

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent

March 28, 2012

Legislative File

File ID No.: 12-0786

Introduction Date: 3/28/12

Enactment No.: 12-0917

Enactment Date: 3-29-12

By: *AS*

TO: Board of Education

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

SUBJECT: Prop. 39 Final Facility Offer 2012-2013 School Year

ACTION REQUESTED:

Approve the proposed Final Facilities Offer to be made by the District to ARISE High 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 2012-2013, 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 2, 2012 (April 1st being a Sunday) and in turn must respond to that offer no later than May 1, 2012. 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, where applicable, 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 \$2.95 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 statutory 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: 2012-2013**. 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 ARISE High School under Proposition 39 as outlined in attached resolution.



OAKLAND UNIFIED SCHOOL DISTRICT

Office of the Superintendent

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 1112-0195

**2012-2013 SCHOOL YEAR FACILITIES OFFER(S) OF EDWARD SHANDS ADULT EDUCATION CENTER,
A DISTRICT FACILITY, TO ARISE HIGH CHARTER SCHOOL, PURSUANT TO REQUIREMENTS OF
PROPOSITION 39**

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 2012-2013 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 2012-2013 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 2, 2012 (April 1st being a Sunday); 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, or no later than May 1, 2012; 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 2012-2013 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 2012-2013 School Year to the Charter School named below:

<p>ARISE High School, 9-12 (2012-13)</p>	<p><u>ENROLLMENT:</u> In-District ADA: 229.32 Total in-district enrollment based on most relevant attendance rate: 95.00%</p>	<p><u>RATIO:</u> Ratio applied to in-district enrollment based on an evaluation of equivalent facility allocation to comparison district school students: 16.87</p>	<p><u>TEACHING STATION ALLOCATION:</u> Total teaching station allocation: 14 teaching stations</p>
<p><u>FINAL FACILITIES OFFER:</u> Edward Shands (see map) - 14 teaching stations identified within the attached map - 3 non-teaching stations identified within the attached map - Shared access to shared spaces as identified</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: 23,337 sq ft (calculated based on exclusive use and percentage of shared use space) Annual Facility Use Rate \$2.95 per square foot, per year. Total Facility Use Rate pursuant to this offer: \$68,844.00</p>	<p><u>SHARED ACCESS TO SHARED SPACE:</u> Final Facilities Offer includes no shared facility; offer is entire campus for exclusive use by the charter school (see map).</p>	

BE IT FURTHER RESOLVED that any such offer accepted not later than May 1, 2012 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:

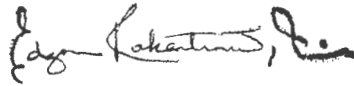
AYES: David Kakishiba, Gary Yee, Christopher Dobbins, Alice Spearman,
and President Jody London

NOES: None

ABSTAINED: None

ABSENT: Noel Gallo and Vice President Jumoke Hinton Hodge

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 29, 2012.



Edgar Rakestraw, Jr.
Secretary, Board of Education

File ID Number: 12-0786
Introduction Date: 3-28-12
Enactment Number: 12-0917
Enactment Date: 3-29-12
By: [Signature]

March 30, 2012

Romeo Garcia
ARISE High School
3301 East 12th Street, Suite 205
Oakland, CA 94601



**RE: Proposition 39 Final Facility Offer
Edward Shands – 2455 Church Street**

Dear Romeo Garcia:

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, 2012, the District provided your charter school a Proposition 39 preliminary facility offer to occupy space for one year only at Edward Shands, 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 §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 is attached.



2012-2013 Proposition 39 Final Facility Offer

From Oakland Unified School District To ARISE High School For the 2012-2013 School Year Only

- Exclusive use of 14 classrooms at Edward Shands, 2455 Church Street.
- Exclusive use of 3 non-teaching space within Edward Shands, 2455 Church Street
- No shared use of space; offer is entire campus.

This offer is based on an in-district classroom ADA assumption of 229.32 students in 9-12 at ARISE High School.

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. (A draft of a Facilities Use Agreement including these terms was provided with the preliminary offer.)

