



Dec 29, 2021

SENT VIA EMAIL TO
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Oakland Unified School District
1000 Broadway, Suite 300
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***Re: Learning Without Limits
Response to District ADA Objections
Proposition 39 2022-23***

Ms. Krag-Arnold:

Learning Without Limits (the “Charter School”) is in receipt of Oakland Unified School District’s (“District”) December 1, 2021 letter, in which the District objects to the Charter School’s in-District classroom average daily attendance projection (“in-District ADA”) submitted with its request for Proposition 39 facilities for the 2022-2023 school year (“Request”). In the letter, the District objects to the Charter School’s projected in-District classroom ADA of **361.39** and asserts a counter-projection of 312.75 based solely on the District’s conclusion that the Charter School cannot reasonably be expected to increase its enrollment or retention rate from where they were following COVID-19’s peak at the beginning of 2021-22. (See Letter at p. 2 [“But, given the ongoing pandemic, it is unlikely for the school to return to pre-Covid enrollment numbers quickly.”].) As a result, the District’s counterprojection assumes an arbitrarily capped K class size and likewise caps 1st – 5th enrollment at its COVID-impacted 2021-2022 level.

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 **361.39** for the 2022-23 school year.

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 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 is Not Projecting a Substantial Increase in In-District ADA and Therefore is Not Required to Submit Additional Documentation to Support its Projections

The District’s attempt to cap the growth of the incoming kindergarten class at its COVID-19-suppressed level appears to be based on the District’s contention that the Charter School was obligated to submit documentation in the form of “Appendix II” to support a projected “substantial increase” in in-District ADA for the kindergarten class when that class is viewed in isolation from the rest of the school. The Prop 39 regulations do not apply the documentation requirement on a grade-by-grade basis. Rather, the requirement for further



documentation of meaningful interest applies when an “operating *school* projects a substantial increase in in-district ADA.” (5 CCR § 11969.9, subd. (c)(1)(A).) As noted above, the Charter School is not projecting a substantial increase in its total in-District ADA, so it had no duty to submit backup documentation with its Request, and the District has no legal authority to cap the growth of its kindergarten class. Moreover, even if it were to cap the Kindergarten growth (which it is not allowed to do), at minimum the District must allow for a 15% growth in K enrollment given its own definitions of what constitutes substantial growth.

Section 11969.9(c)(1)(C) of the Prop 39 Regulations state that supporting documentation need only be submitted “*to the extent* an operating charter *school* projects a *substantial increase* in in-district ADA.” (Emphasis added.) “To the extent” is a phrase typically used to describe the effect or importance of something in relation to something else. Here, it means that for all ADA projections up to the point that the projection would constitute a substantial increase in the *school’s* ADA, no supporting documentation is required.

In other words, the Prop 39 regulations do not require Charter Schools to provide documentation to support increases in enrollment for a single grade level from year to year. As such, the District has no legal authority to require such documentation nor to dictate the year-to-year growth of an individual Charter School grade level.

We also note that while 5 CCR 11969.9(c)(3) allows the District to require charter schools to use a form in making their Prop. 39 request (“School districts may require the charter school to submit its facilities request containing the information specified in paragraphs (1) and (2) on a form available from the CDE and developed in consultation with the Advisory Commission on Charter Schools (ACCS) or another form specified by the school district or another form specified by the school district”), it does not allow the District to request more than is already required in the regulations, or limit the manner in which charter schools provide supporting documentation. Here, the District’s requirement that only Appendix I and Appendix II (which is enrollment data for the Charter School from the District’s enrollment system from 2021-22) be used to support projections means that the Charter School’s supporting documentation has been limited to just data from the 2021-22 school, with its historically low numbers for all schools. It thus disallows relevant historical data for the Charter School, which has always had at least 69 students in its Kindergarten class, with the exception of 2020-21, when it had 58, and this year. The District has used its form to essentially disregard historical data that is relevant to demonstrate the Charter School’s projections are reasonable.

Section 11969.9, subd. (c)(1)(A), provides that ADA projections are to be based on “ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made.” This means that the proper frame of reference for analyzing the “substantiality” of a projected increase in in-District ADA would be the difference between in-District ADA in the year prior to the year in which the request was made and the in-District ADA projected in the Request year. Here, the relevant difference is between the Charter School’s in-District classroom ADA at P-2 for the 2020-2021 school year and the in-District ADA projected for the Request year.



Viewed in this context, the Charter School is not projecting a substantial increase in ADA in the Request year. The fiscal year prior to the fiscal year in which Charter School’s Request was made is 2020-2021, when the Charter School’s total in-District classroom ADA as of CBEDS Census Day was 372.81. The change between this number and the Charter School’s projected in-District ADA in the Request year (361.39) is *negative* 11.42 ADA, or in other words a change of *minus* 3%. A decrease in ADA over the relevant timeframe cannot rationally be considered an increase in ADA—much less a “substantial” increase requiring documentation.

