



June 29, 2017

By Hand Delivery and Email: leslie.jimenez@ousd.org

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Oakland Unified School District
1000 Broadway, Suite 639
Oakland, CA 94607

***Re: East Bay Innovation Academy
Response to District's Final Offer
Proposition 39 2017-2018***

Dear Ms. Jimenez:

East Bay Innovation Academy ("EBIA" or "Charter School") is in receipt of the Oakland Unified School District's ("District") June 1, 2017 letter ("Final Offer") regarding EBIA's request for facilities under Proposition 39 ("Prop. 39") for the 2017-2018 school year.

The District's Final Offer is for 10 classrooms for "exclusive use teaching station and specialized classroom space," along with two (2) classrooms for "exclusive non-teaching space" (890 sq. ft.) and shared use of the gymnasium, courtyard, auditorium, field and cafeteria at varying rates at Roosevelt Middle School, and 12 classrooms for "exclusive use teaching station and specialized classroom space" along with exclusive use of the admin/office/conference, MPR/Auditorium/Cafeteria/Gym and Library (5,234 sf) at Thurgood Marshall Elementary School. The Final Offer is based on a projected in-District ADA of 415.8.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires EBIA to notify the District whether or not EBIA intends to occupy the offered space. Accordingly, despite the deficiencies in the Final Offer (which are identified herein to the extent practicable, with all rights reserved) and as set forth in the response to the Preliminary Offer, which is incorporated here by reference, EBIA accepts and intends to occupy the offered space, without acknowledging the legal sufficiency of the Final Offer under applicable local, state, or federal law and without waiving any of its legal rights under applicable local, state, or federal law, including Proposition 39 rights and remedies. In accordance with the "Exit Agreement" executed by the parties on or about June 29, 2017, (attached hereto) EBIA continues to reserve its right to withdraw its notification of intention to occupy the facilities allocated to EBIA at Roosevelt no later than 5:00 p.m. on August 1, 2017.

As EBIA is accepting the District's offer of space at Marshall and intends to occupy the space offered by the District at Marshall during the 2017-2018 school year, the remainder of this letter will focus on EBIA's concerns regarding the legal deficiencies of the District's offer of space at Roosevelt, while continuing to reserve all rights and remedies.

The Final Offer fails to meet the legal requirements of Prop. 39, in part, because the Final Offer fails to provide sufficient information regarding the allocation of teaching station, non-teaching space and specialized classroom space to EBIA and fails to provide EBIA with a reasonably equivalent allocation of teaching station, specialized classroom and non-teaching space as required by law.

We remind you that 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.

1. Alternative Proposal

EBIA takes this opportunity to once again request that the District place EBIA in contiguous facilities at one of the following sites: 1) King Estates, 2) Lakeview, 3) Westlake, 4) Frick.

While EBIA continues to reiterate that it does not wish for its Upper School to be located at Roosevelt because of the significant challenges EBIA's Upper School has encountered in the 2016-2017 school year while occupying the Roosevelt site, the following changes must occur in order for Roosevelt to be even remotely workable for EBIA's program:

1. Construction on two of the larger rooms to make them functional high school science and art rooms;
2. EBIA must be allocated dedicated student and staff bathrooms;
3. Gates must be installed on stairways to address safety issues discussed in more detail below;
4. EBIA must have additional access to shared space based on a schedule that reflects EBIA's school hours and program needs.

2. Contiguous Facilities

The express provisions of Proposition 39 require that the District allocate facilities to the Charter School that are "contiguous, furnished, and equipped." (Education Code Section 47614(b).) This requirement exists irrespective of the grade level configuration of a charter school. (5 CCR Section 11969.3(a).) In its Request, EBIA specifically requested that the District place EBIA's entire in-District enrollment on a permanent, contiguous site.

Section 11969.2(d) goes on to state that "[i]f the indistrict average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety." In addition, "the district's governing board must first make a finding that the charter school could not be accommodated at a single site and adopt a written statement of reasons explaining the finding." "If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school." (Emphasis added.) This analysis is purely numerical; the Court in *Ridgecrest* noted that "all else being equal, a charter school should be housed at a single site if one exists with the capacity to handle all the school's students." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.*, (2005) 130 Cal. App. 4th 986, 1000, emphasis added.)

In both its Notice of Proposed Rulemaking File, and its Final Statement of Reasons, the State Board of Education specifically reiterates that 5 CCR 11969.3(d) was amended to make it clear that “when no school of the district serves grade levels similar to the charter school’s, a contiguous facility is an existing facility that is most consistent with the charter school’s grade levels” in order to bring the Regulations in line with the *Ridgecrest* decision. (Final Statement of Reasons, Page 20.) The Initial Statement of Reasons further clarified that in looking at the issue of a school district making facilities available to a charter school at multiple locations as discussed in the *Ridgecrest* decision, it was clear an addition to the regulations was necessary to formalize two requirements: 1) a school district is not permitted to treat a charter school’s in-district students with less consideration than students in the district-run schools, and 2) in allocating and providing access to facilities to a charter school, a school district must begin from the premise that the facilities are to be on a single school site. (Initial Statement of Reasons, Page 3.)

The Court of Appeal has also ruled that Proposition 39 requires that a school district “begin with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust the other factors to accommodate this goal.” (*California School Bds. Assn. v. State Bd. of Education*, 191 Cal. App. 4th 530, 548-549 (Cal. App. 3d Dist. 2010).) *Ridgecrest* also specifically acknowledged that “we have little doubt that accommodating [Ridgecrest Charter School’s] facilities request will cause some, if not considerable, disruption and dislocation among the District’s students, staff, and programs. But section 47614 requires that the facilities “should be shared fairly among all public school pupils, including those in charter schools.” (*Ridgecrest*, 130 Cal. App. 4th at 1006.) In other words, the District may not reject a potential contiguous site for EBIA just because it would potentially disrupt and dislocate District students.

In addition, while the District does not have to expend general fund monies to rent, buy, or lease facilities to meet this obligation, the law implicitly recognizes that a district must use all resources including any restricted monies (parcel taxes, bond monies etc.) to meet this obligation.

