

MEETING NOTES

Advisory Commission on Charter Schools

An Advisory Body to the State Board of Education

California Department of Education
721 Capitol Mall, Room 166
Sacramento, California

Friday, February 8, 2002
10:00 a.m.

MEMBERS PRESENT

Mark Kushner, Chair
Steve Barr
Tom Conry
Linda Frost
Beth Hunkapiller
Marta Reyes
Jan Sterling*
Johnathan Williams

MEMBER ABSENT

H. Wes Pratt

* Jan Sterling is the State Superintendent of Public Instruction's designee.

PRINCIPAL STAFF TO THE ADVISORY COMMISSION

Greg Geeting, Assistant Executive Director, State Board of Education
Eileen Cubanski, Administrator, CDE Charter Schools Office

Call to Order. Mr. Kushner called the meeting to order at 10:12 a.m.

Flag Salute. Mr. Kushner asked Mr. Geeting to lead the members, staff, and audience in the Pledge of Allegiance.

Organizational Matters. Mr. Kushner briefly went over the agenda for the day and the various documents to which the members would be referring. Copies of the documents were made available to the audience. Mr. Kushner indicated that time for public comments would be provided at the conclusion of the members' consideration of each of the principal items of business for the day.

Mr. Kushner indicated that one of the principal items of business would be consideration of the process that the Advisory Commission would use in reviewing the many determination of funding requests received to date and expected to be received the following week. Another principal item of business would be consideration of the issue of satellite campuses of schools currently chartered; instances have been reported of

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charter schools opening and closing satellite campuses with little or no reporting to (or oversight or approval by) their chartering entities.

Mr. Kushner asked Mr. Geeting to be informal timekeeper (as needed) for the meeting to help ensure that the group did not get bogged down on any particular issue. He invited Ms. Sterling to keep informal notes on the meeting process and to share his thoughts with the group at the end of the day's session.

Introductions. The members of the Advisory Commission introduced themselves briefly. Mr. Kushner then invited the members of the audience to introduce themselves as well, and to identify the organization (if any) that each represented.

Draft form that CDE staff will use to evaluate/review determination of funding requests. Mr. Kushner proceeded to focus attention on the draft form that CDE staff proposed to use in the evaluation and review of determination of funding requests. A copy of the blank form was distributed, as well as four completed "sample" forms for discussion purposes. Prior to discussing the draft form and the samples, several related issues were mentioned.

- The statutorily specified date of February 13, 2002, applies only to the "automatic approval" of requests in the absence of State Board action by March 19, 2002. There is no statutory prohibition on considering and acting upon requests received after that date. [Indeed, it is likely that there will be requests submitted after that date.] CDE staff and the Advisory Commission need to be prepared (as best they can) to accommodate requests submitted late in the 2001-02 fiscal year.
- Charter schools' funding for nonclassroom-based ADA will not change (i.e., be reduced) prior to the second principal apportionment (P2). Schools that claim ADA for nonclassroom-based instruction (in excess of the amount allowed by law as part of classroom-based instruction) and that have no approved determination of funding request at P2 will likely receive no funding for the nonclassroom-based ADA.
- The Advisory Commission (by general consensus) supported the idea that notice needs to go out as quickly as possible to those charter schools that do not submit requests by February 13 to be sure they have properly understood the consequences of not having an approved determination of funding request. [Charter schools that will claim only classroom-based ADA in 2001-02 – i.e., are not providing nonclassroom-based instruction to a greater extent than is allowed within the definition of classroom-based instruction – will not need to submit a determination of funding request.
- There is no statutory authority to establish a "cut off" date for 2001-02 determination of funding requests after which the requests would not be

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considered. However, there is similarly no authority to consider a request that is not “substantially complete” or to “make up” a request for a charter school that has failed to submit one.

- The number of charter schools that fail to submit a determination of funding request for lack of knowledge as to the significance of the request will probably be quite small. However, CDE staff were encouraged to make a special effort to notify charter schools that are known to provide nonclassroom-based instruction.

