

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

Friday, April 11, 2003

MEMBERS PRESENT

Mark Kushner, Chair
Steve Barr
Tom Conry
Beth Hunkapiller
Jan Sterling*

MEMBERS ABSENT

Linda Frost
Marta Reyes
Johnathan Williams
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 10:23 a.m.

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

Announcements and Tentative Agenda. Mr. Kushner noted that Ms. Frost had indicated some months ago that she would be unable to participate in the April meeting, that an unanticipated emergency had necessitated Mr. Williams remaining in Los Angeles this day, and that Ms. Reyes had an emergency arise at a schoolsite this morning. Therefore, with only five members present, there would have to be unanimity on any recommendation made at this meeting. He also noted that Ms. Sterling would need to leave at about 12:00 noon. He indicated that the agenda for the day's meeting would focus on two matters, (1) the proposed regulations to implement the programmatic provisions of AB 1994 and (2) 2002-03 (and beyond) determination of funding requests. He suggested that the group begin by considering the AB 1994 regulations, then interrupt that discussion at about 11:00 a.m. to consider the determination of funding requests to

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ensure that all individuals wishing to speak on the requests would have the opportunity to do so.

Introductions. The members of the Advisory Commission introduced themselves. Mr. Kushner noted that most of the audience members looked familiar, so he would forego asking individuals to introduce themselves. He invited any audience members who had not previously attended to introduce themselves to the commissioners and staff after the meeting.

Proposed regulations to implement the programmatic provisions of AB 1994. Mr. Kushner noted that several conference call meetings had occurred (consistent with the limitations imposed by the Bagley-Keene Open Meeting Act) to review similarities and differences in various proposals that had been developed. He thanked Ms. Sterling, Ms. Cubanski, Paul Minney (Spector, Middleton, Young & Minney), Colin Miller (CDE Charter Schools Office), Mr. Geeting, and others who had participated in these meetings. He indicated that a consolidated and annotated proposal had been sent out by Mr. Geeting, reflecting his best effort to present a working draft for consideration at this meeting. He commented that in circulating the proposal (by e-mail on April 8), Mr. Geeting was careful to note that the language did not necessarily represent a consensus on any issue, but was intended to help facilitate and focus discussion. Mr. Kushner suggested that, as he saw it, there were four major issues at the moment:

- New impediments (that arose in the development of the regulations) related to implementation of state charter schools, such as how to calculate apportionments and how to provide for their participation in SELPAs.
- The effect of the proposed numbering system on the qualification of charter schools (both locally chartered and state chartered) for grants.
- How many sites a state charter school must open initially as a prerequisite for chartering.
- How much notification and public input are required to qualify individual sites for opening as part of a state charter school.

Mr. Kushner indicated that the criteria for what constitutes “statewide benefit” looked “pretty good” in this current draft, but that he would be suggesting some “stronger” criteria to ensure that state charter schools are “really outstanding and impressive proposals,” not petitions that simply meet a minimum threshold.

Ms. Sterling commented on the new impediments that had been discovered by staff. She indicated that the CDE had traditionally been very reluctant to “make up” provisions for

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the calculation of apportionments with absolutely no grounding in statute. It appears as though the Legislature simply did not think through how state charter schools would be funded, unlike district- and county-chartered schools for which reasonably detailed instructions have been enacted. Similarly, the statute did not provide a means for the CDE (or State Board) to assign responsibility for state charter schools to a county office, which is essential for compliance with the state's basic system of school finance and accountability. Also left unspecified is how the state charter schools, which presumably will be operating in several (perhaps many) different areas of the state at the same time, will participate in one or more SELPAs. She indicated that it was fine to move forward as best we can with the regulations, but that these troublesome issues would need to be resolved before it was realistic for the State Board to approve state charter schools.

At Mr. Kushner's invitation, Mr. Geeting orally summarized key points in the first and second major sections of the regulations dealing with (1) the numbering system for charter schools and (2) the appeal of local denials of charter petitions. There was some discussion regarding the numbering system. Mr. Kushner indicated that he wanted to be sure that the numbering system did not create advantages or disadvantages to charter schools regarding grant eligibility. Mr. Geeting noted that the draft indicates that the assignment of multiple charter numbers to the same school would be implemented for the purpose of tracking the total number of charters operating in the state, but would otherwise have applicability only to the extent that some other statute specifically referenced charter numbers. Mr. Conry indicated that the proposed numbering system was not completely satisfactory to him because it still allowed (under some circumstances) for schoolsites in far-flung geographic areas to be operated under a single charter number. He suggested that AB 1994 intended to bring an end to that practice.

