

Berkeley Unified School District
2020 Bonar Street, The Tech Lab, Room 126
Berkeley, CA 94702

Timothy Carter, Chairperson

Personnel Commission
Heidi Goldstein, Vice-Chairperson
Peter Rogosin, Secretary

Dr. Reynaldo Ortiz, Commissioner

Meeting Agenda

April 6, 2017 – 4:30 pm

1. **Call to Order** **Chairperson Carter**
2. **Roll Call & Establishment of Quorum** **Secretary Rogosin**
3. **Public Comments (15 minute limit)** **Public**
This is an opportunity for the public to comment on Personnel Commission business not on the agenda. The time limit is five minutes per individual and a total of fifteen minutes per subject. No action can be taken by the Commission.
4. **Approval & Adoption of Agenda** **Chairperson Carter**
5. **Closed Session (2 matters)**
 - a) **Employee Discipline and Legal Matters - Government Code § 54954.5**
The Personnel Commission will meet in closed session to discuss a matter related to the termination and subsequent appeal hearing of a classified employee (2016-1-AH).
 - b) **Public Employment - Government Code § 54957 (b)(1)**
The Personnel Commission will meet in closed session to discuss the recruitment of Director, Classified Personnel and provide direction to staff.
6. **Report from Closed Session** **Chairperson Carter**
7. **Approval of Meeting Minutes** **Chairperson Carter**
Approve the Personnel Commission Meeting Minutes for the following:
 - a) March 1, 2017, Special Meeting Minutes p. 3
 - b) March 2, 2017 Regular Meeting Minutes p. 4-6
8. **Consent Items** **Chairperson Carter**
 - I. **Ratification of Eligibility Lists**
 - a) Custodian I, p. 7
 - b) Budget Analyst I, p.8
 - c) School Bus Driver, p.9
 - d) School Administrative Assistant II, p.10
 - e) School Administrative Assistant , ECE, p.11
 - f) Instructional Tech- Before & After School, p.12
 - g) Instructional Assistant II, SPED, p.13
 - h) Maintenance Engineer, p.14
 - i) Clerical Assistant I, p.15

9. Discussion Items

Chairperson Carter

This item is presented for discussion only and may be carried over from a prior meeting. No action will be taken on this item at this time.

- a) Personnel Commission Budget for Fiscal Year 2017-2018- *First reading*, p. 16

10. Conference Items

Chairperson Carter

These items are presented for discussion and action and may be carried over from a previous meeting.

- a) Request for Appeal of Removal from Eligibility List.
- b) Informational Report on the "WRIT", **Attachment A**
- c) WRIT Agreement, **Attachment B**
- d) Proposed revision of Merit Rule 40.200.13 and 50.200.4-b, Ties in Examination Results **Attachment C**
- e) Proposed revision of Merit Rule 70.700.1, Advanced Step Salary Placement, **Attachment D**
- f) Agenda Item Request – M. Ferguson – **Attachment E**
- g) Request for Work-Out-Of-Class- Marie Ferguson, **Attachment F**
- h) Request for Advanced Salary Placement for Vehicle and Equipment Mechanic, **Attachment G**
- i) Revision of the Class Description for Delivery Driver, **Attachment H**
- j) Revision of the Class Description for Nutrition Services Assistant, **Attachment I**

11. Reports

- a) Union **Union Representatives**
- b) Commissioners Reports **Commissioners**
- c) Personnel Director **Secretary Rogosin**
 - i. New Hires and Examinations administered in the month of March, p.17

12. Public Comments (15 minute limit)

Public

This is an opportunity for the public to comment on Personnel Commission business not on the agenda. The time limit is five minutes per individual and a total of fifteen minutes per subject. No action can be taken by the Commission.

13. Next Meeting

Chairperson Carter

Follow up items for next Personnel Commission Meeting.

14. Adjournment

Chairperson Carter

Agendas and minutes of Personnel Commission meeting are available at the District's website, www.berkeleyschools.net. Also, in accordance with the Brown Act and Government Code § 54957.5 (b)(1), writings that are related to an agenda item for an open session of a regular meeting, that are public records not otherwise exempt from disclosure and that are distributed less than 72 hours prior to the meeting, shall be made available for public inspection at the time the writings are distributed to at least the majority of Commissioners. The public may request copies of the records at the District's Human Resources office at 2020 Bonar Street, Berkeley, CA 94702.

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

March 1, 2017 – 8:30 am

1. Call to Order

The meeting was called to order at 8:30 am.

2. Roll Call & Establishment of Quorum

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

3. Public Comments

None.

4. Approval & Adoption of Agenda

Commissioner Ortiz made a motion to approve the agenda; Vice Chairperson Goldstein seconded the motion,

Approved, 3-0

5. Closed Session Item (1 Matter): Government Code § 54957

a) The Personnel Commission went into closed session to conduct an appeal hearing for an employee who has requested an appeal pursuant to Merit Rule 40.100.4 (2016-1-AH).

6. Report from Closed Session

Chairperson Carter commented that follow up dates to resume the appeal hearing were scheduled for 4/10/17 and 4/11/17.

7. Public Comments

None.

8. Adjournment

The meeting was adjourned at 12:06 pm.

