



March 1, 2021

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

**Re: Yu Ming Charter School
Response to District's Preliminary Proposal
Proposition 39 2021-2022**

Dear Ms. Murarka and Ms. Krag-Arnold:

Yu Ming Charter School ("Yu Ming" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2021 letter ("Preliminary Proposal") regarding Yu Ming'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 eleven (11) 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 (2,468 sq. ft. allocated), dining space (579 sq. ft. allocated), athletic (506 sq. ft. allocated), library space (855 sq. ft. allocated), operational space (7,204 sq. ft. allocated), interior room space (3,610 sq. ft. allocated), and exterior space (102,428 sq. ft. allocated) at the McClymonds 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 Yu Ming at each site. The Preliminary Proposal is based on a projected in-District ADA of 231.73.

Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires Yu Ming to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and Yu Ming's facilities request as submitted pursuant to subdivision (b), and/or make counter proposals.

Yu Ming has several concerns with the Preliminary Proposal including its failure to include all the comparison schools in the comparison school group and its exclusion of certain small specialized classroom spaces from the specialized classroom space count. In addition, the Preliminary Proposal proposes to co-locate elementary school students with a comprehensive high school, which creates health and safety concerns and the appropriateness of the facilities for Yu Ming's students. Lastly, the Preliminary Proposal does not clearly identify the amount of specialized classroom space allocated to Yu Ming or the specific "operational," "interior," or "exterior" non-teaching station spaces at McClymonds to which Yu Ming will have access. Yu Ming requests that the District's Final Offer be clarified to address these concerns and the other issues set forth in this letter.

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In the alternative, Yu Ming requests that the District provide it with the allocated space at a different District site, one that is more appropriate for elementary school students.

Comparison Schools

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 Yu Ming.

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 Yu Ming reside. The Preliminary Proposal identified the following comparison schools for Yu Ming: 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.

The Preliminary Proposal Does Not Allocate Reasonably Equivalent Specialized Classroom Space and Non-Teaching Station Space to Yu Ming.

Yu Ming 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.¹

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 Yu Ming. 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 Yu Ming 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, counseling 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 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 from the SCS count based on the spreadsheets included in Ex. C. Instead, Ex. C indicates these spaces were included 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.

¹ *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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Moreover, the Preliminary Proposal does not clearly explain the amount of SCS that Yu Ming is actually allocated. Rather, the Preliminary Proposal states, "The co-located schools at the McClymonds Campus will develop a shared 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 Yu Ming for SCS, Yu Ming assumes that Yu Ming would be allowed shared use of up to 28.16% of the SCS at McClymonds and the District will adjust the pro rata share costs based on Yu Ming's actual shared use allocation once the shared use agreement is negotiated.

b. Allocation of Non-Teaching Station Space to Yu Ming

The Preliminary Proposal states that the Shared Use Allocation is "Calculated as Total Site NCS x Yu Ming's Proportion of Site In-District ADA. Yu Ming's Proportion of Total Site In-District ADA at McClymonds is calculated as $231.73 / (231.73 + 264.77 + 326.45) = 28.16\%$." However, the calculations in Table 11 demonstrate that is not the case for all types of NTSS. For example, Table 11 indicates there is 15,737 square feet of assembly space at McClymonds, but Yu Ming is only allocated 2,468 square feet of assembly space at McClymonds (i.e., 16% of the assembly space at McClymonds).

On the other hand, when Yu Ming's entitlement to a certain category of NTSS actually exceeds its percentage of the site ADA (28.16%), the District has reduced Yu Ming's allocation of that category of NTSS to 28.16%. For example, although Yu Ming is entitled to at least 103,339 square feet of exterior space, it was only allocated 102,428 square feet of exterior space, which is 28.16% of the total exterior space at McClymonds. The District is not permitted to apply different methods of allocation to different categories of NTSS space depending on whether it benefits the District regardless of the detriment it causes to Yu Ming. Doing so is unreasonable and inconsistent with Prop. 39.

Furthermore, 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 Yu Ming. As interior rooms include administrative space, special education space, conference rooms, and other small classrooms, Yu Ming assumes that the District does not intend to have Yu Ming share offices and special education spaces, as well as the other spaces, with the McClymonds program, but rather would allocate exclusive use rooms to Yu Ming to meet this requirement. As such, Yu Ming believes the Preliminary Proposal should have identified the specific interior rooms that the District intends Yu Ming to use, and requests that the District provide this information to Yu Ming as soon as possible, as well as include it in the District's Final Offer.

Lastly, the comparison schools are all elementary and middle schools. As a high school campus, McClymonds does not offer a number of the spaces available at the comparison schools, including play structures and elementary-sized restrooms. How does the District plan to address

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this? In addition, as noted, the District has also not indicated the manner in which it will ensure that Yu Ming's elementary and middle school-age students have safe and distinct facilities on the McClymonds campus; the District does not co-locate elementary and high school grades on any of its campuses, and will need to ensure that the arrangements it creates are age- and grade-appropriate.

Pro Rata Charge Worksheet

1. Improper Costs Included in Pro Rata Share Calculation

a. Custodial Services: While Yu Ming 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 Yu Ming 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 Yu Ming 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 Yu Ming'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."

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

Sincerely,



Sue Park
Head of School

Cc: Sarah Kollman, Young, Minney & Corr, LLP
Yu Ming's Board Members