

MEETING NOTES

Advisory Commission on Charter Schools *An Advisory Body to the State Board of Education*

East End Auditorium
1500 Capitol Mall
Sacramento, California

Friday, October 31, 2008

MEMBERS PRESENT

Rae Belisle, Chair
Jesse Barajas
Vicki Barber
Carol Barkley*
Paul Cartas
Tom Conry
Beth Hunkapiller
Mark Kushner

MEMBERS ABSENT

Brian Bauer

* Carol Barkley is the State Superintendent of Public Instruction's designee.

PRINCIPAL STAFF TO THE ADVISORY COMMISSION

Deborah Domitrovich, Consultant, CDE Charter Schools Division
Deborah Probst, Consultant, CDE Charter Schools Division
Michelle Ruskofsky, Consultant, CDE Charter Schools Division
Greg Geeting, Retired Annuitant, CDE Charter Schools Division

Call to Order

Chair Belisle called the meeting to order at 10:31 a.m.

Announcement

Chair Belisle noted that arrangements were a bit awkward given that members were seated in a straight line. If members wished the floor, she encouraged them to make sure she could see their requests.

Flag Salute

Chair Belisle invited Ms. Barber to lead the members, staff, and audience in the Pledge of Allegiance.

Introductions

Chair Belisle invited the members to introduce themselves.

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Agenda Order

Chair Belisle indicated that she intended to follow the agenda as printed.

Approval of Meeting Notes

Chair Belisle asked if there was a motion to approve the notes from the last ACCS meeting held on August 27, 2008.

ACTION: Mr. Cartas moved that the notes of the meeting held on August 27, 2008, be approved as presented. Mr. Barajas seconded the motion, and it was approved by a vote of 7-0-1. Mr. Kushner was not present when the vote was taken.

Public Comment

Chair Belisle invited comments from the public on matters not on the agenda. Don Shalvey, Chief Executive Officer of Aspire Public Schools, briefly addressed the ACCS. He indicated that both campuses of Aspire's Statewide Benefit Charter School had done very well on the 2008 growth API and that (as a consequence) Aspire staff had calculated that both would receive 2009 base API rankings sufficient to meet the SBE's threshold requirements for the opening of additional sites in fall 2010. Toward that end, he commented that Aspire was considering some refinements to the charter and looked forward to its continuing relationship with the SBE and CDE.

ITEM 1: Update Regarding University of California Policy on A-G Approval for Independent Study Courses

Chair Belisle indicated that, due to unforeseen circumstances, Don Daves-Rougeaux of the UC Office of President was unable to attend today's meeting. She indicated that the matter would be postponed to the next meeting, but invited any member of the public who wished to do so to address the UC policy on independent study course approvals. There were no speakers.

ITEM 2: SB 740 Funding Rate Determinations

Ms. Barkley presented the CDE staff recommendations.

California Virtual Academy @ San Diego..... #493
California Virtual Academy @ Los Angeles..... #838

Ms. Barkley indicated that CAVA @ San Diego had withdrawn a mitigating factor it had proposed to enable the school prospectively to have a lower expenditure percentage for certificated salaries. Therefore, both schools qualified for 100 percent funding rates for three years without qualifications. Katrina Abston, representing the schools, urged the ACCS to recommend SBE approval of the prospective 100 percent funding rate for each school for three years. Ms. Barber inquired about an audit issue that involved a CAVA school. Ms. Abston indicated that it was a different CAVA school and described the issue, which pertains to individual students being served by multiple credentialed teachers. Ms. Barkley indicated that she would see to it that the matter was referred to

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the appropriate staff within CDE for further review. Chair Belisle indicated that in any case the audit issue did not impact the decision before the ACCS at this time. She also noted that CAVA had a waiver request pending before the SBE that may no longer be needed. She encouraged CAVA staff to check on that matter. Mr. Conry inquired as to the location of the school district that is the chartering authority for CAVA @ San Diego. It is the Spencer Valley School District in San Diego County. Ms. Abston explained that the school is nonclassroom-based and has resource centers located outside San Diego County, but not within the county. Mr. Conry also inquired about the chartering authority for CAVA @ Los Angeles. It is the West Covina Unified School District in Los Angeles County. Ms. Abston indicated that CAVA @ Los Angeles does have some resource centers within Los Angeles County.