Respectfully Submitted,



Peter Rogosin
Secretary, Personnel Commission

3/31/17
Date

Approved,

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Personnel Commission Meeting Minutes

March 2, 2017 – 4:30 pm

1. Call to Order

The meeting was called to order at 4:30 pm.

2. Roll Call & Establishment of Quorum

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

3. Public Comments

None.

4. Approval & Adoption of Agenda

Chairperson Carter requested to remove Conference Items 10. a) and 10. b) and bring them back to the next regular Personnel Commission meeting to allow input from BCCE.

Commissioner Ortiz made a motion to approve agenda with the removal of Conference Items 10 a) and 10 b) as requested by Chairperson Carter; Vice Chairperson Goldstein seconded the motion,

Approved, 3-0

5. Closed Session (4 matters)

a) Employee Discipline and Legal Matters - Government Code § 54954.5

The Personnel Commission met in closed session to discuss a matter related to the termination and subsequent appeal hearing of a classified employee (2016-1-AH), and the status of an upcoming appeal hearing (2017-1-AH).

b) Public Employment - Government Code § 54957 (b)(1)

The Personnel Commission received the status of PERB complaint (2017-1-C).

c) Public Employment - Government Code § 54957 (b)(1)

The Personnel Commission discussed the recruitment of Director, Classified Personnel.

6. Report from Closed Session

The Personnel Commission reconvened at 5:45 pm. Chairperson Carter reported that the Commission will hear an appeal of the removal of a name from an eligibility list from a candidate at the next regular meeting. He also reported that direction was given to Erin Arinez, Classified Personnel Supervisor, regarding the next steps for recruitment of the Director of Classified Personnel.

7. Approval of Meeting Minutes

a) February 03, 2017

Vice-Chairperson Goldstein commented that the date the stipulation meeting was set to be held was on 1/12/17, and that it should be added to the minutes under item 7. a)

Commissioner Ortiz moved to approve the minutes as amended; Vice Chairperson Goldstein seconded the motion,

Approved, 3-0

8. Consent Items

- I. Ratification of Eligibility Lists
 - a) Compliance Officer and Title IX Coordinator
 - b) Student Body Account Technician
 - c) Attendance Technician
 - d) Clerical Assistant III
 - e) Maintenance Technician
 - f) Media Technology Technician

Vice-Chairperson Goldstein made a motion to approve the eligibility lists; Commissioner Ortiz seconded the motion, Approved, 3-0

9. Discussion Items

- a) Request for Appeal of Removal from Eligibility List.
Chairperson Carter commented that the Personnel Commission will hear this appeal in the next scheduled regular Personnel Commission meeting.

10. Conference Items

These items are presented for discussion and action and may be carried over from a previous meeting.

- a) Informational Report on the "WRIT"
To be discussed in the next Personnel Commission meeting.
- b) WRIT Agreement
To be discussed in the next Personnel Commission meeting.
- c) Abolishment of Merit Rule 40.200.13
Commissioner Ortiz recommended rewriting the rule instead of abolishing it. Chairperson Carter asked Secretary Rogosin to bring a draft of the rewritten rule back to the next meeting.
- d) Request for Advanced Salary Placement for Compliance Officer and Title IX Coordinator
The District recommended an advanced step salary placement. Secretary Rogosin reviewed the candidate's qualifications and commented that the employee is highly qualified to perform the assigned duties and responsibilities.
Vice Chairperson Goldstein made a motion to approve the advanced salary placement for the Compliance Officer and Title IX Coordinator; Commissioner Ortiz seconded the motion,
Approved, 3-0
- e) Request for Advanced Salary Placement for Health and Wellness Program Coordinator
Secretary Rogosin commented that in the previous recruitment, only one candidate made it to the eligibility list but resigned soon after. He added that the candidate on the current list was highly qualified. Vice-Chairperson Goldstein asked if procedures were followed correctly for this recruitment. Secretary Rogosin responded that they were.
Commissioner Ortiz made motion to approve the advanced salary placement for the Health and Wellness Program Coordinator; Vice Chairperson Goldstein seconded the motion,
Approved, 3-0

11. Reports

a) Union
None.

b) Commissioners Reports

Vice Chairperson Goldstein gave thanks to the Personnel Commission staff for their support during the appeal hearing.

c) Personnel Director

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

Secretary Rogosin commented that Personnel Commission staff has been working hard to administer exams and lists and commended them for their efforts to produce lists sooner.

12. Public Comments

None

13. Next Meeting

The next Personnel Commission meeting is to be held on April 6, 2017 at 4:30 pm.

14. Adjournment

The meeting was adjourned at 6:31 pm.

