

Aurum Preparatory Academy

December 26, 2016

Silke Bradford
Office of Charter Schools
Oakland Unified School District
1000 Broadway, 6th Floor, Suite 639
Oakland, CA 94607

***Re: Response to District ADA Objections
Aurum Preparatory Academy
Proposition 39 2017-2018***

Ms. Bradford:

Aurum Preparatory Academy (“Aurum”) is in receipt of the Oakland Unified School District’s (“District”) December 1, 2016 letter, in which the District objects to Aurum’s projections of average daily attendance (“ADA”) as stated in its November 1, 2016 request for Proposition 39 facilities for the 2017-2018 school year (“Request”). In its letter, the District objects to Aurum’s projected in-District classroom ADA of 125.4, making unsupported claims about the eligibility of many of the students represented on the forms, and asserts its own projection of “58 students.”

The District has failed to state its own counter-projections of in-District ADA (it only stated the enrollment it considered reasonable), and thus it has waived its right to object to Aurum’s in-District ADA projections and must allocate space based on Aurum’s original projection of 125.4. (5 CCR Section 11969.9(d); see below.)

Furthermore, Aurum does not believe the District’s objections are reasonable, nor are they consistent with the purpose and intent of Proposition 39, especially given that the District has elected to project a number of students that would deny facilities to Aurum entirely – certainly not the intent of the law. Accordingly, the purpose of this letter is to respond to the District’s objections, as required under Title 5 of the California Code of Regulations (“CCR”) Section 11969.9(e) of the Proposition 39 Implementing Regulations (“Regulations”), and to reiterate that the District must accept Aurum’s original projection of 125.4 in-District classroom ADA as stated in its Request.

As further explained below, Aurum believes that it has provided the District with sufficient explanation and reliable supporting documentation to clearly demonstrate the reasonableness of its in-District classroom ADA projection of 125.4 in-District ADA for the 2017-2018 school year.

The District Has Failed to State its Own ADA Projections, and Therefore Aurum’s Projections are not Subject to Challenge

5 CCR § 11969.9(d) provides,

The school district shall review the charter school's projections of in-district and total ADA and in-district and total classroom ADA and, on or before December 1, express any objections in writing and **state the projections the district considers reasonable**. If the district does not express objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge, and the school district shall base its offer of facilities on those projections.

In its December 1, 2016 letter, the District fails to include any counter-projection of ADA, including in-District Classroom ADA, that it considers reasonable. Rather, the District's counter-projections are as follows: "The District is exercising its right to provide counterprojections to the Charter School's enrollment projections for 2017-18. Based on the factors discussed above here, the District counterprojects a total of 58 in-District students, based on the number of Meaningfully Interested Student Signature Forms that the District were able to verify for eligibility.

The Implementing Regulations clearly intend for the District to include counter-projections of **ADA**, not enrollment, as no provision in 5 CCR § 11969.9 mentions enrollment (nor do any other provision of Prop. 39 at al) and the subsections within 5 CCR § 11969.9 that refer to the required elements of the District's Preliminary Proposal and Final Offer only mention the District's projections of *in-district classroom ADA*. Therefore, the District's failure to assert a projection of the in-District classroom ADA that it considers reasonable by December 1 leaves Aurum's in-District classroom ADA projection of 124.5 no longer subject to challenge. Further, since the District only includes a counter-projection of enrollment rather than ADA, and it does not otherwise object to Aurum's projected attendance rate, its projections assume an ADA rate of 100%. Aurum accepts the District's assumption of a 100% attendance rate.

Aurum has Provided the Reasonable Projections and Supporting Documentation that is Required by Proposition 39

The 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.*" (5 CCR 11969.9(c); emphasis added.) Therefore, as long as Aurum's projections are **reasonable**, the District must accept and allocate facilities based on those ADA projections.

"Reasonable" is defined in Black's Law Dictionary as "fair, proper, or moderate under the circumstances." In other words, Aurum 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, which the Regulations subsequently incorporated in 2007:

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 5 CCR Section 11969.9(c)(1)(C).

In this case, Aurum believes that the District’s objections are demanding a level of arithmetical precision that is not consistent with the intent of the regulations. The supporting documentation and methodology presented by Aurum must show that its projections are reasonable – not exact.

