

SACRAMENTO COUNTY BOARD OF EDUCATION

Minutes of the Regular Meeting of February 1, 2011

Agenda

- I. Call to Order and Roll Call
 - II. Pledge of Allegiance
 - III. Approval of the Minutes of the Special Board Meeting of January 11, 2011
 - IV. Adoption of Agenda
 - V. Official Correspondence
 - VI. Visitor Presentations
 - A. General Public
 - B. Employee Organizations
 - VII. Superintendent's Report
 - VIII. New Business
 - A. Adoption of Consent Agenda
 1. Report on Personnel Transactions
 2. Accept Donation from Intel to the K-12 Curriculum and Intervention Department
 - B. No Approval of Contracts
 - C. No Approval of Grant Applications/Service Contracts
 - D. Public Hearing, Discussion/Action on Fortune School of Education Sacramento Countywide Benefit Charter Petition
 - IX. Board Reports, Comments, and Ideas
 - A. Board Members
 - B. Board President
 - C. Committees
 - X. Items for Distribution
 - A. February/March Events
 - B. February/March Visits
 - XI. Schedule for Future Board Meetings:
 - A. February 15, 2011 – Leadership Institute
 - B. March 1, 2011 – Measuring Student Progress
 - XII. Adjournment
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I. President Fong called the meeting to order at 6:30 p.m. in the Board Room of the David P. Meaney Education Center, Sacramento County Office of Education, 10474 Mather Boulevard, Mather, California. Board members present were Greg Geeting, Brian Rivas, Brian Cooley, Harold Fong, Eleanor Brown, John Scribner, and Jackie Levy. Also present were David Gordon, Superintendent and Secretary to the Board; Martin Cavanaugh, Deputy Superintendent; Teresa Stinson, General Counsel; Robin Pierson, Joyce Wright, Tammy Sanchez, Tim Taylor, Sue Stickel, John Fleischman, Assistant Superintendents; Judy Holsinger, SELPA Executive Director; Effie Crush, Chief Administrator-Human Resources; Tim Herrera, Director of Communications; Gary Barker, SCOETA; Bill Mullen, CSEA; other staff and visitors; and Carla Miller, Recording Secretary.

II. President Fong led the Pledge of Allegiance.

III. On a motion by Mr. Scribner and seconded by Mr. Cooley, the minutes of the Special Board Meeting of January 11, 2011 were approved. Motion carried unanimously.

IV. Ms. Levy moved to adopt the agenda. Mr. Geeting seconded the motion, which carried.

V. There was no official correspondence.

VI.A. Michael Harris addressed the Board regarding Black History Month.

Darlene Anderson addressed the Board regarding the county's responsibility to ensure that all children get a proper education in Sacramento.

VI.B. There were no requests for presentations from employee organizations.

VII. There was no report from Superintendent Gordon.

VIII.A. Mr. Geeting moved and Mr. Rivas seconded adoption of the consent agenda. Motion carried unopposed. By such action, the Board:

1. Accepted report on Personnel Transactions
2. Accepted donation from Intel to K-12 Curriculum and Intervention Department

VIII.B. No Approval of Contracts

VIII.C. No Approval of Grant Applications/Service Contracts

VIII.D. President Fong announced that the public hearing on the countywide benefit charter petition by the Fortune School of Education will now begin.

The purpose of the public hearing is to provide the opportunity for petitioners, school districts, and citizens to provide public testimony and input to the Board of Education on the proposed charter petition. The hearing enables the Board to receive public input as related to the requirements set forth in Education Code (EC) section 47605.6 and to consider the level of support for the petition by teachers, parents or guardians, and the school districts where the petitioner proposes to place school facilities.

This Board's responsibility is to conduct a review to determine if this charter petition meets the requirements of the law. A copy of EC section 47605.6 was provided to the Board members, and copies were available to the public.

Next, President Fong read the format that the Board would follow in conducting the public hearing. He stated that copies of the format are available at the table at the entrance of the Board Room with the blue Speaker Cards. After the Board has heard

from the petitioners and the Sacramento County Office of Education staff, testimony will be received from members of the public who wish to speak.

Board members were asked to hold their questions until all speakers concluded their testimony. After all speakers have been heard, the Board may follow up with questions.

President Fong stated that he understands there may be strong opinions on each side about whether this countywide petition should be granted or denied. He reminded everyone to be respectful. The Board would appreciate everyone's cooperation as we consider this charter petition. He thanked everyone who was present and those who have called and/or emailed us regarding the petition.

President Fong opened the Public Hearing at 6:47 p.m.

Petitioners

President Fong stated that we would first appreciate hearing from the representatives from the Fortune School of Education who will be allocated 15 minutes to present the charter petition. It would be most helpful if the Fortune School of Education representatives would use their time, at least in part, to respond to any issues raised by SCOE staff in their analysis of the petition. The clock on the podium will inform you of the time remaining, and the timekeeper will inform you when you have one minute left. He asked Board members to hold all questions until after the presentation.

President Fong asked Margaret Fortune to come forward.

Ms. Fortune, Dr. Rex Fortune, and Herinder Pegany presented the petition for the Fortune School of Education.

President Fong thanked the Fortune School of Education representatives and stated the Board may now ask questions of Ms. Fortune. Ms. Fortune also introduced Bonnie Bensen, CFO; Jerry Simmons, Legal Counsel; and Larry Lee, publisher of The Observer.

Mr. Rivas asked about the parental involvement requirement. He would like to know what happens if a student's parent is unable to fulfill the 40 hours per academic year. Mr. Pegany thanked Trustee Rivas and stated that happens often. We have about a 95 percent average of parents who fulfill those 40 hours. The key is that if someone cannot fill those hours, we make it so they can fulfill those hours at home or volunteer in the classroom. But at no point is the child not eligible to be at our school if their parent does not fulfill those 40 hours.

Ms. Fortune added that it is clearly stated in the charter petition that no child will be penalized for the shortcomings of their parents in meeting the terms and conditions of the parent service hours and the contract.

Mr. Rivas said one of the opponents who wrote to him stated that students have to get a B average or they're going to be held back.

Mr. Pegany replied that we make a plan for every single student and at no point do we do anything without the consent and without the input of the classroom teacher or teachers and without the parents and the family. In his history at PS7, during the first eight years of the program, we never retained a child for not making academic progress at 80 percent or higher.

Mr. Cooley asked for the rationale for the need of a countywide benefit charter as opposed to a local district charter.

Ms. Fortune asked her legal counsel, Jerry Simmons, to share the case for countywide benefit.

Mr. Simmons stated that he anticipated this question would be raised and therefore shared a few slides he had prepared. The County Board must make four specific findings if it wishes to approve the charter tonight. The first is that the charter school will offer educational services to a pupil population that will benefit from these services. Of course, we feel that there is strong evidence based on the academic achievement gap that you've seen earlier and that finding is easily met. Second, that the educational services to be provided by the charter school cannot be provided as well by a charter school that operates in only one school district in the county. Here your staff has made a recommendation as part of the staff report that we agree with, of course, which indicates that this will meet the needs of the pupil population. They will benefit from those services but also we think materially this is a countywide problem; this is not a problem in a single neighborhood; this is not a problem in a single school district; this is a problem that is a consistent trend throughout all of the districts in the county and for that reason the petitioners have proposed a countywide solution to that problem. And so importantly, that satisfies finding two that you must make tonight if you wish to approve the charter. Three, that granting the charter is consistent with sound educational practice. Certainly, the results you saw from PS7, upon which this charter is modeled, clearly demonstrate that not only have they closed the achievement gap for African American students, but they've actually exceeded the performance of predominantly white schools in the county. So he thinks there's hopefully relatively little to no question that this is a very solid educational program that will, in fact, be a sound educational program for those students. Finally, the fourth finding that you need to find is to have reasonable justification for why it could not be accomplished by a petition to a school district pursuant to EC section 47605, which relates to the right of parents or teachers to petition for a charter that operates within the boundaries of a single school district. The petitioners are proposing sites that cross multiple school districts so they cannot go to one single school district and ask for approval for a petition that will operate in multiple school districts. The only way they can have sites in multiple school districts in the county is through a countywide charter. He also wanted to note, because he thinks it's important to talk about why we have suggested that a countywide charter specifically is appropriate – it goes to this question of the findings - and that is a countywide charter allows the county board to strategically locate high quality programs where they are needed most in the county. If we were to go to a single school district, there would not be any authority for the county board to dictate the location of these sites within the county and to ensure that they are in fact placed in the areas of greatest need. Countywide charters are subject to complete discretion on your part to approve

or deny. Therefore, you have the ability to do something that a district board cannot, which is to dictate much higher levels of student performance. If this were a district approved charter to be renewed, they would only have to have a minimum API score of 4 to be renewed in the state of California. Statewide rank of 4 or comparative schools rank of 4 or they would need to demonstrate that their student performance was better than the schools to which those kids would otherwise have attended. It's a lower standard than you would be able to set as a county board since it's your sole discretion whether to grant the charter or deny the charter. Also, he thinks it's important to note obviously this achievement gap isn't something that just appeared yesterday. You saw that this data has been going on for many years. Of course, if you look further back that data continues this trend. It's important that these charter petitioners have a partner that has had success in closing an achievement gap. In fact, the county office was the entity that provided the professional development and training to assist PS7 and their teachers. For that reason, we think that the county office is much better positioned to be an effective partner in actually closing this achievement gap. Historically, the districts have not demonstrated a capacity to close the achievement gap. We think our schools would be much more likely to be successful with the county rather than with a district given that history. The county office has a leadership role to play. In your mission statement, you have indicated as a board that you want to be an educational leader and an agent for change in the county. We're asking that you be that agent for change to help fix this problem. Just a couple of other points he wants to make sure that we understand: the achievement gap here is costly to society obviously to the extent that these students do not graduate and go on to college; and it creates an economic impact on our county and on our state. In conclusion, we did provide you in your packet information on both the economic impacts as well as the educational impacts in a letter dated to you, which he knows was distributed at the beginning of the presentation. Thank you very much.

Mr. Cooley stated that in the last slide of the presentation, it was indicated, assuming that the schools are at 100% capacity in the year 2024, that the overall enrollment of the Fortune School of Education on ten campuses would roughly be about 1.9% of the total countywide student population. He addressed Dr. Fortune: in his experience as a superintendent, has he seen that flow in a district in any given school year due to families moving, work issues, etc.?

Dr. Fortune responded that he was superintendent of schools for 15 years. He stated that in any given year, a district might have a swing of 2-3% enrollment. He doesn't see that as a significant issue as it relates to those who are concerned about enrollment declines. Of course this is our countywide base and appropriately so as the proposal is to distribute the schools throughout the county; two K-8 schools and one high school in each of the three zones that we described. A total of nine, plus one child development center in a countywide basis.

Mr. Geeting thinks that Mr. Pegany may be the appropriate person to answer this question. We have received a lot of materials and the allegation was made that PS7 has maintained and achieved its record on the California standards tests by systemically dismissing students or somehow not having students take the test even though they have been at the school for most of the year. Could you address the

combined issues of transiency at the school and the population of students who are around for the California standards tests?

Mr. Pegany replied that their transiency rate is very similar to what is seen in Title I schools because PS7 is a Title I school so they've had mobility amongst their student population, however, what they find is that usually when that happens is during breaks, like the summer break, which is the natural time or during intersession break. What he can tell you is that in looking at our students they tend to stay put once they're there. Our biggest challenge in terms of mobility is transportation because we have not been able to offer transportation to our families. All of them, when we break it down, it comes down to students who left at a specific break or students who moved away or students who couldn't have transportation. We went to school level and contacted the school to find out specifically where and when these students leave. When it comes to students leaving the school again, we found most of them were around the time of the beginning of the school year. If you look at our participation rate on the STAR tests, 100% of our students are participating and that includes if you look at the CBEDS data of kids who were there in October and also for STAR testing in the spring and if you look at the way that kids are there, they tend to stay there. Our purpose of having a school like PS7 is to keep the kids there. We want to get them in our pipeline. We performed a review and found that three children actually left the school right before STAR testing in the month of April due to moving out of state and one child for disciplinary reasons. We did STAR testing in May. Two of those children were siblings and they moved to Texas. One child was dismissed for a disciplinary reason – that child that was dismissed though had been there for five years. So that's the most recent data and that's been the history. We want to get them in the pipeline, seal it, and not let them out.

Mr. Geeting asked Dr. Fortune to address allegations that the design of this school is one that promotes segregation.

Dr. Fortune responded the issue is that they are addressing the needs of the lowest performing ethnic group in the county. Because they open the school with an ethnic majority of students doesn't mean those are the only students who will attend. When he was superintendent of schools in Center, we had a specific population that had a need and he went to his district board and said he wanted to create a charter school. Well, who is it for? Why do we need this? Well, they had a specific population that they were not serving because they were moving away. Well, okay, let's examine all the details. The bottom line is they opened that charter school with the intent to serve children from Ukraine who were leaving the community and going to a charter school somewhere else. The school opened with a 100 kids and it grew over the years to 500 kids. We graduated about 12 or so in the first year. By the end of the 5th or 6th year, 100 graduated. While their intent was for the Ukraine students, other students got interested in going to this particular model of a charter school. It was called Antelope View Charter School. Just as Antelope View had a larger Ukrainian student body when it started, PS7 had a larger African American population at the beginning and now it's still at 80% but other children have begun to come in and of course the door is open to the public if the other children want to come. It's too bad you didn't see some of the other consequential statistics of not doing this, such as the one in three dropout rate in the county, such as the incarceration rates and the costs of that. He's saying that because

we are dealing with not just a private benefit for these parents and children but a public benefit. We are addressing high-needs students who in this case are predominantly African American, but it will be open to all students.

Ms. Brown asked Ms. Fortune if the focus were not African American but rather lowest achieving students because of the gap, the numbers would still be African American.

Ms. Fortune answered affirmatively.

President Fong asked Ms. Fortune whether the petition is aimed at the lowest performing student. He understands that PS7 and Hardy Brown College Prep do not specifically say that they are focusing on African American students. But in this case, you are asking us specifically to focus on African American students – the lowest performing. You want these schools to have that focus, but also state that they are open to anyone. He finds that a different take than the first two schools and was wondering why you are asking us for approval of schools that focus on African American students that anyone can attend.

Ms. Fortune replied their emphasis is the same for Hardy Brown College Prep and that is a public charter school that is open to all students and it is focused on serving the lowest achieving group who happen to be African American students. There has been much news lately about how pernicious the achievement gap is for African American students and that among the low performing, they are the lowest performing and there has been a hesitancy to name it. They're comfortable with naming it because the consequences of not naming it are so dire not just for African Americans but for the entire community. They don't refer to the statistics about incarceration casually, with a high school dropout being 5 to 8 times more likely to be behind bars. There are people who couldn't be here tonight because they've got ankle bracelets on or because they've spent 25 years in prison; but they wrote to you to say please change the destiny for somebody who was like me when I was young. So the African American population has gone beyond standing at the precipice; they've fallen off the cliff. They are in free fall and so that's why they appeal to you as a board to be the agent to change the destiny for a segment of the population in this community that is significant and important.

Mr. Pegany stated to Trustee Fong that PS7 was built on the founding principle. He was there when they designed the program and with a specific purpose for serving again the lowest performing students and that lowest performing subgroup at that time 2001 was still African American students. And again as a charter school, a charter public school, they are open to all the students but with a specific focus they can have that – charter law says they can have a specific focus on an audience or a target group of students which is what they've done at PS7 as well as Hardy Brown and now this proposal.

Ms. Fortune stated she wished to make a legal point which is if there are more students than open slots for this school then there will be a random public lottery, so that of course is neutral.

Mr. Geeting asked Mr. Pegany, as approximately 80% of the students at PS7 are African American, how does the other 20% perform in comparison to the white students in Sacramento County?

Mr. Pegany replied that the students as a whole have surpassed 900 on the API and the next largest subgroup is Hispanic students. All the students, their academic performance index rank as a whole is over 900. There is no gap. Sometimes you will see a school with a pretty high or 800 or above API but when you go deeper, their subgroups don't all have that, but if you look at the subgroup data for PS7, all of our students are at the highest level. On average about 77% of our students are proficient or advanced in the English language arts, which is above the performance of their white counterparts, and 88% is the level of proficiency for our students in mathematics. The same goes across the board for history when they take the CST in 8th grade, and for science in 5th and 8th grades.

Mr. Geeting asked whether the same holds true across the socio economic subgroup.

Mr. Pegany replied that it does. He stated that PS7 has slowly become more diverse.

Mr. Pegany added that we need to get to the point where we are comfortable with randomly selecting any school, any teacher and assigning them to teach our own children – that's the day we need to push for and that's the day we need to fight for. Would any of us be willing to randomly select a teacher or a school within this county? As a parent from PS7, he made that decision, not just because he was the principal there. He made that decision because bottom line, that's the best school for his kids.

Mr. Scribner said he would like Mr. Pegany's take on how he thought the court that ruled on Westminster and Brown would react to your proposal.

Ms. Fortune asked her attorney to approach.

Mr. Simmons stated that he thinks fundamentally the courts have always sought to find ways to reach equality when equality has been elusive, and he thinks there was a time at which an appropriate solution may have been magnet schools – may have been bussing students from one end of the district to another. Some of these districts are open enrollment schools so that parents could send their kids to other schools in the same district, yet this achievement gap is persistent and has not been addressed through that methodology. He thinks the question for the court would be how big of a reach is it really to say that a school which has a random public lottery but happens to be located in an area that's predominately African American is not that different than a district-operated school that happens to be located in the area that's predominately African American and also allows its parents to choose which school to send their kid to within the district. He thinks the difference isn't great in terms of the process – what he thinks is different here is that there's a proven and successful program that they're seeking to replicate. He believes that a court would be persuaded by the fact that there is a problem and a number of solutions have been tried which all have been found wanting. It's time to try something a bit different in hopes of closing this gap once and for all.

