

FINAL MINUTES  
State Board of Education  
September 10-11, 2003

Wednesday, September 10, 2003

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

**Members Present**

Reed Hastings, President  
Joe Nuñez, Vice President  
Robert J. Abernethy  
Donald Fisher  
Nancy Ichinaga  
Carol S. Katzman  
Brent Godfrey  
Luis J. Rodriguez  
Suzanne Tacheny  
Curtis Washington

**Members Absent**

Vacancy

**Secretary and Executive Officer**

Jack O'Connell, State Superintendent of Public Instruction

**Principal Staff**

Rae Belisle, Executive Director, State Board of Education  
Karen Steentofte, Chief Counsel, State Board of Education  
Phil Garcia, Deputy Executive Director, State Board of Education  
Greg Geeting, Assistant Executive Director, State Board of Education  
Debbie Rury, Education Policy Consultant, State Board of Education  
Deborah Franklin, Education Policy Consultant, State Board of Education  
Maryanna Rickner, Legal Assistant, State Board of Education  
Cathy Akana, Executive Assistant, State Board of Education  
Robin Jackson, Executive Secretary, State Board of Education  
Gavin Payne, Chief Deputy Superintendent, California Department of Education  
Marsha Bedwell, General Counsel, California Department of Education  
Susan Ronnback, Chief Policy Advisor to the State Superintendent of Public Instruction  
Cindy Cunningham, Liaison to the State Board, California Department of Education

**Call to Order**

President Hastings called the meeting to order at 9:04 a.m.

**Salute to the Flag**

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

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**Approval of Minutes (July 2003 Meeting)**

- ACTION: Mr. Washington moved that the State Board approve the minutes of the July 2003 meeting with minor corrections. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote of the members present. Mr. Abernethy, Mr. Fisher, and Mr. Nuñez were not present when the vote was taken.

**New Student Board Member / Oath of Office**

President Hastings welcomed the 2003-04 Student Board Member, Brent Godfrey, a senior at Irvine High School in Irvine, California. Mr. Godfrey's accomplishments include (1) serving as a communications intern for the Brookings Institute in 2002; (2) receiving the Gene Autry Humanitarian Award in 2001; (3) earning the Governor's Scholarship in his freshman and sophomore years; and (4) serving in the associated student cabinet throughout his high school career. Superintendent O'Connell administered the Oath of Office.

**Announcements/Communications**

President Hastings issued an apology to those subscribers who received their agendas late this month. A lower-cost discount mailer was used as part of the Department's cost-cutting plan. As a result, although the agendas were mailed as required, some deliveries took longer than anticipated. President Hastings added that in the future agendas would be mailed out as they had been previously.

President Hastings announced that Item 12 was withdrawn; Item 26 was postponed to November; Item 33 would be heard out of order on Thursday morning; and Item W-1 would be heard with Item 32. He also announced that public hearings had previously taken place for all the regulations on the agenda for adoption. Comments at this meeting would be limited to two minutes for each speaker.

**Superintendent's Report**

Superintendent O'Connell announced that constant improvements in the last five years have been seen on test scores for students in California and there is a narrowing of the achievement gap. This is primarily due to the hard work of the people in the trenches (i.e., teachers, local administrators, paraprofessionals, parents, and students). Superintendent O'Connell stated that the State Board and Governor Davis should take great pride in the work and improvement that has occurred.

The California SAT test scores, announced last week, showed a six-point jump over the prior year. More California students are participating than the national average and math scores are also above the national average. Superintendent O'Connell acknowledged that there are more challenges and work to do, but he is confident that the best is yet to come from public education. Improvements will continue to be seen as long as everyone continues to work well together and keeps the best interests of students in mind.

Note: Items appear in the order they were heard.