Even if one were to use the incomplete current year ADA data as the relevant starting point, the year-to-year difference still is only an increase of 45.72 ADA, which constitutes an increase of only 14.4% increase from the current year to the Request year.

The Merriam-Webster dictionary defines “substantial” as “considerable in quantity; significantly great.” Neither a *decrease* of 3% from the last full year of ADA data nor an increase of 14.4% from the current year’s incomplete data can be considered “considerable in quantity” or “significantly great.” Therefore, pursuant to the Prop 39 Regulations, the Charter School was not required to submit additional documentation to support its in-District ADA projections for its 2022-2023 Request.

In light of the foregoing, the District’s attempt to cap the growth of the Charter School’s kindergarden class is arbitrary and contrary to law and cannot be used as a factor in the District’s final allocation of facilities space to the Charter School.

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

The Charter School’s kindergarden class projection for the Request year of 54 in-District students (49.61 in-District ADA) is reasonable and in fact conservative in accordance with past enrollment outside of the peak negative impact of COVID-19. Despite the District’s characterization of the projection as an undocumented “substantial increase,” a simple review of the Charter School’s past kindergarden enrollment makes perfectly clear that the projection is in line with historical patterns and does not constitute a substantial departure from a historically normal class size.

For example, the Charter School’s kindergarden enrollment numbers going back the last seven years are as follows:

Year	Kindergarden Enrollment
2020-21	58
2019-20	72
2018-19	69
2017-18	75



2016-17	69
2015-16	72
2014-15	71

Outside of the peak of COVID-19's disruption to schooling, the Charter School has always maintained a full kindergarten class and waitlist limited only by facilities availability. That is expected to be the case once again as the pandemic response continues to normalize. This assumption is also backed up by the number of incoming kindergarten enrollment applications for the Request year. We have already received over 90% applications required to meet enrollment projections.

For the foregoing reasons, and because the kindergarten class size is not subject to arbitrarily freeze its growth at 15%, the Charter School's projected kindergarten ADA of 49.61 is reasonable and should be used instead of the District's arbitrary and overly pessimistic counterprojection.

As for the other classes, the Charter School has submitted adequate support for projection. Specifically, at the time it made its Request, the Charter School provided the District with information describing 293 *current* K-4th grade in-District students who will return and matriculate to 1st-5th grade in 2022-23.

1st Grade (2022-23)

- 42 existing kindergarten in-District students matriculating toward a reasonable enrollment projection of 67 1st grade in-District students for 2022-23.

2nd Grade (2022-23)

- 57 existing 1st grade in-District students matriculating toward a reasonable enrollment projection of 62 2nd grade in-District students for 2022-23.

3rd Grade (2022-23)

- 66 existing 2nd grade in-District students matriculating toward a reasonable enrollment projection of 68 3rd grade in-District students for 2022-23.

4th Grade (2022-23)

- 61 existing 3rd grade in-District students matriculating toward a reasonable enrollment projection of 66 4th grade in-District students for 2022-23.

5th Grade (2022-23)

- 67 existing 4th grade in-District students matriculating toward a reasonable enrollment projection of 73 5th grade in-District students for 2022-23.

In other words, more than nine months before the start of the 2022-23 school year and several months before the completion of the Charter School's recruitment and enrollment period, the Charter School had already provided reasonable support for **87.2% (293 of 336)** of its



projected in-District ADA for its 1st through 5th grades. 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 cohort survival baseline alone already strongly indicates that the Charter School will achieve its enrollment projections by the start of the 2022-23 school year. It should not need to be noted that this cohort survival baseline functions as a reasonable *floor* for the Charter School's Request year projection for the 1st through 5th grade classes. There is no reason to believe this baseline should represent a ceiling on the Charter School's Request year enrollment, as the District's counterprojection unreasonably assumes, and for no other stated reason than that there is an "ongoing pandemic."

Despite the District's pessimism about the effect of COVID-19 on future enrollment, the Charter School has received strong indications of return enrollment throughout the 2021-2022 school year and projects that will increase and remain as steady through to the beginning of the Request year.

For example, as further evidence of the improving situation, the Charter School has experienced an increase of 25% in new enrollment applications when compared to those received at this same point last year in Oakland Enrolls. Given that the application deadline does not close until February 4th, and most applications are completed in January, this suggests the Charter School will receive many more applications than in 2021-22.

