



May 1, 2020

**Via Email**

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

**Re: *Francophone Charter School of Oakland  
Response to District's Final Proposition 39 Offer for 2020-2021***

Dear Ms. Murarka:

Francophone Charter School of Oakland ("Francophone" or "Charter School") is in receipt of the Oakland Unified School District's ("District") April 1, 2020 letter ("Final Offer") regarding Francophone's request for facilities under Proposition 39 ("Prop. 39") for the 2020-2021 school year.

The District's Final Offer is for a total of thirteen (13) teaching stations and no specialized classroom or administrative/special education space of any kind, with six (6) classrooms at Toler Heights and seven (7) portables at Brookfield Elementary School, as well as 41.64% shared use of the non-teaching station space at Brookfield and all of the non-teaching station space at Toler Heights. Half of the portables allocated at Brookfield are located on the opposite end of the campus from the others. The Final Offer is based on a projected in-District ADA of 244.5.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires Francophone to notify the District whether or not Francophone intends to occupy the offered space. Accordingly, despite the deficiencies in 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 Proposal, which is incorporated here by reference, **Francophone accepts and intends to occupy the offered space**, without acknowledging its sufficiency under applicable local, state, or federal law and without waiving any of its legal rights under applicable local, state, or federal law, including Proposition 39 rights and remedies.

**Alternative Proposal**

We note that Francophone and the District recently executed an in-lieu agreement. We appreciate

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the District's flexibility and creativity in working with Francophone to look for solutions that are in the best interests of both parties.

Francophone is providing a broad list of certain remaining concerns it has with the Final Offer to ensure its reservation of rights, but believes that the in-lieu agreement reflects a positive solution to any disagreements regarding whether the Final Offer complies with Prop. 39.

### **Condition Analysis**

The concerns regarding the District's condition analysis as identified in the response to the Preliminary Proposal continue to be an issue, and are incorporated by reference here.

Francophone notes that the District previously had planned significant improvements to the Brookfield site to mitigate smog and other problems associated with the campuses' proximity to 880, but the work was canceled in 2018 due to other budget overruns<sup>1</sup> – this despite the fact that Brookfield was designated an “intensive support school” which needs significant intervention and support from the District. As such, this raises concerns that the condition analysis performed by the District does not fully capture the differences between the comparison schools and Brookfield related to whether the site provides a “safe learning environment.” The District's Final Offer simply states that the media report cited by Francophone is “insufficient” to counter the District's condition analysis. However, given that the District's facilities master plan did not actually consider air quality, this statement is without merit.

### **The District's Resolution to Allocate Non-Contiguous Space Does Not Meet the Legal Standard**

The Final Offer cites to *Los Angeles Intern. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348 (“*LAICHS*”) and *Westchester Secondary Charter School v. Los Angeles Unified School District* (2015) 237 Cal.App.4th 1226 (“*Westchester*”) to support its claim that the District has broad and wide authority to place Francophone on multiple sites while placing more emphasis on the safety and health impacts on District students than charter schools in its Board resolution.

Francophone reiterates all of its arguments in the response to the Preliminary Proposal, which have not been fully addressed in the Final Offer. Further, any citation to *Westchester* or *LAICHS* to support the determinations made in the Board's resolution is improper, as *Westchester* was about an entirely different provision of Prop. 39 than the language regarding Board findings when making non-contiguous offers. Instead, *Westchester* addressed the provision in Prop. 39 that requires a

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<sup>1</sup> <https://edsource.org/2018/oakland-unified-lacks-funds-to-pay-for-all-capital-projects-so-board-halts-some/601528>

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district to make reasonable efforts to place a charter school near to where it wishes to locate, which is not at issue here.

Lastly, the Final Offer presents the 2.3 miles between the two campuses as a minimal issue. However, because the route between the two schools is on surface and congested streets, for Francophone families who must now move between the campuses, this trip will likely take 20-25 minutes, a substantial burden. A statement that the District looked at possible grade configurations in making its non-contiguous offer so as to minimize trips is simply not equivalent to the pages of justifications provided by the District regarding the safety of its own students.

Francophone also notes here that the portables allocated at Brookfield are on opposite ends of the large campus. This will require Francophone students to traverse the entire campus and will be disruptive both to its program and the Brookfield program, as Francophone students will have to walk through the middle of Brookfield's playspace. Education Code Section 47614 requires that the District share facilities fairly with charter schools, and "[A] school district does not have the discretion to employ practices that are contrary to the very intent of Proposition 39 that school district facilities be "shared fairly among all public school pupils, including those in charter schools." (*Bullis, supra*, 200 Cal.App.4th 296, 336.) No District school is split across a campus, with its classrooms at two opposite ends of the campus. By expecting Francophone to exist in this configuration, when the Brookfield campus could be reconfigured to avoid these foot traffic and safety issues, the District is not treating Francophone students in the same manner they treat their own students.

