

**Personnel Commission Minutes  
Special Session  
Tuesday, October 14, 2008  
4:00 PM  
Berkeley Unified School District  
2134 Martin Luther King Jr. Way  
Berkeley, CA 94704**

**1. Call to Order**

Meeting called to order by Commissioner Margaret Rowland.

**Roll Call**

Roll call was taken by the Director of Classified Personnel. Commissioners Shirley Van Bourg, Margaret Rowland, and Dan Lee were present.

**2. Public Comments**

Paula Phillips, BCCE, stated that nothing has been done in relation to the School Secretary III position.

**3. Salary Market Survey and Classification Study Update**

Katie Kaneko, Koff and Associates project manager for BUSD compensation study, stated that data gathering and analysis has been completed and submitted to BUSD. BUSD has provided feedback to Koff and Associates.

Koff and Associates contracted with BUSD in April 2008. They met with Alan Levinson and Dick Dodson, then with union representation. They came to an agreement in May about benchmarks, data to be collected, and the twelve comparators to be used. Data collection started immediately. Delays were anticipated because the study started in May, when most districts are shutting down. Oakland, Alameda County, and West Contra Costa were particularly unresponsive. Koff and Associates told BUSD immediately. Oakland was not able to provide class descriptions and data from Oakland was eventually thrown out. BUSD wanted to wait for West Contra Costa to move forward. Koff and Associates got data from WCCUSD in mid-September and gave it to BUSD. Lisa Udell and the cabinet sent questions to Koff and Associates and Koff and Associates responded.

The next step is employee feedback through union representation. Spreadsheets and statistics are to be provided to union representation, and employees are supposed to look at it make sure that matches are correct.

After getting a response from employees, Koff and Associates will respond in writing.

Next, Koff and Associates will make recommendations based on the base salary or total compensation and set up new salary schedules and make range placement recommendations. For those classifications that were not benchmarked, they will make internal placement recommendations.

Next, Koff and Associates will give the District a draft of a narrative of the process, recommendations, and findings for review. Once that review is done, it is finalized and brought to the board. Estimated completion date for last draft is mid-November.

Francisco Martinez commented that Kaneko cannot attend the scheduled meeting on Friday, so the next meeting will be rescheduled for Monday, October 20<sup>th</sup>.

Tracie De Angelis asked what happens in the case of positions like hers, which was not one of the benchmarks, and which has changed since RSG did the description. Kaneko responded that the determination will be made based on the classification descriptions that Koff and Associates received. De Angelis asked if employees in positions that were not benchmarked will have an opportunity to respond. Kaneko responded that they would not.

Pat Robinson commented that the advisory committee that was supposed to take part in the process has not been included in prior meetings. Furthermore, the merit commission has made salary recommendations to the District. There are a large number of classified employees that feel that they have not had input in the process. He asked what input Koff and Associates has gotten Lisa Udell, Dick Dodson, and Lou Jones and whether Koff and Associates changed anything based upon their input.

Kaneko responded that the July 3<sup>rd</sup> meeting was mainly about the fact that Alan Levinson and Dick Dodson were both leaving, and the discussion was out the transition from the original team as well as what they should do about the lack of data from WCCUSD. There was no feedback about the data, but management asked questions about methodology. Once all data was collected, it was submitted to management. It is typical in this process for management to look at the data first.

Robinson responded that the advisory committee should have been included in all steps of the process, and that there were concerns that have not been discussed during the process, for example that RSG changed so many job

titles, and expressed concern about the high level of authority that District management had during the process.

Phillips asked about the timeline for the process up to this point, and clarified that up to now all contact has been between Koff and Associates and cabinet. Phillips commented that according to merit rules, the merit commission, not the cabinet, is supposed to have oversight over classification study. Phillips expressed serious doubts about the validity of information passed between Koff and Associates and District management.

Kaneko responded that it is consistent with Koff and Associates methodology to meet first with the cabinet, and then give the information to employees. Koff and Associates recommends giving spreadsheets to employees through the union. Kaneko also stated that the advisory committee will have access to all the spreadsheets and that they will be able to ask any questions that they deem appropriate.

In discussing the total monthly compensation data, Kaneko explained that total compensation included a person at the top of the pay scale and all of the benefits that that a person could receive as an employee of BUSD, and that data is consistently applied to every single position in the benchmarks.

Kaneko said that she would bring all three data spreadsheets to the next meeting. Phillips asked to have a copy of the data spreadsheets prior to the next meeting so that she could review the data and ask questions at the meeting. Martinez expressed concern about data that is distributed before it is agreed upon. Kaneko said that there should be an understanding of what the data represents before it is distributed. Paula said that District Board members have had the opportunity to review the data and give their input, and the union has not, and asked to see all drafts of the data. Kaneko agreed to provide the drafts to all members of the advisory commission.

Martinez asked that the data be given to those on the advisory commission, but that the data is kept confidential. It was agreed that hard copies of the data would be distributed on a confidential basis.

Robinson asked about positions for which RSG has recommended certain salaries, and asked whether RSG's best guess would be used in the case of positions that Koff and Associates determined to have insufficient data. Kaneko responded that they need at least four matches to each position to have sufficient data, and that if there is insufficient data Koff and Associates must make an internal recommendation.

Kaneko provided an explanation of the Side-By-Side Results Summary and clarified that the amount that is used to determine the total monthly salary is based on the maximum that the employer will pay.

Kaneko clarified that the feedback that District employees should provide should be related to whether the matches are accurate or not.

There was a discussion about the job titles used for comparison. Phillips stated that the job descriptions created by RSG have not yet been finalized, so Koff and Associates are using job descriptions for comparison that employees have not had the opportunity to appeal. Martinez said that all employees were mailed their job description as it was seen by RSG, and that if they wanted to appeal they submitted the appeal to RSG.

