

**Report of the State Board of Education
Committee of the Full Board
November 19, 2009**

The State Board of Education Committee of the Full Board met at 9:07 a.m. on Thursday, November 19, 2009, in the State Board of Education Room, #1-104, of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas. All members of the committee were present, as follows:

Presiding: Gail Lowe, chair; Rick Agosto, Lawrence A. Allen, Jr., Mary Helen Berlanga, David Bradley, Barbara Cargill, Bob Craig, Cynthia Dunbar, Pat Hardy, Mavis B. Knight, Terri Leo, Don McLeroy, Ken Mercer, Geraldine Miller, Rene Nuñez

DISCUSSION ITEMS

1. Discussion of Parliamentary Procedures
(Board agenda page I-297)

Kirk Overbey, parliamentarian, gave the committee members an overview of parliamentary procedures. He provided a hand-out titled Parliamentary Pointers, Principles Governing Debate.

**2. Third Quarter 2009 Permanent School Fund
Performance Report**
(Board agenda page I-299)

Tom Heiner and Paul Schmidt, client relationship managers with Mellon Analytical Solutions, presented the third quarter 2009 Permanent School Fund Performance Report. Mr. Heiner stated that the PSF returned 12.6% for the third quarter outperforming the target benchmark by 30 basis points. The Fund ranked in the 26th percentile or the top 2nd quartile of the Mellon Universe of Public Funds greater than \$1.0 billion. Mr. Heiner added that the outperformance for the quarter was attributed to the performance of the Domestic Fixed Income and Absolute Return asset classes against their respective benchmarks.

Mr. Heiner reviewed performance of the Permanent School Fund's asset classes, stating that the total domestic equity composite returned 16.32% for the quarter, coming in right in line with its benchmark. He added that international equities returned 19.79% for the quarter, exceeding its benchmark by ten basis points. The fixed income portfolio returned 4.79%, for quarter, outperforming its benchmark by 105 basis points. Mr. Schmidt stated that the absolute return composite returned 5.90% for the quarter, outperforming its long term benchmark.

ACTION ITEM

3. **Consideration of Texas Attorney General Opinion GA-0707 Regarding Transfers from the Permanent School Fund to the Available School Fund and Determination as to Whether Transfers May be Made from the Permanent School Fund to the Available School Fund**

(Board agenda page I-227)
[Official agenda item #11]

Mrs. Lowe introduced the agenda item and asked Holland Timmins, executive administrator and chief investment officer, to provide his presentation. Mr. Timmins referred the committee to the handout titled "PSF Distribution, Committee on School Finance/Permanent School Fund" dated November 2009. He stated that the constitutional authority and constitutional restrictions applicable to the amount of the distribution from the Permanent School Fund to the Available School Fund were listed on page one of the handout.

Mr. Timmins then noted that according to the calculations as detailed on page three of the handout, that the PSF could distribute approximately \$60.7 million in fiscal year 2010. He further stated that the Fund's general investment consultant, NEPC, concurred with the conclusion. He indicated that if the PSF had only matched the target policy benchmark, then it would be unable to make a distribution. However, because the Fund had outperformed over the last five years, it is able to make a distribution. Mr. Timmins recommended that the board determine that a distribution of \$60.7 million for fiscal year 2010 is permitted under Texas Constitution Article VII, Subsection 5(a)(2).

MOTION: *It was moved by Mr. Bradley and seconded by Mr. Craig that the State Board of Education determine that a distribution of \$60.7 million for fiscal year 2010 is permitted under Texas Constitution Article VII, Subsection 5(a)(2).*

Mr. Bradley asked Mr. Timmins how frequently the board would review the amount of the payment and also asked what the frequency of the payment by the PSF to the ASF would be. Mr. Timmins stated that the board would make the decision annually and that the PSF payment to the ASF would occur on a monthly basis.

Mr. Bradley asked how a significant drop in the value of the PSF's assets would affect the payment in fiscal year 2010. David Anderson, general counsel, replied that the board's decision was binding for the upcoming year and that the approved payment would be made, regardless of any decline in the value of the Fund's assets.

