Minutes of the Regular Meeting

**of the Massachusetts Board of Elementary and Secondary Education**

**November 17, 2009**

**8:37 a.m. – 1:05 p.m.**

**Department of Elementary and Secondary Education**

**75 Pleasant Street**

**Malden, MA**

Members of the Board of Elementary and Secondary Education Present:

**Maura Banta**, Chair, Melrose

**Harneen Chernow**, Vice Chair, Jamaica Plain

**Gerald Chertavian**, Cambridge

**Michael D'Ortenzio Jr.**, Chair, Student Advisory Council, Wellesley

**Thomas E. Fortmann**, Lexington

**Beverly Holmes**, Springfield

**Jeff Howard**, Reading

**Ruth Kaplan**, Brookline

**Paul Reville**, Secretary of Education, Worcester

**Sandra L. Stotsky**, Brookline

**Mitchell D. Chester**, Commissioner of Elementary and Secondary Education, Secretary to the Board

Members of the Board of Elementary and Secondary Education Absent:

**Dana Mohler-Faria**, Bridgewater

Chair Maura Banta called the meeting to order at 8:37 a.m.

Comments from the Chair

Chair Banta thanked Vice Chair Harneen Chernow for the wonderful job she did in presiding over the October 27, 2009 regular meeting. The chair said she and the commissioner met with roughly 40 superintendents recently as part of the Roundtable at Harvard.

Comments from the Commissioner

Commissioner Chester said he is very excited about the Department's work with WGBH. The commissioner said there is a demand in the field for assistance and support for curriculum and instruction, as evidenced by the attendance of more than 600 educators at the Department's 2nd annual Curriculum & Instruction summit.

**Comments from the Public**

* Steve Hemman from the Massachusetts Association of Regional Schools addressed the Board on 9C cuts and regional school transportation.
* Representative Ann-Margaret Ferrante addressed the Board on the Gloucester Community Arts Charter School (GCACS).
* Maggie Rosa from the Gloucester Education Foundation addressed the Board on GCACS.
* Jason Grow, a Gloucester city councilor, addressed the Board on GCACS.
* Stacy Randell, a Gloucester parent, addressed the Board on GCACS.
* Beth Morris, a Gloucester parent, addressed the Board on GCACS.
* Senator Bruce Tarr addressed the Board on GCACS.
* Gloucester Superintendent Christopher Farmer addressed the Board on GCACS.
* Ed Shoucair from the Gloucester Education Foundation addressed the Board on GCACS.
* Kate Ruff, a trustee of the Gloucester Community Arts Charter School, addressed the Board on GCACS.
* Colin Zick of Foley Hoag, which represents the Gloucester Community Arts Charter School, addressed the Board on GCACS.
* Tad Heuer of Foley Hoag, which represents the Gloucester Community Arts Charter School, addressed the Board on GCACS.
* Jean McGuire from METCO addressed the Board on the FY11 budget proposal.

**Comments from the Secretary**

Secretary Paul Reville said the budget process continues and the 9C process is not yet complete, as talks with unions and employee associations continue. The secretary said the FY2011 budget process has begun as departments prepare their budget proposals. He provided an update on the Legislature's deliberation of the Governor's legislation on intervention in underperforming schools, a smart cap lift for charter schools, and the creation of a series of innovation schools. Secretary Reville said the Administration launched the Readiness Centers Initiative at Salem State College last Friday to improve the quality of teaching and provide a focus on professional development in the Commonwealth.

# Approval of the Minutes

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education approve the minutes of the October 27, 2009 regular meeting, the October 26, 2009 special meeting, and the November 7, 2009 special meeting.**

The vote was unanimous.

Gloucester Community Arts Charter School

Chair Banta said the Board today will make a decision to allow the community to move forward. The chair said this has been a long, emotional road for the community and for the Board, which has had much information to consider.

Chair Banta stated that her brother is a partner in a real estate firm and she recently learned that another partner in the firm is helping the Gloucester Community Arts Charter School find a location in Gloucester. Chair Banta said that she sought an opinion from the State Ethics Commission and was advised that this is a non-issue and does not pose any conflict of interest for the chair. Nevertheless Chair Banta asked to place this disclosure into the record so as to ensure there is no current or future misunderstanding.

The chair provided a recap of last night’s special meeting, and said today the Board needed to take action.

Commissioner Chester said the GCA application was a strong one that on its merit deserved to be chartered. The commissioner acknowledged State Inspector General Gregory Sullivan was in the audience; the commissioner noted that the inspector general is conducting an investigation of the charter process and pledged his full cooperation with the inspector general. The commissioner said the Board has been very deliberate and considerate about this matter, and has given very careful consideration to the standard for revocation. Commissioner Chester said the Board's only course of action to undo the charter would be revocation, and he does not see anything rising to the level of material misrepresentation. The commissioner noted the concerns about process and said the Board was fully aware of the range and intensity of public opinion through all of the correspondence and public comment that members received and heard. Commissioner Chester said a vote for revocation would put the Board in an untenable position.

Board member Ruth Kaplan asked about the timeframe for the inspector general's investigation. Inspector General Sullivan addressed the Board and said that his office had opened an investigation last week, and noted that the subject matter was not on material misrepresentation. Inspector General Sullivan said the investigation would look at the process that led to the Board's chartering of the school and whether it complied with state law. The inspector general said his office would conduct an impartial review and has no stake in this other than to look at the legitimacy of the process. Ms. Kaplan asked whether, if the inspector general found the process to have been void, that would mean the charter would be revoked. Inspector General Sullivan said that his office is not a dispositive body, and he would simply identify issues and submit a report. The inspector general said he does not disagree with the analysis and conclusion in the outside consultant's report on material misrepresentation, but said he is looking at other procedural issues. The inspector general said he expects to report within a month and his recommendation would be for the Board to wait until his review was completed.

