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CALIFORNIA STATE ALLOCATION BOARD
RULES AND PROCEDURES SUBCOMMITTEE
PUBLIC MEETING

STATE CAPITOL, ROOM 447
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, AUGUST 15, 2012
TIME: 3:06 P.M.

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APPEARANCES

MEMBERS OF THE SUBCOMMITTEE PRESENT:

SENATOR LONI HANCOCK, CHAIRPERSON

ESTEBAN ALMANZA, Chief Deputy Director, Department of General Services, designated representative for Fred Klass, Director, Department of General Services

KATHLEEN MOORE, Director, School Facilities Planning Division, California Department of Education, designated representative for Tom Torlakson, Superintendent of Public Instruction

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER CURT HAGMAN

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA SILVERMAN, Executive Officer
BILL SAVIDGE, Assistant Executive Officer

REPRESENTATIVES OF THE DEPARTMENT OF GENERAL SERVICES, OFFICE OF PUBLIC SCHOOL CONSTRUCTION (OPSC) PRESENT:

LISA SILVERMAN, Executive Officer
JUAN MIRELES, Deputy Executive Officer

P R O C E E D I N G S

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CHAIRPERSON HANCOCK: Okay. We can begin the meeting of the Subcommittee on Board Rules and Procedures. We have three items on our agenda today.

First, Madam Secretary, would you read the roll.

MS. JONES: We really don't have to do it, but I'll do that for you.

CHAIRPERSON HANCOCK: Oh, okay. We don't have to in subcommittee?

MS. JONES: That's correct.

CHAIRPERSON HANCOCK: Fine. Then you know what, let's streamline.

MS. JONES: Okay.

CHAIRPERSON HANCOCK: We could do that. The first item relates to the Consent Calendar.

I think we have three new members since the Subcommittee on Rules originally had asked that in order to streamline the agenda we have just consent items as opposed to special consent which always seem to be appeals and take a very long time and regular consent which hopefully is literally consent and we can vote on the entire consent calendar at the same time.

I gather that OPSC has requested that we relook at that and reinstitute special consent?

1 MS. SILVERMAN: It was -- Senator, it was a
2 request by some of the members of existing Board that they
3 would like to bring this item back to the Rules Subcommittee
4 for discussion.

5 CHAIRPERSON HANCOCK: Okay. Are those members
6 here today?

7 MS. SILVERMAN: So yeah, we did have a member
8 that's actually present that actually requested that the
9 item be brought forward to the Rules Subcommittee and that
10 member is a representative of --

11 MS. MOORE: Is that me?

12 MS. SILVERMAN: Yes. Kathleen Moore.

13 MS. MOORE: Okay. Great. I believe I probably
14 did talk about this and I'm glad that it can be brought back
15 to the Board -- to the Subcommittee and all that I was
16 indicating is that it appeared that our consent specials
17 that were considered separately seemed to be added into our
18 consent items at most of our Board meetings.

19 So it -- I was wondering if it's something that we
20 continued to need to have separately or is it one that the
21 consent specials would be also considered as part of the
22 consent calendar. And I'm open to the discussion either
23 way. So --

24 CHAIRPERSON HANCOCK: Mr. Hagman.

25 ASSEMBLY MEMBER HAGMAN: Thank you, Madam Chair.

1 I mean the consent is consent. Staff recommendations, I
2 think any of us can pull off -- anything off consent that we
3 don't have -- that we may have issue with as far as
4 recommendations from staff.

5 So lump it all together, get it out of the way,
6 frees up a lot of audience, if we know, we take it out ahead
7 of time. I don't really understand the difference between
8 the special consent and regular consent anyway besides
9 they're different categories of consensual items.

10 So if you're looking for any kind of motion, I
11 would say group them together as one big list and still have
12 the same rules apply, we pull them off if we want to.

13 MR. ALMANZA: Is there any advantage to the staff
14 to have the special consent?

15 MS. SILVERMAN: I think it's obviously as far as
16 organization, it would still be the same. We would still
17 tuck it in.

18 If we want it to have its own separate tab within
19 the consent special, I think we can accommodate that. So
20 that way they can stand out from the rest of the consent
21 agenda. I mean -- it's really not that difficult to do.

22 MR. ALMANZA: Okay.

23 MS. MOORE: Can you --

24 MR. REYES: Madam Chair, if I may. I think the --
25 this came out when I became Chair. There was an

1 apprehension of approving some items that were appealed and
2 action items outside the regular traditional consent.

3 But there were items there that issues had been
4 resolved, but there was no way we were going to vote no --
5 we're going to vote against the issues. So I started -- I
6 asked if it could be put in consent and I was told that
7 traditionally it had not been part of the consent.

8 So then we started sort of putting -- adding
9 Tabs 6, 9, and 12 as a special consent because it wasn't
10 part of the consent.

11 But I think that there's a little bit of
12 distinction in the traditional consent and the other items
13 that get added later in that the traditional consent is
14 stuff -- the bread and butter stuff.

15 The special consent items -- so we can put them
16 into consent. I just want to make sure that we recognize
17 that those are items that are in Tabs 5, 12, and 13 or
18 whatever and then we can just roll them into part of the
19 consent. We still need to have that separation because
20 there's more detail, more documentation, and if a member
21 does choose to pull that item, then there's that historical
22 have -- that you want to have to refer to versus the index
23 and so forth is pretty generic.

24 I mean we're not going to pull item, you know,
25 Dripple (ph) School 750- for the new windows item followed

1 the Port Hueneme 254- walkway kind of stuff. I mean that
2 stuff is going to be part of the consent regardless. That's
3 the only thing I add.

4 ASSEMBLY MEMBER HAGMAN: But you got to
5 categorize. That's what we used to have -- this is part
6 rec, this was building engineering. They were separating
7 categories.

8 MR. REYES: Um-hmm.

9 ASSEMBLY MEMBER HAGMAN: That's what you're saying
10 with the tabs by consensual items, but it's still all the
11 consent.

12 MR. REYES: Yes.

13 CHAIRPERSON HANCOCK: Yeah. I think I agree with
14 Mr. Hagman. Use of the consent calendar -- I have
15 experienced it as I believe we do it in the Senate and the
16 Assembly -- well, actually they're a little different
17 because in the Senate and the Assembly, there are items
18 which no one -- we know in advance no one has objected to;
19 right?

20 In local government, we used to put as much as
21 possible on the consent calendar because there were
22 things --

23 MR. REYES: Right.

24 CHAIRPERSON HANCOCK: -- that might actually look
25 somewhat controversial, but in point of fact, everybody

1 agreed and there was no point in hashing it over for half an
2 hour.

3 So recognizing that items can and will be taken
4 off the consent calendar if the body does not agree to have
5 them passed, it would be -- I really feel that letting it
6 stand the way it is has worked quite well for me at least.

7 MR. REYES: (Indiscernible-away from mic) way it
8 is --

9 CHAIRPERSON HANCOCK: Leave it alone, I guess.

10 ASSEMBLY MEMBER HAGMAN: We're suggesting moving
11 Tabs 6, 9, whatever into the front section of the business
12 under consensual items, but you could have categories in
13 those consensual. So administrative -- you know, whatever
14 Tab 6 name is, you know, have it like that categorized under
15 consent but one master consent calendar itemized by subject.

16 MR. REYES: Um-hmm.

17 MR. MIRELES: Madam Chair, when we first -- when
18 the Subcommittee first chose to remove that special consent
19 tab, that's what staff did. We put those items -- and again
20 these items are your typical facility hardship, health and
21 safety issues that -- not standard applications, but they're
22 a little different.

23 In the past, the Board members did want those to
24 be highlighted. So what we did is we put them at the back
25 of consent -- the consent agenda to try and highlight them

1 for the Board members and staff and at that point, there
2 were some comments that were made, well, sometimes we don't
3 know that they're back there; it might be better if we just
4 pull them out of consent, put them as action items so that
5 they can highlight it.

6 So that's something that we did originally. We
7 could do that again. We could create a separate section of
8 consent and put them in there. It's up to the Subcommittee.

9 MR. ALMANZA: So by changing it, are we adding
10 work or --

11 MS. SILVERMAN: No.

12 MR. MIRELES: No.

13 MR. ALMANZA: -- simplifying it. Okay.

14 MR. MIRELES: Just a different section in the
15 agenda.

16 MS. MOORE: So would we have a consent specials
17 portion of the consent calendar -- is what you're --

18 MS. SILVERMAN: Yes.

19 MS. MOORE: -- saying.

20 MS. SILVERMAN: Right.

21 MS. MOORE: And that consent specials could be
22 removed from the consent calendar should a Board member want
23 to versus what are we doing currently? We have -- just each
24 item stands on its own?

25 MS. SILVERMAN: It's structured as part of the

1 action items.

2 MR. MIRELES: Yes.

3 CHAIRPERSON HANCOCK: Or they can be structured as
4 part of consent because if nobody takes them off --

5 MR. REYES: Yeah.

6 CHAIRPERSON HANCOCK: -- you don't have to deal
7 with it.

8 I mean to me it's very confusing to have consent
9 and controversial consent.

10 MR. REYES: Yeah.

11 CHAIRPERSON HANCOCK: Let's either make them
12 consent and if somebody wants to pull them off, they can,
13 which is what we have now, or put them in action items for
14 discussion.

15 Nobody else that I've been able to see anywhere
16 has a category called special consent which seems to be an
17 oxymoron really.

18 MR. ALMANZA: Right.

19 CHAIRPERSON HANCOCK: And, you know, if you want
20 to call it a different name like hardship cases or contro --
21 but then they go into action items.

22 MR. REYES: Yeah.

23 MR. ALMANZA: Um-hmm. But it's consent or action.

24 MR. REYES: No. I think they're consent. I think
25 you're absolutely right, Senator. It's a consent item or

1 it's an action item and I think that the only reason one
2 came up with this hybrid is that people didn't want us to
3 add those noncontroversial action items to the consent and
4 it seemed that it is silly to have people come in and talk
5 about the issues if everybody was onboard.

6 So then we came up with, okay, let's pull this and
7 when I suggested that we put it to consent, they said no,
8 people pulled it from the consent. So (indiscernible) we
9 call it this special consent, how do we -- and then members
10 started saying okay, I move consent and include items -- you
11 know, Tab 4, 3, 9, and 12.

12 And so that was another way around it, but I
13 concur with you a hundred percent. It should be part of the
14 consent item. It could include the description, the
15 information, and if people want to pull that item, that
16 (indiscernible) be pulled and the action taken
17 appropriately.

18 CHAIRPERSON HANCOCK: And the public can pull
19 anything off -- agree at the beginning to pull off --
20 information off the consent calendar as well. So we're just
21 going to have one consent calendar and you can put as many
22 different items you want underneath it, but it's one consent
23 agenda and then people pull it off as needed.

24 MR. REYES: (Indiscernible)

25 CHAIRPERSON HANCOCK: Do we need to make motions

1 or anything or just recommendations?

2 CHAIRPERSON HANCOCK: Well, if we keep it the way
3 it is, we probably don't need a motion.

4 ASSEMBLY MEMBER HAGMAN: No. We do because it's
5 not set up that way right now. Right now we have two
6 categories.

7 MR. REYES: Right now we have the special consent
8 nonsense.

9 CHAIRPERSON HANCOCK: Oh, we do have it.

10 MR. REYES: Yeah. We have --

11 CHAIRPERSON HANCOCK: I thought we did away with
12 it. No?

13 MS. SILVERMAN: They're probably action items
14 currently. So the consent specials moved over to what we
15 consider now to the action items. The Board did adopt that
16 change in 2010.

