

FINAL MINUTES
State Board of Education
January 8-9, 2003

Thursday, January 9, 2003

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

Members Present

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

Member Absent

Robert J. Abernethy
Vacancy
Vacancy

Closed Session

The State Board met in closed Session from 8:05 a.m. to 8:40 a.m.

Call to Order

President Hastings called the meeting to order at 8:45 a.m.

Salute to the Flag

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

Closed Session Report

Ms. Steentofte reported that in the Closed Session just completed, the State Board considered, but took no action, on the following: *Williams, et al., v. State of California, et al.*; *Chapman, et al., v. California Department of Education, et al.*; and *Emma C. et al., v. Delaine Eastin, et al.* The State Board also considered *Boyd, et al., v. State of California, et al.* and took the following action: Authorized the filing of a petition for review if necessary after consultation with the other respondents and other interested parties.

Announcements/Communications

President Hastings announced that Item 19 had been taken up on Wednesday, January 8, and that Waivers W-1 and W-7 had been withdrawn. He reminded the audience that the meeting would adjourn at 11:00 a.m.

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ITEM 15	Assignment of Numbers for Charter School Petitions.	INFORMATION ACTION
ITEM 16	2002-03 (and beyond) determination of funding requests from charter schools pursuant to Senate Bill 740 (Chapter 892, Statutes of 2001), specifically Education Code Sections 47612.5 and 47634.2.	INFORMATION ACTION
ITEM 17	Funding approval to provide 1) professional development courses in nutrition and food service management including instruction on the School Meals Initiative menu planning systems for child nutrition personnel employed in schools and child care centers; 2) professional development and technical assistance to school teachers through regional school garden resource centers; and 3) grants to local educational agencies for garden-enhanced nutrition education to build skills and motivate children to make healthy food choices using Fiscal Year 2002-2003 state nutrition educational funds.	INFORMATION ACTION
ITEM 21	Approval of 2002-2003 Consolidated Applications.	ACTION

President Hastings informed the Board that Items 15, 16, 17, and 21 were proposed consent items and could be acted on as a group.

- ACTION: Ms. Hammer moved that the State Board approve the actions recommended by staff under Items 15, 16, 17, and 21. The motion recognized that supplemental memoranda had been submitted regarding Items 17 and 21 and that the actions are to be those recommended in the supplemental memoranda. Mr. Nuñez seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 18	Appointments to Curriculum Development and Supplemental Materials Commission, Advisory Commission on Special Education, and Child Nutrition Advisory Council.	INFORMATION ACTION
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Mr. Greg Geeting reported on the Board staff recommendation to appointment Don Shalvey to the Advisory Commission on Special Education and reappointment Nancy Ishino-Gilmore, Paula James, Becky Cates, and Lucy McProud to the Child Nutrition Advisory Council.

- ACTION: Ms. Hammer moved that the State Board approve the appointments to the Advisory Commission on Special Education and the Child Nutrition Advisory Council as recommended by State Board staff in a supplemental memorandum on this item. Mr. Nuñez seconded the motion. The motion was approved by unanimous vote of the members present.

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ITEM 19	Appointment of one deputy and three associate superintendents (exempt positions) in accordance with Article IX, Section 2.1, of the Constitution of the State of California.	ACTION
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Item 19 was taken up at the preceding day's session. [See minutes for Wednesday, January 8, 2003.]

ITEM 20	Legislative Update: Including, but not limited to, information on committee appointments and legislation.	INFORMATION
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President Hastings noted that this was Erika Hoffman's last legislative update to the State Board as she has accepted a position with the Los Angeles Unified School District. Ms. Hoffman presented the legislative status report as well as a list of the new members of various Assembly committees. Ms. Hoffman thanked the State Board for the opportunity to come before them each month to update them on legislative issues.

No action was taken on this item.

