

MEETING NOTES

Advisory Commission on Charter Schools

An Advisory Body to the State Board of Education

Wednesday-Thursday, May 22-23, 2002

Wednesday, May 22, 2002

Holiday Inn Capitol Plaza, 300 J Street, Hermosa Room, Sacramento, California

MEMBERS PRESENT

Mark Kushner, Chair
Steve Barr
Tom Conry
Linda Frost
Beth Hunkapiller
Marta Reyes
Jan Sterling*
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 10:02 a.m.

Flag Salute. Mr. Kushner invited the students present at the meeting to lead the members, staff, and audience in the Pledge of Allegiance.

Introductions. The members of the Advisory Commission introduced themselves along with staff. Because the audience was relatively large, Mr. Kushner departed from his usual practice of asking audience members to introduce themselves briefly and indicate the organizations (if any) they represented.

Organizational Matters. Mr. Kushner indicated that the day's agenda would proceed along the following lines: (1) consideration of second determination of funding requests for 2001-02; (2) consideration of the development of recommendations on the permanent SB 740 regulations; and (3) consideration of a petition for chartering by the State Board of Education from the Pomona Valley Center for Community Development. He indicated that Ms. Frost would facilitate the consideration of the determination of funding requests, and that Mr. Barr would facilitate the consideration of the petition. He noted that some who had come to the meeting to present comments on the development of recommendations regarding the permanent SB 740 regulations had requested to speak in

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the morning (due to flight schedule problems). He indicated that consideration of the determination of funding requests would be interrupted, if necessary, to accommodate these presenters. He ascertained that the students present were all from the Hart-Ransom Academic Charter School; he suggested that Ms. Frost take up the Hart-Ransom determination of funding request towards the beginning of the consideration.

Second 2001-02 determination of funding requests. Ms. Frost asked Ms. Cubanski to brief the members on each request, following which she entertained comments from any individuals present to provide testimony. Thereafter, the general process she followed was to entertain discussion and eventually to bring each request to resolution as described below.

California Charter Academy – Snowline (#262). Ms. Cubanski indicated that the principal new issue raised in the second request was the fact that the school asserted that it served local conservation corps members and, therefore, was entitled to special consideration under the Emergency Regulations. Steven Cox, CEO of the Academy indicated that the Academy does serve a large number of local conservation corps members and also spends a high percentage of revenue for instruction; however, a number of the instructors (while certificated) are not direct employees of the Academy, but rather contract employees. There was extensive discussion.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission recommend that the State Board of Education approve the school's second determination of funding request at the 100 percent level. The school currently has an approved determination of funding at the 95 percent level. Additional information supplied by the school convinced the Advisory Commission that the 100 percent level is justified, even though the school may have expended less than 50 percent of its 2000-01 public revenues for salaries and benefits of certificated employees. The Advisory Commission concluded that the school presented sufficient evidence (taking the totality of the second 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 a vote of 5-1. Ms. Sterling voted against the motion. Mr. Conry and Mr. Williams were not present when the vote was taken.

Dehesa Charter School (#419). Ms. Cubanski reported that more accurate information submitted by the school with the second request documented that more than 50 percent of public revenues were being spent for salaries and benefits of certificated employees in the current year. This is a start-up school.

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- **RECOMMENDATION APPROVED:** Ms. Hunkapiller moved that the Advisory Commission recommend that the State Board of Education approve the school's second determination of funding request at the 100 percent level. The school currently has an approved determination of funding at the 95 percent level. Additional information supplied by the school convinced the Advisory Commission that the 100 percent level is justified; the school (which is a start-up school) is apparently expending at least 50 percent of its 2001-02 public revenues for salaries and benefits of certificated employees. The Advisory Commission concluded that the school presented sufficient evidence (taking the totality of the second 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. Barr seconded the motion. The motion was approved by a vote of 6-0. Mr. Conry and Mr. Williams were not present when the vote was taken.

Excelsior Education Center (#74). Chuck Gehrke testified that a second determination of funding request had been submitted on the basis that the extent of the utilization of the school's facility justified consideration of facilities costs as a mitigating factor. Also, he reported that the school serves some local conservation corps members (approximately 115 out of the school's total of about 1,000 students). After making these points, however, he indicated that the school had decided not to pursue the second request and that he was withdrawing the request on the school's behalf.

Hart-Ransom Academic Charter School (#80). Ms. Cubanski summarized the new information supplied by the school. Even after redistributing some expenditures among categories, the school still appears to have expended less than 50 percent of its public revenues for salaries and benefits of certificated employees. However, the school's total instructional costs were about 70 percent of public revenue. Sherry Smith, the school's Director, presented information regarding the contract employee issue (particularly with respect to special education) and the pupil-teacher ratio. The school's API was reported to have been 708 with rankings of 7/1. The school has relatively low salaries because the district has low salaries. Others who spoke on the school's behalf included R. Ream Lochry, Superintendent of the Hart-Ransom School District; Kathy Thomasson, Business Manager; Nancy Coleman, parent; and Pat Golding, Hickman Charter School. Following considerable discussion, it was determined (by consensus) that the school would be permitted to prepare additional information regarding instructional costs and present it at the next day's session. Further consideration was postponed until that time.

Advanced Instructional Model, Elk Grove Unified (#263). Ms. Cubanski reported that no new information had been submitted, but that the school had submitted a second

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determination of funding request on the basis that, since it was now closed, it did not have the opportunity to change expenditures priorities or patterns. She also noted that the original determination of funding – which was considered at the Advisory Commission’s meeting on May 9, 2002, and recommended for funding at the 95 percent level – had yet to be acted upon by the State Board. Joe Bailey spoke on the school’s behalf. Funding at the 95 percent level would exacerbate a deficit situation with respect to this now-closed school.