Respectfully Submitted,



Peter Rogosin
Secretary, Personnel Commission

3/31/17
Date

Approved,

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **Custodian I**
 (Open)

Written Examination: **February 23, 2017**

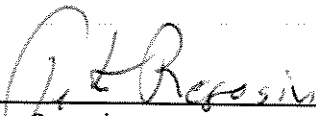
Oral Examination: **March 7, 2017**

List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Open

- 1 Raul Morones
- 2 Stafont Smith
- 3 Ryan Williams
- 4 Aaron Camargo
- 5 Michael Turner
- 6 Erwin Asis
- 7 Reynaldo Lontok
- 8 Jeremiah Mitchell
- 9 Yolanda Hernandez
- 9 Charles Nelson
- 9 Barry Coleman*
- 10 Richard Erhard*

* *Eligibility to expire December 5, 2017*



Peter Rogosin
Secretary, Personnel Commission

3/31/17
Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **School Bus Driver**
 (Open)


Written Examination: **March 14, 2017**

Oral Examination: **March 14, 2017**

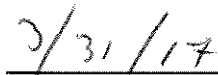
List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Open

1 Mary Carmen Perez



Peter Rogosin
Secretary, Personnel Commission



Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **School Administrative Assistant II**
 (Open and Promotional)

Written Examination: **March 10, 2017**

Oral Examination: **March 21, 2017**

List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Promotional

- 1 Monique Jordan-Araujo

Open

- 1 Maria Sabeh
- 2 Sandra Spiker
- 3 Kimberli McKinzie
- 4 Hannah Bastienne
- 5 Gabriella Arechiga*
- 6 Shamika Johnson*

** Eligibility to expire June 7, 2017*



Peter Rogosin
Secretary, Personnel Commission

3/31/17
Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District

Merit System

Eligibility List for : **School Administrative Assistant, ECE**

Written Examination: **March 3, 2017**

Oral Examination: **March 21, 2017**

List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Open

- 1 Sandra Spiker
- 2 Latriece Love*
- 3 Kimberli McKinzie

** Eligibility to expire December 1, 2017*



Peter Rogosin
Secretary, Personnel Commission

3/31/17
Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **Instructional Tech - Before and After School**

Written Examination: **March 16, 2017**

Oral Examination: **March 28, 2017**

List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Open

- 1 Cassius Mitchell
- 2 Elijah Hemphill
- 3 Nanna Hadikwa Mwaluko*
- 4 Unique Wells
- 5 Jeanne Rehrig*

** Eligibility to expire September 1, 2017*



Peter Rogosin
Secretary, Personnel Commission



Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **Instructional Assistant II, SPED**
(Open)

Written Examination: **March 21, 2017**

Oral Examination: **March 30, 2017**

List Established by Personnel Commission: **August 6, 2017 to expire August 5, 2018**

Open

- 1 Angela Madonia
- 2 Jillissa Bostic
- 3 Courtney Williams
- 4 Simon Tran
- 5 Saidy Guillen
- 6 Sylvia Robinson *
- 7 Khlood Salah
- 8 Mari Kakei

** Eligibility to expire December 5, 2017*



Peter Rogosin
Secretary, Personnel Commission



Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **Maintenance Engineer**

Written Examination: **February 16, 2017**

Oral Examination: **March 17, 2017**

List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Promotional

1 Roderick Carraway



Peter Rogosin
Secretary, Personnel Commission

3/31/17
Date

Timothy Carter
Chairperson, Personnel Commission

Date

Berkeley Unified School District
Merit System

Eligibility List for : **Clerical Assistant I**
 (Open and Promotional)

Written Examination: **March 2, 2017**
Oral Examination: **March 17, 2017**

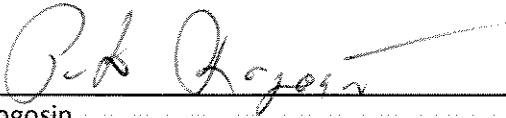
List Established by Personnel Commission: **April 6, 2017 to expire April 5, 2018**

Promotional

1 Marian Willis

Open

- 1 Kimberli Mckinzie
- 2 Christine Graupman
- 3 Christine Bausta
- 4 Cecilia Hernandez
- 5 Antoine Antonia



