

MINUTES

The meeting convened at 7:07 p.m. with Anne Wagley, chairperson, presiding.

ROLL CALL

Present: Mana Barari, Elliot Cohen, Steven Freedkin, John Lavine, Mark McDonald,
Robert Stephen Rose, Anne Wagley

Absent: Stephen Glatt

COMMENTS FROM THE PUBLIC

Carolyn Scarr, Trinity United Methodist and Berkeley Ecumenical Peace Institute, regarding the federal requirements for military recruiters and Boy Scouts.

Vince Lipinski, Boy Scouts-Herms District, regarding Boy Scouts.

Brian Cross, GI Rights Network, regarding military recruitment and Boy Scouts.

Judith Gips, regarding military recruitment/BUSD and federal mandate.

Ann Fagan Ginger, Meiklejohn Civil Liberties Institute, regarding the ABM Treaty.

Sherry Zhang, regarding the sister city issue with Haidian District, Beijing, China.

John McDougall, regarding equal opportunity.

Marie Wacht, regarding military recruitment.

Esther Ho, Berkeley Ecumenical Peace Institute, regarding federal requirements.

Jim Gonzales, South County Peace and Justice Coalition, regarding the military.

Alan Houser, regarding the Boy Scouts.

Jonathan Brandon regarding military recruitment.

Leuren Moret, Community Environmental Advisory Commission.

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ACTION ON MINUTES

M/S/C (Wagley, Lavine) to approve the minutes for the regular meeting of February 4, 2002. Ayes: Barari; Freedkin, McDonald, Rose, Wagley; Abstain: Lavine; Absent: Cohen, Glatt.

Commissioner Lavine abstained from the vote because he was not present for the regular meeting of February 4, 2002.

ACTIONS TAKEN:

FEDERAL REGULATIONS ON ACCESS TO STUDENT RECORDS

M/S/C (Freedkin, Wagley) to approve the following Resolution for the School District to adopt a policy regarding new federal requirements to provide access for military recruiters and the Boy Scouts:

WHEREAS, Berkeley Municipal Code (BMC) Chapter 3.68, establishes the Peace and Justice Commission as advisory to both the Berkeley City Council and the Berkeley Unified School Board; and

WHEREAS, the Berkeley Unified School District Policy Manual, § 7000.3, *Non-Discrimination Policy for Organizations Using District Facilities*, states, in part, "No use of school facilities or grounds shall be permitted by any individual, organization or group which discriminates in the hiring, promotion, assignment or discharge of employees or with respect to volunteers, membership or clientele, on the basis of sexual orientation..."; and

WHEREAS, the national organization of the Boy Scouts of America has a policy (opposed by the local Pack 30) of discrimination based on sexual orientation; and

WHEREAS, the Berkeley Unified School District Directors on May 2, 2001 determined that military recruitment in the school system would violate the Berkeley Unified School District nondiscrimination policy because the United States armed services have a policy of discrimination based on sexual orientation; and

WHEREAS, Public Law 107-110, allocating \$116.25 billion in federal funds for Local Educational Agency Grants over a six-year period, including \$13.5 billion in federal Fiscal Year 2002, and which became law January 8, 2002, provides in § 9528, "Armed Forces Recruiter Access To Students and Student Recruiting Information," in part:

(a) POLICY

(1) ACCESS TO STUDENT RECRUITING INFORMATION -- Notwithstanding section 444(a)(5)(B) of the General Education Provisions Act and except as provided in paragraph (2), each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.

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(2) CONSENT -- A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request.

(3) SAME ACCESS TO STUDENTS -- Each local educational agency receiving assistance under this Act shall provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students; and

WHEREAS, the Berkeley Unified School District Policy Manual, Paragraph 5125.5, *Protection and Privacy of Students Records*, states, in part, "The District shall establish and enforce appropriate procedures to prohibit the release of student records or files without parental or guardian consent except as permitted by law," and Paragraph 5125.1 enumerates specific parties to which student names and addresses may be released, with military recruiters *not* included on that list; and

WHEREAS, the Berkeley Unified School District Policy Manual, "Student Rights" section, confers upon each student the right "[t]o be protected in his/her right of privacy to the limits of the law"; and

WHEREAS, Public Law 107-110, § 9525, co-authored by Senator Jesse Helms (R-NC), provides, in part:

(b) IN GENERAL --

(1) EQUAL ACCESS -- Notwithstanding any other provision of law, no public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or a limited public forum and that receives funds made available through the Department shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

(2) VOLUNTARY SPONSORSHIP -- Nothing in this section shall be construed to require any school, agency, or a school served by an agency to sponsor any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society); and

WHEREAS, a conflict between the aforementioned § 9528 of Public Law 107-110 and other federal laws and court rulings may exist, as the United States Supreme Court ruled on February

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8, 2002, in *Owasso Independent School District No. I-011 v. Falvo* (00-1073), that certain student records are confidential under the Family Educational Rights and Privacy Act of 1974 (FERPA or Act), which authorizes federal funds to be withheld from school districts that permit students' "education records (or personally identifiable information contained therein ...)" to be released without their parents' written consent; and

WHEREAS, a conflict may exist between the aforementioned provisions of Public Law 107-110 and § 9527 of that same Law, which states in part:

SEC. 9527. PROHIBITIONS ON FEDERAL GOVERNMENT AND USE OF FEDERAL FUNDS

(a) GENERAL PROHIBITION -- Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act; and

WHEREAS, the Secretary of Education reportedly has until May 8, 2002 to issue regulations implementing the provisions of § 9528 of Public Law 107-110.

