



April 28, 2017

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

***Re: Lodestar: A Lighthouse Community Charter Public School
Response to District's Preliminary Proposal
Proposition 39 2017-2018***

Dear Ms. Bradford:

Lodestar: A Lighthouse Community Charter Public School ("Lighthouse" or "Charter School") is in receipt of the Oakland Unified School District's ("District") March 31, 2017 letter ("Preliminary Proposal") regarding Lighthouse's request for facilities under Proposition 39 ("Prop. 39") for the 2017-2018 school year.

The District's Preliminary Proposal is for 4 classrooms for "exclusive use teaching station and specialized classroom space" along with shared use of "non-teaching space, such as auditoriums, gymnasiums, multi-purpose rooms, and cafeterias" at each of the following sites: 1) East Oakland Pride Elementary School, 2) Frick Impact Academy, 3) RISE Community School, and 4) Franklin Elementary. The Preliminary Proposal is based on a projected in-District ADA of 316.80.

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

Lighthouse appreciates the District's efforts to work in good faith toward an in-lieu agreement with Lighthouse. Lighthouse continues to believe that an in-lieu agreement whereby Lighthouse would be located at the King Estates site will be in the best interests of both parties and the community. We will continue to work in good faith toward a solution that is amenable to both parties. However, Lighthouse takes this opportunity to express its concerns with the District's Preliminary Proposal pursuant to 5 CCR § 11969.9(g).

The Preliminary Proposal fails to meet the legal requirements of Prop. 39, in part, because the Preliminary Proposal offers Lighthouse space at four separate sites spanning over 10 miles (round trip). In order to make the roundtrip to all four proposed sites in one day, Lighthouse's parents, students and staff must drive at least 42 minutes or walk over 3 hours and 48 minutes,

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crossing major roads and highways along the way. There is no evidence that Lighthouse's in-District enrollment could not be accommodated at a single site or that the District considered redrawing attendance boundaries or increasing District class sizes in order to place Lighthouse at a single site. In addition, the Preliminary Proposal fails to provide sufficient information regarding the allocation of non-teaching space and specialized classroom space to Lighthouse and fails to provide Lighthouse with a reasonably equivalent allocation of teaching station, specialized classroom and non-teaching space as required by law. Lighthouse 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.

1. Alternative Proposal

As stated in more detail below, based on the information available to Lighthouse, Lighthouse has determined that it is owed sixteen (16) teaching stations instead of the fourteen (14) proposed by the District.

Accordingly, Lighthouse proposes the following alternative arrangement to the District.

1. Bret Harte (7 Classrooms, previously offered to COVA)
2. Allendale (5 Classrooms previously offered to AIMS II)
3. Frick (7 classrooms, previously offered to EOLA)

Please be advised that if the District refuses to agree to Lighthouse's alternative proposal and fails to revise its final offer to Lighthouse consistent with Prop. 39 and its Implementing Regulations and the requirements set forth herein, Lighthouse may take all legal measures necessary to enforce its rights, including litigation, should the good faith efforts of the parties not result in a long term in-lieu of agreement.

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).)

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."

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“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 Lighthouse 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 Lighthouse provides the following explanation of how the District determined that Lighthouse could not be accommodated at a single site: “Lodestar: Lighthouse requires seventeen (17) classrooms¹; therefore, the charter school's entire in-District ADA could not be accommodated at

¹ Lighthouse notes that although the District determined that Lighthouse could not be accommodated at a single site because it required seventeen (17) classrooms, Lighthouse has only been allocated sixteen (16) classrooms in the Preliminary Proposal. It is also important to note that the District's Findings related to Lighthouse discussed

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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 Lighthouse’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 Lighthouse 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 Lighthouse across four separate sites, only one less site than the charter school in *Ridgecrest*. Since none of the District schools are spread across four sites, the District’s placement of Lighthouse at four separate sites fails to provide Lighthouse with reasonably equivalent facilities and relegates Lighthouse’s students to second class status.

Further, neither the Preliminary Proposal nor the District’s Findings contain any analysis or explanation of the District’s attempts to minimize the sites offered to Lighthouse, suggesting that the District made no effort whatsoever to locate Lighthouse at a fewer number of sites in violation of the Implementing Regulations. 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 Lighthouse’s students that would occur if they are required to travel between four separate school sites spanning more than 10 miles (roundtrip) in one day. Instead, the District’s Findings focus primarily on the impact to District students of allocating to Lighthouse a single District school site – with no analysis of the safety issues facing Lighthouse’s students.

