

SACRAMENTO COUNTY BOARD OF EDUCATION

Minutes of the Special Meeting of May 10, 2011

Agenda

- I. Call to Order and Roll Call
 - II. Pledge of Allegiance
 - III. Approval of the Minutes of the Regular Board Meeting of February 1, 2011
 - IV. Adoption of Agenda
 - V. Official Correspondence
 - VI. Visitor Presentations
 - A. General Public
 - B. Employee Organizations
 - VII. New Business
 - A. Approval of Material Revision to the Fortune School of Education Countywide Benefit Charter
 - B. Approval of the Memorandum of Understanding (MOU) for the Fortune School of Education Countywide Benefit Charter
 - VIII. Adjournment
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I. President Fong called the meeting to order at 6:01 p.m. in the Board Room of the David P. Meaney Education Center, Sacramento 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 Sue Stickel, Interim Superintendent and Acting Secretary to the Board; Teresa Stinson, General Counsel; Robin Pierson, Joyce Wright, Tammy Sanchez, Tim Taylor, and 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. Trustee Rivas was not present at the time of the roll call.

II. President Fong led the Pledge of Allegiance.

President Fong announced that the Board would recess into Closed Session, under Government Code section 54956.9(b), to confer with legal counsel regarding pending litigation. Specifically, the California Teachers Association has filed a government tort claim regarding the Sacramento County Board of Education's approval of the Fortune School of Education Countywide Charter Petition. The Sacramento County Board of Education has provided public notice that the Board will meet in Closed Session to conduct this business and take action as deemed necessary and appropriate.

Recessed Open Session at 6:03 p.m.

Convened Closed Session at 6:05 p.m.

Adjourned Closed Session at 6:52 p.m.

Reconvened Open Session at 6:55 p.m.

President Fong announced that no action was taken in Closed Session.

III. On a motion by Mr. Geeting and seconded by Ms. Brown, the revised minutes of the Regular Board Meeting of February 1, 2011 were approved. Motion carried unanimously.

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

V. Interim Superintendent Stickel distributed numerous emails and correspondence that have been delivered in the last two days.

VI.A. Darlene Anderson addressed the Board regarding the disturbing thing that is happening in Sacramento County in the behavioral programs and the contracts like LINKS and other contractors who provide services for children who have behavioral issues. The kids are pushed into these programs that do not offer academic content standards. It is the county's responsibility to collect data on these children and report out to the public because the public has the right to know. Even though local districts are choosing to use these partners, the public has the right to know but the county is not collecting that data. And even if they are, the public is not discussing it because it's not something that's readily available. She's going to tell you that in limiting support for African American students in the county that we really need to know what's happening.

President Fong stated that he did hear Ms. Anderson speak at the Black Parallel School Board. There was a government code cited which states that the county superintendent should receive reports from each of the district superintendents about who gets expelled and for what reasons. The superintendent can act on those things. He wanted to bring that to the attention of our staff because we have not heard from our superintendent on this matter.

Frederick Gayle, Jr. stated that he went through the proposal for the charter school and he thought it was one of the most thorough documents he has seen. He thinks Mr. Cooley has been the Josephus of this Board and he is very proud of that. Most people can't be a Josephus because it takes a lot of personal integrity.

VI.B. Bill Mullen, CSEA President, Chapter 480, reported he attended the two budget committee meetings a couple of weeks ago and they were quite informative. He thanked Tammy Sanchez. There were a couple of things that were disturbing, specifically that the SCOE trust ideally needs to be around \$4.5 million and it's going down every year. Our El Centro facility is deficit spending at approximately half a million dollars a year so that puts us in a predicament. The one thing that grabbed his attention was that we will be setting aside \$1 million for the Fortune proposal for possible lawsuits. It's kind of disturbing that we are being put into this position as we are quickly approaching the \$4.5 million mark. He had to endure 53 classified layoffs this week and sitting through meetings daily. These people's lives are being affected. He's had people tear up and not know what to do. If you look at all the chairs behind

you there are not even 53 of them, that's how many people who are being affected just on the classified staff; and does not include teachers. He hopes you are making the right decision.

Mr. Scribner asked Mr. Mullen of those positions you are talking about, what types of programs are they involved in.

Mr. Mullen said it's quite global. The court and community schools are being affected the most, some para-educators, a lot of support staff, people in financial services, and custodians. His fear is that this could be even worse next year. How much more can we cut? As he said earlier and had emailed you about the \$1 million being set aside, maybe we can gamble with a fraction of it and get the community schools back up. That's a lot of jobs saved.

Mr. Cooley thanked Bill for participating in the two sessions a couple of weeks ago. He does agree with him that it is a shame we are put in this position.

VII.A. President Fong opened the Public Hearing on the revised material revisions to the Fortune School of Education Countywide Benefit Charter at 7:07 p.m.

Ms. Stinson stated at its meeting which began on February 1 and ended on February 2, 2011, the Sacramento County Board of Education approved the Fortune School of Education Countywide Benefit Charter Petition for a period of 5 years, subject to a number of conditions.

The Board's approval motion made clear that if any of the conditions of approval was not met by the specific deadline, then unless extended or changed by the Board, the approval of the charter would be terminated and the charter would cease to operate.

As part of the Sacramento County Office of Education's negotiations of the required Memorandum of Understanding, which was one of the conditions of approval, the Fortune School has agreed to make a material revision to the charter so that it includes each of the conditions of approval specified by the Board in its February 1 and 2, 2011 approval action with exception of one. Fortune School has not agreed to the condition that it hold harmless, defend, and indemnify the Board for its approval of the charter petition. So with the exception of that, Fortune School has agreed to otherwise amend the charter to include the other conditions of approval with some slight revisions.

SCOE staff recommends that the Board approve a material revision to the Fortune School charter so that the conditions of approval are included in the charter; this will make those provisions part of the governing document that governs the charter. These conditions are as follows:

- 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, the lowest performing ethnic subgroup in the county, 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.

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.

- 4) 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.

Again, that was one of the conditions of approval where the Fortune School has objected to one portion in that condition.

- 5) Approval of an acceptable Memorandum of Understanding.
- 6) Pursuant to Education Code section 47604(b), the county board may choose to have a representative on Fortune's Board of Directors.
- 7) Fortune shall be subject to the *Williams Act* [Education Code section 1240(c)], to the extent applicable.
- 8) The Fortune charter school's governing board, employees, and contractors shall be subject to the same conflict of interest provisions applicable to California public school district governing boards, employees, and contractors, including, as applicable, Government Code sections 1090-1099, 1125-1129, 81000-91014; Education Code sections 35107, 35230-35240, 41000-41003, and California Code of Regulations, Title 2, sections 18110-18997.

