

FINAL MINUTES
State Board of Education
October 9-10, 2002

Thursday, October 10, 2002

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

Members Present

Reed Hastings, President
Joe Nuñez, Vice President
Susan Hammer
Nancy Ichinaga
Marion Joseph
Stephanie H. Lee

Members Absent

Robert J. Abernethy
Donald Fisher
Carlton J. Jenkins
Suzanne Tacheny
Vacancy

Closed Session

The Board met in Closed Session from 8:12 a.m. to 9:00 a.m.

Call to Order: Public Session

President Hastings called the Public Session to order at 9:26 a.m.

Salute to the Flag

Mr. Nuñez led the Board, staff, and audience in the Pledge of Allegiance.

Closed Session Report

President Hastings reported that the Board had met in Closed Session to consider the matter of its representation by counsel. The Board took one action, which was to allow its Chief Counsel Rae Belisle to accept employment as counsel for the Los Angeles Unified School District subject to specified conditions.

Announcements/Communications

President Hastings announced that Item 24 would be put over to the November Board meeting.

ITEM 18	Assignment of Numbers for Charter School Petitions.	ACTION
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ITEM 19	Gifted and Talented Education Funding.	ACTION
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ITEM 20	California Learning Resource Network (CLRN) Advisory Committee.	ACTION
ITEM 21	Appointment to the English Learner Advisory Committee.	ACTION
ITEM 22	Advisory Commission on Charter Schools: Including, but not limited to, Appointment of a Member.	INFORMATION ACTION
ITEM 26	Request by the New West Charter Middle School Petitioners to Establish New Deadlines for Meeting State Board of Education Conditions of Approval to Open.	INFORMATION ACTION
ITEM 31	Approval of Local Educational Agencies (LEA) and Consortia Member applications for funding under The Principal Training Program (AB 75).	ACTION

President Hastings informed the Board that Items 18, 19, 20, 21, 22, 26, and 31 were proposed consent items and could be acted on as group. President Hastings commented that he was very excited Caprice Young, Los Angeles Unified School District Board Member, had agreed to serve on the Advisory Commission on Charter Schools. He noted that Mariana Ortega Roberts, principal at Castle Heights Elementary in Los Angeles, had agreed to serve on the English Learner Advisory Committee.

- ACTION: Ms. Hammer moved that the State Board approve the recommendations set forth in Items 18, 19, 20, 21, 22, 26, and 31. The motion incorporated a technical revision to Item 18, i.e., the charter number being assigned is 506, not 505. The motion recognized that Mariana Ortega Roberts would be appointed to the English Learner Advisory Committee under Item 21, and that Caprice Young would be appointed to the Advisory Commission on Charter Schools under Item 22. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 23	Legislative Update: Including, but not limited to, the list of bills that were tracked during the 2002 legislative session.	INFORMATION ACTION
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Teri Burns, Governmental Affairs Office, gave a brief report on the outcome of education bills in the 2002 legislative session.

No action was taken on this item.

ITEM 24	Permanent Regulations Relating to Disputes Between School Districts and Charter Schools Regarding Facilities for Charter Schools.	INFORMATION ACTION
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This item was withdrawn.

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ITEM 25	Approval of 2002-2003 Consolidated Applications.	ACTION
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Keric Ashley, Consolidated Programs and Accountability Branch, informed the Board that additional consolidated applications would be brought before the Board over the next several months. The four districts for which the Department has recommended conditional approval were also recommended for conditional approval last year. As these districts reach their benchmarks, funds will be released.

- ACTION: Ms. Hammer moved that the State Board approve 41 Consolidated Applications and grant conditional approval to four other Consolidated Applications as recommended by CDE staff. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote of the members present.

President Hastings announced that Item 3, which was left open at yesterday's meeting, would now be heard.

ITEM 3	No Child Left Behind (NCLB) Act: Including, but not limited to, Update on NCLB and Reading First Implementation.	INFORMATION ACTION
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(This item was continued from the previous day. See minutes for Wednesday, October 9, 2002.)

