

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, July 11, 2003

MEMBERS PRESENT

Mark Kushner, Chair
Steve Barr
Tom Conry
Linda Frost
Michael D. Piscal
Jan Sterling*
Johnathan Williams

MEMBERS ABSENT

Beth Hunkapiller
Marta Reyes

* 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 10:17 a.m.

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

Introductions. The members of the Advisory Commission introduced themselves along with staff.

Tentative Agenda. Mr. Kushner announced that the tentative agenda for the day's meeting would be (1) discussion of a proposal for a model "universal charter application" that charter authorizers would be encouraged, but not required, to use; (2) remaining 2002-03 determination of funding requests; (3) a discussion of facilities as a mitigating factor in the consideration of determination of funding request; (4) a discussion of proposed regulations to implement the programmatic provisions of AB 1994; and (5) other matters.

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

Model Universal Charter Application. Mr. Geeting briefly explained the context for the draft of a model “universal charter application” that had been distributed. [Hard copy of the document was provided at the meeting, and the document had been sent out to the Commission’s e-distribution list the day before the meeting.] His major points were as follows:

- (1) In a presentation to the State Board of Education on the preceding Wednesday, nationally recognized charter school expert Nelson Smith stressed that charter authorizers generally regarded as having the strongest, most accountable systems of charter schools all had some form of standard application to guide the work of charter developers.
- (2) If we were to require the use of a universal charter application, it would be necessary to pursue the cumbersome regulatory process, and the result might well be contrary to the intent, which is not necessarily to get the process “rule bound,” but rather to ensure that charters are complete and evaluation is fair.
- (3) An initial draft document was prepared at the request of Reed Hastings and Don Fisher. A number of people contributed suggestions and comments that have been reflected in the current draft. Mr. Hastings and Mr. Fisher would appreciate any additional suggestions and comments that the Advisory Commission might wish to contribute, in anticipation of sending the document out as an information item for State Board members to review in August.

Mr. Conry asked for clarification on the intended time line for consideration of the draft by the State Board; he also requested a copy of Nelson Smith’s remarks. Mr. Kushner commented that this is an excellent concept to help ensure that proposed charters are comprehensive and that charter authorizers have a reasonable rubric for evaluation. Mr. Barr commented on his experience with a charter authorizer that seemed to have gone too far in terms of detailed requirements for charters; he indicated that this draft document might be helpful in establishing a responsible balance; it would send a great message. Mr. Conry asked for clarification as to whether this document was intended for all levels of chartering. Mr. Geeting indicated that it was intended for all levels of school chartering, but that it excluded district chartering which has unique obstacles in California (e.g., the requirement that no pupil can be required to attend a charter school). There are only a few charter districts in the state, and those we have are all one- or two-school districts.

Mr. Kushner invited public comment.

Brian Bennett expressed reservations about the idea generally because what is offered as a model may soon become a requirement (either formally or as a matter of practice). He indicated that the August 1 date for submission of charter petitions was particularly problematic. [He recommended either no specific date or, in the alternative, November 1

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

to correspond to the regulations pertaining to Proposition 39 implementation.] He also suggested that many terms used in the document would lead to more confusion than clarity. He pointed out that a number of major districts (e.g., San Diego Unified) had charter requirements and evaluation processes that differed from those envisioned in the draft document. He also made references to alignment with IRS regulations and to the provisions related to the location of schools. He noted that AB 1137 (now proceeding through the Legislature) had at one point included “liability protection” language, but that this language had been amended out of the bill; he encouraged the Advisory Commission to advocate for restoration of the language.

Eric Premack also expressed reservations about the concept because a state-endorsed model might have the effect of restricting diversity. He suggested that there are dozens of good models, and that some were in fact better than this one. He recommended (if anything) putting out a variety of models and not endorsing any particular one. He commented that the underlying problem with the proposed evaluation criteria in his view is that they force extraneous items into the consideration process. He recommended tabling further discussion of a universal application and focusing instead on re-doing the existing regulations. This document presents only one model among many.

David Patterson recommended that Nelson Smith’s power point slides be distributed to the whole of the Advisory Commission’s e-distribution list. He then proceeded to make a general comment, but first made it clear that the comment reflected his own personal thinking and not an official position of CANEC. He suggested that this was a case of viewing the glass as half-empty or as half-full. On the one hand, there would be value in having a universal charter application by ensuring, for example, that proposed charters are complete and thorough. On the other hand, however, it could have the effect of limiting diversity and constraining the chartering evaluation process.

Lisa Corr expressed reservations about the effect a document of this type might have on the concept of local control, although she agreed there were some potential benefits. She commented that there are not many precedents pertaining to charter schools. It would be naïve to think that this document, if issued, would not be a significant precedent; it would have a major impact on local operations. The August 1 date is particularly problematic. The document doesn’t mention collective bargaining requirements.

