



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 High School  
Response to District's Preliminary Proposal  
Proposition 39 2021-2022***

Dear Ms. Murarka and Ms. Krag-Arnold:

American Indian Public High School ("AIPHS" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2021 letter ("Preliminary Proposal") regarding AIPHS'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 fifteen (15) teaching stations at the Lakeview campus, as well as exclusive use of the Assembly space on the site, 9,516 of Operational space, 1,742 of Interior room space, and 73,760 square feet of outdoor space (with no further detail provided other than the enclosed map). The Preliminary Proposal is based on a projected in-District ADA of 401.06.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires AIPHS to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and AIPHS'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 AIPHS, and questions around the manner in which the District counted the number of special day classes at one of the comparison schools, and thus the District has failed to provide AIPHS with a reasonably equivalent allocation of space as required by law.

AIPHS recognizes that it has located at Lakeview for a number of years already, and that Lakeview, as a former elementary school site currently also used for District administrative offices,



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does not provide much of the specialized and non-teaching station space available at the District's other schools. It also recognizes that it specifically requested to be located at Lakeview. However, the District's Preliminary Proposal was very distressing to AIPHS, as it takes away two teaching stations currently used by AIPHS, but provides no allocation of specialized classroom space and a minimal allocation of non-teaching station space, nor does it offer any proposal for how to address the lack of these spaces as specifically contemplated by the Settlement Agreement – such as re-allocating the two teaching stations to AIPHS as specialized classroom space with AIPHS' written agreement. As such, while AIPHS has noted the legal deficiencies of the District's Preliminary Proposal below, it is AIPHS' preference to remain in the space it currently occupies at Lakeview for the 2021-22 school year and it proposes to enter into a written agreement with the District to that effect.

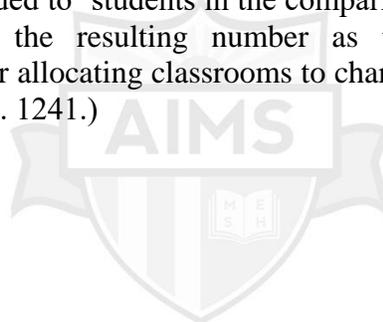
AIPHS requests that the District's final offer of space be modified in accordance with Prop. 39 and its Implementing Regulations. We remind you that under California law the District must give the same degree of consideration to the needs of charter school students as it does to the students in District-run 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 District's Teaching Station to ADA Analysis**

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).)

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





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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.) Classrooms 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.” (5 CCR Section 11969.3(b)(1).)

A review of the number of special day classes (“SDC”) excluded from the Oakland High School (“OHS”) data, as well as the number of SDC ADA projected, for the 2021-22 school year, as compared to the data provided for 2020-21 school year, reveal certain concerning data points. This information is critical, too, given that it significantly increases the teaching station to ADA ratio claimed for Oakland High School, from 23.67 just two years ago to 38.09 for 2021-22, thus resulting in an allocation of two (2) fewer teaching stations to the AIPHS with no concurrent allocation of specialized classrooms or interior room classrooms, which the school needs to operate its program.

More specifically, for 2021-22, the District is projecting that OHS will have 12 SDC classrooms; in 2020-21 it projected 7 SDC classrooms for OHS. Yet in 2020-21, the District projected a SDC ADA of 71.49 and for 2021-22, the District is projecting only a few more SDC students – 79.95.

	<u>Projected Non-SDC ADA</u>	<u>Projected SDC ADA</u>	<u>SDC Rooms</u>	<u>Classrooms on Site</u>	<u>Teaching Stations Claimed by District</u>	<u>Teaching Station to ADA Ratio</u>
<b><u>2021-22</u></b>	1599.93	79.95	12	54	42	38.09
<b><u>2020-21</u></b>	1427.88	71.49	7	51	44	32.45
<b><u>2019-20</u></b>	1448.3	77.06	8	70	62	23.36

It appears the reduction in teaching stations from 62 to 44 over the last two years may be the result of a number of rooms being excluded from the teaching station count due to their categorization being changed. This does not explain, however, the need for so many additional SDC rooms.