- **RECOMMENDATION APPROVED:** Mr. Conry moved that, with respect to this second determination of funding request, the Advisory Commission reaffirm its recommendation on the school’s original request, which is that the request be approved by the State Board of Education at the 95 percent level in accordance with the recommendation of CDE staff. The 95 percent funding level reflects a reduction (from the full funding requested) within the meaning of Education Code section 47634.2(b)(4). Therefore, reasons for the reduction are to be stated and, if appropriate, a description of how any deficiencies or problems may be addressed is to be included. Recommended Reason: The charter school’s expenditures for certificated salaries and benefits were below 50 percent of its public revenues in 2000-01, and (taking into account the totality of the information presented) the school did not present compelling evidence to justify funding in 2001-02 at the 100 percent level. Because the school is now closed, it would not be appropriate to describe how any deficiencies or problems may be addressed. It is recommended that the State Board of Education dispense with the original request and the second request simultaneously. Mr. Barr seconded the motion. The motion was approved by unanimous vote of the members.

Bitney Springs Charter School (#177). It was explained that this school, though it operated in 2000-01, is currently in its first year of offering independent study. In 2000-01, it was entirely classroom-based. The figures previously submitted were apparently estimated expenditures for the current year (2001-02) for only the independent study program operated by the school (exclusive of classroom-based program). The 2000-01 figures indicated expenditures for salaries and benefits of certificated employees that were below 50 percent of public revenues, and overall instructional costs were below 70 percent. Other topics discussed included governing board membership, pupil-teacher ratio, and the costs of contract-provided management services. Lisa Corr (attorney), Carrie Roemer (the school’s Business Manager), and Dave Taylor (District Superintendent), and Jayna Gaskell (Prosser Creek Charter School) spoke on the school’s behalf. It was reported that the current-year figures for independent study alone show that nearly 55 percent of revenues will be spent for certificated salaries and benefits if contract certificated employees are included. The program would suffer greatly if not funded at 100 percent.

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- **MOTION FAILS:** Mr. Conry moved that the Advisory Commission recommend that the State Board of Education approve the second determination of funding request at the 95 percent level, reaffirming the reasons set forth in the initial determination of funding which was also at the 95 percent level. Additional information supplied by the school did not convince the Advisory Commission that the 100 percent level is justified for this school. Ms. Sterling seconded the motion. The motion failed by a vote of 2-0-6. Mr. Conry and Ms. Sterling voted for the motion.

Following more discussion, Ms. Frost directed that the school's representatives be permitted to prepare additional information and present it at the following day's session, with further consideration of the request being postponed to that time. Later in the meeting, however, it was reported that the school's representatives had formally withdrawn the second request for a determination of funding.

Eagles Peak Charter School (#282). Ms. Cubanski indicated that the school has submitted no significant changes in the data originally presented. Joe Bailey (representing the school) indicated that the school's instructional costs were approximately 80 percent of its public revenues and that the school's contract with Horizon Instructional Systems had been discontinued. He urged the Advisory Commission to recommend 100 percent funding.

- **RECOMMENDATION APPROVED:** Mr. Kushner moved that the Advisory Commission recommend that the State Board of Education approve the second determination of funding request at the 95 percent level, reaffirming the reasons set forth in the initial determination of funding which was also at the 95 percent level. Additional information supplied by the school did not convince the Advisory Commission that the 100 percent level is justified for this school. Mr. Barr seconded the motion. The motion was approved by unanimous vote of the members.

Elise P. Buckingham Charter School (#56). Ms. Cubanski indicated that new information from the school indicated higher costs for certificated employees (by including certain district employees), but that the amount was still below 50 percent of public revenues, and total instructional costs were still below 70 percent of public revenues. Bob Hampton (Director) indicated that it was appropriate to include the district employees costs because the school is a dependent charter. He also indicated that construction costs skewed the figures for the preceding year and, if those costs were taken out, the school's expenditures would have met the 50 percent threshold. He commented that SB 740 being implemented midway through 2001-02 did not give the school sufficient time to adjust expenditure patterns. The construction costs were an extenuating circumstance; special consideration should be given.

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- **MOTION FAILS:** Ms. Hunkapiller moved that the Advisory Commission recommend that the State Board of Education approve the school's second determination of funding request at the 100 percent level. The school currently has an approved determination of funding at the 95 percent level. Additional information supplied by the school convinced the Advisory Commission that the 100 percent level is justified, even though the school may have expended less than 50 percent of its 2000-01 public revenues for salaries and benefits of certificated employees. The Advisory Commission concluded that the school presented sufficient evidence (taking the totality of the second 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 failed by a vote of 2-6. Ms. Hunkapiller and Ms. Reyes voted in favor of the motion.
- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission recommend that the State Board of Education approve the second determination of funding request at the 95 percent level, reaffirming the reasons set forth in the initial determination of funding which was also at the 95 percent level. Additional information supplied by the school did not convince the Advisory Commission that the 100 percent level is justified for this school. Ms. Sterling seconded the motion. The motion was approved by a vote of 6-2. Ms. Hunkapiller and Ms. Reyes voted against the motion.

Heritage Family Academy (#216). Ms. Cubanski reported that the new information supplied by the school appeared to shift costs appropriately among categories, but that the data still showed expenditures for certificated employees as being less than 50 percent of the public revenues in 2000-01. Joe Bailey indicated that mitigating circumstances should be considered and encouraged the Advisory Commission to recommend funding at the 100 percent level.

- **RECOMMENDATION APPROVED:** Mr. Williams moved that the Advisory Commission recommend that the State Board of Education approve the second determination of funding request at the 95 percent level, reaffirming the reasons set forth in the initial determination of funding which was also at the 95 percent level. Additional information supplied by the school did not convince the Advisory Commission that the 100 percent level is justified for this school. Mr. Barr seconded the motion. The motion was approved by unanimous vote of the members.

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Pacific View Charter School (#277). Ms. Cubanski reported that the school had presented revised data regarding instructional costs; she was unable to determine exactly what was going on in the shifts. However, even the revised data appear to show that expenditures for certificated employees were less than 50 percent of public revenues. Ron Flenner and Jim Malloy spoke on the school's behalf. Their comments included the following topics: special education costs (Total Education Services); library costs; the school started operation in January 2000, so this is its first full year in operation; the school is above the 50 percent threshold this year; this is a hybrid program serving a rural area; the contract with CSRA has been terminated; the school is now under district management; the school has a new base salary schedule; the school is moving away from independent study as a delivery system; the figures show about \$32,000 for district oversight, but actual collections by the district were lower.