Announcement. Chair Belisle announced that Mr. Kushner had not participated in the consideration of these two funding determination requests and would not participate in the vote on any recommendation because he has a professional association with CAVA.

ACTION: Ms. Barber moved that the ACCS recommend to the SBE that it:

- Approve prospectively a 100 percent funding determination rate for both schools listed above for three years (2009-10, 2010-11, and 2011-12).
- Determine in this case that a rate greater than 70 percent is appropriate within the meaning of *Education Code* Section 47634.2(a)(4), because the recommended level is consistent with the criteria specified in the regulations pertaining to funding determinations as contained in *California Code of Regulations*, Title 5, Section 11963 et seq.
- Determine that prospective approval for a three-year period, as requested, is appropriate taking into account the information presented in its totality.

Mr. Cartas seconded the motion, and it was approved by a vote of 7-0-1. As noted above, Mr. Kushner did not participate in the consideration or vote on these recommendations.

ITEM 3: American Charter High School: Appeal for Chartering by the SBE

Ms. Ruskofsky presented the CDE staff report on American Charter High School (ACHS), noting that the petition had been denied by Santa Barbara School District and by the Santa Barbara County Board of Education. The petitioners seek to open the school in fall 2010. Ms. Ruskofsky reviewed the various materials that had been made available to the ACCS. She noted that the CDE staff report incorporated input from several divisions within the CDE, including special education, fiscal, and legal.

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Ms. Ruskofsky posed the rhetorical question that is central to consideration of petition appeals: Is the petition “close enough” to work with petitioners on revisions, or does it need so much substantive modification as to make denial the more reasonable course of action. She applauded the petitioners for the creative general approach they presented to better serve at-risk students who are currently completing high school and enrolling in postsecondary education at rates far below those of other students in the community. However, she concluded that overall the petition “does not instill confidence” that the proposed educational program would be successfully implemented and be sustainable. She explained why staff found various elements of the charter less than reasonably comprehensively described and, therefore, why those elements reflected grounds for denial. Problematic elements included the educational program, measurement of pupil progress, parental involvement, employee qualifications and benefits, and student discipline (corporal punishment provisions, in particular). She also noted problematic budget issues, including “non-guaranteed” donations and the assumption of receiving the maximum \$250,000 revolving loan. She commented that the review process had been “like pinning down a moving target,” which further heightened CDE staff concerns. The petition was more of a “rough draft” than a finished product. It has promise, but is “opaque” in key areas that should have been well described. The petitioners did not meet the statutory threshold for approval.

Martha Salas, co-chair of the ACHS Board of Directors, led off the 20-minute presentation by the school’s proponents. She noted that the petitioners had applied for 501(c)(3) status. She also introduced various individuals who had come in support of the petition, including Marilyn Gervitz (co-chair), Les Esposito, Kathi Vogel, and Jacqueline Inda, as well as founding member Robert Noël. She outlined the “long and trying process” the petitions had followed to reach this point. She then introduced Matt Witmer (Ascend Leadership and Learning), consultant to ACHS, who would be the principal presenter.

Mr. Witmer provided a listing of the many supporters of ACHS in the community. He conceded that, in retrospect, the original petition had “some misleading proposals.” In general, however, the intent was consistently to “integrate university preparation with technical academies.” He presented various displays of data to demonstrate the need for the school to better serve Hispanic/Latino students and socioeconomically disadvantaged students. He emphasized the vital importance of this school to the community, with a “longer learning day to get students the help they need.” The school’s CTE courses will have the rigor necessary to qualify for the UC/CSU “a-g” course pattern. The educational program will provide “contextual learning experiences,” and the school will “meet the gold standard.” He then introduced “voices from the community” to speak on the school’s behalf.