Vice Chair Chernow asked to whom the inspector general reports. Inspector General Sullivan said that in a criminal matter, he would report to the U.S. Attorney and the Attorney General. But he noted that there is no criminal case here, so his responsibility is to report to the administrative agency and potentially to the Attorney General on the civil side.

Ms. Kaplan said she appreciated the inspector general's attendance. She said she was concerned about moving forward, and that she would make a motion for the Board to delay its vote until December when the Board has the benefit of the advice from the inspector general's office. Vice Chair Chernow said not knowing the outcome of the inspector general's review affects how comfortable she feels voting today. Ms. Kaplan said she has serious concerns about the process the Board used to grant the charter.

Board member Tom Fortmann said the inspector general stated he is not looking into the question of revocation for cause. Dr. Fortmann said the Board has discussed this at length, that it is clear that revocation is the only option if the Board wishes to undo the charter, and material misrepresentation is the only grounds for revocation. Dr. Fortmann said it is clear that none of the cited examples even remotely approach material misrepresentation, and that the revocation question can be dealt with now. Dr. Fortmann said the process issues that the inspector general will look into were discussed thoroughly last night at the special meeting and he is confident the inspector general won't find that the process was improper. Dr. Fortmann said there is no need to wait longer, and stated that he is very satisfied that the commissioner's recommendation and the Board's vote to grant the charter were based on the merits of the application.

Chair Banta said the Board's counsel, Department General Counsel Rhoda Schneider, advised the Board that the process used by the Board to grant the charter did comply with state law. The chair said the Board needed to bring this issue to closure, and that she was not in favor of delaying the matter.

Board member Michael D'Ortenzio Jr. reiterated his point of Monday night, saying that process does matter, but that the children of Gloucester are served best by the merits of the application.

Board member Jeff Howard said the Board has spent so much time on this issue, it threatens to overwhelm the Board’s responsibilities for a range of other issues. Dr. Howard said he favored taking action today, and that if the inspector general found anything further, the Board could take up the matter then. Dr. Howard said what he heard from General Counsel Schneider is sufficient for the Board to move forward.

Ms. Kaplan made a motion that the Board delay its vote on revocation until the December 2009 Board meeting.

**On a motion duly made and seconded, it was:**

**MOVED: that the Board of Elementary and Secondary Education delay its vote on whether there are grounds for revocation of the charter awarded to the Gloucester Community Arts Charter School until its December 15, 2009 regular meeting.**

The motion failed 2-8. Board members Kaplan and Chernow voted in support.

Dr. Fortmann made a motion that the Board vote that there are no grounds for revocation. Dr. Howard asked what is meant by technical assistance in the motion. Dr. Fortmann said he regards it as an exhortation to the commissioner to use his judgment to be as helpful as he can to the school district and the charter school. Commissioner Chester said he takes the motion in the spirit of directing him to reach out to Gloucester Public Schools and the Gloucester Community Arts Charter School to offer whatever help he can provide.

Board member Gerald Chertavian said the situation has been difficult for everyone involved. Mr. Chertavian said he agreed with Dr. Fortmann and the findings of the Kerrigan report that the Board does not have grounds for revocation. Mr. Chertavian said he is pleased the inspector general is reviewing the process. If the inspector general finds anything, Mr. Chertavian said the Board will deal with it at the time.

Secretary Reville said he shares the Board’s confidence in the advice from the commissioner and the general counsel, and agrees these matters do not rise to the material misrepresentation level. The secretary said he welcomes the inspector general's investigation, and that he is confident about the process and how the Board deliberated. Secretary Reville said he appreciates the extraordinary effort the Board has made, and that the Board has gone beyond the call of duty to reconsider this matter. He noted that every charter application is about intentions and capacity. Secretary Reville said that as a member of the Board, he has every right to promote his perspective with the commissioner and with other Board members. The secretary said the premise of his February 5, 2009 email was that in this one application the Board had a quality, viable charter school application, even though it was a tough call due to the financial circumstances. The secretary said his comments about a larger agenda were related to opportunities for the Commonwealth's one million students. The secretary said he still sees the promise of collaboration in Gloucester and that was the rationale behind the Governor's Readiness proposal. Secretary Reville said he believes this charter application is a high quality proposal and the Board has no grounds for revocation. He said he welcomes the inspector general’s review.

Board member Sandra Stotsky said she very much agreed with the motion, and called attention to the subject of the charter school – the arts. Dr. Stotsky said arts education is a neglected area, and that part of what the commissioner could do is secure the involvement of arts institutions and other organizations to highlight the value and benefit of the arts.

Vice Chair Chernow said she doesn't understand why the Board doesn't hold off its vote given that the inspector general is looking at the Board's process to grant the charter. Ms. Chernow said she would vote against the motion, and that she has taken this issue very seriously as has everyone here. Ms. Chernow said her focus has been on the process, and to ensure that the Board operates in a manner that has integrity. Ms. Chernow said there is a chasm between the Board's actions and the public's trust in the Board.

