

East  Oakland Leadership Academy
"Educating children today to become leaders of tomorrow"
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Dr. Laura Armstrong, Director

April 28, 2017

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

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

Dear Ms. Bradford:

East Oakland Leadership Academy ("EOLA" or "Charter School") is in receipt of the Oakland Unified School District's ("District") April 3, 2017¹ letter ("Final Offer") regarding EOLA's request for facilities under Proposition 39 ("Prop. 39") for the 2017-2018 school year.

The District's Final Offer is for exclusive use of seven (7) classrooms for "teaching stations/specialized classrooms" and one (1) classroom for administration, along with shared use of "non-teaching space, such as auditoriums, gymnasiums, multi-purpose rooms, and cafeterias" (4,840 sq. ft. allocation to EOLA) at Westlake Middle School. The Final Offer is based on a projected in-District ADA of 119.63.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires EOLA to notify the District whether or not EOLA intends to occupy the offered space. Due to the deficiencies delineated below and in EOLA's prior correspondence to the District regarding its request for facilities under Prop. 39 for the 2017-2018 school year, please accept this letter as EOLA's notification that it does not intend to occupy the offered space in 2017-2018. EOLA reserves all its legal rights under applicable local, state, or federal law, including Proposition 39 rights and remedies.

¹ EOLA notes that the District's Final Offer is untimely in violation of 5 CCR § 11969.9(h) as it was not provided to EOLA until April 3, 2017.

The Final Offer fails to meet the legal requirements of Prop. 39, in part, because the Final Offer allocates EOLA space at Westlake, which is not anywhere near where EOLA requested to be located, and there is no evidence that the District made reasonable efforts to locate EOLA near its desired location pursuant to Education Code § 47614(b). In addition, the Final Offer fails to provide sufficient information regarding the allocation of teaching station, non-teaching space and specialized classroom space to EOLA and fails to provide EOLA with a reasonably equivalent allocation of such spaces 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. Location

Pursuant to Education Code § 47614(b), the District is required to make "reasonable efforts" to provide EOLA "with facilities near to where the charter school wishes to locate." In its Request, EOLA specifically stated that it wished to be located at "one of the following sites: Frick; Horace Mann; Markham; Lockwood or in the general geographic area of Seminary (between San Leandro Blvd. and 580 Freeway and Foothill (between 73rd and 50th Ave.) in Oakland, CA." Westlake is approximately 6-7 miles away (at least a 20-minute drive and 2-hour walk) from the area in which EOLA requested to be located and the area in which a majority of EOLA's students reside.

The District's Preliminary Proposal allocated EOLA space at Frick, and EOLA informed the District that it anticipated accepting the District's offer of space at Frick in its response to the Preliminary Proposal. EOLA's response to the Preliminary Proposal took no issue with the District's proposal to locate EOLA at Frick in 2017-2018.

Notwithstanding the foregoing, the District now claims that EOLA "took significant issue with the District's allocation of specialized teaching space and non-teaching space" at Frick and implies that the District allocated EOLA space at Westlake instead of Frick according to EOLA's wishes. These claims are meritless and neither based in fact nor logic. In the Final Offer, the District attempts to support its decision to locate EOLA at Westlake by claiming that Westlake provides a "more favorable allocation of [specialized teaching space and non-teaching space]" to EOLA and that the District "balanced the Charter School's preferred location against its complaints about the specialized teaching space and non-teaching space offered to the Charter School." However, the District's failure to properly calculate and allocate reasonably equivalent specialized and non-teaching space according to the Implementing Regulations, which it fails to do again in the Final Offer, cannot justify the District's unilateral decision to locate EOLA far away from the area in which is requested to be located. The District is not permitted to locate EOLA wherever the District sees fit based on the under-enrollment/under-utilization or current extra space available at each District school as it has done here. Contrary to the District's claims, since the amount of specialized classroom and non-teaching space to which EOLA is entitled is based on the "the per-student amount of [specialized/non-teaching] space in *the comparison group schools*,"

(emphasis added), EOLA's entitlement to such space does not change simply due to its offered location.

In addition, the Final Offer falsely claims that offering EOLA space at Westlake instead of Frick provides EOLA with an additional unit of specialized space and non-teaching space above its entitlement. However, both the Final Offer and the Preliminary Proposal offer EOLA seven (7) "teaching stations/specialized classrooms" and claim to provide more non-teaching space than required. Indeed, while the Final Offer allocates one additional exclusive use administration room to EOLA, it provides EOLA with almost half as much shared non-teaching space as the District offered in the Preliminary Proposal. Therefore, the District's decision to locate EOLA at Westlake does not provide a "more favorable allocation of [specialized teaching space and non-teaching space]" as the District contends.

