

January 2, 2022

Sent via Email to

charteroffice@ousd.org

Kelly Krag-Arnold, Deputy Director

Office of Charter Schools

Oakland Unified School District

1000 Broadway, Suite 300

Oakland, California 94607

***Re: Community School for Creative Education***

***Response to District ADA Objections***

***Proposition 39 2022-23***

Ms. Krag-Arnold:

Community School for Creative Education (the “Charter School”) is in receipt of Oakland Unified School District’s (“District”) December 1, 2021 letter, in which the District objects to the Charter School’s in-District classroom average daily attendance projection (“in-District ADA”) submitted with its request for Proposition 39 facilities for the 2022-2023 school year (“Request”). In the letter, the District objects to the Charter School’s projected in-District classroom ADA of **202.81 (Table 2 attendance rate multiplied by Table 1 projected enrollment)** and asserts a counter-projection of **150.9** based solely on the District’s conclusion that the Charter School cannot reasonably be expected to increase its enrollment or retention rate from what they were at the worst points of the COVID-19 pandemic response. (See Letter at p. 2 [“. . . but there is limited evidence [the Charter School’s projection] is realistic, given the ongoing pandemic . . . .”].) The District’s counterprojection instead assumes that the Charter School will continue to suffer enrollment attrition at the same rate in the Request year as during the worst part of COVID-19. This assumption is facially unreasonable and a fatal flaw that renders the District’s counterprojection irrational and unusable for Prop 39 purposes.

The District’s objections are unreasonable and inconsistent with the purpose and intent of Proposition 39. Accordingly, the purpose of this letter is to respond to the District’s objections as required pursuant to California Code of Regulations, title 5, section 11969.9, subdivisions (d) and (e) (collectively, along with sections 11969.1-10, the “Prop 39 Regulations.”) For the reasons set forth below, the Charter School reaffirms its projection of in-District classroom ADA of **202.81** for the 2022-23 school year.

**Applicable Law**

The Prop 39 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*.” (Cal. Code Regs., tit. 5, § 11969.9, subd. (c); emphasis added.)  Therefore, as long as the Charter School’s projections are ***reasonable***, the District must accept and allocate facilities based on those ADA projections.

Indeed, “reasonable” is defined in Black’s Law Dictionary as “fair, proper, or moderate under the circumstances.” In other words, the Charter School 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.

The Court in *Sequoia Union High School Dist. v. Aurora Charter High School* provided further clarification on this issue:

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 v. Aurora,* (2003) 112 Cal.App.4th 185, 195-96; Ed. Code § 47614, subd. (b)(2); emphasis added.)

This reasoning was subsequently memorialized in Section 11969.9(c)(1)(C) of the Prop 39 Regulations.

In this case, the Charter School believes that the District’s objections are demanding a level of one-to-one correlation and arithmetical precision that is not consistent with the intent of the Prop 39 Regulations. The supporting documentation and methodology presented by the Charter School must show that its projections are reasonable – not exact.

Furthermore, the Final Statement of Reasons approved by the State Board of Education (“SBE”) and released with the new Proposition 39 Regulations state that “documentation of the number of in-district students meaningfully interested in attending the charter school is sufficient to determine the reasonableness of the projection though the documentation *need not be verifiable for precise arithmetical accuracy*,” and provides additional clarity on the matter of what types of documentation are considered sufficient:

Submission to the district of the names and addresses of meaningfully interested students and parents would be limited to new charter schools (that have no historical information on enrollment and attendance) and continuing schools to the extent of anticipated [*substantial*] increases in enrollment. Required information would be limited to *names and addresses*, consistent with the statement of legislative intent in *EC* Section 49073.5 to “minimize” the release of telephone numbers “in the absence of express parental consent.” Names and addresses should be sufficient foundational information for school districts to determine the reasonableness of ADA projections. (Final Statement of Reasons at p. 6; emphasis added.)