Board member Beverly Holmes said she would rely on the general counsel’s advice. Ms. Holmes said she attended the November 7th meeting and appreciated seeing the children in Gloucester who were part of the process with their signs. Ms. Holmes said she was the founder of a charter school for urban children and knows the application process is very thorough. She said her bottom line is the children, and she would look to Gloucester Community Arts to deliver positive results to those children. Ms. Holmes said she is pleased the inspector general is reviewing the process, which may have been flawed but was not illegal.

Ms. Kaplan said the inspector general's investigation should have been part of the Board's earlier discussion. Ms. Kaplan said the fundamental problem to her is one of public perception and confidence in the charter school process and that on the whole, the approval process does not appear to be fair to the public. She said each factor alone is not necessarily fatal but taken together, it’s problematic. Ms. Kaplan said she took the commissioner's point about the risk of creating a precedent and unintended consequences, but weighed that against the outcry that has gone on for months. Ms. Kaplan said she is pleased that the inspector general is involved, and hopes he will find that the Board's actions were legitimate.

Dr. Howard said he voted against the granting of the charter in February because it seemed to him that an important part of the application was fairly negative and a judgmental critique of the educational process in the public school system. He said that generated significant resentment and a storm of protest against the application. Dr. Howard said that the application did not need to denounce the public school system. He said his vote was the correct vote for him, but he understood the arguments of his fellow members who voted in favor of the charter. Dr. Howard said he has no concerns about the integrity of the vote that the Board took. He said he sees no grounds for material misrepresentation, and that the concerns about process relate to small errors. Dr. Howard said the Board would not be here today if not for Secretary Reville's email. Dr. Howard said he asked himself whether if he had been privy to the secretary and commissioner's conversation, would that have caused him to question the integrity of the process, and the answer was no. Dr. Howard said the Board has no grounds for revocation.

Secretary Reville clarified that the inspector general's investigation first came to his attention on Friday. The secretary said after he was contacted, he informed Chair Banta of the investigation. Dr. Fortmann said Senator Tarr had informed the Board at a previous meeting that he would be asking the inspector general to investigate this matter. Dr. Fortmann said the inspector general made clear that he is not looking into revocation and material misrepresentation.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, having reviewed and considered all issues that have been presented about the charter granted to the Gloucester Community Arts Charter School, conclude that the issues do not provide grounds for revocation of the charter. Further, that the Board direct the commissioner to offer technical assistance to the Gloucester Public Schools and the Gloucester Community Arts Charter School to promote the success of all educational options for the children of Gloucester.**

The vote was 8-2. Board members Kaplan and Chernow voted in opposition.

Board of Elementary and Secondary Education Budget Proposal for FY 2011

Chair Banta thanked Board members Jeff Howard, Tom Fortmann, Gerald Chertavian, Ruth Kaplan, and Michael D'Ortenzio Jr. for their participation on the Board's budget committee. Dr. Fortmann said the budget recommendation presented in the commissioner's memorandum represented a maintenance budget. Dr. Fortmann said the budget committee came to consensus that in the face of further budget cuts, the Board should recommend that those cuts be targeted at the Hold Harmless provision in Chapter 70 and Kindergarten grants. The Committee also proposed discussing the possibility of reducing the minimum percentage of Chapter 70 funding that all districts are required to receive.

Commissioner Chester said the Department does not yet have a maintenance number from the Administration, and the anticipation is that the state is likely to have considerably less revenue during the next fiscal year. The commissioner said these two factors led him to recommend not approaching the budget exercise the same way as in past years. Rather, the commissioner asked the Board to adopt a set of principles centered on identifying specific programs that are core to the mission, and if substantial cuts are required, there are two programs (Hold Harmless and Kindergarten grants) to consider for reduced expenditure.

Ms. Kaplan said she did not agree with some aspects of protecting programs in the first category, namely the amount of money in MCAS and Academic Support that totals $35 million. Ms. Kaplan said that the fact the state has high stakes testing means that Academic Support is primarily test preparation. Ms. Kaplan also said the budget report leaves questions about programs that are not mentioned, such as METCO and regional schools, and where those programs stand.

The commissioner said if the Board adopted the proposed set of principles, the Board would convey to the Administration that there is a set of programs that are priorities, and if substantial cuts are required, the Hold Harmless provision in Chapter 70 and Kindergarten grants should be reviewed.

Mr. D'Ortenzio Jr. said he agreed with the recommendations of the Budget Committee, noting that it was wise to keep the Department’s ability to leverage increases in student achievement as the top priority. He also agreed that keeping programs like METCO, which have been proven to have a relevant educational impact on students, off the list recommended cuts was the right choice to make. Mr. Chertavian said the cost of student assessment and academic support brings a big payoff in terms of student results. Mr. Chertavian said Massachusetts leads the country in high standards and holding students and schools accountable, and that MCAS is necessary though not sufficient. Mr. Chertavian said MCAS has clearly paid off for children, and to back off now would not be in their best interests. Mr. Chertavian applauded the Budget Committee for looking at things that may not be politically palatable.

Ms. Holmes asked about line items that were listed as cut by 100%. She expressed concern that the Department needs the capacity to carry out its responsibilities. The commissioner said the programs listed were not funded initially in the FY10 budget. Department CFO Tony DeLorenzo said in a few cases those numbers included staff but mostly they were programs for school districts. The commissioner said the Department has been able to redeploy staff and avoid layoffs so far, and he agreed with the concern expressed about the Department’s capacity.

