

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

Tuesday, September 23, 2003

MEMBERS PRESENT

Mark Kushner, Chair  
Steve Barr  
Tom Conry  
Eileen Cubanski\*  
Linda Frost  
Beth Hunkapiller  
Michael D. Piscal  
Marta Reyes  
Johnathan Williams

MEMBERS ABSENT

None

\* Eileen Cubanski 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 10:27 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. Members of the audience new to Advisory Commission meetings were also invited to introduce themselves.

Tentative Agenda. Mr. Kushner announced that the tentative agenda for the day's meeting would be (1) a brief update on various sets of pending regulations affecting charter schools; (2) general public comment on matters not on the agenda; (3) the model charter school application document; (4) proposed regulations to implement the programmatic provisions of AB 1994; and (5) other matters.

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

Next Meeting. There was a brief discussion regarding the start time for the October 19 meeting. The consensus was to set a start time of 9:30 a.m. instead of the usual 10:00 a.m. Members were advised that that day's agenda may include several appeals of local charter denials which could be time-consuming.

Update on the Status of Regulations. Mr. Geeting indicated that three sets of regulations affecting charter schools are pending.

- SB 740 funding determinations. These regulations were adopted by the State Board on September 10. The motion to adopt the regulations recognized that the State Board had considered the comments received during the 15-day public review period and the responses thereto prepared by CDE staff, and further recognized that the opportunity to present written or oral comment had been provided to the public at the State Board meeting in accordance with the Bagley-Keene Open Meeting Act and that no member of the public presented written or oral comment. The final rulemaking package is essentially complete, and submission to the Office of Administrative Law (OAL) is expected this week.
- AB 1994 financial provisions. These regulations were adopted by the State Board on September 10. The final rulemaking package is essentially complete and submission to the OAL is expected this week.
- Average daily attendance claims for students over age 19. These regulations were adopted by the State Board on May 8. The final rulemaking package is largely complete; it has taken longer than is typical to assemble because of the extraordinary volume of public comments. Submission of the package to the OAL is expected in two weeks.

Mr. Kushner asked if there was public comment regarding any of these rulemaking packages. There was none.

Public Comment. Mr. Kushner invited public comment on any item not on the agenda. Peggy Schueler representing Shasta Secondary Home School issued an invitation to the opening of the school's new facility located at 1401 Gold Street in Redding. The opening celebration will be held Wednesday, October 8, from 4:00 to 7:00 p.m. There were no other public comments.

Model Charter School Application. Mr. Geeting briefly explained the development of the "model charter school application" and how it came to be on this agenda. The State Board had requested further review by the Advisory Commission in preparation for consideration of the document at the State Board's November 2003 meeting. Ms. Cubanski indicated that she and her staff had prepared a list of several substantive concerns and a number of minor, technical ones. Probably the most significant proposed

---

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

modification is taking out of the model the part related to statewide charter schools until such time as the AB 1994 programmatic implementation regulations are in place. Mr. Geeting commented that the essential objective is to place a model on the California Department of Education Web site for use by local education agencies as they deem appropriate; the document is not intended as a mandate or a limitation on any LEA. Deborah Connelly provided an update on the forthcoming work of the National Association of Charter School Authorizers (NACSA) regarding the model application and other aspects of charter authorizing in California; NACSA's efforts will be taking place over the next 15 months.

Mr. Kushner applauded the effort made to create a model application and felt it would be a very useful and flexible tool. He outlined three points that he hoped would be taken under consideration in NACSA's work on the document: (1) clarification as to what constitutes the "application" and what constitutes the "charter," so that it's clear when petitioners need to go back to the authorizer for approval of a material change; (2) clarification as to the nature and extent of "changes" in the process of appeal to the State Board, which may be addressed by a State Board policy rather than an amendment to the model; and (3) preparation of a "matrix" check off to expedite and provide more consistency in the process of review by charter authorizers.

