



May 1, 2019

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

**Re: *LPS Oakland R&D
Response to District's Final Offer
Proposition 39 2019-2020***

Dear Ms. Murarka:

Leadership Public Schools ("LPS" or "Charter School") is in receipt of the Oakland Unified School District's ("District") March 29, 2019 letter ("Final Offer") regarding LPS's request for facilities under Proposition 39 ("Prop. 39") for the 2019-2020 school year.

The District's Final Offer is for a total of twenty-three (23) teaching stations, including eight (8) specialized classrooms, at Castlemont High School, as well as 37.2% shared use of the non-teaching station space at Castlemont. The Final Offer is based on a projected in-District ADA of 451.72.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires the Charter School to notify the District whether or not the Charter School intends to occupy the offered space. Accordingly, despite some concerns with the Final Offer (which are identified herein to the extent practicable, with all rights reserved) and as set forth in the response to the Preliminary Offer ("Response"), which is incorporated here by reference, the Charter School accepts and intends to occupy the offered space.

The District's Teaching Station to ADA Analysis

While LPS accepts the offer of teaching stations made by the District, and while LPS does appreciate the improvements in the District's calculation, LPS will still take this

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opportunity to note ongoing concerns with the teaching station to ADA ratio calculated by the District.

The District's Use of a Weighting Factor Is Inconsistent with the Language and Intent of Prop. 39.

LPS does not agree that using a weighted average more accurately captures the individual experience of students at the comparison schools, given that in fact it gives more weight to the larger number of students who occupy schools that have higher enrollment and are more crowded. In fact, LPS students would be more likely to enroll in the schools with smaller enrollments as these schools likely have more available space.

Prop. 39 Does Not Allow the District to Pull Out Special Day Classes from the Teaching Station to ADA Ratio Calculation, and Then Not Include Them Anywhere Else.

The District has removed all of its Special Day Class ADA and facilities from its Prop. 39 analysis and allocation of space to LPS, thus not providing LPS with a reasonably equivalent allocation of special education space, in conflict with Prop. 39.

The District's Final Offer states that the District removed both its special day classes and its special day class ADA from the comparison school information in calculating the teaching station to ADA ratio "as these students require a lower ADA-to-classroom ratio than the general student population....Currently, because the Charter School does not serve students who require an SDC setting, the non-SDC ADA-to-classroom ratio is used to determine classroom entitlement for the Charter School. However, if the Charter School served SDC students, space would be allocated for these students based on comparison schools' SDC ADA-to-classroom ratio."

The District took out a number of teaching stations and ADA from its teaching station to ADA ratio related to its SDC students and facilities, and these spaces were also excluded from all remaining Prop. 39 analysis.

This is not allowed by Prop. 39 – instead, the District must count and allocate for all of its facilities in the Prop. 39 process, and allocate reasonably equivalent amounts of each kind of space that exists at the comparison schools to the charter school.

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More specifically, all public schools, including charter schools, have a legal obligation to provide a “free and appropriate public education” to enrolled students with special needs. (20 U.S.C. § 1401, subd. (9); 20 U.S.C. § 1412(a)(1)(A); Cal. Educ. Code § 56040.) The penalties for a failure to do so can be substantial. As is evidenced from the District’s own exhibits, each District comparison school site has numerous unique, separate special education spaces which it uses to provide services to District students with special needs.

Bullis Charter School v. Los Altos School District (2011) 200 Cal. App. 4th 1022 is extremely clear about the District’s obligation to include all these spaces in its analysis:

“[T]he District contends that in the case of nonclassroom facilities, it need only consider those that are common to each of the schools in the comparison group...There is no support in the regulations for this viewpoint....For instance, using the above example, if all five schools had tennis courts, but one school chose to use the area for badminton only, in the District's view, the space would not be considered in the Proposition 39 analysis...This common usage approach could lead to—as has occurred here—the exclusion of a substantial amount of nonteaching station space from the analysis, to the potential detriment of the charter school. We believe that 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. A school district may achieve the mandate under Proposition 39 and the regulations of “giv[ing] the same degree of consideration to the needs of charter school students as it does to the students in district-run schools” (cite) only if it considers the entire nonclassroom space in the facilities offer. (*Bullis, supra*, at 1047.)

Consistent with the *Bullis* language cited above, the District must include all of the special education spaces at the comparison schools in its analysis, and then allocate a reasonably equivalent amount of those spaces to LPS. (Education Code Section 47614, 5 CCR Section 11969.3(b)(3).) Despite this mandate, the District’s calculation excludes all Special Day Class from its analysis. Had they been included, LPS would be entitled to either additional teaching stations or additional special education space.

