



Wednesday, February 28

Sonali Murarka  
Office of Charter Schools  
Oakland Unified School District  
1000 Broadway, Suite 639  
Oakland, CA 94607

***Re: Francophone Charter School of Oakland  
Response to District's Preliminary Proposal  
Proposition 39 2019-2020***

Dear Ms. Murarka:

Francophone Charter School of Oakland ("Francophone" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2019 letter ("Preliminary Proposal") regarding Francophone's request for facilities under Proposition 39 ("Prop. 39") for the 2019-2020 school year. We thank you for the thoroughness of your offer, and for taking the time to meet with us to discuss it. Like you, we think close communications and collaboration goes a long way toward designing mutually beneficial agreements.

The District's Preliminary Proposal is for a total of eleven (11) teaching stations and no specialized classroom of any kind, with seven (7) classrooms at Toler Heights and four (4) at Howard Elementary School, as well as 30.1% shared use of the non-teaching station space at Howard. The Preliminary Proposal is based on a projected in-District ADA of 205.20.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires Francophone to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal

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and Francophone's facilities request as submitted pursuant to subdivision (b), and/or make counter proposals.

Francophone has some concerns regarding the legality of the District's offer, and has identified those concerns here so that the parties can work together toward a resolution.

### **Alternative Proposal**

Francophone proposes to receive six (6) classrooms on the Toler Height Campus, plus five classrooms (5) on the Howard campus, to total eleven (11) exclusive use classrooms that the school is entitled to based on District enrollment projections. In addition, Francophone proposes to receive exclusive use of an additional classroom on the Howard campus in lieu of the 803 square feet of specialized classroom space to which the Preliminary Offer states that the Charter School is entitled. Finally, Francophone would receive the non-classroom space allocation described in the Preliminary Offer.

The District Board of Education's "Findings that the Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding" dated January 23, 2019 (Exhibit I), states that there are six (6) classrooms available on the Howard campus, and thus this allocation to Francophone will not require an allocation of space other than rooms the District has already indicated are not being used.

Therefore, Francophone proposes that the parties execute a facilities use agreement providing Francophone with the classrooms described above prior to April 1, so that the District does not need to provide a final offer to Francophone.

Several elements of the current Preliminary Offer already support this proposal.

First, in each of the last four (4) Preliminary and Final Offers made to the Charter School, the campus of Toler Heights was described as housing six (6) general classrooms. However, in this year's offer, it is said to have seven (7) classrooms. Since there has not been any changes to the Toler Heights campus over the past year, the Charter School would like to request that Toler Heights continue to be considered as having (6) classrooms.

To support this argument, the Charter School notes that one of the seven (7) classrooms listed in Exhibit C, Portable B, is in fact designed as an administrative portable, identical to those present on other campuses, such as Portable 4 at Howard Elementary.

Portable 4 is categorized in Exhibit C as "instructional support" space. It so happens that Portable 4 is currently used by the Charter School as front office space for its Howard-based campus. These administrative portables typically have no ramp, and include a bathroom, a large closet, and a small walled office in the middle of the portable, which make it very challenging to use them as classrooms. Note that Table 2 in the Preliminary Offer lists the bathroom and closet as part of the classroom space for this room. In reality, without the walled office, the bathroom, and closet, which are listed as "non-classroom space" in Exhibit B, the actual open space square footage is 576 square feet.

Additionally, while classroom space allocation is not based on square footage, Toler Heights is an older campus where classrooms are significantly smaller than the legal standards of 960 square feet for a standard classroom, and 1,350 square feet for a Kindergarten classroom. The table below shows that the difference between Toler Heights' classrooms and the legal standard is equivalent to three (3) standard size classrooms, which is substantial since classroom space affects both the enrollment capacity of a school, and its educational model.

**Comparison of Toler Heights Classroom Sizes and Legal Standards (Based on Exhibit B)**

<b>Building</b>	<b>Room</b>	<b>Classroom Area (SF)</b>	<b>Legal Standard (SF)</b>	<b>Difference (SF)</b>
Building A	A-1-1	638	1,350	712
Building A	A-1-7	616	1,350	734
Building A	A-1-8	638	960	322
Building A	A-1-12	638	960	322
Portable	B	576	960	384
Portable	D	736	960	224
Portable	E	828	960	132
	<b>TOTAL</b>	4670	7500	2830

The average classroom size at Toler Heights is 667 square feet, which is significantly and consistently less than the average classroom size at schools in the comparison group, as shown in the table below.

**Comparison Schools Classroom Sizes (Based on Exhibit C)**

<b>School</b>	<b>Smallest Classroom (SF)</b>	<b>Largest Classroom (SF)</b>	<b>Average Classroom Size (SF)</b>
Brookfield	575	1155	740.6
Community/Futures	828	1248	883.5
Howard	841	1189	868.2
Reach Academy	800	1365	881.1
Burckhalter	720	1365	939.1
East Oakland Pride	748	968	827.6
Greenleaf*	611	1182	805
New Highland/RISE	736	1232	913.3
Markham	851	945	895.8
Parker	644	1173	841.8
Madison Park	700	1292	856.2
FTK Discovery/ Esperanza	638	899	789.3
Encompass/Acorn	864	1296	970
Hillcrest	714	1161	878.4

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Claremont	598	1440	872.8
Westlake	713	897	850.5

*\*Data is from Exhibit B. It was unavailable in Exhibit C.*

The Preliminary Offer states that the Charter School is entitled to at least 803 square feet of specialized classroom space. The Charter School would like this allocation to come in the form of one additional classroom.

Finally, please note that 12% of the Charter School's student body currently receives special education services, which require flexible and/or additional space. As demonstrated above, push-ins in the classroom are not always possible due to the smaller size of the Charter School's classrooms, and pull-outs in alternate spaces are often required.

To that end, if necessary, the Charter School would also be willing to receive additional classroom space at the Howard campus in lieu of a portion of the Preliminary Offer allocation of 4,800 square feet of interior non-classroom space.

The Charter School is very much interested in working with the District on identifying an agreement that works for both parties.

Additional elements of the Preliminary Proposal are opaque and, approached differently as outlined in the rest of the response, would support additional space allocation to the Charter School, including the following:

- The Preliminary Proposal provides insufficient information regarding the allocation of teaching station, specialized classroom, and non-teaching space to Francophone. The “weighting” factors methodology, used for the very first time in this round of Proposition 39 offers to calculate teaching station, specialized classroom, and non-teaching space allocations to Francophone, is unclear, and seems artificial and arbitrary. As described below, this methodology results in an allocation of less space than Francophone is entitled to without it.
- Allocated space is double-counted as both teaching station space and specialized classroom space.
- The pro rata share calculation includes improper costs.