Mr. Kushner asked for public input on the first two sections of the proposed regulations. David Patterson (CANEC) indicated that he would suggest striking out the reference to the numbering system having any purpose other than tracking the number of schools in operation for purposes of the state cap. He also suggested striking out the provision related to charters not being allowed to commence instruction if they are beyond the state cap. Ms. Sterling indicated that the issue of the assignment of charter numbers and the effect of the state cap were still under study by CDE staff. Ms. Cubanski commented that, to date, the state cap has been an essentially irrelevant issue because (previously) it used to be routinely waived and (since the waiver has been banned) the "hard cap" has been vastly higher than the number of charter schools actually operating. Finally, Mr. Patterson requested inclusion of a specific exemption from any requirement for the assignment of additional charter numbers to a school that is in effect "compelled" by its chartering entity to break up a single schoolsite into two or more schoolsites (e.g., because of facilities the chartering entity wishes the charter school use under the provisions of Proposition 39).

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Brad Strong (Ed Voice) commented that he, too, supported the idea of narrowly describing the purpose of the numbering system to be that of tracking the number of charter schools with respect to the state cap. He indicated that multiple charter numbers might be a disadvantage to a school in terms of qualification for grants.

Mr. Kushner suspended consideration of the AB 1994 regulations in order to turn the group's attention to the determination of funding requests.

2002-03 (and beyond) determination of funding requests. Mr. Kushner indicated that the first school to be considered was one for which the CDE staff recommendation was the same as the school's request. He asked if there was a motion on that request.

Charter #	Charter School Name	Recommended Level	Recommended Years
#69	Nevada City Charter School	100%	One year only 2002-03

- **RECOMMENDATION APPROVED:** Mr. Conry moved that the Advisory Commission recommend to the State Board that the determination of funding requests for Nevada City Charter School (#69) be approved at the 100 percent level for one year only (2002-03). 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. Ms. Sterling seconded the motion. The motion was approved by unanimous vote of the members present.

The Advisory Commission next considered two schools with approved determinations of funding that had submitted second requests for consideration. In each case, the CDE recommendation corresponded with the school's request.

Charter #	Charter School Name	Recommended Level	Recommended Years
#19	Natomas Charter School	100%	Two years 2002-03 and 2003-04
#61	Choice 2000	100%	One year only 2002-03

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- **RECOMMENDATION APPROVED:** Mr. Conry moved that the Advisory Commission recommend to the State Board that the second 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. Ms. Hunkapiller seconded the motion. The motion was approved by unanimous vote of the members present.

The Advisory Commission next considered determination of funding requests for the Options for Youth and Opportunities for Learning schools that had been postponed at the previous meeting. Initially, Mr. Conry moved the CDE staff recommendation, namely that the schools be approved at the 70 percent level for one year only (2002-03), unless anyone wished to pull one or more schools from the list. Ms. Hunkapiller seconded that motion. However, subsequently, Mr. Kushner indicated that he wished to discuss all of the schools, which had the effect negating the motion. Mr. Kushner noted that John and Joan Hall were present to address the determination of funding requests for both organizations, and he invited them to do so.

Mr. Hall commented that he and his wife had undertaken the development of alternative schools to meet the needs of at-risk students. He indicated that he well understood the pain and isolation may such students feel, having been one himself. He said that through the Options for Youth and Opportunities for Learning schools over 20,000 students had received educational experiences that they simply would not have received through any other means. Many lives have been touched. Mr. Hall indicated that Professor James Catterall of UCLA had served as independent evaluator of the schools and was present to address questions if their members so desired.

Mrs. Hall indicated that Options for Youth and Opportunities for Learning were the manifestation of a dream to create alternative schools for students who simply “didn’t fit” the traditional school system. She indicated that their own son had difficulties in the traditional school system. She shared the story of an individual student who is now on the staff. These schools give hope, another chance at life, and allow students to realize their dreams.

Mr. Kushner next asked Ms. Cubanski to summarize the CDE staff recommendations on the various schools. Ms. Cubanski indicated that the schools appeared to qualify for the

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70 percent level if the organizations were treated as a whole. One school, Opportunities for Learning-Capistrano, was a start-up school last year and ran a significant deficit. The deficit was funded by the organization, but the resulting figures were rather misleading.

