

## MINUTES

March 7, 2008

Minutes of the meeting of the State Board of Education held March 7, 2008, at the Utah State Office of Education, Salt Lake City, Utah. Meeting commenced at 10:20 a.m.

Chairman Richard Sadler presided.

Members present were:

Chairman Richard Sadler  
Vice Chairman Mark Cluff  
Member Dixie L. Allen  
Member Laurel O. Brown  
Member Kim R. Burningham  
Member Rosanita Cespedes  
Member Bill Colbert  
Member Thomas Gregory  
Member Greg W. Haws  
Member Michael G. Jensen  
Member Charlene Lui  
Member Randall A. Mackey  
Member Richard E. Moss  
Member Debra G. Roberts  
Member Teresa L. Theurer

Members Janet A. Cannon, Denis R. Morrill and Josh Reid were excused.

Also present were:

Superintendent Patti Harrington  
Deputy Superintendent Larry Shumway  
Associate Superintendent Brenda Hales  
Associate Superintendent Todd Hauber  
Associate Superintendent Judy Park  
Executive Director, USOR, Don Uchida  
Public Affairs Director, Mark Peterson  
Board Secretary Twila B. Affleck

Members of the Press:

Jennifer Toomer-Cook, Deseret Morning News  
Lisa Schencker, Salt Lake Tribune  
Beth Young, Standard Examiner  
Linda Mariotti, Granite School District  
Kristin Rushton, Citizen  
Timothy W. Smith, Interim Superintendent, Utah Schools for the Deaf and the Blind  
Jennifer Seelig, Utah State House of Representatives  
Holly Langton, Utah PTA  
Sue Carey, Utah PTA

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Utah State Office of Education staff:  
Von Horton, Business Services Division  
Emily Eyre, Business Services Division  
Lisa Arbogast, Student Achievement and School Success Division

### Welcome and Student Achievement Spotlight

\_\_\_\_\_ Chairman Richard Sadler called the meeting to order. He excused Board Members Janet A. Cannon, Rosanita Cespedes, Denis R. Morrill and Josh Reid.

Member Laurel O. Brown lead the Board in the Pledge of Allegiance.

Board Member Dixie L. Allen offered opening remarks sharing quotes from Roland S. Barth on the accomplishments of students and the nature of adult relationships in the school; and Ken Blanchard and Sheldon Bowles entitled “Gung Ho” dealing with goals. (For complete details see General Exhibit No. 10477.)

The “Schools to Watch” is an initiative launched in 1999 by the national Forum to Accelerate Middle-Grades Reform. The Forum is an alliance of more than 60 national associations, foundations and educators dedicated to improving schools for young adolescents.

Each year the National Forum honors exemplary, high-performing Middle Schools with the designation of “Schools to Watch”. These schools are selected because they have been found to be academically excellent, developmentally responsive, sensitive to the unique developmental challenges of early adolescence and socially equitable.

The Board recognized two Utah schools that have been selected as 2008 “Schools to Watch.” They are Eisenhower Junior High School in the Granite School District and Tonaquint Intermediate School in the Washington School District.

Eisenhower Junior High School is located in Taylorsville. It has a unique student population – 27% of the students come from 32 countries, and 25 different languages are represented in the school.

Tonaquint Intermediate School is located in St. George. It uses Professional Learning Communities where teacher teams collaboratively assume responsibility for small groups of students.

Principals Nancy Jadallah, Eisenhower Middle School and Barbara Garrett, Tonaquint Intermediate School were presented Excellence Certificates for their schools.

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Board Standing Committee Reports

**Law & Policy Committee**

Member Debra Roberts, Chairman of the Law & Policy Committee presented the following recommendations from the Committee:

Early Childhood, Elementary, Secondary,  
Special Education (K-12) Communication  
Disorders, Speech-Language Pathologists  
and Speech Language Technician, and Preschool  
Special Education Licensure, R277-504

Elements of R277-504 have recently been revised by the Board relative to speech language pathologists and technicians. However, because of the need to move expeditiously in that area, other needed changes were not made at that time. The revisions now proposed would have the effect of ensuring that the rule is aligned with other licensure rules both in substance and terminology.

Staff presented the amendments to R277-504. (For complete details see General Exhibit No. 10478.)

The Law & Policy Committee reviewed the amendments and approved R277-504 on first reading and moves that the Board approve the amendments to the rule on second reading. Motion carried unanimously.

Professional Practices Rubric Explaining  
Criteria Used in Making Utah Professional  
Practices Advisory Commission (UPPAC)  
Recommendations

The Utah Professional Practices Advisory Commission (UPPAC) has a statutory mandate to "...assist and advise the Board in matters relating to the professional practices of educators." UPPAC, a committee made up of nine educators and two community members, receive formal, written complaints against Utah-licensed individuals. The UPPAC investigator and the Commission members make disciplinary decisions and recommendations based on multiple factors in each case.

The Law & Policy Committee reviewed and discussed the factors used by UPPAC as presented in the form of a rubric. (For complete details see General Exhibit No.10479.)

Member Roberts reported that she has been impressed with the process that is being followed by the Utah Professional Practices Advisory Commission.