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Francophone would like to request that the District's final offer of space take into account these revisions, in accordance with Prop. 39 and its Implementing Regulations. Under California law, **the District must give the same degree of consideration to the needs of its students in charter schools as it does to its students in District-run schools**, and some disruption and dislocation of district school students and programs may be necessary to fairly accommodate a charter school's facilities needs.

### **Identification of Comparison Schools**

The Implementing Regulations provide an analysis by which a school district must determine whether a facility is reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district. First, pursuant to 5 CCR Section 11969.3(a), the District must identify a comparison group of district-operated schools with similar grade levels to the Charter School.

5 CCR Section 11969.3(a) defines the process for identifying comparison schools as follows:

The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area...in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested.

The comparison school analysis in the Preliminary Offer does not seem to include all of the comparison school space. For example, the District did not include Greenleaf School's middle school program as part of the comparison school analysis, even though it is part of the same program as the school's elementary grades, is on the same campus, and the ADA of the middle school program was included in Tables 7a, and 9, as well as the related Exhibits. In addition, the Jacobs report data excludes the classrooms used by the middle school grades, claiming that the campus only has 16 classrooms, and no science lab or technology space. This does not take into account the new two-story wing constructed on the Greenleaf campus in 2016 (to add administrative space, library space, and six new classrooms) as well as the campus's substantial additional space, including a large multi-purpose room and gymnasium, and science lab space.

## **Condition Analysis**

A district must also determine whether a facility is reasonably equivalent by determining whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of comparison group schools. Pursuant to 5 CCR Section 11969.3(c), the District must assess “such factors as age (from latest modernization), quality of materials, and state of maintenance.” The District must also assess the following factors:

1. School site size
2. The condition of interior and exterior surfaces
3. The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
4. The availability and condition of technology infrastructure
5. The condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use
6. The condition of the facility's furnishings and equipment
7. The condition of athletic fields and/or play area space

The Preliminary Proposal states that the District has evaluated data on the condition of the facilities at the comparison schools based on “site size (acreage) as well as data on the condition of the facilities based on information available from the Facilities Condition Index and Educational Adequacy Score, as part of the Jacobs Study” and references Exhibit C to the Preliminary Proposal. A review of this spreadsheet shows that the District has taken this information directly from the “Oakland USD Facility Adequacy Assessment” (“FAA”) prepared through the Jacobs report, but not the Facilities Condition Assessment Report (“FCAR”) which accompanied it. Rather, the information from the FCAR is reflected in the Facility Condition Index (“FCI”) listed on page 7 of the Preliminary Proposal.

The District identifies individual, and then the “range” of FCI and Educational Adequacy Scores (“EAS”) at the comparison schools, and then lists Toler Heights and Howard’s scores. The District does not identify an average for all of these scores at the comparison schools (even though it used average scores elsewhere in the Preliminary Proposal). It then states that “the sites offered to the Charter School are within the range of the comparison school group on the condition index, and the educational adequacy score.”

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However, an assessment of whether the condition of the allocated sites is reasonably equivalent to the comparison schools would require an assessment of whether the condition of the two sites is actually even close to the comparison schools.

With that said the Charter School accepts that the condition of its allocated sites are reasonably equivalent.

The Charter School does note, however, that Building A at Toler Heights was deemed seismically unsafe by the FCA and therefore potentially unsuitable for occupancy by Francophone students. Specifically, Building A requires approximately \$2,000,000 in "mission critical" seismic upgrades. As a result, Francophone would like to request clarification from the District regarding the extent of the seismic upgrades necessary to address Building A's potential safety hazards.

### **The District's Teaching Station to ADA Analysis Is Illegal**

**All California public school students, charter or district, are entitled to learn in a classroom that is safe, that is not crowded with too many students, and that is conducive to a supportive learning environment.** In accordance with the implementing regulations, the District must provide a facility to the Charter School with the same ratio of teaching stations to average daily attendance ("ADA") as those provided to students in the comparison group of schools, as well as a proportionate share of specialized classroom space and non-teaching space, and are to be allocated at each grade level consistent with the ratios provided by the District to its students. (5 CCR Section 11969.3(b)(1).) There is no such thing as a fractional classroom for a single grade level of students and the allocation cannot be based upon the District's "loading standard," nor can it be based on an arbitrary and fabricated formula.

In responding to a charter school's request for classroom space, a school district must follow a three-step process, as explained by the California Supreme Court in *California Charter Schools Association v. Los Angeles Unified School District* (2015) 60 Cal. 4th 1221 ("*CCSA v. LAUSD*"):

"First, the district must identify comparison group schools as section 11969.3(a) prescribes. Second, the district must count the number of classrooms in the comparison group schools using the section 1859.31 inventory and then adjust those classrooms 'provided to' students in the

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comparison group schools. Third, the district must use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA.” (*Id.*, p. 1241.)

In calculating the number of classrooms that the District will make available to the Charter School, the District must count the number of classrooms in the comparison group schools and cannot use districtwide norming ratios. (*Id.*, p. 1236.) Under 5 CCR Section 11969.3(b)(1):

“[t]he number of teaching stations (classrooms) shall be determined using the classroom inventory prepared pursuant to California Code of Regulations, title 2, section 1859.31, adjusted to exclude classrooms identified as interim housing.” Classroom shall be provided “in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools.” (*Id.*)

In the *CCSA v. LAUSD* case, the Court explained further that classrooms used for preschool or adult education, or by other charter schools are not counted as classrooms provided to the District’s non-charter K-12 public school students. (*Id.*, p. 1240.) However, the Court held that “counting classrooms ‘provided to’ district students for the purposes of section 11969.3(b)(1) is not the same as counting only those rooms a district elects to staff with a teacher.” (*Id.*, p. 1241.) The Court reasoned that “[c]ounting only those classrooms staffed by an assigned teacher would effectively impute to charter schools the same staffing decisions made by the District. But there is no reason to think a charter school would necessarily use classrooms in the same way that the District does.” (*Id.*)

On a practical level, even if certain rooms are not used for classroom instruction, students nonetheless benefit from these additional rooms, either in the form of having additional space to use for break-out instruction or storage, or in having less crowded classrooms. Thus, the District is required by the Supreme Court’s ruling to count all of the classrooms provided to students in the District for K-12 classroom instruction regardless of whether the classrooms are staffed by teachers or not, and use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA. (*Id.*)

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In prior years, the District used enrollment instead of ADA to calculate its ratios, and simply averaged the enrollment of all core classes at each comparison school (excluding all non-core classes). This year, the District's analysis is opaque, does not provide for the transparency required by *CCSA v. LAUSD*<sup>1</sup>, and does not identify all data points used by the District. Moreover, the data points the Charter School is able to extrapolate often are inconsistent with the exhibits the District has attached in support of its calculations. In addition, despite somewhat complying with the required Prop. 39 formula, the District has, in the second part of its analysis, seemingly reduced the number of classrooms it proposes to allocate to charter schools, by applying a weighting factor to its calculations that has no support in law or regulation.