Ernesto Hernandez, representing the League of United Latin American Citizens (LULAC), commented on the “lack of equal opportunity” in the Santa Barbara schools.

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For one reason or another, Hispanic/Latino students have not been able to succeed. There is something wrong in our schools. LULAC endorses this charter petition because it links higher education with relevance to students. The issues that have been identified by CDE staff can be worked out. LULAC encourages the ACCS to “provide this opportunity to our students.”

Jacqueline Inda, representing Esperanza (a youth violence prevention program), commented that the proposed charter school “provides an important option for our community.” Many youth do not know what to do with their lives. The current lack of options pushes our youth toward gangs. This charter school would give our families hope. It would help youth “reconnect” to the community and stop the “cycles of violence.” Esperanza supports this proposal “so that we can start changing lives.” It is important to stop saying that “it’s okay not to go on to college.” The connection of our youth to school is vital. Ms. Inda indicated that she had 150 signatures to present to the ACCS from community members who support the petition.

The 20-minute period for proponents having ended, Chair Belisle asked for testimony from opponents to the charter petition.

Brian Sarvis, Superintendent of the Santa Barbara Elementary and High School Districts, made the principal presentation in opposition to the ACHS charter appeal. He noted that the district “is charter friendly” and has approved four charter schools, as well as district-operated schools of choice. However, the district insists upon “viable programs” that provide “educationally solid opportunities.” This charter petition is simply “not sound.” The petitioners were given full and fair consideration. The governing board denied the charter because “it lacks substance, has major deficits, and could not be successfully implemented.” The petition is “a mishmash of disparate programs.” The curriculum is not well developed, and there is no defined program for English learners who could end up “on a lower track.” The governing board did not see evidence of parents or students interested in attending. Additional time was given to the petitioners to shore up the charter, but still the educational program was not sound. The legitimate questions posed by district staff and the governing board were “not answered satisfactorily.”

Mr. Sarvis noted that the petitioners had provided the ACCS “more materials,” which he had been able to review only briefly, but they still failed to “address sound practice.” The new materials did not resolve fundamental educational issues. The charter needs more than just a “quick fix.” The fiscal plan, for example, depends on obtaining the use of district facilities pursuant to Proposition 39, and “good faith negotiations” are mentioned, yet the petitioners provided no documentation of any students actually interested in attending. Mr. Sarvis also mentioned demographic issues and the potential, based on the district’s review of the charter, of students who are low achieving being simply “bounced out of the school.” He mentioned that letters had been received “from those

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who are in opposition to petition.” He concluded by reiterating the district’s position that the petition is simply “not a viable program.”

Nancy Harter, member and past president Santa Barbara districts’ governing board, provided some historical context regarding the consideration of the petition. She indicated that the district had made efforts to work with the petitioners to improve the charter, but that those efforts were “rejected by the petitioners.” The petition was given “full and fair hearings.” Many questions were posed by governing board members. The petitioners did not address the critical issues. Only one parent expressed support for the petition. The petitioners essentially “made no appeal” to Santa Barbara County Board of Education, but basically stood by the document as presented. Given that the school would serve some of the community’s “most vulnerable students,” the governing board needed to see a more substantive program than this charter presented. It was “not a viable charter.”

Annette Cordero, member Santa Barbara districts’ governing board, introduced herself and urged the ACCS to “uphold the CDE staff recommendation for denial.” The charter petition “lacks a fully developed educational plan.” If the school were to become operational, students enrolled in the school “could have a severe credit deficit that breaks down along ethnic lines.” The school would have a large English learner population, but the educational program described in the charter “does not help them.” Many supporters of the petition “do not know specifics, only the concepts.”

The 20-minute period for opponents having ended, Chair Belisle invited each side to give a five-minute rebuttal presentation, beginning with the proponents.