The District’s Findings of Fact in support of its non-contiguous allocation of space to EBIA provides the following explanation of how the District determined that EBIA could not be accommodated at a single site: “East Bay Innovation Academy requires twenty-two (22) classrooms; therefore, the charter school’s entire in-District ADA could not be accommodated at a single site.” Based on the foregoing explanation and the District’s list of “Potential District School Sites with Projected Capacity” that precedes the foregoing explanation in the District’s Findings, it is clear that the District only considered whether EBIA’s entire in-District enrollment could be accommodated in the *extra space* that exists at any one District site. This practice of only considering whether a charter school may be accommodated in the extra space that exists at District sites rather than determining whether any District site is large enough to accommodate a charter school’s in-District enrollment is most consistent with Assembly Bill 544, which added a provision to the Act giving charter schools the right to use district facilities that are “not currently being used ... for instructional or administrative purposes.” (Former § 47614.) Under that provision, a charter school was entitled to use district facilities only if that would not interfere with the district’s use of them. However, “[t]his restriction was effectively eliminated by Proposition 39.” (*Ridgecrest, supra*, at p. 999.) As stated above, the District may not reject a potential contiguous site for EBIA just because it would potentially disrupt and dislocate District students. As stated in *Ridgecrest*, the District “must at least *begin* with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust the other factors to accommodate this goal.” (*Ridgecrest, supra*, at p. 1002.) There is absolutely no evidence that the District has done so here. Rather, after looking at the extra space available at its District sites, the District decided to locate EBIA across two separate sites. Since none of the District schools are spread across two sites, the District’s placement of EBIA at two separate sites fails to provide EBIA with reasonably equivalent facilities and relegates EBIA’s students to second class status.

In addition, the District's Findings do not indicate that the District considered redrawing District attendance boundaries, increasing District class sizes or the negative impact on the safety of EBIA's students that would occur if they are required to travel between two separate school sites spanning more than 8 miles in one day. Instead, the District's Findings focus primarily on the impact to District students of allocating to EBIA a single District school site – with no analysis of the safety issues facing EBIA's students.

A review of publicly available information reveals that there are several District sites large enough to accommodate EBIA's entire in-District enrollment, at least two of which were requested by EBIA. For example, Frick Middle School, one site proposed by EBIA, previously accommodated over 800 students, but this year, there are only 227 Frick students housed on the site. According to the District's Office of Charter Schools website, there are no charter schools co-located at Frick and no charter schools have accepted an offer of space at Frick for the 2017-2018 school year. Similarly, Westlake Middle School, another site proposed by EBIA, previously accommodated 718 students but now only has 383 on the site with no co-located charter school.

For all the foregoing reasons, the District's failure to offer EBIA a contiguous site violates Prop. 39 and its Implementing Regulations.

3. Location

Pursuant to Education Code § 47614(b), the District is required to make "reasonable efforts" to provide EBIA "with facilities near to where the charter school wishes to locate." In its Request, EBIA specifically stated that it was "not interested in continuing to be located at the Roosevelt Middle School campus" and cited various safety concerns with the Roosevelt campus and the surrounding area. EBIA also set forth the co-location challenges facing EBIA at Roosevelt including being denied shared access to the gym, having no separation between EBIA's students and Roosevelt's students, and the site administration informing EBIA that there is no additional space for EBIA at Roosevelt. In addition, EBIA explained that there is not enough space at Marshall, and as a result, student advisory groups have to meet outside and in the administrative offices and innovation lab supplies and groups meet and work from shipping containers placed on the school playground. EBIA continues to grow exponentially and by 2017-2018, EBIA expects to have an enrollment of approximately 518 students. It is for these reasons that EBIA requested that the District place EBIA at a permanent, contiguous site in the Oakland Hills area near where the school is located now that is safe, gang-neutral, easily accessible to public transportation and the highway, and provides a safe walking areas for students and parents.

After reviewing the possible sites and determining which sites would meet EBIA's long-term and short-term facilities needs, EBIA proposed the following sites and provided the following justifications for their suggestions:

1. Lakeview Elementary School

- Able to hold the EBIA high school's future growth and its programs, co-location impact would be limited to working with OUSD Welcome Center rather than an educational program.
- Central location for bus transportation and conveniently located for families from all over Oakland.
- Perceived by most Oakland families as being a safe and convenient location for an Oakland-wide magnet school.

2. King Estates, Frick Middle School and Howard Elementary School

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- All located relatively nearby the Marshall Campus which is where EBIA's middle school is currently located.
- Bus transportation and conveniently located for families from all over Oakland.

3. West Lake Middle School

- Central location for bus transportation and conveniently located for families from all over Oakland.
- Perceived by most Oakland families as being a safe and convenient location for an Oakland-wide magnet school.
- Co-location with current middle school program and ability to expand capacity of EBIA high school program could be limited in this location.

In the Preliminary Proposal and the Final Offer, the District claimed that it “exercised its discretion in determining that none of the schools in the Charter School’s preferred locations had capacity to accommodate the Charter School’s projected ADA” and that “[t]he District did not have sufficient capacity at any of the Charter School’s identified sites or locations to accommodate the entire Charter School projected in-District ADA.” In its Staff Report and Findings, the District attempted to support its decision to locate EBIA at Marshall and Roosevelt with the following statements:

- “The District gave East Bay Innovation Academy the preferred placement and will offer that the middle school continue to be housed at Marshall Elementary School.”
- “This placement was designed to address safety concerns regarding teachers having to travel to multiple sites during the school day. Under this proposed offer, neither teachers nor students should be required to commute between the two sites.”
- “The District considered the safety implications associated with a relocation of the ninth grade program for a one year agreement at another site. Such a relocation would require that charter school staff, students, and families commute to a new part of the City and manage the likely disruption that would result from two temporary relocations two years in a row.”
- “Retaining students, families, and staff within the community to which they are accustomed and already a part of is a safety consideration that is taken into account. Maintaining the ninth grade at Roosevelt will enable students to continue to be a part of the community with which they are familiar.”