#### The District's Calculation of the Number of Teaching Stations at the Comparison Schools is Inconsistent with its Supporting Documentation

Table 7a in the Preliminary Proposal identifies the "ADA per Classroom" at the comparison schools, as well as the "Projected ADA" for each site and the "Proportion of Total Comparison Group ADA," which is the percentage of the total comparison school ADA that each comparison school's ADA represents. The Preliminary Proposal states that "To determine the number of classrooms 'provided to' District students at individual District schools, the District has taken the additional step of creating an updated inventory of actual classroom allocation utilization at each comparison group school using educational adequacy assessment data that was provided by a contracted third party vendor (Jacobs) to OUSD during the 2017-18 school year. That inventory is provided as Exhibit C." Exhibit C provides a list of each classroom and other space on each District site, categorizing each room/space according to categories:

1. Classroom (used just for general education classrooms)
2. Laboratory (spaces identified as science labs, music and art space, computer labs, vocational education rooms)
3. Instructional Support (spaces identified as for special education)
4. Student Dining (cafeteria and eating spaces)
5. Media Center (library space)
6. Physical Education

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<sup>1</sup> "The regulations prescribe a specific, transparent method for deriving the ADA/classroom ratio to be applied in allocating classrooms to charter schools, thereby allowing charter schools and the public to readily verify whether a district has complied with the regulation." (*CCSA v. LAUSD*, supra, 60 Cal. 4th at 1236.)

7. Assembly (multi-purpose rooms, auditoriums, theaters)

The Preliminary Proposal and the District's Exhibit C do not actually state the number of teaching stations that the District used for each comparison school. The Charter School determined that number algebraically, by dividing the number in the Projected ADA column by the ADA per Classroom number for each school.

<b>Comparison School</b>	<b>"ADA Per Classroom"</b>	<b>Projected ADA</b>	<b>Number of Teaching Stations Used in District "ADA Per Classroom" Calculation</b>
Brookfield Village Elementary	14.33	171.95	12
Community United Elementary School	19.22	326.25	17
Howard Elementary	11.24	146.06	13
Reach Academy	18.89	358.95	19
Burckhalter Elementary	14.97	209.54	14
East Oakland PRIDE Elementary	17.88	268.21	15
Greenleaf Elementary	37.92 <sup>2</sup>	606.68	16
Futures Elementary	18.17	291.26	16
New Highland Academy	16.27	325.48	20
Markham Elementary	15.84	300.87	19
Parker Elementary	17.81	249.29	14
Madison Park Academy TK-5	13.96	251.32	18

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<sup>2</sup> This appears to be a mistake in the District's calculation; while the Jacobs report identifies 16 classrooms on the Greenleaf/Whittier campus, there are more. First, the MKThink report for the site identifies 28 classrooms on the site. In addition, the school's website states that there are 27 teachers at the school. This is further supported by the fact that the school serves grades TK/ K-8; as noted in the comparison school section, the Jacobs report has clearly erroneously identified the facilities available at Greenleaf, as a new wing was added to the campus in 2016 with 6 new classrooms, a library and an administrative space.

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Fred T. Korematsu Discovery Academy	11.32	214.11	19
Esperanza Elementary	19.94	320.72	16
EnCompass Academy	21.81	315.81	14.5
RISE Community School	11.88	202.03	17
ACORN Woodland Elementary	18.00	279.24	15.5
<b>District's "Weighted Average" ADA per Classroom</b>	<b>19.54</b>		
<b>Actual Average ADA Per Classroom</b>	<b>17.61</b>		

<b>Comparison School</b>	<b>"ADA Per Classroom"</b>	<b>Projected ADA</b>	<b>Number of Teaching Stations Used in District "ADA Per Classroom" Calculation</b>
Hillcrest School	29.42	382.40	13
Claremont Middle School	24.54	466.24	19
Westlake Middle School	6.89	199.79	29
<b>District's "Weighted Average" ADA per Classroom</b>	<b>22.95</b>		
<b>Actual Average ADA Per Classroom</b>	<b>20.28</b>		

A review of Exhibit C, however, suggests that the District has not counted certain teaching stations that are identified as general education classrooms in its calculation – as even after deducting classrooms identified as being allocated to a charter school, or as being used for a purpose other than classrooms (for example, as a parent/community room or administrative room), the number of teaching stations provided to students at the comparison school sites do not match up with the number of teaching stations apparently used by the District in its "ADA per Classroom" calculation. This goes against *CCSA v.*

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*LAUSD* and 5 CCR section 11969.3(b), which require the District to count all teaching stations provided to students.

Thus, not only has the District potentially miscalculated the number of teaching stations on the comparison school campuses, but its calculations are unclear, making it impossible for the Charter School to verify the District's calculations.

The other issue with the District's "ADA Per Classroom" calculation resides in the use of a "weighted" factor.

Most charter schools have multiple comparison schools, and thus in order to determine the teaching station to ADA ratio that will be applied to a charter school's projected in-District ADA to determine the number of teaching stations to be allocated, the ratios for all of the comparison schools are generally averaged by adding them all together, and then dividing by the number of comparison schools. This is commonly known as the "mean"<sup>3</sup> and is the most frequently used formula to calculate the average of a set of numbers as it identifies the most central value of a discrete set of numbers (the sum of the values divided by the number of values). This ensures that the allocation of teaching stations to a charter school most closely reflects the actual teaching station to ADA ratio across all comparison schools – in accordance with Prop. 39.

However, rather than calculating the average teaching station to ADA ratio at the comparison schools as required by Prop. 39 and the formula set forth in *CCSA v. LAUSD*, the District first calculated the ratios of each comparison school, and then calculated a "weighted average" by applying a "weighting factor" to the ratios of the comparison schools which evidently gave heavier weight to those District comparison schools with higher projected ADA in averaging the teaching station to ADA ratios of the comparison schools.

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<sup>3</sup> Other calculations to determine the average, the median (the middle number in a list of sorted numbers) and the mode (the most frequently occurring value in a set of values) are not mathematically appropriate here, as they would result in skewed allocations. Prop. 39 requires that facilities must be provided in the same ratio of teaching station space to ADA as available in a group of school district-operated comparison schools, and using medians or modes would likely result in a charter school receiving an allocation of teaching stations that does not reflect space available at the comparison schools, as one school with far more or far fewer teaching stations would have a disproportionate impact on the calculation.

