

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
SPECIAL PERSONNEL COMMISSION
MEETING MINUTES**

July 14, 2011

A special meeting of the Personnel Commission was held in the Personnel Commission Office. Present were Mr. Gino Barabani, Chairperson, Ms. Rhonda Early, Vice Chairperson and Mr. Michael Salazar, Member.

I. CALL TO ORDER

Mr. Barabani called the meeting to order at 5:46 p.m. Mr. Barabani led the pledge of allegiance.

II. APPROVAL OF AGENDA

Mr. Barabani: Item II, Approval of the Minutes.

Mr. Salazar: No, of the agenda right?

Mr. Barabani: Agenda, sorry. Do I have a second?

Ms. Early: I second.

Mr. Barabani: Call for a vote. Discussion? Rhonda?

Ms. Early: On Action Item V (B) 3, should there be; after *commission* should it be 'forward' inserted in there, I wasn't sure?

Mr. Barabani: Item, I'm sorry, again?

Ms. Early: Action V (B) 3, *it is moved that the commission to the District Attorney*, it doesn't read right so I wasn't sure.

Mr. Barabani: Yeah, *it is moved that the commission...*

Ms. Early: 'forward' maybe?

Mr. Barabani: Yeah, 'forward' *to the*, yeah, that'll work. And also on Action Item B, *the commission will make make*, there's too many makes.

Mr. Salazar: There's a couple of those in there.

Mr. Barabani: Yeah.

Mr. Salazar: Not only that, but on Item C, there's a *make* (inaudible).

Ms. Early: Also on that same item I wasn't sure if that's the way it should have been on the agenda because the Action Item B didn't mention Mr. Astrachan's name so, that was just a question I had, but we're not there yet.

Mr. Barabani: Ok.

Ms. Early: So that; my question would be V (B) 3.

Mr. Barabani: *It is moved that the commission to the District...action...governing board to continue to issue...warrants to Bryan...ok, hold the motion.*

Mr. Salazar: I'm sorry, what was the question?

Ms. Early: My question is that the item; is that the way we want; is that the way it should read?

Mr. Barabani: Yes, since it dealt with the District Attorney we put it all as one and the other items regarding the Grand Jury so.

Ms. Early: Ok.

Mr. Barabani: I figured that would work if not, we'll deal with it. Nersi, did you get those corrections? Ok. We'll move on to the discussion, we still have to vote on the agenda. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I'll abstain.

III. APPROVAL OF MINUTES

Mr. Barabani: Item number III, Approval of the Minutes; we have three minutes, three meetings. *It is moved that the commission approve the minutes for the meeting of January 13, 2011, number (2), it is moved that the commission approve the minutes for the meeting of January 26, 2011 and number (3), it is moved that the commission approve the minutes for the meeting of March 23, 2011.* That's read in the record, I will now go back to item number one, any discussion Mike, Rhonda?

Mr. Salazar: I have not had time to read the minutes.

Mr. Barabani: Ok.

Nersidalia Garcia, Secretary III: Can I ask a question about that?

Mr. Barabani: Sure.

Nersidalia Garcia, Secretary III: I have a concern with the minutes because when I send them to you, on all of them especially; especially on the first one January 13th and the 26th, there seems to be changes that you do, for example, on Action Item IV, it says *Mr. Barabani*; Action Item A, *it is moved that the commission appoint Gino* and so forth...

Mr. Barabani: Ok wait, hold on, let's go; what page?

Nersidalia Garcia, Secretary III: Page 15.

Mr. Barabani: Page 15? Alright.

Nersidalia Garcia, Secretary III: You seem to change stuff, like you bold it and we don't bold it, we always keep it at font 12 and this font is changed and then at the bottom there's a font written so whoever's doing it, you or Mr. Maher, whoever's doing these changes, am I going to submit them in the actual internet process as the way I do it or as the way you changed the stuff?

Mr. Barabani: I have a recording of it and I listened to it. Is there an issue with this now?

Nersidalia Garcia, Secretary III: Well there's just some because we were told to do it verbatim...

Mr. Barabani: You did.

Nersidalia Garcia, Secretary III: ...word by word no matter what. And then on some of them there seems like there are some words changed so, I was just, you know.

Mr. Salazar: What page are you talking about?

Mr. Barabani: 15.

Mr. Salazar: Which page 15, there's page 11 of 135?

Nersidalia Garcia, Secretary III: Oh I'm sorry, page 17 of 135.

Mr. Barabani: Page 15 of the January 13th, 2011.

Mr. Salazar: Oh, ok. For the Action Item, that's all changed?

Nersidalia Garcia, Secretary III: Yes, it's just like you bold certain items that you want to be; take notice.

Mr. Barabani: No, it's not emphasized.

Nersidalia Garcia, Secretary III: I just want to make sure what I am supposed to do on my part.

Mr. Barabani: You just correct. But you are saying that you didn't read them yet Mr. Salazar?

Mr. Salazar: No, I didn't read them; I got them yesterday.

Mr. Barabani: Nersi when you sent me these originally, did you send them around to everyone or just?

Nersidalia Garcia, Secretary III: Yes.

Mr. Barabani: No, just yesterday?

Nersidalia Garcia, Secretary III: No, I sent them a couple of days after...

Mr. Barabani: ...you sent them to me?

Nersidalia Garcia, Secretary III: Yes, I sent them a long time ago.

Ms. Early: To everybody.

Nersidalia Garcia, Secretary III: To everybody.

Ms. Early: So, was there any changes other than the font and some of the Action Items bolded, was there change in content?

Nersidalia Garcia, Secretary III: There was and I found on the January 26th, there was a couple words, but it's not major I guess, but I just want to know like are we keeping it verbatim or are we just going to try to make some changes, I don't know the protocol that you want to follow?

Mr. Barabani: I was trying to get it as accurate as I can from the recording now, I don't think that there's an issue here, but my recording is different than yours because I used my recorder and you used yours.

Nersidalia Garcia, Secretary III: Ok.

Mr. Salazar: Well I guess that leads me to a question, whose recorder is the official record?

Mr. Barabani: The recorder records.

Mr. Salazar: I know what recorders do, I'm not, I know that...

Mr. Barabani: ...I mean...

Mr. Salazar: But my question is whose recorder is the official record?

Mr. Barabani: There shouldn't be any difference between the two, I'm saying that what your picking up in the room here because sometimes the sound is bad, but this was done, let me see if I can remember this.

Mr. Salazar: So if I have a recorder and that's a third record, than that's as official as yours or hers too?

Mr. Barabani: Well I don't want to...

Mr. Salazar: That doesn't make sense to me Mr. Barabani.

Mr. Barabani: Well if you had three recorders and they are all electronic, they would record the same thing.

Mr. Salazar: Apparently they don't.

Mr. Barabani: Well, she said it wasn't worded; sometimes it's hard to hear what a person is saying...

Mr. Salazar: No I mean...

Mr. Barabani: ...no matter what recording it's on.