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.)

Furthermore, the Final Statement of Reasons approved by the State Board of Education (“SBE”) and released with the 2009 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.)

In sum, even if Aurum here was required to provide documentation to support its projections, this documentation need 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.) By submitting substantial supporting documentation to support its projected ADA, the Charter School has met the standard of arithmetical accuracy.

Finally, the Prop. 39 Implementing Regulations contain a fail-safe mechanism for the District: the over-allocation penalty. If there is a legitimate disagreement between the District and Aurum regarding what is a reasonable projection, the appropriate action is for the District to allocate space based on Aurum’s projections, and collect the penalty if Aurum has over-projected.

Aurum’s Projections of in-District ADA are Reasonable and are Supported by the Documentation Included with Aurum’s Request

Aurum provided the District with the names and addresses of 97 meaningfully interested students as part of its Request, to support an in-District ADA of 125.4. This included students reflected on the meaningfully interested student spreadsheet, as well as Intent to Enroll forms signed by 97 students.

Aurum also provided the District with a detailed description of the methodology it used to make its projections, assuming an enrollment of 132 and an attendance rate of 95%, based on the language in the school’s charter petition, as well as a review of the number of Intent to Enroll forms collected well before the school has started its comprehensive enrollment and recruitment efforts, which will run from January to July.

Aurum further described its ongoing recruitment efforts, which include contracting with a community organizer who will conduct a series of open houses, home visits, and tabling events for interested families, establishing a Family Advisory Council (FAC), working in partnership with schools and non-profits such as Cox Academy and Live, Learn, Success to table and spread information about the school, and working with a parent organizer to further its outreach and recruitment efforts.

Aurum’s methodology did not state that its supporting documentation was intended to cover all of its projected ADA, but rather showed that the fact that Aurum, a brand new school with no history of enrollment, was able to get a significant number of in-District families (approximately 73% of its projected in-District ADA) to express their meaningful interest by November 1, even before the school’s charter petition has been approved. If Aurum has been able to achieve this level of success many months before the end of its recruitment process, and even before its charter has been approved, it is absolutely reasonable for the school to project that it will enroll 132 students by the start of the 2017-2018 school year.

This methodology is consistent with the applicable case law. In *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, the Court noted that Aurora Charter High School (“Aurora”) had provided 93 Intent to Enroll forms from “in-district students who were either currently attending Aurora and planning to continue or had applied for admission for the 2002-2003 school year” with its request for facilities to accommodate 110 students – in other words, forms to support only 84% of its projections – as well as historic attendance rates and proof of its current enrollment of 90, as well as “the expressed interest of current students and their families of continuing education at Aurora, and the expressed interest of prospective students and their families in attending Aurora during the next academic year.” (*Sequoia, supra*, at 196.)

The Court then determined that Aurora had provided sufficient supporting documentation to demonstrate that its projections were reasonable, and ordered the Sequoia Union High School District to allocate facilities to Aurora. It is clear from this ruling that the Court does not believe the Implementing Regulations require a charter school to submit an Intent to Enroll form for more than every student it projects to enroll, and it also suggests that if a parent confirms their meaningful interest at the time the charter school submits the request, this is sufficient to support the charter school’s projections.

Many of the District’s Objections to Aurum’s Supporting Documentation are Not Reasonable, or are Incorrect

The District provided Aurum with a spreadsheet regarding its “audit” of the Intent to Enroll forms and Meaningfully Interested Student spreadsheet provided by Aurum to document which of the 97 names and addresses the District refused to count.

First, the District incorrectly stated that 5 of the forms included addressed that “could not be found.” However, a review of the Intent to Enroll forms demonstrates that three (3) of the addresses are actually on the forms, and can be located on Google Maps as within District boundaries. The other two (2) are outside of District boundaries:

Student Name	Student Address	Verification/Review of District Audit	Eligible?
██████████	██████████	Easily located by entering the address into Google Maps	Yes
██████████	██████████	Easily located on Google Maps	Yes

██████████	██████████	Outside of OUSD boundaries	No
██████████	██████████	Address is on form, with mother's name	Yes
██████████	██████████	Outside of OUSD boundaries	No

Second, the District claims that “23 were invalid (duplicates, in the wrong grade, or didn’t live in Oakland).”

