COMMONWEALTH OF MASSACHUSETTS
BOARD OF EDUCATION
*****REGULAR MEETING*****
MASSACHUSETTS DEPARTMENT OF EDUCATION

350 MAIN STREET
MALDEN, MASSACHUSETTS

TUESDAY, FEBRUARY 27, 2001
9:00 a.m. - 1:00 p.m.

MEMBERS OF THE BOARD OF EDUCATION PRESENT:	Mr. James A. Peyser, Chairman Dr. Roberta R. Schaefer, Vice-Chairperson Ms. Patricia Crutchfield, Southwick Dr. Judith I. Gill, Chancellor, Board of Higher Education, Boston Mr. William K. Irwin, Wilmington Ms. Jody Kelman, Chair, Student Advisory Council, Concord Dr. Abigail Thernstrom, Lexington Dr. David P. Driscoll, Commissioner of Education Secretary to the Board
MEMBERS OF THE BOARD OF EDUCATION ABSENT:	Mr. Charles D. Baker, Swampscott Dr. Edwin J. Delattre, Boston
ALSO PRESENT:	Nancy Catuogno Varallo, Registered Diplomate Reporter

COMMENTS FROM THE CHAIRMAN

CHAIRMAN PEYSER: Good morning, everyone and welcome to this February meeting of the Massachusetts Board of Education. We have 10 people signed up for public comment and a pretty full agenda, so let's get underway. I'd like to turn it over to the Commissioner for his opening remarks.

COMMISSIONER DRISCOLL: I too will be very brief, Mr. Chairman. I would like to draw your attention to the reference in my notes of the regional workshops that we've had on the NCS Mentor program, the CD-ROM that we sent to every school. Other than the math conference, that is the only thing I want to address.

I think it's most important that the Department and school districts come together on various tools that are most helpful for students and this is one of them. Not only did we send a CD to every school in Massachusetts, but we are now having regional workshops, basically about how do you look at the writing of students, what rubrics do you use, what are the expectations, et cetera. The feedback we have gotten from teachers has been tremendous. It's a terrific tool, and it really gets at this issue of what our expectations are for students in classrooms. As you know, I think one of the major advantages of our assessment program has been the increase in the amount of writing that's being done across the state, and this is helping to make the quality even greater.

Secondly, I do want to announce that on Friday, May 5, we will be holding a mathematics conference. I think this is crucial. As you know, mathematics education is an issue for the entire country. People are grappling with this issue in Massachusetts as they are in other states. 4th grade mathematics performance is pretty good, and then it drops off dramatically by the 8th grade, as it does across the country. We have instituted the 6th grade test to really see what's going on, and this will be the first year we have our results. We will have some major presenters at this conference, such as Paul Sally from the University of Chicago, and Liping Ma. A number of other people will also be presenting, including many from our own state. We are bringing teams from districts as well. Originally, Governor Cellucci and Lieutenant Governor Swift were both scheduled to attend, but I don't know if we'll have both, given the date. The Lieutenant Governor will certainly be there. That's all I have, Mr. Chairman, at this time.

CHAIRMAN PEYSER: Thank you, Commissioner. I also want to welcome back Chancellor Judy Gill who has returned to us. She missed one meeting only, and that's all she will be allowed for the remainder of the year, if not forever. She was ably represented by Charlie Wall, but we are glad to have her back.

STATEMENTS FROM THE PUBLIC

Sumner Kaplan, president of the American Jewish Congress

MR. KAPLAN: Good morning, Commissioner Driscoll, Chairman Peyser, members of the Board. My name is Sumner Kaplan. I'm president of the New England Region of the American Jewish Congress, an organization that for more than 80 years has been committed to a system of public education serving all children. I've spent a good deal of time in my personal life in public service as a state representative, selectman and a judge of the Massachusetts Trial Court. In private practice I was a corporate lawyer. I'm here this morning to convey our organization's deep concern over the rapid expansion of the Commonwealth charter schools despite soaring costs, a decidedly mixed academic record and a troubling lack of oversight by the Department of Education. I want to emphasize the latter point. Further, I want to express our opposition to renewing the charter of the Somerville Charter School, run by the for-profit SABIS Educational Systems, Inc., until such time as the concerns raised by the Inspector General are addressed and satisfied, and addressed not to the satisfaction of the school's Board of Directors or this Department of Education, but to the satisfaction of the Inspector General.

The Inspector General's findings, contained in a report released last month -- I'm sure you all have the report, if not I have it here -- are certainly disturbing in that inter alia: The board of trustees has allowed SABIS to deposit school funds in an account under SABIS's exclusive control; the management contract includes a provision allowing SABIS to take any budget surplus or any excess revenues at the end of the year; the management structure of the school has actually impeded the Board's access to essential documents and information. As a matter of fact, I believe that SABIS, and not the board of trustees or the board of directors, runs the school.

What is more troubling is that these problems are not isolated or unusual. They are part of a pattern of mismanagement stretching back more than six years and involving charter schools across the state, a pattern documented now in three reports from the Inspector General as well as studies by the state auditor. Add to these findings the research of the Donahue Institute for Public Policy, which I also have here, showing that compared with their surrounding public schools, charter schools serve fewer low-income children, fewer bilingual children, and fewer children with special physical and emotional needs, and further, that there have been few, if any, substantive differences between charter schools and public schools in terms of curriculum or teaching methods, and you have a picture of a deeply flawed initiative shielded from meaningful oversight by this Board, chosen more, I believe, for political ideology than educational experience.

The recent failure of the North Star Academy Charter School in Springfield seems to exemplify that lack of oversight. Here is a school that struggled financially and academically for some time before finally closing its doors due to dwindling enrollment. Its closing raises a number of questions about the accuracy of its enrollment figures and responsibility for the school's financial obligations and the effect on students, especially the effect on students. We don't know what they are on those that have left. More importantly, it raises the question of where was the Department of Education's oversight while thousands of public dollars and the educational future of dozens of young people were increasingly at risk. In this fiscal year alone, Commonwealth charter schools cost conservatively $137 million to educate only about 12,500 students. This amounts to almost $11,000 per child, or one and two-thirds times the state's targeted or "foundation" level of spending for children in public schools. I hope you give attention to this problem and I thank you for listening to me.

Harold Oshima from the Somerville Charter School

MR. OSHIMA: Mr. Chairman, Mr. Commissioner, thank you very much. Five years ago the Commonwealth of Massachusetts granted to the Somerville Charter School a charter to operate and oversee a charter school in Somerville. I must say that five years ago the board and the volunteer parents were very, very long in enthusiasm and good intentions and so very short on experience. In the intervening five years, the school has seen its student growth from 300 students to over 600 students today, with an almost equal amount on the waiting list to try to get in. The school is not perfect, but I must say that the five years of oversight from the Commonwealth of Massachusetts, from the Inspector General and many other state agencies -- who I must say also operate with the best of intentions to help not only the Somerville Charter School but all charter schools operate in a responsible manner and operate so that they will see 10, 20, 30 years of progress, operate so that they will be responsible not only to the taxpayers but to the parents and students of the school. This Board and the parents and students of the Somerville Charter School and all charter schools should be grateful for the Department and for the various state agencies that have helped.

Many people see the oversight that the Somerville Charter School and other charter schools receive as criticism. We see them as some of the help that we've desperately needed in the first few years. Had we received some of the guidance, some of the help, some of the assistance in the first two or three years, I think we could have avoided many of the misconceptions that have been played up so effectively by charter school opponents, by people who are satisfied with the status quo, and people who really want to focus on fiscal matters, on money, on management, on for-profit / non-profit distinctions and completely avoid the question and the focus that this Board, the parents and students of our school remain committed to, and that is education of children.

It's hard for this Board sitting in this office once a month, I know, to see what goes on in our school and charter schools across the Commonwealth. To see children who, unfortunately, under normal circumstances would not have the attention of the teacher, not have the attention of the administrator, not have the attention of a board member prodding that child, encouraging that child, inspiring that child to achieve things that that child and that child's parents or guardians never believed possible. Over a third of our students are either recent immigrants or speak English as a second language. Over half of our children are qualified for the reduced-lunch program. Many of these children never saw college -- never saw the possibility of participation in higher education. And I must say, I know my time is up having not addressed any of the issues I came here to address, that we are thankful to the Board for the charter that we were granted and we are hopeful that we can meet the obligations and the promises we have made to the Commonwealth in the next five years. Thank you.

Jean Bowden of Barnstable

MS. BOWDEN: Good morning. My name is Jean Bowden, and I'm here from Cape Cod, and I have been working since the spring of 1998 on this issue of the use of physical restraints on children, particularly in

the public schools, when I did find out that there were no regulations for public schools. It all, of course, came about because I have a daughter who was physically restrained in a way that since I've been looking into it -- I've been doing a lot of research and I've had a lot of experts look at everything -- and it turns out that the type of restraints that were used on my daughter and others in the school were very dangerous. I'm looking over your new regulations and I do see that you have now taken out the part that says that you can not do floor or prone restraints. I have a lot of information that I received from Crisis Prevention Institute, who was nice enough to send someone today with me to talk to you about that, and I really do feel that you should not be doing floor or prone restraints on children because they are dangerous. They are deadly, according to all of the data that I have received and experts I've spoken to.

In fact, one woman who is the consultant to Crisis Prevention Institute who is a paramedic says the forceful prone restraint methods used by these teachers are dangerous and potentially lethal for pathologically demonstrable reasons that can be explained to anyone. Restrainers should not be allowed to forcefully prone restrain any individual for any reason, and she feels they should be outlawed. She has done lots of work and there have been plenty of children and adults who have died being restrained in the manner that my own child was. I'm very disappointed that it took me three years, and I've talk to a lot of people at your office and all these different committees, and I just feel like no one really cares what happens to children with disabilities. They are not outraged.

The only people that are outraged are her parents and people who are in this field of disability advocacy. It has taken its toll on my family, my child, although she's doing really well in her new school. She never would have to live away in a private school if she had not been treated this way in a public school. My daughter was set up to be restrained. She's not aggressive. She's not violent. She was made to be that way. And the other child they used as a test dummy to show how to restrain children, you don't use live children to demonstrate a floor restraint and make videos of it. It's absolutely crazy. I really feel that nobody has really done anything about it and really cares except now we have these regulations, now they have changed and I finally looked at them today. I don't understand how you work things here, I really don't. But hopefully other people will understand it better than me. Thank you.

Terri Howard, Crisis Prevention Institute.

MS. HOWARD: Good morning. Thanks for the opportunity to speak on the subject of the physical restraint regulations. My name is Terri Howard and I'm the director of on-site training for the Crisis Prevention Institute. We do training worldwide in behavior management, teaching people how to deal with potentially assaultive and aggressive individuals. I first want to say that I'm pleased the Board has opened up this topic for discussion, and in response to the regulations, I want to speak to the issue of training.

Certainly behavior management is a complex issue, and while training is important and a part of the regulation, I think we need to stress the fact that training on physical restraint must also be comprehensive in nature, to look at what happens before the restraint. Training staff on how to identify those early cues so that we can prevent a restraint from happening in the first place. In addition to that, training can't stand alone.

Unless staff have an opportunity to practice their skills, unless they have an opportunity for continued training, it just becomes words on a piece of paper. Certainly many of the school personnel that we've trained have expressed concern because they only have two in-service days out of the year and many times those days are already marked for a given curriculum, so they don't get an opportunity to practice and continue increasing and enhancing the skills that they've learned. That's important. Schools must also support what's happening in terms of behavior management. If a training program is implemented, then they need the support from administration through policies and procedures that, again, support the training ideals. The program that most school districts take from the Crisis Prevention Institute is called Nonviolent Crisis Intervention, and the philosophy of that program is to ensure the care, welfare, safety and security of students as well as staff. I think any training program that's implemented with regard to

physical restraint ought to have that in terms of a philosophy so that people understand that physical restraint isn't about punishment. Thank you.

DR. GILL: I would like to know, I'm assuming you have read the revised regulations, if you have specific comments in terms of recommendations you would like to make to us regarding the language that is currently before us on the issue of training.

MS. HOWARD: I can just say that in terms of the language used, it is not clear how the training is conducted. In other words, there is some recommendation with regard to 16 hours, but nothing about ongoing training, refreshing, practicing skills, that kind of thing. I'd like to see something in there with regard to that. In addition to that, in terms of the physical restraints used, I have to echo the woman who spoke prior to me with regard to looking at the inherent dangers of prone restraints. We teach manual restraints in nonviolent crisis intervention and talk about the potential dangers of putting somebody on the floor. So if there are prone restraints taught, people need to know what prone restraints are all about, just in a comprehensive manner.

CHAIRMAN PEYSER: In terms of, I don't know what the right terminology would be, introductory or basic training or something like that, is the 16 hours adequate, and does there need to be more ongoing annual training beyond that? Or is the 16 hours itself adequate as a means of providing people the foundation knowledge and skills?

MS. HOWARD: We provide a train-the-trainers course where we provide individuals training to continue training internally that is 24 hours in length. They then cascade that training to staff in an 8- to 16-hour period of time. So 16 certainly is a number that's workable with regard to the program that we offer, and certainly many of our counterparts.

Andrea Watson, Parents for Residential Reform

MS. WATSON: Good morning. My name is Andrea Watson. I'm a parent of three children. I live in Chelsea. I'm also president of Parents for Residential Reform, an Organization which works daily in advocating on health, welfare and safety issues as well as educational issues for children who are placed in residential and group home care throughout the Commonwealth and the nation. We started off as a very small organization and have grown nationwide because we have a lot of children that are placed here in Massachusetts in residential and group-care facilities. I have just a couple of issues. I know I have called, written, begged and pleaded over a long period of time on this issue. The fact that there is a document, I will commend you on that. That was an act of legislation that we had to unfortunately force on the Department of Education.

The fact that there is a document, a working document, is something to be commended, but there are some things that still really stand out. Although they did adhere to some of the things we had requested, such as taking out full program waivers, which needed to be done, and there was another piece that they had taken out, I can't remember now, and I appreciate that, but there are some other things that are serious issues. One is the word "serious". It's still taken out. I actually spoke to Dean Delattre and begged him to come to this meeting because in my opinion the word "imminent" was replaced with that, and it seems like the same adjective or another adjective in the way that it's used. But it takes the seriousness out of that word "serious". It needs to be in there. We are putting this out and people are treading on waters they have never treaded on before, and plays with words can really be taken wrong and it could affect the outcome which could be somebody's life.

The other huge issue that I have falls in together with prone floor restraints, and I will get back to that, is the training. I have been told that to say you have to train for a certain amount of hours is an unfair mandate. I can say this: The requirement that OCCS has on private residential schools, there were still 7,700 restraints

at one residential program last year, and there's 134 kids there. Out of those 134 kids, there were what we could call, I don't know how to put it, frequent flyers, maybe 30 to 40. So there were maybe more than five restraints every waking hour, if you do the fuzzy math. And this program is also sending kids to the hospital coming back with broken bones. This is with the minimum requirement of 16 hours. This is with the mandate of 16 hours of training. Broken bones, bloody noses, passing out.

As far as the Department of Education or the Board of Education saying it's an unfair mandate, the only thing I can say about an unfair mandate is Mark Saures -- he is an unfair mandate -- the late Mark Saures, a young man who died of asphyxiation by being restrained by staff in his school who were untrained to restrain him even with a mandate of 16 hours of training. They were not able to be prosecuted for manslaughter or anything else because they just weren't trained. I'm not willing to take that chance on another child, not in a private residential school and not in a public school, and this is what's going to happen without being told when you tread on new waters. You need to be told.

One more quick point on that, the notifications. It's unclear in this document -- and I'm very well versed on restraints. I have also trained at CPI, having two disabled children, one who was bipolar who needed to be restrained, and one who is autistic, which it is taboo to restrain an autistic child in most cases. The reporting, although there is a provision in there for reporting and writing, it does not say there needs to be a phone call at the point of de-escalation to a parent. So when a child comes home with bruises all over them, you know, what is a parent going to think? At that time are they able to get in touch with somebody in the school? There needs to be more serious or some serious language put into this document regarding that.

I hate to say this, and I'm not demeaning teachers in school systems because they are very good at what they do and they try to do the right thing, but their hands need to be held through this in order to keep not only the kids safe, but themselves. There are many other laws, there's chemical restraint, prone restraint, floor restraint. We are treading on waters, and not to disrespect any of you, what do you know about restraint? I know about it, I live it, I have the life experience. I'm here on behalf of not only myself but for other parents out there.

One last thing and I will end this -- is that this is just not about special ed kids. What is so concerning out there is that we have had this document out for a few months now and that parents of non-disabled kids had no clue it was there. So as one periodical quoted, and it's totally wrong, the unruly child, unfortunately, that is the message that is out there. That is the first impression on any of this that's out there, not only for the students, not only for the parent, but for the people who are potentially going to be restraining. That's the one word that is never going to be forgotten, unruly child, as opposed to someone who is in serious danger of harming themselves or others. That's the first impression that everybody in the Commonwealth of Massachusetts who read that article got, unruly child. Not someone who is a threat of harming himself or others, unruly child. That is the precedence that is being set now for this. So we need to take a look at this, take a look at the words, and possibly bring in some experts on this and make sure it's the right thing. Because I'm not willing, and as I probably hope none of you are, and I know the Commissioner is not, to see another Mark Saures. A child should not have to lose his or her life because someone just is not trained, and we are too busy to do what we need to do. It needs to be written out every step of the way. Thank you.