Robert Noël, founding member of the ACHS and also a member of the Santa Barbara districts’ governing board, introduced himself and commented that, based upon ten years of observation, the district “has not succeeded” in serving the students ACHS targets and “doesn’t have any imaginative design in mind.” He noted that the district tried an academy approach at one time and had found an enthusiastic principal to head the school. However, the principal soon left and the academy could not be sustained. He commented that all of the district’s efforts have been “disappointing.” He talked about his own research of options to improve academic achievement by these students. He referenced the data presented earlier by Mr. Witmer. He concluded that the district administration and governing board simply “do not have ideas.” He indicated that petitioners “thought the CDE would provide time for curricular development.” He urged the ACCS to “give us time to put together our team and develop the curriculum.”

Melanie Petersen, Fagan, Friedman & Fulfroost, presented the opponents’ rebuttal. She reiterated that the “district is supportive of charters.” The petitioners have laudable goals, but they also have an obligation to provide a sound program. The program presented in this charter is “lacking.” The substance is “not sufficient here,” and so the

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charter is “fundamentally flawed.” The petition has “fundamental deficiencies.” Forty-one of the 72 items mentioned in the CDE staff analysis were not met. The district’s areas of concern included essential matters of educational program, pupil outcomes, and fiscal soundness. She concluded by urging the ACCS to recommend denial of the appeal.

Chair Belisle invited discussion by the ACCS members. Ms. Hunkapiller indicated that she did not have a good idea based upon the presentation as to who would actually be the leader of the proposed school. Chair Belisle responded that she was under the impression Mr. Witmer had been retained to fill the leadership role at least for the moment. Ms. Hunkapiller commented that she was “disappointed” in the petitioners’ presentation. There is certainly “passion” for the goals and a “need in the community,” but those things do not “add up to success.” The petitioners “should have focused on the issues raised in the CDE staff analysis.”

Ms. Barber noted that an application had been submitted for the ACHS to join the El Dorado County SELPA, but the application has not been reviewed at this point. Therefore, she felt it appropriate to participate in the consideration of the petition by the ACCS. She indicated that she “had a series of questions,” but thought surely the petitioners would address most of them as they focused on the issues identified in the CDE staff report. However, the petitioners did not substantively address the CDE staff report, so her questions remain unanswered. Chair Belisle commented on the “large flurry of last minute documents” submitted by the petitioners, and the document of October 28 in particular. In that document, she noted, the petitioners “went through the CDE staff report point-by-point.” Ms. Barber inquired when the petitioners now plan to open the school if approved by the SBE. There are “mixed messages” as to whether it would open in fall 2009 or fall 2010. Also, the “financial side” appears unrealistic. There is no mention of science in grade ten. Ms. Barber indicated that she “had not heard persuasive arguments today” in support of the charter, and that the petitioners’ “additional strategic plan only presents new questions to me.” Chair Belisle commented that she shared Ms. Barber’s concerns, but had come to a somewhat different opinion.

Mr. Kushner briefly summarized his experience in working with and for charter schools. He indicated that he had examined the ACHS materials carefully, and that he too had “lots of concerns” about the petition’s educational soundness – “not the vision, but the specifics.” Noting that the petitioners were planning a 2010 opening, he suggested that the document in hand provided “a good road map for developing a charter.” However, more detail is needed. He asked if his thoughts were really what was being stated in the CDE staff analysis. Ms. Ruskofsky reiterated that the petition had “so little information” on which to base a judgment. There just was “not a whole lot there.” Thus, it was simply “not ripe” for a decision. Mr. Kushner indicated that he was fond of trying to identify “where the fire is” in appeals before the ACCS. In this case, he felt the educational program was perhaps the key issue. There is simply not enough information regarding

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science, mathematics, and English learners. He concluded by complimenting CDE staff for a “very detailed job” of pointing out what was lacking in the petition.

Ms. Barber again asked for clarification on the date planned for the school’s opening. A representative of the petitioners verified that the planned opening is fall 2010.