Mr. Geeting asked in relation to a lot of material that's come to us mostly by email – Sacramento Charter High School keeps coming up – is Sacramento Charter High School a model or otherwise in any way related to this proposal?

Ms. Fortune replied that it is not.

Ms. Levy commented that she realized this is way down the road, but their petition states their three high schools are going to be around 500 students a piece.

Ms. Fortune replied yes.

Ms. Levy said that seems kind of small for a comprehensive college prep high school and asked how they would accomplish that.

Ms. Fortune stated that they are proposing a small school model consistent with the experience in the K-8 school. We want it to be individualized and what it means is that there are some sacrifices. For example, you will notice in the petition that we have chosen one language – Spanish - rather than making several languages available. Some of the sacrifices come in choice and diversity of those types of offerings, but what we believe is that the small school environment will continue to allow us to give students a very personal and individualized experience so they're not getting lost in the large comprehensive high school, as may have been their experience but for this charter school.

Ms. Levy asked whether it is their plan that all of your graduates will go on to one of the three Fortune high schools or whether they anticipate that some of them will choose another school.

Ms. Fortune responded that she imagines, upon 8th grade graduation, that our students will be hot commodities because they will have from kindergarten or preschool really been prepared well. We're coming to you with a comprehensive Pre K-12 charter petition recognizing that you don't approve the Pre-K piece but we wanted you to know about it. It's the K-12 piece that is before this Board for a decision. We want to be able to offer families a complete education so that they can have a clear idea of what their students' high school experience will be at the point of enrolling in kindergarten. We want our program to be strong enough and tailored enough for the students to stay with us, which is why we are growing our only 9th grade class, and opening the first high school in 2017 with the 8th graders filling those 9th grade seats.

President Fong asked if PS7 currently operates a charter high school.

Ms. Fortune replied no. PS7 is a K-8 school.

President Fong asked if the Fortune School of Education currently operates a charter high school.

Ms. Fortune replied no.

President Fong asked what the relationship is between PS7 and Fortune School. Did the Fortune School start PS7?

Ms. Fortune stated that Fortune School did not start PS7; however, she was the founding superintendent of PS7 and Mr. Pegany was the founding principal of PS7 and served there for 8 years. The data that he earned with his teachers and his students and parents as a school leader was presented before this Board today.

President Fong asked how many charter schools Fortune School operates right now and when they started.

Ms. Fortune responded that they operate part of Hardy Brown College Prep, which is a charter school in San Bernardino that started on August 18, 2010 replicating the PS7 model.

President Fong asked if there were any test scores right now.

Ms. Fortune indicated that she can share the first trimester data and asked Mr. Pegany to come forward.

Mr. Pegany informed the Board that this is the first term of their student instruction and performance. They assess students before the students even start school so that they can have an instructional plan for them the first day they arrive at school. They have parents and students come to them for orientations and then at the same time they assess students with their teachers as well. What they saw was this deep need because there were so many students who were below grade level and what they've seen after only the first trimester of instruction are remarkable gains. For example, in their 3rd grade, they had zero percent; no student was reading at grade level. Now they are up – 50% of students have met the benchmark. This means students had to use the standards that they've been taught in the first term, which meant a lot of backtracking. They had to fill a lot of gaps. So about 50% of their students made this movement to where they've mastered the grade level standards that they've taught so far. They are making that kind of progress on the math side of 3rd grade – 13% of the kids came in able to show mastery of the incoming grade levels standards for 3rd grade. Now they are at 54%. They are seeing remarkable gains, but just as they saw with PS7, what they are seeing is that kids come to them far below basic or far below grade level – two, three years at a time.

President Fong thanked them for their presentation and stated the meeting will move on to the SCOE staff presentation.

SCOE Staff

Tamara Sanchez, Assistant Superintendent of Business Services, presented SCOE's analysis of the petition's financial and operational plan, concluding that the petition's financial and operational plan were sound. Sue Stickel, Assistant Superintendent of Curriculum and Intervention, presented SCOE's analysis of the petition's educational program, concluding that the petition presented a sound educational program.

Teresa Stinson, General Counsel, set out the legal requirements for the approval or denial of a countywide charter petition. She stated that these guidelines will assist the Board as it hears testimony, considers, and deliberates on the Fortune charter petition.

The countywide charter statute gives a County Board broad discretion to deny a charter petition, and sets out specific requirements that must be met before a countywide petition may be granted. In particular, the law provides that the Board must deny a countywide charter petition if it finds any of the following:

1. The charter school presents an unsound educational program.
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
3. The petition does not contain the required number of signatures by parents or teachers.
4. The petition does not contain an affirmation of each of the required conditions. (e.g., meet standards, conduct required assessments, nonsectarian, no tuition, may not discriminate, etc.)
5. The petition does not contain reasonably comprehensive descriptions of all 17 required elements of the petition.
6. The Board may also deny the countywide charter petition on any other basis that the Board finds justifies the denial of the petition.

SCOE's written Recommended Findings of Fact, which you have received and have been posted on the SCOE website for over a week, provide a detailed analysis of each of these elements. In sum, SCOE staff found that the Fortune Petitioners have substantially satisfied the five required elements she just reviewed.

In addition to these substantive requirements, the law specifies that the Board may approve a petition for countywide charter school, only if it makes findings that:

- 1) the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services;
- 2) the pupil population cannot be served as well by a charter school that operates in only one school district in the county;
- 3) the Board is satisfied that approving the charter is consistent with sound educational practice; and
- 4) the Board is satisfied that the charter school has reasonable justification for why it could not be established by a petition to a school district pursuant to Education Code section 47605.

Ms. Stinson suggested that after the Board had heard all of the public testimony and the record is complete, the Board explore these specific requirements further in its deliberations. There should be a factual basis to support each of these findings before the countywide charter petition can be granted.

If the Board makes the required findings and decides to grant Fortune's countywide charter petition, the Board may also impose any additional requirements that it considers necessary for the sound operation of a countywide charter petition.

If the Board decides to approve the charter subject to conditions, we recommend that the Board consider the following conditions:

1. The law requires that Fortune must admit all pupils who wish to attend, if capacity allows. Fortune has indicated that it intends to do so. However, in order to remove potential disincentives to apply, we recommend that Fortune not request pupil discipline records or a California Driver's License as part of the application process.
2. As the petition expresses an intention to specifically target and serve African American pupils, we recommend that Fortune make every reasonable effort to specifically reach and recruit pupils from other racial and ethnic backgrounds in order to enable it to achieve a racial and ethnic balance among its pupils that is reflective of the general population of the county.
3. As specified in Board Policy, Fortune must agree to be responsible for all special education services required by law, must be accepted into a Special Education Local Plan Area (SELPA), and be able to provide the full continuum of special education services as required by state and federal law.
4. We recommend that Fortune agree to hold harmless, defend, and indemnify the Board, Superintendent, and SCOE from any claims arising from the approval, opening or operation of the charter school, including the responsibility to provide special education services.
5. Pursuant to Education Code section 47604(b), the county board may choose to have a representative on Fortune's Board of Directors.
6. An acceptable Memorandum of Understanding should be reached and approved by April 30, 2011.
7. Any additional requirements set by the Board.

If the Board decides to approve the petition, it is up to the Board's discretion to grant the petition as submitted, or to approve less than the number of schools requested.

Finally, the Board has received a great deal of correspondence in support of and in opposition to this charter petition. Copies of this correspondence are located on the side table, for anyone to review.

President Fong thanked Ms. Sanchez, Ms. Stickel, and Ms. Stinson.

The Board asked the following questions of SCOE staff:

Mr. Cooley asked Ms. Stinson about the conditions she read, specifically #4. There was a whole host of items that she read that would request the Board to consider in the conditions that the Fortune School of Education indemnify the county office of education. He asked if she could read through the list of items one more time.

Ms. Stinson asked if Mr. Cooley was referring to the proposed conditions – what she was reading at the end was if the Board adopts the recommended finding of fact that the substantive requirements have been met, and if the Board decides to grant the petition – a lot of ifs there – that it consider granting the petition subject to conditions. She read about seven conditions that she would recommend to the Board. It's up to the Board to decide if it wants to accept or take any of those conditions.

Mr. Cooley asked if those seven conditions are recommended by staff.

Ms. Stinson replied yes and in addition to an MOU which includes more specifics.

Mr. Cooley mentioned the fourth recommendation she read regarding the Fortune School of Education indemnifying SCOE. There was a litany of items that staff is recommending that the Board request the petitioner to indemnify. He asked Ms. Stinson to read those again.

Ms. Stinson stated that any indemnity clause, to the extent the Board recommends this condition, would be spelled out in more legal detail. This is a summary of it. The suggestion is hold harmless, defend and indemnify the Board, Superintendent, and SCOE from any claims arising from the approval, opening, or operation of the charter school, including the responsibility to provide special education services.

Mr. Cooley said what you are proposing with that particular condition is that through this approval process, our action tonight - whatever that might be, for however many schools - your recommendation with those conditions is that the Fortune School of Education indemnify SCOE from any items related to the approval. He would like to focus on that for a second. A hypothetical scenario is if there is legal challenge to the charter – the charter decision that this Board makes. We would ask that the petitioners bringing it forward would indemnify our organization from any cost incurred from defending that legal challenge.

Ms. Stinson stated that the reasoning behind it is that if there was a challenge to the Board's decision, the real party in interest is the charter petitioner. Often times with lawsuits against government entities, the government entity is making the decision but the party that's really benefitting from the decision may be a private party and so they

are going to be involved in any sort of litigation anyway and have an interest in that litigation, although if the Board is ever sued it's going to have to put up a defense.

Mr. Cooley said he would agree that they would be involved in any litigation because they were the beneficiary of that decision; but for us, a governmental agency, to ask a body of petitioners to foot the bill for the decision we make as a public entity - he has an issue with that.

Ms. Stinson stated that's up to your discretion as a Board to decide how you'd like to proceed on that – that's our recommendation but it's your decision.

Mr. Cooley asked his next question to Ms. Sanchez. As Chief Financial Officer for the county office of education and through her role in the FCMAT - which is the county office's authority to monitor and evaluate school district's finances across the county – and given the difficult times a lot of our districts are facing financially, upon her review of this particular charter and its finances and budget, where would she rank this particular proposal's finances and budgetary claims? He frames the question like this because she has a lot of experience looking at a wide variety of school and district finances through this county and would like her to elaborate on this particular budget. We have seen a lot of charters come before this Board over the years.

Ms. Sanchez replied that the petitioners put a lot of work and had a lot of expertise in what they prepared in the budget. It's as good as or even better than any school district budget that she reviews. It had to be a lot more detailed because she had to review it on a different level but she will always say your budget is only good as your implementation. As long as they implement it the way they say they're going to then the budget will work. If something changes and they don't make the appropriate budget revisions then something could go wrong. That would be the case with any school district but right now it looks like they have the expertise and the money to do what they say they're going to do.

Mr. Scribner stated that we are moving public funds for educating students, how does a charter organization differ from an organization such as ours that uses public funds with respect to transparency and accountability. Are these subject to the Williams Act?

Ms. Stinson replied that they are subject to the Williams Act if they choose to be. They are not required to have the annual inspections the way all of our public schools who are not charter schools would have to. They could opt in to Williams inspections. As far as she knows, no charters have.

Mr. Scribner asked, with respect to conflicts of interest, whether charter organizations have the same level of transparency and accountability that a public organization such as SCOE does in similar positions, decision makers, board members, and directors.

Ms. Stinson replied that they are not subject to the same conflict of interest laws as a public agency would be. They have to have conflict of interest and governance documents; however, there are no set standards on what those are. That would be something that the Board may wish to consider as a condition if it wants specific conflict

of interest or other government documents because that could impact the operation of the charter school.

Mr. Scriber asked in the back and forth of contract discussions and votes this evening, could it be summarized as willing buyer - willing seller in what both parties are willing to agree to?

Ms. Stinson replied yes, ultimately.

Mr. Rivas said he had a question for Ms. Stinson. Yesterday we received a letter from the CTA challenging our authority to approve this petition and arguing that the petitioners haven't met the standard for a countywide benefit in citing the ruling in the Aspire case. Can she give a response to the legal points that are cited in the CTA's letter?

Ms. Stinson replied yes. The published decision that Mr. Rivas is referring to has to do with a challenge that was made to a statewide benefit charter approval by the state board of education. It is not directly on point but it is similar enough that it should be paid attention to because the statewide benefit charter statute has language that is similar to what's in the countywide charter in terms of when the state board or county board can approve a countywide charter. In the state board of education case, the language is somewhere along the lines that the state board was not allowed to approve it unless the charter was found to be of a statewide benefit and could not be provided in a local district or county. Our language is not exactly the same, but it's similar enough that the lawsuit really needs to be considered. Unfortunately, it is a very gray area. There's no clear black and white guidance as to what finding by a countywide board would meet that requirement because we don't have any lawsuits against a county board and hopefully we never will. She can tell you that you must make the finding and there must be facts in the record and that you must be satisfied that there is reasonable justification for why this should be a countywide charter – why it could not go to each individual district to do that. The bottom line is it is a gray area. There is legal risk and you could be challenged on it, but we proceed weighing everything in its entirety.

Mr. Scribner followed up on that and the caution Ms. Stinson raised. On Trustee Cooley's question earlier and her reference to the hold harmless and indemnification and the staff recommendation to hold harmless, would that cover our legal bills if we are challenged or would we be left covering our own bills if we did not do the hold harmless clause?

Ms. Stinson replied that the idea of the hold harmless clause would be to cover our legal bill. That is the intent of the recommendation.

Mr. Geeting asked if it specifically says countywide benefit of coming to the county board instead of going to each district or does it say to one district in the county?

Ms. Stinson replied that the countywide statute says that the Board may approve a countywide charter if it finds that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and cannot be served as well as a charter school that operates in only one school district in

the county. There's an additional finding in a different part of the statute that says the county board may grant a charter only if the board is satisfied that the charter school has reasonable justification for why it could not be established by a petition to a school district pursuant to EC section 47605. She will read you the statewide benefit charter as it existed at the time the lawsuit was filed. It said that the state board may not approve a petition for the operation of a state charter school unless it finds the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district or only one county. And, in analyzing the language of the statewide benefit charter statute, what the court did find is that there is a preference for having charter schools go to districts and that is what it read to be in the legislative history of the charter schools act.

Ms. Brown noticed that same language about a charter and one school district. If that were not the case, then the references throughout the law about the possibility of going to a county must have a seed some place that talks about situations where you want to hit more districts to go countywide. Otherwise, she would assume there wouldn't be anything in the law mentioning that there is a possibility to go to the county. Even though they might say they prefer that you go district by district, there's recognition that there may be specific situations that would go across the county.

Ms. Stinson replied there is recognition in the statute itself given the fact that there is a countywide charter statute. That in itself is recognition that there is a possibility of having the countywide charter, but what the lawsuit made clear is that for the statewide benefit charter which had this limited language requiring these findings, it is the exception to the rule of going to districts. It didn't say anything about the exception of going to a district or to a county.

Ms. Brown said in that situation where they are proposing different models in different places or one model that would be replicated throughout.

Ms. Stinson said it's her understanding, although the Fortune's legal counsel may be able to answer differently because it's her understanding that their law firm represented one of the parties in that lawsuit, that Aspire Charter School asked for a statewide benefit charter to be granted so it could operate in multiple locations throughout the state with the idea that it would be beneficial to provide those services throughout the state rather than just in one district. What the court found is that is not enough. In addition, to have a statewide benefit, you must also have findings and facts which demonstrate why that statewide benefit could not go locally to be chartered.

Ms. Brown said she was trying to distinguish between a charter proposal that would replicate the same model in all of the sites as opposed to the charters throughout Sacramento, which are all very different and have different emphasis.

Ms. Stinson said she thinks she understands Ms. Brown's question – what the court says is that there is nothing in the Aspire charter petition that would have prevented it from offering the same educational services by going to several districts. Unfortunately, it's a gray area.

Mr. Cooley said if he understands the court language as it relates to the Aspire/CSBA challenge, in the state board of education's case they had made no findings of fact to this point we are speaking of.

Ms. Stinson replied that is correct.

Mr. Cooley said that the Aspire petitioners had no evidence in the record that supported them going to the state board versus a local district which is different in this case. This isn't the first countywide benefit charter in California. The Santa Clara County Office of Education recently – in the last couple of years – approved Rocket Ship Charter proposal very similar with multiple sites throughout the county. He also believes the Alameda County Office of Education approved a countywide charter. Those charters are in operation today. They've gone without challenge. In the state board of education's case, initially, the state board had made no findings which we plan on doing this evening. There was no evidence in the record to support those findings on behalf of the petitioners.

Ms. Stinson said what the Board had done was found there was a statewide benefit to the charter but it didn't make the related finding that it could not be established by going to each district so the Board made one part of the finding but not both of them. And what the court found is that it didn't make the second finding and it should have and there wasn't any evidence in the record that would have allowed them to make that. That is one piece of it. In terms of the other countywide charters, the ones you mentioned, as far as she understands it, each of those was approved before the CSBA decision came down. She doesn't know if any board that approved those countywide charters would have considered the Aspire case in the same manner to apply to those.

Mr. Cooley asked in the Aspire/CSBA issue, did the state department of education cover the legal expenses to defend the state board of education's decision in that matter?

Ms. Stinson replied that is normally what happens when the state is sued; the attorney general represents that state board. The taxpayers paid for that. When any state agency is sued, by law, the attorney general normally represents the state agency.

Mr. Cooley said Aspire did not pay for that.

Ms. Stinson said she doesn't think so. She doesn't believe there was any agreement between Aspire and the state board to have Aspire defend and indemnify. At the same time, by law the state board is normally required to be represented by the attorney general unless there's an exception that's granted.

Mr. Cooley said he had never heard a public agency requiring it.

Ms. Stinson stated you may decide that's not something you want to do. It's a public policy issue. That may be something you consider. Aspire did participate in the lawsuit – they had their own attorneys participate.