17 ASSEMBLY MEMBER HAGMAN: So we want to move it
18 where?

19 MR. REYES: To where -- the special action items
20 (indiscernible) consent to be rolled into a consent item.

21 CHAIRPERSON HANCOCK: Okay. Okay.

22 MR. REYES: And I think there's a motion --

23 ASSEMBLY MEMBER HAGMAN: And I think
24 administratively it would be between the Chair and staff to
25 put those items on consent. Those members -- the rest of

1 the Board members have the right to review it, to pull them
2 off either before or during the meeting before we vote.

3 MS. MOORE: And these are for items that a typical
4 staff has to bring before the Board and there's consensus
5 on, but for items that are appeal, appeal items would still
6 be in the action items of the Board; correct?

7 MR. MIRELES: Correct.

8 MS. SILVERMAN: Correct.

9 MS. JONES: In the appeal -- appeal.

10 MS. SILVERMAN: The appeal section; right. They
11 have their own separate tab, the appeals section.

12 ASSEMBLY MEMBER HAGMAN: Yeah. So consent -- the
13 appeal section.

14 MR. REYES: What happens when you do have an
15 appeal though and you're bringing it up to the Board and
16 from conversation with the Board, the Chair, and the Vice
17 Chair, we all agree that (indiscernible) authorized to give
18 them that, but the Board clearly (indiscernible). Would
19 that still be part of consent or --

20 MS. SILVERMAN: Appeals.

21 MR. REYES: It will be part of the appeals.

22 MS. SILVERMAN: Right.

23 MR. MIRELES: But the Chair still has the
24 discretion to add it as part of the consent --

25 MS. SILVERMAN: Right.

1 MR. MIRELES: -- just like we've been doing now.

2 MS. SILVERMAN: Right.

3 ASSEMBLY MEMBER HAGMAN: You'd make a motion to
4 keep under the appeals section and then if -- so you could
5 make a motion just to move it or to move it to the consent
6 would be the same amount of effort.

7 MR. REYES: So Mr. Hagman would move the consent
8 plus Tabs 7 and 9, if they aren't (indiscernible).

9 ASSEMBLY MEMBER HAGMAN: If they wanted to, yeah.

10 MR. REYES: Okay.

11 CHAIRPERSON HANCOCK: Okay. Should I ask for
12 comments from the public? No comments from the public.

13 Mr. Hagman, would you state your motion again,
14 please.

15 ASSEMBLY MEMBER HAGMAN: That we won't make a
16 special consent section and that the Chair or the staff can
17 put nominal, normal consent items on one master calendar,
18 whatever subcategory tabs they want inside of it.

19 CHAIRPERSON HANCOCK: Okay. Is there a second?

20 MS. MOORE: I'll second.

21 CHAIRPERSON HANCOCK: All in favor.

22 (Ayes)

23 CHAIRPERSON HANCOCK: Opposed? Okay. Motion
24 carries unanimously.

25 Item two is appeals. And I guess we have a number

1 of choices here. My understanding was that this really was
2 a request from some of the school districts that would like
3 us to have to have a clear six votes to either approve an
4 appeal or deny an appeal.

5 And so I'm wondering if staff has any comments
6 about that.

7 ASSEMBLY MEMBER HAGMAN: I do, Madam Chair.

8 CHAIRPERSON HANCOCK: Well, Mr. Hagman does.
9 Okay.

10 ASSEMBLY MEMBER HAGMAN: I always have comments.
11 I looked at this section yesterday and it came up -- we've
12 had one or two instances I could remember where we have been
13 a divided Board on whether or not to take action on an
14 appeal. But let's think of the definition of what we're
15 doing with -- over 99 percent of the business done by SAB
16 Board is done administratively by staff.

17 They follow the rules that we put in place. It's
18 pretty black and white.

19 The problems when we have is when people want to
20 appeal the decision of the staff recommended. That means an
21 action has already been taken.

22 I think there needs to be a consensus, whatever
23 number that is, a majority of the Board or whatever, to
24 overtake administrative action.

25 So a basic appeal says I don't agree with staff.

1 I'm going to take it to the Board and plead my case with
2 them and the Board then has the right to overturn, hopefully
3 within our legal boundaries of doing -- following our own
4 rules -- but that's what the appeal process is.

5 If you have to -- because we came to that point
6 where we had motion A, B, and C where we could not get six
7 members on a decision, all agreed upon the same action to
8 take the different action.

9 But there already has been an action taken. So my
10 feeling is that it takes six votes or a simple majority of
11 the Board to overturn an administrative action. Otherwise
12 the administrative action should stand.

13 CHAIRPERSON HANCOCK: So you're saying yes, we
14 should have six votes.

15 ASSEMBLY MEMBER HAGMAN: Just to overturn. Not to
16 affirm.

17 MR. ALMANZA: To take an action.

18 CHAIRPERSON HANCOCK: Okay.

19 MR. REYES: I concur with Mr. Hagman that the
20 original decision when the first allocation was made, that
21 was when the Board took an action and provided a resources
22 to do what they're going to do.

23 The appeals generally come back because somebody
24 needed to do something differently or they did something
25 different and they want to change the scope.

1 And from my perspective, I think the staff has
2 looked at it and said no, this is not something that we can
3 approve. So change what you want -- to change to what you
4 want to do it has to go to the Board and it's at that point
5 that the Board have the option as Mr. Hagman points out, six
6 Board members, one, to overrule staff or the staff decision
7 stands.

8 I think to require that six vote to support the
9 staff decision is sort of -- it doesn't make sense.

10 ASSEMBLY MEMBER HAGMAN: And then what do you do
11 if you never do, like that one situation --

12 MR. REYES: Yeah.

13 ASSEMBLY MEMBER HAGMAN: -- that made some things
14 in limbo forever. I mean again 99 percent of our business
15 is done administratively. We're here to approve the
16 exceptions to the rule. And so it should take a majority to
17 do that.

18 MR. ALMANZA: Administratively the program [sic]
19 makes, what, probably hundreds of decisions a year on
20 applications and I would imagine that many of those
21 decisions -- you know, a district may not completely agree,
22 but strategically they'll decide which one they want to
23 appeal in the belief that they have a good enough case for
24 the Board action to overturn a staff decision -- a program
25 decision.

1 So if we made this change, potentially every
2 single denial is up to the Board and if there isn't enough
3 votes, then every single case could be overturn and go
4 towards in favor of the appeal.

5 How many potential appeals do you think there
6 would be in a year?

7 MS. SILVERMAN: The margin's very small.

8 MR. MIRELES: Last year in 2011, we had 11 -- 13
9 appeals -- excuse me. We had 406 projects that were
10 approved in consent for a total of 1.1 billion, but there's
11 appeals equal to \$12 million.

12 MR. ALMANZA: Right. But those were appeals that
13 required at least six votes for the action to overturn.

14 MS. SILVERMAN: That's correct.

15 MR. ALMANZA: But if there weren't six votes as
16 what we're saying now, then the administrative decision
17 wouldn't stand? Would be reversed?

18 MS. MOORE: No. What you're saying is that the
19 administrative decision would stand, I believe is how the
20 decision was going.

21 MR. ALMANZA: No. Because if it requires six
22 votes either way and you don't get six votes either way,
23 what --

24 MR. REYES: Under this --

25 CHAIRPERSON HANCOCK: Then it would just sort of

1 drift from month to month in the agenda.

2 MS. SILVERMAN: Right.

3 CHAIRPERSON HANCOCK: Right?

4 MS. MOORE: Well, here's how I've seen it -- how
5 we operated at one time at the Board. The staff made a
6 recommendation and sometimes that recommendation was deny
7 the district's request.

8 Sometimes that recommendation was an alternative
9 option to perhaps what the district is asking for. As I
10 understand the write-up here and the recommendation by staff
11 is that they would not take a position. There would be no
12 recommendation. There would be options for the Board to
13 consider.

14 And if the Board did not approve one of the
15 options with six votes, then the administrative decision
16 would stand. That's how I understand it being presented to
17 us and I guess I have an opposing viewpoint on that in that
18 we have had that tradition which actually in the past
19 required that if there wasn't a vote to either approve or
20 disapprove an appeal that it went back to staff and to the
21 appealer, the school district or county office or charter,
22 whoever was the appealer, to bring forth an item that would
23 be -- that would get six votes potentially.

24 So it could be that it was in as you call limbo
25 until such time as that was brought forward, but that we

1 move to this issue of at first there was a take no action
2 which meant that -- which was confusing --

3 CHAIRPERSON HANCOCK: Yes.

4 MS. MOORE: -- and I think that it was represented
5 in here and I know I spoke with the person Jeannie who
6 represented us in that January meeting. That was her belief
7 that it was confusing this take no action and so she wanted
8 this discussed I believe and she actually said there should
9 be an action taken.

10 So I think there's a couple of things we're being
11 asked to consider here. One is that on appeal items that
12 there will be no recommendation of staff, that they would
13 bring forward options and an option would require six votes
14 in order to proceed. That's one consideration. And then
15 the six votes I think on just -- on the appeal in order to
16 proceed on an approval is an option and then what being not
17 recommended is that there has to be a vote on the other side
18 of that if it's -- if we don't take a vote or if we don't
19 take a vote negatively to deny an appeal that it is in a
20 different state.

21 So I think there's really three issues before us
22 and the first starting with is it such that the Rules and
23 Procedures Committee would recommend to the Board that on
24 appeal items there's no recommended action by staff.

25 That seems to be the first item that's changing

1 and then from the others.

2 ASSEMBLY MEMBER HAGMAN: Can we take one at a
3 time? In that scenario, I mean every Board item we have has
4 a recommendation from staff. They may have options to go on
5 top of the recommendation, but a lot of times it's been
6 recommended by staff because they administratively took the
7 action to deny something.

8 That is their base recommendation. Otherwise they
9 wouldn't have done it.

10 Now they could say under the rules or existing
11 criteria the Board may overturn our staff decision and these
12 are the options you have as a Board to overturn a decision.
13 But a recommendation has been clearly made. I mean they've
14 done so administratively. That's why we got the appeal in
15 the first place.

16 That's different than them coming up to a
17 situation they don't know how to handle and seeking guidance
18 which would be another discussion item, but when we're
19 talking appeals, the decision has been made, the
20 recommendations have been made and they give -- they may or
21 may not give us options based on the law that says you can
22 go this far or this far and the recommendations based on one
23 of those options, even with the -- for example, if they want
24 to put Option A would be the school district's appeal, why
25 they want that and that's their case and then obviously they

1 have to write the conclusion.

2 Sometimes it needs a legal brief. We don't have
3 the authority to do this because, you know, of this section
4 or this section of the Code. Option B is you do have this
5 leeway because these are the parameters the Code gives you,
6 but obviously our recommendation was no because we denied it
7 in the first place and then -- you know, those are the
8 different options they give us.

9 It's not so much a recommended option, just more
10 of what's -- kind of giving us the legal path we could take.

11 But I think in -- the action's already been taken
12 by the time that point's happened and that we need an
13 affirmative vote to take another action.

