



American Indian
Model Schools
A School at Work!

AIPCS I & II

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March 1, 2021

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

**Re: *American Indian Public Charter School
Response to District's Preliminary Proposal
Proposition 39 2021-2022***

Dear Ms. Murarka and Ms. Krag-Arnold:

American Indian Public Charter School I ("AIPCS" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2021 letter ("Preliminary Proposal") regarding AIPCS's request for facilities under Proposition 39 ("Prop. 39") for the 2021-2022 school year.

The District's Preliminary Proposal is a proposal for a total of nine (9) teaching stations as well as shared use of the art space (805 sq. ft. total), assembly space (191 sq. ft. allocated), dining space (288 sq. ft. allocated), library space (677 sq. ft. allocated), operational space (4,186 sq. ft. allocated), interior room space (1,493 sq. ft. allocated), and exterior space (41,688 sq. ft. allocated) at the Franklin Elementary campus. Other than the campus map attached to the Preliminary Proposal, there is no explanation of the specific "operational," "interior space" or "exterior space" allocated to AIPCS at Franklin. The Preliminary Proposal is based on a projected in-District ADA of 215.01.

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

The Preliminary Proposal fails to meet the legal requirements of Prop. 39 and the recent settlement ("Settlement Agreement") between the District and the California Charter School Association for a number of reasons, including the failure to provide reasonably equivalent specialized classroom and non-teaching space to AIPCS and the questionable manner in which the District counted and allocated special day class space. Thus, the District has failed to provide AIPCS with a reasonably equivalent allocation of space as required by law.



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Although Franklin is somewhat near the general area of where AIPCS requested to be located, it is not one of the nine (9) schools at which AIPCS requested to be located. AIPCS did not request or agree to be located at Franklin and gave the District numerous options for acceptable locations at which to locate AIPCS. Although AIPCS may be willing to consider a reduced allocation of certain types of space in exchange for being located at one of its preferred school sites, the District cannot justify its failure to allocate AIPCS thousands of square feet of specialized teaching station and non-teaching station space on the grounds that it allocated space to AIPCS at a school site that is “near the geographic area that the charter school requested and consists of a single-site offer.” Under Prop. 39, the District is obligated to provide charter schools with reasonably equivalent, contiguous facilities near where the charter school requested to be located and to treat all students in the District fairly, including charter school students. Placing AIPCS on a single site somewhat near the geographic area where AIPCS requested to be located does not absolve the District of its obligation to provide AIPCS with reasonably equivalent facilities.

Further, the District’s unsupported claim that offering AIPCS additional specialized teaching station and non-teaching station space would require it to split AIPCS across sites is meritless. Not only does Franklin have a teaching station to ADA ratio of only 17.07, which appears to provide sufficient capacity for additional allocations of space to AIPCS, but at least two of AIPCS’s requested school sites (West Oakland MS and Piedmont Ave. Elementary) appear to have approximately the same or lower teaching station to ADA ratios than Franklin (9.87 and 17.25, respectively). Therefore, AIPCS believes that there is sufficient space at one or more of AIPCS’s requested sites to provide AIPCS with reasonably equivalent and contiguous facilities, with minimal disruption to the District programs at those sites.

AIPCS requests that the District’s final offer of space be modified in accordance with Prop. 39 and its Implementing Regulations. We remind you that under California law the District must give the same degree of consideration to the needs of charter school students as it does to the students in District-run schools and some disruption and dislocation of the students and programs in a district may be necessary to fairly accommodate a charter school's request for facilities.

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

AIPCS 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



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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 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 AIPCS. 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 AIPCS 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, 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 Settlement Agreement sets forth a process, consistent with the Prop. 39 regulations, by which the District will analyze the square footage of SCS at the comparison schools, and then make an allocation of space to a charter school:

To determine the SCS allocation for each charter school, the District shall add together the square feet of SCS per ADA for each category of SCS for each of

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").



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that charter school's comparison schools, and divide it by the number of comparison schools for that charter school to arrive at a (non-weighted) average square feet of SCS per ADA for each category of SCS. The District shall then multiply the average square feet of SCS per ADA for each category of SCS by the projected in-District classroom ADA of that charter school to arrive at the total square footage of each category of SCS to be allocated to the charter school....

The District will allocate a reasonably equivalent exclusive-use share of the SCS and/or a provision for access to shared-use of reasonably equivalent SCS for each of the three categories of SCS to each charter school.

The section also includes the following language:

The District shall not allocate general education classrooms or make other accommodations in place of SCS unless mutually agreed upon in writing by the District and a charter school.

This language was included as a result of discussions which noted that some District school facilities simply did not have some or all of the categories of SCS, but that a charter school might be more interested in the location of the allocated space and would be willing to come to an in-lieu arrangement with the District to take a different allocation of SCS in order to be located on their desired school site.

However, there is no language in the Settlement Agreement that allows the District to simply ignore its legal obligations under Prop. 39 and fail to allocate thousands of square feet of SCS to a charter school. The Settlement Agreement provides two options: make a reasonably equivalent allocation of SCS to a charter school or enter into a written agreement with a charter school for a different allocation.

The District has done neither here. Instead, it determines that AIPCS is entitled to 2,481 square feet of SCS, and then simply states that it is only giving AIPCS shared use of the 805 sq. foot art room that exists at Franklin because "[t]here is no designated Science or Technology SCS at the offered site; however, the offered site is located in the Charter School's requested area, and adding Science and Technology SCS to the preliminary offer would require adding a second site to the offer. If the Charter School is interested in access to specialized space at a secondary site, they should include that information in their response to the preliminary offer."

