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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools. Thriving Students

Memo

To Board of Education

From Silke Bradford, Director – Quality Diverse Providers
David Montes de Oca - Deputy Chief
Marion McWilliams - General Counsel

Board Meeting Date March 22, 2017

Subject **Adopting Issuance of Proposition 39 Facilities Offers and Directing Staff to Issue Written Final Offers in Compliance with Proposition 39**

Action Requested **Approval of Board Resolution 1617-0011 Adopting Issuance of Proposition 39 Facilities Offers and Directing Staff to Issue Written Final Offers in Compliance with Proposition 39**

Background and Discussion California Education Code section 47614 requires school districts' facilities be shared fairly among all public school pupils, including charter school students. California regulations require findings and a written statement of reasons by the Board of Education in the event a charter school, eligible for Proposition 39 facilities, makes a timely request and the District is not able to accommodate the charter school's request at a single school site.

Recommendation Approval by the Board of Education of Resolution 1617-0011 adopting issuance of Proposition 39 facilities offers and directing staff to issue written final offers in compliance with Proposition 39.

Fiscal Impact n/a

Attachment • **Resolution**

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION No. 1617-0011**

**Adopting Issuance of Proposition 39 Facilities Offers and Directing Staff to Issue
Written Final Offers in Compliance with Proposition 39
(Cal. Code Regs., tit. 5, § 11969.1 *et seq.*)**

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 share shared fairly among all students attending traditional and charter schools;

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 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;

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

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, for the 2017-2018 school year, 16 eligible charter schools requested facilities under Proposition 39;

WHEREAS, the Board incorporates into this Resolution the Resolution 1617-0009 ("Finding that Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding") and the Staff Report "Process for Determining Charter Schools Which Cannot Be Accommodated at a Single Site For 2017-18 School Year," attached hereto as Appendix A thereto, approved by the Board on January 25, 2017;

WHEREAS, having analyzed the available space in the specific area where each charter wishes to locate, the District is unable to extend a single site offer in their desired geographic location for the reasons stated in the Final Offer and Resolution 1617-0009;

NOW, THEREFORE BE IT RESOLVED, the Board of the District hereby allocates the following school site(s) to be offered to the charter school(s) named below for the 2017-2018 school year under Proposition 39:

Name of Charter School	Site to be Offered
East Oakland Leadership Academy	• Westlake Middle School 2629 Harrison Street, Oakland, CA

BE IT FURTHER RESOLVED, the Board of the District hereby directs District staff to issue Final Offers of Facilities to the above-named charter schools under Proposition 39 and its implementing regulations by the required deadline.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 22nd day of March, 2017, by the following vote, to wit:

AYES: Aimee Eng, Jody London, Shanthi Gonzales, Roseann Torres, Vice President Nina Senn, President James Harris

NOES: Jumoke Hinton Hodge

ABSTAINED: None

ABSENT: None

CERTIFICATION

I hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 22nd day of March, 2017 with a copy of such Resolution being on file in the Office of the Board of Education of said district.



Dr. Devin Dillion, Interim Superintendent and Board Secretary



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

OFFICE OF CHARTER SCHOOLS

March 22, 2017

Laura Armstrong
East Oakland Leadership Academy
2614 Seminary Ave
Oakland, CA 94605

Re: Oakland Unified School District
Final Offer of Facilities, 2017-2018

Dear Laura Armstrong:

Oakland Unified School District (“District”) makes this Final Offer of Facilities to the **East Oakland Leadership Academy** (“Charter School”) for the 2017-2018 school year.

The District has carefully considered the Charter School’s request for facilities under the criteria set forth in Proposition 39 and its implementing regulations. (Cal. Ed. Code § 47614; Cal. Admin. Code, title 5, §§ 11969.1, *et seq.*) This Final Offer complies with all of the requirements of Proposition 39 and Cal. Admin. Code, title 5, §11969.9(f).

A. Procedural History

The Charter School submitted a Request for Facilities under Proposition 39 pursuant to Cal. Admin. Code, title 5, § 11969.9(c) on or before November 1, 2016. The Charter School’s Request for Facilities was based upon a projected in-District ADA of **119.63 (K-5: 77.21 and 6-8: 42.42)**.

B. 2017-2018 Final Offer to the Charter School

Education Code § 47614 and its implementing regulations only obligate the District to offer space sufficient to accommodate the Charter School’s in-District students. The District’s allocation of space is therefore based on the Charter School’s projected in-District ADA of **119.63 (K-5: 77.21 and 6-8: 42.42)** in-District students.

1. *Methodology*

Cal. Admin. Code, title 5, § 11969.3 governs the identification of the comparison group sites. Subsection (a)(1) states as follows:

Comparison Group:

The standard for determining whether facilities are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district providing facilities shall be a comparison group of district-operated schools with similar grade levels. If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school. The district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration.

Cal. Admin. Code, title 5, § 11969.3(a)(2) governs the determination of the comparison group schools for districts whose students live in high school attendance areas:

The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area, as defined in Education Code section 17070.15(b), in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested.

The District must first identify the high school attendance area in which the largest number of in-District Charter School students reside. Education Code §17070.15(b) defines “attendance area” as “the geographical area serving an existing high school and those junior high schools and elementary schools included therein.” Based on the information provided in the Charter School’s facilities request, the District has

determined that the greatest number of Charter School students for both the K-5 and 6-8 grade spans live within the Castlemont/Coliseum High School attendance area.

Table 1: High School Attendance Area

Grade Span	Attendance Area	# of Students	% of Students in Grade Span
K-5	Castlemont/Coliseum	46	60%
	Fremont	23	30%
	Oakland High	3	4%
	Oakland Tech	2	3%
	Skyline	2	3%
	Outside Of Oakland	1	1%
6-8	Castlemont/Coliseum	21	68%
	Fremont	6	19%
	Outside Of Oakland	3	10%
	Oakland High	1	3%

Therefore, the comparison group schools for the Charter School are as follows:

- **K-5:** Community United Elementary School, Howard Elementary, Reach Academy, Brookfield Village Elementary, Burckhalter Elementary, East Oakland Pride Elementary, Futures Elementary, New Highland Academy, Markham Elementary, Madison Park Academy, Fred T. Korematsu Discovery Academy, Esperanza Elementary, EnCompass Academy, RISE Community School, ACORN Woodland Elementary, Greenleaf Elementary, and Parker Elementary
- **6-8:** Greenleaf Elementary, Parker Elementary, Frick Impact Academy, Elmhurst Community Prep, Alliance Academy, Roots International Academy, Madison Park Academy, and Coliseum College Prep Academy

2. Facilities Offered:

The District offers the Charter School facilities at the following school site:

**Westlake Middle School
 2629 Harrison St, Oakland, CA 94612**

The Charter School’s allocation of space is as follows:

Table 2a: Total Allocation of Exclusive Use Teaching Station, Specialized Classroom, and Admin Space to Charter School by School Site

School Site	# of Teaching Stations/ Specialized Classrooms	# of Admin Rooms	Total Sq Ft
Westlake	7	1	6,340

Table 2b: Allocation of Exclusive Use Teaching Station, Specialized Classroom, and Admin Space to Charter School by Room

School Site	Room # (per MKThink site plan)	Sq Ft
Westlake	C2-201	864
Westlake	C2-202	772
Westlake	C2-203	772
Westlake	C2-204	796
Westlake	C2-205	772
Westlake	C2-206	796
Westlake	C2-207	772
Westlake	C2-208	796

Table 2c: Allocation of Shared Non-Teaching Building Space to Charter School by School Site

Site Name	Projected ADA at Site (District)	Projected ADA at Site (Charter)	Proportion of Projected Charter ADA to Total Site ADA	Total Non-Teaching Space at Site (sq ft)	Non-Teaching Space Allocated to Charter (sq ft)
Westlake	329.36	119.63	26.6%	18,165	4,840

The Charter School’s access to non-teaching space, such as auditoriums, gymnasiums, multi-purpose rooms, and cafeterias, is based upon the Charter School’s per-student entitlement to each category of space at the comparison group schools, and calculated upon the proportion of in-district ADA to the total ADA at the Site. The specific allocation of specialized teaching space and non-teaching space to the Charter School is set forth in subsections 3(c) and 3(d) below.

The District allocates flex space to be used at the discretion of the charter school, consistent with District policy and procedure, and is intended to encompass specialized and non-teaching space (*i.e.* admin, office, library, etc.)

3. Reasonable Equivalence Methodology:

In order to determine whether facilities are “reasonably equivalent,” the District compares the proposed facilities to District-operated schools constituting the comparison group school. The District has considered capacity, condition, location, and other relevant factors, using as a point of reference the comparison group schools identified above, to allocate a facility to the Charter School that meets Proposition 39 standards for “reasonable equivalence.”

a. Condition:

With respect to “condition,” the District may allocate facilities to the Charter School that are comparable to the comparison group in the following ways:

No.	Facility Characteristic – Capacity	Regulatory Authority
1.	Ratio of teaching stations to average daily attendance (“ADA”)	C.C.R., tit. 5, § 11969.3(b)(1)
2.	Specialized classroom space if such facilities are available to the district comparison group (e.g., science laboratories)	C.C.R., tit. 5, § 11969.3(b)(2)
3.	Non-teaching space, which the district can share with the charter school (e.g., administrative, kitchen, multi-purpose, and/or play area space)	C.C.R., tit. 5, § 11969.3(b)(3)
4.	School site size	C.C.R., tit. 5, § 11969.3(c)(1)(A)
5.	Condition of interior and exterior surfaces	C.C.R., tit. 5, § 11969.3(c)(1)(B)
6.	Mechanical, plumbing, electrical, and fire alarm systems in condition and conformity to applicable law	C.C.R., tit. 5, § 11969.3(c)(1)(C)
7.	Availability and condition of technology resources	C.C.R., tit. 5, § 11969.3(c)(1)(D)
8.	Overall learning environment qualities (e.g., lighting, noise mitigation, and/or size for intended use)	C.C.R., tit. 5, § 11969.3(c)(1)(E)
9.	Furnishings and equipment	C.C.R., tit. 5, § 11969.3(c)(1)(F)
10.	Condition of athletic fields and/or play area space	C.C.R., tit. 5, § 11969.3(c)(1)(G)

The District has also evaluated data on the condition of the facilities at the comparison group school based on information available on that site available from the District’s Asset Management and Facilities Master Plan. That analysis shows that the Site offered to the Charter School is virtually equivalent in every category of the Qualitative Assessment of the site (Landscape Quality, Safety, Noise, Graffiti and Community Access) to the comparison group school, as are the buildings on that Site. A copy of that analysis is attached as [Exhibit A](#). Based on the data available to the District, the

District has concluded that the facilities offered to the Charter School meet the reasonable equivalence standards under the category of “condition.”

b. Teaching Stations:

With respect to teaching stations, Cal. Admin. Code title 5, § 11969.3(b)(1) states that “[f]acilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools.”

The District followed the methodology set forth by the Court in *California Charter Schools Assn. v. Los Angeles Unified School District* (2015) 60 Cal.4th 1221 in determining the teaching station allocation to the Charter School. The District first compiled a list of each teaching station at the comparison group school. ([Exhibit B](#)) From that list, the District determined the ADA to teaching station ratio at the comparison group school (**K-5: 22.21 and 6-8: 25.45** ADA per teaching station).