14 It doesn't mean we have to necessarily decide that
15 day. We could come back and say, well, you gave us A, B, C,
16 but we came up with D and no one clearly could say if we can
17 or cannot do D, but that seems like the consensus, can you
18 bring it back to us next month and see if that works out.
19 We've done that before.

20 But it still takes an action to reverse another
21 action that's been taking place.

22 CHAIRPERSON HANCOCK: Yeah. I would tend to agree
23 with that, that we do in fact have a staff recommendation.
24 The staff denied the appeal; right?

25 In the staff report, however, I think they may

1 want to bullet for us -- highlight the reasons for the
2 denial. That's the recommendation.

3 And then it would take six votes to approve the
4 appeal --

5 MR. ALMANZA: A different action.

6 CHAIRPERSON HANCOCK: Yeah, which would -- right
7 or approve the appeal in some form.

8 What might be helpful instead of options, which as
9 I recall got very convoluted and complicated -- now there's
10 something that they do in the staff analyses that we get in
11 the Senate and the Assembly where the committee consultant
12 tactfully says the committee may wish to consider and then
13 they offer some amendments.

14 And if -- I would like to know, for instance, when
15 we're given a denied appeal and -- is this something where
16 we would need to change regulations were we to decide that
17 the interests of school children in California wanted us to
18 grant that appeal? Would we need to have a change in law
19 through legislation or would there be something that occurs
20 to staff as a compromise action with the district.

21 If they didn't ask for this but they only ask for
22 that, we would recommend. I don't know if that's too
23 complicated, in which case I would think just the reasons
24 for denial and an indication of what would have to change
25 would --

1 MR. MIRELES: That's something that I think that
2 we can do, Madam Chair.

3 One other thing that I wanted to highlight is
4 there are cases where staff denies a certain grant amount.
5 The district then appeals. It moves over to a different
6 section in our office and that section reviews the appeal
7 and we do -- have administratively resolved several appeals.

8 CHAIRPERSON HANCOCK: Yes.

9 MR. MIRELES: So sometimes you may not see appeals
10 that come before you because we do look for ways to try and
11 resolve the issues.

12 In cases where it may be a question of a
13 regulation change or potentially a change in law and that's
14 the basis for our denial, we can highlight in our item and
15 the reasons why we denied it.

16 But I just wanted to point out the fact that staff
17 does try to resolve -- and we do -- we do resolve these
18 appeals administratively.

19 CHAIRPERSON HANCOCK: That I applaud.

20 MR. REYES: Yeah. And I think that --

21 CHAIRPERSON HANCOCK: I think that's a great thing
22 to do.

23 MR. REYES: I was going to report on that one as
24 the Chair of the Board. I actually ended up adjudicating
25 some of these with interested parties and staff and trying

1 to figure out, you know, yeah, maybe that sidewalk didn't
2 work, but (indiscernible) would have and those kinds of
3 things or if you take this piece and agree not to take this
4 piece, would everybody go away.

5 And so a lot of that goes on throughout time as
6 there are folks in the audience who can say, yeah, we can do
7 that.

8 And so a lot of those appeals we actually never
9 see because that stuff gets resolved.

10 The problem, as you point out, Mr. Hagman, comes
11 up when we had a recommendation. At the time, folks wanted
12 recommendations. The recommendation was denied as one
13 option. The other option was to approve it. We couldn't
14 get six on either one of those.

15 And I agree with you, Senator. To have this in
16 limbo, we could have several just sit there (indiscernible)
17 for several weeks, we would have that issue pending.

18 So I think that that would be a concern. So I
19 think the -- (indiscernible) have your name there. That's
20 okay. You can sit --

21 So I do think that, you know, the items you're
22 pointing out would be helpful in terms of what the reason
23 is. I think (indiscernible).

24 MS. SILVERMAN: That's usually included in our
25 report, the reasons why we can't approve something

1 administratively. So it is part of the staff discussion.

2 It may not be listed bullet format under the
3 recommendations, but it is part of the staff report and we
4 do --

5 CHAIRPERSON HANCOCK: Yes.

6 MS. SILVERMAN: And we do highlight some of the
7 challenges when we can't get there completely and it may
8 require a reg change and I think we've done that in several
9 cases.

10 So I think we do our best to try to highlight
11 where our challenges are and that's why we bring these items
12 forward for the Board direction.

13 CHAIRPERSON HANCOCK: Okay. I think for many of
14 us who can be kind of attention challenged, it would be
15 helpful if even though you put it into the staff report --
16 you know, one of the reasons we relooked at the rules was
17 that we were spending so much times trying to read and
18 decipher honestly very administrative language. Just the
19 staff deny for one, two, three reasons and even if you've
20 given us three paragraphs somewhere else, that would really
21 help us and if we had questions, we could check back.

22 I just wondered if Mr. Savidge had any comments
23 based on what you do with the Imp., whatnot.

24 MR. SAVIDGE: Well, I think that probably one of
25 the most important things that we hope the Subcommittee will

1 deal with is -- and that part of what brought this up is
2 that we should not use the take-no-action approach and
3 that's one of the -- any of the options that are here would
4 get us away from that. While the first option still it in
5 it, it states take no action, but I think it's important
6 that that's really -- we want the Board to by taking an
7 affirmative action to overturn the staff's administrative
8 action, they would approve an appeal.

9 So if you go to page 6, either Option B or C -- I
10 think it's the take-no-action portion that's caused a lot of
11 the issues just in terms how can the Board affirmatively
12 take no action.

13 And so I think we -- that seems like something --
14 the major thing we'd like to take care of.

15 The second thing that I'd like to point out too is
16 that --

17 MR. REYES: Go back, Bill, on that one.

18 MR. SAVIDGE: I'm sorry.

19 MR. REYES: Though I mean take no action, the
20 Board took an action when they first approved the grant and
21 now there's an appeal and staff is saying we don't approve
22 the appeal.

23 So the take no action -- are you suggesting that
24 the Board -- I mean obviously the Board is going to side
25 with the district, there is an action. But if the Board is

1 going to side the with the staff, are you suggesting that
2 the Board has to take a six vote?

3 MR. SAVIDGE: No, that's not what I mean at all.
4 I -- we've had recommendations recently or within the last
5 year that have included the statement in the recommendation
6 take no action and I think that we don't -- I don't think
7 it's appropriate to see the language take no action as part
8 of what somehow the Board is affirming. That's what I'm
9 trying to say.

10 And so by taking no action effectively but not
11 voting to take not action, that's -- you know, it's -- I
12 think that's what we need to get rid of is not to have that
13 language included even if by effectively not taking an
14 action to overturn, they affirm the staff's action by not
15 voting to overturn.

16 I understand why the language was there, but I
17 think it's -- what's part -- part of what's caused the
18 confusion.

19 MR. REYES: So the school district (indiscernible)
20 has come before us and they've made the appeal and there's
21 no motion and there's no second.

22 MR. SAVIDGE: So the Board has taken no action and
23 so the appeal will not be overturned, but the Board hasn't
24 been asked as an -- or given an option --

25 MR. REYES: Oh, got it. You don't want to see it

1 in the narrative, take no -- I got it. Okay.

2 MR. SAVIDGE: I don't want to -- I think that's
3 what's confusing, yes.

4 MR. REYES: Okay. All right. I'm tracking with
5 what you're saying. Okay.

6 CHAIRPERSON HANCOCK: So you're basic -- are you
7 saying Option C, that there has to be six votes --

8 MR. SAVIDGE: Option C is a very --

9 CHAIRPERSON HANCOCK: -- to approve the district's
10 appeal and if there are not six votes to do that, the
11 administrative decision stands.

12 MR. SAVIDGE: Option C is a very -- to me is a
13 very clean option and -- but I do want -- can I comment on
14 Option B?

15 The item -- Option B that says seek Board
16 direction, in my limited experience here, I've found that
17 when staff has presented an item and said seek Board
18 direction, they've often used it in a way that means that
19 we, administrative staff, may not be able to approve this,
20 but it may have extenuating circumstances that the Board
21 could easily approve.

22 So a good example is the FedEx -- missing the
23 deadline due to the FedEx when the rioters occupied the
24 center of Los Angeles. And so staff doesn't want to approve
25 missing a deadline, but they can see that there are

1 extenuating circumstances, so they might label it as a seek
2 Board direction.

3 And so I think this is -- this gives some
4 flexibility for the Board, for the staff, and for the school
5 districts. So something to think about.

6 CHAIRPERSON HANCOCK: So that would actually be --
7 as you were saying, the staff would state the reasons for
8 denial at the -- they would have the option of suggesting
9 that there might be mitigating circumstances that the Board
10 at its discretion could legally enact or that you'd have to
11 change regulations or change laws or whatever to make this
12 happen.

13 And those be presented as part of the Board
14 recommendations. One of the reasons we need Board -- we
15 need recommendations from OPSC.

16 And then it would take six votes for the SAB to
17 pick up on that and actually affirm an appeal.

18 Does that make sense to everybody? I just
19 wondered maybe now's the time we should see if there's any
20 public comment.

21 MR. ALMANZA: I had a comment.

22 MR. REYES: Sorry. Mr. Almanza. And then -- I'm
23 sorry -- Ms. Moore.

24 MS. MOORE: I think mine got answered when you
25 clarified.

1 MR. ALMANZA: These come before -- these appeals
2 come before the Board requesting action by those appealing
3 to overturn an administrative decision and this sounds to me
4 like what we're talking about is how does that get presented
5 to the Board.

6 CHAIRPERSON HANCOCK: Um-hmm.

7 MR. ALMANZA: And may present to the Board as, you
8 know, here's the appeal action, here's the background, these
9 are the reasons why this request was denied.

10 And the only option or the only action is whether
11 the Board wants to approve the appeal.

12 So I don't know if we really need rules to do that
13 other than directing staff to present it in a more clear,
14 concise manner.

15 CHAIRPERSON HANCOCK: That could be.

16 Ms. Brownley.

17 ASSEMBLY MEMBER BROWNLEY: Well, just in response
18 to that -- and I'm sorry if I missed some of the earlier
19 conversation, but I think in terms of noticing the public,
20 it's got to be important that the public knows that we're
21 going to take a definitive action or not, that that's got to
22 be -- you know, in other words, if we just have something on
23 the item that says, you know, the recommendation is to not
24 approve the district's appeal and -- but we've got to make
25 sure -- I know in my school board days, we would have, you

1 know, major actions, you know, and everything under major
2 actions -- everybody -- the public knew that there was going
3 to be a vote, you know, one way or the other.

4 Now there might not be enough votes for something
5 to pass, but that there was going to be some action taken as
6 opposed to when you say, you know, take direction, lots of
7 times when you give directions to staff, you go back and
8 forth on the interpretation of what the direction is, but at
9 the end of the day, there can be -- it can get misconstrued
10 about what the direction really is.

11 So that's not a -- sort of a definitive thing in
12 my mind.

13 So I think it's just important first of all that
14 we -- that the public knows that we're going to take an
15 action and then how we do it -- I mean I think -- you know,
16 when I say we're going to take an action, there's going to
17 be a motion and a second and there's either going to be the
18 votes for it or there's not going to be the votes for it.

