



Education for Change Public Schools

January 1, 2021

VIA EMAIL

Kelly Krag-Arnold, Specialist
Office of Charter Schools
Oakland Unified School District
1000 Broadway, Suite 300
Oakland, California 94607

***Re: Latitude 37.8 High School
Response to District ADA Objections
Proposition 39 2021-22***

Ms. Krag-Arnold:

Latitude 37.8 High School (“Latitude” or the “Charter School”) is in receipt of Oakland Unified School District’s (“District”) December 1, 2020 letter, in which the District objects to the Charter School’s in-District classroom average daily attendance projection (“in-District ADA”) submitted with its November 1, 2020 request for Proposition 39 facilities for the 2021-2022 school year (“Request”). In the letter, the District objects to the Charter School’s projected in-District classroom ADA of 207.81 and asserts a counter-projection of 167.79 based solely upon its assertion that the Charter School “slightly overprojected its 2020-21 enrollment in its previous Prop 39 request” (Letter at p. 1) and because “the Charter School is projecting a substantial increase in its 9th grade cohort in 2021-22.” (Letter at p. 2) However, and as an initial matter, the Charter School’s in-District ADA projection for 2021-22 and any projected increase is based, in part, on the fact that the Charter School is matriculating into and enrolling a new 12th grade class in 2021-22.

The District’s objections are unreasonable and inconsistent with the purpose and intent of Proposition 39. Accordingly, the purpose of this letter is to respond to the District’s objections as required pursuant to California Code of Regulations, title 5, section 11969.9, subdivisions (d) and (e) (collectively, along with sections 11969.1-10, the “Prop 39 Regulations.”) For the reasons set forth below, the Charter School reaffirms its projection of in-District classroom ADA of 207.21 for the 2021-22 school year.^[1]

Applicable Law

The Prop 39 Regulations state that a charter school must provide: (i) “reasonable projections of in-district and total ADA and in-district and total classroom ADA;” (ii) “a description of the

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methodology used for the projections;” and (iii) “if relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), *documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy.*” (Cal. Code Regs., tit. 5, § 11969.9, subd. (c); emphasis added.) Therefore, as long as the Charter School’s projections are *reasonable*, the District must accept and allocate facilities based on those ADA projections.

Indeed, “reasonable” is defined in Black’s Law Dictionary as “fair, proper, or moderate under the circumstances.” **In other words, the Charter School is not required to provide a one-to-one correlation of names and addresses for each unit of ADA it projects; it need only provide documentation to show its projections are “reasonable” or fair, proper, or moderate under the circumstances.**

The Court in *Sequoia Union High School Dist. v. Aurora Charter High School* provided further clarification on this issue:

By modifying “projection” with the adjective “reasonable” (Ed. Code § 47614, subd. (b)(2)), the statute necessarily implies the charter school must offer some explanation in its facilities request for the basis for its projection. *However, the statute does not require the school to demonstrate arithmetical precision in its projection or provide the kind of documentary or testimonial evidence that would be admissible at a trial. Rather, the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space. (Sequoia v. Aurora, (2003) 112 Cal.App.4th 185, 195-96; Ed. Code § 47614, subd. (b)(2); emphasis added.)*

This reasoning was subsequently memorialized in Section 11969.9(c)(1)(C) of the Prop 39 Regulations.

In this case, the Charter School believes that the District’s objections are demanding a level of one-to-one correlation and arithmetical precision that is not consistent with the intent of the Prop 39 Regulations. The supporting documentation and methodology presented by the Charter School must show that its projections are reasonable – not exact.

Furthermore, the Final Statement of Reasons approved by the State Board of Education (“SBE”) and released with the new Proposition 39 Regulations state that “documentation of the number of in-district students meaningfully interested in attending the charter school is sufficient to determine the reasonableness of the projection though the documentation *need not be verifiable for precise arithmetical accuracy,*” and provides additional clarity on the matter of what types of documentation are considered sufficient:

Submission to the district of the names and addresses of meaningfully interested students and parents would be limited to new charter schools (that have no historical information on enrollment and attendance) and continuing schools to

the extent of anticipated [*substantial*] increases in enrollment. Required information would be limited to *names and addresses*, consistent with the statement of legislative intent in *EC* Section 49073.5 to “minimize” the release of telephone numbers “in the absence of express parental consent.” Names and addresses should be sufficient foundational information for school districts to determine the reasonableness of ADA projections. (Final Statement of Reasons at p. 6; emphasis added.)