Mr. Kushner invited Ms. Cubanski to walk the members through the draft form and the four samples. There was extensive discussion in that process. Some of the key points were as follows:

- To date, the CDE has received 20 requests, of which 14 were adjudged substantially complete and six were found to lack essential pieces of data. CDE staff anticipate receiving 80 to 90 more requests.
- The staff review form includes information as to whether the requesting school’s average cost per certificated employee is within a range based upon the statewide average. It was suggested that the statewide average be adjusted somewhat to take account of data differences as reported for SB 740 purposes.
- It was suggested that there be a “check off” for inclusion of a school’s own independent audit. Currently there is a check off if the school is included in the chartering entity’s audit.
- There was considerable discussion surrounding the “yes or no” questions related to a 70 percent figure. All agreed that having the actual percentage was important information, but some felt that mentioning the 70 percent figure, gave that figure too much credence. Others felt that the “yes or no” question against the 70 percent standard was just a helpful piece of information. The general consensus appeared to be to take out the “yes or no” questions based on the 70 percent figure, but to include instead the data element mentioned immediately below.
- There was a general desire to have included on the form a calculation of each requesting school’s instructional costs as a percentage of its revenues (if possible). It was recognized that revenues as reported on the request form are somewhat different than the definition of revenues as originally envisioned by the Advisory Commission.
- For the future, it might be desirable to seek more detailed information on the “oversight fee.” It might also be desirable to clarify that contracts exceeding \$50,000 refers to funds “from the charter school.” The members will also want to see whether the request form provides sufficient information to address the question *Where’s the money being spent?* when the answer to that question is not readily apparent on the surface. There was some concern that the reserve

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calculation on the staff review form perhaps raised issues needlessly, but there was general agreement that it should be retained for this round of consideration of requests. It might be desirable to ask for specific comment from requesting schools in instances where the relative proportions of certificated and classified employee costs (for the instructional program) “are way out of whack.”

- For the future, there was a clear desire expressed to take a much closer look at the teacher-to-pupil ratio information being requested, and to determine how the quality and consistency of that information can be improved without imposing a considerable new burden on charter schools.
- There was considerable discussion of how the Advisory Commission would regard such matters as (1) charter schools paying all or a portion of the salary of officials of the chartering entity, (2) charter school governing boards including school staff (conflicts of interest), and (3) charter school employees who are also providers of goods or services to the charter schools through contracts.
- The four sample forms will be used to help CDE staff sort the requests into groups that (1) appear to be approvable as submitted for 100 percent funding and (2) appear to present issues that would indicate 95 percent funding is more appropriate for 2001-02. Within the latter group, if possible, CDE staff plan additionally to sort the requests by the types of issues presented.
- “Sample A” was presented to illustrate what CDE staff would likely recommend for 100 percent level. There appeared to be general consensus that this was a correct calibration.
- “Sample B” was presented to illustrate what CDE staff would likely recommend for the 95 percent level. Again, there appeared to be general consensus that this was a correct calibration, although the members indicated that they would want to provide the requesting school the opportunity to provide oral or additional written argument to support receipt of the 100 percent level.
- “Sample C” was presented to illustrate what CDE staff would likely recommend for the 95 percent level, but for reasons different than “Sample B.” Again, there was general consensus that this reflected a correct calibration, but that the requesting school needed to have the opportunity to provide oral or additional written argument to support receipt of the 100 percent level. They need to be able to show why what they are doing is reasonable.
- “Sample D” was presented to illustrate what CDE staff would likely recommend for the 100 percent level, but for reasons different than “Sample A.” There was general consensus that this reflected an acceptable calibration, but the members felt this is one that they would want to have drawn to their attention for in-depth consideration (unlike “Sample A”).

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- CDE staff were commended for developing the review forms (and for preparing very illustrative samples). The staff review will tremendously expedite the Advisory Commission's work.
- There was considerable discussion of adult students in charter schools, the funding provided for adults, and the special requirements pertaining to adults.

Prior to the lunch recess, Mr. Kushner asked for public comment on the draft review form and the samples.

