

MEETING NOTES

Advisory Commission on Charter Schools *An Advisory Body to the State Board of Education*

California Department of Education
1430 N Street, Room 1101
Sacramento, California

Wednesday, March 19, 2003

MEMBERS PRESENT

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

MEMBERS ABSENT

Vacancy

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

PRINCIPAL STAFF TO THE ADVISORY COMMISSION

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

Call to Order. Mr. Kushner called the meeting to order at 10:26 a.m.

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

Tentative Agenda. Mr. Kushner announced that the tentative agenda for the day would be consideration of (1) implementation of the financial reporting provisions of AB 1994, (2) determination of funding requests, (3) proposed regulations pertaining to the programmatic provisions of AB 1994, (4) new legislative proposals, (5) process for evaluating charter school grant applications, and (6) other matters as time permits.

Introductions. The members of the Advisory Commission introduced themselves along with staff. Because the audience was large in number, Mr. Kushner did not invite audience members to introduce themselves individually, but suggested that audience members who had not previously attended take advantage of meeting breaks to introduce themselves to the commissioners and staff.

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Financial reporting provisions of AB 1994. Mr. Kushner invited Caryn Becker, Administrator of the CDE's Financial Accountability and Information Services Office, to make a presentation on the status of implementation of the financial reporting provisions of AB 1994. Ms. Becker noted that AB 1994 requires the submission of various financial data by charter schools based upon forms developed by the State Superintendent which are then distilled into regulations to be approved by the State Board of Education. She indicated that, because of the mid-year effective date of the legislation (January 1, 2003), the CDE had determined not to pursue reporting in 2002-03. For 2003-04, she indicated that the CDE's intent will be to pursue regulations that provide two options for financial reporting, one being the Standard Account Code Structure (SACS), and the other being a modified (simplified) format based on the old Form J-200. The SACS alternative would likely be in the formatted as an Excel spreadsheet. The goal will be for charter schools to submit their reports on disk or CD or by e-mail.

Ms. Becker commented that beyond 2003-04, the likely goal will be to have all charter schools use SACS, but that regulations toward that end would not be pursued at this time. That issue would be addressed in a subsequent regulatory package. She noted that universal reporting through SACS would eliminate some duplicative collections, such as the separate collection of data for purposes of SB 740 determination of funding requests, as well as various federal and state reports. Although SACS implementation presents challenges (particularly for very small schools), the ultimate benefits are very significant. She indicated that the CDE will pursue a budget change proposal for funding of training on SACS implementation. She also suggested creation of a system of support from county offices of education for small charter schools.

There was considerable discussion. Ms. Sterling reiterated that funding for SACS training will be a big consideration in how to proceed beyond 2003-04. Ms. Reyes pointed out that SACS is very complicated and takes lots of time and energy to implement properly. Mr. Kushner asked whether SACS would be simplified for charter schools, perhaps having fewer reporting categories; Ms. Becker indicated that simplification for purposes of charter school reporting was under study. Ms. Frost indicated that training is essential, and that training needed to be carried out soon in order for charter schools to build their 2004-05 budgets in SACS. Mr. Conry commented that it's vital to get financial accountability for charter schools in place quickly. Ms. Sterling apologized for not being able to share a draft 2003-04 form and draft regulations with Advisory Commission members at this meeting. She indicated that draft would be available soon.

David Patterson (CANEC) expressed the organization's desire to see the draft form and regulations for 2003-04 as soon as possible. He also commented that SACS should not be looked upon as a "silver bullet" to remedy all the financial problems of charter schools. Some districts have had fiscal insolvency problems even with SACS in place.

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Also, SACS has a degree of complexity that is contrived and completely unnecessary in many charter schools, particularly very small charter schools; in fact, SACS may be detrimental to the operation of these schools in some instances. Moreover, there is the question of whether requiring SACS constitutes a state-mandated local program; if so, charter schools will be entitled to reimbursement. He expressed support for doing everything possible to keep the financial reporting requirements for charter schools simple and straightforward. He noted the organization's ongoing commitment to promoting financial accountability in charter schools and, in particular, financial accountability that can be easily and meaningfully communicated to the general public.

Waldo Burford (Gorman Learning Center) suggested that incentives be considered to promote SACS implementation, as was done with the California School Information System (CSIS).

Ms. Becker concluded the discussion by commenting that SACS implementation had helped uncover financial problems in some districts and that the mandate issue had previously been addressed for school districts, but was a different circumstance for charter schools and would have to be decided separately by the Commission on State Mandates.

New legislation related to charter schools. Mr. Kushner took note that staff had prepared a summary of new legislation related to charter schools.

2002-03 (and beyond) determination of funding requests. Mr. Kushner indicated that the Advisory Commission had previously proceeded by looking at blocks of determination of funding requests to see if some could be dispensed with in a single motion. To begin, he asked if there was a motion on those requests where the staff recommendation coincided with the school's request.