Peter Rogosin
Secretary, Personnel Commission

3/31/17

Date

Timothy Carter
Chairperson, Personnel Commission

Date

BERKELEY UNIFIED SCHOOL DISTRICT

DRAFT PERSONNEL COMMISSION BUDGET: FISCAL YEAR 2017-2018

DEPARTMENT: Personnel Commission

DATE: July 1, 2017 - June 30, 2018

ITEMS REQUESTED	CODE	Fiscal Year 2015-2016	Fiscal Year 2016-2017	Fiscal Year 2017-2018
Staffing FTE:				
1.0 FTE Director, Including Statutory Benefits	2302/7403	\$169,210.10	\$185,387.23	\$185,387.23
1.0 FTE Classified Personnel Supervisor, Including Statutory Benefits	2302/7403	\$79,187.37	\$87,777.76	\$95,454.59
1.0 FTE Human Resources Technician, Including Statutory Benefits	2402/7403	\$59,923.03	\$65,093.83	\$73,765.09
Subs/Proctors, Including Statutory Benefits	2416/7403	\$12,000.00	\$7,500.00	\$7,500.00
Hourly Overtime	2412/7403	\$3,000.00	\$1,500.00	\$1,500.00
<i>Total Salary Requests</i>		\$323,320.50	\$347,258.82	\$363,606.91
Other Items:				
Books and Other Ref. Material	4200/7403	\$500.00	\$500.00	\$500.00
Other Supplies	4350/7403	\$9,000.00	\$12,410.00	\$9,000.00
Equipment	4400/7403	\$1,500.00	\$4,910.00	\$4,910.00
Travel and Conference	5200/7403	\$4,000.00	\$7,000.00	\$7,000.00
Dues and Memberships	5300/7403	\$3,000.00	\$3,000.00	\$3,000.00
Central Printing - Xerox	5712/7403	\$5,000.00	\$2,500.00	\$2,500.00
Copier Lease - Intrafund	5713/7403	\$8,640.00	\$4,320.00	\$4,320.00
Postage/Federal Express/Certified Mail	5910/7403	\$1,300.00	\$1,300.00	\$1,300.00
<i>Total Other Items</i>		\$32,940.00	\$35,940.00	\$32,530.00
Prof/Consulting Svcs & Operating Expenses:				
Legal Counsel	5829/7403	\$10,000.00	\$10,000.00	\$0.00
Prof/Consulting Svcs	5800/7403	\$4,000.00	\$4,000.00	\$4,000.00
Commissioner Fees	5800/7403	\$4,000.00	\$4,000.00	\$4,000.00
Recruiting/ Advertising	5800/7403	\$9,750.00	\$9,750.00	\$9,750.00
Pre-employment Examinations	5800/7403	\$6,000.00	\$9,000.00	\$10,000.00
Applications/ Announcements/Copying	5800/7403	\$3,200.00	\$3,200.00	\$3,200.00
Testing	5800/7403	\$2,750.00	\$2,750.00	\$2,750.00
Drug Testing (Bus Drivers per State Requirement and Union Contract Provisions)	5800/7403	\$2,000.00	\$2,000.00	\$2,000.00
<i>Total Prof/Consulting Svcs & Operating Expenses</i>		\$41,700.00	\$44,700.00	\$35,700.00
Grand Total		\$397,960.50	\$427,898.82	\$431,836.91

Examinations Administered in the Month of March:

<u>Classification</u>	<u>Written</u>	<u>Oral</u>	<u>Performance</u>
Clerical Assistant I	6	6	
School Administrative Assistant II	12	5	
School Administrative Assistant-ECE	11	3	
Budget Analyst I	7	4	
Custodian I		11	13
School Bus Driver	1	1	
Instructional Technician-BASP	6	5	
Maintenance Engineer	6		1
Instructional Assistant II-SPED	10	8	

New Hires/New Assignments/Promotions Processed in the Month of March:

<u>Name-</u>	<u>Employment Type-</u>	<u>Classification-</u>	<u>Location/Dept.</u>
Luis Ruiz	Promotion	Lead Grounds Gardener	Maintenance
Dana Clark	New-Hire	Compliance Officer and Title IX Coordinator	Superintendent's Office
Erica Contreras	New-Hire	Student Records Assistant, Bilingual	King Middle
Christopher Costello	New-Hire	Instructional Assistant II, SPED	King Middle
Courtney King	New-Hire	School Services Assistant	Thousand Oaks

To: The Personnel Commission
From: Peter Rogosin, Interim Personnel Director
Date: April 6, 2017
Subject: Informational Report on the "WRIT" Agreement

The Personnel Commission, at their meeting of February 3, 2017, requested an informative report on the Agreement between the Berkeley Unified School District and the Berkeley Council of Classified Employees commonly referred to as, "The WRIT."

The Personnel Commission is not a signatory to the WRIT. However, the WRIT does refer to the Personnel Commission and does obligate the District to "request that the Classified Director [Personnel Director], on behalf of the Personnel Commission" initiate the production of an eligibility list to fill any limited-term assignments lasting more than 15 days [See WRIT §3-a]. The WRIT also specifically allows any Limited-Term assignment to be filled in other ways as specified by the California Education Code [See WRIT §3-b].

In some cases, Eligibles are certified to a vacant Limited-Term assignment in accordance with their position on the appropriate employment list and their willingness to accept appointment as limited-term employees." – [Reference Ed. Code §45286] In the absence of a viable Eligibility List, a provisional appointment may be made.

Another way to cover the duties and responsibilities of a temporarily vacant position is to assign an existing BUSD employee additional duties and responsibilities outside their existing class concept and pay them in accordance with the Work-Out-Of-Class provisions of Education Code §45276 and Personnel Commission Rule 30.200.6 Working Out of Classification. In this situation the employee continues to perform their regularly assigned duties and responsibilities as well as "picking up" all or a portion of the duties and responsibilities of the vacated position.

These three methodologies for filling Limited-Term assignments noted above are all consistent with efficient personnel administration practices and are in accordance with the California Education Code and the Rules of the Personnel Commission.

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

THIS MUTUAL SETTLEMENT AGREEMENT AND RELEASE ("Release") is made by and between: Petitioner BERKELEY COUNCIL OF CLASSIFIED EMPLOYEES LOCAL 6192, AFT, AFL-CIO, ("BCCE") and Respondent BERKELEY UNIFIED SCHOOL DISTRICT ("BUSD"). Hereinafter, BCCE and BUSD will be referred to collectively as the "Parties."