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There does not seem to be a rationale for using a weighted average in this situation, as weighted averages are typically used when it is necessary to give certain values in a data set more weight to reflect the fact that those values are inherently more meaningful than other values in the set. For example, in calculating classroom grades, the grade on a final exam will typically be given more weight than a weekly exam to reflect the fact that what the student's final classroom grade is intended to reflect (i.e., the student's overall command of a subject matter) is best captured by the more comprehensive and integrated final exam, and not by weekly exams that are typically designed for an entirely different purpose (i.e., to ensure the student stays engaged in the subject matter and to flag any comprehension difficulties when they still may be timely remedied).

It goes against Prop. 39 regulations to give certain larger and likely more crowded District schools more weight in the teaching station to ADA ratio calculation. Prop. 39 does not contain any language suggesting that some comparison schools are more important than others. Therefore, each comparison school should be given the same weight.

Prop. 39 simply states that the comparison group consists of schools with similar grade levels that serve students living in the high school attendance area in which the largest number of charter school students reside – in other words, the comparison group was developed to reflect the kinds and amounts of facilities charter school students would otherwise enjoy had they chosen to attend a traditional district school. (*See, e.g.* the Final Statement of Reasons accompanying the first set of Prop. 39 Implementing Regulations, which describes the comparison school analysis as trying to find a “middle ground” between a comparison group that consists of all district-operated schools and one that consists of one to three schools, as using all district-operated schools as the comparison group would “result in a standard that might be significantly different than the neighborhood schools the charter school students would otherwise attend. (This is because in large school districts the conditions in schools may vary widely from neighborhood to neighborhood)” whereas “[u]sing one to three schools would result in a group that is too small and would result in problems agreeing on the group selected.”) The State Board of Education (“SBE”) could have allowed school districts to employ a weighted average in calculating comparison group teaching stations, but did not. The District must comply with the SBE's decision in this regard.

Neither the Preliminary Proposal nor the exhibits offer any explanation for how or why the District elected to use this formula this year. However, the use of a weighted

average for the teaching station to ADA ratio results in an allocation of fewer classrooms to the Charter School, as shown in the above tables.

Please note that the data in the “Number of Rooms Identified As General Education Classrooms In Exhibit C” column below does deduct rooms allocated to charter schools, but includes rooms identified in Exhibit C as being used for some other non-classroom purpose (e.g. Administration, Community Room, etc.) because those rooms were previously excluded from the District’s calculation of non-teaching station space and thus need to be added back. As described more fully in the non-teaching station space calculation, the non-teaching station space calculation used the MKThink data, and deducted the square footage of any room categorized as a “classroom” in MKThink. As MKThink did not make any differentiation for classrooms used for non-general education purposes, all classrooms were deducted from the non-teaching station space calculation. This incorrectly takes away numerous rooms from the District’s reasonable equivalence analysis, and as such the Charter School has added them back in here.

<b>Comparison School</b>	<b>Number of Teaching Stations Used in District “ADA Per Classroom” Calculation</b>	<b>Projected ADA</b>	<b>Corrected Number of Teaching Stations<sup>4</sup></b>	<b>Corrected Teaching Station to ADA Ratio</b>
Brookfield Village Elementary	12	171.95	13	13.23

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<sup>4</sup> This number has been determined by identifying the number of rooms listed as General Education Classrooms in Exhibit C, as well as cross-referencing this information with the number of classrooms (including room numbers) identified in the MKThink site plans and school websites.

Community United Elementary School	17	326.25	17 <sup>5</sup>	19.19
Howard Elementary	13	146.06	11	13.28
Reach Academy	19	358.95	19	18.89
Burckhalter Elementary	14	209.54	14	14.97
East Oakland PRIDE Elementary	15	268.21	15	17.88
Greenleaf Elementary	16	606.68	27 <sup>6</sup>	22.26
Futures Elementary	16	291.26	17	17.13
New Highland Academy	20	325.48	20	16.27
Markham Elementary	19	300.87	20	15.04
Parker Elementary	14	249.29	16	15.58
Madison Park Academy TK-5	18	251.32	18	13.96
Fred T. Korematsu Discovery Academy	19	214.11	19	11.26
Esperanza Elementary	16	320.72	16	20.45
EnCompass Academy <sup>7</sup>	14.5	315.81	14.5	21.78
RISE Community School	17	202.03	17	11.88
ACORN Woodland Elementary	15.5	279.24	15.5	18.02
<b>CORRECT AVERAGE Teaching Station to ADA Ratio</b>				<b>16.53</b>

<sup>5</sup> Community United and Futures are on the same campus, and are combined in the Jacobs data. According to Exhibit C, the campus has a total of 34 classrooms, but the District has only counted 33 (17 for Community United and 16 for Futures) in their calculation. Cross-referencing the websites of each school, and the Jacobs data, there are actually 34 classrooms on the Community United/Futures campus that are either being used for general education or are empty.

<sup>6</sup> Please see footnote 1 above; the number of teaching stations identified for Greenleaf is clearly erroneous; as the information publicly available to calculate the correct number of teaching stations is incorrect, Francophone has used the number of teachers on the campus as the number of teaching stations.

<sup>7</sup>Encompass and ACORN are on the same campus, with a total of 30 classrooms.

Comparison School	Number of Teaching Stations Used in District "ADA Per Classroom" Calculation	Projected ADA	Corrected Number of Teaching Stations	Corrected Teaching Station to ADA Ratio
Hillcrest School	13	382.4	13	29.42
Claremont Middle School	19	466.24	19	24.54
Westlake Middle School	29	199.79	29	6.89
<b>CORRECT AVERAGE Teaching Station to ADA Ratio</b>				<b>20.28</b>

According to this revised calculation, Francophone is entitled to an allocation of twelve teaching stations for K-5, and one teaching station for 6-8, for a total of thirteen (13) teaching stations. As the Preliminary Proposal only allocates eleven (11) classrooms, the District's offer is missing at least two teaching stations.

**The Preliminary Proposal Does Not Allocate Sufficient Specialized Classroom and Non-Teaching Station Space to Francophone**

Francophone is entitled to reasonable allocations of specialized and non-teaching station space. Section 11969.3(b)(2) requires that, if a school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the Proposition 39 offer of facilities provided to a charter school must include a share of the specialized classroom space. The Preliminary Offer must include "a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space." (5 CCR § 11969.3(b)(2).) The amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

1. the grade levels of the charter school's in-district students;
2. the charter school's total in-district classroom ADA; and

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3. the per-student amount of specialized classroom space in the comparison group schools.<sup>8</sup>

As such, the District must allocate specialized classroom space, such as science laboratories, art rooms, computer labs, music rooms, weight rooms, etc., commensurate with the in-District classroom ADA of Francophone. The allocated site must include all of the specialized classroom space included across all of the different grade levels.