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ITEM 1	STATE BOARD PROJECTS AND PRIORITIES. Including, but not limited to, future meeting plans; agenda items; State Board office budget; staffing, appointments, and direction to staff; declaratory and commendatory resolutions; update on litigation; bylaw review and revision; review of the status of State Board-approved charter schools as necessary; and other matters of interest.	INFORMATION ACTION
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**In Memory of Travis Whitaker**

The Board members held tribute to Travis Whitaker, who was killed in an automobile accident with his good friend Kevin Keane on Sunday, August 31, 2003. Travis was the 17-year old son of Greg Geeting, Assistant Executive Director of the State Board of Education.

**Liaison Assignments / Resignation of Board Staff**

President Hastings noted that a number of Board member liaison assignments had been made. He also announced that Marion Joseph had resigned from her position as Special Consultant to the State Board effective August 30, 2003.

No action was taken on this item.

ITEM 2	PUBLIC COMMENT. Public Comment is invited on any matter <u>not</u> included on the printed agenda. Depending on the number of individuals wishing to address the State Board, the presiding officer may establish specific time limits on presentations.	INFORMATION
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The following speaker addressed the Board:  
Martha Diaz, Californians Together Coalition

*Request for Agenda Item (November Meeting)*

Mr. Rodriguez requested that an update on the Open Court teacher guide be placed on the November agenda.

No action was taken on this item.

ITEM 3	No Child Left Behind Act of 2001 – Including, but not limited to, Update on Consolidated Application.	INFORMATION ACTION
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Camille Maben, CDE Special Project Coordinator, reported on the September 1, 2003 submission to the U. S. Department Of Education. This portion of the application was for baseline information and setting targets for (1) English learners; (2) English language proficiency; (3) highly qualified teachers, paraprofessionals, and teachers receiving high quality professional development; (4) persistently dangerous schools; and (5) graduation and dropout rates.

Bill Padia reported on the Adequate Yearly Progress (AYP) data, which were released on August 15, 2003. There was a lot of improvement from the previous year, especially in the standards-based test scores, which was directly reflected in the AYP numbers. A lot of high schools met their Annual Measurable Objectives (AMO) but failed to meet their participation rate. A combination of factors

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contributed to the high failure rate. As a result, an appeal process specifically geared to participation rates has been established, which is allowed under the state's NCLB accountability workbook and through federal law. The appeal process deems schools that fail the 95 percent participation rate to have met AYP if at least 90 percent of the students were tested on the California High School Exit Exam and 95 percent were tested on the California Standards Test in English-language arts and STAR math. The 90 percent is consistent with the current API definition of participation for high schools. The Department is looking at appeals by high schools on a case-by-case basis.

In regard to NCLB, Mr. Padia stated that the issue is which schools will be in program improvement. A school goes into program improvement if it does not make its AYP two years in a row. Mr. Padia explained that schools in program improvement have to offer the choice to parents to move their children to non-program improvement schools. NCLB requires schools to send out letters informing parents that they have a choice. The schools are required to provide transportation, as well. There are 571 schools this year that will have to offer choice.

Ms. Katzman thanked Mr. Padia and Ms. Belisle for working on this issue. Ms. Katzman asked how this process would be communicated to the field. Mr. Padia replied that a letter had already been sent to the field regarding the appeal process and hundreds of responses had been received. He is working with the Board to develop a better communication strategy. Mr. Padia noted that the AYP Phase II would be coming out on October 2, 2003.

Ms. Tacheny stated for the record that there is some concern about the number of schools that by just missing their participation rate alone have missed adequate yearly progress. By comparing what was submitted and approved state-by-state, variations were found in what USDOE approved on these plans. For example, in Maryland and Washington things were approved that California had asked for and was denied. If those things were allowed for California, we would not have the participation rate challenge that we have before us. An investigation has been requested with USDOE to see if the participation rate in our state plan can be amended. Ms. Tacheny stated that the Board is working with staff on this issue.