Mr. Scribner asked, relating to the authority of SCOE, what are our enforcement mechanisms if during that five year period some of these conditions are set aside by the other party or conditions are not met.

Ms. Stinson replied that the Board – if they approve the petition subject to conditions and certainly subject to an MOU - the Board through the superintendent and SCOE has oversight responsibilities. Their responsibilities are that the charter school be monitored at least yearly, that it be visited, that the financial aspects of it be monitored, and that the charter has to turn in certain financial documents on a regular basis. In our board policies and ARR's, there are other requirements related to monitoring and certainly anything else could be written into an MOU. If the charter school doesn't meet those requirements then there are means; first of all, you always try to resolve the dispute amicably. If you can't do that and if it rises to the level of something that would justify a revocation, then it's possible to revoke the charter, although that's a pretty high standard.

Mr. Scribner asked if that is reviewable only upon the five year period or does this Board have the authority to reopen review of a charter if staff is saying one of these conditions you've assigned has not been met.

Ms. Stinson replied normally the way we've structured it is that when the Board sets conditions, if the condition is not met, then the Board would have some authority to potentially revoke the charter or take action in some form or another.

Mr. Scribner asked to take action in form of breach of contracts, 17200 – what are we talking about?

Ms. Stinson replied potentially revoke the charter.

Mr. Scribner asked about 17200.

Ms. Stinson asked if he meant Business and Profession code 17200.

Mr. Scribner replied yes.

Ms. Stinson replied no it would be under the Education Code. There's a specific revocation code that lays out factors upon which the charter could be revoked.

Mr. Scribner asked if items are violations severable from the remainder of the contract.

Ms. Stinson asked which specifically are you talking about it.

Mr. Scribner said one of the conditions not met. Is that considered to be a violation of the contract and the rest of the contract remains in operation in terms of revenue flows or if a violation of a portion of a contract – does that mean the contract is then challengeable and we have abilities on revenue?

Ms. Stinson replied it depends on what type of violation it is. Is it a material violation? Is it a substantial violation? Is it something easily curable? She doesn't see why the Board couldn't write into an MOU these are the consequences of not meeting certain conditions. That would be a way to address the issue as well. Again, it depends on the nature of the violation. Some violations are worse than others and some are easily cured.

Mr. Scribner said so we are talking about progressive discipline.

Ms. Stinson replied possibly.

Mr. Geeting said in our seminar session on January 11, we received information that there are approximately thirty countywide benefit charters currently in existence. Do you know of any legal challenge on any of the others?

Ms. Stinson replied she does not. She doesn't know if any of those countywide charters were approved after the Aspire decision came out. She thinks all of them were approved before this additional guidance came out.

Mr. Geeting said the decision itself was about statewide benefit not about countywide benefit. The other question he had was specific to special education which has been the greatest challenge in relation to all of the charter appeals that have come before the Board since he has been on the Board. Do we have any information that this juncture that the petitioners are not on track for acceptance into the El Dorado County Charter SELPA?

Ms. Stinson replied that they filed their SELPA application on January 13 and provided us a copy. Our understanding is that the El Dorado County SELPA is considering it and that Fortune will receive preference because they are already a member for their other school in San Bernardino.

Mr. Geeting said that we don't know of any problems or concerns.

Ms. Stinson replied that is correct. As part of our board policy, they have to be accepted in order to open.

Mr. Cooley said that he doesn't want this discussion regarding our authority to grant the charter to cloud the staff recommendation. Ms. Sanchez already spoke on the sufficiency of the finances and budgetary plan. In terms of their academic program and their ability to successfully carry that out, he wants to get Ms. Stickel's opinion – please comment about the petition, academic program and key highlights that made you believe that they would be successful.

Ms. Stickel said she and her colleagues reviewed the petition to make sure that they have a firm grasp and promise to deliver instruction for the state standards – the promise is there. They use instructional materials that are state board-adopted. They also looked at assessment data. They receive coaching and professional development. They focus on all of the tenets that contribute to a sound educational program and a

sound educational academic experience for students. Sample lesson plans had all of the necessary elements.

Mr. Cooley said he appreciates hearing that.

Ms. Brown said disaggregating data and using that to shore up weaknesses in the students seemed to be very consistent and done weekly, which is difficult to achieve in most schools. The gap is rarely narrowing but they seem to have mastered that by severe intervention after school, during extra time, and Saturdays. Some of the kids are coming in with zero performance in the area. She felt that was phenomenal achievement.

Ms. Stickel said that's why she particularly emphasized the intense intervention. The intense intervention program that they described in their petition is very thorough. You are absolutely right when you talk about the fact that they convene their teams weekly to discuss the progress of students. They look at the data in terms of student assessments and ongoing achievement in the classroom and the petition describes a process where they adjust the instruction for students accordingly. The strong component of intervention in additional time and giving students ample time to produce the achievement that the school desires makes a well-articulated intervention and academic program.

President Fong asked Ms. Stickel whether it is common for charter petitions to borrow items in the proposal from places like the Hardy Brown Academy, the Los Angeles County Unified School District, accumulative record handbooks, conflict of interest provisions. These items are from a different place and he felt that if they are replicating PS7, that most of the stuff should reflect what PS7 is doing. He understands that the pillars are in PS7, but the proposal seems to be a patchwork of items put together. He asked whether that was common in proposals the Board had previously seen.

Ms. Stickel replied that it's not necessarily common in the proposals that we have seen here. Having looked at charter petitions at both a local school district and at a state level, frequently you see charter petitioners use research-based best practices and you see that occurring in this petition. She thinks they feel comfortable in referring to Hardy Brown because that is a charter petition that they've recently written so they take a lot of their language and examples from a school that's already been approved for them. We haven't seen it frequently here – we have seen it some. Some of the petitions have referred to research-based best practices as part of their educational program. She didn't find it to be unusual, as she has seen it used a great deal in other petitions.

President Fong stated that the first finding we had to do was whether the educational program is sound for the students. Does that include any physical or psychological harm of setting up a school as criteria for determining whether it's a sound educational program?

Ms. Stickel said she did not understand the question.

President Fong asked whether the trustees can consider, in addition to the educational curriculum, the physical and psychological possible harm that may happen to a student as the result of the education.

Ms. Stickel said certainly one of the elements is the health and safety of students. The petitioner does describe a program of ensuring safe practices and a health learning environment for students.

President Fong said the reason he asking is because, in the Brown vs. Board of Education case, it states that in addition to the finding that separate but equal is not good, it also caused harm to the child by going to a segregated school that would not be caused if the child went to an integrated school. That was one of the points they decided in Brown vs. the Board. He was wondering because in a charter proposal like this, we are basically being asked to approve segregated schools, although anybody can attend. The other schools in the neighborhood have this ethnic make-up because of housing patterns and people coming and living there, which eventually caused the schools to become segregated. He has some difficulties about the psychological harm to these students who go to a segregated school. He was wondering if that was a factor that he can consider when looking at this.

Ms. Stinson said there is a sixth category that allows the Board to deny a countywide charter petition for any other reason that it finds justifies the denial. To the extent that you're asking about segregation, the law as it presently stands does not allow intentionally segregated schools, but if schools are de facto segregated - in other words because of the neighborhood pattern or some other reason - that is not under the present definition of a violation of the federal civil rights law. The Fortune petition already says that it's going to recruit diversely but one of the reasons we really emphasized that this is important is because it's important to attempt to obtain a racial and ethnic diversity. As long as you are doing that and trying to get the diversity the statute contemplates, if the students who choose to attend are primarily one race or another, that is not necessarily going to be a violation of the federal law. As to your first question - whether the Board can consider that as an issue - she thinks it can because the Board has broad discretion to consider whatever it believes is important for this countywide charter petition.

President Fong asked if Ms. Stinson could walk them through the other three findings and the factors that we can take into consideration because he believes three of the trustees haven't gone through a charter proposal. We have some broad discretion. We can look at finding number six; maybe we should consider establishing an educational policy. He struggles with a balance between closing the achievement gap and maintaining integrated schools. Do we go back to separate but equal and just take care of our own? Or are we our brothers' keepers? Why wouldn't something like this benefit every low-performing student regardless of race? We could operate that way as opposed to allowing schools to focus on just one race. It is a question for which he wants guidance from staff because he does not want to break any federal laws.

Ms. Stinson responded that the Board is not breaking the law, per se. There is no indication that the law will be broken at this point; but the issues you are raising are

issues you can consider as part of your deliberations. One thing she might recommend, if she can be so bold, is perhaps we hear the public testimony; then if you still want that guidance we are happy to provide it.

Mr. Cooley requested the Fortune school counsel come forward and shed some light on this topic.

Mr. Simmons approached the Board. He stated that there is no assignment of students based on race here. What we have is a random public lottery system and with a commitment by the charter school that they will do broad recruitment. Incidentally, one of the countywide charters approved in Alameda County is a Dual Immersion Mandarin Program which also sought an equal balance between Mandarin and English speakers. It had some racial implications to it and the county board did approve that petition. He thinks there are similarities here in the sense there is some overlap between the students who need help and the African American community, but those two things are not necessarily one and the same.

President Fong asked how the lottery is used in this particular place. He thought the lottery only comes into play when more students apply than there are open slots, and then you have the lottery; not that the lottery is the entire selection process.

Mr. Simmons replied that it is true that a lottery only comes into play when more students apply than there are slots. However, he stated that their office represents a majority of California's charter schools and all of their clients have been oversubscribed, meaning that they had more students apply than there were slots. Based on the number of people here in support tonight alone, there is more interest in this charter petition than there are slots that are proposed in year one. He thinks they would be in a lottery situation.

Mr. Cooley suggested that the public comment portion of the meeting should begin.

President Fong stated that the public comment will now commence. Each speaker will have two minutes to speak. There is a request from Superintendent Jonathan Raymond of Sacramento City USD, who has another engagement, to speak first. So if there are no objections from fellow trustees can we allow that? After Superintendent Raymond speaks we will start with proponents of the charter school.

Jonathan Raymond, Superintendent of the Sacramento City Unified School District, addressed the Board regarding that district's opposition to the charter petition.

The following people addressed the Board in support of the Fortune School of Education Sacramento Countywide Benefit Charter:

Bobby Sykes Perkins
Ida Russell
Anela Freeman
Laura Kerr
David Patterson

Patricia Riehl
Evelyn Frazier
Jim Scheible
Joseph Abbulimen
Eric Jackson

Ron Barrow
David DeLuz
Chris Shipman
Cynthia Cooksey
Darryl White

Monica Jones
John Taylor
Michelle Harvey
Tecoy Porter
Ellington Porter

Darlene Anderson
Rick Jennings
Chris Baker
Mrs. Hardy Brown
Jazz Kaur

Chelda Ruff
Larry Lee
Andie Corso
Craig DeLuz

The following person addressed the Board as neutral regarding the Fortune School of Education Sacramento Countywide Benefit Charter:

Heyman Matlock

The following people addressed the Board in opposition of the Fortune School of Education Sacramento Countywide Benefit Charter:

Bill Camp
Kerri Asbury
Andrea Price
Kate Lenox
Karen Gunby
Crawford Johnson
Joe Barnett
Carlos Rico
Sue Sheridan
Nichole DeVore
Devin Lavelle
Lori Jablonski

Nicole Milevsky
Donna Cherry
Linda Tuttle
David S. Sims, Sr.
Cheryl Sims
Maria Lucht
Cheryl Hollis
Lee Ramaley
John Shaban
Sean Donahoe
Dennis Smith
Cynthia Connell

Ken MacPherson
Gustavo Arroyo
L. Roberts
Karen Bernal
Bill Lackemacher
Christine Thomas
Robert Lynch
Diana Rodriguez
Dawn McCarron
Lisa Kaplan

President Fong closed the Public Hearing at 10:58 p.m.

Mr. Scribner had a question for Andrea Price.

Daniel Koen announced that Ms. Price had to leave but asked to respond on her behalf, if that is acceptable to the Board.

Mr. Scribner said he's trying to figure out his points – are you an attorney? Are you versed in education law? Do you understand the Aspire case?

Mr. Koen replied that he is on staff at the California Teachers Association, familiar with education law, and with the Aspire case. He is an attorney, but not a member of the California Bar.

Mr. Scribner stated that Ms. Price wanted to go into further detail while she was speaking and ran out of time. He wanted to understand more of the relationship between the argument that was being made relative to the Fortune proposal and what CTA is prepared to argue and hear in brief with the respect to the deficiencies in the proposal as it relates to the Aspire case.

Mr. Koen stated that as you read through the staff report he thinks the only question that the staff really deferred back to you as a Board is this central issue of what is your authority in this case over approving a charter school in a countywide proposal in light of the availability of local districts to do that. And as your counsel properly warned you, the case is very similar to Aspire. The statute is nearly identical. It applies to a statewide charter as it does to the process of reviewing a countywide charter and what it says is that the burden is on this Board to make the determination that this type of proposal could not be equally well accomplished by local school district chartering as by countywide and the presumption is in favor of local control over that decision whether it be from a statewide perspective or a countywide perspective. The presumption is still in favor of local school districts making that decision and, unlike the statute, in fact, Aspire says that the statute as it applies to county or statewide approval is the opposite of district process where districts are to favor the approval of charter schools. County and state boards have the option to approve or not approve but if they are to approve must show that these services could not be provided by a charter school that is chartered through a local school district. And in response to Board member Geeting's question, Aspire also answered directly the question about does this mean that the county has to determine the services could not be provided by only one district. He thinks you raised a question with the phrase and the statute states only one district and Aspire made clear that it's not an either or choice of county approval or one district. It's county approval or it could be multiple districts, as in the Aspire case. At the time of the appeal, Aspire was running 17 schools chartered by seven local school districts.

Mr. Geeting said he doesn't think Aspire addressed countywide benefit.

Mr. Koen replied that it addressed an almost identical statute related to state approval.

Mr. Geeting said as we had our counsel read it says one district.

Mr. Koen replied that is right. So does the statewide statute refer to one district and that part of the statute is identical in the statewide portion and the countywide portion and Aspire addressed that starting at page 1320 of the decision and it said that even though the statute is not a model of clarity, it cannot be read to mean that the alternative to countywide approval is approval by only one district. What the court said is that the charter petitioner could go to multiple districts and seek to meet its ends through chartering in multiple school districts as alternative to countywide. He thinks that's relevant in this case because as you look at the Fortune proposal she essentially proposes to established three clusters of schools which could be chartered by three independent school districts in the county in those areas where the African American population is centered thereby meeting her desire to reach out to that population equally as well by doing it that way as it could through a countywide petition.

Mr. Cooley asked whether that matter is up for interpretation. Our counsel advised there's a huge gray area in statute. The Fortune School of Education presented evidence to demonstrate that the issue they are trying to rectify could not be done by any one district in a county.

Mr. Koen replied that is a determination for the Board to make. That's clear and it's one that you will have to, as your counsel said, justify when you make it. The burden, he thinks as Aspire and the statute itself and your counsel's words to you were clear, is yours. That's your burden to demonstrate that you don't believe that this proposal could be accomplished through chartering in separate districts.

Mr. Cooley said in the Aspire case two things occurred: one, initially the state board made no findings of fact that the Aspire charter petition could not have been served in local districts around the state; that was the first issue. They went back and rectified that and went to appeal to the higher court and provided some findings and some evidence which the court deemed insufficient on that particular case. This issue of the evidence being a gray area, you can't presume that because the court looked at the findings and the evidence presented in the Aspire case and found them insufficient, that the outcome would be the same for this charter or any other charter or countywide benefit charter that occurs around the state. He respects you and your organization's opinion of explaining to us the court's initial rationale that relates to the Aspire case but he thinks that the comments you stated in your letter really speak to that gray area. He thinks this Board has to weigh that information to make that deliberation.

Mr. Koen agreed that is the decision the Board will have to make, and also make specific findings regarding that determination.

President Fong asked whether the Aspire case is under appeal.

Mr. Koen stated it is not. His understanding is that the appellate court declined to hear it.

Mr. Cooley asked if it's operating.

President Fong asked if that means that decision is final and it sets that precedence.

Mr. Koen replied affirmatively.

President Fong clarified that the Supreme Court refused to hear it so there's no place else for them to appeal.

Mr. Koen replied that is his understanding and suggested the Board have its counsel follow up on that.

Mr. Cooley asked if Aspire is currently running.

Mr. Koen responded that it is. At the time of the case, the court found that Aspire was operating essentially just as well at the time it was operating 17 schools chartered by seven separate school districts throughout the state. The court found that in itself was evidence that Aspire did not need a statewide petition to accomplish its goals.

Mr. Cooley stated he wasn't sure what Mr. Koen's emphasis is: to encourage the Board to make the findings correctly, or to indicate that the process thus far has been inappropriate or illegal in some respect.

Mr. Koen's reply was, "A little bit of both." They didn't see the Aspire case addressed directly in your staff report so they wanted to bring it to your attention because it is a recent case. They also believe that in reading the most recent submissions by Fortune that what she seeks to achieve can be achieved through local chartering of this school in three districts in the county. That appears – the rationale she gives wanting to reach that population, economies of scale, all of those things could equally be met by local chartering of the school. We are also asserting the principle that the statute puts forth which is in favor of local chartering. That is what the countywide chartering statute requires – a presumption in favor of local chartering and the exception of the rule is justified.

Mr. Cooley said your first statement isn't a legal recommendation, that's your perspective.

Mr. Koen said that's his view and our view of the case and the other thing he would like to point out to be clear, the models that have been cited tonight which ones are direct models: PS7, Hardy Brown, St. Hope, Sac High – those are all local schools that are chartered by a local school district. In fact, two of the three of them are chartered by Sac City, which has been called into question here in terms of their ability to manage local charters, yet these two charter schools that were chartered by Sac City are held up as models to be followed.

