

FINAL MINUTES
California State Board of Education
February 6-7, 2002

Thursday, February 7, 2002

California Department of Education
721 Capitol Mall, Room 166
Sacramento, California

Members Present

Reed Hastings, President
Joe Nuñez, Vice President
Donald Fisher
Erika Goncalves
Susan Hammer
Nancy Ichinaga
Carlton Jenkins
Marion Joseph
Vicki Reynolds
Suzanne Tacheny

Member Absent

Robert J. Abernethy

Closed Session

The Board met in Closed Session from 8:10 a.m. to 9:45 a.m. (See Closed Session Report below.)

Call to Order: Public Session

President Hastings called the meeting to order at 9:48 a.m.

Salute to the Flag

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

Announcements/Communications

President Hastings announced that Item 17 had been withdrawn and that the Board would not hear Waiver Item W-7 as the Board's authority to waive the Education Code in this matter (Peer Assistance and Review Programs) had been limited by the passage of urgency legislation.

President Hastings informed the audience that Item 14 would be heard this morning, after the special presentation.

Special Presentation

President Hastings welcomed Bill Lucia, Assistant Deputy Secretary, U.S. Department of Education and former Executive Director of the California State Board of Education, and Mary Jane T. Pearson, Region IX Director, U.S. Department of Education.

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Mr. Lucia spoke about the passage of the Elementary and Secondary Education Act (ESEA), also referred to as the “No Child Left Behind Act.” He said that this is an exciting time for education and that the tone at the federal level is one of partnership. He welcomed the opportunity to work with California and other states to implement President Bush's reforms.

Ms. Pearson stated that collaboration is the key. She added that she was delighted to have worked with Superintendent Eastin in January at Mt. Vernon and is looking forward to working together.

President Hastings thanked Mr. Lucia and Ms. Pearson for taking the time to speak to the Board.

Report of the Superintendent

Superintendent Eastin informed the Board that in keeping with the Board's requests to hear about the Department's work during her report, she asked Mr. Whitmore to report on implementing the Public School Accountability Act (PSAA). Mr. Whitmore reported on the critical work to support implementation of the PSAA. [Attachment 9, Implementation the Public Schools Accountability Act in California’s Lowest Performing Schools: Issues and Planning] Mr. Whitmore said that defining significant growth, which the Board will address under Item 14, is one of the next steps, as is developing pools of providers for “State Assistance and Intervention Teams” to work with schools that do not achieve significant growth. Mr. Whitmore stated that he is thrilled he is here to work on this important matter. He commended Wendy Harris and Hanna Walker and their staffs for the outstanding work they are doing.

Superintendent Eastin commented that Mr. Lucia and Ms. Pearson and the other federal level education staff members in Washington were very gracious when she was there in January with education leaders from throughout the United States– it was a truly bi-partisan event.

Closed Session Report

Rae Belisle reported that in Closed Session the Board:

- (1) Interviewed a candidate for the position of Executive Director (per Government Code section 11126(a)) and took no action.
- (2) Considered *Angel V. v. Davis (Valeria G., et al., v. Wilson, et al.)* and took action to approve a substitution of counsel.
- (3) Considered *Chapman, et al., v. California Department of Education, et al.*, and took action to authorize counsel to explore settlement options.
- (4) Considered *Williams, et al., v. State of California, et al.*, and took no action.
- (5) Considered *Daniel, et al., v. State of California, et al.*, and took no action.

ITEM 14	Definition of “significant growth” for II/USP schools failing to meet annual API growth targets (Education Code Section 52055.5).	INFORMATION ACTION
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Wendy Harris, School Improvement Division, introduced Holly Covin, Co-Chair of Public Schools Accountability Act (PSAA) Advisory Committee. Ms. Covin reported that the PSAA Advisory Committee looked at several options for defining significant growth. The committee recommends that significant growth for Cohort I II/USP schools be defined as any positive growth in their schoolwide

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Academic Performance Index in either of the two years of implementation. The Advisory Committee also recommends using what it termed the traffic light system to illustrate whether schools are meeting the requirement for growth. This system is easy to communicate and understand and provides clear information to districts and the school community.