RECITALS

1. In or about October 2010, BCCE filed a Petition For Writ of Mandate in Alameda County Superior Court (Case No. RG10543258) against BUSD. This action shall be referred to herein as the "Writ Petition."
2. A hearing on the Writ Petition is scheduled for November 21, 2011.
3. Since the filing of the aforementioned Writ Petition, the parties have worked and exchanged information collaboratively in an effort to reach a compromise.
4. Mindful of the uncertainties and expense of continued litigation, the Parties have reached an agreement to compromise and settle all claims and disputes amongst and between these Parties, on the terms set forth in this Release.
5. The express purpose of this Release is to fully and completely resolve the Writ Petition, including all amendments thereto, and all other claims, causes of action, lawsuits, obligations, damages, judgments and liabilities of any nature or kind whatsoever (including, but not limited to declaratory and equitable relief), attorneys' fees, and costs which in any way arise out of or relate to the matters contained in the Writ Petition.
6. As used herein "BCCE," "BUSD" and the "Parties" shall include their respective heirs, successors, and assigns.

AGREEMENT

The Parties hereby agree as follows:

1. The foregoing Recitals are incorporated herein with the same force and effect as though fully reproduced.

2. BCCE Obligations

- a. BCCE waives and releases any and all claims, causes of action, lawsuits, obligations, damages, judgments and liabilities of any nature or kind whatsoever (including but not limited to declaratory and equitable relief), attorneys' fees, and costs which in any way arise out of or relate to the matters contained in the Writ Petition.
- b. On the Court day following the date on which this agreement is executed by all Parties, BCCE shall file with the Court a dismissal of the Writ Petition with prejudice.

3. District Obligations

- a. Whenever the District receives reasonable notice that a BCCE unit position in a *limited term* appointment (i.e. a position lasting not more than six (6) months, or not exceeding the duration of authorized absence of an employee) will last more than fifteen (15) working days, the District shall, within five (5) working days of receiving said notice, request that the Classified Director, on behalf of the Personnel Commission, take the following actions:
 - 1) if there is an existing eligibility list in the classification with at least three (3) ranks, begin the process of developing a list of employees on such existing, regular term eligibility list who have expressed their willingness to accept appointments in such positions as limited term employees; or
 - 2) if there is not an existing eligibility list with at least three (3) ranks, begin the process of developing and certifying such a regular term eligibility list while simultaneously certifying which individuals on such list are willing to serve in a limited term capacity.
 - 3) Notify BCCE of the request.
- b. Except as allowed by the Education Code, make appointments of limited term employees from the lists set forth in 3.a.
- c. Prospectively ensure that temporary employees in BCCE classifications are designated as "provisional" or "limited term" consistent with the California Education Code and discontinue designation with the term "temporary/hourly/limited term."

- d. Prospectively ensure that, except where allowed by the Education Code, individuals are appointed as provisional employees in BCCE classifications for periods not to exceed ninety (90) working days when no eligibility list exists for said classified position and in adherence to the procedures set forth in the Education Code in excess of ninety (90) working days.
- e. Prospectively ensure that individuals are not appointed as probationary if those individuals' names do not appear in the first three (3) ranks of an eligibility list.
- f. Prospectively ensure that BCCE positions are contracted out only in adherence to the applicable Education Code sections that expressly provide for such contracting.
- g. Pay the sum of [REDACTED] to BCCE, in full and final settlement of all potential attorneys' fees and costs. To the extent allowed by law this term shall remain confidential, except that BCCE may advise its Executive Board of this term, and may announce to its membership that "settlement includes the agreement by the District to contribute [REDACTED] toward BCCE's attorneys' fees and costs, however this agreement in no way constitutes an admission of wrongdoing by the District."

4. General Release

This is a full and final release applying to all unknown and unanticipated damages and losses as well as to those now known or disclosed, arising out of the subject matters set forth in the Action. The Parties hereby waive all rights or benefits which they may now have or in the future may have under the terms of Section 1542 of the Civil Code of the State of California, which said section reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

5. Representation and Warranties

- a. Each party herein represents and warrants that as of the date of execution of this Release, no portion of any matter released hereby, nor any portion of any recovery or settlement to which they might be entitled, has been assigned or transferred to any other person or entity by operation of law or otherwise. In the event any party breaches this warranty and representation, the breaching party shall indemnify and hold the non-breaching party or parties harmless from any claims, suits, liabilities, losses or damages resulting from such breach.
- b. Each party herein represents and warrants that it has not filed, instituted or joined any claim in any state or federal court, administrative agency or any other forum arising out of, or relating in any way to any claim that is the subject matter of this Release which may exist against one another. Further, each party herein covenants that it shall not file, institute or join the same.

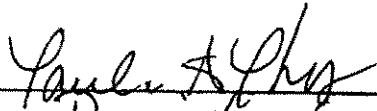
6. General Provisions

- a. This Release is the product of negotiation and compromise, and the language of this Release has been approved by all Parties. Each party warrants and represents to the other that it has reviewed this document with, and obtained advice of, independent counsel prior to execution of this Release.
- b. This Release represents the settlement of disputed and contested claims and nothing contained herein shall be construed as an admission of any party of any wrongdoing or any liability to any other party.
- c. Except as expressly set forth herein, this Release constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all written or oral prior agreements between the Parties with regard thereto. This Release may not be modified or amended except in a writing signed by each of the Parties hereto. No representations, warranties, or promises have been made or relied upon by any signatory hereto other than as set forth herein. No representation or promise pertaining to this Release or the subject matter thereof shall be binding upon any of the Parties, except as expressly stated in this Release.
- d. This Release was drafted by counsel for the Parties and there shall not be a presumption or construction against any party hereto.