Mr. Bradley asked whether the Fund would recapture any payments to the ASF in the event that the value of the Fund's assets declined significantly. Mr. Anderson replied that the Fund would not recapture any payments made to the ASF.

VOTE: *A vote was taken on the motion and carried unanimously that the State Board of Education determine that a distribution of \$60.7 million for fiscal year 2010 is permitted under Texas Constitution Article VII, Subsection 5(a)(2). (Mrs. Berlanga and Ms. Hardy were absent for vote.)*

DISCUSSION ITEM

4. **Public Hearing Regarding Instructional Materials Submitted for Adoption by the State Board of Education Under Proclamation 2010**
(Board agenda page I-301)

John Lopez, managing director of instructional materials and educational technology, introduced the item and explained that the only person who signed up to provide testimony was not in attendance; therefore, no public hearing was conducted.

ACTION ITEMS

5. **Report and Recommendations from the Commissioner of Education Regarding Instructional Materials Offered for Adoption Under Proclamation 2010**
(Board agenda page I-237)
[Official agenda item #12]

Mr. Lopez introduced the item and explained the process by which the instructional materials submitted for adoption are placed on the list of conforming or non-conforming materials.

MOTION: *It was moved by Mr. Craig and seconded by Ms. Hardy to recommend that the State Board of Education:*

Require that all publishers make corrections listed in the Report of the Commissioner of Education Concerning Required Corrections of Factual Errors (see Attachment A);

Require that all student textbooks meet established manufacturing standards and specifications;

Approve changes and corrections in lists submitted by publishers to the agency by August 14, 2009 and in response to written comments and public testimony;

Grant permission for Handwriting Without Tears to withdraw Handwriting Without Tears; English Language Arts and Reading, Grade K;

Grant permission for The Trevor Romain Company to withdraw Bullies are a Pain in the Brain; Reading, Grade 5;

Grant permission for The Trevor Romain Company to withdraw Bullies are a Pain in the Brain; Spanish Reading, Grade 5;

Grant permission for Santillana to withdraw Elevator Level 1 and Elevator Level 2; English for Speakers of Other Languages I;

Grant permission for Santillana to withdraw Elevator Level 3 and Elevator Level 4; English for Speakers of Other Languages II; and

Place the remaining instructional materials submitted for adoption on the Conforming List or Nonconforming List as indicated on the Final Recommendations of the Commissioner of Education Regarding Instructional Materials Offered for Adoption under Proclamation 2010. (See Attachment B.)

MOTION AND VOTE: *It was moved by Ms. Leo and carried unanimously to amend the motion to require any publisher whose material at any grade level uses the TEKS or TAKS labeling to inappropriately promote an item as it relates to the state assessment program to remove the labeling before the materials are shipped to the classroom. (Mrs. Berlanga was absent for the vote.)*

VOTE: *A vote was taken on the motion to recommend that the State Board of Education accept the recommendation of the commissioner of education, and adopt the instructional materials called for under Proclamation 2010 as shown in Attachment B. The motion carried unanimously. (Mrs. Berlanga was absent for the vote.)*

6. Statewide Licenses for Electronic Instructional Materials

(Board agenda page I-243)
[Official agenda item #13]

Anita Givens, associate commissioner of standards and programs, introduced the item by explaining the request for a statewide license under Proclamation 2010.