Charter #	Charter School Name	Recommended Level	Recommended Years
#170	Pacific Coast Charter School	100%	One year only 2002-03
#199	Classical Academy	100%	One year only 2002-03
#375	La Vida Independent Study Charter	100%	One year only 2002-03
#392	Gold Rush Home Study Charter	100%	One year only 2002-03
#423	One Charter School	100%	One year only 2002-03

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- **RECOMMENDATION APPROVED:** Ms. Reyes moved that the Advisory Commission recommend to the State Board that the determination of funding requests for the above-listed charter schools be approved at the 100 percent level for years indicated. The reasons justifying a level higher than 80 percent in 2002-03 are that (1) the schools met the minimum criteria specified in regulation for the 100 percent level and (2) the schools presented sufficient evidence (taking the totality of the request into account along with any other credible information that may have been available) that the 100 percent funding level is necessary for the schools to maintain nonclassroom-based instruction that is conducted for the instructional benefit of the student and is substantially dedicated to that function. Mr. Williams seconded the motion. The motion was approved by unanimous vote.

The Advisory Commission next considered a list of determination of funding requests recommended for approval by staff at the funding level requested, but for a lesser number of years than requested. Ms. Cubanski explained the typical reasons that staff recommended a lesser number of years.

Charter #	Charter School Name	Recommended Level	Recommended Years
#155	Paradise Charter Network	100%	One year only 2002-03
#163	New Millennium Institute of Education	100%	One year only 2002-03
#179	Santa Barbara Middle Charter School	100%	One year only 2002-03
#203	Lammersville Charter School	100%	Two years 2002-03 and 2003-04
#247	Pacific View Charter (Oceanside USD)	100%	One year only 2002-03
#250	Charter Home School Academy	100%	One year only 2002-03
#277	Pacific View Charter (Loleta ESD)	100%	One year only 2002-03
#310	Orchard View Charter School	100%	Two years 2002-03 and 2003-04
#320	Long Valley Charter School	100%	One year only 2002-03
#419	Dehesa Charter School	100%	One year only 2002-03
#472	Central Coast Virtual Academy	100%	One year only 2002-03

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#493	California Virtual Academy-San Diego	100%	One year only 2002-03
Charter #	Charter School Name	Recommended Level	Recommended Years
#494	California Virtual Academy-Kern	100%	One year only 2002-03
#495	California Virtual Academy-Jamestown	100%	One year only 2002-03
#D2	Kingsburg Charter District	100%	One year only 2002-03

- **RECOMMENDATION APPROVED:** Ms. Hunkapiller moved that the Advisory Commission recommend to the State Board that the determination of funding requests for the above-listed charter schools be approved at the 100 percent level for years indicated. The reasons justifying a level higher than 80 percent in 2002-03 and (as applicable) higher than 70 percent in 2003-04 are that (1) the schools met the minimum criteria specified in regulation for the 100 percent level and (2) the schools presented sufficient evidence (taking the totality of the request into account along with any other credible information that may have been available) that the 100 percent funding level is necessary for the schools to maintain nonclassroom-based instruction that is conducted for the instructional benefit of the student and is substantially dedicated to that function. Mr. Williams seconded the motion. The motion was approved by unanimous vote.

Ms. Cubanski noted that a new category of staff recommendations was being presented: determination of funding requests where less than full funding was being requested. After some initial discussion, Mr. Conry moved that the Advisory Commission recommend approval of the requests in keeping with the CDE staff recommendations, and Mr. Williams seconded the motion. However, following more discussion, Mr. Conry withdrew his motion with Mr. Williams' consent.

The discussion focused principally on the Options for Youth requests and the Opportunities for Learning requests. Ms. Cubanski presented a general summary of staff concerns regarding the Options for Youth requests, principally the very low percentages of expenditures being devoted to instructional costs and to certificated employees. Ms. Sterling asked whether a larger percentage reduction should be imposed upon these schools. Ms. Cubanski noted that if the amounts spent for instructional costs by Options for Youth and Opportunities for Learning were scaled upward proportionately in relation to the formula in the regulations, it looks as though they could sustain reductions of nearly 40 percent and 50 percent respectively. Mr. Conry asked if the schools' percentages for instruction had gone up in relation to the preceding year. Ms. Cubanski indicated that the percentages had gone up by approximately 10 percentage points.

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In lieu of the general motion (mentioned above), Mr. Conry offered a specific motion related to the single school on the list that was associated neither with Options for Youth nor with Opportunities for Learning.

Charter #	Charter School Name	Recommended Level	Recommended Years
#285	Gorman Learning Center	80%	One year only 2002-03

Waldo Burford spoke on the school's behalf. He indicated that he had worked closely with the CDE staff regarding the determination of funding request, and that he would wish to request the 80 percent level at this time but that he would reapply after the close of the current fiscal year.