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Member Bill Colbert commented that he felt that if there is a prison sentence involved the revocation should be for a lifetime; especially if they have inappropriately touched children.

The Committee received the report as information.

Performance-based Differentiated Compensation

The 2008 Legislature did not pass HB81 *Task Force to Study Performance Incentives for Teachers*. The bill created a twenty-one member task force to study and make recommendations for the implementation of a goal-driven compensation system, including performance incentives. The membership of the task force includes fourteen legislators, two members of the State Board, two members of local boards, two teachers, and the Governor's designee.

The Committee reviewed reports of existing differentiated compensation programs from across the country. Staff presented findings of the key elements of the programs and the reported essential principles of these established programs. (For complete details see General Exhibit No. 10480.)

The Committee discussed the essential principles and key elements of the existing programs with the aim of developing a document that can be a point of departure for a Board created Differentiated Compensation Development Team. It was noted that it is anticipated that a final statement of principles should be adopted by the Board prior to the initial meeting.

The Committee recommended that the Board create a Differentiated Compensation Development Team. Member Roberts reviewed who would be a part of the team, the structure, compensation and time line, work products and budget. (For complete details see General Exhibit No. 10481.)

Motion from the Committee to move forward with this concept, have the team put into place with its first meeting to be held in April. Further that it be a very open process.

Teresa Theurer voiced concern that there is not a member of the business community listed on the team and recommended that the business community be represented.

Chairman Sadler suggested that Board Members e-mail leadership with their desire to serve on the committee as well as suggestions for business community membership.

Motion to move ahead carried unanimously.

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### Endorsement Program Approval Process

Each year higher education entities add endorsements for programs for licensure recommendation. Prior to the replacement of State program approval with NCATE/TEAC approval, the process for new program approval was clear. Currently we do not have a consistent endorsement approval process.

The Committee reviewed the current protocol for approving endorsements and discussed recommendations for the approval process, including the Board's role in the process. (For complete details see General Exhibit No. 10482.)

This was an information and discussion item only and no action was required.

### **Finance Committee**

Member Greg W. Haws, Chairman of the Finance Committee presented the following recommendations from the committee:

#### Oversight of School Inspections, R277-471

Rule R277-471, Oversight of School Inspections has been revised to include consequences for school districts and charter schools noncompliance with school construction inspection and reporting statutes and administrative rule.

Because some school districts and charter school have not paid close enough attention to timely school construction inspection reporting to USOE and to local municipal and county building officials it was recommended that State Board of Education Administrative Rule R277-471 be revised to include two levels of consequences for noncompliance to the rule:

- (1) If a school district or charter school fails to complete a required construction inspection or fails to submit a copy of an inspection summary to USOE or the local governmental entity, USOE shall withhold Minimum School Program funds in the same graduated manner as is specified in State Board Rule R277-484, Data Standards [R277-484-8, Financial Consequences of Failure to Submit Reports on Time].
- (2) A non refundable penalty in the amount of one half of one percent of the total construction cost shall be assessed school districts and charter schools which fail to report projects to USOE before construction begins. The penalty funds shall be deposited into the School Building Revolving Loan for school districts and into the Charter School Building Revolving Loan subaccount for Charter Schools.

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(For complete details see General Exhibit No. 10483.)

The Finance Committee reviewed the proposed amendments, and asked that the penalty and appeal process be reviewed for legality, and the rule brought back to the Committee in April.

#### Cell Towers on School Property

During the November Board of Education meeting a presentation was made concerning the placement of cell towers on school property. Current research is inconclusive on the effects of low frequency electromagnetic and radio radiation, but some parents are concerned about health issues. The Board has been asked to review the concerns and decide if a board rule is necessary to protect the health and safety of school children.

The Committee reviewed the research summary on cellular communications. (For complete details see General Exhibit No. 10484.)

The Committee recommended that the Board not make a rule at this point because it is not necessary and the issue is being appropriately handled at the local level.

#### Investment and Distribution Policy of Permanent School Fund – Renewable Resources

The investment and distribution policy for the permanent school fund was changed with the creation of School and Instructional Trust Land Administration (SITLA) in 1994. With the creation of SITLA, the Utah Constitution was changed so that all revenue earned by SITLA would go into the permanent school fund and not be distributed to the Uniform School Fund. Renewable resources such as lease revenue and land use fees are invested as principle in the permanent school fund where as prior to 1994 these revenues were distributed to the Uniform School Fund for allocation to school districts.

SITLA has established the goal of reaching \$1 billion in the permanent fund by 2010 at which point the interest and dividends generated from the fund could provide a 2 percent supplement to the annual state budget for education. The primary purpose of this goal is to establish the fund as a major source of public school funding.

In reaching this goal, SITLA has invested renewable resource revenues into the principle of the fund. Historically, these revenues were distributed to school districts for education purposes. Prior to SITLA's existence, schools received a larger portion of the annual revenues.

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The question has arisen as to whether or not investing the revenues from renewable resources is, in the long term, in the best interest of public education. The Finance Committee reviewed and discussed the best investment avenue for the revenues from renewable resources for public education. (For complete details see General Exhibit No. 10485.)