The District apparently believes that because there is no date on the Intent to Enroll form that states when the form was signed, that form can be discounted entirely. However, as noted above, the only information that Aurum is required to provide to the District to demonstrate that a student is meaningfully interested is that student’s name and address. Moreover, the parent is filling out and signing the form affirming specifically that they are meaningfully interested in enrolling their child in Aurum for the 2017-2018 school year, and Aurum will only offer 6th grade in its first year of operation. Therefore, it is much more reasonable to assume that the form represents a valid meaningfully interested family, especially as Aurum spoke individually to each family who filled out a form to ensure they were meaningfully interested and would be in the correct grade, prior to having them fill out a form.

Furthermore, the majority of the forms also include a birthdate for that student. In order to be eligible for 6th grade in 2017-2018, a student would have to be born between December 3, 2005 and December 2, 2006. As noted in the table below, all of the relevant students with birthdays listed were born within the correct timeframe.

Moreover, to further assure the District that all the relevant students are in fact eligible for 6th grade in 2016-2017, Aurum confirmed that all students who submitted Intent to Enroll forms and were listed on the meaningfully interested Student spreadsheet are in fact going to be in 6th grade in the 2017-2018 school year.

Student Name		Student Address	Verification/Review of District Audit	Eligible?
██████████	█	██████████ ██████████ ██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. DOB is ██████████ which would make them eligible for 6 th grade in 17-18.	Yes
██████████	█	██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18.	Yes
██████████	█	██████████	School verified that student is in 5 th grade in 16-17 as of October 22, 2016, will be in 6 th grade in 17-18.	Yes
██████████	█	██████████ ██████████ ██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18.	Yes

			DOB is [REDACTED], which would make them eligible for 6 th grade in 17-18.	
[REDACTED]	■	[REDACTED] [REDACTED] [REDACTED]	School verified that student is in 5 th grade in 16-17 school year. DOB is [REDACTED] which would make them eligible for 6 th grade in 17-18.	Yes
[REDACTED]	■	[REDACTED] [REDACTED] [REDACTED]	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. Student is currently 10 years old, which would make them currently in 5 th grade and thus eligible for 6 th grade in 17-18.	Yes
[REDACTED]	■	[REDACTED]	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. DOB is [REDACTED] which would make them eligible for 6 th grade in 17-18.	Yes
[REDACTED]	■	[REDACTED]	Not eligible – will be in 7 th grade in 17-18	No
[REDACTED]	■	[REDACTED]	Not eligible – will be in 4 th grade in 17-18	No
[REDACTED]	■	[REDACTED]	School verified that student is in 5 th grade in 16-17 school year – parent misunderstood question. DOB is [REDACTED] which would make them eligible for 6 th grade in 17-18.	Yes
[REDACTED]	■	[REDACTED] [REDACTED] [REDACTED]	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. DOB is [REDACTED], which would make them eligible for 6 th grade in 17-18.	Yes
[REDACTED]	■	[REDACTED] [REDACTED] [REDACTED]	Not eligible – will be in 3 rd grade in 17-18	No
[REDACTED]	■	[REDACTED] [REDACTED] [REDACTED]	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18 (parent misunderstood question on form). DOB is [REDACTED], which would make them eligible for 6 th grade in 17-18.	Yes
[REDACTED]	■	[REDACTED] [REDACTED] [REDACTED]	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. DOB is [REDACTED], which would make them eligible for 6 th grade in 17-18.	Yes

██████████	■	██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18.	Yes
██████████	■	██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18.	Yes
██████████	■	████ █████ █████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. DOB is █████, which would make them eligible for 6 th grade in 17-18.	Yes
██████████	■	██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18. DOB is █████, which would make them eligible for 6 th grade in 17-18.	Yes
██████████	■	██████████	Not eligible – will be in 5 th grade in 17-18.	No
██████████	■	██████████	School verified that student is in 5 th grade in 16-17 school year, will be in 6 th grade in 17-18 (parent misunderstood question on form).	Yes
██████████	■	████████████████████	Not eligible – will be in 7 th grade in 17-18.	No

In sum, after further review, Aurum is confirming that it has provided the District with Intent to Enroll forms for 78 grade-eligible in-District students and expects to receive many more forms and enrollment applications over the next several months, as it hires its recruitment coordinator and ramps up its recruitment efforts. The fact that a brand new charter school whose petition has not even been approved yet has been able to collect Intent to Enroll forms representing almost 70% of its projected enrollment is impressive in itself, and demonstrates that the school’s in-District ADA projections for 2017-2018 are very reasonable.