Table 3a: Comparison Group Schools Serving Grades K-5 Located in High School Attendance Area

School	ADA Teaching Station Ratio
Community United Elementary School	22.93
Howard Elementary	20.86
Reach Academy	24.73
Brookfield Village Elementary	17.86
Burckhalter Elementary	21.71
East Oakland PRIDE Elementary	22.27
Futures Elementary	24.10
New Highland Academy	19.19
Markham Elementary	19.75
Madison Park Academy TK-5	24.56
Fred T. Korematsu Discovery Academy	23.69
Esperanza Elementary	24.31

EnCompass Academy	23.92
RISE Community School	23.11
ACORN Woodland Elementary	23.67
Greenleaf Elementary	22.15
Parker Elementary	18.80
AVERAGE	22.21

Table 3b: Comparison Group Schools Serving Grades 6-8 Located in High School Attendance Area

School	ADA Teaching Station Ratio
Greenleaf Elementary	26.33
Parker Elementary	15.20
Frick Impact Academy	23.03
Elmhurst Community Prep	29.02
Alliance Academy	21.62
Roots International Academy	31.50
Madison Park Academy 6-12	27.16
Coliseum College Prep Academy	29.73
AVERAGE	25.45

Applying that ratio to the Charter School's projected ADA of **119.63 (K-5: 77.21 and 6-8: 42.42)**, the District determined that the Charter School was entitled to an allocation of **6 (rounded up from 5.15)** teaching stations.

Table 4: Calculation of Exclusive General Education Classroom Allocation

Grade Span(s)	ADA (In-District)	Average ADA Teaching Station Ratio	General Education Classrooms (ADA / Average ADA Teaching Station Ratio)
K-5	77.21	22.21	3.48
6-8	42.42	25.45	1.67
TOTAL	119.63	-	6 (5.15)

c. Specialized Teaching Space:

With respect to specialized teaching space, Cal. Admin. Code title 5, § 11969.3(b)(2) states as follows with respect to the allocation of specialized teaching space to Charter Schools:

If the school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the space allocation provided pursuant to paragraph (1) of subdivision (b) shall include a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space. The amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

- (A) the grade levels of the charter school's in-District students;
- (B) the charter school's total in-District classroom ADA; and
- (C) the per-student amount of specialized classroom space in the comparison group schools.

The District determined the amount of specialized teaching space based on the number of general education teaching stations.

Table 5: Specialized Classroom Space Allocation

Grade Span(s)	General Education Classrooms (ADA/Average ADA Teaching Station Ratio)	Specialized Classrooms*
K-5	3.48	0.58
6-8	1.67	0.21
Total	6 (5.15)	1 (0.79)

* Specialized classroom space is allocated as a fraction of general education classrooms depending on grade level as follows: Elementary, 1/6; Middle, 1/8; High 1/10.

d. Non-Teaching Space:

With respect to non-teaching space, Cal. Admin. Code title 5, § 11969.3(b)(3) states as follows:

The school district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools. Non-teaching station space is all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative space, kitchen, multi-purpose room, and play area space. If necessary to implement this paragraph, the district shall negotiate in good faith with the charter school to establish time allocations and schedules so that educational programs of the charter school and school district are least disrupted.

The District determined the amount of non-teaching space at the comparison group schools as a function of SF/ADA.

Table 6: Non-Teaching Space at Comparison Group Schools

Comparison School(s)	17-18 Projected ADA	Site Utilization	Non-Teaching Space (Sq Ft)*	Sq Ft/ADA
Community United/Futures Elementary	619.87	96.7%	15,756	24.58
Howard Elementary	202.31	74.1%	6,261	22.93
Reach Academy	369.41	100.0%	14,462	39.15
ACORN Woodland/EnCompass Academy	591.06	100.0%	13,125	22.21
Brookfield Village Elementary	276.66	73.4%	17,432	46.25
Burckhalter Elementary	240.01	91.9%	8,310	31.82
East Oakland PRIDE Elementary	325.64	73.3%	13,335	30.02
Esperanza Elementary/Korematsu	661.53	96.4%	13,592	19.80
Madison Park Academy TK-5	297.60	84.2%	7,756	21.94
Markham Elementary	319.89	71.8%	7,740	17.37
New Highland Academy/RISE Community School	555.84	79.2%	8,588	12.24
Greenleaf Elementary	578.86	100.0%	9,104	15.73
Parker Elementary	248.61	94.1%	9,502	35.97
Elmhurst Community Prep/Alliance Academy	675.69	81.2%	29,810	35.82
Frick Impact Academy	229.07	77.1%	22,664	76.28
Coliseum College Prep /Roots International Academy	760.48	96.1%	23,044	29.10
Madison Park Academy 6-12	781.67	100.0%	20,543	26.28
Median Comparison School Sq Ft/ADA				26.28

*Source: MKThink OUSD Facilities Master Plan

Site Utilization: As part of the Proposition 39 site allocation process, the District evaluated the enrollment and ADA at each of its District school sites, and determined what capacity of teaching space, non-teaching space and specialized teaching space each District school should be entitled to based upon a uniform District utilization standard.

The space allocation at each District school was thereafter adjusted to achieve compliance with the District standard. The balance of the District’s schools site space utilization was then earmarked for charter school allocation under Proposition 39. (For example, for a District school with a site utilization of 96.4%, 3.6% of that District site’s space was reclaimed and earmarked for charter school availability.) ([Exhibit C](#))

The District then used the SF/ADA ratio for each category of space at the comparison group school as part of its reasonable equivalence analysis.

Table 7: Calculation of Non-Teaching Space for Charter School at Westlake

Site Name	Westlake		
Building Footprint (sq ft)	100,681		
Building Area (sq ft)	84,991		
Site Acreage	5.7		
	Westlake Site Total	Westlake Middle School	East Oakland Leadership Academy
17-18 Projected ADA	448.99	329.36	119.63
% of 17-18 Projected Site ADA	-	73.4%	26.6%
Site Utilization	-	66.5%	-
Room Type	Sq Ft	Sq Ft	Sq Ft
Admin/Office/Conference	4,073	2,988	1,085
MPR/Auditorium/Cafeteria/Gym	12,292	9,017	3,275
Library	1,800	1,320	480
Total	18,165	13,325	4,840
AVERAGE SQ FT/ADA	-	40.46	40.46

Following is a summary of the SF/ADA ratios of non-teaching space at the comparison group schools, compared to that of the Charter School’s allocation:

Table 8: Shared Non-Teaching Space Actual Sq Ft/ADA vs. Comparison Sq Ft/ADA

Offer Site	Charter Projected In-District ADA	Non-Teaching Space	
		Sq Ft	Sq Ft/ADA
Westlake	119.63	4,840	40.46
Total Allocated		4,840	40.46
Total Required (based on Comparison Schools' Median Sq Ft/ADA)		3,144	26.28

The District calculates the SF/ADA for non-teaching space to determine the reasonable equivalence standards for this category of space at the comparison group schools.

The District also will offer the Charter School reasonably equivalent Furnishings and Equipment for **119.63 (K-5: 77.21 and 6-8: 42.42)** ADA.

The specific space offered to the Charter School in this Final Offer is depicted in the diagrams attached as **Exhibit D**.

4. Differences Between Facilities Request and Final Offer

In compliance with Cal. Admin. Code, title 5, §11969.9(f), the District identifies the differences between this Final Offer and the Charter School's Request for Facilities.

Charter School's ADA Projections: The District is allocating space in accordance with the Charter School's ADA projections, as provided in its Final Offer.

Site Location: The Charter School identified a location preference of "Frick; Horace Mann; Markham; Lockwood or in the general geographic area of Seminary (between San Leandro Blvd. and 580 Freeway and Foothill (between 73rd and 50th Ave.)"

Education Code 47614(b) states 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 ...". Here, the District exercised its discretion in determining that none of the schools in the Charter School's preferred locations had capacity to accommodate the

Charter School's projected ADA. The District's determination is subject to deference. (See, e.g., *Westchester Secondary Charter School v. Los Angeles Unified School District* (2015) 237 Cal.App.4th 1226; *Sequoia Union High Sch. Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 194-5.) The District did not abuse its discretion by considering the cost to the District, or the impact upon District pupils, of granting the Charter School's location preference.

The District has provided the Charter School a Final Offer at Westlake Middle School, located at 2629 Harrison St, Oakland, CA 94612, which is approximately 5.0 – 7.5 miles from the Charter School's preferred location. The District's preliminary offer included an allocation of space at Frick, which was located within the Charter School's location preference. However, the Charter School's February 28, 2017 took significant issue with the District's allocation of specialized teaching space and non-teaching space. (See, February 28, 2017 letter, pp. 2-4.) The District has recalculated the Charter School's allocation of specialized teaching space and non-teaching space, and has been able to make a more favorable allocation of such space to the Charter School due to Westlake's favorable site utilization rate. Therefore, the District has balanced the Charter School's preferred location against its complaints about the specialized teaching space and non-teaching space offered to the Charter School.

5. **Response to Charter School's February 28, 2017 Letter:**

The Charter School's February 28, 2017 letter claims that "the District must allocate specialized classroom space, such as science laboratories, art rooms, computer rooms, music rooms, wood/metal shop rooms, etc. commensurate with the in-District classroom ADA of EOLA." In fact, the Proposition 39 regulations do not obligate the District to provide an endless list of specialized teaching space categories to the Charter School, but, rather, "the per-student amount of specialized classroom space in the comparison group schools." (Cal. Admin. Code tit. 5, § 11969(b)(2)(C).)

The Charter School derides the District's methodology for determining "the per-student amount of specialized classroom space in the comparison group schools," which is contained on Table 5, p. 10 of this Final Offer, as "irrelevant," "illegal," illogical" and "bizarre." (February 28, 2017 letter, pp. 3-4.) However, the Charter School's aspersions do not explain how the District's methodology is inconsistent with the Proposition 39 regulations. The District's Asset Management and Facilities Master Plan

attaches data for the types and amount of specialized teaching space at the comparison groups school. ([Exhibit A](#)) Cal. Admin. Code tit. 5, § 11969(b)(2)(C) requires the District to determine “the per-student amount of specialized classroom space in the comparison group schools,” which the District’s formula is designed to calculate. The Charter School’s boilerplate complaints in its February 28, 2017 letter do not specify any category of specialized teaching space for which the Charter School claims a right to shared access with the host school or greater amounts of space; rather, the Charter School’s complaint directs its complaints to the aggregate allocation of specialized teaching space in general. Therefore, the District cannot assess the Charter School’s complaints, or adjust its offer, in response to any particular requested category of specialized teaching space.

As for non-teaching space, the Proposition 39 regulations require the District to “allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools.” (Cal. Admin. Code tit. 5, § 11969(b)(3).) This calculation is contained on Table 7, p. 12 of the Final Offer. While the Charter School complains that the District’s methodology for calculating “makes no sense,” it fails to acknowledge that the District’s methodology determines the amount of non-teaching space available at the comparison group schools; calculates the SF/ADA to which the charter school is entitled; and then allocates non-teaching space with reference to the amount available at the comparison group schools, as indicated on [Exhibit A](#). Due to the very general “one-size-fits-all” nature of the Charter School’s complaint, the District was not able to address any specific category of non-teaching space to adjust. However, as was noted above (p. 14, *supra*), the District has attempted to accommodate the Charter School’s objection by making a Final Offer of facilities to the Charter School at Westlake, a school with a lower utilization rate, and there more latitude with respect to the sharing of specialized teaching space and non-teaching space.

C. Final Facilities Offer – Other Terms and Conditions

1. Pro-Rata Share

The calculation of the Charter School’s pro-rata share of facilities costs is attached as

Exhibit E. The District notes that the Charter School’s share of custodial costs may be subject to reconciliation in the event that the District is required to increase staffing as a result of the Charter School’s use and occupation of the District’s site.

Although the District will address the Charter School’s other stated concerns regarding the facilities costs used to compute the pro-rata share during the course of FUA negotiations, it does maintain that it is entitled to include the cost of property insurance. Cal. Admin. Code tit. 5, § 11969.2 provides the definition of “facilities costs” for the purposes of determining the permissible general fund costs to include in the calculation of the pro-rata share:

As used in Education Code section 47614(b)(1), "facilities costs" are those activities concerned with keeping the physical plant open, comfortable, and safe for use and keeping the grounds, buildings, and equipment in working condition and a satisfactory state of repair. These include the activities of maintaining safety in buildings, on the grounds, and in the vicinity of schools. This includes plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases.