- e. If any provision or any part of any provision of this Release is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute, or ordinance, then the remainder of this Release shall not be affected thereby and shall remain valid and fully enforceable.
- f. Sections, titles and captions contained in this Release are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit or extend the scope of this Release or the intent of any of its provisions.
- g. This Release is made and entered into in the State of California. The Parties agree that it shall in all respects be interpreted, enforced and governed under the laws of this State.
- h. This Release may be executed by facsimile and in counterparts.
- i. The parties agree that this Mutual Settlement Agreement and Release is judicially enforceable under Code of Civil Procedure sections 664.6 and 664.7.
- j. This Agreement is subject to ratification by the Board of Education for the Berkeley Unified School District.
- k. Per Code of Civil Procedure section 664.6, parties stipulate that they will jointly request that the Court enter judgment under the terms of this Agreement and retain continuing jurisdiction over this matter for purposes of enforcement.

Dated: November 7, 2011

BERKELEY COUNCIL OF CLASSIFIED
EMPLOYEES LOCAL 6192, AFT, AFL-CIO

By: 
Title: President

Dated: 11/9/11


BERKELEY UNIFIED SCHOOL DISTRICT

By: 
Title: Superintendent

Approved as to form:

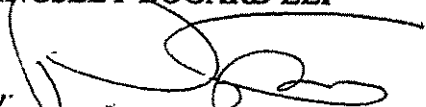
Dated: November 7, 2011

WEINBERG, ROGER & ROSENFELD

By: 
Stewart Weinberg
Counsel for BCCE

Dated: November 9, 2011

KINGSLEY-BOGARD LLP

By: 
Paul Gant
Counsel for BUSD

To: The Personnel Commission
From: Peter Rogosin, Interim Personnel Director
Date: April 6, 2017
Subject: Revision of Commission Rules §40.200.13 and §50.200.4-B

Recommendation:

It is recommended that the Personnel Commission approve the revisions identified below to Rules §40.200.13 and §50.200.4-B.

Background:

The recommended revisions to Personnel Commission Rules §40.200.13 Ties in Examination Scores and §50.200.4-B - Procedure of Certification and Appointment from Eligibility lists will conform the Rules to comply with the language of the California Education Code.

California Education Code §45272 states that;

“The final scores of candidates shall be rounded to the nearest whole percent for all eligibles. All eligibles with the same percentage score will be considered as having the same rank. Appointments shall be made from the eligibles having the first three ranks on the list who are ready and willing to accept the position.”

40.200.13 Ties in Examination Scores*

When two or more competitors in an examination have the same final examination score, ~~preference in placement on the eligibility list shall be based on the following provisions applied in the following order:~~ *A. Higher rank shall be given to the competitor with the higher score in the performance test, if any. B. Higher rank shall be given to the competitor with the higher score in the written or oral technical test. C. Higher rank shall be given to the competitor who filed his/her application earlier.* *they shall be placed on the same rank of the eligibility list and when a rank is certified to the hiring department all names on the rank shall be referred.*

Personnel Commission Rule 50.200.4-B - Procedure of Certification and Appointment from Eligibility lists states that;

“The Personnel Director shall ascertain the availability of eligibles and shall certify three ~~names~~ *ranks* to the appointing power in accordance with these rules.”

*Deleted words are shown in strikeout and inserted words are shown in italics.

To: The Personnel Commission

From: Peter Rogosin, Interim Personnel Director

Date: April 6, 2017

Subject: Proposed Revision Personnel Commission Rule 70.100.1

There are currently two contrasting methods for reviewing a hiring managers' decision to request that a newly hired employee be placed on an advanced step of the salary range. The Personnel Commission Rule applies to Non-Represented and BCCE employees while the Local 21 Contract language applies to its members.

A revision to the Rule is recommended because the language differs conceptually for Bargaining Unit and BCCE represented and Non-Represented classified employees - e.g. the class is difficult to recruit for vs. speaking to the qualifications of the individual.

Personnel Commission Rule 70.100.1, Initial Placement states that,

(A) All new employees shall be appointed at the hiring rate for the class as approved by the Commission. The hiring rate shall be the first step of the schedule except for classes where recruitment efforts have indicated difficulty in recruiting at that step. An accelerated hiring rate may be set, with the approval of the Board and the Commission, at any step of the schedule of the class.

The Contract for Local 21: Article VIII. Compensation §21 states that,

The District may place new hires with three (3) or more years of experience on the salary schedule at the step that will ensure that the new hire receives no less than a five per cent (5%) increase from his/her current rate of pay, inasmuch as that step is within the current salary schedule for the classification. The District shall have sole discretion to determine whether a new hire has the necessary experience under this Article.

In either case, the Personnel Commission has a limited role in concurring with the District that advanced step placement is appropriate. In essence, it is the District that makes the recommendation and the Personnel Commission ensures compliance with the PC Rules regarding advanced step placement.

A second consideration in revising the Rule is the effect some advanced step placements have on existing employees. For example, a very well qualified new hire may be placed on an advanced step that exceeds the step another equally well qualified employee is on. Morale may suffer as well as the efficiency of the affected department.

