

**ENVISION** | of ARTS &  
**ACADEMY** | TECHNOLOGY

**MIDDLE GRADES**

January 2, 2020

Sonali Murarka  
Office of Charter Schools  
Oakland Unified School District  
1000 Broadway, Suite 300  
Oakland, CA 94607

***Re: Envision Academy of Arts and Technology  
Response to District's Objections to Envision's ADA Projections  
Proposition 39 2020-2021***

Dear Ms. Murarka:

Envision Academy of Arts & Technology ("Envision" or "Charter School") is in receipt of the Oakland Unified School District's ("District") November 30, 2019 letter objecting to the Charter School's projected in-District ADA of 119.70, and counter-projecting an in-District ADA of 73.74. As explained in this letter, the Charter School revises its projection of in-District ADA to 84.55.

In our Request, the Charter School identified its "total" enrollment for the current school year (2019-20) as 38 students. The Charter School also identified its "classroom based" enrollment as 36.1. However, upon review, the Charter School notes that this is an error, as 100% of its total enrollment is comprised of District residents. Therefore, the "classroom based" and "total" enrollment for 2019-20 is the same: 38 students. Thus, the current "classroom based" ADA for the Charter School is 36.1 units of ADA, not 34.3 units of ADA, as stated in the District's response.

Upon review of the District's objections to the ADA projection advanced by the Charter School, the Charter School is willing to revise its projection. Therefore, the Charter School will accept the District's methodology for projecting in-District ADA for 6<sup>th</sup> grade in 2020-21, assuming an increase of 15% over current 6<sup>th</sup> grade ADA, for a revised projection of 41.8 ADA. However, the Charter School does not accept the District's counter-projection for its 7<sup>th</sup> grade. Instead, the Charter School proposes to revise its projection for 7<sup>th</sup> grade, based on receiving applications and intent to enroll forms from families seeking to join the current 6<sup>th</sup> grade class in January 2020, or next year's 7<sup>th</sup> grade class in August 2020. The Charter School's revised projections are outlined in the chart below.

2019-20 6 <sup>th</sup> grade current enrollment	2019-20 6 <sup>th</sup> grade in-district ADA	2020-21 6 <sup>th</sup> grade projected enrollment (current + 15% increase)	2020-21 6 <sup>th</sup> grade in-district ADA (projected enrollment x projected in-district x projected attendance)	2020-21 7 <sup>th</sup> grade projected enrollment	2020-21 7 <sup>th</sup> grade in-district ADA (projected enrollment x projected in-district x projected attendance)	Total 2020-21 projected in-district ADA
38	36.1	44	41.8	45	42.75	84.55

As more fully explained below, the Charter School’s projection of ADA is governed by a reasonableness standard. While the Charter School must provide documentation of meaningful interest in students that intend to enroll in the Charter School, this documentation is only required “to the extent” that the Charter School projects a substantial increase in its in-District ADA. Since submitting the Request, Envision has gathered additional enrollment forms from one-on-one meetings with parents of District students meaningfully interested in attending Envision in 2020-21. When added to the documentation previously provided by Envision, this documentation supports Envision’s revised projection of 84.55 ADA. Based on this documentation, which supports its projected increase in ADA and is provided with this letter, the District has an obligation under Proposition 39 to accept Envision’s projection of in-District ADA and to base an offer of facilities on it.

**Under Applicable Legal Standards, the District Must Accept the Charter School’s “Reasonable” Projection of ADA**

a. The Reasonableness Standard

The Regulations state that a charter school must provide: (i) “reasonable projections of in-district and total ADA and in-district and total classroom ADA;” (ii) “a description of the methodology used for the projections;” and (iii) “if relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in-district students meaningfully interested in attending the charter school *that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy.*” (5 CCR 11969.9(c); emphasis added.) Therefore, as long as Envision’s projections are *reasonable*, the District must accept and allocate facilities based on those ADA projections.

“Reasonable” is defined in Black’s Law Dictionary as “fair, proper, or moderate under the circumstances.” In other words, Envision is *not* required to provide a one-to-one correlation of names and addresses for each unit of ADA it projects, it need only provide documentation to show its projections are “reasonable” or fair, proper, or moderate under the circumstances.

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The Court in *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185 provided further clarification on this issue, which the Regulations subsequently incorporated in 2007:

By modifying “projection” with the adjective “reasonable” (Ed. Code § 47614, subd. (b)(2)), the statute necessarily implies the charter school must offer some explanation in its facilities request for the basis for its projection. However, the statute does not require the school to demonstrate arithmetical precision in its projection or provide the kind of documentary or testimonial evidence that would be admissible at a trial. Rather, the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space. (*Sequoia, supra*, 112 Cal.App.4th at 195-96 [emphasis added].)

This reasoning was subsequently memorialized in 5 CCR Section 11969.9(c)(1)(C).

