

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of Interim Superintendent

March 25, 2009

**Legislative File**

File ID No.: \_09-0826

Introduction Date: 3/17/09

Enactment No.: \_\_\_\_\_

Enactment Date: \_\_\_\_\_

By: \_\_\_\_\_

TO: Board of Education  
Vincent Matthews, State Administrator

FROM: Dr. Roberta Mayor, Interim Superintendent  
David Montes de Oca, Coordinator; Office of Charter Schools

SUBJECT: Prop. 39 Final Facility Offer 2009-2010 School Year

---

**ACTION REQUESTED:**

Approve the Board of Education proposed Final Facilities Offer to be made by the District to Bay Area Technology School under the Proposition 39 Statute, wherein charter schools are granted the right to request facilities allocations from the school district in which they reside commensurate with the in-district ADA of the charter school enrollment.

**SUMMARY:**

Following a period of preliminary facility offer considerations, as required under state statute; staff recommends the approval of the Final Facilities Offer under Proposition 39; as outlined in the attached resolution with the specific facility space allocations included in the attached Final Facilities Offer Letter.

Each Proposition 39 application submitted pursuant to statute requirements was evaluated to determine the specific facilities needs under which the District is obligated to meet. To the extent possible, OUSD has attempted to match charter school facility requests with space available based on the compatibility of the following features:

- The quantity of classroom space requested and the excess classroom space available.
- The grades served by each program when programs are co-located.
- The school program and the site.
- The location requested and the location available.

Following a review of current projected use of District facilities for the academic school year 2009-2010, staff identified the facilities indicated in the attached resolution as the most appropriate and compliant facilities to commit as a Final Facilities Offer pursuant to the school's Proposition 39 facilities request. Statute requires that requesting charter schools receive Final Facility Use Offers by April 1, 2009 and in turn must respond to that offer no later than May 1, 2009. A declined offer finalizes the Proposition 39 Facilities Request process. Should a Final Facilities Offer be accepted, it will be contingent on the terms of the lease agreement, as well as the expectations established for the equitable sharing of facilities between the school site administrators.

The lease rate under which the Final Facilities Offer will be made is established at a rate to be \$4.21 per square foot, per year, based on an analysis by Facilities Counsel and the Budget Director as to the applicable costs associated with statute.

The calculation of square footage allocation to be leased is based on a division of the total facility square footage by a divisor equal to the percentage of total classrooms within the facility being allocated to the charter school. The calculation of teaching stations (classrooms) to be offered to the requesting charter school applies the statute language where-in the determination must be made using "comparison schools" comprised of 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 attached resolution outlines the total square footage and teaching stations to be included in the Final Facilities Offer under Proposition 39. The attached Final Facilities Letter includes specific space identified for consideration by each requesting school within the statutory timeframe.

#### **BACKGROUND:**

Under the California Education Code Section 47614; *"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 have been accommodated if they were attending other public schools of the district."*

Under this statute, the District is obligated to provide facilities to requesting charter schools operating within Oakland Unified attendance boundaries. These facilities offers, if accepted, will be followed by the establishment of a Letter of Agreement which will define the scope of the lease terms. The period under which these facilities will be offered by use of the requesting charter school is for one academic school year only; 2009-2010. The requesting charter school may submit a subsequent Prop. 39 facilities request for the ensuing school years, pursuant to the requirements of the statute and applicable legislation, which will then be evaluated within the context of the district's continued capacity to provide such facilities.