Mr. Williams thanked those who commented on the document. It will be interesting to watch how this comes out. Generally the idea of a universal application has merit.

Mr. Barr indicated that a document such as this would provide useful “counter pressure” on local charter authorizers that had “gone too far.” It’s important to expedite the chartering process, not allow that process to be unnecessarily delayed. Students need the options that good charters provide.

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

Mr. Kushner indicated that he applauded the effort to improve both the quality of charters and the quality of evaluation by charter authorizers. The glass is definitely half-full. This will reduce the game playing. The idea of including multiple models of evaluation is good and should be considered. The August 1 date raises some questions. The district impact section is very subjective (and is controlled by many outside forces beyond a charter school's control); this shouldn't be part of a charter; if anything, district impact should be considered separately from the consideration of a charter.

Mr. Piscal echoed comments made by others. He emphasized that local charter authorizers had (in some cases) abused the legal device of labeling charters as "incomplete" in order to avoid decision-making and delay petitioners' right of appeal. If possible, we need to strengthen the requirements to adhere to a reasonable time line once a charter petition has been submitted.

Mr. Conry commented that the concept of a universal charter application is good. There have been abuses on the part of both charter petitioners and charter authorizers. Endorsing a model might have the effect of "opening up" the process and making opportunities more accessible to all individuals with good ideas.

Ms. Frost suggested that a "stretched out" time line was necessary some cases, but not others. There should be flexibility in the model of evaluation used. There is value in giving a "heads up" to charter petitioners to ensure that they cover all aspects of applicable statute and regulations.

Deborah Connelly commented that a universal application overall is probably a good idea. It can be very frustrating at the state level to review appeals of charters that are rather haphazard in design and format. [Of course, the fact that the model would not be uniformly applied might defeat the objective in some cases.] The evaluation criteria proposed in the document may need more elaboration in some places. Mr. Geeting commented that (he believed) the August 1 deadline reflected the thought of a local charter going through the full process (district denial, county denial, and submission to the State Board) and still having a reasonable shot at being implemented in the fall of the forthcoming calendar year.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission express to the State Board its recommendation to proceed with the concept of a universal charter application, recognizing that the document before the Commission is a draft, and indicating the Commission's intent to provide further input on the draft at its September meeting. Mr. Conry seconded the motion. The motion was approved by unanimous vote of the member present. Ms. Sterling was not present when the vote was taken.

MEETING NOTES
Advisory Commission on Charter Schools
 July 11, 2003

Break. 11:26 – 11:49 a.m.

2002-03 (and beyond) determination of funding requests. Mr. Kushner asked Ms. Cubanski to brief the members on the two determination of funding requests.

Charter #	Charter School Name	Recommended Level	Recommended Years
#27	Elk Grove Charter School	100%	Two years 2002-03 and 2003-04

Ms. Cubanski indicated that, while the school met the criteria for approval at the 100 percent level, the charter expires at the end of 2003-04. Therefore, CDE staff recommend two-year approval at the 100 percent level. The 2002-03 allocation to the school would be made in conjunction with the first principal apportionment in February 2004.

- **RECOMMENDATION APPROVED:** Mr. Williams moved that the Advisory Commission recommend to the State Board that the determination of funding request for Elk Grove Charter School (#27) be approved at the 100 percent level for 2002-03 and 2003-04. The reasons justifying a level higher than 80 percent in 2002-03 and higher than 70 percent in 2003-04 are that (1) the school met the minimum criteria specified in regulation for the 100 percent level and (2) the school presented sufficient evidence (taking the totality of the request into account along with any other credible information that may have been available) that the 100 percent funding level is necessary for the school to maintain nonclassroom-based instruction that is conducted for the instructional benefit of the student and is substantially dedicated to that function. Mr. Barr seconded the motion. The motion was approved by a vote of 6-0. Ms. Sterling was not present when the vote was taken.

Charter #	Charter School Name	Recommended Level	Recommended Years
#171	New Jerusalem Charter School	100%	One year only 2002-03

Ms. Cubanski noted that this school has an existing 2002-03 determination of funding at the 100 percent level, but that this second request (appeal) was for a multiple-year determination of funding at the 100 percent level. She summarized an issue having to do with the repayment of loans secured prior to the enactment of SB 740. These repayments may make it impossible for some schools to reach the target level of 80 percent of expenditures for instructional purposes. She indicated, however, that this school might

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

be able to reach the 80 percent target and, thus, CDE staff did not recommend granting an exception (for 2003-04 and 2004-05) based upon mitigating factors at this time. No one was present to represent the school.

