Minutes of the Regular Meeting

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

**May 24, 2011**

**8:35 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

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

**Beverly Holmes**, Springfield

**Jeff Howard**, Reading

**Ruth Kaplan**, Brookline

**James McDermott**, Eastham

**Dana Mohler-Faria**, Bridgewater

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

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

Member of the Board of Elementary and Secondary Education Absent:

**Vanessa Calderón-Rosado**, Milton

**Gerald Chertavian**, Cambridge

Chair Banta called the meeting to order at 8:35 a.m.

**Comments from the Chair**

Chair Banta provided a recap of last evening's special meeting on special education. The chair said the Board's Charter School Committee met again on May 17th. The committee discussed how the Board deals with all the charter school matters before it, and how to make the process more efficient and effective. The chair asked Beverly Holmes to provide an update on the Commissioner's Evaluation Committee. Ms. Holmes said the criteria have been updated to reflect today's times and the Board's priorities. Ms. Holmes said the committee recently received the commissioner's self-assessment and will have a final report in June.

**Comments from the Commissioner**

Commissioner Chester said the Department will hold a listening tour that will include six regional meetings to provide opportunities to update and hear from educators on his proposal on educator evaluation.

**Public Comment**

* Representative William Brownsberger addressed the Board on virtual education.
* Jason Williams, executive director of Stand for Children, and Daniel Gutierrez, a student at Doherty High School in Worcester, addressed the Board on educator evaluation.
* Carlos Rojas from the Boston Student Advisory Council addressed the Board on educator evaluation.

Dr. Mohler-Faria and Secretary Reville arrived at 8:55 a.m.

* Maria Fenwick from TeachPlus Boston addressed the Board on educator evaluation.
* Kim Janey from Boston United for Students addressed the Board on educator evaluation.
* Dan Chu from the Boston Student Advisory Council addressed the Board on educator evaluation.
* Kathy Clancy from the Gloucester School Committee addressed the Board on the Gloucester Community Arts Charter School.
* Val Gilman, chair of the Gloucester School Committee, addressed the Board on the Gloucester Community Arts Charter School.
* Joe Knowles, chair of the Gloucester Community Arts Charter School Board of Trustees, addressed the Board on the Gloucester Community Arts Charter School.
* Gina Manley, a parent of a student at Gloucester Community Arts Charter School, addressed the Board on the Gloucester Community Arts Charter School.
* Peter Daboul addressed the Board on New Leadership Charter School.
* Tracy Novick from the Worcester School Committee addressed the Board on Spirit of Knowledge Charter School.
* Kathleen Babini from Plymouth Public Schools addressed the Board on the MCAS History and Social Science test.
* Tyrone Mowatt addressed the Board on advanced learning.

**Comments from the Secretary**

Secretary Reville said the Administration is working hard on a number of amendments to the Senate budget. The secretary said several education accounts, including circuit breaker and targeted assistance, were underfunded. Secretary Reville said he recently attended a meeting on expanded learning time in Washington, D.C., the charter awarding ceremony for the 16 new charter schools, and a celebration in Worcester related to the approval of six new innovation schools by the Worcester School Committee. The secretary also said he was encouraged by the work in many turnaround schools with respect to wraparound services.

# 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 April 26, 2011 special meeting and April 27, 2011 regular meeting.**

The vote was unanimous.

**Report from Advisory Council on School and District Accountability and Assistance**

Joe Esposito, chair of the Advisory Council on School and District Accountability and Assistance, provided an update on the council's work. Mr. Esposito said the council met six times this past school year and saw a turnover of one-third of its membership. Mr. Esposito said the council shifted its emphasis from the planning of frameworks for accountability and assistance to following their implementation. He said he anticipates an expansion of what the council has to offer beyond the current emphasis on Level 4 schools.

Secretary Reville said it is important to think more broadly about the challenge that lies ahead around closing gaps, and said two major issues are student engagement and health and human services. Ms. Kaplan commented that educational leadership is key because the principal plays a central role in community partnerships and family engagement.

**Educator Evaluation: Overview of Proposed Regulations and Implementation Plan**

Commissioner Chester said he was pleased to share his thinking around how to roll out the implementation of the proposed regulations. The commissioner said the Department has already received substantial feedback on the proposed regulations, and the sentiment has been positive. The commissioner said there has been concern that school districts not be left on their own to figure this out. Deputy Commissioner Karla Baehr delivered a PowerPoint presentation on the key features and the implementation plan for the proposed regulations as well as a review of the student growth percentile methodology.

