



March 1, 2018

Leslie Jimenez  
Office of Charter Schools  
Oakland Unified School District  
1000 Broadway, Suite 639  
Oakland, CA 94607

***Re: Proposition 39 Solutions***

Dear Leslie,

Attached is our formal response to Oakland Unified School District's Proposition 39 preliminary offer.

This letter is intended to notify you that we have been working with other charter schools to discuss other potential configurations, based on the preliminary Prop 39 offers extended to individual schools. In partnership and in good faith, we are hoping to identify a set of solutions that could enable more schools to better serve students and families in their target neighborhood and provide facility stability. Ideally, this process could result in multi-year leases, which would alleviate the arduous Proposition 39 process for both OUSD and charters. Longer-term occupancy may also provide opportunities for charters to invest in capital improvements to OUSD facilities.

We invite OUSD leadership to engage as a thought partner so that we can consider the district's needs and plans for its portfolio of schools. Please let us know if you or other district leaders would be interested in joining in partnership.

In Collaboration,

A handwritten signature in black ink, appearing to read "Mathilde Andrejko".

Mathilde Andrejko

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



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Leslie Jimenez  
Office of Charter Schools  
Oakland Unified School District  
1000 Broadway, Suite 639  
Oakland, CA 94607

***Re: Francophone Charter School of Oakland  
Response to District's Preliminary Proposal  
Proposition 39 2018-2019***

Dear Ms. Jimenez:

Francophone Charter School of Oakland ("Francophone" or "Charter School") is in receipt of the Oakland Unified School District's ("District") February 1, 2018 letter ("Preliminary Proposal") regarding Francophone's request for facilities under Proposition 39 ("Prop. 39") for the 2018-2019 school year.

The District's Preliminary Proposal is for six (6) classrooms for "exclusive use teaching station and specialized classroom space" and exclusive use of the non-teaching station space at Toler Heights/Barack Obama, and two (2) classrooms for "exclusive use teaching station and specialized classroom space" and 13.5% shared use of the non-teaching station space at Howard Elementary School. The Preliminary Proposal is based on a projected in-District ADA of 150.10.

The Charter School thanks the District for its offer, and is interested in discussing this offer of space at Howard Elementary further. Francophone will also be accepting the District's offer of the Toler Heights site.

### **1. Alternative Expanded Proposal**

It is Francophone's understanding that Aspire, which received an allocation of three other available classrooms on the Howard campus, does not wish to use this allocation of classrooms. Francophone does have a need for these additional classrooms.

These additional classrooms could, for instance, be counted as part of the Charter School's non-teaching space allocation.

Alternatively, Francophone would be willing to pay the pro rata share for the additional

three classrooms, which would bring additional revenue to the District in the coming school year.

Francophone would also be interested in entering into a two-year in-lieu agreement with the District whereby it would be allocated its current Toler Heights campus as well as five (5) classrooms on the Howard Site (in addition to Francophone's allocated shared space). Francophone would then not submit a Prop. 39 request for the 2019-2020 school year, thereby reducing the number of requests the District will have to process next year.

Regardless of the details of the final agreement, we look forward to meeting with our colleagues at Howard Elementary to outline a collaborative, mutually beneficial co-location plan, and hope to actively contribute to the school community. We would welcome the District's facilitation and/or involvement in this process.

In order to move the dialogue forward, the Charter School will now outline specific aspects of the offer that will need to be addressed before a final agreement can be reached, in accordance with Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations"), which requires schools to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and Francophone's facilities request as submitted pursuant to subdivision (b), and/or make counter proposals.

The Preliminary Proposal fails to meet the legal requirements of Prop. 39, in part, because the Preliminary Proposal fails to provide sufficient information regarding the allocation of teaching station, non-teaching space and specialized classroom space to Francophone and fails to provide Francophone with a reasonably equivalent allocation of space as required by law. Francophone requests that the District's final offer of space be modified in accordance with Prop. 39 and its Implementing Regulations. 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.

## **2. 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 Francophone from two separate high school attendance areas – one group for Francophone’s 6-8<sup>th</sup> grade students from the Oakland Tech attendance area, and another group for Francophone’s K-5<sup>th</sup> grade students from the Skyline 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 Francophone. Francophone is one school with one program. 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).

### **3. 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 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 Francophone are reasonably equivalent in every category. However, the District's Asset Management and Facilities Master Plan only addresses a small subset of the categories required to be analyzed by the District under 5 CCR Section 11969.3(c). In addition, these documents were prepared a number of years ago, and thus likely do not reflect an accurate assessment of the condition of the facilities.