The Board's approval action states that the Fortune Schools governing board shall be subject to the same conflict of interest provisions as public school district governing boards. However, in looking at the minutes of that approval, it was clear that the Board intended that it also apply to governing board employees and contractors. That is why that slight revision is there. As part of the MOU negotiations, the Fortune School has agreed that the conflict of interest provisions would apply in this manner.

- 9) The conditions may be changed or supplemented by future Board action.

- 10) In addition, SCOE staff recommends that the actual text of the indemnification language that is included in the MOU on pages 9 and 15 be included in the charter in order to spell out the indemnification provisions that were approved by the Board.

We recommend that you approve a material revision in that manner.

Mr. Rivas stated we got a letter today from the Sacramento Coalition to Save Public Education regarding the conflict of interest restrictions. His understanding is that the Fortune School agreed in the MOU to live by all the rules that are applicable to traditional public schools. The question that was proposed to us specifically in this letter was about the ability of Dr. and Mrs. Fortune to sit on the governing board of the Fortune School and to hire Trustee Margaret Fortune; he reminded his colleagues that Ms. Fortune is a member of the California State University Board of Trustees and thinks we should acknowledge that when we address her. He asked if Dr. and Mrs. Fortune could hire Trustee Fortune because of the familial relationship and if that is permitted under these restrictions.

Ms. Stinson replied that this will cross over a little bit into the next agenda item, which is the approval of the MOU. In the MOU, specifically on page 6 of the revised MOU, it makes clear that the Fortune School shall adopt a conflict of interest code before the opening of the school and one of the things it must include is a policy prohibiting nepotism. We will have to give the Fortune School an opportunity to develop their policy prohibiting nepotism and then we will have to review it. This doesn't give specific detail of what type of nepotism is prohibited, but there's certainly a requirement in the MOU that the Fortunes have agreed to adopt such a policy and to send it to us for review.

President Fong had a question regarding item #2. He thinks that by law one of the conditions is that a school that opens is required to have a student population that reflects the district that the school opens up in. He asked what the ethnic composition of Sacramento County is at this time.

Ms. Stinson replied she doesn't have the specific numbers of the ethnic composition of Sacramento County, but she clarified that the approval states that the Fortune School shall make every reasonable effort to specifically reach and recruit a pupil population that will reflect that composition. The approval motion did say that Fortune must make every reasonable effort to achieve that goal.

Mr. Cooley said that item #5 relates to the indemnification of the approval and we have received a letter from the California Charter Schools Association that states to their knowledge, no other charter school authorizing agent has required a petitioner to hold harmless and indemnify the approval of the charter. Before we get into all the discussions on this recommendation he asked Ms. Stinson to provide the Board with a little background as to thought process and rationale for the recommendation.

Ms. Stinson replied that she does not specifically know whether there are charter schools that have been asked to defend and indemnify the approval of the charter, but at the same time, it's very difficult to assess that information because in order to do that

she would have to go to every charter school in the state and ask to see their MOU. So without doing that, she does not know the answer to that. The thinking behind the indemnification clause comes from the following: 1) we are in unprecedented financial times. SCOE is not in the financial shape that it might have been years ago when it could afford to defend lawsuits because they are quite costly. Any money used to defend a lawsuit for which we are challenged would have to come from SCOE's reserves most likely. That could potentially impact the programs that SCOE operates to serve the students within our mission and goals. So the idea was to try to strike a balance. On the one hand, the Board has approved the charter; on the other hand we want to have a balance of protecting our own students, programs, and employees so that we are not spending all our money defending another entity. We certainly want to support them and we want them to be successful, but at some point we have to protect our programs. 2) Whenever we enter into an agreement or an MOU with any entity it normally includes an indemnification clause. It is not unprecedented to have indemnification clauses between government entities and others. 3) There is case law, not in the charter school context but in the context of other types of entities. For example, a developer and other entities seeking different types of government approvals have been required to defend and indemnify the governmental entity that granted the approval. The courts have upheld these indemnification requirements and have said it is appropriate because the taxpayers should not have to foot the bill for defending a decision that's ultimately going to benefit this other organization. If the Board was to be sued and of course we hope that would never happen, ultimately the Fortune School would be involved regardless as a real party in interest. That's how those kinds of lawsuits happen, so the charter school would be involved anyway. Here, maybe we could strike a balance by having them take the laboring oar.

Mr. Cooley said this Board approved two charter schools in the past. To your knowledge do you know if this Board or organization required this same indemnification clause to those two charters?

Ms. Stinson replied she doesn't believe it did. She has no knowledge that it did. The difference she would point out is that when those charters were approved it was a much different time and SCOE's budget was in a different position than it is now. We had more expendable income. Right now, our reserves are diminishing by millions of dollars each year and our programs are at risk. The idea was not to do anything to jeopardize the Fortune School, but to protect the Board and SCOE and its programs.

Mr. Geeting said President Fong spent his whole year as chair of the policy committee and he has spent at least half of his year as chair of the policy committee working on the charter school policy which included items we would insist upon in charters and standards we would use. He seems to recall that we did address the issue of indemnification for opening and operation. He doesn't recall if we included indemnification related to approval. Did we or did we not?

Ms. Stinson replied no, not for that policy.

Mr. Geeting asked if that issue ever came up prior to February 1.

Ms. Stinson replied no, not as part of the policy committee. In the process of reviewing the charter petition, SCOE's position, and the Board's position, it was something that we recommended to protect the Board and SCOE.

Mr. Geeting said he understands that but February 1 was the first time we wrestled with this item. As he said at the time, he gave great deference to the Superintendent's recommendations noting the fact that there was specific language in our action that we could come back and change or supplement at future meetings.

Ms. Stinson said, as you may remember, on February 1 it is one of the things we recommended; it's one of the things that the Superintendent supported for the benefit of all. Ultimately, it is up to the Board to decide as a policy matter whether it wants to include it. She said that repeatedly on February 1. Ultimately, that's what the Board decided to do and that's why it's in the MOU because that's what the Board directed us to do.

Mr. Cooley had a question for Ms. Sanchez. He directed the question to her because she reviewed the budgetary and financial elements of the charter school proposal. From what we have been told in various charter study sessions, and if our action over the approval of the charter is challenged in court, the cost to defend that is potentially substantial; therefore, given what you know and given what you know of the charter school's budget in moving forward to open a school this year and some of the budgetary constraints or challenges that charter schools have to grapple with to open a viable program, perhaps you could speak a little bit about a possible legal challenge and if they had to use operational dollars to defend that challenge what that might mean to their budget.