Ms. Hunkapiller commented that it's important that charters remain essentially the same in the process of appeal. Though changes should be allowed, they should be narrow, not things that alter the fundamental character of the proposal.

Ms. Piscal echoed Mr. Kushner's thoughts. Relatively minor things, such as bell schedule changes, should not require approval by the authorizer. He noted that one uphill battle charter developers confront is the failure of many charter authorizers to comply with the statutory timeline for consideration and action. Often they "sit on" charter petitions for years, contending that the petitions are "not complete" and that, therefore, the statutory clock has not commenced. This is a source of great frustration.

Mr. Kushner noted that the suggested "August 1" timeline for submission of charter petitions should be moved back a month or two if possible. Ms. Cubanski indicated that the date was selected largely to ensure that there would be adequate time for the complete appeal process to be carried out and still allow the proposed school a realistic opportunity to open in the fall of the following calendar year.

Mr. Barr indicated that he was excited about the model application and hoped that the California Charter Schools Association would promote its use. He noted that some LEAs had developed requirements for charter petitions that are overly burdensome.

Mr. Kushner called for public comment regarding the model application.

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

- Ernie Silva. Mr. Silva requested that “(if applicable)” be added to the reference for inclusion of a charter school’s incorporation documents.
- Eric Premack. Mr. Premack commented that the model application is about 179 degrees out of line with the intent of charter law. Will this streamline consideration of charters? Don’t count on it. For the most part, LEAs will simply take the model application and add it to what they are already doing. He indicated that charters might balloon up to 200-300 page documents. This will make chartering more difficult rather than less. Particularly where there is ill-will, it’s important for charter developers to have a “narrow target to shoot at”; this is a very broad target. There is no shortage of templates out there. The document reflects some good work, but the people who developed it are not as familiar with the politics of charter authorizing in California as they should have been.

Mr. Kushner indicated that we don’t know for sure what’s going to happen, but (with all due respect to Mr. Premack) this document should help ensure that the charters that reach the State Board on appeal are of high quality. Mr. Conry indicated that he would support the model application with the CDE staff-proposed amendments, but that he had concerns about the impact it might have. Mr. Barr suggested that “the threat” of approval of charters by the State Board – which is implied in the approval of a model – will significantly improve the local climate for chartering.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission recommend to the State Board that it approve the Model Charter School Application with the changes proposed by CDE staff. Ms. Hunkapiller seconded the motion. The motion was approved by unanimous vote of the member present. Mr. Williams was not present when the vote was taken.

Break. 11:18 – 11:36 a.m.

AB 1994 Programmatic Implementation Regulations. Mr. Kushner indicated that the Advisory Commission would proceed by looking, in turn, at each of the four sections of the proposed permanent regulations.

*Numbering System*. Mr. Geeting gave a brief summary of the key provisions of this section of the proposed regulations. Mr. Piscal suggested that a dual numbering system be kept so that two things would be clear: (1) the chronological order in which charters are numbered by the State Board and (2) the total number of charters that are operating or entitled to operate at any given moment (i.e., excluding revoked, non-renewed, abandoned, or otherwise non-operating charters). Ms. Reyes suggested that the numbering system should be kept as simple as possible. Ms. Hunkapiller suggested that

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

for public accountability purposes, it was important to keep track of the number of charters closed.

Mr. Kushner commented on the apparent interrelationship between charter numbers and the opportunity to apply for start-up grants. He suggest that – in particular – statewide charter schools that operate multiple sites in geographically diverse locations should be eligible in fairness to apply for start-up grants for each site, not limited to a single start-up grant for all sites.

Ms. Cubanski indicated that maintaining the numbering system so that it includes only active charters while, at the same time keeping statistics on closures, etc., should not be a problem. She also indicated that the language in the proposed regulations regarding circumstances under which multiple charter numbers should be issued reflected staff's best thinking on the meaning of the statutory provision. She commented that there was not necessarily a relationship between charter numbers issued and eligibility to apply for start-up grants. An internal group of CDE staff are now exploring the matter of grant eligibility, and that issue can be addressed separately, by separate regulations if necessary.