Mr. Nuñez stated that he likes the traffic light system. It is very creative and clearly signals to school districts. Ms. Hammer agreed that it is simple and readily understood by parents and the public. Mr. Mockler clarified that this traffic light system does not address the issue of different types of sanctions.

- **ACTION:** Mr. Nuñez moved that the State Board (1) approve the definition of “significant growth” for Cohort I II/USP schools as recommended by the PSAA Advisory Committee (i.e., Cohort I schools that have made positive growth in their schoolwide Academic Performance Index in either of the two years of implementation will have achieved “significant growth” and receive a third year of funding as provided for the Public Schools Accountability Act of 1999); and (2) approve the “Traffic Light System” for describing “significant growth” (with technical adjustments as may be necessary) as recommended by the PSAA Awards/Intervention Subcommittee. Ms. Hammer seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 17	Appointment of a Member of the Child Nutrition Advisory Council.	ACTION
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This item was withdrawn.

ITEM 18	Assignment of Numbers for Charter School Petitions.	ACTION
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ITEM 20	Approval of 2001-2002 Consolidated Applications	ACTION
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ITEM 22	Nonpublic School/Agency Certification (New Application Deadline) Waiver Policy/Guidelines #00-02.	ACTION
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President Hastings noted that Item 17 had been withdrawn and that Items 18, 20, and 22 were proposed consent items and could be acted on as a group.

- **ACTION:** Ms. Hammer moved that the State Board approve the recommendations of CDE staff regarding Items 18, 20, and 22. Mr. Jenkins seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 19	Update on the 2002-03 State Budget and Legislative Proposals	INFORMATION ACTION
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Erika Hoffman, Government Affairs Office, briefly reported on current year budget reductions and the

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enactment of Senate Bill X3 5 (Peace). [Attachment 10, Legislative Item]

Mr. Whitmore informed the Board that the new Elementary and Secondary Education Act (ESEA) and some changes in programs will impact state programs. He outlined some of the funding changes under ESEA. [Attachment 11, No Child Left Behind Act of 2001: Summary of Major Changes] Mr. Whitmore stressed the importance of the federal rulemaking process for ESEA implementation and noted that Department will be involved in that process. He stated that he does not know what the state plan will look like. Don Kairott will be the Department's technical expert on ESEA.

Mr. Nuñez noted that under ESEA, all teachers must be credentialed by 2005. He commented that this is a huge undertaking. Mr. Mockler noted that most of our teachers have some kind of credential and that there are many kinds of credentials in California. Mr. Whitmore stated that we need to have conversations with the federal department on this issue.

Superintendent Eastin said that Governor Davis is already aware of the need for credentialed teachers and has taken action, such as the Teaching As A Priority (TAAP) program. She stated that teacher salaries must be increased. Teacher salaries are the elephant in the room. We need to pay and treat teachers like the professionals they are.

Mrs. Ichinaga noted that teacher turnover is a problem in having all teachers fully credentialed. Some districts will have a very hard time with this requirement.

ITEM 21	Waiver Guidelines for <i>Education Code</i> Section 52522, the Adult Education Innovation and Alternative Instruction Delivery Program: Percentage of Block Entitlement.	INFORMATION
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Judy Pinegar, Waiver Office, informed the Board that waivers on this *Education Code* section would be coming to the Board in the next few months. She introduced Sue Bennett, Educational Options Office. Superintendent Eastin remarked that we need a systematic way of measuring student achievement to ensure we are getting results for the money. She added that she is not opposed to distance learning, she just wants there to be accountability.

Mr. Mockler stated that when the Board approved the waiver for the Los Angeles Unified School District, the Board asked the district to report on student achievement. The district has just provided the Board with its report. Ms. Bennett noted the Los Angeles USD waiver would need to be renewed because it was a one-year only waiver. Ms. Bennett said that this proposed policy was developed to guide the Department recommendations on waivers that are coming to the Board. Ms. Bennett reported that changes had been made to the policy after conversations with the Board staff, including a condition of renewal that requires documentation of achievement of students. [Attachment 12, Changes to the Proposed Waiver Policy]

President Hastings noted that this was an information item and that the policy would be back in March for Board action.