President Hastings commented that we have been working on the definition of highly qualified teachers. He noted that there are a number of issues that have been raised. One issue is veteran teachers. Based on discussions with USDE, staff believes that veteran teachers are included in the definition of highly qualified teachers. Another issue is teachers working under emergency credentials. These credentials are not NCLB compliant. Mr. Hastings stated that intern teachers for elementary schools do not usually take subject matter tests and this lack of a means to demonstrate subject matter competency is an issue. President Hastings noted that normally the Board does not get involved in teacher credentialing, but as the state education agency (SEA) it has the responsibility to define highly qualified teachers for NCLB purposes.

Ms. Belisle commented that it is important to inform the field that though we did develop a definition of highly qualified teachers in May, we now have much more information and have had many conversations with the USDE since that time. We now have a better idea of what the USDE requirements are. For those teachers who are new hires, they will need to have a bachelor's degree, pass the CBEST test, pass a background check, and have subject matter competence. Currently, State Board and the Department staff are working with the USDE to clarify what subject matter competency is.

Linda Bond, California Commission for Teacher Credentialing (CTC), told the Board that there are thousands of teachers with emergency credentials who have subject matter competence and even have another credential. CTC staff is working with the Commissioners on giving those teachers an intern credential, if they are enrolled in an intern program. She commented that it is

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important that teachers in intern programs are properly supervised. Ms. Bond noted that the new subject matter standards are going into effect and colleges must meet these new standards. The CTC will set the criteria for the required subject matter exams. Ms. Bond assured the Board that CTC is working to make sure California is in full compliance with the NCLB requirements.

Mrs. Ichinaga stated that credentialing programs should be changed so that college students who want to be teachers must take education classes as undergraduates. Ms. Bond said that this overhaul is already underway. Ms. Hammer asked whether the issue of subject matter competency is limited to elementary teachers. Ms. Belisle replied that subject matter competency is also an issue at middle schools and high schools because teachers must have subject matter competency in the specific subjects they teach.

Mr. Nuñez stated that he wants there to be good communication to the schools. Information must be communicated in a clear way and let schools know the direction in which the State Board is heading. Ms. Fausset recommended waiting until the USDE sends something in writing before communicating with local education agencies.

No action was taken on this item.

**WAIVERS: CONSENT, PROPOSED CONSENT, NON-CONSENT
CONSENT WAIVERS (WC-1 and WC-2)
CHARTER SCHOOLS**

ITEM WC-1	Request by the Orange Unified School District to waive Title 5 CCR Section 11060, related to charter school attendance, for El Rancho Charter School. CDSIS-5-6-2002 (Recommended for APPROVAL WITH CONDITIONS) <i>Education Code</i> Section 33051(c) will apply	ACTION
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HIGH SCHOOL EXIT EXAMINATION (special education students)

ITEM WC-2	Request by Natomas Unified School District to waive <i>Education Code</i> Section 60851(a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for one special education student. #016 CDSIS-7-8-2002 (Recommended for APPROVAL)	ACTION
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Judy Pinegar, Waiver Office, reported there were no announcements or corrections to the consent waivers.

- ACTION: Ms. Hammer moved that the State Board approve the requests in Items WC-1 and WC-2 in accordance with the recommendations of CDE staff. The motion included the conditions recommended under Item WC-1. The motion recognized that *Education*

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Code Section 33051(c) would apply to the request in Item WC-1. Ms. Lee seconded the motion. The motion was approved by unanimous vote of the members present.

PROPOSED CONSENT WAIVERS (W-3 through W-8)

EQUITY LENGTH OF TIME

ITEM W-3	Request by Beardsley School District to waive <i>Education Code</i> Section 37202, equity length of time requirement for some of the kindergarten students at North Beardsley Elementary. CDSIS-26-7-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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ITEM W-4	Request by Jefferson Elementary School District to waive <i>Education Code</i> (EC) Section 37202, the equity length of time requirement for the kindergarten pupils at Roosevelt School. CDSIS-41-7-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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ITEM W-5	Request by Baldwin Park Unified School District to waive <i>Education Code</i> Section 37202, equity length of time requirement for the students at the Sante Fe Fundamental School and the Holland and Olive Middle Schools. CDSIS-5-8-2002 (Recommended for APPROVAL) <i>EC</i> Section 33051(c) will apply	ACTION
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ITEM W-6	Request by Oxnard School District to waive <i>Education Code</i> (EC) Section 37202, equity length of time requirement for the kindergarten students at Elm Elementary, Cesar Chavez Elementary and Emily Ritche Elementary (and other schools as necessary in the following year). CDSIS-10-8-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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INSTRUCTIONAL TIME PENALTY