Mr. Barajas commented that he understood the issues of opportunity that the petitioners were endeavoring to address. He concurred with Mr. Kushner that the petition lacks some essential details. In addition, though, he indicated that he “didn’t see a lot of parent and student voices.” It was not clear to him why parents and students would want to participate in the school’s offerings. There is a real need to “reach out to the community.” If a charter school proposes to do something differently, it needs to bring in the community, bring in the young teachers. The petitioners also need to be prepared with “specific, succinct responses” to issues that arise. “All the information has to be in order – impeccable.” He noted that he is an advocate for small learning environments, but that alone is not enough. The details have to be in place; the paperwork has to be in order.

Mr. Conry indicated that he had been “happy to look at all the materials and listen to all of the testimony carefully.” However, he had not found the case persuasive to recommend approval of this appeal. He indicated that he was “taken by the CDE staff report’s specificity.” The language is very “exacting.” This charter will not work. It does not have enough specifics. The petitioners’ presentations have all been about the need for school, which is assumed. Petitioners did not provide responses to the issues raised by CDE staff. If granted by the SBE, this school wouldn’t have the benefit of a local structure to support it. He indicated that he could not recommend that the SBE “take a chance” on this school.

Mr. Cartas commented that when a petition is brought to the SBE level on appeal, there has to be a “balance.” The petitioners had enough time to address deficiencies in detail, but they did not do so. For example, the petition is sadly lacking in the area of the educational program for English learners. The petitioners need to develop the charter more completely and take it back to the Santa Barbara district.

Chair Belisle commented that this is a good illustration of how petitioners, while continuing to work with a community, remain saddled by our process with a petition that is “frozen in time.” In this case, we are still looking at the petition as it existed in March 2007. If our process allowed them to change the charter, these petitioners would have done so. Consideration by the SBE is “always a balance” of specificity and flexibility; without specificity, it is challenging to analyze the petition, but without flexibility, it is challenging to obtain “buy-in from the community.” However, at this point, the ACCS must look for “gold standard” petitions, and this one has definite flaws. Chair Belisle expressed concern that the district, while having approved charters in the past, has not

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granted charters recently. Based on her experience as staff to the SBE and to a local chartering authority, she said that she “knows how to approve and how to deny.” Some of the reasons for denial presented for the local denial “are troubling.” She noted that the petitioners have acknowledged that they do not plan to open until fall 2010. She commented that the petitioners have “a terrific idea,” but that it would be “better if done at the local level.” The CDE staff analysis is good and thorough, and she indicated that it should be “very helpful” to the petitioners in further developing the charter. “It’s like having a consultant for free.” The petitioners should now “go back and wrap all of this together.” There are some very “good things” in the petition,” such as incorporation of AVID and showing connections between academics and career-technical. The petitioners really “have the start of something good.” In further developing the document, parents need to have a stronger voice. This school “has the capability” to bring about “connections” that are missing for many students. Chair Belisle concluded by saying that petitioners really have “a second bite at the apple,” if they wish to take advantage of it. This is an important “opportunity to build and clean up.” She mentioned, in particular, the petitioners’ association with LULAC that would be “a powerful connection for addressing the area of English learners.”

Mr. Barajas commented that Chair Belisle had provided the petitioners “great advice.” He echoed the thought that the petition needs much more specificity regarding English learners. “What are you going to do differently?” He noted that “parent involvement is key,” and strongly recommended that petitioners “engage them.”

Mr. Kushner commented that, if the petition is denied today and if the petitioners eventually come back before the ACCS, the petitioners should bear in mind that “substance is key at this level.” At the local level, support by parents and community leaders are more critical.

Ms. Barber commented that it is “commendable that the district is here” and has been able to hear and understand the ACCS discussion. She also suggested that the petitioners be offered the opportunity to withdraw if they wished to do so, and return to district level for submission of a revised charter.