A review of publicly available information reveals that there are several District sites large enough to accommodate Lighthouse’s in-District enrollment. For example, Bret Harte Middle School, one site where Lighthouse proposes that the District locate it in 17-18, previously accommodated approximately 1,100 students. However, this year, there are only 500 Bret Harte students housed on the site. Similarly, Frick Middle School, another site proposed by Lighthouse, previously accommodated over 800 students, but this year, there are only 227 Frick students housed on the site. Allendale Elementary, another site proposed by Lighthouse, previously housed at least 774 students, but this year, there are only 371 Allendale students housed on the site.

Lighthouse’s placement at Fruitvale Elementary, not Franklin Elementary, which is the most remote site offered in the Preliminary Proposal.

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

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 Lighthouse 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 Preliminary Proposal fails to perform the complete condition analysis required by the Implementing Regulations.

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

Lighthouse 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

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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 Lighthouse. 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 Lighthouse 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.*) 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 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:

“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

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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 Lighthouse

The Preliminary Proposal allocates a total of two (2) exclusive use "flex" classrooms to Lighthouse 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) 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 Preliminary Proposal 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. Lighthouse 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 Lighthouse 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 Lighthouse. If there are science labs,

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computer labs, wood shops, 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 Lighthouse. 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 two classrooms. Lighthouse 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 Lighthouse students to second-class status, given that District students enjoy access to these separate and furnished and equipped spaces. The District cannot force Lighthouse 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.)

Lighthouse 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 Lighthouse

The District does not properly allocate non-teaching space. The Preliminary Proposal allocates a total of 10,329 square feet of non-teaching space to Lighthouse spread across four separate sites, and the District claims that Lighthouse is only entitled to 8,326 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 Lighthouse. Based on the information contained in the Preliminary Proposal 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 Lighthouse: 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 the proposed sites. The District is required to provide Lighthouse with a reasonably equivalent allocation of all these types of spaces and Lighthouse requires an allocation of all these types of spaces in order to operate its educational program.

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Just based on the amount of storage space that exists at the three comparison schools where Lighthouse has been offered space (Frick, New Highland/Rise, and East Oakland Pride), Lighthouse is entitled to an additional allocation of at least 3,754 sf of storage space (i.e. 11.85 sf/ADA).

Further, while the Preliminary Proposal 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 Preliminary Proposal contains no listing or description of the types of shared non-teaching spaces to which Lighthouse will be provided access at the offered sites or the District’s proposal for sharing the spaces between Lighthouse and the District schools.

Lighthouse 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 school sites.

5. 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 Lighthouse 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.

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.)

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In calculating the number of classrooms that the District will make available Lighthouse, 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 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 Lighthouse’s projected ADA to arrive at the Lighthouse’s allocation.

Lighthouse 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 Lighthouse is entitled to an allocation of at least **sixteen (16) teaching stations**.

School Name	ADA ²	Teaching Stations ³	Teaching Station to ADA Ratio
Community United/Futures	619.87	41	15.12
Burckhalter	240.01	7	34.29
PRIDE	325.64	34	9.58
Greenleaf	578.86	18	32.16
New Highland/RISE	555.84	42	13.23
Markham	319.89	25	12.80
Parker	248.61	11	22.60
Madison Lower	297.60	12	24.80
Acorn/Encompass	591.06	30	19.70
Howard	202.31	17	11.90
Korematsu/Esperanza	661.53	38	17.41
REACH	369.41	45	8.21
Frick	229.07	27	8.48
Madison Upper	781.67	16	48.85
ECP/Alliance	675.69	34	19.87
Roots/CCPA	760.48	34	22.37
Brookfield	276.66	31	8.92
AVERAGE			19.43

Applying the 19.43 teaching station to ADA ratio noted above to Lighthouse’s in-District ADA of 316.8 results in an allocation of 16.3 teaching stations, which is two (2) more teaching stations than the District allocated to Lighthouse.