Mr. Scribner said going forward the practice and the policy is if this Board should move forward this evening, does CTA operate at the regional counsel where if the regional asks or provides a request to the state counsel that state counsel provides legal representation, should they decide that they want to challenge our action?

Mr. Koen replied no. That will be a decision that would be made by CTA's statewide organization essentially regardless – CTA at the statewide level is aware of the letter that was sent to you. It came from their assistant general counsel who represents the entire state, and the Aspire case was litigated by the school boards association as the chief plaintiff of that case so they're aware and they may take some position – he doesn't know what their position is or what their future actions will be, but it will be determined at a regional level.

President Fong said he feels that this is a very important issue and there are gray areas in the statewide application of this to the county and to the districts and we got this letter on January 31 and he believes that submission of the additional data that was given to SCOE was done Friday, the week before that. We really have not had a chance to really get a written legal opinion from our staff attorney. He would like us to do things that would follow the law in making our decision on whether or not the Aspire case actually applies to us. In terms of the time and all the testimony that's been given and for his fellow trustees to give their concerns, he may not be able to move forward until we get a legal opinion from our counsel who will be able to look at this and also some of

the questions about Alameda County, Santa Clara County, and the other one that passed a statewide charter and how that would affect us in terms of what we are being asked to do. He is not saying he wants to delay this. He thinks we need to pause and let our staff and attorneys look at this and give us a legal opinion before we move on because he believes in the rule of law and believes we should do our best to follow that law and since there's no other appeal on this and it is the precedent what we should follow – he wants to know if we are governed by that precedent.

Mr. Cooley objected to that. This letter you are citing came in yesterday. The charter petition has been in several weeks. We have several letters from other organizations and individuals that came in way in advance of this hearing to which our staff has responded. There's actually been a request from our legal staff to the petitioners to further clarify evidence directly on this particular issue. They submitted it in their proposal originally. We have a letter on January 20 from the petitioners giving ten points directly giving evidence to make the justification for this particular finding which our staff has commented on in the staff report that we have before us. For the information that is out there, they've done more than enough research on this particular issue to have a conversation at some point this evening on this and be able to move forward. He asked why CTA waited until the day before the hearing to submit the letter.

Mr. Koen asked to allow him to respond to that question because he thinks it's an appropriate one even though this petition has been apparently officially before the county since December. It does appear there's been a lot of work done on it with county staff prior to that and that the petition has been amended or supplemented since then. As you said with the latest supplementation, in fact the letter that directly addresses these types of questions came in on January 20. We were not privy to that letter – that January 20 clarification letter, until the board packet was made public on January 24 or 25 which was Monday or Tuesday of last week. Our letter came in the following Monday so it was not any intent on our part to bring something in late in the game; it's simply that these particular issues came into this whole process late in the game.

Mr. Cooley said his point is if you want to ask legal staff to go back and research more case law, and that's what he's hearing, there's only one case that is pertinent to this particular issue thus far. He doesn't see the benefit of asking all the folks on the proponents' side and opponents' side that came here and endured until this hour to go back home and delay this hearing for another time when the case law in this particular issue is limited. You and your letters acknowledge that the discretion or decision for this Board is in a very broad gray area in terms of the evidence that we need to find and move forward in this particular issue. So to delay the hearing for that particular issue, he personally objects to that.

Mr. Koen clarified that he didn't acknowledge that the Board's discretion was in a gray area; he just acknowledged it was in your discretion. Their position is that it is not as a gray as your counsel portrays.

Mr. Scribner said he would ask the chair to reconsider allowing the discussion to continue and see if our points of disagreement center upon this one case rift. There are

other issues we need to resolve first and see if we can synthesize it down. It might be helpful for the Board in general. Part of his purpose was simply to highlight that, as he said earlier, when he hears gray it sounds like the attorney full employment act. That simply is a caution he raises for all parties involved here. If the chair would indulge us, we very much would like to discuss some of the other issues associated with this.

President Fong stated that's what the consensus of the Board is so we will continue the deliberation. He asked each of the trustees for their opinions and comments on the particular charter.

Ms. Levy stated she spent a lot of time reading over the petition, reading emails, and fielding phone calls that she received regarding this issue. Her bottom line on this is that although there are good arguments on both sides, she thinks we should adopt the findings of fact from SCOE staff. Her inclination at this point is to approve the charter with the conditions as expressed by our counsel.

Mr. Scribner stated he was hoping to ask a few more questions from some of our public speakers but he sees that's not where the chair wants to go at the moment. He thinks everyone is well intentioned this evening and that people genuinely want to serve the students. He knows his districts; he knows their commitment to their students; he knows his schools – Jessie Baker, Leimbach, Prairie, Reith, Jackman – the ones that they target in their areas. He has been to those schools. He knows those teachers. He sees how they show up early and they leave late. He sees their commitment, and while he has every belief that this is well-intentioned, he does not believe that Elk Grove is deserving of the kind of leveling of the charges they've tried when he knows the improvements they've made to their schools and programs. He knows his board down there. He knows their commitment. He knows how they have redirected resources to those schools to improve them and help those kids. He believes in those kids and those parents. He has seen changes. He lived in Valley Hi. He knows what's going on. He is becoming offended at some of tonight's statements, however closely held. Those kids down there are achieving and making their strides and to say that we are going to raid that district to strip them of their other resources. They have the programs before and after school; they have the teachers that stay around and work with those kids. This may undercut their performance by denying them those resources that are already so short now, and that continue to be short, whether that June ballot measure passes or not. God help us if it doesn't, but even if it does pass, you're still talking a 20-25 million dollars hit in Elk Grove Unified. He is asking you to protect his community, his kids – give them that chance to succeed; do not raid our community for this proposal. Maybe there's an appropriate pilot and a way to continue to explore this in a limited manner. He can't believe that he is that different from those we have heard from tonight, and that the commitment of everybody here is so absolute that there is no way to find that middle position. That these kids are going to be served one way or another, perhaps through a pilot project that continues the vision and commitment of the Fortune movement, but he is certainly asking on behalf of his district and his kids because we represent all of them. He has seen the progress down there. He's seen the commitment. He is asking that you do not raid his district. There are other protections if this Board really believes that they have to go forward, in terms of protecting this organization and everyone else, and increasing the transparency and the accountability.

Whether its conflict of interest or the provision of the Williams Act, if it walks like a duck, quacks like a duck, it's a duck; it's like a public agency because those are the public funds. We owe it to ourselves and everybody involved in that to make sure that we have that transparency and accountability. If that's where this Board really wants to go, but please do not raid his community – do not cut back on all those other kids, not when the progress is being made.

Ms. Brown said she appreciates the people who took time and sent comments. This is a situation we are facing today in education and, regardless of whom they are, a large group of youngsters with little chance in our society - she believes that we can help them. We just have to do it. She worries that it's been so long and we've lost so many children in that process. The total would be less than four percent of students countywide. It's not like we're taking the whole number of students. She looked at the program, particularly the instructional program, and she became excited because those are things we know work with kids. They came together as a whole program here, which is very difficult to do – extended a time, Saturday sessions, disaggregating data and giving teachers the time to sit and talk together, to go to parents homes and bring them in, try to solve some of the problems – so when she looked at that program she felt it was different. She doesn't look at it as being for charters or against charters, but would this be a good program for these students at this time. In doing that, she supports the idea. It's not like we're going to say okay do it, goodbye, and we will never look at you again. There are progressive steps here and we will actually be able to have more supervision over what takes place at that school than we do in most schools. So, without trying to decide who is good and bad in this, looking at a situation that needs a remedy, thinking here is a program that brings all those things together that we try to incorporate in schools which are typically found in different schools. It's just they're here as a whole. It's great to visit a school and see the culture of a school where kids are happy and proud and successful; where they aren't artificially complimented on improvements, but they are truly reaching a point that will make a difference. She felt that. That was an opportunity that she needed to support. She recognizes what is being said about losing money in districts. The money will still be in the county. Hopefully we will not have 31% of the students dropping out. If we looked at our dropout rate and the amount of money that we're losing because of dropouts, we might come out even by the end. She has given this much thought and she wished she could make everybody happy. She would be a yes at this point. Honestly, she doesn't have quite the same interpretation of the legal part. It says one district so she will be interested in seeing that interpretation, but she doesn't have quite the same concern about that wording not allowing a county to supervise a group.

Mr. Cooley said there have been a lot of viewpoints this evening from sides, our staff, the petitioners, Board members. He agrees with what's been said by his fellow trustees, that he doesn't think this is an issue of right, or wrong, or that one side cares about kids more than the other side. He doesn't think that this is a vote or a decision on public education, teacher unions, etc. He views charter schools as public schools. He respects his colleague Mr. Scribner, who actually suggested he run for this Board eleven years ago, and he doesn't regard this proposal a raid on the communities or districts, or his trustee area in Elk Grove. He thinks the point was well stated in the information presented that in 2024 1.9% of all students in Sacramento County will be

educated by this school system. If we can't take 1.9% of our students and try a different approach with a successful track record, there is no innovation to public education. It's almost sad that it takes a proposal to benefit our students – to bring all out facets of education in our county. He sees trustees that he has never seen before in this building tonight. Districts are weighing in on the issues that we consider tonight. It's ironic that the employees of the Fortune School of Education, who are qualified and trained educational experts, have to defend great data, test scores, and high achievement performances of students; and other districts that are not performing well and, in some cases failing students, don't have to defend that behavior. Looking at the goal of the charter school and the number of students that will ultimately be served by the school, 1.9% of the students in the county, those 1.9% of students themselves won't close the achievement gap, but the sharing of information with the successful charter schools, with our districts, with SCOE, with all of us educational leaders will work to close this achievement gap. We have a track record of leadership here in the county office of education of working with districts, working with other county offices in our region to help advance and close that achievement gap. We have a great track record. His issue with some of the charters is that this achievement gap didn't occur in the last year, five years, ten years; it's been endemic over several decades. He thinks there's no argument, and even the folks from the opposition side of this proposal would agree, that parts of our education system are antiquated and if we really want our students to compete in the global market, we need to embrace new innovative reforms that will shift and move education. This population of students that is underachieving, whether African American, Latino, Asian or any stripe or color, can't afford to wait any longer for reform. It happens to be that this population is overwhelmingly African American. Today in California there is a 12.5% unemployment rate. The unemployment rate among African Americans is nearly double if not higher. The graduation percentages statewide and in Sacramento County are the opposite. Almost 40% of African Americans don't graduate high school, and there's a direct correlation between that, their employability, and this recession that we are stuck in. Trustee Brown was right when she stated that students graduating with an education are employable and can return to their communities to create business and be that workforce for tomorrow, and this creates more resources for all students and a great educational system. It's tough for people to get their arms around because it's a long time span but this achievement gap has been systemic here in this county, this state, and this nation for over 50 years. We want to take 1.9% of students over the next 14 years and turn that ship around. When we approve this petition tonight, it won't be the last time that the Fortune School of Education staff is going to be working with SCOE. It's going to be an ongoing relationship. And he wants his district partners to be part of that process. It's a collaborative, community effort to make sure these schools are effective. There is accountability, and he's sure that they would welcome or entertain being regulated and reviewed under the Williams Act. He thinks charter schools ought to be held to the same standard as our public schools. He supports the petition, and supports moving forward on it tonight. There have been hundreds of hours of work on both sides. We've gone too far tonight to pack it up and come back to make a decision on another day. He wanted to thank everyone for their civil discourse tonight. He was watching the news before coming here; in Egypt, people are killing each other in the streets of Cairo and all throughout the country for democracy and freedom. We can sit here tonight in a civil way and have a spirited conversation for the future of our children and he thinks we

owe it to those people around the world that stand up for peaceful free discourse and democracy to make a decision tonight.

Mr. Rivas stated that as a Latino, this is a very emotional issue for him. He's been working on issues related to the achievement gap for a couple of decades. He sees at PS7 a successful school and model with over 79% African American students, 76% are socio-economically disadvantaged, and an 843 API score. The strategies there are informed by research; they're doing things like parental involvement, supplemental instruction, school culture, high expectations, everything that you hear from researchers talk about what we need in order to tackle the achievement gap. At the same time, he did do his due diligence to investigate all the allegations about creaming and students being counseled out and found no evidence of it. There's a choice made by parents who are engaged to go there. He worries about the kids who don't have the parents who are engaged and are left behind. He's worried about diversion of resources and the resources that are available in the broader system to serve the other African Americans who won't be at the Fortune Programs, our Latino kids and South East Asian kids. He's concerned about the ability of the entire system to serve the disadvantaged and the low achievers. It sounds like the easy way out. He generally thinks it is a better process for petitions for charter schools to be considered on a school by school, district by district basis; it integrates the school into the academic plan for the students and the community. What he would like to do is put on the table the option of approving two schools with Ms. Fortune still being able to petition districts for the remaining eight. We would still be taking a step in the right direction.

Mr. Geeting said that was an interesting proposal. He has to give some thought as to how that would work. One thing he wants to address right away is the idea that this charter is somehow a surprise. He wants to commend Superintendent Dave Gordon for when he first learned about this charter last spring putting it on the superintendent's roundtable in May 2010 and telling all the superintendents in the county that this is very important; they need to look at this. A special session was held in June. Margaret Fortune addressed all the superintendents – the opportunity was provided. There were some superintendents of districts that couldn't make the special meeting, but suddenly we get resolutions saying how we don't have an effective process. He wants to dispute that at the outset. He wants everybody to know that his wife and he are firm believers in neighborhood schools. We gave our neighborhood school our most prized possessions – our own children. He is also a firm believer in the ideas that Bill Camp spoke about – creating pathways for teacher aides to move into the teaching profession. He doesn't see it in relation to this for or against this school, but that very much impressed him. He did sense that we lived the battle over charter schools and whether they are a good thing or not, but that is not the question before us. The legislature gave us rules to follow; in the state's case went to the court, and we had a decision which has some relationship to what we are doing here. Ms. Stinson was really good about refocusing back on these findings that we need to make. First, we need to find that the school will offer educational services to a population that will benefit from the services. He has to be guided by our staff who said yes. That's true – they will benefit from these services. Second, we need to find that students cannot be served as well by a charter school that operates in only one school district in the county. He is comfortable in saying that this proposal cannot be replicated by going to one district or to multiple districts in our

county. The reason is that the geographic limitations of charter schools were changed in 2002, after ten years when any district could charter a school and the school could open up anywhere in the state. We lived with that for ten years. Then the legislature changed the deal and the school districts got what they asked for: if a district approves a charter school, the school must locate in that district and that district's students must get priority over the surrounding districts, any other students that come in from outside. This is very clearly a regional proposal that will draw students from all over. Look at the signatures, they don't come from one district, they come from lots of different districts in the county. If the school were to be chartered, for example, to the Sacramento City Unified School District (SCUSD), then the residents of the SCUSD would be required to be given priority over students from, for example, Elk Grove Unified School District (EGUSD); so if you live on one side of Lawnwood Drive you have priority and you get into the school. If you live on the other side of Lawnwood Drive, you don't have priority and you may not get into the school. That requires that parents be sorted into two tiers. If we are going to do this, he finds it difficult to live with some of the parents that he represents having priority over other parents. He thinks the proposal is proper in coming to us because all the parents in the county should have an equal opportunity at enrolling in such a school as this because he sees it as a regional proposal. He is comfortable with those findings. He is comfortable with the educational program. He's not leaning towards a 10 year proposal, but he is comfortable beginning it, with the charter coming back and seeing us regularly, we monitor closely the concerns and reservations that people have talked about here tonight. He has a comfort level with the findings. He's comfortable that we can make those findings – he can make those findings. He could vote for that. The legislature made the policy decision and it empowered not Rex Fortune, not Margaret Fortune, they have no power. Their power derives from the signatories – the hundred twenty-three parents from many different districts in the county who signed the petition; that's what it enables it to be before us tonight. What does he tell those hundred twenty-three who were empowered by our state legislature to sign such a petition and to bring it forward? Given the set of facts that we have and the professional analysis that our staff has done, he is leaning towards being favorable with it for a limited term and a lot of oversight.

Mr. Scribner stated that, setting his district representation aside for the moment – the discussion that Mr. Rivas and Mr. Geeting present different facets here in terms of saying we should look at expanding some services and educational roles while trying to fashion something that the Board can embrace and find a consensus on.

Mr. Cooley commented that we have been focused on the findings and have not yet focused on the terms and conditions of the MOU. He suggested having a thorough discussion of the proposed conditions that are proposed and any other conditions in detail. An MOU is going to come back to this Board and we can design a system of engagement, oversight, and involvement with the charter. He knows the charter has their Board of Directors, the Board of Trustees, and the Board of Regents, if you will, for the schools. When we approved the NCCT charter, we had a Sacramento County Board of Education member on that board to have a direct conduit between the charter and SCOE. We had other issues early on that the petitioners of that particular charter decided they didn't feel comfortable with and decided on their own to withdraw. It wasn't due to any SCOE lack of oversight. There are a couple items he has issues

with, but he's very comfortable with the conditions staff submitted. We could discuss other items that we may want to see fleshed out in the MOU. Some of that could involve some engagement with the districts. We have heard a lot of discussion, county office and local decisions, we're in Sacramento County not Washington, DC. We are pretty local and pretty engaged with our districts on a routine basis. We talk to our staff; they deal with district counterparts on a day to day basis. A lot of us as trustees know the other trustees personally. We live here in Sacramento County. We are very involved in our districts. We happen to be meeting in the Folsom Cordova district this evening; he is heavily engaged in the ongoing operations in Folsom Cordova on a lot of different levels. He wants to dispel this myth of a top down approach. We are involved in what's going on.