#### **RECOMMENDATION:**

It is the recommendation of staff that the Board of Education approve the proposed Final Facilities Offer to Bay Area Technology School under Proposition 39 as outlined in attached resolution

Attachment – Resolution No. 0809-0149



OAKLAND UNIFIED SCHOOL DISTRICT

Office of the State Administrator  
1025 Second Avenue, Room 301  
Oakland, CA 94606  
Phone (510) 879-8200  
Fax (510) 879-8800

RESOLUTION  
OF THE  
GOVERNING BOARD  
OF THE  
OAKLAND UNIFIED SCHOOL DISTRICT

Resolution No. 0809-0149

Proposition 39 – 2009-2010 School Year Offer(s) of District Facilities To Charter School(s)

WHEREAS, Proposition 39 – School Facilities, adopted by California voters on November 7, 2000, requires a local K-12 school district under specified circumstances to make available District facilities to Charter Schools; and,

WHEREAS, the District has received such a request pursuant to statutory requirements from one or more Charter Schools for the 2009-2010 school Year; and,

WHEREAS, District staff has evaluated the requests and has attempted to match charter school facility requirements with available space, if any, within the District; and,

WHEREAS, District staff specifically has attempted to match charter school facility requests with available space based on the compatibility of the following features:

- The quantity of classroom space statutorily required to be provided and the excess classroom space available;
- The grades served by each program when programs are co-located;
- The school program and the site; and,
- The location requested and the location available; and

WHEREAS, District staff based on the foregoing and a current projected use of District facilities for the 2009-2010 School Year, has identified facilities that are appropriate and compliant with the requirements of Proposition 39 to make available to Charter Schools; and,

WHEREAS, the District is presently required under statute to make such a Final Facility Offer not later than April 1, 2009; and,

WHEREAS, offers made under Proposition 39 must be responded to by the charter school within 30 calendar days of the date at which the offer is made, no later than May 1, 2009; and,

WHEREAS, District staff has developed a preliminary Facility Use Agreement that will be required to come before the Governing Board of the District for final approval, should the Facility Offer be accepted by the charter school; and,

WHEREAS, the lease rate associated with the facility offer proposed here-in considers all applicable costs that may be included in the pro rata lease rate under statute, and has been reviewed by District legal counsel to ensure alignment with said statute; and,

WHEREAS, the Final Facility Offer detailed herein is for a period of one year only, the 2009-2010 School Year; and,

WHEREAS, the Final Facility Offer letter attached herein includes the following information, limited to those areas required under statute, per District counsel advice;

- The teaching and non-teaching space to be offered for expulsive use and teaching and non-teaching space to be shared
- The arrangements for shared space
- The in-District classroom ADA assumptions for the charter school
- Pro rata share amount and payment schedule; and,

NOW, THEREFORE, BE IT RESOLVED, the District hereby makes said offers, summarized herein, as follows for the 2009-2010 School Year to the Charter School named below:

<p><b>Bay Area Technology School 6-11 (2009-10)</b></p>	<p><b><u>ENROLLMENT:</u></b> In-District ADA: <b>264</b> Total in-district enrollment based on most relevant attendance rate: <b>95.38%</b></p>	<p><b><u>RATIO:</u></b> Ratio applied to in-district enrollment based on an evaluation of equivalent facility allocation to comparison district school students: <b>1:21</b></p>	<p><b><u>TEACHING STATION ALLOCATION:</u></b> Total teaching station (classroom) allocation: <b>12 classrooms</b></p>
<p><b><u>FINAL FACILITIES OFFER:</u></b> Carter Campus - <b>Twelve (12) classrooms</b></p>	<p><b><u>PRO RATA SHARE LEASE RATE:</u></b> Total Square Footage of the Facility space included in Final Offer: <b>14,572 sf</b> <b>Annual Lease Rate \$4.21 per square foot, per year.</b>  Total Annual Lease Rate pursuant to this offer: <b>\$61,348</b></p>	<p><b><u>NON-TEACHING STATION ALLOCATION:</u></b> Final Facilities Offer to Include shared use of the cafeteria, blacktop, gymnasium, and quad commensurate with the percentage of total facility space allocated for exclusive use by the charter school.  Carter Facility: Exclusive use of one non-teaching space for use as administrative space.</p>	

**BE IT FURTHER RESOLVED** that any such offer includes the permission by the Board of Education of the Oakland Unified School District such that BayTech may, at its own expense, install a single portable at a location on the Carter Campus to be approved by the District for a period of time not to exceed the duration of this offer.