The Committee requested that they have an opportunity to study this further.

#### Performance-based Differentiated Compensation

The Committee felt that the Law and Policy Committee would have the recommendations for the Board and took no action.

#### Finance Committee Strategic Planning

During the February Finance Committee meeting, a discussion was held to develop committee goals for the 2008 calendar year. The Committee continued to discuss these goals and fine-tuned them for presentation at the April 3, 2008 Board Study Session. (For complete details see General Exhibit No. 10486.)

The Committee will be focusing on three areas: Super WPU, End of School Year - how to use those days appropriately and Funding Regional Service Centers.

#### **Curriculum Committee**

Member Dixie L. Allen, Vice-Chairman of the Curriculum Committee presented the following recommendations from the Committee:

#### Elementary Social Studies Core Curriculum Grades 3-6, Request for Public Hearings

The Elementary Social Studies Core Curriculum Grades 3-6, has undergone revisions and is now ready to be submitted for public hearings. The draft presented has undergone extensive review from a wide-range of stakeholders from across the state.

The new draft is different from the current core in significant ways. Rigorous, active verbs encourage a depth of learning. Core standards have been designed to serve as the framework for essential questions, and geography, history, economics, and civics are referenced within context, rather than as stand-alone disciplines. Narrative benchmarks and essential vocabulary lists are provided to support instruction. The separation of the core into three strands of time, people, and places has been removed, helping to significantly reduce the number of standards. The commitment to civic awareness and patriotic education remains vitally important.

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A draft of the proposed Elementary Social Studies Core Curriculum Grades 3-6 was presented to the Committee with a request for permission to hold public hearings for public comment. (For complete details see General Exhibit No. 10487.)

The Curriculum and Instruction Committee approved the request for public hearings for the Elementary Social Studies Core Curriculum Grades 3-6. It was noted that after review, comment, and any revisions which come from the public hearings, the curriculum will be presented to the Board in May for approval.

Motion from the Committee that the Board approve the Curriculum for public review.  
Motion carried unanimously.

Carl D. Perkins Career and Technical Education  
Five-Year State Plan

The Carl D. Perkins Career and Technical Education Improvement Act of 2006, was reauthorized for six years beginning July 1, 2007. The Utah State Office of Education is the Eligible Agency under the law and is required to develop and implement a new state plan. The reauthorization allows a one year transition plan, followed by a five year state plan. The transition plan was approved by the Board March 2007 with direction given to the Career and Technical Education (CTE) Section to continue collaboration with stakeholders, negotiation with the U.S. Department of Education and development of the Five-Year State Plan, which is now available on the CTE Website for review. (For complete details see General Exhibit No. 10488.)

The Committee reviewed and approved the proposed five-year state plan for implementation of Carl D. Perkins Career and Technical Education Improvement Act of 2006 for the State of Utah. The plan includes both secondary and post-secondary CTE programs.

Motion from the Committee that the Board approve the Five-Year State Plan for implementation of the Carl D. Perkins Career and Technical Education Improvement Act of 2006.

Discussion ensued as to whether or not this would need to have approval of the legislature based on newly passed legislation. It was decided that the Plan would be submitted as presented.

Motion carried unanimously.

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### Concurrent Enrollment and Advanced Placement

Utah's Concurrent Enrollment and Advanced Placement programs began in the 1980's to address the needs of accelerated learners. Each program has grown considerably over the course of twenty years, offering many new opportunities and delivery methods to address students' needs.

The Committee was provided with current information and data regarding the Concurrent Enrollment and Advanced Placement programs. (For complete details see General Exhibit No. 10489.)

The Committee received the report and gained a greater depth of understanding of how these two accelerated learning programs impact students, various course offerings, and graduation requirements. The Committee requested the numbers also be presented in percentages. No action was required.

### Adequate Yearly Progress (AYP) Appeals

In the January 10, 2008 Board Meeting, the AYP Appeal process for 2007 was discussed. A formal board motion was passed to "Direct the Utah State Office of education (USOE) staff to inform Local Education Agencies (LEAs), we are following the appeal process of the 2007 Accountability workbook, and that 2007 AYP appeals are not allowed for rules not in the 2007 AYP Workbook including non-uniform averaging." The Board further requested that USOE provide a recommendation for the 2008 AYP Appeal process in the March Board Curriculum Committee Meeting.

The 2008 AYP appeals recommendation was received by the Committee. (For complete details see General Exhibit No. 10490.)

### Student Information System (SIS) Task Force Report

At the August 3, 2007 meeting, the Board directed Associate Superintendent Judy Park to form a task force to investigate the potential of implementing a single statewide student information system. In addition, the Board asked for recommendations as to how the present student information system could be improved.

A Task Force representing multiple districts and charter schools including every Student Information System currently in operation in the state was formed. Meetings were held every month, September through January 2008.

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The Committee received the Task Force recommendations. (For complete details see General Exhibit No. 10491.)

The Committee recommended better communication between to SIS user groups (teachers, parents, administrator) and the SIS team (those reporting back to USOE).

The Committee accepted recommendations from the Task Force.