Secretary Reville asked how we set norms. Commissioner Chester said we look at what is typical by taking into account students’ prior achievement. The commissioner said we could also take into account poverty, race, gender, but noted the risk of setting different expectations based on student demographics. Secretary Reville asked if we have a basis for setting a benchmark expectation for students. The commissioner said we are looking at whether to set a specific expectation, beyond stating that typical growth means mid-range. Commissioner Chester aid this analysis becomes the existence proof of what is possible, because we see higher gains for some students than for others. Dr. Howard asked whether this system demands uniformity in the MCAS exam each year. Deputy Commissioner Baehr said we have student growth percentiles for MCAS-tested subjects and this is only one of the multiple measures, affecting about 17% of teachers. Dr. Howard said he was concerned about the referenced nature of SGP. The commissioner said he shares the concern, and the Department is working on fixing a standard, which will take more time.

Dr. McDermott said it seems multiple teachers can take credit for a student's gains. Deputy Commissioner Baehr said that's why we have to look at patterns and trends and not a single measure. Secretary Reville said the data should be informative and not determinative. The secretary said we are going to look at multiple measures of student performance and rely on overall judgment based on quantitative and qualitative measures. Commissioner Chester said there are places with consistently high or low indicators, and these are huge flags. He added that the Board has a duty to change the scenario for students in low-growth schools.

Vice Chair Chernow said she is uncertain how educators will be able to understand this system and what they are being evaluated on. Deputy Commissioner Baehr said the first step will be self-assessment and reflection. Educators will look at the rubric and all the information they have about student learning and assessing their own practice to come up with goals to improve practice. The goals would guide an educator's plan for the year. Halfway through, there would be an interim assessment, then continued implementation of the plan. By the end of the second year, there would be the summative evaluation.

Ms. Kaplan expressed a concern about the skill level of the evaluator. Deputy Commissioner Baehr said the Department envisions the evaluator to be the principal, a department head, or an assistant principal for teachers. For experienced teachers whose performance is proficient or exemplary (the green area on the chart), this would be a good place for peer observation. Ms. Kaplan said the quality of the evaluator is key, and subjectivity would create the potential for unfairness. Deputy Commissioner Baehr said we would publish rubrics that describe practice at the four performance levels, there would be a self-assessment role built in for the educator, and these would be steps toward a common statewide practice or standard.

Ms. Kaplan said she agrees with the students who advocate having student feedback go to the evaluator. She asked how the model system would relate to collective bargaining. Deputy Commissioner Baehr said the law authorizes the Board to set regulations on the principles of evaluation, to be used and expanded upon at the district level, through bargaining on the implementation of the principles such as process, timeline, supplemental performance standards, and other details. Deputy Commissioner Baehr said the hope is that the model system will be compelling and that evaluation should be part of the ongoing work to improve teaching.

Secretary Reville said he hopes Readiness Centers are used as networks of support. The secretary said student engagement in evaluation needs to be more prominent, and said he realizes there are issues about how to collect student input. Secretary Reville asked about the implementation rollout. Deputy Commissioner Baehr said the first phase is for the Level 4 schools, as a condition of eligibility for school improvement grant funding.

Mr. D'Ortenzio Jr. thanked members who had spoken in support of student engagement in educator evaluation. He asked about the use of MCAS growth scores and how they are factored into evaluations. Chair Banta suggested that members submit additional questions to the Department.

**Amendment to Competency Determination Requirement in History and Social Science, 603 CMR 30.04(3)**

Commissioner Chester said the Board adopted the restoration of the MCAS History and Social Science assessment program as a budget priority for FY12, but the funding is not there. Secretary Reville said today's vote is the only thing to do, given the funding situation. The secretary said he hoped the Department would move forward with further development of this test in the interim, so that at the point of implementation the state would have a stronger exam. Senior Associate Commissioner Bob Bickerton said there are resources in Race to the Top that could support development of performance assessments and other measures.

Ms. Kaplan said she would not support this motion. She said she is concerned that history is getting crowded out and also is concerned about the impact further standardized testing will have on project-based learning in history. Ms. Kaplan said she was also concerned that the focus of the high school test is American history rather than world history.

