



American Indian Model Schools

A School at Work!

Maya Woods-Cadiz

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January 2, 2017

Silke Bradford
Office of Charter Schools
Oakland Unified School District
1000 Broadway, 6th Floor, Suite 639
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**Re: *Response to District ADA Objections
American Indian Public High School
Proposition 39 2017-2018***

Ms. Bradford:

American Indian Public High School (“AIPHS”) is in receipt of the Oakland Unified School District’s (“District”) December 1, 2016 letter, in which the District objects to AIPHS’s projections of average daily attendance (“ADA”) as stated in its November 1, 2016 request for Proposition 39 facilities for the 2017-2018 school year (“Request”). In its letter, the District objects to AIPHS’s projected in-District classroom ADA of 254.79, making unsupported claims about the eligibility of many of the students represented on the forms, and asserts its own projection of “233.58 students.”

The District has failed to state its own counter-projections of in-District ADA (it only stated the enrollment it considered reasonable), and thus it has waived its right to object to AIPHS’s in-District ADA projections and must allocate space based on AIPHS’s original projection of 254.79. (5 CCR Section 11969.9(d); see below.)

Furthermore, AIPHS does not believe the District’s objections are reasonable, nor are they consistent with the purpose and intent of Proposition 39. Accordingly, the purpose of this letter is to respond to the District’s objections, as required under Title 5 of the California Code of Regulations (“CCR”) Section 11969.9(e) of the Proposition 39 Implementing Regulations (“Regulations”), and to reiterate that the District must accept AIPHS’s original projection of 254.79 in-District classroom ADA as stated in its Request.

As further explained below, AIPHS believes that it has provided the District with sufficient explanation and reliable supporting documentation to clearly demonstrate the reasonableness of its in-District classroom ADA projection of 254.79 in-District ADA for the 2017-2018 school year.

The District Has Failed to State its Own ADA Projections, and Therefore AIPHS’s Projections are not Subject to Challenge

5 CCR § 11969.9(d) provides,

The school district shall review the charter school's projections of in-district and total ADA and in-district and total classroom ADA



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and, on or before December 1, express any objections in writing and **state the projections the district considers reasonable**. If the district does not express objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge, and the school district shall base its offer of facilities on those projections.

In its December 1, 2016 letter, the District fails to include any counter-projection of ADA, including in-District Classroom ADA, that it considers reasonable. Rather, the District's counter-projections are as follows: "The District is exercising its right to provide counterprojections to the Charter School's enrollment projections for 2017-18. Based on the factors discussed above, the District counterprojects a total of 233.58 in-District students."

The Implementing Regulations clearly intend for the District to include counter-projections of **ADA**, not enrollment, as no provision in 5 CCR § 11969.9 mentions enrollment (nor do any other provision of Prop. 39 at all) and the subsections within 5 CCR § 11969.9 that refer to the required elements of the District's Preliminary Proposal and Final Offer only mention the District's projections of *in-district classroom ADA*. Therefore, the District's failure to assert a projection of the in-District classroom ADA that it considers reasonable by December 1 leaves AIPHS's in-District classroom ADA projection of 254.79 no longer subject to challenge. Further, since the District only includes a counter-projection of enrollment rather than ADA, and it does not otherwise object to AIPHS's projected attendance rate, its projections assume an ADA rate of 100%.

AIPHS has Provided the Reasonable Projections and Supporting Documentation that is Required by Proposition 39

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 AIPHS'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, AIPHS is **not** required to provide a one-to-one correlation of



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

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

In this case, AIPHS believes that the District’s objections are demanding a level of arithmetical precision that is not consistent with the intent of the regulations. The supporting documentation and methodology presented by AIPHS must show that its projections are reasonable – not exact.

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



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reasonably equivalent facilities.” (*California School Bds. Assn. v. State Bd. of Education*, (2010) 191 Cal.App.4th 530, 564-65; emphasis added.)

Furthermore, the Final Statement of Reasons approved by the State Board of Education (“SBE”) and released with the 2009 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.)

In sum, even if AIPHS here was required to provide documentation to support its projections, this documentation need 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.) By submitting substantial supporting documentation to support its projected ADA, the Charter School has met the standard of arithmetical accuracy.

Finally, the Prop. 39 Implementing Regulations contain a fail-safe mechanism for the District: the over-allocation penalty. If there is a legitimate disagreement between the District and AIPHS regarding what is a reasonable projection, the appropriate action is for the District to allocate space based on AIPHS’s projections, and collect the penalty if AIPHS has over-projected.

