



March 1, 2023

Kelly Krag-Arnold
Office of Charter Schools
Oakland Unified School District
1000 Broadway, Suite 639
Oakland, CA 94607

**Re: Yu Ming Charter School
Response to District's Preliminary Proposal
Proposition 39 2023-2024**

Dear Ms. Krag-Arnold:

Yu Ming Charter School ("Yu Ming" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2023 letter ("Preliminary Proposal") regarding Yu Ming's request for facilities under Proposition 39 ("Prop. 39") for the 2023-2024 school year.

The District's Preliminary Proposal provides for an allocation of facilities to Yu Ming at the Brookfield Elementary School campus. The Preliminary Proposal allocates a total of nineteen (19) teaching stations as well as shared use of the science lab space (1,166 sq. ft.) and tech space (847 sq. ft.), and shared use of the assembly space (3,385 sq. ft. allocated), dining space (2,630 sq. ft. allocated), library space (716 sq. ft. allocated), operational space (13,789 sq. ft. allocated), interior room space (4,492 sq. ft. allocated), and exterior space (263,001 sq. ft. allocated). The Preliminary Offer does not provide access to any arts space or athletic space for Yu Ming, even though it serves middle school students and there are arts spaces and athletic space on the comparison school campuses. The actual square footages provided by the District at the Brookfield site are also less than Yu Ming is entitled to under the District's analysis. The Preliminary Proposal is based on a projected in-District ADA of 383.49.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires Yu Ming to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and Yu Ming's facilities request as submitted pursuant to subdivision (b), and/or make counter proposals.

Yu Ming has several concerns with the Preliminary Proposal. These concerns include the lack of support or evidence for the District Board of Education's findings that Yu Ming's

Kelly Krag-Arnold
Office of Charter Schools
Re: Yu Ming Charter School
Response to District's Preliminary Proposal
Proposition 39 2023-2024
March 1, 2023
Page 2

projected in-District enrollment cannot be accommodated at a single site, the lack of evidence for the District's determinations regarding which District school sites have sufficient space to share with Yu Ming, which underpin the non-contiguous findings, and the lack of allocation of science lab space or athletic facilities, which would make it very difficult for Yu Ming to operate its program in the allocated facilities.

Yu Ming requests that the District's Final Offer be clarified to address the concerns set forth in this letter.

Yu Ming Does Not Wish to be Located at Brookfield Elementary School.

The District has chosen to place Yu Ming in a co-location situation with Brookfield Elementary School, a school that the District Board recently voted to keep open for the 2023-24 school year (after it previously voted to close the school).

Yu Ming does not believe it is in the best interests of the Brookfield community or Yu Ming for Yu Ming to be co-located on the Brookfield campus, and requests that the District allocate it space on another single site campus.

The Preliminary Proposal Does Not Allocate Reasonably Equivalent Specialized Classroom Space and Non-Teaching Station Space to Yu Ming.

Yu Ming 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 Proposal 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
3. the per-student amount of specialized classroom space in the comparison group schools.¹

¹ *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*").

Kelly Krag-Arnold
Office of Charter Schools
Re: Yu Ming Charter School
Response to District's Preliminary Proposal
Proposition 39 2023-2024
March 1, 2023
Page 3

As such, the District must allocate specialized classroom space (“SCS”), such as science laboratories, art rooms, computer labs, music rooms, weight rooms, etc., commensurate with the in-District classroom ADA of Yu Ming. 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 Yu Ming 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, counseling 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/non-teaching space in the comparison group schools). (5 CCR § 11969.3(b)(2)-(3).) 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).

a. Allocation of Specialized Classroom Space.

The Preliminary Proposal does not include an allocation of art space to Yu Ming, even though 1 out of the 7 comparison elementary schools, and both of the comparison middle schools, have art space. Instead, the Preliminary Proposal states that the allocated site does not have art space, and adding art space would require the District to add a second site to the allocation of space. It then states that if Yu Ming wants art space at a second site, it should let the District know.