In addition, the District must provide non-teaching station space commensurate with the in-District classroom ADA of Francophone and the per-student amount of non-teaching station space in the comparison group schools. (5 CCR § 11969.3(b)(3).) Non-teaching space is all of the space at the comparison school that is not identified as teaching station space or specialized space and includes, but is not limited to, administrative space, a kitchen/cafeteria, a multi-purpose room, a library, a staff lounge, a copy room, storage space, bathrooms, a parent meeting room, special education space, nurse's office, RSP space, and play area/athletic space, including gymnasiums, athletic fields, locker rooms, and pools or tennis courts. (*Ibid.*)

The allocation of specialized teaching space and non-teaching space is based on an analysis of the square footage of each category of space available to students at the comparison schools (i.e., "the per-student amount of specialized classroom space in the comparison group schools"). (5 CCR § 11969.3(b)(2)(C).) Moreover, just because one kind of specialized classroom or non-teaching station space is not available at all the comparison schools, the District may not fail to provide an allocation of that kind of space (especially here, where the District averaged the specialized classroom and non-teaching station space over all the comparison schools). Instead:

[W]hile a Proposition 39 analysis does not necessarily compel a school district to allocate and provide to a charter school each and every particular room or other facility available to the comparison group schools, it must at least account for the comparison schools' facilities in its proposal. A determination of reasonable equivalence can be made only if facilities made available to the students attending the comparison schools are listed and considered. And while mathematical exactitude is not required (cf. *Sequoia*, supra, 112 Cal.App.4th at p. 196 [charter school

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<sup>8</sup> *Id.*; see also *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 296 ("*Bullis*") and *California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530 ("*CSBA*").

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need not provide enrollment projections with "arithmetical precision"]), a Proposition 39 facilities offer must present a good faith attempt to identify and quantify the facilities available to the schools in the comparison group--and in particular the three categories of facilities specified in regulation 11969.3, subdivision (b) (i.e., teaching stations, specialized classroom space, and non-teaching station space)--in order to determine the "reasonably equivalent" facilities that must be offered and provided to a charter school. (*Bullis, supra*, 200 Cal.App.4th 296, 336.)

Here, the District either did not count all specialized classroom and non-teaching station space at the comparison schools, or did not account for those spaces in its offer. The District also did not allocate any special education space to Francophone, thus interfering with the school's ability to provide needed and legally-mandated services to some of its most vulnerable students.

a. Allocation of Specialized Classroom Space to Francophone.

The Preliminary Proposal does not allocate any specialized classroom space to Francophone, instead stating that "[t]he District's calculation of the Charter School's entitlement to specialized classroom space shows that the Charter School is entitled to approximately an additional 803 sq ft of specialized classroom space. In order to meet this entitlement, the District will either identify additional specialized classroom space to include in the Final Offer of facilities or consider reasonable requests from the Charter School to reconfigure offered classrooms for use as specialized classroom space."

The District's allocation of specialized classroom space square footage does not comply with the Implementing Regulations in several respects.

First, the Preliminary Proposal is intended to provide a description of the facilities to be offered to Francophone, so that the school can respond with its March 1 letter expressing concerns. Postponing the identification of specialized classroom space to the final offer makes it impossible for the charter school to substantively respond to the District's offer. The District's other solution is for Francophone to voluntarily give up teaching stations (which it will need to operate its general education program) to turn them into specialized classroom space.

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Second, the District's offer combines different kinds of specialized classroom space into one lumped square footage that encompasses science, technology and art spaces. It is not reasonably equivalent to combine different types and sizes of specialized classroom space. If there are science labs, computer labs, music rooms, weight rooms, art rooms, and the like available at the comparison schools, then the District must allocate reasonably equivalent, fully furnished and equipped kinds of these spaces and/or shared access to these spaces for Francophone. Allocating general education classrooms to meet this obligation is not consistent with the requirements of Prop. 39. A standard classroom does not have, for example, the risers in a choral classroom, the gas and water stations in a science classroom, or the computers in a computer classroom, nor can all these different kinds of uses (and the attendant furnishings and equipment) happen in classrooms allocated for other uses. By allocating one classroom for all these uses, the District is relegating Francophone students to second-class status, given that District students enjoy access to these separate, furnished and equipped spaces. "[A] school district does not have the discretion to employ practices that are contrary to the very intent of Proposition 39 that school district facilities be "shared fairly among all public school pupils, including those in charter schools." (*Bullis, supra*, 200 Cal.App.4th 296, 336.)

Lastly, as noted in the prior section, the District has also applied here a weighting factor to its calculations of specialized classrooms space, thereby giving more weight to the comparison schools with higher ADA, which are more crowded and thus less likely to have specialized classroom space. Using a weighted average also contradicts the express language of the Prop. 39 regulations, which require the District to calculate "the per-student amount of specialized classroom space in the comparison group schools." (5 CCR § 11969.3(b)(2).) By applying a weighting factor, the District's formula does not calculate a per-student amount of specialized classroom space, and instead gives more weight to the space made available to students at larger comparison schools, and less for those at smaller comparison schools. Thus, the District may not apply a weighting factor to its allocation of specialized classroom space.

## **Corrected Exhibit E Data Regarding Specialized Classroom Space (SCS) Entitlement<sup>9</sup>**

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<sup>9</sup> While Francophone does not agree that the District may combine kinds of SCS in its allocation, in order to update the District's calculations to remove the weighting factor, for each of reference Francophone has used the District's categories in these tables.

<b>Comparison School</b>	<b>Arts</b>	<b>Science</b>	<b>Tech</b>	<b>Total</b>
Brookfield Village Elementary	0	0	3.36	3.36
Community United Elementary School	0	0	0	0
Howard Elementary	0	4.84	4.84	9.69
Reach Academy	0	2.33	2.59	4.92
Burckhalter Elementary	1.34	0	3.89	5.23
East Oakland PRIDE Elementary	2.57	3.33	0	5.9
Greenleaf Elementary	0	0	0	0
Futures Elementary	0	0	0	0
New Highland Academy	1.76	1.49	0	3.25
Markham Elementary	3.14	2.83	2.75	8.72
Parker Elementary	0	0	3.21	3.21
Madison Park Academy TK-5	1.79	0	0	1.79
Fred T. Korematsu Discovery Academy	2.34	0	1.36	3.7
Esperanza Elementary	2.34	0	1.36	3.7
EnCompass Academy	1.14	2.9	0	4.04
RISE Community School	1.76	1.49	0	3.25
ACORN Woodland Elementary	1.14	2.9	0	4.04
<b>Corrected (Non-Weighted) Average</b>	<b>1.14</b>	<b>1.30</b>	<b>1.37</b>	<b>3.81</b>