Mr. Salazar: So I'd just like my question answered for the record, which recorder is the official recorder, yours or Nersi's?

Mr. Barabani: Uh, I guess hers, we'll just use hers.

Mr. Salazar: Ok.

Mr. Barabani: We'll just use hers.

Mr. Salazar: Then we should probably use the minutes that she...

Mr. Barabani: They're not correct, there are errors.

Mr. Salazar: So, it's official with your changes?

Mr. Barabani: Well it doesn't matter because you didn't read them yet so...

Mr. Salazar: It does matter.

Mr. Barabani: Well, I mean, they wouldn't be correct anyways because you haven't read them so, you haven't...

Mr. Salazar: They could be correct, I just haven't read them, they could be correct.
Nersidalia Garcia, Secretary III: What I could do is give you a copy of the CD recording, give you a copy and then you can make the changes that you like, it needs to be done. Do you know what I'm saying?

Mr. Barabani: Pardon? You're going to give a copy to...

Nersidalia Garcia, Secretary III: I'll give you each a copy of the CD.

Mr. Barabani: It's going to be the same thing. I mean, I don't care, I'll take it.

Ms. Early: Commissioner Barabani, I did read the minutes and there were some sections in here where it will start the sentence and it will say inaudible so, I suggest then that we all be provided with a copy of the audio version of the minutes. I did note that it appeared that the motions have been put in a bold font, I've never seen that before, but I don't object to motions being put in the bold font however, if Ms. Garcia is stating that content has been changed then, I would like to hear the audio version if that's what you're saying. I've noted some corrections on the minutes that I have, I did get a chance to review all three sets of minutes, but most of my corrections I was able to fill in where it said inaudible. For example, there's a word that says *approved*, but I know it should be 'removed' as opposed to *approved* so, I penciled that in as a correction, but I have no problem with having these re-agendized so that we can compare what we have received to the audio version and if that is a concern, I would like to request that the audio tape or whatever audio format you are using be provided to the Commissioner's along with the written version of the minutes and I did receive the minutes via email ahead of time, thank you. From my email it looks like all the Commissioner's received them prior to yesterday.

Mr. Barabani: So you're going to provide CD's?

Nersidalia Garcia, Secretary III: Yep.

Mr. Barabani: Does anyone need their minutes sent again by email?

Mr. Salazar: I would suggest that you send a copy of the official audio to each Commissioner and you might as well just...

Mr. Barabani: She'll have to give you a CD (inaudible).

Mr. Salazar: ...resend the minutes in another format or something.

Mr. Barabani: Just send an original email and when you make corrections, I would like to see them, do we have to put them in there bold? I mean, I don't have an issue with any of this, Mr. Salazar hadn't gotten to them and (inaudible)...

Mr. Salazar: I made a hard copy so that I could pencil through because otherwise I'm not going to go through and; I guess you can strikethrough on a PDF, but I'm not that sophisticated, I just pencil through.

Mr. Barabani: Could you send that, could you have those by tomorrow?

Nersidalia Garcia, Secretary III: Yeah, I can.

Mr. Barabani: I don't need them I was just...Ok, thank you.

Ms. Early: So I move that the minutes for January 13th, January 23rd and March the 23rd be re-agendized to the next commission meeting after the Commissioner's have been provided with a copy of the audio version of the minutes from those meetings.

Mr. Barabani: We were on Item number I, we had the motion of the discussion so, let's vote on that or are we modifying that approval?

Ms. Early: No, we are on Item number III, Approval of Minutes.

Mr. Barabani: So, re-agendize then?

Ms. Early: Commissioner Salazar, you didn't look at any of the minutes correct?

Mr. Salazar: The only thing that I would like to add to what we are moving to do is that I would also like a hard copy of the official minutes as she has them written so that compares to this CD here or disc or the audio and then I would be fine with that I'm sure so that we all have the exact same information and then we can go forward.

Mr. Barabani: The motion is to re-agendize the minutes to provide a CD audio copy and a printed copy of the minutes, of all three minutes, correct?

Mr. Salazar: Perfect.

Mr. Barabani: Ok, can we vote on that?

Cindy Andrade, CSEA 3rd Vice President: Was there a second on that?

Mr. Barabani: A second, I'm sorry, is there a second on that?

Mr. Salazar: I'll second it.

Mr. Barabani: Vote.

Mr. Salazar: Aye.

Ms. Early: Aye.

Mr. Barabani: Aye.

IV. PUBLIC COMMENTS

Mr. Barabani: Alright, we'll move to Item number IV, Public Comments. *Note: Comments from the public on any agenda item may only be made at this time. Public comment during the commission's discussion of an agenda item will not be permitted. Public comments on anything other than an agenda item may not be made during this special meeting.* Public Comments is open on anything that is not on the agenda. I'd like to add to speak up so the microphone, the little recorder over there; anyone that has anything to say needs to come up here a little closer.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Just so that we are clear, there seems to be a change in procedure from the meetings I've attended, do you want comments on the agenda items now?

Mr. Barabani: Yes.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Ok. May I be recognized then?

Mr. Barabani: Yes.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Good evening Commissioners, thank you for the opportunity to address you once again on these very serious matters. As a first item, I would note that whoever prepared the agenda backup for the evening assembled a rather significant amount of material for your assistance in edification, significant if not one sided. The backup contains numerous items of correspondence from the commission to various persons, some correspondence from another law firm to the commission and various district records. None of this firm's prior communications on the issues at hand were provided however, I've taken the liberty of providing copies of our prior correspondence on behalf of the district so that you have it before you this evening. It includes the legal authorities and the arguments previously asserted by the district on these issues. I will refer to specific items as necessary during my presentation on behalf of the district. Is there anyone's else whose a representative of an interested party that would like a copy of that correspondence? And I'm sorry, who are you representing?

Cindy Andrade, CSEA 3rd Vice President: Just myself.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Just yourself? Alright.