Public testimony was provided by the following individual:

NAME: Modesta Lopez-Tollison
AFFILIATION: Self

MOTION: *It was moved by Mr. Bradley and seconded by Mr. Agosto to recommend that the State Board of Education direct the commissioner of education to adopt rules for the implementation of a statewide license and to recommend that the State Board of Education accept the statewide license offered by A+RISE.*

MOTION: *It was moved by Mr. Craig and seconded by Mrs. Miller to divide the motion into two separate motions: the first motion being to recommend that the State Board of Education direct the commissioner of education to adopt rules for the implementation of a statewide license and the second motion being to recommend that the State Board of Education accept the statewide license offered by A+RISE.*

VOTE: *A vote was taken on the motion to divide the motion into two separate questions. The motion carried.*

VOTE: *A vote was taken on the motion to recommend that the State Board of Education direct the commissioner to adopt rules for the implementation of a statewide license. The motion carried.*

VOTE: *A vote was taken on the motion to grant a statewide license to A+RISE. The motion failed.*

7. Approval of Question and Answer Document for Proclamation 2011

(Board agenda page I-247)
[Official agenda item #14]

At the request of Dr. McLeroy and without objection this item was moved to Friday, November 20, 2009.

8. Proposed Revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials

(First Reading and Filing Authorization)
(Board agenda page I-249)
[Official agenda item #15]

Mr. Lopez introduced the item, which presents for first reading and filing authorization proposed revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

Public testimony was provided by the following individual:

NAME: Karla Christman
AFFILIATION: Textbook Coordinators' Association of Texas

MOTION: *It was moved by Mr. Craig and seconded by Mrs. Knight to recommend that the State Board of Education approve for first reading and filing authorization the proposed revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials. (Mr. Agosto, Mr. Allen, Mr. Bradley, Mr. Mercer, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Mrs. Cargill, seconded by Ms. Leo, and carried unanimously to keep the original language in 19 TAC §66.27. (Mr. Agosto, Mr. Allen, Mr. Bradley, Mr. Mercer, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Mrs. Miller, seconded by Ms. Hardy, and carried unanimously to amend 19 TAC §66.30 by adding subsection (b) to read "For purposes of this section, an eligible institution under §66.67 that has submitted open-source materials for adoption is considered to be an entity participating in an adoption." (Mr. Agosto, Mr. Allen, Mr. Bradley, Mr. Craig, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Dr. McLeroy, seconded by Mr. Mercer, and carried unanimously to amend 19 TAC §66.33(b) to add "hardware or software providers" after each of the three instances of the word "publishers" in the last sentence. (Mr. Agosto, Mr. Allen, Mr. Bradley, Mr. Craig, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Mrs. Knight, seconded by Ms. Hardy, and carried unanimously to amend 19 TAC §66.33(a) by striking the last sentence and adding "The appointments shall include educators, parents, business and industry leaders, and employers." (Mr. Agosto, Mr. Allen, Mr. Bradley, Mr. Craig, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Mrs. Leo and approved without objection to amend 19 TAC §66.54 by adding a new (b) to read: "The publisher of instructional materials submitted for*

adoption shall make available up to three examination copies of each submitted student and teacher component to each SBOE member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials." and re-lettering subsections (b) through (i). (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)

MOTION AND VOTE: It was moved by Ms. Dunbar, seconded by Dr. McLeroy, and carried unanimously to amend 19 TAC §66.66, striking section (c) and inserting:

"(c) The SBOE shall adopt both a list of conforming and nonconforming instructional materials in accordance with TEC §31.023. Instructional materials may be adopted only if they:

- 1) Meet the requisite percentage of TEKS required under TEC §31.023. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;
- 2) meet the established physical specifications adopted by the SBOE;
- 3) are free from factual errors; and
- 4) receive majority vote of the board. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of TEC §28.002(h).

(d) Instructional materials submitted for placement on a conforming or nonconforming list may be rejected by majority vote of the board in accordance with TEC §31.024.