ITEM W-7	Request by John Swett Unified School District to waive <i>Education Code</i> Section 46201(c)(1)(2)(3) the longer day instructional time penalty and <i>Education Code</i> Section 46202 (a), the penalty for falling below the 1982-83 instructional minute baseline for the fiscal year 2000-01 at John Swett High. CDSIS-56-1-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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ITEM W-8	Request by Fremont Unified School District under the <i>Education Code</i> Section 46206 to waive Education Code Section 46201(c), the full longer-day instructional time penalty for the 2000-2001 school year for Washington and Irving High Schools. CDSIS-49-1-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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Ms. Pinegar reported there were no announcements or corrections to the proposed consent waivers.

- ACTION: Ms. Hammer moved that the State Board approve the requests in Items W-3 through W-8 in accordance with the recommendations of CDE staff. The motion included the conditions recommended under Items W-3, W-4, W-6, W-7, and W-8. The motion recognized that *Education Code* Section 33051(c) would apply to the request in Item W-5. Mr. Nuñez seconded the motion. The motion was approved by unanimous vote of the members present.

NON-CONSENT WAIVERS

ACADEMIC PERFORMANCE INDEX (adult testing irregularities)

ITEM W-1	Healdsburg Unified School District (HUSD) Academic Performance Index (API) Waiver. Specifically, the HUSD requests a waiver of Title 5 CCR Section 1032(d) (1) to allow Foss Creek Elementary School to be given a valid API (no awards) for the current year (2002), in spite of "adult testing irregularities." CDSIS-21-7-2002 (Recommended for DENIAL per <i>Education Code</i> Section 33051(a) (1), the educational needs of the pupils are not adequately addressed.	ACTION
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Ms. Pinegar explained that the district wants a valid API for the current year, but would not be awards eligible. Pat Chladek, Awards Unit, reported that the only new information on this waiver, which was before the Board last month, is that there was a recalculation of the percent of students involved that resulted in a slight increase to 6.3 percent.

The following individuals addressed the Board:
Richard Jones, Healdsburg Unified School District
Susan Buck-Gordon, Principal, Foss Creek Elementary School

President Hastings asked if there was a specific reason for the Department's recommendation for denial of this request. Mr. Chladek replied that the issue is the 5.0 percent level set by the Board regulations and how strongly the Board wants to hold that line. Ms. Fausset noted that every waiver brought to the State Board is unique and Board action on a waiver is not precedent setting.

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- MOTION FAILS: Mr. Nuñez moved that the State Board approve the request in Item W-1. The motion recognized that *Education Code* Section 33051(c) would apply to the request. Mrs. Joseph seconded the motion. The motion failed by a vote of 5-1. Mrs. Ichinaga voted against the motion.
- o On behalf of the Healdsburg Unified School District, Mr. Jones announced that he was withdrawing the request for purposes of resubmitting it for consideration at the November 2002 meeting.

ITEM W-2	Alhambra Schools District (ASD) Academic Performance Index (API Waiver). Specifically, the ASD requests a waiver of Title 5 CCR Section 1032(d)(1) and (3) to allow Mark Keppel High School to be included in the API for the current year (2002) or at least in the subsequent year (2003). The district had "adult testing irregularities." CDSIS-39-7-2002 (Recommended for DENIAL per <i>Education Code</i> Section 33051(a)(1), the educational needs of the pupils are not adequately addressed.	ACTION
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Ms. Pinegar reported that the waiver request is for a valid API for the current year, but the school will not be awards eligible. Mr. Chladek advised that 6.2 percent of the students are involved, which is a significant amount.