The Preliminary Proposal does not assess the condition of the athletic fields, play areas, furnishings and equipment, technology infrastructure, mechanical, plumbing, electrical, and fire alarm systems, the suitability of lighting, or the size for intended use. Therefore, the District's Preliminary Proposal fails to perform the complete condition analysis required by the Implementing Regulations.

In addition, Francophone is concerned that Building A at Toler Heights may be seismically unsafe. According to the MAPPs 2017 Facilities Condition Assessment Report for Toler Heights, Building A requires approximately \$2,000,000 in "mission critical" seismic upgrades. As a result, Francophone requests that the District provide clarification regarding the extent of the required seismic upgrades to Building A and potential safety hazards.

#### **4. The Preliminary Proposal Does Not Allocate Sufficient Specialized Classroom and Non-Teaching Station Space to Francophone**

Francophone is also entitled to reasonable allocations of specialized and non-teaching station space. Section 11969.3(b)(2) requires that, if a school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the Proposition 39 offer of facilities provided to a charter school must include a share of the specialized classroom space. The Preliminary 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.<sup>1</sup>

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<sup>1</sup> 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 labs, music rooms, weight rooms, etc., commensurate with the in-District classroom ADA of Francophone. 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 Francophone 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 in the comparison group schools"). (5 CCR § 11969.3(b)(2)(C).) 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:

[W]hile 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 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 and 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 Francophone**

The Preliminary Proposal allocates a total of one (1) exclusive use “specialized” classroom to Francophone. However, the Preliminary Proposal does not indicate whether any of the classrooms allocated contain any specialized furnishings or equipment or are appropriate for specialized instruction.

In addition, in an approach that ignores the literal language of Section 11969.3(b)(2), the District asserted that “At the elementary level, specialized rooms are estimated as 1 for every 8 of general education classrooms. At the middle school level, specialized rooms are estimated as 1 for every 6 of general education classrooms. . . .” The District then allocated specialized classroom space “based on the number of general education teaching stations” at the comparison schools. The District’s allocation of specialized classroom space does not comply with the Implementing Regulations in several respects.

The District is not permitted to 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).) Further, the 2017-18 Facility Utilization Baseline Estimator on which the District relies to support its calculation of specialized classroom space makes it clear that the estimations of specialized classroom contained therein are not based on “actual use” and “[i]t is assumed that the actual use is likely much higher than the estimate.”

The District’s calculation fails to account for “the per-student amount of specialized classroom space in the comparison group schools.” The Preliminary Proposal is completely void of any discussion of the different amounts (square footage) and types of specialized classroom space that exist at the comparison schools including: computer lab, band/choir/music room, math lab, science lab, art room, and weight room space.

Francophone 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 Francophone 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.

In addition, the District may not combine different types and sizes of specialized classroom space and then allocate non-specialized classrooms to Francophone. 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 Francophone. 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).

By allocating one classroom for all these uses, the District is relegating Francophone students to second-class status, given that District students enjoy access to these separate, furnished and equipped spaces. The District cannot force Francophone 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.)

Francophone 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 Francophone**

The Preliminary Proposal does not properly allocate non-teaching space to Francophone. The Preliminary Proposal allocates a total of 6,639 square feet of interior non-teaching space and 101,758 total non-teaching station space to Francophone spread across two separate sites (exclusive use of the non-teaching station space at Toler Heights and 13.5% of the non-teaching station space at Howard).

The District's allocation of non-teaching space to Francophone in the Preliminary Proposal does not comply with Prop. 39 or its Implementing Regulations in several respects, including its failure to identify the specific non-teaching station space to be allocated to Francophone and its allocation of non-teaching station space based on the percentage of Francophone's enrollment on the sites, as determined by the District. Moreover, the District's calculations of the space to be allocated to Francophone are opaque, unverifiable, and based on mysterious formulas that have not been provided to Francophone. This makes it almost impossible for the school to understand both how the District arrived at its allocation of space, and make a determination whether that allocation is legally compliant.



First, there is a considerable amount of non-teaching station space at the comparison schools that is not referenced in the District's calculation or allocation to Francophone. The Preliminary Proposal does not appear to include any of the following types of spaces in its calculation of non-teaching space at the comparison schools or its allocation to Francophone even though such spaces are available at the comparison schools: kitchen/servery, nurse/health clinic space, psychiatric/OT/RSP/special education/ESL/Title I/speech rooms, and parent centers/community use rooms.

