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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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| California Parents for the Equalization of Educational Materials, |) | Case No. 2:06-CV-00532-FCD-KJM |
| |) | |
| |) | |
| Plaintiff, |) | REQUEST FOR JUDICIAL NOTICE IN |
| |) | SUPPORT OF MOTION TO DISMISS |
| v. |) | |
| |) | |
| The California State Department of Education; |) | Date: July 21, 2006 |
| The California State Board of Education; Glee |) | Time: 10 a.m. |
| Johnson, President; Kenneth Noonan, Vice |) | Courtroom: 2 |
| President; Alan Bersin; Ruth Bloom; Yvonne |) | |
| Chan; Donald G. Fisher; Ruth E. Green; Joe |) | |
| Nunez; Bonnie Reiss; and Tom Adams, |) | Honorable Frank C. Damrell, Jr. |
| |) | |
| Defendants. |) | |
| |) | |

Defendants, California State Department of Education; California State Board of Education; Glee Johnson, President; Kenneth Noonan, Vice President; Alan Bersin; Ruth Bloom; Yvonne Chan; Donald G. Fisher; Ruth E. Green; Joe Nunez; Bonnie Reiss; and Tom Adams, by and through their counsel, request the Court to take judicial notice pursuant to Federal Rule of Evidence 201 of the following laws and facts:

1. California Education Code section 33530 and sections 60200 through 60206, which are statutes pertaining to the adoption of textbooks and other instructional materials for use in

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kindergarten (K) through grade 8 in California. Attached as Exhibit A is a true and correct copy of the statutes. (See *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) [on “a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings”]; see also *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977).)

2. California Code of Regulations, title 5, sections 9510 through 9524, which are regulations pertaining to the adoption of textbooks and other instructional materials for use in kindergarten (K) through grade 8 in California. Attached as Exhibit B is a true and correct copy of the regulations. (See *MGIC Indem. Corp.*, *supra* [on “a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings”]; see also *National Agr. Chemicals Ass'n v. Rominger*, 500 F.Supp. 465, 472 (E.D.Cal.1980).)

3. The Articles of Incorporation for the Americans Opposed to Discrimination and Hatred Against Children (Articles), which as indicated by Exhibit D below, was the former name of Plaintiff California Parents for the Equalization of Educational Materials. Attached as Exhibit C is a true and correct copy of the Articles, which have been certified by the California Secretary of State's office. In particular, Defendants request that the Court take notice of the Articles' date of filing with the Secretary of State's office, March 9, 2006. (See *MGIC Indem. Corp.*, *supra* [on “a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings”]; see also *Grassmuck v. Barnett*, 281 F.Supp.2d 1227, 1232 (W.D.Wash.2003).)

4. A Certificate of Amendment of Articles of Incorporation by the Americans Opposed To Discrimination and Hatred Against Children (Certificate). Attached as Exhibit D is a true and correct copy of the Certificate, which has been certified by the California Secretary of State's office. This document shows that Plaintiff amended its Articles to change its name from “Americans Opposed to Discrimination and Hatred Against Children” to “California Parents for the Equalization of Educational Materials” (CPEEM). (See *MGIC Indem. Corp.*, *supra* [on “a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings”]; see also *Grassmuck*, *supra*.)

5. The Preliminary Report of Actions from a meeting of the Defendant California State Board of Education (SBE) on March 8, 2006 (Report). Attached as Exhibit E is a true and correct

notice of Item 19 on page 8 of the report which indicates that SBE adopted final edits and revisions to the sixth grade History-Social Science textbooks at the SBE's March 8, 2006 meeting. Plaintiff acknowledges this fact in its First Amended Complaint at page 15, section 4.66, lines 18-19. (See *MGIC Indem. Corp., supra* [on "a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings"]; see also *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F.Supp.2d 968, 972 (W.D.Mich.2003), *aff'd*, 388 F.3d 209.)

DATED: June 12, 2006

Respectfully submitted,

MARSHA A. BEDWELL

General Counsel

AMY BISSON HOLLOWAY

Assistant General Counsel



By: TODD M. SMITH

Deputy General Counsel

Attorneys for Defendants

EXHIBIT A

CALIFORNIA CODES

EDUCATION CODE

SECTION 33530

33530. There is in the state government the Curriculum and Supplemental Materials Commission consisting of one member appointed by the Speaker of the Assembly, one member appointed by the Senate Committee on Rules, one member appointed by the Speaker of the Assembly, one member appointed by the Senate Committee on Rules, one public member appointed by the Governor, and 13 public members appointed by the State Board of **Education** upon the recommendation of the Superintendent of Instruction or the members of the State Board of **Education**.

So far as is practical and consistent with the purposes of the commission by the State Board of **Education**, at least 13 public members appointed by the State Board of **Education** shall be persons, who because they have taught, written, or researched in the subject matter fields specified in Section 33533, whether in public or private employment, have become recognized and experienced practitioners in such fields. The State Board of **Education** shall make its appointments so as to ensure that, at one time, at least seven of the public members shall be classroom teachers, or mentor teachers, or both as defined in Section 33533, kindergarten or any of grades 1 to 12, inclusive.

Notwithstanding the requirement that seven of the public members shall be current classroom teachers or mentor teachers, the public members of the commission who were appointed on or before September 30, 1989, shall be allowed to complete their terms.

In making the remaining appointments to the commission, the State Board of **Education** is encouraged to consider the recommendations of the commission's advisory task forces.

CALIFORNIA CODES

EDUCATION CODE

SECTION 60200-60206

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

(3) Science.

(4) Social science.

(5) Bilingual or bicultural subjects.

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six- and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or

levels for which they are submitted.