- **RECOMMENDATION APPROVED:** Mr. Conry moved that the Advisory Commission recommend to the State Board that the determination of funding requests for the above-listed charter schools be approved at the 80 percent level for 2002-03 only. Since the 80 percent level is consistent with the level specified in statute for 2002-03, no reasons justifying a higher or lower level are necessary. Ms. Hunkapiller seconded the motion. The motion was approved by unanimous vote.

More discussion ensued regarding the Options for Youth requests. Ms. Hunkapiller initially moved to recommend approval at the 65 percent level, and Mr. Barr seconded the motion. Considerable discussion ensued. Ms. Sterling indicated that a still lower percentage might be in order. Ms. Reyes indicated that she did not have sufficient information at this time to feel comfortable with a level below 70 percent. Ultimately, Ms. Hunkapiller, with Mr. Barr's consent, modified her motion as noted below.

Charter #	Charter School Name	Recommended Level	Recommended Years
#13	Options for Youth-Victor Valley	N/A	N/A
#105	Options for Youth-Upland	N/A	N/A
#117	Options for Youth-San Gabriel	N/A	N/A
#130	Options for Youth-Burbank	N/A	N/A
#139	Options for Youth-Mt. Shasta	N/A	N/A

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Charter #	Charter School Name	Recommended Level	Recommended Years
#217	Options for Youth-San Juan	N/A	N/A

Greg Bordo (Freeman, Freeman &Smiley) spoke on behalf of Options for Youth. He indicated that it has not been made clear what Options for Youth is to do. The numbers being considered are from the preceding year; today's numbers are quite different. The regulations were not in place until after the year was over. The schools cannot absorb a reduction of the percentage contemplated in the discussion. A reduction of that magnitude would make the schools unable to ever reach the objectives outlined in the regulations. Significant shifts in expenditures have been occurring; we need more time to turn the ship. The concept of economies of scale isn't applicable to these schools. We will be pleased to provide more information.

Mr. Barr commented that it just isn't clear what Options for Youth is doing with all of its revenues; it appears to be spending an excessive amount for non-instructional purposes. It's disappointing that an operation that receives so much funding is the only one who has sent an attorney to address us, and that the general tenor of the arguments is legalistic (e.g., notice requirements) and not educational. Mr. Williams indicated that it would be acceptable to him to put over consideration and look at additional materials from the organization. Mr. Kushner indicated that he, too, would need more information about how Options for Youth expends funds in order to feel comfortable with the 70 percent level. Mr. Conry commented that he would be interested in more explanation of why the ship takes so long to turn. Ms. Reyes indicated that she would like to know more about the governance and organization of the Pathways organization.

Mr. Conry stated that he would oppose a motion to recommend postponement of consideration of the Options for Youth requests. He indicated that he felt a better course of actions would be to recommend approval the requests at a level below the 70 percent level. If the State Board chose to approve the requests at the lower level, Options for Youth could submit second determination of funding requests and produce additional facts and arguments at that time. Ms. Sterling concurred.

- **RECOMMENDATION APPROVED:** Ms. Hunkapiller moved that the Advisory Commission recommend to the State Board that it postpone consideration of the determination of funding requests for the Options for Youth schools pending further consideration by the Advisory Commission of the possibility of recommending funding levels below 70 percent. The postponement will allow time for the submission of additional information by the affected schools and for consideration of that information by the Advisory Commission. Mr. Barr seconded the motion. The motion was approved by a vote of 5-2-1. Mr. Conry and Ms. Sterling voted against the motion. Ms. Frost did not vote on the motion.

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Charter #	Charter School Name	Recommended Level	Recommended Years
#188	Opportunities for Learning-Hacienda La Puente	N/A	N/A
#214	Opportunities for Learning-William S. Hart	N/A	N/A
#402	Opportunities for Learning-Baldwin Park	N/A	N/A

Michael Coppess spoke on behalf of the Opportunities for Learning schools. He indicated that there is no legal relationship between Opportunities for Learning and Options for Youth. There was extensive discussion regarding the roles of John and Joan Hall with respect to Opportunities for Learning and Options for Youth. Mr. Bordo provided some clarification in the course of the discussion.

Mr. Kushner indicated that it would be helpful to have a written statement clarifying the governance structures of Opportunities for Learning and Options for Youth. Mr. Conry added that he would appreciate information on the organizations' histories from their beginnings to the current day. Mr. Coppess indicated that more information would be provided.

Mr. Williams indicated that, as with the Options for Youth schools, he would prefer in this case to postpone action and study any additional information that is provided. Ms. Reyes, too, indicated that she would support postponement. Mr. Kushner indicated that he would support postponing a recommendation, but would welcome any information that could be presented today. Mr. Conry commented that he would favor taking action now to recommend a reduced funding level, then have the schools present second determination of funding requests along with any additional information. Mr. Barr commented that he found himself in a difficult situation; generally nonclassroom-based charters have responded positively to SB 740 and brought expenditures into line with the regulations, but Opportunities for Learning schools seem to be an exception. On top of that, the schools are being represented by an attorney emphasizing technical points rather than educational ones. Mr. Barr indicated that he leaned toward recommending a reduced funding level now and having the schools present more information in second determination of funding requests.