The California Court of Appeals also provided a more recent analysis in *California School Bds. Assn. v. State Bd. of Education*, 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. v. State Bd. of Education*, (2010) 191 Cal.App.4th 530, 564-65; emphasis added.)

In sum, while the Charter School is required to provide *some explanation* for its projections, as well as documentation to support its projections, this documentation need not be a one-to-one match for each unit of projected ADA, and must only be “sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy*.” (Cal. Code Regs., tit. 5 § 11969.9, subd. (c)(1)(C); emphasis added.)

**The Charter School is Not Projecting a Substantial Increase in In-District ADA and Therefore is Not Required to Submit Additional Documentation to Support its Projections**

The District’s attempt to freeze the Charter School’s attrition/retention rate at its COVID-19-suppressed level appears to be based on the District’s contention that the Charter School was obligated to submit documentation to support a purported “substantial increase” in retention rate for 1st through 7th grade. The Prop 39 regulations require that charter schools provide further documentation when an “operating school projects a substantial increase in in-district ADA.” (5 CCR § 11969.9, subd. (c)(1)(A).) The regulations do not require documentation to support a substantial increase in any other specific metric, including attrition/retention rate.

The Charter School is not projecting a substantial increase in its total in-District ADA, so it had no duty to submit backup documentation with its Request. Consequently, the District has no legal authority to freeze the Charter School’s retention rate into a perpetual COVID-19 nosedive, year-after-year, by requiring the Charter School to prove through documentation that it is not going to suffer the full impact of the COVID-19 pandemic all over again, each year. This is what the District’s approach implicitly requires, and it is contrary to the law and the purpose of Prop 39.

We also note that while 5 CCR 11969.9(c)(3) allows the District to require charter schools to use a form in making their Prop. 39 request (“School districts may require the charter school to submit its facilities request containing the information specified in paragraphs (1) and (2) on a form available from the CDE and developed in consultation with the Advisory Commission on Charter Schools (ACCS) or another form specified by the school district or another form specified by the school district”), it does not allow the District to request more than is already required in the regulations, or limit the manner in which charter schools provide supporting documentation. The District’s own application also states that charter schools need only provide documentary proof for Kindergarten, 6th and 9th grades.

Here, the District’s requirement that only Appendix I and Appendix II (which is enrollment data for the Charter School from the District’s enrollment system from 2021-22) be used to support projections means that the Charter School’s supporting documentation has been limited to just data from the 2021-22 school year, with its historically low numbers for all schools. It thus disallows relevant historical data for the Charter School that supports a projection of a modest recovery from the impact of COVID-19 on enrollment and retention rates. The District has used its form to essentially disregard historical data that is relevant to demonstrating that the Charter School’s projections are reasonable.

In any case, the Charter School is only required to document substantial increases in in-District ADA and none is projected in the Charter School’s Request. Section 11969.9, subd. (c)(1)(A), provides that ADA projections are to be based on “ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made.” This means that the proper frame of reference for analyzing the “substantiality” of a projected increase in in-District ADA would be the difference between in-District ADA in the year prior to the year in which the request was made and the in-District ADA projected in the Request year. Here, the relevant difference is between the Charter School’s in-District classroom ADA for the 2020-2021 school year and the in-District ADA projected for the Request year.

Viewed in this context, the Charter School is not projecting a substantial increase in ADA in the Request year. The fiscal year prior to the fiscal year in which Charter School’s Request was made is 2020-2021, when the Charter School’s total in-District classroom ADA as of CBEDS Census Day was 207.35 (Table 2 Attendance rates multiplied by the CBEDS enrollment noted in the District’s objection letter). The change between this number and the Charter School’s projected in-District ADA for the Request year, 202.81 (Table 2 projected attendance rate multiplied by Table 1 projected in-District classroom based enrollment for 2022-23), is negative 4.54 ADA, or in other words a change of *minus* 2.2% from 2020-21 to the Request year. This change certainly does not constitute an increase in ADA, much less a “substantial” increase requiring documentation.

