

(UNADOPTED MINUTES)

CONTRA COSTA COUNTY BOARD OF EDUCATION
Serving in the Capacity as the County Committee on School District Organization

Contra Costa County Office of Education
The Ronald L. Stewart Center
77 Santa Barbara Road, Pleasant Hill, California

April 6, 2005

A meeting of the County Committee on School District Organization, which took place at the Contra Costa County Schools Insurance Group, 550 Ellinwood Way, Pleasant Hill, CA 94523, was called to order at 6:00 p.m. with the recitation of the Pledge of Allegiance.

ROLL CALL Pamela Mirabella, David Krapf, (arrived at 6:05 p.m.) Daniel Gomes, Glenn Ruley, and Daniel Borsuk.

ABSENT None.

CHAIR Daniel Borsuk

OTHERS Ellen Elster, Peggy Marshburn, Terry Foley, and Laura Dorsey Huerta, County Office of Education staff; and Vickey Rinehart, Superintendent of Knightsen School District; Rick Rogers, Superintendent of Oakley Union Elementary School District; Kathy Hein, Knightsen; Teresa Estrud, Knightsen; Dorothy Walter, Knightsen School Board; Liesel Williams, Knightsen School Board; Lynn Gursky, Knightsen; Franklin Dell, Knightsen School Board; Dean Mills; Karen Bergenholtz, Oakley; Lauri Winters, Oakley; Mont Norris, *Oakley Press*; Joan Ryan, City of Oakley; Ed Biggs, Fairfield; Paul G. Thompson, Esq., counsel to Knightsen School District; Jim Frank, Knightsen School Board; Bob Kratina, Oakley School Board; Richard Loewke, City of Oakley; and Edward Sklar, Esq., Lozano-Smith, counsel to West Contra Costa Unified School District. A partial list of attendees is on file at the County Office of Education.

APPROVAL OF MINUTES The minutes of May 7, 2003, were approved as presented (M/S: Ruley/Gomes; Krapf absent).

PUBLIC COMMENT

Possible Reorganization of School District Territory to Transfer Territory Described as the Southern Portion of the East Cypress Corridor Area from Knightsen SD to Oakley UESD

Ellen Elster, Deputy Superintendent of the Contra Costa County Office of Education and staff person to the County Committee on School District Organization, introduced the matter by stating that it is appropriate for the County Committee to study any proposed development that could possibly create any kind of negative consequences for students or families in the area. She then distributed to the County Committee a list of options to consider and briefly described each option: 1) the County Committee could decide to stop and go no further regarding this matter, or 2) the County Committee could direct staff to commence a process for looking into a territory transfer in the affected area, which would require hearings to take place in both the Oakley and Knightsen school districts. She noted that if the County Committee chooses to follow the second option, it could decide to stop and go no further after the hearings take place or it could make a final recommendation to approve a territory transfer. She further noted that if the County Committee recommends a territory transfer, the decision can be made without requiring an election if two conditions are met: 1) that the territory is uninhabited and the majority of owner(s) of the territory consent to the transfer, and 2) that the governing boards of both school districts consent. She clarified that if either school district's governing board did not consent to the transfer, the County Superintendent of Schools would then have to call for an election. If that were to come to pass, the County Committee would have to define the boundaries of the precincts that would be allowed to vote in such an election. County Committee Chairman Daniel Borsuk then announced that the Public Comment portion of the meeting would now begin.

Rick Rogers, Superintendent of the Oakley Union Elementary School District, addressed the County Committee and made the following comments: He stated that he felt it would be best to be proactive regarding this matter in order to avoid a situation similar to the Oakley Orphan situation (students who live in Oakley but who are in the Antioch Unified School District). He explained that there is a great amount of uncertainty involved with the annual requests made by parents in Oakley to allow their children to transfer from the Antioch Unified School District to the Oakley Union Elementary School District, and he would not like to have a similar situation arise in the proposed development in Oakley that would require students to attend the Knightsen School District unless annual requests for transfers were once again utilized. He highlighted four of nine reorganization criteria (Substantial Community Identity, Cost to State, School Housing Costs, and Fiscal Management/Fiscal Status). He enumerated reasons why the residents of the newly developed area would identify more with Oakley than Knightsen, he argued how costs would be less for the state if the transfer were to occur, he argued that lower school housing costs would be a result of transferring the territory to the Oakley district; and, lastly, he argued that the proposed reorganization would not cause a substantial adverse effect on the fiscal management or fiscal status of either of the districts involved.