Robinson commented that job titles are not as important as pay in determining whether he would agree with a change. Phillips stated that the education and experience requirements for each job have not yet been set.

Kaneko said that the district will provide recommendations as well as the rationale for the recommendations after Koff and Associates gets the employee feedback and is able to gather the data.

Martinez stated that at the next meeting, the District must focus on moving forward with the process from this point.

In response to a question about the extent of involvement that the Commission has with the data, Commissioner Rowland stated that the next group to provide input is the employees. Kaneko added that Koff and Associates make their recommendations after getting the employee input, and then asks for input from everyone.

Gloria Dudley expressed concern about the length of time that the study has been in progress and asked for an estimate for the completion date. Kaneko responded that their process typically takes six to eight months, and that it is then the District's responsibility to implement the changes.

Phillips stated that Denise Diggs-Ray, BCCE, who was unable to attend the meeting, would like the Commission to consider beginning the appeal process, re-classing positions for which titles exist, and, for those positions for which titles exist, bring them up to where they fall on the salary scale.

Phillips expressed concern that the District would reach a stalemate in trying to implement the changes because the District is trying to do everything at

once. She suggested coming up with a plan to implement changes in stages, particularly given the new budget.

There was a discussion about the fact that many districts implement changes in stages by doing one third of employees each year, and suggested that BUSD might implement changes in this manner.

Meeting was adjourned at 5:20 PM.

**Personnel Commission Minutes**  
**Regular Session**  
**Thursday, November 6, 2008**  
**4:00 PM**  
**Berkeley Unified School District**  
**BUSD Annex**  
**1835 Allston Way**  
**Berkeley, CA 94704**

**1. Call to Order**

Meeting called to order by Commissioner Margaret Rowland.

**Roll Call**

Roll call was taken by Francisco Martinez, Director of Classified Personnel. Commissioners Shirley Van Bourg, Margaret Rowland, and Dan Lee were present.

The Commissioners adjourned to closed session. The meeting returned from closed session at 4:00 PM. Commissioner Rowland announced that there was a unanimous vote during closed session to place the Director of Classified Personnel on Step II.

**2. Public Comments**

A member of BCCE discussed a grievance that was filed with the District. Rowland stated that she is not aware of the grievance. Martinez stated that a memorandum was mailed to Commissioner Rowland's home. Rowland stated that she did not receive it.

**3. Classification Study Process in Alameda County Office of Education**

Rick Minnis, Alameda County Office of Education Human Resources, discussed classification studies. According to Minnis, three parties are involved in classification studies: the Personnel Commission, Administration and Board, and the local bargaining unit. Classification studies are a part of what merit systems do. Without a merit system, it is up to the union to insist that the employer re-evaluate a position or compensation. A merit system provides an organized structure for this process as job descriptions evolve. Typically, merit systems require that positions get evaluated every three to five years. There is also a Classification Study Commission that meets when an employee or supervisor wants a position evaluated. Minnis encouraged

BUSD to practice an ongoing, continuous, individual evaluation of staff as positions come to the attention of the Commission or management.

Minnis distributed a sheet about the overall responsibilities of classified employment.

Minnis said the most important thing about classification studies is that the District has trust in the contractor chosen to do the study. According to Minnis, it works best if a removed third party is involved, rather than the District doing the study internally.

According to Minnis, adopting job specifications is a Merit Commission duty. When creating a job, the employer or manager decides what they want done, and the Merit Commission forms a job description based on that. Education, experience, and knowledge required are decided by the Merit Commission. The employer has the right to reject the job description. Any changes to a job description must be adopted and approved by the Commission.

The employer sets the salary after negotiation with union. The Commission sets the internal alignment, for example the difference in pay between level I, II, and III classifications.

In a classification study, the vendor should meet independently with the incumbent person in the position to get details on what the job entails, education and experience needed, etc. The vendor and the employee should discuss it and the vendor should develop a job description. This goes to the immediate supervisor for approval or for changes. If the immediate supervisor feels changes are needed, they meet with the vendor and the employee. If an employee feels that their classification does not represent what they do, they ask for a meeting with the vendor, management, and representation. At the appeal level, the incumbent makes a presentation to the personnel commission, the union is there for support, the immediate supervisor is there, and everyone has input in discussing the job description with the Commission.

Once the job description is done, the union and management implement the description. In some districts, it may take years to implement changes in pay.

Rowland commented that one of the challenges that have come up in BUSD's classification study is that classification studies are supposed to fall under the purview of the Merit Commission, but in this case it was set up under the control of the Board. This has meant that the Commission is now trying to figure out what its role is from this point forward.

Minnis said that if the party that pays for and administers the classification study is the same party that will handle compensation, this presents a conflict. One of the benefits of using a merit system is that this conflict does not exist.

There was some discussion about problems with the current classification study in BUSD, including that it has taken over two years and is not yet in the implementation stage and that originally the District did not want to include a salary survey, so the original vendor did not include one. The original vendor changed numerous job titles.

Minnis explained that if a job description is changed to include higher skills, the minimum qualifications must also change. The employer must approve changes in job duties. If they do not want to include duties in a job description that will cause them to pay an employee a higher salary, they can tell the employee to stop doing those tasks and keep those duties out of the job description.

There was discussion about the fact that BUSD's Merit Commission has not accepted the internal alignment of the job descriptions and that there have been a number of instances in which there was a gradual increase in duties over time, a contractor made recommendations for job titles and descriptions, including alignment, and these have not been adopted. Minnis explained that the Commission is always available to management and employees for input in public view.

Commissioner Rowland asked about districts that have an ongoing process in which a portion of all of the jobs are examined each year, so that each job in the district is examined within each cycle, which may be three to five years. Minnis said that this practice is helpful because it allows for more attention to be paid to each job and it is less disruptive. Costs for this type of study are usually the same as costs for studies that review all jobs at once.