To be clear, just because AIPCS requested to be located in the same general area where Franklin is also located does not constitute an agreement to waive any rights to reasonably equivalent facilities, especially given that Franklin isn't even one of the nine (9) sites requested by



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AIPCS, nor does it somehow relieve the District of its legal obligation to allocate reasonably equivalent SCS to AIPCS. As stated above, based on the information provided in Ex. C, AIPCS believes there is sufficient space at one or more of its requested sites to accommodate AIPCS's projected in-District ADA in reasonably equivalent, contiguous facilities.

Moreover, the Preliminary Proposal fails to include a considerable amount of SCS that exists at the comparison schools based on the spreadsheets included in Ex. C. For example, while Exhibit C states that there is no lab space on the Claremont campus, the school's website references two computer science teachers, and notes that 7th and 8th graders have access to a digital media class that combines art and computer software tools for digital illustration, photo editing and 3D animation, that all 6th grade students are enrolled in a half-year of computer class, and that there are 7th and 8th grade computer science classes. This suggests that there is in fact technology space on the campus.

AIPCS believes it can make the allocation of space at Franklin work despite the lack of SCS on the site, with the allocation of 3 additional classrooms, which it can use to create these spaces.

b. Allocation of Non-Teaching Station Space to AIPCS

As noted above, Prop. 39 requires that "the school district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools." (5 CCR § 11969.3(b)(3).)

The District's allocation of non-teaching station space ("NTSS") to AIPCS in the Preliminary Proposal does not comply with Prop. 39 or its Implementing Regulations, or the Settlement Agreement, for the same reason its SCS allocation does not comply.

AIPCS is entitled to a reasonably equivalent allocation of the seven categories of NTSS. The District's calculation of the per-student amount of NTSS at the comparison schools is set forth in Table 9 of the Preliminary Proposal, but as Table 9 makes clear, the Preliminary Proposal significantly under-allocates NTSS to AIPCS to the tune of over ten thousand square feet. However, the Preliminary Proposal provides no solution or alternative for its failure to comply with the law and the Settlement Agreement other than stating, "The Charter School's allocation of NCS is below its entitlement in several² categories; however, the offer site is near the geographic area that the charter school requested and consists of a single-site offer. Adding additional NCS to the preliminary offer would require adding a second site to the offer. If the Charter School is interested in access to additional NCS at a secondary site, they should include that information in

² In fact, the allocation is below the comparison school average in every category except one where it is the same.



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their response to the preliminary offer.” Again, simply because AIPCS requested to be located in a somewhat similar geographic area as where Franklin is located does not relieve the District of its obligation to comply with Prop. 39 and the Settlement Agreement.

In addition, the District’s allocation of shared NTSS based on a percentage of the ADA at the allocated site does not comply with the requirements of Prop. 39. As explained above, the NTSS allocation to AIPCS must be based on the per-student amount of the NTSS that exists at the comparison schools unless the parties have entered into a written agreement allowing for a different allocation. Moreover, while the Preliminary Proposal states that the Shared Use Allocation is based on “AIPCS’s Proportion of Total Site In-District ADA at Franklin is calculated as $215.01 / (215.01 + 536.63) = 28.61\%$,” the calculations in Table 8 demonstrate that is not the case for all types of NTSS. For example, the Table 8 indicates there is 2,416 square feet of dining space at Franklin, but AIPCS is only allocated 288 square feet of dining space (i.e., 12% of the dining space at Franklin).

Even assuming these issues with the square footage are rectified, the District has still not actually identified the specific kinds of NTSS that it has allocated to AIPCS. More specifically, while the District has allocated 1,493 of interior room space, without identifying which interior rooms the District is intending to share with AIPCS, what those rooms are designed to be used for, and how those sharing arrangements would work,

Moreover, some of the 3,045 square feet of Interior Room space that AIPCS is entitled to needs to be allocated in the form of exclusive use teaching stations. These rooms are intended to be used for special education and administrative space, among other things – which do not lend themselves well to shared use as they require privacy for parent and student meetings and storage of confidential records, among other things. The District can address the illegalities identified above by allocating additional exclusive use classrooms for this purpose.

Again, although AIPCS appreciates the data provided by the District in Ex. C, the internal inconsistencies in the District’s data and the miscalculations in the Preliminary Proposal suggest that the District is not being transparent in its NTSS analysis. For all the foregoing reasons, the allocation of NTSS to AIPCS in the Preliminary Proposal does not comply with Prop. 39 or the Settlement Agreement.

Pro Rata Charge Worksheet

1. Improper Costs Included in Pro Rata Share Calculation

a. Custodial Services: While AIPCS 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.



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b. **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 AIPCS 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 AIPCS 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 AIPCS’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

Please see attached proposed revisions to the template facilities use agreement. We have attempted in this letter to enumerate all of our concerns with the District’s Preliminary Proposal; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term. AIPCS looks forward to the opportunity to discuss and negotiate these matters with the District moving forward.

Sincerely,

Maya Woods-Cadiz
AIMS K-12 Superintendent

Cc: Sarah Kollman, Young, Minney & Corr, LLP
AIPCS’s Board Members

