



American Indian
Model Schools
A School at Work!

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

**Re: *American Indian Public Charter School II
Response to District's Preliminary Proposal
Proposition 39 2019-2020***

Dear Ms. Murarka:

American Indian Public Charter School II ("AIPCS II" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2019 letter ("Preliminary Proposal") regarding AIPCS II's request for facilities under Proposition 39 ("Prop. 39") for the 2019-2020 school year.

The District's Preliminary Proposal is for a total of ten (10) teaching stations and one (1) specialized classroom at Webster, seven (7) teaching stations at Hoover, and seven (7) teaching stations at Prescott, as well as 45.5% shared use of the non-teaching station space at Webster, 37.4% shared use of the non-teaching station space at Hoover, and 54.9% shared use of the non-teaching station space at Prescott. The Preliminary Proposal is based on a projected in-District ADA of 551.95.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires AIPCS II to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and AIPCS II'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 for numerous reasons, including the failure to provide sufficient information regarding the allocation of teaching station, specialized classroom, and non-teaching space to AIPCS II, the artificial and illegal use of "weighting" factors in the calculation of the teaching station and specialized classroom, and non-teaching space to be allocated to AIPCS II, which results in an allocation of less space than AIPCS II is entitled to, double-counting allocated space as both teaching station space and specialized classroom space and then claiming that a charter school has been over-allocated space, failure to calculate the pro rata share in compliance with law, and thus an overall failure by the District to meet its legal obligations and provide AIPCS II with a reasonably equivalent allocation of space as required by law.



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AIPCS II 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.

Condition Analysis

A district must also determine whether a facility is reasonably equivalent by determining whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of comparison group schools. Pursuant to 5 CCR Section 11969.3(c), the District must assess "such factors as age (from latest modernization), quality of materials, and state of maintenance." The District must also assess the following factors:

1. School site size
2. The condition of interior and exterior surfaces
3. The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
4. The availability and condition of technology infrastructure
5. The condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use
6. The condition of the facility's furnishings and equipment
7. The condition of athletic fields and/or play area space

The Preliminary Proposal states that the District has evaluated data on the condition of the facilities at the comparison schools based on "site size (acreage) as well as data on the condition of the facilities based on information available from the Facilities Condition Index and Educational Adequacy Score, as part of the Jacobs Study" and references Exhibit C to the Preliminary Proposal. A review of this spreadsheet makes clear that the District has taken this information directly from the "Oakland USD Facility Adequacy Assessment" ("FAA") prepared through the Jacobs report, but not the Facilities Condition Assessment Report ("FCAR") which accompanied it. Rather, the information from the FCAR is reflected in the Facility Condition Index ("FCI") listed on page 7 of the Preliminary Proposal.

From the information available to us, the District's claim that the condition of Webster, Hoover and Prescott are reasonably equivalent to the condition of the comparison schools is not accurate.

Specifically, the District identifies individual, and then the "range" of FCI and Educational Adequacy Scores ("EAS") at the comparison schools, and then lists Toler Heights and Howard's scores. The District does not identify an average for all of these scores at the comparison schools



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(even though it used average scores elsewhere in the Preliminary Proposal), which would be a much more accurate tool for determining reasonable equivalence. It then states that “the sites offered to the Charter School are within the range of the comparison school group on the condition index, and the educational adequacy score.”

However, an actual assessment of whether the condition of the allocated sites is reasonably equivalent to the comparison schools would require an assessment of whether the condition of the three sites are actually even close to the comparison schools. The actual average FCI score for the comparison schools, for example, is 78%, and the average EAS is 50.25. Compared to Webster’s scores of 44% and 56.2, Hoover’s 56% and 47.4, and Prescott’s 21% and 49.4, the averages of the sites allocated to the Charter School are lower when it comes to FCI scores and slightly lower when it comes to EAS scores.

Therefore, the District’s Preliminary Proposal does not perform a mathematically logical analysis of the facility condition information required by the Implementing Regulations, but the Charter School accepts that the condition of its allocated sites are reasonably equivalent.

The District’s Teaching Station to ADA Analysis Is Illegal

All California public school students are entitled to learn in a classroom that is safe, that is not crowded with too many students, and that is conducive to a supportive learning environment. In accordance with the implementing regulations, the District must provide a facility to the Charter School with the same ratio of teaching stations to average daily attendance (“ADA”) as those provided to students in the comparison group of schools, as well as a proportionate share of specialized classroom space and non-teaching space, and are to be allocated at each grade level consistent with the ratios provided by the District to its students. (5 CCR Section 11969.3(b)(1).) There is no such thing as a fractional classroom for a single grade level of students and the allocation cannot be based upon the District’s “loading standard,” nor can it be based on an arbitrary and fabricated formula.

In responding to a charter school’s request for classroom space, a school district must follow a three-step process, as explained by the California Supreme Court in *California Charter Schools Association v. Los Angeles Unified School District* (2015) 60 Cal. 4th 1221 (“*CCSA v. LAUSD*”):

“First, the district must identify comparison group schools as section 11969.3(a) prescribes. Second, the district must count the number of classrooms in the comparison group schools using the section 1859.31 inventory and then adjust those classrooms ‘provided to’ students in the comparison group schools. Third, the district must use the resulting number as the denominator in the



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ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA.” (*Id.*, p. 1241.)