19 CHAIRPERSON HANCOCK: Right.

20 ASSEMBLY MEMBER BROWNLEY: You know, and then
21 you're done with it. You've dispensed with it one way or
22 the other.

23 CHAIRPERSON HANCOCK: LAUSD.

24 MR. BAKKE: Eric Bakke with the Los Angeles
25 Unified School District.

1 This actually has been a very good conversation
2 from all perspectives. I first want to admit that I'm
3 probably -- our school district is one of those where
4 administrative resolutions have occurred quite frequently.

5 There are a number that you heard about that --

6 MR. REYES: And we thank you, sir.

7 MR. BAKKE: Well, we thank you too. I think
8 that's the beautiful thing about this is that we can sit
9 down and collectively figure out -- school construction
10 isn't black and white. It doesn't fit in a tight little box
11 that the program tries to pretend that (indiscernible-away
12 from microphone).

13 And so there's going to be circumstances. We've
14 got to kind of sit down and try to figure out how to make it
15 work and many times -- more than anyone really knows --
16 those kind of conversations occur. So thank you for that.

17 Our issue today is, you know, the conversation
18 about take no action or not having enough votes. Therefore
19 staff's recommendation then applies.

20 When there's a disagreement between a school
21 district and OPSC, we're seeking direction from the Board
22 and we need clear direction from the Board as to what
23 outcome everyone should follow because it's really setting
24 some new policy, establishing what the basis for future
25 applications are going forward.

1 So recently when we've situations where we haven't
2 had votes either way, staff's recommendation applies. Well,
3 then I have to ask the question why then have an appeals
4 process. If we're appealing because we disagree with
5 staff's recommendation and this body can't determine what's
6 the appropriate policy, I think that means that we really
7 should have a conversation about that issue so we can
8 establish a policy (indiscernible) I think there's a
9 disagreement because clearly having no votes doesn't mean
10 there's an affirmative that staff's recommendation's
11 correct. That just means we don't have a vote.

12 Before I came here, I researched and rules and
13 procedures require that lacking direction in the rules and
14 procedures manual, we default to Mason's.

15 Mason's is very clear. You have to take a vote.
16 If there's an action brought before the Board, a vote has to
17 happen. (Indiscernible) six votes. Whether you agree with
18 the district's appeal or you disagree with the appeal, there
19 needed to be six votes.

20 MR. REYES: What happens if there's no motion?

21 MR. BAKKE: That's the interesting part of
22 Mason's. It doesn't specify clearly what we do. The
23 assumption then is you keep working until you get the six
24 votes and it keeps coming back (indiscernible) to your point
25 (indiscernible) infinity.

1 MR. REYES: Yeah.

2 MR. BAKKE: But I think --

3 CHAIRPERSON HANCOCK: Which is --

4 MR. BAKKE: Which is a problem. But I think we
5 have a blueprint in the fact that we have so many
6 administrative resolutions before that it -- clearly we just
7 need to sit down in a room and try to figure out how to make
8 it work.

9 CHAIRPERSON HANCOCK: Okay. Point of -- just -- I
10 hope we don't have to call Greg in for this. But we use
11 Mason's in the Senate. If there is no motion on a bill that
12 comes before a committee, the bill dies. I think it's
13 analogous here, that if there's motion on an appeal or there
14 aren't six votes for the appeal, staff --

15 MR. REYES: (Indiscernible) administrative staff
16 recommendation stands.

17 MR. BAKKE: The only difference I would argue in
18 that respect is that (indiscernible) within the Legislature,
19 you've got a bill that someone's trying to pass. I'm
20 failing at coming up with the words on how to make the
21 difference.

22 Someone is trying to pass a bill that they want
23 (indiscernible) you know, is doesn't get the vote
24 (indiscernible). I can see that.

25 But here we're dealing with interpretations of the

1 regulations and I think that's where it's different.

2 What we're doing is -- OPSC has an interpretation
3 of the regulation. I as the school district have an
4 interpretation of the regulation and why I think I should
5 either be funded or not funded or whatever the circumstances
6 are.

7 We're seeking direction from the Board to
8 determine which interpretation is correct (indiscernible) of
9 the regulation.

10 With respect to the legislation, well, no votes,
11 you don't -- you need six votes to pass. I just think
12 there's a difference between the way the regulations are
13 structured and how -- or why we're here.

14 If we agree on the interpretation, we wouldn't
15 appeals.

16 MR. REYES: But I think though sometimes is -- if
17 it were that clear that it was just interpreted
18 (indiscernible) attorneys. So it's not just interpretative.
19 It is what do you want to fund. I mean is it okay to fund
20 the pool instead of the solar panels. Is it okay to fund
21 the library when (indiscernible) improved upon.

22 I mean some of that stuff is not interpretation.
23 It actually what happened and I think that a lot of the
24 appeals actually fall into that category.

25 I think (indiscernible) the regulations. They

1 look to ways to make it work. I think there's the other
2 stuff that comes us that is struck -- they can't make it fit
3 into the box.

4 And so to me an action is required if we're going
5 to overrule staff and I go back to you, Senator. Your point
6 is very well taken.

7 We follow the rules and the last line is the
8 Senate rules. That's what we have as a catchall. If we
9 didn't agree on everything else, at the end of the line is
10 the Senate rules. The Senate rules, much like the Assembly
11 rules is fail to have a motion or fail to have second, you
12 go (indiscernible). Your issue dies. Your decision-making
13 dies and that's what this body does.

14 And so when folks sit on a board and they take an
15 action, lack of an action is also an action in my mind.

16 MR. BAKKE: Just a couple points. Many of the
17 appeals that come before us, I mean we've had numerous
18 attorneys represent the school districts because I know -- I
19 mean LA's got one that we're still working on. It's almost
20 three years old that we have an attorney involved with and
21 OPSC has an attorney.

22 So I mean the level of interpretation of
23 regulation is (indiscernible) and I think it's consistent
24 with a lot of the appeals.

25 When I look at Mason's, you know, I don't have a

1 book, but I was able to write down a few of the code
2 sections -- regulation sections. You know, it requires that
3 there must be a definitive proposal for consideration, which
4 is what the appeal is.

5 In order for a body to make a determination or a
6 deliberative action, a vote must be taken. And so if you
7 want an action to occur and that is OPSC to continue in its
8 approach, you have to take a vote.

9 MR. REYES: But the action is on the appeal itself
10 though. Go ahead. Sorry

11 ASSEMBLY MEMBER HAGMAN: No. I was going to
12 say --

13 CHAIRPERSON HANCOCK: Wait. Okay.

14 ASSEMBLY MEMBER HAGMAN: I'm sorry. I disagree
15 with the interpretation of Mason's right here. An action
16 has already been taken. We have delegated that authority
17 administratively to staff at OPSC and so an action is taken.

18 What you're trying to do is say that you need an
19 action to overturn an action that's taken. Therefore you
20 need affirmative -- a vote to do that.

21 You're saying in a vacuum -- proposition -- you
22 have to make an action one way or the other, but the
23 action's already taken and that is the staff ruling of what
24 administratively they did.

25 In order to overturn that, that's when you need

1 the six votes on that. So that interpretation is wrong.

2 Secondly, if we put this in the rules, we don't
3 have to worry about that anyway. But the bottom line is I
4 think that's what the difference is.

5 Administratively, 99 percent of the stuff is done
6 by our authority given to staff to make those decisions
7 based on the rules and regulations that we have interpreted
8 over the years and set in place so those actions are taken.

9 This appeal is an attempt to overcome an action
10 that was taken and therefore that's when you need an
11 affirmation action to overturn the first action. It's not
12 in a vacuum. There's already been a history of that.

13 CHAIRPERSON HANCOCK: Okay. Mr. Almanza and
14 Ms. Brownley.

15 MR. ALMANZA: You made my point. Sorry.

16 ASSEMBLY MEMBER BROWNLEY: My question is just are
17 we comparing apples and apples here. I hear what the
18 Senator said about the Senate rules and -- but we're talking
19 about an appeal process here.

20 So I'm just wondering in the Senate rules there's
21 one thing about a bill. You know, if there's no motion, the
22 bill dies. Are there any instances within the Senate where
23 you're hearing an appeal and the rule might be different?
24 And I don't know the answer to the question. No?

25 CHAIRPERSON HANCOCK: Not in the legislative

1 committees that I can think of.

2 ASSEMBLY MEMBER BROWNLEY: No? Okay.

3 CHAIRPERSON HANCOCK: So this is different. It's
4 simply that Mason's was cited. So that's why we're trying
5 to clarify Mason's. Ms. Moore.

6 MS. MOORE: Well, as an alternative -- and I know
7 we're discussing this, so I'm just putting it out.

8 At the State Board of Education on waivers, which
9 are -- have some similarity. They're appeals to the State
10 Board of Education. They come under that there must be an
11 action taken and in fact in if the action of the board is
12 not taken, it defaults actually to the requester of the
13 waiver -- to the school district.

14 So in this case, we're talking about the
15 default -- and I hope I'm expressing that right -- defaults
16 to the staff action. In a State Board of Education item
17 that's asking to waive a certain Education Code section, it
18 defaults to the requester if there's no action by the State
19 Board of Education.

20 Now that's provided by -- I believe provided by
21 Education Code. So it's prescribed.

22 MR. REYES: Um-hmm.

23 MS. MOORE: But it is as has been presented here.
24 If we're considering rules, we can consider rules and then
25 the default is to Mason's. If we don't have a rule on that

1 particular situation, it's going to default to Mason's.

2 So it's an alternative and I think that's what
3 folks are asking for consideration of is an action one way
4 or the other and we're just -- and that's what we're
5 discussing.

6 MR. REYES: We're actually more prescriptive than
7 that. We actually -- we go through Mason's and the default
8 is Senate rules.

9 MS. MOORE: Oh, okay.

10 ASSEMBLY MEMBER HAGMAN: And if we did that, I
11 mean you basically invite everyone to appeal every decision
12 and a lot of times, it's based on denial based on law. You
13 know, so there may be other things than just interpretation
14 of law or rule of the Committee. You start defaulting on
15 that, we're going to be open up for lawsuits completely. I
16 think that's definitely not a way to go.

17 ASSEMBLY MEMBER BROWNLEY: I just -- I mean I
18 think that, you know, there's a good reason why there's an
19 appeal process in the State Allocation Board and I mean
20 obviously if we're looking at an appeal and the regulations
21 are so crystal clear, I don't think, you know, any of us are
22 going to rule and not take the -- you know, the rules and
23 regulations that are crystal clear and not follow that.

24 I mean we're all concerned about precedent and
25 that. I think it's -- where the difficulty comes is when

1 it's not that black and white and I think the reason why we
2 have an appeals process is because you can't create, you
3 know, these regulations and have the regulations meet every
4 single situation that there is. It's just impossible to do
5 so.

6 And so when the -- and in the right scenario when
7 the appeal is being processed, that means the regulations
8 aren't clear. It's not black and white and we have to sort
9 of make a determination or ruling, you know, in that moment
10 which is in many times trying to have the debate of what the
11 interpretation is or creating our own interpretation at
12 that -- you know, kind of at that moment in time.

13 So I'm not sure that I'm solving the situation,
14 but --

15 CHAIRPERSON HANCOCK: I'm going to actually call
16 for a motion. Would somebody make a motion? We've all
17 talked about this for quite a while.