Vickey Rinehart, Superintendent of the Knightsen School District, then addressed the County Committee and made the following comments: She gave some background on the Knightsen School District and informed the County Committee that of the 465 students, 170 are children who have transferred into the district via interdistrict transfers from Oakley, Brentwood, Byron, and Antioch. She stated that Knightsen School has become a school of choice that has been described as “a private school with public funding.” She indicated on a large map the territory in question, and she noted that the Knightsen School District encompasses portions of the cities of Oakley and Brentwood and the town of Byron. She noted that 73% of the homes proposed to be built in the new development fall within the boundaries of the Knightsen School District and that the resulting 600 students (approximation) will be able to walk to a school that Knightsen School District will have built close-by. She also pointed out that of the 170 transfer students that Knightsen School District currently has, 90 come from Oakley (53% of all transfers). She also informed the County Committee that the first mitigation agreement that was made in 1993, as well as the 2001 mitigation agreement with Shea Homes, calls for a road to be extended across Rock Slough that would connect with Byron Highway. She added that, in those mitigation agreements, it is stated that the developer must pay \$340 per home to pay for that road; therefore, she argued that the property in dispute is not locked by water. Also, once the road connects the property to the Byron Highway, it will be less than one mile from the school in Knightsen. She noted that, without growth, a school district cannot remain strong. She also noted that Knightsen School District offers free busing to its students, while Oakley UESD charges its students to ride the school bus. She also spoke to the Oakley Orphan issue as it relates to money for attendance transferring to another school district but that the developer fees do not transfer. She also disputed Mr. Roger’s claim that interdistrict transfers must be renewed annually; instead, she noted that the Education Code is very permissive in this regard and that the school districts can arrive at an agreement for a longer period between transfer requests. She described the positive reputation of Knightsen School for structured discipline as well as its test scores (an API of 761 for Knightsen versus an API of 723 for Oakley). She also noted that the property in question is still considered County land, since the City of Oakley has not yet applied to annex that area. She explained that the State of California would like to see school districts larger than 901 students because county offices of education carry much of the burden with small districts; and she noted that, with the number of new students that would result from the new development in question, Knightsen School District would see its enrollment grow to larger than 901 students and would, hence, be viewed as more financially healthy. Regarding community identity, she described the many community organizations that include Knightsen in their activities. She also expressed her opinion that smaller schools make for better learning environments for the students and that if a small school were built in Knightsen, it could very easily be funded. She concluded with stating that the Knightsen School District needs the territory in question to maintain its fiscal stability and to be able to grow.