Mr. D'Ortenzio Jr. asked if there was any possibility of funding being restored to support the test. The commissioner said there is always the possibility. Vice Chair Chernow asked about the implementation date for the Competency Determination standard for history. Mr. Bickerton said the new regulation would provide a ramp up period where the CD requirement would not take effect until the third consecutive year of history testing at the high school level, to provide fair notice.

Ms. Holmes asked why world history is not incorporated into the test. Mr. Bickerton said under the current curriculum framework, world history is covered and assessed before high school, and American history is covered and assessed in high school. Mr. Bickerton said this has to do with the sequencing of the standards.

**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, §§ 1B and 1D, and having solicited and reviewed public comment in accordance with the Administrative Procedure Act, G.L. chapter 30A, § 3, hereby adopt the proposed amendment to the Competency Determination Regulations, 603 CMR 30.03(4), as presented by the Commissioner.**

**The proposed amendment revises section 30.03(4) of the regulations, deleting the obsolete reference to the classes of 2012 and 2013 and stating that the Competency Determination requirement for history and social science would take effect in the third consecutive year that the history and social science high school assessment is administered, in order to provide fair notice to students and schools about performance levels and expectations before the assessment counts towards the Competency Determination required for high school graduation.**

**Provided, further, that the Board states its intent to implement the history and social science Competency Determination requirement contingent on the appropriation of funding necessary for the assessment program and for academic support services for students.**

The vote was 8-1. Ms. Kaplan voted in opposition.

**Virtual Innovation Schools: Waiver Requests from Greenfield and Hadley Public Schools; Legislative Proposal on Virtual Schools**

Commissioner Chester said that in Massachusetts the state Board of Elementary and Secondary Education has no direct role in virtual schools in terms of consumer protection. The commissioner said he and the board have expressed concern about not having a quality control role. Commissioner Chester said the regulations were an effort to institute some reasonable controls but the 25 percent cap requirement around district enrollment is unworkable. The commissioner said his recommendation is that the Board endorse a draft legislative proposal to move the authorization of virtual schools from the Innovation School statute to the charter school statute. The commissioner said this would require revisions to the charter school statute. Commissioner Chester said he is also recommending that the Board grant another one-year waiver to the existing Greenfield virtual school, but not grant any further waivers to allow additional schools to open at this time.

Senior Associate Commissioner Jeff Wulfson reported that K12, Inc. has entered into an agreement to buy Kaplan Virtual Education, which is the proposed partner for the Hadley School District. Secretary Reville said he supports the commissioner's recommendation and has a variety of concerns. The secretary said the existing legislation gave to the local school committee power that is affecting consumers across the state, and we have an experiment underway in Greenfield.

Mr. Wulfson said tuition paid to charter schools would be excessive for virtual schools, which have lower costs. Secretary Reville said he was encouraged by the letter from the Co-Chairs of the Joint Committee on Education indicating their interest in giving the state a greater role. Ms. Kaplan said she supports most of the recommendation, but is concerned about denying the waiver for the high school proposed for the Greenfield Virtual Academy. Ms. Kaplan said she was persuaded by the arguments made by Representative Brownsberger that the state has already made an exception with Greenfield and this is the opportunity to continue with grades 9-12. Ms. Holmes asked what Virtual High School was. Secretary Reville said there is a Virtual High School through which students across the state can take courses. Ms. Holmes asked whether allowing the 9-12 expansion would jeopardize our position with the Legislature. Commissioner Chester said his concern is that in light of the unease with the limited role of the state, it would be unwise to permit the expansion given that we will be advocating for a change in the authorization process.

Dr. Howard asked when to expect a new statute. Commissioner Chester said that leadership is in tune with this and it should not be hard to move quickly. Mr. D'Ortenzio Jr. said that Virtual High School is a consortium for students enrolled in brick and mortar schools to take additional supplementary classes online. Mr. Wulfson said once the legislation is enacted, the Department would work with the existing virtual school in Greenfield to have it apply for a charter.

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

**VOTED: that the Board of Elementary and Secondary Education, in accordance with 603 CMR 48.03(4), hereby waive the requirement of 603 CMR 48.05(2)(b) for MAVA (Massachusetts Virtual Academy) @ Greenfield for the 2011-2012 school year for students in grades K-8, in accordance with the innovation plan approved by the Greenfield School Committee, provided that at least 2% of the enrollment at said school shall be residents of the town of Greenfield.**

The vote was unanimous.