AIPHS’s Projections of in-District ADA are Reasonable and are Supported by the Documentation Included with AIPHS’s Request

AIPHS provided the District with the names and addresses of 91 meaningfully interested 2017-18 9th grade students as part of its Request, to support an in-District 9th grade ADA of 70.56 This included students reflected on the meaningfully interested student spreadsheet, as well as



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Intent to Enroll forms signed by 97 students. In addition, AIPHS also assumed that almost all of its current students will return for the 2017-18 school year.

AIPHS also provided the District with a detailed description of the methodology it used to make its projections, assuming a total enrollment of 322, an in-District enrollment of 260 and an attendance rate of 98%, based on the school's enrollment and ADA history and discussions with the school's current students, almost all of whom confirmed that they would be returning for the 2017-18 school year, as well as a review of the number of Intent to Enroll forms collected well before the school has started its comprehensive enrollment and recruitment efforts, which will run from November, 2016 to April, 2017. The school noted that it has always received more applications than it has available slots, and

Notably, the school is **not** projecting a substantial increase in ADA between 2016-17 and 2017-18. Rather, the school is assuming that almost all of its current students will return next year (resulting in a small decline in the ADA for each grade level as it moves up to the next grade), and it will enroll a new 9th grade class that is approximately the same size as the current 9th grade class. The increase in the total ADA and total in-District ADA is simply the result of a small 12th grade class of 29 students – 27 of whom are in-District – graduating. All the other current grades are between 71 and 88 total students (59 and 72 in-District), and this results in an increase of approximately 35 in-District ADA. 5 CCR Section 11969.9(c)(1)(A) even assumes that these sorts of projections are reasonable in and of themselves, as it states that as long as a request is based on the prior year's ADA (as it is here), no further supporting documentation is necessary.

Further, AIPHS's methodology did not state that its supporting documentation was intended to cover all of its projected ADA, but rather to show that AIPHS has a committed student body who will almost all be returning next year, as well as a significant number of in-District 9th grade families (representing over 100% of the school's projection) who have expressed their meaningful interest by November 1.

This methodology is consistent with 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 93 Intent to Enroll forms from "in-district students who were either currently attending Aurora and planning to continue or had applied for admission for the 2002-2003 school year" with its request for facilities to accommodate 110 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, as well as "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.)





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The Court then determined 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 Court does not believe the Implementing Regulations require a charter school to submit an Intent to Enroll form for more than every student it projects to enroll, and it also suggests that if a parent confirms their meaningful interest at the time the charter school submits the request, this is sufficient to support the charter school's projections.

The District's Objections to AIPHS's Projections are Not Reasonable.

In making its counter-projections, the District has simply applied one year's retention rate to AIPHS' current ADA, without apparently considering the school's description of its methodology.

First, the school stated in its methodology section that it has confirmed with almost all of its current students that they will be returning for the 2017-18 school year, and has a waitlist to fill the slots of any students who do choose to depart. The District does not appear to have taken this into account.

Second, the District's counter-projections has not factored in that next year will be the school's first year at its complete build-out, without the smaller enrollment that each grade level started with. Instead of classes of 45 or fewer, the school has been maintaining classes of double that size. Now that the classes are larger and more established, students will be more likely to remain with the school.

Fundamentally, the District is taking one aspect of AIPHS's prior enrollment patterns and applied it to the school's projections for 2017-18, when there are a number of other factors affecting the projections for next year which overcome prior year retention patterns. As noted in detail above, the Implementing Regulations assume that a school district must make reasonable counter-projections, which require the District to take into account all relevant factors. Furthermore, if AIPHS has in fact overestimated its ADA, the District's remedy in this circumstance is not to unilaterally reduce AIPHS's projections to unreasonable levels. Rather, the District's remedy is to reclaim over-allocated space or levy an over-allocation penalty on AIPHS. (Cal. Code Regs., tit. 5, § 11969.8.)

Conclusion

Based on the foregoing, AIPHS has responded in detail to the District's objections and addressed the District's concerns. Further, AIPHS has provided reliable documentation and clarifying information that reasonably supports the school's ADA projections beyond the substantial information provided with its original Request, and has demonstrated how the District's projections are unreasonable and have failed to meet the requirements of Prop. 39. Accordingly, AIPHS 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 254.79.



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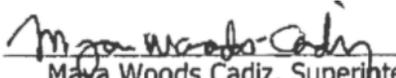
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We look forward to resolving any remaining concerns and receiving the District's written Preliminary Proposal on or before February 1, 2017, to accommodate AIPHS's entire projected ADA of 125.4 pursuant to 5 CCR Section 119632.9(f). In the meantime, AIPHS would appreciate the opportunity to meet with the District to discuss any remaining concerns related to the responses outlined herein.

Respectfully,


Maya Woods Cadiz, Superintendent