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The following individual addressed the Board:
Peggy Barber, Los Angeles Unified School District.

Mr. Mockler responded to Ms. Barber's comment that her district would be asking for a waiver to use more funds for its alternative program. He stated that when the Board sets a policy, it does not mean you cannot come and ask for more. It is just that once the Board has a policy, it is more wary of requests for waivers outside of the policy.

WAIVERS: CONSENT, PROPOSED CONSENT, AND NONCONSENT

CONSENT WAIVERS

CARL D. PERKINS VOCATIONAL AND TECHNICAL EDUCATION ACT 1998

ITEM WC-1	Request by Fall River Joint Unified School District for a waiver of Section 131(d)(1) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (P.L. 105-332) CDSIS-38-11-2001 (Recommended for APPROVAL)	ACTION
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INSTRUCTIONAL MATERIALS SUFFICIENCY (Audit Findings)

ITEM WC-2	Request by fourteen districts for a retroactive waiver of <i>Education Code</i> Section 60119 regarding Annual Public Hearing on the availability of textbooks or instructional materials. These districts have an audit finding for the 1999-2000 fiscal year that they either 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. (SEE ATTACHED LIST) (Recommended for APPROVAL)	ACTION
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MILLER-UNRUH READING SPECIALIST

ITEM WC-3	Request by Morgan Hill Unified School District for a renewal to waive <i>Education Code</i> Section 52859(b). This request relates to the prohibition of using funds coordinated under the School-based Coordinated Program (SBCP) to pay for the local share of costs associated with the employment of a Miller-Unruh Reading Specialist. CDSIS-42-12-2001 (Recommended for APPROVAL)	ACTION
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STATE MEAL MANDATE (Summer School Session)

ITEM WC-4	Request by Foresthill Union School District for a <u>renewal</u> to waive <i>Education Code</i> Section 49550, the State Meal Mandate during the summer school session. CDSIS-31-12-2001 (Recommended for APPROVAL)	ACTION
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STATE MEAL MANDATE (Saturday Session)

ITEM WC-5	Request by Huntington Beach Union High School District to waive <i>Education Code</i> Section 49550, the State Meal Mandate during the Saturday school session. CDSIS-45-12-2001 (Recommended for APPROVAL) E.C. 33051(c) will apply	ACTION
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Ms. Pinegar stated that there were no changes or corrections to the consent waivers. President Hastings remarked that the Board would be waiving nearly \$2 million in penalties for 14 school districts under Waiver WC-2.

- ACTION: Mrs. Ichinaga moved that the State Board approve the requests in Items WC-1 through WC-5 in accordance with the recommendation of CDE staff, taking note that *Education Code* section 33051(c) will apply to the request in Item WC-5. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote of the members present.

PROPOSED CONSENT WAIVERS (W-3 through W-6)

INSTRUCTIONAL TIME PENALTY

ITEM W-3	Request by Dunsmuir Elementary School District to waive <i>Education Code</i> Section 46201(b) and (c), the full longer day instructional time penalty and <i>Education Code</i> Section 46202(a), the full penalty that is based on falling below their 1982-83 instructional minute baseline for the 2000-01 fiscal year. CDSIS-15-10-2001 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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NONPUBLIC SCHOOL/AGENCY

ITEM W-4	Request by Grossmont Union High School District (GUHSD) to waive <i>Education Code</i> (EC) Section 56366.1(a); use of an uncertified nonpublic agency to provide counseling services to one special education student: Ryan E. CDSIS-6-12-2000 (Recommended for APPROVAL)	ACTION
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ITEM W-5	Request by Ramona Unified School District (RUSD) to waive <i>Education Code</i> (EC) Section 56366.1(a); use of an uncertified nonpublic school to provide speech and language, occupational therapy and special education instruction to one special needs student: David S. CDSIS-18-8-2001 (Recommended for APPROVAL)	ACTION
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ITEM W-6	Request by East Valley SELPA (EVSELPA) to waive <i>Education Code</i> (EC) Section 56366.1(a), use of an uncertified nonpublic school to provide special education instruction to 49 special needs students. (List attached) CDSIS-4-10-2001 (Recommended for APPROVAL)	ACTION
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Ms. Pinegar informed the Board that Waiver Items W-3 to W-6 were proposed consent waivers and that the individual signed up to speak in support of W-6 had declined to speak.