Cindy Andrade, CSEA 3rd Vice President: Thank you.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: The backup at pages one and two of your, its beginning at page three technically, three of 135, excuse me. The backup at page 68 of 135 implies that Commissioner Barabani had to do the investigation in the

matter concerning the Associate Superintendent because district's legal counsel, not this firm, but another law firm, did not give permission to hire independent legal counsel for such purposes. I would remind this commission that there's been considerable discussion in recent months about the commission's ability to hire hearing officers or other representatives to do investigations under Education Code section 45312, that section is separate from the requirements of section 45313 related to the hiring of legal counsel. We have on at least four occasions in the past asserted the district's challenge to Commissioner Barabani's ability to participate in the commission's deliberations, discussions or actions in matters related to the appointment of the current Associate Superintendent/Chief Administrative Officer. And if you would look to the exhibits I just provided at tab one, tab two, tab four, and tab five you will see the written copies of those prior authorities and arguments. The mere passage of time since your prior consideration of this issue and our prior objections does not cure the district's objections, in point of fact, given the most recent revelations regarding Mr. Barabani's participation in the agenda item related to pending rule changes, the evidence of bias and prejudice has become evermore compelling. At the present time I would reassert our prior arguments and prior authorities and in brief that is that Commissioner Barabani cannot participate because of his prior investigation and his prior report. This evening the commission is considering whether the Associate Superintendent was appropriately appointed under the law and whether to order that his pay be terminated. *In determining whether a panel member is biased in such a case, there must be a factual showing of such bias* and I would cite Burrell versus City of Los Angeles (1989) case at 209 Cal.App.3d 568, in line with that case, *at least one other California court has determined that even the appearance of prejudice constitutes actual evidence of bias* and for that proposition, I would cite Pacific Conference of United Methodist Church versus Superior Court, that is a 1978 case found at Cal. App.3d 72. *In Pacific Conference a court held that where a judicial officer wrote a pre-hearing letter to the parties in a matter indicating his belief that a particular conclusion would prevail, there existed actual evidence of bias* and that's from the court case. *Accordingly, any document that evidences predisposition is strong evidence that actual bias exists.* In the present case, Mr. Barabani investigated and then drafted the investigation summary which was included in the agendas in the commission's agenda backup to this public hearing. His report is found in your materials at pages 84-97 of 135. This report goes beyond mere fact finding, it goes beyond mere recitation of facts, it makes conclusions and recommendations that should have been reserved to the commission during its deliberations after hearing and considering all the facts. If you would look to tab one again in the materials I have presented to you, beginning at page two and the bullets near the bottom of the page, examples from that actual report, these are quotations from that report that show the bias and prejudice on the issues before you. The report drafted by Commissioner Barabani, for instance, says *the governing board acted willfully, and with the intent to exempt Mr. Albiso from the merit system through fraud solely for the purpose of protecting him in an attempt to illegally exempt him from the merit system;* that's at page one and later at page six there is a quote, *this action taken without any legal authority and in direct contravention of the Rules and the Education Code as they pertain to the position of Associate Superintendent only increases the degree of inappropriate actions taken in regards to the position of Associate Superintendent.* There after on page seven, there is a quote that says *if Mr.*

Delgado and Mr. Marca want to admit that Dr. Delgado was hired in violation of the applicable provisions of the merit system, then the commission can focus on a hearing for Dr. Delgado instead of one for Mr. Albiso. Also...

Mr. Salazar: I'm sorry, excuse me, where was that at?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: ...on page seven.

Mr. Salazar: Page seven?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Of the report, its on page four of tab one of our letter. Tab one.

Mr. Salazar: Page four.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Yes.

Mr. Salazar: Oh ok, I see it.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Thereafter on page seven, there's another quote *attempting to create an exemption out of whole cloth does not meant*, and that I think should be mean, *does not meant that the action is lawful nor does it mean that a position that is clearly in the classified service is exempted from the classified service through a misplaced selection of words from a statute*. Then skipping to page ten of the report, *it appears as though the job description had a lot of divergent "examples of duties" thrown in that are under the purview of Business Services Division merely to create a masquerade of some "business related matters"*. Also on page ten, *the governing board seems to have no concern for any of the Education Code when it comes to Mr. Albiso in their zeal to ensure that he is immunized from the laws that apply to everyone else in the district*.

Mr. Barabani: Ms. Gordon, I hate to interrupt you at this time, but the issue I have right now with this is are you planning on going through all of this? I don't mind having an open meeting and a comment and all of that, but my problem with this is once again this is a last minute thing.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: This is quoting from a letter that you received...

Mr. Barabani: I know, but you provided me this packet today again at the last minute. I asked not to be done, I even called today...

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: For your convenience sir, I have provided a second copy of something that you have had since May 10th, I did that just to be helpful because I wanted to be sure that the members of the commission who will end up voting on this have fresh in their minds the arguments and the authorities that

we have presented not once, not twice, not three times, but four times and no, I'm not going to read every bit of this, but right now we are talking about the evidence of bias that's contained in your investigative report.

Mr. Barabani: You mean the opinion? I mean you keep talking about evidence, you mean the opinion? I mean, I know the governing board...

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: May I proceed?

Mr. Barabani: ...I know the governing board limits their public comments to five minutes and I don't mind having more than that, but this looks like another issue where we are going to spend hours and hours here going through the same stuff, I mean at the last minute. I even called here this afternoon and asked if there was anything here that, you know, so we could change the items on the agenda.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I do not have any new written materials, new, written materials to provide for you, I didn't have time to do new written materials to provide for you, but I do have a thorough presentation and I would be finished now with this one if I had been allowed to read the last few examples here.

Mr. Barabani: And how long you think this presentation will take?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I'm on page two of what I planned I to say and I have almost five pages of written notes regarding comments. May I proceed?

Mr. Barabani: Well I'm trying to determine what's the best course of action for us to go. There's no way we can read through all of this stuff and understand...

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I just indicated to you that it was not my intent to read that entire packet.

Mr. Barabani: But we can't even understand this entire packet, whatever's in here it must be important or you wouldn't have gave it to us.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I gave it to you as...

Mr. Barabani: So we can't read all of this in the next few minutes and make any kind of decision, but I'm also getting upset because every time we try to make a decision on this matter, last minute things come up, volumes of trees are cut down and printed and it prevents us from taking action. I postponed it last time thinking that any material and everything would be provided this time so everybody, not just me, I want both Commissioner's to receive this on time so they can read it.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: They have...

Mr. Barabani: So now we're back to the same situation of last minute, having to go through, should I say 60 pages of material in five or ten minutes, it can't be done.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Mr. Barabani, maybe if I slow down.

Mr. Barabani: I mean I'd like a little courtesy for the commission to be able to go through this.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: With all due courtesy sir, you have received previously these self same materials between the dates of May 10th and June 22nd. I'm assuming sir, that you heard me when I put them in the record orally the first time, I'm assuming sir, that you read them the first time they were presented to you, all I've done sir, with all due respect, is put them in a stack so you'd have them in one place so that you could be reminded since there's nothing in the packet, your agenda backup that reflects that the district even cares what you do on any of these three items before you. I wanted to remind the commission that we have provided authorities and arguments at least four times and here they are. I have stated...

Mr. Barabani: And I recall writing to you and asking you to instead of giving me opinions, giving me legal reasons and facts and I recall getting a letter saying that I shouldn't ask you for anything, give or take a few words, and I didn't get anything back from you that was helpful in any nature and so we proceeded. Then you came to a meeting and threw a bunch of stuff at us again and this is where we are at again today. Is this purposely done to just continue this process forever?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: This is done in order to record the district's objections to the actions being contemplated by the commission. I'm sorry if you have already decided what you want to hear, what to do and so you don't want to hear any more.

Mr. Barabani: No.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: We still have the right to present our position and quite frankly sir, I would have been done with my entire comments if you hadn't insisted on interrupting to challenge my right to make comment of behalf of the district.

