

MEETING NOTES

Advisory Commission on Charter Schools

An Advisory Body to the State Board of Education

State Capitol Building
Room 112
Sacramento, California

Wednesday, December 19, 2001
10:00 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

* Jan Sterling is the State Superintendent of Public Instruction's designee. Regretfully, Yvonne Chan, the State Superintendent's original designee, requested replacement as a member of the Advisory Commission because of other demands on her schedule.

PRINCIPAL STAFF TO THE ADVISORY COMMISSION

Greg Geeting, Assistant Executive Director, State Board of Education
Gaye Smoot, Manager, Charter Schools Office, California Department of Education

Call to Order. Mr. Kushner called the meeting to order at 10:21 a.m. in Room 112 of the State Capitol Building.

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

Organizational Matters. Mr. Kushner briefly went over the agenda for the day and the various documents to which the members would be referring. Copies of the documents were made available to the audience. In addition, a sign-up sheet was provided for those wishing to address the Advisory Commission during the public comment periods.

Mr. Kushner thanked California Department of Education (CDE) and State Board staff for their efforts in preparing for the meeting. He also acknowledged the assistance of

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representatives of the California Network of Educational Charters (CANEC) who had contributed to the development of documents that the members would be reviewing during the meeting. He noted that drafts of proposed regulations and of financial disclosure forms had been distributed by e-mail, but that he had since revised both documents. He distributed hard-copy of the revised regulations and financial disclosure forms and indicated that these revised documents would serve as the day's principal focus. He indicated that he would orally describe (as the meeting progressed) the differences between the documents sent out by e-mail and the documents now before the Advisory Commission members.

He noted that the Advisory Commission was of course completely at liberty to amend the draft documents, but that it was imperative to reach agreement on the documents at this day's meeting if at all possible. The State Board is (in effect) required by law to adopt the regulations (as Emergency Regulations) at its January 2002 meeting, and Mr. Premack has made arrangements to put on a training session on the new provisions relating to nonclassroom-based instruction in charter schools on January 15, 2002, at CSU Sacramento.

Mr. Kushner asked Mr. Geeting to be informal timekeeper for the meeting to help ensure that the group did not get bogged down on any particular issue. He invited Ms. Hunkapiller to keep informal notes on the meeting process and to share her thoughts with the group at the end of the day's session. Finally, appreciation was expressed to Kellie Smith of Senator Jack O'Connell's Office for making arrangements for the meeting room.

Introductions. The members of the Advisory Commission introduced themselves briefly. Mr. Kushner then invited the members of the audience to introduce themselves, as well, and to identify the organization (if any) that each represented.

Revised Draft Regulations. Mr. Kushner proceeded to focus attention page-by-page to the revised draft regulations (dated December 18, 2001).

Page 1. Classroom-Based Instruction.

- There was discussion of the fact that charter schools have many different instructional time schedules and whether the draft regulations took this into account. There was general agreement that if the provisions were reworked to discuss classroom-based instruction as a whole (rather than in relation to individual pupils), then the concern regarding instructional time would be resolved.
- There was discussion as to whether the draft definition of "immediate supervision and control" should be removed. Ms. Sterling recommended that it be removed.

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- There was discussion concerning the provision related to not imposing any new attendance accounting requirements. It was pointed out that implementing the new statutory requirement for separate reporting of nonclassroom-based instruction (as necessary) will result in some additional attendance accounting for some charter schools. There was general agreement that the provision should be retained, but modified to provide an exception for the new statutory requirement. The provision may need to be relocated to ensure that it applies to the section as a whole.

Page 2. Classroom-Based Instruction (continued).

- There was extensive discussion of the statutory provisions relating to classroom-based instruction that require (1) at least 80 percent of instructional time offered by a charter school must be at the schoolsite and (2) pupils to be required to attend at least 80 percent of the minimum instructional time required to be offered by law. These requirements are conditions of apportionment.
- There was general agreement to delete subdivision (e) relating to the counting of excused absences in determining whether pupils have attended for 80 percent of the minimum instructional time required to be offered by law.
- There was general agreement to retain the concept expressed in subdivision (d) pertaining to the exclusion of boarding schools and group homes. Staff were asked to tighten up the reference in keeping with the discussion at the meeting.

Page 2. Nonclassroom-Based Instruction.

- There was general agreement to delete the section. No particular advantage could be determined to including “home schooling” in the definition or to excluding (from the definition) computer-based education in the classroom and school computer labs.

Pages 2 and 3. Average Daily Attendance for Nonclassroom-Based Instruction.