18 ASSEMBLY MEMBER HAGMAN: I forgot if it's B or C
19 at this point, but basically for a lack of affirmative
20 action on the Board by the simple majority, the previous
21 administrative decision stands.

22 CHAIRPERSON HANCOCK: Okay. Or could we say that
23 a motion -- that number one, the staff will give reasons for
24 the denial and any suggestions they might have regarding
25 policy ambiguity.

1 ASSEMBLY MEMBER HAGMAN: I think that's just a
2 Board direction to staff how they want to present the
3 material. I mean I don't it has to do with the
4 decision-making process on an appeal.

5 But I agree with you on those recommendations,
6 Senator. I just don't think they need to be part of the --
7 you know, it's just a format that we get --

8 MR. REYES: Well, can we ask -- we take a minute
9 and ask is it possible to change the format to provide that
10 information --

11 MS. SILVERMAN: Yeah, we could certainly work on
12 that.

13 MR. REYES: Okay.

14 MS. SILVERMAN: So that way it's really clear on
15 the reasons why we are denying it. So we can definitely lay
16 that out -- structurally much better so --

17 MR. REYES: Okay.

18 CHAIRPERSON HANCOCK: And that it would require
19 six votes on the Board to approve the appeal.

20 ASSEMBLY MEMBER HAGMAN: Yeah. The only thing I
21 was going to say, Senator, is majority because who knows how
22 we -- the legislation change, the makeup of the Board, new
23 members coming off, you know, do we establish a quorum and
24 then three people leave, do you still need six votes or do
25 you want it simple majority of members present and voting

1 after quorum.

2 I mean that's the big distinction there is, you
3 know, sometimes we do have people leave early, you know,
4 because of other commitments.

5 CHAIRPERSON HANCOCK: Well, that's true.

6 ASSEMBLY MEMBER HAGMAN: How do you want that to
7 go apart there. If you need six votes and two people are
8 sick when you start off, it makes it more difficult.

9 I'm suggesting that once you establish a quorum, a
10 simple majority of those members voting and present.

11 MR. ALMANZA: I believe it's in statute that it
12 requires six votes.

13 MS. JONES: Yes.

14 MR. REYES: Yes.

15 MS. JONES: Six votes.

16 CHAIRPERSON HANCOCK: So that would essentially be
17 Option C?

18 MR. REYES: So do we get into any Bagley-Keene
19 issues in not laying out the potential recommendations?

20 CHAIRPERSON HANCOCK: No. We are going to lay
21 them out. I thought --

22 MR. REYES: Well, I mean what -- the question
23 there -- the premise that we've been functioning before or
24 at least the way I was told is that we needed to lay out the
25 recommendations including deny the request, approve the

1 request, and that's we got into this trouble.

2 And then I asked the question, well, we need a
3 blank in terms of recommendation and that's not
4 (indiscernible) so there if there's no action. So we've
5 created a -- no action is an option and we've met
6 Bagley-Keene. So people know that it doesn't come out of
7 staff recommendation, but it's clear that a no action is one
8 of the options being considered.

9 One of the things that gave trouble in some of my
10 other boards is when I wanted to go outside of the potential
11 recommendations and, Kathleen, do you remember one of
12 financing authorities I was asking that we do this
13 regulation every two years instead of every year and they
14 said, oh, no, because everybody's expecting this for one
15 year. And why we ever changed it now, can we amend it
16 halfway. Yeah. Why can't we do it to infinity then. Well,
17 because that's not one of the options listed.

18 So I just want to make sure that we check for
19 counsel in terms of what are the options for purposes of
20 Bagley-Keene.

21 MS. MOORE: I guess as a point of discussion as
22 well, I think too I'd like to think of the audience of the
23 agenda item which is the particular school district in
24 question or county office or charter, whoever's bringing
25 forth the appeal and then the larger audience in general and

1 I do think that in order to have a good public meeting and a
2 public hearing that they need to know what they're dealing
3 with. And in order to know what they're dealing with, there
4 should be a recommendation.

5 If the recommendation is to deny the appeal, it's
6 to deny the appeal. If the recommendation is to seek Board
7 direction, the recommendation is seek Board direction, but I
8 would -- as -- for the public to not have -- not know what
9 the recommendation is, in order to prepare whatever public
10 comment they may have seems that we're not doing justice to
11 the public process.

12 So I would like to -- I hope that part of what
13 we're motioning here is that there is a recommendation of
14 the staff and I think one of the reasons that we're where we
15 are right now is that one of the times there was take no
16 action which is a confusing recommendation to the public.

17 So I would like to see that there is a
18 recommendation on that and I -- is that part of our --

19 MR. REYES: Well, the problem is though we get
20 into (telephone interruption) staff recommendation is to
21 deny and you don't get six votes on that, we're
22 (indiscernible) limbo because those --

23 MS. MOORE: I think that's what we're discussing
24 now.

25 MR. REYES: And that's why the no action lays that

1 out there in terms of one of the options is to continue to
2 support the staff recommendation.

3 By saying no action, you're basically saying staff
4 recommendation stands. The other option is to grant the
5 appeal and that way the public knows that those are the two
6 options under consideration.

7 ASSEMBLY MEMBER HAGMAN: Well, and you could have
8 disclosure. If anybody appeals, it's very clear when they
9 get -- they fill out the appeal form that if not affirmative
10 action is taken by the Board, the staff recommendation
11 stands. You could have that at the top of the agenda each
12 time.

13 MR. REYES: As long as it's in the (indiscernible)
14 someplace --

15 ASSEMBLY MEMBER HAGMAN: Yeah. You could put just
16 a summary there that anytime you mention that, but that's
17 why I worded it the way it is. Unless there's an
18 affirmative majority vote with six votes, staff
19 recommendation -- last staff recommendation stands.

20 MR. REYES: Okay.

21 MR. MIRELES: Madam Chair, the other thing that I
22 wanted to highlight is we have a process in place now where
23 we notify the school district -- I think it's within around
24 70 days after the appeal's submitted of staff's position on
25 that appeal.

1 So we send the district a letter letting them know
2 where we stand on their appeal. We give them an opportunity
3 to respond before we present the item to the Board.

4 So the districts are aware of what staff's
5 position is. We do it via a letter to the district.

6 CHAIRPERSON HANCOCK: Okay. I think Ms. Moore was
7 also concerned with just the precedent-setting quality of
8 appeals and that --

9 MS. MOORE: Well, I --

10 CHAIRPERSON HANCOCK: -- make sure that everybody
11 knew.

12 MS. MOORE: Yeah. I think it's good that the
13 school -- that particular participant has a letter, but
14 we're doing a public meeting, public process, you know, and
15 I believe that the public is owed that recommendation so
16 that they can be prepared one way or the other however they
17 may want to address the Board.

18 If there's no recommendation, then that leaves
19 confusion I think to the public as to what the intent of the
20 staff is, what the intent of -- or what the direction of the
21 Board might be, but I just think -- I think -- and I think
22 if we clarify that no action on the recommendation -- what
23 I'm hearing is being developed and I think is the motion --
24 means that it in essence goes back to the administrative
25 decision. Correct?

1 ASSEMBLY MEMBER HAGMAN: Yeah. I just -- again
2 the individual appellants are getting the -- you know, the
3 correspondence from the staff. The public will see that on
4 top of -- appeals that unless there's affirmative action by
5 six or more votes, whatever wording you want to use, the
6 previous administrative action stands.

7 MR. REYES: Um-hmm.

8 ASSEMBLY MEMBER HAGMAN: It doesn't matter how
9 many options you have. No option, so you seek Board
10 direction, you could have ten different options, but if
11 there's not a positive six votes on something, then whatever
12 was decided last works or by staff --

13 CHAIRPERSON HANCOCK: Would it make sense to try
14 to do two motions, one I would say to adopt Option C which
15 says that you need to have six affirmative votes to approve
16 an appeal and have a subsequent motion saying that the staff
17 report on appeals will list the reasons for denial and
18 policy options if any on which they may wish to seek Board
19 direction.

20 ASSEMBLY MEMBER HAGMAN: I don't have a problem
21 with taking the first one separately, Madam Chair. I don't
22 know if it needs to be in the rules of how you present a
23 particular issue though. I think of the UPS --

24 CHAIRPERSON HANCOCK: Well, it is because they're
25 saying that one of the things in the staff report right now

1 is that they would no longer give recommendations. So --

2 ASSEMBLY MEMBER HAGMAN: No. I totally -- I mean
3 I think we give staff --

4 MR. REYES: No. (Indiscernible) votes --

5 ASSEMBLY MEMBER HAGMAN: Yeah. No. I think we
6 give staff direction on what kind of information they have
7 and let's take that UPS or Fed Express day late thing.

8 You know, there's no real code to cite. You could
9 say the rule is it has to be date marked by the stamp.
10 That's the rule. There is no really legal options, though
11 we're seeking staff direction and that's what they put in
12 there. I mean if it gets appealed, it would be.

13 And let's make the first one and get that out of
14 the way. I move No. C.

15 CHAIRPERSON HANCOCK: You're moving policy C? Is
16 there a second?

17 MR. REYES: I'm not on the Committee. I
18 (indiscernible).

19 CHAIRPERSON HANCOCK: Oh, you're -- okay. Is
20 there a second to Option C?

21 MR. ALMANZA: I have a question.

22 CHAIRPERSON HANCOCK: Yes, Mr. Almanza.

23 MR. ALMANZA: So Option C, is that -- isn't that
24 pretty much the way it's done now? No change? Because when
25 the appeal comes before the Board, it's either we get six

1 votes and approve the appeal or you don't get six votes and
2 you lose the appeal.

3 So it's pretty black and white; right?

4 ASSEMBLY MEMBER HAGMAN: It was confusing with the
5 options if -- take no action and then some argue that if you
6 didn't get the six votes to take no action, that means
7 nothing happened.

8 So that's what we're trying to clarify and the
9 lack -- and the wording I think is a little bit different in
10 Option C that I proposed.

11 MR. ALMANZA: You know, I mean it seems like a
12 pretty simple issue that's getting very confusing.

13 MS. MOORE: So just so I understand, Option C is a
14 recommendation that will have as the recommendation of every
15 appeal approve the district's appeal?

16 MR. WATANABE: Only pertaining to option -- so the
17 Board would have the option to (indiscernible-away from
18 microphone).

19 MR. ALMANZA: So how is this different from what
20 we do now?

21 MR. WATANABE: What we do now is (indiscernible)
22 the (indiscernible) recommendation and then this take no
23 action (indiscernible).

24 MS. MOORE: Wait. That's not Option C; right?

25 MR. WATANABE: No.

1 ASSEMBLY MEMBER HAGMAN: No.

2 MR. WATANABE: What we do now is essentially A1
3 (indiscernible).

4 MS. MOORE: Okay.

5 MR. REYES: So is Option C basically .2 of
6 Option A?

7 MR. MIRELES: Yes.

8 MS. SILVERMAN: Yes.

9 MR. REYES: As a option.

10 MR. MIRELES: Yes.

11 MS. SILVERMAN: Yes.

12 MR. REYES: So that's all it really does. It
13 takes away the text, the take no action, which allows the --
14 under Mr. Hagman's, instead of an action, it would just
15 clarify. If you take no action, then you sort of do the
16 same thing as we're doing now.