The Personnel Commission is specifically empowered to write Rules for the classified service that maintain merit system principles and, "such rules as may be necessary to insure the efficiency of

the service and the selection and retention of employees upon a basis of merit and fitness.”
[Reference Education Code §45260]

The recommended revised language is,

An eligible may be hired above the lowest step of the applicable salary range when the qualifications of the selected eligible exceed the education and/or experience standards established by the Personnel Commission in the class description. ~~Whenever an advanced step placement is made, the qualifications of current regular employees in the class shall be reviewed and those who are below the step for which the employee would qualify as a new hire shall advance to that step.~~



Personnel Commission of the Berkeley Unified School District

2134 Martin Luther King Jr. Way, Berkeley, California 94704-1180

Agenda Item Request Form

You may fax this form to (510) 644-6151 attention to Peter Rogosin, hand deliver it to the address above or scan and email to The Human Resources Department is open Monday through Friday from 8:00am to 4:30pm.

The deadline for submitting a request for items to be included in a Personnel Commission Meeting is 4:00pm 7 calendar days prior to the Personnel Commission Meeting you are considering. This form can be obtained from the Secretary to the Personnel Commission or by downloading the form from the Berkeley Unified School District website under the Personnel Commission.

Name of Person Requesting Item for Agenda: Marie Ferguson

Telephone Number: **510-379-6166**

Email Address: **bccemarie@gmail.com**

Description of Item:

- Back Pay
- Working out of Class

I am a School Administrative Asst. II (range 46) performing the duties of HR Technician/Sub Coordinating which is at a higher pay (range 48). Working at Berkeley High School the complexity of substitutes is far greater than working at Elementary or Middle School. I facilitate and coordinate daily substitutes such as locating and arranging for substitutes to cover employee absence for a full or partial day. Run substitute daily sub report, issue substitute keys and collect substitute timesheets for signature. I have been performing these duties since 01/10/17.

Background Information:

(Please attach or include some background information to assist the Personnel Commission in determining appropriate action.)

For Personnel Commission Use Only:

Date of Chairperson Review: _____

Determination: Place on agenda for meeting of _____
Date of Personnel Commission Meeting

Place on agenda as _____
Type of Item

Do not place on agenda

To: The Personnel Commission
From: Peter Rogosin, Interim Personnel Director
Date: April 6, 2017
Subject: Request for Work-Out-Of-Class - Marie Ferguson

Recommendation:

It is recommended that the Personnel Commission find that Ms. Marie Ferguson, working within her classification as a School Administrative Assistant II at Berkeley High School.

Background

The Personnel Commission received a request dated March 16, 2017 from Marie Ferguson, School Administrative Assistant II, Berkeley High School, requesting Work-Out-Of-Class pay for performing the following tasks:

1. "Locating and arranging for substitutes to cover employee absence."
2. Running the daily substitute report.
3. Issuing "substitute employees with keys."
4. "Collect(ing) substitute timesheets for signature."

Personnel Commission Rule 30.200.6 Working Out of Classification specifies that:

An employee is not expected to be required to work out of classification, but when he/she is required to do so the fact shall be reported to the Personnel Director, who shall immediately investigate and report to the Personnel Commission.

After review, the Commission shall take such action as necessary based upon the facts. This rule shall not be construed as permitting an employee to refuse to perform duties legally assigned by competent authority.

An employee may be required to perform duties inconsistent with those assigned to the position by the governing board provided that his/her salary is adjusted upward to 5% or at the salary range of the higher' classification, whichever is greater, for the entire period he/she is required to work out of classification.

Education Code §45276 states:

The governing board shall fix the duties of all positions a part of the classified service as required by Section 45109. The board may recommend the minimum educational and work experience requirements for classified positions to the personnel commission. Minimum qualification requirements shall be subject to approval of the commission.

Education Code §45110 states:

Classified employees shall not be required to perform duties which are not fixed and prescribed for the position by the governing board in accordance with Section 45109, unless the duties reasonably relate to those fixed for the position by the board, for any period of time which exceeds five working days within a 15-calendar-day period except as authorized herein.

An employee may be required to perform duties inconsistent with those assigned to the position by the governing board for a period of more than five working days provided that his salary is adjusted upward for the entire period he is required to work out of classification and in such amounts as will reasonably reflect the duties required to be performed outside his normal assigned duties.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

Basis for the Recommendation:

Personnel Commission staff reviewed the tasks identified on the employee's request (see above) and identified corresponding tasks on the classification description for School Administrative Assistant II. They include:

1. "Assist the Human Resources Department with facilitating site substitute coverage"
2. "Assist substitute employees by providing keys, materials and pertinent information"
3. "Collect and code timesheets" and,
4. "Input a variety of data into an assigned computer system; maintain automated records and files; initiate queries and generate a variety of computerized lists, spreadsheets and reports as requested; assure accuracy of input and output data."

According to the class description the class concept of a School Administrative Assistant II is to "coordinate a wide variety of administrative and other office functions and activities related to the administration and operations at the school." The tasks identified by Ms. Ferguson and listed above were evaluated as falling within the tasks typically performed by incumbents in the Clerical/ Administrative Assistant hierarchy and reasonably relate to those fixed for the position.