Paul Thompson introduced himself to the County Committee and informed them that he worked for the law firm that is representing the Knightsen School District. He offered the following comments: He referenced the criteria set forth in the Education Code that must be substantially met for either a petition or a recommendation by a County Committee to be approved before it can go to an election. He then referenced the first criteria found in Education Code section 3573(a)(1), which provides that each district shall have adequate enrollment on the day the proposal becomes effective. He stated that the State Board of Education has made its intent known that it does not want districts created that will become more dependent on county offices of education and on state support, and the baseline number set for elementary school districts is 901 students. He informed the County Committee that while Knightsen School District currently has 465 students enrolled, Oakley UESD has approximately 4,000 students enrolled. He pointed out that if the subject property were transferred from Knightsen to Oakley, Knightsen's enrollment would remain at 465, which is barely above half of the state baseline, but if the boundaries remain as they are, Knightsen will obtain between 500 and 600 students, which would allow it to get above the state baseline, which has benefits. He then stated that, according to Criteria 5 in Education Code section 3573(a)(5), the proposed reorganization "shall not result in increased costs to the state." He argued that allowing the territory to remain in the Knightsen School District would result in lower costs to the state. He then referenced Criteria 4 in Education Code section 3573(a)(4), which provides that "reorganization of districts shall not promote racial or ethnic discrimination or segregation." He presented the following ethnic makeup of the two school districts: Knightsen has an African-American attendance rate of one-fourth of one percent (four students) and approximately 28% Hispanic enrollment, while the Oakley UESD has an approximate 20% African-American attendance rate and a 45% Hispanic attendance rate. He argued that, currently, Oakley has much more ethnic diversity than Knightsen does and represents enrollment ethnicity figures that meet the intent of the state and the California Constitution. He pointed out that if the transfer of territory were to occur, Oakley's ethnic diversity would become enhanced while Knightsen's ethnic diversity would become practically nonexistent. Therefore, he argued, leaving the boundaries as they are would create the opportunity for both districts to experience ethnic diversity, which he stressed is a very important part of the learning and growth process. He further argued that to redraw the boundaries, resulting in such unequal ethnic diversity might even be considered unconstitutional. He stated that with regard to Criteria 6 as set forth in Education Code section 3573(a)(6), "the reorganization will not significantly disrupt the educational program of the district," it might be considered relevant that the API scores are higher in the Knightsen School District than in the Oakley UESD. He suggested that the reorganization would be neither in the best interest of the students nor the districts that would be affected. He also mentioned the difference in developer fees that are charged by the two districts, indicating that Knightsen would receive higher fees and would be better able to afford to build a new school. Lastly, he indicated that it was his opinion that, procedurally, the County Committee could initiate the proceedings, hold hearings, and make recommendations pursuant to section 35720.75; however, later in that chapter, section 35722 provides that "following the public hearing required by section 35720.75," the County Committee may adopt a final recommendation for unification or other reorganization and shall transmit that recommendation to the State Board of Education for hearings provided in Article 4. His interpretation of the Code is that the matter would end up being handled by the State Board of Education.

Dorothy Walters, a longtime Knightsen school board member, addressed the County Committee, and made the following comments: She has lived in two communities in which her children had to be bused to schools other than the schools in their local neighborhood, and it was never a problem for her family. She spoke highly of Knightsen School District and the community as a whole.

Joan Ryan, City of Oakley, addressed the County Committee and made the following comments: The City of Oakley believes that this is a very important issue with respect to the future growth of the City and that this is the ideal time to be examining this issue prior to the development of the subject area. She thanked the County Committee for its willingness to examine this issue. She provided some background on the City's annexation project and explained that in August 2003, Oakley's sphere of influence was amended to include the East Cypress Annexation Area, which includes approximately 2,500 acres. The City is currently working on an EIR to examine the impact of the project. She noted that the City anticipates making a formal application to LAFCO in the summer of 2005. She further stated that the southern area includes approximately 350 acres, which is proposed for 1,120 units, representing about a third of the overall units planned for the East Cypress Area.

