



AIMS College Prep Elementary School

AIMS K-12 College Prep Elementary School
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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: American Indian Public Charter School II
Response to District ADA Objections
Proposition 39 2022-23***

Ms. Krag-Arnold:

American Indian Public Charter School II (the “Charter School”) is in receipt of Oakland Unified School District’s (“District”) December 1, 2021 letter (“Response”), 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 Response, the District objects to the Charter School’s projected in-District ADA of **568** and asserts a counter-projection of 545.64 evidently based solely on the difference between the in-District enrollment for 2020-21 and 2021-22 listed in the Request and the in-District enrollment for 2020-21 and 2021-22 listed in CBEDS.

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 **568** 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*



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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



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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’s In-District ADA Projection is Reasonable

The Charter School submitted more than adequate information and explanation to support its projected in-District classroom ADA of 568. With the Request the Charter School provided enrollment and attendance data evidencing an increase in in-District enrollment at multiple grade levels this year and steady enrollment and attendance overall even during a pandemic that has negatively impacted school enrollment and attendance across the state. The Request further



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explained that the Charter School reasonably anticipates that its enrollment patterns will begin to rebound to pre-COVID levels as the impacts from the pandemic continue to subside. In addition, the Request explained that the Charter School has received more applications than spaces available and maintained a waitlist in the last few years, again, even during the pandemic (this year it received an impressive 275 Kindergarten and 114 1st grade applications and had 60 slots open for kindergarten 5 slots open for 1st grade). Given that the Charter School is conservatively using the cohort survival method and projecting no increases in in-District enrollment for its current 1st-7th grade cohorts as they matriculate to the next grade next year and is only projecting a small increase (of 4-6 in-District students) to its current and incoming kindergarten cohorts even though it typically receives hundreds more applications than available seats, the Charter School's in-District classroom ADA projection of 568 is more than reasonable.

The District's apparent objection to only 4% of the Charter School's in-District ADA projection actually underscores the reasonableness of the Charter School's projection. Indeed, it is hard to imagine a scenario in which a 4% difference, in the context of ADA projections, could rationally be the difference between a projection being within the bounds of reason or entirely without reason. Again, as long as the Charter School's projections are *reasonable*, the District must accept and allocate facilities based on those ADA projections.

By comparison, in *Sequoia*, 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 84% of its projections as well as historic attendance rates and proof of its current enrollment of 90, along with "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.) 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 based on the projections in original request for facilities.

It is unmistakable from the *Sequoia* ruling that ***and the Prop. 39 Regulations do not require a charter school to provide documentation of meaningful interest for every student it projects to enroll.*** As the Charter School provided enrollment data demonstrating its ability to increase its enrollment at several grade levels even during the pandemic as well as current in-District enrollment and ADA data reflecting at least 94% of the Charter School's in-District enrollment projection even based on the District's figures, it has fully complied with the requirement to provide the District with sufficient data by which the District is able to determine the reasonableness of its ADA projections. Thus, the Charter School's in-District ADA projection is reasonable.

The District's Counter-Projection of 545.64 is Unreasonable



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The District’s attempt to cap the Charter School’s projected in-District classroom ADA at its current in-District enrollment appears to be based on the District’s misplaced belief that the Charter School was obligated to submit documentation to support its in-District classroom ADA projection. Section 11969.9(c)(1)(C) of the Prop 39 Regulations state that supporting documentation need only be submitted “*to the extent* an operating charter *school* projects a *substantial increase* in in-district ADA.” (Emphasis added.) Here, the Charter School is only projecting an overall 2% increase in in-District enrollment next year (or 5.8% according to the District’s figures), which cannot logically be viewed as a “substantial” increase. According to the District’s Prop. 39 application form, only a 15% increase is “substantial” and requires documentation. Therefore, the Charter School is not required to provide any documentation to support its in-District classroom ADA projection.

The District’s objections and counterprojection also ignore the clear and documented evidence that the Charter School typically receives more hundreds more applications for enrollment than it has vacant seats and has increased its in-District enrollment at several grade levels this year despite the challenging impacts of the pandemic. The District’s failure to address these points further demonstrates the lack of reasonableness in its counterprojection.

In addition, as explained above, the Prop. 39 Regulations do not require a charter school to provide documentation of meaningful interest for every student it projects to enroll or that the Charter School’s projections be arithmetically precise. The District’s objections and counterprojection 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 data and methodology presented by the Charter School must show that its projections are reasonable – not exact. As such, the District’s objections fail to establish that the Charter School’s in-District ADA projection is unreasonable and the District is not permitted to reduce the Charter School’s reasonable in-District ADA projection of **568**.

Conclusion

Based on the foregoing, the Charter School has responded in detail to the District’s objections. 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 Proposal will allocate reasonably equivalent facility space sufficient to accommodate the school’s total projected in-District classroom ADA of **568**.

We look forward to resolving any remaining concerns and receiving the District’s written Preliminary Proposal on or before February 1, 2022, to accommodate the Charter School’s entire projected in-District ADA of **568** pursuant to Section 11969.9(f). In the meantime, the Charter



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School would appreciate the opportunity to meet with the District to discuss any remaining concerns and responses outlined herein.

Sincerely,

Maya Woods-Cadiz
AIMS K-12 Superintendent