In calculating the number of classrooms that the District will make available to the Charter School, the District must count the number of classrooms in the comparison group schools and cannot use districtwide norming ratios. (*Id.*, p. 1236.)

Under 5 CCR Section 11969.3(b)(1), “[t]he number of teaching stations (classrooms) shall be determined using the classroom inventory prepared pursuant to California Code of Regulations, title 2, section 1859.31, adjusted to exclude classrooms identified as interim housing.” Classroom shall be provided “in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools.” (*Id.*)

In the *CCSA v. LAUSD* case, the Court explained further that classrooms used for preschool or adult education, or by other charter schools are not counted as classrooms provided to the District’s non-charter K-12 public school students. (*Id.*, p. 1240.) However, the Court held that “counting classrooms ‘provided to’ district students for the purposes of section 11969.3(b)(1) is not the same as counting only those rooms a district elects to staff with a teacher.” (*Id.*, p. 1241.) The Court reasoned that “[c]ounting only those classrooms staffed by an assigned teacher would effectively impute to charter schools the same staffing decisions made by the District. But there is no reason to think a charter school would necessarily use classrooms in the same way that the District does.” (*Id.*)

On a practical level, even if certain rooms are not used for classroom instruction, students nonetheless benefit from these additional rooms, either in the form of having additional space to use for break-out instruction or storage, or in having less crowded classrooms. Thus, the District is required by the Supreme Court’s ruling to count all of the classrooms provided to students in the District for K-12 classroom instruction regardless of whether the classrooms are staffed by teachers or not, and use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA. (*Id.*)

In prior years, the District used enrollment instead of ADA to calculate its ratios, and simply averaged the enrollment of all core classes at each comparison school (excluding all non-core classes). This year, the District’s analysis is opaque, does not provide for the transparency required by *CCSA v. LAUSD*¹, and does not identify all data points used by the District. Moreover, the data points the Charter School is able to extrapolate often are inconsistent with the exhibits the District has attached in support of its calculations. In addition, despite somewhat complying with

¹ “The regulations prescribe a specific, transparent method for deriving the ADA/classroom ratio to be applied in allocating classrooms to charter schools, thereby allowing charter schools and the public to readily verify whether a district has complied with the regulation.” (*CCSA v. LAUSD*, supra, 60 Cal. 4th at 1236.)



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the required Prop. 39 formula, the District has, in the second part of its required analysis, unfortunately engaged in a similarly illegal and manipulative tactic to reduce the number of classrooms it proposes to allocate to charter schools, by applying a weighting factor to its calculations that has no support in law or regulation.

The District's Calculation of the Number of Teaching Stations at the Comparison Schools is Inconsistent with its Supporting Documentation

Table 7a in the Preliminary Proposal identifies the “ADA per Classroom” at the comparison schools, as well as the “Projected ADA” for each site and the “Proportion of Total Comparison Group ADA,” which is the percentage of the total comparison school ADA that each comparison school’s ADA represents. The Preliminary Proposal states that “To determine the number of classrooms ‘provided to’ District students at individual District schools, the District has taken the additional step of creating an updated inventory of actual classroom allocation utilization at each comparison group school using educational adequacy assessment data that was provided by a contracted third party vendor (Jacobs) to OUSD during the 2017-18 school year. That inventory is provided as Exhibit C.” Exhibit C provides a list of each classroom and other space on each District site, categorizing each room/space according to categories:

1. Classroom (used just for general education classrooms)
 2. Laboratory (spaces identified as science labs, music and art space, computer labs, vocational education rooms)
 3. Instructional Support (spaces identified as for special education)
 4. Student Dining (cafeteria and eating spaces)
 5. Media Center (library space)
 6. Physical Education
 7. Assembly (multi-purpose rooms, auditoriums, theaters)
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Nothing in the Preliminary Proposal or the District's Exhibit C actually states the number of teaching stations that it used for each comparison school, but the Charter School believes it has been able to determine that number algebraically, by dividing the number in the Projected ADA column by the ADA per Classroom number for each school.

Comparison School	"ADA Per Classroom"	Projected ADA	Number of Teaching Stations Used in District "ADA Per Classroom" Calculation
Sankofa Academy	11.90	142.83	12
Emerson Elementary	15.28	259.77	17
Lincoln Elementary	23.96	718.90	30
Piedmont Avenue Elementary	16.64	299.57	18
Chabot Elementary	22.27	556.86	25
Hillcrest School	29.42	382.40	13
Peralta Elementary	23.17	324.41	14
Kaiser Elementary	22.81	250.96	11
District's "Weighted Average" ADA per Classroom	22.07		
Actual Average ADA Per Classroom	20.68		

