RESOLUTION OF THE BOARD OF EDUCATION OF THE OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION No. 1920-0220A

Finding that Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding (Cal. Code Regs., tit. 5, § 11969.2, subd. (d))

WHEREAS, on November 7, 2000, California voters passed Proposition 39, which mandates that school districts make facility space available to in-district charter school students, if certain eligibility requirements are met, in a manner that ensures that public school facilities are shared fairly among all students attending traditional and charter schools; and

WHEREAS, Education Code section 47614 and its interpreting regulations (Cal. Code Regs., tit. 5, section 11969.1 *et. seq*.) (collectively "Proposition 39") require a school district to make available, to each eligible charter school operating therein, facilities sufficient for the charter school to accommodate all of the charter schools' in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district; and

WHEREAS, Education Code section 47614 requires that the facility offered to the Charter School be contiguous, furnished and equipped; and

WHEREAS, Cal. Code Regs., tit. 5, § 11969.2(d) states that "facilities are 'contiguous' if they are contained on the school site or immediately adjacent to the school site;" and

WHEREAS, Cal. Code Regs., tit. 5, section § 11969.2(d) requires that "[i]f the in-district 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"; and

WHEREAS, Cal. Code Regs., tit. 5, § 11969.2(d) requires the Board to 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, should the District offer the Charter School facilities on a non-contiguous site; and

WHEREAS, District staff has evaluated all feasible facilities allocation options, and considered capacity, condition, location and other relevant factors, using as a point of reference a set of "comparison schools" as required by Proposition 39, to offer a facility to the Charter School that meets Proposition 39 standards for "reasonable equivalence" in terms of "capacity" and "condition"; and

WHEREAS, Cal. Admin. Code tit. 5, § 11969.3 states that "[t]he district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration"; and

WHEREAS, school districts have the discretion, in determining reasonable equivalent facilities allocations to charter schools, and in meeting their Proposition 39 obligations, to consider

the impact upon existing district programs. (*Los Angeles Intern. Charter High School v. Los Angeles* (2012) 209 Cal.App.4th 1348; *Westchester Secondary Charter School v. Los Angeles* (2015) 237 Cal.App.4th 1226); and

WHEREAS, in making an allocation of space, the District attempts to place a charter school applicant on one school site or, when that is not feasible, alternatively attempts to minimize the number of school sites on which the charter school applicant is placed; and

WHEREAS, in making an allocation of space, the District materially considers the safety implications to charter school students of making a multi-site offer and balances the safety, instructional, and social consequences of displacing children from their neighborhood District schools, as well as the burdens associated with such an action on their parents and the community; and

WHEREAS, for the 2020-21 school year, 14 charter schools requested facilities under Proposition 39:

- Achieve Academy [Education for Change]
- American Indian Public Charter School I
- American Indian Public Charter School II
- American Indian Public High School
- Aspire College Academy
- Aspire ERES Academy
- Cox Academy [Education for Change]
- East Bay Innovation Academy
- Envision Academy
- Francophone Charter School
- Latitude 37.8 High School
- Leadership Public Schools-Oakland R&D
- Unity Middle School
- Urban Montessori; and

WHEREAS, for the 2020-21 school year, the District has signed extensions for Proposition 39 offers while in-lieu of Proposition 39 facilities agreements are being negotiated with the following charter schools to stay at their current sites:

- Achieve Academy [Education for Change]
- American Indian High School
- Cox Academy [Education for Change]
- East Bay Innovation Academy
- Envision Academy
- Leadership Public Schools-Oakland R&D; and

WHEREAS, for the 2020-21 school year, extensions for Proposition 39 offers have been signed by the following charter schools to enable facilities negotiations with American Indian High School, that would also involve the withdrawal of their Proposition 39 requests for facilities:

- American Indian Public Charter School I
- American Indian Public Charter School II; and

WHEREAS, for the 2020-21 school year, the District has been notified by the following charter schools of their decision to withdraw their Proposition 39 requests for facilities:

