

FINAL MINUTES
California State Board of Education
March 12-13, 2003

Thursday, March 13, 2003

California Department of Education
1430 N Street, Room 1101
Sacramento, California

Members Present

Reed Hastings, President
Joe Nuñez, Vice President
Donald Fisher
Nancy Ichinaga
Stephanie H. Lee
Suzanne Tacheny

Members Absent

Robert J. Abernethy
Carol S. Katzman
Vacancy
Vacancy
Vacancy

Closed Session

The Board continued the Closed Session (that had commenced the preceding day) from 8:05 a.m. to 9:20 a.m.

Call to Order: Public Session

President Hastings called the Public Session to order at 9:29 a.m.

Salute to the Flag

Ms. Tacheny led the Board, staff, and audience in the Pledge of Allegiance.

Announcements/Communications

President Hastings announced that Mr. Brandsma was retiring after one year of outstanding service to the Board. This meeting will be Mr. Brandsma's last meeting, and there will be a reception in his honor after the meeting. President Hastings reported that, in the Closed Session begun following the conclusion of the preceding day's Public Session, the Board took action to appoint Rae Belisle to the position of Executive Director of the State Board as of April 4, 2003.

Mr. Nuñez stated it has been his pleasure to work with Mr. Brandsma. Mr. Brandsma has done an admirable job. His outstanding ability to keep people focused on the issues and to build consensus has been an asset to the Board. Mrs. Ichinaga said she is impressed with the hard work he has done in the last year and has appreciated his support. Ms. Tacheny commented that the Board has been extraordinarily lucky in its staff. She added that, on a more personal note, Mr. Brandsma is a "class act."

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Mr. Fisher thanked Mr. Brandsma for his extraordinary work as executive director. Ms. Lee described Mr. Brandsma as “one of the coolest adults I know—his coolness level is very high!” Ms. Lee also thanked him for the help he gave to her as a student member and to other student leaders.

Superintendent O’Connell stated that Mr. Brandsma has been helpful to him and that he especially appreciates his openness and communication style. He thanked Mr. Brandsma for his assistance and his service to California’s students.

Mr. Brandsma thanked the Superintendent for his leadership in creating an environment of open communication. He thanked the Board for providing the opportunity to serve and the Board staff for their support. He welcomed Ms. Belisle back to the Board as the new executive director.

Closed Session Report

The Closed Session begun on the preceding day was recessed and reconvened on this day. In addition to the announcement made by President Hastings, Ms. Steentofte reported that in the preceding day’s portion of the Closed Session, the State Board took action to approve a memorandum of understanding with the Commission on Teacher Credentialing pertaining to the review of items on the California Subject Examinations for Teaching (CSET), subject to the incorporation of modifications as may be approved by the State Board President in keeping with the discussion.

Ms. Steentofte reported that during this day’s portion of the Closed Session, the State Board considered, but took no action, on the following: *Chapman, et al., v. CDE, et al.*, and *Pazmiño, et al., v. California State Board of Education, et al.* She also reported that the State Board took action to direct counsel regarding the continuing negotiations related to *Comité de Padres de Familia v. Honig*. Finally, she reported that the State Board took action to direct counsel to continue negotiations regarding possible resolution of *Californians for Justice Education Fund, et al., v. State Board of Education* and authorized the State Board President to approve a resolution of the matter in keeping with the discussion if the negotiations reach a successful conclusion.

President Hastings announced that the Board is fortunate to be able to hire Marion Joseph, who will be a special consultant to the Board.

State Superintendent O’Connell reported that he had informed the Board in the Closed Session that he had appointed Marsha Bedwell to the position of General Counsel of the California Department of Education.

Changes to Agenda

President Hastings announced that Item 20 has been withdrawn and that Item 26 would be heard out of order.

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ITEM 17	Assignment of Numbers for Charter School Petitions	ACTION
ITEM 18	2002-3 (and beyond) determination of funding requests from charter schools pursuant to Senate Bill 740 (Chapter 892, Statutes of 2001), specifically Education Code Sections 47612.5 and 47634.2.	ACTION
ITEM 19	High Priority Schools Grant Program Implementation Grant Awards.	ACTION

President Hastings informed the Board that Items 17, 18, and 19 were proposed consent items and could be acted on as a group.