President Fong wanted to say that he commends everyone who came here today to speak in favor or against the charter. He does support all the work that teachers do, both in charters and public schools; our administrators, superintendents, and all of the trustees that take the time to run for office and be accountable to the people that elected them in their district. There is a problem with the achievement gap. The testing is one way to find out how people are learning. He really thinks that it is probably one of the worst ways to do it because it's basically memorizing and regurgitating things to pass a test. He spent ten years in Asia and the families there send their kids to the United States to get an education, to be the creative people to go back to their countries to make it a better country. They didn't send their kids here to memorize and regurgitate what they've learn and take those tests, but their parents want their kids to be something better. They want them to be the creative people that can do something to change society and yet they are changing their education system to be more creative and the United States is kind of going backwards; we are making our kids learn things by memory to take tests. There's an achievement gap in many different parts of our society that charade at the situation that what we have here today. It is not that the schools are at fault or the teachers are at fault. Some people talked about parents being the first teachers of their kids and the most important teachers in the lives of their children. He thinks parents have some responsibility with what has happened with the achievement gap. People that are going into gangs, people that don't have a future, he thinks it's not just the education system; that is the topic that we are talking about. He does believe that there is a role for parents and there is a role for individuals to make their communities better. The kinds of people who have taken over certain parts of our community have done things to make the environment, the community, the kids, and schools unsafe. There may be a real achievement gap; we need to talk about integrating and having everybody at the table so that we can learn together. The best way to do this is be together in classrooms at a young age so we can meet people from different cultures and religions so that we can get along. It would be unfortunate in 20 years if we had to implement ethnic study classes in our schools, colleges, and universities to learn how to get along. He still thinks that Brown versus Board of Education is the law of the land. We as educators have the courage to say it is the integration that makes us better and makes us good as a people. We cannot step backwards and say because there's one group with a bigger problem than another group that we should separate this group into their own school, and then say off to the side that in order to meet the letter of the law - everybody's welcome. If PS7 did their outreach and marketing and ended up with 79% African American enrollment, he

doesn't know if they did it in a way that geared towards producing this result or if they tried to reach everybody. Then you have a second school, Hardy Brown, which represents the diversity of the district in which they're chartering. He doesn't know if the marketing and the outreach that was done produced this or it just happened that was the only group of people that were interested because people were told that this is the focus of the group of the school and you're welcome. He doesn't know if that's how it happened. If we approve this charter, he has some serious concerns that schools reflect the diversity of Sacramento County and the district where they are located. In Sacramento County, it's much different from Sac City or even Elk Grove. To ask us to approve a school that is heavily segregated flies in the face of the education policy that has been handed to us by the Supreme Court. He finds it very difficult and to ask us to do this is wrong. PS7 did not mention the focus was African Americans. From what he has read about Hardy Brown, it did not either, but for this one you are actually asking to intentionally produce segregated schools. When that happens because of natural housing patterns, it's a little different. We could try to mitigate this by having very strong MOUs but then if the focus is still on one particular group he doesn't know how it can be bridged with a chartering group that says this is who we want to work with. We want to put things in place that would make them be more diverse when they may not want to because their focus is particular on one group. He does support local control of the districts. He read the brief and court case and because he's not a lawyer he can't really say what is similar and relevant for a statewide charter and a countywide charter. He's concerned enough about a lawsuit to give him pause. There is time now to make sure we are following the law in making our decision. We will make our decision public. For this reason, we need some legal advice from our attorney to make sure we are doing what we need to do according to law. PS7's replication is a school in Sac City; the petitioners could go to Sac City and ask them to replicate without going through this whole charter process. The school would be in Sac City and would be able to draw students from other districts because charter schools can draw from anywhere in the county and state. There's nothing that will prevent them from applying for a charter from each of the three or four districts in which they are planning to develop their children zones. He understands that Sac City is a very friendly charter district and so is Natomas. He thinks part of those districts' financial problem is that they have many charters. In terms of the two trustees who want to approve two schools now – if we move in that direction – he wants us to consider the replication process. He's had some experience in replicating health education programs. It takes a while to get results. Charters are granted for a five year period. There is plenty of time within those five years to find out if the replication process takes hold. You may not get the results until the fourth year, but opening your first school and waiting until the fourth year to open up your second one, and then in the fifth year we can review closely, at which time they may want to ask for more charters. If we are going to charter, he would like to look at the replication process. We must be prudent with public funds so we know that something is really successful before we actually approve additional schools.

Mr. Cooley stated that there are four findings that the Board has to make before we get to a final vote on the petition and a discussion on any conditions. He would like to move forward with making some motions on these findings. He thinks there's some consensus on a majority of them. Let's get some votes and move this discussion forward. He moves the staff recommendation on the following finding of fact, based

upon the petitioners' intended goal and the data provided, that the Sacramento County Board of Education makes the required finding under EC section 47605.6(a)1 that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from the services that cannot be served as well by a charter school that operates in only one school district in the county.

Ms. Stinson pointed out that Mr. Cooley combined two of the motions. She recommends that the Board make each of these findings individually and there needs to be evidence in the record supporting the findings.

MOTION 1 (12:10 a.m. on February 2, 2011)

Mr. Cooley moved and Ms. Levy seconded the motion finding that the Sacramento County Board of Education is satisfied that granting the Fortune charter is consistent with sound educational practice.

Mr. Cooley said that from his perspective, based on reading the staff report and hearing staff testimony regarding this particular finding, the Fortune Charter School is consistent with sound educational practices.

Ms. Brown asked about the findings of fact or the details. She wanted to know whether those have to be specified right now in the motion or whether that is something that we can call out of our notes.

Mr. Cooley replied he doesn't think so.

Ms. Brown stated you said we have to detail the reasons behind the support for the motion.

Mr. Cooley replied not on that finding. The finding that we are going to get to for example on number two was the one for which counsel advised us that on that particular finding we had enter into the record the data to support our finding.

President Fong stated that our counsel can speak for herself in giving us guidance on how to proceed. If you want to make the motions to move this charter forward, in front of you are five separate motions that need to be made in order to meet the requirements.

Mr. Cooley said he moved it and it was seconded. He thinks we are now in the discussion phase of adding additional evidence to support that finding. He welcomes counsel to weigh in on it. He believes that making the finding that the charter is consistent with sound educational practices doesn't require additional supporting data on the record. He thinks the Board either accepts the staff recommendation or doesn't. That's the discretion of the Board. That's for us to make that decision if we want to add that in there.

Ms. Stinson stated that the Board must make it clear that its findings are based on the testimony heard today, correspondence received, letters submitted to you today, as well

as the staff report. There needs to be facts to support each of the findings and you need to make it clear.

Superintendent Gordon said he would also add comments of the Board itself tonight. For example, Mr. Geeting had some comments on the countywide charter issue – that would all be part of the record.

Mr. Cooley explained his rationale for making this motion would be the evidence provided by the petitioners, evaluated and commented by our staff that the Fortune charter petition is consistent with sound educational practices. From his perspective that would be the supporting evidence to make this finding.

Mr. Scribner said this is not how he is reading this language. Because this is a countywide charter application, this Board has the ability and the responsibility to consider other factors beyond those delineated in a usual charter appeal that this Board would consider. We are able to look at the impact on other districts and services or adverse selection. The fact is that the 1.9% of students isn't from every district in this county; it much more greatly affects in certain districts – not San Juan, not Folsom Cordova, not Galt. It's limited generally to the four districts we've heard from. It is not accurate to him to say this motion is purely about the Fortune charter. To him, this motion says we're not going to take the negative impacts on the other districts into account. This motion is not accurate.

Mr. Cooley said he would slightly disagree that there are other motions forthcoming and a final motion on the overall approval of the charter. County boards have the ability to discretionally decide that based on some of the criteria you just mentioned. This particular finding is very specific as it relates to the sound educational practices proposed in the charter, which to him are the educational program and finances that were submitted. He believes the other items Mr. Scribner raised should be discussed when we get to the question of the charter as a whole and he thinks that's where we differ as county board or local school district.

Mr. Scribner said we will agree to disagree. It's a very sweeping statement and one he is not prepared to support.

Mr. Geeting asked if it would help to add, at the conclusion of the existing sentence, "consistent with sound educational practice based upon review of the petition itself, all supplementary materials, the staff report and the testimony received considered in its totality."

Ms. Stinson stated she thinks that improves it.

Mr. Cooley stated he would accept that as the maker of the motion as a friendly amendment.

President Fong asked if Trustee Geeting is presenting this in response to Trustee Scribner's concerns.

Mr. Scribner asked what Mr. Geeting's language was again.

Mr. Geeting repeated his proposed language.

Mr. Cooley stated that is not his motion. He understands that going through this process of approval of the charter is required by Education Code.

Ms. Stinson replied yes, this comes directly from the Education Code. It's one of the preliminary findings but she wants to make sure she understands Trustee Scribner and that we are taking everything into account, particularly since it's after midnight.

Mr. Scribner said there is significant disagreement on this. The language itself does not only focus on the Fortune charter but seems to also disregard the other issues brought up relative to negative impacts on the other districts; or the fact that one trustee from another district stated nothing was brought to him, though he would have been willing to have accept a charter in his district. We seem to have set aside a lot of other issues in arriving at the more generalistic language of this statement, rather than focusing it specifically at the charter itself - whether the charter, absent all other considerations, is in and of itself a sound program.

Ms. Stinson asked if Mr. Scribner is suggesting that it be made clearer that this is related to the Fortune School of Education Countywide Charter School.

Mr. Scribner asked how that language would reflect that situation if we were operating in a vacuum and all we had was the charter in front of us. There are issues that other Board members have where they take exception because of its impact.

Mr. Cooley acknowledged Mr. Scribner's point but said at some point you have to agree or disagree that the finding has either been met or it hasn't been met. This isn't the first time we've seen these set of findings. This is the process to move towards a final decision. He's struggling to understand how to take in all the points raised and jam them it into a motion. He thinks the points that Mr. Geeting brought are great points to add on. He is willing to accept that if he's making it as an amendment to the motion.

Mr. Geeting said he offered it to our counsel to see if it made any difference. She did think marginally it provided some foundation. He will offer that as consideration as the maker of the motion.

Ms. Stinson said she sees this as one motion and a series of many. This isn't the ultimate motion.

President Fong said he would like to caution trustees at this time that we are assuming to make motions and decisions and we still have uncertainty in terms of possible liability and a challenge to this decision based upon the Aspire decision. He is uncomfortable moving forward in making these decisions without getting the best advice from counsel and we haven't gotten that advice as far as he is aware of. He wants to look at this closer so we can perhaps avoid spending hundreds of thousands dollars of our funds to defend us. It will not come from some insurance policy that we have if we are taken into

court; it will come out of our general fund to defend this. If we win we don't pay the other party; however if we lose we could end up paying the other parties legal expenses. He feels that we ought to take a closer look and get an opinion on this particular lawsuit's application to us as a statement.

Superintendent Gordon asked counsel to read the finding as amended for motion one.

Mr. Cooley called for the question.

Read by Ms. Stinson: Mr. Cooley moved and Ms. Levy seconded the motion finding that the Sacramento County Board of Education is satisfied that granting the Fortune School of Education Countywide Charter Petition is consistent with sound educational practice based upon review of the petition, all supplemental materials, the staff report, and the testimony received at the public hearing.

Roll call vote:

Mr. Scriber – no
Mr. Rivas – aye
Ms. Levy – aye
Mr. Geeting – aye
Mr. Cooley – aye
Ms. Brown – aye
President Fong – no

Motion carried 5 ayes, 2 noes (Scribner, Fong)

MOTION 2

Mr. Cooley moved and Ms. Brown seconded the motion that the Board is satisfied that the charter school has a reasonable justification for why it could not be established by a petition to a school district pursuant to EC section 47605.

Mr. Cooley thought Trustee Geeting said it most eloquently as he described his rationale and also the petitioner's rationale for justifying this finding. The crux of the discussion this evening has been whether this county board, or any county board for that matter, has the authority and jurisdiction to approve this charter versus it going to a district. He thinks the information is clear that this issue of the African American achievement gap in Sacramento County is systemic across county lines and not relegated to one particular county. One district does not have the authority to grant a charter school in another district. Also, from his perspective, going district by district to get a different LEA to be your authorizing agency really undercuts the ability to a seamless system of schools that operates under a core set of issues universal to have a countywide system. To go district by district and deal with different MOUs, one may get approval, one may not get approval, and he thinks the statute was intended to allow a county board of education to be the local educational agency to be the authorizing district to approve a charter. In looking at SCOE's work in ROP or SELPA, both have regional focuses to focus resources and attention to a special group of individuals. In

SELPA, it is those with special education needs. In ROP, we pull together counties and districts to provide workforce readiness training and skilled development to address a regional issue. This charter petition isn't that much different. He thinks the information provided by the petitioners with ten points of why they felt it necessary to have a countywide benefit charter meet the threshold. They provided ample evidence for us to defend ourselves in the event of a lawsuit. He finds it very puzzling that while everyone in this room this evening said we're here for the children, there are folks dangling a lawsuit in our face if we approve this charter. A threat to stop the progress of children being educated is really counter to the success of PS7 here in our district; instead, we should embrace this charter and find ways to work with it. That's his personal consideration. He would appreciate your aye vote.

Ms. Brown asked if it would be stipulated that providing an instructional program that's consistent across the Board, that provides higher standards or additional requirements like career projects and college visitations and all of that, would that be a part of this finding as well.

Mr. Cooley said he would welcome additional language that supports this. He thinks this is the one finding about which counsel was adamant that we need to make sure we've covered ourselves.

Mr. Cooley said that he would support adding that justification to this particular motion.

Ms. Brown asked whether we could add all aspects that have been discussed by the staff to the motion. Ms. Stinson said we could do something similar to what we did for the other motion, which is base it upon the review of the petition, all supplemental materials, and the staff report, the testimony and Board comments received at the public hearing. She would say that anything mentioned in the staff report would be included in that. If there's anything else that anybody has on this issue that hasn't already been discussed it would be very helpful to talk about it now because this is an important issue and important finding and as we mentioned there's semi-relevant guidance out there.

Ms. Brown thinks it's important that the vision of the charter be maintained rather than it being tweaked throughout all the districts because again, you're breaking the whole and we are looking at the whole here that has been successful.

Ms. Stinson wants to read a couple of sentences from the lawsuit so the Board is fully aware of what the lawsuit said. Ultimately, what the court found was there's nothing in the statute, the charter schools act, or the legislative history that would support a conclusion that a statewide benefits charter cannot be achieved under a series of local charters. What the court ended up finding was that the same benefits could have been achieved by going to district to district to district. The court also found that the charter school act reflects an intent to promote district chartered schools and local oversight, allowing limited exceptions; and so it specifically rejected the state board's arguments that the statewide statute was adopted to provide a mechanism for charter school operators to avoid the patchwork quilt of local school districts approval. In rejecting the arguments made by Aspire and the state board, the court held that the 2002 amendments to the charter schools act were specifically designed to encourage locally

chartered schools, and to propose geographic restrictions on charter school operations that would help clarify a district's sovereignty over public education provided within its boundaries, and enhance oversight of charter schools. With that in mind, the Board has to make very specific findings as to why this could not go to each school district. Mr. Geeting has spoken to some of the reasons why he believes it's appropriate to do it in this way. And if anybody else has anything to add, now is the time to do it.

Mr. Cooley stated he is trying to understand the difference between this motion and number four. They seem very similar.

Ms. Stinson explained they are from different parts of the Education Code statute. It has a slightly different emphasis.

Mr. Cooley said it's stating the same thing just reworded.

Ms. Stinson replied that it depends on whether you think there's a difference between "could not" and "served as well by." Those are the major differences.

Ms. Brown said she is still struggling with comparing this statewide charter with a county charter. She would agree San Diego is not very similar to Siskiyou County, but we're in a county where we do a lot of things together. Geographically, it would seem like if they added specifics it would be much more difficult to support that statewide. She thinks the counties are a very different situation particularly because the county provides a lot of services for all districts within the county. That's a very common model. That is why she is struggling – she doesn't see the similarities.

President Fong asked if counsel could give us clarification of the examples of ROP and SELPA and asked whether the fact that we do a lot of things together with the other districts has any relevance to the decision that was made.

Ms. Stinson said it potentially could. The court did not specifically consider that. It was looking at a statewide benefit charter and the reason it is relevant is because the language is similar and because it found that statewide charters are the exception to the rule of local district charters. The countywide statute has many similarities to the statewide charter statute, that's why that case is relevant. At the same time, there are differences between the state and county and the services we provide. Doing something statewide is very different than doing it countywide and that is something you should consider as part of the findings.

Mr. Scribner stated the key distinction here when we talk about SELPA and ROP is that those are cooperative programs. Our local district boards are elected by their own voters for their own sovereignty. If we force this upon them over their objections, we are violating that local district's sovereignty – that local district's ability to govern itself and to provide for its own constituency. That's the key distinction between talking about ROP or SELPA and what we're attempting to do here this evening. Let's note that key distinction. They opposed here tonight. They didn't say yes we want it. They came out here to specifically inform us. They took four more actions. It wasn't a private conversation. They put themselves on the record. Let's understand that distinction because it's very different.

Mr. Cooley said a lot of us weren't around when the SELPA law was enacted and when ROP was enacted. We've had a lot of districts that have pulled out of our county SELPA and started their own SELPA in recent history, for whatever reason. We don't know when the SELPA law was enacted. We don't know when ROP on a regional basis was enacted or what the thoughts of local districts were at the time. As for him as an individual trustee he thinks the evidence is compelling enough to agree with the petitioners that this could not be as successful going district by district or by having this population served by one district in the county as it could by having a countywide benefit charter. He's going to professionally agree to disagree with the districts that presented this evening. It's clear that districts have been financially hit for the last several years and may face significant hits in the future as well as SCOE. When someone's back is against the wall they tend to fight with everything they can whether it's rational or irrational. We need to look at this situation and look at the systemic achievement gap for this population. This isn't something that occurred the last several years. This has been going on since any of us were in this room. It's been going on for a very long time. It's always going to be one argument or another. It's not a great time to do it. Well, we're making strides give us another couple of years to fix the issue. They should have come to us in the first place. It's a lot of excuses to some degree but the issue exists and persists today. We have the ability tonight to begin to rectify that; begin to put something in place that's going to help close that gap. He doesn't think this will be the end of the world. We're looking at 1.9% students countywide between now and 2024 that are going to be served. Districts could lose more than 1.9% of students due to budget cuts and parents pulling their kids out to go to private school, home school, or moving out of the county. He doesn't agree that the world is going to end when these charter schools get built.