The following individual addressed the Board:
Myrna Rivera, superintendent, Alhambra Schools District

Mrs. Joseph recognized the impressive work done at the school, but noted that the prohibition on calculators has existed for over five years.

- MOTION FAILS: Ms. Hammer moved that the State Board deny the request in Item W-2, citing the justification set forth in *Education Code* Section 33051(a)(1). Mrs. Ichinaga seconded the motion. The motion failed by a vote of 5-1. Mr. Nuñez voted against the motion.

INSTRUCTIONAL MATERIALS FUND PETITIONS

ITEM W-9	Petition request under <i>Education Code</i> Section 60200(g) by Santa Barbara County Office of Education to purchase nonadopted Instructional Resources for "special education students" using Instructional Materials Fund (IMF) monies. (List attached) CDSIS-36-5-2002 (Recommended for APPROVAL from date of SBE action through August 31, 2004)	ACTION
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Ms. Pinegar reminded the Board that this waiver was put over from the September Board meeting. She added that this month the county had a representative present to address the Board's request for additional information.

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Mrs. Joseph stated that her concerns last month were about some of the specific materials the county office wished to purchase and the appropriateness of the materials for the populations being served. She reported that she has spoken with the county office and is ready to support a motion with one change, that the county will drop specific materials from the purchase list.

The following individual addressed the Board:
Helen Rehm, Santa Barbara County Office of Education.

Ms. Rehm indicated that the petition was to be considered modified to remove the reference to instructional materials published by Steck-Vaughn. She stated that the county office is looking at purchasing the newly adopted instructional materials.

- ACTION: Mrs. Joseph moved that the State Board approve the petition in Item W-9, as amended by the representative of the Santa Barbara County Office of Education, for the time period recommended by CDE staff. Mr. Nuñez seconded the motion. The motion was approved by unanimous vote of the members present.

Mrs. Joseph commented that the larger problem is that we have not done a good job of informing the special education teachers about the newly adopted instructional materials, which are excellent materials to use with some special education students.

ITEM W-10	Petition request under <i>Education Code</i> (EC) Section 60200(g) by Stanislaus County Office of Education to purchase nonadopted Instructional Resources for "special education students" using Instructional Materials Fund (IMF) monies. (List attached) CDSIS-33-5-2002 (Recommended for APPROVAL from date of SBE action through August 31, 2004)	ACTION
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Ms. Pinegar noted that this waiver is similar to the previous waiver and was also before the Board in September.

Mrs. Joseph informed the Board that she had spoken with the county office to clarify which students the materials were for and was now ready to make a motion to approve the waiver.

The following individual addressed the Board:
Ken Daniel, Stanislaus County Office of Education

- ACTION: Mrs. Joseph moved that the State Board approve the petition in Item W-10 for the time period recommended by CDE staff. Ms. Hammer seconded the motion. The motion was approved by unanimous vote of the members present.

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Mr. Brandsma inquired about the status of the review of the data related to the East Whittier petition that the Board approved in June 2002. Ms. Pinegar replied that the district is checking the data it provided to the Board.

PHYSICAL EDUCATION INSTRUCTIONAL MINUTES

ITEM W-11	Request by San Ysidro School District for a retroactive waiver for Sunset Elementary School to waive the required physical educational instructional minutes as specified in <i>Education Code</i> Section 51210(g); and <i>Education Code</i> Section 60800(a) physical fitness testing during March, April, or May, due to playground construction. CDSIS-6-5-2002 (Recommended for APPROVAL of <i>Education Code</i> Section 51210(g) with conditions). (Recommended for DENIAL of <i>Education Code</i> Section 60800 based on <i>Education Code</i> Section 33051(a)(1), the educational needs of the pupils are not adequately addressed.	ACTION
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Ms. Pinegar explained that this waiver was a request to waive the required minutes of physical education instruction for two years and also the administration of the Fitnessgram (the state's physical fitness test) for the previous school year. The Department is recommending denial of the waiver requests for 2001-02 and approval with conditions of the request for 2002-03.

Diane Wilson Graham, Physical Education Consultant, informed the Board that construction on the school site is impacting the space available for physical education, but there are sufficient spaces available for the school to meet the instructional minutes requirement and administer the fitness test this year. She noted that students at the school performed below the state average on the last fitness test.