Phillips asked how districts with this type of ongoing process determine which jobs are reclassified first. Minnis responded that it is often based on need.

In response to a question from Phillips, Minnis said that a classification study should be paid for from the Commission's budget.

Phillips asked for clarification on the steps involved in the reclassification of a position. Minnis explained that the job description and title is determined and appealed, if necessary, before salary is attached, and without discussing how changes in a given job description might affect internal alignment.



Phillips stated that BUSD employees have not had an opportunity to appeal their job descriptions. She stated that employees were given the opportunity to submit a written appeal to the vendor, but they were not given the opportunity to appeal to the Commission.

Martinez clarified that Berkeley has a classification study committee, and that management and the union read all job descriptions before the descriptions were sent out. The committee drafted a letter and sent all employees and managers a job classification and a job title with information about how to appeal. If there was an appeal, the employee and the manager would send a rebuttal to the vendor. The vendor would then decide whether to agree with employee or with management.

Denise Diggs-Ray, BCCE, said the problem with this process was that management saw what the employee wrote but the employee did not see what management wrote. Robinson added that, during the 1997 classification study, there were occasions in which management and the employee agreed that a job description should be changed and the vendor did not change the description.

There was further discussion regarding agreement on internal alignment. There was concern that there is a need for more union-specific agreements about internal alignments because the process has been made complex by gradual accretion of duties, changing of job titles, and by questions about the relationship between a title upgrade and seniority. Minnis explained that the internal alignment is the salary schedule. Minnis said that job descriptions should not be specific to a particular department, but to the job functions associated with the position. When there are changes due to grants or layoffs, there should not be a job description change.

Diggs-Ray asked what the next step should be in the District's classification study given the fact that there are job descriptions that have not yet been approved but that have been salary surveyed. Minnis responded that the District should wait for the salary survey to be complete. Phillips commented that the employees have not gotten the opportunity to appeal job descriptions or titles.

Minnis said that in his commission the commission approves the job titles and specifications at the same time as they do the market salary survey. The survey is for information only to provide direction for internal alignment and is negotiable. The job is packaged with internal salary alignment when it comes to the commission, not in discussion with the manager or employee.

Martinez asked who is involved in meetings during the appeal process prior to the appeal. Minnis responded that in the case of an appeal in his system there was an immediate supervisor, their supervisor, a human resources person, the incumbent, a union person, and a state person. The decision is ultimately made by the vendor.

**4. Approval of Minutes**

In the October 2<sup>nd</sup> minutes, the third sentence in the Approval of Minutes should be corrected to add “and asked if an updated timeline could be provided.” On page six, the sentence beginning on the seventh line down should be changed to add that Diggs-Ray asked what else the Director of Personnel Services does in regards to classified. The second sentence in the third paragraph in the Response to Questions from Previous Commission Meeting agenda item should be changed to clarify that the three requirements for reinstatement of an employee are that the person must be a former employee, they must be in good standing, and the hiring authority must want to re-hire them. The third sentence in the Implementation of the Rules & Regulations of the Rules and Regulations of the Personnel Commission section should be changed to read, “The previously-named Rules Revision Committee is working on updating the rules and regulations, and they will be available after they have been approved by the Personnel Commission” instead of “The previously-named Rules Revision Committee is working on updating the rules and regulations to be in compliance, and they will be available after they have been approved by the Personnel Commission”. On page four, in the second paragraph in the Response to Question form the Previous Commission Meeting section, the name “Johnny Phillips” should be changed to read “Johnny Billups”.

The minutes were accepted as corrected.

**5. Response to Questions from Previous Commission Meeting**

Francisco Martinez, Director of Classified Personnel, reported that someone had asked whether she could submit her application for the Afterschool Program Coordinator position at BTech. That application was accepted, but there are not enough applications so more applications will be requested.

There was a discussion about questions that had been asked in a previous meeting that were not addressed. Martinez responded that if he is asked during a meeting to respond to a question he will have an answer by the next meeting.

There was some discussion about an administrator that knew an applicant's test scores and kept a provisional employee after being instructed not to do so. Martinez responded that the members of the applicant's oral panel signed a confidentiality agreement not to divulge any information from the oral panel. There was a discussion about the extent of the information that was given to the administrator. Pat Robinson, BCCE, said that the administrator assumed that the outside candidate scored cumulatively more than anyone on the internal list and that he thought he should be able to hire the person with the highest score instead of people from the internal list, who scored lower.

Phillips stated that she had asked about the Director of Personnel Services being required to be a certificated person, thus eliminating the classified position. Educational Code section 45241 prohibits that from happening.

Robinson said that the certificated Director is supposed to help the Assistant Superintendent deal with issues related to certificated employees, for example licensing and salary schedule. Jobs have been assigned to the certificated Director that were under the purview of the Labor Relations Committee. Phillips added that the Superintendent told the Superintendent's advisory committee that this was a value-added position that would not be eliminated. However, after Dick Dodson resigned, his duties were assigned to a certificated person. Martinez will read the applicable codes and report back to the Commission. There was some discussion about whether this position had been on the list of those to be cut. Martinez clarified that it was considered but not added to the list of positions to be slated for lay-off. There was a comment that since Dick Dodson resigned, the position should have been posted a long time ago if it was not cut.

Phillips inquired as to which board meeting and which open session it was reported out what Pasquale Scuderi's title is.

## **6. Approval/Ratification of Eligibility Lists**

Eligibility lists A, B, E, and F were unanimously accepted.