- Aspire College Academy
- Aspire ERES Academy
- Latitude 37.8 High School; and

WHEREAS, the District has signed an extension until April 8, 2020 for a Proposition 39 final offer for the following charter school:

- Urban Montessori; and

WHEREAS, for the 2020-21 school year, the District will make a Proposition 39 single site final offer to the following charter school:

- Unity Middle School; and

WHEREAS, the District will make a Proposition 39 multi-site final offer to the following charter school:

- Francophone Charter School; and

WHEREAS, on or before February 1, 2020, charter schools received a Preliminary Offer of Facilities under Proposition 39; and

WHEREAS, on or before April 1, 2020, charter schools will receive a Final Offer of Facilities under Proposition 39; and

WHEREAS, as provided in the Staff Report which is attached hereto as Appendix A and incorporated by reference herein, the District cannot accommodate a single site offer for one charter school; and

WHEREAS, District staff determined that to house all of the students at a single District location would neither be feasible nor in the best interests of all students, in-District and charter schools alike; and

WHEREAS, having analyzed the space in the specific area where the charter school wishes to locate, the District is unable to extend a single site offer; and

WHEREAS, having then expanded the search to other schools in the geographic area where the charter wishes to be located and beyond, the District determined that it cannot accommodate the charter's entire student population on a single site for the 2020-21 school year; and

WHEREAS, the District can provide charter schools with multi-site offers of reasonably equivalent facilities; and

WHEREAS, the Staff Report recommends the District offer the following charter schools

a final offer of facilities on or before April 1, 2020 involving co-location at the following sites:

- Francophone Charter School
  - Former Toler Heights Elementary School Site (exclusive use)
    9736 Lawlor Street, Oakland, CA 94605
  - Brookfield Elementary
    401 Jones Avenue, Oakland, CA 94603.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Board of the District hereby finds, determines, declares, orders and resolves in accordance with Cal. Admin. Code tit. 5, § 11969.2(d), for the reasons set forth herein and as further expressed by District Staff in the Staff Report, the Board of Education finds that the District cannot accommodate the in-district average daily classroom attendance of one charter school at a single school site for the 2020-21 school year; and

BE IT FURTHER RESOLVED, the District has considered student safety and has minimized to the extent possible the number of sites at which charter schools would be located.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District at a Special Meeting this 31st day of March, 2020, by the following vote, to wit:

Passed by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYE:

NOE:

ABSTAINED:

RECUSE:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Special Meeting of the Board of Education of the Oakland Unified School District, held on March 31, 2020.

Legislative File Info.	
File ID Number:	20-0631
Introduction Date:	3/25/2020
Enactment Number:	
Enactment Date:	

OAKLAND UNIFIED SCHOOL DISTRICT

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Jody London
President, Board of Education

_____

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Staff Report

Process for Determining that Charter Schools Cannot Be Accommodated at a Single School Site for 2020-21 School Year

Process for Determining Charter Schools That Cannot Be Accommodated at a Single Site for the 2020-21 School Year

Proposition 39:

Education Code section 47614 ("Proposition 39") requires that OUSD provide reasonably equivalent facilities to charter schools that meet the requirements for eligibility. Education Code section 47614(a) states that "public school facilities should be shared fairly among all public school pupils, including those in charter schools."
Specifically, Education Code section 47614(b) provides that:

> Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.

Education Code section 47614(b)(4) states that "[f]acilities requests based upon projections of fewer than 80 units of average daily classroom attendance for the year may be denied by the school district."

Under the regulations implementing Proposition 39, facilities shall be considered contiguous "if they are contained on the school site or immediately adjacent to the school site." (Cal. Admin. Code tit. 5, § 11969.2.) Under the regulations, a school district making a non-contiguous facilities offer must make certain findings. Specifically:

> If the in-district 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 … [T]he 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.