Superintendent O'Connell noted that USDOE had initially stipulated that there were going to be inconsistencies and different agreements among states. Ms. Katzman asked if there was anyway to advocate to USDOE that the participation rate not cancel out meeting our AMOs. Mr. Hastings replied that is part of the appeal process being put into place. He noted that if USDOE does not change the law, every school would eventually fail AYP. Mr. Nuñez stated that it is very important that members of Congress hear from the districts about their problems with the AYP in implementing this law. Their involvement will help in getting this law amended. Mr. Nuñez noted in some districts there has been quite a bit of movement of children among schools. This can create a lot of problems because the schools cannot turn children away.

Mr. Fisher suggested that a uniform letter be drafted for principals to send out. Ms. Belisle stated that sample letters have been provided and districts also have their own letters. Ms. Maben clarified that data on the number of students utilizing choice are being collected through the consolidated application.

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Ms. Maben reported that AB 312 Committee voted on Monday to send a letter to the California Commission on Teacher Credentialing to urge them to rescind their decision to phase out emergency permits in Title I schools.

Ms. Steentofte reported that AB 1485 is proceeding. If enacted, an amendment will be sent to the USDOE to modify California’s Reading First Plan. This issue will be brought back to the Board after the legislation passes.

The following individuals addressed the Board:

Richard Bray, Association of California School Administrators  
Fernando Elizondo, Superintendent, Salinas Union High School District  
Candace McCarthy, Principal, Alisal High School

No action was taken on this item.

ITEM 4	<i>No Child Left Behind Act of 2001</i> – Approve Local Educational Agency Plans (required by Section 1112).	INFORMATION ACTION
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Joe Barankin, School and District Accountability Branch, reported on Items 4, 5 and 6. He stated that the remaining LEA plans would be brought back to the Board in November. Exercising an abundance of caution with respect to the appearance of a conflict, Mr. Fisher indicated that he would not participate in the consideration or vote on this item.

- ACTION: Mr. Abernethy moved that the State Board approve the local education agency plans for the No Child Left Behind Act of 2001 in keeping with the recommendation of the Department staff. Ms. Tacheny seconded the motion. The motion was approved by a vote of 8-0. Mr. Rodriguez was not present when the vote was taken.

ITEM 5	<i>No Child Left Behind Act of 2001</i> – Approve Supplemental Educational Service Providers (required by Title I, Section 1116(e)).	INFORMATION ACTION
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- ACTION: Mr. Nuñez moved that the State Board approve the Supplemental Educational Service Providers recommended by the Department staff to be included on the list of providers for 2003-04. Mr. Abernethy seconded the motion. The motion was approved by unanimous vote of the members present. Mr. Rodriguez was not present when the vote was taken.

ITEM 6	<i>No Child Left Behind Act of 2001</i> Supplemental Educational Service Providers—Adopt Proposed Title 5 Regulations.	INFORMATION ACTION
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Ms. Franklin reported that no comments had been received on these regulations.

The following individual addressed the Board:

Richard Bray, Association of California School Administrators

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- ACTION: Mr. Washington moved that the State Board adopt the proposed regulations and direct staff to complete the rulemaking package and submit it to the Office of Administrative Law for approval in accordance with the Administrative Procedure Act. Mr. Abernethy seconded the motion. The motion was approved by unanimous vote.

Ms. Tacheny suggested that the Board consider having a clean and tight definition of “standards-alignment” so when regulations are done it stays consistent.

ITEM 7	Standardized Testing and Reporting (STAR) Program – Including, but not limited to, STAR Update.	INFORMATION ACTION
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Mr. Flores reported on the 2003 STAR results. Students continue to improve in their performance on standards-based tests. There was an increase in students taking algebra, geometry and algebra II tests. The contractor, ETS, is conducting some post-test workshops. In relationship to that, information will be provided to districts on how to interpret their results from the 2003 STAR program.