- **MOTION FAILS:** Ms. Sterling moved that the Advisory Commission recommend that the State Board of Education approve the second determination of funding request at the 95 percent level, reaffirming the reasons set forth in the initial determination of funding which was also at the 95 percent level. Additional information supplied by the school did not convince the Advisory Commission that the 100 percent level is justified for this school. Mr. Conry seconded the motion. The motion failed by a vote of 4-4. Mr. Barr, Ms. Hunkapiller, Mr. Kushner, and Ms. Reyes voted against the motion.

Following further discussion, focusing particularly on special education costs, another motion was made.

- **RECOMMENDATION APPROVED:** Ms. Hunkapiller moved that the Advisory Commission recommend that the State Board of Education approve the school's second determination of funding request at the 100 percent level. The school currently has an approved determination of funding at the 95 percent level. Additional information supplied by the school convinced the Advisory Commission that the 100 percent level is justified, even though the school may have expended less than 50 percent of its 2000-01 public revenues for salaries and benefits of certificated employees. The Advisory Commission concluded that the school presented sufficient evidence (taking the totality of the second 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 a vote of 6-2. Mr. Conry and Ms. Sterling voted against the motion.

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Permanent SB 740 Regulations: Public Comment. Mr. Kushner interrupted consideration of second determination of funding requests in order to accommodate one individual who wished to provide comments on the permanent SB 740 regulations but could not stay in the afternoon.

- Mary Bixby (The Charter School of San Diego). Eliminating profiteering was the goal of SB 740; keep focused on that. Don't let consistency override good sense. Don't create ambiguities. Encourage schools to get the management help they need (don't discourage that behavior by counting the management costs against the schools in determination of funding considerations). It's a good thing to hire reputable management companies. The independent study manual was our guide in building our school; the manual encouraged lots of teaching assistants, so we should be allowed to count them. You should give consideration to student achievement and reducing drop outs. Schools should be encouraged to have contingency funds, not discouraged. Keep the big picture in mind – quality charters need to be encouraged.

Second 2001-02 determination of funding requests (continued). The Advisory Commission returned to consideration of second 2001-02 determination of funding requests.

Gold Rush Charter School (#392). Ms. Cubanski reported on the new information supplied by the school which addressed some of the concerns mentioned in the Advisory Commission's consideration of the initial request. Kathleen Hansen, Lisa Corr, and Jim Gallno spoke on the school's behalf. Among the topics discussed were: the school's facility situation; the school's enrollment of certain students and employment of certain teachers who had previously been enrolled and employed, respectively, at a now-defunct charter school; the percentages of public revenues expended for certificated employee costs and for instruction and instruction-related costs; composition of the school's governing board; renegotiation of the contract for management services; the school's salary schedule. Ms. Frost indicated that she would not participate in the discussion or any vote concerning this school because it is serving students in Tuolumne County and, in her position as a district superintendent, she had participated in discussions concerning its operation.

- **MOTION DIES FOR LACK OF SECOND:** Mr. Kushner moved that the Advisory Commission recommend that the State Board of Education approve the school's second determination of funding request at the 100 percent level. The school currently has an approved determination of funding at the 95 percent level. Additional information supplied by the school convinced the Advisory Commission that the 100 percent level is justified. The school expended more than 50 percent of its 2000-01 public revenues for salaries and benefits of

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certificated employees. The Advisory Commission concluded that the school presented sufficient evidence (taking the totality of the second 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. The motion died for lack of a second

Following further discussion, another motion was made.

- **MOTION FAILS:** Ms. Sterling moved that the Advisory Commission recommend that the State Board of Education approve the second determination of funding request at the 95 percent level, reaffirming the reasons set forth in the initial determination of funding which was also at the 95 percent level. Additional information supplied by the school did not convince the Advisory Commission that the 100 percent level is justified for this school. Mr. Conry seconded the motion. The motion failed by a vote of 4-1-2. Mr. Kushner voted against the motion. Ms. Hunkapiller and Ms. Reyes did not vote on the motion. Ms. Frost had recused herself from participation for the reason noted above.

Mr. Kushner indicated that the school's second determination of funding request would be placed on the State Board agenda without a recommendation from the Advisory Commission, but with the CDE staff recommendation for funding at the 95 percent level (citing the reasons set forth for the initial determination of funding).

Lunch Break. 12:33 – 1:26 p.m.

Permanent SB 740 regulations (continued). Ms. Cubanski presented a revised proposal for permanent SB 740 regulations that took into account a number of the suggestions and comments received at Advisory Commission meetings. Members asked clarifying questions and discussed various aspects of the proposal. Some key topics included the pupil-teacher ratio; whether "full funding" should be modified to be consistent with any percentage reduction in the per-ADA amount allocated for independent study pupils in non-charter schools that may be approved by the Legislature, in keeping with the Governor's recommendation; and the meaning of the term "master agreement."

Public comment. Following initial discussion of the revised CDE staff proposal, Mr. Kushner invited additional public comment.

- Marilyn Elliot (Liberty Family Academy). It is essential that the regulations be clear. Schools must know what is expected of them to receive full funding.

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- Chuck Gehrke (Excelsior Education Center). The regulations need to be clear. Please have the CDE post the applicable comparison pupil-teacher ratios for the counties. The CDE should be able to do this, and it would make it much easier for the schools to comply with the law. Clarify concerns about governing boards – what are the red flags? Square footage alone is not going to tell you much; you need to know how facilities are being used. You should consider information on student achievement as (at least) a mitigating factor. Examples should be given of what the Advisory Commission is looking for with the mitigating factors. It's vital that schools have time to comply; the regulations should not be finalized after the fiscal year has begun.
- Dennis Snyder. This is a very frustrating process. The requirements are being put in place after the fact. Full funding should be 100 percent. The benchmarks in the regulations should be taken right out of the CDE Fact Book; those data are easy to find and understand. This is a political football, but you should do what you can to simplify and protect those who are doing a good job. You should do site visits. Private funds should be excluded from consideration as revenues. Facilities maintenance costs should be considered.
- Jeff Rice (Horizon). The CDE proposal to keep the 2002-03 criteria very close to 2001-02 is good. However, for 2003-04 (and thereafter), why the higher bar? How the mitigating factors will be considered is not clear; that part of the regulations is not sufficiently detailed. Schools should know how this will work.
- Dennis Boyer (New Jerusalem Charter School). With the degree of regulation now affecting charter schools, it's essentially impossible to profiteer. It's good to keep the threshold essentially the same in 2002-03 as it was in 2001-02. Schools should be able to include contract certificated staff in the count. Full funding should be 100 percent. There is too much squeezing going on. Grants should be excluded as revenues.
- Mary Vink (New Jerusalem Charter School). Full funding should be 100 percent. The threshold should not be raised in future years.
- Sherry Iida (Sierra Charter School). Full funding should be 100 percent. The reference to the pupil-teacher ratio should be stated exactly as it is in statute, not re-phrased.
- Kathy Bass (Greater San Diego Academy). Charter schools do not qualify for the pupil or classroom reduction funds, yet the state law applies to them the same pupil-teacher ratio as is applied to those schools that do. Over 50 percent of our school's enrollment population is composed of K-3 students, yet we do not receive the funds to pay for the extra teachers needed to lower the pupil-teacher ratio. If we're accountable for the same ratio as those schools that receive classroom