There was a discussion about eligibility lists C and D for Program Coordinator - Student Court. Phillips said that the department is identified in the job title only to indicate where the employee will work, but the program coordinator is a non-specific position. Monica Thyberg, BSEP manager, discussed the funding for the position and the timeline of the creation of the position. Martinez said that the questions asked during the oral panel were generic questions for a program coordinator position. Phillips said that there was an eligibility list for the program coordinator position for the Student Learning Center that was supposed to be combined with the non-specific Program

Coordinator list, but it does not appear that lists had been combined. Martinez recommended that the two lists be merged and that in the future, positions are non-specific to the location, and that there is only one list for each job title.

The Commission did not take action on eligibility lists C and D so that the two lists can be merged before the list is approved.

There was a discussion about the notices that are sent to applicants to inform them of their test scores. Martinez explained that when he began working in the position of Director of Classified Personnel the office was about three months behind in sending the notices, and that he is working on catching up. Phillips informed the Commission that Commission rules require that the notices are sent within ten days. There was agreement that the District does not currently have the resources to accomplish this.

Robinson cited section 50.200.5 regarding certification from a list for another class to clarify the rules related to eligibility lists.

**7. Policy on Placement of Items on the Personnel Commission Agenda**

There was a discussion about the deadline to submit items for the Personnel Commission agenda.

The Commission moved to change the policy so that non-Commissioners must submit items for placement on the Personnel Commission Agenda on the Tuesday of the week before the scheduled meeting. The motion was unanimously approved.

Denise Diggs-Ray asked for clarification about the topics that need to be placed on the agenda. The Commission responded that anything that requires action must be placed on the agenda.

**8. Clarification of 1/9/08 School Board Discussion on the Classification Study**

Martinez showed the tape of the January 9<sup>th</sup>, 2008 School Board meeting to clarify whether or not the Board approved the RSG job descriptions.

Diggs-Ray said that Mark Coplan had said that the Board may have approved the job descriptions in closed session. Van Bourg said that the Board would not have approved the job descriptions in closed session.

The tape of the Board meeting showed that the job descriptions were presented at the meeting only for review, not for adoption or approval, and that no action was taken.

9. **Revised Job Description of Health Education Assistant**

Martinez reported that BTech applied for a grant to hire a health education assistant. Martinez presented a job description for this position based on a job description that dates back to 1993. The job description was changed to say that the health education coordinator will work under the lead of the Program Coordinator, rather than the direction of the Program Coordinator.

Phillips expressed concern that new positions are being created while positions have not been approved from the classification study. Phillips also expressed concern that BUSD employees are often passed over for promotional opportunities, particularly at BTech, and that BTech places people in positions as provisional employees who do not have clearance to work at the site before the position has been posted. In these cases there is often an expectation that these individuals will take the permanent position. This means that people from outside of the District are given preference over permanent employees.

Martinez reported that he has discussed this problem with the principal at BTech as well as other managers throughout the District, that he aware that this is a problem, and that he is trying to correct it. He said that if this position is posted as a promotional placement only, there may not be enough qualified applicants among current BUSD employees.

There was a comment about the fact that there are many paraprofessionals that have a Bachelor's or Master's degree.

There was a suggestion that the District move forward with filling the position so that students can receive the help that they need. There was discussion about whether the position should be posted as an open position or whether it should be offered as a promotional placement.

Martinez said that if the job is approved he will post quickly to avoid having a provisional employee fill the position for a long time before a permanent employee is hired. The Merit Rules allow for provisional placement if there is a need to fill the position before a permanent employee is hired.

Martinez clarified that provisional employees do not have benefits or rights to the job. There was a discussion about the fact that permanent employees can

go into a job provisionally, but they do not typically do this because they do not want to leave their current job until they are sure that they have a new one.

The job description was unanimously approved with the change discussed.

Martinez said that he will try to have an eligibility list for the new position by the next Commission meeting.

There was a proposal that the District create a policy that individuals should not be interviewed by people that they know.

**10. Hiring of Professional Experts (Memo to be provided at Commission Meeting by BCCE)**

Phillips informed the Commission that over the past several years the District has violated the Education Code when hiring classified employees by using professional experts, limited-term employees, and substitute employees in positions that do not exist. She discussed some examples of people that have been hired to do work in the District as substitutes or independent contractors when extra work was needed. In these cases, the position was not created, posted, or filled according to Education Code hiring policies and permanent employees were not given the opportunity to apply. Phillips asked the Commission to direct the Classified Director to follow all merit rules, laws, and regulations related to classified hiring and to post vacancies as they occur.

Lee asked whether these positions would come to the attention of the Classified Director or if they would go through the business office for a purchase order. Phillips responded that there should not be any consultants hired within a merit district that are not approved by the Commission.

This item was placed on the agenda for the next meeting for further discussion. The remaining items on the agenda that were not discussed were also placed on the agenda for the next meeting.

The meeting was adjourned at 7:00 PM.

**Personnel Commission Minutes**  
**Special Session**  
**Joint Session with the Berkeley School Board**  
**Wednesday, November 19, 2008**  
**6:00 PM**  
**Berkeley Unified School District**  
**2134 Martin Luther King Jr Way**  
**Berkeley, CA 94704**  
**(Council Chambers)**

**1. Call to Order and Roll Call**

Meeting called to order by Commissioner Margaret Rowland at 6:05 PM. Roll call was taken by the Director of Classified Personnel. Commissioners Shirley Van Bourg, Margaret Rowland, and Dan Lee were present.

**2. Public Comments**

Paula Phillips, BCCE, expressed her appreciation that the Commission and the School Board were meeting to discuss Personnel Commission and School Board responsibilities, especially as it pertained to the Classification Study.

**3. Responsibilities of the Personnel Commission and the School Board**

Commissioner Rowland thanked William Huyett, Superintendent, John Selawsky, Board Member, and Joaquin Rivera, Board Member, for arranging and attending this meeting.

The Commissioners and Board Members discussed the responsibilities that are shared by the Personnel Commission and the Berkeley School Board. Additionally, they discussed how to address problems with supervisors not following hiring practices.