- ACTION: Mr. Nuñez moved that the State Board approve the requests in Items W-3, W-4, W-5, and W-6 in accordance with the recommendations of CDE staff including the conditions recommended under Item W-3. Ms. Hammer seconded the motion. The motion was approved by unanimous vote of the members present.

CHARTER SCHOOL ATTENDANCE

ITEM W-1	Request by South Bay Union School District on behalf of the South Bay Charter School to waive Title 5, CCR Section 11960 regarding apportionment reductions. CDSIS-27-11-2001 (Recommended for DENIAL)	ACTION
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Ms. Pinegar introduced Eileen Cubanski of the Charter Schools Office. Ms. Pinegar stated that the Department is recommending denial of this waiver pursuant to *Education Code* section 33051(a)(6).

President Hastings asked if he was correct in saying that this charter school is not a physical school, it is a program. Mr. Hill reported that Superintendent Eastin has expressed concerns about this program in her letter to the South Bay Union Elementary School District letter, which is in the agenda materials. Mr. Mockler stated that charter issue aside, the district wants funding for days that students were not in school. This is not something he would recommend.

The following individuals addressed the Board in support of the waiver:

- Patrick Pettit, Superintendent, South Bay Union Elementary School District (SBUESD)
- Vilma Counts, teacher, SBUESD
- Estela Mora, teacher, SBUESD
- Walter Freeman, Chief Business Official, SBUESD
- Curtis Washington, California Teachers Association

Ms. Hammer asked for an explanation of the charter school program and physical site. President Hastings offered an explanation of how the program is structured. Students on many campuses take part in a program that is not allowed under Proposition 227, but is allowable under charter school statute. Ms. Pinegar informed the Board that charter schools are not covered by the *Education Code* section that addresses funding for public schools that have non-traditional calendars, and therefore a waiver the

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district has does not apply to South Bay Charter School. President Hastings said that it was the district's choice to have this schedule, which overlaps two fiscal years. Ms. Cubanski noted that the district was paid on behalf of the charter school for the days in the next fiscal year, the year that school was in session. Mr. Mockler clarified that district was paid for all the school year's days; some in one fiscal year and some in another fiscal year.

Mr. Fisher remarked that this program is not what the charter school law intended. President Hastings asked Mr. Pettit to address the concerns raised about the nature of the charter school. Ms. Tacheny asked if the district is not separating out students in the charter school program from other students who are not in the program, how does it measure their achievement and know that the program works? Mr. Pettit responded that they measure student achievement by the SABE test and the number of children that exit the program. Mr. Hill asked why the district did not create a program under Proposition 227 that would do the same thing as the charter program. President Hastings thanked Mr. Pettit for answering the Board's questions.

- ACTION: Ms. Tacheny moved that the State Board deny the request in Item W-1, citing the justification set forth in *Education Code* section 33051(a)(6), in accordance with the recommendation of CDE staff. The motion was approved by unanimous vote of the members present. In addition to the absent member, Mr. Jenkins was not present with the vote was taken.

INSTRUCTIONAL MATERIALS SUFFICIENCY (Audit Findings)

ITEM W-2	Request by Needles Unified School District for a retroactive waiver of <i>Education Code</i> Section 60119 regarding Annual Public Hearing on the availability of textbooks or instructional materials. This district has an audit finding for the 1999-2000 fiscal year, they failed to hold the public hearing. In addition they cannot certify to having sufficient instructional materials. CDSIS-17-12-2001 (Recommended for APPROVAL WITH CONDITION)	ACTION
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Ms. Pinegar noted that usually waivers of 60119 are on consent, but when this district held the public hearing it found the district did not have sufficient instructional materials. Hilary Steinmetz, Waiver Office, provided background information on the waiver. Ms. Steinmetz reported that the district was not able to purchase the materials within two years, but is progressing. As a condition of approval, the district must purchase sufficient instructional materials by June 30, 2002. Mr. Mockler said that the district ought to be applauded for honesty. He asked that the district report on its purchase of instructional materials to the Waiver Office after the June deadline.