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- reduction funds, the charter schools should be eligible to receive equitable funding. This is an area where charter schools may want to explore legal action.
- Joe Bailey (Eagles Peak Charter School). Full funding should be 100 percent. What connection is there between these criteria and profiteering? Student achievement should be considered.
 - Pat Golding (Hickman Community Charter District). Full funding should be 100 percent. The pupil-teacher ratio reference should reflect the statutory language. Certificated teachers who work for the district and teach part-time at the charter school under contract should be allowed to be included. The proposed 60 percent threshold in 2003-04 is too high. How will these criteria work with multiple-year determinations of funding?
 - Bob Hampton (Buckingham Charter School). This proposal is sort of a shotgun approach. It takes away opportunities for kids. Alternative – multi-strand – approaches should be encouraged, not just independent study. You should keep it simple. Grants and reserves should not be counted as revenue.
 - Jayne Gaskell (Prosser Creek Charter School). Full funding should be 100 percent. The Emergency Regulations included sources of funds that should have been excluded; you should fix that problem in the permanent regulations. The treatment of district employees who teach part-time at charter schools should be clarified. You should go back to some of the alternative ideas submitted for consideration, e.g., the matrix approach.
 - Paul Keefer (Antelope View Charter School). Independent study is less costly when offered through school districts than when offered through charter schools. It's often a "rip off" when run by districts; I/S students often have no access to a campus, to computers, to science labs. Full funding should be 100 percent.
 - Michael Coppess (Opportunities for Learning). The 2002-03 regulations should be the same as were applied in 2001-02. Zero funding should be eliminated; it subjects schools to termination when they may not know the rules. Presented a written statement.

The public comment being completed, Mr. Kushner focused in on the issue of "full funding," asking members' views on whether full funding should be adjusted to reflect any reduction in non-charter independent study funding. Mr. Barr, Mr. Kushner, Ms. Reyes, and Mr. Williams indicated that – barring a statutory change to prohibit it – they would be inclined to have full funding be the 100 percent level. Full funding should be just that – full funding – unless that is a statute otherwise requiring. Mr. Conry, Ms. Frost, Ms. Hunkapiller, and Ms. Sterling indicated that – even absent a statutory requirement – they would be inclined to match full funding for nonclassroom-based instruction with the level of funding approved by the Legislature and the Governor for the independent study in non-charter schools. If independent study is funded at a higher rate

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in charter schools (even potentially, i.e., if the school receives an approved determination of funding at the 100 percent level), there will be incredible pressure to shift all independent study to charter schools and, potentially, adversely affect the operation and quality of independent study programs, as well as give the appearance of a “scam” to get higher funding.

Break. 2:36 – 2:48 p.m.

Petition for State Board chartering. Deborah Connelly (School Fiscal Services Division, California Department of Education) presented the CDE staff analysis of a petition for State Board chartering. The petition – currently aimed for consideration at the State Board’s June meeting – is sponsored by the Pomona Valley Center for Community Development. The proposed school is to open in fall 2003. She noted that the proposed school is very ambitious – many promises are made – but that considerable detail would need to be added to make it one that CDE staff would recommend for approval to the State Board. Among the topics she discussed were: instruction for English learners; students with behavioral problems; special education (including SELPA participation); the school’s business plan; lack of clarity with respect to staffing; budget projections; and the use of 1998 planning grant received by the petitioner.

Tomas Ursua (Executive Director of the Pomona Valley Center for Community Development) made a presentation to the Advisory Commission in which he included the following topics: the demographics of the area to be served by the school; the low academic performance of the public schools in that area of Pomona (well below the district’s average); the fact that the final report on the 1998 planning grant was late, but there were mitigating circumstances – the matter has been cleared up; the Pomona Valley Center has been an important change agent in this area of the city; the Center purchased a site (a former nursing home) in 2001 – this site will be ideal for the school, and the Center will lease space to the school; the school district will not grant this charter no matter what the petitioners do – that seems clear; this school would provide a clearly better education for students in this area of the city than do other public schools; the changes in the charter needed to address the concerns outlined by CDE staff appear fairly easy to make; the school needs to be granted charter status in order to attract needed funding; the charter school will agree to the conditions applied to other schools chartered by the State Board.

- Mr. Barr expressed appreciation for the petitioner’s passion and commitment to children in the urban environment. He noted that, given the intent to open in fall 2003, there was time to address some major issues. However, is the infrastructure there to make this a successful school? Not completely convinced, but interested in providing some time and direction.