The District believes that it is allowed to include insurance (which only includes property insurance covering the District’s structures, and does not include contents or liability insurance) because these costs constitute expenses incurred in “keeping the ... buildings ... in working condition and a satisfactory state of repair,” in the event that they are damaged and an insurable claim is made. Therefore, the Charter Schools occupying the District’s facilities under Proposition 39 directly benefit from the property insurance that the District takes out on the structures that they occupy.

2. Overallocation Fee

Cal. Admin. Code tit. 5, § 11969.8 provides for a penalty in the event that a school district overallocates facilities to a charter school based on the charter school’s overprojection of Average Daily Attendance (“ADA”) for a school year. Subsection (a) of that regulation provides as follows:

Space is considered to be over-allocated if (1) the charter school's actual in-district classroom ADA is less than the projected in-district classroom ADA upon which the facility allocation was based and (2) the difference is greater than or equal to a threshold ADA amount of 25 ADA or 10 percent of projected in-district classroom ADA, whichever is greater.

The penalty for overallocation is calculated as follows:

The per-pupil rate for over-allocated space shall be equal to the statewide average cost avoided per pupil set pursuant to Education Code section 42263 for 2005-06, adjusted annually thereafter by the CDE by the annual percentage change in the general-purpose entitlement to charter schools calculated pursuant to Education Code section 47633, rounded to the next highest dollar, and posted on the CDE Web site. The reimbursement amount owed by the charter school for over-allocated space shall be equal to (1) this rate times the difference between the charter school's actual in-district classroom ADA and the projected in-district classroom ADA upon which the facility allocation was based, less (2) this rate times one-half the threshold ADA.

Please be advised that, in the event that the District overallocates facilities based upon the charter School's overprojection of ADA, the District will exercise its rights under the Proposition 39 regulations to collect the overallocation fee from the Charter School.

3. Miscellaneous

Should the Charter School accept the Final Offer of Facilities, the District will require it to enter into a Facilities Use Agreement containing the terms and conditions of the District's facilities allocation. ([Exhibit F](#)) The District provides this proposed agreement without prejudice to its right to propose or modify terms during the process of negotiating the agreement.

Under tit. 5, § 11969.9(i) of the Cal. Code of Regs.:

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 May 1 or 30 days after the school district notification pursuant to subdivision

East Oakland Leadership Academy

March 22, 2017

Page 18 of 18

(h), whichever is later. The charter school's notification can be withdrawn or modified before this deadline. 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 the following fiscal year.

If you have any questions, please do not hesitate to contact me.

In Service,

Silke Bradford

Silke Bradford
Office of Charter Schools

Exhibit A

District Facilities' Site Plans and Profiles

To view the District facilities' site plans and profiles, please visit:

<http://www.ousdcharters.net/prop-39-data.html>

Exhibit B

Teaching Station Data

To view the data used to calculate the teaching station ratio, please visit:

<http://www.ousdcharters.net/prop-39-data.html>

Exhibit C

Facilities Utilization One Pagers

To view the Facilities Utilization One Pagers for District schools, please visit:

<http://www.ousdcharters.net/prop-39-data.html>

Westlake Middle School

2629 Harrison Street

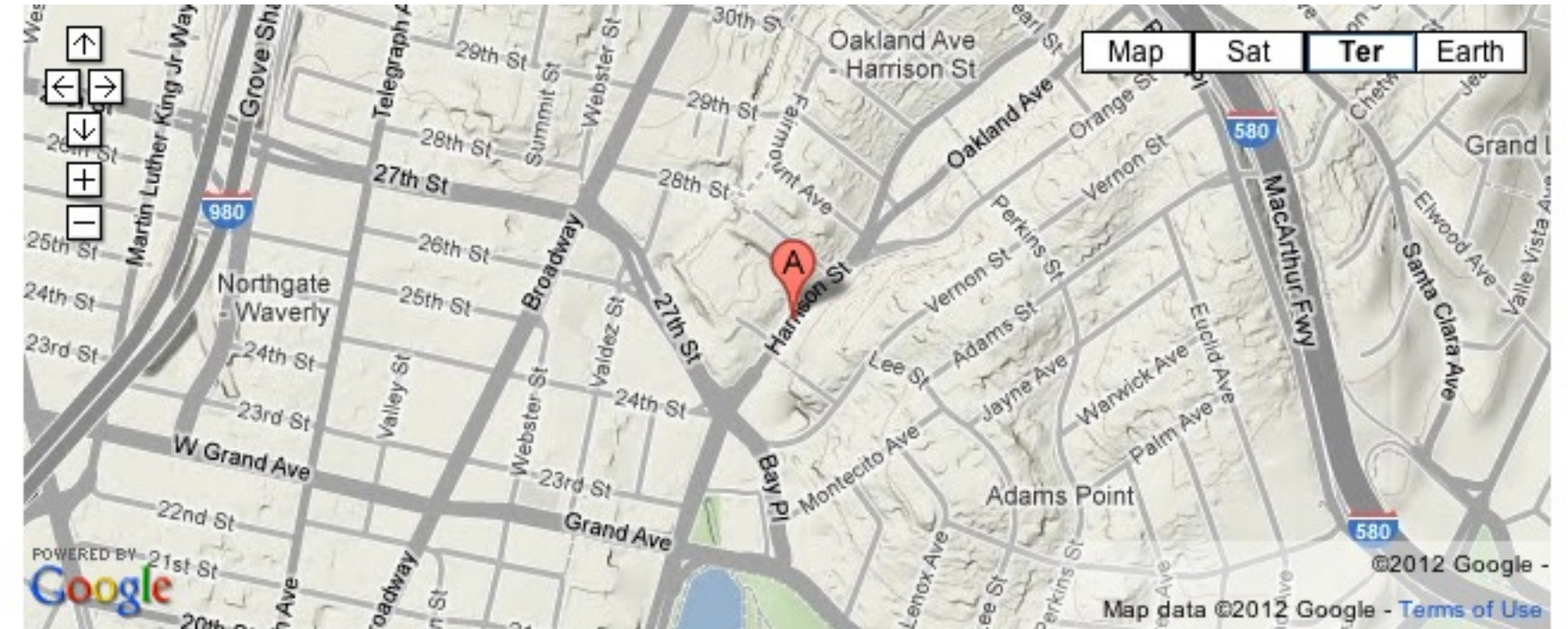
Site 213 Region 1 Grades 6-8

Westlake Middle School lies along Harrison Street in West Oakland, between I-580 and the northern tip of Lake Merritt. The site is three blocks north of Children's Fairy Land and the rest of the Lakeside Park area, and 2 blocks east of Broadway Auto Row, which leads south directly into Downtown Oakland. To the west, the rest of the neighborhood north of Grand Avenue is a mix of residential apartment buildings and single-family houses all the way to I-580.

PROGRAMMING (2012-2013)

Schools / Enrollment

	SDC	Non-SDC	Total	API (2010-2011)
Westlake	51	551	602	711



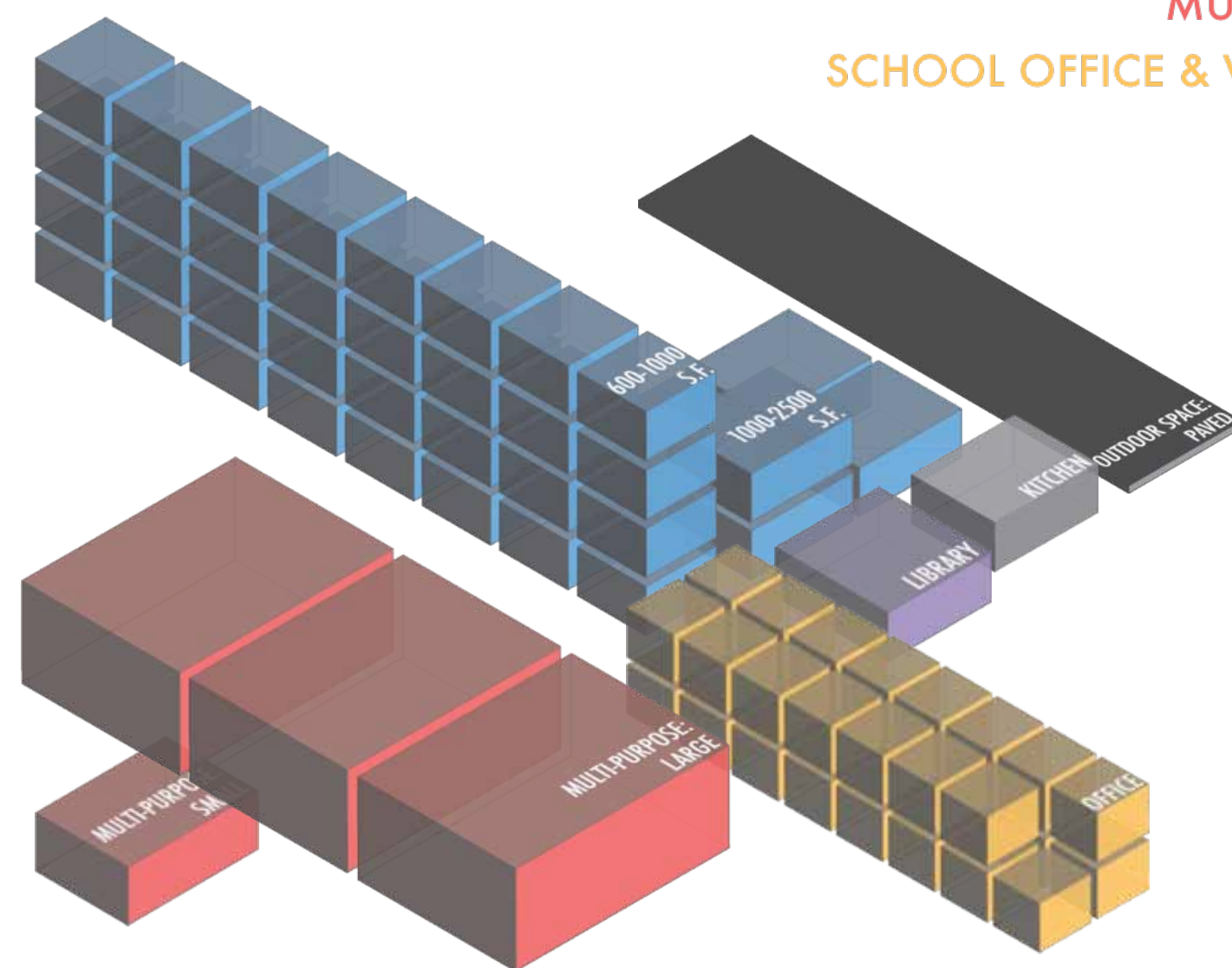
FACILITIES (Summer 2012)

LEARNING ENVIRONMENTS

LIBRARY

MULTI-PURPOSE

SCHOOL OFFICE & WORKSPACE



Summary Counts

	Total	Permanent	Portable
Site Acreage	5.7		
Building Footprint (sf)	100,681		
Building Area (sf)	84,991	84,991	
Classroom-Sized Rooms	37	37	

	Number of Rooms	Sq Ft
Library Rooms	1	1,800
Auditorium/Cafeteria/ Multi-purpose/Gym	4	12,292
Admin/Office/ Conference Room	31	4,073
School Gardens	Number: 1	Sq Ft: 120
Kitchen	Type: Full-scale	
On-site Health Clinic	No	