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of **Education**.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

(6) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of

knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than six years from the date of adoption for instructional materials pertaining to subject areas designated in paragraphs (1) to (5), inclusive, of subdivision (a), and not more than eight years from the date of adoption for instructional materials pertaining to subject areas designated in paragraph (6) of subdivision (a), or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) Nothing in this section shall be construed to prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent of Public Instruction shall develop, and the State Board of **Education** shall adopt, guidelines to implement

(b) This section shall become operative only if Section 35182.5 as proposed by Assembly Bill 117 of the 1999-2000 Regular Session is enacted and takes effect.

60200.4. (a) The State Board of **Education** shall ensure that the basic instructional materials that it adopts for mathematics and reading in grades 1 to 8, inclusive, are based on the fundamental skills required by these subjects, including, but not limited to, systematic, explicit phonics, spelling, and basic computational skills.

(b) It is the intent of the Legislature that the fundamental skills of all subject areas, including systematic, explicit phonics, spelling, and basic computational skills, be included in the adopted curriculum frameworks and that these skills and related tasks increase in depth and complexity from year to year. It is the intent of the Legislature that the instructional materials adopted by the State Board of **Education** meet the provisions of this section.

60200.5. Instructional materials adopted under this chapter shall, where appropriate, be designed to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and to instruct them in manners and morals and the principles of a free government. The State Board of **Education** shall endeavor to see that this objective is accomplished in the evaluation of instructional materials for educational content in appropriate subject areas.

60200.6. Instructional materials adopted pursuant to this chapter for the category of social science as specified in paragraph (5) of subdivision (a) of Section **60200** shall include information designed to instruct pupils on Dr. Martin Luther King, Jr., the civil rights movement, and contributions made by ethnic minority groups to the history of the United States. The state board shall ensure that the materials present the information in a manner consistent with the instruction provided in each grade level. The state board shall endeavor to see that this objective is accomplished in the evaluation of instructional materials for educational content.

60201. In approving and maintaining lists of adopted instructional materials, the state board shall, pursuant to subdivision (e) of Section **60200**, do any one or more of the following, when applicable:

(a) Retain any instructional materials from a previous list and biennially make any adjustment in prices based on information provided pursuant to Section 60223.

(b) Delete from the lists any instructional material which it determines is obsolete pursuant to Section 60500, or which received no order from any district board during the previous two years.

(c) Add instructional materials not previously submitted for adoption, or materials previously submitted which have been revised to comply with any recommendations of the state board.

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EXHIBIT B

HISTORY

1. New section filed 8-28-96; operative 9-27-96 (Register 96, No. 35).

Article 2. Standards and Criteria for Adoption of Instructional Materials

§ 9510. Standards and Criteria for Specific Subject Matter Adoptions.

NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference: Chapters 1 and 2 of Part 33 of Title 2, Education Code.

HISTORY

1. New article 2 (sections 9510 and 9511) filed 9-10-92; operative 10-12-92. Submitted to OAL for printing only pursuant to Education Code section 60004 (Register 92, No. 37).
2. Amendment filed 7-22-93; operative 8-23-93. Submitted to OAL for printing only pursuant to section 60004, Education Code (Register 93, No. 30).
3. Amendment of subsection (h) and new subsections (o)-(p) filed 9-10-93; operative 10-11-93. Submitted for printing only pursuant to Education Code section 60004 (Register 93, No. 37).
4. New subsection (g) filed 12-13-93; operative 1-12-94. Submitted to OAL for printing only pursuant to Education Code section 6000 (Register 93, No. 51).
5. New subsections (r) and (s) adopted by the Department of Education on 12-5-94. New subsection submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).
6. Repealer of section and amendment of NOTE filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

§ 9511. Standards and Criteria for All Subject Matter Adoptions.

The standards and criteria in the publication entitled *Standards for Evaluating the Social Content of Instructional Materials*, 2000 Edition, approved by the State Board of Education on January 13, 2000, and published by the California State Department of Education in 2000 are incorporated in this section by reference and apply to all State Board of Education adoptions of instructional materials in all subjects.

NOTE: Authority cited: Sections 33031, 60005, 60048(d), 60200(o) and 60206, Education Code. Reference: Sections 60040-60044, 60048, 60200 and 60200.2, Education Code.

HISTORY

1. New section filed 9-10-92; operative 10-12-92. Submitted to OAL for printing only pursuant to Education Code section 60004 (Register 92, No. 37).
2. Amendment of section and NOTE filed 8-28-96; operative 9-27-96 (Register 96, No. 35).
3. Amendment of section and NOTE filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

Article 2.1. Adoption of Curriculum Frameworks and Instructional Materials—Procedures

§ 9515. Definitions.

- (a) "Board" means the State Board of Education.
- (b) "Curriculum Commission" means the Curriculum Development and Supplemental Materials Commission.
- (c) "Department" means the California Department of Education.
- (d) "Schedule of Significant Events" means the dates promulgated by the Department in the "Invitation to Submit Basic Instructional Materials for Adoption in California."
- (e) "Period of Adoption" means the period of time that the instructional materials shall remain in adoption. This time period shall be specified in the "Schedule of Significant Events."
- (f) "Primary Adoption" means the first instructional materials adoption following the approval of new evaluation criteria by the Board.

NOTE: Authority cited: Sections 33031 and 60206, Education Code. Reference: Sections 60200, 60201, 60202, 60204, 60206, 60221, 60222 and 60227, Education Code.

HISTORY

1. New Article 2.1 (sections 9515-9524) and section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on

12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

2. New subsection (f) and amendment of NOTE filed 12-8-2004; operative 1-7-2005 (Register 2004, No. 50).

§ 9516. Advisory Task Forces and Committees to the Curriculum Commission.