Mr. Flores reported on the California Parent Report proposals. Ms. Tacheny provided an overview of the report. Language issues will be addressed in November. Teachers will receive a copy of the report that goes to the parent (guardian) for every child in their class. Translation guides in ten different languages will be provided, which ETS is doing for no additional cost to California. President Hastings stated that it would need to be completed by January 2004.

Ms. Katzman acknowledged Ms. Tacheny, Mr. Flores, ETS, and the GROW Network for all their work. She recommended giving out these reports at parent-teacher conferences. Mr. Flores noted that there is a requirement to notify parents of the results within 20 days of receipt. Ms. Tacheny stated that teachers would be given an aggregate summary report for students.

President Hastings stated that Ms. Tacheny started focusing on the parent reports at least three years ago and has been relentless with this item. She acknowledged ETS for making this happen in a very tight budget year.

Ms. Belisle noted that an issue to explore with the publisher and others is the difference between boys and girls at the high school level on English language arts in STAR and CAHSEE. Ms. Tacheny requested that analysis regarding the NRT be presented by November. Mr. Flores noted that conversion tables provided by the contractor would be out before the end of September.

The following individual addressed the Board:  
Doug McRae, Education Specialist

President Hastings announced that Item 8 would be postponed to Thursday.

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ITEM 9	Standardized Testing and Reporting (STAR) Program – Approval to Redesignate Spanish Assessment of Basic Education, 2 <sup>nd</sup> Edition (SABE/2) and Approval of 2004 Contract with CTC/McGraw-Hill.	INFORMATION ACTION
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Mr. Flores provided an overview of the STAR program consistency. The 2004 Scope of Work would be basically the same as the 2003 Scope of Work, with changes to reflect about a four percent increase in fixed costs with no change in the variable cost. Approximately 110,000 students will be tested.

- ACTION: Ms. Katzman moved that the State Board (1) designate the Spanish Assessment of Basic Education, 2<sup>nd</sup> Edition (SABE/2), as the Spanish norm-referenced test for the 2004 STAR program; (2) approve the 2004 contract with CTB/McGraw-Hill related to the SABE/2; and (3) authorize the Executive Director of the State Board to approve any technical changes to the 2004 contract as may be necessary. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote of the members present. Mr. Abernethy was not present when the vote was taken.

ITEM 10	California High School Exit Examination (CAHSEE) – Including, but not limited to, CAHSEE Update.	INFORMATION ACTION
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Mr. Flores reported that ETS would conduct a performance standard-setting for the CAHSEE using the Bookmark Method on September 18-20, 2003. A recommendation on the passing score will be presented in November.

ITEM 11	California High School Exit Examination (CAHSEE) – Adopt Proposed Title 5 Regulations.	INFORMATION ACTION
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Mr. Flores provided an update on the regulations, including the proposed revisions.

The following individual addressed the Board  
Stephanie Farland, California School Boards Association

- ACTION: Mr. Washington moved that the State Board (1) amend the proposed regulations as recommended by staff; (2) direct staff to send the amended regulations out for 15-day public review in accordance with the Administrative Procedure Act; (3) if no objections to the amended regulations are received during the 15-day public review period, direct staff to complete the rulemaking package and submit it to the Office of Administrative Law in accordance with the APA; and (4) if objections to the amended regulations are received during the 15-day public review period, direct staff to place the matter on the next State Board agenda for action following consideration of the objections. Ms. Katzman seconded the motion. The motion was approved by unanimous vote of the members present. Mr. Abernethy was not present when the vote was taken.

ITEM 12	California English Language Development Test (CELDT) – Including, but not limited to, CELDT Update.	INFORMATION ACTION
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This item was withdrawn.

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ITEM 13	Immediate Intervention/Underperforming Schools Program (II/USP) – Consider definition of “significant growth” for certain schools failing to meet annual Academic Performance Index (API) growth targets (Education Code Section 52055.5).	INFORMATION ACTION
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Wendy Harris, School Improvement Division, stated that in November a recommendation will be presented on some form of intervention or sanction for any school that has participated in II/USP for two or three years and has failed to make significant growth. A definition is needed so it can be applied in November.