<b>Comparison School</b>	<b>Arts</b>	<b>Science</b>	<b>Tech</b>	<b>Total</b>
Hillcrest School	0.84	2.35	1.44	4.63
Claremont Middle School	4.77	1.99	1.95	8.70
Westlake Middle School	15.07	6.38	12.30	33.75
<b>Corrected (Non-Weighted) Average</b>	<b>6.89</b>	<b>3.57</b>	<b>5.23</b>	<b>15.69</b>

**Corrected Allocation of SCS**

	<b>Arts</b>	<b>Science</b>	<b>Tech</b>	<b>Total</b>
Grades TK -5 (200.45 ADA)	228.51	260.59	274.62	763.71
Grades 6-8 (4.75 ADA)	32.73	16.96	24.84	74.53
<b>Total</b>	<b>261.24</b>	<b>277.54</b>	<b>299.46</b>	<b>838.24</b>

The removal of the District's illegal "weighting" factor results in an increased allocation to Francophone of 838.24 square feet of specialized classroom space, more than the amount the District offered Francophone.

Francophone is entitled to reasonably equivalent allocations of specialized spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized space at the school sites.

b. Allocation of Non-Teaching Station Space to Francophone

The Preliminary Proposal provides for the allocation of 30.1% of the non-teaching station space at Howard, and all of the non-teaching station space at Toler, claiming a total allocation of 4,847 square feet of interior space, and 82,214 square feet of outdoor space.

As noted above, Prop. 39 requires that "the school district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools." (5 CCR § 11969.3(b)(3).)

The District's allocation of non-teaching station space to Francophone in the Preliminary Proposal does not comply with Prop. 39 or its Implementing Regulations in several respects.

First, the District's calculation of the non-teaching station space at the comparison schools excludes all special education classrooms, as well as a number of other non-teaching station spaces that are housed in classrooms and were specifically removed from the teaching station to ADA ratio calculation. These spaces are not accounted for anywhere else in the Preliminary Proposal.

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The District directs attention to Exhibit B, which includes a spreadsheet demonstrating how the District arrived at the “Interior NCS” calculation for each comparison school site. This spreadsheet shows that the District used data from the MKThink facilities master plan (from 2010)<sup>10</sup> identifying each comparison school site’s interior square footage, and simply deducted the square footage of each room identified as a “classroom” from the total interior square footage. The resulting number is used as the “Interior NCS” for each comparison school site.

This approach is problematic for several reasons. First, this appears to exclude all regular classrooms that are used for special education. As an example, the Jacobs report attached as Exhibit C (“Rooms Inventory” tab) to the Preliminary Proposal identifies all special education classrooms on District sites, including rooms used for “SpEd Special Day Class,” “SpEd Resource Room,” “SpEd Life Skills Lab,” and “Resource Room.” Many of these special education classes are located in regular classrooms (though some are located in smaller conference or other spaces).

Yet when the District calculated its teaching station to ADA ratio calculation, it removed Special Day Class and Newcomer ADA from its calculation, and appears to have not counted special education classrooms in its tabulation of total teaching stations on the comparison school site. Exhibit E, tab “JRoomSCS” makes clear that these rooms were also not counted as specialized classroom space.

As an example, according to Exhibit C, Burckhalter has one Special Day Class classroom and fourteen (14) Kindergarten, Primary (1-2) or PreK/TK classrooms, for a total of fifteen (15) classrooms. The MKThinkRooms tab of Exhibit B, used to calculate non-teaching station space, also lists fifteen “classrooms” – whose square footage was taken out of the “Site Interior NCS” calculation.

Yet the District’s “ADA per Classroom” analysis in Table 7a assumed fourteen classrooms for Burckhalter, not fifteen.

Therefore, it appears the Special Day Class classroom at Burckhalter is entirely absent from the District’s calculation of space provided to Burckhalter students.

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<sup>10</sup> Note also this means that the data on Greenleaf’s non-teaching station space is completely out of date, with the addition of the new building on the campus.

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Similarly, according to Exhibit C, Fred T. Korematsu Discovery Academy and Esperanza Academy (which are located on the same campus) have a total of thirty-five (35) Kindergarten, Primary (1-2) and Intermediate classrooms and one Special Day Class classroom, for a total of 36 classrooms. The MKThink report lists forty (40) classrooms on the site (four of which appear to have been categorized as art, computer lab, music and MPR space in the Jacobs report), whose square footage was taken out of the “Site Interior NCS” calculation.

Yet the District’s “ADA per Classroom” analysis assumed thirty-five classrooms for Stonehurst (the name of the campus in MKThink), not thirty-six.

Thus, it appears that special education classrooms provided to District students were removed or ignored in the calculation of space at the comparison schools. This is especially notable as the Preliminary Proposal makes no mention at all of special education, whether as an analysis of the special education space at the comparison schools, or to make an allocation of space to Francophone – and the District’s special day class ADA has been taken out of its “ADA per Classroom calculation”.

Prop. 39 clearly requires that a charter school receive an allocation of reasonably equivalent facilities and that district facilities be shared fairly between district and charter school students. Yet despite the fact that each District comparison school has more than one special education space, and several special education teachers/service providers, Francophone has not received any allocation of special education space. This is a clear violation of Prop. 39.

In addition, the District has failed to identify the specific non-teaching station space to be allocated to Francophone and its allocation of non-teaching station space based on the percentage of Francophone’s enrollment on the sites, as determined by the District, not the actual square footage of space which Francophone should be allocated under the law. The District claims that “a charter school’s allocation is considered to fall within reasonable equivalence standards if it falls within the range of the sqft/ADA ratios at the comparison schools.” However, the District has not and cannot provide any legal authority to support this claim, and such a position directly conflicts with the basic premise of Prop. 39 – that public school facilities must be shared fairly between all public school students, including those in charter schools. Prop. 39 also requires a reasonably equivalent allocation of each different kind of non-teaching station space, based on the square feet per ADA of these spaces at the comparison schools – nowhere does Prop. 39 or applicable case law state that

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falling within a “range” is acceptable. This would allow the District to allocate non-teaching station square footage at the far low end of a range that includes much higher numbers (as here, the range is from 214 square feet to 1,116 square feet per ADA) and claim compliance with Prop. 39.

