Minutes of the Regular Meeting
of the Massachusetts Board of Education

February 25, 2003
9:00 a.m. – 12:25 p.m.

Massachusetts Department of Education
350 Main Street, Malden, Massachusetts

Members of the Board of Education Present:

James A. Peyser, Chairman, Dorchester
Henry M. Thomas, III, Vice-Chairman, Springfield
J. Richard Crowley, Andover
Jeff DeFlavio, Chair, Student Advisory Council, Belmont
Judith Gill, Chancellor, Board of Higher Education (by Patricia Plummer, designee)
William K. Irwin, Wilmington
Roberta Schaefer, Worcester
Abigail Thernstrom, Lexington

David P. Driscoll, Commissioner of Education, Secretary to the Board

Member of the Board of Education Absent:

Charles D. Baker, Swampscott

Chairman Peyser called the meeting to order at 9:00 a.m.

Comments from the Chairman

Chairman Peyser opened the meeting by stating that up until two years ago he was Executive Director of Pioneer Institute. He said he has met all state ethics requirements by making full disclosure to the Governor and the public of any facts that might lead to the appearance of a conflict of interest relating to charter schools. He stated that he has had no role in the Department's or Commissioner's recommendations on new charters or charter renewals, and based on the State Ethics Commission's guidance he can participate in the Board's deliberations and decisions on these matters.

Comments from the Commissioner

Commissioner Driscoll reported on the results of the most recent MCAS performance appeals. The Commissioner reported that 112 (58%) of the 193 appeals filed were granted during the latest appeal period, November 25, 2002 to January 23, 2003. Overall, 53% of the 595 appeals that were submitted to the Department have been granted. The Commissioner noted that the MCAS retest results for December will be announced by the Commissioner and the Governor on March 3.

Commissioner Driscoll also reported that the Governor plans to release his FY 04 budget proposal, House 1, on Wednesday, February 26. The Commissioner thanked the Chairman and Secretary of Education Peter Nessen for their efforts to ensure that K-12 education remains a priority, as it has for the past decade. The Governor's budget proposal will be sent to all Board members, and will also be available on the Department's website.

Statements from the Public

- Senator David Magnani, Representative Karen Spilka, and John Kneeland, Chair of the Ashland School Building Committee, addressed the Board on charter schools and on School Building Assistance.
- Representative Dan Bosley addressed the Board on charter schools.
- John Barrett, Mayor of North Adams, addressed the Board on charter schools.
- Doreen Millis of the Salem School Committee addressed the Board on charter schools.
- Mark Kenan, Executive Director of the Massachusetts Charter School Association, addressed the Board on charter schools.
- Kathleen Toomey of the Worcester School Committee addressed the Board on charter schools.
- Representative Tom Stanley addressed the Board on charter schools.
- Pam Richardson, a parent from Framingham, addressed the Board on charter schools.
- Paul Locke of the Department of Environmental Protection addressed the Board on the School Construction Regulations.
- Mark Roberts, an environmental lawyer, addressed the Board on the School Construction Regulations.

Approval of the Minutes of the January 28, 2003 Regular Meeting

On a motion duly made and seconded, it was:

VOTED: that the Board of Education approve the minutes of the January 28, 2003 regular meeting as presented by the Commissioner.

The vote was unanimous.

1. School Building Assistance

Commissioner Driscoll updated the Board on FY 03 capital project applications and the moratorium on new project approvals. The Commissioner noted that School Building Assistance is now a $5.5 billion program, and it would take 17 years and another $5 billion to reach all of the projects on the current waiting list. The regulations specify that the Commissioner's placement of a project on the waiting list is not a guarantee of funding. He said while he understands that many projects are vital, the moratorium is necessary so that the Governor and Legislature can address the overall financial impact of School Building Assistance on the state budget. Chairman Peyser stated that if the School Building Assistance program funding problem is not resolved this year, the program will be in meltdown.