Mr. D'Ortenzio Jr. asked if the proposed 9-12 school of the Greenfield Virtual Academy would have the option to apply for a charter if the legislation passes. Mr. Wulfson said yes, but that it would not be for this year. Ms. Kaplan said there was an inconsistency in wanting to stop the process but allowing the K-8 school to continue. Commissioner Chester said we have an existing school that we want to follow, with the caveat that there is a lot of concern about the lack of quality control by the Board. Ms. Kaplan asked why Greenfield only sought K-8 when it applied for a waiver. Mr. Wulfson said their plan was to open a K-8 school but expand to K-12. Mr. Wulfson said the reason they are proposing a separate school is because each school could have a 500 student enrollment limit.

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

**VOTED: that the Board of Elementary and Secondary Education hereby deny the request from the Greenfield School Committee to waive the requirement of 603 CMR 48.05(2)(b) for a virtual school to serve students in grades 9 through 12.**

The vote was 8-1. Ms. Kaplan voted in opposition.

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

**VOTED: that the Board of Elementary and Secondary Education hereby deny the request from the Hadley School Committee to waive the requirement of 603 CMR 48.05(2)(b) for a virtual school to serve students in grades 6 through 12.**

The vote was unanimous.

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

**VOTED: that the Board of Elementary and Secondary Education hereby endorse the draft legislative proposal on virtual schools presented by the Commissioner, and direct the Commissioner to communicate the Board’s endorsement of the proposal to the Legislature and Governor.**

The vote was unanimous.

**Report on Conditions at Gloucester Community Arts Charter School**

Commissioner Chester he is recommending that the school continue under the conditions that currently exist. The commissioner said the Board has been deliberate and attentive to this issue, and his recommendation should not be interpreted as endorsing the school as an exemplar. Commissioner Chester said he has substantial concerns about the school, the leadership of its board, and the special education program. The commissioner said there have been varying degrees of progress made on the conditions that the Board placed on the school in December.

Commissioner Chester said he is heartened by a couple of facts. He said the school started with 64 students and that was a tremendous handicap, but the pre-enrollment figures for next year would triple enrollment and provide a sounder fiscal footing. The commissioner said fiscal viability has been a concern all along. Commissioner Chester said he is hopeful the school’s board takes the issues seriously and they will move the school forward and address the conditions placed on them. The commissioner said that looking at the procedures for charter schools early in their tenure, it has been the practice of the Board not to pull the trigger quickly. Mr. Wulfson said the revocation process is lengthy and difficult. Mr. Wulfson said the Board has never had one of its revocation decisions overturned, because the Department is very deliberate in making those decisions. Commissioner Chester added that the Department does not yet have any academic performance data for this school.

Mr. D'Ortenzio Jr. said he was glad to see representation from both sides on this issue and he is encouraged by the pre-enrollment numbers for next year. Mr. D'Ortenzio Jr. said he would like to the see the relationship between the charter school and the school district strengthened. He said he is eagerly awaiting the MCAS results. Mr. D'Ortenzio Jr. said he was most concerned that the loss of the school's integrated arts specialist had not been reported to the Department. Mr. Wulfson said the school needs to strengthen its board and that the arts integration specialist position is important. Mr. Wulfson said the Attorney General's Office has not reported any instances of noncompliance since the previous report.

Ms. Kaplan said she has a lot of serious concerns about the school, and is dismayed by the special education finding. She said the work in progress is not good enough, and that having to offer compensatory services is a travesty. Vice Chair Chernow said she sees a lot of problems in the report, including conditions not being met. The vice chair said she would make a motion to revoke the charter for the Gloucester Community Arts Charter School. The vice chair said the Board voted in December, according to Ms. Kaplan's motion, that it would vote up or down on the charter. Vice Chair Chernow said there are a number of issues that are not a big deal if this were a private school, but a public school demands public accountability.

Ms. Holmes asked if we have revoked a charter in the first year of operation. Department Deputy General Counsel Kristin McIntosh said the Board has never revoked a charter in the first year of a school's operation, but it has taken action early in the second year. Deputy General Counsel McIntosh said both previous examples – Roxbury Charter High School and YouthBuild – represented schools in gross fiscal distress where the Department had grave concerns about their ability to finish the school year.

