

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent

March 23, 2011

Legislative File

File ID No.: 11-0593
Introduction Date: 3-15-11
Enactment No.: _____
Enactment Date: _____
By: _____

TO: Board of Education

FROM: Anthony Smith, Ph.D., Superintendent
Gail Ann Greely, Coordinator, Office of Charter Schools

SUBJECT: Proposition 39 – 2011-2012 School Year Offer(s) of District Facilities to Charter School(s) – Vincent Academy

ACTION REQUESTED:

Adoption of Board of Education Resolution 1011-0140 - 2011-2012 School Year Offer(s) of District Facilities to Charter School(s) - Vincent Academy - Pursuant to Requirements of Proposition 39.

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 2011-2012, 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, 2011 and in turn must respond to that offer no later than May 2, 2011. 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 facility use agreement, as well as the expectations established for the equitable sharing of facilities between the school site administrators.

The facility use rate under which the Final Facilities Offer will be made is established at a rate to be \$3.50 per square foot, per year, based on an analysis by Facilities Counsel and the CFO as to the applicable costs associated with statute.

The calculation of square footage allocation to be offered 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 Facility Use Agreement which will define the scope of the facility use terms. The period under which these facilities will be offered by use of the requesting charter school is for **one academic school year only: 2011-2012**. 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 to approve the proposed Final Facilities Offer to Vincent Academy under Proposition 39 as outlined in attached resolution.



OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent
1825 Second Avenue, Room 301
Oakland, CA 94608
Phone (510) 879-4200
Fax (510) 879-4800

**RESOLUTION
OF THE
GOVERNING BOARD
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 1011-0140

Proposition 39 - 2011-2012 School Year Offer(s) of District Facilities to Charter School(s) - Vincent Academy

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 2011-2012 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 2011-2012 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, 2011; 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 2, 2011; 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 facility use rate associated with the facility offer proposed here-in considers all applicable costs that may be included in the pro rata facility use 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 2011-2012 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 exclusive 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 2011-2012 to the Charter School named below:

| | | | |
|---|---|---|---|
| <p>Vincent Academy K-1 (2011-12)</p> | <p><u>ENROLLMENT:</u> In-District ADA: 84</p> | <p><u>RATIO:</u> Ratio applied to in-district enrollment based on an evaluation of equivalent facility allocation to comparison district school students: 1:13.12</p> | <p><u>TEACHING STATION ALLOCATION:</u> Total teaching station allocation: 7 teaching stations</p> |
| <p><u>FINAL FACILITIES OFFER:</u> Santa Fe Elementary School (see map)</p> <p>- Four (4) teaching stations identified within the attached map</p> <p>- Two (2) portables / non-teaching stations identified within the attached map</p> <p>- Shared access to shared spaces</p> | <p><u>PRO RATA SHARE FACILITY USE RATE:</u> Total Square Footage of exclusive use and prorated shared use of the Facility space included in Final Offer:</p> <p>13, 579 sq ft (calculated based on exclusive use and percentage of shared use space)</p> <p>Annual Facility Use Rate \$3.50 per square foot, per year.</p> <p>Total Facility Use Rate pursuant to this offer: \$47, 525</p> | <p><u>SHARED ACCESS TO SHARED SPACE:</u> Final Facilities Offer to include shared use of the multi-purpose room/cafeteria, gymnasium and athletic fields commensurate with the percentage of total facility space allocated for exclusive use by the charter school (see map).</p> | |

BE IT FURTHER RESOLVED that any such offer accepted not later than May 2, 2011 by Charter School shall be formalized by a mutually approved Facility Use 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 23, 2011.

Edgar Rakestraw, Jr.
Secretary, Board of Education



OFFICE OF CHARTER SCHOOLS

March 23, 2011

Jean Driscoll, Director
Vincent Academy
21 Tanglewood Road
Berkeley, CA 94705

**Certified Mail &
Fax**

**RE: Proposition 39 Final Facility Offer
Santa Fe Elementary School Campus – 915 54th Street, Oakland CA, 94608**

Dear Jean Driscoll:

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.

To the extent possible, Oakland Unified School District 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.

On February 1, 2011, the District provided your charter school a Proposition 39 preliminary facility offer to occupy space for one year only at Santa Fe Elementary School, 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).

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).

RESPONSE TO CHARTER SCHOOL CONCERNS OR COUNTER-PROPOSAL

As described in 5 CCR §11969.9(g), the charter school responded in writing to the District's preliminary facilities proposal. The following constitutes the District's response to the charter school's concerns and/or counter proposals.