Kathy Taylor, Cape Organization for the Rights of the Disabled.

MS. TAYLOR: Thank you. My name is Kathy Taylor. I'm an advocate at Cape Organization for the Rights of the Disabled, and we are very concerned about the latest version of the restraint regulations. Students with disabilities will be continually hounded for violent restraints. These regulations contain so many gaps and so many loopholes that our children are in as much danger as before, if not more danger. As a mother of a 13-year-old in special education, I'm very frightened by these regulations.

Chemical restraints are allowed if authorized by a doctor. It doesn't say the child's doctor, it doesn't mention any criteria to be used, and there are no reporting requirements for chemical restraints, only for physical. My son Justin has a heart disease. I can't give him Triaminic cold syrup without damage to his heart, yet some doctor who doesn't know him can authorize medication, and since there's no reporting, I won't know about it, so I won't need to know if I need to rush him to his cardiologist to get him help or not.

Because of my son's heart, he can't ride roller coasters because of the pressure on his chest, but these regulations will allow a teacher to force him to the floor and apply pressure to his chest. Since he has a sensory disability as well, he will struggle against that pressure, and of course logically the teacher will apply more pressure trying to control him and disrupt the rhythm of his heart and he could die. This is a real threat for my son. As I make the teachers aware, it is in his IEP not to have any restraints. I started this as soon as I saw the video. There are teachers who don't read the IEP's, regular ed. teachers do not read IEP's, gym teachers do not read IEP's, and they might just not understand it all. I urge you to please rewrite these regulations to eliminate all chemical restraints, mechanical restraints and prone restraints. And also strengthening up the reporting requirements. You only need to report a restraint if there's a physical restraint more than five minutes. You could have a child restrained four minutes and thirty seconds ten times a day and still do a lot of damage.

Robert Neely, Richard Pavao, and Jim Smith, Fall River.

MR. SMITH: Good morning. Thank you for having us here today with you. I have a submission for the Board for the record as well as a copy of the two site locations that we are here to discuss with you today, if there's interest in reviewing those. My name is James Smith. I'm the director of municipal services for the city of Fall River. With me today is Frank Tedesco from the Mount Vernon group, who is our architect on the William Greene and Spencer Borden schools, as well as Rick Pavao, the assistant superintendent of schools. Department of Public Works Terry Sullivan is in the back and, obviously, Senator Menard who represents the Fall River area. I apologize for Mayor Lambert being unable to make the meeting here this morning. He did want to be here. Unfortunately he had some family situations he needed to attend to, so he sends his apologies.

Let me just state perfectly clearly that we are here today to ask for a waiver of all allowable costs due to site issues related to the Spencer Borden and the William Greene schools. Five years ago the city of Fall River developed a plan to reconstruct and build 11 new schools over the next ten years. This was a very ambitious program for the city of Fall River. The city had been trying for years to fund a school program not unlike other major cities in the state of Massachusetts. However, financial issues had really strapped us, and finally we reached a position where the state support, the Department support, SBAB and the 90 percent reimbursement program were key aspects of allowing us to move forward with our program. The city of Fall River completed our first rehabilitation of the John J. Doran Elementary School this fall and opened it and again. Thank you to the Board for your assistance and continued assistance with this program. However, we are ready to move forward with the next two schools in our list of schools that we plan to rehabilitate, the William Greene and the Spencer Borden.

We originally went out to bid on both schools in the summer of 2000, in the month of June, and the bids came in July. Both of those bids came in significantly over the costs that we had anticipated. After consulting with the administration, with Mayor Lambert, there was a decision made to re-bid both projects. This, again, was in the June/July time frame. We made an effort working with our architect to scale these projects down. We cut approximately $700,000 worth of costs from these projects, and we did our due diligence. We went out to bid again. We even combined these projects, these two schools, as one project, so that we could get the economies of scale of doing the two projects at the same time. The city recently opened the bids for the second time on the William Greene and Spencer Borden schools this fall, and the bids came in approximately $5.6 million over the anticipated cost.

We submitted a letter to the Department of Education on January 9 to Mr. Wulfson stating the site issues associated with both of these schools, and I won't belabor the issue, but there are a number of site issues particularly to these schools, and you have site plans for both schools in front of you, and you can see the density of the sites, the proximity to residential properties, and the difficulty in mobilizing a workforce on these locations. It's also our understanding that the SBAB has adopted a new policy that as of yet is still unpublished that limits the additional costs related to site issues at a cap of 10 percent of the original allowable amount. While the city respects the Board's desire and willingness and ability to make that decision, the city was not formally notified of this policy change. In addition, other cities in the state of Massachusetts have received the full requested amount of additional SBAB funds specifically when those additional costs were related to site issues.

In the June meeting, as I understand, when we were considering going out to bid and doing our due diligence, the cities of Boston, Norwell, Medford, even Edgartown came in and received full reimbursement for the additional site issues that they were facing. It's unfortunate for us. If we didn't do our due diligence and we didn't go out to bid and didn't look to cut costs at that time and brought these petitions to the Board, it's more likely that we would have been fully reimbursed for all of the allowable site issues.

Unfortunately, now we are being held to this 10 percent cap as we understand it, and we think that is unfair. We do ask that the Board reconsider the 10 percent cap policy, if that is a policy. These are just conversations that we have had in the administration at the city and various players and the Department and SBAB. But we do ask that you reconsider. We do have some serious issues with both of these schools, you can see them by looking at the sites, and we do want to continue an aggressive school building program in the city of Fall River. The city of Fall River deserves these schools, we have fought through a lot of tough time to get these schools in the ground and being built. We are faced with under-performing schools just like cities across the Commonwealth. Cities like Lawrence who also have a petition coming in probably next month for site waiver issues, and now they are going to be held to the 10 percent cap, and they were unaware of this policy as well. I spoke with the leadership there in Lawrence yesterday.

So this is going to be a real problem for cities. I think this is going to impact cities more than anybody else. Obviously, these issues of dense sites and urban environments are particular to inner city neighborhoods. So we do ask the Board to please reconsider and please fund the city of Fall River for the full request for site issues, and then if there is a change in policy, we ask the Board to publicize that with the cities and all of the communities in Massachusetts and at that point receive comment from the public and implement it that way. We feel we are the first ones in the door here and we are going to get hit with a new cap that no one really knows about. So I thank you, I'm going to now ask Assistant Superintendent Rick Pavao to say a few words.

MR. PAVAO: Mr. Chairman, members of the Board, Commissioner Driscoll. I'm coming to you from a more compassionate and educational point of view on these projects. As you know, Fall River is a poor community. We serve over 12,000 children. Today, hundreds of our children at the elementary level are going into schoolhouses that were built over 100 years ago. As a matter of fact, the Borden school was built during President Grant's era in 1868. As you know, we are on the cutting edge now of bringing these new facilities to Fall River. One of these facilities has just opened up, the Doran Elementary School. Prior to that, we have not built an elementary school for the last 50 years. It's time we begin to do that.

Through the cooperation of this Board and SBA, we have been able to have nine applications in process. We need these schools. We can't afford the additional money. If you do not reconsider the cost factor, we have to go back to the drawing board, and that means we have to get into the educational programs that these schools will provide. So on behalf of the kids and the staff of Fall River, I'm begging you, and I don't mind using that word, begging you to reconsider this cap and allow the full amount of money that we are requesting. Thank you.

MR. TEDESCO: As the city's consultant, I would just say that it was kind of shocking when we did go out to bid, did do due diligence, went through all of the drawings and cut things. There's an addendum to the Mayor's letter that showed all of the things that we cut from the project to try to bring it in in the market that it was, and again, I would say that had we gone right to the Board at that time, the policy was that the full amount would have been funded in addition, and now it seems we're being penalized for trying to do the right thing.

SENATOR MENARD: Mr. Chairman, Commissioner, members of the Board, I hope you're all familiar with the application that Fall River has. I don't know if you have it before you or if you have taken any time to look at it, but what Mr. Pavao said about the city of Fall River planning 14 new schools, either new schools or refurbished schools, over the next ten years is just a breakthrough for the city. I've made a couple of notes that I did want to talk to you about and, as you know, I'm here to support the application for this waiver, and I feel that we are being penalized because we could have submitted our application for a waiver instead of re-bidding our two projects. Replacing these schools that are in, by the way, not only old but deplorable condition -- and actually, there are no facilities whatsoever for kids to eat, there are lots of kids in the basements of these schools, poorly functioning lavatories, leaking roofs, on and on and on. It seems to me that under Education Reform, to have a decent place for our kids to go to school is a start. It's just a beginning, a baseline.

When the Board and the legislature work so hard in planning how we can improve instruction, how we can put into effect some standards, we have to also think of the kind of impression that our children get when we put them in buildings that roofs are leaking, that toilets don't work, that were built 114 years ago. That's absurd. To think that you can start programs -- for example, there are no classrooms for special education in several of these schools. The schools use closets, old cupboards that used to be used for storage of books, they are using that for classrooms for kids. That's unacceptable for our kids. You're talking about a city where 50 percent of the workforce is at or near minimum wage level, at the poverty level. It is our job, those of us that are here before you today, to make a better life for these children, and we think a better life is a better education.

We have a mayor who is committed to a program, who, by the way, was the author with Mark Roosevelt of Education Reform when Tom Birmingham was the vice chair of education at the time. He has committed himself not only to a building program but also to preschool programs, to full-day kindergarten, and after-school programs. We are doing all those things, but you have to help us. You have to provide us a decent place for these kids to go to school. What does it say to kids when they go to the malls, beautiful buildings? They go to the movies, beautiful buildings? And then they go to school and they are in a dump. They are in places we can't even repair anymore. They can't plug computers in because there's actually no facilities for any kind of computers in many of the schools. They'll blow every single circuit. So we have to commit ourselves.

To think that after getting two schools approved, getting them through the legislature, getting all of that done, and if we had submitted it last June or September, we would have had this waiver approved. To think that because we re-bid, we cut the project, that we won't have our projects approved, we may have to go back and eliminate one of the schools. Wouldn't that be sad? You and I should be ashamed of ourselves if we let that happen, because of what? Because we haven't put a realistic estimate on what that cost per square foot is? If every single community is coming in over bid, that means something, doesn't it? It means that gasoline isn't 75 cents a gallon anymore; it means that perhaps we are setting our standard too low. And it's our legislative business to provide you with the money and we will try to do that, and I commit to that.

You have to help us. And you have to continue, by the way, providing an equalizing formula so that cities like Lawrence, like Lowell, like Fall River, like New Bedford, are given some leeway in terms of equalizing not only their buildings, but their education. I appreciate everything that you do and everything you've done and your patience in listening here. But we implore you, because to think that our kids will have to

wait another ten years or another five years for a couple of these other schools to be built -- I'd like you to come to Fall River and come to some of these schools, and I guarantee you, you would not send your children to any of those schools. I guarantee it. This building is 5,000 times better, in better condition, than those schools. Let us continue with our program. Let us help those kids. They deserve it and that's our job.

Tim Sindelar

MR. SINDELAR: Mr. Chairman, Commissioner, members of the Board, I'm going to try to do a couple things I'm not known for. One is to first of all try to be brief, but second, I'm going to commend the Department for the progress it's shown in regard to restraints. I'm going to start from that proposition.

When the Department started considering the issue of restraint over a year ago, it issued a policy, and that policy unfortunately failed to reflect much thinking about what the current best practices are and what the state and federal regulators are doing on this subject. So the Department received a lot of comment with regard to that policy and the Department reacted very favorably. When these regulations were promulgated and put out for comment this fall, they showed substantial improvement. There was a lot of listening to the comments that were made with regard to the policy, a lot of examining what the policies are of the other regulators in the field. As a result, it was a much better product, particularly, for example, where the Department explicitly recognizes that restraint is a very dangerous activity and should only be used when there's an imminent physical danger to a student or another student posed by that student's conduct. That's a step in the right direction.

Unfortunately, there are some flaws in those proposed regulations, so you received a lot of comments. And again, the Department attempted to meet those comments. Unfortunately, I'm going to have to report to you today, I think that the fixes that you have in the documents before you, that is the specific things that were changed from when these were put out for public comment, really instead of fixing the problem create bigger and worse problems than the regulations as they were originally promulgated. I want to talk about three areas. We have submitted extensive comments, and when I say "we" I speak on behalf of the Disability Law Center, on behalf of the Children's Law Centers, I speak on behalf of the Coalition for the Legal Rights of the Disabled. We submitted a lot of comments with regard to proposed regulations. We stand behind those comments. But for the sake of brevity here, I want to look at three issues raised by the changes that are before you today in the regulations that you're going to be considering.

First of all, the regulations for the first time, when they went out last week, create an exception for children with disabilities. And that specific exception seems to state that an IEP team can come up with a plan for the use of restraints on a child with a disability that ignores all the regulations except for the reporting requirement. In other words, the IEP team can decide who is going to restrain, regardless of their training, can decide when the child is going to be restrained, whether it's for behavior modification or punishment or whatever reason they want to use, and what restraint is going to be used, what kind of physical restraint, mechanical restraint, chemical restraint. This regulation simply can't stand. It's unwise as a matter of policy and it's also a violation of the Americans With Disabilities Act and Section 504 of the Civil Rights Act of 1973, because it's a clear discrimination against the rights of children with disabilities. It singles them out for less protection than other students. So that's the first point.

The second point is that the regulations allow the use of chemical and mechanical restraint where authorized by a physician. The problem with that is that there is no process, there's no limits, there's no directives. It's simply when authorized by a physician. Does that mean it must be authorized by a physician immediately before it's applied? Does that mean it's a general script? Does that mean any kind of mechanical restraint can be used? If you look at these regulations and the regulations of OCCS and DMH and DMR, you will find that such a broad grant of authority is simply inconsistent with the best practices of use of restraint and will put children at risk. This is not to say the physicians won't be thinking the right thing, but a lot of times they don't understand the realities of what is going on in a public school system. So that's a real major problem.

The third major area is the regulations as they are now proposed allow anyone with a very minimal amount of training to use any form of restraint except for a restraint which takes a child to the floor, the prone or floor restraint, which is very dangerous and we are glad that you've taken a step forward in regulating that. We would actually like to see you ban that because, as you've heard, that is an extremely dangerous practice. But other forms of restraint are likewise dangerous. There have been deaths reported in children in basket holds, deaths reported in children in various types of holds used. We have had deaths in Massachusetts by such holds of such students. The regulations as proposed allow anyone who simply attends a school training event -- doesn't specify how long that training event can be, it can be a 10-minute discussion in a faculty meeting on the use of the restraint. It goes too far. We again recognize that certain actions may be necessary to take for the safety of all students.

We would urge that the restriction on regulations on restraint be much broader. However, we think that by working with the Department these things could be made better and I would ask that you defer action on these regulations. We know that there are enough people concerned out there. I received calls this morning from two doctors that are shocked at the notion of what the Department was thinking about the use of physical restraint in public schools. We know there are members of state agencies, members of the state legislature, who have concerns about these issues. Go back, have a meeting. Let's let the regulators, OCCS, DMR, DMH sit down, a representative from a parent advocacy group, and iron these things out and come back in a month and do them right. Otherwise, you really risk endangering our students.

APPROVAL OF MINUTES

On a motion duly made and seconded, it was:

VOTED: that the Board of Education approve the minutes of the January 23, 2001 Regular meeting as presented by the Commissioner.

The motion was made by Mr. Irwin and seconded by Dr. Gill. The vote was unanimous.

ANNUAL REPORT OF THE BOARD FOR 2000 - Discussion and Vote

CHAIRMAN PEYSER: What you have before you is a draft of the annual report, which has been in circulation for over a month, that is ready to be published. It's a document that's intended to summarize our activities from the past year as well as provide some general information to the public, legislators, policymakers, and opinion makers about education in Massachusetts. We are ready to send it out. Any final thoughts or edits?

MR. IRWIN: Mr. Chairman, I'd just like to say that it's so good to see the dedication to Jack Rennie. It's very appropriate.

CHAIRMAN PEYSER: I appreciate that comment, Bill. Jack's contribution is certainly well worth this kind of recognition and certainly even more than that. I would note that we have also quoted Paul Reville's eulogy in the memoriam as well. Are there any further comments on the annual report?

MS. KELMAN: I just want to thank Melanie Winklosky for putting it all together.

CHAIRMAN PEYSER: Indeed, Melanie did literally all the work.

DR. THERNSTROM: I have a personal request to change the photograph.

CHAIRMAN PEYSER: It's not quite the final edition, so maybe we can seek one out. With that, are there any objections to approving the annual report and sending it out?

On a motion duly made and seconded, it was:

VOTED: that the Board of Education, in accordance with G.L. c. 69 §§ 1A and 1B, approve the annual report as presented, and authorize its publication.

The motion was made by Ms. Crutchfield and seconded by Dr. Thernstrom. The vote was unanimous.

REPORT OF EDUCATION REFORM REVIEW COMMISSION ON RESEARCH FINDINGS - Discussion

CHAIRMAN PEYSER: The next item is a report from Paul Reville from the Education Reform Review Commission on research findings. We'll also have further comment by Sandy Stotsky about some of the activities in the Department's own research department and various projects or proposals that are on the drawing board for both groups. So with that, I'd like to turn it over to Paul for some commentary and then Sandy, and then we'll have a little discussion about what they've said.