In addition, the minimum qualifications for the class of School Administrative Assistant II require incumbents to have, "Five years of increasingly responsible secretarial and clerical school office experience involving public contact. " In light of the significant prior experience and level of expertise required of incumbents in this classification, the tasks identified and performed by Ms. Ferguson do not appear to be outside the expected assignment.

To: The Personnel Commission
From: Peter Rogosin, Interim Personnel Director
Date: April 6, 2017
Subject: Advanced Salary Step Placement for Vehicle and Equipment Mechanic

The District has selected Mr. Si Yazid Kahil to serve in the class of Vehicle and Equipment Mechanic and is requesting advanced step placement on the salary schedule.

Personnel Commission Rule 70.100.1 Initial Placement states, "(A)ll new [District*] employees shall be appointed at the hiring rate for the class as approved by the Commission. The hiring rate shall be the first step of the schedule except for classes where recruitment efforts have indicated difficulty in recruiting at that step. An accelerated hiring rate may be set, with the approval of the Board and the Commission, at any step of the schedule of the class.

The minimum qualifications (MQ's / EQ's) for entrance to the selection process are:

Any combination equivalent to: graduation from high school supplemented by specialized training in the repair and maintenance of gas and diesel powered equipment/vehicles and three years of journey-level automotive or diesel maintenance and repair experience.

Obtaining highly qualified diesel mechanics has been difficult. The latest recruitment resulted in only one name being placed on the employment list. Staff reviewed the qualifications of Mr. Kahil and has determined that the experience of the new employee meets the criteria for advanced step placement. In addition to having 15 years' experience in all phases of heavy duty and auto repair, Mr. Kahil has an Associate degree from the College of Alameda in Diesel Mechanics, taught in the diesel mechanic program at the college and has obtained numerous training and certifications in such areas in air brakes, emissions and inspections.

Due to the extensive related background of the employee, the District has requested to start the new employee at an advanced step on the salary range, which in the present case would be step 3.

Recommendation: It is recommended that the Personnel Commission concur with the District recommendation to place Mr. Si Yazid Kahil, Vehicle and Equipment Mechanic, at step three (3) of Range on the Salary Schedule.

*Commission staff not included

To: The Personnel Commission
From: Peter Rogosin, Interim Personnel Director
Date: April 6, 2017
Subject: Revision of the Class Description – Delivery Driver

Recommendation:

It is recommended that the Personnel Commission revise the requirement in the Delivery Driver class description for possession of a Forklift Certificate at time of application from must possess a valid Forklift Operator Certificate to “Some positions in the class require a valid Forklift Operator Certificate to be obtained during the first six months of employment.”

Background:

The primary duties and responsibilities of the Delivery Driver is to “drive a vehicle to various locations to pick up and deliver items, [including] mail, food and supplies.” The current class description for Delivery Driver also notes that the Delivery Driver shall “operate a variety of standard warehouse and delivery equipment including food carts, forklifts, pallet jacks, hand trucks and dollies.”

The current minimum requirements (MQ’s/EQ’s) to be included in the selection process Delivery Driver require the applicant to possess a “Valid Forklift Certification.” Cost of the training is approximately \$60 and, unless the applicant worked in a warehouse setting, the Certification would not be something a delivery driver would have. This requirement has therefore unduly restricted the pool of applicants with Delivery Driver experience to those with prior forklift experience. In addition, not all Delivery Driver assignments involve operating a forklift.

Staff has reviewed the duties and responsibilities of the Delivery Driver, spoken with the incumbent and with the supervisor. This confirmed that the use of the forklift is very rare and the work environment in which the forklift is operated does not present the same level of risk as a full-service warehouse with narrow aisles and high shelving of heavy items that must be retrieved using a forklift. The department is not adverse to the requirement being deleted from the class description.

For safety reasons, possession of the certificate by anyone who would be using the forklift is a “best practice.” For this reason, the recommended revision to the class description is not to abolish the certification requirement but remove the requirement for entrance to the selection process and specify that some positions in the class require the employee to obtain a Fork Lift Operator Certificate the first six months of employment.

To: The Personnel Commission
From: Peter Rogosin, Interim Personnel Director
Date: April 6, 2017
Subject: Revision of the Class Description – Nutritional Services Assistant

Recommendation:

It is recommended that the Personnel Commission revise the requirement in the Nutritional Services Assistant class description for possession of a “ServSafe” (food handlers) Certification at time of application from must possess a ServSafe Certificate to “Positions in the class require ServSafe Certification to be obtained during the first 30 days of employment.”

Background:

The primary duties and responsibilities of the Nutritional Services Assistant are to prepare and serve food at an assigned school site or within the production kitchen and maintain food service facilities, equipment and utensils in a clean and sanitary condition. This requires knowledge of safe food handling practices. This knowledge is best demonstrated by possession of the ServSafe certification. In order to obtain the certification the employee must take and pass a qualifying test administered by the National Restaurant Association.

Staff has reviewed the duties and responsibilities and spoken with the Nutritional Services Assistant supervisor who confirmed that the certification is not a mandated requirement during the first six months of employment. The department is not adverse to deleting from the class description the requirement for possession of the certification at time of hire with the provision that the certification be obtained within the first 30 days of employment.