Ms. Sanchez said she guesses they would face the same things that SCOE would face; they would have to make budget cuts just like we would have to make budget cuts. She doesn't know outside of the actual budget that's just going to the operations, what else they have, what other means they have if they've done any sort of fundraisers or anything to help start the charter. She doesn't know of any of those things or their outside assets. She hasn't audited all of the entities. It would be difficult for a charter to defend something just like it would be difficult for any organization to defend it.

Mr. Cooley said we saw their budget in detail, but do we require charters to have a legal defense line item within the budget?

Ms. Sanchez replied no. We just look for the fact that they are going to have insurance to cover items and that they have reserves to help cover unexpected items and sometimes you don't know and that's why it's unexpected.

Mr. Scribner said following up with that line of questioning, have you in your experience with SCOE ever seen the scope of budget cuts we've been presented with during the last two years?

Ms. Sanchez replied no.

Mr. Scribner said if we were to set aside that number for possible litigation and then we had to deal with an all cuts budget, would that put us at the trigger mechanism which would then put us under state notice regarding our deteriorating fiscal condition.

Ms. Sanchez replied it could if the cost came in at the higher end of the estimates; we would be right there – so yes.

Mr. Scribner said at this point we're pretty much looking at class cuts now because we don't have libraries or athletic teams or items of that nature.

Ms. Sanchez replied yes; the only cuts that would be available would be the SCOE programs because our schools are so much leaner than a regular district and we don't have libraries, we don't have athletics, we don't have the field trips, and vice principals that other districts do. We can't go out and cut those things. The only options we have are directly in the classroom.

Mr. Scribner said he would oppose this in general; however he asked, with the group of students we assist through our various programs, would you say that they are also challenged students who need a helping hand and need to be helped out with respect to their academics and trying to bring them out of legal situations or simply poor decisions.

Ms. Sanchez replied absolutely.

Mr. Rivas stated he had a question for Interim Superintendent Sue Stickel. He thinks everyone recalls when we were considering the petition, that one of the criticisms of the performance of PS7, because that's the school that was used as the model to develop the petition and academic program, was that PS7 only takes the most talented or the highest achieving African American or low-income students. He suspects that in five years when we are considering a renewal, if we reach that stage, we'll hear those criticisms again, so he's looking at the MOU and there is a lot of information about reporting on student achievement and aggregates. He's wondering if it's feasible to get information on individual students who leave and the reasons for exiting the Fortune School and also get data on the level of achievement of those students so that we know whether in fact it's true, or we can just know whether or not students are being counseled out because they may drag down the aggregate API score of the school.

Interim Superintendent Stickel said are you asking about the students who exit from the school and if we can follow their achievement and obtain test scores for those students working with school districts or wherever they end up. Yes, we could.

Mr. Rivas asked what about at the time they leave.

Interim Superintendent Stickel replied we could ask for their records from the charter school.

Mr. Rivas asked if we need to put that in the MOU.

Interim Superintendent Stickel replied you could ask to have that included; presently it is not part of what we requested but you could in fact ask to have that included.

Mr. Rivas asked if now is the time to make a motion to amend?

President Fong replied that could be later.

Ms. Brown said she wanted to go back to the previous discussion about indemnifying the school. She would agree that everyone is being forced to make very, very difficult financial decisions, but they're difficult because when you do that you aren't free to abdicate your responsibility to students. When we talk about this situation of the approval, she would like to think we are not supporting an entity – Fortune School. We are supporting an opportunity for a group of students who have not been achieving to achieve so to not abdicate the responsibility to try, across the board, to look at all students who are needy; she doesn't feel comfortable in excluding a group to do that. That is why she struggles so much about the financial part of it because you can be sued. She was sued at a school because someone tripped over a step. It took a lot of money too, but part of that responsibility is not shying away from the more difficult decisions about the finances. She thinks that discussion about approval is one of three sections. We are not saying they don't have to accept any other responsibility as far as lawsuits or whatever. We are talking about the approval, which seems to be our chunk of the responsibility. It's a certain way to look at how that approval part is very different from the rest. We are not taking away any of the other responsibility from Fortune School.

Mr. Geeting said he would like to inquire if we have public speakers who wish to address this part of the discussion; if we do, he would like to move forward and hear from them.

President Fong stated he was giving Board members an opportunity to ask questions and would now like to offer the opportunity for the representatives from the Fortune School to make their case. He would like to call on Trustee Fortune to present the Fortune case and she will have five minutes to do so.

Trustee Fortune stated that with all due respect, the President of the NAACP is among those who would like to offer public comment and she's under a time constraint and we are asking if you would allow the President of the NAACP the courtesy of speaking at this time.

President Fong said okay and then we will come back to Trustee Fortune. Trustee Fortune said thank you very much.

Betty Williams, President of the NAACP, addressed the Board in support of the Fortune Charter School.

Trustee Fortune thanked SCOE staff for the negotiation process. This MOU is a voluminous document, longer than any MOU she has ever been involved with and there were lots of issues that came before us. She is really pleased to stand before the Board

today to acknowledge that we worked through those issues. She thinks that staff and the Fortune School are to be applauded for going through this process. She thanks the Board for giving her more time to allow that to be a thoughtful process. The one point of disagreement is with regards to the indemnification clause. Fortune School is more than willing and agreeable to pay for litigation that arises due to some wrong doing as it relates to the opening or the operation of the school and that is what's normal. That is what is required and agreed to by every charter school in the state. What is precedent setting for this Board is to hold Fortune School out for a special standard that no other charter petitioner, to the knowledge of the charter school association and also our law firm that represents two-thirds of the charter schools in the state, has been held to and that is to pay the legal bills and take responsibility, financially, for the decision of this Board. Fortune School wasn't in a position to make a decision to approve its own charter. The 120 parents that allowed us the opportunity to come before you on their behalf were not in a position to approve their own school. They came to you, their elected representatives, as citizens and they are the petitioners, those 120 parents that are experiencing an education deficit. African American families are in a point of desperation. Perhaps it's much clearer in places like New Orleans where a hurricane wiped out the public schools and allowed them a fresh start. We are not falling through the cracks; our children have already fallen over the cliff. 37% of African American children in this county never graduate from high school. 60% of African American students in elementary and middle schools never learn to read, write or do mathematics at grade level. They came to this Board for a solution and you gave it to them. And you were celebrated in the African American community. Now it feels as though with this action you are backing away from your decision because a challenge has arisen in the name of the CTA to put this Board under a particular type of pressure, which is part of an organized strategy that not just this Board is subject to, but other boards across the state that would be bold enough to say that we ought to offer more public school alternatives to kids that are failing in a broken system. That's what this is about. There, throughout history, has always been a bureaucratic reason to not act. Those bureaucratic reasons upheld segregation when it was challenged, upheld Jim Crow when it was challenged, and in that moment of time those decisions probably felt like a matter of protecting institutions because it's the way that it's always been done. This is that moment for this Board. The African American community, just like the CTA, is watching you at the statewide level, isn't it odd that the state teachers union would take on this local issue. Well, they've brought it to the attention of the state's African American community. Those are the people who are in the audience. You don't see the masses; you see their leadership. She understands that she doesn't have Trustee Scribner's support and that he will argue against it. She understands she doesn't have Trustee Fong's support and he will argue against it. She is talking to Trustee Rivas and Trustee Levy and asking you to stand behind your decision.