Mr. Coppess reiterated that Opportunities for Learning is distinct from Options for Youth. The schools serve more than 7,000 students and are WASC accredited. They provide rigorous educational programs and have a high level of parent and student satisfaction. The schools target "at risk" youth and work to "change lives." There is a

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substantial waiting list. The teacher-pupil ratio is approximately 14:1. The schools have relatively high facilities costs. There has not been adequate notice to the schools to recommend funding levels lower than 70 percent. The schools should be recommended for approval at the 70 percent level as requested.

Mr. Conry indicated with the large number of students served in these schools, the schools should all be squarely in line with the regulations. Ms. Cubanski pointed out that while there are individual variations among the Opportunities for Learning schools, there were compelling reasons to treat them the same.

- **MOTION FAILS:** Mr. Barr moved that the Advisory Commission recommend to the State Board that the determination of funding request for the Opportunity for Learning schools listed above be approved at the 50 percent level for 2002-03 only. The reasons justifying a level lower than 80 percent in 2002-03 are that (1) the school is below the minimum criteria specified in regulation for the 80 percent level, (2) as a group, the schools did not meet the minimum criteria specified in regulation for the 70 percent level, and (3) no mitigating factors reasonably overcome the failure to meet the minimum criteria. Ms. Frost seconded the motion. The motion failed passage by a vote of 4-4. Ms. Hunkapiller, Ms. Reyes, Mr. Kushner, and Mr. Williams voted against the motion.

- **RECOMMENDATION APPROVED:** Mr. Williams moved that the Advisory Commission recommend to the State Board that it postpone consideration of the determination of funding requests for the Opportunities for Learning schools listed above pending further consideration by the Advisory Commission of the possibility of recommending funding levels below 70 percent. The postponement will allow time for the submission of additional information by the affected schools and for consideration of that information by the Advisory Commission. Mr. Kushner seconded the motion. The motion was approved by a vote of 5-2-1. Mr. Conry and Ms. Sterling voted against the motion. Mr. Barr did not vote on the motion.

The Advisory Commission next considered a list of requests where the CDE staff recommendations were for lower-than-requested percentages and (in some cases) a lesser number of years. Based upon requests either from members of the Advisory Commission or from members of the audience, four requests were separated from the list for individual consideration. The CDE staff recommendations were then approved for the balance of the list.

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Charter #	Charter School Name	Recommended Level	Recommended Years
#20	Santa Barbara Elementary Charter	80%	One year only 2002-03
#51	Charter Oak School	70%	One year only 2002-03
#61	Choice 2000 On-Line Charter	80%	One year only 2002-03
#88	Mid-valley Alternative Charter	80%	One year only 2002-03
#262	California Charter Academy	70%	One year only 2002-03
#297	California Charter Academy-Orange	70%	One year only 2002-03
#377	California Charter Academy-Snowline	70%	One year only 2002-03
#379	One Step Up Charter Academy	70%	One year only 2002-03

- **RECOMMENDATION APPROVED:** Ms. Hunkapiller moved that the Advisory Commission recommend to the State Board that the determination of funding requests for the above-listed schools at the funding levels indicated. Where the recommended funding level is the 70 percent level, the reasons justifying a level lower than 80 percent in 2002-03 are that (1) the school is below the minimum criteria specified in regulation for the 80 percent level and (2) no mitigating factors reasonably overcome the failure to meet the minimum criteria. Mr. Williams seconded the motion. The motion was approved by unanimous vote.

Charter #	Charter School Name	Recommended Level	Recommended Years
#56	Elise P. Buckingham Charter School	100%	One year only 2002-03

Ms. Cubanski reported that the school did not meet the criteria for approval at the 100 percent level, and therefore was recommended at the 80 percent level. However, she indicated that CDE staff felt this was a worthy case for an exception based on a mitigating factor. In this case, the mitigating factor is completion of a facility construction project begun prior to the enactment of SB 740. The only outstanding issue from the CDE staff perspective is whether the facility's size is appropriate in relationship to the school's student body and needs.

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Bob Hampton spoke on the school's behalf, emphasizing that the school had been very successful with its students and had kept administrative costs down. The facility is exclusively for use by the school. Ms. Sterling asked if the funds that had been going into the facility project would now be put into instruction; Mr. Hampton indicated that was exactly the school's plan. Ms. Sterling also commented that the payment to the district seemed quite high; Mr. Hampton outlined the various services received, emphasizing that the district had been instrumental in saving some costs that the school would otherwise have borne in the facility project. Mr. Kushner inquired about the cost per square foot of the project; Mr. Hampton indicated it was approximately \$100 per square foot. Mr. Conry inquired how much of the school's student body receives nonclassroom-based instruction. It was eventually clarified that all of the school's students are claimed as nonclassroom-based average daily attendance (because none of the students is on campus more than 80 percent of the minimum annual instructional minutes); however, at any given time during the instructional day, approximately one-third of the student body is on the campus. The campus is open from 7:00 a.m. to 7:00 p.m.