(e) The SBOE shall either adopt or reject each submitted instructional material in accordance with TEC §31.024."

and re-lettering existing item (d) as (f). (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)

MOTION AND VOTE: It was moved by Dr. McLeroy, seconded by Ms. Hardy, and carried unanimously to amend 19 TAC §66.67(g) by adding "by the same process used in §66.36" after the phrase "All university developed open-source textbook submissions shall be reviewed independently." (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)

MOTION AND VOTE: It was moved by Ms. Hardy and approved without objection to amend 19 TAC §66.67(e) by adding "the SBOE and" before the words "the commissioner of education." (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)

MOTION AND VOTE: It was moved by Ms. Dunbar, seconded by Ms. Hardy, and carried unanimously to amend 19 TAC §66.67(b) by adding "if the textbook meets the criteria outlined in subsections (c) and (d) of this section." (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)

MOTION AND VOTE: It was moved by Ms. Hardy, seconded by Mr. Craig, and approved without objection to amend 19 TAC §66.67(b) by adding "for a secondary-level course" after the phrase "The State Board of Education shall place all open-source textbooks submitted." (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)

MOTION AND VOTE: *It was moved by Ms. Dunbar and approved without objection to amend 19 TAC §66.67(b) by striking “all open-source textbooks” and inserting “an open-source textbook.” (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Dr. McLeroy, seconded by Ms. Hardy, and approved unanimously to amend 19 TAC §66.67(g) by replacing the word “ensure” with “confirm” and adding “The SBOE shall notify the submitting institution of any discrepancy with alignment with the essential knowledge and skills.” (Mr. Agosto, Mr. Allen, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Ms. Dunbar, seconded by Dr. McLeroy, and approved without objection to strike item (5) of 19 TAC §66.102(d) and insert “and” between items (3) and (4). (Mr. Agosto, Mr. Bradley, Mr. Mercer, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Ms. Hardy, seconded by Dr. McLeroy, and approved without objection to replace “25” with “32” in 19 TAC §66.104(s) and add “with the exception of school districts with small enrollments” after the word “units”. (Mr. Agosto, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

MOTION AND VOTE: *It was moved by Ms. Dunbar, seconded by Dr. McLeroy, and approved without objection to strike the current subsection (t) from 19 TAC §66.104. (Mr. Agosto, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

VOTE: *A vote was taken on the motion to recommend that the State Board of Education approve for first reading and filing authorization the proposed revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, as amended. The motion carried unanimously. (Mr. Agosto, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

DISCUSSION ITEM

9. Discussion of Pending Litigation (Board agenda page I-303)

The committee did not discuss pending litigation; therefore, no executive session was held.

ACTION ITEM

Dr. McLeroy requested that item #12, Update on Texas Essential Knowledge and Skills (TEKS) Review, be brought up at this meeting. Originally, the Committee of the Full Board on Wednesday, November 18, unanimously agreed that this would be considered on Friday at the general meeting.

Ms. Givens explained that the speech TEKS review committee has recommended elimination of the Speech Communications course because there is relatively low enrollment statewide and the Speech Communications course content is very similar to the Communication Applications course content.

MOTION AND VOTE: *It was moved by Ms. Hardy, seconded by Mr. Craig, and carried unanimously to recommend elimination of the Speech Communications course. (Mr. Agosto, Mrs. Berlanga, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

Ms. Givens explained that the proposed rule text for the revised social studies TEKS would be presented to the board at the January meeting for first reading and filing authorization.

MOTION AND VOTE: *It was moved by Mrs. Knight and seconded by Ms. Hardy to invite representatives from the appointed social studies TEKS committees and experts to the public hearing in January with travel expenses paid by the Texas Education Agency. The motion failed. (Mr. Agosto, Mrs. Berlanga, Mr. Bradley, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

Ms. Givens explained that TEA is beginning to receive nominations from board members for technology applications TEKS review committees. She asked the committee members to begin considering experts for the review of the technology applications TEKS.

The board agreed to continue to use the process that was followed for the review of the social studies TEKS as they proceed with the review of the technology applications TEKS and revised the currently approved process. (See Attachment C.)

MOTION AND VOTE: *It was moved by Mrs. Lowe to assign the initial technology applications TEKS review process to the Committee on Instruction. The motion carried. (Mr. Agosto, Mrs. Berlanga, Mr. Bradley, Ms. Dunbar, Mrs. Miller, and Mr. Nuñez were absent for the vote.)*

Mrs. Lowe adjourned the meeting at 5:37 p.m.