Mr. Barr commented that separating the issue of grant eligibility from charter numbering would be good. Mr. Williams echoed that thought. Mr. Piscal indicated that the whole area of grant eligibility needed focused attention by the Advisory Commission; he indicated that he will likely be bringing suit against the CDE for its handling of a previous round of grant application and review. This expanded into a wide-ranging discussion of the grant application and review process. Among other things, the discussion touched upon high-need areas for grant funds, potential discrimination against statewide charter schools in grant eligibility, the critical role charters play in serving dropouts and at-risk students, the legal framework of charter schools, the role of CDS codes in the grant application and review process, the statutory cap versus grant eligibility, the Legislature's apparent desire to count satellite sites more fully than had been done in the past, and the statutory conceptualization of statewide charter schools.

*Appeals of Charter Denials.* Mr. Geeting provided a brief description of the regulations proposed in this section of the document, noting that the changes were essentially technical to reflect the fact that statute now requires local charters to be appealed first to the county board of education and (if denied at that level) then to the State Board of Education.

Mr. Kushner noted that the regulations require petitioners to provide a copy of the written factual findings justifying denial as part of the appeal package. He related experiences with districts not producing written factual findings, which thus leaves the petitioners unable to comply with this requirement of regulation. He indicated that failure to

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

produce written findings should not be held against petitioners. The appeal process must continue despite the district's failure.

Mr. Piscal asked if it would be possible to impose a financial penalty on districts not producing the required written factual findings. Mr. Geeting indicated that a regulation proposing to establish a financial penalty would likely be rejected by the OAL for lack of statutory authority. Typically a statute must specifically empower an administrative agency to impose fees and penalties; it's not a power that can be assumed in the absence of specific statutory authorization. Similarly, the Legislature has limited the State Superintendent's (and CDE's) powers to withhold apportionments from LEAs to a relatively narrow set of compliance errors, not just any type of non-compliance.

Lunch Break. 12:30 – 1:35 p.m.

*Statewide Charter Schools.* Mr. Geeting noted that this section was really the heart of this set of proposed regulations, and he highlighted several key provisions. Ms. Frost asked for some examples of schools that might meet the vision of statewide charter schools as described in the regulations. Mr. Kushner commented on the elaboration provided in the regulations, noting that it appeared consistent with the descriptions of intent given by members of the Legislature and their staffs. Mr. Piscal indicated that the regulations went beyond what's required by law in the areas of certificates of occupancy and local zoning. He indicated that these are very problematic areas where local officials and local ordinances are often conflicting and unclear; moreover, though sounding important, these matters really do not affect pupil safety.

Ms. Reyes indicated that the proposed mandatory assignment of responsibility (under certain conditions) to county offices of education (pertaining to financial allocations and retirement system participation) should be changed to an authorization. That would make the provision much more acceptable to county offices and would have the effect of ensuring that any potential assignment of responsibility is a matter of negotiation between the CDE and the affected county office.

Ms. Hunkapiller commented that the narrowness of the definition of statewide benefit is a matter of concern. Will this definition provide sufficient latitude to approve some good proposals? On the other hand, we don't want a definition that obligates us to approve every proposal that comes along. It's something of a morass – very prickly.

Mr. Kushner mentioned a variety of concerns, including consistency in references to sites being located in different districts or counties; clearer delineation of what must be in a charter versus what petitioners must do after a charter has been granted, but prior to the school's opening; the reference to zoning ordinances; and required notifications of LEAs.

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

Mr. Geeting and Ms. Cubanski commented that the reference to local zoning ordinances had come from what was now the traditional conditions included in the State Board's motions to approve charter schools on appeal. Ms. Connelly provided elaboration on several matters included in the regulations that evolved from the conditions that have traditionally been imposed by the State Board.