Richard Loewke, a professional urban planner, addressed the County Committee and made the following comments: He thanked the County Committee, COE staff, and the representatives of the local education community who have been putting so much thought and effort into this process. He stated that he is currently serving as a special consultant to the City of Oakley in the preparation of their Specific Plan program for the East Cypress Corridor and specifically for the evaluation of municipal and special district services to the area. He noted that one of his responsibilities is to examine the logical sequence of development and the logical extension of urban services to this area, and that primarily includes the extension of infrastructure, roadway, and utilities in addition to police and fire services. Although, he stated, that it does not fall directly under the jurisdiction of the Contra Costa Local Agency Formation Commission, he is also examining the matter of schools. In order to help the County Committee understand the area being discussed, he distributed copies of several maps as well as copies of Oakley's Specific Plan, which indicates the specific arrangement of the arterial roadway systems, the location of the planned high school, and the locations of the two elementary schools planned for the southerly portion of the planning area. He stressed the importance of creating neighborhood identity and cohesiveness, and he noted that the Oakley City Council has placed an enormous amount of importance on directing the property owners, the staff, and team of 20 consultants to examine very carefully the placement of elementary schools within walking distance of the homes, to make certain that no major physical barriers exist as children walk on planned trails and sidewalks from their homes to the parks and schools. He stated that this plan reflects a great deal of consideration to create quality neighborhoods to help improve the identity of the city itself. He directed the County Committee's attention to two property holdings in the subject area (Biggs and Dal Porto properties), which represent approximately 350 acres that are separated by Rock Slough. With regard to the Shea Homes Cypress Lakes project and the conditions of approval imposed on that project by the Contra Costa County Board of Supervisors, he stated with conviction that that project is not obligated to build a roadway across Rock Slough as indicated earlier by the superintendent of the Knightsen School District. He further explained that there was a very conscious effort in the planning of traffic flow from the new development to route traffic away from the agricultural core of the area and specifically not through Knightsen. He argued that the planning program has been designed with local feeder streets, cul-de-sacs, and separate trails and sidewalks to link the residents of the Biggs and Dal Porto properties, which are currently in the Knightsen School District, back to those local schools and other facilities that would be provided by the Oakley UESD so that children living on different sides of the street can attend the same school district. He maintained that to do otherwise would ultimately create significant traffic and air-quality impacts as well as social impacts on the community in the future.

Jim Frank, the president of the Knightsen school board, addressed the County Committee and made the following comments: He stated that there may very well be a school built where one is intended to be built now; thus, no students would have to walk four miles to school since there would be a school right there near their neighborhood. The only difference would be that the school would be part of the Knightsen School District rather than the Oakley Union Elementary School District. He stated that the Oakley UESD is not the City of Oakley; it is a separate entity. He maintained that the City of Oakley can provide certain services to the community while the educational services can be provided by the Knightsen School District. He stated that there will be enough children to allow for Knightsen School District to build a school, and he pointed out that the area in question will be surrounded on three sides by Knightsen. He noted that the Knightsen School District is fiscally sound, productive, and able to provide all services without deficit spending while continuing to grow. He pointed out that the areas of Knightsen that are to the south and to the north have the most potential for growth to increase enrollment in their district. He stated that he does not see it as reasonable to ask one district to sacrifice its potential future so that another, larger district can expand to an even larger size. He stressed that it would be far more detrimental to Knightsen School District than to Oakley UESD to lose this area. He noted that Knightsen School has a waiting list, and its reputation has become so good, it could be considered a school of choice. He noted that because emphasis is placed on teaching social skills in addition to educational skills, their school has a zero expulsion rate and the frequency of crimes or violent behavior is also zero. He reiterated that the desires of a developer and a city do not need to be met at the expense of Knightsen School District's future.

Deputy Superintendent Ellen Elster clarified that the attorney representing Knightsen was partially correct, that if this were a unification or a reorganization, it would go to the State Board of Education. However, since this matter is neither, and is in fact a transfer of territory, it can be decided at the local level.

**Direction to Staff to Commence
Process for Reorganization of the
Knightsen SD and Oakley UESD**

Mr. Gomes stated that he would like to see things stay as they are. Mrs. Mirabella described the input received this evening as conflicting and stated that an evaluation would be difficult without receiving additional information; therefore, she stated that she favored directing staff to commence the process by scheduling public hearings and perhaps having a consultant study the nine criteria to provide feedback to the County Committee. She thanked the members of the public who spoke. Mr. Ruley moved that the County Committee commence the process for a territory transfer so that the matter can be further studied. Mrs. Mirabella seconded the motion. Dr. Krapf agreed that it would be advisable to proceed with the process because of the conflicting information provided thus far. Mr. Borsuk also stated that he has a number of questions about the matter, and until he receives clarification, he would not be able to make a definitive decision. He also stated that he would like to see the EIR when it is completed and learn whether a road will, in fact, be built across the slough. Therefore, he agreed that the County Committee should proceed with the process. The Board then voted to direct staff to commence the process for territory transfer from the Knightsen School District to the Oakley Union Elementary School District (4-1, Gomes dissented).