The District is aware that a two-site allocation of space would be extraordinarily difficult for any charter school, especially if it would require students to travel from one site to another just for one class. Yu Ming would certainly not be in a position to have its students travel just to access art instruction in a lab.

Kelly Krag-Arnold
Office of Charter Schools
Re: Yu Ming Charter School
Response to District's Preliminary Proposal
Proposition 39 2023-2024
March 1, 2023
Page 4

While Yu Ming does not believe that the District has complied with Prop. 39 by allocating spaces for middle school students that interfere with Yu Ming's ability to provide comprehensive instruction to its students, it will instead take this opportunity to request that rather than give Yu Ming an impossible choice, the District consider providing Yu Ming with moveable art furnishings and equipment that can be used in one of its classrooms for purposes of facilitating art instruction.

b. Allocation of Non-Teaching Station Space to Yu Ming

Similar to the art space situation outlined above, the District has not allocated athletic space (e.g. gymnasium and locker room) to Yu Ming, and has again noted the lack of these spaces on the two allocated sites, offering Yu Ming the option only of an allocation on a third site to meet these requirements. This is not a feasible option for Yu Ming, and the school would prefer a single site allocation.

In addition, in its allocation of interior rooms, the District has allocated a square footage of interior rooms but has not actually identified the interior rooms to be provided to Yu Ming. As interior rooms include administrative space, special education space, conference rooms, and other small classrooms that are critical to school operations, Yu Ming assumes that the District does not intend to have Yu Ming share offices and special education spaces, as well as the other spaces but rather would allocate exclusive use rooms to Yu Ming to meet this requirement. As such, Yu Ming believes the Preliminary Proposal should have identified the specific interior rooms that the District intends Yu Ming to use, and requests that the District provide this information to Yu Ming as soon as possible, as well as include it in the District's Final Offer.

Pro Rata Charge Worksheet

1. Improper Costs Included in Pro Rata Share Calculation: The District may have included its entire "RRMA transfer from UR to resource 8150" in its pro rata share calculation, rather than only expenditures from the 8150 account. However, as confirmed in the recent case of *Mt. Diablo Unified School District v. Clayton Valley Charter High School* (2021) 69 Cal.App.5th 1004, the District may not include the entire transfer in its pro rata share calculation, but rather may only include actual expenditures from the account on eligible facilities costs. As stated by the Court, "When the state board amended section 11969.7 by both including contributions to the OMM account as facilities costs and adding the exclusion paragraph, did it limit a district's ability to include contributions to the OMM account in its facilities costs? As with plant maintenance and operations costs, we conclude that it did." Therefore, we request that the District confirm that the \$19,897,200 included in

Kelly Krag-Arnold
Office of Charter Schools
Re: Yu Ming Charter School
Response to District's Preliminary Proposal
Proposition 39 2023-2024
March 1, 2023
Page 5

the pro rata share calculation only reflects actual expenditures from the 8150 account, rather than simply the amount of the transfer.

2. Custodial Services: While Yu Ming understands that the Settlement Agreement provided that the District would provide custodial services for co-located charter schools, it still will take this opportunity to object to the District's requirement as inconsistent with law, as set forth in prior years' responses. Prop. 39 specifically states that charter schools are responsible for performing the day to day operations and maintenance for their allocated space.

3. 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 Yu Ming 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 Yu Ming 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 Yu Ming'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."

Draft Facilities Use Agreement

We have previously provided the District with redline changes to the facilities use agreement. These requested revisions continue to be relevant.

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

Sincerely,

Kelly Krag-Arnold
Office of Charter Schools
Re: *Yu Ming Charter School*
Response to District's Preliminary Proposal
Proposition 39 2023-2024
March 1, 2023
Page 6

[SIGNATURE]

Cc: Sarah Kollman, Young, Minney & Corr, LLP
Yu Ming's Board Members