Commissioner Chester said today's budget recommendation will be transmitted to the secretary, who then makes a budget recommendation for education at all levels and submits it to the Secretary of Administration & Finance. A&F then determines the statewide budget and the Governor submits it to the Legislature in January. Secretary Reville said the Legislature has final authority to submit a budget for the Governor's signature. Chair Banta said when the Board weighs in, it is sending a message about its priorities.

Dr. Stotsky asked whether at some point the Board could get information on how to evaluate the effectiveness of these programs. Mr. DeLorenzo said most of the lines items prohibit the Department from using the money for evaluations. The commissioner said the Department will identify those programs that do have evaluation reports.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with G.L. c. 69, § 1A, as amended by Chapter 27 of the Acts of 2008, approve the guiding principles for the FY 2011 education budget as recommended by the Board’s budget committee and the Commissioner, and authorize the Commissioner to transmit these recommendations to the Secretary of Education.**

The vote was 8-0-2. Secretary Reville and Ms. Kaplan abstained.

Charter School Amendments for Nine Charter Schools

Commissioner Chester said that the Board in September 2009 delegated authority to him to approve charter renewals that do not involve conditions or probation and charter amendments that do not involve changes in grade span, maximum enrollment, or districts served. The Commissioner reminded Board members that he approved three such amendment requests this month for the Conservatory Lab Charter School (mission), the Edward W. Brooke Charter School (governance), and the Pioneer Valley Chinese Immersion Charter School (governance).

The Board considered amendments to the charters for the following nine schools: Amesbury Academy Charter Public School (grade span); Martin Luther King, Jr., Charter School of Excellence (maximum enrollment); Mystic Valley Regional Charter School (maximum enrollment; Prospect Hill Academy Charter School (grade span); Sturgis Charter Public School (maximum enrollment); Academy of the Pacific Rim (maximum enrollment); Boston Preparatory Charter Public School (maximum enrollment); Codman Academy Charter Public School (maximum enrollment); and Edward W. Brooke Charter School (maximum enrollment).

Dr. Howard said he did not see any information on the demographics of the schools. Associate Commissioner Wulfson said the Department can provide this in the future. Vice Chair Chernow asked about the process and timelines for amendments. Associate Commissioner Wulfson said schools must submit amendment requests by August for changes in enrollment, grade span, etc. for the following year.

Ms. Holmes said she would recuse herself from the vote on Martin Luther King, Jr., Charter School of Excellence's amendment request, since she was a founding member of that school. Mr. Chertavian asked about the Amesbury charter school, and whether its size warranted a school and if cost effectiveness could be achieved. Mr. Chertavian also said there was less data provided for the Martin Luther King, Jr., Charter School of Excellence, and asked how that school compared to others. Associate Commissioner Wulfson said that size is an issue, and part of the charter school initiative is to come up with different models. Mr. Wulfson said that Amesbury is trying to serve a targeted high-risk population. Mr. Wulfson said the Department does not provide additional funding to offset the inefficiencies of a smaller school. Charter School Director Mary Street said that Amesbury is a Horace Mann charter school and receives its funding through the district. Ms. Street said that the Martin Luther King, Jr., school is requesting a temporary enrollment increase to maintain numbers at lower grades.

Dr. Howard said he was interested in Sturgis' implementation of International Baccalaureate for all students. Dr. Howard asked how representative the school was of its member towns. The school's leader said that about 9-10 percent of students at Sturgis qualify for free/reduced price lunch and 13 percent are students with disabilities. Ms. Kaplan asked how a school not at its maximum enrollment can have a waiting list. Ms. Street said that schools are not required to enroll to their maximum enrollment. The school leader from Sturgis said that the school was at its building maximum, and that the school has proposed to get another building. The Mystic Valley school leader said the school's wait lists are maintained by grade, and that new children are admitted in grades K-5, while sibling preference is used beyond grade 5. Dr. Stotsky said in some cases, as with Chinese immersion programs, students must enter in the early grades to benefit from the sequence of the curriculum.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Amesbury Academy Charter Public School (grades served from 7-12 to 9-12)***

 **Location: Amesbury**

 **Maximum enrollment: 50**

 **Grade levels: 9-12**

 **Effective year: 2010**

The vote was unanimous.

Ms. Kaplan asked whether Board members should weigh the accountability status

information that the Charter School Office includes. Associate Commissioner Wulfson

said academic performance is the most important criterion, and the 5-year cycle of accountability is most intense in the year of renewal. The commissioner added that he does not bring to the Board every charter amendment request that he receives, because he bases his recommendations on the school’s performance track record.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Martin Luther King, Jr. Charter School of Excellence (temporary enrollment increase from 360 to 380 students)***

 **Location: Springfield**

 **Maximum enrollment: 380 for two years**

 **Grade levels: K-5**

 **Effective year: 2010 and 2011**

The vote was 9-0-1. Ms. Holmes abstained.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Mystic Valley Regional Charter School (enrollment increase from 1,400 to 1,500 students)***

 **Location: Malden**

 **Maximum enrollment: 1,500**

 **Grade levels: K-12**

 **Effective year: 2010**

The vote was unanimous.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Prospect Hill Academy Charter School (grades served from K-12 to K1-12)***

 **Location: Cambridge and Somerville**

 **Maximum enrollment: 1,200**

 **Grade levels: K1-12**

 **Effective year: 2010**

The vote was unanimous.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Sturgis Charter Public School (enrollment increase from 425 to 800)***

 **Location: Hyannis**

 **Maximum enrollment: 800**

 **Grade levels: 9-12**

 **Effective year: 2010-11**

The vote was unanimous.