MR. REVILLE: Thank you, Mr. Chairman, Commissioner, and members of the Board for inviting me to come up and talk a little bit about the work of the Commission. It's good to be among my former colleagues again and back with the Board. I appreciate this opportunity. I especially appreciate the dedication of your annual report to my friend and colleague, Jack Rennie, who has been a guiding light to so many of us in this whole quest for education reform for all children in this state. We sorely miss his presence on the reform scene, and I thank you for that. I'm here to talk about the Commission.

Just a quick refresher for you in terms of the role of the Commission. The Commission was embodied in the statutory language of the Education Reform Act of 1993. Our role is to oversee the state's role in the implementation of education reform and the Education Reform Act of 1993. I've chaired the Commission since 1996. We have a broad array of gubernatorial appointees and constituency groups who are members of the Commission. We meet regularly, and we have an annual budget. This past year was the largest budget we've had of $300,000. We have a research agenda which I'll be talking about shortly. We have now held two annual conferences in an effort to convene researchers from around the Commonwealth to get them working together and reflecting on the success of Education Reform. We have also recently initiated a website.

We see our role as that of being somewhat at a distance from the day-to-day work of the implementation of reform. We are not a policymaking body. We are a body whose role is to comment on the way in which reform is being implemented, the strengths and weaknesses of the implementation effort, and to be advocates for effective implementation as well as for quality research on the effectiveness of school reform.

We have made the case several times in the public domain and in a variety of places that given the massive expenditures on education reform over the past eight years, in excess of 10 billion state and local new dollars being sunk into school reform, we made a mistake, as a Commonwealth, to have invested so little in research, in terms of what's effective. If we rely only on test results as our indicator for whether or not education reform has been effective, we will be missing a large part of the picture. And so, we have been urging the legislature and the executive branch and others in the private sector to invest significant dollars in studying the many aspects of reform that are now in the process of being implemented. So what I want to do in my remaining time here today is two things, really. Number one, to tell you about a recent study we did on MCAS. This is written up in an editorial I did in the Boston Herald which you may have seen, and you have some notes in the way of a handout, but it's good news on MCAS and its utilization by teachers. I want to speak briefly about that, and then I want to quickly review with you the six research projects we commissioned last fall and give you a little bit of a progress report on how those are going.

First to our MCAS report which was prepared for us in collaboration with the Learning Innovations at WestEd. It was basically a study of how school districts were utilizing the results of the MCAS testing. If you recall, the original intent and purpose of the Education Reform Act of 1993, the assessment provisions thereof, was first and foremost to provide diagnostic information to teachers for purposes of improving instructional practice and helping all students to meet the standard. Notwithstanding all of the hullabaloo about how the test results were being used to make judgments on student performance, we were curious about that diagnostic intent, that important diagnostic intent of the Reform Act, and how those results were being utilized, if they were being utilized by teachers. And we frankly were surprised by some of the results we received in the study.

Just a quick word on methodological approaches here. We did regional focus groups of superintendents, teachers, and principals. We did written questionnaires; we did extensive phone interviews. We had as our purpose, more specifically, to look at how and to what extent teachers are using the MCAS results, what is common practice in using MCAS results among Massachusetts schools, and to identify and disseminate information about positive practices in terms of the utilization of test results. Our study did not address the actual impact of those decisions on student MCAS performance. In other words, we can document that a number of teachers, by self-report, indicate that they have changed instructional practice as a result of their analysis of test results that they received. We cannot document whether or not those changes in fact have taken place in the classrooms or whether or not they have led to improvements in student performance. But this is a first step.

The three key findings in my view, just to summarize, and you've got an outline of them, are: (1) At levels in excess of 90 percent, teachers are, in fact, receiving the results of the students they had in their class at the time the test was administered, so they are receiving the results. The Department has been terrific, I think, particularly when you look nationally in this process, of not only releasing the test questions but also getting the results out to teachers. So this was one of the things we were concerned about when we initiated the study. Was there, in fact, a connection between the results and the teachers as was originally the intent of the Reform Act? We find that at very high levels that it is taking place. (2) We also find that in very high levels, in excess of 80 percent at least, districts are providing to teachers professional development in analyzing and thinking about changes in practice based on the results and their analysis of the results that they are seeing. (3) We were finding, at surprisingly high degrees of implementation, maybe 70-75 percent, that the teachers are reporting that they made constructive changes in practice as a result of their analysis of test results. So all three of those things bode very well for the future in terms of what is happening with MCAS, and the kind of changes in practice were interesting also.

The kind of changes in practice that we heard reported were not the sorts of changes in practice that we often hear critics of MCAS citing, such at dumbing down the curriculum, over-focusing on trivia, narrowing the curriculum, things of that nature. The kind of things we heard about were teachers using more open-ended writing questions, teachers bringing more critical thinking elements into the curriculum, teachers using their own rubrics, teachers doing their own assessment work, a much higher-level work than before. A whole variety of different kinds of seemingly very constructive responses that we got from teachers about changes in practice. There were findings that pointed to difficulties or problems in terms of the results connecting to the teachers. Probably the foremost thing is something you have heard before, which is the time interval between the taking of the test and the receiving of the results. That was a concern for virtually all the teachers who responded to the survey. It
just wasn't timely enough for them to respond as quickly as they would like. Notably, in all cases the students that they had at the time of the testing were no longer with them. But when they receive the results -- and we recognize there are many logistical problems with respect to producing results on a timely fashion, not least of which it takes more time to respond to and correct open-ended items that are very important in terms of changing practice here.

But notwithstanding those limitations, our study suggests that that's a priority area to focus on. We also found a number of problems in terms of connecting the results with the teachers who are now teaching students that they didn't have in the prior year. In other words, the results following students to their new classrooms. That was happening at much lower levels than the results going to the teacher who is teaching the students at the time of the test. We are working with a contractor disseminating these results. They've identified a number of positive practices in terms of districts utilization of results and getting that out. And we made some recommendations as a result of our report with respect to the release, and a timely release of results, and also to the Department working on publicizing best practices with respect to data utilization and professional development that goes along with the data. So that's all I'm going to say at this point in terms of that study, but I want to underline, it's difficult to get the media to pay attention to positive news about MCAS being used as a diagnostic tool for teachers and positive things that the teachers are saying, notwithstanding the volume of criticism that we hear regularly about this.

Secondly, I mentioned this year that we had a much more substantial budget than we have had in the past for the Commission. $250,000 of that budget we have dedicated to research efforts, and I wanted to inform you of those efforts, particularly those efforts that touch directly on the work of the Department, to let you know not only what we're going to be doing, but the spirit in which we do that work. The original legislation called for the Commission to publish an annual report on education reform. That was done once by the original Commission that was appointed in 1994, but in the absence of any funding for the Commission for about five or six years, that function was effectively dropped. I took over leadership of the Commission in 1996. We made a concerted effort to get the funding that would enable us to do quality work. However, it took us about five years to get an adequate amount of funding to do something that we thought would be useful as an annual report.

So we have just commissioned an annual report. The contractor for this is a group called Education Transformations headed up by Dr. Maxine Minkoff. The objectives of that report are to identify the key components of education reform and track a common set of success indicators, audit the implementation of all aspects of the Education Reform Act, catalog relevant research, identify important gaps in the research, and identify significant policy and practice challenges related to the Education Reform Act. We are working with a contractor to develop an appropriate format for that report. That is our largest grant for a report this year at $83,000. It will reflect directly on the work of the Department, on the work of this Board, on the work of the legislature, and on aspects of work as they proceed in the field.

Second important area, and I underline this, I guess, as probably the most sensitive one, is a report that focuses in on the state capacity to perform the duties and obligations either explicitly stated or implied as a function of education reform. Here we're getting into the idea that there are a number of obligations that increase the role of the state under education reform, and it is not necessarily clear that the capacity of the state to deliver in all these different areas was increased at a comparable level. So what we have asked our contractor, which is the University of Massachusetts at Amherst, Center for Education Policy, Dr. Katherine McDermott is heading up that effort, is to inventory the state government's responsibility under the Massachusetts Education Reform Act, to review the capacity of the Department of Education and other agencies and offices to fulfill those myriad obligations, and then to make specific constructive recommendations on the appropriate division of labor, organizational structure and qualifications and levels of staffing required.

Now, I want to underline here that this effort is an effort to look at simply what is the state being asked to do as a function of education reform, what does it take by way of resources and staffing to do that, is there is a gap between what we are asking the state to do and what they are actually funded and staffed to do, and, finally, to point that out and make recommendations about filling in the gap. We will need to work closely with the Department in terms of making this analysis. And I want to make it clear right at the outset that this is not an attempt to comment on the quality of the Department's work or to make any effort to embarrass anybody at the Department in terms of what we are doing, but rather to look at what the expectation is and

whether or not adequate resources have been devoted to giving the Department and other agencies the staffing and support they need in order to fulfill those obligations.

Four other areas, just quickly, to mention, and you will see them on our outline. The legislature mandated that we do a study on alternative assessment for vocational education. That is also being done at the University of Massachusetts Amherst in the School of Education there by Dr. Stan Scarpetti and Gary Stoner. Key questions here are: How do vocational students' MCAS performance compare with those of other students; how do other states and nations handle assessment in vocational programs; and how might the COPS and MCAS relate to each other? We are hoping to identify feasible approaches for assessing both the academic and occupational development of vocational students. This is, as you know, an important issue in the legislature right now and, again, our mission is to provide some quality research that gives policymakers like yourselves a basis on which to develop and think about policy.

Three other areas in which we have issued small grants to contractors to look at issues that the Commission deemed of significant importance in terms of the implementation of education reform. One is educational leadership challenges in the Commonwealth. We hear a lot of discussion about the difficulty of attracting people to the principalship and the superintendency. As we look at research, in general, on student achievement we find that, particularly, the instructional leadership factor in education reform is absolutely critical. We are concerned about leadership in the Commonwealth. We have contracted with Learning Innovations of WestEd on this, and there are a variety of questions ranging from how does leadership responsibility of merit impact the desirability of these jobs, what pipelines are in place to produce leaders, how does our current leadership model in schools both at the school level and the system level integrate with the requirements and expectations under education reform?

We have a study also with WestEd on teacher supply. We hear a lot of talk these days, particularly in light of the recent teacher retirement legislation, about how teacher supply is going to change in the next few years, and how demand will change in Massachusetts. We want to look more closely at that, to look at what other states are doing to recruit and develop enough qualified teachers, and to ask the question: What elements need to be addressed to develop a vital profession of teaching in Massachusetts that will attract the kind and quality and quantity of people that we want to be doing this kind of work with young people in the Commonwealth? And finally, we have commissioned a study on the impact of high-stakes MCAS testing and at-risk students. Again, this is an area in which we have a lot of rhetoric these days but not much data. This is our contribution, to put some data on the table to assess what is in fact happening in this area, so policymakers, as they address some of the big questions coming up now about the utilization of MCAS and impact on young people's futures, will have some data to impact on those decisions.

Our goal is to have research-driven data, not to only speculate. By at-risk we're talking about racial and ethnic minorities, limited English proficient students, special education students, and students at-risk of dropping out of school. Key questions that we are asking: What is the projected failure rate and how does it compare for various groups of students which can be considered at risk; what can we learn about failure and dropout rates from other states; what have other states done to support students and help them graduate; what statewide initiatives are being planned to address the issue in Massachusetts; what are the gaps in terms of meeting the needs of at-risk students and helping at-risk students to realize the dream that we have for all students, that they achieve the standards that have been set by this Board? So that, in summary, is our research agenda.

Again, we are trying to make a constructive contribution to policy decisions that precede this Board and the legislature elsewhere in the state by providing some data and perspective on that data which we can give you to consider in your deliberations. We are pleased to have been able to make contributions not only on MCAS but also on a variety of other topics over the past five years as we have produced reports bearing on everything from charter schools to the teaching profession as a whole. We expect to continue to do that work. I'm pleased that in the past year or so we have developed a good working relationship with Deputy Commissioner Stotsky and her group, and I know there are a variety of research interests here at the

Department and we want to coordinate, work together on those, work together not only on the work that we are funded to do or that you are funded to do, but also stimulating other researchers in the private sector which is so well resourced in this state to look into some of the key questions that affect the policies that are so important for the implementation of this act. So with that, I will close my comments.

CHAIRMAN PEYSER: Thank you very much, Paul. If you could turn the microphone over to the Deputy Commissioner. I would note, unfortunately, that we are starting to get pressed for time.

MS. STOTSKY: I want to thank Paul for his great interest in research, which we have discussed in the past on several occasions. I appreciate his interest in research because that has been essentially my background in education for many decades. I was pleased that at the last conference he had organized in Boston that several of us from the Department were able to be on a panel presenting what we saw as research needs from the Department's perspective. So we were able to be there at the conference giving ideas from various departments.

Let me just say briefly what we have been trying to do. In addition to guiding major documents to completion in the past year and a half, I have found a bit of time for one other responsibility that was part of my job description: to build a research, evaluation and policy planning unit as part of the Office of Academic Affairs. We have had several initiatives that we have been able to work out and get going, and I'm very pleased we have been able to do a little bit in addition to the other things we were trying to do, because part of the major purpose of a state department of education is to provide an information base for policymaking. As Paul has been indicating, there isn't always a great deal of information available for policymaking. There have been several types of initiatives that I have tried to guide and shepherd through.

One of them you're familiar with: short informational reports for which I now have a dedicated researcher available on staff, Jennifer Butler, and as you will note in your book that came out this time, the local graduation requirements is an example of the kind of in-house research that someone like her can do. You'll find an example of some of the reports we have done in your appendix. We have done a summary on bilingual education; one on sequence leading to AP calculus; and we have also done an annotated METCO bibliography in response to Board concerns. Those are all in-house.

A second larger one is a public school math initiative project which Dr. Beth McBride has been in charge of, and at some other point I'd be happy to give you more details on that because it really has great implications for how we use the many millions of dollars of technical assistance given to us by the legislature as we look at what is the best way to help low-performing middle schools in mathematics education. We are doing this in conjunction with the UMass Lowell faculty. So this is a small initiative, a pilot curriculum project and pilot research project, and it's the kind of thing I see as extremely important for the Department to do as we spend millions of dollars in ways that give us the right kinds of results.

The third is a venture we are trying out with Dr. Kathe Kirkman, who is part of our small research staff, about how we work out a research proposal for the Interagency Education Research Initiative, IERI, and the National Institute of Child Health and Human Development for funding in order to look at the different types of beginning reading programs we now sponsor through this Department. We want to identify those components in professional development that produce student achievement in reading. That has many more details but I have an overview of the page Kathe prepared handed out to the Board members so they can see some of the details in this piece of research.

Our goal is to, eventually, see a unit in this Department that will, in some way, be in charge of our data warehouse so we'll be able to do information-gathering reports on topics such as: retention rates for teachers over time through the different routes, the value of block scheduling in relation to student achievement, or MCAS kinds of statistical analyses that the Department should be able to produce for the Board, for the legislature and for other interested bodies. Thank you very much.

CHAIRMAN PEYSER: Thank you. Paul, what is the division of responsibility between internal Department of Education research evaluation projects and those which are more appropriately handled by an outside organization such as yourself, or even entirely private researchers at universities or elsewhere?

MR. REVILLE: I think there are not rigid guidelines on that. The pie is huge. If you look at the Reform Act of 1,100 pages or so, there are about 150 different elements programmatically contained in it, with stipulations of one kind or another. There's a lot of work to do beyond the level that either of us has the resources for. There are any number of projects that could be done equally well by the private outside sector and an independent state-appointed board like ourselves, or internal to the Department. You could be looking at teacher supply, as I mentioned. Obviously, you have the numbers. You can produce various things on teacher supply just as easily as we could, and I don't think there would be any concern about objectivity. In one area, I think this is the particular role of the Commission to work on, which is this whole aspect that is part of our mandate through legislature, to comment on the way in which and the quality of the state's effort of implementing its responsibilities under education reform.

Clearly though, you have some self-evaluation function as a Department in terms of your own work, and as a Board in terms of your own work. It is a value to policymakers and others to have some outside entity looking independently at the work of the state of which the Department is a big piece in terms of implementing reform. So that's something where I think we would benefit from objectivity. Then I think it's a question of capacity. I think that in some states you have highly resourced departments of education with major research divisions that can produce the kind of data that you need to have analyses. And in this state we have often not had that capacity. If you look back at the whole audit situation of several years ago, that was first stimulated by a series in the Boston Globe on things that were happening in a particular city in the Commonwealth that set off a flurry of interest at the state level in auditing, but it was clear that nobody had the capacity or the designated responsibilities to do the kind of financial research, let alone auditing, that might have given us the information on which to formulate policy and regulation at that time.

I think there are things where we are self-consciously looking at ourselves as a Commonwealth and how we do our work, which the Commission would be well suited to do. There are things that are data intensive, particularly, that involve the kind of data that you regularly collect or could even collect more of from districts if it's appropriate for the Department to do. Then, there's a whole host of areas in both of our interests, because we are not going to get enough funding from the legislature to do it, to try to encourage others from the outside to do.

MS. STOTSKY: One of the things I've asked my researcher to get information on is the way in which departments of education throughout the country structure their information-gathering units. They are structured in different ways. Some of them have different types of problems. What I'd like to get is a review of the literature on the way to structure a research division as part of a department of education or separate from it that assures the public and the legislature that they are getting impartial information. And I would hope, at some point, to make a presentation on some ideas on how that unit could be structured.