Mr. Barabani: Well...

Mr. Salazar: Can I make a comment?

Mr. Barabani: Yeah, it's open.

Mr. Salazar: According to the agenda this is the Public Comments section of the agenda and one thing that caught my ear that the Chair mentioned a moment ago is that these are

important items and important issues so I believe that we should hear from the public about these important issues and items that way we can intelligently take our vote so, although it is a little bit cumbersome and it's a little bit time consuming and I'm wasting time right now, I would prefer that we just go ahead and proceed through. I do appreciate, in fact, that this is all catalogued nice and neat for us and it's something that we can refer to on a quick basis so, I think that is very helpful for me in my decision making process, but I would strongly urge the Chair to allow Ms. Gordon to proceed and let's get this going.

Mr. Barabani: Ok, my issue is that the pile of stuff here; do you know what's in here?

Mr. Salazar: In here?

Mr. Barabani: No, in here.

Mr. Salazar: That's what I'm pointing to, this?

Mr. Barabani: Yep, do you know what's in here?

Mr. Salazar: Well, I'm following along. I'm following along with the Public Comments.

Mr. Barabani: We're getting this big old documents at the last minute, but ok.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: There are three or four more examples of evidence of bias as I've been discussing in the balance of that document. I will move forward in order to conclude my comments as quickly as I can. In addition to the arguments and authorities previously asserted, and in response to the assertion at page 79 of 135, that a district is without standing to challenge a hearing panel for bias, I would note that the district is a party to this hearing, the acts of the governing board in appointing the current Associate Superintendent are at issue. All of the case law that has previously been provided that is set forth in tabs one through six, for your convenience, pertains to the rights of all parties to a neutral fact finder. This right is nowhere restricted to individual citizens to the exclusion of public agencies. The commission can not cite a single case that stands for the proposition that a public agency, when a party to an administrative or civil matter is not fully entitled to a fair and impartial hearing before a neutral fact finder. As a matter of fact, the recorded cases involving cities, counties, school districts, and Personnel Commissions as either plaintive's, defendants or interested parties or legion. The statutes in case law do not say that only individual persons may challenge a fact finder for bias or prejudice, they almost universally use the term party, as an example, in a case such as the current controversy, California Code of Civil Procedures section 1094.5 provides the legal remedy for a party to an administrative hearing who claims that there has not been a fair hearing, that remedy is to file a writ of administrative mandamus. Section 1094.5 is by its own terms made applicable to any final administrative order or decision made as a result of a proceeding which by law, a hearing is required to be given. Evidence is required to be taken; a discretion in the determination of facts is vested in an inferior tribunal corporation board or officer.

Section 1094.5 does not state that only natural persons may file challenges for lack of fair hearing, any aggrieved party may do so. On that topic there is discussion in the case Pomona College versus Superior Court which is found at 199645 Cal.App.4d discussing the applicability to both public and private colleges where a private college appealed the denial of its writ. See also Code of Civil Procedure 170.6 which allows a party to disqualify a judge by filing a peremptory challenge in any hearing involving a contested issue of law or fact. In the administrative hearing arena for state agencies who fall under the Administrative Procedures Act, there's a similar provision found at Government Code section 11425.40(d) which allows the OAH and other agencies governed by the Administrative Procedures Act that conduct contested hearing to adopt rules and regulations to provide for peremptory challenge of the hearing officer. For general purposes, a party as discussed in the cases in the Code of Civil Procedures and in the Government Code would be a person or an entity whose name is formally entered on the records of the proceedings. We repeat our challenge and demand that Commissioner Barabani step aside so that the other two Commissioners' can deal with these issues once and for all. Directing my further comments to the two remaining Commissioners, beginning at page 70 of 135 in the backup materials there is a citation to Education Code section 45256(a) which states that *the commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those that are exempt from the classified service, as specified in subdivision (b)*. Read in isolation, this writer, the writer of the backup, opines that this section was violated because the writer found no evidence that the commission ever classified the position when it first was created and that was in early 2009. Section 45256 applies by its terms to all employees in positions within the jurisdiction of the commission or the district. It must be read in conjunction with Education Code section 35029 and if you might indulge me, I've a copy of Education Code section 35029 at tab eight or, you each have a copy of the Education Code in front of you, that's 35029. Specifically, Education Code 35029 excludes Chief Administrative Officers from the authority of the commission. The next citation in the backup is to 45272 which talks about filling vacancies in the classified service. Again, 35029 excludes Chief Administrative Officers and therefore is not applicable. Moving next to page 41 where there is a reference to 45276 which deals with fixing the duties by the governing board and prescribing of qualification requirements for classified positions. Again, this position is specifically removed from the jurisdiction of the commission and these requirements, the same comments pertain to the testing required for classified employee positions under 45280. Further down the page on page 71 of 135, there's an isolated quotation from the board's resolution of May 17th 2011, that resolution is found in your materials at page 81 of 135. May I point out please that the isolated portion that is quoted is found in the box at the bottom of page 81, talks about trying to avoid further conflict, and wouldn't we all love to do that? You must read the entire page though, not just take one phrase out of context. If you look to the second *whereas* right about the middle of the page, says *whereas, at the time of the adoption of the job description for the position of Associate Superintendent/Chief Administrative Officer, it was the intention of the Governing Board that the position continue to be exempt from the jurisdiction of the District's Personnel Commission*; it wasn't something that they were trying to create at that moment or in fact were trying to do on May 17th; just to make sure we're reading everything and taking them in context. At the top of page

72 of 135 is a quotation from Ed Code section 45104, first it provides that *every position not defined by this code as a position requiring certification qualifications and not specifically excluded by 45256(b) are part of the classified service.* We would note that the position of Chief Administrative Assistant is a position that normally in district's requires a credential, that credential however, pursuant to the specific terms of 35029, which you have in front of you either in your book or at tab eight, says that that credential requirement may be waived. It also provides that such a position is excluded from the position, from the jurisdiction of the Personnel Commission. Section 45104 goes on to state that classified positions may not be designated as certificated *nor shall the assignment of a title to any such position remove the position from the classified service, nor shall possession of a certification document be made a requirement for employment in any such position.* Again, this section must be read in concert with section 35029 in a way that will give meaning to both statutes, you can't make one the surplus and just read the other, you have to read them both. Clearly the governing board had no intent to take a classified position and turn it into a certificated position; it did intend to promote the current incumbent from Assistant Superintendent to Associate Superintendent/Chief Administrative Officer. To the extent that the promotional position was a certificated position it was within their discretion to waive that credential requirement by action of law not by any necessary action of the governing board. Upon assumption of the promotional position, the incumbent was excluded from the merit system. In May the board took further clarifying action to amend the job description and to continue the position's exclusion from the merit system. In closing, the Chief Administrative Officer in this district is the Associate Superintendent, the Chief Executive Officer is the Superintendent, there is no prohibition against having one of each, but even assuming for the sake of argument that the district had two Chief Administrative Officers, which it never has, those positions would be excluded from the merit system and you would lack standing to challenge that fact. I have nothing further at this point in time to say regarding the items that are before you this evening for your consideration, it is my sincerest hope that our comments will be taken at full value and that Commissioner Barabani will step aside based on his evidenced bias and prejudgment of this issue.