The foregoing statements demonstrate that the District did not consider EBIA’s wishes at all or the devastating financial impact that supporting two sites would have on EBIA, but rather selected locations according to the District’s preferences and thereafter attempted to rationalize those selections, albeit unsuccessfully. Instead of directly addressing the fact that EBIA expressly stated that it did not want to return to Roosevelt for 2017-2018, the District instead essentially claimed that Roosevelt was in EBIA’s best interests because it would cause the least amount of disruption. The District’s decision to locate EBIA at the one site that EBIA expressly rejected (with good cause) without providing any meaningful analysis of why EBIA could not be located at any of its proposed sites reveals that the District did not in fact make any effort to locate EBIA near to where the charter school wishes to locate as required by the law.

EBIA will take this opportunity to again notify the District of some of the ongoing challenges facing EBIA at Roosevelt, some of which pose serious health and safety concerns that could subject the District to liability. If the District decides to locate EBIA at Roosevelt again in 2017-18, the District must resolve these issues. If the District does not resolve these issues, EBIA will be forced to take legal action to enforce its rights:

1. The steel door entrance – The steel wall doors are always locked and there are no safety

mechanisms or door knobs in place to allow a student, parent or staff member waiting outside to communicate to EBIA's office to request that the gate be unlocked so they may enter. EBIA has no way of opening the gate from its main office so EBIA staff must make several trips to the gate each day to see if anyone is waiting outside or to allow people to enter. This not only severely interferes with EBIA's daily operations and takes the administration and staff away from its students, it is incredibly unsafe as the students, staff and parents waiting outside have no protection. As explained above, the area surrounding the Roosevelt campus has experienced violence and other safety concerns. This is unacceptable and fails to provide EBIA with the safe, reasonably equivalent facilities to which it is entitled under the law. The District must take safety measures to ensure that EBIA's students, staff and parents are not forced to wait outside the school grounds with no way of communicating to the EBIA office.

2. Availability of EBIA's facilities – The District has failed to provide EBIA with keys or other means to access the Roosevelt site outside school hours unless a District employee is on site. EBIA is entitled to access its exclusive use facilities to the same extent that District employees may access their classrooms and spaces. In addition, EBIA is not required to align its schedule to the District's schedule and is entitled access to the allocated facilities for its entire school year. The District's failure to provide EBIA with reasonably equivalent access to its exclusive use spaces is in violation of Prop. 39 and its Implementing Regulations.
3. The harassment of EBIA's students by Roosevelt's students – Despite being in the basement with only one shared restroom and one District classroom, EBIA's students are constantly being harassed by Roosevelt's students. These Roosevelt students will often curse at EBIA's administration, appear to have no District supervision whatsoever, and cause multiple distractions to EBIA's students and staff. EBIA has advised the District of these ongoing issues and requested that the District find a way to separate the schools or prevent this harassment from continuing, but the District has failed to resolve any of these issues or propose any meaningful solution. The District's failure to supervise its own students to the detriment of EBIA's in-District students demonstrates that the District is not treating the charter school's in-District students fairly and has instead relegated these students to second-class status. As such, EBIA would require some separation between the co-located schools at Roosevelt or another measure to ensure that Roosevelt students are not subjecting EBIA's students and staff to continuous harassment.
4. The servery – The District has forced EBIA to essentially use a snack shack for a servery. Not only is the "servery" too small with insufficient equipment, the servery gate is unsecure. This arrangement poses numerous health and safety issues and fails to provide EBIA with the reasonably equivalent servery space that the District students enjoy.
5. Gym Access – During the 2016-2017 EBIA was not provided with access to the Roosevelt Gym. Additionally, recently the District has requested that EBIA use Civic Center Act permit requests to use the gym during EBIA's previously scheduled times (according to its shared use agreement) in violation of Prop. 39 as well as the Civic Center Act. In addition, the janitorial staff will frequently turn off the lights and/or begin cleaning while EBIA is using the gym during its scheduled gym time. This inferior treatment of EBIA is unacceptable and in violation of Prop. 39.
6. Civic Center Act use by community groups - The District has authorized Huong Viet Community Center ("HVCC") to use Roosevelt for language instruction on Saturdays. However, EBIA is informed and believes that the only classrooms that HVCC has been assigned to use are the classrooms assigned to EBIA under the FUA. The District disputes this claim. Not only was EBIA never consulted about this arrangement, but

none of the classrooms used by Roosevelt appear to have been assigned to HVCC. Since accommodating HVCC, our teachers have experienced losses of or damage to materials, furniture and student work because of the use by HVCC. In addition, every time that HVCC uses EBIA's classrooms, the furniture is rearranged and trash and messes are left in the classrooms. In other words, the activities of HVCC have caused disruptions for our teachers which interfere with our educational program, and EBIA has incurred financial costs and damages associated with HVCC's use of its space.

Under the Civic Center Act, the District is responsible for preserving order and protecting school facilities. District Board Policy 7000 requires the District to "consistently administer facilities use guidelines delineating ... [c]lear user expectations, including behavior, cleanup, security, insurance and damage repair." This Board Policy also states that the District's facilities use guidelines must address "enforcement procedures for public users who fail to follow the established rules." Also, according to the terms of the FUA, "any use of the Premises by the Community shall not interfere with Charter School's educational program." (FUA § 1.6.) Lastly, the District's Board policy and Administrative Regulation on Civic Center Act use (BP and AR 1330) states that "Groups or persons using school facilities shall be liable for any property damages caused by the activity. The Board may charge the amount necessary to repair the damages and may deny the group further use of school facilities." Additionally EBIA wonders how HVCC can access the school site on the weekend, when EBIA's own staff cannot without an OUSD staff member present.

The use of Roosevelt by HVCC disrupts the educational program of EBIA, and appears to violate the District's rules regarding the use of District facilities. EBIA has requested that the District take appropriate action immediately to enforce its rules and to ensure that HVCC ceases to cause disruption to the educational program of EBIA by having HVCC use some other space on the Roosevelt campus, for example the auditorium or other non-classroom space. The District is not permitted to subject EBIA and its in-District students to such inferior and unequal treatment as it is a direct violation of Prop. 39, the Civic Center Act, and the District's own policies.