Chair Belisle concurred that petitioners “ought to think about that option.” Withdrawal has the advantage of keeping “a blemish off the record.” If the ACCS recommends denial, it would be “a very uphill road” for the petitioners with the SBE. She again reiterated her own recommendation that the petitioners “utilize all of the advice you have received – in writing – and go back to local school district, which has indicated on the record that it is ‘charter friendly.’” There are “lots more ‘upsides’ to working with the district.”

Ms. Hunkapiller encouraged the petitioners, if they choose to further develop the charter and return to the district, to have “in place” many of the individuals who would eventually

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be involved with the school's leadership. These individuals should be involved with the rewriting. She commented that "a key issue is about the ability to implement. Who will actually be involved with delivery" of the educational program to students. She also noted that having the chartering authority "closer to the place where people are able to help" is a clear advantage to the petitioners' chances of success.

Chair Belisle indicated that she wanted to give the petitioners "a few minutes to review the options." However, prior to calling for a break, she asked for any public comment on the appeal. Colin Miller, California Charter Schools Association (CCSA), commented that CCSA "has been working with this school." He expressed concern about the CDE staff report going "much beyond" what is needed and required in relationship to the Model Application posted on the CDE Web site. CCSA works closely with the SBE criteria for evaluation (as incorporated in the Model Application). Insisting, in practice, upon more detail than the Model Application envisions is problematic. There is (and rightly should be) a significant difference between what a charter contains per se, and what an approved charter school needs to have in place prior to opening. Mr. Miller thanked the ACCS members for their thoughtful comments and discussion regarding the ACHS charter appeal.

Break

Chair Belisle called for the lunch break at 12:28 p.m. She reconvened the meeting at 12:43 p.m.

ITEM 3: American Charter High School: Appeal for Chartering by the SBE (continued)

Chair Belisle inquired whether the petitioners had reached a decision on how to proceed. Ms. Salas, on behalf of the petitioners, withdrew the petition from consideration and expressed appreciation for the advice and guidance provided at the meeting.

ITEM 4: Proposition 39 Regulations: Outcome of Court Hearing

Chair Belisle invited Mr. Geeting to provide an update on this topic. Mr. Geeting reported that the California School Boards Association (and others) had filed suit to invalidate the revisions to the Prop 39 regulations adopted by the SBE in January 2008. A hearing was held on the matter in the Sacramento County Superior Court on October 17. The court entertained argument on every item within the petitioners' complaint, and the judge did not orally state any inclination as to how he might eventually rule. A placeholder item is included on the November 2008 SBE agenda in anticipation of the possibility that the court might issue a ruling that would necessitate prompt action by the SBE. As of this morning, no ruling has been issued. The court having made no order to interfere with the revised regulations' operative status, the CDE issued guidance that the revised regulations are in force and should be followed in relationship to requests filed in 2008-09 for the use of district facilities in 2009-10.

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ITEM 5: Update on Regulation Packages: Revocation Appeals, SB 319, SB 740

Mr. Geeting indicated that the SB 319 regulation package would not be presented to the SBE in November and would most likely be brought to the ACCS at its next meeting (December 1). Chair Belisle requested that ACCS members receive any background information as much in advance of the meeting as possible.

Ms. Ruskofsky indicated that there was now a “good draft” of regulations related to revocation appeals, but that at least one more meeting of the workgroup would be called. She indicated that the Division’s “goal” is to present the package to the ACCS in December barring unforeseen complications.

Ms. Barkley indicated that Keith Edmonds had worked out a reasonably comprehensive draft of revisions to the existing SB 740 regulations. At this point, there is a need to convene a “more broadly representative” workgroup to vet the proposal. The Division does not anticipate bringing the proposed changes to the ACCS in December.

Adjournment

Thanking everyone for their contributions to today’s session, Chair Belisle adjourned the meeting at 12:52 p.m.

The next meeting will be held on Monday, December 1, 2008, at the CDE Building, 1430 N Street, Room 1101, Sacramento.