Mr. Barabani: If you haven't provided Nersi a copy of this, would you?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Yes I did.

Corina Borsuk, Classified Employee: Is it open for further comments from the public?

Mr. Barabani: Yes.

Corina Borsuk, Classified Employee: For the record, my name is Corina Borsuk and I am a classified employee of the district and also a resident of the area that the district serves. Forgive me I am going to jump around a bit because I have a few points and I don't want to forget them so, I am going to say some of them first even though they are not necessarily the most important.

Mr. Barabani: Ok.

Corina Borsuk, Classified Employee: First let me say that I am not an attorney, I have never studied the law and I have no idea about the legal ramifications of all the things that the person who spoke before me has just said, I apologize, I didn't get your name however, I do consider myself a fair expert in grammar and I can say one thing, when something says that they are 'the' Chief Administrative Officer of the school district, that means that they are the 'one and only'. Generally speaking, it doesn't say requirement for 'one of' or for 'a', which would include that there may be more than one, it does say 'the'. As far as the other matters that you brought up, I couldn't speak to those because I wouldn't know. Also, I would like to say that I really don't like all the fighting that has been going on between the Personnel Commission and the district, not because I understand it from a legal perspective, but quite frankly, it hurts the students so, I would encourage the Personnel Commission as well as the district governing board, although they are not here, to try to come to a reasonable solution as quickly as possible because I have a concern not just as an employee, but as someone who was born and raised here and whose children may, when I have children, may go to school in this district. Also my concern; I understand the concern that has been brought up, though I am not qualified to speak on it, that Mr. Barabani may not be unbiased judge in this particular case; I would assume however, and please someone correct me if I am wrong, that if this were to go to a Grand Jury or the DA as proposed here, that that person or those persons would indeed be unbiased and independent and so whatever judgment they were to make would be an unbiased judgment and I would hope of course, that if they decided against the Personnel Commission that the commission would accept their findings just as I would hope that whatever findings they might make if went against the governing boards current actions that they would accept those findings as well. So, although I'm not a fan of taking this further as far as lawsuits and such things, perhaps this could be the independent unbiased source that might be needed to finally break the stalemate and move things forward. So again, I apologize for the convoluted description, but I wasn't sure where to start exactly, thank you very much.

Mr. Barabani: Alright, we're still on the Public Comments section.

Patrick Maher: My name is Patrick Maher and I am also speaking on Item V (A) and part of it goes back to some of the things that are addressed tonight and part of what happened back on June the 8th. Basically at the June 8th 2011 meeting I witnessed one of the most intellectually dishonest of hypocrisy in my entire life. At that meeting Commissioner Salazar accused Commissioner Barabani of conflict of interest and actively seeking to want to conduct investigation into the appointment of the Associate Superintendent by the governing board and whether that appointment conforms with the principle of merit. Commissioner Salazar refused to acknowledge that there were efforts all of which were supported by Commissioner Barabani, but never by Commissioner Salazar to obtain someone other than the Commissioner to provide Mr. Albiso with an opportunity to provide information that would show that he was properly appointed. The first effort in that regard was to ask the governing board's own counsel to obtain that information and report back to the commission. They refused and stopped the commission from employing its own counsel for that very purpose. Commissioner Barabani voted to

support every motion to delay the matter to give Mr. Albiso more time to respond, he voted for the motion of Commissioner Early to seek the Superintendent's cooperation in seeking a professional expert to conduct that investigation. Had it not been for Commissioner Barabani's vote in support of that motion, it would not have passed because as usual, Commissioner Salazar abstained. Thus it was only with the affirmative vote of Commissioner Barabani that this effort was made. Not unexpectedly, Dr. Delgado ignored the request. On July 1, 2010 I sent an email to each Commissioner including Commissioner Salazar filing a complaint that Commissioner Salazar was biased against me; Commissioner Salazar never denied the charge of bias. This charge in writing to all Commissioners should have caused any ethical official to either dispute the charges or to recuse themselves from any further actions concerning me. Commissioner Salazar did neither therefore, he is hypocritical and ethically and morally bankrupt and this is the last person to accuse a fellow Commissioner of bias and conflict of interest. Commissioner Salazar formally filed a written charge against Commissioners Early and Barabani claiming to have witnessed a meeting in a parking lot and engaging in a conversation that violated the Brown Act. Commissioner Salazar never claimed to have heard any actual conversation and when asked, refused to provide any specifics to substantiate his claim. At a subsequent meeting, others stated they witnessed Commissioner Early leave the Administration building ahead of Commissioner Barabani, they witnessed Commissioner Barabani leave at a later time. Thus the alleged meeting that Commissioner Salazar claimed to have witnessed apparently never occurred. Even after being challenged by other Commissioners to provide specifics as to what he saw in refusing to do so and even after he was directly challenged on the facts of that claim, Commissioner Salazar subsequently sent that written charge to the State Superintendent of Instruction as part of his justification for claiming that Ms. Early is not an advocate of the principle of merit. In my opinion, Commissioner Salazar was so intent of supplanting Commissioner Early with someone of his own choosing who he hoped would vote with him to destroy the merit system he knowingly, willfully and with malice of forethought forwarded an accusation that he well knew to be created in concert with the district representatives or counsel, that was totally false without any basis of fact. Under this pattern of what in my opinion is malfeasance and misfeasance of office, Commissioner Salazar is in no position to accuse any Commissioner of improper conduct and ill motive except himself. Commissioner Salazar, given his past history of apparent false charges and misconduct against the other Commissioners and having displayed his unwillingness to even admit that he was wrong when confronted with uncontroverted evidence that he was wrong, has demonstrated his lack of objectivity in a commitment to honest disagreement. Since he has been Commissioner, Commissioner Salazar has never once found any instance in which the district has acted contrary to the merit system and should be held accountable. Based on his voting record which endurably are no or abstention, he has no interest in ensuring that the principle of merit is being adhered to by the district. Commissioner Salazar in my opinion has one purpose only, to ensure that the merit system and independent commission do not function in this district. He is in my opinion only a water boy for the district and its powers and administration doing their bidding and arguing against anything they tell him to oppose. If Commissioner Salazar was truly concerned about the principle of merit he would have voted to support the request of the Superintendent to assist in hiring a professional expert to conduct the investigation in the