Ms. Kaplan asked what happens when a school like Academy of the Pacific Rim is above its enrollment limit. Ms. Street said the school does that to allow for attrition, and that the school does not receive extra funding for students above the limit.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Academy of the Pacific Rim Charter School (enrollment increase from 475 to 500 students)***

 **Location: Boston**

 **Maximum enrollment: 500**

 **Grade levels: 5-12**

 **Effective year: 2010**

The vote was unanimous.

Vice Chair Chernow asked about the “pinch” in enrollment at the Boston Preparatory Charter Public School. Ms. Street said the school has succeeded in retaining more students in the upper grades.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Boston Preparatory Charter Public School (enrollment increase from 350 to 400 students)***

 **Location: Boston**

 **Maximum enrollment: 400**

 **Grade levels: 6-12**

 **Effective year: 2010**

The vote was 9-0-1. Vice Chair Chernow abstained.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Codman Academy Charter Public (enrollment increase from 120 to 145 students)***

 **Location: Boston**

 **Maximum enrollment: 145**

 **Grade levels: 9-12**

 **Effective year: 2010**

The vote was unanimous.

Ms. Kaplan said it is a positive development that charter schools are retaining more students and experiencing less attrition. Ms. Street said the schools and programs are maturing. Dr. Fortmann said he has visited Brooke several times and the school is terrific.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby amend the charter granted to the following school as presented by the Commissioner:**

 ***Edward W. Brooke Charter School (enrollment increase from 450 to 475 students)***

 **Location: Boston**

 **Maximum enrollment: 475**

 **Grade levels: K-8**

 **Effective year: 2010**

The vote was unanimous.

Appointment to School and District Accountability and Assistance Advisory Council

The Board considered a motion to approve the appointment of an additional member to the School and District Accountability and Assistance Advisory Council to fill a recent vacancy.

Dr. Stotsky suggested that a parent representative from a PTA or PTO should be added to the School and District Accountability and Assistance Advisory Council. Ms. Kaplan asked whether anything precluded the Board from adding another member. Legislative Director Sylvia Smith said the statute specifies 15 members. Commissioner Chester said some of these are at-large members, so the Department can consider including a parent member in the future when an at-large seat is available.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education, in accordance with General Laws Chapter 15, § 1G, hereby appoint the School and District Accountability and Assistance Advisory Council member as recommended by the Commissioner. The appointed member shall serve for a three-year term, concluding November 1, 2012.**

The vote was unanimous.

Secretary Reville and Vice Chair Chernow had to leave the meeting at 12:20 p.m.

Race to the Top

Commissioner Chester said the Department now has the final regulations for the Race to the Top application. The commissioner said the interest in this grant nationally remains huge. The Department's Director of Strategic Planning, Research & Evaluation, Carrie Conaway, made a presentation on Race to the Top, which included a summary of the final guidance, an update on stakeholder engagement, and a review of the conceptual framework and cornerstone initiatives.

The Phase I application deadline is January 19, 2010, and Phase I awards will be announced in April. The budget guidance for Massachusetts is $150 million to $250 million. Ms. Conaway talked about a new "State Success Factors" criterion to evaluate the coherence of a state's education reform agenda and its capacity to implement, scale up, and sustain proposed plans. Applications will be evaluated according to the following criteria: State success factors (25%), Standards and assessments (14%), Data systems to support instruction (9%), Great teachers and leaders (28%), Turning around the lowest achieving schools (10%), General (11%), and STEM competitive priority (3%). More than 10 percent of points are for the strength and breadth of commitment of school districts. Ms. Conaway said the state's planning effort is anchored in a vision of excellence and equity for all.

The Department's application will propose the following six initiatives: (1) redesign and bolster high school to ensure all students are college/career ready; (2) design and scale proven K-12 instructional tools to accelerate student learning; (3) develop state-wide definition of teacher effectiveness; (4) identify and scale teacher recruitment, preparation, and development approaches; (5) develop a state pipeline of effective turnaround teacher and leader teams; and (6) identify, assess and deploy turnaround partners, intervention models and/or 3rd party supports.

Dr. Stotsky asked whether it would be more efficient to review textbooks that are being used, rather than designing a model curriculum. She noted that research-based instructional materials are not mentioned. Commissioner Chester said textbooks are clearly part of the curriculum. The commissioner said he wants this to be academically oriented and said "The Widget Effect" makes this case. The commissioner thanked Ms. Conaway, who is the Department's point person on Race to the Top. The commissioner said there is nothing more challenging than engaging local school leaders to implement ideas like this.

Dr. Fortmann said he is very enthusiastic about this. He said he wanted to make a pitch for something missing – professional development in mathematics for K-8 teachers. He said this has high leverage because math deficits are high and typical, and teachers have to understand math in order to teach it. Dr. Fortmann added that since Massachusetts has put in a mathematics requirement for the licensure of elementary teachers, this would link well with professional development for the rest of the teachers.

Ms. Kaplan said professional development focused on improving teaching for students with disabilities and English language learners is important. Ms. Kaplan asked about personalized learning and building adult-student relationships and supports in schools. She suggested adding family engagement, or more specifically, meaningful adult support for every at-risk student.

Dr. Howard said he would like to see a seventh priority to include a Department initiative to put public focus on closing proficiency gaps. Ms. Kaplan said she would like to add better integration of human services with education.