- **RECOMMENDATION APPROVED:** Mr. Williams moved that the Advisory Commission recommend to the State Board that it reaffirm the existing 2002-03 determination of funding for New Jerusalem Charter School (#171) which is at the 100 percent level. As reaffirmation of an existing determination of funding is recommended, no additional reasons need be stated. Mr. Conry seconded the motion. The motion was approved by a vote of 6-0. Ms. Sterling was not present when the vote was taken.

Mr. Kushner and Ms. Cubanski indicated that more input on the issue of repayment of pre-SB 740 loans would be appreciated. Ideas should be sent by e-mail to Ms. Cubanski.

Recognition of Jan Sterling. Noting Ms. Sterling's arrival, Mr. Kushner commented that she had recently announced her retirement as of mid-August. Mr. Kushner commended Ms. Sterling for her outstanding assistance and support over the years in addressing issues of concern to charter schools and in implementing the provisions of law affecting charter schools in a consistently reasonable and responsible manner. Several members echoed Mr. Kushner's commendation, expressing their own high regard for Ms. Sterling. Though indicating that she looked forward to retirement, Ms. Sterling complimented the Commission members and her staff for their dedicated work; she indicated that she felt privileged to have been associated with such knowledgeable and capable people.

Treatment of facilities costs in relation to 2003-04 (and beyond) determination of funding requests. At Mr. Kushner's request, Ms. Cubanski outlined three options for the treatment of facilities costs in relation to 2003-04 (and beyond) determination of funding requests, summarizing the advantages and disadvantages of each.

- (1) Establish a formula under which a portion of facilities costs would be defined as "instruction-related" and, therefore, included with the 80 percent instruction-related expenditure target. This option would provide for more "predictability," and it would apply equally. However, it would need to be incorporated in the regulations (which takes time), and it would involve more data gathering (and the data might of necessity involve somewhat speculative factors, e.g., the percentage of time facilities are "accessible" to students).
- (2) Simply reduce the percentage criterion for instruction-related costs from 80 percent to some lower percentage. This option would also provide for more predictability, as well as being equal. In addition, it would be simple and require no new data collection. However, it might not adequately compensate for facilities costs in some settings (e.g., costly urban areas), while overcompensating

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

in other settings. It would also require a change in regulation, and one-time facilities costs would still be problematic.

- (3) Continue the current practice of considering facilities costs as a mitigating factor on a case-by-case basis. This option requires no change in regulation, is simple, and requires no new data collection. However, it does not introduce the element of predictability sought by a number of charter schools operating hybrid programs.

Ms. Cubanski indicated that CDE staff recommended the third option (continuation of the current practice), but that she felt operators of hybrid programs would most likely favor some variation of the first option or the second option.

Mr. Kushner complimented Ms. Cubanski for her succinct, clear summarization of the basic options. Mr. Piscal echoed that thought. Ms. Cubanski indicated that Jeff Rice, in particular, and other charter school advocates had been very helpful in the preparation of the document outlining the options. Mr. Kushner called for public comment.

Jeff Rice also complimented the excellent quality of the staff work, noting that the advantages and disadvantages of each option were well described. As a matter of respectful difference of opinion (with CDE staff), however, he indicated that the first option is clearly the best option. He noted that the existing regulations do not deal adequately with the facilities issue, as evidenced by the time spent on the issue in deliberating over determination of funding requests. Hybrid schools are in need of greater predictability; greater accountability demands more precision in the system of evaluating requests. More predictability is critical to hybrid schools in making decisions about the acquisition of new or different facilities. He indicated that a variation of the first option (outlined by CDE staff) under which “instructional minutes” would be counted runs completely counter to independent study principles. He did recommend that it be optional for schools to submit the data necessary to implement the first option; schools that meet the 80 percent target without adjustment for facilities costs should not have to submit the additional data. He noted that the language in AB 1638 endeavors to remove subjectivity around the “reasonable use” aspects of the first option. Mr. Rice indicated that AB 1638 had failed passage, but was allowed to remain active as a two-year bill.

Mr. Rice indicated that his preference would be the first option with the AB 1638 additions. He indicated that he viewed the second option (adjustment of the 80 percent target) to be “a toss up” as an alternative plan. But he indicated that either would be preferable to the current process of considering facilities costs as a mitigating factor.

Jan Jablecki echoed the thought that more predictability is needed. Facilities costs are a very real and important issue for hybrid schools; the Advisory Commission’s

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

recommendations and the State Board's decisions have a serious impact on the ability of these schools to deliver quality programs. She emphasized that it's more complicated to operate a hybrid school. Those truly endeavoring to "game" the system are unlikely to pursue the hybrid model. She concluded by expressing her preference for the second option (adjustment of the 80 percent target) over the first option (development of a formula).