The Board discussed the final grant amounts for 25 capital projects, based on close-out audits. School Building Assistance grants are initially based on estimated costs, and subsequently adjusted to reflect the eligible costs actually incurred, up to the amount of the project cost limit. Board member Richard Crowley asked what accounts for the difference between the estimated costs and the actual costs. Associate Commissioner Jeff Wulfson responded that reductions or increases in costs are generally caused by changes in interest rates for borrowing.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education approve the final approved costs and state construction grants for the 25 school construction projects as recommended by the Commissioner.**

The vote was unanimous.

The Board discussed two of the requests the Department has received for project cost waivers. Associate Commissioner Wulfson noted that the requests for the projects in Lowell and Revere comply with the Board's current policy which limits cost waivers to five percent for constricted urban sites.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with 603 CMR 38.13 and on recommendation of the Commissioner, hereby waive the cost standards of 603 CMR 38.06 for the following projects currently on the Priority List:**

City of Lowell – New Middle School project, provided that said waiver shall not exceed $831,348

City of Revere – New Elementary Middle School project, provided that said waiver shall not exceed $1,564,507,

provided further that said waivers shall be subject to such additional terms and conditions as may be imposed by the Commissioner.

The vote was unanimous.

The Board discussed proposed amendments to the School Construction Regulations. The amendments require an environmental site assessment process for all new sites not currently in use for educational purposes. The amendments also include a construction site signage requirement and some technical wording changes to correct or clarify existing provisions. These amendments were also discussed at the Board's November 2002 meeting, at which the Board requested additional information regarding environmental site assessments. Associate Commissioner Wulfson said the Department believes the proposal strikes the right balance with respect to costs and benefits; the environmental site assessment requirement will apply to all projects that are not yet approved and that are not using existing school sites.

Board member Roberta Schaefer suggested that the Department review the impact of the environmental site assessment process after a few years. Chairman Peyser asked the Commissioner to include information on this process in future School Building Assistance annual reports.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, under the authority of G.L. chapter 69, section 1B, and G.L. chapter 70B, section 3, and having solicited and reviewed public comment in accordance with the Administrative Procedure Act, G.L. chapter 30A, hereby adopt the amendments to the School Construction Regulations, 603 CMR 38.00, as presented by the Commissioner.**

The vote was unanimous.

The Board discussed the annual update of the School Building Assistance cost factors. Associate Commissioner Wulfson noted that each year, the Board is required to review the construction cost factors in the School Construction Regulations and make appropriate adjustments. The proposed cost factors would increase the cost standards by 0.5%.

The Board also briefly discussed the findings of a recent Beacon Hill Institute study on the use of project labor agreements. Associate Commissioner Wulfson said the Department will invite comments on the issue, although no regulatory change is being proposed at this time. Board member William Irwin said he has reviewed the study report, and he cautioned the Board to review the findings with care.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with G.L. chapter 69, section 1B, and G.L. chapter 70B, section 3, hereby authorize the Commissioner to proceed in accordance with the Administrative Procedure Act, G.L. chapter 30A, section 3, to solicit public comment on the proposed amendments to the School Construction Regulations, 603 CMR 38.00, as presented by the Commissioner. The Commissioner is further authorized to solicit public comment on the issue of project labor agreements.**

The vote was unanimous. The proposed cost factors will be brought back to the Board for a final vote in the spring.

The Board voted to approve the School Building Assistance annual report. Under the School Building Assistance Act, the Board is required to submit an annual report to the Governor and the Legislature. At the January meeting the Board discussed the draft of the annual report, which the Department has since expanded in response to comments from Board members.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education approve the annual report of the School Building Assistance program for 2002 and authorize the Commissioner to transmit said report to the Governor and Legislature in accordance with G.L c. 70B, s. 17.**

The vote was unanimous. The Commissioner will forward the report to the Governor and Legislature.

2. Programs for English Language Education

The Board discussed the proposed Regulations Governing the Education of English Learners, which replace the current Transitional Bilingual Education regulations and are based on Question 2, the new law governing education programs for English learners. It replaces the transitional bilingual education (TBE) law as of the start of the 2003-04 school year. The Commissioner reported that a draft guidance document regarding Question 2 and its implementation is posted on the Department's website at www.question2@doe.mass.edu.