DR. THERNSTROM: I was going to ask the same question Jim did, but let me follow up on it for a minute. It does seem to me the Department and the Commission don't want to be working on precisely the same topics, but maybe that's wrong. Maybe there is a point to having two voices instead of one on the same issue and, obviously, the Commission does have, as Paul just said, a special kind of oversight role in looking at the implementation from the outside. But I have two comments on an issue such as teacher supply and career development. One, is that really better done by the Commission than within the Department? And two, it seems to me on a number of these topics, that you don't want to reinvent the wheel. That is, there's a huge body of literature on the problem of teacher supply. There is already a lot of data on MCAS and at-risk students. I mean, the data has been disaggregated to some extent. To what extent do you see, Paul, if we look simply at the teacher supply question, Massachusetts as unique? Or don't we

really already have the answers to the questions we might pose with respect to teacher supply and career development because, again, of the extensive national literature on the subject?

MR. REVILLE: I think that's a fair point. If you look at what we are trying to describe in these studies, part of it is simply collating that national knowledge and putting it in a form that speaks to the issues here. Especially in some of the smaller studies we are doing, it is tantamount to survey work, in effect, rather than a deep boring down into the data that we have here in Commonwealth. It's sort of pulling it together. What do we see, at least superficially, looking at the data coming forward that's been produced by a variety of sources, what are some other people doing about it, in light of those recommendations what might be appropriate policy steps to take here.

With respect to does it make more sense for the Commission to do it or the Department to do it, as you started out, our approach in this was just to simply ask the question: Was the Department doing it at the time? The Department wasn't, through no fault of their own, they may have wanted to do it but didn't have the resources to do it. We were trying to pinpoint, with the topics we selected, state capacity, or with vocational, that the legislature selected for us, an actual report was selected for us. As far as teacher supply and leadership, we thought they were particularly important to pinpoint. The selection of topics is a kind of a statement by this Commission about areas that are important for policymaking. We really need to be thinking about leadership and teacher supply and the capacity of the state to fulfill these various obligations that are going forward, and we need better data on at-risk students, even nationally. We do reflect all these issues. Virtually every state is concerned about teacher supply and quality. Every state associated with testing is dealing with this question of high-stakes contributing to an escalating dropout rate, for example. So we would be foolish not to draw on that work. But at the same time, I think there is a role for us, either as a Commission or within the Department, to begin to focus that work specifically, because policymakers, in particular, don't necessarily have the time or the staffing themselves to peruse the entire length and breadth of the research and then apply it to Massachusetts.

DR. THERNSTROM: You've given us an executive summary here of how Massachusetts schools are using MCAS, et cetera. Is there a full report on the website?

MR. REVILLE: The full report is on our website.
DR. THERNSTROM: Which is what?

MR. REVILLE: You have received the full report, because we make a point of sending it out to everybody. You may have received it this fall, but I'll make sure you get it.

DR. THERNSTROM: It just got lost in the pile.

MR. REVILLE: That's an example of what we were talking about earlier. There's a lot out there.

DR. SCHAEFER: Thanks, Paul. We have undertaken a number of major initiatives in the last few years, and there should be, in each case, a research component attached to it. For example, in the field of early childhood education, we are spending a lot of money, and I know you can say, “You know what works and what doesn't work”, but we are funding programs across the state that are of a wide variety. It might be appropriate to have the research component built in in the first place, when you start funding a program to say that a part of this funding is to be spent on evaluation as we go. I didn't mean to pick on early childhood in particular, but there are a number of different areas. We have talked about this with respect to METCO and alternatives to certification.

MR. REVILLE: It's a common practice in private philanthropy, as you know. Foundations routinely make grants to organizations to do programs, but insist that some component, between 5 and 15 percent, typically be devoted to research on what actually happens. And in light of the proclivity of the legislature not to fund

research at this stage, that would be an effective way, I think, to incorporate it into the regular work. Because in the absence of this we are forced to make policy on the effectiveness of various advocacy groups that come before us, the last three phone calls, political exigencies, whatever kinds of things prompt policymakers. So it really strengthens the hands of policymakers to have this kind of data. Where you're making the grants, I think that would be a terrific idea.

MS. CRUTCHFIELD: I agree.

DR. GILL: I don't want to speak to the general issue of research, because this is how I, too, have spent most of my career, but what I'd like to do is spend a moment talking about a specific issue that's been raised several times now, and that's the issue of teacher supply and demand. It's an issue, obviously, of great importance to higher education. We have begun to look at this issue and I'm struck, as I listen to both of you speak, that here we have a situation, once again, where we have a Commission doing some work and we have the Department doing some work and we have the Board of Higher Education doing some work. So I would like very much to invite both of you and others that are working in this area to meet with the Board of Higher Education Task Force on Teacher Education. We could benefit from the research that you are doing, the data that you have, and I think perhaps you might benefit from what we have learned in our own schools of education. We have a very difficult road ahead of us as we try to make sure that the supply of teachers is adequate, and if we work together, I think we might come to a better solution than if the three of us are working by ourselves.

MR. REVILLE: We appreciate that. We've had excellent cooperation from the universities, that's one of our research endeavors, and we would love the opportunity to work with you on that. And I guess you're trying to wrap up here, but that's part of the overall message that I wanted to make today on behalf of the Commission. We are very eager to work in collaboration with Commissioner Driscoll, his staff, and with the higher education system, with Deputy Commissioner Stotsky and her staff, on addressing a research agenda that is huge and desperately needs attention.

MS. STOTSKY: Let me just say we will meet tomorrow morning at 9:00 in your office, as you know.

COMMISSIONER DRISCOLL: Just to wrap up, I think the stars are starting to line up. As you know, Paul, we have supported an appropriation for your Commission for a long time, and you really have been toothless until the appropriation. Unfortunately, the appropriation came directly out of our administrative line reducing our capacity to do what we do.

MR. REVILLE: Not by our design.

COMMISSIONER DRISCOLL: I understand that. It was not either of our wishes. We were not competing, it was others that caused us to. Thanks to Bob Costrell and others, the administration is interested in seeing us have monies for research as well. So I think the time has come, people are anxious to see us do it, you do it, and others. On teacher supply and other issues, we are finally developing our data. I mean, the sad fact is that up until recently, we couldn't tell you how many teachers there are, other than through the Teachers Retirement Board. Now we are developing our own data with students in education, so I think the stars are lining up and I think now is the time to try to push. And I agree with Roberta, as we look at these other initiatives, to try and get monies directed for that, I think the studies show that other states do a much better job in informing people. Good practice is what it should all be about. So thank you. Mr. Chairman?

CHAIRMAN PEYSER: Thank you both very much. And just to reiterate, we all appreciate the work that you're doing and the resource constraints you have been operating under. At the same time, we urge the legislature and others involved in this process to support more resources for research for both of your activities because it's critical to our success and critical to the effective use of the resources that we do have. So thank you very much.

We are going to change the schedule a bit because we are approaching an appropriate break time. What I'd like to do is switch items 3 and 4 so that we get right to 4. When we come back from the break we'll pick up with charter schools, and 4 is an update from the Commissioner based on a memo in your binders on the MCAS appeals process. Commissioner?

COMMISSIONER DRISCOLL: I will be brief because I think we'll want to spend more time on this at future meetings and issues like charter schools and restraints and SBA are coming up, so I will be brief today. As you know, not only the Lieutenant Governor's report but also other states, and just really good common sense, suggests that an assessment program ought to have appropriate appeals. So we are looking at it broadly, first of all, with respect to policy and then to set up regional groups of practicing educators so that we can involve the field in a very active way. What I'm proposing is that I appoint a blue-ribbon panel to work with us at the Department to flesh out some of the recommendations. I promise to bring it back to this Board no later than May, and that we will go forward with various groups in setting up regional teams of practicing educators. We will be looking at other states and the kinds of processes they go through, not only for technical appeals, but also for the appeals process itself. So that's really all I'd want to report at this time, Mr. Chairman, unless there are any questions.

CHAIRMAN PEYSER: I would just add that the blue-ribbon panel, and the recommendations that will come back to us in May by that panel through the Commissioner, is intended among other things to inform us about what the criteria might be for evaluating appeals. It would tell us what kinds of students would be eligible to bring appeals, and then what kind of accommodations or what kind of other recommendations for any unfairness that may come out of those specific cases are appropriate and consistent with the standards we have established for graduation requirement or competency determination. Roberta?

DR. SCHAEFER: Just one comment. I was discussing this with someone recently and the suggestion came up about the word "appeals" and whether we might not want to think about calling it a "review process" as opposed to "appeals", since "appeals" has more of a legal connotation, and you know how I love to come up with the appropriate name for something.

CHAIRMAN PEYSER: That's a good point. Maybe we ought to ask the panel to consider a different nomenclature for this kind of thing. It isn't intended to be a legal process, but an educational one. The other thing I'd say is that the Commissioner has listed some types of individuals he would consult with in putting this panel together. I certainly hope that in assembling the panel and in recruiting members we have as broad a representation of people who have a direct interest in this without creating a cumbersome process that is unworkable.

COMMISSIONER DRISCOLL: In that regard, I would welcome suggestions by Board members.

MS. KELMAN: I was just wondering if you're looking at an appeals process for any LEP students.

COMMISSIONER DRISCOLL: I think the whole area of all of the issues people talk about, special education, limited English proficient, vocational students, all of those will obviously be topics.

CHAIRMAN PEYSER: Up until this point, there have been certain safeguards or procedures in place with respect to special education students only. The intention is to open this up more broadly to students generally, certainly including LEP. With that, we look forward to hearing back from you in May.

CHARTER SCHOOLS – Discussion and Vote

CHAIRMAN PEYSER: In particular, we have two basic tasks here. One is the renewal of three charters and the other is to act on the recommendations of the Department with respect to new charter applications. So with that, I'll turn it over to Susan Miller Barker, and what do you want to take up first, the new charters or renewals?

MS. BARKER: Let's do new charters first. The Massachusetts chartering process, as all of you I'm sure are aware, is one that is regarded nationally as being very rigorous. This is the culmination of that process, certainly the charter school office staff would agree with that. We would like to compliment each and every one of the applicant groups. There were 33 original applicant groups here in Massachusetts. Each of them provided an intellectually stimulating conversation both for the external panel reviewers as well as internal panel reviewers, and we applaud their commitment to the education of students across the Commonwealth. Out of these 33 applications, seven applicant groups have met the criteria as set by the Commissioner, and they are now in front of you for charter granting. So I'd be happy to answer any questions relating to any specific schools or the process, if you have them.

CHAIRMAN PEYSER: I'd like to pick up on what you said about the quality, and perhaps in some cases the potential, of some of the applications that didn't make it to this final round here. I know that a lot of people who may have been involved in this process who spent a lot of time and energy putting these applications together may feel pretty discouraged if they are not on the approved list. But what I want to make sure we communicate to these folks is that being rejected in this case doesn't mean you're forever banned or your application is deemed to be without merit, but rather, at a minimum, further work may be necessary in order to bring it up to a level that could be approved at a later date.

There are additional charters as a result of the amendment that was adopted last year by the legislature. We intend on issuing charters for at least five years and perhaps more based on kind of the additional charters that were authorized under the law. So there are additional opportunities for people who have gone through the process already but have not gotten to the point of approval, and I would encourage them to stay in this process and to try to work on improving the quality of their application.

I have one other specific question which is related to the Holyoke Community Charter School, in particular the recommendation is that the application in the gradespan be reduced to K-5 as opposed to K-8 at opening, and that opening be delayed from the planned September 2001 to September 2002, and I just wanted to ask you whether those conditions or those amendments have been communicated to the school founding team, whether they had accepted them as something they could work within.

MS. BARKER: Yes. The founders are actually here today, they have agreed to those conditions. They were quite enthusiastic, as you can understand, after having gone through the planning process to get this school up and running. However, given the size and the academic design of the school, as we have in place in a couple of charters already here in Massachusetts, the prudent choice seemed to be to have a K-5 situation and allow them to grow up from there, as well as delay a little bit to allow sufficient cleaning time for the opening of the school.

CHAIRMAN PEYSER: Are there any other questions the Board members have about the seven recommended charters before you? Or for that matter, any of the other applicants that have been distributed previously?

MS. KELMAN: I had a question about -- I'm trying to find the name of the one that focuses so much on the virtual high school.

MS. BARKER: The Codman Academy.

MS. KELMAN: Yes, thank you. It will be a combination of virtual learning and actual classroom-based learning?

MS. BARKER: Students will have classroom-based learning, and actually this is a very interesting school design because they'll be using part of the Codman community in a couple of different facilities as their learning space. In addition to that, the students will have the opportunity to participate in virtual high school courses. That will be both accessible to them independently but also monitored and guided by personnel at the school.

MS. KELMAN: That answers my question. I had a comment, too. I realize that the legislature has already decided to appoint or grant these new charters, but I just wanted to let you know that I will be voting no because I don't feel comfortable voting for new charter schools just because of my own ideology. So thank you very much.

CHAIRMAN PEYSER: Okay. Any other questions or comments?

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with G.L. Chapter 71, §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.**

Horace Mann Charter:

Academy of Strategic Learning Charter School

Location:	Amesbury
Number of Students:	50
Grade Levels:	7-12
Opening year:	2001

Commonwealth Charters:

Codman Academy Charter School

Location:	Boston
Number of Students:	120
Grade Levels:	9-12
Opening year:	2001

Edward Brooke Charter School

Location:	Boston
Number of Students:	360
Grade Levels:	5-10
Opening year:	2002

Framingham Community Charter School

Location:	Framingham
Number of Students:	306
Grade Levels:	6-8
Opening year:	2002

Holyoke Community Charter School

Location:	Holyoke
Number of Students:	702
Grade Levels:	K-8
Opening year:	2002

North Central Regional Charter Essential School

Location:	Fitchburg or Leominster
Number of Students:	400
Grade Levels:	7-12
Opening year:	2002

Northern Bristol County Regional Charter School

Location:	North Attleboro or Taunton
Number of Students:	669
Grade Levels:	K-8
Opening year:	2002

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 was made by Ms. Crutchfield and seconded by Dr. Gill. The motion passed 5 to 1. Ms. Kelman opposed.

CHAIRMAN PEYSER: The next item will be treated as three separate motions. These are three schools up for charter renewal, and we'll take them one at a time. Maybe you can introduce the people sitting at the table.

MS. BARKER: I was remiss in not introducing the two women from the charter school office. As are all the staff in the charter school office, they were great leaders in the process, and we would not have these applications before you for granting were it not for their efforts. So I thank them very much. To my left is Dr. Joseph Dolan, who is our director of accountability. Joe is the one who shepherds the renewal process for existing charter schools. You all know Kristin McIntosh.

COMMISSIONER DRISCOLL: The Benjamin Banneker is the only one we are asking the Board to vote with conditions. We laid out the four conditions and they are pretty significant. They have to do with the professional development plan, the accountability plan, rules and procedures of the board. They are clearly organizational issues. The final condition is a plan for specifically improving MCAS scores. As I told the board, I plan to meet directly with the them myself after this Board votes, but with those conditions I'm recommending them, Mr. Chairman.

CHAIRMAN PEYSER: Let's treat them one at a time. Banneker is the first one up. With that as an introduction, any other comments, Susie, that you or Joe would make?

DR. DOLAN: I have been out to Benjamin Banneker and I have talked to the school's director about our conditions. He asked me questions about the action plan and the plan that they need to present to us, so I

gave him our best advice on that. They are in agreement with us on these issues and will present to us a plan by May 1 as we require them.

MS. CRUTCHFIELD: These conditions seem powerfully significant, so I'm curious about what leads you to believe that this renewal will be successful given these four large challenges. Say something to me about the ability that you believe the school has to succeed.

DR. DOLAN: I think you're correct. I think these conditions are very strong and we are very serious about the extent to which this school puts into place remedies for these problems. In my view, and I've looked at this data fairly carefully, including the site visits and annual reports and other data that we have, it's rather mixed. In some areas the school shows either improvement or progress in putting into place its program. Particularly if you look at the Stanford 9 scores, the school has been able to demonstrate that the kids are learning and that significant progress is being made in particular areas. When it comes to certain organizational issues that we've identified here, we think that the school really needs to address the issues with the board and the professional development of teachers if it hopes to continue to progress. That is why we're going to go out and have a look at the school and report back to the Board on how well they are doing at this. They know that we are very serious about this and they have a limited period of time to demonstrate to us that these organizational issues have been dealt with.

CHAIRMAN PEYSER: The only thing I'd say, Pat, is that in the report from the review team, they spoke very favorably of the school leadership and its capacity to address some of the weaknesses. Clearly, in the absence of that vote of confidence by these folks, we might be in a different position. But I think it's on the strength of that report that the Department has come back with the recommendation.

MS. CRUTCHFIELD: I just read the report. I just needed to hear it today.

COMMISSIONER DRISCOLL: It is the right question.

MS. CRUTCHFIELD: Thank you.

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 grant a renewal of a public school charter to the following school for the five-year period from July 1, 2001 through June 30, 2006, as recommended by the Commissioner:**

Commonwealth Charter School:

Benjamin Banneker Charter School
Location: Cambridge

By May 1, 2001, the school shall provide written documentation for the Commissioner's approval that:

1. **Specifies the roles, responsibilities, and practices of the board of trustees, particularly in regard to: (1) the recruitment and retention of qualified board members, in compliance with the school's by-laws; (2) the relationship between the Board of Trustees and the school leader; and the responsibilities of the chairperson of the Board of Trustees and the school leader.**
2. **Specifies a school-wide professional development plan, linked to the school's standards for students learning and assessments, that clearly articulates plans and time lines for professional development as well as prepares teachers to incorporate the school's curriculum standards in theirs day-to-day work with students.**
3. **Specifies a plan, linked to the school's accountability plan as approved by the Department of Education for how the school will report student performance on internal and external assessments, including how specific assessments are linked to important school-wide learning goals for students in the elementary and middle school programs.**
4. **Specifies a plan, linked to the school's accountability plan as approved by the Department of Education, for how the school will improve the MCAS scores of students in grades 4 and 8, including timelines and benchmarks for improvement.**

Said charter school 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 additional conditions as the Commissioner may from time to time establish, all of which shall be deemed conditions of the charter.