The space allocated by the school district will be furnished with desks and chairs, equipped with dry erase boards, and available for occupancy by the charter school seven days prior to the charter school's first day of instruction in 2012-2013.

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 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 the 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 will 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 \$68,844.00.

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 no later than 5:00 p.m., Tuesday, May 1, 2012 or within 30 days after District notification, whichever is later. 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 2012-2013.

Respond to this final facility offer by fax, mail, or personal delivery, to be **received by 5:00 p.m., Tuesday, May 1, 2012** at the following address:

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

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

FAX:
510-482-6774

EMAIL:
Gail.Greely@ousd.k12.ca.us



OFFICE OF CHARTER SCHOOLS

Please do not contact the principal currently operating at the offered campus. Contact the Office of Charter Schools to schedule a meeting to discuss any 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
Alison McDonald, Network Executive Officer

Enclosure: Plan of Edward Shands

Proposition 39 Final Offer of Facilities

Response to Charter School Concerns and/or Counter Proposal/s

ARISE High School

Concern: ARISE High School asks the District to confirm that the square footage identified in the preliminary offer includes only space that the charter school has been allocated and will use.

- The final offer from the District designates the entire campus for the charter school's exclusive use and the square footage listed is for all existing buildings (no outdoor space) on the campus. Total District building space was used to calculate the pro rate share.

Concern: ARISE High School questions the inclusion of "RRMA transfer from UR to resource 8150" in the calculation of the pro rata share because the charter school, by the terms of the Facilities Use Agreement ("FUA"), has responsibility for some facility maintenance and operations.

- 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." The FUA specifies that the District will continue to have specific maintenance responsibilities for the offered site, as outlined in the Charter School Facilities Guide document provided with the preliminary offer, and these are part of the referenced "resource 8150" and are therefore appropriately included in the fee calculation.

Concern: ARISE High School questions 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 specifically includes debt service with no language restricting it to facilities-related debt service, as suggested by ARISE High School. The regulation 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:

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:

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,

costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, and

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.

For purposes of this section, the cost of facilities shall include debt service costs.
[Emphasis supplied]

Concern: ARISE High School notes that the District's contributions to maintenance may change as a result of changes to state funding requirements, thereby changing the calculation of the pro rata share.

- Proposition 39 regulations at 5 CCR §11969.7(d) requires that, "The per-square-foot charge shall be determined using actual facilities costs in the year preceding the fiscal year in which facilities are provided and the largest amount of total space of the school district at any time during the year preceding the fiscal year in which facilities are provided." The calculations will therefore be adjusted to reflect 2011-2012 fiscal year costs.