Comparison School	"ADA Per Classroom"	Projected ADA	Number of Teaching Stations Used in District "ADA Per Classroom" Calculation
Hillcrest School	29.42	382.40	13
Claremont Middle School	24.54	466.24	19
Westlake Middle School	6.89	199.79	29
District's "Weighted Average" ADA per Classroom	22.95		
Actual Average ADA Per Classroom	20.28		



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A review of Exhibit C, however, suggests that the District has not counted certain teaching stations that are identified as general education classrooms in its calculation – as even when classrooms that are identified as being allocated to a charter school, or as being used for a purpose other than classrooms (for example, as a parent/community room or administrative room) are deducted, the number of teaching stations identified as being provided to students at the comparison school sites do not match up with the number of teaching stations apparently used by the District in its “ADA per Classroom” calculation. This is a violation of *CCSA v. LAUSD* and 5 CCR section 11969.3(b), which require the District to count all teaching stations provided to students.

The Charter School also reviewed the websites for each comparison school to evaluate the District’s claimed number of teaching stations, and actual usage of particular rooms on campus as something other than general education.

Thus, not only has the District potentially miscalculated the number of teaching stations on the comparison school campuses, but has not been transparent about its calculations, making it impossible for the Charter School to verify the District’s calculations. And there is also an even more fundamental problem with the District’s “ADA Per Classroom” calculation, one that appears to be a blatant effort by the District to manipulate its calculations so as to illegally reduce the number of teaching stations it allocates to charter schools.

Most charter schools have multiple comparison schools, and thus in order to determine the teaching station to ADA ratio that will be applied to a charter school’s projected in-District ADA to determine the number of teaching stations which a charter school must be allocated, the ratios for all of the comparison schools must be averaged by adding them all together, and then dividing by the number of comparison schools. This is commonly known as the “mean”² and is the most frequently used formula to calculate the average of a set of numbers as it identifies the most central value of a discrete set of numbers (again, the sum of the values divided by the number of values). This ensures that the allocation of teaching stations to a charter school most closely reflects the actual teaching station to ADA ratio across all comparison schools – which is the intent of Prop. 39.

² Other calculations to determine the average, the median (the middle number in a list of sorted numbers) and the mode (the most frequently occurring value in a set of values) are not mathematically appropriate here, as they would result in skewed allocations. Prop. 39 requires that facilities must be provided in the same ratio of teaching station space to ADA as available in a group of school district-operated comparison schools, and using medians or modes would likely result in a charter school receiving an allocation of teaching stations that does not reflect space available at the comparison schools, as one school with far more or far fewer teaching stations would have a disproportionate impact on the calculation.



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However, rather than simply calculating the average teaching station to ADA ratio at the comparison schools (as required by Prop. 39 and the formula set forth in *CCSA v. LAUSD*), the District, for mathematically fallacious reasons, first calculated the ratios of each comparison school, but then calculated a “weighted average” by applying a “weighting factor” to the ratios of the comparison schools which gave heavier weight to those District comparison schools with higher projected ADA in averaging the teaching station to ADA ratios of the comparison schools. In other words, the teaching station to ADA ratios of schools with higher ADA were given greater weight than schools with lower ADA.

There is no support for using a weighted average in this situation, as weighted averages are typically used when it is necessary to give certain values in a data set more weight to reflect the fact that those values are inherently more meaningful than other values in the set. For example, in calculating classroom grades, the grade on a final exam will typically be given more weight than a weekly exam to reflect the fact that what the student’s final classroom grade is intended to reflect (i.e., the student’s overall command of a subject matter) is best captured by the more comprehensive and integrated final exam, and not by weekly exams that are typically designed for an entirely different purpose (i.e., to ensure the student stays engaged in the subject matter and to flag any comprehension difficulties when they still may be timely remedied).

It is a violation of Prop. 39 to give certain larger and likely more crowded District schools more weight in the teaching station to ADA ratio calculation. Instead, each comparison school should be given the same weight, because Prop. 39 clearly does not contain any language even suggesting that some comparison schools are more important than others.

Instead, Prop. 39 simply states that the comparison group consists of schools with similar grade levels that serve students living in the high school attendance area in which the largest number of charter school students reside – in other words, the comparison group was developed to reflect the kinds and amounts of facilities charter school students would otherwise enjoy had they chosen to attend a traditional district school. (See, e.g. the Final Statement of Reasons accompanying the first set of Prop. 39 Implementing Regulations, which describes the comparison school analysis as trying to find a “middle ground” between a comparison group that consists of all district-operated schools and one that consists of one to three schools, as using all district-operated schools as the comparison group would “result in a standard that might be significantly different than the neighborhood schools the charter school students would otherwise attend. (This is because in large school districts the conditions in schools may vary widely from neighborhood to neighborhood)” whereas “[u]sing one to three schools would result in a group that is too small and would result in problems agreeing on the group selected.”) The State Board of Education (“SBE”) could have allowed school districts to employ a weighted average in calculating comparison group teaching stations, but did not. The District must comply with the SBE’s decision in this regard.