President Hastings stated that the projections between the Department and the Board are that 98 percent of schools will eventually not make AYP. Broadening the definition of “significant growth” to include making AYP will eventually condemn essentially all schools to stay permanently in II/USP. The Board discussed the AYP issue.

- ACTION: Mr. Nuñez moved that the State Board maintain the definition of “significant growth” adopted in February 2002 for all three cohorts in the Immediate Intervention/Underperforming Schools Program (II/USP), with the technical change recommended by the Department staff pertaining to exiting from the program. Mr. Washington seconded the motion. The motion was approved by unanimous vote.

The following individuals addressed the Board:  
Richard Bray, Association of California School Administrators  
Samantha Dobbins Tran, California School Boards Association

ITEM 14	Territory Transfer Appeal: From San Lorenzo Valley Unified School District in Santa Cruz County to Los Gatos-Saratoga Joint Union High School District and Lakeside Joint School District in Santa Clara County.	ACTION
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Teri Chen, School Fiscal Services Division, provided background information and explained the Department’s recommendation. President Hastings announced that speakers were limited to two minutes.

The following individuals addressed the Board:  
Harald Striepe, Appellant  
Steve Lopez, Los Gatos-Saratoga Joint Union High School District, Director of Educational Services  
Porter Sexton, Santa Clara County Office of Education

- ACTION: Mr. Nuñez moved that the State Board approve the appeal, consistent with the recommendation of the Department staff, by the adoption of the proposed resolution presented in Attachment 2 of the agenda item. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote.

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ITEM 15	Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day – Adopt Proposed Title 5 Regulations.	ACTION
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Caroline Roberts, School Health Connections Office, provided an update on the regulations.

The following individual addressed the Board:

Rosaline Turnbull, California State Parent Teacher Association

- **ACTION:** Ms. Tacheny moved that the State Board adopt the proposed regulations and direct staff to complete the rulemaking package (including any necessary changes in the draft responses to public comments) and submit it to the Office of Administrative Law for approval in accordance with the Administrative Procedure Act. Mrs. Ichinaga seconded the motion. The motion was approved by unanimous vote.

**Lunch Break:** President Hastings called for the lunch break at 12:01 p.m. He reconvened the session at 1:10 p.m.

ITEM 16	Annual Financial Reporting for all K-12 Local Educational Agencies, including Charter Schools, as Required by Assembly Bill 1994 (Chapter 1058, Statutes of 2002) – Adopt Proposed Title 5 Regulations.	INFORMATION ACTION
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Caryn Becker, School Fiscal Services Division, provided an update on the regulations.

The following individual addressed the Board:

Eric Premack

- **ACTION:** Mr. Nuñez moved that the State Board (1) adopt the regulations pertaining to annual financial reporting by K-12 local educational agencies, including charter schools, with the amendments recommended by staff, which appear to be non-substantial; and (2) direct staff to complete the rulemaking package and send it to the Office of Administrative Law (OAL) for approval in accordance with the Administrative Procedure Act (APA). In the event the OAL finds that the amendments are substantial, then (1) direct that staff send out the amended regulations for 15-day public review in accordance with the APA; (2) if no objections to the amended regulations are received during the 15-day public review period, direct staff to again complete the rulemaking package and submit it to the OAL for approval; and (3) if objections to the amended regulations are received during the 15-day public review period, direct staff to place the matter on the next State Board agenda for action following consideration of the objections. Mr. Washington seconded the motion. The motion was approved by unanimous vote.

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ITEM 17	Funding Determinations for Charter Schools Offering Nonclassroom-based Instruction Pursuant to Senate Bill 740 (Chapter 892, Statutes of 2001) – Adopt Proposed Title 5 Regulations.	ACTION
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Eileen Cubanski, Charter Schools Office, provided an update on the regulations.