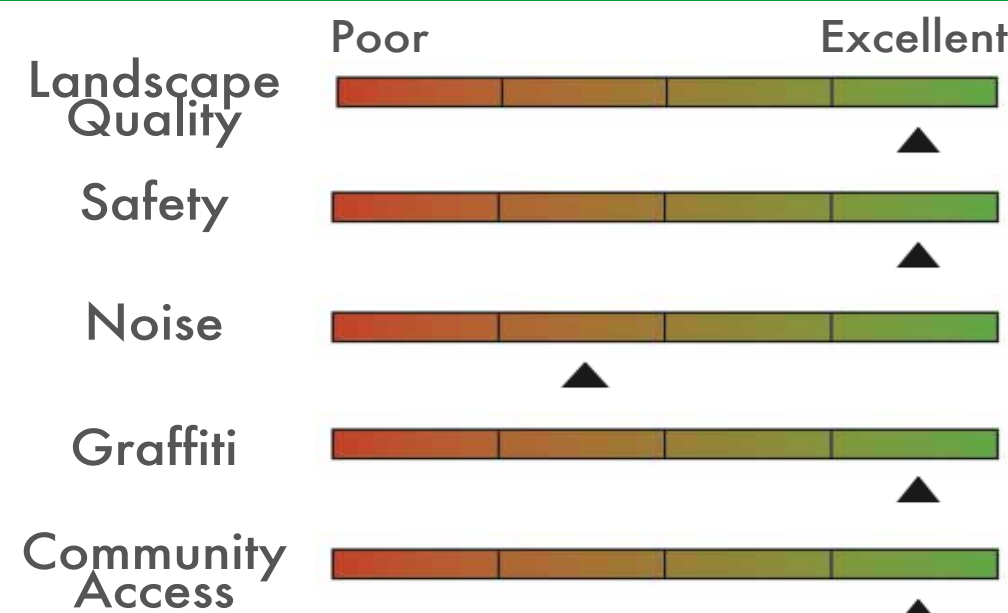
SITE SUMMARY (Summer 2012)

Sports / Recreation

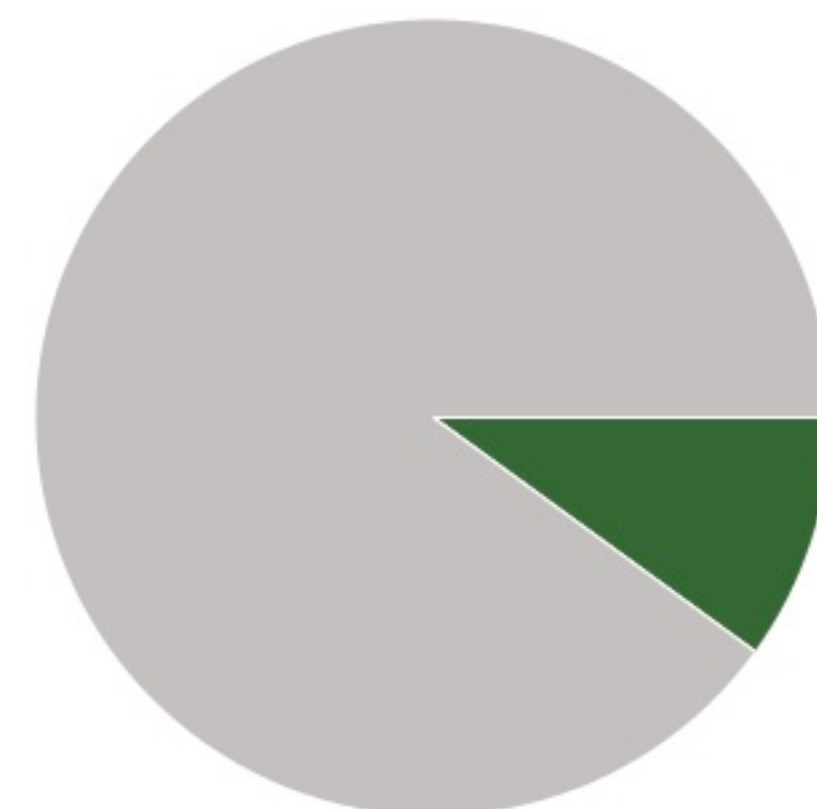
- Play structure
- Basketball hoops ●●●●●●●●
- Swimming pool
- Soccer/football field
- Volleyball court
- Track
- Baseball field
- Tennis court

Qualitative Assessment

Transit Accommodations



Open Space



Paved 90% 10% Green

Westlake Middle School

Building Records

Site ID 213

Region 1

Grades 6-8

Site & Facilities Photos - Summer 2011 (Sample)

*To view the full set, visit: <http://bitly.com/tBjxwN>



BUILDING A		BUILDING AREA (SQFT): 17,544		CONSTRUCTED: 1978									
STRUCTURAL ELEMENTS		ROOFING Plywood on wood joists and steel beams	FOUNDATION Strip footings (under structural walls)	VERTICAL RESISTANCE Wood stud walls with 1/2" plywood									
QUALITATIVE BUILDING ASSESSMENT		EXTERIOR <table border="1"> <tr> <td>Physical Condition</td> <td> </td> </tr> <tr> <td>Circulation & Wayfinding</td> <td> </td> </tr> </table>		Physical Condition		Circulation & Wayfinding		INTERIOR <table border="1"> <tr> <td>Physical Condition</td> <td> </td> </tr> <tr> <td>Circulation & Wayfinding</td> <td> </td> </tr> </table>		Physical Condition		Circulation & Wayfinding	
Physical Condition													
Circulation & Wayfinding													
Physical Condition													
Circulation & Wayfinding													
ROOM SUMMARY		NO. OF CLASSROOMS 1	NO. OF OFFICES 17	NO. OF ADMIN ROOMS 20	NO. OF RESTROOMS 7								
		NO. OF STUDENT COMPUTERS 	NO. OF ADMIN WORKSTATIONS 20	ADDITIONAL ADMIN SPACES Conference Room Teachers' Lounge									

BUILDING B		BUILDING AREA (SQFT): 12,549		CONSTRUCTED: 1978									
STRUCTURAL ELEMENTS		ROOFING Plywood on wood joists and steel beams	FOUNDATION Strip footings (under structural walls)	VERTICAL RESISTANCE Wood stud walls									
QUALITATIVE BUILDING ASSESSMENT		EXTERIOR <table border="1"> <tr> <td>Physical Condition</td> <td> </td> </tr> <tr> <td>Circulation & Wayfinding</td> <td> </td> </tr> </table>		Physical Condition		Circulation & Wayfinding		INTERIOR <table border="1"> <tr> <td>Physical Condition</td> <td> </td> </tr> <tr> <td>Circulation & Wayfinding</td> <td> </td> </tr> </table>		Physical Condition		Circulation & Wayfinding	
Physical Condition													
Circulation & Wayfinding													
Physical Condition													
Circulation & Wayfinding													
ROOM SUMMARY		NO. OF CLASSROOMS 5	NO. OF OFFICES 2	NO. OF ADMIN ROOMS 2	NO. OF RESTROOMS 2								
		NO. OF STUDENT COMPUTERS 5	NO. OF ADMIN WORKSTATIONS 5	ADDITIONAL ADMIN SPACES 									

BUILDING C		BUILDING AREA (SQFT): 24,149		CONSTRUCTED: 1978									
STRUCTURAL ELEMENTS		ROOFING Plywood on wood joists and steel beams	FOUNDATION Spread footings (under interior columns) & strip footings (under structural walls)	VERTICAL RESISTANCE Wood stud walls									
QUALITATIVE BUILDING ASSESSMENT		EXTERIOR <table border="1"> <tr> <td>Physical Condition</td> <td> </td> </tr> <tr> <td>Circulation & Wayfinding</td> <td> </td> </tr> </table>		Physical Condition		Circulation & Wayfinding		INTERIOR <table border="1"> <tr> <td>Physical Condition</td> <td> </td> </tr> <tr> <td>Circulation & Wayfinding</td> <td> </td> </tr> </table>		Physical Condition		Circulation & Wayfinding	
Physical Condition													
Circulation & Wayfinding													
Physical Condition													
Circulation & Wayfinding													
ROOM SUMMARY		NO. OF CLASSROOMS 20	NO. OF OFFICES 	NO. OF ADMIN ROOMS 	NO. OF RESTROOMS 6								
		NO. OF STUDENT COMPUTERS 54	NO. OF ADMIN WORKSTATIONS 	ADDITIONAL ADMIN SPACES Teachers' Lounge									

BUILDING D		BUILDING AREA (SQFT): 8,124		CONSTRUCTED: 1928	
STRUCTURAL ELEMENTS		ROOFING T&G on wood joists	FOUNDATION Spread footings (under interior columns) & strip footings (under structural walls)	VERTICAL RESISTANCE Wood stud walls	
QUALITATIVE BUILDING ASSESSMENT		EXTERIOR Physical Condition: Excellent Circulation & Wayfinding: Excellent		INTERIOR Physical Condition: Excellent Circulation & Wayfinding: Excellent	
ROOM SUMMARY		NO. OF CLASSROOMS 2	NO. OF OFFICES 1	NO. OF ADMIN ROOMS 1	NO. OF RESTROOMS 2
		NO. OF STUDENT COMPUTERS	NO. OF ADMIN WORKSTATIONS	ADDITIONAL ADMIN SPACES	

BUILDING E		BUILDING AREA (SQFT): 14,266		CONSTRUCTED: 1929	
STRUCTURAL ELEMENTS		ROOFING T&G on wood joists and steel trusses with rod bracing	FOUNDATION Spread footings (under interior columns) & strip footings (under structural walls)	VERTICAL RESISTANCE Concrete moment frames, Steel frames with infill concrete walls	
QUALITATIVE BUILDING ASSESSMENT		EXTERIOR Physical Condition: Excellent Circulation & Wayfinding: Good		INTERIOR Physical Condition: Excellent Circulation & Wayfinding: Good	
ROOM SUMMARY		NO. OF CLASSROOMS 2	NO. OF OFFICES 2	NO. OF ADMIN ROOMS 2	NO. OF RESTROOMS 4
		NO. OF STUDENT COMPUTERS	NO. OF ADMIN WORKSTATIONS 2	ADDITIONAL ADMIN SPACES	

MODULAR M		BUILDING AREA (SQFT): 8,359		CONSTRUCTED: 2006	
QUALITATIVE BUILDING ASSESSMENT		EXTERIOR Physical Condition: Excellent Circulation & Wayfinding: Excellent		INTERIOR Physical Condition: Excellent Circulation & Wayfinding: Excellent	
ROOM SUMMARY		NO. OF CLASSROOMS 7	NO. OF OFFICES 4	NO. OF ADMIN ROOMS 4	NO. OF RESTROOMS 2
		NO. OF STUDENT COMPUTERS 4	NO. OF ADMIN WORKSTATIONS 4	ADDITIONAL ADMIN SPACES Teachers' Lounge	