The District’s analysis raises significant questions as to why it requires five (5) additional SDC rooms when it only projects approximately 8 additional SDC students in 2021-22. Given that this analysis results in a problematic reduction in AIPHS’ allocation of teaching stations with no attendant increase in its allocation of interior room space, the District’s offer of fifteen teaching stations is not legally compliant.





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**The Preliminary Proposal Does Not Allocate Any Specialized Classroom Space to AIPHS, and Allocates Less Non-Teaching Station Space than Required by Law.**

AIPHS 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.<sup>1</sup>

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 AIPHS. 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 AIPHS 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).

a. Allocation of Specialized Classroom Space.

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<sup>1</sup> *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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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 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.

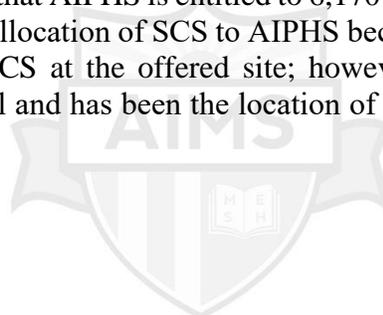
The section also includes the following language:

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 not ignore its legal obligations under Prop. 39 and just not allocate 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, nor does the Preliminary Proposal make any such proposal. Instead, it determines that AIPHS is entitled to 6,170 square feet of SCS, and then simply states that it is not making any allocation of SCS to AIPHS because “[t]here is no designated Arts, Science Lab, or Technology SCS at the offered site; however, the offered site was explicitly requested by the Charter School and has been the location of the Charter School’s operations for several years.”





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To be clear, just because AIPHS requested to be located at Lakeview does not constitute a written agreement between the District and AIPHS regarding SCS, nor does it somehow relieve the District of its legal obligation to allocate reasonably equivalent SCS to AIPHS. Thus, the Preliminary Proposal does not comply with Prop. 39 or the Settlement Agreement.

**b. Allocation of Non-Teaching Station Space to AIPHS**

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 AIPHS 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.

AIPHS is entitled to a reasonably equivalent allocation of the seven categories of NTSS, the square footage of which is set forth in Table 9 of the Preliminary Proposal. But as Table 9 makes clear, the Preliminary Proposal significantly under-allocates NTSS to AIPHS to the tune of tens of thousands of square feet, but provides no solution or alternative for its failure to comply with the law and the Settlement Agreement other than saying “As shown in the table above, the Charter School’s allocation is below the comparison group average in several<sup>2</sup> categories; however, the offered site was explicitly requested by the Charter School and has been the location of the Charter School’s operations for several years.”

Again, simply because AIPHS requested to be located at Lakeview does not relieve the District of its obligation to comply with Prop. 39 and the Settlement Agreement.

AIPHS will take this opportunity to state, however, that it is open to addressing the lack of SCS and NTSS allocated in the Preliminary Proposal by entering into a written agreement with the District whereby it retains all of its existing space on the Lakeview campus, including the two (2) teaching stations that it currently occupies but which the Preliminary Proposal does not allocate to AIPHS for the 2021-22 school year, as well as two additional office spaces located on the 1<sup>st</sup> floor and converting part of the parking lot into a basketball court. This will allow AIPHS to not only operate its traditional classrooms, but also offer special education services, technology space, and art and music space for its students, among other things.

**Pro Rata Charge Worksheet**

**1. Improper Costs Included in Pro Rata Share Calculation**

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<sup>2</sup> In fact, the allocation is below the comparison school average in every category.



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**a. Custodial Services:** While AIPHS 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 AIPHS 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 AIPHS 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 AIPHS'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.

AIPHS 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  
AIPHS's Board Members