Paula Phillips inquired how the district addressed supervisors who did not follow hiring rules. Lisa Udell stated that she reviewed the hiring process with all new supervisors over the summer. The length of the process sometimes leads to frustration and oversight on the part of the supervisors. The Commissioners discussed continuous training for supervisors.

Commissioner Rowland and Van Bourg discussed how merit systems worked in other district around the state. The Commission discussed the Commission staffing, and the cooperation of the Commission staff with Human Resources staff.

Paula Phillips, BCCE, brought up a concern that payroll warrants should be certified by the Classified Personnel Director, and there have been errors. Lisa Udell described the process in the Human Resources for reviewing the payroll warrants and in Business Services for personnel requisitions.

The difficulty of overpaying due to multiple positions or timesheets was discussed, along with possible solutions.

Pat Robinson, BCCE, asked about the possible legal conflict of the Berkeley School Board and the Personnel Commission sharing legal counsel.

Johnny Bullips Transportation, asked for clarification on the process for medical returns to work. Francisco Martinez explained that he works with Human Resources staff to insure that the correct documents are completed when an employee returns from medical leave.

Commissioner Van Bourg expressed concern about provisional hiring without input from the Commission. The merit rules and Education Code regulations regarding provisional hiring were discussed.

Superintendent Huyett thanked Deborah Turner, Executive Secretary, for arranging refreshments and expressed a hope on behalf of the Berkeley School Board that the Board and Commission continued to meet from time to time.

Meeting was adjourned at 7:00 PM.



**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Administrative Assistant (Promotional)**

Examination Completed: Written Exam: **November 12, 2008**

Technical/General Fitness Oral: **November 20, 2008**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	Date Certified <u>To Position</u>	Effective Date <u>of Appointment</u>
1. Carol Niehus	_____	_____

**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Administrative Assistant (Open)**

Examination Completed: Written Examination: **November 12, 2008**

Technical/General Fitness Oral: **November 20, 2008**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Heather Butler	_____	_____
2. Brittany DeAvilan	_____	_____
3. Kari Zaft-Gutierrez	_____	_____
4. Sarah Jane Davis	_____	_____

**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Program Coordinator – Promotional**

Examination Completed: Written Examination: **9/2/08**

Performance Evaluation:

Technical/General Fitness Oral: **10/23/08**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Brazil McIntyre	_____	_____
1. Marsha Montgomery	_____	_____
	_____	_____
	_____	_____

**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Program Coordinator -- Open/Combined**

Examination Completed: Written Examination: **12/11/07 and 9/2/08**

Performance Evaluation:

Technical/General Fitness Oral: **12/17/07 and 10/23/08**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. David Luu	_____	_____
2. Lisa Baty	_____	_____
3. Joel Moody (1/10/09)*	_____	_____
3. Julie Shepard (1/10/09)*	_____	_____
4. Paula deJoie	_____	_____
5. William Butkus (1/10/09)*	_____	_____
6. Matthew Akuluze	_____	_____
7. Marqueaux Wilson	_____	_____

\*expires on 1/10/09

**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Administrative Secretary without Shorthand (Promotional)**

Examination Completed: Written Examination: **November 13, 2008**

Technical/General Fitness Oral: **December 3, 2008**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Carol Niehus	_____	_____

**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Administrative Secretary without Shorthand (Open)**

Examination Completed: Written Examination: **November 13, 2008**

Technical/General Fitness Oral: **December 3, 2008**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Jenna Jacques	_____	_____
2. Elizabeth Haro	_____	_____

**BERKELEY UNIFIED SCHOOL DISTRICT**

**Merit System**

Eligibility List for: **Administrative Secretary without Shorthand Bilingual Preferred (Open)**

Examination Completed: Written Examination: **November 13, 2008**

Technical/General Fitness Oral: **December 3, 2008**

List established by Personnel Commission **December 11, 2008** To Expire: **December 11, 2009**

	Date Certified <u>To Position</u>	Effective Date <u>of Appointment</u>
1. Elizabeth Haro	_____	_____

# Berkeley Unified School District

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2134 Martin Luther King Jr. Way, Berkeley, California 94704-1180  
Phone: (510) 644-6150 Fax: (510) 644-6151 www.berkeley.k12.ca.us



**William Huyett**  
Superintendent

To: Personnel Commission of the Merit System  
From: Francisco Martínez  
Director of Classified Personnel  
Date: December 11, 2008  
Subject: Election of Commission Chairperson and Vice Chairperson

## **Background**

Merit Commission rule 20.100.2 states that "the meeting following December 1<sup>st</sup> of each year, the Commission shall elect one of its members as Chairperson and another member as Vice Chairperson, to serve a term of one year or until their successors are duly elected." The December 11, 2008 Personnel Commission meeting is the first meeting after December 1<sup>st</sup>. The Personnel Commission is within its authority to elect its Commission Chair and Vice-Chair.

## **Recommendation**

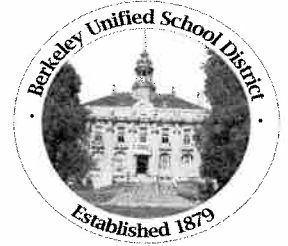
Elect a Chairperson and a Vice Chairperson.