The following people addressed the Board in support of the Fortune School of Education Charter's position:

Darlene Anderson
Sarah Kollman, Middleton, Young and Minney, LLP
Malaki Seku-Amen, President and CEO of the California Urban Partnership
Monica Jones

Larry Lee, President and General Manager of the Sacramento Observer Newspaper

Carl Pinkston, Black Parallel School Board

Frederick Gayle, Jr.

Mark T. Harris, Attorney in Sacramento

Regina Wilson speaking for Hardy Brown, Publisher of the Black Voice News, Founder of California Black Media

Chris Griffin, Associate Pastor of the Destiny Church of South Sacramento and a member of the Nehemiah Merchant Leadership Program

The following person addressed the Board in opposition to the Fortune School of Education Charter's position.

Gary Barker, President of the Sacramento County Office of Education Teachers Association

President Fong stated that it is the time for Board members to ask questions or make any comments. At the close of the public comments and after the Board enters into deliberations there will be no other public comments accepted. If anyone in the public would like to make a comment on this, please do so now.

Mr. Cooley said we are on VII.A.; the request is that we approve this document as recommended or amended.

Ms. Stinson replied yes. The action is to approve material revisions of the charter as you so decide.

Mr. Cooley said we've gone through public hearing and President Fong has closed it.

Mr. Herrera noted that Trustee Fortune would now like the opportunity to speak on item VII.A.

Trustee Fortune said your decision on item VII.A. would make item VII.B. a rather moot point. This is the decision of the night and there are others who wish to speak on this issue of indemnification. She would encourage them to come forward and say their piece. That is how she wanted to use her time. Her attorney is among them and would like to share the rest of her letter into the record.

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

Ms. Kollman referred to Jerry Simmons' letter and provided her copy to Mr. Cooley. She wrote a definition of discrimination on that letter because we want to get a sense of how precedent setting this decision by the Board would be. If you are treating someone differently from somebody else as this Board would be doing by asking this charter to indemnify its actions as opposed to every other charter it's approved; and every other charter that's been approved in the state that is discrimination. She wants you to think about the policy considerations. If a parent wants to start a charter school and they know that a school district is going to make them pay for the legal fees that might result

from a challenge, how many parents do you think will want to start a charter school? Not one. How many will be able to take that risk on? Not many. So by doing this you are putting a chilling effect on the concept and purpose of the charter schools act. She hopes you will consider that in your decision.

Andie Corso, Deputy Director of Stand Up: Mayor's Johnson Education Initiative
Darryl Heath, Pastor of the Saint John Missionary Baptist Church in Sacramento,
Moderator of the Northern District Baptist Association
Sharon Saffold, President of the Sacramento Affiliate of the Black Child Development
Institute
Laura Kerr, California Charter Schools Association
Bonnie Bensen, CFO of Fortune School of Education

President Fong closed public comments at 8:22 p.m. We are now open for trustees to make their statements, comments, or ask questions of the speakers.

Ms. Levy said she's been thinking about this issue quite a bit since February 1. She has a lot of respect for our staff and their recommendations, but in this case she will respectfully disagree with them. We made this decision in good faith that long Tuesday night on February 1. The plan for the Fortune School is an excellent one. She's a long time educator and she was very impressed with everything she saw in that plan. She thinks we need to stand by our decision and we should not ask Fortune School to indemnify us for our decision. That is one part of the MOU she would like to see changed. There's not a lot of money to go around and every educational institution is having trouble making their budget and trying to serve as many students as possible and it's her hope we don't have to take our scarce dollars and use them to pay for legal costs.

Mr. Cooley said he could not have said it better than his fellow trustee, Ms. Levy. We have spent a lot of time this evening talking about who is going to pay our legal bills if the action of this Board is challenged in court by an organization. If individuals in the state care about children and they care about educating children, then they should care about giving children the best chance to get the best education possible, which he hopes that they do. He calls on the CTA to reconsider challenging our actions on February 1. They should save their resources for the fight that's at hand which is preserving public education here in California and protecting their own membership from what we've had to describe today has been every district in the state that's had to make employee reductions. It flies in the face of putting children, students first. There's never a great day to get sued. He was on this Board four or five years ago when we approved the other two charters and we didn't have this requirement and it never came up. Part of the reason is not only the economic times were better but we weren't facing the gun of a legal challenge. He's a little bit less risk adverse and his position is very clear. He's not going to speak much this evening but he wants to implore his trustees to do the right thing and stand up for what you believe in and stand up for what you declared and how you voted on February 1.

Mr. Rivas said this is a very difficult decision for him. Every dollar in public education is so precious right now, but for him he just can't get past the principle of asking someone

else to be responsible for our decision. He will support Trustee Cooley in making a motion to remove the provision that would require the indemnification as it pertains to the decision of this Board.

Mr. Cooley seconded the motion.

Mr. Rivas said he would like to add a lobby for the California School Boards Association. Senator Joe Simitian said something that was really insightful and really profound but simple at the same time. He said, "why can't we get past the charter versus traditional arguments that we seem to keep reliving over and over." He's hoping that at some point we are going to get to a point where we can discuss how to duplicate the successful strategies that Trustee Fortune has developed and apply them and spread them throughout the county to all the traditional publics. That is his final comment and where he stands.

Ms. Brown said she would echo what has been said as all of us have spent a lot of time going over the charter, the law, and what is right for children, our responsibilities as Board members so she is comfortable with the fact that, as difficult as it is, she does believe we have met the letter of the law and diligently looked at all parts of it and we're very open about how we felt that charter could work. She doesn't care what it is called, what the name of the school is, if it is a program that works for our kids and we can all come together and duplicate that then everyone will win with that. She would support eliminating the approval part.