In the District's Final Offer, the District agrees to address the foregoing issues "separately as they constitute implementation issues outside the scope of the Final Offer process." The District has yet to resolve or otherwise meaningfully address any of the above-referenced issues that were set forth in EBIA's response to the District's Preliminary Proposal. Further, contrary to the District's claims, the above-referenced co-location issues directly relate to the Prop. 39 reasonable equivalency and location analysis and therefore do not fall outside the scope of the Final Offer process. In addition, under 5 CCR § 11969.9(h), the District's Final Offer must include a "response to the charter school's concerns . . ." and the District is not permitted to pick and choose which concerns are to be addressed in the Final Offer. The District's refusal to address the foregoing concerns not only demonstrates a lack of good faith, it violates the District's obligations under 5 CCR § 11969.9(h).

4. Comparison Schools

The 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 the Charter School.

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.” (Emphasis added.)

Here, the District has identified two separate comparison groups for EBIA from two separate high school attendance areas – one group for EBIA’s 6-8th grade students from the Skyline high school attendance area, and another group for EBIA’s 9-12th grade students from the Castlemont/Coliseum high school attendance area. However, there is nothing in the Implementing Regulations that allows the District to select two separate comparison groups from two separate high school attendance areas for EBIA. EBIA is one school with one program whose grades are split between sites due to the actions of OUSD. Indeed, 5 CCR Section 11969.3(a) clearly states that for those school districts whose students attend high school based on attendance areas, such as the District here, 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.” In other words, there can be only one high school attendance area that dictates the entire comparison group under 5 CCR Section 11969.3(a)(2). Since the largest number of students of the EBIA reside in the Skyline High School attendance area, the comparison group of schools for EBIA for 2017-2018 are those district-operated schools with similar grade levels that serve students living in the Skyline High School attendance area, namely: Skyline, Montera Middle School, and Bret Harte Middle School. The District’s Final Offer fails to address this concern in violation of 5 CCR § 11969.9(h).

5. Condition Analysis

A district must also determine whether a facility is reasonably equivalent by determining whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of comparison group schools. Pursuant to 5 CCR Section 11969.3(c), the District must assess “such factors as age (from latest modernization), quality of materials, and state of maintenance.” The District must also assess the following factors:

1. School site size
2. The condition of interior and exterior surfaces
3. The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
4. The availability and condition of technology infrastructure
5. The condition of the facility as a safe learning environment including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use
6. The condition of the facility's furnishings and equipment
7. The condition of athletic fields and/or play area space

The District did not perform this complete analysis in the Preliminary Proposal, Final Offer or

the exhibits attached thereto. The District claims that it has evaluated data on the condition of the facilities at the comparison schools based on the information available from the District's Asset Management and Facilities Master Plan, and that the sites offered to EBIA are virtually equivalent in every category (landscape quality, safety, noise, graffiti and community access). However, that analysis only addresses a small subset of the categories required to be analyzed by the District under 5 CCR Section 11969.3(c). Therefore, the District's Final Offer fails to perform the complete condition analysis required by the Implementing Regulations. The District's Final Offer failed to address this concern in violation of 5 CCR § 11969.9(h).

6. Insufficient Allocation of Specialized Classroom and Non-Teaching Station Space

EBIA 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 Final 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:

- (A) the grade levels of the charter school's in-district students;
- (B) the charter school's total in-district classroom ADA; and
- (C) the per-student amount of specialized classroom space in the comparison group schools.

(*Id.*; see also *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 296 and *California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530 (CSBA).)

As such, the District must allocate specialized classroom space, such as science laboratories, art rooms, computer rooms, music rooms, wood/metal shop rooms, etc., commensurate with the in-District classroom ADA of EBIA. 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 EBIA 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/non-teaching station space] in the comparison group schools"). (5 CCR § 11969.3(b)(2)-(b)(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). Instead:

"while a Proposition 39 analysis does not necessarily compel a school district to allocate and provide to a charter school each and every particular room or other facility

available to the comparison group schools, it must at least account for the comparison schools' facilities in its proposal. A determination of reasonable equivalence can be made only if facilities made available to the students attending the comparison schools are listed and considered. And while mathematical exactitude is not required (cf. *Sequoia, supra*, 112 Cal.App.4th at p. 196 [charter school need not provide enrollment projections with "arithmetical precision"]), a Proposition 39 facilities offer must present a good faith attempt to identify and quantify the facilities available to the schools in the comparison group--and in particular [*78] the three categories of facilities specified in regulation 11969.3, subdivision (b) (i.e., teaching stations, specialized classroom space, and non-teaching station space)--in order to determine the "reasonably equivalent" facilities that must be offered and provided to a charter school." (*Bullis, supra*, 200 Cal.App.4th 296, 336.)

Here, the District has failed to count wide swaths of specialized classroom or non-teaching station space at the comparison schools, or has entirely failed to account for those spaces in its offer.

a. Allocation of Specialized Classroom Space to EBIA

The Final Offer allocates a total of three (3) exclusive use "flex" classrooms to EBIA that are "intended to encompass specialized and non-teaching station space (i.e. admin, office, library, etc.)" The District alleged that it "determined the amount of specialized teaching space based on the number of general education teaching stations." The District then allocated specialized classroom space "as a fraction of general education classrooms depending on grade level as follows: Elementary, 1/8; Middle, 1/6; High 1/10." The District's allocation of specialized classroom space does not comply with the Implementing Regulations in several respects.

First, the District is not permitted base its determination of the amount of specialized classroom space at the comparison schools on the number of general education teaching stations at those schools. Nothing in the law authorizes the District to average all the various types and amounts of specialized classroom spaces across all the comparison schools in this manner. According to the Implementing Regulations, the allocation of specialized teaching space and non-teaching space is based on an analysis of the square footage of these types of space available to students at the comparison schools (specifically, "the per-student amount of specialized classroom space in the comparison group schools." (5 CCR Section 11969.3(b)(2).) Here, the District's calculation completely fails to account for the "the per-student amount of specialized classroom space in the comparison group schools." The Final Offer is completely void of any discussion of the different amounts (square footage) and types of specialized classroom space that exists at the comparison schools such as science labs, art rooms, band/music/choir rooms, dance studios, ceramics rooms, weight rooms, computer labs, performing arts rooms, and exercise rooms. EBIA is entitled to a reasonably equivalent allocation of or access to all of these types of specialized classroom spaces since they exist at the comparison schools, and *Bullis* requires the District to make "a good faith attempt to identify and quantify" the specialized classrooms spaces that exist at the comparison schools. Therefore, the District's methodology for determining the specialized classroom allocation to EBIA and its failure to identify and quantify all the various types of specialized classroom space at the comparison schools violates Prop. 39 and its Implementing Regulations.