The motion was made by Ms. Crutchfield and seconded by Dr. Thernstrom. The vote passed 6-1. Ms. Kelman abstained from the vote.

CHAIRMAN PEYSER: The next one is Seven Hills Charter School in Worcester.

DR. DOLAN: Really no comments except to say I think the MCAS score improvement has been very significant and I'd be interested more in knowing how they do that and hopefully the headmasters and others there will share with us over time through some of their activities and how they are able to improve MCAS scores of students.

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 grant a renewal of a public charter to the following school for the five-year period from July 1, 2001 through June 30, 2006, as recommended by the Commissioner**

Commonwealth Charter School:

Seven Hill Charter School
Location: Worcester

Said charter school 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 motion was made by Ms. Crutchfield and seconded by Dr. Gill. The motion passed 6-1. Ms. Kelman abstained from the vote.

CHAIRMAN PEYSER: Finally, Somerville Charter School, and I think here it's appropriate, given the public comment earlier on with respect to the Inspector General's report, for some commentary from the Commissioner.

COMMISSIONER DRISCOLL: We received a report from the Inspector General with respect to the Springfield SABIS school, and now have recently received a report on the Somerville Charter School. I think the Inspector General knows I have taken his recommendations and findings very seriously, and we have worked very diligently in the case of Springfield to develop a contract, and we'll do the same thing in Somerville. Essentially, the issues are the importance of the board of the school to take the responsibilities that it needs to take under the law and not defer it in one way or another to a contractor or somebody else. So there were changes made and there will be changes made in this contract which we will have to develop before it ends July 1, or June 30 of this year.

There are some issues of the Inspector General that are, frankly, a matter of opinion, and that's something we, the contractor, and the board need to come to agreement on. For example, the issue of surplus and whether or not SABIS, in this particular case, deserves to share in any surplus. That's really an opinion in my judgment because this company has put forward a lot of money, its own money, and if it satisfies all of the conditions, financial and otherwise, for running the school, then I think by the very nature that we are entering with a management company, that that is a legitimate issue for the board and the company to include. So we've taken it very seriously, we have gone very carefully through the findings. We will do so when we finalize the contract, and there will be some changes made where there should be. I'm satisfied that we have complied with what the Inspector General has put forth.

CHAIRMAN PEYSER: I would like to underline a couple things. One is that the obligation that we have, and that the Department has, is to ensure that the board of trustees is actually entering into these arrangements with their eyes wide open and they understand what the trade-offs are in costs and benefits and that they are empowered to make those choices based on the information that is available. To the extent that the board is either ignorant of what that information might be or what their choices are, is willfully blind or is otherwise not competent to make those decisions, that's an area where the Board and the Department need to intervene. I don't think that's the case here. I think the board is entirely competent, they

have demonstrated that they understand exactly what tradeoffs they are making. So it is not a question of their being ignorant or incompetent, but rather making the particular choice based on their specific circumstances.
The other thing, of course, is that even with that, there is a certain obligation on the part of the state to ensure a level of accountability for the expenditure of tax dollars that goes beyond the responsibilities simply of the board of trustees. We do have the authority and obligation to review management contracts and we will do that in this case when it comes up in the next few months.

MS. BARKER: Can I also add that both the financial department and the legal department have been great partners with the charter school office, and by the end of March we'll have a couple of documents that provide the kind of structure that you heard during public comment. They will provide some guidance on management contracts for boards, some guidance on sound business practices to have in place so that these boards of trustees have a roadmap provided, again by the Department of Education, and that we can use as we go into the schools and hold them accountable.

CHAIRMAN PEYSER: Finally, I'd just note that in this particular instance, SABIS has invested quite heavily in this particular school, and this is not a matter of the management organization sort of extracting revenues and profits out of a charter school. In fact, up until this point it's been quite the opposite. And so I think we need to keep this all in perspective, that what happened here is as a result of the participation of SABIS and as a result of the freedom established in charter school law. There's been a substantial investment in public education in Massachusetts, and in Somerville in particular, that wouldn't otherwise have occurred. It is a net positive which doesn't excuse us or the board of trustees from exercising the appropriate diligence in overseeing the functions or the operations of that contract or from understanding the terms and all of the various costs and benefits associated with it, but I think it's important in contextual observation.

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 grant a renewal of a public school charter to the following school for five-year period from July 1, 2001 through June 30, 2006, as recommended by the Commissioner:**

<u>Commonwealth Charter School:</u>

Somerville Charter School
Location: Somerville

Said charter school 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 motion was made by Ms. Crutchfield and seconded by Dr. Gill. The motion passed 6 to 1. Ms. Kelman abstained.

CHAIRMAN PEYSER: I want to congratulate all of the schools who have had their charters renewed today and all the schools who have received charters. Congratulations and continue to do good work. Thank you all for the work you did in making this process go forward. I know it was a lot of work, to say the least.

ADOPTION OF REGULATIONS ON USE OF PHYSICAL RESTRAINT FOR STUDENTS (603 CMR 46.00 AND AMENDMENTS TO 603 CMR 18.00) - Discussion and Vote

COMMISSIONER DRISCOLL: Mr. Chairman, if I could make just a couple of introductory remarks. First of all, the development of these policies, in my judgment, is the right thing to do, and we really can't take full credit because we were directed to do so by the legislature. Developing policies on restraint is never a winner. Any time you take a difficult issue and you have to address it, it is never fun. But that, in fact, is where our responsibility lies. I would say in large part, at least speaking for myself, that I find my most important responsibilities are the harder ones. Wouldn't it be nice if they were all easy and fun?

I'm very proud of these regulations and I urge the Board to approve them. I will say this: In the public comment today there were a couple of issues brought up which I hope we will discuss. I also recognize that we allow 30 days or so for fine-tuning and language changes, and I know there are people out there that would like to help me with those. I have some language on the IEP that I will give out today. But I know the concerns on both sides of this issue.

I chair the Teachers Retirement Board and accept applications for disability retirement every month and, unfortunately, many of those are as a result of physical harm done to educators. I know that people can talk about experiences from years ago. There was a fatal one brought to us today, which of course was at a private school, but nevertheless it can happen anywhere. The kind of misuse of common sense occurs everywhere in our society, on subways, street corners, schools, churches and, tragically, hockey rinks of all places, off the ice. So this is a very serious matter, and I hope this Board will not be deflected by the emotion. I know it's difficult. But our job is to put forth a common sense, rational, appropriate, clear set of policies that allow people in schools to function as they should. As the language of the regulations indicates, restraint should not be used unless absolutely necessary. There's no question about that. But we have to have the tools in place.

I'm very happy to talk about the specifics, about chemical restraint, training, and other issues of concern because they are important. But I don't want to lose sight of the fact that we have been asked, maybe we should have done it on our own, to take on a responsibility that is very, very important and emotional. I think we have done it with great care. I think we have listened. I certainly want to thank Marty Mittnacht who has done a terrific job, and Rhoda Schneider, Liz Keliher, and others who have done a tremendous job. We have allowed a great deal of time on this issue and we have done what we can. I'm proud of these regulations. They are not fun. I hope they never have to be employed. But they are there, and I think employed with good judgment and common sense, they can be made to be effective. So with that, Mr. Chairman, I would be glad to see if Marty or Liz want to say anything.

CHAIRMAN PEYSER: Do you have introductory comments, or should we just jump into questions?

MS. MITTNACHT: Why don't you jump into questions and then I will do some ending comments.

CHAIRMAN PEYSER: I want to underline what the Commissioner said about the basic intention of these regulations. They are not to introduce the notion of restraints in school, but rather to regulate their use. They are intended to elevate the level of thoughtfulness and quality, if you will, in the use of restraint, and to protect the rights of children as well as staff in public and private schools.

I have a couple of questions, some of which are driven by the comments this morning, and they are specific to language. There's this issue that came up on the use of the word "serious", and that is in section 46.04, paragraph 1(b). It currently reads, "The student's behavior poses a threat of imminent physical harm to self and / or others." Is there any reason why "serious" is a word that shouldn't be in there just prior to the word "threat"?

COMMISSIONER DRISCOLL: I think we added the word "imminent" not only here but in other places to provide clarity. I think as Ed Delattre brought up, there is some hesitation, due to semantics issues, about what "serious" means. It poses a real problem. We thought "imminent" was better language. We are not sure that "serious" is helpful, but we thought the "imminent" gave the better sense of when action should take place.

CHAIRMAN PEYSER: I guess I'm wondering whether it undermines or detracts from any other part of the regulation. I think the regulation clearly leaves one with the understanding that we are talking about serious incidents, not trivial ones.

COMMISSIONER DRISCOLL: I would only say, Mr. Chairman, I for one don't have a problem putting that word back. I will tell you that Ed Delattre wanted to take it out. Nobody dissented. So we thought we were dealing with the will of the Board with a word that was ill-defined, and we know how careful you are with language, but if you want the word back --

CHAIRMAN PEYSER: I'm just putting it on the table.

COMMISSIONER DRISCOLL: It wouldn't matter to me. I think I know what it means.

MS. MITTNACHT: The original proposal did have the word "serious" in it and it was directly because the Board chose to remove it from the proposed regulations that we did not reinsert it into the final regulations.

COMMISSIONER DRISCOLL: To be clear, I'm not sure the word was actually voted.

DR. THERNSTROM: We didn't vote.

COMMISSIONER DRISCOLL: But no one objected.

MS. CRUTCHFIELD: Wordsmithing is dangerous at our level because while we want to get things clear and we want to get them as accurate as possible. We are not going to be in the school on the day, and for me, the question's a good one. And why not use both of the words in the same sentence? This kind of meaning making will happen around addressing the issue of how we train people, what kind of a system we set in use. For some people, "serious" has different meanings. It depends on what's happening to you as you're watching what's going on with a kid. Regulations and practice can become common sense through the training required for all staff and through an established system. There's a need for some common meaning and some common understanding as it applies to the specific population at the specific place that we're talking about. All of this will get clear while we struggle to give it our most serious language and our clearest language. Again, for me, the issue of how this looks is going to happen as we address things closer to the point of impact.

CHAIRMAN PEYSER: You're right. I mean, in fact, reality is with this, as with other regulations, we are giving words at our best.

MS. SCHAEFER: If I could add something about the word "serious". I think the intent is to address situations of dangerousness as the Office for Child Care Services regulations does by using that word. There is a concern about precluding program staff from intervening in a situation that, to their perception, is dangerous. Having there be a requirement, will they stop and think, How dangerous? Is this serious enough? What does the word "serious" mean? So there is a concern that program staff not be precluded from intervening in a situation that poses dangerousness to a reasonable person's perception and having to think how dangerous. I raise that so you may consider that concern when you're thinking about the issue.

CHAIRMAN PEYSER: Is your point that the use of the term unduly inhibits staff from intervening in cases where they should?

MS. SCHAEFER: It may, I think.

CHAIRMAN PEYSER: Or is the reverse true, that its absence would somehow result in staff intervening and introducing restraint in places where they shouldn't?

MS. SCHAEFER: I was more concerned about the former and wanted to bring that to the Board's attention for consideration. We did not use the word "dangerous", which is the concept used in the OCCS regulations, but we meant to approach a similar concept, here, by using the concept that's in the regulations promulgated by the Department of Mental Health. In those regulations the word "serious" is used. However, it's a different setting than a public school district. I just wanted to bring to the Board's attention some of the concern in evaluating whether to include the word "serious". I believe that in the version of the regulations that went to the Board in November, there was a request that we take out the word "serious". "Serious" was in front of the word "threat". Now I think we're talking about using "serious" in front of the word "physical harm" to describe the harm rather than the threat, and I think that Dr. Delattre asked that the word "serious" be taken out because a threat is a threat. I think that was the concern. We're now talking about adding the word "serious" in front of a different word, and that changes the meaning somewhat. I don't mean to be too picayune about the wordsmithing, I just want to ensure that you clearly understand what the issue is.

CHAIRMAN PEYSER: What I'm trying to do is address key questions and then when we get to actually considering the motion, we can think about amendments, perhaps.

In 46.05, paragraph 3, which has to do with the safest method, there's a reference to floor or prone restraints and I have a general comment. Should there be any statement in here about administering restraints that would meet these requirements but that are also consistent with the limitations specified in the IEP? What if there are specific circumstances to an individual child that are not taken into account by these more general statements?

MS. MITTNACHT: We very deliberately did not assume that these regulations were specific to students with disabilities. So we did not want to suggest throughout these regulations that it's only kids who have IEP's who may need restraint because that would be very inappropriate.

CHAIRMAN PEYSER: Understood.

MS. MITTNACHT: That is why that doesn't address that there. We did specifically put in the language around kids who do have IEP's in the special circumstances section, 46.07 (1), where we speak about restraint administered to a student with a disability pursuant to an IEP. The Commissioner has some language that we have proposed to actually make that section a little bit more protective because, at this point, what it says, at least, is that it must meet the reporting requirements. We are recommending that you consider adding language that also says that it is limited by the limitations on chemical, seclusion, and mechanical restraint that are in the section 46 regulations and also subject to the training requirements of the section 46 regulations. That way, children with disabilities have those systemic protections as well and staff cannot simply sweep aside the systemic protections through the use of an IEP. But it does make specific that kids with IEP's may have specific circumstances that apply to them individually.

CHAIRMAN PEYSER: I understand, and this addresses one of Tim Sindelar's comments. But it's a slightly different point from the one I'm making, which is, there may be certain actions or restraints that are imposed on a child which are contrary to some specific physical or emotional problems or whatever the right words might be.

MS. MITTNACHT: I would recommend that you look down at 5(c). That's where we have that: "Program staff shall review and consider any known medical or psychological limitations and / or behavioral intervention plans regarding the use of physical restraint on an individual student."
CHAIRMAN PEYSER: "Review and consider" in this context means that if, for example, we decided here today that there's a child who has a breathing problem, and that is somehow known or let's say specified in the IEP, that that section 5(c) would preclude the use of a restraint that restricts that child's breathing. Is that true?

MS. MITTNACHT: Yes.

CHAIRMAN PEYSER: Then that may address the issue I've got. Under Reporting Requirements, 46.06, paragraph 1, it talks about reporting physical restraints, but it does not talk about the reporting of chemical or mechanical restraints. I'm not sure if that was an oversight or intentional.

MS. MITTNACHT: This was deliberate. These are regulations -- we are authorized to do restraints. In the area of physical restraint, we are limited to physical restraint. We cannot use mechanical or chemical restraint unless specifically authorized by a physician. So there was no intent in these regulations to suggest that we are regulating chemical, mechanical or seclusion restraint because we suggest that they are inappropriate to be used educationally unless a physician decrees that they are necessary for the student.

CHAIRMAN PEYSER: If they do exist, is there any reason why you wouldn't just ask for it to be reported?

MS. MITTNACHT: You mean any instance of use? So you would recommend that in addition to the limits that we put on when you must report the physical restraint, you would want to have a report on any instance of --

CHAIRMAN PEYSER: At the moment I'm not expressing an opinion about the term "any", but whether mechanical --

MS. MITTNACHT: If we look at chemical restraint, for example, a physician may order that a student receive a certain kind of medication on a regular basis for medical reasons, but it could also be that a medication is sometimes used in other settings or for other reasons to tranquilize a student, whether it was prescribed for that student or not on that basis is the physician's determination, not the educator's determination. Let’s take, as an example, Ritalin. How could you require that any time that the student received Ritalin pursuant to a doctor's order that you are reporting it as a use of restraint?

CHAIRMAN PEYSER: I wonder if all drugs are in that category.

COMMISSIONER DRISCOLL: I would just warn us, again, to be careful about getting carried away by the emotions. We basically want to take chemical and mechanical restraint out of it.

MS. MITTNACHT: Off the table.

COMMISSIONER DRISCOLL: We are not interested in those. They are not in the educator's bailiwick. That's not what we are regulating. If a doctor prescribes it -- now, somebody says, Well, what if it's not the doctor? Well, I don't know what someone is doing prescribing something chemical for a child unless it's the child's physician. But I guess that is up to the parents. I think you have to understand the subtlety here. We are starting to be concerned about these kinds of restraints which we don't want even part of it in our regulations, essentially.

CHAIRMAN PEYSER: I don't know what the frequency is, but are they not occasionally used in schools?

COMMISSIONER DRISCOLL: Used and administered in schools by medical personnel and cannot be --
CHAIRMAN PEYSER: The school's medical personnel?

COMMISSIONER DRISCOLL: Yes. If that's prescribed by the doctor, it can't be administered by a secretary; it has to be an RN.

DR. THERNSTROM: I assume, Jim, this is not at the discretion of a teacher to decide I want to calm this kid down with Ritalin. I assume, I think what you are saying, Dave, this is a non-problem in the sense that we do not allow teachers to make these kinds of decisions.

MS. CRUTCHFIELD: We do not allow non-medical people to make these decisions.

DR. THERNSTROM: Thank you, we do not allow non-medical people.