Even if one were to use the incomplete current year ADA and enrollment data as the relevant starting points for comparison, the projected year-to-year difference would still only an increase of 27.87 ADA, which constitutes an increase of only 15.93% from the current year to the Request year.

The Merriam-Webster dictionary defines “substantial” as “considerable in quantity; significantly great.” Neither a *decrease* of 2.2% from the last full year of ADA data nor an increase of 15.93% from the current year’s incomplete data can be considered “considerable in quantity” or “significantly great.” Therefore, pursuant to the Prop 39 Regulations, the Charter School was not required to submit additional documentation to support its in-District ADA projections for its 2022-2023 Request.

In light of the foregoing, the District’s attempt to cap the growth of the Charter School’s recovery from COVID-19 by demanding documentation to prove that the Charter School won’t suffer peak COVID-19 attrition once again in the Request year is facially unreasonable and contrary to law and cannot be used as a factor in the District’s final allocation of facilities space to the Charter School.

**The Charter School’s In-District ADA Projection is Reasonable and is Supported by Adequate Documentation**

The District accepts the Charter School’s projected ADA for the TK through 1st grade class levels but renders a significantly lower counterprojection for the overall Request year ADA.

The Charter School notes that its Table 3 ADA projections appear on Appendix I as rounded numbers and should have been more precisely factored to two decimal places by applying the projected attendance rates from Table 2 to projected in-District enrollment from Table 1. This would result in the following ADA projection:

|  |  |
| --- | --- |
| **Grade Level** | **Projected In-District ADA 2022-23** |
| **TK** | 1.88 |
| **K** | 15.98 |
| **1** | 19 |
| **2** | 23.75 |
| **3** | 23.75 |
| **4** | 22.8 |
| **5** | 24.65 |
| **6** | 21.85 |
| **7** | 25.65 |
| **8** | 23.5 |

The overall difference in projected ADA from the original Table 3 ADA projection and the more precise ADA projection derived from Tables 1 and 3 of the Charter School’s Appendix I is only .81 ADA. Regardless of this minor difference, the Charter School’s projections remain equally reasonable and supported by enrollment data, trends, and history.

While the District has acknowledged the reasonability of the TK and K classes as projected by the Charter School, it differs from the Charter School on the 1st through 8th grade classes. The Charter School has submitted adequate support for its projected in-District ADA for its Request year 1st through 8th grade classes. Specifically, by cohort survival alone, the Charter School starts with a baseline of 164 *current* K–7th grade in-District students who can be reasonably relied on to return and matriculate to 1st–8th grade in 2022–23. This results in baseline cohort survival support rate of 83.67% for the 1st through 8th grade classes (164 divided by the projected in-District enrollment of 196 for the specified grade levels, per Table 1). The Charter School’s cohort survival baseline is broken down into grade levels as follows:

**1st Grade (2022-23)**

* 16 existing kindergarten in-District students matriculating toward a reasonable enrollment projection of 20 1st grade in-District students for 2022-23.

**2nd Grade (2022-23)**

* 21 existing 1st grade in-District students matriculating toward a reasonable enrollment projection of 25 2nd grade in-District students for 2022-23.

**3rd Grade (2022-23)**

* 18 existing 2nd grade in-District students matriculating toward a reasonable enrollment projection of 25 3rd grade in-District students for 2022-23.

**4th Grade (2022-23)**

* 17 existing 3rd grade in-District students matriculating toward a reasonable enrollment projection of 24 4th grade in-District students for 2022-23.

**5th Grade (2022-23)**

* 26 existing 4th grade in-District students matriculating toward a reasonable enrollment projection of 27 5th grade in-District students for 2022-23.

**6th Grade (2022-23)**

* 24 existing 4th grade in-District students matriculating toward a reasonable enrollment projection of 23 5th grade in-District students for 2022-23.