The Board may, upon recommendation by the Curriculum Commission, appoint task forces or committees of subject matter experts to assist and advise the Curriculum Commission. Each task force or committee shall include, at the time of appointment, a majority of current classroom teachers providing instruction in kindergarten and grades one to eight, inclusive, or mentor teachers, or certificated teachers employed by school districts of county offices of education who are not in a position that requires a services credential with a specialization in administrative services, or any combination of those teachers. The primary criteria for membership shall be subject matter expertise and professional knowledge of, and successful experience with, effective educational programs and practices for the full range of the state's diverse population. The Board shall, to the extent possible, appoint persons who are representative of the various ethnic groups and types of school districts in the state. Nothing in this section shall preclude public members, i.e., noneducators, from serving on a task force or committee as the Board may deem appropriate.

For the purpose of developing a curriculum framework or for other activities not associated with the evaluation of basis instructional materials, the Board may expand the committees or task forces to include teachers who provide instruction in kindergarten and grades one to twelve, inclusive.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 33530 and 60204, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9517. Invitation to Submit Basic Instructional Materials for Adoption.

The Board shall ensure that a written notice of an upcoming primary and follow-up adoption of instructional materials is posted on the Department Website and mailed to every person or firm who has submitted a request for notice to the Department and to any person or firm whom the Department, in its judgment, deems to be interested in the notice. This notice shall be known as the Invitation to Submit Basic Instructional Materials for Adoption in California. The failure to mail an invitation to any person as provided in this section shall not invalidate any action taken by the Board, Curriculum Commission, or Department.

With respect to the submission of instructional materials for adoption by the Board, publishers and manufacturers shall comply with the following requirements:

(a) Instructional materials may be submitted in any language, but essential teachers' materials shall be included in English.

(b) Publishers and manufacturers shall indicate, either in the teacher's edition or in the student's edition or both, which literary works contained in the student's edition or teacher's edition have been abridged, adapted, or excerpted. Publishers and manufacturers shall provide detailed descriptions of these changes upon request by the Department or local educational agencies.

(c) Publishers and manufacturers shall list, either in the teacher's edition or in the student's edition or both, only authors, reviewers, consultants, advisors, field-test teachers, and others who actually contributed to the development of the materials and shall indicate, for those who are listed, in what capacity they served. Publishers and manufacturers shall provide additional related information upon request by the Department or local educational agencies.

(d) Education Code sections 32060-32066 prohibit the purchase of toxic art or craft supplies for grades kindergarten through six and allow their purchase for grades seven through twelve only if they display a

warning label. Publishers and manufacturers shall ensure that all art or craft materials included or suggested in their instructional materials comply with the requirements of these Education Code sections.

(e) On or before 5:00 P.M. of the date specified in the Schedule of Significant Events, which is included in the Invitation to Submit Basic Instructional Materials for Adoption, publishers and manufacturers shall provide to the Department a list of all instructional materials that will be submitted for adoption. Receipt of submission information after this deadline shall result in disqualification of the instructional materials from further consideration in the current adoption unless publishers or manufacturers can show extenuating and compelling circumstances beyond their control.

(f) On or before 5:00 P.M. of the date specified in the Schedule of Significant Events, publishers and manufacturers shall deliver samples of instructional materials to the evaluators and locations specified by the Department. Failure to meet the deadline for delivery of samples shall result in disqualification of the instructional materials from further consideration in the current adoption unless the publisher or manufacturer can show extenuating and compelling circumstances involving natural disasters or independent carriers beyond the control of the publishers and manufacturers. In addition:

(1) Publishers and manufacturers shall deliver all samples in final form (i.e., a form that will be offered for purchase over the period of adoption) unless written permission to submit a sample in other than final form is obtained from the Department before any samples are shipped.

(2) Publishers and manufacturers shall deliver all samples free of shipping, handling, sampling, or other charges.

(3) After the final date for delivery of samples, changes or modifications to instructional materials during the adoption review period by the publisher or manufacturer shall result in disqualification of the materials from the adoption unless those changes or modifications are made pursuant to the Board's social content review or educational content review.

(4) Publishers and manufacturers shall retrieve samples of nonadopted instructional materials from display centers during the first thirty (30) days following the date of Board adoption. The deadline for retrieval shall be specified in the Schedule of Significant Events in the invitation. All materials shall be retrieved without any cost to the display center or its staff. Display center directors may dispose of or donate for educational use any samples of instructional materials not retrieved within the 30-day period. Board and Curriculum Commission members, instructional materials reviewers, and Department staff may offer their samples back to publishers and manufacturers, retain their samples, or donate them, provided that the materials are used to benefit public education in California.

(g) On or before 5:00 P.M. of the date specified in the Schedule of Significant Events, publishers and manufacturers shall submit to the Department price quotations (bids) for the sale of completed materials, including all transportation costs.

(h) Publishers and manufacturers are discouraged from withdrawing from a state adoption after the submission of their materials. No publisher or manufacturer may withdraw their submitted instructional materials from a state adoption within seven working days prior to the beginning of the Instructional Materials Advisory Panel educational content deliberations, which date(s) shall be specified in the Schedule of Significant Events. Publishers and manufacturers withdrawing prior to this date shall be so noted in the Curriculum Commission's report of adoption recommendations.

(i) Other than during the times specified in the Schedule of Significant Events, publishers and manufacturers shall not contact Instructional Materials Advisory Panel members during their tenure to discuss anything related to the state evaluation or state adoption of materials. Contact initiated by publishers or manufacturers regarding the evaluation or adoption of materials may lead to disqualification of the publisher's or manufacturer's materials from further consideration in the current adoption, legal action, or both. Instructional Materials Advisory Panel members shall

not discuss materials under adoption consideration with publishers or manufacturers or their spokespeople or representatives.

(j) Publishers and manufacturers shall not publicize in printed marketing materials any part of the Instructional Materials Advisory Panel Report.