CHAIRMAN PEYSER: The question is, do the school personnel from time to time administer drugs to children in school for purposes of restraint?

MS. MITTNACHT: Under this but not without explicit direction from the physician.

CHAIRMAN PEYSER: It could be from a school doctor or something, so why wouldn't we ask them to report? I understand Ritalin, I'm wondering about different classes of drugs administered explicitly for purposes of restraint.

MS. CRUTCHFIELD: What is the problem of reporting?

MS. MITTNACHT: Then you're starting to interpret the doctor, did they prescribe --

MS. CRUTCHFIELD: I'm not interpreting anything. What's the problem if it happens, and the medical person does it, what's the problem with reporting it?

MS. MITTNACHT: So I guess the judgment would be whether or not what is being used -- I'll give another example. Mechanical restraint, which is the use of some kind of material or another to physically prevent the movement or limit the movement of a student. And I would suggest to you, for instance, that in many cases there are stabilizing belts that are used for children in wheelchairs who have cerebral palsy or something like that where their movement makes it difficult for them to perform tasks. Then there's a judgment implied as, is this being used for restraint or is this being used for medical purposes? We are essentially asserting in these regulations, it was our intention to assert that these things are not being used for restraint purposes, they are being used for medical purposes. If you use anything like this at all, it's for a medical purpose, medically authorized by a physician.

MS. CRUTCHFIELD: This says, "Circumstances under which a restraint must be reported."

MS. MITTNACHT: That is intended to specifically relate to the fact that these are regulations on the use of physical restraint. We could intentionally add the use of the word "physical restraint" if that would make it clearer for you.

MS. CRUTCHFIELD: Is that your question, Jim? I'm sort of lost. Is that your original question?

CHAIRMAN PEYSER: I think there is undoubtedly some complexity here, especially around the use of mechanical and chemical restraint. While some things are not appropriate for addressing directly in regulations they may be appropriate for further advisory opinions and detail. What I don't fully understand is why we would limit the reporting to physical restraint if, in fact, there are instances, as I think there probably are, where there's some direct intervention using chemical or mechanical means to restrain a child in a school.

COMMISSIONER DRISCOLL: You may be right. Perhaps it would be a regulation on school reporting or something. It's meant to be outside the bounds of this policy. If you want schools that have students for whom doctors have prescribed the use of a chemical substance and it can be clearly determined that it is for the purpose of restraint then, to me, I'd rather see this Board pass a policy that says anytime a student is using a chemical substance at a doctor's request that it be reported, as a separate issue from restraint. That's what I would say. It's just outside the purview, I would say.

CHAIRMAN PEYSER: But it needs to be clear. There are other parts of the regulations that do encompass chemical or mechanical restraints.

MS. MITTNACHT: It was not our intention -- essentially we have only used the terminology of any other type of restraint in the definitions section, and then specifically in the language that we are recommending to you around IEP's to include that section.

CHAIRMAN PEYSER: Section 46.06(3) about informing parents, that only applies to physical restraints, not chemical or mechanical?

MS. MITTNACHT: Yes. If we have misled you without using the term physical in front of restraint in these regulations, we sincerely apologize and we'll fix these as a technical change. That is intended to be on the use of physical restraints.

DR. GILL: I'd like to take a different tact. If the only reason that a mechanical restraint or a chemical restraint is used is for medical purposes, and then is prescribed by a physician, then I would feel okay if we added the language "authorized by a physician and approved by the parent or the child's legal guardian", and then I'd know that the parent was involved in this decision and therefore very definitely a medical issue.

MS. MITTNACHT: In the section 46.02(5) where it prohibits the use unless explicitly authorized by the physician, you would recommend adding the language "and approved by the parent".

DR. GILL: Right. Then I'm more comfortable with the statement that you're making with respect to the intent, which is that neither mechanical nor chemical restraints ever be used except for medical purposes, and if it's going to be used for medical purposes, then the parent needs to be involved in the discussion.

MS. CRUTCHFIELD: Yes.

COMMISSIONER DRISCOLL: That's fine. That's certainly a common sense approach. Again, I would simply say that if that eliminates that whole governance of a school which allows a chemical substance to be used for all those other uses which is separate and distinct from here, I think that that addition adds process.

MS. CRUTCHFIELD: It brings it to right here on the page.

COMMISSIONER DRISCOLL: It certainly does no harm and it makes it more comfortable.

CHAIRMAN PEYSER: I think that resolved the issue we have been talking about.

MS. CRUTCHFIELD: Mine, too. Thank you.

MR. IRWIN: Just to back up on that. The amount of chemicals that are being used in schools today, some people don't have any idea of what's going on down in the school nurse's office except for the parents, the students and the school nurse. But if we got into that area, and I know where Dave was going with this, we would have a nightmare here. But getting back to reporting, 46.06, paragraph 5, when a restraint has resulted in a serious injury, what is a serious injury? This is where the Department gets notified. This is where I was talking about the other use of the word "serious". What is a serious injury? Who determines that?

MS. MITTNACHT: What we are doing here is paralleling language related to incident reporting in the special education regulations where that term is used and requires an incident report to the Department. We wanted to ensure that that was also true for anything having to do with restraints having nothing to do with kids with disabilities. In some sense kids with disabilities are already protected under that language, at least in some settings. You're right, it's a judgment question, and again, that's one of the reasons we are careful about using it. And, frankly, in our view, if they believe that it's serious, they ought to report it to us. We want them to err on the side of caution in their reporting to us. And so far that has seemed to be a workable standard.

COMMISSIONER DRISCOLL: It does cut both ways, though. I mean, a school could –

MR. IRWIN: Could disregard something and say it wasn't serious.

COMMISSIONER DRISCOLL: Right. He didn't break his arm, but the parent thinks it's serious. But it cuts both ways. They can under-report.

MS. MITTNACHT: They do have to report to the parents at all times about any injury, serious or otherwise, so that clearly requires a report to the parents. But as for the Department, we tried to limit the numbers of reports we'd be getting.

DR. GILL: I'd like to talk about the fact that this has been a difficult issue for all of us and you have done a truly commendable job. One of the things that I realized this morning is that I had lost sight of the forest for the trees, and I think it's quite easy to do because of the difficult nature of this particular issue. Leaning back in that direction, though, is the fact that we have really very little data. I would like to discuss the opportunity, for at least the first year, to collect the data on when restraints are used. Not just restraints that are used for longer than five minutes, but any restraint that is being used for longer than a minute, that it be reported. I know that this would be somewhat burdensome. I accept that. But I think the nature and importance of this issue mandates that we take that caution for one year. We need the opportunity to look at the data and see how the restraints are used, when they are used and what the implications to the student and to the teacher are. I would only request this for one year, but I do feel very strongly about this issue. I do think, as one of the individuals who spoke with us earlier today indicated, that four minutes and 10 seconds can be done several times a day and that there would be no reporting of it.

MS. MITTNACHT: That is not totally accurate because any injuries, whether they are in a shorter restraint or a longer restraint, require a report.

DR. GILL: I'm going beyond injuries. I'm talking about any restraint, whether there is an injury or not. I think we ought to understand how and when restraints are used. This also goes back to the point that

Sandra was talking about and Dr. Schaefer. It is important to look at the policy issues that we are working with and do some research on them and see if our policy is the right one. Is it working the way we meant it to so that there aren't unintended consequences? Because there are no data in our public schools, we won't have that information unless we collect it. So I would like to request that we change the reporting requirements to any time a student is restrained for more than one minute, and that for one year for purposes of evaluation of this policy, that all restraints that are placed on a student for longer than one minute be reported to the Department of Education.

MS. CRUTCHFIELD: I would think that's certainly a way to chart this uncharted territory.

MS. MITTNACHT: I would just suggest we certainly could do a study of that, and we could seek to gather data on that, but to put that in the regulations essentially is quite burdensome.

DR. SCHAEFER: I was going to ask that. How onerous is this?

MS. CRUTCHFIELD: How would we get the data if not?

MS. MITTNACHT: You also have to look at the definition of restraint. It is essentially using any kind of bodily force to limit the movement of a student. Now, this could be as minor as, or as safety precaution, as holding a young student from running into the street. You want to be careful of the extent to which you're having people watch their clock.

MS. CRUTCHFIELD: I understand that. I think the request is to collect data, it is to do the research. I understand that there are impediments to that. How do we collect the data if not in the regulations?

MS. MITTNACHT: If you basically direct us to consider how to do an appropriate research project to look to collect that data at that level, we will come back to you with a proposal on how we can do that kind of collection.

DR. SCHAEFER: They are going to get the reports.

DR. THERNSTROM: During a recent school visit, a principal said to me, “Look, we don't have time to mentor teachers. We spend our days with paperwork.” The question of the burden that you raise is very serious. And teachers also say, and they have said it over and over again at various hearings, “We don't report things, we don't pursue things, we don't take actions when they should be necessary because it is so burdensome on us to go through all the paperwork.” You know, there is a line that we can cross here that seems to me counterproductive and therefore dangerous.

COMMISSIONER DRISCOLL: I hear what Judy's saying. To some extent, of course, there's nothing magic about five minutes as opposed to 4 minutes and 30 seconds, but we’re obviously talking about a longer period of time. I am a little concerned about putting it in the regulation, even though Judy's intent was to do it for a year. I would ask the Board to leave it to us to come back to you with a plan. If you provided some money, we may be able to conduct studies on how often restraints between one minute and five minutes are used. If you jump from zero to five minutes, what is happening here? Is it a big problem, small problem? We just don't have data on it, and it would be worth getting that. So I don't know whether we can come back to you, but if you want to make a motion --

DR. THERNSTROM: Let's try to do that instead of starting to add here.

COMMISSIONER DRISCOLL: I'm serious about it, but I just --

MR. IRWIN: Judy, I understand what you're saying, I do, but to make it a minute right now is going to affect everything else that's in these regulations. I'd hate to have a teacher be afraid of restraining someone if they thought the clock was going to tick too long after that minute before help could come or something could be done about a situation. My concern would be some student hurting another student over that minute period of time, somebody taking their clock and looking at it and saying, "We've gone too far." Or a student actually sitting in the classroom and saying, "The principal can't get down here for a minute and a half, so I have you because you have to let me go in a minute." I do understand where you're going with it, Judy, and I do agree with you, but the constraints are perhaps --

DR. GILL: I have some concerns about five, but I will accept the Commissioner's suggestion that the staff come back to the Board with a plan on how we would evaluate this.

COMMISSIONER DRISCOLL: We want the data, but there is an inherent problem in mandating it for a year along with this issue of having to report it. If we develop a plan whereby we sample various size schools, and they know they are doing it anonymously, we can get data as to what it looks like. I think that may be a better way to get it. It won't be onerous to people and they'll report correctly, which is what we want.

MS. CRUTCHFIELD: I would think that if this is an important enough issue for us to have regulations, that it's important for us to begin to collect data. I want to support Judy's proposal. I understand that adding it to the regulations probably wouldn't get us what we want, but a plan for getting what we need to move from opinion to data, which would be refreshing, is something that I'd love to see.

CHAIRMAN PEYSER: Commissioner, could you and Marty take that project on and report back to us in the next couple months on how we might collect this data, next year, in terms of restraint and regardless of duration? Are there any other comments or questions?

DR. GILL: I have another concern, and that is on the issue of the number of hours that have been identified for in-depth staff training. They are recommended as 16. I asked a question of the person from CPI that spoke with us, and my understanding from her response was that one of her concerns was the fact that we are recommending, not requiring. I understand the issues in the schools with respect to requiring, but we are talking about a very serious issue to children. I would feel more comfortable not only if it were to say "require", but also that we talk about ongoing training. I mean, I took CPR 20 years ago, but I couldn't do CPR today.

MS. SCHAEFER: A part of this is a legal issue: unfunded mandates. A 16-hour mandate imposed on school districts would be an unfunded mandate, therefore it wouldn't be legally permissible unless the Commonwealth fully funded it or the community accepted it. That's the legal concern that we had about the 16-hour training requirement. But I would also note that under these regulations, students in residential programs have adopted the OCCS regulations for those students, and those are usually clinical programs, private programs, and those regulations do require the 16 hours of training.

CHAIRMAN PEYSER: Could I ask you a quick question on this? Would these hours be eligible for professional development points?

MS. MITTNACHT: Yes.

CHAIRMAN PEYSER: We do, obviously, require them to participate in professional development.

MS. MITTNACHT: Yes.

COMMISSIONER DRISCOLL: They are not content.

CHAIRMAN PEYSER: Except the people who are providing the in-depth training, presumably, are professionals in this particular discipline.

COMMISSIONER DRISCOLL: The train-the-trainers.

MS. MITTNACHT: We are in essence requiring that there be, in every school building in the Commonwealth, someone who has received in-depth training, some one or ones. Now, that's something like 1600 school buildings. There are a lot of school buildings in the Commonwealth.

COMMISSIONER DRISCOLL: You should make that distinction, by the way, between the broader training and the specific in-depth --

MS. MITTNACHT: We do make very specific distinction around the in-depth training. One of the things that we have agreed to do with some of our special education discretionary funds is to begin to prepare to build the capacity, in the Commonwealth, to have what the woman from CPI talked about: the 24-hour training that they have for trainer of trainers. One of the things we learned when we spoke with other state agencies with restraint regulations is that they are already facing limited capacity issues in providing the training that they require in their settings. So one of the things that we immediately addressed is building capacity within the Commonwealth to meet the requirements as written. It is our intention to train additional folks to be trainers of trainers within the Commonwealth, across the Commonwealth, and within each region of the Commonwealth.

MS. CRUTCHFIELD: So you're building a system.

MS. MITTNACHT: We have identified some funds to try to build that capacity to have the training so that it is more easily available for each of the school districts to find the training and find someone who can train them. If they adopt a specific methodology, then that methodology has requirements within the methodology of what constitutes training. So we took the 16 hours, as a start, that are present in the OCCS regulations that we recommend. We think that schools will take that seriously. We have taken those kind of recommendations seriously in the past, and we feel that kind of training will then be a more consistent presence in the Commonwealth.

MS. CRUTCHFIELD: It ‘s interesting that I'm trained as a community mediator in 72 hours and that is nowhere near the intensity that this is. So I have a concern about not the timing so much as the quality. The system of training and building capacity, wonderful, I'm glad to hear you say that, and I am, too, concerned about the notion that it's recommended as oppose to required.

CHAIRMAN PEYSER: Let me back up a second. This does, in some ways, contradict the comment about unfunded mandate -- there is a requirement that all staff participate in in-depth training. It's not as if that's an option.

MS. MITTNACHT: It's a requirement that all staff participate in the training that is done by the school district for all staff.

CHAIRMAN PEYSER: "Shall participate in in-depth training in the use of physical restraint." There's a requirement they participate. It's not optional. The recommendations have to do with the length of it and it sort of gets to Pat's comment.

MS. MITTNACHT: That's the in-depth training. But that is not for all staff.

CHAIRMAN PEYSER: I'm getting back to Judy's comment about in-depth training on the16 hours. "Such staff," the designated program staff, "must," it's not option, it's a mandate. But the issue is, as Pat described, that it's quality over quantity. The thing I'm just concerned about, we say it's 16 hours, you know, what is in that 16 hours?

MS. CRUTCHFIELD: Thank you.

CHAIRMAN PEYSER: I'm just not sure we are buying anything by saying it's 24 hours. Sometimes the amount of training expands to fit the available time. It doesn't mean there's more training that's done. I think it is perhaps more useful to think about guidelines, and these guidelines may be inadequate, but to indicate that the training itself is required and that in the standard course of doing business around the program audits that we do, we ought to be evaluating whether the kind of training is actually any good or not, regardless of whether it's 24 hours or five minutes.

DR. GILL: That would take care of my problem. Thank you.

MS. MITTNACHT: Also, we didn't want to arbitrarily require a specific amount because, as the woman who spoke from CPI said, some of their training sessions are eight hours. So what we did was try to make sure, when we identified the content of the in-depth training, that we said the things that were really critical that this person receive training in, and that's number 4.

COMMISSIONER DRISCOLL: I think the Chairman has given us a mechanism to check on that, which I think is good --

CHAIRMAN PEYSER: Focus on quality.

DR. THERNSTROM: Just one last question. Tim Sindelar charged that these regulations, Special Circumstances 46.07, were not in conformity with federal and state statutes. Would you just like to say a word in response to that charge?

MS. MITTNACHT: One of the things he said is that the protections for students without disabilities would be better than the protections for students with disabilities, and that's why we proposed to you the language, on that blue sheet that you have, to make clear that the systemic protections that are in place for children in these section 46 regulations also apply to students with disabilities. Other than that, I would say to you that the special education regulations are the most extensive regulations that are in the field of education, period. They have significant personal protections and individual protections and procedural protections. We feel that other than ensuring that the systemic protections are fully in place, that the procedural protections that the IDEA and the state special education law guarantee, are strong and would address that concern.

DR. THERNSTROM: I just wanted something on the record on that since that charge was made.

COMMISSIONER DRISCOLL: By the way, I'm assuming that you're going to accept my amendment which addresses that issue.

CHAIRMAN PEYSER: What I'd like to do, if someone would move the motion that's before us here to approve these regulations, then we'll put the amendments on the table.

DR. SCHAEFER: So moved.

MS. KELMAN: Can I ask a quick question? I'm really wondering why the prone and floor restraints were kept in.