CONSENT WAIVERS (WC-1 through WC-16)

CARL PERKINS VOCATIONAL AND TECHNICAL EDUCATION ACT OF 1998

ITEM WC-1	Request by Sherman Indian High School for a renewal of a waiver of <i>Section 131(d)(1)</i> of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Public Law 105-332) CDSIS-5-11-2002 (Recommended for APPROVAL)	ACTION
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ITEM WC-2	Request by Waterford Unified School District for a renewal of a waiver of Section 131(d)(1) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Public Law 105-332) CDSIS-15-11-2002 (Recommended for APPROVAL)	ACTION
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CHARTER SCHOOL ATTENDANCE

ITEM WC-3	Request by the Learning Community Charter School under the authority of Education Code Section 33054 to waive Title 5 CCR Section 11960, related to charter school attendance for Heatherstone School Site for Four Winds School Site. CDSIS-16-10-2002 (Recommended for APPROVAL WITH CONDITIONS) <i>E.C. 33051(c)</i> will apply	ACTION
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HIGH SCHOOL EXIT EXAMINATION (special education students)

ITEM WC-4	Request by Glendora School District to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for one special education student #063. CDSIS-17-10-2002 (Recommended for APPROVAL)	ACTION
ITEM WC-5	Request by Glenn County Office of Education to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for two special education students #064 and #065. CDSIS-20-10-2002 (Recommended for APPROVAL)	ACTION
ITEM WC-6	Request by Julian School District to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for one special education student #066. CDSIS-1-11-2002 (Recommended for APPROVAL)	ACTION
ITEM WC-7	Request by Fremont School District to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for one special education student #067. CDSIS-2-11-2002 (Recommended for APPROVAL)	ACTION
ITEM WC-8	Request by Poway SELPA to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for four special education students #069, #070, #071, and #072. CDSIS-6-11-2002 (Recommended for APPROVAL)	ACTION

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ITEM WC-9	Request by Placentia Yorba Linda School District to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for one special education student #074. CDSIS-8-11-2002 (Recommended for APPROVAL)	ACTION
ITEM WC-10	Request by Nevada School District to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for three special education students #076, #077, and #078. CDSIS-9-11-2002 (Recommended for APPROVAL)	ACTION
ITEM WC-11	Request by Moorpark School District to waive <i>Education Code</i> Section 60851 (a), “the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school” for four special education students #080, #081, #083 and #084. CDSIS-13-11-2002 (Recommended for APPROVAL)	ACTION
<u>INSTRUCTIONAL MATERIALS SUFFICIENCY (Audit Findings)</u>		
ITEM WC-12	Request by Old Adobe Union School District for a retroactive waiver of <i>Education Code</i> (EC) Section 60119 regarding Annual Public Hearing on the availability of textbooks or instructional materials. This district has an audit finding for the 2001-2002 fiscal year that they failed to properly notice (10 days) the public hearing. CDSIS-19-11-2002 (Recommended for APPROVAL)	ACTION

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MILLER-UNRUH READING SPECIALIST

ITEM WC-13	Request by Riverside Unified School District to waive <i>Education Code</i> Section 52859(b). This request is related to the prohibition of using funds coordinated under the School-Based Coordinated Program (SBCP) to pay for the local share of costs associated with the employment of a Miller-Unruh Reading Specialist. CDSIS-10-11-2002 (Recommended for APPROVAL)	ACTION
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REGIONAL OCCUPATIONAL PROGRAMS

ITEM WC-14	Request by Lassen County Office of Education for the Regional Occupational Program to waive <i>Education Code</i> Section 52314.6(a) regarding the 3% limit enrollment of students under the age of 16, in the Regional Occupational Program (ROP) CDSIS-21-10-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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RESOURCE SPECIALIST

ITEM WC-15	Request by Fortuna Union High School District to waive Education Code (EC) Section 56362(c), which allows the district to exceed the maximum caseload of 28 students (but not more than 32) for each Resource Specialist, Kathleen Teague and Carol Argyle assigned at Fortuna Union High School. CDSIS-7-11-2002 (Recommended for APPROVAL)	ACTION
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SATURDAY SCHOOL STATE MEAL MANDATE

ITEM WC-16	Renewal request by Pixley Union School District to waive <i>Education Code</i> Section 49550, for 2002/03, 2003/04, and 2004/05 state fiscal years for the Saturday school program. CDSIS-19-10-2002 (Recommended for APPROVAL) <i>E.C.</i> 33051(c) will apply	ACTION
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Judy Pinegar, Waiver Office, reported that there were minor technical corrections to WC-3 and WC-10. There were two typographical errors in WC-3: the school's name is Hearthstone, not Heatherstone, and the word "for" between the names of the two schools should be "and." On the WC-10 coversheet, the CDSIS code is incorrect and should be CDSIS 9-11-2002. She informed the Board that Silvia DeRuvo from the California Association of Resource Specialists and Special Education Teachers had intended to speak on WC-15, but was not present at this time. Ms. Pinegar noted that the Department recommendation on WC-15 would not be affected.