(k) Follow-up adoptions shall be based on the Invitation to Submit Basic Instructional Materials and evaluation criteria issued for the primary adoption. A new Schedule of Significant Events shall be approved prior to implementing a follow-up adoption.

NOTE: Authority cited: Sections 33031 and 60206, Education Code. Reference: Sections 60200, 60201, 60202, 60204, 60206, 60221, 60222 and 60227, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

2. Amendment of first paragraph and subsections (h)-(j), new subsection (k) and amendment of NOTE filed 12-8-2004; operative 1-7-2005 (Register 2004, No. 50).

§ 9517.1. Follow-Up Adoptions: Notice to Publishers and Manufacturers, Intent to Submit, Fee, List of Adopted Materials.

Follow-up adoptions shall be conducted according to the following requirements:

(a) The Board shall ensure that a written notice of an upcoming follow-up adoption in a given subject is posted on the Department Website and mailed to all publishers or manufacturers known to produce instructional materials in that subject. The notice shall include:

(1) A "Schedule of Significant Events."

(2) Specifications for "Intent to Submit."

(b) Each publisher or manufacturer shall provide an "Intent to Submit" that specifies the following:

(1) Number of programs that the publisher or manufacturer will submit.

(2) Number of grade levels covered by each program.

(c) Based on the specifications in subdivision (b) as reported in the "Intent to Submit," the Department shall assess a fee of \$5,000 per grade level submitted for review.

(d) A "small publisher" or "small manufacturer," as defined in Education Code Section 60227(f)(3), may request a reduction of the fee by submitting documentation that includes, but is not limited to, the following:

(1) A statement of earnings for the most recent three fiscal years.

(2) Number of full-time employees excluding contracted employees.

(3) A statement verifying that the small publisher or small manufacturer is not dominant in its field for the subject matter being submitted for follow-up adoption.

(e) Instructional materials approved by the Board in a follow-up adoption shall be added to the existing adoption list for that subject and remain on the list until the established expiration date for that list.

NOTE: Authority cited: Sections 33031 and 60206, Education Code. Reference: Sections 60200, 60201, 60202, 60204, 60206, 60221, 60222 and 60227, Education Code.

HISTORY

1. New section filed 12-8-2004; operative 1-7-2005 (Register 2004, No. 50).

§ 9518. Social Content Review of Instructional Materials.

The standards and criteria in the publication entitled Standards for Evaluation of Instructional Materials with Respect to Social Content, referenced in Section 9511, shall apply to all instructional materials approved by the Board for compliance with social content requirements, as follows:

(a) Reviews of instructional materials for compliance with social content requirements may be conducted by the Department or its agent.

(b) The Department shall notify publishers or manufacturers in writing of approval of instructional materials for compliance with social content requirements or any citations of noncompliance.

(c) If a publisher or manufacturer requests that their instructional materials be reviewed for compliance with social content requirements, and those materials are not concurrently being submitted for adoption, the Department or its agent may charge publishers and manufacturers a fee not to exceed the cost of the service for conducting a social content review and/or for including them in the list of instructional materials which have been approved by the Board for compliance with social content requirements. The list of approved materials shall be available to all school districts in the state. The publisher or manufacturer requesting such a review shall provide samples of instructional materials in completed form and in numbers to be determined by the Department.

(d) A publisher or manufacturer may appeal the decision of the Department or its agent to the Curriculum Commission. The following procedures apply:

(1) Within thirty (30) days from the postmark date of the Department's written notification to a publisher or manufacturer of noncompliance with social content requirements, a publisher or manufacturer shall notify the Department in writing of proposed revisions or intent to appeal.

(2) The appeal shall be limited to consideration of citations of noncompliance identified during the initial social content review.

(e) A publisher or manufacturer may appeal the decision of the Curriculum Commission to the Board.

(1) Within ten (10) days following the postmark date of the Curriculum Commission's written decision, a publisher or manufacturer shall notify the Curriculum Commission chairperson of any intent to appeal to the Board.

(2) An appeal to the Board shall be limited to consideration of revisions or issues raised during the first-level appeal.

(f) Instructional materials which have been approved for compliance with social content requirements shall not be re-evaluated unless the materials have changed substantively, or the Board's social content standards and criteria have been amended to the extent that, in the judgment of the Board, a re-evaluation is necessary.

(g) Publishers and manufacturers shall not describe or represent as adopted by the Board those instructional materials which have passed only a social content review at the state level. Misrepresentation may result in deletion of the instructional materials from the list of materials approved for compliance with social content requirements.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60040-60044 and 60200, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

9519. Display of Instructional Materials and Curriculum Frameworks.

Before final adoption of any instructional materials, the Board shall make any instructional materials recommended for adoption available for public review for not less than thirty (30) days at display centers designated by the State Superintendent of Public Instruction. These dates shall be specified in the Schedule of Significant Events.

Samples of instructional materials adopted by the Board shall be available at display centers for a minimum of two years from the date specified in the Schedule of Significant Events.

Prior to recommending any curriculum frameworks to the Board for adoption, the Curriculum Commission shall ensure that copies of the curriculum framework are mailed to any person upon request to the Curriculum Commission. Copies shall also be available at specified display centers throughout the state.

Public comment forms shall be provided at the display centers and may be used for written statements regarding instructional materials and curriculum frameworks. Use of a public comment form to submit a written statement shall not be required.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 60202, Education Code.

HISTORY

New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

9520. Written Statements to the Curriculum Commission Regarding Instructional Materials and Curriculum Frameworks Submitted for Adoption.

Any person may submit to the Curriculum Commission a written statement regarding any instructional materials or curriculum frameworks submitted for Board adoption, as follows:

(a) A statement of error appearing in the instructional materials or curriculum framework. The statement shall indicate the page, pages, or place in which the error appears, shall include a specification of the error, and, where possible, shall mention a responsible source of information from which the Curriculum Commission can confirm the existence of such error.

