



American Indian
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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

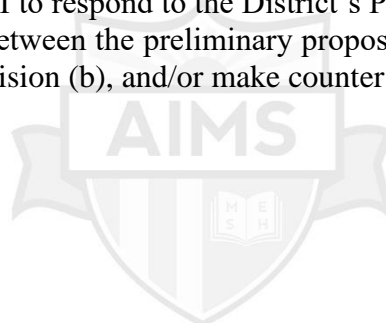
**Re: *American Indian Public Charter School II
Response to District's Preliminary Proposal
Proposition 39 2021-2022***

Dear Ms. Murarka and Ms. Krag-Arnold:

American Indian Public Charter School II (“AIPCS II” or “Charter School”) is in receipt of the Oakland Unified School District’s (“District”) February 1, 2021 letter (“Preliminary Proposal”) regarding AIPCS II’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 twelve (12) teaching stations as well as shared use of the art space (4,674 sq. ft. total), science lab space (12,224 sq. ft. total), tech space (5,985 sq. ft. total), assembly space (3,504 sq. ft. allocated), dining space (1,187 sq. ft. allocated), athletic (964 sq. ft. allocated), library space (1,094 sq. ft. allocated), operational space (7,606 sq. ft. allocated), interior room space (4,631 sq. ft. allocated), and exterior space (110,222 sq. ft. allocated) at the McClymonds campus, plus fourteen (14) teaching stations as well as shared use of the art space (7,256 sq. ft. total), science lab space (4,800 sq. ft. total), tech space (3,468 sq. ft. total), assembly space (1,860 sq. ft. allocated), athletic (1,124 sq. ft. allocated), library space (701 sq. ft. allocated), operational space (8,876 sq. ft. allocated), interior room space (3,625 sq. ft. allocated), and exterior space (128,612 sq. ft. allocated) at the Montera campus. Other than the campus maps attached to the Preliminary Proposal, there is no explanation of the specific “operational,” “interior space” or “exterior space” allocated to AIPCS II at each site. The Preliminary Proposal is based on a projected in-District ADA of 573.71.

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.





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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 Schools Association for a number of reasons, including the failure to provide reasonably equivalent, contiguous facilities near where AIPCS II requested to be located.

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.

Contiguous Facilities

The express provisions of Proposition 39 require that the District allocate facilities to the Charter School that are “contiguous, furnished, and equipped.” (Education Code Section 47614(b).) School districts must “begin with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust the other factors to accommodate this goal.” (*California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal. App. 4th 530, 548-549.)

Section 11969.2(d) further states that “[i]f the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.” In addition, “the district's governing board must first make a finding that the charter school could not be accommodated at a single site and adopt a written statement of reasons explaining the finding.” (5 CCR Section 11969.2(d).) “If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school.” (5 CCR Section 11969.3(a) [emphasis added].) This analysis is purely numerical; the Court in *Ridgecrest* noted that “all else being equal, a charter school should be housed at a single site if one exists with the capacity to handle all the school’s students.” (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal. App. 4th 986, 1000 [emphasis added].)

In both its Notice of Proposed Rulemaking File, and its Final Statement of Reasons, the State Board of Education specifically reiterated that 5 CCR Section 11969.3(d) was amended to make it clear that “when no school of the district serves grade levels similar to the charter school’s, a contiguous facility is an existing facility that is most consistent with the charter school’s grade levels” in order to bring the Regulations in line with the *Ridgecrest* decision. (Final Statement of Reasons, Page 20.) The Initial Statement of Reasons further clarified that in looking at the issue



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of a school district making facilities available to a charter school at multiple locations as discussed in the *Ridgecrest* decision, it was clear that an addition to the regulations was necessary to formalize two requirements: “. . . a school district is (1) not permitted to treat a charter school’s in-district students with less consideration than students in the district-run schools and 2) in allocating and providing access to facilities to a charter school, a school district must begin from the premise that the facilities are to be on a single school site . . .” (Initial Statement of Reasons, Page 3.)