- ACTION: Mr. Nuñez moved that the State Board approve the request in Item W-2 with conditions in accordance with the recommendation of CDE staff and with the additional condition that the applying agency submit a follow-up report to CDE staff on the success of its efforts to acquire sufficient instructional materials within the meaning of *Education Code* section 60119. Ms. Reynolds seconded the motion. The motion was approved by unanimous vote of the

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members present. In addition to the absent member, Mr. Jenkins and Mrs. Joseph were not present with the vote was taken.

PEER ASSISTANCE AND REVIEW PROGRAM (PAR)

ITEM W-7	Request by Sausalito Marin City School District to waive the July 1, 2001, Peer Assistance and Review (PAR) certification deadline, as stipulated in Education code Section 44504 and 44505 to October 15, 2001, allowing the district to reapply for certification of a PAR program and maintain other staff development funds. CDSIS-26-11-2001 (Recommended for APPROVAL) <i>Education Code</i> Section 33051(c) will apply	ACTION
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Ms. Pinegar informed the Board that there was a technical error in Waiver W-7 that she wanted on the record even though the waiver had been withdrawn: the CDSIS should be 8-1-2002.

This item was withdrawn. Senate Bill 5 (Third Extraordinary Session), an urgency statute, enacted February 2, 2002, prohibits general authority waivers of Education Code sections 44504 and 44505.

ITEM 23	Appeal by Riverside Unified School District (USD) of Riverside County Committee's Approval of a Petition to Transfer Territory from Moreno Valley USD to Riverside USD.	ACTION
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Jan Sterling, School Fiscal Services Division, introduced Mary Chenier of her staff. Ms. Chenier provided background information and explained the Department's recommendation to deny the appeal.

- ACTION: Ms. Reynolds moved that the State Board deny the appeal by the Riverside Unified School District (and, thereby, affirm the decision of the Riverside County Committee on School District Organization to approve a petition by registered voters to transfer specified property from the Moreno Valley Unified School District to the Riverside Unified School District) by adopting the proposed resolution to that effect prepared by CDE staff, a resolution specifying that the area of election shall be the area under petition only. Ms. Tacheney seconded the motion. The motion was approved by unanimous vote of the members present. In addition to the absent member, Ms. Hammer and Mr. Jenkins were not present when the vote was taken.

ITEM 24	Adoption of Permanent English Learner Regulations.	ACTION
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[Attachment 13, Memo from Mr. Mockler and Response to Senator Polanco's Letter]

Jan Mayer, Language Policy and Leadership Office, reported on the public comments received during the 15-day public review period.

The following individuals addressed the Board:

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Don Bridge, California Teachers Association
Ron Unz, Proponent of Proposition 227
Mary Hernandez, META
Holly Covin Jacobson, California School Boards Association
Manny Hernandez, representing Senator Polanco
Karen Stapf-Walters, Association of California School Administrators

Mrs. Joseph inquired about teachers requesting waivers. Ms. Reynolds said that she had a question on which teachers made placement decisions. Mr. Mockler commented that the teacher issue may be a state mandate problem. Ms. Belisle noted that Proposition 227 language allows someone other than the parents of the child to recommend a waiver. The Board has clarified in regulations that parents must be informed of the waiver and that only the parent has the right to make the final decision as to whether a waiver is pursued. Ms. Belisle addressed the comments on requiring a student to be enrolled for 30 days each year in an English language classroom. Ms. Reynolds said that her question is which staff is involved in the reclassification decision. Ms. Belisle replied that the language in the proposed regulations is what we have been using for several years. The comment about staff is not clear. Teachers, who must be credentialed, are involved in the reclassification decision.