**BE IT FURTHER RESOLVED** that any such offer accepted not later than May 1, 2009 by Charter School shall be formalized by a mutually approved Facility Use or Lease Agreement between the District and the Charter School.

Passed by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted at a Regular Meeting of the Governing Board of the Oakland Unified School District held March 25, 2009.

---

Edgar Rakestraw, Jr.  
Secretary, Board of Education

**Office of Charter Schools**

1025 Second Avenue Rm. 206  
Oakland, CA 94606  
P: 510.879.8349 F: 510.879.1844

www.ousdcharters.com



every student. every classroom. every day.

April 1, 2009

Matt Demir, Director  
Bay Area Technology School  
4521 Webster St.  
Oakland, CA 94609

**Certified Mail &  
Fax**

**RE: PROP 39 2009-2010 FINAL FACILITY SPACE OFFER  
Bay Area Technology School (BayTech) – Carter Campus,**

Dear Mr. Demir:

On November 7, 2000, California voters passed Proposition 39. A portion of this initiative amended Education Code section 47614 to mandate that school districts make excess facility space available to in-district charter school students, if certain conditions are met, in a manner that is fair to all public school students. The California Department of Education has also promulgated implementing regulations, most of which took effect on August 29, 2002.

**2009-2010 FINAL SPACE OFFER**

Oakland Unified School District (OUSD) received facility requests from many charter schools operating in Oakland and OUSD identified an inventory of facility spaces that are available to fulfill these requests. To the extent possible, OUSD has attempted to match charter school facility requests with space available based on the compatibility of the following features:

- The quantity of classroom space requested and the excess classroom space available.
- The grades served by each program when programs are co-located.
- The school program and the site.
- The location requested and the location available.

OUSD's **final** Prop 39 facility offer is to occupy space for **one year only** at the **Carter Campus**, located at 4521 Webster St., Oakland, CA 95609, sharing with Oakland International High School.

The fee rate included in this offer is based on the applicable sections of Education Code section 47614.

This letter constitutes a Final Offer of facility space as required by the California Code of Regulations, Title 5, Education, Division 1, California Department of Education, Chapter 11, Special Programs, Subchapter 19, Charter Schools, Article 3, Facilities for Charter Schools, Section 11969.9 (5 CCR s 11969.9 Cal. Admin. Code tit. 5, s 11969.9).

**PROP 39 2009-2010 FINAL FACILITY SPACE OFFER**  
**From Oakland Unified School District (OUSD)**  
**To BayTech**  
**For the 2009-2010 School Year Only**

- Exclusive use of **twelve (12)** classrooms at the **Carter Campus**
- Exclusive use of **one (1)** non-teaching space within the **Carter Campus**
- Shared use of the gym, multi-purpose room/cafeteria, outdoor space, and parking.

This offer is based on an in-district classroom ADA assumption of **264** students in grades **6-11** at BayTech.

Pursuant to the response by the charter school, dated February 27, 2009, following the preliminary offer made by the District on February 1, 2009, the District agrees to permit BayTech to install, at the full expense of the charter school, for one portable within the boundaries of the Carter campus for a period not to exceed the 2009-2010 school year.

The school district and the charter school shall negotiate a Facility Use Agreement regarding use of and payment for the space. The agreement shall contain at a minimum, the information included in this notification provided by the school district to the charter school. In addition, the school district requires that the agreement shall provide that the charter school shall:

- (1) Maintain liability insurance naming the school district as an additional insured to indemnify the school district for damage and losses for which the charter school is liable; and/or
- (2) Comply with school district policies regarding the operations and maintenance of the school facility and furnishings and equipment.

The space allocated by the school district will be furnished with desks and chairs, equipped with whiteboards, and available for occupancy by the charter school seven days prior to the charter school's first day of instruction in 2009-2010.

The charter school will negotiate the arrangements for sharing the shared space with OUSD and the **Oakland International High School** principal or designees. These arrangements will be described in the Facility Use Agreement.