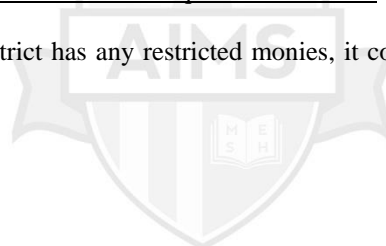
The Court in *Ridgecrest* also specifically acknowledged that “we have little doubt that accommodating [Ridgecrest Charter School’s] facilities request will cause some, if not considerable, disruption and dislocation among the District’s students, staff, and programs. But section 47614 requires that the facilities ‘should be shared fairly among all public school pupils, including those in charter schools.’” (*Ridgecrest*, 130 Cal. App. 4th at 1006.)¹ In other words, the District may not reject a potential contiguous site merely because it would potentially disrupt and dislocate District students.

In addition, while the District does not have to expend general fund monies to rent, buy, or lease facilities to meet this obligation, the law implicitly recognizes that a district must use all resources including any restricted monies (parcel taxes, bond monies, etc.) to meet this obligation.²

The District’s Findings of Fact in support of its non-contiguous allocation of space to AIPCS II provides the following explanation of how the District determined that AIPCS II could not be accommodated at a single site: “American Indian Public Charter School II is estimated to be eligible for 26 classrooms and specialized space. The charter school’s entire in-District ADA cannot be accommodated at a single site.” Based on the foregoing explanation and the District’s list of “Potential District Sites with Projected Capacity for 2021-22” that precedes the foregoing explanation in the District’s Findings, it appears that the District only considered whether AIPCS II’s entire in-District enrollment could be accommodated in the *extra space* that exists at any one District site. This practice of only considering whether a charter school may be accommodated in the extra space that exists at District sites rather than determining whether any District site is large enough to accommodate a charter school’s projected in-District enrollment is most consistent with

¹ The *Ridgecrest* court also stated that “In discussing the timeframe within which a new charter school must submit a facilities request (Regs., § 11969.9, subd. (a)), the Department explained: ‘This section is intended to ensure that a charter school is or has a reasonable chance of becoming a viable concern before requiring the school district to plan modifications to its programs to accommodate the charter school. *For example, accommodating a charter school might involve moving district-operated programs or changing attendance areas.*’ (Italics added.) Plainly then, the regulations contemplate that 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.” (*Ridgecrest*, 130 Cal. App. 4th at 1000 [emphasis added].)

² Therefore, as an example if the District has any restricted monies, it could put additional portables on one of its school sites to meet this obligation.





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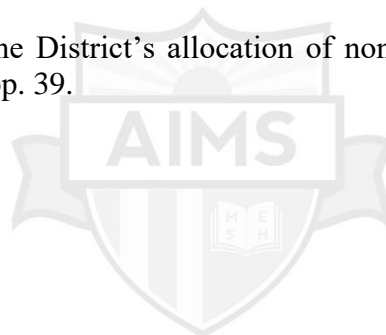
Assembly Bill 544, which added a provision to the Act giving charter schools the right to use district facilities that are “not currently being used ... for instructional or administrative purposes.” (Former § 47614.) Under that provision, a charter school was entitled to use district facilities only if that would not interfere with the district’s use of them. However, “[t]his restriction was effectively eliminated by Proposition 39.” (*Ridgecrest, supra*, at p. 999.) As stated above, the District may not reject a potential contiguous site for AIPCS II just because it would potentially disrupt and dislocate District students. As stated in *Ridgecrest*, the District “must at least *begin* with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust the other factors to accommodate this goal.” (*Ridgecrest, supra*, at p. 1002.) There is no evidence that the District has done so here. Rather, after looking at the extra space available at its District sites, the District decided to locate AIPCS II across two separate sites. Since none of the District comparison schools are spread across two sites, the District’s placement of AIPCS II at two separate sites fails to provide AIPCS II with reasonably equivalent facilities and relegates AIPCS II’s students to second class status.