- There was extensive discussion regarding what constitutes a “material change.” There was general agreement that incorporating a definition of material change from the December 17 proposal would be helpful, if the Advisory Commission chose not to include the provisions related to independent study.
- There was discussion regarding whether the State Board had authority to approve a determination of funding that extended beyond the effective period of a charter. Mr. Kushner indicated he thought the State Board could do so. Ms. Smoot

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pointed out that Education Code Section 47612.5(d)(3) appears to require that a determination of funding “each time” a charter is renewed and that, therefore, there would be no point in approving a determination of funding for a longer period than the charter’s term.

- Mr. Geeting pointed out that proposed subdivision (b) would give the Advisory Commission authority to prescribe the form or forms for charter schools to submit. He indicated that this would be an improper delegation, as the Advisory Commission is an advisory body, not a decision-making body.

Public Comments. Mr. Kushner called for public comments on the matters discussed up to this point in the meeting.

- Brad Strong. It’s clear that no new attendance accounting requirements were intended under SB 740.
- Michael Coppess. The regulations should include appropriate notice of deficiencies in determination of funding requests and the opportunity to cure them.
- Lisa Corr. The definition of schoolsites should include facilities that are lent to charter schools. The regulation pertaining to home schooling should be deleted. The definition of material change should be limited to this set of regulations to ensure that it is not applied elsewhere.
- Sonia Cameron. Computer labs should not be counted as computer-based education (and, therefore, come under the definition of nonclassroom-based instruction). Material change should be defined as significant and pertaining to the school’s nonclassroom-based instruction. The Advisory Commission should consider the severity of the penalty for inadvertent failure to comply with the requirements of law.
- Sharon Scott Dow. A definition of group homes needs to be included. The inclusion of the reference to home schooling should be taken out. The section on 80 percent attendance and excused absences should be taken out.
- David Patterson. It is important to keep the reporting simple. There should be no new attendance accounting requirements. The definition of “immediate supervision and control” should be retained. The provision on excused absences should be dropped. The obligation to report material changes should be dropped.

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- Eric Premack. The Advisory Commission needs to keep its expectations low. These regulations are not a cure-all for problems related to nonclassroom-based instruction. Tighter controls are needed on charter granters (a change in statute is needed). The definition of “immediate supervision and control” should be retained. The regulations should not give the Superintendent of Public Instruction any new or additional powers. The obligation to report material changes should be dropped.

Lunch Recess. 12:30 – 1:23 p.m.

Mr. Kushner indicated that there were three main topics to be discussed in the afternoon: (1) the forms to be submitted by a charter school requesting a determination of funding; (2) the process for evaluating determination of funding requests, and (3) independent study. He stressed that the central focus of the regulations is nonclassroom-based instruction. Although definitions pertaining to classroom-based instruction are in order, it is questionable whether there is a need to include provisions related to independent study.

Proposed form for reporting financial information.

- There was extensive discussion regarding the relative merits of basing the calculation on expenditures in relation to revenues, or just the composition of expenditures themselves.
- There was extensive discussion regarding whether to include revenues from all sources (including grants and private sources), or just public revenues (excluding grants). Similarly, there was discussion regarding whether to include all expenditures regardless of the income source from which the expenditures are made, or to exclude certain expenditures.
- There was discussion of whether the percentage of revenues (for administration and related costs) to be counted in the calculation of expenditures should be 30 percent or 20 percent.
- Start-up schools will clearly have higher administrative costs. Can they document that these are expenditures “going to the kids”?
- Is the accounting structure now in place sufficient to separate expenditures by sources of revenue?

Public Comments. Mr. Kushner called for public comments on the matters just discussed.