appointment of Mel Albiso instead, he is the one who has, in my opinion, a clear conflict of interest, bias and prejudice. If he and the district acting in concert and collusion can get Commissioner Barabani recused, then this matter; then the outcome of the commission will never act no matter how clear the evidence may be to do so. Commissioner Salazar, in my opinion, will vote to support the district and Mel Albiso. Of the two, it is Commissioner Salazar who is obviously biased and who has prejudged this case and of course Ms. Gordon wants Mr. Barabani to recuse himself so the other two Commissioners their very objective and impartial and stalwart of merit Mr. Salazar, Commissioner Salazar, can be one part of that vote because she knows how he's going to vote, everyone knows how he's going to vote, he's going to vote no, no matter what the evidence is, I mean if they walked in here and admitted everything, he would still vote no, in my opinion. So this is the hypocrisy that is going on here and this is the same thing. There are some other things in Ms. Gordon's statement; once again, she's an attorney, she's misrepresenting facts of law of this body, a violation of her professional duty, in my opinion. For example, and this was brought up earlier, she misstated the law to you when she was quoting the section dealing with Administrative Officers, she said Chief Administrative Officers as though there were many of them, as though they are plural, she never said 'the' Chief Administrative Officer, she never dealt with what was going on, she tried to make up a whole bunch of new law by misquoting the law as to what the law actually said, it's very clear, the Chief Administrative Officer, there is only one and creating another title or making some other things up there and everything else does not exempt the person from the merit system, she quoted no legal analysis at all, no case law, no legal analysis of what the statutory language of the section is that talks about the Chief Administrative Officer. She has misrepresented this commission the law before; she did that once before where she claimed that the commission had no authority to appoint professional experts and only quoted part of the law to support that point by leaving the rest of the law out. So therefore, you should not pay any attention to what she has to say because she is not here as an honest and independent advocate, she's here as an advocate for the governing board, and more likely Mr. Mel Albiso, this is my opinion. You can't have two Chief Administrative Officers excluded from merit system because she didn't quote the law that said that, she didn't quote the law that allows for two Chief Administrative Officers to be exempted from the merit system, she never quoted that law, she just gave that as an opinion, trying to make it sound as though there is some law that supported that basis. She also mentioned it has to be a factual showing of bias, a factual showing of bias and yet in the letter that was referenced that was in that package earlier, she says I'm not going to provide you any facts, any facts that support biased so she says the law says factual bias, but I'm not going to give you any facts that show that. The other thing that's important to remember on this is that the district, Mr. Mel Albiso, no one has come forward and said that we have evidence, evidence and proof that we acted in full accord with the provisions of the merit system, they have never said that from what happened way back in 2009, they haven't said it in the meantime when they were faced with the fact that they were wrong and they knew they were wrong, they then made up this whole plan to let's try to rewrite the law and reformate the law and let's make sure that we exempt from the merit system. Classified employees cannot and should not be exempted from the merit system and the governing board, just as much as this commission, should follow the law and many years ago, in violation of the law, they gave

Mr. Mel Albiso the title the of Assistant Superintendent when he did not have a credential, that violated the Education Code when they did that and they didn't care about that then, they've for whatever reason, they've just done whatever they want to with this person and said that they merit system does not apply to Mr. Mel Albiso; it didn't apply as an Assistant Superintendent, it didn't apply as an Associate Superintendent, but let's make it clear, let's make up a brand new title to protect him, that's the real issue that's going on here. Where are the facts? What single factual basis of evidence do you have for you that shows that one single aspect of the merit system was ever followed and they have admitted that it hasn't. Why have they admitted that it hasn't, because they are not arguing that it there is evidence, they're arguing that it's exempt, they're arguing that Mr. Barabani is prejudice so therefore they know how the vote is going to go at the most, they don't know how Ms. Early is going to vote, but they surely know how Mr. Salazar is going to vote, at least in my opinion. So I think that this farce ought to end right here and now, this has been delayed, it's been put over, it's been answered, it's been responded to, it's been delayed time and time again and it's time for you to take some action on it, one way or the other, you either vote it's ok, vote it's not ok, but do something with it. As to how to solve this problem, I've got a solution, I don't think the district will go for it, turn it over to an Administrative Law Judge and let the Administrative Law Judge make the decision based upon the facts and the law and that will be binding on both the commission and the governing board. I challenge the governing board to take that on and turn it over to an Administrative Law Judge and let him look at the law, let him look at the facts and let him make a decision and have that binding on both parties. I challenge the district to do that, they're not going to do it because they know they are going to lose in the law, they know they are going to lose on the facts, thank you.

Mr. Barabani: Any other public comments? Ok. Move on to Action Item V.

V. ACTION ITEMS

Mr. Barabani: Action Item V (A), *the commission will make decision and take action on whether or not Mel Albiso was appointed or assigned as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) in accord with the Education Code Article 6 commencing with section 45240 on the merit system and the Commission Rules pertaining to examination procedures and whether or not the commission should order that no further pay warrant be issued.* Action Item B under subsection V, I'm reading them in the record, *the commission will make a decision and take action to refer the appointment of Mel Albiso as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) and subsequent actions taken to provide legal representation to Mr. Albiso and a declared intent of the governing board to exempt Mr. Albiso from the merit system to the District Attorney for the investigation of potential criminal actions.* I will turn back now, I've read those two into the record; on Action Item V; I'm sorry, my fault; Action Item (A), we're going to make a decision, that's (A), I've already read it; like to propose a motion; it is moved that the commission find that the governing board appointee assignment of Mel Albiso in the position of Associate to Superintendent, Associate Superintendent/Chief Administrative Officer is in violation of Personnel Commission Rules 3.06, 4.01, 4.08, and 5.01 and Ed Code sections 45256,

45261, 45272, 45273, 45276, 45278, and 45300 as they pertain to the examination procedures in the classified service. Do I have a second?

Ms. Early: Before you proceed Commissioner Barabani, I have a couple of questions.

Ms. Gordon, are you here tonight as serving as legal counsel representing the district?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Absolutely, as indicated in prior correspondence, I am here on behalf of the district. The districts actions in promoting the Assistant Superintendent to Associate Superintendent are under attack and I am here to present their objections to what is being considered by the commission.

Ms. Early: Are you aware of any of any request from the commission for legal counsel as it relates to this investigation?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I have become aware of information that's in your backup, I mean I've read those things so, from that point, yes, I am aware.

Ms. Early: Do those requests come through your office? Do our requests for legal counsel come through your office?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: In the past such requests have been made to our office, but for some time now, a different law firm has been the point of contact for the commission and those requests aren't made to our firm any longer.

Ms. Early: Do you know the status of our requests for legal counsel?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: The status of your requests?

Ms. Early: Correct.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Other than there are some letters in here and there are some assertions made by whoever wrote the back up as to what happened, but personal knowledge no, I don't have any.

Ms. Early: Are Assistant Superintendent's for this district required to have credentials?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: That I couldn't tell you because I've not looked into it, I would have no way of knowing, I am not the person to ask.

Ms. Early: Ok, thank you. Who would know?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: You would have to look at those people who hold that title and at their job description and back at board meeting minutes to see whether any action had been taken on that issue.

Ms. Early: Commissioner Barabani do you have access to a legal opinion as it was related to Action V (A)?