- Rick Piercy. Despite some problems, charter schools remain a very effective educational reform endeavor and need to be encouraged. More information should be collected regarding governing board members and their financial relationships (if any) to the school. The Advisory Commission needs to study more closely the issue of facilities costs, particularly in hybrid models (part classroom-based and part nonclassroom-based). The teacher-pupil ratio information is a problem.
- Lisa Corr. There may be some special issues in 2001-02 related to charter schools that are receiving revenues based on the revenue limit/categorical funding model (which will sunset this year). Some of their revenues are restricted and cannot be used for salaries; they need to be able to explain the restrictions. The teacher-pupil ratio information is flawed.
- Eric Premack. The Advisory Commission has been given a job that fundamentally unsound; there are lots of problems with the concepts behind SB 740. It's unclear what "evil" is being rooted out, and, thus, what the criteria are that define that evil. What the Advisory Commission and State Board have done so far do not reflect the purposes outlined in the Governor's message in signing SB 740. Imposing cuts in funding mid-way through a fiscal year is impractical, and the whole process of endeavoring to develop criteria for the cuts is a Kafkaesque exercise. The forms are, at best, mass, crude statewide tests that don't work. Specific problems include salary data and the teacher-pupil ratio calculation.
- Mike Coppess. In listening to the discussion, it was difficult to find consistent threads differentiating between the 100 percent and 95 percent levels. The review process will be overly discretionary and vague. The forms at best provide "ball park" numbers. The language used during the discussion (e.g., "squishy") underscores lack of appropriate respect. Drafts of possible regulations circulated some months ago illustrate how difficult it is to define such terms as "gross fiscal mismanagement."
- David Patterson. The goal should be to award full funding except in unusual cases. Charter schools should be informed as soon as possible of the consequences of not submitting determination of funding requests. CANEC has

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prepared a statutory “reform proposal” addressing major issues now confronting charter schools, including (1) a moratorium on opening sites outside the county in which a charter is granted or an adjacent county; (2) a requirement for charter schools to inform their chartering entities of all campus locations; (3) expansion of the LAO study of charter schools to include the charter-granting process; and (4) raising of the statutory limit on the charter oversight fee under certain conditions.

- Mindy Copley. Did not hear student achievement being discussed in the consideration of nonclassroom-based instruction. It needs to be a primary consideration. When charter schools are serving adults in nonclassroom-based settings, they need to be able to explain what they are doing, why it’s reasonable, and why the school should be funded at the 100 percent level. The teacher-pupil ratio does not fairly account for part-time students.
- Zane Copley. Options for Youth Charter School has been very important for me. I wouldn’t have been able to be successful in a traditional school. Students need this type of alternative.

Lunch Break. 1:01 – 2:04 p.m.

Following the lunch break, Mr. Kushner asked the members for their observations on the issues raised in the public comment.

- Ms. Frost indicated that student achievement is certainly a very important focus, but that SB 740 was responding to a different (and also very important) priority.
- Mr. Conry indicated that he very much favored the approach of securing additional written communication/documentation when requests raise questions (in contrast to encouraging large groups to travel to Sacramento to make oral presentations). He also mentioned that it was the members’ obligation to implement the provisions of law as they stand, even though individuals might have preferred to see one provision or another written differently.
- Mr. Barr indicated that he did not find SB 740 “a horrible law.” It’s part of the evolutionary process through which charter schools are going. It’s a sad development when those who have been “change agents” (by participating in the development of charter schools) become resistant to change (when confronted with real problems that need to be resolved). We need to work on the “gray areas.” It was very foresighted of the State Board to assemble an advisory commission that includes (along with others) a cross-section of the “peers” of those involved with the charter school movement to provide guidance in the development of the regulations and to do the initial screening of determination of funding requests.

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- Ms. Sterling noted that, while the particular phrasing of statutory requirements raises questions in some areas, we are approaching the issues in a very thoughtful and deliberative way.
- Mr. Kushner suggested that the invitation to supply additional written materials with determination of funding requests needs to be tempered with reason (not boxes of material!). We do need to take a close look at the teacher-pupil ratio; the law requires its consideration, but we need to ensure that the data are consistent and meaningful. We need to be sure that we do not inadvertently punish those who are working responsibly. We need to be limited in our scope when we are endeavoring to make assessments from afar (i.e., from Sacramento) about what is happening in local areas. We may need to consider actual visits under some circumstances. There is a “healthy tension” between the freedom charter schools enjoy (from minute regulation by statute) and the accountability (both fiscal and otherwise) to which they must be subject.
- Ms. Hunkapiller indicated that we are now in a period of ongoing evaluation of our experiment with charter schools. SB 740 is part of that process. There may be difficulties in completing the task we’ve been given, but it’s a job that needs to be done. We need to get at “profiteering” in charter schools. There is much we can do here that is good and that will (in the long-term) strengthen charter schools.