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- ACTION: Ms. Tacheny moved that the State Board approve the requests in Items WC-1 through WC-16, in keeping with the recommendations of CDE staff. The motion recognized minor corrections to Items WC-3 and WC-10. The motion also recognized that the provisions of Education Code Section 33051(c) applied to the requests in Items WC-3 and WC-16. The motion incorporated the conditions recommended by CDE staff with respect to Items WC-3 and WC-14. Ms. Hammer seconded the motion. The motion was approved by unanimous vote of the members present.

WITHDRAWN WAIVERS (W-1, W-2, and W-7)

FEDERAL SUPPLEMENTAL SERVICES

ITEM W-1	Request by districts for a waiver of NCLB, Title I, Part A, Section 1116(e), the requirement to provide “supplemental services” to eligible students. CDSIS—To be determined (Recommended for)	ACTION
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ACADEMIC PERFORMANCE INDEX (adult testing irregularities)

ITEM W-2	Alhambra Schools District (ASD) Academic Performance Index (API Waiver). Specifically, the ASD requests a waiver of Title 5 CCR Section 1032(d)(1) and (3) to allow Mark Keppel High School to be included in the API for the current year (2002) or at least in the subsequent year (2003). The district had "adult testing irregularities." CDSIS-39-7-2002 (Recommended for DENIAL per <i>Education Code</i> Section 33051(a) (1), the educational needs of the pupils are not adequately addressed.	ACTION
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SCHIFF-BUSTAMANTE STANDARDS-BASED INSTRUCTIONAL MATERIALS

ITEM W-7	General waiver request of <i>Education Code</i> Sections 60450 (b) and 60451(b) – Schiff-Bustamante Standards-Based Instructional Materials Program by Woodside Elementary School District to purchase nonadopted Instructional Resources (<i>FOSS, Grades K-5, California Edition</i>) using Schiff-Bustamante Funds. CDSIS-12-10-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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Ms. Pinegar announced that Waivers W-1, W-2, and W-7 had been withdrawn.

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PROPOSED CONSENT WAIVERS (W-3, W-5, and W-8)
COMMUNITY DAY COLLOCATION

ITEM W-3	Request by Cotati-Rhonert Park Unified School District for a waiver of <i>Education Code</i> Section 48661(a) relating to the placement of a community day school on the same site as two continuation high schools, an independent study center, and an adult education center at the new relocated site (Alternative Education Center at Richard Crane site). CDSIS-18-11-2002 (Recommended for APPROVAL) <i>E.C.</i> 33051(c) will apply	ACTION
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INSTRUCTIONAL MATERIALS FUND (IMF) PETITION REQUEST

ITEM W-5	Petition request under <i>Education Code</i> Section 60200 (g) by Sonoma County Office of Education to purchase nonadopted Instructional Resources for “special education students” using Instructional Materials Fund (IMF) monies. (List attached) CDSIS-22-10-2002 (Recommended for APPROVAL)	ACTION
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SCHOOL SITE COUNCIL

ITEM W-8	Request by Lassen View Union Elementary School District to renew a waiver of Education Code Section 52852, allowing one joint school site council to function for two small rural schools. CDSIS-21-11-2002 (Recommended for APPROVAL)	ACTION
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Ms. Pinegar informed the Board that Items W-3, W-5 and W-8 are proposed consent waivers. She noted that in W-3, the name of the school district was misspelled as Cotati-Rhonert and should be Cotati-Rohnert.

- **ACTION:** Ms. Hammer moved that the State Board approve the requests in Items W-3, W-5, and W-8. The motion recognized that the provisions of Education Code Section 33051(c) would apply to the request in Item W-3. The motion also recognized a technical correction to the write-up on Item W-3. Ms. Lee seconded the motion. The motion was approved by unanimous vote of the members present.

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EQUITY LENGTH OF TIME

ITEM W-4	Request by Dublin Unified School District to waive <i>Education Code</i> (EC) Section 37202, the equity length of time requirement for third grade students at Dougherty and Dublin Elementary Schools, to unstagger their third grade classes in order that all students in their classes can attend a longer school day (45 minutes per day). CDSIS-14-10-2002 (Recommended for APPROVAL WITH CONDITIONS)	ACTION
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Ms. Pinegar explained the waiver request and informed the Board that the parent who had come before the Board in December to express her opposition was no longer opposing the waiver.