Westlake Middle School

Portable Records

Site ID 213

Region 1

Grades 6-8

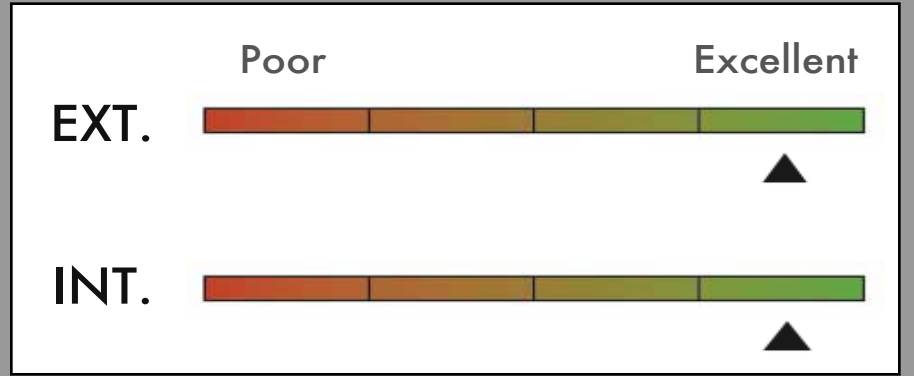
Portable Inventory

Total Count

Average Age

? Years

Qualitative Conditions Assessment



Westlake Middle School

Rooms Summary & List

Site ID 213

Region 1

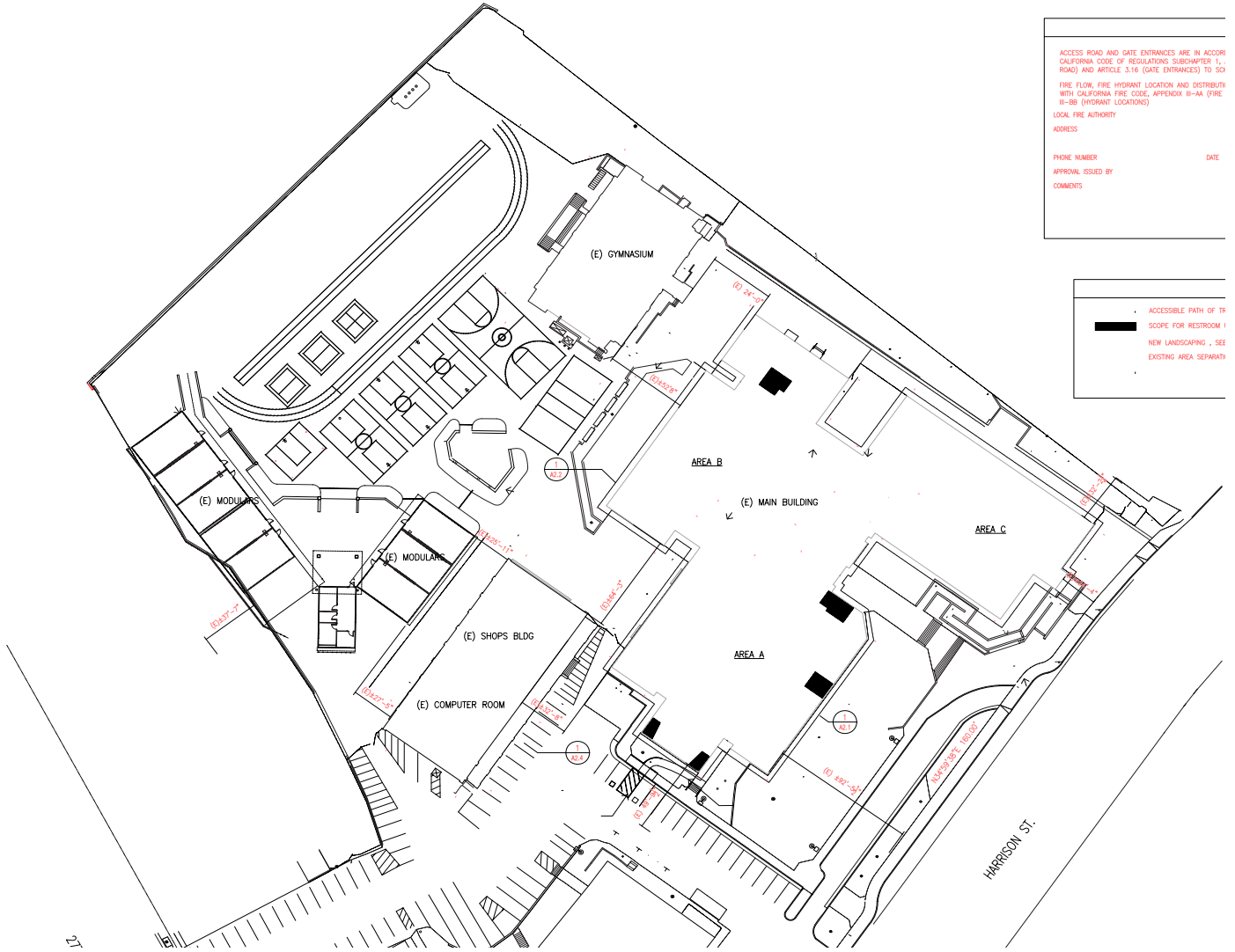
Grades 6-8

BUILDING	BLDG LEVEL	ROOM #	ROOM USE	ROOM AREA (SQUARE FOOTAGE)	CLASSROOM COMPUTERS	ADMIN WORKSTATIONS	MARKED ROOM #	ROOM CAPACITY
A	1	1a	Circulation	594				
	1	1b	Circulation	392				
	1	1c	Circulation	1,168				
	1	1d	Circulation	125				
	1	2b	Storage	120				
	1	2a	Admin/Office	100		2		
	1	3	Admin/Office	324		1		
	1	4a	Admin/Office	100				
	1	4b	Admin/Office	192		1		
	1	5	Circulation	156				
	1	6	Admin/Office	154		2		
	1	6a	Conference Room	252			6	
	1	7	Admin/Office	100		1		
	1	8	Admin/Office	70		1		
	1	9	Admin/Office	110		1		
	1	10b	Restroom	273				
	1	10a	Admin/Office	36				
	1	11d	Admin/Office	80		1		
	1	11a	Admin/Office	80		2		
	1	11c	Admin/Office	36		1		
	1	11b	Admin/Office	70				
	1	12f	Admin/Office	80		1		
	1	12e	Admin/Office	80		1		
	1	12d	Admin/Office	120		1		
	1	12b	Admin/Office	90		1		
	1	12a	Conference Room	90				
	1	12c	Admin/Office	80		1		
	1	13a	Storage	414				
	1	13c	Admin/Office	72		1		
	1	13b	Building Utilities	100				
	1	14	Circulation	72				
	1	15	Circulation	457				
	1	31	Multipurpose	3,286				
	1	32	Multipurpose	1,080				
	1	33	Restroom	120				
	1	34	Classroom	904				
	1	35	Storage	120				
	1	36	Circulation	144				
	1	37	Building Utilities	280				
	1	38	Building Utilities	60				
	1	39	Locker Rooms	42				
	1	40	Restroom	20				
	1	41	Building Utilities	36				
	1	42	Storage	156				
	1	43	Storage	132				
	1	44	Building Utilities	144				
	1	45	Admin/Office	48		1		
	1	46	Building Utilities	632				
	1	48	Restroom	35				
	1	49	Building Utilities	42				
	1	50a	Lounge/Staff Dining	713				
	1	50b	Storage	351				
	1	51	Storage	77				
	1	52	Restroom	142				
	1	53	Restroom	48				
1	54	Restroom	132					
1	55	Circulation	820					

	BLDG LEVEL	ROOM #	ROOM USE	ROOM AREA (SQUARE FOOTAGE)	CLASSROOM COMPUTERS	ADMIN WORKSTATIONS	MARKED ROOM #	ROOM CAPACITY
BUILDING								
		B						
	1	n/a	Circulation	549				
	1	n/a	Circulation	610				
	1	20a	Classroom	1,333				
	1	21a	Classroom	1,092				
	1	21b	Storage	200				
	1	22b	Storage	240				
	1	22a	Classroom	1,092				
	1	23	Classroom	980	2			
	1	24	Classroom	980	3			
	1	54	Circulation	240				
	1	56	Circulation	1,040				
	1	56a	Circulation	187				
	1	65	Admin/Office	120		2		
	1	66	Storage	72				
	1	67	Building Utilities	66				
	1	69	Storage	112				
	1	70	Storage	540		1		
	1	72	Library	1,800	5			
	1	73	Admin/Office	480		2		
	1	75	Restroom	105				
	1	76	Restroom	105				
	1	77	Storage	320				
BUILDING								
		C						
	1	100	Circulation	490				
	1	100e	Locker Rooms	360				
	1	100a	Restroom	64				
	1	100b	Building Utilities	48				
	1	100c	Restroom	90				
	1	100d	Restroom	88				
	1	101	Classroom	820	1			
	1	102	Classroom	772				
	1	103	Classroom	772	1			
	1	104	Classroom	796	4			
	1	105	Classroom	772	2			
	1	106	Classroom	796				
	1	107	Classroom	772				
	1	108	Classroom	796				
	1	109	Classroom	772				
	1	110	Storage	92				
	1	111	Classroom	820				
	1	112	Building Utilities	128				
	1	113	Circulation	1,190				
	1	114	Storage	92				
	1	116	Storage	92				
	1	118	Storage	92				
	1	121	Circulation	288				
	1	122	Building Utilities	127				
	2	n/a	Circulation	288				
	2	n/a	Circulation	200				
	2	200	Circulation	806				
	2	200a	Restroom	100				
	2	200c	Restroom	120				
	2	200b	Building Utilities	60				
	2	200d	Restroom	100				
	2	201	Classroom	864				
	2	202	Classroom	772	3			
	2	203	Classroom	772	3			
	2	204	Classroom	796	1			
	2	205	Classroom	772	5			
	2	206	Classroom	796				

	BLDG LEVEL	ROOM #	ROOM USE	ROOM AREA (SQUARE FOOTAGE)	CLASSROOM COMPUTERS	ADMIN WORKSTATIONS	MARKED ROOM #	ROOM CAPACITY
	2	207	Classroom	772				
	2	208	Classroom	796	1			
	2	209	Classroom	772	1			
	2	210	Storage	92				
	2	211	Classroom	864	32			
	2	212	Storage	156				
	2	213	Circulation	1,190				
	2	214	Storage	92				
	2	216	Lounge/Staff Dining	92				
	2	218	Storage	92				
BUILDING								
		D						
	1	s01	Gym	2,400				
	1	s02	Storage	80				
	1	s03	Storage	80				
	1	s04	Classroom	2,340				
	1	s05	Storage	138				
	1	s06	Restroom	50				
	1	s07	Restroom	48				
	1	s08	Storage	110				
	1	s09	Storage	132				
	1	s10	Storage	156				
	1	s11	Storage	63				
	1	s12	Storage	63				
	1	s13	Storage	63				
	1	s14	Admin/Office	100				
	1	s15	Classroom	2,102				
BUILDING								
		E						
	1	n/a	Circulation	185				
	1	n/a	Building Utilities	40				
	1	n/a	Circulation	66				
	1	n/a	Circulation	320				
	1	n/a	Building Utilities	58				
	1	um1	Storage	27				
	1	101	Circulation	140				
	1	102	Restroom	154				
	1	103	Storage	64				
	1	104	Circulation	44				
	1	105	Building Utilities	50				
	1	106	Storage	80				
	1	107	Locker Rooms	1,450				
	1	108	Admin/Office	96		1		
	1	108a	Restroom	126				
	1	109	Building Utilities	288				
	1	110	Locker Rooms	60				
	1	112	Locker Rooms	126				
	1	113	Locker Rooms	98				
	1	114	Restroom	140				
	1	115	Locker Rooms	730				
	1	116	Admin/Office	180		1		
	1	116a	Restroom	98				
	1	118	Circulation	320				
	1	119	Circulation	87				
	1	121	Circulation	41				
	1	122	Building Utilities	42				
	2	n/a	Building Utilities	58				
	2	203	Storage	120				
	2	205	Gym	5,526				389
	2	208	Storage	120				
	2	209	Circulation	70				
	2	201/202	Circulation	322				
	2	206/207	Circulation	322				

	BLDG LEVEL	ROOM #	ROOM USE	ROOM AREA (SQUARE FOOTAGE)	CLASSROOM COMPUTERS	ADMIN WORKSTATIONS	MARKED ROOM #	ROOM CAPACITY
MODULAR								
M								
	2	1	Classroom	858			310	
	2	1	Classroom	858	1		310	
	2	1	Classroom	858			310	
	2	1	Admin/Office	286		1	310	
	2	1	Restroom	297			310	
	2	1	Classroom	858			310	
	2	1	Classroom	858			310	
	2	1	Lounge/Staff Dining	858			310	
	2	1	Classroom	858	3		310	
	2	1	Classroom	858			310	
	2	2	Admin/Office	150		1		
	2	2	Storage	54				
	2	3	Storage	60				
	2	3	Storage	54				
	2	4	Admin/Office	165		1		
	2	4	Restroom	297				
	2	5	Admin/Office	132		1		



ACCESS ROAD AND GATE ENTRANCES ARE IN ACCORD WITH CALIFORNIA CODE OF REGULATIONS SUBCHAPTER 1, (ROAD) AND ARTICLE 3.16 (GATE ENTRANCES) TO SCD
 FIRE FLOW, FIRE HYDRANT LOCATION AND DISTRIBUTION SHALL BE IN ACCORD WITH CALIFORNIA FIRE CODE, APPENDIX B-4A (FIRE FLOW) AND B-4B (HYDRANT LOCATIONS)
 LOCAL FIRE AUTHORITY ADDRESS
 PHONE NUMBER DATE
 APPROVAL ISSUED BY COMMENTS