Maram Aliwatt commented that some change had to be made to the current treatment of facilities costs as a mitigating factor. It's too unpredictable. The formula approach (the first option) is very complicated, particularly if implemented with the variation of counting instructional minutes. Reduction of the 80 percent target (the second option) would be better. However, the second option doesn't give an adequate adjustment to schools that operate in areas where facilities costs are high. The ability to pursue high facilities costs as a mitigating factor should be allowed for these schools.

Lisa Corr indicated her preference for reduction of the 80 percent target (the second option) over the formula approach (the first option). It's simpler. Our experience with treating facilities as a mitigating factor has been problematic; a change is warranted.

Kara Smith indicated that more objectivity and less subjectivity is definitely preferable; the current system is not working well for hybrid schools. However, neither the first nor the second option is great. The first option is too complex; the second option is too rigid. If forced to pick, she indicated she would favor the second option (reduction of the 80 percent target) with retention of the allowance for schools to pursue high facilities costs as a mitigating factor where the adjustment provided by the second option is insufficient.

David Patterson indicated that either the first or the second option would be better than the existing system, and he sensed that it would be easier to reach agreement on the first option than on the second.

Ms. Frost indicated that between the first and second options, she would be inclined toward the second.

Mr. Conry commented that the third option (retaining the existing approach) has worked well and that he hadn't been persuaded to move away from the treatment of facilities as a mitigating factor at this point. He expressed considerable discomfort with the idea of lowering the target percentage and also retaining facilities costs as a mitigating factor. Also, he suggested it would be very difficult to reach agreement on a figure lower than the 80 percent target. The existing system is not perfect – not everyone is pleased – but overall it has worked well.

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

Mr. Kushner indicated that he was undecided, but leaning toward reduction of the expenditure target for instruction-related costs to 75 percent. However, he would additionally favor a “trigger” such that not every school would qualify; those schools that didn’t qualify would continue to be subject to the 80 percent target. He expressed concern that the additional five percent leeway may not be sufficient in high-cost urban areas.

Ms. Sterling indicated that the third option was her preference. She suggested that the Advisory Commission could consider non-binding guidelines to help provide more clarity to the affected charter schools (similar to the State Board’s non-binding guidelines expressing the Board’s “intent” to approve or not to approve waivers under certain circumstances). She indicated that reopening the target percentage (the second option) would be a very difficult route to pursue.

Mr. Barr indicated that the third option is truest to the intent of SB 740. It has been working well enough.

Mr. Williams indicated that, although sympathetic to the predictability argument, he still felt that treating facilities costs as a mitigating factor (the third option) was the better than either the first or the second options.

Mr. Kushner suggested that the members might not want to take action today, but rather to think the matter over during the next couple of months. However, Mr. Barr indicated that he felt comfortable in proceeding on the matter at this time.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission (1) recommend to the State Board that no change be made in the existing regulations pertaining to the treatment of facilities costs as a mitigating factor with respect to determination of funding requests, (2) request that staff prepare some non-binding guidelines for the Advisory Commission’s consideration related to facilities as a mitigating factor in keeping with the discussion at this meeting, and (3) note for the record that the Advisory Commission plans to have further discussions on this topic. Mr. Conry seconded the motion. The motion was approved by a vote of 6-1. Mr. Kushner voted against the motion.

Lunch break. 1:02 – 2:08 p.m.

Implementation regulations for the programmatic provisions of AB 1994. Mr. Kushner apologized for not being able to devote more time to the draft regulations and, thus, disseminate a revised text prior to the meeting. He indicated that the draft before the

MEETING NOTES
Advisory Commission on Charter Schools
July 11, 2003

group today was very solid, reflecting a lengthy conversation with staff of the Senate Education Committee and Assembly Member Reyes' Office.

Ms. Sterling commented that the revised draft could be said to reflect less "compromising" than an earlier version reviewed the Commission. Legislative staff convinced them that the intent with respect to state charter schools was very narrow and focused. She also indicated that it would be her plan to submit a draft of proposed regulations to the State Board in September in order to begin the formal rule-making process.

Ms. Cubanski summarized significant changes between the current draft and a draft the Commission examined in April. She indicated that a consolidated draft would be assembled and sent out through the Commission's e-distribution list. Comments prior to the submission of the draft regulations to the State Board would be welcome and could be e-mailed to her. In the discussion that ensued, the major issue mentioned was the reference to compliance with local zoning ordinances. Some attorneys specializing in charter schools are of the opinion that an existing statutory exemption from local zoning ordinances that applies to school districts also applied to charter schools.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission recommend to the State Board that it proceed to commence the formal rule-making process on regulations to implement the programmatic provisions of AB 1994, using the draft as a base, but incorporating corrections and changes as determined appropriate by CDE staff. Mr. Kushner seconded the motion. The motion was approved by unanimous vote of the members present.

Adjournment. Mr. Kushner adjourned the meeting at 2:32 p.m.