Vice Chairman Mark Cluff voiced concern with the recommendation 3, All SIS-type products should be encouraged. He felt that it should read “will be.” Associate Superintendent Judy Park responded that the reason the Task Force chose to go with that verbiage is we currently have some systems in our state that are not SIF compliant or certified and to indicate they must be they would be placed out of compliance. Vice Chairman Cluff suggested that a time table be included for a specific time they need to be in compliance.

Member Tom Gregory commented that it was the understanding of the committee that we expect the districts to be in compliance, and if that is not explicit it needs to be made explicit.

Member Laurel Brown suggested that wording read: “All SIS type products are expected to become. . .rather than should be encouraged to.

## **Board Meeting**

### Executive Officer Report

Superintendent Patti Harrington presented the following items of information:

Information Items update on items mailed to the Board with the Agenda: Recall of beef products that have been removed from school districts. Secondly, Reading First update with approval to use carryover funds from this year we will be able to maintain.

Discussion Items:

Provided an update of the Governor’s Blue Ribbon Panel on Assessment.

The Integration Team- Dr. Harrington reported that she has been invited to participate in this team. The idea is to identify where we have work and learning opportunities and how it matches with students who are ready for these job opportunities. The software that is being applied is very helpful. This will also work with assessment data to show where students are in the pipeline on different course taking patterns.

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Inspections Update- Emersion Academy. The Inspector has cited three or four pages of infractions. Abundant help has been offered to Emersion Academy from the State Office. We are in the process of hiring a full-time inspector for the State Office.

Superintendent Harrington expressed appreciation to the Utah State Office of Education legislative team for their diligent work during the legislative session, especially Dr. Larry Shumway, Deputy Superintendent who took charge in her absence because of her auto accident.

(For complete details see General Exhibit No. 10492.)

#### Board Chairman Report

Chairman Richard Sadler presented the following items of information:

1. Today is the first day to file for reelection.
2. Utah Foundation Luncheon - March 26 Hilton Salt Lake City Center. Anyone wishing to go contact Twila and she will register you for the meeting and luncheon
3. Reminded board members that we are under scrutiny on the e-mails we send out.
4. Legislative Session - Chairman Sadler expressed appreciation to Dr. Larry Shumway and USOE staff, and to Vice Chairman Mark Cluff who spent a lot of time at the legislature.

On Tuesday he had a chat with the staff because there was an effort to have a public solidarity meeting to tell the legislature that instead of placing money in some of the programs they passed it should all go into the WPU. As they discussed the strategy, it was his decision that we not appear at the press conference because the legislature had passed many things that were our priorities. In keeping with our intent to thank the legislature and not continually be in an adversarial position, that be the position we take on that issue. Some of the members of the education community may not have been happy with that decision.

Reviewed the Calendar Items.

(For complete details see General Exhibit No. 10493.)

#### General Consent Calendar

Motion was made by Member Teresa Theurer and seconded by Member Richard Moss to approve the General Consent Calendar as presented with the exception of Item H, State

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Charter School Board Recommendations. Member Theurer noted that she had a question on one of the school being recommended for an increase in enrollment. Motion carried unanimously.

1. Minutes of Previous Meeting

Minutes of the Meetings of the State Board of Education held February 1, February 15, and February 22, 2008.

1. Contracts

The following contracts were approved by the Board:

(A) Dynamic Internet Solutions LLC. \$561,636. 12/28/07 - 1/25/2010. Amend.

To provide computer package/database for administration of USOE Child Nutrition Programs, including site-based claiming. This amendment adds a special report to enhance capability of federal compliance.

(B) Utah Department of Workforce Services. \$42,003.00. 10/1/07-9/30/08. - RECEIVABLE.

To provide funding for in-service training for teachers and curriculum development of Adult Roles and Responsibilities and the Adult Roles and Financial Literacy now being taught in Utah high schools.

© Utah Department of Workforce Services. \$493,976.23. 3/1/08-12/31/12. - Fed.

To sub-lease office space for the Division of Rehabilitation Services located at 965 E 700 S., Suite 202 and 204, St. George, Utah.

(D) Boyer Madsen 7<sup>th</sup> East Partnership. \$129,245.13. 1/1/08-4/30/13. - Amend.

Lease for Trust Lands Office Space.

(E) Cedar South Station, Inc. \$294,874.58. 2/1/08-1/31/13. - Amend. - Fed.

Lease of Division of Rehabilitation Services Cedar City Office, 925 South main Street, Cedar City, Utah.

(F) EquiWest. \$3,470,922. 8/1/08-7/31/13. - Fed.

Lease of office space for Disability Determination Services located at 1563 'S 300 W., Salt Lake City, Utah.

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(G) Public Service Commission of Utah. \$400,000. 1/1/08-12/31/09. - Amend. RECEIVABLE

The Division of Services to the Deaf and hard of Hearing, Utah Interpreter Program, will provide interpreter training and mentoring services utilizing funds regulated by the Public Service Commission. The goal is to increase the number of qualified, certified sign language interpreters for relay services, community and educational settings within the state of Utah.