The District appears to justify this exclusion by stating that LPS does not serve SDC students, and if it did it would be allocated space for these students. Yet the number of students receiving special education services is irrelevant to the Prop. 39 analysis, and there

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is a good reason for this. Often, a school will not know until the first day whether a student has special education needs. In addition, many students are found eligible for special education during the school year. Thus, if a school district only had to allocate special education space to a charter school based on documented need, it would be a constantly moving target and students might be denied their rights. Even *California Charter School Association v. Los Angeles Unified School District*, a case about allocation of teaching stations, acknowledges that Prop. 39 does not allow a district to dictate or control a charter school's specific use of spaces once those spaces are allocated in compliance with the law:

“The Legislature authorized the creation of charter schools in order to promote choice, innovation, and competition on the premise that charter schools, while [*1241] remaining accountable for student outcomes, would be largely free to adopt different educational approaches and make different decisions than those made by the school districts in which they operate. Counting 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.” (*California Charter Schools Assn. v. Los Angeles Unified School Dist.*, 60 Cal. 4th 1221, 1240-1241.)

As such, the District may not completely exclude Special Day Class spaces from its reasonable equivalence analysis as well as its allocation of space to LPS because it believes LPS does not serve Special Day Class students. Instead, the District must either include this space in the teaching station to ADA ratio calculation (including SDC ADA as well), or include it in the specialized or non-teaching station space allocations.

Pro Rata Charge Worksheet

For all the reasons enumerated in the Response, LPS does not believe the District may separately charge it for custodial services or utilities for the site, and even if for purposes of argument it does agree to separate charges, it is not appropriate for these costs to be based on a proportion of ADA at the site. Instead, it should be based on the actual square footage occupied by LPS on the site, as this more accurately reflects the amount of utilities consumed and benefited by each program. As LPS has successfully provided its own custodial services for the last 14 years on the Castlemont campus, it strongly prefers to continue this practice.

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In addition, LPS and Castlemont still need to negotiate a shared use schedule for the site. The pro rata share calculation will need to be revised to reflect LPS' actual usage on the site. As LPS will, at a minimum, decline use of the Gym space, Building A Rooms 29 and 30, and the remainder of the Cafeteria (Building F) other than Room 20, this amount will need to be revised upon the schedule being finalized.

Prop. 39 requires the pro rata share to be based on "actual facilities costs in the year preceding the fiscal year in which facilities are provided" (5 CCR Section 11969.7(d)); as the current pro rata share is based on 2018-19 "working budget," please confirm it will be updated with the 2018-19 end of year actuals.

Lastly, while the majority of the Facilities Use Agreement is acceptable to LPS, there are a few small items that needs to be addressed:

1. **Section 1.7:** This section is a new addition to the FUA and has never existed in a District FUA before, and LPS does not agree to this language (nor does it agree to the language placing a grade range restriction on LPS outside the grade ranges served by the school). Once the space has been allocated, LPS can use it for whichever students, and in whatever grade configuration it deems necessary for its program. Prop. 39 does not allow the District to take space away from the Charter School once that space has been offered by the District and accepted. This section is also not consistent with the definition of overallocation in the Prop. 39 regulations, which is based on the school's total in-District ADA at P-2, not the in-District ADA accommodated on the site.
2. **Section 3:** The FUA proposes monthly payments, yet the Final Offer proposes quarterly payments. LPS prefers the quarterly payment system which is currently in practice.
3. **Section 8:** The District carves out a limitation on LPS using the Site related to joint use agreements that were "entered into between the District and a third party prior to January 1 of the school year to the Term." The District has provided no other information as to whether such a Joint Use Agreement exists at the Site. Without knowing this information, and how this will affect LPS' access to the Site, LPS cannot agree to this provision.
4. **Section 18:** This section should also apply to the District.

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We have attempted in this letter to enumerate all of our concerns with the District's Final Offer; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term. We look forward to working with the District to finalize the details of our co-location at Castlemont, as well as the FUA. Please do not hesitate to contact me should you have any questions.

With Appreciation,

A handwritten signature in dark ink, appearing to be 'Soo Zee Park', with a long horizontal flourish extending to the right.

Soo Zee Park
LPS Chief Business Officer

Cc: Sarah Kollman, Young, Minney & Corr, LLP