At various points in the ensuing conversation, it was clarified that Options for Youth is a non-profit organization with 2001-02 revenues of approximately \$20 million, and Opportunities for Learning is a for-profit organization with 2001-02 revenues of approximately \$17 million. In both cases, the 2001-02 revenues reflected the 95 percent funding level for nonclassroom-based instruction as approved by the State Board. Options for Youth has been in operation approximately 16 years and Opportunities for Learning approximately three years. Pathways is a separate organization which is intended to be a tax-exempt charitable organization (although Mr. Hall was unsure whether forms for tax-exempt status had yet been filed). Pathways' mission is to provide educational services to at-risk students. Mr. Hall indicated that he and his wife directly control Opportunities for Learning, but that Options for Youth and Pathways have separate boards, although he acknowledged that they have some degree of "influence" with respect to Options for Youth and Pathways. The Halls do not receive any compensation from Pathways. The Pathways organization was funded initially by \$10 million in excess revenues (built up over a number of years) that were donated by Options for Youth (apparently in 2001-02).

Mr. Barr commented that there is a clear public purpose served in pursuing the effective expenditure of tax dollars in education. He indicated that he questioned the effectiveness of expenditures in these two organizations because such a small percentage is dedicated to instruction. Where do the dollars go? What value are the taxpayers receiving?

Mr. Hall indicated that facilities consumed a large part of the revenues received by the two organizations. Overall, there are some 60 education centers being operated from Shasta to Orange County. The centers are designed to serve small groups, no more than about 10 students at a time, and instruction is individualized for each pupil. Mrs. Hall noted that the organizations have moved substantially toward the objectives established for SB 740 vis-à-vis the percentage of revenues dedicated to instructional costs. Also, the centers include tutoring and leadership classes. The centers' operations are focused on the kids.

Mr. Barr indicated that costs of facilities and resources for teachers just "didn't add up" in his view to the approximate 50 percent of revenues devoted to non-instructional costs at these schools. Mr. Kushner echoed that thought, indicating that he felt the Halls, while doing nothing legally improper, appeared to have found a way to earn a substantial profit. Nothing was wrong with that in the past; however, with the advent of SB 740, the state now has an obligation to reduce funding for nonclassroom-based instruction in

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schools where expenditures are not substantially devoted to instruction in general, and salaries of certificated employees in particular.

Mr. Hall reiterated that the organizations did make substantial movement toward the SB 740 goals last year, and had reorganized the expenditure plan for this year to anticipate funding at the 70 percent level. However, if the schools were to be funded in 2002-03 at the 50 percent level, “we would have to shut our doors.” There isn’t sufficient time left in the year to absorb a reduction from the anticipated 70 percent level down to the 50 percent level.

Mr. Barr indicated that he simply found less than credible the explanations for so little funding being dedicated to instructional costs. He commented that the situation, in his view, was a compelling argument for vouchers.

- **MOTION FAILS:** Mr. Barr moved that the Advisory Commission recommend that the State Board approve the determination of funding request for each of the Options for Youth and Opportunities for Learning schools at the 50 percent level for one year only (2002-03). 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. The reason justifying a level lower than 70 percent is that taking into account the totality of the information received, the purposes for which the schools spent public revenues in 2001-02 do not warrant funding at the 70 percent level in 2002-03. Mr. Conry seconded the motion. The motion failed passage by a vote of 2-3. Mr. Barr and Mr. Conry voted in favor of the motion.

Ms. Hunkapiller suggested that the Advisory Commission recommend a range of determination of funding levels with the CDE “balancing out” the percentages among the schools. She suggested a range of 60 to 65 percent. Ms. Sterling commented that she did not feel that was an appropriate role for CDE staff; she favored developing a specific recommendation for the State Board.

Mr. Kushner indicated that the 50 percent level represented too much of a reduction in his view, but that he could support the 60 percent level (a reduction of 40 percent). Mr. Conry suggested that the group try a progressive series of percentage numbers in an effort to find one all could agree upon.

Mr. Hall urged the group to remember that there are only two and one-half months left in the fiscal year; it’s simply unreasonable to sustain a massive cut at this point. He also pointed out that the CDE staff recommendation was for 70 percent, and that the schools acted reasonably in expecting to receive 70 percent. Mr. Kushner indicated that the

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schools could have come in sooner. Michael Laney, representing the Options for Youth and Opportunities for Learning organizations indicated that this year's budgets had been built upon the assumption of funding at the 70 percent level, the lowest specifically referenced in the regulations.