Mr. Geeting said he thinks it was on February 2 that this final motion, which was motion number 6 was considered and he wasn't quite quick enough in his thought process to process everything that Trustee Cooley was talking about at the time and his motion to adopt motion number 6 without the word approval was ruled dead for lack of a second. At that point, he made a motion to accept the Superintendent's recommendations on motion 6 with some additions that Trustee Scribner offered and with an addition of his own. He said at the time that he gave great deference to the Superintendent's recommendation and really wanted to consider it thoroughly, but noted that the final point in motion 6 was that we could come back at a future time and change or supplement any of the conditions that we had approved. He's really thoughtfully mulled over and pondered the Superintendent's recommendations and the reasons that have been articulated. He doesn't think those reasons are trivial reasons. He thinks there's a good case to be made. The problem he has is that we didn't set that out in the rules ahead of time. If we had set that out in our charter policy and said if you bring a charter to us, this is something you have to do – indemnify us for approval – then he would be willing to enforce the policy. Potential petitioners could figure the cost of indemnification for approval into their budgets and decide whether they could make it work or not; that's the fair thing to do. Imposing it as a condition without prior notice is unfair. That is his major reason for being supportive of a motion at this point to strike the word "approval" from the list of required indemnifications. The other part of his reasoning has already been articulated by fellow trustees and he will merely reinforce it with a little story. It's a story that Marty Cavanaugh liked to tell. It's about a graduation ceremony at Carson Creek. The student speaker got up and said "You know all of us here are guilty; we've

made decisions where we've taken action and then we've expected somebody else to be responsible for the consequences. Well, I am here to tell you – it's time to man up.”

Mr. Scribner said when this item came before us on February 1 and 2 there was a significant discussion back and forth on a lot of issues. We approved the charter at the expense of other school districts and of their programs. He had a problem with that and voiced that, but on the final vote he abstained because the other observations he had made as to the process of this hearing had left him with significant concerns about our decision, but he was satisfied that the indemnification would protect us, or at least cause folks to think secondly about whether or not we needed to approach this in a different way. This Board approved it that night tentatively with that indemnification in it and he abstained. Now he finds this Board, if he's reading the votes correctly, having a change of mind and putting SCOE programs at serious risk. We are not like other districts. Ours is all about direct service to our students and no one can argue differently that the students we serve are any different in terms of being challenged and facing a dim future. Now this Board is backsliding in protecting this organization and our programs and he is very concerned about where we are going as an organization on this issue. There was some careful wording in discussion tonight about no one else having done this. The fact is, it has been pointed out that other governmental agencies have in fact required the indemnification. As he brought up that night, it is a willing buyer and a willing seller relationship here. We're saying we are willing to back you and a number of you have said we're willing to raid the funds from our other local school districts to fund this program because we believe it's worthy. Now we are saying we are going to put our programs and our ability to serve all our students on the line and that is something that is untenable to him.

President Fong said he will close out the comments. Our court and community school population is probably close to 50-60% African Americans and the rest is Latinos, Whites and Southeast Asians. We are being placed in a situation of providing the services to one group of a really needy population and another group that has fallen through the cracks that have been failed by schools, failed by teachers, failed by their parents, failed by their communities and they have not had the opportunity to change their lives around and he has fought for ten years on this Board to improve the types of programs that we have here to offer the kids; to have that opportunity to change their lives, but all of this is being put at risk and he would like to echo Trustee Scribner's remarks. When we took the oath of office here we took on a fiduciary responsibility to ensure that SCOE maintains and remains an ongoing concern. If you make decisions that jeopardize that, then you are not taking that responsibility as a trustee. You have to put on that cap as a trustee in making some of these decisions. He supports what's going on in terms of we have a charter that he opposed, but this Board approved and he is trying to support this charter in a way that is equitable to the same African American kids that you talked about that he's talking about and they deserve the same education that you want for those kids and he wants for our kids here. He would like to be able to think outside the box and find a solution to this. He wants the Trustees to think about jointly forming a legal defense fund with the Fortune School. It would be a separate legal defense fund where we will raise the money from outside sources to defend our decision so that it doesn't come from your kids or our kids. Somebody out there has the money to defend what we see as a good program. He offered that as a compromise to

think about and for his fellow trustees to think about their responsibility to ensure that SCOE is an ongoing concern financially, and that when we make our decisions that they are not made because you feel guilty that something is going on that's unfair out there. He thinks it's unfair to our kids that we have here, who have fallen through the cracks of the system for all the reasons he named earlier and it's not just teachers. He thinks the community and the parents of those kids have that same responsibility that you ask of the teachers and those school districts. The fault is not just one particular group of people. There are reasons why these things are happening in our society. A lot of it is because the politicians up there are making decisions that really don't have to do with real people and kids. He has always put kids first on this Board and he thinks Trustee Cooley will confirm that he's been one of the biggest advocates to have a program that would give our kids an opportunity to change their lives around. He would like to offer that as a suggestion and give you some time to think about it as a means to get out of this situation where you're asking us to take from our kids to give to your kids. They are the same kids.

Mr. Cooley said as a Vice Chair let's get order in the chambers real quick. You have been a champion for kids the ten years you have been on this Board. You have the opportunity to continue that tonight. As it relates to your offer, he would be happy to discuss and move forward on the offer after we pull the word "approval" out of the indemnification clause. If we draw a line in the sand tonight, as we did on February 1, that we're going to do something positive to address the achievement gap in Sacramento County, has it occurred to you that in the future maybe you would have less kids in our court and community schools?

President Fong said he would welcome the day that we would close those schools, but unfortunately that is a long way away and he hopes we get there sooner rather than later.

Mr. Cooley said today is the day we fill the dyke. With all due respect to his fellow Trustees he thinks everyone on this Board has been a champion of our programs. He would say if our schools, our traditional public schools, were doing a better job on the ground level with our students we would have fewer kids in our court and community schools. A lot of folks know that he works in real estate development. When we go to a city or county with a project, the difference is we don't have to go out and get 120 taxpayers/citizens to give us the power to bring that proposal forward. It's a private proposal and we accept the risk that we incur to bring that project forward. When you bring a charter to a public school district or county office of education as it was voiced here this evening, the power for them to bring that charter forward is the 120 signatures of those parents and taxpayers to petition their government to have a ruling on the charter proposal and that's the difference, in his mind. Everything has been said that needs to be said in terms of doing the right thing here this evening. He doesn't think anybody is saying that any trustees on this Board don't care about students or our programs. He doesn't think you can detach our responsibility to address this achievement gap in Sacramento County from our ability to take care of our schools today. A lot of the students in our schools today are here because our system failed them three, four, five and ten years ago. Today we have the chance to do the right thing and set us on a new course going forward where maybe we will have fewer kids in

our programs. Our ultimate goal is to work ourselves out of the business of having court and community kids. He thinks Mr. Rivas was going to make a motion. If he doesn't, then he will be happy to do it.