Ms. Tacheny commented that she was concerned that in last month’s discussion and the presentation of the waiver, the district’s rationale for the waiver was to implement a program. This program, however, is already operational in all schools in the district. Dublin Unified School District Superintendent John Sugiyama responded to Ms. Tacheny’s concerns.

Vice President Nuñez stated this is a local decision and the district is working to implement the longer instructional time in all the schools, which is why he was supportive of the waiver request.

- ACTION: Mr. Nuñez moved that the State Board approve the request in Item W-4 with the conditions recommended by CDE staff. Ms. Hammer seconded the motion. The motion was approved by a vote of 6-1-1. Ms. Tacheny voted against the motion. Mrs. Joseph did not vote on the motion.

SALE AND LEASE SURPLUS PROPERTY

ITEM W-6	Sale/Lease of Surplus Real Property: Waiver of Property Bid and Offer Procedures for the Maintenance and Transportation Yard owned by the Huntington Beach Union High School District. CDSIS-16-11-2002 (Recommended for APPROVAL) <i>E.C.</i> 33051(c) will apply	ACTION
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Ms. Pinegar introduced Duwayne Brooks, School Facilities Planning Division, who presented the waiver request.

President Hastings pointed out that the competitive bid process in the law is intended to maximize the value the districts receive for sales and leases of surplus property and there has to be a “high bar” for waiving the law.

Mr. Brooks called forward Huntington Beach Union High School District representative, Patricia Koch, who explained why the district was requesting the waiver and the process implemented to date regarding the lease of the property.

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Ms. Hammer inquired about the possible need for hazardous waste clean up at the site and how the district would handle that problem. Mrs. Koch responded to Ms. Hammer's question.

- ACTION: Ms. Tacheny moved that the State Board approve the request in Item W-6. The motion recognized that the provisions of Education Code Section 33051(c) would apply to the request. Ms. Hammer seconded the motion. The motion was approved by unanimous vote of the members present.

Ms. Pinegar informed the Board that Ms. DeRuvo was now present and still wished to address the Board. Ms. DeRuvo commented on WC-15, which had been taken up earlier in the day before she was in attendance.

ITEM 22	Revision to the <i>California State Plan (1999-2004) for the Workforce Investment Act, Title II: Adult Education and Family Literacy Act</i> (revised May 30, 2002).	INFORMATION
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Mary Weaver, Educational Support Services Division, presented this item. She informed the Board that the revisions are a technical cleanup. Table 2 in Attachment 1 needs to be inserted into the state plan. In Attachment 2, there are additional changes, including a correction of incorrect data on page 5.4 and a new table on page 5.5 (a duplication of Table 2 on Attachment 1). The table was part of the changes the Board previously made, but that had been unintentionally left out of the state plan.

Mr. Fisher asked if any action was possible at this meeting. Ms. Weaver replied that the item was not noticed for action at this meeting. Ms. Franklin noted that if the Board wished, staff could put this item on the proposed consent list for next month.

No action was taken on this information only item.

ITEM 23	Proposed Additions and Amendments to Title 5, CCR, Regulations Relating to Special Education.	INFORMATION ACTION
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Alice Parker, Special Education Division, presented the regulations to the Board. She stated that the regulations had been through the 45-day public comment period and that the public hearing for the regulations had been held at the December Board meeting. The regulations are before the Board for adoption as permanent regulations.

President Hastings thanked his colleagues for delaying the action last month so that he could discuss these regulations. He commented that there is a problem related to students in charter schools receiving services from SELPAs. Conflict often arises regarding what entity should pay for these services. Noting that he has no solution for this problem, he asked Ms. Parker to develop possible solutions over the next two months that would ensure charter school students receive the services they need. With that request, President Hastings advised he was prepared to vote for adoption of the regulations. Mr. Fisher asked that proposed solutions to the problem be presented at the March 2003 Board meeting.

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In response to Superintendent O’Connell’s question regarding an appeal process, Ms. Parker responded that the appeal process varies with the SELPA.

Mr. Nuñez remarked that many SELPAs are providing services to students enrolled in charter schools and asked that any proposed solutions not have a negative impact on the SELPAs that are doing the right thing.

- ACTION: Mr. Nuñez moved that the State Board adopt the proposed permanent regulations as presented in the agenda item, in keeping with the recommendation of CDE staff and the provisions of the Administrative Procedure Act. Ms. Lee seconded the motion. The motion was approved by unanimous vote of the members present.