Ms. Brown stated she doesn't think PS7 is doing anything that we haven't heard about. She doesn't believe that the model is doing anything new to educational research or anything that they have created that none of us has ever heard about before and that they are experimenting with. Those ideas about using data not to judge people but to help you and form your instruction the next day – extended instructional time is necessary when a child is far behind, as much as we dislike the state testing. The state standards are not the ceiling; they are the floor as much as we dislike the state testing. The state standards are not the ceiling; they are the floorboard, if not the basement. Those are just basic skills that the science teacher wants students to have so they can learn their content. She thinks the opportunity for this to have happened has been there in all schools for quite a while. She thinks what this is doing is giving a shove to that, and then to do it district by district and still struggle with the pace that a district might want to select to do it will not be supportive for success of that program. She thinks that's another countywide reason that this is different.

Mr. Geeting said, in response to Trustee Scribner, that it's the legislature that made the policy decision for regional charters to come to county boards – elected boards – elected local education boards. They could have added that the county board would have to await the decisions of all the districts in the county. The legislature chose not to do that. That's a proposal in the city district's resolution. They could take that to Darrell Steinberg or to Roger Dickinson – maybe they would be interested in carrying such a

bill, but it's not the statute that we have before us now. He did want to speak specifically to this motion. We have a motion on the floor.

Ms. Stinson read aloud: Trustee Cooley moved and Trustee Brown seconded the motion finding that the Board is satisfied that the Fortune School of Education Charter School petitioner has reasonable justification for why it could not be established by a petition to a school district pursuant to EC Section 47605 based upon review of the petition, all supplemental materials, the staff report, testimony, and Board comments received at the public hearing.

Mr. Geeting would like to make sure that the record reflects the reason that he believes that to be reasonable. He would be comfortable voting for that motion because of the specific wording in the statute that this charter as proposed could not be established by a petition to a district because, if a charter school is approved by a district, it's required to give preference to students who reside in the district and prohibited from considering equally for enrollment, applications on behalf of students who reside outside the district. So this proposal is a regional proposal that could not be established by going to a district.

Mr. Cooley said he has no problem supplementing that.

Mr. Geeting said he wanted to make it clear so in case what he said before was too murky. He wanted to make it sharp.

Mr. Cooley said as the maker of the motion he would accept adding that language to the motion and he would call the question.

President Fong said a few comments need to be made.

Mr. Cooley said he would allow this but he called for the question. If there's disagreement on calling for the question you have to take a vote, but he doesn't want to get too bogged down. He thinks we've beaten it to death and would like to move forward.

President Fong thought that once charter schools are open they can take anybody from anywhere in the county and state. It doesn't preclude from accepting.

Ms. Stinson replied once a charter school is open it can take anybody from anywhere; however, for a district wide charter, preference is given to students who live within that district. With a countywide charter, preference is given to students who live within the county. Those are preferences that are specified in the statute and they're different in the district statute versus the countywide statute.

MOTION 2

Trustee Cooley moved and Trustee Brown seconded the motion finding that the Board is satisfied that the Fortune School of Education Charter School has reasonable justification for why it could not be established by a petition to a school district pursuant to Education Code Section 47605 based upon review of the petition, all supplementary materials, the staff report, testimony, and Board comments received at the public hearing.

Roll call vote:

Mr. Scribner – no
Mr. Rivas – aye
Ms. Levy – aye
Mr. Geeting – aye
Mr. Cooley – aye
Ms. Brown – aye
President Fong – no

Motion carried 5 ayes, 2 noes (Scribner, Fong)

MOTION 3

Mr. Scribner moved, and Mr. Cooley seconded the motion.

Mr. Geeting said he thinks the same addition that Ms. Stinson offered to the previous motion might be a good addition for this one.

Mr. Scribner said the maker of the motion and the second agreed.

Ms. Stinson read aloud: Trustee Scribner moved and Trustee Cooley seconded the motion that the Board find that the educational services to be provided by the Fortune School of Education Charter School will offer services to a pupil population that will benefit from those services based upon review of the petition, all supplemental materials, the staff report, testimony, and Board comments received at the public hearing.

Roll call vote:

Mr. Scribner – aye
Mr. Rivas – aye
Ms. Levy – aye
Mr. Geeting – aye
Mr. Cooley – aye
Ms. Brown – aye
President Fong – aye

Motion carried unanimously.

MOTION 4 (a)

Mr. Scribner moved and Mr. Fong seconded the motion that the Sacramento County Board of Education deny the Fortune School of Education countywide charter petition.

Mr. Cooley said he would regard this very similar to the second finding. He thinks Mr. Geeting's point that a district approving this charter would have to give preference to students in that district negates the ability to address a countywide issue. The

proponents have brought forth the countywide benefit charter because they intend to address a countywide issue is the clearest point he's heard this evening. The evidence we included in the record to support our positive vote of the second finding stands for this one as well. It's worded a little differently. He views them very similarly.

Mr. Scribner stated there is nothing in the record which says the petitioners were rejected at those districts or that there was a public discussion at any one of those districts regarding this application before it was brought here. There is nothing in the record that supports that finding.

Mr. Cooley said there were several community meetings in the areas in which the petitioners plan to locate school sites, from the districts. They were advertised in the Sacramento Bee and the Sacramento Observer. SCOE staff presented the data that supports the existence of the achievement gap in Sacramento County. Mr. Geeting pointed out last spring there was a countywide district superintendents meeting where this proposal was presented to all the district superintendents. In June, there was another opportunity for district superintendents to hear the proposal. The district superintendents had an opportunity to speak. It's been approaching for almost a year.

Mr. Scribner said he is not disagreeing with Mr. Cooley. His point is that in the public record there is no request from the chartering organization to speak with the districts. Any constituent could have requested one board member to request the item to be put on their agenda. There is not one item in the public record that supports this finding. There are community hearings where everyone was free to engage but there is nothing before any public body until now that supports this finding.

Mr. Cooley replied that to ask the petitioners to go to every district to ask for an agenda item discussion on their petition negates the ability to have a countywide benefit charter. If we are going to require them to go to every district as an informational item where the public can see the agenda and speak on it district by district, then they might as well go to each district and ask for a vote. Every district superintendent in this county was informed of this issue last spring and had an opportunity to bring it to their board and he thinks not one of them chose to in an official manner. To say we're going to sneak this through and pass this with no public vetting or information is just inaccurate.

Mr. Scribner said he wouldn't make that argument to Mr. Cooley, but the fact remains there's nothing in the public record before these school districts that they've had any kind of a hearing that the presentation has been made to them for the consideration of a public hearing before a public body. There's nothing in the record that supports that finding.

Mr. Cooley said the fault is not ours nor the petitioners'.

Mr. Scribner said it may be somebody else's call shortly.

President Fong asked if counsel could give them some guidance on this in terms of it sounds like a very similar argument that Aspire made against the CSBA lawsuit. It appears to him that was discussed and turned down by the courts.

Ms. Stinson stated that in the Aspire case, the statewide benefit charter statute provides that the state board may not approve a petition for the operation of a state charter school unless it finds that the proposed charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district or only one county. So the language for a statewide language requires a finding that the benefit “cannot” be provided. The language of the countywide charter statute is “cannot be served as well as.” There’s a difference in the language between the statewide benefit and the countywide charter.

Mr. Geeting said again let’s go back to what the statute requires the petitioners to do. There is a 30 day notice required of school districts. The data that we have before us in the staff report indicates that the petitioners followed through on what is required as terms of notification of districts. He thinks it said that was done in November.

Ms. Stinson replied that the districts were notified. That is a slightly different finding though.

Mr. Geeting said they chose not to do anything about it.

Mr. Scribner said they did choose. They chose to oppose the proposal to the county board of education. There is no evidence in the record that this was presented to the local boards to say we’d like to open this charter school in your district. There’s nothing in the record that supports that finding to that point.

Mr. Geeting asked if that was required by the statute.

Mr. Scribner replied it’s required by how the courts interpreted the statute.

Mr. Cooley asked if that was an interpretation. He thinks that’s part of the gray area.

Mr. Geeting said he doesn’t see it written in any statute anywhere.

Ms. Brown said it isn’t written. That’s a decision on the part of the petitioner because the petitioner read the guidelines and chose to go countywide because we require these things as opposed to a district. Why would they go to the district if they know their program, they have that flexibility in the law. She’s sure they read it just like we are.

Ms. Stinson stated that what the court did make clear is that nothing in the Aspire case supported the state board’s contention that the statewide charter statute was adopted so that schools could avoid the requirements of local chartering. In other words, what the court found is that the charter petitioners couldn’t just choose where they wanted to go. There was a preference for local chartering and doing a statewide charter was the exception to the rule because of the way the statute was written.

Mr. Geeting stated that Justice Rivera used the words local chartering as you just read it. He knew the difference between local chartering, which would include the county board and district chartering. He also uses that term in other places so where he talks

about local chartering one must assume that he includes county because when he wants to talk about district charters he does that.

Ms. Stinson stated there are times when it talks about local chartering and by local it means district and county chartering, and there are times when it makes clear that the court favors district chartering.

Mr. Scribner said if you carry the argument through - either carry the point of sovereignty or of the ability to put in the record that there was no alternative but to take it to the county - these points start adding up cumulatively to an argument that the action to take it to the local board was avoided. They weren't given that option to say no or we'll consider it or let's negotiate. It is not in the record that the alternative was considered, and the sovereignty at the local district was violated. He's saying a consistent point is beginning to develop here in the arguments if this is litigated. If you're comfortable with it that's good, but he thinks it has to be brought up at least in the discussion.

Ms. Stinson stated this is Trustee Scribner's motion. Trustee Scribner moved and Trustee Fong seconded the motion that Sacramento County Board of Education deny the Fortune School of Education Countywide Charter petition.

Roll call vote:

Mr. Scribner – aye
Mr. Rivas – abstain
Ms. Levy – no
Mr. Geeting – no
Mr. Cooley – no
Ms. Brown – no
President Fong – aye

Motion failed 4 noes, 2 ayes, 1 abstain (Rivas)

MOTION 4

Mr. Cooley moved and Ms. Levy seconded the motion that the Board find that the pupil population to be served by the Fortune School of Education charter petitioner cannot be served as well by a charter school that operates in only one school district in the county based upon review of the petition, all supplemental materials, the staff report, testimony, and Board comments received at the public hearing.

Mr. Scribner said he would subscribe to all of the arguments made by both sides on the previous question.

President Fong noted that Trustee Scribner stipulates all of the arguments that were made on motion 2.

Ms. Brown asked if one of the first schools is on the boundary between two districts.

President Fong replied yes. The first one is between Sac City and Elk Grove.

Ms. Brown asked if they were to go to a district would they have to go to both districts, which is not allowed by law.

Ms. Stinson replied that they could go to both districts. There's nothing in the law that prevents them from going to both districts. If they went to Elk Grove and were granted for example a charter by Elk Grove, then students in the Elk Grove school district would have preference at that school. If they went to Sac City and were approved by Sac City, then students in that district would have preference. However, students from any part of the county or any part of the state regardless of which district they went to would be eligible to attend that school.

Ms. Brown asked if they targeted a certain area that encompassed two districts then would both of those districts get priority attendance.

Ms. Stinson replied no. The district where the school was actually located would have priority attendance. For example, if it's on the border of Elk Grove and Sac City it depends on which side of the border it's on - those students would get the preference.

Mr. Cooley asked even if it was that close on the boundary.

Ms. Stinson replied if it was straddling the boundary then we would have an issue. We would have to figure out what happened there. She's thinking that's unlikely.

Mr. Geeting said he thinks it's simpler than that. If they go to two districts and they are approved by two districts they have to have two schools, one located in one district, one located in the other district. The students who reside in the one district have priority for the school that is located in their district but not the other and vice versa. So if he is a parent who lives in the sort of meandering line between Elk Grove and Sacramento and the school that he really wants that may be closer to him is in the wrong district and he would have to take second tier. Charters, you could argue, could submit a waiver. Guess what, charters used to be able to submit waivers – that authority has sunsetted. Charters can't submit waivers anymore.

Mr. Scribner said you mean other than a JPA.

Mr. Geeting said you show him where the statute talks about JPAs and crossing district lines. This is very specific to chartering schools and under EC 47605 districts got what they wanted. They have control over approval of the school, the school must locate in the district, and the students who reside in the district must be given preference. Those rules cannot be changed. They have to do that.

Ms. Brown said that is why she asked the question in relation to the motion that we were voting on. The question was asked did they go to the districts before they came to the county. If they had recognized that wouldn't work for them; that would have been a reason not to go to their districts first and to start with the county. She's trying to understand not having gone to the districts in the sense that you are asking about it. She would think that would be a reason. Their plan was a school in that particular area that would draw from both of them.

Mr. Geeting asked about going to the districts for informational purposes.

Ms. Brown replied no for student attendance because they have one that draws from two districts. Is that correct?

Mr. Geeting said they have multiple schools that draw from multiple districts.

Mr. Scribner said remember they are talking about ten schools total.

Ms. Stinson read motion 4 aloud: Trustee Cooley moved and Trustee Levy seconded the motion that the Board find that the pupil population to be served by the Fortune School of Education Charter petitioner cannot be served as well by a charter school that operates in only one school district in the county based upon review of the petition, all supplemental materials, the staff report, testimony, and Board comments received at the public hearing.

Roll call vote:

Mr. Scribner – no
Mr. Rivas – aye
Ms. Levy – aye
Mr. Geeting – aye
Mr. Cooley – aye
Ms. Brown – aye
President Fong – no

Motion carried 5 ayes, 2 noes (Scribner, Fong)

Mr. Cooley had a question on the fifth motion. There are two different motion options here. The only change he sees is on the second motion that the Board adopt written recommended findings of fact by SCOE program staff with the following revisions. Would the revisions be what we've added to the subsequent findings? Is that what you are speaking of?

Ms. Stinson replied no. That is there in case the Board had any disagreements with the recommended findings of fact and wanted to revise them in any way. Otherwise, this motion concerns the findings in EC 47605.6(b)(1-5) which have to do with the standards she read at the beginning of her presentation. What the statute requires is that the Board find that the school presents a sound educational program, that they are demonstrably likely to successfully implement the programs set forth in the petition, that they have the required number of signatures, they have the affirmations, and that they have reasonably comprehensive descriptions of all seventeen required elements. The SCOE staff report discusses each of those items. So the intent of the motion is that if you adopt the SCOE staff report and make that your findings, the idea is that you are also finding that the charter petitioner has met those statutory requirements.

Mr. Cooley said since we're not proposing to modify those conditions you just read, the top motion would be in order.

Mr. Rivas commented that this doesn't speak to the number of schools.

Ms. Stinson replied no, it does not and that discussion will be later.

MOTION 5 – To Adopt Recommended Findings of Fact

Mr. Cooley moved and Ms. Levy seconded the motion that the Sacramento County Board of Education (Board) adopt the written Recommended Findings of Fact by SCOE program staff regarding the Fortune Charter petition.

Mr. Scribner said if you have voted aye on all of them you're going aye on this, but if you disagreed with any of the earlier findings you basically need to vote no.

Ms. Stinson replied you could find that the charter petitioner was sound and they're demonstrably likely to successfully implement, that they have the signatures, and they have everything else, and still vote no on the preliminary findings. Ultimately, if you voted no on the preliminary findings, you're ultimately voting no on the petition because you cannot grant the petition without the preliminary findings, but you as a technical matter could find that they met these substantive requirements.

Mr. Scribner asked even if it disagreed with one of the points.

Ms. Stinson replied yes. These motions could have been reversed in the sense that this could have come first and then you could have voted no thereafter.

Mr. Scribner said he wanted to get that out there for the Board's information.

President Fong said he would like to pull item G that speaks to achieving the racial and ethnic diversity of the population of the district that they will be chartering in. He disagreed with the staff finding on this. That's the one that says the school will open a charter school that will reflect the racial and ethnic diversity of the district that they're chartering in.

Ms. Stinson asked if he was referring to the recommended findings of fact.

President Fong replied yes. He just wants to say he disagreed with one of the elements.

Ms. Stinson stated she believes that President Fong is talking about H. It's on page D26.

Mr. Scribner said what you are referencing is EC 47605.6(H) in terms of the finding backed to it.

Ms. Stinson replied yes, it's EC 47605.6(b)(5)(H).

President Fong stated the reason he disagreed is because PS7 and Hardy Brown were made with approvals with trying to reflect the diversity of the district that they opened up

in and they both did not. He does not believe that any new charters that were opened up in Sac County as a countywide charter will reflect the diversity of Sacramento County which is the district that they chose to petition for a charter in. If there's a track record already, then he doesn't believe what's going to happen here is going to reflect that. He doesn't have the confidence that they would seek diversity and even if we stuck it in the MOU and tried to monitor it, he doesn't think their state of focus and goal of the school is going to allow them to have the diversified population. He wished they would and show us that they made those attempts, but each of the schools that we talked about, PS7 and Hardy Brown, says that hasn't happened. He doesn't have the confidence that it will happen in a new charter school that these petitioners offer.

Mr. Scribner said the discussion of whether one disagrees or agrees with the charter itself it does kind of raise a conundrum. On one hand, we say you will have a population that reflects the diversity of the district you're in but the mission statement itself speaks for an entirely different goal.