In addition, the District also appears to be requiring a one-to-one correlation between the number of Intent to Enroll forms and Aurum’s projected in-District ADA, which is also not required by the Prop. 39 Implementing Regulations. Aurum collected 78 valid Intent to Enroll forms by November 1, 2016 – 60% of its total projected ADA – more than 7 months before its recruitment and enrollment efforts will end. It has collected additional forms during the holiday season when it is difficult to reach parents, and without a real recruitment effort. Aurum has accomplished this goal even though it is a brand new charter school that has not yet opened, and thus does not have the historical or community reputation of an established school. It is also only projecting an in-District ADA of 124.5, supported by ongoing recruitment efforts – providing a very close correlation in either case between what Aurum is projecting, and the supporting documentation it is providing. In other words, Aurum’s projections are not unreasonable, excessive, or anything other than a realistic assessment of the school’s likely enrollment and ADA

in its first year of operation. As a result, the District should accept the projections. Certainly the intent of Prop. 39, if there is any question of reasonable projections making the difference between a charter school being eligible for Prop. 39 facilities or not, is that the charter school be allocated facilities, and the District may collect an over-allocation penalty if the charter school fails to meet its projections.

Furthermore, the District's final calculation reducing any projection for Aurum below 80 betrays the District's pre-textual approach. Rather than engage in a fair and unbiased analysis of Aurum's Request and supporting documentation, the District sought any means to reduce Aurum's projected ADA below the 80 in-District ADA threshold required for entitlement to facilities under Proposition 39. Consequently, the District's approach is contrary to the purpose and intent of Proposition 39 and violates the rights of Aurum's future students to receive reasonably equivalent facilities.

The District's projections, however, entirely fail to take into account any of the information outlined above, including the fact that Aurum will continue to recruit students to enroll in its school for many months to come. This is again requiring a precise arithmetical accuracy that is not required or contemplated by the Prop. 39 Implementing Regulations – the District cannot require one-to-one correlation between projected in-District ADA and Intent to Enroll forms, where, as here, the projections made by the charter school are reasonable.

In asserting that Aurum will enroll 58 students, the District is effectively ignoring the wishes and intentions of the 78 in-District students and their families who have indicated their meaningful interest in attending the Charter School for the 2017-2018 school year. Moreover, the District's projection that Aurum will enroll 58 students is the result of the District requiring Aurum to support its request with documentation that is verifiable for precise arithmetical accuracy. In other words, the District is requiring Aurum to demonstrate its ADA projections with a greater than one-to-one correlation of students' names and address for each unit of ADA projected. As noted in detail above, this is not the intent of the Implementing Regulations, which only require a showing that demonstrates projections are reasonable. Furthermore, if Aurum has in fact overestimated its ADA, the District's remedy in this circumstance is not to unilaterally reduce Aurum's projections to unreasonable levels. Rather, the District's remedy is to reclaim over-allocated space or levy an over-allocation penalty on Aurum. (Cal. Code Regs., tit. 5, § 11969.8.)

Conclusion

Based on the foregoing, Aurum has responded in detail to the District's objections and addressed the District's concerns. Further, Aurum has provided reliable documentation and clarifying information that reasonably supports the school's ADA projections beyond the substantial information provided with its original Request, and has demonstrated how the District's projections are unreasonable and have failed to meet the requirements of Prop. 39. Accordingly, Aurum 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 **125.4**.

We look forward to resolving any remaining concerns and receiving the District's written Preliminary Proposal on or before February 1, 2017, to accommodate Aurum's entire projected ADA of 125.4 pursuant to 5 CCR Section 119632.9(f). In the meantime, Aurum would appreciate the opportunity to meet with the District to discuss any remaining concerns related to the responses outlined herein.

David Hardin