(b) A statement of objection to a specified item of content which shall include the page number of other identification of, and reference to, the item of content to which objection is made, and the grounds for the objection.

(c) Comments relating to any other factor of which the Curriculum Commission should be aware before making a decision to recommend the instructional materials or curriculum framework to the Board for adoption.

(d) A general objection to the adoption of the instructional materials or curriculum framework. The statement shall include a brief statement of the objection and evidence or grounds supporting the objection.

(e) A statement supporting the instructional materials or curriculum framework as a whole or any portion thereof. The statement shall include the reasons for supporting the recommended adoption or for supporting specified portions thereof.

Written statements, typewritten (or in clearly legible manuscript), shall be mailed postpaid, to the Executive Secretary of the Curriculum Development and Supplemental Materials Commission, 721 Capitol Mall, Sacramento, California, 95814, postmarked not later than ten (10) days prior to the date set for the Curriculum Commission's public hearing on the instructional materials or curriculum framework.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 60202, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9521. Public Hearings Held by the Curriculum Commission and the Board Regarding Instructional Materials and Curriculum Frameworks.

Prior to recommending a curriculum framework or any instructional materials to the Board for adoption, the Curriculum Commission shall hold at least one public hearing on the curriculum framework and at least one public hearing on any instructional materials submitted for Board adoption.

Prior to adopting a curriculum framework, the Board shall hold a public hearing on the curriculum framework. Pursuant to Education Code section 60203, the Board shall hold a public hearing on any instructional materials submitted for adoption.

NOTE: Authority cited: Sections 33013 and 60004, Education Code. Reference: Sections 60203 and 60204, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9522. Speakers.

Persons wishing to address the Curriculum Commission on a subject to be considered at a further meeting, including any matter designated as a public hearing, shall present a written request to the Executive Secretary of the Curriculum Development and Supplemental Materials Commission, 721 Capitol Mall, Sacramento, California, 95814, by noon of the third working day before the scheduled meeting, stating the subject they wish to address, the organization they represent, if any, and the nature of their testimony.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 33530, 33534 and 33535, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9523. Presentation of Public Testimony.

At or before the hearing at which oral comments from the public are to be received, the Curriculum Commission chairperson or the chairperson of a hearing body other than the full Curriculum Commission shall determine the total amount of time that will be devoted to hearing such oral comments, and may determine the time to be allotted to each person or to each side of an issue.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 33536, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9524. Waiver by Chairperson.

At any time, upon a showing of good cause, the Curriculum Commission chairperson or the chairperson of a hearing body other than the full Curriculum Commission may waive the requirements of Sections 9522 and 9523.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 33536, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt

from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 2.2. Acquisition of Adopted Instructional Materials

§ 9527. Free Instructional Materials.

If free instructional materials are offered to school districts, publishers and manufacturers shall comply with the following requirements in addition to those stated in Education Code section 60061:

(a) Free instructional materials shall comply with the requirements of Education Code sections 60040–60044 and the Board's Standards for Evaluation of Instructional Materials with Respect to Social Content.

(b) Publishers and manufacturers shall inform the Department in writing of all offers of free instructional materials within thirty (30) working days of the effective date of the offer so that all school districts may have the opportunity to order these materials. Failure or refusal by the publisher or manufacturer to inform the Department within this deadline shall constitute a rebuttable presumption that the violation of Education Code section 60061 was willful.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 60061, Education Code.

HISTORY

1. New Article 2.2 (sections 9527–9530) and section adopted by the Department of Education on 12–5–94. New section submitted to OAL for printing only on 12–6–94, effective 12–30–94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9528. Alternate Formats of Adopted Instructional Materials.

Alternate formats are (1) instructional materials which are identical in content to adopted instructional materials but different in physical format, or (2) translations or literature that is equivalent in content to adopted instructional materials. Publishers and manufacturers may submit alternate formats of adopted instructional materials to the Department for approval at any time during the period of adoption.

Submissions for approval shall include a sample of the proposed alternate format material.

An alternate format package may include free instructional materials that have not been adopted by the Board, provided that:

(a) the non-adopted free materials have passed a state review for legal compliance with the social content requirements as required by Section 9527 and in accordance with Section 9518,

(b) the purchase price of the alternate format package shall not include any costs attributable to the non-adopted free instructional materials such as, but not limited to, development and production, correlation to the adopted materials, packaging and shipping costs,

(c) the publisher or manufacturer includes with the submission a certification of compliance with the proviso in subdivision (b) of this section, and

(d) the publisher includes in the alternate format package a statement that identifies any items that are free and which have not been adopted by the Board.

NOTE: Authority cited: Sections 33031 and 60206, Education Code. Reference: Sections 60200 and 60222, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12–5–94. New section submitted to OAL for printing only on 12–6–94, effective 12–30–94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

2. Amendment filed 2–27–97; operative 3–29–97 (Register 97, No. 9).

§ 9529. New Editions of Adopted Instructional Materials.

Upon written request by a publisher or manufacturer, the Department may approve a new edition of an instructional material to replace the original edition adopted by the Board, provided that:

(a) Changes contained in the new edition are so minimal that both the new edition and the old edition may be used together in a classroom environment. (Technical upgrades of computer software which do not con-

tain educational or social content changes shall be exempt from this requirement.)

(b) All changes comply with the social content requirements of Education Code sections 60040–60044 and the Board's Standards for Evaluation of Instructional Materials with Respect to Social Content.

The price of the original edition or a lower price shall apply until the next scheduled biennial price adjustment for that subject area.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60040–60044, 60061, 60222 and 60223, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12–5–94. New section submitted to OAL for printing only on 12–6–94, effective 12–30–94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9530. School District Ordering of Instructional Materials.