# Berkeley Unified School District

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2134 Martin Luther King Jr. Way, Berkeley, California 94704-1180  
Phone: (510) 644-6150 Fax: (510) 644-6151 www.berkeley.k12.ca.us



**William Huyett**  
Superintendent

To: Personnel Commission of the Merit System  
From: Francisco Martínez  
Director of Classified Personnel  
Date: December 11, 2008  
Subject: Proposed 2009 Personnel Commission Meeting Dates

January 15, 2009

February 5, 2009

March 5, 2009

April 2, 2009

May 7, 2009

June 4, 2009

July 9, 2009

August 6, 2009

September 3, 2009

October 1, 2009

November 5, 2009

December 10, 2009

# Berkeley Unified School District K - 12 2008-2009 Calendar

	Mon	Tue	Wed	Thur	Fri	Key Dates	Highlights	Student Days Elementary	Student Days Secondary	Teacher Days Elementary	Teacher Days Secondary
<b>JULY 2008</b>		1	2	3	4	7/4	Independence Day Holiday***				
	7	8	9	10	11						
	14	15	16	17	18						
	21	22	23	24	25						
	28	29	30	31							
<b>AUG 2008</b>					1						
	4	5	6	7	8						
	11	12	13	14	15	8/25	Staff Development Day**@				
	18	19	20	21	22	8/26	Teacher Work Day (No school for students)				
	25	26	27	28	29	8/27	First Day of School for Students				
<b>SEPT 2008</b>	1	2	3	4	5	9/1	Labor Day Holiday*	3	3	5	5
	8	9	10	11	12	9/4	Elementary Back to School Night				
	15	16	17	18	19	9/11	Middle School Back to School Night				
	22	23	24	25	26	9/25	High School Back to School Night				
	29	30						21	21	21	21
<b>OCT 2008</b>			1	2	3						
	6	7	8	9	10						
	13	14	15	16	17	10/13	Staff Professional Development Day (No school for students)				
	20	21	22	23	24	10/31	End of First Grading Period (K-12)				
	27	28	29	30	31						
						11/4-11/7	K-5 Parent Conferences (shortened days)	22	22	23	23
<b>NOV 2008</b>	3	4	5	6	7	11/7,11/13,11/14	Middle School Parent Teacher Conferences				
	10	11	12	13	14	11/10	K-5 Parent Conference Day and Secondary Staff Development Day (no school for students)				
	17	18	19	20	21						
	24	25	26	27	28	11/11	Veterans' Day Holiday*				
<b>DEC 2008</b>	1	2	3	4	5	11/26-11/28	Thanksgiving Break (no school for students)	15	15	16	16
	8	9	10	11	12	11/26-11/28	Thanksgiving Board Holidays*				
	15	16	17	18	19						
	22	23	24	25	26	12/22-1/2	Winter Recess (no school for students)				
	29	30	31			12/24-12/26	Christmas & Winter Board Holidays* (District closed)	15	15	15	15
<b>JAN 2009</b>				1	2	12/31-1/1	New Year's & Winter Board Holidays* (District closed)				
	5	6	7	8	9						
	12	13	14	15	16						
	19	20	21	22	23	1/19	Martin Luther King Jr. Birthday Holiday*				
	26	27	28	29	30	1/23	End of Second Grading Period/First Semester (secondary)				
						1/26	Secondary Semester Break and Elementary Staff Development Day (no school for students)	18	18	19	18
<b>FEB 2009</b>	2	3	4	5	6						
	9	10	11	12	13	2/13	Lincoln's Birthday Holiday*				
	16	17	18	19	20	2/16	President's Day Holiday* (District Closed)				
	23	24	25	26	27	2/26	High School Open House				
						2/27	End of Second Grading Period (elementary)	18	18	18	18
<b>MAR 2009</b>	2	3	4	5	6						
	9	10	11	12	13						
	16	17	18	19	20						
	23	24	25	26	27						
	30	31				3/27	End of Third Grading Period (secondary)				
<b>APR 2009</b>			1	2	3	4/2	Middle School Open House	22	22	22	22
	6	7	8	9	10	4/6-4/10	Spring Recess (no school for students)				
	13	14	15	16	17	4/10	Spring Board Holiday* (District closed)				
	20	21	22	23	24						
	27	28	29	30							
<b>MAY 2009</b>					1	TBA	State Testing for Secondary begins	17	17	17	17
	4	5	6	7	8	TBA	State Testing for Elementary begins				
	11	12	13	14	15	5/14	Elementary Open House				
	18	19	20	21	22	5/18	Malcolm X's Birthday Holiday*				
	25	26	27	28	29	5/18	Staff Development Make-up Day				
						5/25	Memorial Day Holiday*				
<b>JUN 2009</b>	1	2	3	4	5			19	19	19	19
	8	9	10	11	12	6/12	Last Day of School				
	15	16	17	18	19						
	22	23	24	25	26						
	29	30						10	10	10	10
*Includes Classified Staff **Certificated Staff ***12 Month Classified Staff @Selected Classified Employees								Total Days			
<b>BUSD 2008-2009 School Calendar - Human Resources Department</b>								180	180	185	184
Final 6/10/2008											