Similarly, the Preliminary Proposal does not address the various types of outdoor areas that exist at the comparison schools such as gardens, basketball courts, play fields, and play structure space but rather lumps all the different types of exterior spaces together when calculating exterior non-teaching station space. Each of these types of spaces has a specific use and furnishings and equipment and/or design that are appropriate for such use, and the District's allocation method does not ensure Francophone will receive a reasonably equivalent allocation of each type of non-teaching station space that exists at the comparison schools. As stated in *Bullis*, “a school district, in determining the amount of nonteaching station space it must allocate to the charter school, must take an objective look at all of such space available at the schools in the comparison group.” (*Bullis, supra*, at p. 1047, emphasis added.) The District is not permitted to average all of the unique types of non-teaching station spaces that exist at the comparison schools and then allocate Francophone a percentage of unspecified non-teaching station spaces that exists at the allocated sites, which are not comparison schools.

In addition, the Preliminary Proposal contains no listing or description of the types of shared non-teaching spaces to which Francophone will be provided access at the offered sites beyond large categories of space, or any proposed schedule for Francophone's use. The District's failure to provide this basic information to Francophone precludes Francophone from engaging in timely and efficient negotiations with site principals regarding shared use schedules and prevents Francophone from assessing whether the Preliminary Proposal provides Francophone with access to all of the different types of non-teaching station space to which Francophone is entitled. 5 CCR section 11969.9(h) requires that the school district, in its final facilities proposal, specifically identify the nonteaching station space offered to the charter school. (*Bullis, supra*, at p. 1046.) As such, Francophone expects that the District's final offer will specifically identify all the non-teaching station space to be allocated to Francophone.

For all these reasons, the District's allocation of specialized and non-teaching station space included in the Preliminary Proposal fails to comply with Prop. 39 and its Implementing Regulations. Francophone is entitled to reasonably equivalent allocations of specialized and non-teaching spaces, and of furnishings and equipment that accompany

those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized and non-teaching space at the offered school sites.

### **Pro Rata Charge Worksheet**

As a preliminary matter, Francophone notes that the District has indicated that Francophone's "share of the custodial costs may be subject to reconciliation in the event that the District is required to increase staffing as a result of the Charter School's use and occupation of the District's site." To the extent that the District is indicating its intent to charge Francophone an additional amount for custodial services above what is included in the pro-rata share, this is not permitted by the Implementing Regulations.

#### **1. Improper Costs Included in Pro Rata Share Calculation**

a. **Facility Acquisition and Construction Costs:** The District's 2019/20 Fiscal Year Facility Use Rate Per Sq Ft Calculation, attached to the Preliminary Proposal, improperly includes \$6,760,492 in Facility Acquisition and Construction Costs (an increase from the \$70,324 the District listed for this line item in the prior year pro rata share calculation). It is the Charter School's understanding that these are costs associated with facility improvements performed by the District using money from the Proposition 39 Clean Energy Jobs Act.

As the District is aware, only "facilities costs that the school district pays with unrestricted general fund revenues includes those costs associated with plant maintenance and operations, facilities acquisition and construction" may be included in the pro rata share calculation. According to the California School Accounting Manual, "restricted programs or activities are those funded from revenue sources subject to constraints imposed by external resource providers or by law through constitutional provisions or enabling legislation." Prop. 39 Clean Energy Job Act funds are therefore restricted funds and may not be included in the pro rata share calculation.

b. **RRMA Transfer:** The District has included \$17,254,784 in facilities costs identified as "RRMA transfer from UR to resource 8150." Typically this transfer represents 3% of the District's annual total general fund budgeted expenditures. Last year the District claimed a transfer of \$13,048,405; in other words, the District's calculation suggests that this year it has increased its transfer amount by more than \$4 million. Francophone requests additional information to document that this is the correct transfer amount, as the District's

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current budget situation, in which the District has made and is making significant cuts, makes it seem less likely that its RRMA transfer amount would have increased between 2017-18 and 2018-19.

**c. Police Services:** The District may not include police costs in its pro rata share calculation because Francophone provides its own security and alarm services, and also has been told by the District's Police Services that Police Services does not provide services to charter schools in the District. Pro rata share amounts are intended to reflect a charter school's portion of the District's facilities costs that Francophone uses. Because Francophone does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

**d. Insurance:** Francophone will provide and pay for the full spectrum of its insurance benefits, as required by its charter and the Facilities Use Agreement; the District has included the cost of its own property insurance on the facility. Including the District's insurance costs in the calculations not only double bills Francophone for a cost it is already paying for, it is requiring Francophone to pay for a cost that is actually the District's responsibility. Moreover, insurance is not contemplated under the Prop. 39 regulations as an acceptable "facilities cost," and Education Code Section 47614 specifically states that a charter school may not be charged for use of district facilities beyond the pro rata share.

**e. Custodial Services:** The District, as it has done in prior years, is requiring Francophone to use District custodial services, and is attempting to charge Francophone for these services separately from the pro rata share, by adding a "Custodial Use Fee" on top of the pro rata share. The District's Preliminary Proposal indicates that it may charge the charter school for its custodial costs under the current case, *California Charter School Association v. Oakland Unified School District*.

First, this case is not binding precedent on Francophone. Second, the ruling in the motion for summary adjudication referenced by the District was only related to whether the District could require charter schools to use District custodial services. However, whether or not the charter school accepts the District's custodial services, the District cannot charge those costs separately from the pro rata share. Instead, if the Charter School accepts the District's services, the District's district-wide custodial costs must be included in the calculation of the pro rata share and charged to the Charter School on a per-square-foot basis. Education Code § 47614(b)(1) is very clear that other than the pro rata share, "the charter school shall not be otherwise charged for use of the facilities."

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f. **Utilities:** The District may not charge a separate “Utility Fee” for the same reason it cannot charge a separate custodial fee.

g. **Emergency Debt Service Costs:** The District has included its emergency debt service costs in the pro rata share calculation. 5 CCR Section 11969.7 states that only unrestricted General Fund facilities costs that are not costs otherwise assumed by Francophone are included in the methodology. Under the Implementing Regulations, items that are not specifically included in the pro rata share calculations because they are either obligations of Francophone or facilities-related general fund expenses may not be included in the calculation of facilities costs. “Debt servicing” is typically not a cost charged to the unrestricted general fund (e.g., bond repayment obligations are excluded). Further, even if repayment of the District’s emergency loan constitutes debt service that is charged to the unrestricted general fund, the pro rata share is intended to reimburse the District for a charter school’s proportion of the District’s facilities costs in exchange for Francophone’s use of District facilities. The Emergency Apportionment state loans are clearly not facility-related debt service costs, and thus may not be included in the calculation. Again, only those facilities costs charged to the unrestricted general fund can be included in the pro rata share calculation. (5 CCR Section 11969.7.) If it is the District’s position that the repayments of the emergency state loan are debt service for “facilities costs” then we request that the District provide some documentation demonstrating that the emergency loan monies were spent on “facilities costs.”

h. **Exhibit G:** Exhibit G to the Preliminary Proposal contains a statement that “The District is entitled under Cal. Admin. Code tit. 5, § 11969.7(c) to charge the charter school on a square footage basis for use of common areas such as the parking lot, exterior corridors, field space, playground, and blacktop, but is not doing so at this time. The District reserves the right to amend its calculation of the pro-rata share to include all “space allocated by the school district to the charter school,” and will provide the charter school notice and an opportunity to respond before implementing any changes. The full allocation of both interior and exterior space is outlined in the preliminary offer letter.”