[Attachment 14, Proposed Language for Section 11316]

- ACTION: Mr. Nuñez moved that the State Board approve the circulation (for the 15-day period specified in the Administrative Procedure Act) of amendments to the proposed regulations that (1) correct the identification of the subchapter in which the regulations are to be placed, (2) make technical corrections in references as necessary, and (3) add a provision related to notices and other communications to parents or guardians. Ms. Goncalves seconded the motion. The motion was approved by a vote of 7-1. Mrs. Ichinaga voted against the motion. In addition to the absent member, Ms. Hammer and Mr. Jenkins were not present when the vote was taken.

ITEM 25	Proposed Amendment of Title 5, CCR Regulations Relating to Disputes Between School Districts and Charter Schools Regarding Facilities.	INFORMATION ACTION
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Ms. Sterling noted Mr. Fisher's view that arbitration is the best approach to resolve disputes quickly. The proposed regulations reflect this approach to dispute resolution. [Attachment 15, Memo from Mr. Fisher with Proposed Regulations]

The following individuals addressed the Board:
Laura Walker Jeffries, Association of California School Administrators
Dave Patterson, California Network of Educational Charters
Victoria Li, San Francisco Unified School District counsel
Lupita Cortez, California School Boards Association
Paul Minney, attorney

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Ms. Reynolds stated that as a former local government official, she is not ordinarily supportive of binding arbitration. She supports binding arbitration in this case with the protection of a list of arbitrators provided by the Department. President Hastings noted that there have been some changes to proposed regulations in the last 30 days and asked Ms. Belisle to explain some of the changes. Ms. Belisle replied that the current proposal no longer contains the provision that Ms. Reynolds referred to. Disputing parties can use the California State Mediation and Conciliation Service, which may establish a list of arbitrators for charter schools. Mediation is the first option used before binding arbitration.

Superintendent Eastin stated that the Department has some concerns that the Board does not have authority to require binding arbitration. She noted that a number of charter school issues need to be addressed, satellite schools for example. Mr. Fisher agreed that there are some charter school problems that need to be cleaned up. However, these problems have nothing to do with the proposed regulations. Mr. Nuñez asked the Board’s counsel if she thought the Board has authority to do this. Ms. Belisle replied that she is concerned about whether the Board has authority. She added that if these regulations are sent out for the 45-day public review, other state agencies, such as the Department of Finance, and other interested parties would have the opportunity to review and comment on the regulations.

- **ACTION:** Mr. Fisher moved that the State Board approve the circulation (for the 45-day period specified in the Administrative Procedure Act) of proposed amendments to the Proposition 39 implementation regulations pertaining to the resolution of disputes between school districts and charter schools regarding facilities. [The proposed amendments specify a dispute-resolution process that includes binding arbitration.] Ms. Goncalves seconded the motion. The motion was approved by unanimous vote of the members present. In addition to the absent member, Ms. Hammer and Mr. Jenkins were not present when the vote was taken.

ITEM 26	Academic Performance Index (API) Results for Charter Schools.	INFORMATION
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Ms. Sterling provided information on charter school APIs. [Attachment 16, 2201 Base API Results]

President Hastings stated that in fall 2000, charter schools slightly underperformed compared with non-charter schools. Ms. Tacheny asked if any one kind of charter school performed better than another. Ms. Sterling replied that there was no data on this issue. President Hastings said that he noticed some high- and some low-performing charter schools and they were in about the same distribution as non-charter schools. We need to tilt that distribution so there are more high-performing charter schools to see that the charter school movement as valued added. Ms. Goncalves commented that a lot of charters are serving students who would not otherwise be in school. President Hastings responded that non-charter public schools also work hard to serve those students. Ms. Sterling pointed out that a higher percentage of charter schools than non-charter schools are in the alternative accountability system.

The following individual addressed the Board:
Dave Patterson, California Network of Educational Charters

Adjournment: President Hastings adjourned the meeting at 12:42 p.m.