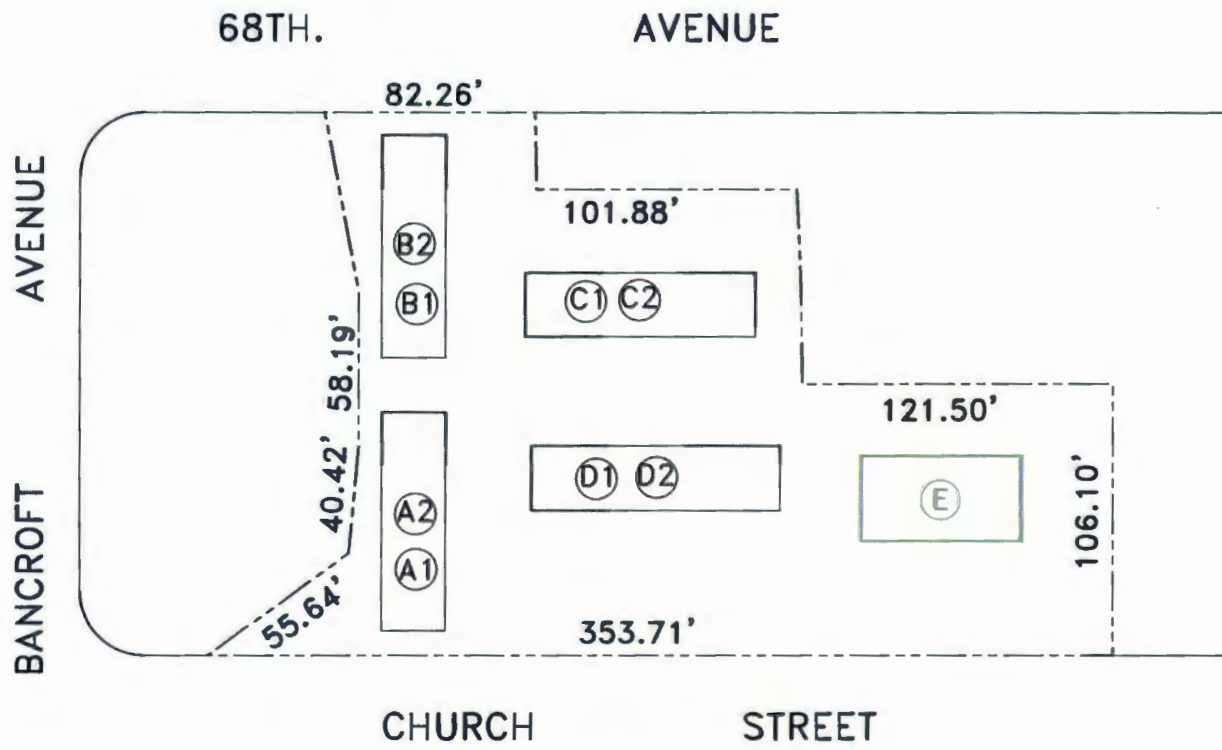
Concern: ARISE High School identifies two issues of concern in the Charter School Facilities Guide ("Guide"): 1) clarification that the charter school will not be responsible for equipment already in damage condition at time of occupancy and requesting an inventory; and 2) questioning whether the charter school should be responsible for damage to shared equipment.

- With respect to responsibility for equipment damaged prior to charter school's possession, the Facilities Use Agreement clarifies that the parties are not responsible for damage caused by the other. The charter school may prepare an inventory specifying the condition of equipment at the offered site, to be submitted to the District for review and agreement.

- With respect to shared equipment, because ARISE High School’s offer is for exclusive use of a complete campus, the issue of responsibility for damage to shared equipment is moot.

Concern: ARISE High School raises multiple questions and concerns regarding the draft Facilities Use Agreement (“FUA”) provided with the preliminary offer. The District will engage in discussions with ARISE High School to finalize the draft FUA.

- Section 1: ARISE High School says the FUA is contradictory with respect to Civic Center Act obligations.
 - The District will work with the charter school to clarify the language of the FUA and procedures to be used for Civic Center Act access to the offered site, should ARISE High School accept the final offer.
- Section 2: ARISE High Schools asks for clarification of the language regarding date of occupancy.
 - In the course of finalizing the FUA, the language can be clarified to better track the language of the Proposition 39 regulations regarding occupancy.
- Section 4: ARISE High School seeks clarification of language regarding responsibility for false alarms on the site’s security system.
 - Although the FUA includes limits on the charter school’s responsibility for the acts of others, in the course of finalizing the FUA, the language of this section can be further clarified.
- Section 8: ARISE High School seeks clarification that the pro rata share fee does not include technology equipment and services, and that the District will provide the charter school with comparable equipment pursuant to Proposition 39.
 - Costs for the referenced list of technology equipment and services are not included in the calculation of the pro rata share facilities fee (as can be verified by reference to the materials provided with the preliminary offer).
 - OUSD will meet its obligations under Proposition 39 to provide furniture and equipment comparable to that provided to district schools, using a variety of measures that could include designating furniture and equipment currently at the final offer site, relocating surplus furniture and equipment from other District campuses, and/or selecting furniture and equipment from District surplus.
- Section 14: ARISE High School requests more information on the amount of excess liability insurance coverage expected and asks for clarification that insurance obtained through a Joint Powers Agency is sufficient.
 - In the course of finalizing the FUA, the District will specify the amount of excess liability coverage. Language in the FUA on “Insurance Policy Criteria” does not prohibit insurance obtained through a JPA, as long as the insurance is “written by responsible insurance companies authorized to do business in the State of California”.
- Section 22(1): ARISE High School asks that the FUA needs to include a statement on written notice to cure pursuant to Code of Civil Procedure Section 1161.
 - In the course of finalizing the FUA, the District will consider applicability of the referenced section and the appropriateness of including the requested language.