In addition, the District’s Findings do not indicate the District considered redrawing District attendance boundaries, increasing class sizes or the negative impact on the safety of AIPCS II’s students that would occur if they are required to travel between two separate school sites. Instead, the District’s Findings focus primarily on the impact to District students – with no analysis of the safety issues facing AIPCS II’s students. Indeed, the District’s Findings indicate that AIPCS II cannot be located at Piedmont Elementary, one of AIPCS II’s requested sites, because Piedmont Elementary “has a specific attendance area it serves and is the only neighborhood elementary school in that area.” However, the Findings fail to acknowledge that Emerson Elementary is less than a mile away from Piedmont Elementary whereas the District has proposed to split AIPCS II across two sites that are approximately seven (7) miles away from each other, one of which is a high school that doesn’t serve the grade levels served by AIPCS II.

AIPCS II also disagrees with the contentions in the District’s Findings that none of the sites requested by AIPCS II have “underutilized” space or could accommodate AIPCS II’s projected in-District enrollment. For example, to support its refusal to provide AIPCS II space at Westlake, the District simply stated, “This site also already houses two schools: Westlake and MetWest. Furthermore, Westlake also serves a particularly vulnerable student population,” without any further analysis of the facilities at Westlake. Indeed, based on the “Schools” tab on Ex. C, Westlake currently has a significantly lower teaching station to ADA ratio than both sites at which the District proposed to locate AIPCS II (18.2 at Westlake compared to 48.45 at McClymonds and 33.06 at Montera).

For all these reasons, the District’s allocation of non-contiguous facilities to AIPCS II violates the requirements of Prop. 39.

Comparison Schools





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The Prop. 39 Implementing Regulations provide an analysis by which a school district must determine whether a facility is reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district. First, pursuant to 5 CCR Section 11969.3(a), the District must identify a comparison group of district-operated schools with similar grade levels to AIPCS II.

5 CCR Section 11969.3(a) defines the process for identifying comparison schools as follows:

The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area...in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested.

The Preliminary Proposal indicates that the District determined that the Oakland Tech attendance area is the high school attendance area in which the largest number of students of AIPCS II reside. The Preliminary Proposal identified the following comparison schools for AIPCS II: Chabot, Emerson, Hillcrest, Lincoln, Peralta, Piedmont, Sankofa, Claremont and Westlake. Based on the District's attendance boundary maps, Glenview Elementary @ Santa Fe is also located within the Oakland Tech attendance area, but Glenview Elementary @ Santa Fe was excluded from the District's comparison group. Therefore, the Preliminary Proposal does not appear to be based on the correct comparison schools.

Location of Allocated Space

Pursuant to Education Code § 47614(b), the District is required to make "reasonable efforts" to provide AIPCS II "with facilities near to where the charter school wishes to locate." Here, the Preliminary Proposal proposes to locate AIPCS II across two sites that are approximately seven (7) miles apart. Neither of the sites are located within the high school attendance area in which the largest number of AIPCS II students reside, and one of the sites, Montera, is not anywhere near where AIPCS II requested to be located.

Based on the District's "Potential District Sites with Projected Capacity for 2021-22" that is included in the District's Findings of Fact, it appears there are at least 12 classrooms that are available at Westlake and 7 classrooms that are available at West Oakland Middle, which are two one of AIPCS II's requested sites and much closer to McClymonds and the general area where AIPCS II requested to be located than Montera. Although AIPCS II believes one or more of its requested schools is large enough to accommodate AIPCS II's projected in-District enrollment for



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2021-22, if the District had to split AIPCS II across two campuses, at the very least, the District could have allocated space to AIPCS II at one of its requested sites given the amount of available space at Westlake and West Oakland Middle School per the District's capacity list.