Impact on Existing District Students and Programs:

California courts have recognized that school districts are not obligated to ignore the potential impact of meeting Proposition 39 obligations on district students and programs. The court in *Westchester Secondary Charter School v. Los Angeles Unified School District* (2015) 237 Cal.App.4th 1226 interpreted the provision in Proposition 39 that "[t]he school district shall make

reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate." (Education Code section 47614(b).) The Court rejected the charter school's attempts to question the district's other facilities allocations, including a decision to place a district pilot program, and not the charter school, at the charter school's second choice campus; the decision not to place both the district pilot program and the charter school at the second choice campus; the decision not to eliminate "set-asides" (classrooms used for purposes other than general education) to free up more classrooms; and not placing the charter school at a closed adult education school site. In reaching its ruling, the Court recognized that school districts must have the discretion to balance the impact on district programs in meeting their obligations to provide reasonably equivalent facilities to charter school students under Proposition 39. "In sum, the law requires the District to treat charter and noncharter students fairly, but not favor one group over the other," the Court stated.

The Court in *Los Angeles Intern. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348 upheld the school district's determination that placing the charter school in its preferred location would have harmed district students by forcing the district to "redistribute eight classrooms serving 40 classes, displace 240 students, and force eight teachers with five different periods each day to vacate their classrooms, so as to provide the 157 [charter school] students with eight contiguous classrooms in the midst of the school year." The District was permitted to consider the disruptive impact on district students that would have been caused by supplanting district programs to accommodate the charter school's location preference.

Proposition 39 allows school districts to balance the needs and rights of district students and charter school students and to allocate facilities in a manner that ensures that public school facilities are shared fairly among all students. The court in *Ridgecrest v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986, 1001 (n. 16) established that "[c]harter school students are not entitled to better facilities choices than other district resident pupils." Proposition 39 does not prohibit the District from considering the potential impact upon District programs and students in meeting its obligations under Proposition 39.

<u>Factors Considered by OUSD</u>:

The District received 14 Proposition 39 requests from charter schools for the 2020-21 school year. The District analyzed the factors listed below for each charter school and also analyzed additional safety considerations specific to each charter school's multi-site offer. In determining its allocation of reasonably equivalent facilities to the charter schools, the District considered the following factors:

- Identification of an inventory of potential space in which charter school requests can be accommodated;
- Whether the offered facilities meet Proposition 39's "reasonable equivalence" requirements with respect to capacity and condition;
- The charter school's preferred location;

- Whether the District can avoid moving a charter school from its existing location;
- The capacity, if any, at each District school site, to accommodate additional students or programs;
- The number of existing programs already at each district site, in recognition of the difficulty in designing schedules for more than 2 programs to share spaces such as cafeterias and playgrounds;
- The feasibility of moving existing District programs, including the potential impact on OUSD students, schools, and programs, in response to a charter school's Proposition 39 request;
- The right of OUSD students to enjoy reasonably equivalent facilities;
- The quantity of classroom space the charter school is entitled to;
- The grade configuration of the charter school being sited; and
- The grades served by programs at each district site.

Identification of Potential District Sites with Projected Capacity for 2020-21

The below District sites are estimated to have at least 2 underutilized classrooms. Note that most of these sites are *not* included in a Prop 39 offer of facilities.

Site Name	**Capacity** [Number of underutilized classrooms]
Allendale ES	2
Bridges Academy (Melrose)	4
Brookfield ES	15
Bunche HS	14
Castlemont HS	2
Coliseum College Prep (Havenscourt)	12
Cox	32
Community United / Futures (Lockwood)	2
Dewey HS	5
East Oakland Pride (Webster)	9
Elmhurst United	5
Franklin ES	12
Fremont HS	10
Frick MS	6
Fruitvale ES	5
Garfield ES	3
Golden Gate CDC	5
Grass Valley ES	2
Hawthorne (Achieve Academy)	35
Harriet Tubman CDC	2
Howard ES	11