- ACTION: Mr. Nuñez moved that the State Board take the following actions pertaining to the request in Item W-11: (1) deny the request to the extent it would apply to any part of 2001-02, citing the justification set forth in *Education Code* Section 33051(a)(1); and (2) approve the request for the period July 1, 2002, to January 30, 2003, on the condition that the district provide the affected students at least 160 minutes of physical education every 10 days until the completion of construction, and that the district administer the physical performance test during 2002-03 as required by *Education Code* Section 60800. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 27	Appeal by Chief Petitioners of the County Committee's Denial of a Petition to Transfer Territory from the Val Verde Unified School District to the Riverside Unified School District in Riverside County.	ACTION
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Larry Shirey, School Fiscal Services Division, reported that the Riverside County Committee found that Criterion 9 was not met. The Department staff concurred with the County Committee that Criterion 9 was not met. The Department staff also found that Criterion 10 has not been

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substantially met. The Department does not believe there is a compelling reason to approve the territory transfer.

The following individual spoke in support of the petition:
Monica Gruver, Chief Petitioner

The following individuals spoke in opposition to the petition:
Kirk Lewis, Riverside USD
Fred Workman, Val Verde USD

Ms. Hammer stated that she does not think the petitioners made a compelling case. She added that it appears that the transfer would have a negative financial impact on both districts.

- ACTION: Ms. Hammer moved that the State Board deny the appeal and affirm the action of the Riverside County Committee on School District Organization by adoption of the resolution to that effect prepared by CDE staff and presented (as Attachment 2) in the agenda item. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 28	Proposed Additions and Amendments to Title 5, CCR, Regulations Relating to Special Education.	INFORMATION ACTION
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Janet Canning, Special Education Division, informed the Board that in these proposed regulations are a handful of items that will bring the state into full alignment with the federal Individuals with Disabilities Education Act.

The following individual addressed the Board:
David Patterson, CANEC

In response to the speaker's comments, Mrs. Joseph noted that the Board appoints members to the Advisory Commission on Special Education (ACSE) and the Advisory Commission on Charter Schools (ACCS) and suggested appointing an individual from the ACCS to serve as a liaison to the ACSE and vice versa. President Hastings recommended that Mr. Patterson work with staff and the ACCS members to include charter schools in the regulations. Ms. Belisle noted that the Board took extra effort to ensure that charter schools were treated equally in the state's special education plan.

Mrs. Joseph recognized that while the Board has had much discussion regarding special education, it has not had much conversation about special education students' instruction in charter schools. Those students who are two or more years behind will benefit from the intervention materials. Mrs. Joseph stated it was not appropriate to place a sixth grader reading at a second grade level in a sixth grade reading text. She added that she would like to figure out a method for informing special education providers and charter schools about the outstanding intervention programs that the Board has adopted. Mrs. Joseph asked Mr. Patterson for help with

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getting information to the charter school community and asked Mr. Geeting to work with her to develop communication materials.

- **ACTION:** Mr. Nuñez moved that the State Board direct that the proposed permanent regulations be circulated for a period of 45 days in accordance with the Administrative Procedure Act and that the public hearing be scheduled for December 12, 2002, as recommended by CDE staff. Ms. Hammer seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 29	Special Education Local Plan Area Size and Scope Standards.	INFORMATION
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Deputy Superintendent Paula Mishima explained that the standards were before the Board for information only this month and would be back before the Board for action at a future meeting. In the meantime, the Department will work with charter school representatives.

No action was taken on this information only item.

ITEM 30	Revisions to the California School Accounting Manual.	INFORMATION
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Jan Sterling, School Fiscal Services Division, reported that the annual update of the California School Accounting Manual is available on the website. This month the revisions are presented for information only. The revisions will be brought back to the Board for action next month.

Mr. Nuñez asked if charter schools must use the accounting codes under the new law. Ms. Sterling replied that the regulations to implement the law had not yet been written.

No action was taken on this information only item.

Adjournment: President Hastings adjourned the meeting at 11:29 a.m.