6. Charter School Facilities Guide:

Lighthouse appreciates the additional information and guidance included in the Charter School Facilities Guide (“Guide”). However, there are two issues that need to be addressed in the Guide moving forward. First, the Guide needs to clarify that Lighthouse is not responsible for

² Lighthouse used the District’s ADA projections for 2017-18 here, without acknowledging the accuracy of the District’s projections.

³ This calculation assumes that each elementary school uses five (5) of its teaching stations for specialized and non-teaching space (such as a parent center, band/music, special education, science labs, and computer lab space) and each middle 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).

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repairs and replacement of equipment damaged before Lighthouse took possession of it. Lighthouse expects that the District and Charter School will do a full inventory of the furnishings and equipment ("F&E") provided to the Charter School by the District at the start of the year, to identify any damage to the F&E for which Lighthouse will not be responsible.

Second, the Guide states that Lighthouse is responsible for a number of items that are typically the responsibility of a custodian or operations and maintenance individuals, including unclogging drains, repair of window blinds, electrical outlets, and white boards, replacement of light bulbs, and replacement of broken cabinets. The District is trying to require Lighthouse to pay the District for all of its maintenance and operations costs, as well as custodial costs, through the pro rata share. As a result, if the District wishes to receive payment for all of these areas of maintenance, the District must take responsibility for all of these areas of maintenance.

Lastly, the Guide states that Lighthouse is responsible for "Replacement/Repair of broken kitchen equipment (capital equipment such as stoves, ovens, refrigerators)," as well as other items. The District may not require Lighthouse to pay for the repair and replacement of broken kitchen equipment, or any other items that are shared with the District school. Unless the damage necessitating repair or replacement is solely caused by Lighthouse, this obligation belongs to the District.

7. Pro Rata Charge Worksheet: As a preliminary matter, Lighthouse notes that the District has indicated that Lighthouse'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 Lighthouse 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 Lighthouse, 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 Lighthouse to shoulder higher burdens of utilities costs than the amounts Lighthouse actually uses. If the District receives billing from the utilities companies for each of its individual school sites, Lighthouse 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 Lighthouse 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 Lighthouse 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 Lighthouse uses. Because Lighthouse does not use the District's police service, the inclusion of these costs in the pro rata share calculation is not appropriate.

- c. **Insurance:** Lighthouse 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 Lighthouse for a cost it is already paying for, it is requiring Lighthouse 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 Lighthouse (5 CCR Section 11969.4(b)) and that any costs assumed by Lighthouse cannot be included in the pro rata share calculation. Lighthouse 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 Lighthouse (5 CCR Section 11969.4(b)) Therefore, please provide Lighthouse 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 Lighthouse'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 Lighthouse 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 Lighthouse 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 Lighthouse'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."

8. 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 Lighthouse's summer school and programs procured by Lighthouse through third party entities, e.g. after-school program providers.
- b. **Section 1.4:** Prop. 39 only requires Lighthouse 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 Lighthouse 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 Lighthouse.
- d. **Section 2:** The Site must be furnished, equipped and available for occupancy by Lighthouse 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 Lighthouse constructs or installs recreational improvements or other school facilities, Lighthouse and the District will agree to negotiate a reduction in the facilities use fees. Lighthouse's other concerns regarding the Pro Rata Share Charge outlined above are incorporated herein. Again, any costs assumed by Lighthouse cannot be included in the pro rata share calculation, including custodial and maintenance costs.

Lighthouse objects to the late charge listed in Section 3.5. The Implementing Regulations do not contemplate late fees to be charged to Lighthouse.

- 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 Lighthouse 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 Lighthouse 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 Lighthouse 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 Lighthouse 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 Lighthouse’s program. The District must provide relevant scheduling information and reasonable notice to Lighthouse if it will be coming onto the facility to perform maintenance. In addition, Lighthouse 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 Lighthouse 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).)

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- k. Section 15:** Lighthouse 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. Lighthouse does not agree to provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District prior to Lighthouse taking possession of the Premises and prior to conducting its educational program on the Premises.
- m. Section 18.1.7:** Lighthouse 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 Lighthouse 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 Lighthouse 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 Lighthouse.

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.

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

Sincerely,

Jenna Stauffer & Brandon Paige

Silke Bradford

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Cc: Paul C. Minney, Young, Minney & Corr, LLP