17 MS. SILVERMAN: Yes.

18 MR. ALMANZA: Okay. So that's how it appears on
19 the presentation.

20 MR. REYES: On this -- Mr. Hagman's but not on
21 Option C.

22 MS. MOORE: So I'm confused so bear with me once
23 again. By voting for the motion which says approve
24 Option C, on State Allocation Board recommendations on
25 appeal, it will say approve the district's appeal and we

1 will vote for that.

2 MR. REYES: Will it be as a recommendation --

3 MR. MIRELES: It would be an option to the Board.

4 MR. REYES: So it will be an option to the Board,
5 not a recommendation.

6 MR. ALMANZA: It's what's before the Board.

7 There's a request --

8 MR. SAVIDGE: I think that the recommendation of
9 the staff will be the action that's been taken and that in
10 the item, they will explain the reasons for denial and the
11 items that Senator Hancock brought up and their
12 recommendation is that the Board deny the appeal if that's
13 their recommendation, but the option then -- the Board has
14 the option to approve the district's appeal.

15 MR. REYES: No, because then we're being asked to
16 take a vote on the staff's recommendation and that's where
17 we get into trouble. If we don't get six votes on the staff
18 recommendation, we end up in limbo again.

19 MR. SAVIDGE: Okay. Well, I mean not if we --

20 MR. REYES: If you lay it out as a recommendation,
21 that's --

22 MS. SILVERMAN: Right.

23 MR. REYES: That's your -- that's where you got to
24 take action --

25 MS. SILVERMAN: Right.

1 MR. REYES: Unless you have that recommendation in
2 text and not --

3 MR. SAVIDGE: That's what I was saying, in the
4 text.

5 ASSEMBLY MEMBER HAGMAN: If you change the rules
6 and maybe don't put this in Option C -- and we're talking
7 about recommending their options, that's where we talk about
8 how the report's given to us. But the underlying rule that
9 we put on top of the header is if affirmative action is not
10 taken by the majority of the Board or six members, the
11 staff's last administrative action stands.

12 So any other option we take from that it would
13 take affirmative action to take. So you put that from the
14 header, there is no I think gray area that we have to vote
15 to affirm what staff's done or not vote, you know. If no
16 action is taken, the staff --

17 MR. REYES: Okay.

18 ASSEMBLY MEMBER HAGMAN: -- thing stands.

19 MR. ALMANZA: I could second that.

20 CHAIRPERSON HANCOCK: Okay. Mr. Duffy, did you
21 want to comment?

22 MR. DUFFY: Should I use this or --

23 MS. JONES: You need to use --

24 MR. DUFFY: Madam Chair, thank you, and members of
25 the Subcommittee. And I apologize for being delayed. I was

1 at the confirmation hearing for the State Architect.

2 The issue -- and you spoke to it just a second
3 ago, Mr. Hagman. The issue of an item coming before you and
4 if there isn't a vote for the appeal that the appeal fails,
5 it -- I don't think it's always as clear as that.

6 There was an item a couple months ago that -- a
7 district on a seismic item and it was an appeal to the Board
8 for some consideration for funding, although they didn't
9 qualify for financial hardship, but they were certainly
10 (indiscernible-away from microphone).

11 It was brought before the Board one time and there
12 wasn't a quorum. We'd understand that there was general
13 support for this (indiscernible) members and staff. It came
14 back -- so there wasn't quorum so you could have no -- came
15 back the next meeting and there was a brief discussion of it
16 and there was no action on the part of the Board to approve
17 it.

18 There was little discussion and in talking to
19 staff afterwards, basically they said well, the Board took
20 no action, therefore we feel it's denied.

21 There was no information given back to the
22 district that here are some options for you and the question
23 was really do you get to come back. No. The answer was the
24 appeal was denied because the Board didn't take it up.

25 It seems to me that considering that, that action

1 on the part of the Board to say you're -- we're denying this
2 because we don't find any merit in it really concludes the
3 whole thing.

4 This district I think is left in limbo and I -- so
5 I think that some change in the process to really define --
6 we're approving or we're disapproving gives at least closure
7 to it. But I don't know that the district can't come back.

8 MR. ALMANZA: Can staff send a letter to those who
9 appeal to tell them that their request to appeal the
10 decision was denied by the Board? That would take care of
11 it.

12 MS. SILVERMAN: Right. Right. That issue
13 actually isn't an appeal so to say. It's to take in
14 consideration other evidence.

15 So the district is -- it's a different request.
16 It's not an appeal. The district is requesting other
17 consideration because they don't fit within the rules within
18 hardship.

19 So I don't technically consider that an appeal.

20 MR. DUFFY: Well, the district filled out the
21 appeal form and all that. Your staff did a marvelous job of
22 trying to help the district. Your staff at the end was
23 telling the district the appeal wasn't approved, therefore
24 it's denied.

25 So -- and there was -- they were very clear in

1 saying the Board didn't approve this. If the Board didn't
2 approve it, so it means it's denied completely? And I
3 realize that asking for an action on the part of the Board
4 to say okay, we're denying this because we're not agreeing
5 with you is saying do something that you haven't done
6 before, but at the same time, the issue of appeals has been
7 gradually over the last couple years because you have a
8 process now where you have the timelines that go before the
9 staff and AEO, but that process is working itself out and I
10 think resolving issues. But this seems to be something that
11 continues to be unresolved.

12 So I just -- we sent you a letter on this.

13 MR. REYES: So would you feel (indiscernible) as
14 the Chair I say there was not six votes so your appeal is
15 denied? And memorialize the issue?

16 MR. DUFFY: In essence, I believe that's what
17 occurred. I don't -- I wasn't at the meeting. I wasn't at
18 the hearing.

19 MR. REYES: Um-hmm.

20 MR. DUFFY: So I didn't hear exactly what you
21 said. You were the Chair at the time.

22 But I think there was still a question on the part
23 of the district. The district wasn't in the room at the
24 time either, but there was a question on the part of the
25 district again is this over or do we have a conclusion.

1 So if you did say that, does that mean that they
2 can't ask for a reconsideration of this?

3 MR. REYES: We're done with the issue at that
4 point. I mean at what point do we continue this till the
5 next meeting or the meeting after that or the meeting
6 after --

7 MR. DUFFY: That's why I'm saying -- saying if
8 indeed you were to say you -- the light switch is on or off
9 with six votes. You either get the appeal, it's on, or it's
10 six votes down, it's off.

11 You don't necessarily have all the details --

12 MR. REYES: If we were doing your way and say it
13 was six votes that say no, then you still ask the question
14 well, can this be taken up again.

15 MR. DUFFY: Yes.

16 MR. REYES: So whether I give you six votes with a
17 no or don't give you six votes with a no, you're still going
18 to have the question --

19 MR. DUFFY: No. I misunderstood you. If indeed
20 the six votes are no, I think it's definitive. The Board
21 has said we understand the appeal, we have six members here
22 that are voting no. It's over. And that's -- I think that
23 that would be a very clear and resounding action on the part
24 of the Board. Just like six votes yes saying we're agreeing
25 with what you're asking for.

1 MR. REYES: I think the staff saying no and the
2 Board -- so Board and staff are now overruling them should
3 send a message pretty clear, six --

4 MR. DUFFY: Well, the reason I'm looking at it
5 this way is the regulations that you adopt as a Board are
6 the Board's regulations. They're not your staff's
7 regulations.

8 So you are defending your regulations in taking an
9 action that is a positive action of yes or a definitive
10 action of no and schooled in schools as I have been, you
11 exhaust your administrative regulations -- or your
12 administrative actions in remedies with whatever you do.

13 What I as with that particular circumstance that I
14 mentioned over the seismic issue -- and Lisa is correct.
15 The district was asking for some special consideration, but
16 it was still seen as an appeal. It doesn't seem like
17 there's any closure to it.

18 Do they have -- have they exhausted their
19 administrative remedies? I don't know that they have
20 because you didn't take any definitive action to say no.

21 MR. REYES: Okay.

22 MR. DUFFY: You didn't have enough votes --

23 ASSEMBLY MEMBER HAGMAN: Well, Madam Chair and
24 Mr. Chair, I think that paragraph ahead of the appeals
25 states it pretty clearly. If we don't have the six votes to

1 overtake an action, the last administrative action stands.

2 Now we as a Board can sit there and say, hey, we
3 want some more information, bring it back, but we don't have
4 a quorum enough to vote on it or even the appellate person
5 may say, hey, I have two people that talked to that were,
6 you know, sympathetic but they're not here today.

7 Mr. Chair, could I put it off till next SAB Board meeting
8 and we can take an action to postpone it to there.

9 But I think in a lack of that we default to the
10 previous administrative action. Because it's not an action
11 hasn't been taken. It's been taken. So we need an action
12 to overturn an action.

13 So once you make that clear, I don't think
14 there'll be a question for anyone's mind.

15 CHAIRPERSON HANCOCK: So a motion to --

16 MR. DUFFY: Thank you very much.

17 CHAIRPERSON HANCOCK: Thank you. A motion to that
18 effect would read unless an action of the SAB by six votes
19 approves the appeal, the last administrative action stands?

20 ASSEMBLY MEMBER HAGMAN: Or approve a different
21 action. Yeah. I would just -- I was going to say to
22 approve the appeal.

23 CHAIRPERSON HANCOCK: Oh, to approve the appeal
24 or --

25 ASSEMBLY MEMBER HAGMAN: Or approve an action -- a

1 different action, yeah.

2 MR. ALMANZA: So Option C -- well, no --

3 ASSEMBLY MEMBER HAGMAN: Well, no. Option C's a
4 little different.

5 MS. SILVERMAN: Yeah.

6 MR. REYES: -- is the way it works well --

7 ASSEMBLY MEMBER HAGMAN: Yeah. That's good.
8 That's why I wanted to tweak it a little bit.

9 So that way if -- we may take an action of six
10 votes to send it back to staff and see if they can work on
11 it a little bit and bring it back to us in two Board
12 meetings.

13 MR. REYES: Or give them two parts of the project
14 that it makes sense --

15 ASSEMBLY MEMBER HAGMAN: Yeah. So there may be
16 different things than what's the actual approval of the
17 appeal or nothing at all. It may be something in between we
18 give them direction to do. So that'd be an action by the
19 Board.

20 If there's not an action, the previous action
21 stands. There could be any kind of action. Say we don't
22 want to vote on it this week, we'll take it up next month,
23 that's an action. We get six votes, we move on.

24 CHAIRPERSON HANCOCK: Okay. So unless there's an
25 action of the Board with six votes to approve the appeal or

1 another action, the last administrative action stands.

2 MS. MOORE: I just want to clarify on that. If we
3 delay an item to a next Board meeting, we have those rules,
4 a district can ask for a delay. There is a certain period
5 of time. We as Board members can ask for a delay. That's
6 outside of this. There would be no action. Is that this
7 other action you're referring to?

8 ASSEMBLY MEMBER HAGMAN: No. I think, you know,
9 the Chair would entertain a motion, we're going to put this
10 off for the next SAB Board meeting. We're all in favor.
11 Yeah, we get six votes. Okay. That is an action that we're
12 taking to do something that replaces the last act.

13 MR. REYES: So the question to Ms. Moore is we're
14 in the middle of this conversation and it's clear that the
15 votes aren't there. Can Mr. Almanza say I'd like to have
16 this item moved to the next meeting. Let's (indiscernible)
17 action.