Mr. Barr indicated that at one time he would have opposed references to local zoning, but that he had come to see wisdom in respecting this aspect of local community control. There is a need to amend local zoning ordinances in some communities to make the establishment of charter schools more feasible. However, if we proceed from premise that local communities can exercise no control on the location of charter schools, then we set the stage for irresponsible behavior, e.g., locating charter schools in places that are clearly unsafe.

Ms. Cubanski commented that she could live with the changes Mr. Kushner had proposed concerning consistency in the references to districts and/or counties. Mr. Conry indicated that he found the proposed definition of statewide benefit unnecessary, even though it may reflect legislators' and legislative staff's recollections of what was intended when the bill was passed.

Mr. Piscal reiterated his concerns regarding certificates of occupancy and local zoning. He agreed that it was important for students to be in facilities that are safe, but he argued that these requirements are "bureaucratic issues" that don't really make any child safer. Mr. Conry commented that since charter schools are exempt from the Field Act (which specifies minimum construction requirements for most public school facilities), it seemed appropriate to require certificates of occupancy and compliance with local zoning ordinances. Mr. Kushner suggested that the specific wording of the proposed regulations had been carefully crafted and allowed a charter school to argue that it was exempt from local zoning under certain circumstances.

*Countywide Charters.* Mr. Geeting briefly described the proposed regulations in this area of the document. The proposal is largely technical and has to do with the mechanics of funding countywide charters. There were no comments from Advisory Commission members on this area of the regulations.

Mr. Kushner invited public comment on the proposed regulations.

- Brad Strong. Mr. Strong commented on several areas of the proposed regulations, including the reference to grade levels in the description of different pupil populations; using "may" instead of "shall" in several places; the matter of qualifications for start-up grants; leaving in some language proposed to be

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

stricken concerning limitations on review in the case of appeals; and consistency of reference to local authorizers.

- Martina Westmoreland. Ms. Westmoreland inquired about several areas of the regulations pertaining to special education and funding. She emphasized that every charter school needs to be participating in a special education local plan area, either as an independent LEA or as the school of a district or county office of education. She indicated that we should be sure that students in all charter schools are required to participate in the state's assessment programs.
- Waldo Burford. Mr. Burford commented that the proposed provisions regarding local zoning exceed what is now required. They are much more restrictive and will make it much more difficult to operate charter schools.
- Paul Keefer. Mr. Keefer emphasized that no two charter schools are alike; each is unique. He referenced an article in the September 3<sup>rd</sup> edition of *Education Week*. Our aim with charter school students needs to be good citizens; not all students are college-bound. We need to examine these regulations carefully in terms of their impact on site-based versus non-site-based charter schools (personalized learning). We don't to make the state into a "large district" that forces all charters into a narrow mold.
- Eric Premack. Mr. Premack commented on a number of provisions. The requirement for multiple sites at the outset is problematic; sites could be phased-in instead. The zoning reference should be stricken. The whole section regarding broad operational requirements should be dumped. In regard to legislators' or legislative staffers' recollections of intent vis-à-vis statewide benefit, these are largely irrelevant; the law means what it says. The burden should be placed on the charter developer to demonstrate statewide benefit. References to "unique" should be modified; the meaning is unclear. The oversight provisions should be subject to mutual consent. In regard to SELPA participation, there should be a requirement for SELPAs to be meaningfully engaged in the process. The 150-day review provision seems overly generous; it should be reduced. The proposal to fund statewide charter schools as fully state aid seems ambitious; probably the Department of Finance will balk, and a fall-back proposal should be developed.
- Dave Guthrie. The reference to "fire marshal" should be more detailed. Periodically there are disputes between the state fire marshal and a local fire marshal. Which prevails in regard to a statewide charter school?