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- Mr. Williams also expressed appreciation for the commitment to meet the critical needs of this area and the petitioner's dedication.
- Mr. Kushner suggested that the petitioner not take this proposal to the State Board in June. It's not ready yet. There's still a lot to flesh out. Who will be the management team? Who will be the principal (head of the educational program)? How will the school address the very difficult issue of special education? You need to put more of the pieces together before I would feel comfortable in recommending approval to the State Board.
- Ms. Frost applauded the petition's effort. This is a monumental task. However, you do need to get more of the "ducks in a row." You need a plan that will succeed.
- Mr. Conry inquired about the educational leadership team. This proposal just isn't ready yet. Concerned about process. Pomona has a very thorough review process that came up with many of the same concerns as were expressed by CDE staff. Petitioner would be better advised to improve the proposal and then pursue it again locally.
- Mr. Barr indicated that the petitioner had shown two of the four elements needed to create a successful charter school: community support and a facility. What he needs to put together to have a successful proposal are: a leadership team (educational and operational) and a financial package that's sufficient to get through the difficult start-up period. He suggested that the petitioner postpone consideration for the time being, study successful urban charter schools, and put together a leadership team who are experienced. Also, starting a charter school takes on the order of \$750,000; this school would conceivably be able to get an implementation grant of \$200,000 and a loan of \$250,000; where will the remaining \$300,000 come from? You need to work on this and come back to us with more.
- Mr. Kushner indicated that we want to encourage urban charters. This looks like a very promising effort, and I'd like us to put some time and effort into it. It's not "close enough" as it stands.
- Ms. Sterling inquired as to the involvement of CDE staff in improving a charter proposal. She indicated that the burden needs to be on the petitioner to develop any package of improvements, and that the improvements should not alter the charter's fundamental character – otherwise, it's no longer the petition that was turned down locally. The law is clear; the State Board is to consider charters that were turned down locally, not new proposals created after local rejection. If the fundamental character of the charter is changed by a package of improvements, then we should send the petitioner back to a local agency for consideration.

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- Mr. Ursua indicated that he had followed the advice of Eric Premack in developing this charter: less is more. The charter was intentionally left somewhat general. We would have no problem filling in the specifics set forth in the CDE staff analysis.
- Ms. Connelly indicated that it is important to remember that a charter is more than a paperwork exercise. The paperwork needs to be the culmination of a real understanding of the elements essential to the operational of a school in all respects, a comprehensive educational program, a dedicated and knowledgeable team, a solid business plan, and a sufficient package of financing. Here there is certainly a community of students in need and a petitioner with a commendable vision and a genuine desire, but it's worrisome to hear that what has been outlined and discussed here is regarded largely as a paperwork problem.
- Mr. Kushner indicated that it's important to have very high standards for State Board approved charters because it is so easy to fail. You're out there on your own – you have little support from other local education agencies, yet you are dependent upon them (e.g., special education).
- Ms. Sterling commented on the lack of infrastructure to help State Board approved charters. They have to be prepared for the real world.
- Mr. Conry indicated that the educational plan is very sketchy, and there just doesn't seem to be much of a support structure to make the school successful.
- Ms. Hunkapiller suggested that the petitioner needed to talk with teachers – to recruit. He had indicated that the surrounding public schools had high numbers of teachers with emergency credentials, but what's the plan to get experienced teachers to your school? Also, it's vital that you reach out to the SELPA. You are dependent on the SELPA.
- Mr. Kushner commented that, for the long-term viability of the school, it is important to build mass political support. When it comes time for renewal, you have to go back to the district first. Also, with respect to Mr. Premack's advice, he is frequently misunderstood. He does not say, "Less is more." He says, in effect, "fewer is more." He does not advocate generality, but rather a limited number of focused objectives that the petitioners believe they can honestly deliver. Don't promise 100 things, if you can only deliver ten well. Be strategic, be selective.
- Mr. Barr encouraged the petitioner to build a governing board by looking for individuals who have strengths in areas he does not. Having a strong governing board would be one way to giving us more confidence in the proposal.

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- Mr. Williams suggested that going back to a local agency with a revised proposal might be worthwhile.
- Mr. Barr indicated that the petitioner was obviously a very sophisticated individual with regard to local politics. There is potential here, but he needs more time to get the proposal in shape, get the leadership team, and get the financing. It is worth working on this petition. After all, what if your child had only the apparently rather dismal choices available in this area of Pomona?
- Mr. Conry indicated he was still not convinced that the Pomona district was as negative toward charters as the petitioner indicated. They have a thorough review process; they insist on high standards of preparation – just what we’ve been discussing.
- Ms. Hunkapiller indicated that giving the petitioner two or three months to present the types of things that had been discussed in the meeting would be worthwhile in relation to the potential benefit to students.
- Mr. Williams clarified that he felt going back to a local agency would, in his view, help build good faith and broaden community support.
- Ms. Frost suggested that petitioner might want to consider another district or the county office. Being a State Board approved charter is a very difficult road – you’re out there by yourself.

In the course of the discussion, the following motion was approved:

- **RECOMMENDATION APPROVED:** Mr. Kushner moved that the Advisory Commission recommend to the petitioner that he agree to postpone consideration of the petition by the State Board until at least the State Board’s September meeting and, between now and a subsequent meeting of the Advisory Commission (perhaps late August), strengthen the overall proposal in keeping with the ideas set forth in the discussion, e.g., preparing charter amendments that address the concerns noted by CDE staff, but without changing the charter’s fundamental character; assembling a leadership team (operational and educational); putting together a comprehensive financing package. The Advisory Commission would further recommend that the petitioner follow a parallel track locally to build local support and further explore approval of the charter by a local entity. If the petitioner wishes to proceed to the June State Board meeting, the Advisory Commission recommends that the State Board postpone action on the petition and request that the petitioner present ways of strengthening the overall proposal to the Advisory Commission as outlined above. Mr. Barr seconded the motion. The motion was approved by a vote of 5-2. Mr. Conry and Ms. Sterling voted against the motion. Ms. Reyes was not present when the vote was taken.

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Closing comments. Mr. Kushner indicated that the following day's session would begin at 8:00 a.m., with the following general agenda: finishing up the one determination of funding request that is outstanding; a briefing on the status of the charter school facilities grant program; a quick check of Commissioners' thoughts on the new CDE staff proposal regarding permanent SB 740 regulations, along with any needed clarifications; public comment; and an item-by-item review of the CDE proposal, reaching as much consensus as possible.

Adjournment of day's session. 4:15 p.m.

Thursday, May 23, 2002

Tsakopoulos Library Galleria, East Meeting Room, 828 I Street, Sacramento, California

MEMBERS PRESENT

Mark Kushner, Chair
Steve Barr
Tom Conry
Linda Frost
Beth Hunkapiller
Marta Reyes
Jan Sterling*
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 8:04 a.m.