(H) State of Utah Commission on Criminal and Juvenile Justice. \$50,000. 9/1/07-8/31/08. - RECEIVABLE

To provide support for the Utah Methamphetamine Joint Task Force Priority Prevention Initiative. This is grant number 8F21.

(For complete details see General Exhibit No. 10494.)

3. Educator Licensing Requests for Temporary Authorization

Requests for Temporary Authorizations as submitted by the school districts were approved. (For complete details see General Exhibit No. 10495.)

4. Request for Variance - Ogden City Schools

Ogden City School District was unable to convene classes at three schools on January 25, 2008 due to a city main water line break. The Schools: Ben Lomond High School, Hillcrest Elementary School, and Horace Mann Elementary School. The Ogden City School District is requesting a variance request to R277-419, Pupil Accounting, for the three schools listed above. As a matter of course, school schedules are reviewed to ensure compliance with the requirement of holding school a minimum of 990 hours for the school year. With the closing of schools, each school will hold school a minimum of 994 hours, thus meeting the 990 hour requirement for the year. (For complete details see General Exhibit No. 10496.)

The Board approved the Ogden City Schools request and granted a variance to R277-419 for: Ben Lomond High School, Hillcrest Elementary School, and Horace Mann Elementary School for the missed day, January 25, 2008.

5. USBE Annual Calendar

The Utah State Board of Education Annual Calendar for 2008 is provided for information to the Board. (For complete details see General Exhibit No. 10497.)

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6. Monthly Budget Report

The Monthly Budget Report provides information to the Board in meeting its fiduciary responsibilities toward the Utah State Office of Education, the Utah State Office of Rehabilitation and the Utah Schools for the Deaf and the Blind. (For complete details see General Exhibit No. 10498.)

7. Ratifications

Lynn Greenwood was ratified as an Educational Director - Curriculum in the Student Achievement and School Success Division.

Timothy Salazar was ratified as the Performance Auditor, Utah State Board of Education.

8. List of Applicants for Licenses

The list of applicants for initial and renewal licenses was approved by the Board. (For complete details see General Exhibit No. 10499.)

9. Claims Report

The Claims Report in the amount of \$211,851,143.36 for January 31, 2008 was approved by the Board. (For complete details see General Exhibit No. 10500.)

Item H - State Charter School Board Recommendations

The State Charter School Board met on February 21, 2008 and unanimously approved to recommend to the State Board of Education the following amendments:

**Noah Webster Academy** modify its elementary program to serve grades K-8 (adding grades 7-8), and increasing its enrollment by 100 students. Noah Webster Academy has been open since 2006.

**Lincoln Academy** to increase its enrollment by 50 students. Lincoln Academy has been open since 2005.

**American Leadership Academy** - to increase its enrollment by 100 students. American Leadership Academy has been open since 2006.

Motion was made by Member Teresa L. Theurer and seconded by Member Dixie L. Allen to approve the State Charter School Recommendations on Noah Webster Academy, Lincoln Academy, and American Leadership Academy.

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Member Teresa Theurer questioned where the 100 students are being added because the American Leadership Academy is a K-12 school and the Utah High School Activities Committee is currently looking into enrollment of schools and the possibility of adding a percentage to the enrollment.

There was no one from the Charter School Board or staff to answer the question at this time. Motion was made by Vice Chairman Mark Cluff and seconded by Member Thomas Gregory to table the motion until after lunch. Motion carried unanimously.

#### Public Participation/Comment

Member Charlene Lui, presented a letter to the Board from the Coalition of Minorities Advisory Committee of a concern brought to that committee on February 28<sup>th</sup> relative to USOE hiring procedures. The concern was raised by France A. Davis, Rev. , Calvary Baptist Church for the African American Education Interest Group. (For complete details see General Exhibit No. 10501.)

Superintendent Harrington indicated that the State Office is attune to the concerns and she has a meeting scheduled with Rev. Davis on Monday, March 10. Members of the Board leadership were invited to attend that meeting along with Member Lui. Member Randall Mackey asked that a report be made to the Board following that meeting.

Holly Langton, State PTA, Education Commissioner commented that during the recent voucher campaign it was obvious that parents support public schools. She expressed appreciation from the PTA to the Board for their commitment to public school children. Although we are thankful for the dollars in education funding here in the state, this past legislative session they were taken by surprise. PTA members across the state expected that they had made it clear during the voucher campaign where they wanted their tax dollars to go. Teacher pay was among the top priorities and they are thankful for the attention and funding they will receive. However, the number 1 priority of PTA parents is relief for our overcrowded classroom which went unnoticed. She requested that the Board work with the PTA to find the answers to this continually increasing problem, What can we do to start the effort to bring down our class sizes? She suggested looking at the existing education structure to see what we can do to shift resources from less effective sources.

Chairman Sadler expressed appreciation to the State PTA for all of their work on behalf of children and for continuing to be a great partner.

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Executive Session

Motion was made by Member Thomas Gregory and seconded by Member Dixie L. Allen to move into an executive session for the purpose of discussing personnel items and potential litigation. The Board was polled and by unanimous consent of those present the Board moved into an executive session following lunch at 12:30 p.m.