Ms. Stinson said that, understanding where the Board is going as a policy matter with this, she reminded the Board that the item before the Board is the approval of a material revision to the charter. The motion needs to be approval of a material revision to the charter with the provisions you accept. If you decide to strike out the word approval, you can do that. She would recommend that, since she sees that's where you are going, she could read the motion as she understands you may want to do it or you could read it.

Mr. Cooley said he will propose a motion and asked Ms. Stinson to let him know if this seems to capture the essence of what we are doing.

Mr. Cooley moved and Mr. Rivas seconded the motion that we approve the material revisions to the Fortune Charter School of Education Countywide Benefit Charter with the amended changes being striking the word "approval" from section five as it relates to the requirement of the Fortune School of Education to hold harmless and indemnify the Board of Education and the Superintendent from any claims arising from the approval of the charter school.

Ms. Levy said she would like to check with our counsel. Does the motion as Trustee Cooley stated it square with your approval in terms of our intent?

Ms. Stinson replied its fine in terms of her understanding of your intent. If you would like her to read the full text of it into the record she can do that.

President Fong asked Ms. Stinson to read it.

Ms. Stinson read the following motion:

Mr. Cooley moves and the motion is seconded by Trustee Rivas to approve a material revision to the Fortune Charter School so that the following conditions of approval are incorporated into the charter:

- 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, the lowest performing ethnic subgroup in the county, 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 pupils 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 opening or operation of the charter school.
- 6) Approval of an acceptable Memorandum of Understanding.
- 7) Pursuant to Education Code section 47604(b), the county board may choose to have a representative on Fortune's Board of Directors.
- 8) Fortune shall be subject to the *Williams Act* [Education Code section 1240(c)], to the extent applicable.
- 9) The Fortune charter school's governing board, employees, and contractors shall be subject to the same conflict of interest provisions applicable to California public school district governing boards, employees, and contractors, including, as applicable, Government Code sections 1090-1099, 1125-1129, 81000-91014; Education Code sections 35107, 35230-35240, 41000-41003, and California Code of Regulations, title 2, sections 18110-18997.
- 10) The conditions may be changed or supplemented by future Board action.
- 11) The text of the indemnification language contained on pages 9 and 15 of the MOU with the exception of the word "approval" will be included in the charter.

Mr. Scribner said under item number 7 with respect to a seat on Fortune's Board of Directors, is that a voting board seat or is that a de facto?

Ms. Stinson replied that would be a voting board seat in which whoever is appointed would have all the powers and responsibilities of a full board member. That is something you don't have to decide right now. If the Board elects to do that, it can decide that later, but what this provides is that if the Board chooses to do it, it could. It wouldn't be a member of the board; it would be somebody appointed by this Board to be on the Fortune board.

Mr. Scribner said it would have the full responsibilities and voting privileges as a board member.

Ms. Stinson replied yes, if you elect to do that at some point.

Mr. Geeting said he wanted to inquire, to be certain, that it is his understanding that with the modification of deleting the word "approval" staff has no other objections and the petitioner has no other objections.

Trustee Fortune said before she responds she needs to look at the education provisions listed under item number 9 because they are new. She is familiar with Government Code section 1090-1099, but the other ones we are trying to determine what they actually mean.

President Fong said to Trustee Fortune it would be easier if you had a microphone so we could hear you. He's not sure we are entertaining this discussion at this time.

Mr. Geeting said he has made an inquiry and has not heard an answer to his inquiry.

Trustee Fortune thanked Trustee Geeting for his inquiry. The language in number 9 is the first time we've seen it and her attorney is looking up the government codes and if we could have a moment to do that then she will be able to answer the question expeditiously.

Mr. Cooley directed the following question to Ms. Stinson: on item number 9 these government code sections that were added, he thought these material revisions were not agreed upon but at least presented to the petitioners prior to the meeting.

Ms. Stinson replied these provisions were included in the item which was sent with the Board agenda item ten days ago so they were available to everybody. One of the things that was made clear when the Board approved these conditions was that this was the general gist of what the Board wanted and that staff was to fill in the actual code citations at a later date so that's the intent of this. It's not to sneak up and surprise anybody and again this was put in as part of the agenda item ten days ago.

Mr. Cooley said it was fair and he understands that; it's open for public hearing the agenda item. It was called a negotiation. If it were him, he would have given it to them ahead of time to see what they thought about it instead of seeing it at the hearing. He doesn't understand why they are seeing it for the very first time.

Mr. Geeting said it was out ten days ago.

Ms. Stinson reiterated the document was out ten days ago so she didn't expect it was the first time.

President Fong said he would like to go back to his comment about considering a joint legal defense fund.

Trustee Fortune replied we are fine with the codes listed under item 9.

President Fong said in terms of considering of voting for or against item VII.A. he would be more comfortable if he had some assurance and he would like to offer an amendment to the motion on item number 5 which is the indemnification clause. That

would be Fortune shall agree to form a joint legal defense fund with SCOE to defend the approval, opening and operation of the charter school. Monies would not come from the Fortune programs nor SCOE's programs to defend any legal challenges to that decision. Perhaps we can find people who support charter schools to help with the defense of what he believes they support anyway. That would allow us to operate our programs and Fortune to operate their programs and no money would be taken from either. He is offering that as an amendment to the motion.

Mr. Cooley asked if that was an amendment.

President Fong said yes, he is offering that as an amendment.

Mr. Cooley said thank you.

Mr. Scribner seconded the motion for purposes of discussion.

Mr. Cooley said he's not accepting the amendment.

Mr. Scribner said President Fong has offered an amendment and Mr. Scribner has seconded the motion. You must vote on it.

Mr. Cooley said he thought if you amend the original motion the maker of the motion must agree to the amendment?

Mr. Cooley called for the question on the motion to amend and advised Board members we now have to go to an automatic vote. He is calling for the question on the amendment and if there is no objection we have to vote.

President Fong said he will ask for the vote.

Mr. Scribner said he didn't object.

Mr. Geeting said he would like it stated again. He doesn't understand the specific sentence.

President Fong restated the motion as follows: Fortune shall agree to form a joint legal defense fund with SCOE to defend the approval, opening and operation of the charter school. Mr. Cooley repeated that he has called for the question.

President Fong said he's calling for the question. If Board members want to discuss this further then they should vote accordingly. Motion to close debate carried 5 ayes, 2 noes.

Mr. Cooley stated we have voted on closing the debate and the side that wanted to keep the debate open lost so now we are voting on the amendment that Mr. Fong's proposed.

Ms. Levy said we are voting on just Mr. Fong's amendment.

Mr. Cooley said correct and then we follow the same phase on the original motion.

President Fong said we are now voting on his amendment.

Mr. Cooley said we should do a roll call vote.