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

Second 2001-02 determination of funding requests. Mr. Kushner indicated that there was one request to consider.

Hart-Ransom Academic Charter School (#80). Sherry Smith and Kathy Thomasson presented additional information as had been requested at the preceding day's session. The discussion focused on "shared" teachers and special education costs.

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- **RECOMMENDATION APPROVED:** Ms. Reyes moved that the Advisory Commission recommend that the State Board of Education approve the school's second determination of funding request at the 100 percent level. The school currently has an approved determination of funding at the 95 percent level. Additional information supplied by the school convinced the Advisory Commission that the 100 percent level is justified, even though the school may have expended less than 50 percent of its 2000-01 public revenues for salaries and benefits of certificated employees. The Advisory Commission concluded that the school presented sufficient evidence (taking the totality of the second 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 a vote of 7-1. Mr. Conry voted against the motion.

SB 740 Charter School Facilities Grant Program. Ms. Cubanski presented and discussed briefly a draft letter to the field regarding the facilities grant program. There was a short discussion.

Permanent SB 740 regulations. Mr. Kushner indicated that he intended to proceed by first allowing members to voice any thoughts or concerns; clarifying issues as needed; hearing from the public; and then reaching recommendations on as many points as time would allow.

Mr. Kushner indicated that the Assembly had apparently rejected the Governor's proposal for reduced funding for independent study in non-charter schools. Therefore, he suggested that the Advisory Commission not spend any time on the 100 percent funding issue. It might be an issue that will need consideration at a later time (when the budget is finalized), but not now.

- Mr. Kushner commented that charter schools should be held more accountable. "Milking" independent study is simply not appropriate anywhere. We need to be simple, clear, and efficient with the regulations; the regulations should not be subject to lots of interpretation. It's an imperfect law, but it's clear that the intent was to ensure that dollars are focused on instruction. The CDE should post the comparison independent study pupil-teacher ratios; it doesn't seem like that much work, and it would be very helpful to the field.
- Mr. Conry indicated that 50 percent of public revenues being spent for salaries and benefits of certificated employees has been established as the goal. Keeping

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- that goal for 2002-03, per the CDE plan, is the proper way to go. Increasing the mark in 2003-04 is appropriate; it allows time for schools to adjust.
- Ms. Reyes commented that we need to keep the process simple and clear, but we also need to be flexible – able to respond to special circumstances.
 - Mr. Kushner suggested that contract costs for special education teachers should be included in certificated salaries and benefits. He also suggested that “master service contract” be defined.
 - Ms. Sterling commented that it will be difficult to sort out certificated salaries and benefits in contracts for special education programs and services.
 - Mr. Conry suggested it general agreements for services were problematic; charter schools need to have fee-for-service agreements. Tie it down.
 - Ms. Frost suggested that salary and benefit data should be obtainable from the SELPA of which the charter school is a part.
 - Ms. Reyes suggested that schools be allow to count salary and benefit costs where they can be documented.
 - Mr. Kushner commented on special education encroachment and certificated special education teachers actually hired by charter schools in some instances.
 - Mr. Williams suggested that the issue of contract employees might be better handled as a mitigating factor rather than devising complex definitions that endeavor to allow some of the costs to be counted as certificated salaries and benefits.
 - Mr. Conry agreed that consideration as a mitigating factor would be a good approach.
 - Mr. Kushner suggested that data on salaries and benefits of contract special education teachers should not be that difficult to obtain.
 - Ms. Sterling suggested that adding significantly to mitigating factors is problematic. It is difficult to apply mitigating factors in a consistent way. We should quantify as much as possible in the criteria.
 - Ms. Hunkapiller suggested that the form be designed to elicit information on special education costs – we need to know what’s in the figures; the figures need to be verifiable.
 - Mr. Conry agreed that verifiable data are essential.
 - Mr. Williams commented that the provider of the special education programs and services should have the burden of providing salary and benefit information.
 - Ms. Frost reiterated that SELPA should be able to provide the information.

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- Ms. Hunkapiller commented that casting “sunshine” on special education costs would be a good thing for charter schools in the long run, even if it did create some additional burden in the near term.

Public comment. Mr. Kushner invited public comment.

- Sonja Cameron (Antelope View Charter School). The tests imposed need to be clear.
- David Patterson (CANEC). Charter schools are generally not welcomed by SELPAs; it is difficult to get data from SELPAs. Do not have different rules for dependent and independent charters; devise the regulations so that both can claim salaries and benefits for contract employees (not just the dependent charters). Do not limit choices and options for independent charters but virtue of the tests to be used in evaluating determination of funding requests.
- Mary Vink. The salaries and benefits of contract employees who are certificated should be countable.
- Sherry Smith. Same thought on salaries and benefits of contract employees.
- Kathy Bass. Schools should be able to include the salaries and benefits of part-time (contract) special education teachers whether district or private.
- Don Riddell (Options for Youth). Third-party providers of special education should be included.

At this point, Mr. Kushner steered the discussion toward specific issues and endeavored to put forward motions on the issues that would achieve at least a majority vote.

- **MOTION FAILS:** Contract special education providers. Mr. Kushner moved that the Advisory Commission recommend that the permanent regulations include a definition of “certificated employees” that allows inclusion of the salaries and benefits of certificated individuals who provide special education programs and services at a charter school under contract (with a local education agency or a private agency) but who are not direct employees of the school. The motion failed passage by a vote of 4-3-1. Mr. Barr, Mr. Conry, and Ms. Sterling voted against the motion. Mr. Williams did not vote on the motion.

Following the exploration of alternatives, e.g., consideration as a mitigating factor, the same motion was considered again.

- **RECOMMENDATION APPROVED:** Contract special education providers. Mr. Kushner moved that the Advisory Commission recommend that the permanent regulations include a definition of “certificated employees” that allows inclusion of the salaries and benefits of certificated individuals who provide special

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education programs and services at a charter school under contract (with a local education agency or a private agency) but who are not direct employees of the school. The motion was approved by a vote of 6-2. Mr. Conry and Ms. Sterling voted against the motion.

Additional public comment. Mr. Kushner invited additional public comment on 2002-03 issues, e.g., revenues and pupil-teacher ratio.