Elizabeth Keliher of the Department's legal staff presented a summary of the proposed regulations to the Board. Board members asked how the requirement of English language fluency might affect current educators. The Commissioner responded that the Department will have more information later in the spring, after working with local school officials to implement the new requirements. He distributed a revised version of the proposed regulations that would permit the Commissioner rather than the Board to choose the fluency assessment instrument for educators, and the Board substituted the revised version for purposes of its vote. He added that the Department intends to invite public comment and suggestions on an additional regulation that would address the educator liability provisions of Question 2. The Commissioner also informed the Board that the Department is working with local school districts to address the professional development needs of teachers who will be

teaching sheltered English immersion programs under the new law. Chairman Peyser commended the Commissioner for his collaboration with local school officials and teachers to implement the new law, which he noted will bring dramatic change to English language instruction across the Commonwealth.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with G.L. chapter 69, § 1B and chapter 71A, as most recently amended, hereby authorize the Commissioner to proceed in accordance with the Administrative Procedure Act, G.L. chapter 30A, § 3, to solicit public comment on the proposal to repeal the Transitional Bilingual Education Regulations, 603 CMR 14.00, and replace them with the Regulations Governing the Education of English Learners, 603 CMR 14.00, as presented by the Commissioner.

The vote was unanimous. At the conclusion of the public comment period, the Commissioner will present the regulations to the Board for a final vote in April.

Board member William Irwin had to leave the meeting at this point.

The Board discussed the draft English Language Proficiency Benchmarks and Outcomes. The document was drafted through a collaborative effort of Department staff with expertise in second language acquisition and an advisory committee of local educators who serve students with limited English proficiency. It is intended to guide and support teachers and others in developing effective English language curriculum and instruction for students with limited English proficiency. The benchmarks and outcomes also will serve as the basis for developing a new state English Proficiency Assessment for students, as required by the federal No Child Left Behind Act and Question 2.

Commissioner Driscoll commended the Department staff who have worked to develop the benchmarks, including Kathy Riley, Liz Keliher, Jeff Nellhaus, Kit Viator, and Deputy Commissioner Mark McQuillan. Mr. Nellhaus said the Department is implementing the student assessment requirements of both Question 2 and the federal No Child Left Behind Act with respect to English language learners. The Department has issued an RFR for a comprehensive assessment program that will provide results for individual students, schools and districts. Chairman Peyser said this work is critical for improving educational programs for English learners, and that professional development for teachers to use the assessment data to improve English language instruction will be very important. Ms. Riley said the Department has been training teachers in using the MELA-O (Massachusetts English Language Assessment-Oral). Over 270 teachers from 150 districts have already been trained.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with G.L. chapter 69, § 1B and G.L. c. 71A, as amended, hereby authorize the Commissioner to solicit public comment on the proposed *English Language Proficiency Benchmarks and Outcomes*.

The vote was unanimous. After the public comment period, the Commissioner will bring the document back to the Board in April for discussion and a final vote.

The Board discussed proposed amendments to the Educator Licensure Regulations. These amendments are necessary because of new program standards for English language education under Question 2. The amendments primarily relate to licensure as a Teacher of English Language Learners.

Vice Chairman Henry Thomas suggested that the Department consult with the teachers unions to develop professional development around the proposed new license. Deputy Chancellor of Higher Education Pat Plummer said the Board of Higher Education is willing to work with the Department to assist colleges in developing or revising their preparation programs. Associate Commissioner Sandra Stotsky agreed that the Department will be working with the Board of Higher Education as well as with the colleges.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with G.L. c. 69, § 1B and c. 71, § 38G, hereby authorize the Commissioner to proceed in accordance with the Administrative Procedure Act, G.L. c. 30A, § 3, to solicit public comment on proposed amendments to the Educator Licensure Regulations, 603 CMR 7.00, as presented by the Commissioner.