The California Court of Appeals also provided a more recent analysis in *California School Bds. Assn. v. State Bd. of Education*, confirming that a request for an existing charter school that projects a substantial increase in enrollment:

“...must provide ‘*some explanation*’ and ‘a showing’ of the charter school’s projected ADA because the facilities request must still explain the charter school’s methodology, break down its projections into grade level and district school that would otherwise be attended, and the district can access the charter school’s prior year documentation to evaluate the request. If the charter school overestimates its projected ADA, the district will be entitled to reimbursement for over allocated space. (Ed. Code, § 47614, subd. (b)(2).) ... Considered together, the provisions of Regulations, section 11969.9 require a charter school to provide a school district with *some explanation*, based on a documentary showing, of its ADA projections. Although the School District Associations argue more information is necessary, we see no reason to believe, on this facial challenge to the regulation, that the information required by section 11969.9 will be insufficient to allow a school district to carry out its duties to evaluate the facilities request and provide reasonably equivalent facilities.” (*California School Bds. Assn. v. State Bd. of Education*, (2010) 191 Cal.App.4th 530, 564-65; emphasis added.)

In sum, while the Charter School is required to provide *some explanation* for its projections, as well as documentation to support its projections, this documentation need not be a one-to-one match for each unit of projected ADA, and must only be “sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy.*” (Cal. Code Regs., tit. 5 § 11969.9, subd. (c)(1)(C); emphasis added.)

The Charter School’s In-District ADA Projection is Reasonable and is Supported by Adequate Documentation

The Charter School submitted adequate documentation to support its projected in-District ADA of 207.81. Specifically, at the time of its Request on November 1, 2020, the Charter School provided the District with information describing 120 *current* 9th–11th grade in-District students who will return and matriculate to 10th–12th grade in 2021-22. Additionally, the Charter School reasonably expects 100 *new* in-District students as follows:

9th Grade (2021-22)

- 100^[JJR1] new in-District 9th grade students for 2021-22 toward a reasonable projection of 100 in-District students (e.g., the Charter School’s current 2020-21 9th grade class has 47 in-District students, but had over 239 9th grade applications last year and prior to that had over 300 9th grade applications. The size of the class was limited by facilities considerations, not due to demand.

10th Grade (2021-22)

- 47 existing 9th grade in-District students matriculating toward a reasonable enrollment projection of 47 10th grade in-District students for 2021-22.

11th Grade (2021-22)

- 41 existing 10th grade in-District students matriculating toward a reasonable enrollment projection of 41 11th grade in-District students for 2021-22.

12th Grade (2021-22)

- 32 existing 11th grade in-District students matriculating toward a reasonable enrollment projection of 32 12th grade in-District students for 2021-22.

In other words, more than nine months before the start of the 2021-22 school year and several months before the completion of the Charter School’s recruitment and enrollment period, the Charter School had already provided a reasonable description for 76% (167 of 220)^[2] of its projected in-District ADA. Although the Charter School is not required to provide documentation amounting to a one-to-one correlation of its projected in-District ADA, the Charter School’s already 76% reasonable identification support rate strongly indicates that the Charter School will achieve its enrollment projections by the start of the 2021-22 school year.

Any suggestion by the District that the Charter School’s current 2020-21 ADA is the primary data that may be considered by the District in evaluating the reasonableness of the Charter School’s projections is simply incorrect. As the District is aware, the Charter School’s 2020-21 enrollment was impacted not only by a global pandemic, but also by the emergency circumstances at the beginning of the school year where Charter School students had to vacate their then-current campus as a result of safety issues and had to be bussed to Merritt College, the school’s temporary home. This meant that in addition to already having to travel many miles to the original school location, students then had to get on a bus for an additional 20 minute drive to get to their actual school site. Given the high needs population that the Charter School serves, it is not surprising that the Charter School lost a number of its enrolled students at the start of the 2020-21 school year, for reasons it could not have predicted. In each of its two years of operation, the Charter School has received many more applications than it had space for, and its enrollment has increased significantly, and as the unique conditions that have plagued 2020-21 will not exist for 2021-22, any slight lull in the Charter School’s ADA will no longer exist.