The District insists that it has properly calculated the "per-student amount of specialized classroom space in the comparison group schools," and that EBIA's foregoing arguments are rebutted by Table 5a included in the Final Offer. However, as explained above, Table 5a only includes an estimation of the amount of specialized classroom space at the comparison schools based on the number of general education teaching stations at those schools according to the following formula: Elementary, 1/8; Middle, 1/6; High 1/10. Similarly, the Facility Utilization One-Pagers only estimate the number of

specialized teaching stations at each school based on the same formula. Indeed, the very first page of the Facility Utilization Baseline Estimator 2017-18 clearly states that the Facility Utilization One-Pagers are not based on “actual use,” but rather a formula used to assess minimum use expected for each facility. The Facilities Asset Management Rooms Summary & List included as Exhibit D does not list the specific uses of each classroom. Thus, contrary to the District’s claims, the District has yet to provide EBIA with any data regarding the various types and amounts of specialized classroom space that actually exists at each comparison school. The District further claims that EBIA’s complaints are “boilerplate” and EBIA has not identified any category of specialized teaching space for which EBIA claims a right to shared access with the host school. Yet, on page 12 of EBIA’s response to the Preliminary Proposal, and in the foregoing paragraph, EBIA includes a list of the types of specialized classroom spaces that exist at the comparison schools (i.e., science labs, art rooms, band/music/choir rooms, dance studios, ceramics rooms, weight rooms, computer labs, performing arts rooms, and exercise rooms) to which EBIA is entitled access.

In addition, the District may not combine different types and sizes of specialized classroom space and then allocate non-specialized classrooms to EBIA. If there are science labs, computer labs, music rooms, weight rooms, art rooms, and the like available at the comparison schools, then the District must allocate reasonably equivalent, fully furnished and equipped kinds of these spaces space and/or access to EBIA. A standard classroom does not have, for example, the risers in a choral classroom, the gas and water stations in a science classroom, or the computers in a computer classroom, nor can all these different kinds of uses (and the attendant furnishings and equipment) happen in just three classrooms (along with administrative, office and library space). EBIA also notes that by allocating two classrooms for all these uses (including non-teaching space uses, i.e. administration, office, and library), the District is relegating EBIA students to second-class status, given that District students enjoy access to these separate, furnished and equipped spaces. The District cannot force EBIA to create its own fully furnished and equipped specialized classroom space in a standard teaching station space. “[A] school district does not have the discretion to employ practices that are contrary to the very intent of Proposition 39 that school district facilities be “shared fairly among all public school pupils, including those in charter schools.” (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 296, 336.) The District claims that it is not required to provide EBIA with “an endless list of specialized teaching station categories, but, rather, ‘the per-student amount of specialized classroom space in the comparison group schools.’” Here, the District has done neither; it is only committing to convert one of EBIA’s classrooms to a science lab with no other allocation of specialized classroom space (only a regular “flex” classroom) and based its allocation of “specialized classroom” space to EBIA on an arbitrary formula not derived from the actual specialized classroom space that exists at the comparison schools.

EBIA is entitled to reasonably equivalent allocations of specialized spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized space at the school sites.

b. Allocation of Non-Teaching Station Space to EBIA

The District does not properly allocate non-teaching space. The Final Offer allocates a total of 11, 361 square feet of non-teaching space to EBIA spread across two separate sites, and the District claims that EBIA is only entitled to 12,100 square feet of non-teaching space based on the amount of non-teaching space that exists at the comparison schools. The District acknowledges that it is providing EBIA with less space than it determined was required “based on Comparison Schools’ Median Sq/Ft/ADA,” but attempts to justify this noncompliant offer by explaining that it considered the following “mitigating factors:”

1) the SF/ADA allocated to the Charter School at Roosevelt is well above that of the shared site; 2) the Charter School has exclusive use at Marshall of non-teaching space such as restrooms, hallways, and storage, which are not reflected in Table 7c above; and 3) the District did not include square footage for the shared courtyard and field space at Roosevelt, or other space such as restrooms, hallways and storage, in the calculation of the pro-rata share.

The District's allocation of non-teaching space to EBIA does not comply with Prop. 39 or its Implementing Regulations in several respects. First, there is a substantial amount of non-teaching station space at the comparison schools that is not included in the District's calculation or allocation to EBIA. Based on the information contained in the Final Offer and the site plans for the comparison schools, it is clear that the District only counted the library, auditorium/cafeteria/MPR/gym, and admin/office/conference room square footage in its calculation of non-teaching space at the comparison schools. The District does not include any of the following spaces in its calculation of non-teaching space at the comparison schools or its allocation to EBIA: storage, kitchen/servery, nurse/clinic space, psychiatric/OT/resource/special education/ESL/Title I/speech rooms, textbook rooms, parent centers, educational guidance centers, copy rooms, custodial rooms, locker rooms, restrooms, field space (only allocation at Roosevelt), gardens, blacktop space/basketball hoops, tennis/volleyball courts, play structure and parking space even though such space is available at the comparison schools and most, if not all the proposed sites. The District is required to provide EBIA with a reasonably equivalent allocation of all these types of spaces and EBIA requires an allocation of all these types of spaces in order to operate its educational program.