Each school district shall purchase adopted instructional materials directly from publishers and manufacturers. With respect to the purchase of instructional materials by a school district, the publisher or manufacturer shall comply with the following requirements:

(a) The provisions of Education Code section 60061 and 60061.5.

(b) Instructional materials furnished and delivered to the school district by the publisher or manufacturer shall conform to and be of the same quality of workmanship as the samples of the respective instructional materials submitted by the publisher or manufacturer to the Department, except that the instructional materials shall also include all revisions, corrections, additions, and substitutions required by the Board at the price adjusted by the Board and the publisher or manufacturer.

(c) Upon request by any school district, a publisher or manufacturer shall provide a copy of any manufacturing standards and specifications for textbooks with which the publisher or manufacturer is currently in compliance.

(d) A discontinuation of an instructional material before its adoption expiration date or before eight years, whichever is less, may cause a hardship on the school districts by limiting the reorder availability of components necessary for the use of instructional materials sets or programs. Should the publisher or manufacturer discontinue to supply an instructional material before its adoption expiration date or before eight years, whichever is less, without prior written approval from the district, upon receipt of written notice from the district, the publisher or manufacturer shall buy back, from all school districts having received the program, set, or system within the adoption period of the program, set, or system, all components of the instructional materials program, set, or system in which the discontinued item was designed to be used. The publisher shall buy back the instructional materials program, set, or system at the price in effect pursuant to the purchase order or agreement at the time the particular material from the program, set, or system is discontinued.

(e) The failure of the publisher or manufacturer to perform under the term of any purchase order or agreement by late or nondelivery of instructional materials, or the discontinuation to supply materials without prior approval by the Board and the delivery of unauthorized materials will disrupt and delay the intent of the school district's educational process, causing loss and damage to the school, its students, and the public interest. It is difficult to assess and fix the actual damages incurred due to the failure of the publisher or manufacturer to perform. Therefore, the publisher or manufacturer shall comply with any of the following requirements made by the school districts pursuant to this section as compensating or liquidating damages and not as penalties:

(1) For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement or are materials that have not been approved for delivery to California schools in written notice to the publisher or manufacturer from the Board or Department.

Should the publisher or manufacturer deliver unauthorized instructional materials to the school district, on written notice from the district, the publisher or manufacturer shall comply with the following requirements:

EXHIBIT C

State of California
Secretary of State



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAR 23 2006

A handwritten signature in cursive script, reading "Bruce McPherson".

BRUCE McPHERSON
Secretary of State

**ARTICLES OF INCORPORATION
OF****MAR -9 2006****AMERICANS OPPOSED TO DISCRIMINATION AND HATRED AGAINST CHILDREN****I. NAME**

The name of the corporation is Americans Opposed to Discrimination and Hatred Against Children ("AODHAC").

II. PURPOSES

- A. This corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. It is not organized for the private gain of any person.
- B. The purpose of this corporation is to promote an accurate portrayal of the Hindu religion in the public education system of the State of California.

III. INITIAL AGENT FOR SERVICE OF PROCESS

The name and address in the State of California of the corporation's initial agent for service is: ARVIND KUMAR, 4400 The Woods Drive, Apt. 821, San Jose, California 95136.

IV. ORGANIZATION

- A. This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3), Internal Revenue Code.
- B. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distributing of statements) on behalf of any candidate for public office.

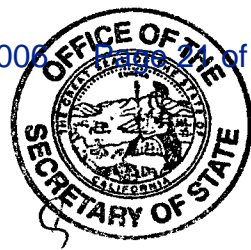
V. CORPORATE PROPERTY

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3), Internal Revenue Code.

*Murali Menon***MURALI MENON, INCORPORATOR**

EXHIBIT D

State of California
Secretary of State



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) was prepared by and this office from the record on file, of which it purports to be a copy, and at it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUN 09 2006

A stylized, handwritten signature in black ink, appearing to read "Bruce McPherson".

BRUCE McPHERSON
Secretary of State

APR 3 2006

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

The undersigned certifies that:

They are the president and secretary, respectively, of Americans Opposed To
Discrimination And Hatred Against Children ("AODHAC"), a California corporation.

Article 1 of the Articles of Incorporation of this corporation is amended to read as
follows:

I. NAME

The name of the corporation shall be California Parents for the Equalization of
Educational Materials.

The foregoing Amendment of Articles of Incorporation has been duly approved by the
board of directors.

The foregoing Amendment of Articles of Incorporation has been duly approved by the
members.

We further declare under penalty of perjury under the laws of the State of California that
the matters set forth in this certificate are true and correct of our own knowledge.

DATE: MARCH 29, 2006

Murali Menon
Murali Menon, President

Rajesh Goswami
Rajesh Goswami, Secretary



EXHIBIT E

California Department of Education
1430 N Street, Room 1101
Sacramento, California

Members Present

Glee Johnson, President
Kenneth Noonan, Vice President
Alan Bersin
Yvonne Chan
Don Fisher
Paul Gardner III
Ruth E. Green
Joe Nuñez
Johnathan Williams
Ruth Bloom

Members Absent

Bonnie Reiss

Secretary and Executive Officer

Jack O'Connell, State Superintendent of Public Instruction

Call to Order at 9:00 a.m.

Salute to the Flag

Mr. Bersin led the Board and the audience in the Pledge of Allegiance

Approval of Minutes (January 12, 2006)

- **ACTION:** Mr. Fisher moved to approve the meeting minutes for the January 12, 2006, meeting. Ms. Chan seconded the motion. The motion was approved by a vote of 10-0.