Scheduling of meetings and review process. Mr. Kushner turned next to a discussion of the scheduling of meetings and how the process of reviewing requests would proceed from this point.

- The meeting scheduled for February 19 will be essentially a day of “paper-screening” the requests. CDE staff will have reviewed the requests (to the extent possible) and will have copies available for the members and at least one public review copy. Because it is a noticed meeting (and the public is welcome), the members may discuss the requests and/or review process periodically during the day. However, the major objective of the day will be review of the requests and CDE evaluations by the members as individuals.
- The meeting scheduled for February 20 will be a structured session in which public input will be accepted. The goal of the day will be to settle on recommendations to the State Board for as many of the requests as possible.
- The meeting scheduled for February 25 will be re-noticed as a full-day meeting (beginning at 10:00 a.m.), which probably means that the meeting location will need to be changed. The purpose of the day will be to provide a second opportunity for public input. The goal of the day will be to settle on recommendations for the requests on which recommendations could not be reached on February 20 (or requests that were not fully reviewed by CDE staff by

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February 20), as well as requests about which additional information was requested at the February 20 meeting.

- An all-day meeting (beginning at 10:00 a.m.) will be noticed for March 5. This meeting (which may eventually be cancelled) will be to consider and resolve requests that were received late or could not otherwise be resolved earlier, as well as to consider any differences that may have arisen between the recommendations developed previously by the Advisory Commission and the position(s) that may have been taken by the State Superintendent.
- The plan will be to present (at the State Board meeting of March 7, 2002) four batches of requests: (1) requests recommended for approval at the 100 percent level; (2) requests recommended for approval at the 95 percent level (with statements of reasons justifying the lower-than-requested level, if applicable); (3) requests on which there is a difference of recommendation between the Advisory Commission and the State Superintendent; and (4) requests that have been adjudged as not “substantially complete” with a recommendation that the State Board make a finding to that effect. In this way, no request will be subject to the automatic approval provision specified in SB 740.
- Advisory Commission members are invited to attend the State Board meeting and monitor (or assist with) the presentation of recommendations.
- Ms. Hunkapiller suggested that the members might want to “recalibrate” as the review process went along. She also expressed some degree of anxiety regarding the evaluation “tool” being used. Is it fair?

Mr. Kushner called for public comment on the matters just discussed.

- Rick Piercy. Comparisons among the requests (and the members recommendations concerning them) will be inevitable. This is an issue of which the members should be aware, and that they should be prepared to address.
- Buzz Breedlove. The members should consider how disagreements between themselves and the State Superintendent will be presented to the State Board.
- Eric Premack. The members must not forget that, for each request recommended for less than the 100 percent level, a statement of reasons must also be included in keeping with law.

Additional meetings. The members set the following meeting dates in April 2002:

- April 2-3 (a two-day meeting).
- April 11.
- April 22.

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Satellite campuses. Mr. Kushner turned the discussion to the issue of satellite campuses. He indicated that the issue had arisen in connection with a specific school chartered by the Fresno Unified School District that apparently operated many campuses, and that these satellite campuses apparently opened and closed with little or no notice being given to the district. Other issues surrounding this particular school included teaching religion, charging tuition/fees, and improper financial management. [Mr. Kushner indicated that there is a related issue of students at a single school site being claimed by different charter schools for funding purposes.] He noted that Fresno Unified had revoked this particular school's charter in January 2002.

- With respect to limiting satellite campuses, three general ideas have been set forth: (1) campuses only within the geographic boundaries of the chartering entity; (2) campuses only within the county in which the chartering entity is located; and (3) campuses only within the county in which the chartering entity is located and immediately adjacent counties.
- A second issue is whether to make permanent or temporary any change in the current provisions of law regarding satellite campuses.
- A third issue involves what to do with schools that have existing satellite campuses. These satellites could be "grandfathered" (allowed to remain in operation) permanently, or for a limited period of time.

Mr. Kushner asked for the members' comments on these issues.