- ACTION: Ms. Lee moved that the State Board approve the actions recommended in Items 17, 18, and 19. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 20	High Priority Schools Grant Program – New Implementation Grant Awards.	ACTION
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This item was withdrawn at the Department’s request.

ITEM 21	Approval of 2002-2003 Consolidated Applications.	ACTION
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The following individuals addressed the Board
David Page, member, District Advisory Council, San Diego USD
William Pennick, parent, San Diego USD
Miles Durfee, San Diego USD Legislative Office

President Hastings thanked the speakers for their comments.

Mr. Flores introduced Kathleen Seaborn, Compliance Management Unit, who has been working with the San Diego district staff on the complaint. The Department staff does not yet have all the facts, but expects to have a report prepared by April 30.

Mr. Nuñez inquired whether there would be any implications if the Board did not act on San Diego consolidated application today. He then stated that he could accept the Department staff recommendation on the other applications, but wanted to set aside the San Diego consolidated application.

- ACTION: Mr. Nuñez moved that the State Board approve the 2002-2003 Consolidated Applications identified in the supplemental agenda item, as recommended by CDE staff, except

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for the 2002-2003 Consolidated Application submitted by the San Diego Unified School District. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 22	Legislative Update: Including, but not limited to, information on committee appointments and legislation.	INFORMATION ACTION
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B. Teri Burns, Government Affairs Office, reported that AB 96 proposes to change the terminology of “low-performing” schools to “high priority” schools. She noted that the first bill to be chaptered this session was AB 38, which requires the State Superintendent of Public Instruction to take over the West Fresno School District. The Legislature is close to acting on the current year budget reductions. These reductions include reductions in funding for instruction materials.

Mr. Fisher expressed interest in strengthening the Board’s role in the legislative progress. President Hastings responded that legislation is the Office of the Secretary for Education’s (OSE) main job. The Superintendent is also actively involved in legislation. Since the OSE has become more active in the last five years, the State Board has become less active. He added that this would need to be discussed with the Secretary and the Superintendent.

Superintendent O’Connell stated that he thinks it would be helpful if the Board considered taking a position on a few important bills and even considered having Board members testify before committees.

Ms. Tacheny commented that the Board used to have a legislative committee, but that role has lessened with the OSE involvement. President Hastings suggested that Mr. Fisher follow up with the OSE to see how to proceed.

Mr. Fisher asked Ms. Burns to identify key bills for the Board. As guidance to Ms. Burns, Ms. Tacheny noted that at the Board’s retreat last year, the Board identified curriculum, assessment, professional development, and communication as its priority areas.

No action was taken on this item.

ITEM 23	Charter Schools participation in Special Education Local Plan Areas (SELPA’s).	INFORMATION
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Alice Parker, Special Education Branch, reported that there are three major issues related to the provision of special education services: transportation, residency, and funding. Resolution for each of these issues requires legislative action. Ms. Parker informed the Board that a survey has been sent out to charter schools and the SELPAs regarding the services available to students attending charter schools. The results of the survey will be the basis for a white paper on how to address the issues.

Ms. Parker reported that her staff is working with the Department’s charter school staff to provide assistance to charter schools. Special education staff is attending the meetings of the Advisory

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Commission on Charter Schools. She is seeking funding for a study on how to meet the financial needs of the charter schools and solutions to the inherent delays in special education funding. Possible solutions to the problems that charter schools sometimes face are: (1) federal and state legislative “fixes” in the areas of transportation, residency and funding and (2) working with the charter school community to identify areas of need and provide technical assistance, including developing a tool kit for charter schools. Ms. Parker added she that expects to have a report on the survey findings for the Board’s review at the next meeting.

Ms. Parker suggested that some possible solutions to the problem could include Congressional action on incentives in the Individuals with Disability Education Act (IDEA) to better incorporate charter schools into local education agencies’ special education programs, flexibility for several charter schools to form consortia to provide special education services, and clarifying language in IDEA regarding parental choice. She added that the Bush administration is expected to propose federal dollar “scholarships” to be spent at private schools.