Similarly, the Preliminary Proposal does not address the various types of outdoor areas that exist at the comparison schools such as gardens, basketball courts, play fields, and play structure space but rather lumps all the different types of exterior spaces together when calculating exterior non-teaching station space. The District is required to provide Francophone with a reasonably equivalent allocation of all these types of spaces based on the "per-student amount of non-teaching station space in the comparison group schools," and Francophone requires an allocation of all these types of spaces in order to operate its educational program. Each of these types of spaces has a specific use and furnishings and equipment and/or design that are appropriate for such use, and the District's allocation method does not ensure Francophone will receive a reasonably equivalent allocation of each type of non-teaching station space that exists at the comparison schools. As stated in *Bullis, supra*, "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.) The District is not permitted to average all of the unique types of non-teaching station spaces that exist at the comparison schools and then allocate Francophone a percentage of unspecified non-teaching station spaces that exists at the allocated sites, which are not comparison schools. Nonetheless, as outlined in the in-lieu proposal at the beginning of this letter, Francophone would accept an allocation of classrooms instead of additional non-teaching station space.

Second, the Preliminary Proposal contains no listing or description of the types of shared non-teaching spaces to which Francophone will be provided access at the offered sites beyond large categories of space, or any proposed schedule for Francophone's use. The District's failure to provide this basic information to Francophone precludes Francophone from engaging in timely and efficient negotiations with site principals regarding shared use schedules and prevents Francophone from assessing whether the Preliminary Proposal provides Francophone with access to all of the different types of non-teaching station space to which Francophone is entitled. 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.) As such, Francophone expects that the District's final offer will specifically identify all the non-teaching station space to be allocated to Francophone.

Third, the District may not base its non-teaching station space allocation to Francophone on the "minimum" amount of non-teaching space that exists at any one of the comparison group

schools, which results in a significantly and artificially reduced allocation to Francophone.<sup>2</sup> The District claims a “charter school’s allocation is considered to fall within reasonable equivalence standards if it falls within the minimum/maximum Sqft/ADA ratios at the comparison group schools.” However, the District has not and cannot provide any legal authority to support this claim, and such a position directly conflicts with the basic premise of Prop. 39 – that public school facilities must be shared fairly between all public school students, including those in charter schools.

Fourth, Tables 7a and 7b add even more opacity to the District’s analysis. The District is using these tables, we assume, to calculate how much total non-teaching station space exists at the comparison schools (including indoor and outdoor space) per unit of ADA. Furthermore, the District has ensured that its calculation misstates the actual per ADA amount of non-teaching station space by deducting the total “classroom space”<sup>3</sup> from the “total site area”.<sup>4</sup> By using this formula, the District has assumed that all classrooms larger than 600 square feet are accounted for in its teaching station to ADA ratio – but by its own admission, the District’s teaching station to ADA ratio calculation only includes rooms staffed by a teacher – not empty rooms, not classrooms used for storage or counseling or restorative justice or any other purposes. This space is also not necessarily captured by the specialized teaching station allocation, as this is also based only on the number of classrooms larger than 600 square feet on the site, but does not actually determine the use of each space, or whether the proportion actually captures usage at each comparison school site.

Most important, even based on the District’s square footage figures for the comparison schools located within the Skyline attendance boundary (including middle schools), which evidently exclude a considerable amount of non-teaching station space, Francophone is still entitled to an allocation of at least 8,734 sq. ft. interior non-teaching station space (i.e., 2,095 more sq. ft. than the District allocated to Francophone at both sites) as set forth below:

<b>Comparison School Name</b>	<b>ADA<sup>5</sup></b>	<b>Interior NTS</b>	<b>Non-Charter Use</b>	<b>Resulting Interior NTS/ADA</b>
Allendale	338.37	16,712	80%	13,369.6

<sup>2</sup> The District claims that Francophone is only entitled to 33,371 total square feet of non-teaching space based on the “minimum” amount of non-teaching space that exists at the comparison schools. Based on the figures provided by the District, the average comparison schools’ non-teaching station sq ft/ADA is 498.19, which would result in an allocation of 74,778 total square feet of non-teaching station space.

<sup>3</sup> Defined as the square footage of all classrooms that are equal to or larger than 600 square feet “and any attached classroom storage space included in the Prop. 39 preliminary offers.”

<sup>4</sup> The total square feet of outdoor and building square feet on the campus, including non-ground level building square footage.

<sup>5</sup> With the exemption of Bret Harte and Montera, Francophone based the ADA at the comparison schools on the District’s claimed ADA, without accepting the accuracy of the District’s figures.