Superintendent's Report

| ITEM 1 | STATE BOARD PROJECTS AND PRIORITIES. Including, but not limited to, future meeting plans; agenda items; State Board office budget; staffing, appointments, and direction to staff; declaratory and commendatory resolutions; update on litigation; bylaw review and revision; review of the status of State Board-approved charter schools as necessary; Board Liaison Reports; and other matters of interest. | INFORMATION ACTION |
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|--------|---|--------------------|

➤ NO ACTION WAS TAKEN ON THIS ITEM.

| | | |
|--|---|-------------------------------------|
| ITEM 2 Case 2:08-cv-00522-EJD-KJM Document 32 Filed 06/12/2006 | PUBLIC COMMENT. Public Comment is limited to matters not included in the printed agenda. Depending on the number of individuals wishing to address the State Board, the presiding officer may establish specific time limits on presentations. | INFORMATION Page 25 of 31 |
|--|---|-------------------------------------|

➤ NO ACTION WAS TAKEN ON THIS ITEM.

| | | |
|---------------|---|---------------------------|
| ITEM 3 | California High School Exit Examination: Examination of Alternatives Under California <i>Education Code</i> Section 60856 | INFORMATION ACTION |
|---------------|---|---------------------------|

- ACTION:** Mr. Fisher moved that the Board finds, at this time, that there are no other criteria that are appropriate and that do not undermine the Legislature's intent that all high school graduates demonstrate satisfactory academic proficiency, as set forth in Education Code sec. 60856; and therefore, the Board will NOT recommend that the Legislature enact any alternatives to the California High School Exit Examination for high school students regarded as highly proficient but unable to pass the high school exit exam. Ms. Green seconded the motion. The motion was approved by a vote of 9-0 with Mr. Nuñez abstaining.

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| ITEM 4 | California High School Exit Examination: Adopt Emergency Regulations related to Senate Bill 517, and Approve Commencement of the Rulemaking Process for Amendments to Title 5, Sections 1200-1225 | INFORMATION ACTION |
|---------------|---|---------------------------|

Case 2:06-cv-00532-FBD-KJM Document 32 Filed 06/12/2016 Page 26 of 31

- **ACTION:** Mr. Bersin moved that the State Board of Education (SBE): (1) approve the proposed emergency regulations; (2) approve the Final Statement of Emergency; (3) approve the commencement of the regulatory process for the proposed regulations and direct staff to commence the rulemaking process; (4) approve the Initial Statement of Reasons and the Notice of Proposed Rulemaking; (5) direct CDE staff to conduct a public hearing on the proposed regulations and take action as deemed necessary and appropriate. Mr. Noonan seconded the motion. The motion was approved by a vote of 9-0 with Ms. Green absent for the vote.

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| ITEM 5 | Standardized Testing and Reporting Program: The Approval of Performance Standards (Levels) for the Grade Eight California Standards Test in Science and the Grade Ten California Standards Test in Life Science | INFORMATION ACTION |
|---------------|---|---------------------------|

- **ACTION:** Ms. Chan moved that the State Board of Education (SBE) approve the proposed performance standards (levels) for the Grade Eight California Standards Test (CST) in Science and the Grade Ten California Standards Test (CST) in Life Science and direct staff to conduct regional public hearings on the proposed performance standards (levels). Ms. Bloom seconded the motion. The motion was approved by a vote of 10-0.

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| ITEM 6 | Standardized Testing and Reporting Program: Including but not limited to Program Update | INFORMATION ACTION |
|---------------|---|---------------------------|

➤ NO ACTION WAS TAKEN ON THIS ITEM.

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| ITEM 7 | Standardized Testing and Reporting Program: Approval of Contract and Scope of Work | INFORMATION ACTION |
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- **ACTION:** Mr. Noonan moved that the State Board of Education (SBE) approve the proposed Standardized Testing and Reporting (STAR) Program Contract and Scope of Work with the written modifications presented by Board Member Green and the additional correction made in that same language that states, "Collaborate with ETS Program Management to assure that SBE concerns are reflected in the STAR program and operations." Mr. Gardner seconded the motion. The motion was approved by a vote of 9-0 with Ms. Green absent for the vote.

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| ITEM 8 | Independent Evaluation of Standards and Assessment Program: Request for Proposals | INFORMATION ACTION |
|---------------|---|---------------------------|

- **NO ACTION WAS TAKEN ON THIS ITEM.** President Johnson removed this item from the agenda and stated that the Board would not consider it at this meeting.

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| ITEM 9 | Standardized Testing and Reporting Program: Approval of Revised Blueprints for the California Alternate Performance Assessment | INFORMATION ACTION |
|---------------|--|---------------------------|

- **ACTION:** Ms. Green moved that the State Board of Education (SBE) approve the revised blueprints for the California Alternate Performance Assessment (CAPA). Mr. Noonan seconded the motion. The motion was approved by a vote of 9-0 with Mr. Nuñez absent for the vote.

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| ITEM 10 | California English Language Development Test: Including, but not Limited to, Update on California English Language Development Test | INFORMATION ACTION |
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- **NO ACTION WAS TAKEN ON THIS ITEM.**

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| ITEM 11 | California English Language Development Test: Performance Level Standard Setting | INFORMATION ACTION |
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PUBLIC HEARINGS

Public Hearings on the following agenda items will commence **no earlier than 12:00 p.m.** The Public Hearings will be held at or after 12:00 p.m. as the business of the State Board permits.