President Fong said all those in favor of the amendment as read please signify by saying aye, oppose and abstention.

Roll call vote on President Fong's amendment: 1 aye (Fong), 5 noes, 1 abstention (Scribner)

President Fong said we are back to the original motion.

Mr. Cooley called for the question on Mr. Cooley's original motion.

The motion carried 5 ayes, 2 noes based on the following roll call vote:

President Fong – no

Ms. Brown – aye

Mr. Cooley – aye

Mr. Geeting – aye

Ms. Levy – aye

Mr. Rivas – aye

Mr. Scribner - no

VII.B. Ms. Stinson stated that, as Trustee Fortune pointed out before, SCOE staff has spent a great deal of time negotiating with the Fortune School over the contents of this MOU. The MOU is designed to provide guidance on the oversight, procedures and policies that we will use in overseeing the Fortune School charter. It's also intended to outline our respective relationships, particularly those related to fiscal administration, oversight responsibilities, and other conditions on the opening and operation of the charter school. The MOU is based on the template that's used by the State Board of Education and the California Department of Education and what's been used in other circumstances to oversee and govern the operation of charters. It covers a number of different areas including the administration of the charter school, the recruitment and enrollment procedures of the charter school, insurance and risk management, facilities, educational performance, fiscal operations, what Fortune School is going to do to fulfill the charter terms, the requirements for reporting to SCOE and to the Board, and other oversight responsibilities and expectations. As you know, the one provision that the Fortune School has not agreed to is the provision relating to indemnification and defense of the Board's approval of the charter. Since the proposed MOU was distributed to the Board ten days ago, there have been some minor, we believe, non-substantive revisions to it, which are in front of you right now. We don't believe that any of these revisions are substantive or Fortune School objects to any of them as she reviewed them with Fortune's counsel this afternoon. In any event, we recommend that the Board approve the MOU in its revised form.

President Fong opened the Public Hearing at 9:03 p.m.

The following people addressed the Board in support of the Fortune School of Education Charter's position regarding the MOU:

Margaret Fortune said we would ask that the Board take action consistent with the motion that was just passed striking the word "approval" from the indemnification clause. We would also ask that supporters of Fortune School not comment during public comment to allow the Board to move quickly to its deliberation.

The following persons who had completed speaker cards were either not present or did not wish to speak:

Derrel Roberts – not present
Monica Jones – not present
Ebony Strain – not present
Sarah Kollman – did not wish to speak
Larry Lee – did not wish to speak
Malaki Seku-Amen – did not wish to speak
Mark T. Harris – not present

Carl Pinkston, Black Parallel School Board, addressed the Board in support of the Fortune Charter School's position regarding the MOU.

President Fong closed the Public Hearing at 9:07 p.m. and announced that the Board would start deliberations.

Mr. Geeting asked if our counsel could walk us through the changes that would make this MOU consistent with the action taken on item VII.A.

Ms. Stinson said if the Board wishes to make the approval of this MOU consistent with the action taken on item VII.A. on page 9 of the revised version of the MOU, the words "approval of this charter" would be stricken from the MOU, and that's under the indemnification provision which is about half way down the page. Right now, it is included in red to indicate that was the one portion we did not agree on in this MOU.

Mr. Geeting asked if there was anything else. Ms. Stinson replied no.

President Fong asked if the rest of that sentence would remain in the MOU.

Ms. Stinson replied yes, the rest of the paragraph would stay with the exception of striking those few words.

Mr. Cooley said if we approve item VII.B. the approval of the MOU. He is assuming that motion does not need to include a language or statement as amended pursuant to the amended material revisions under item VII.A.

Ms. Stinson suggested that the motion include approval of the revised MOU with one exception: that those words be stricken from the MOU because the motion you made

previously has to do with the revision to the charter; the charter takes precedence over everything, so technically you do not need to do it. But, you may want to make it clear.

Mr. Rivas asked if now is the time for him to talk about the data that he brought up previously. On page 21, the annual report on the second bullet, second open circle from the bottom it states: report on any and all transiency pupils transferring into out of the school including the occurrence dates and the basis for the transfer – he would like us to consider and he's open to any help with the grammar, English, and concept he wants the student's level of academic achievement to be included in that report.

Interim Superintendent Stickel asked if it would be adequate to use the report on their CST scores.

Mr. Rivas replied yes, that would work for him.

Interim Superintendent Stickel asked if he wanted both entrance and exit.

Mr. Rivas said if it's available he would like to have the data on the students when they enter the school and when they leave.

Ms. Brown said if the student left before the testing, the student will have had to be there for over a year to get that information.

Interim Superintendent Stickel you could say before CST and upon exit, if available.

Mr. Rivas replied yes.

Ms. Stinson asked if they are proposing to put that in the parenthesis there.

Mr. Rivas is hearing that is only available if the student stays in the school a year.

Ms. Brown said that's what we are saying, but perhaps we could add to it: if available or the academic record.

Mr. Rivas said that works too.

Ms. Brown said you would get grades.

Mr. Rivas said you get the concept he's going for.

President Fong said the concept is you want to know how they are doing after they left.

Mr. Rivas said he wants to know the academic profile of the students leaving the school.

President Fong said they would not be leaving.

Mr. Rivas said the ones that do leave.

Interim Superintendent Stickel said that bullet only refers to students that are exiting.

Ms. Brown said yes.

Ms. Stinson said as she understands it the Board wants a report on any and all transiency (pupils transferring into and out of the school including the occurrence dates and basis for the transfer) and the students' CST scores if available, or the academic record.

Mr. Rivas asked if Trustee Fortune would like to comment on this request.

Trustee Fortune said she doesn't have any issue with the request in concept but she is interested in preserving the confidentiality of student records, so she hopes Trustee Rivas is not talking about individual students and reports because that then becomes public information. We need to take that into consideration.

Mr. Rivas asked Ms. Stinson if we need to say "in compliance with all applicable student confidentiality and privacy rights."

Ms. Stinson said we certainly would want to do that. We want to make sure that student records remain private and that's something we have addressed in other parts of the MOU. We want to make sure the Board is getting the data it wants, but at the same time preserving pupil privacy. So, the Board may consider amending it to say: subject to preserving their privacy and we could figure out how to describe that.

Ms. Brown said the problem would probably be if there's one student; if there were two you could talk about the average or the trend. It's just if it were one student then it could be traced back to that student.

Trustee Fortune said she was hearing Trustee Brown and Trustee Rivas's comment that he wanted information on individual students.

Ms. Brown asked when you mean individual, do you mean by name or do you mean specifically ten came in and this is their information?

Mr. Rivas said what he is looking for is if ten students leave the school he would like to know if they were in the top 1 percentile on CSTs or were they B students or F students. He would like to have an idea of the level of achievement of the students leaving the school.