OFFICE OF CHARTER SCHOOLS

The charter school objects to the location of the preliminary offer as too distant from its requested location close to its related facility, the Saint Vincent's Day Home. Mindful of Proposition 39's requirement to provide charter schools with reasonably equivalent and contiguous space, District staff sought to identify elementary schools sites with sufficient available classroom spaces as near to the requested location as possible. Unfortunately, none of the elementary campuses closer to Saint Vincent's (including Prescott and Martin Luther King, Jr. referenced in the charter school's response) had sufficient classrooms based on a review of District facilities data, updated site conditions, programmatic changes, and plans for facilities use in 2011-2012. Alternatives to the Santa Fe Elementary location would require an offer of rooms at more than one site or at locations even further from the charter school's requested location.

The charter school expressed concerns with specific teaching stations identified in the preliminary offer, including: 1) that assigned rooms are not located in one common block or space; 2) that allocation of classrooms for use by 1st grade students on the second floor is not permitted; and 3) that allocation of space would change the Santa Fe program's use of space for specialized classroom, such as library and computer lab. The Santa Fe campus presents multiple constraints in assigning classroom uses (for both the District's Santa Fe school program and the charter school). Principle among these is the requirement that students in grades K, 1 and 2 be housed on the ground floor for both District and charter school students. (Initial research supporting the preliminary offer suggested that charter school 1st grade students were not subject to this restriction.) Of the Santa Fe campus's ground floor rooms, however, two were determined to be unavailable for regular classroom use: one is dedicated for a special day class and another is being licensed for pre-K. As a result, all grade K through 2 students (charter and District) can be accommodated on the ground floor only if one or more modular buildings are brought into service for classroom use. The specific classroom assignments have been revised accordingly from the preliminary to the final offer. The resulting configuration of rooms may be inconvenient, but it is contiguous, as defined by the regulations (5 CCR §11969.2(d)), and the inconvenience impacts both the District and charter programs. Availability of space on the campus for specialized uses such as computer labs and libraries may be impacted by the allocation of rooms for the charter school, but as the school's comments note, case law interpretations of Proposition 39 anticipate that accommodating charter school needs may cause "disruption and dislocation among the district students, staff, and programs".

The charter school also questions the preliminary offer's allocation of specialized classroom and non-teaching space. The District's offer was based on a calculation of a classroom entitlement consistent with the Prop. 39 using loading ratios that include the use of specialized space in District schools. The regulatory formula generated an allocation of slightly over 6 teaching stations. Given the charter school's projected ADA for 2 Kindergarten classes and 2 1st grade classes, the final offer provides sufficient space for administration and "specialized" space to be used at the charter school's discretion. Sharing of playground and cafeteria are identified in the offer; sharing of other specialized classroom spaces and specific sharing arrangements can be addressed as part of the negotiations associated with the Facilities Use Agreement.

The charter school also challenges the "reasonable equivalence" of the space offer primarily because of the condition of the portable buildings. The District will ensure that the rooms meet applicable standards for cleanliness and condition before the rooms are made available for the charter school's use.



OFFICE OF CHARTER SCHOOLS

The charter school raises questions and concerns related to the amount of the pro rata share fee included in the preliminary offer. The school asks for confirmation that the square footage identified in the preliminary offer as the basis for the pro rata charge includes only space allocated by the school district to the charter school. In fact, it includes a portion of shared space, calculated in a manner consistent with the regulations implementing Prop. 39 at 5 CCR 11969.7(c):

"Space allocated by the school district to the charter school" shall include a portion of shared space where a charter school shares a campus with a school district-operated program. Shared space includes, but is not limited to, those facilities needed for the overall operation of the campus, whether or not used by students. The portion of the shared space to be included in the "space allocated by the school district to the charter school" shall be calculated based on the amount of space allocated for the exclusive use of the charter school compared to the amount of space allocated to the exclusive use of the school-district-operated program.

The final offer employs the same methodology, but revises the ratio based on assigned rooms, resulting in a square footage of 9,699, a fee of \$3.50 per square foot and a total cost of \$38,796.

The charter school also questions the calculation of the pro rata charge on three bases. The school challenges the inclusion of costs for "RRMA transfer from UR to resource 8150" in the calculation of the pro rata charge. The inclusion of these costs is supported by the Proposition 39 regulations (5 CCR 11969.7(a)(1)), which specifically allow the inclusion of "contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund." (Full text of the section is found below.)

