

**POWAY UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION
SPECIAL MEETING AGENDA**

January 12, 2022

4:30 p.m.

Remote via Zoom

Join Zoom Meeting

<https://powayusd.zoom.us/j/99371971825?pwd=WW1pRWRYTjI6c0VuVzg3bVp1M1I6dz09>

Meeting ID: 993 7197 1825

Passcode: 998565

1. CALL TO ORDER

- a. Call to Order
- b. Roll Call/Establishment of a Quorum
 - David Little, Chair present absent
 - Margaret Wyatt, Vice Chair present absent
 - Vacant present absent
- c. Welcome to the Public
- d. Approval of Agenda for January 12, 2022

2. PUBLIC COMMENTS

If you wish to address the Personnel Commission concerning a non-agenda item, you are requested to submit a public speaker request form via this link:

<https://forms.gle/aLwEyCVHUBQuu7gy9>

prior to the start of the meeting which begins at 4:30 p.m. on Wednesday, January 12, 2022.

Anyone who has submitted a speaker request form concerning a non-agenda item will be called upon to address the Commission during Agenda Item 2.

3. CLOSED SESSION

- a. Conference with Legal Counsel: Anticipated Litigation (Gov. Code 54956.9(b))
 - 1. One potential case: Cure and Correct Demand (Item in agenda packet)

4. DISCUSSION

- a. Discussion concerning PC rules and procedures regarding the selection of the joint appointee commissioner.

5. ADJOURNMENT



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VIA PERSONAL DELIVERY

December 17, 2021

Margaret Wyatt, Chairperson
David Little, Vice Chairperson
Personnel Commission
Poway Unified School District
15250 Avenue of Science
San Diego, CA 92128

Re: Cure and Correct Demand re: Alleged Violations of Brown Act;
Our file 6230.1101

Dear Ms. Wyatt and Mr. Little:

Our law firm represents the Poway Unified School District ("District") with respect to the above-referenced matter. Please kindly direct all communications regarding this matter to the undersigned at our firm's San Diego address.

It has come to the District's attention that the Personnel Commission ("Commission") may have violated the Ralph M. Brown Act ("Brown Act") regarding the electronic meeting requirements under Assembly Bill ("AB") 361. Such violations have jeopardized the actions taken by the Commission during its virtual December 6, 2021 regular meeting, including conducting Personnel Commissioner interviews, deliberations and announcing its intended appointee for the Commission's Joint Appointee seat that was vacant as of December 1, 2021.¹

As you are aware, AB 361 allows Commission members to electronically attend meetings from any location if the Commission has determined that it is necessary for

¹ The Commission had nine (9) action items listed on its December 6, 2021 agenda, and all actions have been called into question due to the alleged Brown Act violations.

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health and safety to meet electronically after September 30, 2021. (Gov. Code, § 54953(e)(1).) Moreover, in order to continue meeting electronically under AB 361, the Commission must reaffirm this determination no less than every 30 days. (Gov. Code, § 54953(e)(3).)

Here, during the Commission's October 11, 2021 special meeting that occurred in-person in the Aztec Room of the District Office, the Commissioners determined by majority vote to continue holding virtual Commission meetings after September 30, 2021 pursuant to AB 361. In order to continue meeting electronically, the Commission was required to reaffirm its determination no less than 30 days from October 11, 2021, which was November 11, 2021. Alternatively, prior to its December 6, 2021 meeting, the Commission could have made the determination again to conduct meetings virtually, and this could have been done at a prior in-person meeting or at a special electronic meeting with only that agenda item. The Commission did not take any of these actions; rather, during its December 6, 2021 regular meeting, which was held electronically, the Commission attempted to make such reaffirmation to continue virtual meetings. However, because the December 6, 2021 reaffirmation occurred more than 30 days from the initial determination on October 11, 2021, it was therefore untimely and invalid, and the Commission was not authorized to hold its meeting virtually on December 6, 2021. Thus, the Commission's virtual meeting held on December 6, 2021 constitutes a violation of Government Code section 54953.

Further, AB 361 sets forth the following public comment requirements for electronic meetings:

- Prohibits the legislative body from requiring public comments be submitted in advance of the meeting
- Prohibits the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified
- Requires that members of the public be given the opportunity to provide public comment in "real time"

(Gov. Code, § 54953(e)(2).)

Here, in addition to the December 6, 2021 meeting being an unlawful electronic meeting, as described above, the Commission also violated the public comment requirements during that electronic meeting, as follows:

- The Commission required public comments be submitted in advance of the meeting, namely, that any public speaker complete and submit a Google public speaker request form by 3:30 p.m. on December 6, 2021, prior to the start of the meeting at 4:45 p.m. Comments that were timely submitted via the form would be read aloud during Agenda Item 2 "Public Comments." The Commission's requirement that public comments be submitted in advance expressly violates AB 361's prohibition against having such a requirement. Moreover, the 3:30 p.m. cut-off time to submit public comments prior to the start of the meeting at 4:45 p.m.