Ms. Brown said so you don't need their name. Mr. Rivas replied no.

Ms. Brown said he just needs the average to get a picture.

Interim Superintendent Stickel said she doesn't think he's asking for the average. She thinks you could mask the name of the student; you could call them student X, Y, or Z. He wants to know by individual student records, not an average of test scores.

Trustee Fortune said she doesn't have an issue with adding that language and she trusts that we can work out with staff how to report and respect student privacy.

Mr. Rivas said ideally he would like to know what is the profile of who comes in and what is the profile of the students who leave, but he understands there are constraints on when they're tested and when the tests are available. He doesn't want to make this too complicated.

Trustee Fortune said the measurement that we use is best left to our discussion with staff about what would make a sensible report in order to achieve Trustee Rivas' request. We assess students before they begin school; typically those are on the standards from the previous grade level. And we also do standards based report cards that are advanced, proficient, basic, or far below basic and we do assessments at the trimester so while this wouldn't be CST data, it is the data we are using in our weekly reflections to determine how students are performing.

Mr. Scribner said for purposes of where Trustee Rivas is at, you are talking pretty much apples to apples.

Trustee Fortune said yes and thinks we will have enough data in order to respond to the question and she thinks the language that Trustee Brown added –“if available” allows us to be transparent if the data is not available.

Mr. Rivas said he needs counsel's assistance – can you remind him of where we left off with the language?

Ms. Stinson said as she understands it, on the second to the last bullet on page 21 under fulfilling the charter terms, the report section would state something to the effect that – “report on any and all transiency (pupils transferring into and out of the school including the occurrence dates and the basis for transfer) and the students' CST scores or assessment data, if available, or the academic record, subject to protecting student privacy rights.”

Mr. Rivas moved that we adopt the language as read by our general counsel. Mr. Geeting seconded the motion with the amendment. Motion carried unanimously.

Ms. Brown said may we go back to page 9 and the elimination of “the approval of the charter” from the indemnification language. Should we also eliminate the words “this MOU” from the indemnification section, since that's also our vote?

Ms. Stinson said the MOU also encompasses the operation of the school. There are a lot of provisions in the MOU relating to the operation, reporting duties, and other obligations. Neither the Fortune School nor anyone that we know of objected to that language. The only objection was to the indemnification language “approval of the charter.”

Ms. Brown said she wants to make certain that it isn't a substitute for approval of the charter in certain areas, unintentionally.

Mr. Cooley said it only replaces the document words where it's spelled out on page 9. He thinks what Ms. Stinson was indicating is if you strike the word "approval of this charter" it would read "Fortune School shall hold harmless, defend and indemnify the Sacramento County Board of Education and the Sacramento County Office of Education's officers, employees, volunteers, contractors and agents from any and all claims, demands, actions, causes of actions, suits, losses, liabilities, expenses, penalties, obligations, errors, admissions, and costs including all legal fees or costs which actually or allegedly arise in any manner from the opening of the school, the operation of the school, this MOU, or the operation activities of the Fortune School, it's charter schools, or any real or personal property in their care, custody or control."

Ms. Brown said she understands. Her point is let's find a line in there that we made a mistake somewhere in our MOU.

Mr. Rivas said the MOU is mutually agreed to, whereas we were discussing asking the Fortune School to indemnify us for our decision which they had no control over. But the MOU is a mutually agreed to document – a contractual agreement – so he has no problem with the language in there.

President Fong said legal counsel has provided comments on that. He said the Fortune people are not objecting to that.

Trustee Fortune said she understands Trustee Brown's point and it's the language regarding the approval of the charter she objected to and she thinks we are good. We have discussed this and she didn't think of it that way as you have raised it here. She doesn't think it came up that way in our discussions, but she took it as the MOU is defining the operation of the school as it relates to our relationship with our authorizers, so if we did some error or omission relating to that, then that's what we would be held responsible for – that is her understanding.

Ms. Stinson replied that is her understanding as well.

Ms. Brown said this is just an overall comment which she has talked a lot with our counsel about. It was hard to keep all aspects together because it seemed like there's a lot of repetition in the MOU. Counsel explained to her why some of that is necessary in there, but she doesn't know if in the future some of that could be condensed a little bit so that we would be able to follow it. An example would be how you recruit – that's probably in about three or four different places, but that might be the nature of an MOU. It won't change her vote but she thought it would be interesting in future MOUs.

Ms. Stinson said we will take that into consideration in the future.

President Fong said the chair just wants to comment that it is a difficult decision for all of us to make but he feels that with the financial situation of SCOE and our kids being able to get an education here at SCOE, and with all of our teachers getting layoff notices (except for 7 of them) and about 57 of our classified staff received those notices and we are about half a million dollars away from declaring that we're not going to be financially solvent for the next three years, he cannot make this decision and move ahead because

his first responsibility is to our students. This has nothing to do with the Fortune Charter School being a good program. He thinks that the Fortune people will advocate for their program but as a Trustee he needs to advocate for our programs because we are required to run them regardless of what happens. We are required to run a program at Juvenile Hall and that program runs at a deficit of half a million dollars a year. We will continue to do so because we are the educator of choice in Juvenile Hall. He knows that the votes will probably go the same as the first vote but he wants Fortune to know that he's not voting against you; he's voting for our students.

Ms. Stinson said just to clarify because it's a little bit confusing – she understands that the previous motion was to adopt the proposed revisions suggested by Mr. Rivas -- and is this motion now to approve the MOU in its entirety with striking out the words related to the “approval of the charter” from the indemnification clause? That is her understanding of this motion.

Mr. Cooley asked if we voted on Mr. Rivas's motion. Ms. Stinson replied yes, you voted on Mr. Rivas's amendment.

President Fong said this vote is to strike out the three words.

Ms. Stinson said she understands it as a motion to approve the MOU in its entirety with those three words stricken out on page 9.

Mr. Cooley moved to approve the amended MOU consistent with the amended material revisions to the Fortune School of Education Countywide Benefit Charter in previous action on item VII.A. with the words “approval of this charter” stricken from page 9 and subject to Mr. Rivas's suggested revisions. Mr. Rivas seconded the motion.

The motion carried 5 ayes and 2 noes based on the following Roll call vote:

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

President Fong stated we have concluded our business. He thanked all speakers, SCOE staff, Fortune staff, and fellow trustees.

VIII. Mr. Rivas moved to adjourn the meeting. Ms. Levy seconded the motion, which carried. The meeting adjourned at 9:32 p.m.

Respectfully submitted,

Sue Stickel
Acting Secretary to the Board

Date approved: June 7, 2011