18 ASSEMBLY MEMBER HAGMAN: You have to get votes

19 MR. REYES: If he gets six votes.

20 MS. MOORE: Okay. We have in our rules that a
21 school district actually can ask for an -- a Board item to
22 be delayed to another Board meeting and that is granted at
23 the discretion of I believe -- I'm just paraphrasing -- at
24 the discretion of the Chair and the Vice Chair.

25 MR. REYES: That's (indiscernible).

1 MS. MOORE: Before the meeting starts, that --
2 none of this would come into question

3 MR. REYES: That's correct --

4 MS. MOORE: But if at the Board meeting -- and
5 then there are times that a Board member before a Board
6 meeting starts asks for an item to be not brought forward,
7 pulled, and it is announced as pulled by the Chair, again
8 nothing changes with what our action is here.

9 But if an item is on and it's discussed and a
10 Board member then says I would like to have this come back,
11 we're saying six votes allows for that.

12 ASSEMBLY MEMBER HAGMAN: And that way -- I mean
13 and I -- I've never turned down one myself because I
14 disagreed with it, just as a courtesy because you want to
15 get more information. You want to be informed about it

16 MR. REYES: Sometimes members are absent and are
17 very, you know, passionate about an issue, so we pull that
18 when we find out that member's not here and we've done for
19 Senator Hancock. I think we've done that for Senator
20 Runner, different folks who have expressed an interest in a
21 particular issue and they're not going to be around and we
22 pulled that item at the beginning of the hearing.

23 I just want to make an announcement. There were
24 six members here and it's not a Bagley-Keene violation
25 because (A) we're meeting in public and (B) we're not making

1 any Board decisions. This is a committee that's been duly
2 notified and the members of the Committee are voting and
3 there's only four, but there were five earlier. I am not
4 voting, but it's not a full Board decision and this still
5 has to go before the Board.

6 So somebody raised the issue of Bagley-Keene.
7 This is not a Bagley-Keene. This is quite transparent and
8 public and they're required to discourse. So -- just for
9 clarification.

10 CHAIRPERSON HANCOCK: So do --

11 ASSEMBLY MEMBER HAGMAN: Was that the motion?

12 CHAIRPERSON HANCOCK: So did you second it?

13 ASSEMBLY MEMBER HAGMAN: No. I thought I made it,
14 but whatever.

15 CHAIRPERSON HANCOCK: Okay. Could you read the
16 motion back --

17 MS. JONES: Thanks a lot. Oh, my gosh.

18 CHAIRPERSON HANCOCK: This is not a test.

19 MS. JONES: All right. I have adopt Option C
20 unless there is an action with six positive votes to approve
21 the appeal or another action, staff's action will stand.

22 MS. SILVERMAN: I don't think it was adopt
23 Option C.

24 ASSEMBLY MEMBER HAGMAN: Yeah. It was a D we made
25 up.

1 MS. SILVERMAN: Right.

2 MS. JONES: Okay. See. I stepped out of the room
3 for just a minute --

4 ASSEMBLY MEMBER HAGMAN: And then I think we also
5 gave direction that we'd like to see some kind of clarifying
6 notice on correspondence with appeals and on the agenda and
7 that we also -- you've heard all of us say we recommend as
8 many options and parameters of the law and choices, whatever
9 may be specific for that thing put in staff reports. But I
10 don't think --

11 CHAIRPERSON HANCOCK: But that --

12 MS. JONES: But that wasn't part of the motion.

13 ASSEMBLY MEMBER HAGMAN: But that's part of the
14 motion, no. I just think that's administrative anyway.

15 MR. REYES: -- presentation by staff
16 (indiscernible) gives it kind of a summary of the issues
17 while you cover in the text of the discussion, Senator
18 Hancock has requested that (indiscernible) bullet as the
19 primary reason why it was an issue and identify regulatory,
20 statutory, and constitutional concerns as to why this
21 doesn't fly and that way we'll identify whether it would
22 require regulatory change or a statutory change.

23 CHAIRPERSON HANCOCK: Right. Or just a policy
24 different interpretation.

25 MR. REYES: Um-hmm.

1 CHAIRPERSON HANCOCK: I thought Ms. Brownley's
2 example was actually very good.

3 MR. REYES: Um-hmm. Yes.

4 CHAIRPERSON HANCOCK: If they're going to shut
5 down a government building and a deadline was missed for
6 that reason due to some natural disaster or whatever, staff
7 might be uncomfortable overturning a regulation, but the
8 Board could do that.

9 That's what we used to refer to as the mercy
10 clause, but we won't go into that now; right?

11 Okay. So the motion as read. Please call the
12 roll.

13 MS. JONES: Okay. Senator Hancock.

14 CHAIRPERSON HANCOCK: Aye.

15 MS. JONES: Assembly Member Curt Hagman.

16 ASSEMBLY MEMBER HAGMAN: Aye.

17 MS. JONES: Esteban Almanza.

18 MR. ALMANZA: Aye.

19 MS. JONES: Kathleen Moore.

20 MS. MOORE: Aye.

21 MS. JONES: And it looks like your motion carries.

22 CHAIRPERSON HANCOCK: Okay. Thank you. And we'll
23 leave that and hopefully we've solved that problem.

24 The next item has to do with subcommittees and
25 working groups and again my informal understanding of this

1 was that it came about because somebody wanted work group
2 committee meetings to be webcast.

3 If that's the case, quite frankly I would like to
4 just send it back to staff and say it's an administrative
5 decision.

6 ASSEMBLY MEMBER HAGMAN: Take it out of the
7 Chair's budget.

8 MS. MOORE: On our working groups?

9 CHAIRPERSON HANCOCK: On whether subcommittees and
10 working groups will be webcast, but this particular one was
11 about working groups I think.

12 MS. SILVERMAN: I think the question was brought
13 forward as far as formulating the agendas of the
14 establishment of the working groups and who has the ability
15 to establish work groups. I think that's what that was --
16 what we understood that want to be presented --

17 ASSEMBLY MEMBER HAGMAN: Is it currently at the
18 discretion of the Chair?

19 MR. REYES: That's my understanding.

20 ASSEMBLY MEMBER HAGMAN: Because nothing at the --
21 there's no action the subgroups or subcommittee working
22 groups can take officially on behalf of the Board. All we
23 could do is bring back recommendations to the full Board for
24 action.

25 MR. REYES: Right.

1 ASSEMBLY MEMBER HAGMAN: So if the Chair wants to
2 set up 20 different subgroups to bring recommendations back
3 to the full Board, I think that's the prerogative of the
4 Chair.

5 MR. REYES: At some point, it was a concern that
6 we include agenda item that there was an intent of the Chair
7 to create a subcommittee of some sort. I think it was more
8 correctly pointed out that there are times that issues come
9 up in the middle of a conversation that we (indiscernible)
10 working group. The Department of Defense issue comes up
11 very quickly because we created a working group as a result
12 of a presentation on the spot.

13 And so to (indiscernible) agenda item now
14 (indiscernible) doing the working group on -- I don't
15 know -- on Occupy Sacramento action, you know, presupposes
16 that I'll be able to tell what the (indiscernible).

17 MS. MOORE: I actually thought that there was two
18 reasons maybe this came forward. Working groups and
19 subcommittees: Subcommittee are like -- like the
20 Department of Defense, we created a subcommittee at the
21 Board meeting with the agreement of the Board and then
22 working groups are another area that has occurred within
23 subcommittee actually.

24 So, for instance, we have the Audit Subcommittee.
25 I think Esteban, myself, and Senator Lowenthal are on that

1 committee. And during that committee's deliberations, it
2 became -- there was a need for greater degree of input and
3 there was a working group created and I believe that that
4 was created by the Chair of the Subcommittee -- created this
5 working group that then work went out, worked -- did their
6 work. I think at the time they did it with the prior
7 assistant executive officer. Now the current executive
8 officer is working with that working group that brought
9 recommendations back to the Subcommittee and the
10 Subcommittee brings those recommendations back before the
11 Board.

12 And I guess what I was assuming this item -- and
13 maybe I came in in the middle of the conversation on it, but
14 this was saying how are those -- how are the subcommittees
15 formed and how are the working groups formed. Is that the
16 purpose of this item?

17 MR. MIRELES: I think part of the other reason for
18 this item is can a work group be created without the consent
19 of the majority of the Board or a subcommittee. Could it be
20 created outside of the Board without at least six members
21 deciding to create the subcommittee -- or sorry -- a working
22 group or a subcommittee deciding to create a working group.

23 Can a working group be formed without the full
24 membership or a subcommittee's direction.

25 ASSEMBLY MEMBER HAGMAN: Mind if I get my two

1 cents' worth. Since there is no action officially take on
2 the subcommittee and work group, it is just we're hearing
3 public testimony and we're to report back to the full
4 committee, I see no problem why the Chair can't select,
5 pick, send out anything you want as long it's publicly
6 noticed before that subcommittee meets to get a webcast or
7 not webcast. You know, but it should be the discretion of
8 the Chair and then everything comes back to the full Board
9 anyway and either we affirm the recommendations or we don't
10 take action at that point.

11 MR. REYES: And I agree with you on that,
12 Mr. Hagman. What I would not want to see if where
13 Mr. Almanza gathers a group of 12 people on his own and
14 calls that a working group on behalf of the State Allocation
15 Board and draws people into meetings because he has some
16 sort of agenda that he wants to push forward.

17 I think that if it's -- you know, the working
18 group, if they're working at the request -- I mean any group
19 can get together. I mean CASH gets together and does their
20 thing and they can invite the Bruce and Eric and anybody
21 else they want and have their conversation. That's their
22 call and if they want to elevate issues to the State
23 Allocation or Implementation Committee, that's fine.

24 But I think for -- Mr. Almanza then can call a
25 group and call Bill and Juan and CASH and call -- that he's

1 creating a working group to resolve this issue on behalf of
2 the Board. That causes me pause.

3 ASSEMBLY MEMBER HAGMAN: No. But that's why the
4 Chair gets to do that in an open meeting where it can be
5 discussed and questioned if there is a question about the
6 motives for working group or the personnel --

7 MR. REYES: And the Bagley-Keene and that's kind
8 of why they don't want to be (indiscernible).

9 ASSEMBLY MEMBER HAGMAN: -- and all takes care of
10 it if it's done in the meeting. I don't think it
11 necessarily has to be agendized. You can put an open
12 agendize for new business on there or something for things
13 that come up.

14 But -- because the working group's not going to
15 meet right then. They're going to meet in the future which
16 will be agendized and noticed to the public to attend and
17 that way you don't have the -- don't have 12 of us going to
18 the staff and having our own little missions. We still go
19 through the public or the Board.

20 MR. REYES: Right. And the Implementation
21 Committee can also be a vehicle for such a working group if
22 they want to do that, which is still a public meeting. I
23 will be concerned when, you know -- and I know we have a
24 difference of opinion on Bagley-Keene issues. You know, I
25 look to the Department of Justice who will be defending us

1 in the event of a Bagley-Keene violation and not necessarily
2 the Leg. Counsel's opinion on what constitutes a
3 Bagley-Keene violation. So I'm more conservative on that
4 and that's why I'm a little bit more (indiscernible) of what
5 create -- who creates a working group or creates a
6 subcommittee.