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also violates AB 361's prohibition of closing the public comment period before the public comment period has elapsed.

- The Commission did not provide the public with the opportunity to provide public comment in "real time," which violates AB 361.

The Commission's above-described violations of Government Code section 54953 are concerning and harmful for several reasons, including, but not limited to, not properly informing the public within 30 days of October 11, 2021 of whether the next Commission meeting would occur in-person or virtually, and denying the public the opportunity to make public comments in real time regarding the action items on the agenda for the December 6, 2021 meeting.

Pursuant to Government Code section 54960.1, the District hereby demands that the Commission cure and correct the violations described above, namely, invalidate its actions taken during the unlawful December 6, 2021 electronic meeting, redo the December 6, 2021 meeting at a future meeting, and moving forward, timely comply with the reaffirmation provisions of AB 361 regarding holding electronic meetings if the Commission intends to continue electronic meetings, and comply with the public comment requirements for such electronic meetings.

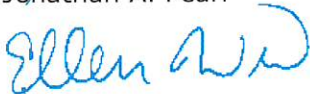
Pursuant to Government Code section 54960.1, the Commission has 30 days from the receipt of this demand to either cure or correct the challenged actions as described above, or inform the undersigned of your decision not to do so. If you fail to cure or correct the challenged actions as described above, or otherwise fail to respond to this letter, we may have no recourse but to pursue legal action to invalidate the challenged actions, which includes seeking an award for our court costs and reasonable attorney fees in this matter.

Respectfully,

DANNIS WOLIVER KELLEY



Jonathan A. Pearl



Ellen C. Wu

cc: Marian Kim Phelps, Ed.D., Superintendent, Poway Unified School District

MEETING OF THE PERSONNEL COMMISSION POWAY UNIFIED SCHOOL DISTRICT

Welcome! The following information is provided to assist persons who attend the meeting of the Personnel Commission and wish to participate in the meeting.

Addressing the Commission:

There are two ways to address the Commission during the meeting. These are 1) speaking to the Commission regarding an item already on the agenda, and/or 2) speaking to the Commission about a new topic not on the agenda. Speakers will be asked to keep their comments brief, and allotted approximately 3 minutes per speaker, per topic.

- 1. Items on the Agenda – Speakers may comment on any item on the meeting agenda in order to share information for consideration by the Commission immediately before the Commission begins deliberation on the item. A speaker slip must be completed and provided to the Director prior to the agenda item using the request form via this link: <https://forms.gle/aLwEyCVHUBQuu7qy9>.*
- 2. Items not on the Agenda – The Public Comments portion of the Agenda provides the opportunity for individuals to address topics that are not listed on the agenda. The Brown Act restricts the Commissioners from engaging in a discussion of non-agenda items or issues raised during public comment except to acknowledge receipt of the information, refer it to staff for further study, or refer the item to a future meeting. The Commission may not take any action on issues or topics presented during Public Comments. A speaker slip must be completed and provided to the Director prior to the start of the meeting using the request form via this link: <https://forms.gle/aLwEyCVHUBQuu7qy9>.*

Placing Items on a Future Agenda

Any member of the public may request that a matter within the jurisdiction of the Commission be placed on the agenda of a regular meeting. The request must be in writing and must describe the item to be discussed with sufficient detail including the history of the issue and how it is related to the Personnel Commission. Also, to be included is any information or material that the requestor wishes to be reviewed by the Commission regarding the issue. It must be submitted to the Personnel Commission Director at least five (5) working days before the scheduled meeting date. Items submitted less than five (5) working days before the scheduled meeting date may be postponed to a later meeting date to allow sufficient time for consideration and research of the issue.

The Commission Chair and the Director shall decide whether a request is within the subject matter jurisdiction of the Commission. Items not within the subject matter jurisdiction of the Commission may not be placed on the agenda. In addition, the Commission Chair and/or Director will determine if the item is merely a request for information or whether the issue is covered by an existing policy or administrative procedure before placing the item on the agenda.

The Commission Chair and/or Director shall decide whether an agenda item is appropriate for discussion in open or closed session, and whether the item should be an action item, information item, or agenzized under Public Comment.

Agenda and Agenda Materials

A copy of all documents related to any item on this agenda that have been submitted to the Commission may be obtained from the Commission office upon request. Requests may be made via email communication to the Director no sooner than 72 hours prior to the meeting. A copy of a previous month's agenda and attachments may be requested by email communication to the Director at any time.

Assistance/Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance, disability-related modifications or accommodations, including auxiliary aids or services, in order to participate in the public meetings of the District's Personnel Commission, please contact the Personnel Commission Office at (858) 521-2794. Notification 72 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accommodation and accessibility to this meeting. Upon request, the District shall also make available this agenda and all other public records associated with this meeting in appropriate alternative formats for persons with a disability.

Closed Session

The Personnel Commission may hold closed sessions only for purposes identified by law. The Commission may hold a closed session at any time during a regular or special meeting and during emergency meetings in accordance with Law.