The District’s Counter-Projection of 167.79 is Arbitrary and Unreasonable

For all the reasons set forth above, the Charter School believes that its in-District classroom ADA projection of 207.81 is reasonable and cannot unreasonably be reduced to 167.79. As described, the Charter School originally provided the District with reliable descriptions reflecting at least 120 *current* 9th–11th grade in-District students who will return and matriculate to 10th–12th grade in 2021-22. It is unreasonable for the District to discount these students and assume that less than 100% of these current students will return and matriculate to the 10th-12th grades in 2021-22 based on purported prior year retention rates. Indeed, the Charter School’s support need not be a one-to-one match for each unit of projected ADA, and must only be “sufficient for the district to determine the reasonableness of the projection, but ... *need not be verifiable for precise arithmetical accuracy.*” (Cal. Code Regs., tit. 5 § 11969.9, subd. (c)(1)(C); emphasis added.) The fact that the District’s own purported in-District ADA projection for the Charter School’s 10th-12th grades in 2021-22 is 103 students (just 17 students less than the Charter School’s projection across all three grade levels) demonstrates the underlying reasonableness of the Charter School’s projection. As such, the District’s methodology for arriving at its counter-projection of 167.79 in-District ADA is unreasonable and inequitable and assumes, without any justification, that the Charter School will not receive any Meaningfully Interested/Intent to Enroll forms or Enrollment Applications between now and August 2021 while the Charter School completes its recruitment and enrollment efforts.

Furthermore, the District’s reference that the Charter School “slightly overprojected its 2020-21 enrollment in its previous Prop 39 request” (Letter at p. 1) does not establish a lawful basis upon which the District can unilaterally reduce the Charter School’s projections, particularly where, as the District acknowledges, the difference was a mere 15 in-District students, or just 14.10 in-District ADA for 2020-21. Additionally, at the time of the Charter School’s Request and the District’s letter, the 2020-21 school year was just underway and less than 1/3 complete and does not yet reflect accurate year-long enrollment data for 2020-21. Even more so, the Charter School’s projection for 2020-21 was made several months before the onset of the global COVID-19 pandemic, which, as it has upon the District’s operations, significantly impacted the Charter School. These considerations, including the substantial demand for 9th grade at the Charter School as evidenced by an average of more than 250 applications in the most recent years, and given how accurate the Charter School’s 2020-21 projections actually were, reasonably indicate that the Charter School’s 2021-22 are reasonable and likely to be achieved by the start of the 2021-22 school year. Therefore, the District’s reduction of the Charter School’s projected ADA is unreasonable.

Conclusion

Based on the foregoing, the Charter School has responded in detail to the District’s objections and addressed the District’s concerns. Furthermore, the Charter School has provided reliable documentation and clarifying information that more than reasonably supports the Charter School’s in-District ADA projections and has demonstrated how the District’s projections are unreasonable. Accordingly, the Charter School anticipates that the District’s Preliminary Offer will allocate reasonably equivalent facility space sufficient to accommodate the school’s total projected in-District classroom ADA of 207.81.

We look forward to resolving any remaining concerns and receiving the District's written Preliminary Proposal on or before February 1, 2021, to accommodate the Charter School's entire projected in-District ADA of 207.81 pursuant to Section 11969.9(f). In the meantime, the Charter School would appreciate the opportunity to meet with the District to discuss any remaining concerns and responses outlined herein.

Sincerely,



Larissa Adam
Superintendent of Schools

[1] The Charter School does not contest the District's acceptance of the Charter School's projected ADA rate of 0.9404.

[2] 120 *current* 9th-11th grade in-District students who will return and matriculate to 10th-12th grade in 2021-22 + reasonable beginning benchmark of 47 in-District 2021-22 9th grade students, as supported by past 9th grade enrollment history and pattern.

[JJR1]As you know, charter schools with projected enrollment of a 9th grade that increases by more than 15% between 2020-21 and 2021-22 are considered "expanding schools" that were not required to submit meaningfully interested student signature forms or a spreadsheet, but were instead required to submit student application documentation from the 2019-20 and 2020-21 school years? Did Latitude provide this information and does it support more than doubling the size of the 2021-22 9th grade class?