Kaiser ES	11
MLK ES	2
Lakeview	19
Laurel ES	3
Madison Park Academy 6-12	7
Madison Park Academy TK-5	2
Mann ES	4
Manzanita CDC	2
Marshall	13
Markham ES	15
McClymonds HS	21
Melrose Leadership Academy (Maxwell Park)	3
Montera MS	13
Munck ES/Hintil KUU CDC	7
New Highland Academy/RISE Community	4
Parker ES	5
Prescott ES	10
Roses in Concrete (Swett)*	25
Sankofa Academy (Washington)	2
Santa Fe	22
School of Language (SOL)	10
Skyline HS	19
Street Academy	2
Toler Heights	6
West Oakland MS (Lowell)	17
Westlake MS	11

Note: Above capacity numbers are calculated **excluding** existing (2019-20) and future (2020-21) potential Prop 39 co-locations.
**Pending outcome of all renewal appeals*

Matching Guidelines Utilized by the District

District staff first attempts to accommodate a charter school's entire in-District ADA of either the charter school's projected ADA, or the District's counterprojection under Cal. Admin. Code tit. 5, § 11969.9(d)) at a single school site, or OUSD school sites that are immediately adjacent to each other. (Cal. Admin. Code tit. 5, § 11969.2.)

The list below excludes 12 charter schools who submitted Proposition 39 requests but either signed extension agreements or withdrew their facilities request.

Francophone Charter School is eligible for 13 classrooms and specialized space. The charter school's entire in-District ADA *cannot* be accommodated at a single site.

Oakland Unity Middle School is eligible for 10 classrooms and specialized space. The charter school's entire in-District ADA *can* be accommodated at a single site.

Francophone

Francophone Charter School is growing to a TK-8 grade program for 2020-21 that is eligible for 13 classrooms. They requested space in East Oakland and currently are placed at the former Toler Heights Elementary School campus and nearby Howard Elementary School.

Unfortunately, a single dedicated site or single site co-location was not an option because the sites near the charter school's requested location do not have sufficient capacity for the entire in-district ADA of the charter school. Accordingly, the District considered how to allocate the charter school's population over more than one school site in East Oakland, the charter school's requested location. Specifically, the District determined that the charter school's population could be placed across the following two sites:

- Former Toler Heights Elementary School Site
  9736 Lawlor Street, Oakland, CA 94605
- Brookfield Elementary School
  401 Jones Avenue, Oakland, CA 94603

The District gave Francophone Charter School space at one of its current school sites. Retaining students, families, and staff within the community to which they are accustomed and already a part of is a safety consideration that is taken into account. The District's offer of the Toler Heights site will enable students to continue to be a part of a community with which they are familiar, promoting continuity and safety for the charter school students and their families.

Francophone Charter School is also being offered additional space at nearby Brookfield Elementary School. Brookfield is also located in East Oakland, near the Toler Heights site. The District was mindful in offering sites that did not require students, families, or staff to traverse the City. The two school sites are less than three miles away from each other.

The District considered how the grades could be separated among the offered sites to minimize teacher and student commutes between sites. The District has proposed sites that can be utilized in such a way that grade levels can be strategically placed separately and minimize travel between school sites among teachers and school staff. The District was mindful of keeping campus occupancy and traffic at a level that would not subject students or personnel to increased physical safety risks.

Based upon an analysis of the factors set forth above, Staff determined that the above offer would be appropriate.

Summary and Conclusion

Considering historical precedent, as shown in the table below, the number of preliminary multi-site offers being issued for 2020-21 is far fewer than in recent years, particularly when considering the number of preliminary offers including 3 or more sites. The multi-site preliminary offers for 2020-21 are further contextualized by the fact that the District currently has and next year will continue to have three District schools that operate across multiple sites (two sites each).

Offer School Year	Requests Received	Multi-Site Final Offers	Final Offers Including 3 or More Sites
2017-18	16	1	0
2018-19	17	10	3
2019-20	11	2	1
2020-21	14	1	0