Second, while the Final Offer indicates that "Charter School's access to non-teaching space, such as auditoriums, gymnasiums, multi-purpose rooms, and cafeterias, is based upon the Charter School's per-student entitlement to each category of space at the comparison group schools . . . ," the Final Offer contains no listing or description of the types of shared non-teaching spaces to which EBIA will be provided access at the offered sites¹, with the exception that the District included a schedule for EBIA's shared use of the gym, courtyard, auditorium, field and cafeteria at Roosevelt. However, contrary to the District's claims, the shared use schedule and shared non-teaching space allocation included in the Preliminary Proposal and Final Offer are not "the result of a sharing arrangement determined by the leaders of the two schools co-located at the site." EBIA and the Roosevelt site administration have not executed any agreement regarding EBIA's shared use of the Roosevelt site in 2017-2018 and EBIA anticipates that it will receive greater shared access than it receives now based on its increased in-District enrollment. Despite EBIA's expression of these concerns in its response to the Preliminary Proposal, the District failed to respond to these concerns in the Final Offer in violation of 5 CCR § 11969.9(h). In addition, EBIA has the following concerns/requests regarding the sharing schedule included in the Final Offer:

1. Gym and Field use – consistent with EBIA's schedule for 2017-2018, EBIA requests use of the gym and field during its 7th period class time for its PE program. EBIA is willing to share a portion of the gym and/or field during this time.
2. Courtyard – EBIA has historically used the Courtyard during its lunchtime. However, the schedule included in the Final Offer does not cover EBIA's lunchtime.
3. Cafeteria – EBIA's lunchtime on Wednesdays goes until 1:43 p.m., but the schedule in the Final Offer only allows EBIA access to the cafeteria until 1:30 p.m. EBIA

¹ 5 CCR section 11969.9(h) requires that the school district, in its final facilities proposal, specifically identify the nonteaching station space offered to the charter school. (*Bullis, supra*, at p. 1046.)

previously shared its lunchtime schedule with the District and the District did not express any concerns or objections.

EBIA expects that the District will intervene if the Site Principal and EBIA cannot reach a mutually agreeable shared use schedule.

Third, the District is not permitted to reduce EBIA's allocation of non-teaching space based on the District's claimed "utilizations" at the comparison school sites. "Non-teaching station space is all of the space that is not identified as teaching station space or specialized classroom space . . ." and "a school district, in determining the amount of nonteaching station space it must allocate to the charter school, must take an objective look at all of such space available at the schools in the comparison group." (*Bullis, supra*, at p. 1047, emphasis added.) "A school district may achieve the mandate under Proposition 39 and the regulations of giv[ing] the same degree of consideration to the needs of charter school students as it does to the students in district-run schools [citation omitted] only if it considers the entire nonclassroom space in the facilities offer." (*Id.*, emphasis added) Regardless of the "utilization" of the comparison schools, with the exception of spaces used exclusively by co-located charter schools, areas under construction, or spaces that may be excluded such as spaces used by preschools or adult schools, the District students/staff at the comparison schools have access to all the non-teaching station space at the site and do not have their access reduced because the school is under-enrolled. Similarly, the District may not base its non-teaching station space allocation to EBIA on the "median comparison schools' sq ft/ADA," which results in an artificially reduced allocation to EBIA.² In addition, EBIA notes that the District mistakenly claims that "the average SF/ADA of non-teaching space for the Charter School between the two sites is marginally below the average at the comparison group sites . . ." yet the District fails to realize that what is listed in the table immediately preceding this statement is actually the median SF/ADA at the comparison schools. In fact, even based to the District's quoted figures, which do not include a considerable amount of non-teaching station space at the comparison schools, the average SF/ADA at the comparison schools is *substantially* greater than that which the District allocated to EBIA.

For all these reasons, the District's allocation of specialized and non-teaching station space included in the Final Offer fails to comply with Prop. 39 and its Implementing Regulations. EBIA is entitled to reasonably equivalent allocations of specialized and non-teaching spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized and non-teaching space at the offered school sites.

7. Insufficient Allocation of Teaching Station Space

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 EBIA 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).) There is no such thing as a fractional classroom for a single grade level of students and the allocation cannot be based upon the District's "loading standard," nor can it be based on an arbitrary and fabricated formula.

² The District claims the median comparison schools' sq ft/ADA is 29.10, which as mentioned above, does not include wide swaths of non-teaching station space that exists at the comparison schools. Based on the figures provided by the District, the average comparison schools' sq ft/ADA is 37.41.

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):

“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.)

In calculating the number of classrooms that the District will make available EBIA, the District must count the number of classrooms in the comparison group schools and cannot use districtwide norming ratios. (*Id.*, p. 1236.)

Under 5 CCR Section 11969.3(b)(1), “[t]he number of teaching stations (classrooms) shall be determined using the classroom inventory prepared pursuant to California Code of Regulations, title 2, section 1859.31, adjusted to exclude classrooms identified as interim housing.” Classroom 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.” (*Id.*) As the number of classrooms provided to students varies by grade range in order to meet the age-appropriate facilities needs of students in each grade range, the number of classrooms should be counted at each grade range (K, 1-3, 4-5, 6-8, and 9-12).

In the *CCSA v. LAUSD* case, the Court explained further that classrooms used for preschool or adult education, or by other charter schools are not counted as classrooms provided to the District's non-charter K-12 public school students. (*CCSA v. LAUSD, supra*, p. 1240.) However, the Court held that “counting classrooms ‘provided to’ district students for the purposes of section 11969.3(b)(1) is not the same as counting only those rooms a district elects to staff with a teacher.” (*Id.*, p. 1241.) The Court reasoned that “[c]ounting only those classrooms staffed by an assigned teacher would effectively impute to charter schools the same staffing decisions made by the District. But there is no reason to think a charter school would necessarily use classrooms in the same way that the District does.” (*Id.*)

On a practical level, even if certain rooms are not used for classroom instruction, students nonetheless benefit from these additional rooms, either in the form of having additional space to use for break out instruction or storage, or in having less crowded classrooms. Thus, the District is required by the Supreme Court's ruling count all of the classrooms provided to students in the District for K-12 classroom instruction regardless of whether the classrooms are staffed by teachers or not, and use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA.

To find the numerator in the ADA/classroom ratio, the District must determine each comparison school's ADA “using projections for the fiscal year and grade levels for which facilities are requested.” (5 CCR Section 11969.3(b)(1).) The District must then arrive at an average ADA/classroom ratio for all the comparison schools, and apply this to EBIA's projected ADA to arrive at the EBIA's allocation.

EBIA is concerned that the District has not properly calculated the Average ADA to teaching station ratio at the comparison schools. The District fails to include the number of teaching stations used to determine the ADA to teaching station ratio and the District's Exhibit B indicates that the District is in fact using class size averages in violation of *CCSA v. LAUSD*, rather than the actual number of teaching stations to ADA at the comparison schools to determine the ADA to teaching

station ratio at the comparison schools.