The vote was unanimous. After the public comment period, the Commissioner will bring the regulations back to the Board in the spring for a final vote.

3. Charter Schools

Commissioner Driscoll opened the discussion on charter schools by speaking about the "architecture" of the charter school process, noting that it is meant to enhance standards-based education. He said the financial constraints on school districts have led many to express concern about the award of new charters this year, and he is sensitive to that concern. The Commissioner said he too would hesitate to recommend new charters if the Governor were not proposing some fiscal relief for school districts. He commented that the outpouring of parent and community support for public schools is impressive, and it indicates the progress that has been made through education reform. The Commissioner made clear that the process of reviewing charter applicants has been consistent and rigorous, and in fact most applicants are rejected. He said he stands by his recommendations, based on the thorough review process conducted by the Charter School Office, to award charters for five new schools. Only one of the new charter schools is scheduled to open in 2003. Commissioner Driscoll added that he expects charter schools and all other public schools now have a sense of urgency about improving student achievement, consistent with the Education Reform Act and the No Child Left Behind Act.

The Board discussed charters for five new schools. Of the eleven applicant groups that submitted final applications for new charters, Commissioner Driscoll recommended five for the Board's approval. The five schools are: Berkshire Arts and Technology Charter School (regional) in North Adams, Boston Preparatory Charter School in Boston, Excel Academy Charter School (regional) in Boston, Hill View Montessori Charter School in Haverhill, and Salem Academy Charter School in Salem. Only the Excel Academy Charter School is scheduled to open in 2003; all the others plan to open in 2004.

Chairman Peyser said he and the Commissioner will continue to work with the Governor and the Legislature to provide funding to districts when a charter school opens in their community. He added that the Board's action is not a referendum on charter schools; it is a narrow decision on whether the charter applications have been thoroughly reviewed by the Department and whether they meet the high standards the Board has set.

Acting Associate Commissioner Kristin McIntosh gave the Board an overview of the review process. She noted that because of the net school spending cap in the charter school law, only two new charter schools are being recommended in the city of Boston. Board member Jeff DeFlavio said he thinks the Board should award a new charter only if the community favors it, and suggested the Board should approve only Horace Mann charters. Chairman Peyser responded that he is sympathetic to the concern and the Board and Commissioner have carefully considered the comments that have been presented, but the law directs the Board to approve both Horace Mann and Commonwealth charters if they meet the standards and the requirements in the law.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, and subject to the conditions set forth below, hereby grants a charter to the following schools as recommended by the Commissioner:

Commonwealth Charters:

Berkshire Arts and Technology Charter School (regional)

Location:	North Adams
Districts in region:	Adams-Cheshire, Clarksburg, Florida, Hancock, Lanesborough, Mount Greylock, North Adams, Savoy, Williamstown
Fifth year number of students:	308
Fifth year grade levels:	6-12
Opening year:	2004

Boston Preparatory Charter School

Location:	Boston
Fifth year number of students:	300
Fifth year grade levels:	6-11
Opening year:	2004

Excel Academy Charter School (regional)

Location:	Boston
Districts in region:	Boston, Chelsea
Fifth year number of students:	300 (limited to 100 students from Boston)
Fifth year grade levels:	6-8
Opening year:	2003

Hill View Montessori Charter School of Haverhill

Location:	Haverhill

Fifth year number of students:	243
Fifth year grade levels:	1-7
Opening year:	2004

Salem Academy Charter School

Location:	Salem
Fifth year number of students:	308
Fifth year grade levels:	6-12
Opening year:	2004

The charter schools shall be operated in accordance with the provisions of General Laws chapter 71, section 89; 603 CMR 1.00; and all other applicable state and federal laws and regulations and such conditions as the Commissioner may from time to time establish, all of which shall be deemed conditions of the charter. The Commissioner shall conduct a legal review of each charter application to ensure that it complies with all applicable requirements.

The motion passed 6-1, with Mr. DeFlavio opposed.