President Hastings thanked Ms. Parker for the informational presentation. Mr. Fisher asked that legislative language be drafted and provided to the Board. Ms. Parker replied that she would provide a draft for possible state legislative changes.

The following individual addressed the Board:
David Patterson, CANEC

No action was taken on this item.

ITEM 24	Repeal State Board of Education Waiver Policy: <u>Administrator/Teacher Ratio and Related Penalty</u> Adopted 10/14/88; 6/8/90	ACTION
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President Hastings advised that this policy is no longer needed due to changes in statute.

- ACTION: Ms. Tacheny moved that the State Board repeal the Waiver Policy on Administrator/Teacher Ratio and Related Penalty, which is no longer needed because of a change in statute. Mr. Nuñez seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 26	Request by the Academy of Culture and Technology Petitioners to Approve a Petition to Become a Charter School Under the Oversight of the State Board of Education.	INFORMATION ACTION
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Deborah Connelly, School Fiscal Services Division, reported that the Advisory Commission on Charter Schools (ACCS) first heard the charter petition in May 2002. The petitioners made changes to address some of the Department’s concerns and the concerns of the ACCS. With those changes, the ACCS

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recommended approval of the petition, however, the Department continued to have concerns. In September 2002, the Board encouraged the petitioners to submit their revised petition to the local district and stated its intent to approve the petition if not locally approved. The local district denied the charter in January 2003.

Ms. Connelly outlined the Department's primary concerns about the petition, including the soundness of the education program, the provision of special education services, and the governance of the charter school. She noted that there are other technical issues in the petition.

Mr. Fisher asked what the school's standards for success would be. Ms. Connelly responded that the petition mentions grade point goals and college admissions goals.

The following individual addressed the Board:
Tomas Ursua
(Mr. Ursua also showed a video on the charter school.)

President Hastings said that he thinks the Board is impressed with the community support, but is concerned about "experiential learning." It can be a sound approach, but it also can be meaningless activity. The Board is also concerned that the students receive the appropriate instruction in reading, especially when they are not reading at grade level. Noting that the Board shares Mr. Ursua's goals, President Hastings expressed concern about how those goals would be achieved.

Mr. Fisher asked about the funding sources and the school's funding requirements over the next several years. Mrs. Ichinaga stated it is difficult to have a full curriculum in place before the students arrive, but she is impressed with the "skeleton" for the curriculum as outlined in the petition.

President Hastings reported that Senator Gloria Romero had taken the time to personally meet with him to express her support for this charter petition.

The following individuals addressed the Board:
Ana Gamíz, Senator Romero's office
Christina Resto, National Council of La Raza

Ms. Tacheny commented this was a difficult decision. She said that President Hastings had explained the Board's concerns very well, but her main concern is that the proposal does not reflect deep thinking about how to best teach children. The tension for her is that there are few good choices for students in the district. She added that she was inclined to support the petition. Ms. Lee commented that the skeleton was there, but it needs ligaments and muscles. The area needs a charter school option.

Mr. Nuñez mentioned that when he reviews this charter petition, he does so with his "teacher hat" on and is looking for specific ways the charter will address the poor academic performance that exists in the Pomona District. Although he acknowledges the compassion and commitment of Mr. Ursua, he is unable to vote for the petition at this time.

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Superintendent O’Connell reported that he was also contacted by Senator Romero and Assembly Member Nuñez. He suggested that if the petition is not approved today, the petitioners should continue to work with the Department staff to address staff concerns.

Upon determining through the discussion that the six members present were not unanimous in their positions regarding the charter petition, President Hastings asked that the petition be brought back to the Board for review in April.

No action was taken on this item.