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404 - Edward Shands Adult Ed. Center - Site Plan

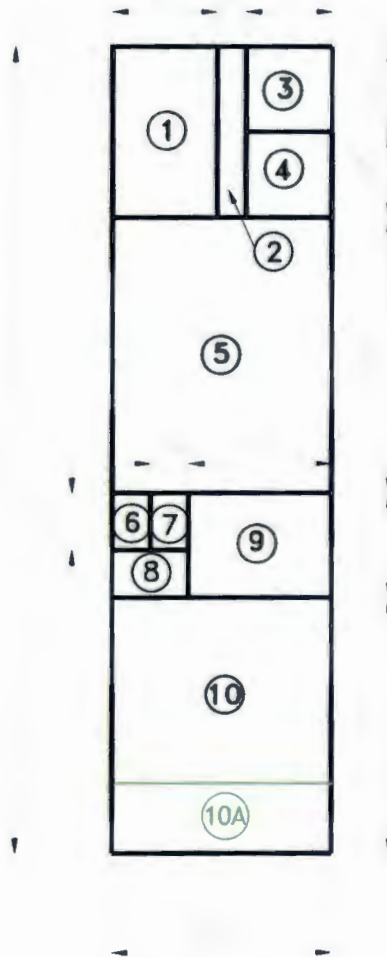
2455 Church Street - Oakland, CA 94605-4037



Business Center 1275 Broadway Street, Emeryville, CA 94608
 415.763.4200

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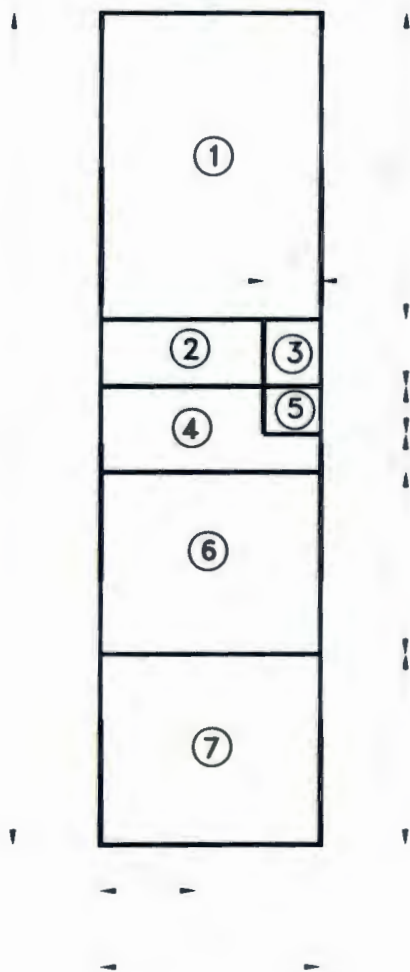
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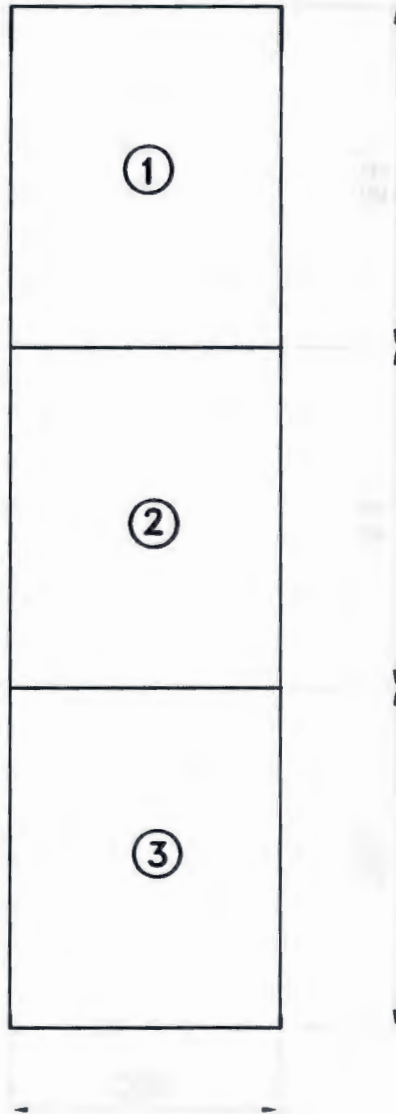