Commissioner Chester said these are all great comments. He said this was a high level presentation that did not include all the breadth and depth of what's in the application. The commissioner said the Department is trying to address priority areas the federal government has identified.

Ms. Holmes said her concern lay with the deadline being two months away and the whole issue of stakeholder buy-in, and asked whether it is required that every district sign on. Commissioner Chester said the Department does not expect all districts to sign on, but those that do not will not get the funding. He said the larger districts are likely to participate and the Department is reaching out to them. Commissioner Chester said there was a lot of enthusiasm in a recent convening in Worcester with 24 urban districts, and that group asked the commissioner to keep convening them.

Mr. D'Ortenzio Jr. thanked the Department for its outreach to the Student Advisory Council on this issue.

**National Validation Committee**

Chair Banta asked Board member Sandra Stotsky to provide an update on the work of the National Validation Committee. Dr. Stotsky said she strongly supports the effort to develop strong national academic standards in English language arts and mathematics, especially mathematics at the high school level. Dr. Stotsky said that strong standards can help eliminate the need for remedial education. She said that a concern is the possible threat to a state's autonomy of postsecondary institutions in admissions requirements and placement in credit bearing courses. Dr. Stotsky said she would like to learn of any legal implications to institutions of higher education for a set of standards called college and career readiness, and whether this might affect the autonomy of those institutions.

Mr. Chertavian had to leave the meeting at 1:00 p.m.

**Proposed Changes to 2010 Accountability Reporting: Graduation Rate**

The U.S. Department of Education requires states to establish a statewide graduation rate goal and to set annual targets to reach that goal. The Board approved the 2009 graduation rate targets in March 2009. The Department is analyzing district data from last year and developing a recommendation for its long-range state goal and for the intermediate targets for the 2009-2010 and subsequent school years. The recommendation will be presented to the Board at its December meeting. Commissioner Chester said USED is requiring the state to participate in a peer review of its graduation rate methodology, which will begin in mid-January.

Dr. Fortmann referred members to an article in the News Clippings section of this month's Board book called [Teacher test](http://www.massinc.org/index.php?id=749&pub_id=2493) from CommonWealth Magazine and commended the article. Dr. Fortmann said the article mentions "The Widget Effect," and that he requested copies of that report, which were distributed to members.

**Next Meeting**

The next meeting of the Board of Elementary and Secondary Education is scheduled for Tuesday, December 15, 2009 at the Department of Elementary and Secondary Education in Malden.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education adjourn the meeting at 1:05 p.m., subject to the call of the chair.**

The vote was unanimous.

Respectfully submitted,

Mitchell D. Chester

Commissioner of Elementary and Secondary Education

and Secretary to the Board

Minutes of the Special Meeting

**of the Massachusetts Board of Elementary and Secondary Education**

**November 16, 2009**

**5:45 p.m. – 7:48 p.m.**

**Massachusetts Department of Elementary and Secondary Education**

**75 Pleasant Street**

**Malden, MA**

Members of the Board of Elementary and Secondary Education Present:

**Maura Banta**, Chair, Melrose

**Harneen Chernow**, Vice Chair, Jamaica Plain

**Michael D'Ortenzio Jr.**, Chair, Student Advisory Council, Wellesley

**Thomas E. Fortmann**, Lexington

**Beverly Holmes**, Springfield

**Jeff Howard**, Reading

**Ruth Kaplan**, Brookline

**Paul Reville**, Secretary of Education, Worcester

**Sandra L. Stotsky**, Brookline

**Mitchell D. Chester**, Commissioner of Elementary and Secondary Education, Secretary to the Board

Members of the Board of Elementary and Secondary Education Absent:

**Gerald Chertavian**, Cambridge

**Dana Mohler-Faria**, Bridgewater

Chair Maura Banta called the meeting to order at 5:45 p.m.

Chair Maura Banta said the purpose of the special meeting was to discuss and process what the Board heard at its November 7, 2009 special meeting in Gloucester, and to discuss what action the Board should take at its regular meeting tomorrow regarding Gloucester Community Arts Charter School (GCA). The chair said the Board heard two options from the independent consultant, David Kerrigan, at the November 7th meeting – to proceed with the charter as granted or, if there are grounds for revocation, to begin the process to revoke the charter. Chair Banta said Board members heard about the high legal standard for revocation based on material misrepresentation. Commissioner Chester distributed several documents, including his analysis of the assertions about material misrepresentation.

Board member Tom Fortmann said he had listened to opinions on both sides, and to Mr. Kerrigan's presentation, and agreed with the chair that the only option is to revoke or not do so. Dr. Fortmann said he agreed that a number of things stated in the group's application could be criticized as overly pejorative and perhaps overstating the case but that he agrees with the commissioner’s memo. Dr. Fortmann said he looked at specific items in the superintendent's paper and compared them side-by-side with the charter group's application. Dr. Fortmann said he did not find anything that came near to material misrepresentation. Given that and the fact that the commissioner based his recommendation on the merits of the application, Dr. Fortmann said there was no reason to proceed with looking into revocation.

Board member Ruth Kaplan asked how she could make a determination on material misrepresentation now, since the Board has not had a hearing on that question. Ms. Kaplan said in order to reach a conclusion that cause exists, she would need to hear that evidence of material misrepresentation exists. Commissioner Chester said the Board would hear his assessment of the assertions that have been made in regard to misrepresentation. The commissioner said a hearing would occur only if the Board were to decide there are sufficient grounds for revocation.