Motion was made by Member Debra G. Roberts and seconded by Member Michael Jensen to reconvene into open meeting. Motion carried unanimously. The Board reconvened at 2:00 p.m.

**Disability Determination Services Advisory Council**

Motion was made by Member Thomas Gregory and seconded by Member Mark Cluff to approve Kathy Franson to serve on the Disability Determination Advisory Council. Term to expire June 2008. Motion carried with Members Allen, Brown, Burningham, Cluff, Colbert, Gregory, Haws, Jensen, Moss, Roberts and Theurer voting in favor; Member Mackey absent.

**Utah Professional Practices Advisory Commission Recommendations**

Motion was made by Member Thomas Gregory and seconded by Member Dixie L. Allen to adopt the recommendation of the Commission and the hearing panel following a hearing for consideration of reinstatement of a license in Case No. 04-714 of a former teacher in the San Juan School District. The license was previously suspended as a result of the educator's use of his school computer to access pornographic images sporadically. Some of the use occurred during school hours. It was noted that the hearing report was reviewed by the Board in Executive Session. Motion carried unanimously.

Motion was made by Member Thomas Gregory and seconded by Member Dixie L. Allen to adopt the recommendation of the Commission in Case No. 06-765, and accept a stipulated agreement, including conditions of the agreement whereby a former teacher in the Davis School District, voluntarily surrenders her educator license in lieu of a hearing for purposes of suspension of her license for one year from the date of formal action by the State Board of Education. The educator's license is suspended until and unless the educator applies, in a minimum of one year, has a reinstatement hearing, and the State Board of Education determines that reinstatement is warranted. The suspension results from the educators conviction on January 14, 2008 for a second DUI offense in violation of the terms of the hearing report accepted by UPPAC on November 9, 2006. Motion carried unanimously.

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Motion was made by Member Thomas Gregory and seconded by Member Dixie L. A..en to adopt the recommendation of the Commission in Case No. 07-838 and accept a stipulated agreement, including conditions of the agreement, whereby a former teacher in the Alpine School District, voluntarily surrenders his educator license in lieu of a hearing for purposes of suspension of his license for one year from the date of formal action by the State Board of Education, or until the Plea in Abeyance is successfully terminated, whichever occurs sooner. The educator must apply, have a reinstatement hearing, and the State Board of Education must determine that reinstatement is warranted. The educator's suspension results from engaging in a real estate venture which led to criminal charges against him and several others. The educator entered into a Plea in Abeyance for a Class A misdemeanor count of communications fraud. The Plea in Abeyance is currently in place for 36 months beginning October 4, 2007. Motion carried unanimously.

(For complete details see General Exhibit No. 10502.)

Response to Utah State Legislature Letter  
Concerning Utah Schools for the Deaf  
and the Blind Issues

Utah Code defines the purpose and authority of the Utah Schools for the Deaf and the Blind (USDB) under the Utah State Board of Education. Board Rule, R277-800, Administration of the Utah School for the Deaf and the Utah School for the Blind, provides further guidance on the governance and operation of USDB. A group of concerned legislators sent a letter to the Utah State Board of Education, dated February 6, 2008, that identifies specific concerns about eligibility of students to be served by USDB. Specifically, the question has been raised concerning the perceived practice that deaf, blind, or deafblind students served by USDB who are able to achieve at or above grade-level are moved out of the USDB system, because they may not qualify for special education, and are served in their district and school of residence.

The Board received a report from Karl Wilson, Title 1 Director, and USDB leadership outlining current statutory and rule language pertaining to USDB along with recommendations that the Board considered as an interim solution to concerns that may require changes in Utah Code during the 2009 legislative session. (For complete details see General Exhibit No. 10503.)

Mr. Wilson noted that staff has met with the USDB Institutional Council to discuss this issue and the recommendations presented. He further noted that there is a legislative workgroup that is in the process of making recommendations for amended language in state statute regarding

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the governance of USDB. The goal is to complete that work so that in working with Legislative Interim Committee and analysts at the Governor's and Legislative offices we will be on track for a presentation in 2009 to the State Legislature.

Mr. Wilson reported that under current state statute they did not find a clear definition of the requirement to move students out of USDB. With the recommendation of the USDB Institutional Council, it is proposed that the Board adopt recommendation No. 1 which reads: "The Board could, considering the lack of specific language regarding USDB students who had IEPs and have been successfully served at USDB, determine that a student with an IEP who is achieving at or above grade level can remain at the USDB consistent with the IEP Team's decision that continued placement or service by the USDB is in the individual student's best interest."

Member Laurel Brown commented that when these students who are deaf are being served at USDB, most of them are utilizing a different language form (ASL) and yet if they are put back into the traditional school they are with students who are speaking and not using sign language. She wondered why were at this point because they are required to have specialized instruction to get where they are going and to continue on that path.

Mr. Wilson provided clarification and background on the issue. The primary concern this came out of is from the merger between USDB and Jean Massieu School, which was a charter school.

Motion was made by Vice Chairman Mark Cluff and seconded by Member Teresa L. Theurer to accept Recommendation No. 1 identified above. Further that a response from the USDB and the State Board of Education be sent to the legislators relative to this decision. Motion carried unanimously.