WAIVERS: CONSENT, PROPOSED CONSENT, NON-CONSENT

CONSENT WAIVERS: WC-1 through WC-4

ADULT INNOVATION AND ALTERNATIVE INSTRUCTIONAL DELIVERY PROGRAM

ITEM WC-1	Request by Simi Valley Unified School District to waive <i>Education Code</i> Section 52522(b) to increase their Adult Education state block entitlement of 5 percent to 7 percent maximum for implementation of approved programs (Adult Innovation and Alternative Instructional Delivery Program). CDSIS-3-12-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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CHARTER SCHOOL ATTENDANCE

ITEM WC-2	Request by the Capistrano Opportunities for Learning Charter School under the authority of <i>Education Code</i> 33054 to waive Title 5 CCR Section 11960(a), related to charter school attendance. CDSIS-13-1-2002 (Recommended for APPROVAL WITH CONDITIONS) <i>Education Code</i> Section 33051(c) will apply	ACTION
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INSTRUCTIONAL MATERIALS SUFFICIENCY (Audit Findings)

ITEM WC-3	<p>Request by six school districts and two county offices of education for a retroactive waiver of <i>Education Code</i> (EC) Section 60119 regarding Annual Public Hearing on the availability of textbooks or instructional materials. These districts have audit findings for fiscal year 2001-2002 that they 1) failed to hold the public hearing, or 2) failed to properly notice (10 days) the public hearing and/or 3) failed to post the notice in the required three public places.</p> <p>CDSIS-17-01-2003 – Curtis Creek Elementary School District CDSIS-07-01-2003 – Lassen View Elementary School District CDSIS-05-01-2003 – Orchard Elementary School District CDSIS-16-01-2003 – Riverside County Office of Education CDSIS-09-01-2003 – Roseville Joint Union High School District CDSIS-26-01-2003 – Westminster Elementary School District CDSIS-07-02-2003 – Whittier Union High School District CDSIS-06-02-2003 – Ventura County Superintendent of Schools (Recommended for APPROVAL)</p>	ACTION
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STATE MEAL MANDATE (summer school session)

ITEM WC-4	<p>Request by four school districts for a renewal to waive <i>Education Code</i> Section 49550, the State Meal Mandate during the summer school session.</p> <p>CDSIS-11-12-2002 Foresthill Union School District CDSIS-21-1-2003 Elk Hills School District CDSIS-23-1-2003 Lowell Joint School District CDSIS-3-2-2003 McKittrick School District (Recommended for APPROVAL)</p>	ACTION
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Judy Pinegar, Waiver Office, informed the Board that there were no corrections to the consent waivers.

- ACTION: Ms. Lee moved that the State Board approve the requests in Items WC-1 through WC-4 in keeping with the recommendations of CDE staff. The motion incorporated the conditions recommended under Item WC-1 and WC-2, and recognized that the provisions of *Education Code* Section 33051(c) would apply to the request in Item WC-2. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote of the members present.

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PROPOSED CONSENT WAIVERS (W-2, W-3, W-5, and W-6)
EXTENDED SCHOOL YEAR (special education students)

ITEM W-2	Request by Anaheim City School District to waive <i>Title 5, California Code of Regulations, Section 3043(d)</i> , requiring 20 school days (4 hours each) of attendance for extended school year for Special Education students. CDSIS-4-1-2003 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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INSTRUCTIONAL TIME PENALTY

ITEM W-3	Request by Tipton Elementary School District to waive <i>Education Code Section 46201(c)(1)(2)(3)</i> , the longer day instructional time penalty and <i>Education Code Section 46202(a)</i> , the penalty for falling below the instructional time 1982-83 baseline for the 2000-2001 school year for kindergarten at Tipton Elementary School. CDSIS-12-1-2003 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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LOW INCIDENCE FUNDING (Braille)

ITEM W-5	San Diego Unified School District is requesting that <i>Education Code Section 56836.22(c)</i> which designates funds for purchase of specialized books, materials and equipment – to be instead spent on staff time to transcribe those materials into Braille for use by blind students. CDSIS-21-12-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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NON PUBLIC SCHOOL/AGENCY (child specific)

ITEM W-6	Request by Valley Center-Pauma Unified School District to waive <i>Education Code Section 56520(a)(3)</i> , which prohibits the use of aversive procedures to eliminate maladaptive behavior, in order to employ a self-injurious behavior inhibitor system (SIBIS) with James G. CDSIS-6-8-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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Ms. Pinegar noted that there were no corrections to the proposed consent waivers. She pointed out that W-5 was a new type of waiver for the Board, but that Board staff had looked into the request and concurs with the Department recommendation.