**Scheduling of Public Hearings
for Petition to Transfer Territory
from WCCUSD to JSUSD**

Ellen Elster, Deputy Superintendent acting as staff to the County Committee on School District Organization, reported that the hearing in the John Swett Unified School District will be held on April 27, 2005, at the Rodeo Hills Elementary School, and the hearing in the West Contra Costa Unified School District will be held on May 4, 2005, at the Hercules Middle & High School. (Note: These dates were later changed to May 19 at Rodeo Hills Elementary School and May 25 at Hercules Middle & High School.)

Ed Sklar then addressed the County Committee, identified himself as an attorney with Lozano-Smith representing West Contra Costa Unified School District, and made the following comments: He asked the Committee to stay the process of this petition review based on Education Code section 35706.5, which precludes the initiation of a petition for reorganization if the district meets certain qualifications; he noted that this section was put into place to protect low-income, financially poor districts from having to fight continuous reorganization battles. He stated that a district is protected from reorganization unless the affected school – in this case, West Contra Costa USD – approves it. In this case, the West Contra Costa USD's governing board has not yet approved any type of petition for reorganization. He informed the Committee that West Contra Costa USD and the Committee's counsel agree that the first criterion, evidenced by West Contra Costa USD's receipt of a state emergency apportionment, has been met. However, he noted that the second criterion – that a district is protected under the statute if 70% of its students come from low-income households – appears to be at least partially met, but the parties involved have not yet had a chance to fully evaluate this yet. He stated that it is West Contra Costa USD's position that it is this Committee's duty and role to ensure compliance with the Education Code and provide an analysis of the petition. As such, he stated that the Committee must determine this before the petition can move forward; therefore, some analysis needs to be performed. He noted that to not proceed with the analysis first goes against the statute to prevent a financially strapped school district from having to fight continual reorganization battles and that, unfortunately, the West Contra Costa USD has already had to spend money to hire his firm to fight this particular reorganization attempt. Lastly, he urged the County Committee, on behalf of West Contra Costa USD, to discuss this matter in the very near future.

Mrs. Elster stated that it is the opinion of the County Counsel's Office, which reviewed this matter in depth, that the first criterion involving the state loan has been met; however, with regard to the second criterion, the County Committee has no way of verifying the data because it would involve students' names, addresses, and possibly income levels, which could be considered confidential information. County Counsel's Office also could not confirm that it is even the role of the County Committee to verify such data. Therefore, the petition was given a conditional approval to move forward and that if at any time it is determined that criterion two of the statute does apply to West Contra Costa USD, then the petition could be declared insufficient. However, based on the opinion of the County Counsel's Office, it has been conditionally deemed a valid petition and the County Committee may proceed. She noted that the statute requiring the verification of income levels may end up in court since it is not enforceable due to the confidentiality factor. She offered to share the opinion of the County Counsel's Office if any of the County Committee members wished to read it. Mr. Sklar added that it is his opinion that the County Committee has an obligation to seek further clarification in regard to how such income statistics can be collected, and he reiterated that it is his opinion that it is unfair to force a school district to enter a fight based on the Committee's acceptance of the petition and to force the school district to somehow prove that 70% of its student body live in low-income households. He urged the Committee to proceed more slowly with this matter so that a solution can be found for gathering the required income information. Mrs. Elster stated again that the Committee is relying on the opinion of the County Counsel's Office, which is that the matter should proceed forward within the time limits required by law.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:25 p.m.

Ellen Elster, Secretary Designee
County Committee on School District Organization

These unadopted minutes are summaries and excerpts from the meeting of April 6, 2005, and are subject to amendment and/or correction prior to the approval of the County Committee on School District Organization.