MS. MITTNACHT: They are kept in only if you have received in-depth training and, as you will see, the in-depth training does include experiencing restraints, understanding the dangers of the various types of restraints, and we put in as protective language as we could, recognizing that there may be circumstances where these regulations will apply not only to the public school settings and classrooms but to private special education day school settings, and there are sometimes very challenging cases where it may seem that the most appropriate restraint is the prone restraint. We wanted to ensure that any use of prone restraint was done fully cognizant of safety considerations, health considerations and medical considerations. But in that sense we paralleled the Office for Child Care Services which does allow prone restraints with the training. So that was our attempt to parallel how they are managing it for the residential settings, to at least give that possibility in the judgment of a staff member who had been fully trained, had in-depth training. So that was our intention.

CHAIRMAN PEYSER: There have been three amendments that have been specifically discussed, and what I would like to do is say what those are now, and then to see if they are acceptable to members to vote in block, or whether we need to deal with them individually. First is the amendment the Commissioner circulated which you have before you which amends the section around Special Circumstances, in particular, it talks about specific words including the limitations on chemical and mechanical and seclusion restraints set forth in 603 CMR. This is intended to say, I believe, if I'm reading correctly, the IEP cannot override the existing regulations, it goes beyond the protections embodied in the--

MR. IRWIN: I move the amendment.

CHAIRMAN PEYSER: Okay, we'll deal with them individually.

MR. IRWIN: I'd prefer.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education would amend the proposed revision to 603 CMR 46.07(1) as follows (proposed change is underlined): (1) <u>Special Circumstances – Students with Disabilities</u>. Restraint administered to a student with a disability pursuant to an Individualized Education Plan ("IEP") or other written plan developed in accordance with state and federal law to which the public education program and the student's parent or guardian have agreed shall be deemed to meet the requirements of 603 CMR 46.00 except that <u>the limitations on chemical, mechanical and seclusion restraint set forth in 603 CMR 46.02(5), the training requirements set forth in 603 CMR 46.03, and</u> the reporting requirements set forth in 603 CMR 46.06 shall apply.**

The motion was made by Mr. Irwin and seconded by Ms. Crutchfield. The vote was unanimous.

CHAIRMAN PEYSER: The second amendment is to section 46.02 which is the Definitions, paragraph 5 under Restraint - Other, and this is the second sentence. I'm going to put in some words here that I thought people said, unless someone has a better formulation of it now. "The use of chemical and mechanical restraint is prohibited unless explicitly authorized by a physician and approved by a parent or guardian."

DR. GILL: Can you add "in writing by the parent or guardian"? Written approval?

MS. CRUTCHFIELD: That makes sense to me. Sometimes if it's not on paper, it doesn't exist.

CHAIRMAN PEYSER: And approved in writing by a parent or guardian.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education would amend the proposed revision to 603 CMR 46.02(5) as follows (proposed change is underlined): Restraint – Other: Limiting the physical freedom of an individual student by mechanical means or seclusion in a limited space or location, or temporarily controlling the behavior of a student by chemical means. The use of chemical and mechanical restraint is prohibited unless explicitly authorized by a physician and approved in writing by a parent or guardian. The use of seclusion restraint is prohibited in public education programs.**

The motion was made by Mr. Irwin and seconded by Dr. Gill. The vote was unanimous.

CHAIRMAN PEYSER: And the third is the word "serious", section 46.04, paragraph 1(b). Student behavior poses a threat of imminent serious physical harm to self and / or others."

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education would amend the proposed revision to 603 CMR 46.04 (1b) as follows (proposed change is underlined): The student's behavior poses a threat of imminent serious physical harm to self and/or others.**

The motion was made by Ms. Crutchfield and seconded by Mr. Irwin. The vote was unanimous.

CHAIRMAN PEYSER: Any other amendments that members wish to put on the table at this time? If not, the overall motion to approve the regulations as amended is on the table and it's been seconded.

On a motion duly made and seconded, it was:

VOTED: **that the Board of Education, in accordance with General Laws chapter 69, section 1B, chapter 71, section 37G and chapter 71B, and having solicited and reviewed public comment on the proposed regulations in accordance with the Administrative Procedure Act, G.L. Chapter 30A, section 3, hereby adopt the Physical Restraint Regulations on Program and Safety Standards for Approved Public or Private Special Education School Programs (603 CMR 18.00), as presented by the Commissioner and amended by the Board.**

The motion was made by Mr. Irwin and seconded by Ms. Crutchfield. The vote was unanimous.

SCHOOL BUILDING ASSISTANCE – Discussion and Vote

CHAIRMAN PEYSER: We will take up the progress report on History / Social Science last. We have a couple votes we need to get out of the way. If Jeff Wulfson could come up, the first item is number 7, School Building Assistance. And there are some amendments to the regulations as well as the issue of Fall River, which is discussed in the public comment. Commissioner?

COMMISSIONER DRISCOLL: Let me do the introductions. Everybody knows Jeff Wulfson. To his right is Christine Lynch, and to his left is Jay Sullivan. Paul Reville talked about capacity earlier. I don't think there's anybody more taxed than these two staff members trying to essentially run School Building Assistance by themselves. And the $750,000 that was to accompany the running of SBAB when it got moved out of the Department got lost when it got moved back in. So they do yeoman's work. We want to summarize the proposed regulations. Now, are these going out for public comment?

MR. WULFSON: Yes, this is the annual adjustment to the cost factors in the regulations that we are required to do by statute that basically determines the total allowable project costs for which we will reimburse communities. It is clearly related to the cost waiver process because, as Senator Menard stated very accurately, the whole fairness of this process hinges on us having reasonable cost factors. We last visited this issue at detail level two or three years ago, and at that time, we determined that the cost factor seemed reasonable based on current projects that were being bid at that time. That was the point in time when we decided to adopt the Engineering News Record building cost index for Boston as the annual inflation factor. We have now had two years of relatively low index inflation numbers which seems to go counter to the anecdotal evidence that public construction is going through the roof in terms of costs. We are not quite sure what's happening out there, but we are committed to coming back to you in May when we revisit this in final form with both the summary of the public comments, which I think will be extensive, and also another analysis of current bids for school construction projects.

MR. IRWIN: Jim, if I may, one of the problems of just using the ENR index is a lot of these school systems go out, get the initial bid, then come back because they have to go with value engineering in order to lower their costs because they see the bid is just so high. Then when the final bid is accepted, that's what ENR uses. So they don't use the original bid that went out and you don't use the value engineering that is done during the bidding process. That can tend to be a problem. So there are other factors that come into the cost of building in the area.

MR. WULFSON: Certainly the biggest problem with ENR is it reflects private construction predominantly, and we all know there are extra costs associated with public construction. And the dilemma we always have is there isn't a good index available of public construction costs.

CHAIRMAN PEYSER: These are going out for public comment?

COMMISSIONER DRISCOLL: This is the easy part. But I think that's very important because there seems to be a disconnect and that certainly explains part of it. If not all of it, most of it.

DR. SCHAEFER: And we certainly don't have anything that disaggregates the various sections of the state.

MR. WULFSON: No.

DR. SCHAEFER: That doesn't make any sense to me.

MR. IRWIN: Maybe I can help you with this a little bit. You're no longer in a construction industry where a contractor just works in one or two or three towns. You're dealing with construction companies and construction managers that are not just New England wide but nationwide. Therefore, they don't have an office in each town, where years ago you had a local construction company that took care of two or three towns. It's not the case anymore.

CHAIRMAN PEYSER: Any further discussion on this one? Is there a motion to send it out for public comment?

On a motion duly made and seconded, it was :

VOTED: that the Board of Education, under the authority of General Laws Chapter 69, Section 1B and pursuant to Chapter 70B, Section 9, authorize the Commissioner to solicit public comment and review, in accordance with said statutes and General Laws Chapter 30A, the Administrative Procedure Act, on the proposed amendments to the cost standards in the School Building Assistance Regulations, 603 CMR 38.00.

The motion was made by Mr. Irwin and seconded by Ms. Crutchfield. The vote was unanimous.

COMMISSIONER DRISCOLL: The next issue is more problematic. This is the problem, as we know, that started with Administration and Finance. It's this whole issue of reforming School Building Assistance because it's the next Big Dig. It's just been escalating at a cost of billions of dollars. There are a number of recommendations made to try and provide some efficiencies in the whole system. As Fall River said, they went out to bid a lot higher than they thought and then out to re-bid, still high, even though I think they saved $700,000. Our recommendation is that we establish a formula by which we approve partially that which they exceed because otherwise we are paying nine cents on every dime. There has to be some curtailing of the costs.

It is unfortunate that Fall River is the first we deal with. I don't know if you want to explain the formula. I would like you to first comment on the idea that Fall River did due diligence and therefore got hurt by going out to bid again when they could have come in and got 100 percent. And then secondly, the whole idea of the timing of all of this as it affected Fall River and will affect others, including Lawrence.

MR. WULFSON: We certainly have been working on these cost waiver issues, as the Board knows, for the last couple of years. I believe it was in 99 when we amended the regulations then, we significantly tightened it up, although I don't think everybody really realizes that at this point. But we used to be much more lenient. In the 99 changes, we basically said we're going to limit the waivers to very specific, site-specific, and identifiable costs that can be identified during the design phase. We are trying to get away from this notion that whatever the final costs come in after the bids, the state is going to pick up the full reimbursement percentage. We have reminded districts of that during the course of this past year in our project advisories.

Yes, I think there is probably an element of unfairness in that Fall River probably would have been treated more leniently if they had come in a year ago. From our perspective, obviously we felt that we are in a new year now, if we treated them differently, then we'll have a number of other requests that will be coming to the Board later this year, and we are in this never-ending pattern. Where do you draw the line? Obviously that's ultimately the Board's decision.

We are trying to leave the guidelines that we are using as informal staff guidelines based on the recommendation rather than putting it in the regulations. Waivers, by their nature, are intended to cover the unexpected, and we didn't want to preclude the Board from having the discretion to really do anything that made sense in a given situation. But rather than just say whatever the costs are, that's the amount of the waiver, we are trying to focus on the specific discrete elements related to the unusual site. Then we can identify what some specific cost was and ultimately verify those costs during the audit process. We also want to put an upper limit on it, which is this ten percent guideline. We felt uncomfortable recommending larger amounts than that because you end up taking money from other projects because you don't have enough to fund all of the projects. It's arbitrary, there's no question about that, but lacking the engineering staff to review these cost estimates in detail, we are not sure what else we can do without having just an open-ended process where the cost factors don't mean anything.

CHAIRMAN PEYSER: Let me back up a second. The request for the two schools was for a waiver of about $6.1 million. Is that the full amount of the additional costs beyond the originally submitted plan?

MR. WULFSON: It's actually slightly above the estimated project cost at this point.

CHAIRMAN PEYSER: Then the recommendation is to approve essentially $3 million in waivers.

MR. WULFSON: That's correct. Again, what we have done in the past is, typically, recommended the full amount of the request or we have discouraged the community from going forward with the request. This is trying to fine-tune it a little by saying maybe part of it is justified but we can't necessarily support you with the full amount.

CHAIRMAN PEYSER: In this case, half of the amount is being recommended but they'd be reimbursed at 90 percent of that half, so $3 million, 90 percent of that, or $2.7 million.

MR. WULFSON: Correct. The only other thing I want to reiterate is the point you just made, which is that this is pretty much a zero sum gain; the money we spend here is money we can't spend elsewhere. This is, I suppose, a difficult and problematic choice, but it's the choice we actually make implicitly or explicitly every day. And that, unfortunately, I suppose it's to our benefit that we don't always know who the injured party is. In this case, Fall River clearly has some reasons to be concerned or complain. On the other hand, there are others waiting in line behind Fall River who are not going to be able to go forward or be fully funded in a way they would be able to in the absence of this decision. So is that fair?

CHAIRMAN PEYSER: Absolutely. As the Commissioner noted, in the SBA progress report that's in your Board packet, with the number of projects we currently have on the waiting list and the extraordinary number of applications we have in this year that we also expect again next year, the waiting list for funding now is going to extend to five or six years. And clearly that's literally a breakdown of the program when districts have to wait that long for funding. If needs change or building costs become excessive, it's problematic. We clearly have more needs than we can look forward to meet.

MS. KELMAN: I'm just wondering where your proposed figure came from.

CHAIRMAN PEYSER: The one I was just citing?

MS. KELMAN: The 1.6.

MR. WULFSON: The recommendations are based on the identification of specific costs and identifying those that we truly believe are site specific, as opposed to some more general costs that are probably implicit with most projects.

CHAIRMAN PEYSER: Sort of a general inflation factor, not something --

MR. WULFSON: It's very difficult when you're dealing with general construction bids to separate out how much is related to excavation versus how much is related to the extra costs of doing business in the urban area versus how much is related to the market conditions, and clearly there are pressures there. And we don't believe we have a commitment from the legislature or this Board to fund all of those things.

MR. IRWIN: I think really the bottom line here is that, with all due respect to all of you and how hard you're working and the amount of money that is passing through this area, we don't have enough staff, engineering staff, to go through these changes. With the amount of money that's going through the SBA, we have to do something about this. This is unfair to everyone, including the Board. Because to take a vote on

this and not actually have an engineer that gives you some true numbers and figures, it's a tough vote to take. And the other part is it's not fair to a city or town that we are not looking at it with an expert on that. It's just too bad that the legislature doesn't see fit to fund the people in this office to do the proper job they should be doing.

CHAIRMAN PEYSER: I think that's a very good point. We have asked for money, as you know, and we'll see what happens. And it goes beyond just this issue to other issues related to the determination of reimbursement rates going forward under the reform law which exact a fairly heavy burden. I think appropriately, even administering the program itself is beyond the capacity of the current organization.

MR. WULFSON: Any time you use factors or percentages or any kinds of rules of thumb, clearly, there's an element of unfairness. It's an arbitrary number and we understand it's a shortcut.

CHAIRMAN PEYSER: But within the context of these constraints which obviously we are living with now, I don't think that what's before us is unreasonable. Basically we are splitting the difference with the town. With all things being equal, it doesn't seem like such a bad deal, and especially in this case for the vast majority of the project we are reimbursing the city 90 percent.

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 previously authorized projects:**

City of Fall River - Greene School, provided that said waiver shall not exceed $1,674,000;

City of Fall River - Borden School, provided that said waiver shall not exceed $1,362,000;

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

The motion was made by Ms. Crutchfield and seconded by Dr. Schaefer. The vote was unanimous.

CHAIRMAN PEYSER: Can we forego the update? There's a written update?

MR. WULFSON: It's in your packet.

CHAIRMAN PEYSER: All right. The grants, which is section 8. Just to keep people apprised here, there are grants for Workplace Education, technology literacy, virtual education space, transition planning, full-day kindergarten and alternative education pilot demonstration projects. That total value is under $1 million. It's about $750,000.

On a motion duly made and seconded, it was:

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

The motion was made by Mr. Irwin and seconded by Ms. Crutchfield. The vote was unanimous.

PROGRESS REPORT ON PROPOSED REVISIONS TO HISTORY/SOCIAL SCIENCE CURRICULUM FRAMEWORK - Discussion

CHAIRMAN PEYSER: So now, if we could move to history / social science. There's one more item on the agenda, which is to review the progress of the committee on the development of the history / social science frameworks or the revision of those frameworks, and perhaps, to the extent we have guidance, to provide them with guidance and direction going forward from here. Commissioner?

COMMISSIONER DRISCOLL: I'm delighted so many of our panelists are here, and they are doing yeoman's work. My goal today is to have this panel, which is doing such great work, go back to work tomorrow with some direction so that they feel affirmed of their work. This issue of assessment at the high school level is tricky to try and figure out. It's tricky to go from the beginning of man to at least maybe World War II. I don't know how far they get these days, but it's very difficult, especially trying to cover world history with all that is changing. But the outline, as you've seen, is very thoughtful. I think the panel is off to a great start, so I want to have a discussion, Mr. Chairman, so that the Board can give a sense of direction to this panel so that they can complete their work. Is there anything you wanted to add, Sandra or Susan?

MS. STOTSKY: I just want to make sure that I introduce the people who are here and who took the time to sit here all day for this moment in the sun: Kathy Babini of the Plymouth Public Schools; Bob Davidson, Whitman Hanson Regional; Gorman Lee, Medford Public Schools; Rodney Barker, Newton Public Schools; John Kennedy from the Medway Public Schools; Charles Horn, Lenox Public Schools; Joyce Malcolm at Bentley College; and the staff people who have been very involved, John Keh, Barbara McLean, and Marge Harris. So I just wanted to point them out.

COMMISSIONER DRISCOLL: Thank you all for your tremendous work.

CHAIRMAN PEYSER: The one big issue overhanging all of this is how does this fit in with the overall assessment strategy, particularly the competency determination that ultimately will encompass history and social science which relates specifically to the 10th grade history / social science curriculum? The proposal that's before us today, if I understand it correctly, maintains the basic sequence of courses or coursework that is currently embodied in the history framework. To simplify, perhaps, at least in high school, it says we are looking at a 9th and 10th grade world history course, and an 11th grade and 12th grade U.S. history.

The issue, of course, related to the assessment and the competency determination has to do with the place to be held for American history and civics, those two things in particular, within the context of a high-stakes graduation requirement. The Lieutenant Governor in her report recommended strongly that when it comes time to integrate history / social science in the graduation requirement, that the focus be around American history and civics, which I think makes a lot of sense. I think there would be a lot of support among the public in general, policymakers specifically, around that conclusion. However, it raises some very serious logistical problems, not the least of which relates to the issue that if you drive American history in the earlier grades, 10th grade in particular, you may dilute its content, depth, quality, and may limit the students' knowledge and depth of understanding of American history by the time they graduate. I think this is an interesting and valid concern.