Mr. Barabani: No I do not.

Ms. Early: So, we've gotten information from legal counsel that is representing the district, but the commission has no access to legal counsel as it relates to Action Item V (A)?

Mr. Barabani: That is correct. The only item that I have that even comes close to that was when a letter was written, Ms. Gordon's office, I asked her to provide me with the legal opinions and I didn't receive what I believe the legal opinion; matter of fact, I was told not to demand it.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: If I may, I believe I was asked to present factual evidence not to give you a legal opinion which is very different.

Mr. Barabani: Ok.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Very different. You were asking me as district's attorney to do things.

Mr. Barabani: Well, you told me I don't have the right to demand anything.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: It's in one of the letters in front of you.

Mr. Barabani: Yeah, I know.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I could quote it exactly.

Mr. Barabani: Yeah I know it's in here, but you know, I tried to make it open, tried to get some assistance, you know, but that's not the first time.

Ms. Early: Ok, no further questions.

Mr. Salazar: Actually, my question is for Mr. Barabani and that is...

Corina Borsuk, Classified Employee: Mr. Salazar, could you speak up, I can't really hear.

Mr. Salazar: Yes, I will. My question is for Mr. Barabani, he has cited a number of Education Codes in terms of, I guess, helping you to make the motion on Action Item V (A) and unfortunately, I don't have all of those codes in front of me and I have not researched them so I really would like to get, but I mean, you have them written down, I didn't know that you would cite them so, I would really like to kind of go over and read those codes so, I don't know where we go from there, I am just stating that for the record

that would be very interesting to me to see the basis of your making this motion because I don't have that same information in front of me to be able to make that kind of a decision. It would be helpful to me, but it's up to you, I know they're read into the record but then that would take obviously some time for me to take a look at them, I'd be happy to do it right now.

Mr. Barabani: It's the same...

Mr. Salazar: ...or later...

Mr. Barabani: ...it's the same as the previous motion; in the same codes that were discussed in the previous; when we discussed this, what, this is the fourth or fifth time; they have all been provided in one of these books, the California Education Code.

Mr. Salazar: Ok, well, I'm just saying, I mean, if you want to mock me that's fine.

Mr. Barabani: I'm not mocking you, I mean, it's the truth, it has been provided.

Mr. Salazar: Ok, now, I'm sorry to waste your time.

Ms. Early: Commissioner Barabani, what's the status of our request for legal counsel as it pertains to this investigation?

Mr. Barabani: Well, it was denied originally when we asked to hire an outside investigation, we went to the governing board, no action and the bottom line is we live in a system where we request permission for payment for our attorney's and they don't get paid just like Chidester didn't, we didn't get legal representation there for Abe Flory's hearing, I mean, then we asked for investigation and then they don't act on them or they deny us so, we're either without counsel; we asked the board, we asked Mr. Delgado can we come to terms, let's not do this, let's get somebody independent, they saw fit not to do that and then if we do hire somebody, they seem to take forever to pay them, don't want to pay them; in Chidester's case, they didn't pay them, I'm just bringing that up as an example, it's the same pattern over and over, they decided to take a stance and then Ms. Gordon even admitted that we used to go to her for advice and then they sent us off to some attorney's in Arizona and then we have to go attorney's in Riverside and once again, you ask and we don't get it, I even asked for attorney's advice when we had that little dispute about the meeting that happened out here in the parking lot that didn't happen and I never got any response back from the attorney's, I'm just using these all as examples, but Mr. Salazar, you were able to get them to write you a letter without commission approval, that was pretty nice, I wasn't able to get that as a Commissioner so, that's where we're at, they're totally ignoring us or not paying the bills and not providing the services.

Ms. Early: So Ms. Gordon as legal representation for the district our request for legal counsel as it relates to this issue, would that go through you?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: No ma'am it would not.

Ms. Early: Why not?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Because our firm provides legal advice to the district on commission related matters and the district uses many many many law firms not just ours. There's been mention of the Insurance Defense Counsel out of Arizona; you've mentioned another firm that's in Riverside...

Mr. Barabani: We didn't have an insurance matter with them people.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: ...let me finish...

Mr. Barabani: Oh, ok.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: The district doesn't just deal with us, but to facilitate getting legal assistance the district decided that since in most cases, our firm couldn't provide the requested assistance that you would be referred to another firm, a firm that doesn't on a regular basis, deal with Personnel Commission issues with the district. It was done to assist, to help get you where you needed to be more quickly.

Ms. Early: But it's not helping us get to where we want to be quickly.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I don't know what conversations go on between you and the other counsel other than what I've seen in here, I'm not privy to that and it would not be appropriate for me to be privy to that.

Ms. Early: Commissioner Barabani, we're being asked to make a decision on an issue that I believe we need legal counsel for and once again, we find ourselves in a position where we have requested help and we have received none as far as legal counsel, I'm going to support Commissioner Salazar's request in asking that you provide us with the codes that you just cited. I do know that you have brought them up at other meetings however, our decision in getting minutes and you read fast and we might not have written them all down so, I would like this to be put on our next meeting agenda, next meetings agenda so, we meet again this month...

Mr. Barabani: That is correct.

Ms. Early: ...so Action Item V (A), I move to re-agendize for our next Personnel Commission meeting and for Commissioner Barabani to provide Commissioner Salazar and myself a copy of the Ed Codes that you have cited before the close of this meeting.

Mr. Barabani: Oh, sure. Can I just photocopy it?

Ms. Early: Sure.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: May I request a copy?

Mr. Barabani: Sure. Do you want me to read them slowly so everybody can...

Ms. Early: No, we'll have a photocopy.

Mr. Barabani: Ok so that's your motion?

Ms. Early: That's my motion.

Mr. Salazar: I can second.

Mr. Barabani: Call for the vote.

Mr. Salazar: Aye.

Ms. Early: Aye.

Mr. Barabani: I'd like to take a five minute break right now.

The Personnel Commission meeting reconvened into open session at 7:15 p.m. after taking a five minute break.

Mr. Barabani: We'll move to; I'd like to go to propose motions on number (1), I move *that the commission forward to the District Attorney a copy of the March 28, 2011 report for his review and consideration of filing of criminal charges, (2) it is moved that the commission communicate to the District Attorney the action of governing board to specifically exempt Mel Albiso as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) from the provisions of the merit system without any lawful authority to do so for his review and consideration of filing of criminal charges.* That's Items (1) and (2); do I have a second on those?

Mr. Salazar: Can I ask you a question before we do that because it's Action Item V?

Mr. Barabani: It's Action Item V (B), ok.

Mr. Salazar: B?

Mr. Barabani: A...

Mr. Salazar: 1, 2, 3...

Mr. Barabani: ...and this is B; this is, well, this is going to be Action Item; we'll call it subset 1.

Mr. Salazar: Ok, alright, I just wanted to make sure.