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- Jayna Gaskell. Preferred the financial reporting form as presented by Mr. Kushner (in contrast to CDE-developed version). All expenditures should be included regardless of income source.
- Colin Miller. Examining the composition of expenditures alone solves the apple-to-orange comparison problem, i.e., comparing a subset of revenue to all expenditures. The Advisory Commission should consider going with more generalized language in the regulations and not endeavor to describe all of the specifics of the forms.
- Buzz Breedlove. Providing some examples of what to include and what not to include would be helpful.
- Eric Premack. Charter schools' accounting mechanisms are not sophisticated enough to break out expenditures by sources of income. The only realistic way to proceed is to compare public-source revenues (excluding grants) to all expenditures. It's important to keep expectations low; the reporting of financial information will not solve all of the problems of nonclassroom-based instruction.
- Greg Roseboom. The financial reporting form needs to be designed so as to keep reserves neutral. All charter schools should receive full funding (100 percent) for nonclassroom-based instruction in 2001-02; no charter school should face reduced revenue in the fiscal year now in progress.
- Sharon Scott Dow. As the form is proposed, it raises the possibility of supplanting public dollars. Expenditures from private sources should be excluded. The base (default) amount to which charter schools are entitled for nonclassroom-based ADA should be 95 percent (2001-02), 80 percent (2002-03), and 70 percent (2003-04 and thereafter); there should be reasons to go above or below those percentages. The default should not be 100 percent simply because it is the percentage requested. The Advisory Commission should take a close look at the issue of fees and the pupil-teacher ratio.
- Sandra Geisel-Churchill. The form does not properly deal with the issue of instruction and related services in special education.
- David Patterson. It is not possible for charter schools to separate expenditures in such a way as to reflect only expenditures from public revenue sources. The proposed allowance of 30 percent of revenues for administration and related costs is reasonable.

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Issue of Reporting Revenue and Expenditures.

Mr. Kushner asked for a show of hands as to how the Advisory Commission wished to proceed on the issue of reporting revenue and expenditures:

- Public-source revenue excluding grants (only) compared to all expenditures regardless of the source of revenue. Seven votes in favor.
- Public-source revenue excluding grants (only) compared to expenditures of public-source revenue (separated out from all expenditures). No votes in favor.
- All revenue to all expenditures. Three votes in favor.
- Internal comparison of expenditures (no comparison to revenues). Four votes in favor.

Other financial reporting form issues.

- Should professional development be separated? Approved by consensus, but an appropriate definition should be included.
- Subdivisions (e) and (f) should be collapsed. Approved by consensus.
- Paragraph (2) should be modified to reflect CDE language regarding rents and insurance. Approved by consensus.

Action on proposed financial reporting form.

- ACTION: Ms. Reyes moved that the financial reporting form be recommended with the adjustments as outlined in the discussion at the meeting. Mr. Barr seconded the motion. The motion was approved by a vote of 7-2. Mr. Conry and Ms. Hunkapiller voted against the motion.

Independent Study

There was considerable discussion regarding whether to include draft regulations pertaining to independent study. Mr. Premack recommended against proceeding with such regulations. He pointed out particular concerns with subdivisions (h), (m), and (n) of the draft dated December 17.

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- **ACTION:** Mr. Pratt moved that the Advisory Commission not recommend regulations pertaining to independent study (including a regulation that nonclassroom-based instruction comply with the requirements for independent study in order to be claimable for ADA purposes). Ms. Reyes seconded the motion. The motion was approved by unanimous vote.

Emergency Regulations versus Permanent Regulations

Mr. Geeting indicated that the Emergency Regulations would have a limited life and that they would be “base” to begin the process by which permanent regulations would eventually be adopted. However, in the process of enacting permanent regulations, adjustments could certainly be made to the text of the regulations.

Draft Regulations (using the December 18 document as the base)

Draft Regulations, Page 1.

- **ACTION:** Recommend subdivision (a) with the revisions outlined earlier in the meeting. Reyes/Williams; unanimous vote.
- **MOTION FAILS.** Recommend subdivision (b) as presented. Kushner/Williams; four votes.
- **MOTION FAILS.** Delete subdivision (b), but move language from (b)(1) up to subdivision (a). Sterling/Pratt; three votes.
- **ACTION:** Recommend subdivision (b), but be sure that it applies only to charter schools. Kushner/Reyes; six votes.
- **ACTION:** Recommend subdivision (c), but include references to facilities allocated to charter schools under the provisions of Proposition 39 and facilities that are allowed to be used rent-free. Kushner/Williams; unanimous vote.

Draft Regulations, Page 2.

- **ACTION:** Recommend subdivision (d) but with tightened up language regarding boarding schools and group homes in keeping with the discussion earlier in the meeting (may take the provision out if no suitable language can be developed). Kushner/Barr; unanimous vote.
- **ACTION:** Delete subdivision (e) and delete the proposed section defining nonclassroom-based instruction. Kushner/Pratt; unanimous vote.

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- ACTION: Recommend subdivision (a) – bottom of page 2 – revised to reflect the language used in the statute, i.e., a charter school may receive funding for nonclassroom-based instruction only if a determination of funding is approved by the State Board of Education. Approved by consensus.

Draft Regulations, Page 3.