Mr. Kushner indicated that he would like to make a comprehensive motion (regarding the proposed regulations) that he felt had a good chance of receiving at least five votes among the Advisory Commission members, but with the understanding that additional

---

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

motions could follow to address specific aspects of the proposed regulations. Mr. Conry expressed his objection to that procedure as it would lend unfair advantage to matters incorporated in the comprehensive motion. Mr. Kushner acknowledged the point, but indicated that he still wished to proceed with his motion; those not favoring the motion (regardless of their reasons) could vote against it.

- **MAIN MOTION MADE:** Mr. Kushner moved that the Advisory Commission recommend to the State Board that it commence the permanent rulemaking process for the AB 1994 programmatic provisions with the proposal presented in the attachment to the memorandum from staff dated September 17, 2003, with the following exceptions:
  - Throughout, change “state charter school” to “statewide charter school”
  - On page 3, line 11, strike out “shall” and insert “may”
  - On page 9, line 1, strike out “and” and insert “or”
  - On page 9, line 7, strike out “and” and insert “or”
  - On page 9, line 9, strike out “and” and insert “or”
  - On page 9, rewrite the paragraph (3) beginning on line 16 as necessary to make clear that these provisions occur after a charter has been granted, not before.
  - On page 11, line 11, after “benefit” insert “in and of itself”
  - On page 11, lines 15-16, strike out “locally approved” and insert “district- or county-authorized”
  - On page 13, strike out lines 4 to 8, inclusive.
  - On page 13, line 28, strike out “consent” and insert “approval”
  - On page 15, line 16, strike out “shall” and insert “may”

The motion was made with the understanding that, if passed, subsequent motions would be entertained on other possible changes to the document. Mr. Barr seconded the motion.

- **AMENDMENT TO MAIN MOTION MADE:** With the consent of Mr. Kushner and Mr. Barr, the main motion was amended to incorporate the following on the list of exceptions:
  - On page 6, lines 26-29, leave the existing subdivision in place (rather than strike it out), except for the dependent clause reading “, but review the charter school petition pursuant to Education Code section 47605(b)”

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

Mr. Kushner proposed another amendment to the main motion. At Mr. Conry's request, this amendment was considered as a formal motion to amend the main motion because of its somewhat different character, i.e., it proposed to strike out an existing provision of regulation.

- **MOTION TO AMEND MAIN MOTION APPROVED:** Mr. Kushner moved that the main motion be amended to incorporate the following on the list of exceptions:
  - On page 5, strike out the existing text appearing on lines 18 to 20, inclusive, and renumber the affected paragraphs accordingly.

Mr. Barr seconded the motion to amend. The motion was approved by a vote of 6-3. Mr. Conry, Ms. Cubanski, and Ms. Hunkapiller voted against the motion.

- **RECOMMENDATION APPROVED (AMENDED MAIN MOTION):** The amended main motion was that the Advisory Commission recommend to the State Board that it commence the permanent rulemaking process for the AB 1994 programmatic provisions with the proposal presented in the attachment to the memorandum from staff dated September 17, 2003, with the following exceptions:
  - Throughout, change "state charter school" to "statewide charter school"
  - On page 3, line 11, strike out "shall" and insert "may"
  - On page 5, strike out the existing text appearing on lines 18 to 20, inclusive, and renumber the affected paragraphs accordingly.
  - On page 6, lines 26-29, leave the existing subdivision in place (rather than strike it out), except for the dependent clause reading ", but review the charter school petition pursuant to Education Code section 47605(b)"
  - On page 9, line 1, strike out "and" and insert "or"
  - On page 9, line 7, strike out "and" and insert "or"
  - On page 9, line 9, strike out "and" and insert "or"
  - On page 9, rewrite the paragraph (3) beginning on line 16 as necessary to make clear that these provisions occur after a charter has been granted, not before.
  - On page 11, line 11, after "benefit" insert "in and of itself"
  - On page 11, lines 15-16, strike out "locally approved" and insert "district- or county-authorized"
  - On page 13, strike out lines 4 to 8, inclusive.

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

- On page 13, line 28, strike out “consent” and insert “approval”
- On page 15, line 16, strike out “shall” and insert “may”

The main motion passed by a vote of 8-1. Mr. Conry voted against the motion.