- **RECOMMENDATION APPROVED:** Ms. Reyes moved that the Advisory Commission recommend to the State Board that the determination of funding request for the Elise P. Buckingham Charter School (#56) be approved at the 100 percent level for 2002-03. The reasons justifying a level higher than 80 percent in 2002-03 are that (1) the school met the minimum criteria specified in regulation for the 100 percent level (taking into account a mitigating factor) and (2) the school presented sufficient evidence (taking the totality of the request into account along with any other credible information that may have been available) that the 100 percent funding level is necessary for the school to maintain nonclassroom-based instruction that is conducted for the instructional benefit of the student and is substantially dedicated to that function. Mr. Kushner seconded the motion. The motion was approved by unanimous vote.

Charter #	Charter School Name	Recommended Level	Recommended Years
#67	Home Tech Charter School	100%	One year only 2002-03

Ms. Cubanski explained that even though this school met the criteria for 80 percent funding (which is reflected in the CDE staff recommendation), the figures were skewed by its small size. CDE staff believe this request is another example of one where a mitigating factor may be an appropriate basis on which to recommend funding at the 100 percent level.

Jim Aird spoke on the school's behalf. He urged that the school be recommended at the 100 percent level based upon its small size. He detailed the circumstances which initially

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led to the school curtailing expenditures, then finding (because of an increase in enrollment) that revenues were higher than expected. He indicated that the school was endeavoring to be fiscally responsible. The small size of the student body makes it difficult to hit specific expenditure targets.

Ms. Cubanski pointed out that if reserves were counted as having been spent for instruction, the school would still be somewhat short of the 80 percent target. However, if the reserves had all been spent for credentialed teachers, the 50 percent target would have been met. The school does have low administrative costs. It's the reserve that distorts the figures. Ms. Sterling asked if this would be a school that perpetually will need consideration of mitigating factors. Mr. Aird acknowledged that possibility because (due to small size) a few students make a big difference in the percentage figures. As long as the school errs on the safe side (not spending more than income), it's likely to have difficulty meeting the targets.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission recommend to the State Board that the determination of funding request for the Home Tech Charter School (#67) be approved at the 100 percent level for 2002-03. The reasons justifying a level higher than 80 percent in 2002-03 are that (1) the school met the minimum criteria specified in regulation for the 100 percent level (taking into account a mitigating factor) and (2) the school presented sufficient evidence (taking the totality of the request into account along with any other credible information that may have been available) that the 100 percent funding level is necessary for the school to maintain nonclassroom-based instruction that is conducted for the instructional benefit of the student and is substantially dedicated to that function. Ms. Reyes seconded the motion. The motion was approved by unanimous vote.

Lunch Break. 12:42 – 2:01 p.m.

Charter #	Charter School Name	Recommended Level	Recommended Years
#463	Opportunities for Learning-Capistrano	N/A	N/A

Ms. Cubanski indicated that this is a start-up school and the data are skewed by a substantial deficit which (presumably) is being made up by the Opportunities for Learning organization. She indicated that, as with the other Opportunities for Learning schools, CDE staff had recommended the 70 percent level. She commented that if one Opportunities for Learning school were to be funded at the 100 percent level, it might be possible to shift students to that school in order to maximize revenues.

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Mr. Coppess confirmed that the school is spending more money than it is taking in during this initial year of operation. He indicated that the organization is covering the deficit and believes that the long-term prospects for the school are very promising. He stressed that the school meets the criteria for 100 percent funding, and he urged the Advisory Commission to give serious consideration to recommending that level. He indicated that there was no foundation for the suggestion that the Opportunities for Learning organization would shift students from one school to another. Ms. Reyes asked if Opportunities for Learning operated a school in a county contiguous to Orange County; Mr. Coppess indicated that a school is operated in Los Angeles County. Ms. Reyes asked about the relationship between Education Management Systems and Opportunities for Learning; Mr. Coppess indicated that the former owns the latter, and that Education Management Systems is owned by John and Joan Hall. Mr. Kushner reiterated a request made earlier in the meeting for more information about the association (including commonality of owners or employees) between Pathways and these other entities. Ms. Frost expressed her reservations about potential conflicts in the governance of this school and other Opportunities for Learning schools.

- **RECOMMENDATION APPROVED:** Mr. Williams moved that the Advisory Commission recommend to the State Board that it postpone consideration of the determination of funding request for the Opportunities for Learning-Capistrano (#463), as it had with other Opportunities for Learning schools, pending further consideration by the Advisory Commission of the possibility of recommending a funding level below 70 percent. The postponement will allow time for the submission of additional information by the affected school and for consideration of that information by the Advisory Commission. Ms. Frost seconded the motion. The motion was approved by a vote of 7-1. Mr. Conry voted against the motion.