NOW THEREFORE, BE IT RESOLVED by the Board of the Berkeley Unified School District directs the Superintendent to develop and implement a thorough, comprehensive, highly visible and highly effective mechanism to allow high school students or their parents to opt out of the distribution of student information to military recruiters, including: (1) providing a prominent check-box on at least one form that is required to be submitted by all students or their parents; (2) handing out a separate form to every high school student, that the student may check off and return to any teacher to opt out of such distribution, and making such forms available on public display in all guidance counselor offices and the high school library; (3) providing an email address to which students or parents may write to opt out; (4) providing a form on the District's Website that may be filled out by a student or parent to opt out and that is accessible via prominent links at the top of the District's main page at <http://www.berkeley.k12.ca.us/> and Berkeley High School's main page at <http://www.bhs.berkeley.k12.ca.us/>; (5) including a description of opt-out procedures in various communications to the student, faculty, and parent communities at least twice during in each school year.

BE IT FURTHER RESOLVED, that the Berkeley Unified School Board directs the Superintendent to examine the new law and any ensuing federal rules to determine whether the Berkeley Unified School District's existing non-discrimination policies that apply to all organizations enable the Berkeley Unified School District under the law to continue to prohibit on-campus military recruitment under the language of § 9528 that requires providing "military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students"; if so, to continue to enforce the Board's policy prohibiting on-campus military recruitment; if not, to provide an equal and contemporaneous opportunity for a reputable organization offering an

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opposing viewpoint, such as the Central Committee for Conscientious Objectors, to present its information.

BE IT FURTHER RESOLVED, that any local Boy Scout group, such as Pack 30, whose statements and practices oppose the national Boy Scout policies of discrimination based on religion and sexual orientation, may therefore be considered to comply with the Berkeley Unified School District's non-discrimination policies.

BE IT FURTHER RESOLVED, that the Berkeley Unified School Board objects to the provisions of §§ 9525 and 9528 of Public Law 107-110 as unwarranted federal interference with local school policies and affairs and a conflict with other provisions of law and public policy, and directs staff to send letters to that effect to the United States Secretary of Education, the United States President, the Member of Congress representing Berkeley and the United States Senators representing California.

BE IT FURTHER RESOLVED, that the Berkeley Unified School Board directs the Superintendent to make all efforts to comply with the nondiscrimination and privacy provisions of the Berkeley Unified School District's policy and with any provisions of law that conflict with §§ 9525 and 9528, rather than with §§ 9525 and 9528, to the extent that such efforts will not jeopardize federal funding for Berkeley Unified School District. Ayes: Barari, Freedkin, Lavine, McDonald, Wagley, Rose; Noes: None; Abstain: Cohen; Absent: Glatt.

Commissioner Cohen abstained from the vote because he was not present for public comment and the majority of the Commission's discussion of the item.

EARTH DAY – April 20, 2002

M/S/C (Wagley, Lavine) that the Commission participate in the Earth Day event on Saturday, April 20, 2002 (with Commissioner Rose as lead person). Ayes: Unanimous; Absent: Cohen, Glatt.

BAYER CORPORATION

M/S/C (Cohen, Lavine) WHEREAS, in 1992 the Berkeley City Council approved a development agreement with Bayer Corporation (formerly Miles Inc.) which guarantees that as long as Bayer abides by certain conditions the zoning rights of the Berkeley plant would remain unchanged for thirty years; and

WHEREAS, this Agreement is up for review in 2002; and

WHEREAS, the Peace and Justice Commission is mandated to advise the Berkeley City Council and Berkeley Unified School Board on matters related to the City of Berkeley's role on issues of peace and social justice (Berkeley Municipal Code 3.68.070 A); and

WHEREAS, the placing of profit above the obligation to provide medicine to people in danger of death is a social injustice of the highest magnitude; and

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WHEREAS, the Bayer Corporation has done just that on several occasions, specifically:

- Participated as a plaintiff in a lawsuit filed in 1997 which sought to prevent the government of South Africa from importing and manufacturing inexpensive generic medications from those suffering from AIDS; and
- Hemophilia Justice have accused Bayer of knowingly administering medication containing HIV and hepatitis to approximately 4,000 persons afflicted with hemophilia; and
- During the Anthrax scare Johnson & Johnson offered to donate up to 100,000 tablets of the antibiotic Levaquinn, and Abbott Laboratories, Bristol-Myers Squibb, and GlaxoSmithKline offered to donate as much medicine as Anthrax victims actually needed, in contrast Bayer continued to charge the government a price they acknowledged exceeded the cost of manufacture; and

WHEREAS, these actions have caused protest by members of the Berkeley community; and

WHEREAS, the Peace and Justice Commission is mandated to act as a liaison between community groups organizing around issues of peace and social justice and city government (Berkeley Municipal Code 3.68.070 H).

NOW THEREFORE, BE IT RESOLVED that as part of the comprehensive ten year review process, the Peace and Justice Commission request that a public hearing be held for citizens to raise concerns about Bayer.

BE IT FURTHER RESOLVED, that the public hearing shall be held at a meeting of the City Council.

BE IT FURTHER RESOLVED, that the City Council take into consideration testimony heard at the public hearings and the facts in the contained in this Resolution as part of that review process.

BE IT FURTHER RESOLVED, that the City Council refer this matter to any other commissions that have jurisdiction over the various aspects of the Bayer agreement to determine if Bayer is failing to properly fulfill it's obligations in those areas. Ayes: Unanimous; Absent: Glatt.

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NEXT MEETING:

The next meeting will be a Special Meeting on Monday, March 8, 2002 at 7:00 pm in the North Berkeley Senior Center to complete agenda items from tonight's meeting. The next regular meeting will be on Monday, April 8, 2002 at 7:00 p.m.

The meeting was adjourned at 10:07 pm.

Respectfully submitted,

Manuel Hector, Secretary
Peace and Justice Commission