The District cannot include the square footage of outdoor space (fields, asphalt, etc.) in its calculation of the amount owed unless it also included the square footage of the District’s total outdoor spaces when calculating the per-square foot charge. The intent of the pro rata share, as evidenced by the bond language of the Proposition 39 initiative, as well as the Statements of Reasons accompanying the first and second iterations of the

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Proposition 39 Implementing Regulations, was to determine the amount of money the District spent to operate and maintain its facilities on a per square foot basis. This calculation was performed by dividing the district's total facilities costs (minus costs paid for by the charter school) by the "total space" of the District. A charter school would then be required to pay its fair share of the District's facilities costs, based on the number of square feet it was allocated. In other words, the pro rata share charged to a charter school was expected to make the charter school's use of a school district's facilities as revenue-neutral as possible by reimbursing the school district for all costs it incurred in maintaining facilities use by the charter school. As further explanation, "pro rata" is defined by the American Heritage College Dictionary as "in proportion; according to a factor that can be calculated exactly." Proportion is then defined as "a relationship between quantities such that if one varies than another varies in a manner dependent on the first."

If the District does not include the square footage of its outdoor space, field space, or blacktop space at any of its facilities in the calculation, even if it is including the costs it incurs to operate, maintain and repair the outdoor spaces, its pro rata share will not accurately reflect its per square foot costs incurred to operate and maintain its entire complement of facilities.

This is remedied, of course, by not including the outdoor space used by the Charter School in the cost charged to the Charter School. In order for the costs calculated by the District and paid for by the Charter School to actually be proportional, and thus reflect a pro rata share of the costs, the costs and square footage included in the calculation must reflect the costs and square footage being charged to the Charter School. If the District does not include its outdoor square footage in its pro rata share calculation, but then charges the Charter School for outdoor square footage, the District is causing one quantity to vary without adjusting the other quantity, and is overcharging the Charter School for its use of the facility, in violation of 5 CCR Section 11969.7.

The District must therefore either only charge the Charter School for the square footage of the buildings it uses, or if it wishes to charge the Charter School for exterior space, it must recalculate its pro rata share as set forth above.

### **Draft Facilities Use Agreement.**

We are reviewing the draft Facilities Use Agreement; attached please find a non-exhaustive list of proposed changes.

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1. **Section 1:** This section states “District agrees to allow use of the Premises at the School(s) by Charter School for the sole purpose of operating Charter School’s educational program in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Charter School’s educational program.” This section will need to be revised to include Francophone’s summer school, if any, and programs procured by Francophone through third party entities, e.g. after-school program providers.

2. **Section 1.4:** Prop. 39 only requires Francophone to comply with the District’s policies and procedures related to operations and maintenance, and not where actual school district practice substantially differs from official policies. (5 CCR Section 11969.4(b)).

3. **Section 3.1:** The Charter School does not agree to the District’s calculated pro rata share for the reasons set forth above.

4. **Section 9:** This section states that the District “shall not be liable for any personal injury suffered by Charter School or Charter School’s visitors, invitees, and guests, or for any damage to or destruction or loss of any of Charter School or Charter School’s visitors, invitees or guests’ personal property located or stored in the parking lots, street parking or the School Site, except where such damage is caused by the District’s negligence or misconduct.” This section will need to be changed to reflect that the District may not avoid liability for injuries or damage caused by its failure to maintain the parking spaces on the site. The District is required to provide Francophone with a facility that complies with the California Building Code, and to maintain the facility in compliance with the California Building Code. (5 CCR Section 11969.9(k).) It may not provide the parking lot in an “as-is” condition.

5. **Section 10:** The District should also make temporary facilities available to the Charter School for any of its program that is displaced while the District makes repairs. The Charter School would also prefer to see a higher dollar value than \$250,000 before the District can terminate the Agreement, such as \$400,000.

6. **Section 12.3 and 12.4:** The District must make reasonable efforts to keep their materials, tools, supplies and equipment on the Premises in such a way as to minimize disruption to Francophone’s program. The District must provide relevant scheduling

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information and reasonable notice to Francophone if it will be coming onto the facility to perform maintenance. In addition, Francophone wishes to perform its own custodial services at Toler Heights, and as a result, does not agree to allow the District to enter the Premises to perform custodial services.

7. **Section 14:** While Francophone is willing to pay any taxes or assessments on its personal property, or modifications or improvements it performs on the facility, it may not otherwise be obligated to pay any costs to occupy the facility beyond the pro rata share. (Education Code Section 47614(b)(1).)

8. **Section 15:** Francophone wishes to perform its own cleaning and custodial services at Toler Heights. Therefore, the Final Offer will need to be revised to provide for this revision.

9. **Section 16.3:** This section requires the Charter School to be responsible for the maintenance of the Premises, which is inconsistent with all other language in the Agreement.

10. **Section 17:** If the comparison schools have a security system, then in order to provide a reasonably equivalent facility, the District must also provide the Premises with a security system. Francophone does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to Francophone taking possession of the Premises and prior to conducting its educational program on the Premises.

11. **Section 21.5:** Most insurance companies are now refusing to provide notice of cancellation to additional insureds. The Charter School would propose that this section be revised to require the Charter School to provide this notice to the District.

We have attempted in this letter to enumerate all of our concerns with the District's Preliminary Proposal; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term.

Francophone looks forward to the opportunity to discuss and negotiate these matters with the District moving forward.

*Sonali Murarka*

*Office of Charter Schools*

*Re: Francophone Charter School of Oakland  
Response to District's Preliminary Proposal  
Proposition 39 2019-2020*

*February 20, 2019*

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A handwritten signature in black ink, appearing to read "Mathilde Andrejko". The signature is fluid and cursive, with the first letter 'M' being particularly large and stylized.

Mathilde Andrejko

Francophone Charter School of Oakland

Cc: Sarah Kollman, Young, Minney & Corr, LLP  
Board of Directors, Francophone Charter School of Oakland  
Farid Senna, Executive Director, Francophone Charter School of Oakland