Commissioner Chester said the Department will do site visits and monitor the school's progress against its conditions. The commissioner said he expects to see the school continue to make progress and mature. He said he would be happy to report back on any schedule the Board would like. Secretary Reville said we expect certain difficulties in a school's first year. The secretary noted that 100 percent of the parents have indicated their children will return to the school. Secretary Reville said the concern about special education is an important concern.

Mr. Wulfson said Tony Blackman remains the school's executive director, and a director of education position has been recast as head of school. Mr. Wulfson said the incoming head of school would start July 1. Mr. Wulfson said the school has indicated it received consent from all parents of special education students involved.

Dr. McDermott said the school lacks effective leadership and he is not confident that things will improve. Mr. Wulfson said that on the administrative side, it is hard for a school to operate with one full-time administrator (executive director). Mr. Wulfson said the absence of permanent leadership is a concern, and that the Department continues to believe the board needs strengthening.

Chair Banta said there are still issues of concern about the school, but she cannot support the vice chair's motion to revoke the charter because she does not believe the Board has grounds to do so.

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

MOVED: that the Board of Elementary and Secondary Education hereby state its intent to revoke the public school charter granted to the Gloucester Community Arts Charter School.

The motion failed. The vote was 3-5-1. Ms. Kaplan, Vice Chair Chernow, and Dr. McDermott voted in support of the motion. Chair Banta, Dr. Mohler-Faria, Secretary Reville, Mr. D'Ortenzio Jr. and Ms. Holmes voted in opposition. Dr. Howard abstained.

Commissioner Chester said he would provide an initial report back to the Board in October or November. Ms. Holmes said we want to see significant progress so the conditions are completely eliminated. Commissioner Chester said he hopes the school's leaders have seen and heard the concerns of the Board. Ms. Kaplan said her concern is the message to the charter school community about the importance of doing special education and English language learners' work right. Ms. Kaplan said going forward we have to ensure that these are not marginal issues.

**Report on Conditions and Recommendation: New Leadership Charter School**

Commissioner Chester said he is recommending that the Board place New Leadership Charter School on probation. The school has had seven conditions up to now – four were met, though not in a timely manner, and three were not fully met. The commissioner said he has major concerns about the school and its lackluster academic track record. Commissioner Chester said we need to see substantial progress leading up to the school's next renewal in 2012.

Ms. Holmes said there has been a persistent impasse with the district as it relates to revenue and compensation, and asked what the Department's role is. Mr. Wulfson said the Board's regulations for Horace Mann charter schools require a memorandum of understanding between the schools and the district around services and funding. The regulations provide an appeal to the commissioner if the school believes it has not received its proportional share. Mr. Wulfson said this has been a matter of contention for several years. Mr. Wulfson said the school did appeal, the district responded, and the Department is reviewing the matter. Mr. Wulfson said that a Horace Mann charter school cannot be successful without a good relationship with the district.

Ms. Holmes asked whether if the impasse continues, it will continue to affect academic achievement at the school. Ms. Holmes asked if a Horace Mann charter school has ever converted to a Commonwealth charter school. Ms. Holmes added that only one of the new 16 charter schools was from the western part of the state, and that region needs more innovation schools. Mr. Wulfson said yes, we believe administrative and organizational issues do get in the way of improved academic performance. He said there has been one instance of a Horace Mann charter school becoming disenchanted with the district. Mr. Wulfson said the Global Learning Charter School in New Bedford turned in its charter and reapplied as a new Commonwealth charter school. Those students were then required to reapply to the new school.

Mr. Wulfson said that while the smart cap lift used up most of the available seats in Boston, during the next round of charter school applications, the Department will encourage proven providers to look beyond Boston to other gateway cities. Ms. Holmes said there will be the opportunity to look at MCAS results for this school in the fall. Secretary Reville said the need to promote more options is strong. The secretary said the Department can play an important role to see if the relationship between the school and the district can get back on track.

Dr. Howard asked to note on the record that his organization, the Efficacy Institute, did work with this school briefly over ten years ago. Dr. Howard said the fact that 13 years have passed since the charter was first granted weighs very heavily, and that he will not vote again to extend this school’s charter if we do not see very strong results. Dr. McDermott asked why this school was not previously placed on probation. Mr. Wulfson said the use of probation is as a final warning and was not traditionally done, but that Commissioner Chester has added it to the arsenal. Mr. D'Ortenzio Jr. said this school has experienced significant problems after 13 years, and that meeting conditions 15 months after the due date is unacceptable. He said the vote to place the school on probation should be a final warning.