ITEM 24	Permanent Regulations Regarding Claims for Average Daily Attendance for Pupils Over the Age of 19 by Charter Schools and Charter Granting Entities.	INFORMATION ACTION
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Mr. Geeting explained the need for the proposed regulations, which are recommended by both the Department of Finance and the Office of the Secretary for Education.

Mr. Fisher inquired about the difference between the funding levels for average daily attendance for K-12 students and adult education students. Mr. Geeting replied that funding for adult education students is approximately half that provided for the K-12 students.

Eileen Cubanski, District Organization and Charter Schools Office, provided context for the regulations. She explained that some charter schools are enrolling adult pupils and providing adult education courses, without providing a comprehensive high school program to these pupils. The intent of charter schools was to serve K-12 students. She noted that there are exemptions to the proposed regulations already in statute for California Conservation Corps and local conservation corps, as well as federal job programs.

Mr. Fisher inquired about what is done in other public schools, schools that are not charter schools. Ms. Cubanski explained how non-charter schools typically serve adult pupils through separate adult education programs.

The following individual addressed the Board:

Brian Bennett, San Francisco Sheriff’s Department and the Metropolitan Area Assistance Committee Charter School

President Hastings stated that the core issue is the Legislature intended charter schools as a K-12 program, and that if enrolled at age 19, students can continue towards their diploma. President Hastings said that he believe the best approach to deal with programs such as the Sheriff’s program is through legislation. Ms. Hammer remarked that she would like there to be a way to support such programs.

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Ms. Tacheny commented that without regulations, we open up a Pandora's box of potential problems. It is the role of the Governor and the Legislature to allocate resources for education.

- ACTION: Mr. Nuñez moved that the State Board approve the Notice of Proposed Rulemaking with the minor technical changes identified by staff for purposes of commencing the process to establish permanent regulations regarding claims for average daily attendance of individuals over the age of 19 in charter schools. Ms. Tacheny seconded the motion. The motion was approved by a vote of 6-1-1. Ms. Hammer voted against the motion. Ms. Lee did not vote on the motion.

Special Presentations

President Hastings presented a plaque to Mrs. Joseph recognizing her tireless advocacy of high quality education for all children and enduring accomplishments. The Board and audience responded with a standing ovation.

President Hastings then presented a plaque to Susan Hammer highlighting her many important contributions to educational reform. The Board and audience responded with a standing ovation.

ITEM 25	Monitoring and Evaluation of Supplemental Educational Services Providers for No Child Left Behind Act of 2001	INFORMATION ACTION
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President Hastings noted that Hanna Walker, Specialized Programs Division, has been with the Department for 28 years and this meeting marks her last day. Ms. Walker reflected that she has enjoyed the experience of working the Department and will miss her colleagues.

Ms. Walker informed the Board that surveys were being developed for providers and parents. The purpose of the surveys is to provide data to monitor the effectiveness of providers. Ms. Walker introduced Sofia Aburto, WestEd, who has been assisting in the development of the survey. Ms. Aburto advised that WestEd has been working on the survey for approximately one month and that it is an electronic, web-based survey.

Mr. Nuñez stated the Board needs to look at the bigger picture. The districts have to pay for these supplemental services after two years of not reaching federal goals in Program Improvement. It is very important that these services are effective. Mr. Fisher noted that it is likely that some providers will do a good job and some will not. He expressed concern about how the districts would be able to provide the information requested on the survey.

President Hastings asked Mr. Nuñez and Ms. Tacheny, as the Board's NCLB liaisons, to work with the Department staff on the survey. Ms. Tacheny noted the draft survey is very comprehensive. In her experience with both writing and completing surveys, she has found that often surveys ask too much. This survey is 12 pages and should be reduced to four pages and have more outcome questions.

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Mr. Fisher suggested weighting some of the questions. He added that the survey would be a lot of work for a lot of people and needs to be field-tested. Ms. Aburto responded that the survey would be field-tested.

The following individuals addressed the Board:

Lisa Ramer, Association of California School Administrators

Peggy Barber, Los Angeles Unified School District

Mr. Fisher remarked that service providers should be judged on the results. Ms. Tacheny stated we should have a short, simple survey of what information is needed from the districts, another for what we need from the schools, and another survey for each provider.

No action was taken on this item.

Adjournment of Meeting

President Hastings adjourned the meeting at 10:41 a.m.