# Berkeley Unified School District K - 12 2009-2010 Calendar

	Mon	Tue	Wed	Thur	Fri	Key Dates	Highlights	Student Days Elementary	Student Days Secondary	Teacher Days Elementary	Teacher Days Secondary		
<b>JULY 2009</b>			1	2	3	7/3	Independence Day Holiday***						
	6	7	8	9	10								
	13	14	15	16	17								
	20	21	22	23	24								
	27	28	29	30	31								
<b>AUG 2009</b>	3	4	5	6	7								
	10	11	12	13	14								
	17	18	19	20	21								
	24	25	26	27	28	8/31	Staff Development Day**@	0	0	1	1		
<b>SEPT 2009</b>		1	2	3	4	9/1	Teacher Work Day (No school for students)						
	7	8	9	10	11	9/2	First Day of School for Students						
	14	15	16	17	18	9/7	Labor Day Holiday*						
	21	22	23	24	25	9/10	Elementary Back to School Night						
	28	29	30			9/17	Middle School Back to School Night						
<b>OCT 2009</b>				1	2	10/1	High School Back to School Night	20	20	21	21		
	5	6	7	8	9	10/12	Staff Professional Development Day** (No school for students)						
	12	13	14	15	16	10/30	End of First Grading Period (K-12)						
	19	20	21	22	23	11/5-11/12	K-5 Parent Conferences (shortened days)						
	26	27	28	29	30	11/5, 11/9, 11/10	Middle School Parent Teacher Conferences	21	21	22	22		
<b>NOV 2009</b>	2	3	4	5	6	11/6	K-5 Parent Conference Day and Secondary Staff Development Day (No school for students)						
	9	10	11	12	13								
	16	17	18	19	20	11/11	Veterans' Day Holiday*						
	23	24	25	26	27	11/25-11/27	Thanksgiving Break (no school for students)						
	30					11/25-11/27	Thanksgiving Board Holidays*						
<b>DEC 2009</b>		1	2	3	4			16	16	17	17		
	7	8	9	10	11								
	14	15	16	17	18								
	21	22	23	24	25	12/21-1/1	Winter Recess (No school for students)						
	28	29	30	31		12/23-12/25	Christmas & Winter Board Holidays* (District closed)	14	14	14	14		
<b>JAN 2010</b>					1	12/31-1/1	New Year's & Winter Board Holidays* (District closed)						
	4	5	6	7	8								
	11	12	13	14	15	1/18	Martin Luther King Jr. Birthday Holiday*						
	18	19	20	21	22	1/22	End of Second Grading Period/First Semester (secondary)						
	25	26	27	28	29	1/25	Secondary Semester Break and Elementary Staff Development Day (no school for students)	18	18	19	18		
<b>FEB 2010</b>	1	2	3	4	5								
	8	9	10	11	12	2/12	Lincoln's Birthday Holiday*						
	15	16	17	18	19	2/15	President's Day Holiday*						
	22	23	24	25	26	2/18	High School Open House						
						2/26	End of Second Grading Period (elementary)	18	18	18	18		
<b>MAR 2010</b>	1	2	3	4	5								
	8	9	10	11	12	3/19	End of Third Grading Period (secondary)						
	15	16	17	18	19	3/25	Middle School Open House						
	22	23	24	25	26								
	29	30	31										
<b>APR 2010</b>				1	2	3/29-4/2	Spring Recess (no school for students)	20	20	20	20		
	5	6	7	8	9	4/2	Spring Board Holiday* (District closed)						
	12	13	14	15	16								
	19	20	21	22	23	TBA	State Testing for Secondary begins						
	26	27	28	29	30	TBA	State Testing for Elementary begins						
<b>MAY 2010</b>	3	4	5	6	7	5/13	Elementary Open House	20	20	20	20		
	10	11	12	13	14								
	17	18	19	20	21	5/17	Malcolm X's Birthday Holiday*						
	24	25	26	27	28	5/17	Staff Development Make-up Day						
	31					5/31	Memorial Day Holiday*	19	19	19	19		
<b>JUN 2010</b>		1	2	3	4								
	7	8	9	10	11								
	14	15	16	17	18	6/18	Last Day of School						
	21	22	23	24	25								
	28	29	30										
*Includes Classified Staff **Certificated Staff ***12 Month Classified Staff @Selected Classified Employees								14	14	14	14		
<b>BUSD 2009-2010 School Calendar - Human Resources Department</b>								<b>Total Days</b>		180	180	185	184
										Final	6/11/2008		



**BERKELEY COUNCIL OF CLASSIFIED EMPLOYEES  
AFT Local 6192, AFL-CIO**

December 1, 2008

Personnel Commissioners  
Personnel Commission of the Berkeley Unified School District  
Berkeley Unified School District  
2134 Martin Luther King Jr. Way  
Berkeley, CA 94704

SUBJECT: Professional Experts and All Other Types of Classified Employment

Dear Commissioners:

The Berkeley Unified School District has violated the law for the past several years when it employed Gene Nakamura, a retired Vice Principal, to perform the duties of a classified employee. BCCE is requesting that the Personnel Commission direct Francisco Martinez, Classified Personnel Director to adhere to the Rules and Regulations of the BUSD Merit System and the law according to Ed Code when filling all positions in the Classified Service.

According to the definitions section of the BUSD Merit Rules, there are five types of employees: limited-term, permanent, provisional, regular and substitute. Additionally, the law and the merit rules also list and define emergency and provisional appointments and as outlined in the law, section 45256 of the Ed Code lists and defines those positions which are exempt from the classified service: those which require certification qualifications, part-time playground positions, part-time or full-time day students of a college work study program, part-time apprentices, and professional experts. The law, according to section 45256 states:

No person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above **shall** be employed outside the classified service.

On October 15, 2008, I submitted a request for information to Francisco Martinez, Classified Personnel Director regarding the hiring of Gene Nakamura, a retired Vice Principal who according to Mr. Martinez, was hired to "...direct/coordinate the collection of CBEDS [information] for BUSD." I asked Mr. Martinez to provide BCCE with copies of the following documents:

1. Copies of the job description and job posting (MR 30.100.4 (A))
2. A copy of the written request to hire Mr. Nakamura as a professional expert or the independent Contractor Agreement submitted to HR by Mr. Nakamura

3. The authorization by the Commission for Mr. Nakamura's assignment as a professional expert that lists the duration of time approved by the commission (MR 30.100.4 (E))

To date, Mr. Martinez has not responded to my inquiry. Several years ago, the Classified Personnel Director was responsible for the CBEDS report and prior to his resignation, Robbie Valentine, a Sr. Personnel Assistant was responsible for compiling the data. In the 06 - 07 school year and in subsequent years, the District has employed the services of Mr. Nakamura to complete this task. That the CBEDS report was the responsibility of the two classified employees and that Mr. Nakamura does not fall under any of the previously mentioned categories to perform the duties of a classified employee, is clearly a violation of the law as outlined in the Ed Code. While the district may argue that it does have the right to prescribe the duties of the classified service, it does not have the right to remove a position from the classified service as outlined in section 45241 of the Ed Code, which states:

In any district in which the procedure set forth in this article has been incorporated the governing board **shall** employ, pay, and otherwise control the services of persons in positions not requiring certification qualifications only in accordance with the provisions of this article.