Ms. Hunkapiller asked that the group go through the schools one-by-one. Mr. Kushner indicated that doing so would effectively put the matter over until the next meeting, because Ms. Sterling was imminently to leave. Ultimately, the members agreed that they had studied the materials on each individual school sufficiently to feel comfortable in acting upon the requests in two groups: the Opportunities for Learning schools (for-profit) and the Options for Youth schools (non-profit).

Charter #	Charter School Name	Recommended Level	Recommended Years
#188	Opportunities for Learning-Hacienda	60%	One year only 2002-03
#214	Opportunities for Learning-William S. Hart	60%	One year only 2002-03
#402	Opportunities for Learning-Baldwin Park	60%	One year only 2002-03
#463	Opportunities for Learning-Capistrano	60%	One year only 2002-03

- **RECOMMENDATION APPROVED:** Mr. Kushner moved that the Advisory Commission recommend that the State Board approve the determination of funding request for each of the Opportunities for Learning schools at the 60 percent level for one year only (2002-03). The reasons justifying a level lower than 80 percent in 2002-03 are that (1) the schools are 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. The reason justifying a level lower than 70 percent is that taking into account the totality of the information received, the purposes for which the schools spent public revenues in 2001-02 do not warrant funding at the 70 percent level in 2002-03. Ms. Sterling seconded the motion. The motion was approved by unanimous vote of the members present.

Following some additional discussion, a motion was made concerning the Options for Youth schools.

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Charter #	Charter School Name	Recommended Level	Recommended Years
#13	Options for Youth-Victor Valley	60%	One year only 2002-03
#105	Options for Youth-Upland	60%	One year only 2002-03
#117	Options for Youth-San Gabriel	60%	One year only 2002-03
#130	Options for Youth-Burbank	60%	One year only 2002-03
#139	Options for Youth-Mt. Shasta	60%	One year only 2002-03
#217	Options for Youth-San Juan	60%	One year only 2002-03

- **RECOMMENDATION APPROVED:** Mr. Kushner moved that the Advisory Commission recommend that the State Board approve the determination of funding request for each of the Options for Youth schools at the 60 percent level for one year only (2002-03). The reasons justifying a level lower than 80 percent in 2002-03 are that (1) the schools are 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. The reason justifying a level lower than 70 percent is that taking into account the totality of the information received, the purposes for which the schools spent public revenues in 2001-02 do not warrant funding at the 70 percent level in 2002-03. Mr. Barr seconded the motion. The motion was approved by unanimous vote of the members present.

Mr. Hall thanked the members of the Advisory Commission for devoting considerable time and attention to the Options for Youth and Opportunities for Learning determination of funding requests.

Break. 12:18 – 12:35 p.m.

Proposed regulations to implement the programmatic provisions of AB 1994 (continued). Following the break, Mr. Kushner noted that a quorum was no longer present (due to Ms. Sterling's departure), but that the remaining members would continue as an ad hoc committee to discuss provisions of the draft regulations not considered earlier in the meeting.

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Mr. Geeting summarized the provisions of the third (and final) major section of the draft regulations: state charter schools. The following were areas of discussion:

- Starting at some initial sites, then adding more sites.

Mr. Geeting explained the design of the draft, i.e., that state charter schools would fall into one of three groups. In the first group, all sites (minimum of two in different districts and/or in different counties) would be included in the original petition and all would open at the same time; in that case, signatures, local notification, and local public input would have been held for each site as part of the original proposal. In the second group, at least two sites (in different districts and/or in different counties) would open initially (and have all of the requisite signatures, local notification, and local public input), but the petition would include a timetable and list of locations for additional sites; signatures, local notification, and local public input would be submitted for staff sign-off as the additional sites come on line, provided the timetable and list of locations was being followed. The third group would be like the second, except that the school (downstream) would want to amend the timetable or list of locations; such action would be treated as a material revision of the charter and require State Board approval.

Mr. Kushner indicated that he appreciated the effort to find a compromise that maintained some degree of transparency and tension in the process of adding school sites. However, he suggested that the same purpose might be achieved by a staff sign-off even on changes in the timetable and list of locations, provided that any disputes could be appealed to the State Board.