I don't think we are prepared here today to resolve this issue, to say what the assessment should be, at this point in time, and that this will be the particular assessment that is incorporated in the graduation requirement and competency determination. I guess my interest is in doing two things: one, to provide whatever guidance we can to help the committee go forward and complete its work; and two, to inform that work in such a way that when the committee reports back, they are able to present us with options that we can make a decision on. So that is the preamble.

Is it feasible to say, you should continue working on the existing course sequence as envisioned by the existing framework as well as the current version of this draft, but come back with some additional options? An example might be World history in 9th grade, American history through the Civil War in 10th grade, American history post Civil War in 11th grade. There may be other permutations here that we can talk about. But the question on the table, I suppose, is the extent to which it's possible to come back with those kinds of alternatives so we can actually make an informed choice, at the proper time, on this subject. Please comment.

DR. SCHAEFER: Before you ask them to comment, I don't mean to contradict you, but you made a statement that we were not prepared at this point to say what direction we wanted to see, and for myself, that's not correct. I argued this in 1996-97 when we were dealing with this, and I do believe that American history should be the graduation requirement and I was prepared to say it four years ago and I'm prepared to say it now.

DR. THERNSTROM: Ditto. Over here. I second that.

COMMISSIONER DRISCOLL: I appreciate this, and this will be hard to believe, but if the Chairman and I have discussed anything at length, it's this issue. We spend at least an hour a week, if not more, talking about these permutations and combinations. But what I'd like to do, if I may, Mr. Chairman, is spend a minute talking about what this framework means in terms of how it changes from the former framework. I'd like to establish some context, Susan, for the difference in this framework, what is it we are trying to accomplish as it relates to the other framework, and then leave aside the issue if we can of the high school for a moment. I think the work that these people are doing is very important and I think it affirms some of what other Board members have done in the past.

MS. WHELTLE : I certainly would second that. We have a very thoughtful group that is dealing with a very vast amount of material, and one of the things they said first off was that they acknowledge that the existing framework adopted in 1997 has had a number of beneficial effects on schools in really promoting history and social science to a point that it really wasn't before, so that's good. That said, however, the format of the existing framework has been cumbersome for teachers to use because it has several sections that ideally intersect, without clarity on how they do. Those two sections are really the standards on the core knowledge sections and how those pieces go together has been challenging for schools and districts to deal with.

So the panel's solution was to create grade-by-grade standards, as opposed to four-year blocks, that really specify the content knowledge that's expected at a certain grade level. This is the first framework for which we have done that. I think it will be a beneficial change and we have done a number of meetings around the state and we are doing two more this week and next week. But teachers seem to be responding well to the idea of grade-by-grade standards. There's a draft of a page of a format that you see there. I think there are questions around how specific we should be about the content, in what detail we need to go, given the MCAS testing. That still needs to be resolved. So those are, basically, the changes that we are working on. One of the things that people like very much about the existing framework, however, is the rationale in the Guiding Principles that appear in the front.

COMMISSIONER DRISCOLL: Also, the specificity of the standards is very, very important. It gets back to some of the issues that were dealt with during the frameworks before. And then this idea of identifying the core standards, because there isn't a framework in the country that can adequately deal with all that everybody wants to deal with. The only way to do it is to allow some freedom but around this core. Those are the very important aspects of the framework that I'm very pleased with.

MS. WHELTLE: I will say that we have learned some valuable lessons from the group that worked on the science and technology / engineering frameworks. In many ways, they were dealing with somewhat the

same framework problem of how do you write comprehensive standards but then also indicate what are the absolute core pieces of knowledge that everybody should have. So we are following in their footsteps and hoping to learn.

DR. THERNSTROM: Except that you are specifying content on a grade-by-grade basis on the assumption that you've got two years of world history and then American history in 11th grade. There are some members of this Board, myself included, who want two years of American history and one year of world history, and so I'm very unhappy about your continuing to go down this road without that issue being resolved.

COMMISSIONER DRISCOLL: One of the suggestions that was made, for example, is to do the four modules and then let people decide like we did with physics, chemistry, biology and earth science, teach them in any order you want. The question is, and I'd be interested in the panel's view on whether or not to include world history in 9th and 10th grade. I'm not so sure that that's so easily turned around. I don't know. I mean, there's some people I would think in the field that would consider that unfair. So I'd really be interested in how the field would feel if all of a sudden we shifted grade 10 to United States history.

FROM THE FLOOR: I think we need to be mindful that the existing curriculum is the curriculum that was established in 1997 by the State Board of Education, and the communities in Massachusetts have spent untold millions and millions of dollars implementing this curriculum. Not only have they spent dollars for materials, they have also spent dollars on curriculum development and all sorts of other things like staff development. So this is a major issue. We currently require U.S. history for graduation and it is usually taught at grade 11. So that might be something to consider. But I think that -- you know, I understand the weighing of world history versus U.S., but the other issue that this Board needs to consider is that the Board owns this curriculum right now, and if this curriculum is changed significantly, that change is going to be met with tremendous, tremendous concern from a fiscal point of view as well as anything else. This will amount to millions of dollars in terms of changes.

COMMISSIONER DRISCOLL: The Chairman and I really do argue this out every week. It's not as simple as science in my judgment. There are a lot of nuances here. But for the moment, if you could picture four separate courses, four modules if you will, two of which are world history and two of which are United States history, and let's assume this current Board, in its wisdom, compared to the other Board in its wisdom, decided to take the two modules that are world history and move them to 11 and 12 and have the two United States history modules be 9 and 10, couldn't all the books just be used at a higher level?

FROM THE FLOOR: It actually would not, because currently -- I'm trying to just visualize this. Currently, as you know, U.S. history picks up at 1865. The 8th grade course provides U.S. history which goes up to and including 1887, 1877. Most school systems have gone out and purchased U.S. history books which pick up with 1865, and so you see this at grade 11, these books. Just to give you an idea, these books are now costing $65 to $70 a piece. So our concern is that we hear the Speaker, we hear the Senate President, we hear the Governor talking about fiscal restraint, and to impose this, many school systems -- try to envision this -- many school systems just finally this year purchased the materials because they were under such constraints to implement the 1997 standards and frameworks. If we go back to them and tell them that they have to do it all over again at numerous grade levels, it's going
to be one big problem.

COMMISSIONER DRISCOLL: So let's just take the last two issues, because we have them all out there: one is adding to the problem, assuming you have the United States history in grade 11 and that fulfilled everybody's -- you're old enough to represent them all, you're my age.

FROM THE FLOOR: I'm very old.

COMMISSIONER DRISCOLL: If we maintain grade 9 World history, grade 10 World history, then in grade 11, as you suggest, have a United States history course, there are then two questions, required under law anyway. Under the competency determination, for those who want U.S. history to be what's tested, the Lieutenant Governor and others, and the general public who say, "I wish kids would know something about United States history when they graduate", that makes that an 11th grade test, and that in one sense doesn't allow for the retake. So that's one issue. The other issue is that not only in the law itself, but in, again, some people's minds, we ought to be testing not just from the Civil War on, but we ought to be testing the Federalist Papers and something about Thomas Jefferson and so forth. So that's why it gets so complicated, because while you suggest what would be the logical, 9th grade world history, 10th grade world history and 11th grade U.S. history, I don't agree. I'd rather test U.S. history and have it in 9 and 10.

DR. THERNSTROM: He is describing a curriculum in which kids don't get any American history prior to 1865 after 8th grade.

COMMISSIONER DRISCOLL: Correct.

DR. THERNSTROM: I think it was the Chairman before who said he was worried about having American history in 10th grade, that it would be a diluted, dumbed-down version because you're more sophisticated by 11th grade. But here we are talking about kids getting absolutely vital American history for the last time in 8th grade. I have got real problems with this.

FROM THE FLOOR: I don't disagree with that philosophically, but I think what I was trying to present was a very practical and also a fiscally responsibility position. I don't know what the Board of Education wants to do, but I wouldn't think it would want to put itself in a position of saying what we did in 1997 was absolutely incorrect, we imposed this on communities all over the state, they spent millions of dollars, people were trained, and now we're going to turn around and say that wasn't the right way to go.

CHAIRMAN PEYSER: I appreciate the comment, but this raises the reason why I believe we are not ready to make a decision now and we need to have options on the table that we can choose among, weighing the practical issues, weighing the assessment and graduation issues, and weighing the educational issues, all three of which may point us in different directions, and somehow we have to make a choice or come up with --

DR. THERNSTROM: But in the meantime, this committee keeps working going down a road we may not agree with in the end.

CHAIRMAN PEYSER: What I'd like them to do is work on several paths at the same time. I know that is adding to their burden, but unless we are presented with options, we're going to find ourselves several months from now at exactly the same point we are today, with the only option being rejecting the draft or approving it. And I'm not sure that's a tenable position to put ourselves in.

COMMISSIONER DRISCOLL: I'd be interested if anybody had a solution.

MS. KELMAN: You're not going to like my suggestion. I really think that we need to consider not making history a part of the graduation requirement, and you're talking to someone whose favorite subject is history, who loves social science, who plans to study it in college. But there's so much history.

DR. SCHAEFER: No way. American history has to be a requirement.

CHAIRMAN PEYSER: This is not a decision we can make because right now it's a statutory requirement. The only issue is when it's integrated in the process. But I will say it's not going to be soon under any circumstances.

DR. SCHAEFER: Which is most unfortunate.

CHAIRMAN PEYSER: Which is certainly unfortunate. But I think the result is there's a statutory mandate to include it at some point in time in the graduation requirements.

MS. KELMAN: Those can be changed and I think we need to think about that.

FROM THE FLOOR: I just wonder whether we can consider as one of the options having an 11th grade test in American history. I don't see why you couldn't test it quickly the way the SAT's come back with their requests and then for those who didn't pass it, they have 12th grade to take it again, that way you wouldn't need to shift everything.

CHAIRMAN PEYSER: That's something we need to consider. There are some statutory issues, there are process and fairness issues the Commissioner alluded to which are not easily addressed, but maybe there's a way to do it. I think this is why also we need more time to think through not only the possible implications on the field in terms of their costs, but also in terms of the assessment.

DR. SCHAEFER: Can't the texts that are being used in American history now be used in the 10th grade?

COMMISSIONER DRISCOLL: When you say get the results back quickly, like the SAT, which is obviously an option that's available, that raises another important issue. Remember, it's not just about getting kids to pass, that's what everybody is focusing on, but we want to use the assessment program to drive instruction, to drive critical thinking and so forth and so on. So if we reduce it down to a multiple-choice test, was it Washington, Jefferson, we lose out all of that strength. And if we give a full test, then it takes some time. Nothing's easy.

DR. SCHAEFER: Could we reduce the content so that you have world history in 9th grade and half of 10th grade and then starting in the second half of the 10th grade American through 11th grade and then a test?

CHAIRMAN PEYSER: Anything is possible. What I'd like to do is ask the committee to come forward with two or three viable options which present tradeoffs in both directions but at least allows us to make a choice.

FROM THE FLOOR: To reiterate what you're saying, I taught 7th grade, one of our charges in the fall when we went to public hearings, there wasn't going to be a change in scope and sequence. I think for us to have gone public at public hearings in saying that and now coming back and saying there's been a change is going to be an issue for us as well, because we went out and said the Board came to us and said there'd be no change in scope and sequence, and that was the premise we were working on at the time, that that wasn't going to be changed. We have a law now that we have to take and pass U.S. history in grade 11, so I'm not quite sure.

COMMISSIONER DRISCOLL: Not grade 11.

FROM THE FLOOR: U.S. history has to be taken and passed, and it's being done in communities across the state now. So to add another U.S. history test or a different U.S. history test, I'm not sure why we need to change something that's already in place. There are local exams being written and kids are having to pass U.S. history now to graduate.

CHAIRMAN PEYSER: The issue with the statute is that the state is required to make a competency determination based on student performance in history among other subjects. So this gets back to the whole question with MCAS, generally, which is that in order for the state to make that determination, there needs to be some external measure of performance in those demands.

COMMISSIONER DRISCOLL: Since the law says 10th grade right now, and since a lot of people think it should include U.S. history, thus we wind up in these conundrums.

MS. STOTSKY: To follow up on what Commissioner Driscoll is saying, if we could have several members with a number of people from the field including superintendents to work out three options, possibly thinking about the tradeoffs, what extra materials might need to be provided, at least to get a sense of what it could be, you have three or whatever options, and start getting some sense from legislators as well. Because they have been part of the whole issue in what we do, the Governor's office on down. And having public opinion at least think about what is it we desire of high school students before they graduate from high school. And think of these options from that perspective.

COMMISSIONER DRISCOLL: Not that it's easy to say, but it's easy to say. If we took the money out, okay, we're going to change the sequence but we're going to reimburse you for all your costs, will that solve the whole problem? Or are there still people out there that would live and die for world history in 9 and 10?
FROM THE FLOOR: I would just like to comment on that. We are at my school, my district at least, still trying to implement changes based on the latest curriculum. It's very time intensive, writing curriculum. It takes an awful lot of time to put it into practice and have these curriculum guides ready. It's not just an issue of money, it goes well beyond that. And not to say that's a reason to not make any changes, but it would take a number of years, I think, to actually implement these so that teachers could make these changes in the classroom.

COMMISSIONER DRISCOLL: Thank you.

CHAIRMAN PEYSER: Okay. Well, we solved that problem. I know we have provided direction by indirection, I suppose, but is that --

MS. STOTSKY: In a month we could come up with some possibilities.

COMMISSIONER DRISCOLL: Is it reasonable for the panel -- you did it grade-specific right up the line, so is it reasonable to develop a world history course 1, a world history course 2, and then, I don't know, it certainly should be United States history from its founding to the current time. Maybe call that two U.S. history courses.

DR. THERNSTROM: I don't understand this notion of options when they are going grade by grade specifying content. It makes a huge difference in what they are doing and what the sequence is going to be.

CHAIRMAN PEYSER: Are you prepared to say right now we are going to do history in 10th grade and that's where the exam will be? Is that a decision you want to make today?

DR. THERNSTROM: I would be delighted to say that.

CHAIRMAN PEYSER: And the course will be from the founding to the present, from the founding to the Civil War without knowing what the implications will be?

DR. THERNSTROM: Most important thing is for our students to learn -- and Jody, by the way, what you're saying is that our high school graduates don't even have to know what somebody who is naturalized as an American citizen knows, some basic facts about American history. I think the exit exam should be focused on American history. It should be the most important part of the package of historical knowledge that students acquire.

CHAIRMAN PEYSER: I agree with you, but we are where we are and we need to figure out how to get from where we are to some place else, and whether that's even possible to do, or when to make the right choices. The problem is we aren't being presented with any choice here. At the moment we have a particular path the committee is going down, fine, they are doing what they were asked to do. But what I'm saying is we need to ask them to do something a little bit differently here and give us some choices that we can evaluate one against the other and make an informed decision. We don't have to make it now, in part because we aren't under such a severe time constraint that if we don't make it today, something is going to happen that we don't want to happen next week. That's not where we are at this point.

COMMISSIONER DRISCOLL: I think we have to understand how serious it is to the field.

DR. THERNSTROM: I do understand that, but at the end of the day we have to do what's educationally right.

FROM THE FLOOR: I sense there's two things going on here at the same time. One, there's a couple of people who want content, and then there are other people who want competency and context. And I think you have to first pull it apart and take a look, rather than trying to do the two things at the same time.

CHAIRMAN PEYSER: How do you do that?

FROM THE FLOOR: That's what we have to discuss. I'm saying that because the content is just a lot of content, and I would like to see more on -- this is my personal opinion as an 8th grade teacher -- a more thematic approach where it doesn't necessarily matter on the content, but it's whether or not the student can do certain skills to be able to comprehend cause and chronology, so on and so forth. When you pose a question on a more thematic route, they can use an example on U.S. history or world history. I think from what I see, there are some people who want just total content rather than the context.

CHAIRMAN PEYSER: Can I make a nitpicky comment? Not on this particular issue, but on the page that was submitted that's on numbered page 3 in the memo. It's an excerpt of the draft standard for grade 8, Jacksonian democracy, et cetera. I would encourage you to avoid trying to summarize large periods of history in a single paragraph. I don't think it adds anything and I think it opens up all kinds of legitimate arguments about whether this is, in fact, a fair representation of what's taking place or what's important. So I would suggest deleting these introductory paragraphs and let the standards speak for themselves.

MS. STOTSKY: Could we perhaps suggest coming up with for your approval within a month, next month, several different alternatives for thinking about the high school issue, which is the issue that we really have to wrestle with? And more or less K-8, although there may be some little changes there might be implications for, but at least think about how we could have the Board --

CHAIRMAN PEYSER: Work on a schematic design of what it would look like.

MS. STOTSKY: We could do that with meetings of the committee as a whole and then come forth at the March meeting and then continue the discussion then.

CHAIRMAN PEYSER: That would be great. Again, I also would be doing it in consultation with Jeff's group to figure out whether some of the alternatives are feasible in terms of the assessment.

MS. STOTSKY: Right. We would involve Jeff in these discussions, as well as anybody else the Commissioner might designate.

CHAIRMAN PEYSER: Sorry for all this, but this is really important work and I think we are actually making some progress. And the work you've done to date is very productive, it's going to lead us whenever we get to the end of this process to a much stronger framework. So thank you very much. With that, I think we are adjourned.