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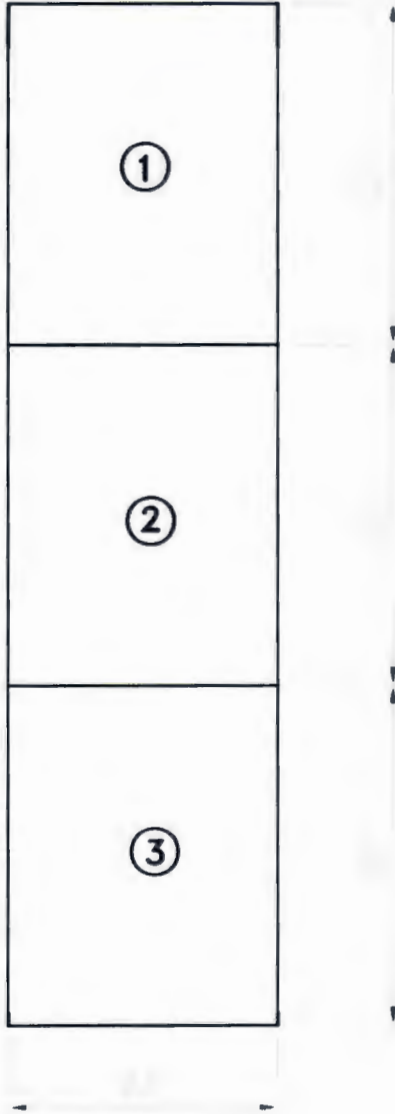
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404 - Edward Shands Adult Ed. Center - Unit B1