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One can only assume the District used this weighted average because schools with higher ADA are more likely to have more crowded classrooms and less empty space, whereas schools with lower ADA are more likely to be under-enrolled, and thus have lower class sizes and more empty rooms. We note neither the Preliminary Proposal nor any of the exhibits offer any explanation for how or why the District elected to engage in this sort of mathematical gymnastics. However, a review of Table 7a shows that in fact the comparison schools with higher ADA do have higher teaching station to ADA ratios. As such, the District's use of a weighted average for the teaching station to ADA ratio results in an allocation of fewer classrooms to the Charter School, as proven below.

Please note that the data in the "Number of Rooms Identified As General Education Classrooms In Exhibit C" column below does deduct rooms allocated to charter schools, but not rooms identified in Exhibit C as being used for some other non-classroom purpose (e.g. Administration, Community Room, etc.) because those rooms were excluded from the District's calculation of non-teaching station space and thus need to be added back into the reasonable equivalence calculation. As described more fully in the non-teaching station space calculation, the non-teaching station space calculation used the MKThink data, and deducted the square footage of any room categorized as a "classroom" in MKThink. As MKThink did not make any differentiation for classrooms used for non-general education purposes, all classrooms were deducted from the non-teaching station space calculation. This illegally removes numerous rooms from the District's reasonable equivalence analysis, and as such the Charter School has added it back in here.

Comparison School	Number of Teaching Stations Used in District "ADA Per Classroom" Calculation	Projected ADA	Corrected Number of Teaching Stations	Corrected Teaching Station to ADA Ratio
Sankofa Academy	12	142.83	16	8.93
Emerson Elementary	17	259.77	18	14.43
Lincoln Elementary	30	718.90	29	24.79
Piedmont Avenue Elementary	18	299.57	18	16.64
Chabot Elementary	25	556.86	24	23.20
Hillcrest School	13	382.40	13	29.42
Peralta Elementary	14	324.41	15	21.63
Kaiser Elementary	11	250.96	11	22.81
CORRECT AVERAGE Teaching Station to ADA Ratio				20.23



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Comparison School	Number of Teaching Stations Used in District "ADA Per Classroom" Calculation	Projected ADA	Corrected Number of Teaching Stations	Corrected Teaching Station to ADA Ratio
Hillcrest School	13	382.4	13	29.42
Claremont Middle School	19	466.24	19	24.54
Westlake Middle School	29	199.79	29	6.89
CORRECT AVERAGE Teaching Station to ADA Ratio				20.28

Therefore, AIPCS II is entitled to an allocation of 16.74, or seventeen (17) teaching stations for K-5, and 10.5, or eleven (11) teaching stations for 6-8, for a total of twenty-eight (28) teaching stations. As the Preliminary Proposal only allocates twenty-five (25) classrooms, the District's offer is missing at least three teaching stations.

The Preliminary Proposal Does Not Allocate Sufficient Specialized Classroom and Non-Teaching Station Space to AIPCS II

AIPCS II 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 Offer 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.³

As such, the District must allocate specialized classroom space, such as science laboratories, art rooms, computer labs, music rooms, weight rooms, etc., commensurate with the in-District classroom ADA of AIPCS II. The allocated site must include all of the specialized classroom space included across all of the different grade levels.

³ *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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In addition, the District must provide non-teaching station space commensurate with the in-District classroom ADA of AIPCS II 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 in the comparison group schools"). (5 CCR § 11969.3(b)(2)(C).) 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). Instead:

[W]hile a Proposition 39 analysis does not necessarily compel a school district to allocate and provide to a charter school each and every particular room or other facility available to the comparison group schools, it must at least account for the comparison schools' facilities in its proposal. A determination of reasonable equivalence can be made only if facilities made available to the students attending the comparison schools are listed and considered. And while mathematical exactitude is not required (cf. *Sequoia*, supra, 112 Cal.App.4th at p. 196 [charter school need not provide enrollment projections with "arithmetical precision"]), a Proposition 39 facilities offer must present a good faith attempt to identify and quantify the facilities available to the schools in the comparison group--and in particular the three categories of facilities specified in regulation 11969.3, subdivision (b) (i.e., teaching stations, specialized classroom space, and non-teaching station space)--in order to determine the "reasonably equivalent" facilities that must be offered and provided to a charter school. (*Bullis*, supra, 200 Cal.App.4th 296, 336.)

Here, the District has failed to count specialized classroom and non-teaching station space at the comparison schools, or has failed to account for those spaces in its offer. The District has also entirely failed to allocate any special education space to AIPCS II, thus interfering with the school's ability to provide needed and legally-mandated services to some of its most vulnerable students.



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a. Allocation of Specialized Classroom Space to AIPCS II.

The Preliminary Proposal does not allocate any specialized classroom space to AIPCS II, instead stating that “[t]he District’s calculation of the Charter School’s entitlement to specialized classroom space shows that the Charter School is entitled to approximately an additional 3,042 sqft of specialized classroom space. In order to meet this entitlement, the District will either identify additional specialized classroom space to include in the Final Offer of facilities or consider reasonable requests from the Charter School to reconfigure offered classrooms for use as specialized classroom space.