**7th Grade (2022-23)**

* 21 existing 4th grade in-District students matriculating toward a reasonable enrollment projection of 27 5th grade in-District students for 2022-23.

**8th Grade (2022-23)**

* 21 existing 4th grade in-District students matriculating toward a reasonable enrollment projection of 25 5th grade in-District students for 2022-23.

In other words, more than nine months before the start of the 2022-23 school year and several months before the completion of the Charter School’s recruitment and enrollment period, the Charter School has reasonable support for 83.67% (164 returning 1st–8th students, divided by projected enrollment of 196) of its projected in-District enrollment for its 1st through 8th grade classes. Assuming a new kindergarten class enrolls in the Request year at the same size as the 2021–22 kindergarten class (18 in-district enrollment), this would result in a K-8th cohort survival baseline of 84.5% (180 returning K–8th students, divided by the K–8th projected enrollment of 213).

Although the Charter School is not required to provide documentation amounting to a one-to-one correlation of its projected in-District ADA, the Charter School’s cohort survival baseline alone already strongly indicates that the Charter School will achieve its enrollment projections by the start of the 2022-23 school year. It should not need to be noted that this cohort survival baseline functions as a reasonable *floor* for the Charter School’s Request year projection for the 1st through 8th grade classes. There is no reason to believe this baseline should represent a ceiling on the Charter School’s Request year enrollment, as the District’s counterprojection unreasonably suggests, and for no other stated reason than that there is an “ongoing pandemic.”

Despite the District’s pessimism about the effects of COVID-19 on future enrollment, the Charter School has received strong indications of return enrollment throughout the 2021-2022 school year and projects that number will increase and remain steady through the beginning of the Request year.

First, the cohort survival baseline is further supported by existing documentation of intent to return to the Charter School. Although not required to have submitted them because no substantial ADA increase is projected, the Charter School had collected 121 intent to return forms from current students as of November 2, 2021. Among these forms, 96% were completed by in-District students. It is important to note these forms were not mandatory and we are still in the process of collecting the full tally of those intending to return.

In addition, the Charter School has, as of December 14, 2021, already received 43 new in-District applications to enroll in the Request year. This is notable because the Charter School’s Request year recruitment drive has not yet begun in earnest. Given that the application deadline is still relatively far off and that most applications are historically completed in the month of January, this suggests the Charter School will receive significant interest in the month to come, consistent with its historical pre-COVID enrollment patterns. The Charter School’s historical enrollment patterns also include full classes, filled from a lottery and waitlisted, for all recent years not affected by COVID-19. The data and trends in enrollment activity is trending back in that direction.

Thus, despite the District’s pessimism, in light of the points presented above, it is perfectly reasonable for the Charter School to project a reasonable recovery in enrollment in its projections for the Request year. If the Charter School is too optimistic in its projection, the District’s remedy is to seek an overallocation penalty in the future; it is not to cap the Charter School’s enrollment at the level it was during the worst of the pandemic.

In addition, and as referenced in the Request, the Charter School has already undertaken stronger and novel recruitment efforts in the coming year, including numerous in-person events that the Charter School did not and could not have employed in its recruitment for the 2021-2022 year due to COVID-19. These include (1) weekly tours every Tuesday from 9 a.m. to 10 a.m and by appointment; (2) fifteen already-planned in-person outreach events to be held in January and February at local Head Start centers, community centers, churches, and public libraries; (3) a physical presence at January 2022 Town Nights at San Antonio Park and the August 2022 Laurel Street Fair; (4) the Charter School’s ongoing food pantry outreach program; and (5) the Charter School’s partnership with Faith in Action East Bay to work with and inform families served by FIAEB – serving over 60,000 Oakland families -- as to the Charter School’s programs and role in the community. In addition, the Charter School is strengthening its social media campaign with strategic advertisement in key locations including but not limited to Oakland Patch, Alameda Patch, Berkeley Patch and Berkeley Parent Network. It is also participating in the Oakland Enrolls January 2022 Virtual Elementary and Middle School Fairs. These efforts are in addition to various additional events, fairs, and public outreach efforts to be scheduled throughout the 2022 recruitment season.

