different supervisor. President Phillips commented that the District is refusing to transfer Ms. Ferguson because they say that they do not want to force a supervisor to take an employee in her condition, and President Phillips said that was a violation of reasonable accommodations under the Americans with Disabilities Act. Assistant Superintendent Ruiz responded that the alleged disability is not recognized as an official disability based on court law. President Phillips commented that Ms. Ferguson was deemed by a physician to have suffered PTSD and anxiety disorder and is being forced to work in a hostile work environment at Le Conte Elementary because the principal interrupts, in Spanish, Ms. Ferguson’s conversations with Spanish speaking parents. Assistant Superintendent Ruiz responded that not being able to work under a particular supervisor is not considered an official disability and so the District is not required to accommodate the request be transferred to another supervisor. However, Ms. Ferguson was allowed to submit transfer applications in the past and had been interviewed on two occasions, but was not selected. Commissioner Goldstein requested a timeline of the interaction between Secretary Perez and Marie Ferguson. Assistant Superintendent Ruiz asked the Commission to clarify what they considered to be under the Commission’s jurisdiction and which Merit Rule indicates such. Secretary Perez commented that Ms. Ferguson had no appeal rights with the Commission because she is no longer an employee. Chairperson Ortiz stated that Ms. Ferguson can appeal the interactive process, but it is a different process that the District has set in place. Vice Chairperson Carter asked President Phillips to clarify what Ms. Ferguson is requesting. President Phillips said that Ms. Ferguson wants to return back to work. Chairperson Carter made a recommendation to bring this issue back to the next meeting to give the employee a fair review. Chairperson Ortiz requested timelines from Secretary Perez and Marie Ferguson.

**10. Reports**

a) Union

President Phillips said that in regards to the classification study, the Union has thirty-two classifications that need to be revised and they hope to get those completed by the end of the month. Assistant Superintendent Ruiz said that they have already received 51 job descriptions from BCCE.

b) Commissioners Reports

c) Personnel Director

i. New Hires and Examinations administered in the month of March

Commissioner Goldstein asked how many candidates took the Instructional Assistant Special Ed Attendant and the Clerical Specialist written exams in the previous month and asked for that information in the next meeting.

**11. Public Comments**

None

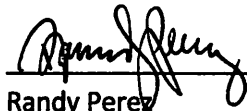
**12. Next Meeting**

Next special meeting will be held on April 14, 2016 at 9:30 am. Next regular meeting will be held on May 5, 2016.

**13. Adjournment**

The meeting was adjourned at 8:02 pm

Respectfully Submitted,

  
\_\_\_\_\_  
Randy Perez  
Secretary to the Personnel Commission

4/29/2016  
Date

Approved,

\_\_\_\_\_  
Reynaldo Ortiz  
Chairperson, Personnel Commission

\_\_\_\_\_  
Date