The District’s allocation of specialized classroom space (or more specifically, lack thereof) does not comply with the Implementing Regulations in several respects.

First, the District has counted the same classrooms as both teaching stations and specialized classrooms, thereby illegally reducing the amount of space it allocates to AIPCS II. More specifically, on page 2 of the Preliminary Proposal, the District states that it is allocating twenty-five (25) classrooms to AIPCS II, two of which are specialized classrooms. Next, on Page 9 of the Preliminary Proposal, the District calculates that it owes AIPCS II twenty-five (25) regular teaching stations. Then, on page 10, the District claims that its allocation of those same twenty-five (25) regular classrooms to AIPCS II includes 748 square feet of art space, and no square feet of science lab space or technology space. In other words, the District is using the same square footage to meet two entirely different obligations.

This is illegal. As outlined above, there are three separate kinds of space that must be analyzed and allocated by a district to a charter school, each with its own separate analysis: teaching station space, specialized classroom space, and non-teaching station space. (5 CCR section 11969.3(b); *Bullis Charter School v. Los Altos School Dist.*, *supra*, 200 Cal. App. 4th at 1063-1064 [“and in particular the three categories of facilities specified in regulation 11969.3, subdivision (b) (i.e., teaching stations, specialized classroom space, and nonteaching station space) [must be used to] determine the “reasonably equivalent” facilities that must be offered and provided to a charter school.) The District cannot have it both ways – here, either Room A-2-1 is allocated to AIPCS II as a regular teaching station and is counted against the District’s obligation to provide AIPCS II with twenty-nine teaching stations, or they are counted against the over 3,790 (at a minimum) square feet of specialized classroom space the District is required to provide to AIPCS II.

Because the District’s offer double counts these rooms, in this context the District’s offer is either deficient in the number of teaching stations it has offered AIPCS II, or the amount of specialized classroom square footage.



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Next, the District's offer combines different kinds of specialized classroom space into one lumped square footage that 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 AIPCS II.

Allocating general education classrooms to meet this obligation is not 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. By allocating the specialized classrooms for all these uses, the District is relegating AIPCS II students to second-class status, given that District students enjoy access to these separate, furnished and equipped spaces. "[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.)

Lastly, as noted in the prior section, the District has again illegally applied a weighting factor to its calculations of specialized classrooms space, thereby giving more weight to the comparison schools with higher ADA, which are more crowded and thus less likely to have specialized classroom space. Using a weighted average also contradicts the express language of the Prop. 39 regulations, which require the District to calculate "the per-student amount of specialized classroom space in the comparison group schools." (5 CCR § 11969.3(b)(2).) By applying a weighting factor, the District's formula does not calculate a per-student amount of specialized classroom space, and instead gives more weight to the space made available to students at larger comparison schools, and less for those at smaller comparison schools. Thus, the District may not apply a weighting factor to its allocation of specialized classroom space.



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Corrected Exhibit E Data Regarding Specialized Classroom Space (SCS) Entitlement⁴

Comparison School	Arts	Science	Tech	Total
Sankofa Academy	0.00	0.00	0.00	0.00
Emerson Elementary	0.00	0.00	0.00	0.00
Lincoln Elementary	0.00	0.00	1.17	1.17
Piedmont Avenue Elementary	0.72	0.00	0.00	0.72
Chabot Elementary	4.78	1.46	1.53	7.76
Hillcrest School	0.84	2.35	1.44	4.63
Peralta Elementary	0.00	0.00	0.00	0.00
Kaiser Elementary	0.00	0.00	1.79	1.79
District's "Weighted Average"	1.09	0.58	0.90	2.56
Corrected (Non-Weighted) Average	0.79	0.48	0.74	2.01

Comparison School	Arts	Science	Tech	Total
Hillcrest School	0.84	2.35	1.44	4.63
Claremont Middle School	4.77	1.99	1.95	8.70
Westlake Middle School	15.07	6.38	12.30	33.75
District's "Weighted Average"	6.09	3.21	4.39	13.69
Corrected (Non-Weighted) Average	6.89	3.57	5.23	15.69

Corrected Allocation of SCS

	Arts	Science	Tech	Total
Grades K-5 (338.72 ADA)	268.44	161.32	251.08	680.40
Grades 6-8 (213.23 ADA)	1,469.15	761.23	1,115.19	3,345.58
Total	1,737.59	922.55	1,366.27	4,025.98

⁴ While AIPCS II does not agree that the District may combine kinds of SCS in its allocation, in order to update the District's calculations to remove the weighting factor, for each of reference AIPCS II has used the District's categories in these tables.



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Thus, the simple removal of the District's illegal "weighting" factor results in an increased allocation to AIPCS II of 235 square feet of specialized classroom space.

AIPCS II is entitled to reasonably equivalent allocations of specialized spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized space at the school sites.

b. Allocation of Non-Teaching Station Space to AIPCS II

The Preliminary Proposal provides for the allocation of 45.5% of the non-teaching station space at Webster, 37.4% of the non-teaching station space at Hoover and 54.9% of the non-teaching station space at Prescott, claiming a total allocation of 32,318 square feet of interior space, and 82,214 square feet of outdoor space.