#### **Item H - State Charter School Board Recommendations**

Motion was made by Member Thomas Gregory and seconded by Member Dixie L. Allen to take the Item H off the table. Motion carried unanimously.

Member Theurer reported that during lunch she was informed that the increase of the 100 students was in grades four, five and six. Therefore, she no longer has a concern. .

Motion to add the three charter schools together in the motion. Motion carried unanimously.

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Motion to approve the amendments to the three charter schools carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Gregory, Haws, Jensen, Mackey, Roberts and Theurer voting in favor; Member Moss abstained noting that his wife is a principal at the Noah Webster Academy.

#### 2008 Legislative Session Review

The 2008 General Legislative Session concluded March 5, 2008. The Board and Utah State Office of Education staff have been actively involved throughout the session taking positions on particular pieces of legislation. They met regularly with legislators and educational stakeholders to advocate support for public education in the state of Utah.

Deputy Superintendent Larry Shumway reviewed the final actions taken by the legislature dealing with education. (For complete details see General Exhibit No. 10504.)

#### **SB 162 - Approval of Federal Funds**

Deputy Superintendent Shumway identified some of the programs in the state where calculating the associated state and local costs is going to be enormously difficult. Further, that having the number come out that will be acceptable will be a problem.

Superintendent Harrington reported that the Board did not take a position on SB 162, Approval of Federal Funds, and the fiscal note did not indicate there were any costs direct or measurable to the enactment of the bill. She noted that this will be time intensive in terms of computing the costs at the state level and will be replicated in districts and charter schools across the state. Dr. Harrington noted that the Jordan School District has computed the costs of No Child Left Behind in 2004 and it took them seven months to have the study completed and the cost developed. One option would be to seek a veto of this bill or to seek a line item veto that would limit it to No Child Left Behind. She commented that she believes this bill has the potential of putting the Governor and Legislature at odds. Further, she noted that Member Gregory had raised an argument earlier today about the constitutionality of this board as it relates to this matter.

Superintendent Harrington noted that last year there was some legislative angst over some veto's recommended by this board and we did not contact the sponsor prior to doing so.

Superintendent Harrington reported that in November or December the sponsor sent the bill to her in protected form for input, to which she responded that it would have dramatic consequences and she had great concern about the proposed legislation.

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Chairman Sadler asked the Superintendent for a recommendation on what would be best to do with this bill. Superintendent Harrington responded that the Governor has asked for any veto letters, should be any from the Board, by the end of the day.

Deputy Superintendent Larry Shumway reported that this bill passed 38-36 in the House, so it is not as though it was a vote of universal acclaim.

Member Greg Haws questioned what would happen if we took the position of just identifying the incremental costs and not the total costs.

Motion was made by Member Debra G. Roberts and seconded by Vice Chairman Mark Cluff that the Board communicate with sponsor and indicate if this was looking at new programs we could support the intent. However, under the circumstances and our obligation to provide the best education for children and the kind of burden this would put on the system, we would request a veto from the Governor.

Member Tom Gregory indicated he was not sure he could support the legislators original intent.

Member Randall Mackey commented that it is too late to go to the sponsor. The bill has passed. We just need to advise the Governor as to whether or not we would like him to veto it. There is a tremendous cost in trying to come up with the numbers.

Member Debra Roberts restated her motion that the Board recommend to the Governor that he veto the bill. Further, as a courtesy we go to the sponsor as quickly as possible and indicate we are requesting a veto because of the circumstances. Motion carried with Members Allen, Brown, Burningham, Cluff, Colbert, Gregory, Haws, Jensen, Mackey, and Roberts voting in favor; Members Moss and Theurer absent.

Member Kim Burningham commented that he is troubled by one particular action taken by the legislature. He noted that he was out of town last three weeks but followed the actions of the legislature on the Internet every night. The thing that troubled him was the omnibus approach of this huge omnibus bill. Items 1 - 8 on the Legislative Summary are all a part of the omnibus bill. It includes some things that were previously defeated by one house and then reappeared in this bill. The rationale was given that there was a rush of time. He felt the rationale was to buy agreement which he calls "bribery." This approach is a bad approach for the state in big ways, not a specific piece of legislation, but a procedure that will lead us to adopt many things that are not good.

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Furthermore, it may very well be unconstitutional. He cited, Article 6 Section 22 of the Constitution of Utah which requires bills treat one single subject (interpretation is in question). In the Supreme Court decision of the Utah State Fair Association vs Green, they said the following: “The framers of the constitution meant to put an end to legislation of the vicious character referred to which was a little less than a fraud upon the public and to require that in every case the proposed measure should stand upon its own merits.” Legislation should stand on its own merits not because it is tied to a lot of other things. In another Supreme Court Case Pass vs Canal in 1940, the ruling said: “. . .the mischief sought to be remedied by the requirement of a single subject or object of legislation was the practice of bringing together in one bill matters having no necessary or proper connection . . . the practice of incorporating proposed legislation – all of these things into one thing that don’t deserve general favor or cannot stand alone on their own merits, were often incorporated in the laws to secure needed and desirable legislation members of the legislature were by this means often induced to sanction and actually vote for provisions which it presented as independent subjects of legislation would not have received their support.” They call this legislative hodgepodge or “log rolling.”