ACCESSIBLE PATH OF TRAVEL FOR RESTROOMS
 NEW LANDSCAPING - SEE EXISTING AREA SEPARATE



Not drawn to scale

**Exclusive Use by
Charter School**

213 - Westlake Middle School - Site Plan

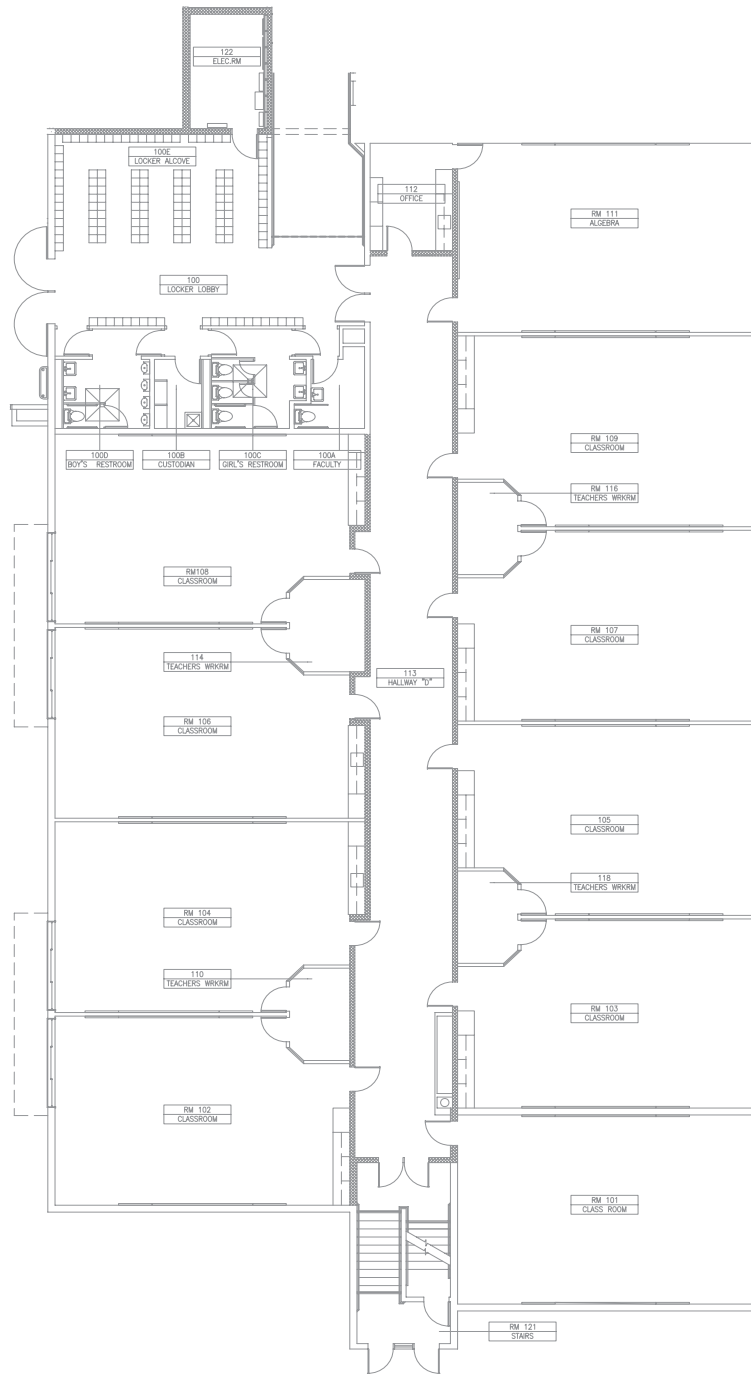
2629 Harrison Street - Oakland, CA 94612-3813



Roundhouse One, 1500 Sansome Street, San Francisco, CA 94111
 mkthink.com 415.402.0888

2011

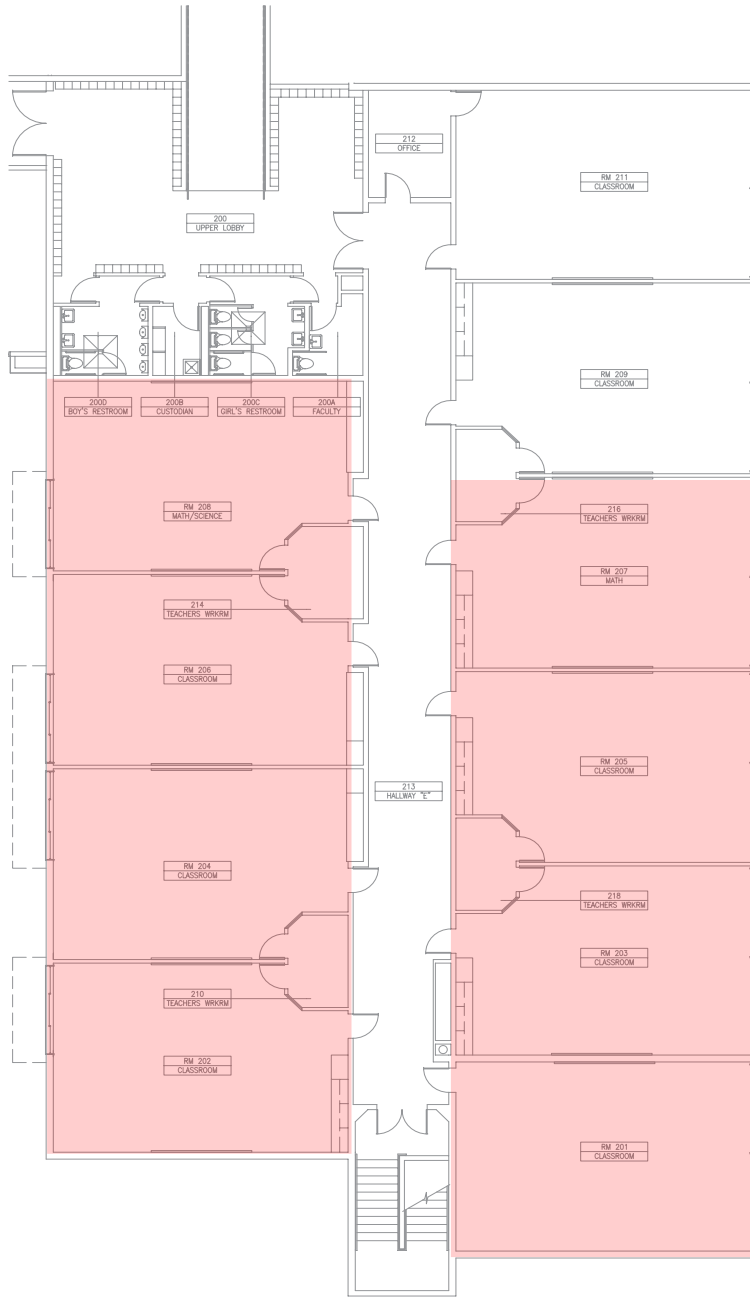




Not drawn to scale

213 - Westlake Middle School - Unit C1

2629 Harrison Street - Oakland, CA 94612-3813



Not drawn to scale

213 - Westlake Middle School - Unit C2

2629 Harrison Street - Oakland, CA 94612-3813

Exhibit E

FEE, ALLOCATION, AND PAYMENT SCHEDULE *

Contract Term (Fiscal Year):	2017-18
School Name:	East Oakland Leadership Academy
Location/Campus:	2629 Harrison St, Oakland, CA 94612 (Westlake Middle School Campus)
Building Footprint (Sq. Ft.)	100,681 sq ft
Charter School Exclusive + Shared Space Sq. Ft.	6,340 sq ft+ 4840sq ft = 11,180 sq ft
Total 17-18 Proj. ADA: Charter / (District + Charter)**	119/ (332 + 119) = 26.64%
= Percentage of Site Used	26.64%
Facility Fee:	
Charter School Exclusive + Shared Space Sq. Ft.	6,340 sq ft + 4840sq ft = 11,180 sq ft
X Rate per Square Footage	\$4.74
= Facility Use Fee Total	\$52,993.20
Custodial Services: \$72,894 for 1 FTE	
(No. of FTE x Rate) x Shared Cost %	(4.0 FTE x \$72,894) x 26.64%
= Custodial Fee Total	\$77,675.85
Utilities:	
Percent of Site Use (if applicable)	26.64%
Payment Schedule:	25% by October 1, 2017
	25% by December 1, 2017
	25% by April 1, 2018
	25% by July 1, 2018

* All Calculations Subject To Change

**Includes total (in-district + out-of-district) projected ADA as reported in the school's facilities request form.



Welcome to the online source for the California Code of Regulations

5 CA ADC § 11969.7

5 CCR § 11969.7

Cal. Admin. Code tit. 5, § 11969.7

BARCLAYS OFFICIAL 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.

This database is current through 1/16/09, Register 2009, No. 3

§ 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:

(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.

(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.

(d) 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.

(e) The per-square-foot charge shall be applied equally by the school district to all charter schools that receive facilities under this article, and a charter school using school district facilities pursuant to Education Code section 47614 shall report the per-square-foot charge it is paying in the current fiscal year to the California Department of Education (CDE) in any notification the charter school makes to the CDE pursuant to Education Code section 47630.5(b). The CDE shall post the per-square-foot amounts reported by charter schools on its publicly accessible Web site. The CDE shall offer the opportunity to each school district to provide explanatory information regarding its per-square-foot charge and shall post any information received.

(f) If a school district charges a charter school for facilities costs pursuant to this article, and if the district is the charter school's authorizing entity, the facilities are not substantially rent free within the meaning of Education Code section 47613, and the district may only charge for the actual costs of supervisory oversight of the charter school not to exceed one percent of the school's revenue.

Note: Authority cited: Sections 33031 and 47614(b), Education Code. Reference: Sections 17014, 17070.75, 47613, 47614 and 47630.5, Education Code.

HISTORY

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).

5 CCR § 11969.7, 5 CA ADC § 11969.7
1CAC

5 CA ADC § 11969.7

END OF DOCUMENT

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WEST

WORKSHEET -- OUSD's Prop 39 Facility Use Rate Per Sq Ft for 2017-18 FY

Calculation is based on 2016/17 budget as of 12/09/16

	Prop 39 Base	
Custodial Services Department Expenses*		
Trash & Recycling		
Compensation		
Supplies and Materials		
Buildings & Grounds Department Expenses		
Deferred Maintenance transfer from Fund 01 (NONE)		
RRMA transfer from UR to resource 8150	13,548,405	
Facility Acquisition and Construction (Funct. 8500)	2,419,327	
		15,967,732
Utilities Expenses*		
Gas, Water & Electric		
Sewer Charges		
Basic Phone Service		
Debt Servicing - principal & interest payments		
Emerg. Apportionment (State) Loan - \$65 million	3,890,534	
Emergency Apportionment (State) Loan - \$35 million	2,094,903	
		5,985,437
Police Services (CCR 11969.2 (h))		3,242,398
Insurance (Function 6000)		2,440,500
TOTAL COST BASIS		27,636,067
TOTAL DISTRICT SQUARE FOOTAGE		5,836,129
COST PER SQUARE FOOT		\$ 4.74

* Item may be added to Use Agreement if applicable.