A review of the publicly available information for the District comparison schools’ teaching stations, enrollment, and attendance rates, specifically CDE data regarding enrollment in 2016-17, the 2016-17 OUSD “Fast Facts” regarding the average District attendance rate, the School Accountability Report Cards and the 2012 OUSD Facilities Master Plan suggests that EBIA is entitled to an allocation of at least **twenty-two (22) teaching stations, i.e., three (3) more than the District allocated EBIA.**

School Name	ADA ³	Teaching Stations ⁴	Teaching Station to ADA Ratio
Montera	743.93	34	21.88
Bret Harte	489.26	33	14.83
Skyline	1758.96 ⁵	88	19.99
AVERAGE			18.90

8. Pro Rata Charge Worksheet: As a preliminary matter, EBIA notes that the District has indicated that EBIA’s “share of the custodial costs may be subject to reconciliation in the event that the District is required to increase staffing as a result of the Charter School’s use and occupation of the District’s site.” To the extent that the District is indicating its intent to charge EBIA an additional amount for custodial services above what is included in the pro-rata share, this is not permitted by the Implementing Regulations.

- a. **Utilities:** The District indicates that utilities may be included in the pro rata share if applicable under the Use Agreement. These amounts should be separately metered and billed to EBIA, as it is not appropriate nor provided for in the law to include these costs in the pro rata share calculation, especially since some schools in the District (for example, comprehensive highs schools that have pools and large gymnasiums) have substantially higher utilities costs, thereby requiring EBIA to shoulder higher burdens of utilities costs than the amounts EBIA actually uses. If the District receives billing from the utilities companies for each of its individual school sites, EBIA is willing to pay the actual utilities costs for the site based on the same calculation used to determine the pro rata share costs for the shared use space, with the exception that any costs assumed by EBIA cannot be included in the pro rata share calculation.
- b. **Police Services:** The District may not include police costs in its pro rata share calculation because EBIA provides its own security and alarm services, and also has been told by the District’s Police Services that Police Services does not provide services to charter schools in the District. Pro rata share amounts are intended to reflect a charter school’s portion of the District’s facilities costs that EBIA uses. Because EBIA does not use the District’s police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

³ EBIA used the District’s ADA projections for 2017-18 here, without acknowledging the accuracy of the District’s projections.

⁴ This calculation assumes that each middle and high school uses ten (10) of its teaching stations for specialized and non-teaching space (such as a parent center, band/music, special education, science labs, computer lab space, home economics, and art room).

⁵ For Skyline, we used the school’s current enrollment of 1,843 and applied the District’s current attendance rate of 95.44% to determine the ADA for 2017-2018.

- c. **Insurance:** EBIA will provide and pay for the full spectrum of its insurance benefits, as required by its charter and the Facilities Use Agreement; the District has included the cost of its own property insurance on the facility. Including the District's insurance costs in the calculations not only double bills EBIA for a cost it is already paying for, it is requiring EBIA to pay for a cost that is actually the District's responsibility. Moreover, insurance is not contemplated under the Prop. 39 regulations as an acceptable "facilities cost," and Education Code Section 47614 specifically states that a charter school may not be charged for use of district facilities beyond the pro rata share.
- d. **Custodial Services:** The District indicates that custodial services may be included in the pro rata share if applicable under the Use Agreement. The Implementing Regulations provide that ongoing operations and maintenance of facilities, which includes custodial costs, are the responsibility of EBIA (5 CCR Section 11969.4(b)) and that any costs assumed by EBIA cannot be included in the pro rata share calculation. EBIA wishes to perform its own custodial services in large part because it is not financially able to absorb the cost of District services; therefore, the Final Offer will need to be revised to provide for this revision.
- e. The District has included \$13,548,405 in facilities costs identified as "RRMA transfer from UR to resource 8150." However, the Implementing Regulations provide that ongoing operations and maintenance of facilities, which includes custodial costs, are the responsibility of EBIA (5 CCR Section 11969.4(b)) Therefore, please provide EBIA with the necessary documentation to show that the District has removed all facilities costs related to ongoing operations and maintenance from its RRMA transfer amounts that are EBIA's responsibility, including custodial services.
- f. Third, 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 EBIA 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 EBIA 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 EBIA'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."

9. Draft Facilities Use Agreement: We are reviewing the draft Facilities Use Agreement and look forward to negotiating the terms of that or an in-lieu agreement over the next several weeks, as required by the Implementing Regulations. (5 CCR Section 11969.9(k).)

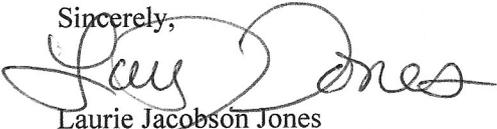
- a. **Section 1:** This section states “District agrees to allow use of the Premises at the School(s) by Charter School for the sole purpose of operating Charter School’s educational program in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Charter School’s educational program.” This section will need to be revised to include EBIA’s summer school and programs procured by EBIA through third party entities, e.g. after-school program providers.
- b. **Section 1.4:** Prop. 39 only requires EBIA to comply with the District’s policies and procedures related to operations and maintenance, and not where actual school district practice substantially differs from official policies. (5 CCR Section 11969.4(b).
- c. **Section 1.6:** Fees charged under the Civic Center Act are intended to reimburse school districts for the costs they incur to process permits and to clean up after community use of their facilities. As EBIA will be responsible for cleaning up its site after each community use, the portion of the Civic Center Act fees related to custodial and maintenance costs must be paid to EBIA.
- d. **Section 2:** The Site must be furnished, equipped and available for occupancy by EBIA for a period of at least ten (10) working days prior to the first day of instruction. However, we are willing to consider taking possession earlier if mutually agreed upon between the parties.
- e. **Section 3:** This section also needs to reflect that if EBIA constructs or installs recreational improvements or other school facilities, EBIA and the District will agree to negotiate a reduction in the facilities use fees. EBIA’s other concerns regarding the Pro Rata Share Charge outlined above are incorporated herein. Again, any costs assumed by EBIA cannot be included in the pro rata share calculation, including custodial and maintenance costs. EBIA objects to the late charge listed in Section 3.5. The Implementing Regulations do not contemplate late fees to be charged to EBIA.
- f. **Section 6:** This section indicates there will be furnishings and equipment for 83 students. This number will need to be adjusted to reflect the number of EBIA students on the sites.
- g. **Section 9:** This section states that the District “shall not be liable for any personal injury suffered by Charter School or Charter School’s visitors, invitees, and guests, or for any damage to or destruction or loss of any of Charter School or Charter School’s visitors, invitees or guests’ personal property located or stored in the parking lots, street parking or the School Site, except where such damage is caused by the District’s negligence or misconduct.” This section will need to be changed to reflect that the District may not avoid liability for injuries or damage caused by its failure to maintain the parking spaces on the site. The District is required to provide EBIA with a facility that complies with the California Building Code, and to maintain the facility in compliance with the California Building Code. (5 CCR Section 11969.9(k).) It may not provide the parking lot in an “as-is” condition.
- h. **Section 10:** For the same reason, the District may not require EBIA to take the facility in “as is” condition. Furthermore, it is not acceptable for the District to terminate the FUA if the cost to make repairs exceeds \$150,000. The District is