Another issue that came up concerned the draft's references to appeals of administrative determinations. Is establishing the administrative determination as the "default" (i.e., unless reversed by the State Board) appropriate? Is there authority provided for the State Board to "amend" an administrative determination (i.e., something other than "reversing" the administrative determination)?

- Timing of petition submissions to the State Board.

The parenthetical reference to "(prior to the next fiscal year)" should be eliminated on Page 7, line 1. The issue is whether prescribed conditions are satisfied in time for the school's opening, not necessarily that all the conditions are satisfied prior to the next fiscal year.

- Local community input regarding sites.

Mr. Conry expressed discomfort with the draft language concerning "an alternative of at least equal rigor"; he suggested that it would be difficult to enforce that provision

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consistently. He would prefer local public hearings subject to tight controls. Ms. Hunkapiller suggested that the regulations include more detail on the specifications for public meetings, such as requirements for the content and circulation of notices. There was also discussion regarding qualitative review of the input. Should the nature of the input received be taken into account in staff sign-off on additional sites (viz., substantial objections are voiced), or merely whether the input was collected?

- Required description of “statewide benefit.”

Mr. Conry suggested that the reference to how the school’s organization and administration “will be beneficial for the school” is too general and vague; it won’t yield any information helpful in making a decision to grant or deny the petition. Mr. Kushner suggested that the reference to how the school’s organization and administration “will not be seriously detrimental to the interests of the state in terms of data collection” is too obscure; a clearer statement is needed of what schools are to address. Mr. Kushner also suggested the inclusion of additional elements for this area, such as documentation regarding the petitioners’ experiences with successful charter schools or other efforts that resulted in improved student achievement. The bottom line must focus on how student achievement will be enhanced by the school. State chartering must be reserved for “the best of the best.”

- Reference to charges for oversight costs.

There has been some dispute regarding what “revenues” are included in the calculation of the maximum oversight fee. Mr. Kushner suggested that the regulations clarify this point. Mr. Geeting commented that such a regulation might better be applied to all charter schools, not just to state charter schools.

- Requirement to be considered “one site.”

Mr. Kushner suggested that this requirement might conflict with other provisions (related to issuing multiple charter numbers) and might unfairly disadvantage a state charter school in terms of pursuing grants. He recommended that the proposed subdivision be deleted.

- Timetable for considering petitions.

Mr. Geeting explained the reasons the draft specifies a 150-day timetable for consideration of petitions. Mr. Kushner acknowledged the reasons, but suggested that he would prefer to shorten the timetable if possible.

- Assignment of a county office for fiscal and administrative purposes.

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Mr. Geeting acknowledged that the draft envisions voluntary cooperation in the assignment of a county office to manage fiscal and administrative details for a state charter school, and simply did not deal with the likely prospect of no county office being willing to undertake a potentially substantial workload. He pointed out that the draft provides for sharing of oversight resources with a willing county office, but this may not satisfactorily resolve every case. Ms. Hunkapiller indicated that additional “incentivizing” may be in order, perhaps in relation to the number of sites and students involved. It would be preferable to establish a system in which county offices actually compete for the business.

- Independent study.

Mr. Geeting explained that the draft allows for state charter schools to provide instruction through independent study subject to three conditions: (1) that all independent study statutes (which are not waivable and which do apply to charter schools) are followed; (2) that determinations of funding are sought if necessary (in other words, that state chartering did not somehow “automatically” result in an approved determination of funding); and (3) that independent study is “expressly” included in the charter (in other words, it cannot be an afterthought once the school is operating). Mr. Conry indicated that the specter of independent study adds considerable complexity to state charter schools; he indicated that he preferred the original CDE proposal of simply banning independent study in state charter schools.

Prior to adjourning, Mr. Kushner called for public comment on the draft regulations related to state charter schools. Only Mr. Patterson spoke, touching quickly on many areas of concern, including this partial list: (1) the extent to which state charter schools may qualify for grants (i.e., by site or only for the school as a whole); (2) other considerations to be taken into account in evaluating petitions (e.g., the quality of other educational alternatives available to students in the areas a school proposes to operate); (3) elimination of the reference to not being “seriously detrimental to the interest of the state in terms of data collection” (this is too high a threshold); (4) adding a reference to the petitioners’ record of experience; and (5) having a 120-day instead of a 150-day timetable for consideration of petitions.

Adjournment. Mr. Kushner adjourned the meeting at 1:46 p.m.