7 MS. MOORE: So to be clear, then what we're saying
8 at the State Allocation Board level is that the
9 subcommittees of the State Allocation Board are created by
10 the Board and that working groups are created by the Board
11 or by the subcommittees of the Board and those are the
12 groups -- I mean I'm not aware of a working group out there
13 that is a Board -- that calls themselves a State Allocation
14 Board group that exists.

15 MR. REYES: I guess the question is if the
16 subcommittee -- if -- just picking you, Ms. Moore. You were
17 the Chair right now of the Personnel Committee and you then
18 decide to have a working group, would that working group be
19 subject to Bagley-Keene if it involves staff who are members
20 of the Board.

21 MS. MOORE: Probably.

22 MR. SAVIDGE: Yeah. Probably. Could I clarify
23 because right now the -- what the Rules and Procedures say
24 is pretty much what we're discussing. It says membership of
25 a working group shall be determined by the Board or a

1 subcommittee of the Board. That part's clear.

2 And then the work group meetings shall be publicly
3 noticed and allow for public comment. It doesn't mention
4 Bagley-Keene and this has come up in the past in some areas.
5 Maybe we should clarify that and so -- I think what we've
6 got here is already what everybody is agreeing is what we
7 want, is that the Board or a subcommittee could form a
8 working group and that's what's in the rules right now.

9 MR. REYES: Okay. So --

10 ASSEMBLY MEMBER HAGMAN: But under the -- in the
11 open up a SAB Board meeting with the direction of the Chair.
12 I mean generally we say yes, you know, or hey, I don't want
13 to be on that Board, so you may not have anybody show up on
14 your committee anyway.

15 But that would be in the open presence of the
16 Board. Then I don't see any -- you know, no conflict. It's
17 when it happens outside a public -

18 MR. REYES: That's the working group. So back to
19 my comment to Ms. Moore. As the Chair of the Personnel
20 Committee, if you then gather staff and Board members as a
21 working group because you want to redefine their duty
22 statement or whatever, whatever personnel action you think
23 is appropriate, would that group then be subject to
24 Bagley-Keene.

25 MS. MOORE: I don't know. Are we --

1 ASSEMBLY MEMBER HAGMAN: I think --

2 MS. MOORE: I mean I -- it sounds --

3 MR. REYES: That's my concern.

4 ASSEMBLY MEMBER HAGMAN: And that's why you come
5 back to the Board. You report it as Personnel Chair, say
6 Mr. Chair, I mean if -- I would like to -- you know, to
7 start a special select committee, whatever the case may be.
8 I want to meet on this Tuesday, whatever. It gets brought
9 up in front of the Board. We take action. They set up this
10 special thing. But that way it's always open.

11 So you -- I guess if you had to change the rules,
12 just put it that -- and I forgot the two terms we're using
13 here -- subcommittee and working group can only be formed at
14 a full SAB Board meeting.

15 CHAIRPERSON HANCOCK: Or you would --

16 MS. MOORE: Well, that's different than -- that's
17 different --

18 MR. REYES: That's not (indiscernible). We're
19 saying the Chair of a subcommittee can form a working group.

20 MS. MOORE: Let's deal with the one that we know
21 about. I mean the one -- there is one that exists.

22 So there is a subcommittee -- an Audit
23 Subcommittee. That Audit Subcommittee has a working group.
24 That working group was sanctioned by the Chair of the
25 Subcommittee.

1 It, as I understand, meets in public and notices
2 its meetings and they're -- I don't know. Do you take -- I
3 don't go to them. Do you take public comment?

4 MR. SAVIDGE: We do take public comment.

5 MS. MOORE: They take public comment. Their
6 only -- they recommended to the subcommittee. The
7 subcommittee either takes or does not take any input that
8 they have as does the State -- as does the whole entire
9 Board when it's brought forward a subcommittee
10 recommendation.

11 So is that how we want it to function?

12 MR. REYES: That's fine because it is public.
13 It's a public meeting. But my concern would be if
14 Mr. Almanza decides that, you know, I think that the
15 Overcrowded Relief Grants are biased towards a particular
16 region in the State and we got to change that a little bit
17 and equalize it so the rural communities have an equal shot.

18 And he then gets folks who represent the rural
19 areas as a working group with OPSC and Bill and other folks.
20 I don't think that's appropriate that they just do it in a
21 close, backroom area.

22 If they want to do it in a public forum at the
23 request of, you know, the Chair of the Committee on what
24 was -- Cash Management or whatever it is you get, then it's
25 a different story.

1 So I think with the definition of a working group
2 and --

3 MS. MOORE: I get that.

4 MR. REYES: -- public forum is my big concern
5 is --

6 MS. MOORE: And I think --

7 MR. REYES: -- transparency.

8 MS. MOORE: I think also because there -- you
9 know, there are legislative members here. There are
10 administrative members here. There are Department of
11 Education members and we go about doing our work as well and
12 we seek guidance on that work.

13 So I may want to bring together a group of folks
14 to talk about an issue, but I'm not representing the State
15 Allocation Board. I'm representing that that's an issue.
16 It may be one that we would deal with as the State
17 Allocation Board at some point, but that we're bringing
18 together a group to discuss that under the auspices of the
19 Department of Education.

20 The, you know, Department of General Services
21 might have something similar. Those are not sanctioned by
22 the State Allocation Board. They are sanctioned by the
23 office that you work for.

24 So those -- and there may be some -- you know,
25 there could be some issues that are discussed there that

1 ultimately become legislative issues or State Allocation
2 Board issues or not, but they're not official meetings of
3 the State Allocation Board nor its members.

4 MR. ALMANZA: But it would be subject to
5 Bagley-Keene if your group included staff from members of
6 the Board.

7 MS. MOORE: Not if I'm not talking about a -- not
8 if I'm --

9 MR. ALMANZA: Well, if you're discussing an issue
10 related to --

11 MS. MOORE: Well, for instance, we have a
12 leadership team that meets that is State -- that are leaders
13 of the agencies. We don't notice that meeting and we don't
14 sanction it under the State Allocation Board. We sanction
15 it under our agency rolls that we're --

16 MR. REYES: Does the agenda or the item discussed
17 that end up as agenda items on the State Allocation Board --
18 so, for instance, if you were to have a meeting -- you
19 called a meeting under the Superintendent of Public
20 Instruction and in that meeting, you asked Mr. Almanza to
21 come in as the DGS representative.

22 And you invite Senator Lowenthal and Ms. Brownley
23 as the Education Committee Chairs and you invite other folks
24 who are -- you invite Finance as the money people into this
25 thing and you start talking about school facility financing

1 and the critical aspects and how we should be creating a
2 program to maximize the bond money and so forth, I mean
3 those are issues that will be before the State Allocation
4 Board potentially.

5 But if you have this in a conference room without
6 access to the public, that seems to me that you're asking
7 for trouble under Bagley-Keene because you're looking at
8 potential agenda items.

9 MS. MOORE: Well, the State -- the Superintendent
10 of Public Instruction can bring together any group of
11 individuals that he wants to seek advice from and to hold
12 meetings with.

13 I don't know how that then affects the State
14 Allocation Board and I think this is a greater conversation.

15 MR. REYES: Um-hmm.

16 MS. MOORE: If that's what this item is, you know,
17 trying to get at, I think we have a greater conversation to
18 be had.

19 If -- I thought the item was about working groups
20 sanctioned by the State Allocation Board and subcommittees
21 sanctioned by the State Allocation Board. As I said, we
22 have an agency group that has been meeting and we are
23 discussing items between our agencies. I don't think
24 that -- you know, does that ultimately affect the State
25 Allocation Board? I don't --

1 MR. REYES: I guess I'm just an advocate
2 (indiscernible) Bagley-Keene. So that's -- it's always my
3 backstop.

4 CHAIRPERSON HANCOCK: Well, I'm going to have to
5 reveal my bias. I grew up in local government with the
6 Brown Act made it impossible to caucus, made it impossible
7 for members to talk to each other, and I just wish someday
8 we all had to live with that here. We could never have two
9 or three gather together to have informal conversation about
10 policy matters.

11 So I actually -- if anybody wants to talk about
12 this, we should have it as a larger discussion because there
13 is separation of powers. They're a different agency with an
14 elected head. There's the administration and frankly each
15 one of us is elected to meet with our district and to
16 represent our district and to get advice from people.

17 Now, if we're going to talk about -- obviously
18 we're not talking about setting up -- me declaring a
19 subgroup or a working group or anybody else here doing that.

20 If the discussion is how do we seek informal
21 advice, I would say I have a right to ask Mr. Savidge to
22 give me advice because he works with the Board members.
23 Maybe I don't have a right to ask the staff for advice and
24 if that's the case, somebody should clarify that and we will
25 not ask the staff for advice. We will go talk to members of

1 the public and other people.

2 I don't quite get where we're going with this.

3 MR. REYES: I don't know where this other item
4 came from, but I think all OPSC staff is available to all
5 Board members at all times for information.

6 ASSEMBLY MEMBER HAGMAN: Madam Chair, I think to
7 clarify the rolls and not get into this other stuff right
8 now that if we made it clear that any of the committees or
9 subcommittees are announced and formed at the full Board, at
10 least that is transparent to the public.

11 So if the Chair wants to set up a committee or a
12 subcommittee Chair wants to set up a working group to work
13 on a particular issue, at least that is announced and that
14 way staff is aware and public's aware and if there's an
15 actual date and time for that, that it should be notified
16 and publicized. Our staff attorney could let us know that
17 we need to publicize and have it out there and we could get
18 those groups together.

19 As far as individual one-on-one going through the
20 thing, I don't think that's part of the rules. We're clear
21 to go. But if you do that, then everything's covered.

22 CHAIRPERSON HANCOCK: Okay. Do we need to add
23 anything to our existing rules?

24 MR. REYES: I don't think so.

25 MR. ALMANZA: No.

1 MS. SILVERMAN: I don't think so.

2 MR. REYES: I think there's a question here
3 (indiscernible).

4 CHAIRPERSON HANCOCK: That's why -- you know, it's
5 like how far did we go to make sure --

6 ASSEMBLY MEMBER HAGMAN: And we did webcast our
7 meeting -- the working group meeting yesterday.

8 MR. REYES: And (indiscernible) going to be based
9 upon availability and feasibility --

10 ASSEMBLY MEMBER HAGMAN: And tossed, yeah.

11 MR. REYES: So --

12 CHAIRPERSON HANCOCK: Okay. So with that
13 clarifying discussion, I think we have completed our agenda
14 and I would like to thank the members of the Committee and I
15 guess the clarification that we did on appeals will be --
16 oh, that's a good idea. Thank you.

17 Yeah, are there any public comments now that we've
18 completed the agenda?

19 Seeing and hearing none --

20 ASSEMBLY MEMBER HAGMAN: So move to adjourn.

21 CHAIRPERSON HANCOCK: -- then move that we
22 adjourn. Now what if we don't get six votes.

23 MS. JONES: We stay here until we do.

24 CHAIRPERSON HANCOCK: Well, all in favor.

25 (Ayes)

1 CHAIRPERSON HANCOCK: Opposed? Motion carries.

2 Okay.

3 (Whereupon, at 4:43 p.m. the proceedings were
4 recessed.)

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