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|----------------|--|--|
| ITEM 12 | Kingsburg Elementary Charter School District: Hold a Public Hearing and Join the State Superintendent of Public Instruction in Approving Renewal of All-Charter District Status for a Five-Year Period | INFORMATION ACTION PUBLIC HEARING |
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- **ACTION:** Ms. Bloom moved that the State Board of Education (SBE) join the State Superintendent of Public Instruction (SSPI) in approving renewal of Kingsburg's all-charter district status for a five-year period, subject to the development of a memorandum of understanding (MOU) between Kingsburg and the CDE covering all matters essential to effective oversight. Mr. Williams seconded the motion. The motion was approved by a vote of 9-0 with Mr. Noonan absent for the vote.

| | | |
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| ITEM 13 | Edison Charter Academy: Renewal of Charter Status Under State Board of Education Oversight for a Five-Year Period | INFORMATION ACTION PUBLIC HEARING |
|----------------|---|--|

- **ACTION:** Mr. Fisher recused himself and exited the room during the discussion and vote of this item. Mr. Williams moved that the State Board of Education (SBE) approve the renewal of the Edison Charter Academy (ECA) with conditions described by the CDE under the oversight of the SBE, subject to the development of a memorandum of understanding (MOU) between ECA and the CDE. Mr. Gardner seconded the motion. The motion was approved by a vote of 9-0 with Mr. Fisher absent for the vote.

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| ITEM 14 Case 2:06-cv-02533-FSD-MJM Document 232 Filed 06/12/2006 | High Tech High Bayshore: Approve the Appeal of San Mateo County Board of Education's Decision to Deny Renewal of the Charter and, thus, Renew the Charter for a Five-Year Period | INFORMATION ACTION PUBLIC HEARING |
|--|--|--|

- ACTION:** Ms. Chan moved that the State Board of Education (SBE) approve the renewal of the county-wide charter of High Tech High (HTH) Bayshore and, thus, renew the charter which would then continue to operate under the SBE's authorization for a five-year period, commencing July 1, 2006, and ending June 30, 2011, subject to the conditions for continued operation as recommended by CDE staff and the Advisory Commission on Charter Schools (ACCS) reflected in Attachment 4 to Board meeting agenda item 14. Ms. Bloom seconded the motion. The motion was approved by a vote of 10-0.

END OF PUBLIC HEARINGS

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| ITEM 15 | Recommendation to Appoint Commissioners to the Advisory Commission on Charter Schools | INFORMATION ACTION |
|----------------|---|---------------------------|

- ACTION:** Mr. Williams moved that the State Board of Education (SBE) approve the recommendation of the Screening Committee of the State Board of Education and appoint the following members for new terms on the Advisory Commission on Charter Schools (ACCS): Ms. Beth Hunkapiller, Mr. Tom Conry, Mr. Steve Barr, and Mr. Greg McNair. Ms. Green seconded the motion. The motion was approved by a vote of 10-0.

Case 2:06-cv-00532-ECD-KJM Document 32 Filed 06/12/2006 Page 30 of 31

| | | |
|---------|---|--------------------|
| ITEM 18 | New West Charter Middle School: Approve with Conditions a Material Revision to the Charter to Extend the Initial Approval Period by One Year (2006-07) to June 30, 2007 | INFORMATION ACTION |
|---------|---|--------------------|

- **ACTION:** Ms. Green moved that the State Board of Education (SBE) approve, with the following conditions, a material revision to the charter of the New West Charter Middle School (New West) to extend the initial approval period by one year (2006-07) to June 30, 2007, consistent with the five-year limit on an initial charter approval period, as specified in *Education Code* (EC) Section 47607(a)(1):
 - On a continuing basis, New West shall implement all of the recommendations contained in the follow-up audit (Key recommendations are listed in the table on page 2 of the Board's agenda item. All recommendations are reflected in Attachment 1 to the agenda item on pages 32, 33, 42, 45, 52, 63, and 64.)
 - New West shall present an action plan to the CDE addressing all of the follow-up audit recommendations. Further, New West shall report to the CDE each month documenting its implementation of the audit's recommendations, until such time as New West's charter is renewed.

Mr. Fisher seconded the motion. The motion was approved by a vote of 10-0.

*****PUBLIC HEARING*****

The Public Hearing on the following agenda item will commence **no earlier than 3:00 p.m.** The Public Hearing will be held at or after 3:00 p.m. as the business of the State Board permits.

| | | |
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| ITEM 19 | 2005 History-Social Science Primary Adoption: Consideration of Board Committee Recommendations; Adoption of Edits and Corrections for Grades 6-8; Motion to Amend Action Taken by Board on November 9, 2005, regarding Curriculum Development Commission's review of Ad Hoc Committee Edits and Corrections | INFORMATION ACTION PUBLIC HEARING |
|---------|---|--|

ACTION: Mr. Gardner moved that the State Board of Education (SBE):

Case 2:06-cv-01531-FGD-KM Document 32 Filed 06/12/2006 Page 31 of 32

1) adopt the edits and corrections recommended by the SBE Committee on February 27, 2006, for the adopted history-social science instructional materials for grades six through eight; with conforming edits and corrections in all parts of the programs, as recommended by the SBE Committee; and with the September 30, 2005, edits and corrections taking precedence over the February 27, 2006, edits and corrections to the extent: (i) that a publisher has already acted on the September 30, 2005, edits and corrections and (ii) that the September 30, 2005, edits and corrections on which the publisher has acted conflict with those of February 27, 2006; and with the staff of the SBE and CDE to take care of any final “clean-up” issues.

2) amend the action it took on November 9, 2005, when it adopted history-social science instructional materials, by substituting the February 27, 2006, edits and corrections (with the provisions for conforming edits and corrections, potential conflict between edits and corrections, and “clean-up”), as just moved, in place of the provision regarding the edits and corrections recommended by the Ad Hoc Committee and reviewed by the Curriculum Commission.

Mr. Noonan seconded the motion. The motion was approved by a vote of 8-0 with Mr. Fisher and Mr. Williams abstaining.

*****END OF PUBLIC HEARINGS*****

This completes the actions taken by the State Board of Education on Wednesday, March 8, 2006. See also the Preliminary Report of Actions for actions taken on Thursday, March 9, 2006.