Department General Counsel Rhoda Schneider presented an overview of the process for revocation of a charter. General Counsel Schneider said if the Board voted its intent to revoke the school's charter, notice would be provided to the charter school, which would then have the right to appeal. If the school chose not to appeal, the charter would be revoked. If the school appealed the Board's decision, the Department would hire a hearing officer and an adjudicatory hearing would be held. General Counsel Schneider said the Department would have the burden of proof because it would be seeking to revoke the charter. The charter school would present its case, the hearing officer would hear testimony, and then the hearing officer would issue a tentative decision to the Board. The Board would then take a final vote on revocation. General Counsel Schneider said the charter school could appeal the final decision to Superior Court, and if aggrieved, could appeal to the state Appeals Court and the Supreme Judicial Court. General Counsel Schneider said the court's standard of review would be whether the Board’s decision to revoke the charter was based on substantial evidence and was not arbitrary and capricious.

Ms. Kaplan said she wanted to understand Commissioner Chester’s rationale for his recommendation. She said she did not feel competent to make a determination on material misrepresentation. Ms. Kaplan said she was more concerned about the integrity of the process.

Board member Jeff Howard said there were two distinct issues here. The first involved the question of the secretary, commissioner, and members of the Department and their recommendations. Dr. Howard said he would dismiss these issues because he sees no grounds for questioning the integrity of the people involved. Dr. Howard said this comes down to a question of judgment, not integrity. Dr. Howard said the real question on the table is can we revoke and should we, and are there any grounds or basis for revoking the charter.

Vice Chair Harneen Chernow said she did a lot of thinking after the November 7, 2009 special meeting in Gloucester. The vice chair said she was surprised by the two letters that Governor Patrick sent to the Board asking the Board to reconsider. Vice Chair Chernow said she was not sure the case has been made on material misrepresentation, and that was beyond her ability to know. The vice chair said the issue of process is huge, and that the public has questioned the Board's work, and she is concerned about that.

Board member Beverly Holmes said the process was not perfect and needs to be tightened. Ms. Holmes said she looked again and again at the documents, including the Foley Hoag document on material misrepresentation. General Counsel Schneider reviewed the standard for material misrepresentation that was included in Mr. Kerrigan's report.

Commissioner Chester expressed his respect to the community of Gloucester and to the school district. The commissioner said he reread the GCA Charter School application and reaffirmed what he had presented previously to the Board, that his recommendation was based on the merits of the application, not based on any aspersions about the Gloucester Public Schools nor on any political calculus. Commissioner Chester said what is compelling about GCA's application is that the school has a strong academic focus with an arts infused curriculum, attention to differentiated instruction, multi-age classes, a focus on instructional practice, and the use of data tied to parent reporting. He noted that the school will provide a 7-hour school day for students and an 8-hour teacher day. He said this is a compelling application now, as it was when he recommended it in February.

Commissioner Chester said that after careful review, he does not see that this matter rises to material misrepresentation. The commissioner added that while there may have been pieces in the application that were not 100 percent accurate, none of those were substantial or ones that he relied on in making his recommendation. He summarized the list of procedural flaws and his memo to the Board on allegations of material misrepresentation. The commissioner said it would be a mistake for the Board to revoke this charter and to do so would set a significant precedent.

General Counsel Schneider said that reconsideration is an idea, not a legal option. Ms. Schneider said that to rise to revocation, there must be a level of seriousness and gravity commensurate with the grounds listed in the regulation. Ms. Schneider said the Board would have to find something gravely threatening to the existence of the school or the integrity of the process.

Ms. Schneider reviewed the procedural flaws and addressed each of them. On the issue of no Board member at the public hearing and waiver of the Board's procedural regulation, she stated that the waiver was lawful; this was a procedural regulation and did not affect substantive rights. Moreover, members of the community had and used many other opportunities to convey their views and concerns to the Board. On the issue of census estimates, she stated that the Department was using the best and most recent estimates, and no one has identified any better estimates, from the city clerk's office or elsewhere. On the issue of an alleged conflict of interest due to a Department employee participating in the applicant group, she said the employee sought and received an opinion from the State Ethics Commission, provided proper notice of his involvement, his involvement was totally on his own time, and he had no involvement in the application review process, so there was nothing improper here. On the issue of the Charter School Office's initial "do not recommend" recommendation, she said aside from the fact that this was at a very preliminary stage in the discussion, the bottom line is that there is nothing improper or flawed because the Commissioner makes his recommendation based on input from a variety of sources, including but not limited to his staff. On the issue of Secretary Reville's February 5, 2009 email to Commissioner Chester, she said the wording may have been unfortunate, it may have been taken out of context, and critics are entitled to disagree with the sentiments, but there is no procedural flaw in the Secretary, or any member of the Board, offering their opinion to the commissioner. Ms. Schneider concluded that while it was appropriate for the community to raise these issues as concerns, the Department and Board have addressed them all, and they do not constitute grounds for revoking the charter.

Ms. Schneider said that procedural flaws would have to be close to or at criminal behavior, for example bribery or criminal misconduct, to reach a threshold that would call for revocation. Ms. Schneider said that the Board would face a legal challenge if it decided to vote for revocation in this matter, and that it would have a fairly weak case.