The charter school also challenges the inclusion of debt service, specifically Emergency Apportionment State Loans, in the calculation. The District has included the debt service on two Emergency Apportionment State Loans in its cost calculation in reliance on the language of Proposition 39 (Ed Code §47614(b)(1)) and implementing regulations at 5 CCR §11969.7, which reads as follows:

§ 11969.7. Charges for Facilities Costs.

If the school district charges the charter school a pro rata share of its facilities costs for the use of the facilities, the pro rata share shall not exceed (1) a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as "unrestricted general fund revenues," divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school. The following provisions shall apply to the calculation of the pro rata share of facilities costs:

(a) For purposes of this section, facilities costs that the school district pays with unrestricted general fund revenues includes those costs associated with plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases, as defined in section 11969.2(h). For purposes of this section, facilities costs also includes:



OFFICE OF CHARTER SCHOOLS

- (1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund,
- (2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, and
- (3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, that have not been included in paragraphs (1) and (2), according to school district schedules and practices.

For purposes of this subdivision, facilities costs do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item.

(b) For purposes of this section, the cost of facilities shall include debt service costs. [emphasis supplied]

(c) "Space allocated by the school district to the charter school" shall include a portion of shared space where a charter school shares a campus with a school district-operated program. Shared space includes, but is not limited to, those facilities needed for the overall operation of the campus, whether or not used by students. The portion of the shared space to be included in the "space allocated by the school district to the charter school" shall be calculated based on the amount of space allocated for the exclusive use of the charter school compared to the amount of space allocated to the exclusive use of the school-district-operated program.

The charter school also complains that a site visit was scheduled later than requested. Because the District staff is aware of the challenges of co-locating charter and District programs, thorough communication with the impacted District school was prioritized.



**2011-2012 Proposition 39 Final Facility Offer
From Oakland Unified School District
To Vincent Academy
For the 2011-2012 School Year Only**

- Exclusive use of five (5) classrooms at Santa Fe Elementary School Campus, 915 54th Street, Oakland, CA 94608
- Exclusive use of two (2) non-teaching spaces within the Santa Fe Elementary School Campus, 915 54th Street, Oakland, CA 94608
- Shared use of multi-purpose room/cafeteria and outdoor space.

This offer is based on an in-district classroom ADA assumption of 84 students in grades K-1 at Vincent Academy.

The District and the charter school shall negotiate a Facilities Use Agreement regarding use of and payment for the space. The agreement shall contain: for shared space, the arrangements for sharing; specific location(s) of the space; all conditions pertaining to the space; the pro rata share amount; and the payment schedule.

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 2011-2012.

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 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 Proposition 39 offer to occupy District facilities will be charged a facilities 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 rate includes the charter school's contribution for use of classrooms and administration space, shared access to special classrooms and non-classroom space. There may be additional



OFFICE OF CHARTER SCHOOLS

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 would be part of a final Facilities Use Agreement.

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 Oakland Unified School 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 \$38,796.

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:

- 25% by October 1;
- 25% by December 1;
- 25% by April 1; and
- 25% by July 1.

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 **5:00 p.m., Monday, May 2, 2011**, which is 30 days after District notification. The charter school's notification can be withdrawn or modified before this deadline as the District and charter school negotiate terms of the Facilities Use Agreement. After the deadline, if the charter school has notified the 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 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 2011-2012.

Respond to this final facility offer by fax, mail, or personal delivery, to be **received by 5:00 p.m., Monday, May 2, 2011** at the following address:

Oakland Unified School District
Office of Charter Schools
Attention: Gail Greely

MAIL or DELIVERY:

Tilden School
4551 Steele Street, Rm. 11
Oakland, CA 94619

FAX

510-482-6774



OFFICE OF CHARTER SCHOOLS

Please do not contact the principal currently operating at the site. Contact the Office of Charter Schools to schedule a meeting with the District school's principal to discuss any co-location terms and conditions that would apply to the specific District site offered. These specific terms and conditions will be included in the Facilities Use Agreement.