Mr. Barabani: Yeah, because it doesn't make sense, the other two we've moved to move on...

Mr. Salazar: Well, this is a subset of B right?

Mr. Barabani: Well not now because we; because one goes with B...

Mr. Salazar: Then, do 1, 2 and 3 go with B?

Mr. Barabani: Not in this case.

Mr. Salazar: Well they have to; they're subsets of B right?

Mr. Barabani: We're going to move on these items here because we postponed items 1 and 2; they don't...

Mr. Salazar: That's kind of my question, did we postpone A and B or just A?

Mr. Barabani: We postponed A, but there's no reason to do the other part, *we'll make a decision...take action on...appointment...subsequent actions taken to provide legal representation...Mr. Albiso...governing board...exempt...from the merit...*

Mr. Salazar: Hold...but here's my question, did we just...we just...

Mr. Barabani: A.

Mr. Salazar: A, right?

Mr. Barabani: A.

Mr. Salazar: Now we're on B?

Mr. Barabani: That's correct.

Mr. Salazar: Ok.

Mr. Barabani: I already read B in the record earlier...

Mr. Salazar: No, I know that...

Mr. Barabani: Oh, ok.

Mr. Salazar: ...but I didn't know if you, if we moved on just A, I thought that that was the case, that we moved on just A, we're on B 1, 2, 3.

Mr. Barabani: Ok, these are my motions, the motions. Should I re-read the whole thing?

Mr. Salazar: If you want to, you can do it.

Mr. Barabani: I got it in the record once. So, I'll take the motions one at a time, *it is moved that the commission forward to the District Attorney a copy of the March 28, 2011 report for his review and consideration of filing of criminal charges.* Do I have a second on that?

Ms. Early: I second.

Mr. Barabani: Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Mr. Salazar?

Mr. Salazar: I have given this careful consideration and I don't think we should do that so, nay.

Mr. Barabani: Aye. Motion (2) is move *that the commission communicate to the District Attorney the action of the governing board to specifically exempt Mel Albiso as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) from the provisions of the merit system without any lawful authority to do so for his review and consideration of filing criminal charges.* Do I have a second?

Ms. Early: Commissioner Barabani, I would like to propose a substitute motion and there's a part in your motion where you're saying *without any lawful authority to do so* and I don't have legal counsel so I don't know if it is within their authority so, if I may, I believe your motion die for lack of a second so, I would like to make a motion; *I move that the commission communicate to the District Attorney the action of the governing board to exempt Mel Albiso as an Assistant Superintendent (Associate Superintendent/Chief Administrator) from the provisions of the merit system for his review and consideration of filing criminal charges.*

Mr. Barabani: I will second that. Any discussion? Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye. Item (3)...

Patrick Maher: I didn't hear Mr. Salazar's vote, I'm sorry.

Mr. Barabani: Oh, I'm sorry.

Mr. Salazar: I'm still thinking.

Mr. Barabani: Oh, ok.

Mr. Salazar: Can I take a minute to think about that?

Mr. Barabani: Sure.

Ms. Early: While he's thinking, I feel that some of this could have been avoided if we had access to legal counsel and we haven't, unfortunately.

Mr. Barabani: I agree with you.

Mr. Salazar: I will abstain from voting on that one.

Mr. Barabani: Thank you. Item (3), *it is moved that the commission forward to the District Attorney the action of the governing board to continue to issue pay warrants to Bryan Astrachan following the February 23, 2011 meeting during which the commission ordered that no further pay warrant be issued to Mr. Astrachan.* I don't know why I have to investigate that matter, do I have a second?

Ms. Early: I'll second.

Mr. Barabani: Discussion?

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: I realize that I am out of order at this point however, I would point out that there hasn't been any hearing on this, that motion doesn't match with Item B which was to make a decision and take action to refer appointment of Mel Albiso etcetera; there is no public hearing on Mr. Astrachan.

Mr. Barabani: We took an action on February 23rd to stop his pay warrant; he's continually being paid, Mr. Astrachan...

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: But this evening's agenda doesn't have anything to match up with the motion that was just made.

Patrick Maher: If you look at the rationale, there's reference to it inside your agenda.

Mr. Barabani: We're going to the District; the whole rationale; am I wrong here; we're going from B is to go to the District Attorney with these things that we can't get support for to find out if they law is being violated.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: That's not what it says, it says it's about Mel Albiso.

Mr. Barabani: And then; but we're going to the District Attorney on the two matters for him and so we're also going to the District Attorney on the third matter.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: Sir, I'm putting out the defects in your agenda.

Mr. Salazar: It sounds like that should be a separate Action Item because that's not part of the Action of B.

Sherry Gordon, Atkinson, Andelson, Loya, Rudd & Romo: And there is no Action Item on this agenda.

Mr. Salazar: And there is no Action Item on that issue.

Mr. Barabani: But we had taken the action back in February. Ok, this is (inaudible).

Ms. Early: That was my question at the beginning of the meeting when we were moving to approve the agenda.

Mr. Barabani: Yes, I looked it at as a whole thing going in to the District Attorney as opposed to; since we had already voted and taken action to move the pay. Does the call for the vote and we can move on.

Ms. Early: We can agendize that at our next meeting and have it listed properly as an Action Item.

Mr. Barabani: Ok. Call for the vote because I gave the motion and need a second. I'll abstain. Mr. Salazar?

Mr. Salazar: Nay.

Ms. Early: I'm not going to vote.

Mr. Barabani: On the record, alright. Item C, *the commission will make a decision and take...*

Ms. Early: So...

Mr. Barabani: Huh?

Ms. Early: ...do we need a motion to re-agendize, or can we move it to the next meeting?

Mr. Barabani: I'll make that motion. Its motion; I make a motion to re-agendize Item (3) at the next most convenient meeting; I'd like to make it for the next meeting, but the thing is, we've already started so many things on it; the next meeting is still about the rules and stuff, it's a regular meeting and I'd like to keep that open like I have for all the rules and things like that.

Ms. Early: So, you didn't make a motion to change, you just...

Mr. Barabani: No, I'm just talking...

Ms. Early: I move that we put Item (3) as an Action Item at our next scheduled commission meeting.

Mr. Barabani: Next scheduled?

Ms. Early: Yes.

Mr. Barabani: Ok, I'll second it. Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: *The commission will make a decision and take action to refer to the Grand Jury for investigation into the processes used by the governing board, the adherence of the governing board to the provisions of the merit system statutes of the Education Code, and other practices of the governing board in appointment and non-appointment of classified staff. There's a proposed motion on that, it is moved that the commission request that the County Grand Jury investigate the governing board's practices involving non-compliance with the merit system as it pertains to the hiring, appointment, and issuance of pay warrants to classified staff. Do I have a second on the motion?*

Ms. Early: I second.

Mr. Barabani: Discussion. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I'll abstain.

VIII. ADJOURNMENT

Mr. Barabani: Item VI Adjournment. The commission will adjourn the meeting at 7:28 p.m.