Mr. D'Ortenzio Jr. asked if the commissioner needed to recommend revocation. General Counsel Schneider said that typically the Board acts on the commissioner's recommendation, but the Board does not always follow that recommendation. Mr. D'Ortenzio Jr. said that there were a lot of procedural irregularities, and the Board and Department should address those. He said he reviewed the documents and spoke to former student member AJ Fajnzylber. Mr. D'Ortenzio Jr. said the community's passion has been inspiring to him as a 16-year old. He also noted that the value put on public comment is up to the individual Board member, and that to him the public comment portion was not as important as other factors. He said the manner in which the application was written did not reflect positively on the public school system, but he did not view those statements as material to the Board’s decision. Mr. D'Ortenzio Jr. said the conversation comes down to money, and that is a fair and relevant point. He said that in light of the fact that Gloucester did meet foundation and would receive a generous charter school reimbursement, we should go ahead with the charter. He said the charter application contains innovative ideas for the children of Gloucester, and based on the merits, the charter should move forward.

Dr. Stotsky asked about Gloucester's foundation budget, the effects of any decline in enrollment, and how much the district would eventually lose because of the charter school. Associate Commissioner Jeff Wulfson said Gloucester receives a foundation allotment under Chapter 70. He said in the absence of hold harmless, whether the district's foundation budget would go down with an enrollment decline has to do with a juxtaposition of enrollment and inflation. The city would be assessed a per pupil cost for charter school tuition. The city would still get state aid for a student, but would have to pay the local share of the charter school tuition. He said the school district does not lose enrollment based on students attending charter schools or school choice.

Ms. Kaplan asked about the Charter School Office report and what concerns the office had. Associate Commissioner Wulfson said the charter application review process is complex and relies on judgment, rubrics, and evaluations of many different dimensions by Department staff and external reviewers. The Charter School Office gathers information, synthesizes it and presents it to the commissioner. Associate Commissioner Wulfson said every charter school application has its strengths and weaknesses, and that recommendations are judgments. He said the other two applicants were non-starters, while Gloucester had significant strengths as well as weaknesses. Commissioner Chester said the most compelling piece of the application was the arts infused curriculum and structures to ensure that core academics would be well executed.

Associate Commissioner Wulfson said some examples of weaknesses include: no strong rationale for K-8 rather than just middle school; no clear process to train teachers; no clear plan for how to link assessments to curriculum; and how to attract students. He said it is hard to take these examples out of context.

Chair Banta said that a decision to vote to revoke the GCA charter would threaten the stability and viability of all charter schools and could set some precedents that have unintended consequences. Associate Commissioner Wulfson said the Charter School Office's job is to support the commissioner and give him the information he needs, and the Board needs to rely on the commissioner as its CEO.

Vice Chair Chernow said the question for her is what is the role of the Board. She said all the issues together got us to where we are today. The vice chair said this is the first time in her memory that the Board has received communication from the Governor, and that raises the matter to a different level. Dr. Fortmann said it is not appropriate for the Board to look at what the staff said, because the Board has to rely on the commissioner. Dr. Fortmann said if the Board looked at what the staff says on everything, it would become dysfunctional. Dr. Fortmann said he agrees with the commissioner’s memo and if the Board doesn't bring this to closure, it could cripple the effort to open this school. Ms. Kaplan said that the Charter School Office’s recommendation on its own is not an issue, but in combination with the secretary's email made it questionable to the public. Ms. Kaplan said she agrees with Secretary Reville that there is nothing wrong with advocating for the charter. Ms. Kaplan said the way in which the secretary characterized the decision, combined with other factors, gave the appearance of a political decision. Ms. Kaplan said the primary issues for her are the Board's issues, and the process looked irregular to the public.

Chair Banta said tonight's discussion was an important one to have. The chair said she looked at the application and the side-by-side analysis, and did her due diligence, as all Board members did. The chair said she voted for the school because she believed in it at the time, and still does. The chair said she liked the strong curriculum, the deliberate blend of art and mathematics, and the K-8 model. Chair Banta said her decision was not a political one. The chair said the Board must make a solid, accurate decision at its meeting tomorrow. Chair Banta said she hoped that after tomorrow, the community of Gloucester will do what the mayor asked and respect the Board's decision.

Dr. Stotsky expressed her gratitude to the staff, commissioner, and chair. Dr. Stotsky said she was not happy about the amount of time charter schools are taking with this Board given that there are so many important issues in education. Dr. Stotsky said the Board has to respect what the commissioner and staff do. Ms. Kaplan said the Board might want to revisit some options on the table for approving charter schools. Vice Chair Chernow said that is already happening with some of the charter school amendments.

Secretary Reville said every charter school decision is a judgment on people's intentions and their capacity to fulfill those intentions. The secretary said this was a credible, well intentioned proposal. He said there were a number of missteps in the process that have led to bad feelings. Secretary Reville said the Board has made the extra effort that the Governor asked for, and that each of us needs to examine our hearts and minds and ask if we made our decision on this charter school in good faith.

Commissioner Chester said the Board made the right decision on this school. He said the Board action tomorrow could be precedent setting, and if the Board decides that procedural irregularities are grounds for revocation of a charter, the Board and the education community would have to live with that precedent. The commissioner said the Board has put a lot of thought and time into turning the application and process inside out, and has put a lot of energy, reflection, debate and consideration into its decision and action.

**On a motion duly made and seconded, it was:**

**VOTED: that the Board of Elementary and Secondary Education adjourn the meeting at 7:48 p.m., subject to the call of the chair.**

The vote was unanimous.

Respectfully submitted,

Mitchell D. Chester

Commissioner of Elementary and Secondary Education

and Secretary to the Board