- ACTION: Mr. Nuñez moved that the State Board approve the requests in Items W-2, W-3, W-5, and W-6 in keeping with the recommendations of CDE staff. The motion incorporated the

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conditions recommended under each of the items. Ms. Lee seconded the motion. The motion was approved by unanimous vote of the members present.

NON-CONSENT WAIVERS (W-1 and W-4)

ADULT INNOVATION AND ALTERNATIVE INSTRUCTIONAL DELIVERY PROGRAM

ITEM W-1	Request by Torrance Unified School District for a renewal to waive <i>Education Code</i> Section 52522(b) to increase their Adult Education state block entitlement of 5 percent to 7 percent maximum for implementation of approved programs (Adult Innovation and Alternative Instructional Delivery Program). CDSIS-4-12-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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Ms. Pinegar reported that districts are now asking for multiple years of waiver so that, in effect, the waivers become permanent. Mary Weaver, Adult Education, informed the Board that about 70 percent of alternative delivery adult education in California is audio and video checkout. Approximately 20 percent is computer-based instruction and 10 percent is live broadcasts. She reported on a recent study on effective practices for English-as-a-Second Language students. Ms. Weaver suggested that the Board limit action to non-permanent waivers and that there be discussion on the bigger policy issue, including possible legislative change related to the percent of ADA that can be derived from distance learning. More study is needed to determine if there are the same kinds of student gains in distance learning as in face-to-face learning.

Mr. Fisher asked when the Department could have that information, which is necessary to propose legislative action. Ms. Weaver responded that although there are some schools that have data now, other schools new to distance learning would need approximately 18 months after beginning the program to obtain and analyze that information. There is a commitment from Department staff to begin an analysis to determine the appropriate percent for distance learning expenditures and support.

President Hastings noted the Department staff recommendation is to approve the waiver for one day less than a year so it does not, in effect, become permanent.

- **ACTION:** Mr. Nuñez moved that the State Board approve the request in Item W-1 in keeping with the recommendation of CDE staff. The motion incorporated the condition recommended under this item that the waiver's effective period be for one day less than one year, such that the provisions of *Education Code* Section 33051(c) would not apply. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote of the members present.

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INSTRUCTIONAL MATERIALS SUFFICIENCY (Audit Findings)

ITEM W-4	Request by Emery Unified School District for a retroactive waiver of <i>Education Code</i> (EC) Section 60119 regarding Annual Public Hearing on the availability of textbooks or instructional materials. The district has an audit finding for the 2000-2001 fiscal year that they failed to “prove” the required posting in three places for 10 days. CDSIS-11-1-2003 (Recommended for APPROVAL)	ACTION
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Ms. Pinegar explained the audit findings related to *Education Code* Section 60119.

- **ACTION:** Ms. Tacheny moved that the State Board (1) make a finding that the violation prompting the request in Item W-4 was minor or inadvertent and the intent of *Education Code* Section 60119 was substantially met by the district and (2) approve the request in Item W-4 in keeping with the recommendation of CDE staff. Mr. Nuñez seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 25	Title 5 Regulations on Administration of Medication to Pupils at Public Schools.	ACTION
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Mr. Geeting reported that last month the Board held the main public hearing on the medical regulations. Unfortunately, there was a technical problem with the mailing of the 15-day amendment the Board approved in February and the public comment period is still open. As a result, the Board is not able to take further action on the regulations today, other than to hear comments. For the April meeting, the Board will be provided all the public comments received on the 15-day amendments.

Mr. Geeting noted that staff anticipates recommending another set of amendments at the April meeting. After discussions with representatives of the Board of Registered Nursing and the Department of Finance, it seems that further amendments will be needed to ensure the regulations are consistent with professional licensing laws and do not impose a state-mandated program for which there is no funding.

The following individuals addressed the Board:

Brent McFadden, Association of California School Administrators
Samantha Dobbins, California School Boards Association

No action was taken on this item.

Special Presentation

Gaye Smoot, California County Superintendents Educational Services Association, presented a plaque to Mr. Brandsma for his outstanding contributions to education and dedication to public education.

Adjournment of Meeting: President Hastings adjourned the meeting at 11:13 a.m.