**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 1.13(4), hereby place the New Leadership Charter School (NLCS) on probation until January 2013, and direct NLCS to meet the following terms of probation, as recommended by the Commissioner:**

1. **New Leadership Charter School shall demonstrate that it is an academic success by:**

* **meeting academic growth targets in English language arts and mathematics, as established by the Department of Elementary and Secondary Education, or achieving Adequate Yearly Progress in the aggregate and for all statistically significant subgroups in English language arts and mathematics in 2011 and 2012, and**
* **meeting the academic success measures in its accountability plan.**

1. **By January 2013, New Leadership Charter School shall demonstrate improvement in its financial conditions as evidenced by audited financial statements showing operating surpluses; current assets in excess of current liabilities; and positive unrestricted net asset balance.**
2. **By September 2011, New Leadership Charter School’s Board of Trustees shall reach agreement with the Springfield School Committee on a memorandum of understanding for the 2011-12 and 2012-13 school years, including agreements with respect to services, facilities, and funding.**
3. **New Leadership Charter School shall demonstrate that it is organizationally viable by:**

* **fully staffing its administrative structure;**
* **ensuring that all teachers are licensed to teach in Massachusetts;**
* **ensuring that the administrative team includes an instructional leader who is licensed and qualified to supervise and evaluate teachers; and**
* **ensuring that the school leader is qualified and licensed as a school administrator.**

1. **New Leadership Charter School shall demonstrate that it is faithful to the terms of its charter by providing evidence, written and as documented through the site visit process, of consistent implementation of the leadership component of its mission, integrated across the school and school community.**
2. **New Leadership Charter School shall demonstrate that it is in compliance with legal and regulatory requirements by establishing and operating a program for English language learners in a manner consistent with the requirements of General Laws chapters 71A**

**and 71B.**

1. **By September 2011, New Leadership Charter School shall submit a complete asbestos management plan as required by the Massachusetts Department of Occupational Safety. The school shall perform ongoing maintenance of the asbestos management plan annually, as required by the Asbestos Hazard Emergency Response Act (AHERA) and it regulations, 40 CFR 763.80 through 763.99.**
2. **New Leadership Charter School’s Board of Trustees shall comply with the terms of its bylaws, including, but not limited to, the number of trustees who are affiliated with the Urban League of Springfield, Inc.**

**In addition to meeting the terms of probation, NLCS, like all charter schools, must also comply with the terms of its charter. The Commissioner shall review and report to the Board on NLCS’s success or lack of success in meeting the terms of probation and its charter and, based on his review, shall recommend such further action as he deems appropriate.**

The vote was unanimous.

**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**

**May 23, 2011**

**5:10 p.m. – 7:05 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

**Vanessa Calderón-Rosado**, Milton

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

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

**James McDermott**, Eastham

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

**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

**Beverly Holmes**, Springfield

**Jeff Howard**, Reading

**Dana Mohler-Faria**, Bridgewater

**Ruth Kaplan**, Brookline

Chair Banta called the meeting to order at 5:10 p.m.

Chair Banta welcomed the Board to its special meeting on special education. Commissioner Chester said that one in six students in Massachusetts is identified as having a disability and this population has not always been as successful as we would wish. The commissioner said this is a very diverse population. Commissioner Chester said tonight's meeting would include an overview from Department staff, a presentation by the Advisory Committee on Special Education, and a presentation by Harvard Professor Thomas Hehir.

Department director of special education planning and policy Marcia Mittnacht presented a PowerPoint on special education, including a definition and key concepts, relevant state and federal laws, the population of students identified, the most common disabilities, and the costs of special education including the Circuit Breaker reimbursement for high cost students who are placed out-of-district.

Jennie DunKley, the chair of the Special Education Advisory Council, said the council is charged to advise the Board on unmet needs in the state. Ms. DunKley said a majority of members are parents of students with disabilities or individuals with disabilities. Ms. DunKley said a key question is how to balance providing services to individual children with limited resources. The council developed a white paper, and discussions have centered on how teams, parents, and service providers can ensure it is a child-first practice. Ms. DunKley said the council has identified best practices between special educators and general educators.