Member Burningham stated that if the state lets it go in the one instance, it will literally log roll into bigger abuses in the future just as we have seen in the federal government. Article 6, Section 22 of the Utah Constitution is right. The attorney he has talked to said, of course this doesn’t apply to appropriations bills. Hence, we were told this is an appropriations bill. This is an absurd definition. Since it was used, if it is an appropriations bill, then the Governor has the option of line-item veto.

Member Burningham suggested that the Board request that the Governor consider his ability to make line-item veto’s in what they call an appropriation bill, the items that had been defeated in one house. To do otherwise encourages future log rolling, bribery, and bad legislation. The Founders of the Utah Constitution foresaw this; decisions in the past said we should not do it.

Motion was made by Member Kim R. Burningham and seconded by Member Thomas Gregory that the Board send a letter to the Governor indicating we are appalled by the process which we believe may be unconstitutional in bringing so many things together in one bill, particularly identifying things already defeated in one house, and that he should strongly consider using his line item veto power to veto sections of the omnibus bill as a possible solution.

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Member Tom Gregory spoke in favor of the motion. He expressed a concern that the language in the constitution is general appropriations bill and the word "general" has to have meaning and in this case it is clearly not general. Further, there are sections of this bill that codify language without an appropriation, which also prevents this from being a general appropriations bill. Further, if the intent of the writers of the constitution can be circumvented by any bill appropriating a single dollar, the language would have no meaning and that is clearly not what they would want. The language of the constitution demands that a general appropriation bill be considered. He would also go further and ask that the entire bill be receive a veto because it is in deep constitutional trouble should any portion of it be challenged for any reason.

Member Randall Mackey commented that from a legal standpoint we need to take these issues seriously. He suggested that the Board ask their legal staff to look into these issues and give us a legal opinion as to the correctness as what has been said. As he has observed the legislature we have had wonderful support for public education in the last couple of years. However, we do have some legal issues that the bills seem to be more omnibus type bills, and we need a legal opinion on what type of constitutional issues could be raised.

Vice Chairman Mark Cluff spoke in favor of the motion. He has a lot of issues with the bill because he would like to see all the money in the WPU and let the school districts accountable. Although they appear to be good programs, we have gone through and talked about implementing them and they were thrown together possibly to look good for an election year. One of the issues is that we send the letter to the Governor, and the Governor was involved in putting this bill together. He felt we need to say that there is the possibility of constitutional issues with this bill.

Member Burningham agreed with the comment about using the word possible constitutional issues.

Member Greg Haws questioned if it would be proper for us to pick one item in the bill and ask the Governor to veto that one specifically and look at some others.

Member Burningham responded that he has strong feelings on this but is not sure of the best course of action. He felt the Governor could use his line item veto and get rid of one or two of them - especially the ones that did not pass the house. However, he felt strongly that the message needs to go out that this is wrong.

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Following further comments on the merits of the line item veto, motion carried with Members Allen, Brown, Burningham, Cluff, Colbert, Gregory, Haws, Jensen, Mackey, Moss, Roberts and Sadler voting in favor; Members Moss and Theurer absent.

Associate Superintendent Todd Hauber presented a summarization of the budget actions of the Utah Legislature in the 2008 General Session. (For complete details see General Exhibit No. 10505.)

Chairman Sadler noted that the legislative report has been the focus of much work and all kinds of attention. He questioned the Board as to whether they would like to have the legislative report come the first thing in the morning on the agenda and put the committee meetings later. Also, other meetings where we have crucial kinds of issues. He requested that Board Members indicate their preference on their Board Evaluation Form. He indicated that by the nodding of heads we will experiment with that.

Member Randall Mackey reiterated that the Boards understanding is that the legal staff will go ahead and look at issue raised by Member Burningham and report back to the Board. The Board can then decide who else to share it with.

Chairman Sadler indicated it was his understanding that the two motions to convey the Boards wishes to the Governor will be sent from Superintendent Harrington indicating the action of the Board.

Deputy Superintendent Shumway commented that this was a session notable for the lack of controversy and for the general tone of congeniality and collegiality. It was his perspective that throughout the process we were asked to participate in meaningful ways; we had opportunities to meet with leadership at key moments and express the Boards positions and give input. We were treated respectfully. The Board acted judiciously in taking positions and not taking positions. At the end of the session this was a banner year for education funding, there are not any bills that are crushingly awful, and all things said and done the book balances to the positive.

Chairman Sadler noted that a letter has been prepared by the Superintendent to be sent to each of the legislators, signed by the Superintendent, Dr. Shumway and Chairman Sadler, thanking them for their careful attention to public education and their contributions.

Member Randall Mackey suggested that a letter to the editor also be sent on behalf of the board thanking the legislature.

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Motion to adjourn was made by Member Dixie L. Allen and seconded by Member Laurel Brown. Meeting adjourned at 3:45 p.m.