The Board also discussed five charter school renewals. The charter renewals are for Abby Kelley Foster Regional Charter School in Worcester, Health Careers Academy Charter School in Boston, New Leadership Horace Mann Charter School in Springfield, Rising Tide Charter School in Plymouth, and SABIS Foxborough Regional Charter School in Foxborough. Vice Chairman Henry Thomas said he would abstain from the discussion and vote because of his role as Chairman of the Board of Trustees of the New Leadership Charter School.

Chairman Peyser commented that all five schools are strong organizationally and have strong indicators of student performance. He added that expectations and accountability for student performance are increasing for all charter schools and regular public schools. Acting Associate Commissioner McIntosh noted that three of the five schools are revising their accountability plans to make them more specific and measurable.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.00, hereby grant a renewal of a public school charter to the following schools for the five-year period from July 1, 2003 through June 30, 2008, as recommended by the Commissioner:**

Commonwealth Charter School:

Rising Tide Charter School

Location:	Plymouth
Number of students:	228
Grade levels:	5-8

Commonwealth Charter Schools (regional):

Abby Kelley Foster Regional Charter School
Location: Worcester
Region: Auburn, Leicester, Millbury, Oxford, Shrewsbury, Sutton, Worcester
Number of students: 1,176
Grade levels: K-12

SABIS Foxborough Regional Charter School
Location: Foxborough
Region: Attleboro, Avon, Brockton, Canton, Foxboro, Mansfield, Medfield, Medway, Millis, Norfolk, North Attleboro, Norton, Norwood, Plainville, Sharon, Stoughton, Walpole, West Bridgewater, Wrentham
Number of students: 1,200
Grade levels: K-12

Horace Mann Charter Schools:

Health Careers Academy Charter School
Location: Boston
Number of students: 220
Grade levels: 9-12

New Leadership Charter School
Location: Springfield
Number of students: 375
Grade levels: 6-12

Said charter schools shall be operated in accordance with the provisions of General Laws chapter 71, section 89, and 603 CMR 1.00 and all other applicable state and federal laws and regulations and such conditions as the Commissioner may from time to time establish, all of which shall be deemed conditions of the charter.

The vote was 6-0 with one abstention by Vice Chairman Thomas.

4. Review of Improvement Plan from English High School, Boston - Discussion and Vote

The Board discussed the improvement plan presented by English High School in Boston. Under the Regulations on Under-Performing Schools and School Districts, schools that have been declared under-performing must submit plans for improving student achievement to the Board. The Department evaluates each plan based on a rubric developed for this purpose as well as the detailed fact-finding report that identifies the school's areas of strength and weakness.

Associate Commissioner Juliane Dow and Lynda Foisy of the Department introduced Boston Deputy Superintendent Janet Williams and English High School Principal Jose Duarte, who presented the plan to the Board. Associate Commissioner Dow said the Department has advised the school on ways to strengthen its improvement plan, and based on the school's response, the Department recommends that the Board accept the plan. The Boston administrators thanked the Department for its support through the fact-finding and planning process. Deputy Supt. Williams said Boston is using the Department's PIM (Performance Improvement Mapping) Process with other schools in the district.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with G.L. chapter 69, § 1J and 603 CMR 2.03 (6), and upon recommendation of the Commissioner, hereby accept the improvement plan submitted by the English High School in Boston.

The vote was unanimous.

5. Approval of Federal Grants – Vote

The Commissioner presented $460,000 in grants under the federal Secondary School Reading Grant Program. The program supports middle schools, high schools, and vocational schools in developing a school-wide approach to improving reading achievement.

On a motion duly made and seconded, it was:

VOTED: that the Board of Education approve the grants as presented by the Commissioner.

The vote was unanimous.

On a motion duly made and seconded, it was:

VOTED: that the meeting adjourn at 12:25 p.m., subject to the call of the Chairman.

Respectfully submitted,

David P. Driscoll
Commissioner of Education
and Secretary of the Board

CORRECTED: April 29, 2003