Chair Banta asked about the data showing a range of percentage of students with disabilities across districts from 3.5 percent to 46 percent. Ms. Mittnacht said it has to do with the size and type of district. Ms. Mittnacht said the highest percentages are in vocational districts, and many charter schools have low percentages. Ms. Mittnacht said the Department is looking to bring together school districts with high numbers to review why those percentages are so high.

Mr. D'Ortenzio Jr. asked for more information on Section 504 plans. Ms. Mittnacht said 504 provides protections for school-aged children who have a disability that affects a major life activity, and could be a temporary disability. Special education is specifically about educational needs based on identified disabilities. Ms. DunKley said a 504 plan provides accommodations, where an IEP contains all accommodations and specialized instruction. Mr. D'Ortenzio Jr. asked when students are invited to the process. Patricia Schram, vice chair of the Special Education Advisory Council, said students are supposed to be invited at age 14, but not all schools do that.

Secretary Reville asked about the relationship between special education and vocational schools. Ms. Mittnacht said that historically most students with disabilities look for an occupation, and vocational schools offer many options. She said in the past vocational schools tended to screen out students with disabilities, and this has changed significantly.

Dr. McDermott said he worked in a school for 25 years with a large special education population and this helped him to become a better teacher.

Professor Thomas Hehir said he has looked at special education data provided by the Department in innovative ways. Dr. Hehir said Massachusetts collects data very well. Dr. Hehir said among the preliminary findings are: (1) Massachusetts is a high identifier of children with disabilities; (2) there is no racial bias in Massachusetts overall regarding the identification of students with disabilities; (3) the district percent of students with disabilities scoring Proficient or higher on MCAS tends to mirror the percent for general education students; and (4) context matters. Dr. Hehir said this is only the first step in his analysis.

Among other findings, Dr. Hehir said there is evidence that other states are under-serving students in some categories; urbanicity is not the story; and there is enormous variability in the data. Dr. Hehir said that in some districts, students with disabilities are doing phenomenally well. He said that students on free or reduced price lunch are placed in special education at very high rates.

Secretary Reville asked about the association between income status and identification. Dr. Hehir said the effect might be 20 percent, and that factors such as lack of pre-natal care and trauma in the environment could contribute.

Secretary Reville had to leave the meeting at 6:30 p.m.

Dr. Calderón-Rosado said the data are very interesting, and asked about the effect of race across the state. Dr. Hehir said he will be reviewing this further even though there is no strong racial disproportionately overall. Dr. Hehir said there is much more diversity in the ELL population than other places, and that diversity could be obscuring variability among language groups.

Vice Chair Chernow asked about complaints related to denial of service and mis-categorizations. Ms. Mittnacht said if a student is referred, one aspect required is the evaluation in the area of suspected disability. Ms. DunKley said the team determines the label of the disability. Dr. McDermott asked if inclusion programs vary according to schools and districts. Ms. Mittnacht said yes, the law is highly individualized.

Chair Banta asked about students who are given drugs, such as those identified with ADHD, and the long term effects. Ms. Schram said it has been shown that a child who has ADD and receives medication has 5 times less chance of substance abuse in the future. She said the use of medication protects children. Dr. Hehir said it is important that children have a solid and appropriate evaluation. Dr. Hehir said most disabilities do not go away and have a permanent impact. He said the first evaluation of the child should be very comprehensive.

Vice Chair Chernow said we have heard some students at charter schools are being removed from special education, and that the assumption is the students were misidentified. Dr. Hehir said the issue of participation of students with disabilities in charter schools is complex. Dr. Hehir said some students leave charter schools because the school cannot meet the needs of the child. Ms. DunKley said she knows of children who had to leave charter schools because they did not have the resources or supports.

Mr. James DiTullio (designee for Secretary Reville) said a number that stood out to him was that 6.7 percent of students with disabilities go to a separate day or residential school. Ms. Mittnacht said this is a complex issue, and that on the East Coast, private schools are seen as a good concept. She said many states that do not have private schools have state schools. Ms. DunKley said it is a great service to districts that have low incidence of certain disabilities and the private schools provide increased options.

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

**VOTED: that the Board of Elementary and Secondary Education adjourn the meeting at 7:05 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