The California Court of Appeals also provided a more recent analysis of this standard in *California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530 confirming that a request for an existing charter school that projects a substantial increase in enrollment:

“...must provide ‘some explanation’ and ‘a showing’ of the charter school's projected ADA because the facilities request must still explain the charter school's methodology, break down its projections into grade level and district school that would otherwise be attended, and the district can access the charter school's prior year documentation to evaluate the request. If the charter school overestimates its projected ADA, the district will be entitled to reimbursement for over allocated space. (Ed. Code, § 47614, subd. (b)(2).) ... Considered together, the provisions of Regulations, section 11969.9 require a charter school to provide a school district with some explanation, based on a documentary showing, of its ADA projections. Although the School District Associations argue more information is necessary, we see no reason to believe, on this facial challenge to the regulation, that the information required by section 11969.9 will be insufficient to allow a school district to carry out its duties to evaluate the facilities request and provide reasonably equivalent facilities.” (*California School Bds. Assn., supra*, 191 Cal.App.4th at 564-65 [emphasis added].)

More specifically, 5 CCR Section 11969.9(c)(1)(C) states that supporting documentation need only be submitted “to the extent an operating charter school projects a substantial increase in in-district ADA.” (Emphasis added.) “To the extent” is a phrase typically used to describe the effect or importance of something in relation to something else. Here, it means that for all ADA projections up to the point that the projection becomes a substantial increase in ADA, no

supporting documentation is required. This intent is clear in the Regulations given that 5 CCR Section 11969.9(c)(1)(A) makes clear that any projections “based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year” do not require supporting documentation.

b. The Documentation Submitted by Envision Shows that the Increase in Attendance Projected by Envision Is Reasonable

To date, we have received documentation of meaningful interest from 14 potential students and anticipate that at least half of those students will enroll in the Charter School. In addition, we will continue to recruit students who will enroll in the Charter School; now that Envision’s expansion to middle school has been established, our ability to tour parents around the school and give them a first-hand experience of our school will result in additional enrollment. As such, we project that by next year, the 7<sup>th</sup> grade class will have a total enrollment of 45 and an in-district ADA of 42.75. This represents an increase of 18%, or 6.65 ADA over the current grade 6 cohort (36.1 ADA). We believe this increase is reasonable because the Charter School has an existing cohort that will be advancing from 6<sup>th</sup> to 7<sup>th</sup> grade, and we expect this cohort to grow significantly as shown by the significant interest documented by the Charter School’s recruitment efforts. In addition, unlike in the 2019-20 school year, the Charter School will have an established facility during the entire enrollment process, whereas in the prior year this information was uncertain during the majority of the enrollment process.

This methodology is supported by the applicable case law. In *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, the Court noted that Aurora Charter High School (“Aurora”) had provided adequate documentation to support its projection of 110 students with only 93 Intent to Enroll forms from in-district students; in other words, forms to support only 84% of its projections – as well as historic attendance rates and proof of its current enrollment of 90. This documentation was provided along with “the expressed interest of current students and their families of continuing education at Aurora, and the expressed interest of prospective students and their families in attending Aurora during the next academic year.” (*Sequoia, supra*, at 196.)

In reviewing this documentation, the Court found that Aurora had provided sufficient supporting documentation to demonstrate that its projections were reasonable, and ordered the Sequoia Union High School District to allocate facilities to Aurora. It is clear from this ruling that the Regulations so not require a charter school to submit an Intent to Enroll form for every student it projects to enroll. Accordingly, Envision has fully complied with the requirement to provide the District with sufficient foundational documentation by which the District is able to determine the reasonableness of its ADA projections.

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By reducing Envision's in-District enrollment projection to 73.74 in-District ADA, the District does not account for the increasing amount of documentation of student interest, or the strong likelihood that Envision will collect additional enrollment applications for new students as Envision completes its recruitment process. There is still more than one month left in the enrollment process, and Envision can continue to recruit and enroll students after that time until it fills all of its spots. As such, Envision believes that the District's methodology for arriving at its counter-projection of 73.74 in-District ADA in 2020-2021 underestimates the attendance at Envision.

As previously stated, a charter school is only required to provide documentation of the number of in-district students meaningfully interested in attending the charter school "to the extent" that the charter school projects an increase in enrollment. (5 CCR § 11969.9(c).) The supporting documentation and methodology presented by Envision must show that its projections are reasonable – not exact. In other words, Envision is not required to provide a one-to-one correlation of names and addresses for each in-District student projected to enroll at Envision. Furthermore, the District's own counter-projections must themselves be reasonable. (5 CCR § 11969.9(d).) If Envision has in fact overestimated its ADA, the District's remedy in this circumstance is not to unilaterally reduce Envision's projections to unreasonable levels. Rather, the District's remedy is to reclaim over-allocated space or levy an over-allocation penalty. (5 CCR § 11969.8.)

Based on the District's projection of 41.8 ADA for 6<sup>th</sup> grade and our revised projection of 42.75 ADA for 7<sup>th</sup> grade, the Charter School believes its revised projection of 84.55 is reasonable. This represents a significant reduction from the projection in our request, which demonstrates our desire to reach a compromise with the District that secures our continued use of our current facility, or another reasonably equivalent facility, for our program.

We appreciate the District's consideration of this counter-projection and look forward to receiving the District's Preliminary Offer on February 1, 2020.

Sincerely,



Sele Nadel-Hayes  
Chief Operating Officer  
Envision Education Inc.