The District also claims that Westlake allows EOLA to have continuous classroom space in a single wing, rather than spread across the campus, and that confirmation from a pre-existing high school program that it will continue to stay at Frick in 2017-2018 makes a "sharing arrangement with the Charter School less appropriate." Again, EOLA's response to the District's Preliminary Proposal did not object to the District's specific allocation of classrooms at Frick, and as a result, the proximity of allocated classrooms at Westlake cannot justify the District's decision to locate EOLA far away from its desired area. The District's indication that a pre-existing high school's confirmation that it will stay at Frick makes a "sharing arrangement with the Charter School less appropriate" further demonstrates that the District is relegating EOLA's in-District students to second-class status in violation of Prop. 39 and its Implementing Regulations.

While the Final Offer claims that the District is exercising 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," the Final Offer is completely void of any evidence that the District made any attempt to locate EOLA at any of its offered locations. Moreover, the publicly available information reviewed by EOLA reveals that there is sufficient space for EOLA at two of its requested sites, namely, Markham and Howard. Markham previously accommodated at least 642 students but currently only has 363 students enrolled, and the Final Offer indicates that Markham's utilization rate is only 71.8%. Similarly, Howard previously accommodated at least 371 students but currently only has 241 students enrolled, and the Final Offer indicates that Howard's utilization rate is only 74.1%. According to the District's website, no charter schools are currently co-located at either site.

For all the foregoing reasons, the District's selection of Westlake and its refusal to make reasonable efforts to locate EOLA near where it wishes to be located violates Prop. 39 and its Implementing Regulations.

2. 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 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 site offered to EOLA is 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.

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

EOLA is also entitled to reasonably equivalent allocations of furnished and equipped 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 EOLA. 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 EOLA 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.*, emphasis added.) An allocation of non-teaching station space can be accomplished through shared use or exclusive use. (*Ibid.*; *Bullis, supra*, 200 Cal.App.4th 296; *CSBA, supra*, 191 Cal.App.4th 530.)

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/non-teaching] space in the comparison group schools"). 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, or has entirely failed to account for those spaces in its offer.

a. Allocation of Specialized Classroom Space to EOLA

The Preliminary Proposal allocates a total of one (1) exclusive use "flex" classroom to EOLA that is "intended to encompass specialized and non-teaching station space (i.e. admin, office, library, etc.)" The District alleged that it "determined 'the per-student amount of specialized classroom space in the comparison group schools' 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) and (3).) 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 (including STEM/STEAM labs), computer labs, music rooms, art rooms, media centers, and dance studios.² EOLA 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 EOLA

² According to EOLA's review of publicly available information regarding the comparison schools, including the comparison schools' Facility Plans, School Accountability Report Cards, LCAP reports, and websites.

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.

Second, the District may not combine different types and sizes of specialized classroom space and then allocate non-specialized classrooms to EOLA. If there are science labs, computer labs, music 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 EOLA. 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 one classroom. EOLA also notes that by allocating one classroom for all these uses (including non-teaching space uses, i.e. administration, office, and library), the District is relegating EOLA students to second-class status, given that District students enjoy access to these separate and furnished and equipped spaces. The District cannot force EOLA 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.)

In response to EOLA’s concerns expressed in its response to the Preliminary Proposal, the District falsely asserts that “the Charter School only identifies one category of specialized teaching space- special education classrooms – for which it demands additional space” This claim is completely meritless as EOLA’s response to the Preliminary Proposal also stated that since the comparison schools “have science labs, computer labs, music rooms, and art rooms,” and as a result, “the District must allocate exclusive or shared use of reasonably equivalent, fully furnished and equipped kinds of these spaces space and/or access to EOLA.” The District asserts that its “calculation of the availability of specialized teaching space at the comparison group schools already incorporates the availability of special education teaching space at those schools, which is carried forward into the allocation of specialized teaching space to the Charter School.” However, the Final Offer directly contradicts this claim as the Final Offer makes it clear that the District is determining the amount of specialized spaces at the comparison schools and the resulting allocation to EOLA based on a broad, and largely unsupported, estimation, rather than by counting the amount and types of specialized spaces at the comparison schools.

EOLA is entitled to reasonably equivalent allocations of specialized spaces, and of furnishings and equipment that accompany those spaces in the comparison schools.

b. Allocation of Non-Teaching Station Space to EOLA

The District does not properly allocate non-teaching space and the District’s methodology regarding non-teaching space is illegal and illogical in several respects. The Final Offer allocates a total of 4,840 square feet of non-teaching space to EOLA, and

the District claims that EOLA is only entitled to 3,144 square feet of non-teaching space based on the amount of non-teaching space that exists at the comparison schools.