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 to AIPCS II in the Preliminary Proposal does not comply with Prop. 39 or its Implementing Regulations in several respects.

First, the District's calculation of the non-teaching station space at the comparison schools excludes all special education classrooms, as well as a number of other non-teaching station spaces that are housed in classrooms and were specifically removed from the teaching station to ADA ratio calculation. These spaces are not accounted for anywhere else in the Preliminary Proposal.

The District directs attention to Exhibit B, which includes a spreadsheet demonstrating how the District arrived at the "Interior NCS" calculation for each comparison school site. This spreadsheet shows that the District used data from the MKThink facilities master plan (from 2010) identifying each comparison school site's interior square footage, and simply deducted the square footage of each room identified as a "classroom" from the total interior square footage. The resulting number is used as the "Interior NCS" for each comparison school site.

This approach is problematic for several reasons. First, this appears to exclude all regular classrooms that are used for special education. As an example, the Jacobs report attached as Exhibit C ("Rooms Inventory" tab) to the Preliminary Proposal identifies all special education classrooms on District sites, including rooms used for "SpEd Special Day Class," "SpEd Resource Room," "SpEd Life Skills Lab," and "Resource Room." Many of these special education classes are located in regular classrooms (though some are located in smaller conference or other spaces).



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Yet when the District calculated its teaching station to ADA ratio calculation, it removed Special Day Class and Newcomer ADA from its calculation, and appears to have not counted special education classrooms in its tabulation of total teaching stations on the comparison school site. Exhibit E, tab “JRoomSCS” makes clear that these rooms were also not counted as specialized classroom space.

As an example, according to Exhibit C, Emerson has five Special Day Class classrooms and eighteen (18) Kindergarten, Primary (1-2), or Intermediate (3-5) classrooms, for a total of twenty-three (23) classrooms. The MKThinkRooms tab of Exhibit B, used to calculate non-teaching station space, lists twenty-two “classrooms” (five of which appear to have been categorized as special day class and one as library/media center space space in the Jacobs report) – whose square footage was taken out of the “Site Interior NCS” calculation.

Yet the District’s “ADA per Classroom” analysis in Table 7a assumed seventeen (17) classrooms for Emerson, not fifteen. Therefore, it appears the Special Day Class classrooms at Emerson are entirely absent from the District’s calculation of space provided to Emerson students.

Thus, it appears that special education classrooms provided to District students were removed or ignored in the calculation of space at the comparison schools. This is especially notable as the Preliminary Proposal makes no mention at all of special education, whether as an analysis of the special education space at the comparison schools, or to make an allocation of space to AIPCS II – and the District’s special day class ADA has been taken out of its “ADA per Classroom calculation”.

Prop. 39 clearly requires that a charter school receive an allocation of reasonably equivalent facilities and that district facilities be shared fairly between district and charter school students. Yet despite the fact that each District comparison school has more than one special education space, and several special education teachers/service providers, AIPCS II has not received any allocation of special education space. This is a clear violation of Prop. 39.

In addition, the District has failed to identify the specific non-teaching station space to be allocated to AIPCS II and its allocation of non-teaching station space based on the percentage of AIPCS II’s enrollment on the sites, as determined by the District, not the actual square footage of space which AIPCS II should be allocated under the law. The District claims that “a charter school’s allocation is considered to fall within reasonable equivalence standards if it falls within the range of the sqft/ADA ratios at the comparison schools.” However, the District has not and cannot provide any legal authority to support this claim, and such a position directly conflicts with the basic premise of Prop. 39 – that public school facilities must be shared fairly between all public school students, including those in charter schools. Prop. 39 also requires a reasonably equivalent allocation of each different kind of non-teaching station space, based on the square feet per ADA of these spaces at the comparison schools – nowhere does Prop. 39 or applicable case law state



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that falling within a “range” is acceptable. This would allow the District to allocate non-teaching station square footage at the far low end of a range that includes much higher numbers (as here, the range is from 90 square feet to 2,191 square feet per ADA) and claim compliance with Prop. 39.

Similarly, the Preliminary Proposal 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 AIPCS II 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 AIPCS II a percentage of unspecified non-teaching station spaces that exists at the allocated sites, which are not comparison schools.

In addition, the Preliminary Proposal contains no listing or description of the types of shared non-teaching spaces to which AIPCS II will be provided access at the offered sites beyond large categories of space, or any proposed schedule for AIPCS II’s use. The District’s failure to provide this basic information to AIPCS II precludes AIPCS II from engaging in timely and efficient negotiations with site principals regarding shared use schedules and prevents AIPCS II from assessing whether the Preliminary Proposal provides AIPCS II with access to all of the different types of non-teaching station space to which AIPCS II 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.) As such, AIPCS II expects that the District’s final offer will specifically identify all the non-teaching station space to be allocated to AIPCS II.

For all these reasons, the District’s allocation of specialized and non-teaching station space included in the Preliminary Proposal fails to comply with Prop. 39 and its Implementing Regulations. AIPCS II 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, and it anticipates receiving its full complement of the specialized and non-teaching space at the offered school sites.