- ACTION: Mr. Washington moved that the State Board (1) adopt the proposed regulations pertaining to funding determinations for charter schools offering nonclassroom-based instruction and (2) direct staff to complete the rulemaking package and submit it to the Office of Administrative Law for approval in accordance with the Administrative Procedure Act. The motion recognized that the State Board had considered the comments received during the 15-day public review period and the responses thereto prepared by the Department staff, and further recognized that the opportunity to present written or oral comment had been provided to the public in accordance with the Bagley-Keene Open Meeting Act and that no member of the public presented written or oral comment at the meeting. Ms. Tacheny seconded the motion. The motion was approved by unanimous vote.

ITEM 18	Alternative Schools Accountability Model (ASAM) –Adopt Proposed Title 5 Regulations.	INFORMATION ACTION
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Sue Bennett, Educational Options Office, provided an update on the regulations. Ms. Bennett introduced Lynn Wilen, Co-Chair of the Alternative Accountability Subcommittee.

- ACTION: Mr. Nuñez moved that the State Board (1) adopt the proposed regulations pertaining to the Alternative Schools Accountability Model and (2) direct staff to complete the rulemaking package and submit it to the Office of Administrative Law for approval in accordance with the Administrative Procedure Act. Ms. Katzman seconded the motion. The motion was approved by unanimous vote.

ITEM 19	Model Charter School Application – Consider for approval.	INFORMATION ACTION
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Consideration was postponed to November so the Advisory Commission on Charter Schools could further review the document.

ITEM 20	Legislative Update – Including, but not limited to, information on legislation and legislative priorities.	INFORMATION ACTION
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B. Teri Burns, Government Affairs Office, reported that the State Board legislative liaisons’ recommendations include (1) preserving the current assessment system; (2) maintaining the accountability system, making only those minor conforming changes necessary to comply with the No Child Left Behind Act; (3) encouraging more publisher submissions and instructional materials that will meet California’s rigorous requirements; and (4) safeguarding the academic content standards as the foundation of California’s K-12 education system. The Board held considerable discussion on this issue. Mrs. Ichinaga recommended the Board take a stand on maintaining grade two testing. President Hastings

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suggested that other possible legislative priorities might include enhancing the coordination between K-12 and higher education, and supporting high achievement charter schools operating in California with particular support and encouragement of those operating in areas of greatest need. President Hastings announced that this issue would return in November.

Superintendent O’Connell explained that due to the decrease in manpower, he has directed Ms. Burns and her limited staff not to “pick a fight” on everything. He stated it is important to work together, prioritize, and be realistic.

Ms. Burns provided updates on AB 356, AB 1485, AB 921, and AB 1548.

President Hastings announced Item 24 would be postponed to Thursday.

No action was taken on this item.

**PROPOSED CONSENT ITEMS (21, 22, 23, 25, and 27)**

ITEM 21	AB 2326 (Frommer) Task Force on Braille Reading Standards – Approve Proposed Members.	ACTION
ITEM 22	The Principal Training Program (AB 75) – Approve Training Providers.	ACTION
ITEM 23	The Principal Training Program (AB 75) – Approve Local Educational Agencies (LEAs) and Consortia Funding Applications.	ACTION
ITEM 25	Assignment of Numbers for Charter School Petitions.	ACTION
ITEM 27	Instructional Materials Fund – Approve 2003-04 Budget.	INFORMATION ACTION

- ACTION: Mrs. Ichinaga moved that the State Board approve the actions recommended in Items 21, 22, 23, 25, and 27. The motion incorporated the last-minute memorandum submitted for Item 25. Mr. Godfrey seconded the motion. The motion was approved by unanimous vote of the members present. Mr. Abernethy was not present when the vote was taken.

ITEM 26	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.	ACTION
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This item was postponed to November.

**Adjournment of Day’s Session**

President Hastings announced that the Closed Session would begin on Thursday at 8:00 a.m. He adjourned the day’s session at 2:00 p.m.