These measures have already had, and will continue to have, a positive impact on enrollment and the Charter School’s projection reasonably bears that out. All of the foregoing combine to support the reasonability of the Charter School’s projection, and the District’s letter does not reasonably dismiss that reasonability by merely pointing out that the pandemic is “ongoing.”

**The District’s Counter-Projection of 150.9 is Arbitrary and Unreasonable**

For all the reasons set forth above, the Charter School believes that its in-District classroom ADA projection of **202.81** is reasonable and that the District’s counterprojection of **150.9** is unrealistically pessimistic, unreasonable, and unsupported by data.

As described, the Charter School provided the District with reliable indication that 164 current K–7th grade in-District students will return and matriculate to 1st–8th grade in 2022–23. This represents a reasonable cohort-survival baseline. It is unreasonable for the District to discount these students and assume that less than 100% of these current students will return and matriculate to the 1st – 8th grades in 2022–23, especially given the number of intent to return forms collected by the Charter School to back up its retention rate. It is perfectly reasonable for the Charter School to assume that this enrollment baseline will only grow, not only because of the previously-mentioned 43 applications for new in-District students already received as of December 14, 2021, but also because of the additional and improved recruitment efforts the Charter School is engaging in, and because the worst disruption of the pandemic is behind us and not in front of us. The Charter School’s support need not be a one-to-one match for each unit of projected ADA, and must only be “sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy*.” (Cal. Code Regs., tit. 5 § 11969.9, subd. (c)(1)(C); emphasis added.) The Charter School has provided a perfectly reasonable basis for its projection.

On the other hand, the District’s counterprojection reflects a world in which the Charter School’s enrollment will remain locked into its COVID-19-suppressed low point apparently perpetually—simply because the pandemic is “ongoing.” This out-of-hand dismissal of any improvement following the worst of COVID-19’s disruption of school and recruitment is facially unreasonable and unsupported by any actual data. The District’s approach has also been proven false by the enrollment data and application trends noted in this letter.

That there is an “ongoing pandemic” appears to be the only basis for the District’s out-of-hand rejection of any positive impact on enrollment due to the Charter School’s improved recruiting and outreach efforts. The District’s counterprojection not only dismisses any positive effect on enrollment from these efforts, the District actually projects that the result will be *negative* and that in-District ADA will contract further from 174.94 this year to 150.9 in the Request year. This is unreasonable and unsupported any actual data, and is in fact contra-indicated given the data we present in this letter of significant increases in the number of applications received by the Charter School for next year.

Again, if the District believes that the pandemic enrollment losses will be as bad in the transition from the 2021-2022 school year to 2022-2023 as it was in the transition from 2020-2021 to 2021-2022, then it may assess an overallocation penalty should the Charter School fail to fill its facilities. However, the District may not use its irrational pessimism to deny the Charter School the facilities it needs to return to its pre-pandemic enrollment.

**Conclusion**

Based on the foregoing, the Charter School has responded in detail to the District’s objections and addressed the District’s concerns. Furthermore, the Charter School has provided reliable documentation and clarifying information that more than reasonably supports the Charter School’s in-District ADA projections and has demonstrated how the District’s projections are unreasonable. Accordingly, the Charter School anticipates that the District’s Preliminary Offer will allocate reasonably equivalent facility space sufficient to accommodate the school’s total projected in-District classroom ADA of 202.81.

We look forward to resolving any remaining concerns and receiving the District’s written Preliminary Proposal on or before February 1, 2021, to accommodate the Charter School’s entire projected in-District ADA of 202.81 pursuant to Section 11969.9(f). In the meantime, the Charter School would appreciate the opportunity to meet with the District to discuss any remaining concerns and responses outlined herein.



Dr Ida Oberman, Executive Director & Founder, CSCE

2