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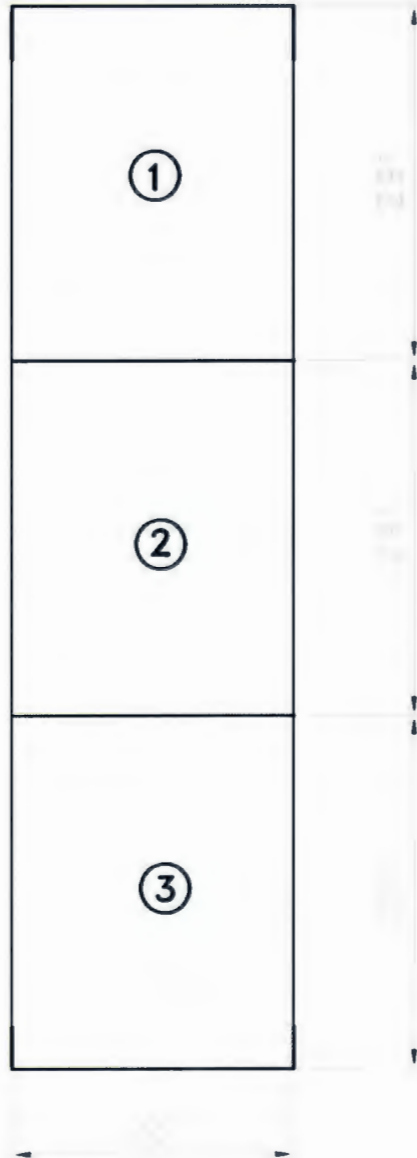
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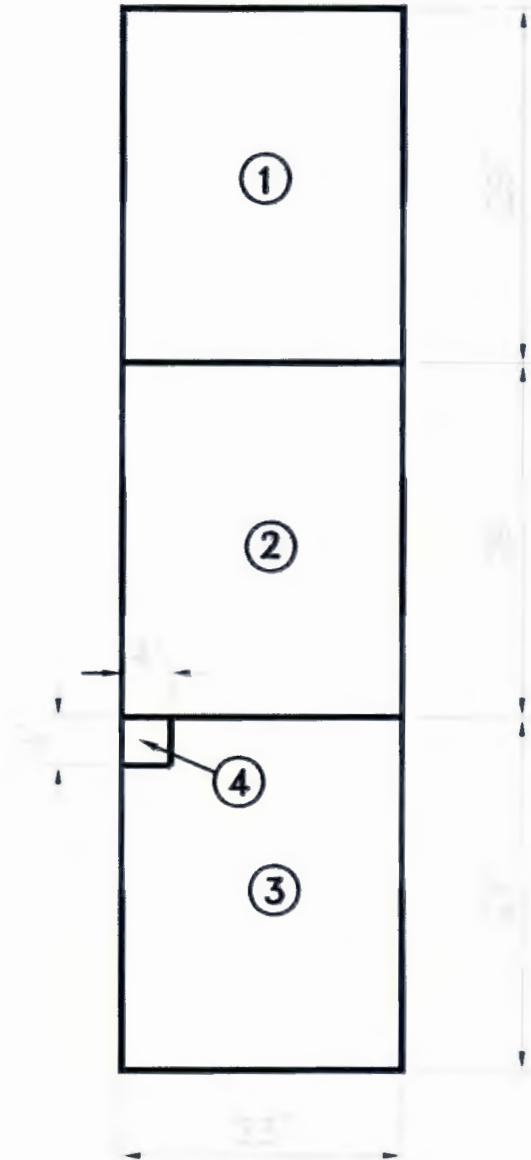