Charter #	Charter School Name	Recommended Level	Recommended Years
#324	HomeSmartKids of Knightsen	80%	One year only 2002-03

Ms. Sterling commented that she had asked to review this request individually in order to point out that HomeSmartKids of Knightsen was one of the principal reasons SB 740 had been introduced. She had contemplated proposing a lower funding level but, upon considering the CDE staff analysis, she had become convinced to go with the 80 percent level.

- **RECOMMENDATION APPROVED:** Mr. Kushner moved that the Advisory Commission recommend to the State Board that the determination of funding request for HomeSmartKids of Knightsen (#324) be approved at the 80 percent level for 2002-03 only. Since the 80 percent level is consistent with the level

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specified in statute for 2002-03, no reasons justifying a higher or lower level are necessary. Ms. Reyes seconded the motion. The motion was approved by a vote of 7-1. Ms. Frost voted against the motion.

Charter #	Charter School Name	Recommended Level	Recommended Years
#393	Delta Charter High School	100%	Two years 2002-03 and 2003-04

Ms. Cubanski noted that this is a second determination of funding request for Delta Charter High School. Based upon additional information supplied by the school, CDE staff are now comfortable in recommending the 100 percent level for two years as requested. [The State Board, in keeping with the Advisory Commission's recommendation, has already approved a determination of funding for the school at the 100 percent level for one year only (2002-03).] The school's expenditures for facilities are in keeping with their plan.

Mary Vink and Sandra Melendez spoke on the school's behalf and gave a short power point presentation.

- **RECOMMENDATION APPROVED:** Mr. Kushner moved that the Advisory Commission recommend to the State Board that the second determination of funding request for Delta Charter High School (#393) be approved at the 100 percent level for years indicated. The reasons justifying a level higher than 80 percent in 2002-03 and higher than 70 percent in 2003-04 are that (1) the school met the minimum criteria specified in regulation for the 100 percent level (taking into account a mitigating factor) and (2) the school presented sufficient evidence (taking the totality of the request into account along with any other credible information that may have been available) that the 100 percent funding level is necessary for the school to maintain nonclassroom-based instruction that is conducted for the instructional benefit of the student and is substantially dedicated to that function. Ms. Hunkapiller seconded the motion. The motion was approved by unanimous vote.

Presentation by Lara Larramendi Blakely. Mr. Kushner invited Lara Larramendi Blakely, Executive Director of the California School Financing Authority, to address the Advisory Commission. Ms. Blakely focused on the steps that have been taken to date to implement the \$100 million set aside in the recent state school bond act (Proposition 47) for charter schools. She indicated that applications for bond funding would be considered in the April and May and described the review process briefly. She noted that the forthcoming bond act (in March 2004) would have a \$300 million set aside for charter schools.

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Mr. Barr inquired as to how many projected are expected to be funded from the \$100 million. Ms. Blakely commented that the total number of projects is difficult to predict because of an as-yet-unknown mix of construction and modernization. If applications are more heavily weighted toward one than the other that could have a substantial impact on the total number funded. She said that staff anticipate receiving a total of perhaps 100 applications.

Mr. Kushner asked Ms. Blakely to respond to the rumor circulating in the charter school community that “the winners are already lined up.” She indicated that there is no foundation to such an allegation; no applications have even been received at this point, and there is no predisposition to approve any individual project. Brad Strong (EdVoice) noted that the implementing legislation does establish priorities for consideration which establish legitimate grounds to favor some applications over others.

Mr. Kushner asked whether there would be any priority given in the second round (from the 2004 bond act) to schools that were not funded in this first round. In other words, is there a long-term advantage to applying now, even though a charter school might not have a competitive application? Ms. Blakely acknowledged that this is a good question and that she did not have a ready answer. She indicated that a policy would need to be established on this topic. Ms. Blakely also confirmed that the implementing statute limits funding to classroom-based charter schools.

AB 1994 (Programmatic) Implementation Regulations. Mr. Kushner indicated that he had prepared for consideration an alternative to the CDE staff proposal for regulations to implement the programmatic provisions of AB 1994. He commented that the alternative was based to some extent on his personal experiences with pursuing charter approval at the local level, but not exclusively so. He indicated that he felt the bill had been intended to “break the logjam” at the local level and that he was particularly concerned that some of the provisions proposed in the CDE staff version would make it virtually impossible to pursue direct chartering by the State Board. He noted that a principal area of the focus might be how the regulations address “statewide benefit” as used in the statute.

Ms. Sterling explained the CDE staff view on the meaning of “statewide benefit,” and noted that AB 1994 had been sponsored by the CDE. Mr. Geeting pointed out that these two words should not be separated from their context which, in full, is a “statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county.”