The charter school must report actual ADA to the school district every time that the charter school reports ADA for apportionment purposes. The reports must include in-district and total ADA and in-district and total classroom ADA. The charter school must maintain records documenting the data contained in the reports. These records shall be available on request by the school district.

The charter school and the school district may negotiate separate agreements and/or reimbursement arrangements for specific services not considered part of facilities costs as defined in Section 11969.7. Such services may include, but are not limited to, the use of additional space and operations, maintenance, and security services.

## ANNUAL PRO RATA SHARE & PAY SCHEDULE

All charter schools that choose to accept the Prop 39 offer to occupy OUSD facilities will be charged a facility use rate that represents the charter school's pro-rata share of general fund expenditures for the last fiscal year for costs for building and grounds deferred maintenance, as allowed by statute and regulations.

The charter school's annual basic facility use rate includes the charter school's contribution for use of classrooms and administration space, shared access to special classrooms and non-classroom space. There will be additional pro-rata charges for required services to the entire facility, such as custodial services, sewer charges, and gas, water and electricity. These terms and rates will be part of a final Facility Use Agreement. Utilities charges, etc. are divided between the charter school and the K-12 program by a percentage of the facility space the charter occupies. The accountant in the Office of Charter Schools coordinates with Accounts Payable to ensure that the charter pays its portion of the required bills.

The charter school will be charged, at the actual cost, for any extra or extended services provided by OUSD to the charter school. The charter school will be responsible for acquiring its own basic and long distance telephone service and Internet connectivity. The charter school will not be part of the district's e-mail network or its '879-xxxx' telephone system. This access would be separately acquired by the charter school after consulting with OUSD facility staff regarding its installation at the site.

The pro rata share amount that the charter school will pay for this space will be **\$61,348**.

The payment schedule for the pro rata share amount, which takes into account the timing of revenues from the state and from local property taxes, is as follows:

- 18% by August 15 or prior to occupancy, whichever is earlier;
- 8% by the 15<sup>th</sup> of September, October, November, December, and January,
- 14% by February 15; and
- 7% by the 15<sup>th</sup> of, March, April, May and June.

## RESPONSE

The charter school must notify the school district in writing whether or not it intends to occupy the offered space. This notification must occur by 4:30 p.m., Friday, May 1, 2009 which is 30 days after the school district notification. The charter school's notification can be withdrawn or modified before this deadline as the school district and charter school negotiate terms of the Facility Use Agreement. After the deadline, if the charter school has notified the school district that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the school district by this deadline that it intends to occupy the offered space, then the space shall remain available for school district programs and the charter school shall not be entitled to use facilities of the school district in 2009-2010.

Respond to this Final Offer by fax, mail, or personal delivery to be **received by 4:30 p.m., Friday, May 1, 2009** at the following address:

Oakland Unified School District  
Office of Charter Schools, Room 206  
Attention: David Montes de Oca

MAIL or DELIVERY:

FAX:



1025 Second Avenue Rm. 206      510-879-1844  
Oakland, CA 94606-2212

**Please do not contact the principal currently operating at the sites.** Contact the Office of Charter Schools to schedule meeting with the host school's principal and discussing the co-location terms and conditions that would apply to the specific district sites offered. These specific terms and conditions will be included in the Facility Use Agreement.

If you would like to schedule another viewing the site or if you have any questions, please contact me at [David.Montes@ousd.k12.ca.us](mailto:David.Montes@ousd.k12.ca.us).

Sincerely,

David Montes de Oca  
Office of Charter Schools, Coordinator

Cc: Danielle M. Houck, OUSD General Counsel  
Cate Boskoff, OUSD General Counsel  
Dr. Roberta Mayor, Interim Superintendent  
Timothy White, Associate Superintendent of Facilities  
Tadashi Nakadegawa, Director of Facilities Management  
Alison McDonald, Executive Officer  
Juwen Lam, School Portfolio Management

Enclosure