- ACTION: Recommend paragraphs (a)(1), (2), and (3) – top of page 3. Approved by consensus.
- ACTION: Recommend paragraph (4) with the addition of the sentence from page 8 of the December 17 draft defining material change. Do not recommend a requirement for charter schools to report material changes in their charters. Reyes/Kushner; unanimous vote.
- ACTION: Recommend subdivision (b), paragraph (1) through (5) with the detail of paragraph (5) modified to reflect decision on financial reporting form. Approved by consensus.

Draft Regulations, Page 4.

- ACTION: Recommend paragraph (6) – bottom of page 4. Approved by consensus.

Public Comments, paragraph (7) – bottom of page 4.

- Sharon Scott Dow. The interpretation of teacher-pupil ratio is inconsistent in the field.
- Jeep Jensen. Support proposal as stated.
- Lisa Corr. Need a broader definition of teacher-pupil ratio.
- David Patterson. Include reference of Title 5 provision and Education Code.
- ACTION: Recommend paragraph (7) – bottom of page 4 – including a reference of CCR, Title 5, Section 11704 and Education Code Section 51745.6. Kushner/Frost; unanimous among those present (Conry, not present).

Draft Regulations, Page 5.

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- ACTION: Recommend paragraph (c)(1). Approved by consensus.
- ACTION: Recommend paragraph (c)(2). Approved by consensus.
- ACTION: Recommend paragraph (c)(3), but split into two paragraphs with numbering to be adjusted accordingly. Approved by consensus.
- ACTION: Recommend paragraph (c)(4), but use language from December 17 draft. Approved by consensus.
- ACTION: Recommend paragraph (c)(5), but use language from December 17 draft, substituting “selected” for “appointed.” Approved by consensus.
- ACTION: Recommend paragraph (c)(6), but first sentence only. Barr/Pratt; seven votes in favor.
- ACTION: Recommend paragraph (c)(7), but with the modification suggested by Ms. Smoot (i.e., define a “complete” request, but indicate that a request that is “substantially complete” may be considered and acted upon). Approved by consensus.
- ACTION: Recommend paragraph (c)(8). Pratt/Barr; seven votes in favor.

Draft Regulations, Pages 5 (bottom), 6, and 7.

- ACTION: Recommend subdivision (a) lead-in and paragraph (a)(1) – bottom of page 5 and top of page 6 – but incorporate language indicating that approval of a request will be recommended if expenditures equal or exceed revenues (as specified), unless there is a reasonable basis to recommend otherwise. Pratt/Barr; seven votes in favor.
- MOTION FAILS. Mr. Conry moved that the Advisory Commission reconsider its decision regarding paragraph (a)(1). Ms. Hunkapiller seconded the motion. The motion failed by a vote of 1-5.

Paragraphs (a)(2) and (3) were set aside for later decision. See below.

- ACTION: Recommend paragraphs (4), (5), (6), and (8), but recast them as individual subdivisions, because they are not in the form of criteria and should not be part of subdivision (a). Kushner/Barr; six votes in favor.

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- **ACTION:** Recommend paragraph (9), recast as a subdivision, but limiting requests for new determinations of funding to one per fiscal year. Kushner/Barr; six votes in favor.
- **MOTION FAILS.** Recommend paragraph (7), recast as a subdivision, but with the inclusion of references to “job corps” and the “youth bill.” Pratt/Kushner; two votes in favor, three against, one not voting.
- **MOTION FAILS:** Recommend paragraph (7), recast as a subdivision, modifying the language to be “operated by or for” and changing “recognized” to “certified.” Kushner/Pratt; two votes in favor, two against, two not voting.
- **ACTION:** Recommend paragraph (7), recast as a subdivision, modifying the language to reflect the language in the Governor’s SB 740 signing message and changing “recognized” to “certified.” Approved by consensus.
- **ACTION:** Recommend paragraphs (a)(2) and (3), but modify “allowed expenditures” language and take out last clause of (3). Approved by consensus.
- **ACTION:** Recommend the section on termination of a determination of funding. Approved by consensus.

Future Meetings. There was general consensus to confirm the tentative meeting schedule for the month of February 2002 that was established at the November 30, 2001, meeting. However, there was a proposal to move the meeting tentatively scheduled for Wednesday, January 16, 2002, to Friday, January 25, 2002. Mr. Geeting is to survey the members; if more can attend on January 25, the meeting will be moved to that date.

Closing. In view of the lateness of the hour, Mr. Kushner dispensed with a report on meeting process. He expressed appreciation to the members, staff, and audience for their diligent work and helpful comments throughout the day.

Adjournment. Mr. Kushner adjourned the meeting at 6:28 p.m.