Before proceeding with Advisory Commission discussion of the CDE draft and the alternative draft, Mr. Kushner called for public comments.

Brian Bennett cautioned that some of the issues raised in the alternative draft were really more suitable for legislation than regulation. He stressed that charter schools had been

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rooted in the belief that local control was essential. The state's role should be very limited; the state should not meddle in matters that have been properly and fairly decided at the local level. The parent voice is essential. There should not be a preference for multi-site charters at the state level. Consistent violation of statutory requirements for the fair evaluation of charters at the local level should be addressed, but that will necessitate legislation.

Mr. Strong indicated that the CDE draft establishes requirements for direct chartering by the State Board that simply cannot be met by any charter petitioner. Mr. Patterson provided some historical perspective on AB 1994 and indicated that CANEC could not support the CDE draft. Lisa Corr (Spector, Middleton, Young & Minney) commented that the CDE draft includes some confusing provisions that could end up being more troublesome than helpful in implementing the statute; she urged the Advisory Commission to support the alternative draft.

Mr. Kushner initially moved that the Advisory Commission recommend that the State Board approve the alternative draft with some yet-to-be-worked-out changes related to grants. Mr. Barr seconded the motion for purposes of discussion. Subsequently the motion was withdrawn in favor of the motion described below. In the course of the intervening discussion, the following key points were made:

Regarding State Board numbering:

- The principal area of difference relates to how multiple charter numbers are used. The CDE draft would limit the use of multiple charter numbers exclusively for tracking the cap on the number of charter schools allowed by statute. The alternative draft would also authorize the use of multiple charter numbers for the purpose of applying for “various federal and state grants such as startup and implementation grants.”
- Concern was expressed that a charter organization could monopolize available grant funds. Concern was also expressed that the language (“various”) is vague.
- The point of the alternative draft was to ensure that schools that are truly distinct from one another not be unfairly excluded from applying for grants.

Regarding appeals of charter denials at the local level:

- The only area of difference between the drafts relates to a specification (in the alternative draft) that the State Board must use standard criteria in reviewing the elements of charter petitions. However, the State Board would be allowed to “create additional processes to ensure the quality of state charters.”

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- The point of the alternative draft was to flower out a specification that the State Board be broad in reviewing charter petitions, not limited to a narrow evaluation of the reasons for denial expressed by local agencies.
- Concern was expressed that language (“additional process”) is vague and would not be approved by the Office of Administrative Law.

State Board chartering:

- The CDE draft defines “multiple sites” to mean more than two sites operating in more than two counties. The alternative draft includes no analogous limitation. The concern is that the statute makes clear that a State Board chartered school must provide a “statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county.” The argument is that multiple sites are not expressly required by the statute and, therefore, should not be required by the regulations.
- The CDE draft specifies that petitions must be received by September 15 of a fiscal year for a school that plans to open in the following fiscal year. The alternative draft proposes to move that date out to November 15. The argument is that September is a hectic time for grant applications and the like; November is more reasonable. Also, November 15 is the date specified in regulation for submission of Proposition 39 facility requests.
- The alternative draft contains specific language regarding the conversion of an existing school to a State Board charter school; no analogous provision is included in the CDE draft. The argument is that an existing charter that confronts a disagreeable local situation should be able to pursue State Board chartering and that conversion in this way is not expressly prohibited by statute. The counter-argument is that the requirement for establishing a statewide benefit is not met merely by demonstrating the existence of a disagreeable local situation.
- The CDE draft specifies that various requirements be met “independently” for each site in the required multiple-site petition; the alternative draft (as noted above) eliminates references to multiple sites. The argument is that establishing high hurdles for each site in a multiple-site charter makes it virtually impossible to present an approvable petition. The counter-argument is that there needs to be evidence of each site has met the minimum criteria specified in law; one site having met the criteria should not be able to carry with it other sites which might otherwise have been turned down.
- The CDE draft calls not only for notification of county and district officials in the development of charter petitions, but also for the holding of local public hearings

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in the communities in which each site is to be located. The alternative draft calls for notification of local officials only. The argument is that local public hearings would help uncover evidence of community desire not otherwise apparent. The counter-argument is that the complication of holding the hearings far outweighs the likely benefit.