### **Specialized Classroom and Non-Teaching Station Space**

Francophone 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. Please refer to the response to the Preliminary Proposal for a summary of the applicable law.

The District's allocation of specialized classroom space in the Final Offer does not appear to comply with the Implementing Regulations in several respects.

The District's analysis combines different kinds of specialized classroom space into one lumped square footage for purposes of allocating space, which encompasses science, technology and art spaces. It is not reasonably equivalent to combine different types and sizes of specialized classroom space. If there are science labs, computer labs, music rooms, weight rooms, art rooms, and the like available at the comparison schools, then the District must allocate reasonably equivalent, fully furnished and equipped kinds of these spaces and/or shared access to these spaces for Francophone.

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Allocating general education classrooms to meet this obligation would not be consistent with the requirements of Prop. 39; a standard classroom does not have, for example, the risers in a choral classroom, the gas and water stations in a science classroom, or the computers in a computer classroom, nor can all these different kinds of uses (and the attendant furnishings and equipment) happen in classrooms allocated for other uses. “[A] school district does not have the discretion to employ practices that are contrary to the very intent of Proposition 39 that school district facilities be “shared fairly among all public school pupils, including those in charter schools.” (*Bullis, supra*, 200 Cal.App.4th 296, 336.)

The District has failed to identify the specific non-teaching station space to be allocated to Francophone. The District’s process for allocating NCS also does not ensure reasonably equivalent NCS.

Specifically, as noted in the response to the Preliminary Proposal, the District calculates the amount of NCS that the charter school is entitled to based on the NCS square feet/ADA of the comparison schools (Table 8), broken out by three categories of interior space, and exterior NCS. The District then calculates the amount of square footage to be allocated to the charter school at the co-located sites in Tables 9a and 9b, breaking out interior and exterior NCS, with interior space broken into three very broad categories (Auditorium-Cafeteria-MPR-Gym, Other Interior, and Operational). However, the Final Offer claims to provide an analysis of the charter school’s allocation vs. entitlement, but instead (as in the Preliminary Proposal) lumps all NCS back together and divides it by the charter school’s projected ADA, stating that a charter school’s allocation is considered to fall within reasonable equivalence standards if it is commensurate with the average of the sqft/ADA ratios at the comparison group schools. Yet lumping all the different kinds of NCS space into a minimal number of very large categories does not provide an accurate or evaluable way of ensuring a charter school has access to reasonable equivalence NCS. A charter school that gets significant use of an auditorium, but very minimal access to a gym for physical education, is not receiving reasonably equivalent access.

Similarly, the Final Offer does not address the various types of outdoor areas that exist at the comparison schools such as gardens, basketball courts, play fields, and play structure space but rather lumps all the different types of exterior spaces together when calculating exterior non-teaching station space. Each of these types of spaces has a specific use and furnishings and equipment and/or design that are appropriate for such use, and the District’s allocation method does not ensure Francophone will receive a reasonably equivalent allocation of each type of non-teaching station space that exists at the comparison schools. As stated in *Bullis*, “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.” (*Bullis, supra*, at p. 1047, emphasis added.) The District is not permitted to average all of the unique types of non-teaching station spaces that exist at the comparison schools and then allocate Francophone a

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percentage of unspecified non-teaching station spaces that exists at the allocated sites, which are not comparison schools.

In addition, the Final Offer contains no listing or description of the types of shared non-teaching spaces to which Francophone will be provided access at the offered sites beyond large categories of space, or any proposed schedule for Francophone's use. The District's failure to provide this basic information to Francophone precludes Francophone from engaging in timely and efficient negotiations with site principals regarding shared use schedules and prevents Francophone from assessing whether the Final Offer provides Francophone with access to all of the different types of non-teaching station space to which Francophone is entitled. 5 CCR section 11969.9(h) requires that the school district, in its final facilities proposal, specifically identify the nonteaching station space offered to the charter school. (*Bullis*, supra, at p. 1046.)

For all these reasons, the District's allocation of specialized and non-teaching station space included in the Final Offer fails to comply with Prop. 39 and its Implementing Regulations. Francophone is entitled to reasonably equivalent allocations of specialized and non-teaching spaces, and of furnishings and equipment that accompany those spaces in the comparison schools at the offered school sites.

### **Pro Rata Charge Worksheet and Facilities Use Agreement**

Francophone reiterates all of its arguments in the response to the Preliminary Proposal, as the Final Offer does not fully address or resolve the arguments made by Francophone.

Francophone also notes its ongoing objections to the manner in which the District calculated the custodial costs for co-locations. Francophone should be able to perform its own janitorial services on co-located campuses, and if the District performs the services, these costs should be wrapped into the pro rata share calculation, not charged out as a separate line item.

Francophone looks forward to working with the District to finalize facilities arrangements for the 2020-21 school year in the near future.

Sincerely,

Mark Kushner, Interim Executive Director

Cc: Sarah Kollman, Young, Minney & Corr, LLP  
Francophone Board of Directors