In addition, the Charter School's current enrollment of in-district students is **380 students** compared to 354 students after the first 30 days of school. In other words, in just a three month period the Charter School has added 26 students over a three month period, including 3 kindergarten students, and even more students across all other grade levels. (See enrollment by grade report from SIS for in-district students.) This increased enrollment demonstrates that the Charter School's enrollment will in fact rebound from COVID impacts in 2022-23, and that this recovery is already starting. **Just with these new students, the Charter School's in-District enrollment is only 10 students less than the number of students it projects to enroll in 2022-23.**

Despite the District's hypothetical pessimism, the data shows that the Charter School's enrollment is rebounding and it is perfectly reasonable for the Charter School to project a reasonable recovery in enrollment in its projections for the Request year. If the Charter School is too optimistic in its projection, the District's remedy is to seek an overallocation penalty in the future; it is not to cap the Charter School's enrollment at the level it was during the worst of the pandemic.

In addition, and as explained in the Request, the Charter School has already undertaken stronger and novel recruitment efforts in the coming year, including but not limited to canvassing, using recruitment booths at city events, in-person and virtual presentations with local preschools, and other intensified outreach measures that the Charter School did not and could not have employed in its recruitment for the 2021-2022 year due to COVID-19. The Charter School's Request also notes that it has hired a full time community outreach coordinator to lead



its recruitment strategies in the coming year, and the Charter School is doing targeted and direct community outreach to build relationships and a presence that includes events (as an example, a toy drive was held two weeks before Christmas), providing health based resources, and hands-on support with the application process to address the digital divide and challenges of navigating two different enrollment platforms. These measures have already had, and will continue to have, a positive impact on enrollment and the Charter School's projection reasonably bears that out.

The District's Counter-Projection of 312.75 is Arbitrary and Unreasonable

For all the reasons set forth above, the Charter School believes that its in-District classroom ADA projection of **361.39** is reasonable and that the District's counterprojection of 312.75 is unrealistically pessimistic, unreasonable, and unsupported by data.

As described, the Charter School provided the District with reliable indication that 283 current K-4th grade in-District students will return and matriculate to 1st-4th grade in 2022-23. This represents a reasonable cohort-survival baseline. 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 1st-4th grades in 2022-23, especially when, as noted above, the Charter School's 1st through 4th grade enrollment has grown by 23 students since CBEDS. It is perfectly reasonable for the Charter School to assume that this enrollment baseline will only grow, not only because it has grown by 26 students, including Kindergarten (as noted above), but also because of the additional and improved recruitment efforts the Charter School is engaging in, and because the worst disruption of the pandemic is behind us and not in front of us. 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 Charter School has provided a perfectly reasonable basis for its projection.

On the other hand, the District's counterprojection reflects a world in which the Charter School's enrollment will remain locked into its COVID-19-suppressed low point perpetually—simply because the District has a hunch that "it is unlikely for the school to return to pre-COVID enrollment numbers quickly." This hunch – not based on any actual data – that the Charter School cannot grow during COVID-19 is the only motivation behind the District's attempt to cap enrollment growth and use the cohort baseline for grades 1 through 5 as a maximum and not a minimum. It has also been proven false by the data set forth in this letter.

That there is an "ongoing pandemic" is also apparently the only basis for the District's out-of-hand rejection of any positive impact on enrollment due to the Charter School's improved recruiting and outreach efforts. The District's counterprojection not only dismisses any positive effect on enrollment from these efforts, the District actually projects that the result will be negative and that in-District ADA will contract further from 315.67 this year to 312.75 in the Request year. This is unreasonable and unsupported any actual data, and is in fact contra-indicated given the data we present in this letter of steady enrollment growth during the



school year as well as significant increases in the number of applications received by the Charter School for next year.

Moreover, the District's Prop. 39 request form did not accept any data from the Charter School that would address the Charter School's projected enrollment and ADA for its grades other than Kindergarten. The Charter School conservatively projected to return its enrollment to the approximately 390 students it enrolled in 2020-21 – also a COVID year, when all school was virtual – instead of rebounding fully to its pre-COVID enrollment of over 400 students. It is certainly unreasonable and inconsistent with the intent of Prop. 39 to disregard this information.

Again, if the District believes that the pandemic enrollment losses will be as bad in the transition from the 2021-2022 school year to 2022-2023 as it was in the transition from 2020-2021 to 2021-2022, then it may assess an overallocation penalty should the Charter School fail to fill its facilities. However, the District may not use its irrational pessimism to deny the Charter School the facilities it needs to return to its pre-pandemic enrollment.

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 361.39.

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 361.39 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.

Regards,

Sundar Chari
Chief Strategy Officer
Education for Change / Learning Without Limits



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