Mr. Cooley said one of the staff comments to that particular issue is, "...however as the petitioner expresses an intention to specifically target and serve African American pupils, if the petitioners are approved, Fortune must ensure that it specifically reaches and recruits pupils from other racial ethnic backgrounds in order to enable it to achieve a racial ethnic balance among its students that is reflective for the general population of the county." In the bullet points above that, the petitioner lays out efforts that they will make going forward to meet that requirement. He agrees the goal of the petition is to address the African American student achievement gap. If you have been to PS7, although it is primarily African American, there are other ethnic and racial students represented on the campus. He doesn't know if PS7's goal when it was approved or submitted was to address purely African American students, but based upon where that school is located in the population that lives in that community that's the student population that's there. He would point out if you look at Sac City traditional schools that are in the same neighborhood they would be very similar in population as PS7. One of the goals that the Fortune folks have indicated is they're going to locate schools in geographic areas where the underperforming students happen to exist.

Mr. Scribner said are you trying to tell him that those census tracks around that attendance area aren't that high.

Mr. Cooley said he would argue that they are. He's been down there.

President Fong said that one will be Sac City. Sac City probably has a student population that's a bit higher than the counties in terms of different ethnic groups, but it still doesn't meet that requirement that they open a school that reflects the ethnic diversity of Sac City. They didn't even meet that one. That one is probably a higher number. If you open up the school in the neighborhood he thinks that's just an excuse. He doesn't know if they are marketing the targeting of the students to get to the diversity that you need was made to reflect the diversity of Sac City where they opened up. The same occurred when they opened up in San Bernardino County with the Hardy Brown School that they made all the affirmations that they would; yet the marketing plans, the

targeting and how they got people there says that it's close to the same kind of numbers that we have with PS7.

Mr. Cooley said he doesn't think there's any evidence that they told any educational body one thing and done another if that's what you're suggesting.

President Fong said he's not trying to say that. He's just saying that if the two school districts have certain diversity and the schools they opened there did not reflect that diversity, then he doesn't know if they will have it when they open up here.

Mr. Cooley said if you look at San Bernardino Unified School District, it's the third largest African American population community in the state of California. The school reflects the ethnic breakdown within that community. The school isn't in Newport Beach and that might be diverse but he's not sure.

Ms. Brown thinks part of the recruitment results will be based on the process and they state in here that process (page 26) needs to be scheduled and adopted to include a timeline that allows for a broad based recruiting and application process. When we talk about supervision of the county, those are progressive steps so that we make certain that the development, distribution, and promotional information materials appeal to all of the various racial ethnic groups represented in Sacramento County, including materials other than English. She thinks rather than trying to react to something they didn't do, we would want to get in front of it and make certain that the plan and conditions include that which is in the conditions here. She thought those items need to be distributed to a broad variety of community groups and agencies. We need to make certain that those groups and agencies really represent all people. Outreach meetings in several areas of the county again could help. Maybe assurance before it happens, as opposed to after might be a way to alleviate that.

President Fong said the bottom line for him is looking at the results, not the outreach. They could do all of this and still end up with something that is not diverse. He doesn't know how it is that we could ensure that, because they have a mission to do a certain thing and that mission is not inclusive of the others. Even if you get 20% or 30% other ethnicity, it doesn't quite match the diversity of Sacramento County. What if the first school opens up at maybe 70% or 60% African American, then what are we going to do for the second school? Then the third school that opens up to try to make them more diverse and reflect the diverse population of the county.

Mr. Scribner stated it's an open discussion about what is versus what we want it to be. He understands they are trying to serve a specific population, but there are also other requirements that say it has to be open and outreached to a broader community. As long as we acknowledge that needs to occur, we could look at it more aggressively under the conditions section to how we move that outreach along and kind of enforce it.

Ms. Brown said look at how people do it in the open enrollment process because it allows people to move around before you get to the lottery. That might be another way.

Ms. Stinson read motion 5: Trustee Cooley moved and Trustee Levy seconded the motion of the Sacramento County Board of Education to adopt the Recommended Findings of Fact by SCOE program staff regarding the Fortune School of Education Countywide Charter Petition.

Roll call vote:

Mr. Scribner – no
Mr. Rivas – aye
Ms. Levy – aye
Mr. Geeting – aye
Mr. Cooley – aye
Ms. Brown – aye
President Fong – no

Motion carried 5 ayes, 2 noes (Scribner, Fong)

President Fong announced that if motion 5 passes and the Board finds no other justification for denial, then we will move on to motion 6.

Ms. Stinson stated the question is whether there is any other basis for denial that the Board has or is contemplating. If not, you go on to the next motion.

President Fong asked if that's the all-encompassing motion.

Ms. Stinson said motion 6 would be the motion approving the charter. In other words, you have made all the preliminary findings. Assuming there is no other reason that the Board finds to deny the petition, motion 6 would be a motion to approve the countywide charter petition subject to conditions. As part of this; as the Board had brought up before, you might want to have a discussion about whether you are granting the petition as a whole for all ten schools or whether you are granting it for a limited number.

MOTION 6 - Motion to Approve, Subject to Conditions

Mr. Cooley moved that the Sacramento County Board of Education (Board) grant the Fortune School of Education Sacramento Countywide Benefit Charter School (Fortune) petition, upon meeting the conditions listed below by the deadlines identified. If any of the conditions is not met by the specific deadline for that condition then, unless the deadline is specifically extended by the Board, approval of the charter shall be terminated and the charter shall cease to operate.

CONDITIONS FOR APPROVAL OF THE FORTUNE SCHOOL OF EDUCATION SACRAMENTO COUNTYWIDE BENEFIT CHARTER PETITION:

- (1) Fortune must admit all pupils who wish to attend, if capacity allows. In order to remove potential disincentives to apply, Fortune shall not request pupil discipline records or a California Driver's License as part of the application process.

- (2) As the petition expresses an intention to specifically target and serve African American pupils, Fortune shall make every reasonable effort to specifically reach and recruit pupils from other racial and ethnic backgrounds in order to enable it to achieve a racial and ethnic balance among its pupils that is reflective of the general population of the county. Fortune must welcome and serve all students who attend, regardless of background.
- (3) Fortune must demonstrate that it has been accepted into a Special Education Local Plan Area (SELPA) and can provide the full continuum of special education services as required by state and federal law.
- (4) Fortune shall agree to be responsible for all special education services required by law and to hold harmless, defend, and indemnify the Board, Superintendent, and SCOE from any liability arising from its responsibility to provide such special education services.
- (5) Fortune shall agree to hold harmless, defend, and indemnify the Board, Superintendent, and SCOE from any claims arising from the approval, opening or operation of the charter school.
- (6) Approval of an acceptable Memorandum of Understanding by April 30, 2011.
- (7) Pursuant to Education Code section 47604(b), the county board may choose to have a representative on Fortune's Board of Directors.
- (8) Any additional requirements set by the Board.
- (9) The conditions contained in this motion may be changed or supplemented by future Board action.

Mr. Cooley said as part of his motion he would include amending the conditions to strike on the fifth bullet the word in the fifth bullet as it reads, "...Fortune shall agree to hold harmless, defend, and indemnify the Board, Superintendent, and SCOE from any claims arising from the approval, opening, or operation of the charter school." He thinks it's highly unfair and exceptional that a government entity would require a petitioner to indemnify that agency from the decision that it makes. Whether it's the state of California or other local governments in our state, decisions by a governing board or council or board of supervisors never ask the petitioner or proponent to indemnify them from legal claims that may arise by that action. That's the risk we take by taking action on it. We could be challenged by our inaction by the petitioners or some other group that's sympathetic towards their cause. He personally finds that we would not keep that word of approval in there to say we want indemnification from any lawsuit that may come forward. When the state board of education approved Aspire, they didn't require Aspire to cover their legal bills when CSBA challenged them. He knows it's a state law that the attorney general shall litigate on behalf of the state but that's in there for a reason. You routinely see throughout the whole state of California a lot of public agencies are sued over a whole host of development projects and they defend their decisions. He thinks that is there for a purpose.

Mr. Scribner asked if there was a second on the motion.

President Fong stated motion 6 with the amendment. Is there a second on it?

Mr. Cooley said he has talked to counsel about this. He'd challenge anybody to show him in past decisions of any governmental bodies where they've had that in there.

President Fong said he kind of remembers seeing this as a standard kind of language that we put in all of these kinds of things.

Mr. Cooley said he's talking about outside.

President Fong said he's not concerned about an outside entity; he's concerned about what we do as our practice.

Mr. Cooley said he doesn't agree with that.

President Fong asked if there was a second with that amendment. If not, the motion dies.

Mr. Scribner said we've acknowledged that its public funds, folks have identified it as being a public school, we're treating it as a public agency and yet the concept of the charters is different in a number of ways in terms of transparency and accountability. The conflict of interest provisions are nowhere like conflict of interest provisions that we and SCOE operate under because we have the public funds. The conflict of interest provisions are nowhere near our level and he would respectfully ask this Board to consider that we establish conflict of interest standards as we have found appropriate to avoid conflicts of interest. Also, do we wish to have more transparency relative to the Williams Act?

Mr. Cooley said he would be willing to add that in.

Mr. Scribner said we should talk about whether there are other issues to consider. We've already discussed the concept of breach of contract with respect to the cessation of the charter if they fail to meet the terms and conditions of the agreement. He thinks we should consider saying if the charter is going to take public funds, then you're part of the public trust and therefore you should be held to the same standards for those who make the financial decisions, and for the board of directors with respect to the conflict of interest statements that apply to us.

Mr. Cooley said he hasn't really said a lot or offered any insight on those particular items. He brought this up at the charter workshop a few weeks ago. He thinks charters ought to be held to the same inspections standards as schools in the Williams Act. We have to adhere to those regulations in our SCOE schools. In terms of conflict of interest issues, charters ought to adhere to them as well. He's more than willing to entertain those items. He's willing to include those into the conditions. Where he draws the line is on the indemnification for any actions around the approval of the charter. For example, there were a couple of teachers from Sacramento City Unified School District

who earlier mentioned how this Board, about four years ago, approved a petition to modify the Sac City election process from a district wide to a trustee area model similar to our own. That petition was brought to us by signatures of residents of the district. The teachers' union was involved in that process; they supported it. This Board took action and that is now the governance election system in Sac City School District. We could have been open to legal challenge on that issue on whether we had the authority to do that. It's no different than this countywide benefit charter law. It's open for review or judicial review. We didn't require the petitioners to hold us harmless for any litigation around that act. He thinks it's a very severe hurdle to ask the petitioners to jump when the school isn't even open. When it comes to operations of the charter and any issues that occur on that site after they are operating and running as a school, then it would be appropriate to have that indemnification. What you're doing is putting a huge red light on our decision almost as if to say sue us because we're not going to defend our action; the charter is going to have to come up with the resources to defend it.

President Fong said you should have heard his warnings about being more prudent and careful.

Mr. Cooley said he would put our decision up to stand against any legal challenge that may come forward and he is willing to go to the mat for our decision and that includes in the financial sense. He thinks this particular issue is highly inappropriate and he doesn't quite know where it came from.

Mr. Scribner said we have a number of new Board members who weren't here to share that experience. We had no legal entity upon which to fall back on then because it was a petition. Here we have a legal entity with financial means who is asking us to take an action in which, as Board members, we would be negligent to expose SCOE to any potential significantly legal cost when we have a willing buyer and a willing seller relationship.

Mr. Cooley said if that's the case then we should not consider the petition.

Ms. Brown said in her mind there's a big difference between approval, which is what we have done, and opening and operation of the charter school. It would seem to her that we are responsible for the approval but once the school is open and starts functioning, if they decide not to use the right facilities or whatever it might be, that's on their shoulders.

President Fong said there will be no public comments during deliberations.

Mr. Cooley thinks it fair to have the petitioner give some input on this.

President Fong said he has ruled that we weren't going to take any more public comments on this.

Mr. Scribner said that with all due respect, may a Board member direct a question to an individual that is an interested party.

President Fong said he was going to ask that he convey the question to our attorney and ask our attorney about where the wording came from.

Mr. Cooley said before she answers he would like to ask the petitioner's counsel about their interpretation on this particular condition. If there's objection, he will back off.

Ms. Stinson said you asked where the indemnification language came from.

President Fong replied yes.

Ms. Stinson said it came up because generally when the Board or SCOE enters into any sort of agreement or contract there's normally an indemnification provision.

Mr. Cooley said he's not countering that. He is referring to Ms. Brown's comments. When it comes to the operations, we're going to have an MOU and we're going to have oversight. But at the end of the day, if a charter petitioner/operator wants to abscond with public funds or do something that's dangerous on their campus or fails to provide a safe environment for the students and the staff, to some degree that is out of our jurisdiction just like it is on our school sites that we operate currently. It's highly appropriate to have some indemnification along those lines but when it comes to the approval, we're making that decision on our own free will. We are as leaders of this organization. We are going to partner with these petitioners to make these charter schools work. We have made that conscious decision as a response to the materials they brought before us. He views that as distinctly different than indemnifying us for the ongoing operations. He would ask that the petitioner's counsel give us their insight on this particular condition.

Ms. Stinson said she can you tell you what he told her or you can hear it directly from him, whichever you prefer.

Mr. Cooley said he prefers to hear from him.

Mr. Simmons stated that he wanted to state for the record that he's unaware of any charter granting agency, anywhere in the state of California that has ever required indemnification for the approval process; that is specifically distinguished from the operations and ongoing management of the school. It's a huge concern that this Board would attempt to set this precedent here for the first time in the state of California as far as we're aware, for this process. He thinks that if this matter were to go up on appeal you may be setting this thing up to fail. He doesn't know if that's the intent but he thinks that's a very real possibility.

Superintendent Gordon said he hasn't weighed in this evening, but because it's twenty minutes to two in the morning and the Board is just beginning to discuss conditions, he doesn't know that the Board would be making their best decisions on what could be very important conditions. For this one condition, he will just say this is not something he hasn't discussed with the petitioners already and you, as counsel mentioned, could potentially be facing a lawsuit. He's been around a long time. It used to be in the world of district budgets, a lawsuit might cost a couple of million dollars, people didn't like that

but you got by. Now there is no fluff in anybody's budget to go by, so that's not to say you ought to eventually conclude that petitioner ought to indemnify you, but he thinks it is quite prudent for you to have a thoughtful discussion of whether you should impose a condition like that because in many cases our budget would be depending on that to keep us moving forward. He's not trying to presuppose what you would conclude; he's just trying to say that, among the other conditions including numbers of schools and so on, merits probably more thought than you can give it. He thinks you've settled the threshold question but now we've got staff that's been here for fourteen hours already and he's just worried that we're not in a position to make our best decisions now. He's not trying to presuppose what your decision should be, just to say to him especially, as the conservator along with Ms. Sanchez of our budget, he just feels it warrants more discussion.

Mr. Rivas said with apologies to the petitioners, he is uncomfortable proceeding further at this hour on these issues and he apologized to Trustee Cooley. He knows that Trustee Cooley feels passionate about this and would prefer to plow through but his preference at this time is that we return to this at our next meeting.

Mr. Cooley said he brought this issue up at twenty minutes to seven and prior to that several weeks ago. He recognizes that staff has been here awhile and we've all been here awhile. In his eyes, by not standing up and defending our decision he's almost likening it to a parent who doesn't want to pay to support their child. If we are going to vote on this, we're going to vote to support and defend it. We can chicken out on this decision and say we're going to support it, but if it gets challenged it's on you, you go find the money and you go defend it.

President Fong said to Trustee Cooley you made the motion with the strike out and there wasn't a second. Do this again so do you want to make a motion to do this and have a vote on it today, or do you want to wait and have some time to think about it? Clearly, you had more than ample opportunity to convince us to try to do this. You had a chance to get a motion and a second on this and there was no second. You had ample time to bring this up again and to ask us to consider this. Do you want to make a motion to do this to push this forward today or do you want to wait?

Mr. Cooley said if there are additional Board comments, he would be happy to hear those and then he will have a motion.

President Fong asked Mr. Cooley if he wants to plow forward to do this.

Mr. Cooley replied yes.

Mr. Rivas said again he apologized to Trustee Cooley but his motion is that we adjourn and pick this up at our next meeting.

Ms. Stinson said the one thing she would say is the next meeting is scheduled for February 15, 2011 and the agenda for that meeting is scheduled to go out this Friday and that's a pretty quick turnaround.

Ms. Levy asked are you saying that it's not too late to add this to our next agenda. She's getting kind of tired and sympathetic to the others and thinks we've plowed through a lot of territory tonight on the big issues and she thinks it might be very helpful if we could just get these fine points down.

President Fong stated that the conditions do not have to be decided tonight. We've already made all of the motions to approve the charter, now we just have to look at some of the details of it and those aren't things that we have to do tonight.

Ms. Stinson stated that the Board has not yet approved the charter. You've made the preliminary findings to approve the charter and the next motion would be to approve or not to approve the ultimate motion to approve, and with how many schools and with what conditions. That is what could be continued to the next meeting.

President Fong asked Ms. Stinson if the Board can go ahead and do the approval and then go back with the conditions. He thinks that would get us out of here. He believes the votes are set for this Board so we could go ahead and vote to approve this charter or not.

Ms. Stinson replied you could but you don't have to tonight. You have that option and we're all getting tired but the one thing you should consider as part of the approval is how many schools you're going to approve.

Mr. Cooley said he's looking at the conditions for approval and asked if they were recommended conditions on motion 6. He keeps hearing staff indicating we should weigh in on the number of schools but he doesn't know why. He feels we are being set up to limit or knock down the number of schools when we just keep putting that out there. As he read the petition, they're asking for ten. He doesn't see where they said they would ask for as many schools as you deem necessary to offer. He has a problem with the fact that we continue to put out there that you ought to speak to the number of schools when he doesn't see that in the staff recommended conditions. The petition isn't written to say we're loose on that matter.

President Fong asked counsel if the Board can approve this petition without the conditions, including the number of charters and some major things and say we will take those up at the next meeting.

Ms. Stinson said she would not recommend that. She recommends that you do them all at the same time. We do discuss, in the Recommended Findings of Fact, that the Board may decide to approve all ten schools, alternatively it may decide to approve a lesser number; that is at the Board's discretion. You could do what you wish to do but she's telling you what she thinks would make more sense.