- Sonja Cameron. What's the purpose of the pupil-teacher ratio in the independent study program?
- Dennis Snyder. Are you locked into this approach? This will take away innovation – penalize innovation. Go with the law's intent.
- Frank Butler (Opportunities for Learning). It's difficult for school's to react to these changes – need time to comply. Mitigating factors need to be taken into account – how will that process work?
- David Patterson. Consistency is important; that's how schools have the opportunity to adjust. Pupil-teacher ratio information is difficult to obtain.
- Dennis Boyer. Counties don't know the pupil-teacher ratio numbers. Auditors do it now, but it's difficult to find the correct numbers. The comparison ratio is generally higher than 25:1. You should not have changes from 2001-02; keep it the same – be clear.
- Mary Vink. Exclude grants from revenues, because grants can't be spent for teachers' salaries and benefits. The pupil-teacher ratio information is difficult to find. We fight, but we still have dollars taken away; it's discouraging.
- Jeff Rice. Grant revenues should not be included; they can't be spent for general purposes. There should be an either/or on the pupil-teacher ratio (the largest unified in the county, or a statewide average – e.g., 25:1 – whichever is greater).
- Kathy Bass. The 25:1 ratio may have had its origins in facilities calculations. Pupil-teacher ratio data are difficult to find. There appear to be different bases for calculation depending on the program. Including grants would discourage, for example, seeking a library grant that can't be used for salaries. Figures developed by CDE staff show about 35-37 percent of funds spent on certificated employee salary and benefits by the average small school district (under 1,000 students); the proposed 50 percent threshold for charter schools is significantly higher. Allow certificated staff working part time as a charter school employee (and part time

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with the district or another school) to be included in the charter school's total expenditures for certificated salary and benefits.

- **Pat Golding and Sherry Smith.** Use the statutory language in referring to the pupil-teacher ratio.
- **Bob Goode.** We have used the independent study manual in designing our programs. It encourages no more than 25:1.
- **Michael Coppess.** A certain level of arbitrariness in funding standards is acceptable if applied on a going forward basis. No written explanation has ever been provided detailing how the percentages were derived or why they relate to the operation of independent study charter schools. Accordingly, there is no reasonable basis to determine their acceptability. These standards would be an insufficient basis for termination of funding, which would be the effect of zero funding. This sanction is too severe.
- **Don Riddell.** Under this proposal, the future is based on the past – this isn't reasonable. When the rules change late, this creates a problem for the schools. Establishing zero as a floor is a new rule; it would have put as many as a third of the schools out of business if it had been imposed this year.
- **Jonelle Pena.** There should be no changes in 2002-03. Keep the 95 percent and 100 percent options only next year – just like this year. It's unfair to place any new burden on schools when they have no time to implement. The Advisory Commission should propose a rule that changes can only be made one year in the future and take a vote on that proposal.

Break. 10:03 – 10:12 a.m.

Following the break, there was considerable discussion regarding the permanent SB 740 regulations focused on 2002-03. A number of motions were made that were keyed to the CDE staff proposal.

- **RECOMMENDATION APPROVED:** 2002-03, part I, section 3. Pupil-teacher ratio. Move this section to mitigating factors and use statutory language in referencing pupil-teacher ratio. The motion was put forward by Mr. Kushner and approved by unanimous vote of the members present. Mr. Williams was not present when the vote was taken.
- **RECOMMENDATION APPROVED:** 2002-03, part I, sections 1 and 2. Certificated employee costs; instruction and instruction-related costs. Retain as presented (i.e., 35 percent threshold for certificated employee costs AND 55

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percent threshold for instruction and instruction-related costs). The motion was put forward by Mr. Kushner and approved by a vote of 5-2-1. Mr. Conry and Mr. Barr voted against the motion. Ms. Sterling did not vote on the motion.

- **RECOMMENDATION APPROVED:** 2002-03, part II, section 2. Pupil-teacher ratio. Move this section to mitigating factors and use statutory language in referencing pupil-teacher ratio. The motion was put forward by Mr. Kushner and approved by unanimous vote of the members.
- **RECOMMENDATION APPROVED:** 2002-03, part II, section 1. Certificated employee costs. Retain as presented (i.e., 50 percent threshold for certificated employee costs). The motion was put forward by Mr. Kushner and approved by unanimous vote of the members.
- **RECOMMENDATION APPROVED:** 2002-03, part III. Zero funding. Modify to become a 70 percent minimum (instead of zero). The motion was put forward by Mr. Kushner and approved by a vote of 5-3. Mr. Barr, Mr. Conry, and Ms. Sterling voted against the motion.
- **RECOMMENDATION APPROVED:** 2002-03, Mitigating factors. Modify to refer to “ending balance”; include provision(s) requiring data to document and verify; and include pupil-teacher ratio (reflecting statutory language). The motion was made by Mr. Williams, seconded by Mr. Kushner, and approved by a vote of 7-1. Ms. Frost voted against the motion.

Public comment. Mr. Kushner called for a brief round of public comment on the CDE staff proposal regarding 2003-04 (and thereafter).

- Jonelle Pena. What criteria governing the mitigating factors? When would they come into consideration?
- Sherry Smith. Use the statutory language regarding the pupil-teacher ratio.
- Pat Golding. The 80 percent test (for instruction and instruction-related costs) is fair, but the 60 percent test (for certificated employee costs) is too high.
- Kathy Bass. Why not use current-year revenues and expenditures? Maintain the 35 percent and 55 percent tests.
- Jeff Rice. Material change is defined as a significant change; this should be quantified. Use the statutory language in referring to the pupil-teacher ratio. Why raise the bar in 2003-04? No justification.

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- Mary Vink. Why raise the bar in 2003-04? Grant revenues should not be counted as income. Zero funding for exceeding pupil-teacher ratio establishes a different meaning for the ratio as it applies to charter schools – not fair.
- Dennis Boyer. The percents proposed for full funding are too high. Grant funds should not be counted as income.
- David Patterson. Retain 2002-03 criteria in 2003-04. What’s the rationale for higher percentage thresholds in 2003-04? Not comparable. Close with what you’ve done for 2002-03.
- Frank Butler. Do not raise the bar in 2003-04. Certificated teachers are difficult to attract. Raising the bar is unfair.
- Cameron Curry. Do not raise the bar in 2003-04.
- Dennis Snyder. Regulations should be turned around the other way – charter schools should be entitled to 100 percent funding unless specified factors are found to exist. Charter schools should not have to prove they have done nothing wrong. Go back to the intent of the law.
- Sonja Cameron. This is like hitting a moving target – it’s difficult to understand the changes. This should be about education for students – you’ve gotten away from that. What’s the rationale for increasing to 60 percent (certificated employee costs)?