- The CDE draft requires that the requisite number of both parent and teacher signatures be obtained; the alternative draft requires either parent or teacher signatures. The argument is that the State Board charters need to meet a higher standard. The counter-argument is that requiring both parent and teacher signatures substantially exceeds (and therefore is contrary to) statute.
- The CDE draft requires an explanation of why the outcome desired by a petition cannot be achieved by individual charter petitions submitted to districts or counties. This requirement is flowered out to include (1) why the proposed program's approval at the state level outweighs the local opportunity to consider, approve, and oversee; (2) convincing evidence regarding the furtherance of statewide educational reform and improvement of pupil achievement; and (3) why aggregate data will be more beneficial than individual data from independent schools operating in different locations. The general argument for this requirement is that this level of detail is consistent with the statutory descriptions. The counter-argument is that the details set forth in this language create such a high standard as to be essentially unachievable by any petitioner.
- The alternative draft, in contrast, essentially quotes the statutory language, then offers optional considerations to be made in determining whether to approve a petition. The options include (1) administrative or operational benefit; (2) difficulty in maintaining quality and continuity of instructional delivery among multiple sites; (3) improved fund raising ability; and (4) furthering of the general legislative intent for charter schools. The general argument for this more flexible approach is that the State Board has the ultimate decision-making authority and that the purpose of the detail is to present (or fail to present) a convincing overall picture; these are more the kinds of considerations that spell the difference between success and failure of a charter school in the long run. The counter-argument is that this language is so vague as to establish no solid guidance for approval or denial. Although the State Board has ultimate authority, it must not exercise that authority capriciously; each petition should be held to the same standard of evaluation.
- The CDE draft references reviewing each site for compliance with all elements tested in the annual independent audit. The alternative draft eliminated this reference (presumably because of the alternative draft's elimination of the

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- requirement for multiple sites). There wasn't any significant discussion of this matter at the meeting.
- The CDE draft includes a specific provision related to oversight. The alternative draft eliminated this provision (presumably because it is duplicative of statutory requirements and is, therefore, unnecessary). Again, there wasn't any significant discussion of this matter at the meeting.
 - The CDE draft includes a specific provision related to participation of the multiple-site charter in a single SELPA. The alternative draft eliminates this provision (presumably, again, because of the alternative draft's elimination of the requirement for multiple sites). There wasn't any significant discussion of this matter at the meeting.
 - The CDE draft includes a provision authorizing the State Board to impose additional requirements or conditions. The alternative draft eliminates this provision. There wasn't any significant discussion of this particular matter at the meeting.
 - The CDE draft establishes a basic 180-day timetable (with certain exceptions) for the State Board to consider and act upon petitions and states that failure of the State Board to act voids the petition. The alternative draft establishes a basic 90-day timetable (also with certain exceptions) for the State Board to take action, but eliminates the consequence for failure to act. The alternative draft also establishes requirements related to preparation of a CDE staff analysis of each petition and establishes the right of the petitioners to make changes in the petition. There wasn't any significant discussion of these matters at the meeting.
 - The CDE draft prohibits the offering of independent study by State Board charters. The alternative draft eliminates this prohibition. There wasn't any significant discussion of this matter at the meeting.
 - The CDE draft includes a provision related to the applicability of certain audit requirements to a school approved by a county office of education. The alternative draft eliminates that provision. There wasn't any significant discussion of this matter at the meeting.

As the discussion proceeded, it was suggested that Mr. Kushner might work "off line" with Ms. Sterling to develop a compromise set of regulations or, in the alternative, at least narrow the differences and present a concise list of any remaining issues. Mr. Conry noted that he was willing to support deferral of formal consideration, but that the issues of difference appeared to be quite substantive and extensive. Mr. Kushner indicated that he thought there was room to develop a compromise on most of the issues.

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- **RECOMMENDATION APPROVED:** Ms. Reyes moved that the Advisory Commission (1) request that Mr. Kushner and (to the extent permissible under the Bagley-Keene Open Meeting Act) other members of the Advisory Commission work with CDE staff to develop a set of proposed regulations that (to the extent possible) resolve differences between the CDE draft and the alternative draft and to prepare a concise summary of any differences that cannot be resolved and (2) pending completion of this effort, request that the State Superintendent not place an item on the State Board's April agenda to commence the formal rule-making for regulations to implement the programmatic provisions of AB 1994. Mr. Kushner seconded the motion. The motion was approved by unanimous vote.

Draft application for State Board chartering. Mr. Kushner distributed a draft of an application for State Board chartering. He noted that the draft mostly embodied the ideas of Nelson Smith (New American Schools). He emphasized that the document did not represent a proposal from the CDE or from the State Board President.

Legislative update. Mr. Kushner noted that staff had provided a brief summary of bills introduced in 2003 related to charter schools.

Charter schools grant review process. Mr. Barr indicated that he wished to propose creation of a review committee to look at the current grant review process and suggest changes. Ms. Sterling commented that CDE staff were going to meet in the near future with an internal task force that includes some individuals with considerable experience in dealing with grant reviews. She suggested that the Advisory Commission wait until the next meeting before making any formal recommendations; her suggestion was accepted by consensus. In the brief discussion that followed, specific mention was made of the phenomenon that (under the existing grant review process) applications from more experienced charter operators tended to be reviewed almost exclusively by new charter operators because of conflict of interest provisions. There was general agreement that the objective of the process must be to ensure that each application receives a fair evaluation.

Adjournment. Mr. Kushner adjourned the meeting at 4:28 p.m.