- Ms. Frost suggested that it was desirable and important to retain the flexibility to approve charters outside of the geographic boundaries of a district or county. Petitioners often find unreceptive audiences in the immediately affected district or county, even though the proposal is a quality one that will succeed. The local agencies don't want the competition. We must not throw the baby out with the bathwater.
- Ms. Hunkapiller indicated that geographical distance (from a chartering entity to a charter school) isn't a major issue. The real issue is diligence of oversight. Chartering entities can insist on being notified of the opening and closing of satellite campuses; this is not a big problem.
- Ms. Sterling suggested there was an issue with respect to the expectations for charter oversight by chartering entities. Oversight responsibilities need to be defined more clearly.
- Mr. Barr suggested that restricting charter schools to the boundaries of the district in which they are chartered is too narrow. He indicated that he favored the home county and adjacent counties option. Also, he indicated that we need to preserve to option to charter schools that operate outside of a chartering entity's jurisdiction, otherwise we will be overwhelmed by appeals for State Board

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chartering. [He analogized to Walmart seeking permission from K-mart to operate in a particular neighborhood. Charter schools' relationship to districts is similar in that they are seeking the districts' permission to be competitors.]

- Mr. Conry suggested that physical distance from a chartering entity is a problem in effective oversight. Restriction to the chartering district's boundaries seems the logical limit, but the members have presented important arguments for a more expansive limit. There are clearly exceptional issues that should be considered.
- Mr. Kushner indicated that it's clear the satellite campus issue can be dealt with effectively by chartering entities under existing law. State-only chartering (such as in Massachusetts) would not be in keeping with California's local control tradition. It's unfortunate that a few "bad" charter schools tarnish all the "good" ones.
- At Mr. Kushner's request, Mr. Patterson summarized the CANEC recommendations (see above).

Mr. Kushner called for public comment on the matters just discussed.

- Buzz Breedlove. The problem is not the satellite campuses; the problem is charter schools breaking the law and oversight agencies (chartering entities) not following through on their clear responsibilities. The Fresno example is one of oversight working; the charter was revoked following fair due process. The current system of allowing for satellite campuses relieves the California Conservation Corps of having to contract with many charter schools.
- Jayna Gaskill. It would be better to have criteria for satellite campuses rather than a "ban" of some type. One possibility would be a "right of first refusal" to districts in which satellite campuses are to be located. Limitations on satellite campuses will restrict some charter schools from providing the best kind of education for pupils. Smaller campuses are often desirable educationally, but a charter school may need many small campuses to have the critical mass of students necessary to be economically viable.
- Eric Premack. School districts are in a conflicted position as chartering entities. Indifference is often the best chartering entities do as far as oversight goes. In some cases, kickbacks from charter schools have become anticipated sources of revenue in districts' budgets, and the districts thus have become financially unable to revoke the charters. The CANEC proposal would provide some breathing room. The long-term solution may involve some sort of regional chartering entities. There are some good models in place in other states. SB 740 came about because of bad relationships between charter schools and their chartering entities, but it does not provide a workable solution.

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- David Patterson. It is important that the Advisory Commission continue to be thoughtful in its consideration of important public policy questions pertaining to charter schools. Keep the focus on student achievement and operational efficiency.

Process check. Mr. Kushner asked Ms. Sterling for her report on the meeting process. She indicated that, overall, she felt the group had done a FINE JOB wrestling with some very difficult issues. She felt the opportunities for public input were adequate and sufficiently frequent. She appreciated the reason for NOT bringing in lunch was to provide the audience an opportunity to have a lunch break as well, but asked if there might be some alternative. [Mr. Conry suggested that the group could have lunch brought in, but still take a lunch break (shorter than the usual one-hour break) to allow the audience members to get lunch as well.] She indicated that forecasting general plans for future meetings was good. She felt that more frequent breaks during the day might be helpful. To the extent the group does break for lunch, it's important that the group adhere more rigorously to the announced time of the meeting's resumption.

Mr. Kushner closed by indicating that with so many meetings coming up it's certain that members will have difficulty attending from time to time. He asked that members inform him as soon as they know their schedules will preclude their attendance at a forthcoming meeting.

Adjournment. Mr. Kushner adjourned the meeting at 3:43 p.m.