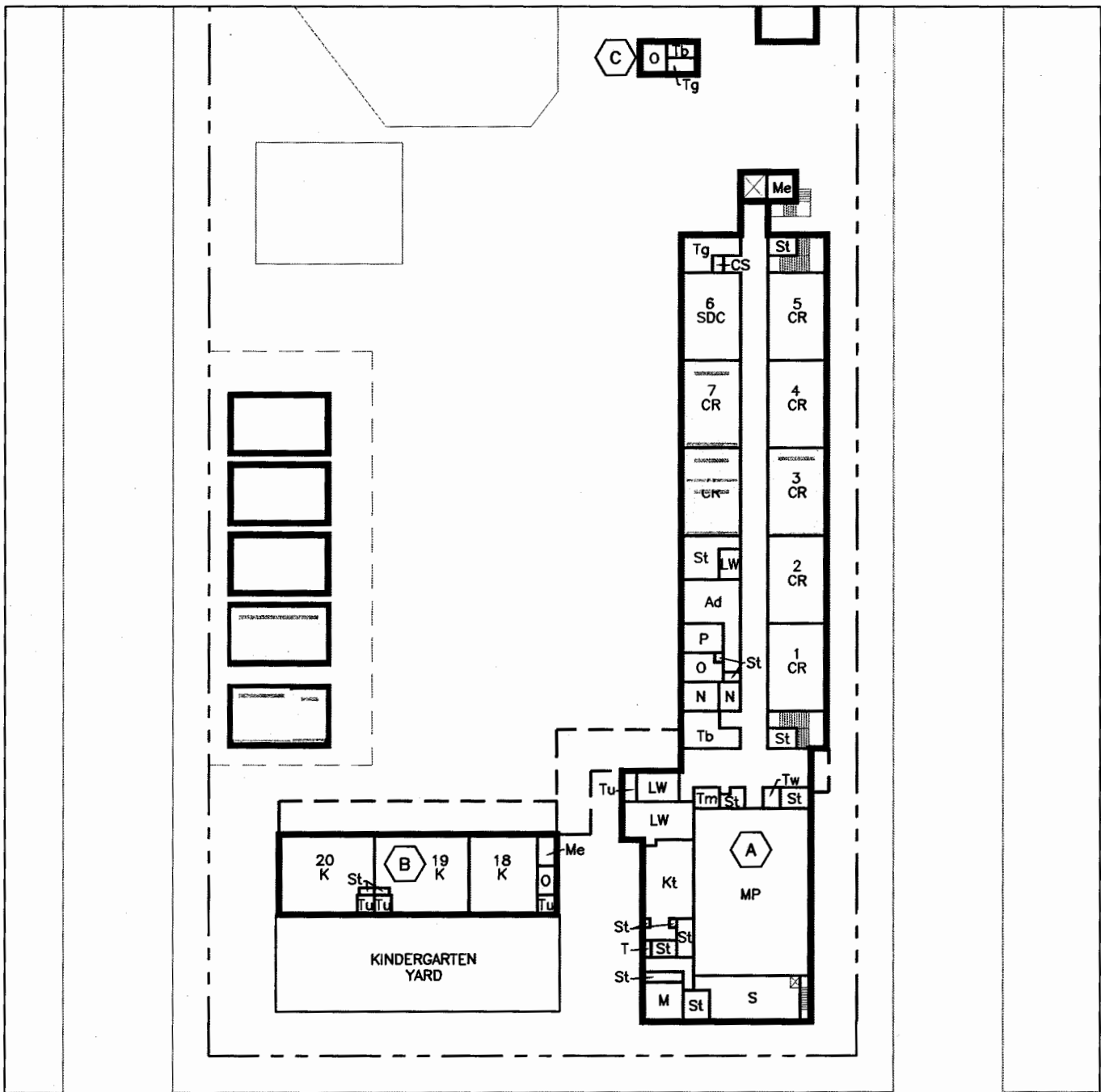
If you would like to schedule another viewing the site or if you have any questions, please contact me at (510) 336-7571 or at Gail.Greely@ousd.k12.ca.us.

Sincerely,

Gail Ann Greely
Office of Charter Schools, Coordinator

Cc: Jacqueline Minor, OUSD General Counsel
Cate Boskoff, OUSD Facilities Counsel
Dr. Anthony Smith, Superintendent
Timothy White, Assistant Superintendent, Facilities, Planning & Management
Tadashi Nakadegawa, Director of Facilities Management
David Montes, Director of Quality Community Schools Development Group
Mia Settles, Executive Officer, PK-8 Region 1

Enclosure



① FIRST FLOOR PLAN
1" = 60'-0"

A4E
ARCHITECTURE FOR EDUCATION, INCORPORATED
46 SMITH ALLEY, SUITE 200
PASADENA, CALIFORNIA 91103
626-356-4080
626-356-3080 F
www.architecture4e.com

OAKLAND UNIFIED SCHOOL DISTRICT

SANTA FE ELEMENTARY SCHOOL
915 54TH STREET
OAKLAND, CA 94608-3142

DATE: 05/09/05
JOB NUMBER: A-0303-01-1
SCALE: 1" = 60'-0"
SHEET: 5