Mr. Scribner said with all due respect, Mr. Cooley is very passionate and he totally respects and supports that, but he also appreciates that counsel picked up there were several Board members that started to discuss a number and she simply was protecting the Board members ability to have that forum.

Mr. Geeting asked rather than discussing this in terms of the number of schools because the petition itself lays out a plan for adding schools, can this discussion be on the number of years for which the charter is initially approved.

Ms. Stinson replied that could be part of a discussion as well.

Mr. Geeting asked if they were to approve a three-year initial charter because five years is not a requirement on an initial approval, it's up to five years. If you do three years, the plan is already set for the building out. The question of renewal would then come up at approximately two and a half years. There would be two schools in operation at that point. We would have some data on the first school, preliminary data on the second one, and sketchy information on the third one that had just opened and be at the point where we would be considering our renewal. That would be a potential way of resolving this. These conditions didn't talk about the number of years of approval. The other thing is look at the last bullet in the conditions which says these are subject to change at a later time. This is clearly an initial proposal of conditions. The hour is early but he would tend to agree with Trustee Cooley's ideas, but he also gives great weight to the Superintendent's recommendation. So if you're looking for a motion at some point he will be happy to make one.

Ms. Brown asked if we have to wait a certain number of years.

Mr. Geeting replied that the write up itself says there will be an annual report.

Ms. Brown asked at that time one could say no more.

Mr. Geeting replied we could pursue the process of revocation, but the process of renewal we could make that decision now. We can give a three year approval. He was giving that as an example but then you would come back about two and a half years later and make a decision whether to renew or not.

Mr. Cooley asked what the timeline is for the process of revocation of a charter.

Ms. Stinson replied it depends, if it's an imminent threat to health or safety then you do it right away. If it's something else, you go through a process of giving notice and trying to work it out and trying to get to the point where you do not need to revoke.

Mr. Cooley said within the petition and within our conditions, we talk about having to come back on an annual basis to evaluate and review. We ought to do that as a responsible authorizer anyway. He's open to figuring out some language which will strengthen our oversight of the schools, something affirmative in the conditions that knock down the number of schools from ten to something else at a later date. He reads his trustees really well and he's been around a little himself and he does acknowledge that we've been here a long time. He is willing to support some tougher and forceful language if we can hold to what the petitioners want, and then bring that back if we can separate it out right now.

President Fong asked counsel if there was a way to make the decision tonight on the number of schools in a range so we can move forward and then discuss the conditions in more detail later on. It doesn't have to be four or ten but a range that we can agree on and then move onto whether it's a three-year approval or a five-year approval charter and then discuss those details later.

Ms. Stinson replied one thought is you could approve the petition subject to the Board deciding how many schools it's going to authorize to open subject to making that decision at a later date. If you are trying to get approval of the petition but deciding on the number of schools and conditions later you would have to build that into the motion very carefully.

President Fong asked can we take a short recess and direct staff to draft that motion.

Mr. Cooley said let's be clear on what it is.

President Fong said we could do it where we can make that motion and include in it that we will determine the numbers and conditions later.

Mr. Cooley said he would rather make it simpler. We can act upon the charter petition itself and we can come back and act on the conditions as a whole without getting into any shoe horning what the conditions may be but we'll act on the conditions later as a whole. We keep looking at counsel and he has great respect for our counsel but we have discretion.

President Fong asked if we're still on topic because if we're not a motion to adjourn is on the table and has to be voted on.

Mr. Scribner asked President Fong if this would be the appropriate time to ask any other Board members if they wanted to vote an alternative motions if the motion to adjourn was withdrawn. Would that be appropriate to ask or would you say that question would be out of order at this time to other Board members to raise questions if they wanted to?

Mr. Rivas withdrew his motion; Mr. Scribner agreed.

Mr. Cooley said we could vote on the charter and is okay with deferring the discussion and action on the conditions for a later time. He thinks they have the authority to act on the petition minus the conditions at this time and move forward.

Ms. Levy said she thought our counsel said no.

Mr. Cooley asked counsel if she concurred.

Ms. Stinson asked if they would like for her to read a proposed motion. Ms. Sanchez wrote it and she edited it.

President Fong asked the trustees to listen.

Ms. Stinson read the proposed motion: Trustee (A) moved and Trustee (B) seconded the motion that the Sacramento County Board of Education grant the Fortune School of Education Sacramento Countywide Benefit Charter School petition to open a certain number of schools or a number of schools to be considered at the next regular Board meeting, and upon the meeting the conditions to be considered at the next regular Board meeting.

Ms. Brown clarified that we would vote to approve the charter petition, but that we would be able to come back to the next meeting. For example, the defending indemnity, looking at the numbers of schools, we could come back and yet have people know we are approving based on that last bullet.

Ms. Stinson said the idea is to let everybody here and the public know that you've approved it but actual specifics including the number of schools, any conditions, and everything else would be set at a later date. To make it clear you're not deciding one way or the other to grant the petition as it has been submitted because as it has been submitted it's asking for a system of ten schools. You really need to make it clear that you're going to decide the extent to which you're granting the petition at a later date but you are agreeing to it and she would suggest that at the next regular Board meeting when you actually consider making a much more detailed motion to make this clear.

Mr. Cooley said he could support that. He wants to caveat that he's not comfortable with edging into that issue – it's almost an admission that we're going to knock down the number of schools. He's not going to reargue that because we haven't done that. He could support moving in that direction and moving forward. The other thing is the MOU will come back to the Board as well, on or by April 30, 2011. He wants to warn the Board that some of the conditions can be addressed in the MOU.

Ms. Brown wants to ensure that it's clearly understood that we are not coming back at the next meeting to start all over again and go through all of this. That needs to be very clear in the motion.

President Fong asked counsel if that is clear in the motion the concerns of Trustee Brown.

Ms. Stinson replied you have already passed all the preliminary motions, and by passing this motion you're granting the charter petition subject to these other provisions.

Ms. Brown said that might be stated as an explanation in the next agenda so people aren't misled to think that they're coming back for another open discussion.

Ms. Stinson replied we will have to do something to make that clear. Of course, it's a regular Board meeting and they're always subject to public comments. We would like to focus on you all deliberating and we would like you to have as much time as possible to do that.

President Fong asked if the motion also considers the concerns of Trustee Cooley that we are not giving up on the proposed ten schools.

Mr. Cooley said he would like to have it more open ended and silent on the issue of the numbers of schools, however, that was as close as you can get to this as possible to the language you read. It sets us up for a discussion that you're starting with ten but we're going to go lower. That's his only concern about that.

President Fong said that the motion doesn't preclude any numbers.

Ms. Stinson replied she doesn't think so. It doesn't say any particular number one way or the other.

Mr. Scribner said in the motion itself, the wording that you proposed basically left the number blank and to be determined later. He's not sure that it sets it up for that discussion of knocking it down. It can easily be attempted if there are four members that vote ten, you've got ten.

Mr. Geeting stated they don't propose ten schools until about ten years out. If we went to the maximum, which is a five-year approval, that would be five schools. He's not sure what the difference is here between numbers of schools and years of approval. The statute talks about years of approval which makes him more comfortable with using that. Do you want him to make a motion? He will make a motion.

Mr. Scribner said if you wanted to do the whole thing.

Mr. Geeting said he had difficulty understanding, with due respect, what you're trying to craft with that motion so he wouldn't be comfortable in voting on it. We have before us, in writing, the Superintendent's recommendation on motion 6.

Mr. Geeting moved motion 6, as proposed by the Superintendent, recognizing that the last bullet talks about coming back at future meetings and changing or supplementing the language of the conditions that are set forth in the recommendation, and he would add one other piece which is that the approval is to be for a period of five years.

Mr. Cooley seconded the motion and had a question on the motion. Does your motion then basically infer that the bullet points in the conditions are standing?

Mr. Geeting replied that the word approval was part of the Superintendent's recommendation so that would be, but recognizing the last bullet that we have the ability to come back and talk about these conditions or supplement them at a future meeting.

Mr. Cooley said his only concern is that by voting on this, the indemnification issue is in there and he would have to work to pull that out of there.

Mr. Geeting stated to Mr. Cooley that his arguments make good sense to him but he also gives great weight to the Superintendent's recommendation. You tried your motion and didn't get a second. And now he's trying one.

Mr. Rivas clarified that the approval for five years would take us up to five schools.

Mr. Geeting replied that's what the plan says; they would all be K-8 schools and each of them would start K-3 and build out. For the build out plan, it's on page 2 of the petition.

Mr. Scribner stated you moved the recommendations here as stated noting that things could be changed. We discussed conflict of interest provisions and subject to Williams Act.

Mr. Geeting said that's covered under the last bullet. We can come back and talk about those when we are a little bit fresher than we are now. He wouldn't preclude any of that discussion.

Mr. Scribner said we would vote to pass this without putting those items in there.

Mr. Geeting said he is trying to respect the Superintendent's recommendation which we have in writing with that one little addition that he thinks is very understandable, that is how many years do we approve the school. He moved five. We had a second on that.

Mr. Scribner asked if it was five years or the five year plan.

Mr. Geeting replied the charter itself is binding. The charter itself lays out a plan for expansion; at the end of five years, it would have five operating schools.

Mr. Scribner said it goes hand in hand.

Mr. Geeting said in about four and a half years we would be back here with the decision on whether to renew or not.

Mr. Cooley said the plan calls for five schools in five years so you're consistent with the plan. As we approach the fifth year, they would come back at some point. We review the performance thus far and as we renew the charter petition they would continue to move to execute their plan which takes them up to ten schools by 2024. He could support that.

Mr. Geeting said if it's renewed that's what would happen because five years is the maximum by statute. He's pointing that out in case there's anyone who feels that it's too much. He wants to make that clear.

Mr. Scribner said in following up, since we have made a minor modification he would feel much more comfortable if we insert the conflict of interest code provisions and the charter being subject to the Williams Act.

Mr. Cooley said if we add those items and if there are no other conditions we could wrap it up.

President Fong said he doesn't think so because we can always come back and add others.

Mr. Cooley said we have to end it at some point.

Mr. Scribner said if there is no objection by the maker of the motion, he would offer a friendly amendment to include the adoption of conflict of interest provisions and being subject to the Williams Act, if the maker and the second agree.

Mr. Cooley said he would agree.

Mr. Geeting asked Mr. Scribner if he was talking about the Williams court settlement.

Mr. Scribner replied yes, the inspections.

Mr. Geeting clarified that they should be required to opt in, but they are automatically in if they're a low performing school; if they're a high performing school then it's irrelevant. So we should say if applicable.

Mr. Scribner doesn't think we will ever visit under Williams, which is fine.

Mr. Geeting asked what the conflict of interest code means exactly.

Mr. Scribner replied under Form 700, the provisions of conflict of interest that we follow, we would want them applied to the same like positions for those who make financial decisions, the superintendent, and probably most of Cabinet. We would want to avoid any conflict of interest problems like they experienced in Santa Ana with the Albert Einstein Charter.

Mr. Geeting asked if that is sufficient direction for our counsel to write that piece of language into the conditions. He's deciding whether to accept an amendment.

Ms. Stinson said that a condition that the charter school would be subject to the same conflict of interest provisions as other public agencies or particularly public school districts can be included.

Mr. Geeting asked if that piece needs to come back.

Mr. Scribner replied it could be in the MOU.

Mr. Rivas asked what about the Brown Act. Ms. Stinson replied that they are already subject to the Brown Act.

Mr. Cooley said the specifics of the conflict of interest provisions could be detailed in the MOU. We call out for it in the motion. He's not sure if Trustee Geeting is willing to accept that.

Mr. Geeting said he wants to be sure that staff has enough information to implement that decision if it's included in the motion.

Ms. Stinson said if it's included that the charter school operator would be subject to the same conflict of interest code provisions as other public school districts. She thinks that would give us enough to find the correct statutory sites and include that language in

there. Ms. Stinson said that Trustee Geeting had asked about the Superintendent's recommendation on the number of charter schools and she pointed out that there was no specific recommendation as to the length of the charter or the number of charter schools to be approved.

Mr. Geeting said he added that as his own addition. It's the Superintendent's recommended motion plus approval for a period of five years, which according to the charter itself, is a build out to five schools.

Ms. Stinson replied she understood Trustee Geeting's motion and she understands that he will accept Trustee Scribner's additions.

Ms. Brown asked if we are saying that we can only go five years and not six.

Mr. Geeting said the statute says up to five and it's unique to the initial approval. When we get to the issue of renewal there's no question, it's five, no more or less. That's the difference with the initial approval. One advantage to the five years is that the provisions of EC 47607, which create minimum thresholds for academic performance as a condition of renewal will apply. If we go less than the five years and we start looking at our decision for renewal at three and a half years we cannot apply those provisions. They're only applicable after four completed years of operation.

Mr. Cooley asked if he's referring to discretionary action to extend it.

Mr. Geeting said there's an API threshold which they must meet or we cannot renew, but that only kicks in after four completed years.

President Fong asked how many schools would have qualified by that fourth completed year.

Mr. Geeting said in the charter itself there's one school being added each year for the first five years.

President Fong asked how many schools would qualify by the end of the fifth year.

Mr. Geeting said if we are looking at the issue of renewal in approximately four and a half years into this, there would be five operating schools – we would have a lot of information on one of them, quite a bit of information on the second one and so on. The one that had just opened that previous fall we would know very little about.

President Fong stated he understands the plan that was put forth but he has concerns about it. If we grant five years, he would prefer to have a demonstrated replication successful charter school before a second one actually opens up. When that's demonstrated at the end of the third year and we get results in the fourth year maybe they can open up two more schools at that time and that would get us to the fifth school. He is concerned that it may not be good business practice because we wouldn't have concrete evidence for success on three of the five schools that are open. He has concerns about that.

Mr. Scribner said it's the rule of four.

President Fong said he's just expressing his concerns that the plan itself is not a good business plan because they are using public money.

Mr. Cooley called for the question.

Ms. Stinson noted that Mr. Geeting made the original motion.

MOTION 6 – Motion to Approve, Subject to Conditions

Mr. Geeting summarized his motion, which was the Superintendent's proposed Motion Number 6, with an initial approval for a period of five years with the build out plan described in the charter itself, along with the two amendments on conditions which he accepted from Trustee Scribner. The first one pertaining to conflict of interest provisions and counsel indicated she understood how to write that specific language. The second piece pertains to the Williams settlement agreement, if applicable.

The full motion before the Board was:

Trustee Geeting moved, and Trustee Cooley seconded the motion that the Sacramento County Board of Education grant the Fortune School of Education Sacramento Countywide Benefit Charter School petition, upon the meeting of conditions listed below by the deadlines identified for a period of five years.

If any of the conditions is not met by the specific deadline for that condition then, unless the deadline is specifically extended by the Board, approval of the charter shall be terminated and the charter shall cease to operate.

Conditions for approval:

- Fortune must admit all pupils who wish to attend, if capacity allows. In order to remove potential disincentives to apply, Fortune shall not request pupil discipline records or a California Driver's License as part of the application process.
- As the petition expresses an intention to specifically target and serve African American pupils, Fortune shall make every reasonable effort to specifically reach and recruit pupils from other racial and ethnic backgrounds in order to enable it to achieve a racial and ethnic balance among its pupils that is reflective of the general population of the county. Fortune must welcome and serve all students who attend, regardless of background.
- Fortune must demonstrate that it has been accepted into a Special Education Local Plan Area (SELPA) and can provide the full continuum of special education services as required by state and federal law.
- Fortune shall agree to be responsible for all special education services required by law and to hold harmless, defend, and indemnify the Board, Superintendent, and SCOE from any liability arising from its responsibility to provide such special education services.

- Fortune shall agree to hold harmless, defend, and indemnify the Board, Superintendent, and SCOE from any claims arising from the approval, opening or operation of the charter school.
- Approval of an acceptable Memorandum of Understanding by April 30, 2011.
- Pursuant to Education Code section 47604(b), the county board may choose to have a representative on Fortune's Board of Directors.
- Fortune shall be subject to the *Williams Act*, to the extent applicable.
- The Fortune charter school's governing board shall be subject to the same conflict of interest provisions applicable to California public school district governing boards.
- The conditions contained in this motion may be changed or supplemented by future Board action.

Motion carried 4 ayes, 1 no (Fong), 2 abstentions (Scribner, Rivas) on the following Roll Call vote:

Mr. Scribner – abstain
 Mr. Rivas – abstain
 Ms. Levy – aye
 Mr. Geeting – aye
 Mr. Cooley – aye
 Ms. Brown – aye
 President Fong – no

IX.A. President Fong announced at this time we will dispense with the rest of the agenda items.

IX.B. Board President report - no report.

IX.C. There were no committee reports.

X.A. There was no distribution of the February/March Events item.

X.B. There was no distribution of the February/March Site Visits item.

XI. Schedule for Future Board Meetings:

- A. February 15, 2011 – Leadership Institute
- B. March 1, 2011 – Measuring Student Progress

Mr. Geeting stated we might want to request that staff agendaize an item related to the conditions for the February 15 meeting, as we just adopted language saying the conditions were subject to being changed or supplemented. We could address Trustee Cooley's issue related to the word approval. He asked when we would have further discussion on the conditions.

Ms. Stinson replied it could be on February 15 or the Board could do it at the time the MOU comes back to the Board.

President Fong asked if it would be appropriate for trustees to have a discussion to give guidance for the MOU before it comes to us for approval.

Mr. Cooley said not necessarily. We haven't in the past. He's okay with bringing it back when the MOU comes to us on April 30.

XII. Mr. Cooley moved to adjourn the meeting. Ms. Levy seconded the motion, which carried. The meeting adjourned at 2:25 a.m., February 2, 2011.

Respectfully submitted,

Sue Stickel
Acting Secretary to the Board

Date approved: May 10, 2011