Following these public comments, there was a focused discussion on the subject to what should be counted as revenue. Ms. Cubanski pointed out that the rationale for including grants as revenue is so that revenues and expenditures would then be as close to “apples-to-apples” as possible. Knowledgeable sources repeatedly told the Advisory Commission that charter schools’ current accounting structures are not sufficient to break out expenditures by revenue source. Even with the minor adjustment to revenues in 2001-02 (excluding certain grants), there were some schools that reported expenditures in excess of revenues. Other topics that came up in the discussion included looking at the size of the school; differences in the numbers of certificated and non-certificated teachers; keeping the definition of revenues stable rather than changing it; penalizing aggressive fundraising; and treatment of bond revenue and capital outlay expenditures.

- **RECOMMENDATION APPROVED:** Definition of total public revenue. Accept the CDE staff proposal for definition of total public revenue in future years (including 2002-03), and provide ample opportunity (and encouragement) for charter schools to describe individual mitigating circumstances with respect to revenue (e.g., restricted grants, bond revenue for capital outlay, etc.). The motion

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was made by Mr. Barr, seconded by Mr. Conry, and approved by a vote of 7-1. Ms. Reyes voted against the motion.

- **RECOMMENDATION APPROVED: Definition of total revenue.** Accept the CDE staff proposal for definition of total revenue in future years (including 2002-03), and provide ample opportunity (and encouragement) for charter schools to describe individual mitigating circumstances with respect to revenue (e.g., restricted grants, bond revenue for capital outlay, etc.). The motion was made by Mr. Conry, seconded by Ms. Sterling, and approved by unanimous vote of the members.
- **RECOMMENDATION APPROVED: Small and new schools.** Accept the CDE staff proposal to insert specific language regarding “serious consideration for full funding” for small schools and schools in their first year of operation. Include a clarification that “less than 100 units of average daily attendance” means in the fiscal year preceding the year in which the determination of funding request is made. The motion was made by Mr. Williams, seconded by Mr. Barr, and approved by a vote of 5-3. Mr. Conry, Ms. Hunkapiller, and Ms. Sterling voted against the motion.
- **RECOMMENDATION APPROVED: By consensus,** it was agreed that the language pertaining the pupil-teacher ratio should be the same as it appears in statute. [Ms. Sterling indicated she would explore ways to encourage local education agencies (particularly county offices of education) to assist charter schools in obtaining reliable comparison pupil-teacher ratios.]
- **MOTION FAILS: 2003-04, part I. 70 percent level.** Raise the thresholds in sections 1 and 2 to 40 percent and 60 percent, respectively; retain section 3 as proposed. The motion was made by Mr. Conry, seconded by Ms. Sterling, and failed passage by a vote of 4-3-1. Ms. Hunkapiller, Mr. Kushner, and Ms. Reyes voted against the motion. Mr. Williams did not vote on the motion.
- **RECOMMENDATION APPROVED: 2003-04, part I. 70 percent level.** Raise the thresholds in sections 1 and 2 to 40 percent and 60 percent, respectively; move section 3 to mitigating factors. The motion was made by Mr. Kushner, seconded by Mr. Barr, and approved by a vote of 6-2. Ms. Hunkapiller and Ms. Reyes voted against the motion.
- **MOTION DIES FOR LACK OF SECOND: 2003-04, part II. Funding level midway between 70 percent level and full funding.** Raise the thresholds in sections 1 and 2 to 45 percent and 70 percent, respectively; move section 3 to mitigating factors. The motion was made by Mr. Kushner; the motion died for lack of a second.

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- RECOMMENDATION APPROVED: 2003-04, part II. Funding level midway between 70 percent level and full funding. Retain sections 1 and 2 as proposed; move section 3 to mitigating factors. The motion was made by Mr. Conry, seconded by Mr. Barr, and approved by unanimous vote of the members.
- RECOMMENDATION APPROVED: 2003-04, part III. Full funding. Modify to specify that the thresholds in all three sections be met (as opposed to either section 1 or section 2); reduce the percentage specified in section 1 from 60 percent to 50 percent. The motion was made by Ms. Reyes, seconded by Mr. Williams, and approved by a vote of 5-3. Mr. Conry, Ms. Frost, and Ms. Hunkapiller voted against the motion.
- MOTION FAILS: 2003-04, part IV. Zero funding. Retain the part as proposed. The motion was made by Mr. Conry, seconded by Mr. Barr, and failed passage by a vote of 4-3-1. Ms. Hunkapiller, Mr. Kushner, and Ms. Reyes voted against the motion. Mr. Williams did not vote on the motion.
- MOTION FAILS: 2003-04, part IV. Zero funding. Modify to specify a minimum 50 percent level. The motion was made by Mr. Kushner, seconded by Mr. Barr, and failed passage by a vote of 2-5-1. Mr. Kushner and Mr. Barr voted in favor of the motion. Mr. Williams did not vote on the motion.
- RECOMMENDATION APPROVED: 2003-04, part IV. Zero funding. Retain the part as proposed. The motion was made by Ms. Hunkapiller, seconded by Mr. Barr, and approved by a vote of 5-2-1. Mr. Kushner and Ms. Reyes voted against the motion. Mr. Williams did not vote on the motion.
- RECOMMENDATION APPROVED: 2003-04; Mitigating factors. Retain as proposed, except for adjustments to reflect other recommendations. The motion was made by Mr. Conry, seconded by Mr. Barr, and approved by unanimous vote of the members.

Public comment. Mr. Patterson indicated that he wished to have the data files used by Ms. Cubanski in the preparation of the CDE staff proposal. Mr. Kushner indicated that this matter could be taken up outside of the Advisory Commission meeting.

Adjournment. Mr. Kushner adjourned the meeting at 12:03 p.m.