12/14/16

2017/18 FY

WORKSHEET -- OUSD's Prop 39 Facility Use Rate Per Sq Ft Calculation

Calculation is based on 2016/17 budget as of 12/09/16

Prop 39 Base	
Custodial Services Department Expenses*	
Trash & Recycling	
Compensation	
Supplies and Materials	
Buildings & Grounds Department Expenses	
Deferred Maintenance transfer from Fund 01 (NONE)	
RRMA transfer from UR to resource 8150	13,548,405
Facility Acquisition and Construction (Func 8500)	2,419,327
	15,967,732
Utilities Expenses*	
Gas, Water & Electric	
Sewer Charges	
Basic Phone Service	
Debt Servicing - principal & interest payments (E.C. 47614)	
Emerg. Apportionment (State) Loan - \$65 million	3,890,534
Emergency Apportionment (State) Loan - \$35 million	2,094,903
	5,985,437
Police Services (CCR 11969.2 (h) Safe & Comfortable)	3,242,398
Insurance (Function 6000)	2,440,500
TOTAL COST BASIS	27,636,067
TOTAL DISTRICT SQUARE FOOTAGE	5,836,129
COST PER SQUARE FOOT	\$ 4.74

* Item may be added to Use Agreement if applicable.
12/14/16

RRMA Transfer from UR to resource 8150

Object Codes	BUDGET	As of 12/09/16
2. Classified Salaries	6,958,437	
2205 - CLASSSUPPT SALARIES	5,567,391	
2220 - CLASSSUPPT SALARIES STIPENDS	-	
2225 - CLASSSUPPT SALARIES OVERTIME	236,376	
2305 - SUPV&ADM SALARIES	914,564	
2405 - CLERICAL SALARIES	240,106	
2450 - CLERICAL SUBSTITUTES	-	
3. Employee Benefits	3,293,199	
3102 - STRS CLASSIFIED	16,028	
3202 - PERS CLASSIFIED	867,400	
3302 - SOCSEC,MEDI,ALTSS CLASSIFIED	417,981	
3322 - MEDICARE CLASSIFIED	100,372	
3342 - PARS CLASSIFIED	5,781	
3402 - HEALTH & WELFARE CLASSIFIED	1,356,035	
3502 - ST UNEMPLOY INS CLASSIFIED	9,145	
3602 - WORKERS COMP CLASSIFIED	450,069	
3802 - PERS REDUCTION CLASSIFIED	-	
3902 - OTHER BENEFITS CLASSIFIED	70,386	
4. Books and Supplies	1,837,951	
4310 - SUPPLIES	1,687,445	
4330 - GASOLINE	140,000	
4399 - SURPLUS	-	
4410 - Equipment \$500-4,999	5,506	
4420 - Computer \$500-4,999	5,000	
4432 - Furniture \$500-4,999	-	
5. Services and Operating	1,458,819	
5515 - DISPOSAL SERVICES	94,783	
5210 - MILEAGE/PERSONAL EXP REIMB	-	
5610 - EQUIP MAINTENANCE AGREEMT	1,800	
5622 - RENTALS - EQUIPMENT	12,000	
5670 - REPAIRS CONT	1,091,604	
5679 - REPAIRS CONT - VEHICLE	80,000	
5716 - INTERPGM - DUPLICATION SERVICE	1,000	
5720 - INTERPGM - MAINT WORK ORDERS	(93,692)	
5724 - INTERPGM - POSTAGE	-	
5760 - INTERFUND - MAINT WORK ORDERS	(40,000)	
5810 - ADVERTISING - LEGAL	8,523	
5826 - EXTERNAL WORK ORDER SERVICES	286,800	
5910 - POSTAGE	1,000	
5930 - TELEPHONE	15,000	
5934 - PAGERS	-	
6. Capital Outlay	-	
6410 - EQUIPMENT	-	
6460 - VEHICLE PURCHASE	-	
7. Other Outgo	-	
7615 - IFT GEN,SRF,BLDG TO DEF MAINT	-	
7990 - UNAPPROPRIATED FUND BALANCE	-	
Grand Total	13,548,405	

Source: Rpt 12 - Fd 01, Res. 8150, Obj. 1000-7990

Facility Acquisition and Construction (Function 8500)

Object Codes	BUDGET	As of 12/09/16
4. Books and Supplies	31,050	
4310 - SUPPLIES	26,196	
4311 - MEETING REFRESHMENTS	1,854	
4315 - COMPUTER SUPPLIES	-	
4399 - SURPLUS	-	
4410 - Equipment \$500-4,999	-	
4420 - Computer \$500-4,999	2,000	
4432 - Furniture	1,000	
5. Services and Operating	36,450	
5210 - MILEAGE/PERSONAL EXP REIMB	22,150	
5220 - CONFERENCE EXPENSE	4,699	
5300 - DUES & MEMBERSHIPS	1,601	
5610 - EQUIP MAINTENANCE AGREEMT	500	
5620 - RENTALS (NON-CAPITAL LEASES)	2,000	
5622 - RENTALS - EQUIPMENT	-	
5675 - REPAIRS CONT. - EQUIP OTHER	-	
5716 - INTERPGM - DUPLICATION SERVICE	500	
5714 - INTERPGM - POSTAGE	-	
5800 - OTHER SERVICES & OPERATING EXPS	-	
5825 - CONSULTANTS	-	
5830 - CONTRACTED SERVICES	-	
5870 - PRINTING	-	
5872 - Property Loss	-	
5910 - Postage	5,000	
5930 - Telephone	-	
6. Capital Outlay	2,351,827	
6100 - Sites & Improvement of Sites	7,890	
6200 - Buildings & Improvement of Buildings	4,838	
6215 - Architects/Engineers	33,813	
6220 - Assessments and Fees	-	
6252 - Preliminary Fees	-	
6262 - Other Planning Costs	18,056	
6271 - Main Construction	2,083,917	
6274 - Other Construction	178,632	
6276 - Moving Expense	10,000	
6410 - Equipment	14,681	
Grand Total	2,419,327	

Source: Rpt 12 - Fd 01, Function 8500

Exhibit F

Draft Facilities Use Agreement

To view a draft Facilities Use Agreement, please visit:

<http://www.ousdcharters.net/prop-39-data.html>

Exhibit G

Multi-Site Resolution

To view Resolution No. 1617-0009: Finding that Charter Schools Could not be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding in Compliance with Proposition 39, please visit:

<http://www.ousdcharters.net/prop-39-data.html>

Board Office Use: Legislative File Info.	
File ID Number	17-0112
Introduction Date	1-25-17
Enactment Number	17-0122
Enactment Date	1/25/17



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Marion McWilliams, General Counsel
Andrea Epps, Staff Attorney
David Montes de Oca, Deputy Chief
Silke Bradford, Ed.D, Director

Board Meeting Date January 25, 2017

Subject Findings that the Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding

Action Requested Approval of Board Resolution 1617-0009 Findings that the Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding.

Background California regulations require findings and written statement of reasons by the Board of Education in the event a charter school, eligible for Proposition 39 facilities, makes a timely request and the District is not able to accommodate the charter school's request at a single school site.

Discussion For the 2017-2018 school year, the District received Proposition 39 facility requests from 16 charter schools. The District identified an inventory of facility spaces that are available to fulfill these requests. In matching the District's available space with charter school requests, the District considered many factors, including prioritizing no displacement of existing OUSD or charter school programs, safety, instructional and social implications as well as compatibility of the following features:

- The quantity of classroom space requested
- The grades served by the program
- The grades served by other programs, if co-located
- The school program and any identified special features; and
- The location requested

For the 2016-2017 school year, the following charters, under multi-year in lieu of Proposition 39 lease agreements, will continue to occupy single District sites:

- Community School for Creative Education
- Bay Area Technology School
- Roses in Concrete

Board Office Use: Legislative File Info.	
File ID Number	17-0112
Introduction Date	1-25-17
Enactment Number	
Enactment Date	



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Marion McWilliams, General Counsel
Andrea Epps, Staff Attorney
David Montes de Oca, Deputy Chief
Silke Bradford, Ed.D, Director

Board Meeting Date January 25, 2017

Subject Findings that the Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding

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- The grades served by other programs, if co-located
- The school program and any identified special features; and
- The location requested

For the 2016-2017 school year, the following charters, under multi-year in lieu of Proposition 39 lease agreements, will continue to occupy single District sites:

- Community School for Creative Education
- Bay Area Technology School
- Roses in Concrete



- East Bay Innovation Academy
- Oakland Military Institute College Preparatory Academy
- Leadership Preparatory School Oakland R & D
- Education for Change – Lazear Academy
- Education for Change - Learning without Limits
- Education for Change - Ascend Charter School
- Education for Change- Achieve Academy
- Education for Change- Cox Academy
- KIPP Bridge Charter School
- Urban Montessori Charter School
- Yu Ming Charter School
- Aspire Berkley Maynard Academy

As provided in the Staff Report which is attached to the Resolution for the 2017-2018 school year, the District cannot accommodate single site offers for the following charter schools:

- American Indian Public Charter School II
- East Bay Innovation Academy
- Lodestar: A Lighthouse Community Charter Public School
- Envision Academy
- Aspire ERES Academy
- Conservatory of Vocal/Instrumental Arts

The Staff Report outlines the process used by the District to determine the multi-site offers to the charter schools that could not be accommodated at a single site.

Recommendation

Approval of Board Resolution 1617-0009 Finding that the Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Findings.

Fiscal Impact

n/a

Attachments

- Resolution
- Staff Report

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION No. 1617-0009**

**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 share shared fairly among all students attending traditional and charter schools;

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;

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

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 2017-2018 school year, 16 charter schools requested facilities under Proposition 39; and

- American Indian Public Charter School I (6-8)
- American Indian Public Charter School II (K-8)
- American Indian Public High School (9-12)
- Aspire ERES Academy (K-8)
- Aspire Berkley Maynard Academy
- Aurum Preparatory Academy
- Castlemont Primary Academy
- Conservatory of Vocal/Instrumental Arts (K-8)
- East Bay Innovation Academy (6-12)
- Envision Academy of Arts and Technology (9-12)
- Francophone Charter School of Oakland (K-5)
- Lodestar: A Lighthouse Community Charter Public School
- Leadership Preparatory School Oakland R&D
- East Oakland Leadership Academy (K-8)
- Oakland Charter High School
- Yu Ming Charter School

WHEREAS, for the 2017-2018 school year, the following charters, under multi-year in lieu of Proposition 39 lease agreements, will continue to occupy single District sites;

- Community School for Creative Education
- Bay Area Technology School
- Roses in Concrete
- East Bay Innovation Academy
- Oakland Military Institute College Preparatory Academy
- Leadership Preparatory School Oakland R & D
- Education for Change – Lazear Academy
- Education for Change - Learning without Limits
- Education for Change - Ascend Charter School
- Education for Change- Achieve Academy
- Education for Change- Cox Academy

- KIPP Bridge Charter School
- Urban Montessori Charter School
- Yu Ming Charter School
- Aspire Berkley Maynard Academy

WHEREAS, for the 2017-2018 school year, the District will make Proposition 39 single site offers to the following charter schools;

- American Indian Public Charter School I
- American Indian Public High School
- East Oakland Leadership Academy
- Francophone Charter School of Oakland

WHEREAS, the District will make Proposition 39 multi-site offers to the following charter schools:

- American Indian Public Charter School II
- East Bay Innovation Academy
- Lodestar: A Lighthouse Community Charter Public School
- Envision Academy
- Aspire ERES Academy
- Conservatory of Vocal/Instrumental Arts

WHEREAS, on or before February 1, 2017, charter schools shall receive a Preliminary Offer of Facilities under Proposition 39;

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 some charter schools;

WHEREAS, District staff determined that to house all of the students at a single District location would not be feasible or in the best interests of all students, in-District and charter schools alike;

WHEREAS, having analyzed the available space in the specific area where charter schools wish to locate, the District is unable to extend a single site offer at their desired school site;

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 2017-2018 school year;

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

WHEREAS, the Staff Report recommends the District offer the following charter school a preliminary offer of facilities on or before February 1, 2017 involving co-location at the following sites;

- American Indian Public Charter School II
 - Allendale Elementary School
3670 Penniman Avenue, Oakland, CA 94619
 - Skyline High School
12250 Skyline Boulevard, Oakland, CA 94619
 - Carl B. Munck Elementary School
11900 Campus Drive, Oakland, CA 94619
 - Howard Elementary
755 Fontaine St, Oakland, CA 94605
 - Garfield Elementary School
1640 22nd Avenue, Oakland, CA 94606
- East Bay Innovation Academy
 - Marshall Elementary School
3400 Malcolm Avenue, Oakland, CA 94605
 - Roosevelt Middle School
1926 19th Avenue, Oakland, CA 94606
- Lodestar: A Lighthouse Community Charter Public School
 - Fruitvale Elementary School
3200 Boston Avenue, Oakland, CA 94602
 - Rise Elementary School
8521 A Street, Oakland, CA 94621
 - Brookfield Elementary School
401 Jones Avenue, Oakland, CA 94603
 - Franklin Elementary School
915 Foothill Boulevard, Oakland, CA 94606
- Envision Academy
 - Ralph J. Bunche High School
1240 18th Street, Oakland, CA 94607
 - Alliance Academy
1800 98th Avenue, Oakland, CA 94603
 - Westlake Middle School
2629 Harrison Street, Oakland, CA 94612
- Aspire ERES Academy
 - Markham Elementary
7220 Krause Avenue, Oakland, CA 94605
 - East Oakland Pride Elementary School
8000 Birch Street, Oakland, CA 94621
- COVA (Conservatory of Vocal/Instrumental Arts)
 - Bret Harte Middle School
3700 Coolidge Avenue, Oakland, CA 94602
 - Montera Middle School
5555 Ascot Drive, Oakland, CA 94611

WHEREAS, the Board incorporates into this Resolution the 2017-18 Staff Report "Finding that Charter Schools Could Not Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding," which is attached hereto as Appendix A;

WHEREAS, based on historical precedent, the District anticipates that the number of multi-site offers will decrease between the issuance of the preliminary and final offers. For the 2016-2017 school year, the District initially received 14 requests for facilities, resulting in a number of multi-site preliminary offers. Because a number of charter schools withdrew their requests, or entered into agreements in lieu of Proposition 39, the District ultimately issued 4 Final Offers for 2016-2017, and only 2 of the 4 Final Offers included multi-site offers because the decreased number of requests resulted in the number of potential sites for the requesting charter schools to increase.