Bret Harte	480 <sup>6</sup>	68,850	100%	68,850
Carl B. Munck	216.69	17,651	100%	17,651
Fruitvale	325.65	27,041	88.24%	23,860.98
Grass Valley	246.39	16,620	78.95%	13,121.49
Joaquin Miller	416.4	16,066	100%	16,066
Laurel	476.72	16,384	100%	16,384
Manzanita/SEED	780.23	23,215	100%	23,215
Montclair	603.79	18,074	100%	18,074
Montera	598.08 <sup>7</sup>	56,093	100%	56,093
Redwood Heights	351.13	19,973	100%	19,973
Sequoia	414.24	24,025	100%	24,025
Thornhill	377.29	16,628	100%	16,628
<b>Total</b>	<b>5,624.98</b>	<b>337,332</b>		<b>327,311.07</b>

<b>Non-teaching station space</b>	<b>SF/ADA ratio</b>	<b>Applied to in-District ADA of 150.1</b>
Interior NTS	58.19	8,734.15

For all these reasons, the District's allocation of specialized and non-teaching station space included in the Preliminary Proposal fails to comply with Prop. 39 and its Implementing Regulations. Francophone 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.

### **5. The Preliminary Proposal Does Not Properly Allocate 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 Francophone with the same ratio of teaching stations to average daily attendance ("ADA") as those provided to students in the comparison group of schools. (5 CCR Section 11969.3(b)(1).) 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:

<sup>6</sup> Based on the school's 16-17 enrollment multiplied by a 96% attendance rate.

<sup>7</sup> Based on the school's 16-17 enrollment multiplied by a 96% attendance rate.

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 Francophone, 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." 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.

Francophone is concerned that the District has not properly calculated the Average ADA to teaching station ratio at the comparison schools. The Preliminary Proposal fails to include the number of teaching stations used to determine the ADA to teaching station ratio and the District's Exhibit C suggests 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.

## 1. Pro Rata Charge Worksheet

As a preliminary matter, Francophone notes that the District has indicated that Francophone'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 Francophone 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 Francophone, 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 high schools that have pools and large gymnasiums) have substantially higher utilities costs, thereby requiring Francophone to shoulder higher burdens of utilities costs than the amounts Francophone actually uses. If the District receives billing from the utilities companies for each of its individual school sites, Francophone 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 Francophone 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 Francophone 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 Francophone uses. Because Francophone does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.
- c. Insurance:** Francophone 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 Francophone for a cost it is already paying for, it is requiring Francophone 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 Francophone (5 CCR Section

- 11969.4(b)) and that any costs assumed by Francophone cannot be included in the pro rata share calculation. Francophone 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 \$13,048,405 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 Francophone (5 CCR Section 11969.4(b)) Therefore, please provide Francophone with the necessary documentation to show that the District has removed all facilities costs related to ongoing operations and maintenance from its RRMA transfer account that are Francophone’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 Francophone 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 Francophone 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 Francophone’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.”
- 2. 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 Francophone's summer school, if any, and programs procured by Francophone through third party entities, e.g. after-school program providers.

- b. Section 1.4:** Prop. 39 only requires Francophone 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. The portion of the Civic Center Act fees related to custodial and maintenance costs must be paid to Francophone if Francophone is responsible for cleaning up its site after each community use.
- d. Section 2:** The Site must be furnished, equipped and available for occupancy by Francophone 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 Francophone constructs or installs recreational improvements or other school facilities, Francophone and the District will agree to negotiate a reduction in the facilities use fees. Francophone's other concerns regarding the Pro Rata Share Charge outlined above are incorporated herein. Again, any costs assumed by Francophone cannot be included in the pro rata share calculation, including custodial and maintenance costs. Francophone objects to the late charge listed in Section 3.5. The Implementing Regulations do not contemplate late fees to be charged to Francophone.
- f. Section 6:** This number will need to be adjusted to reflect the number of Francophone 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 Francophone 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 Francophone 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 Francophone 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 Francophone’s program. The District must provide relevant scheduling information and reasonable notice to Francophone if it will be coming onto the facility to perform maintenance. In addition, Francophone 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 Francophone 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:** Francophone 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. Francophone does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to Francophone taking possession of the Premises and prior to conducting its educational program on the Premises.
- m. Section 18.1.7:** Francophone 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 Francophone 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 Francophone 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 Francophone.

We have attempted in this letter to enumerate all of our concerns with the District's Preliminary Proposal; however, we note that our failure to mention a concern in this letter should not be interpreted as acceptance of that term.

We look forward to working with the District to make the necessary changes to the District's Preliminary Proposal in order to ensure compliance with Proposition 39 and its Implementing Regulations in time for the issuance of the final notification of facilities.

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

Sincerely,



Mathilde Andrejko

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