However, 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 EOLA. 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. What the District has done is looked at the Facility Plans for the comparison schools, and added together the square footage in those documents identified as "Admin/Office/Conference," "MPR/Auditorium/Cafeteria/Gym," and "Library" for each school. It has then applied an arbitrary "Site Utilization" percentage to this square footage, and divided it by the school's ADA, to arrive at a random Sq Ft/ADA number.

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 EOLA: storage, kitchen/servery, nursing stations, psychiatric/OT/resource/special education/ESL/speech rooms, intervention rooms, textbook rooms, parent centers, copy rooms, custodial rooms, locker rooms, restrooms, field space, gardens, blacktop space/basketball hoops, tennis courts, play structure and parking space even though such space is available at the comparison schools and most, if not all of these types of spaces exist at the offered site. The District is required to provide EOLA with a reasonably equivalent allocation of all these types of spaces.

Further, even though the District is required to include the arrangements for sharing shared spaces and the specific spaces to be allocated to EOLA in its Final Offer pursuant to 5 CCR § 11969.9(h), the Final Offer contains no listing or description of the types of shared non-teaching spaces to which EOLA will be provided access at the offered site or the District's proposal for sharing the spaces between EOLA and the District school. The Final Offer merely 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 . . . ," and the site maps attached to the offer do not provide any clarification of the actual spaces to be shared by EOLA.

In addition, the District is not permitted to reduce EOLA's allocation of non-teaching space based on the District's claimed "utilizations" at the comparison school sites. The District claims that it is permitted to evaluate the utilization of classrooms at the comparison group schools under *CCSA v. LAUSD, supra*. However, the portion of the *CCSA v. LAUSD* opinion quoted by the District does not provide any support for the District's position. While *CCSA v. LAUSD* dictates that "unbuilt classrooms, classrooms already used by charter schools, and classrooms dedicated to preschool, adult education, or other uses besides K-12 education are not 'provided to' such K-12 students and thus

need not be counted in determining the ADA/classroom ratio . . . ,” *CCSA v. LAUSD* does not authorize the methods employed by the District here.³

“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 EOLA on the “median comparison schools’ sq ft/ADA,” which results in an artificially reduced allocation to EOLA.⁴

Lastly, the District’s methodology for determining the allocation of non-teaching station space to EOLA is not consistent with Prop. 39 because it indicates that EOLA’s allocation of access to non-teaching station space will be based on the percentage of square footage that EOLA occupies on the school site that it has been allocated; for a charter school allocated space on a large District campus, for example, this will artificially reduce the amount of space to which the charter school is actually entitled (beyond the fact, as described above, that this is not the formula for allocation in the Implementing Regulations).

EOLA 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.

4. 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 EOLA with the same ratio of teaching stations to average daily

³ The District’s description of its “site utilization” method (page 13 of the Final Offer) does not even imply that the “utilization” rates quoted by the District are based on any of the following: unbuild classrooms, classrooms already used by charter schools, or classrooms dedicated to preschool, adult education, or other uses besides K-12 education. Rather, the District’s method is based upon “a uniform District utilization standard” according to “what capacity of teaching space, non-teaching space and specialized teaching space each District school should be entitled to . . . ”

⁴ According to the District’s figures, the average non-teaching space SF/ADA at the comparison schools is 29.85, 3.57 greater than the median SF/ADA.

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.

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 EOLA, 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 (here K, 1-3, 4-5, and 6-8.)

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 to 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 EOLA's projected ADA to arrive at the EOLA's allocation.

EOLA 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.

- 5. Pro Rata Charge Worksheet:** EOLA notes that the District has indicated that EOLA'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 EOLA 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 EOLA, 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 EOLA to shoulder higher burdens of utilities costs than the amounts EOLA actually uses.
 - b. Police Services:** The District may not include police costs in its pro rata share calculation because 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 EOLA uses.

- c. Insurance:** 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 would double bill EOLA, it would require EOLA 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 EOLA (5 CCR Section 11969.4(b)) and that any costs assumed by EOLA cannot be included in the pro rata share calculation.
- 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 EOLA (5 CCR Section 11969.4(b))
- 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 EOLA 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 EOLA 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 EOLA'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.)

6. Draft Facilities Use Agreement: EOLA fully incorporates all its concerns regarding the proposed FUA that were expressed in its response to the Preliminary Proposal herein by this reference.

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Sincerely,

Laura Armstrong, Director
East Oakland Leadership Academy

Cc: Paul C. Minney, Young, Minney & Corr, LLP
EOLA's Board Members