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Pro Rata Charge Worksheet

As a preliminary matter, AIPCS II notes that the District has indicated that AIPCS II's "share of the custodial costs may be subject to reconciliation in the event that the District is required to increase staffing as a result of the Charter School's use and occupation of the District's site." To the extent that the District is indicating its intent to charge AIPCS II an additional amount for custodial services above what is included in the pro-rata share, this is not permitted by the Implementing Regulations.

1. Improper Costs Included in Pro Rata Share Calculation

a. **Facility Acquisition and Construction Costs:** The District's 2019/20 Fiscal Year Facility Use Rate Per Sq Ft Calculation, attached to the Preliminary Proposal, improperly includes \$6,760,492 in Facility Acquisition and Construction Costs (an increase from the \$70,324 the District listed for this line item in the prior year pro rata share calculation). It is the Charter School's understanding that these are costs associated with facility improvements performed by the District using money from the Proposition 39 Clean Energy Jobs Act.

As the District is aware, only "facilities costs that the school district pays with unrestricted general fund revenues includes those costs associated with plant maintenance and operations, facilities acquisition and construction" may be included in the pro rata share calculation. According to the California School Accounting Manual, "restricted programs or activities are those funded from revenue sources subject to constraints imposed by external resource providers or by law through constitutional provisions or enabling legislation." Prop. 39 Clean Energy Job Act funds are therefore restricted funds and may not be included in the pro rata share calculation.

b. **RRMA Transfer:** The District has included \$17,254,784 in facilities costs identified as "RRMA transfer from UR to resource 8150." Typically this transfer represents 3% of the District's annual total general fund budgeted expenditures. Last year the District claimed a transfer of \$13,048,405; in other words, the District's calculation suggests that this year it has increased its transfer amount by more than \$4 million. AIPCS II requests additional information to document that this is the correct transfer amount, as the District's current budget situation, in which the District has made and is making significant cuts, makes it seem less likely that its RRMA transfer amount would have increased between 2017-18 and 2018-19.



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c. **Police Services:** The District may not include police costs in its pro rata share calculation because AIPCS II provides its own security and alarm services, and also has been told by the District's Police Services that Police Services does not provide services to charter schools in the District. Pro rata share amounts are intended to reflect a charter school's portion of the District's facilities costs that AIPCS II uses. Because AIPCS II does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

d. **Insurance:** AIPCS II will provide and pay for the full spectrum of its insurance benefits, as required by its charter and the Facilities Use Agreement; the District has included the cost of its own property insurance on the facility. Including the District's insurance costs in the calculations not only double bills AIPCS II for a cost it is already paying for, it is requiring AIPCS II to pay for a cost that is actually the District's responsibility. Moreover, insurance is not contemplated under the Prop. 39 regulations as an acceptable "facilities cost," and Education Code Section 47614 specifically states that a charter school may not be charged for use of district facilities beyond the pro rata share.

e. **Custodial Services:** The District, as it has done in prior years, is requiring AIPCS II to use District custodial services, and is attempting to charge AIPCS II for these services separately from the pro rata share, by adding a "Custodial Use Fee" on top of the pro rata share. The District's Preliminary Proposal indicates that it may charge the charter school for its custodial costs under the current case, *California Charter School Association v. Oakland Unified School District*.

First, this case is not binding precedent on AIPCS II. Second, the ruling in the motion for summary adjudication referenced by the District was only related to whether the District could require charter schools to use District custodial services. However, whether or not the charter school accepts the District's custodial services, the District cannot charge those costs separately from the pro rata share. Instead, if the Charter School accepts the District's services, the District's district-wide custodial costs must be included in the calculation of the pro rata share and charged to the Charter School on a per-square-foot basis. Education Code § 47614(b)(1) is very clear that other than the pro rata share, "the charter school shall not be otherwise charged for use of the facilities."

f. **Utilities:** The District may not charge a separate "Utility Fee" for the same reason it cannot charge a separate custodial fee.

g. **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 II 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 II or facilities-related



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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 II’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.”

h. **Exhibit G:** Exhibit G to the Preliminary Proposal contains a statement that “The District is entitled under Cal. Admin. Code tit. 5, § 11969.7(c) to charge the charter school on a square footage basis for use of common areas such as the parking lot, exterior corridors, field space, playground, and blacktop, but is not doing so at this time. The District reserves the right to amend its calculation of the pro-rata share to include all “space allocated by the school district to the charter school,” and will provide the charter school notice and an opportunity to respond before implementing any changes. The full allocation of both interior and exterior space is outlined in the preliminary offer letter.”