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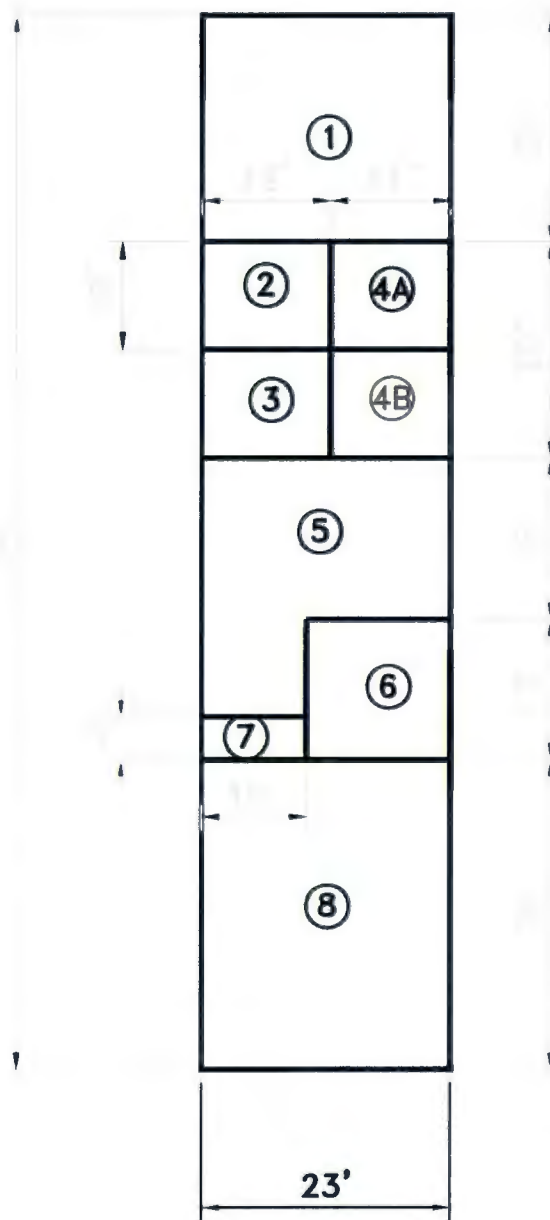
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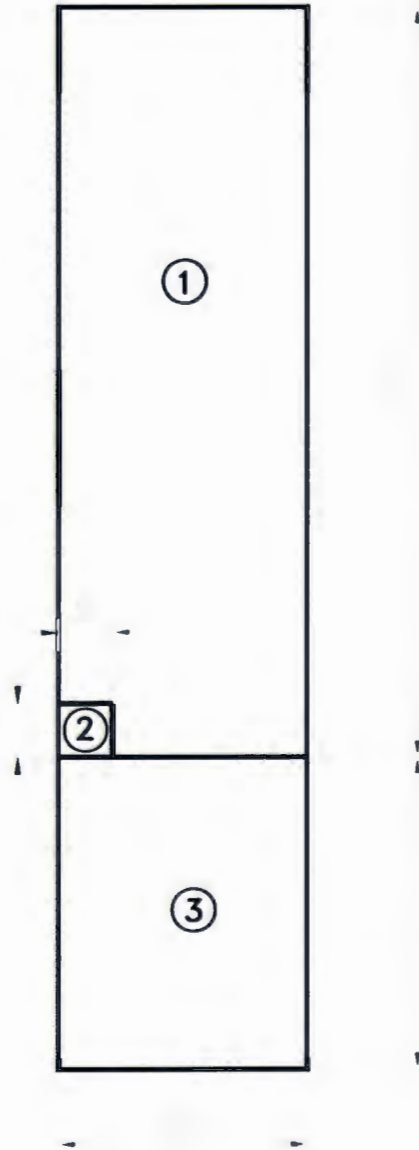
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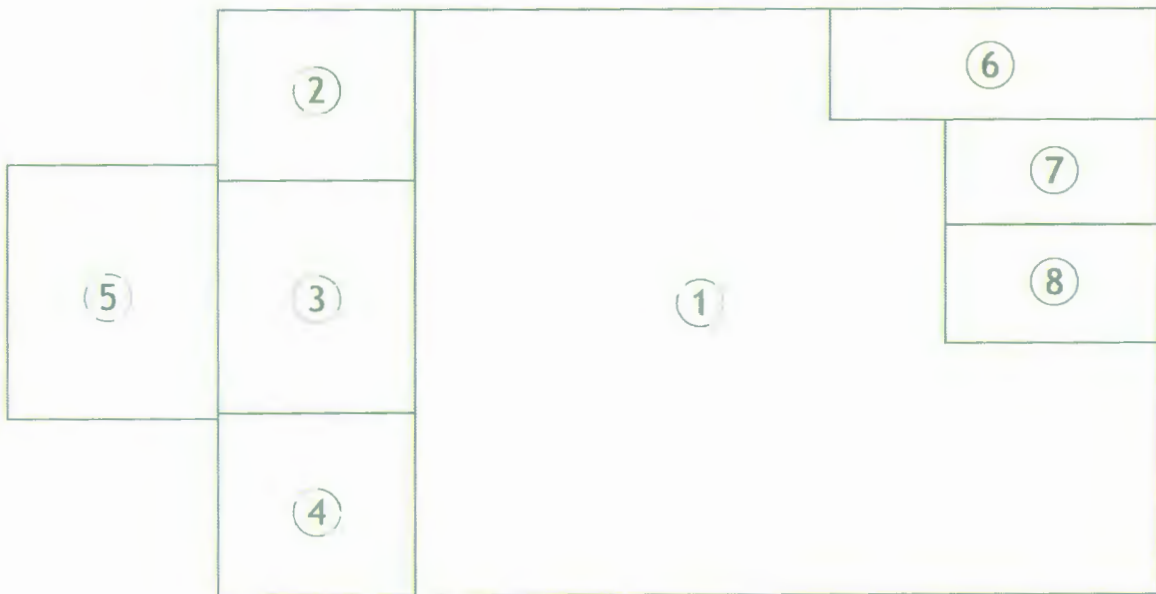




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404 - Edward Shands Adult Ed. Center - Unit E

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