Mr. Kusher opened the floor for additional motions to modify the document.

Mr. Conry indicated that the proposed elaboration on statewide benefit was unnecessary. The statutory language should essentially stand on its own. He made a motion regarding the language – appearing below – which was seconded by Ms. Hunkapiller for purposes of discussion. Mr. Piscal commented that the additional language helps clarify the types of petitions that would qualify for approval. Mr. Barr concurred, indicating that the regulations as proposed would help expedite the process and do reflect legislative intent. Ms. Reyes commented that the language does not block anyone from applying. Mr. Conry recalled Mr. Premack’s remark that we should not be adopted regulations based on expressions of intent by individual legislators or legislative staff. Ms. Hunkapiller indicated that she would be voting against the motion – even though having seconded it – because she had been convinced that it does not do any harm; it’s still the petitioners’ burden to present a convincing case.

- **MOTION FAILS:** Mr. Conry moved that the Advisory Commission recommend to the State Board that it modify paragraph (6) appearing on page 11 as follows:
  - Retain lines 6 to 11, inclusive, except that, in line 11, strike out “The description may include, but is not limited to:”
  - Strike out lines 12 to 22, inclusive.
  - On line 23, strike out “(C)”
  - Edit as may be necessary (for grammar and usage) to flow from the sentence ending on line 11 to the sentence beginning on line 23.

Ms. Hunkapiller seconded the motion. Following discussion (summarized above), the motion failed by a vote of 1-8. Mr. Conry voted in favor of the motion.

There was further discussion on the specific references in the proposed regulations to fire marshal inspections, certificates of occupancy, and compliance with local zoning ordinances. Mr. Piscal made the following which was seconded by Ms. Hunkapiller for purposes of discussion. At the conclusion of the discussion, Ms. Hunkapiller indicated that she would be voting against the motion having been convinced of a better way of approaching the matter.

- **MOTION FAILS:** Mr. Piscal moved that the Advisory Commission recommend to the State Board that it modify paragraph (3) appearing on page 9 as follows:

MEETING NOTES  
**Advisory Commission on Charter Schools**  
September 23, 2003

---

- Retain lines 16 to 20, inclusive, except that, in line 20, after “In addition,” insert “except for facilities a charter school is allocated pursuant to Proposition 39 (Education Code section 47614),”
- In line 21, after “use” insert “, including the maximum number of persons that may be present in each room or other appropriate unit of space in the facilities”
- Strike out the existing text in lines 23-23 and insert “(B) Within two years of the first instructional day in a facility, a certificate of occupancy.”
- Strike out lines 24 and 25.
- Retain lines 26 to 29, inclusive, but re-letter the sub-paragraphs appropriately.

Ms. Hunkapiller seconded the motion. The motion failed passage by a vote of 3-5. The motion was supported by Mr. Conry, Mr. Piscal, and Mr. Williams. Ms. Reyes was not present when the vote was taken.

Paul Minney suggested deleting the specific language regarding facilities, but leaving the language allowing the State Board to impose conditions on a case-by-case basis. Caprice Young concurred with Mr. Minney’s suggestion. Mr. Geeting clarified that, even though the specific requirements were being proposed for elimination, general authority for the State Board to impose the same and/or other requirements in the form of “conditions” was being maintained.

- **RECOMMENDATION APPROVED:** Mr. Barr moved that the Advisory Commission recommend to the State Board that it modify paragraph (3) appearing on page 9 as follows:
  - Retain lines 16 to 20, inclusive, except that, in line 20, strike out “In addition, the charter school shall submit the following:”
  - Strike out lines 21 to 29, inclusive.

Mr. Williams seconded the motion. The motion was approved by a vote of 7-1. Ms. Cubanski voted against the motion. Ms. Reyes was not present when the vote was taken.

Adjournment. Mr. Kushner adjourned the meeting at 4:20 p.m.