

February 26, 2023

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

***Re: Envision Academy of Arts and Technology
Response to District's Preliminary Proposal
Proposition 39 2023-2024***

Dear Ms. Krag-Arnold:

Envision Academy of Arts and Technology ("Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2023 letter ("Preliminary Proposal") regarding Charter School'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 Charter School at Franklin Elementary School. The Preliminary Proposal allocates a total of seventeen (17) teaching stations as well as shared use of the 809 sq. ft of art space, assembly space (179 sq. ft.), dining space (647 sq. ft.), athletic (0 sq. ft.), library space (634 sq. ft.), operational space (3,921 sq. ft.), interior room space (937 sq. ft.), and exterior space (39,050 sq. ft. allocated). The Preliminary Offer does not provide access to any science lab space, technology space, or athletic space for Charter School, even though it serves high school students and there are science lab spaces and athletic space on the comparison school campuses. The Preliminary Proposal is based on a projected in-District ADA of 150.40.

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

Charter School has several concerns with the Preliminary Proposal. These concerns include the lack of allocation of athletic facilities, including a gymnasium, as well as reasonably equivalent cafeteria and yard space, which would make it very difficult for

Charter School to operate its program in the allocated facilities. The Charter School would like to request that it be provided with allocation of a gym on a separate, proximate District campus, to be used primarily after regular school hours for after school activities, as well as access to additional cafeteria space and yard space on the Franklin site for Charter School students. In addition, the Charter School has 17 classrooms on the Franklin campus – its allocation of shared space should be based on the number of classrooms it has on the site, not its projected ADA.

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

The Preliminary Proposal Does Not Allocate Reasonably Equivalent Non-Teaching Station Space to Charter School.

Charter School 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

As such, the District must provide non-teaching station space commensurate with the in-District classroom ADA of Charter School 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.*)

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*”).

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 Non-Teaching Station Space to Charter School

The District has not allocated athletic space (e.g. gymnasium and locker room) to Charter School, and has again noted the lack of these spaces on the two allocated sites, offering Charter School the option only of an allocation on a second site to meet these requirements. The Charter School, as noted above, requests an allocation of gym space during after school hours, as well as additional exterior yard space on the Franklin campus during the school day. More specifically, the Charter School requests use of the gym at a campus that has grade-level appropriate gym facilities within geographic proximity to the Franklin campus during after school hours.

ict's Exhibit C, the Franklin campus has 2,416 square feet of cafeteria space, of which 647 square feet is being allocated to the Charter School. The sharing schedule has not yet been negotiated with the Franklin principal, but the Charter School anticipates it will require greater access to dining and food preparation space than its 26.8% allocation. Given the number of teaching stations it has been allocated at the Franklin campus, the Charter School requests an allocation per day for the cafeteria that allows Envision Academy to operate its School Breakfast Program and National School Lunch Program, including daily receiving, storing, and serving breakfast and lunch.

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 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 Charter School 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.

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 Charter School 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 Charter School 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 Charter School’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

Should the Charter School accept its offered space, it will provide the District with redline changes to the proposed facilities use agreement.

Sincerely,



Mariko Highsmith

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