The Preliminary Proposal Does Not Allocate Reasonably Equivalent Specialized Classroom Space 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 Proposal must include "a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space." (5 CCR § 11969.3(b)(2).) The amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

1. the grade levels of the charter school's in-district students;
2. the charter school's total in-district classroom ADA; and
3. the per-student amount of specialized classroom space in the comparison group schools.³

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 II. 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 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/non-teaching space in the comparison group schools). (5 CCR § 11969.3(b)(2)-(3).) Moreover, just because one kind of specialized

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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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 Preliminary Proposal appears to exclude some SCS that exists at the comparison schools based on the spreadsheets included in Ex. C. First, it appears that the District excluded small SCS areas from its SCS calculation and instead claims to have included those spaces in the non-teaching station space amount. The Settlement Agreement between the District and CCSA does not permit the District to exclude small SCS areas from the SCS analysis, and this practice is not consistent with the requirements of Prop. 39, which requires that the District allocate SCS based on the per-student amount of SCS at the comparison schools.

Moreover, the Preliminary Proposal does not clearly explain the amount of SCS that AIPCS II is actually allocated. Rather, the Preliminary Proposal states, “The co-located schools at the McClymonds and Montera campuses will develop a shared access schedule for the amount of SCS the Charter School is entitled to based on each co-located school’s ADA.” Based on the amount that the District appears to be charging AIPCS II for SCS, AIPCS II assumes that AIPCS II would be allowed shared use of up to approximately 33% of the SCS at each of the allocated sites and the District will adjust the pro rata share costs based on AIPCS II’s actual shared use allocation.

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

The Preliminary Proposal states that the Shared Use Allocation is “Calculated as Total Site NCS x AIPCS II’s Proportion of Site In-District ADA. AIPCS II’s Proportion of Total Site In-District ADA at McClymonds is calculated as $264.77 / (264.77 + 231.73 + 326.45) = 32.17\%$ and its Proportion of Total Site In-District ADA at Montera is calculated as $308.94 / (308.94 + 611.06) = 33.58\%$.” However, the calculations in Table 8 demonstrate that is not the case for all types of NTSS. For example, Table 8 indicates there is 15,737 square feet of assembly space at McClymonds, but AIPCS II is only allocated 3,504 square feet of assembly space at McClymonds (i.e., 22% of the dining space at McClymonds). On the other hand, when AIPCS II’s entitlement to a certain category of NTSS actually exceeds its percentage of the site ADA (32.17% at McClymonds and 33.58% at Montera), the District has reduced AIPCS II’s allocation of that category of NTSS to 32.17%/33.58%. For example, although AIPCS II is entitled to at least 1,980 square feet of library space, it was only allocated 32.17% of the library space at McClymonds and 33.58% of the library space at Montera for a total allocation of only 1,795 square feet of library space (even though more than 2,000 square feet of library space exists at each site). The District is not permitted to apply different methods of allocation to different categories of NTSS space



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depending on whether it benefits the District regardless of the detriment it causes to AIPCS II. Doing so is unreasonable and inconsistent with Prop. 39.

Lastly, in its allocation of interior rooms, the District has allocated a square footage of interior rooms but has not actually identified the interior rooms to be provided to AIPCS II at either campus. As interior rooms include administrative space, special education space, conference rooms, and other small classrooms, AIPCS II assumes that the District does not intend to have AIPCS II share offices and special education spaces, as well as the other spaces, with the McClymonds and Montera programs, but rather would allocate exclusive use rooms to AIPCS II to meet this requirement. As such, AIPCS II believes the Preliminary Offer should have identified the specific interior rooms that the District intends AIPCS II to use, and requests that the District provide this information to AIPCS II as soon as possible.

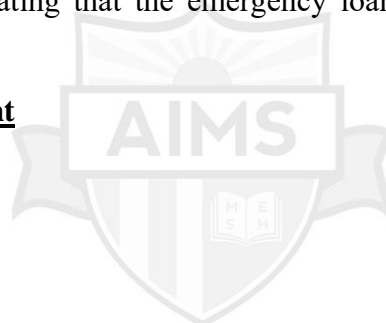
Pro Rata Charge Worksheet

1. Improper Costs Included in Pro Rata Share Calculation

a. **Custodial Services:** While AIPCS II 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.

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 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 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."

Draft Facilities Use Agreement





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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 II 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 II's Board Members