No governing board **shall remove a position** from the classified service by title assignment or otherwise which would then require an incumbent to be credentialed if such position is not required by this code to be designated as certificated.

Subsequently, if the district continues this practice of removing the assigned duties from a classified position, and assigns those duties to a credentialed incumbent, as it did with the classified Director of Labor Relations, I fear that the classified service will suffer the consequences if the district is faced with mid-year cuts.

Several of the most recent examples where the district has violated the law occurred when:

1. Berkeley High School employed the services of a Robert Half International/Accountemps employee to fill the vacancy of a Program Assistant
2. When a Temporary/Hourly/Limited-Term Sr. Records Clerk was hired in the Admissions Office from 8/12/08 to 9/15/08
3. Each time the district employs a substitute employee to work in a position when no permanent employee is absent from work
4. When two provisional appointments for Health Education Assistants were appointed on October 1, 2008.

When the personnel requisitions were approved by the past and present, Classified Personnel Director and the Assistant Superintendent of Human Resources, they violated the law, as outlined in sections 45272 and 45278 (a) of the Ed Code which state:

45272 **All vacancies** in the classified service **shall** be filled pursuant to this article and the rules of the commission, from applicants on eligibility lists which, wherever practicable, as

determined by the commission, shall be made up from promotional examinations, or appointments may be made by means of transfer, demotion, reinstatement, and reemployment in accordance with the rules of the commission.

45278 (a) Written notices concerning tests, vacancies, transfer opportunities, and other selections of shifts, positions, assignments, classifications, or locations shall be posted at all work locations of employees who may be affected, not later than 15 working days prior to the closing date of filing appropriate applications, together with the normal use of newspapers and bulletins for public notice for open or promotional vacancies.

Furthermore, when a violation of appointments does occur, Ed Code section 45310 should be exercised to correct such violations

No warrant shall be drawn by or on behalf of the governing board of any district for the payment of any salary or wage to any employee in the classified service unless the assignment bears the certification of the personnel director that the person named in the assignment has been employed and assigned pursuant to this article and the rules of the commission.

Whenever the commission, after a public hearing, finds that any appointment has been made in violation of this article or the rules of the commission as they apply to examination procedures, the commission may order that no salary warrant shall thereafter be drawn to the employee so appointed, for services rendered after the date of said order. Any violation of this article or the rules of the commission as they apply to examination procedures shall constitute grounds for the dismissal of the employee or employees guilty of such violation.

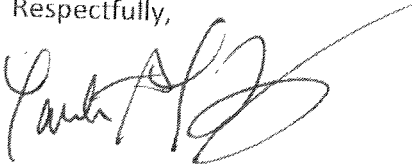
During the October 2, 2008 commission, meeting Mr. Martinez presented a letter to the commission stating his intent to

“...return to the written Rules and Regulations [of the merit rules] and its principles.”

While it appeared to be a grand gesture on his part, the union has discovered that Mr. Martinez has already fallen short in “...implement[ing] the rules and regulations according to its principles...” when he approved the hiring of the Health Education Assistants at B-Tech on October 1, 2008. The commission was not consulted until the November 6<sup>th</sup> meeting and during the discussion, I raised my concerns about the possibility of these positions already being filled or that individuals were already identified by Victor Diaz, principal at B-Tech. Considering the history of the hiring practices at B-Tech, one would have expected to hear from Mr. Martinez on the issue; however, he chose to remain silent. To the union, it appears that his silence in this matter was a deliberate act of guilt by omission because he has stated before that he intends to watch this site very closely.





In closing, as personnel commissioners and as a known adherents to the principals of the merit system, I ask that you carry out your fiduciary responsibilities to uphold the law to ensure equitable and fair treatment of the classified employees of the Berkeley Unified School District, by directing Mr. Martinez to adhere to the Merit Rules of the Berkeley Unified School District, to adhere to all applicable laws according to Article 6 Merit System, and any other relevant laws outlined in the California Ed. Code relating to classified employees.

Respectfully,

A handwritten signature in black ink, appearing to read "Paula Phillips", with a large, sweeping flourish extending to the right.

Paula Phillips, President

Cc: Stewart Weinberg, BCCE Legal Counsel  
Ed Wang, CFT Field Representative  
Mary Lou Saavedra, CSPCA President  
Jack Hayes, CSPCA Executive Director

From:  Denise Diggs-Ray Monday, November 17, 2008 2:47:23 PM   
Subject: Re: Merit Commission - Agenda Items for Dec. 4th  
To:  **Francisco Martinez**  Paulap

**Denise Diggs-Ray on Friday, November 14, 2008 at 9:48 AM -0800 wrote:**  
**Good Morning Francisco,**

**I would like the following items to be placed on the Merit Commission Agenda for action, regarding the Classification Study, on December 4th:**

- 1) Reclassify those employees with the existing job title of Administrative Assistant, as recommended by RSG.**
- 2) Create and implement an appeal process.**

**If you need further information please let me know.**

Francisco,

I would also like to add, please: Possible Classification Study Timeline

These are the three topics I repeatedly asked for answers in the various Merit Commission minutes, regarding the classification study, but issues were never addressed. Hopefully this is the correct procedure in getting that done. (:

Now is there a procedure for confirmation? Please advise.

Thank you.

--

Denise Diggs-Ray, Administrative Secretary  
BUSD Student Services  
1835 Allston Way  
Berkeley, CA 94704  
510 883-5224  
[Denise\\_Diggs-Ray@berkeley.K12.ca.us](mailto:Denise_Diggs-Ray@berkeley.K12.ca.us)

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