required to make the facility available to EBIA for its entire school year (5 CCR Section 11969.5) and to maintain the facility in compliance with the California Building Code. (5 CCR Section 11969.9(k).) As a result, if the facility is damaged, the District must repair it, or, if it is destroyed, the District must provide alternative facilities.

- i. **Section 12.3 and 12.4:** The District must make reasonable efforts to keep their materials, tools, supplies and equipment on the Premises in such a way as to minimize disruption to EBIA's program. The District must provide relevant scheduling information and reasonable notice to EBIA if it will be coming onto the facility to perform maintenance. In addition, EBIA wishes to perform its own custodial services, and as a result, does not agree to allow the District to enter the Premises to perform custodial services.
- j. **Section 14:** While EBIA is willing to pay any taxes or assessments on its personal property, or modifications or improvements it performs on the facility, it may not otherwise be obligated to pay any costs to occupy the facility beyond the pro rata share. (Education Code Section 47614(b)(1).)
- k. **Section 15:** EBIA wishes to perform its own cleaning and custodial services. Therefore, the Final Offer will need to be revised to provide for this revision.
- l. **Section 17:** If the comparison schools have a security system, then in order to provide a reasonably equivalent facility, the District must also provide the Premises with a security system. EBIA does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to EBIA taking possession of the Premises and prior to conducting its educational program on the Premises.
- m. **Section 18.1.7:** EBIA does not agree that should it default under the FUA, it must pay the District its unpaid pro rata share. The District is obligated to attempt to first find an alternative occupant for the site.
- n. **Section 18.2:** This section must provide for EBIA to perform any District obligation if the District is in default, and to recover its reasonable costs in so doing from the District.
- o. **Section 20:** If EBIA chooses to seek its insurance through a joint powers authority such as CharterSAFE, JPAs do not receive an A.M. Best insurance rating. This section will need to be revised to provide that insurance through a JPA will satisfy the terms of the FUA.
- p. **Section 28:** This section must be revised to provide that the District is responsible for maintaining the Premises in compliance with applicable law, except to the extent that compliance arises as a result of modifications or improvements performed by EBIA.

We have attempted in this letter to enumerate all of our concerns with the District's Final Offer; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term. EBIA looks forward to the opportunity to discuss and negotiate the Facilities Use Agreement with the District, along with EBIA's other above-referenced concerns, moving forward.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Jones". The signature is written in black ink and is positioned above the printed name.

Laurie Jacobson Jones
EBIA Board of Directors

Cc: Casey Hazelhofer, Young, Minney & Corr, LLP
EBIA's Board Members

AGREEMENT BETWEEN EAST BAY INNOVATION ACADEMY CHARTER SCHOOL ("EBIA") AND OAKLAND UNIFIED SCHOOL DISTRICT ("DISTRICT") REGARDING RESPONSE TO FINAL OFFER OF FACILITIES UNDER EDUCATION CODE SECTION 47614 ("PROPOSITION 39") FOR THE 2017-2018 SCHOOL YEAR

WHEREAS, on or about June 1, 2017, the DISTRICT served on EBIA, pursuant to a written agreement extending the applicable statutory deadlines, a Final Offer of Facilities for 2017-2018 under Proposition 39; and

WHEREAS, the Final Offer included an allocation of facilities, furnishings and equipment to EBIA at Roosevelt Middle School, 1926 East 19th Street, Oakland, CA 94606 ("Roosevelt"); and at Thurgood Marshall Elementary School, 3400 Malcolm Avenue, Oakland, CA 94605 ("Marshall"); and

WHEREAS, EBIA intends to notify the DISTRICT of its intent to occupy the facilities at Marshall; and

WHEREAS, EBIA is in the process of negotiating alternate facilities for its upper grades;

NOW, THEREFORE, for and in consideration of the covenants and agreements herein set forth to be kept and performed by both parties, the parties agree as follows:

1. EBIA hereby notifies the DISTRICT of its intent to occupy the facilities at Marshall, as set forth in the DISTRICT's June 1, 2017 Final Offer of Facilities to EBIA.
2. EBIA hereby conditionally notifies the DISTRICT of its right to occupy the facilities at Roosevelt, as set forth in the DISTRICT's June 1, 2017 Final Offer of Facilities to EBIA, without obligation and prejudice to its ability to withdraw such notification in writing to the DISTRICT no later than 5 p.m. on August 1, 2017. Should EBIA provide the DISTRICT written notice that it has withdrawn such notification as to the Roosevelt site by 5 p.m. on August 1, 2017, it shall have no obligation to use or occupy the portion of the Roosevelt site set forth in the DISTRICT's June 1, 2017 Final Offer of Facilities to EBIA for the 2017-2018 school year, and will not incur any of the financial obligations under Proposition 39 that would have solely arisen out of EBIA's use and occupation of the facilities at Roosevelt for the 2017-2018 school year.
3. The parties retain all rights under Proposition 39 not specifically addressed herein.

OAKLAND UNIFIED SCHOOL DISTRICT

By: _____
Title: _____
Date: _____

EAST BAY INNOVATION ACADEMY

By: Allen Oles
Title: Co-Founder, Board Treasurer
Date: 6/29/17