The District cannot include the square footage of outdoor space (fields, asphalt, etc.) in its calculation of the amount owed unless it also included the square footage of the District’s total outdoor spaces when calculating the per-square foot charge. The intent of the pro rata share, as evidenced by the bond language of the Proposition 39 initiative, as well as the Statements of Reasons accompanying the first and second iterations of the Proposition 39 Implementing Regulations, was to determine the amount of money the District spent to operate and maintain its facilities on a per square foot basis. This calculation was performed by dividing the district’s total facilities costs (minus costs paid for by the charter school) by the “total space” of the District. A charter school would then be required to pay its fair share of the District’s facilities costs, based on the number of square feet it was allocated. In other words, the pro rata share charged to a charter school was expected to make the charter school’s use of a school district’s facilities as revenue-neutral as possible by reimbursing the school district for all costs it incurred in maintaining facilities use by the charter school. As further explanation, “pro rata” is defined by the American Heritage College Dictionary as “in proportion; according to a factor that can be calculated exactly.” Proportion is then defined as “a relationship between quantities such that if one varies than another varies in a manner dependent on the first.”



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If the District does not include the square footage of its outdoor space, field space, or blacktop space at any of its facilities in the calculation, even if it is including the costs it incurs to operate, maintain and repair the outdoor spaces, its pro rata share will not accurately reflect its per square foot costs incurred to operate and maintain its entire complement of facilities.

This is remedied, of course, by not including the outdoor space used by the Charter School in the cost charged to the Charter School. In order for the costs calculated by the District and paid for by the Charter School to actually be proportional, and thus reflect a pro rata share of the costs, the costs and square footage included in the calculation must reflect the costs and square footage being charged to the Charter School. If the District does not include its outdoor square footage in its pro rata share calculation, but then charges the Charter School for outdoor square footage, the District is causing one quantity to vary without adjusting the other quantity, and is overcharging the Charter School for its use of the facility, in violation of 5 CCR Section 11969.7.

The District must therefore either only charge the Charter School for the square footage of the buildings it uses, or if it wishes to charge the Charter School for exterior space, it must recalculate its pro rata share as set forth above.

Draft Facilities Use Agreement.

We are reviewing the draft Facilities Use Agreement; attached please find a non-exhaustive list of proposed changes.

1. **Section 1:** This section states “District agrees to allow use of the Premises at the School(s) by Charter School for the sole purpose of operating Charter School’s educational program in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Charter School’s educational program.” This section will need to be revised to include AIPCS II’s summer school, if any, and programs procured by AIPCS II through third party entities, e.g. after-school program providers.

2. **Section 1.4:** Prop. 39 only requires AIPCS II to comply with the District’s policies and procedures related to operations and maintenance, and not where actual school district practice substantially differs from official policies. (5 CCR Section 11969.4(b)).

3. **Section 3.1:** The Charter School does not agree to the District’s calculated pro rata share for the reasons set forth above.

4. **Section 9:** This section states that the District “shall not be liable for any personal injury suffered by Charter School or Charter School’s visitors, invitees, and guests, or for any damage to or destruction or loss of any of Charter School or Charter School’s visitors, invitees or guests’ personal property located or stored in the parking lots, street parking or the School Site,



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except where such damage is caused by the District's negligence or misconduct." This section will need to be changed to reflect that the District may not avoid liability for injuries or damage caused by its failure to maintain the parking spaces on the site. The District is required to provide AIPCS II with a facility that complies with the California Building Code, and to maintain the facility in compliance with the California Building Code. (5 CCR Section 11969.9(k).) It may not provide the parking lot in an "as-is" condition.

5. **Section 10:** The District should also make temporary facilities available to the Charter School for any of its program that is displaced while the District makes repairs. The Charter School would also prefer to see a higher dollar value than \$250,000 before the District can terminate the Agreement, such as \$400,000

6. **Section 12.3 and 12.4:** The District must make reasonable efforts to keep their materials, tools, supplies and equipment on the Premises in such a way as to minimize disruption to AIPCS II's program. The District must provide relevant scheduling information and reasonable notice to AIPCS II if it will be coming onto the facility to perform maintenance. In addition, AIPCS II wishes to perform its own custodial services at Webster, Hoover, and Prescott and as a result, does not agree to allow the District to enter the Premises to perform custodial services.

7. **Section 14:** While AIPCS II is willing to pay any taxes or assessments on its personal property, or modifications or improvements it performs on the facility, it may not otherwise be obligated to pay any costs to occupy the facility beyond the pro rata share. (Education Code Section 47614(b)(1).)

8. **Section 15:** AIPCS II wishes to perform its own cleaning and custodial services at Webster, Hoover, and Prescott. Therefore, the Final Offer will need to be revised to provide for this revision.

9. **Section 16.3:** This section requires the Charter School to be responsible for the maintenance of the Premises, which is inconsistent with all other language in the Agreement.

10. **Section 17:** If the comparison schools have a security system, then in order to provide a reasonably equivalent facility, the District must also provide the Premises with a security system. AIPCS II does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to AIPCS II taking possession of the Premises and prior to conducting its educational program on the Premises.

11. **Section 21.5:** Most insurance companies are now refusing to provide notice of cancellation to additional insureds. The Charter School would propose that this section be revised to require the Charter School to provide this notice to the District.



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

Maya Woods-Cadiz, Superintendent AIMS

Cc: Sarah Kollman, Young, Minney & Corr, LLP
American Indian Model School Board Members