NOW, THEREFORE, 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 some charter schools at a single school site for the 2017-18 school year;

AND BE IT FURTHER RESOLVED, that 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 this 25th day of January, 2017, by the following vote, to wit:

AYES: Roseann Torres, Aimee Eng, Shanthi Gonzales, Jody London, Jumoke Hinton Hodge, Vice President Nina Senn, President James Harris

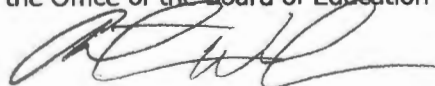
NOES: None

ABSTAINED: None

ABSENT: None

CERTIFICATION

I hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 25th day of January, 2017, with a copy of such Resolution being on file in the Office of the Board of Education of said district.



Antwan Wilson, Superintendent and Board Secretary

Staff Report

Process for Determining that Charter Schools
Cannot Be Accommodated at a Single School
Site for 2017-2018 School Year

Staff Report

Process for Determining Charter Schools That Cannot Be Accommodated at a Single Site for the 2016-2017 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 second-guess 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.

Factors Considered by OUSD:

The District received 16 Proposition 39 requests from charter schools for the 2017-2018 school year. In determining its allocation of reasonably equivalent facilities to the charter schools, the District considered the following factors:

- Identification of an inventory of potential available space in which charter school requests can be accommodated;
- Whether the offered facilities meet Proposition’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 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 requested;
- The grades served by the program;
- The grades served by other programs, if co-located;
- The school program and any identified special features;
- The location requested.

Identification of Potential District School Sites with Projected Capacity:

School	Capacity/Number of Classrooms
Garfield	5
Skyline	3
Munck	4
Howard	6
Allendale	5
Marshall	12
Roosevelt	8
Fruitvale	2
Alliance	5
Rise	4
McClymonds	8
Franklin	5
Bunche	4
Brookfield	6
East Oakland Pride	6
Markham	5
Montera	7
Bret Harte	3
Westlake	9

Matching Guidelines Utilized by the District:

District staff first attempts to accommodate a charter school's entire in-District ADA at 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.)

American Indian Public Charter School II requires twenty-two (22) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at a single site.

East Bay Innovation Academy requires twenty-two (22) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at a single site.

Envision Academy requires seventeen (17) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at a single site.

Lodestar: Lighthouse requires seventeen (17) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at a single site.

Aspire Eres requires eleven (11) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at an available single site.

Conservatory of Vocal/Instrumental Arts requires ten (10) classrooms; therefore, the charter school's entire in-District ADA could not be accommodated at an available single site.

Student Safety Considerations:

Where the District allocates a charter school's population over more than one school site, it made the following safety considerations specific to the placement of each charter school across multiple sites:

- **American Indian Public Charter School II**

American Indian Public Charter School II (K-8) requested that the twenty-three classrooms be made available at Lincoln Elementary School, La Escuelita Elementary School, or Bella Vista Elementary School. The charter school identified downtown Oakland as its preferred geographical location. Unfortunately, the requested sites were already at capacity. Accordingly, the District considered how to allocate the charter school's population over more than one school site. Specifically, the District determined that the charter school's population could be placed across the following sites:

- Allendale Elementary School
3670 Penniman Avenue, Oakland, CA 94619
- Skyline High School
12250 Skyline Boulevard, Oakland, CA 94619
- Carl B. Munck Elementary School
11900 Campus Drive, Oakland, CA 94619
- Howard Elementary School
755 Fontaine St, Oakland, CA 94605
- Garfield Elementary School
1640 22nd Avenue, Oakland, CA 94606

Where the District allocates a charter school's population over more than one school site, it made the following safety considerations specific to the placement of American Indian Public Charter School II (K-8):

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. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

The District evaluated grade-alike space and determined that students in elementary grades should be housed on an elementary campus that is physically responsive to safety concerns surrounding bathroom design and accessibility.

The District offered a site that was not at capacity within District 2, the District which houses Lincoln Elementary School, La Escuelita Elementary School, and Bella Vista Elementary School. Thus, the District tried to accommodate the preferred geographical location to the best of its ability.

The District evaluated other campuses that are grade-alike space and determined that placement across multi-site would balance safety concerns regarding over population at fewer sites that would result in campuses exceeding capacity. Additionally, many of the sites offered are serviced by special bus lines which will support better traffic conditions and safer commutes for students.

- **East Bay Innovation Academy**

East Bay Innovation Academy requested twenty-one classrooms be made available at Lakeview Elementary School, King Estates, Frick Middle School, Howard Elementary School, or Westlake Middle School. The charter school indicated that it would prefer to have the middle school program remain at Marshall Elementary School. For the high school program, the charter school requested a location that was in the Oakland hills area or another easily accessible area that is “a safe, gang-neutral location,” near public transportation with good highway access and students can consistently travel safely to the school site without supervision.

- Marshall Elementary School
3400 Malcolm Avenue, Oakland, CA 94605
- Roosevelt Middle School
1926 19th Avenue, Oakland, CA 94606
- Westlake Middle School
2629 Harrison Street, Oakland, CA 94612

Where the District allocates a charter school’s population over more than one school site, it made the following safety considerations specific to the placement of East Bay Innovation Academy:

The District gave East Bay Innovation Academy the preferred placement and will offer that the middle school continue to be housed at Marshall Elementary School.

The District was mindful in offering sufficient classrooms at Marshall Elementary School to house the entire middle school population and offer sufficient classrooms to house the high school population at Roosevelt Middle School. This placement was designed to address safety concerns regarding teachers having to travel to multiple sites during the school day. Under this proposed offer, neither teachers nor students should be required to commute between the two sites.

East Bay Innovation Academy's ninth grade was housed at Roosevelt Middle School for the 2016-2017 school year. The District considered the safety implications associated with a relocation of the ninth grade program for a one year agreement at another site. Such a relocation would require that charter school staff, students, and families commute to a new part of the City and manage the likely disruption that would result from two temporary relocations two years in a row.

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. Maintaining the ninth grade at Roosevelt will enable students to continue to be a part of the community with which they are familiar.

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. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

- **Lodestar: A Lighthouse Community Charter Public School**

Lodestar requested space at the King Estates site or a site in the eastern region of the City.

- Fruitvale Elementary School
3200 Boston Avenue, Oakland, CA 94602
- Rise Elementary School
8521 A Street, Oakland, CA 94621
- Brookfield Elementary School
401 Jones Avenue, Oakland, CA 94603
- Franklin Elementary School
915 Foothill Boulevard, Oakland, CA 94606

Where the District allocates a charter school's population over more than one school site, it made the following safety considerations specific to the placement of Lodestar:¹

¹ The District is currently in dialog with Lodestar regarding long term planning for relocating to the King Estates sites. The King Estate site requires construction and a capital improvement investment if it is to house additional educational programs.

The District offered all the space available at Fruitvale Elementary School as the site is less than a mile away from the charter school's current facility. Thus, attempting to keep the charter school close to the community in which it is currently located. Additionally, the District was mindful in offering sites that did not require students, families, or staff to traverse the City. Rise Elementary School and Brookfield Elementary School are both in District 7 and separated by just 1.8 miles.

The District considered how the grades could be separated among the offered sites to minimize teacher and student commutes between sites. The charter school is comprised of two schools, one serving K-8 and the other serving 9-12. The District has proposed sites that can be utilized in such a way that Kindergarten, elementary, middle school and high school programs can housed separately and thereby minimize travel between school sites.

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. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

- **Envision Academy**

Envision Academy did not identify any preferred school sites or geographical location.

- Ralph J. Bunche High School
1240 18th Street, Oakland, CA 94607
- Alliance Academy
1800 98th Avenue, Oakland, CA 94603
- Westlake Middle School
2629 Harrison Street, Oakland, CA 94612

Where the District allocates a charter school's population over more than one school site, it made the following safety considerations specific to the placement of Envision:

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 two sites within District 3 (Bunche and Westlake) takes into consideration the historical placement of Envision within District 3 and enables students to continue to be a part of a community with which they are familiar.

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. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

- **Aspire ERES Academy**

Aspire ERES Academy requested to remain close to 1936 Courtland Avenue, Oakland, California.

- Markham Elementary School
7220 Krause Ave, Oakland, CA 94605
- East Oakland Pride Elementary School
8000 Birch Street, Oakland, CA 94621

Where the District allocates a charter school's population over more than one school site, it made the following safety considerations specific to the placement of Aspire ERES:

The District offered two sites that are a mere 1.0 mile away from one another. This placement was designed to address safety concerns regarding students, families, or teachers having to travel to multiple sites during the school day. Here, the two sites are in very close proximity to each other and therefore, minimize issues regarding commutes and travel between 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 two sites that are less than three miles away from the charter school's preferred location. Accordingly, students will continue to be a part of the community with which they are familiar.

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. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

- **COVA (Conservatory of Vocal/Instrumental Arts)**

COVA requested available space at Lakeview Elementary School, Claremont Elementary School, King Estates, Howard Elementary School, or Tilden. The charter school identified North or Central Oakland as its preferred geographical location.

- Bret Harte Middle School
3700 Coolidge Avenue, Oakland, CA 94602
- Montera Middle School
5555 Ascot Drive, Oakland, CA 94611

Where the District allocates a charter school's population over more than one school site, it made the following safety considerations specific to the placement of COVA:

The District evaluated other sites that are grade-alike space and determined that Bret Harte Middle School had the type of specialized space necessary for COVA's educational program. Specifically, Bret Harte has specialized space for choir and instrumental music courses. Since Bret Harte had the specialized space required to meet the needs of the COVA educational program, the District identified a secondary site in close proximity to Bret Harte. Montera Middle School and Bret Harte Middle School are both located in District 4. The two school sites are separated by a mere 2.1 miles. The District was mindful in offering two sites that were appropriate for COVA's specialized program but not so far away from one another that students, families, or staff would be required to traverse the City.

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. The safety concern of managing student safety would be disproportionately exacerbated if total in-District classroom ADA was located at any one site.

Based on historical precedent, the District anticipates that the number of multi-site offers will decrease between the issuance of the preliminary and final offers. For the 2016-2017 school year, the District initially received 14 requests for facilities, resulting in a number of multi-site preliminary offers. Because a number of charter schools withdrew their requests, or entered into agreements in lieu of Proposition 39, the District ultimately issued 4 Final Offers for 2016-2017, and only 2 of the 4 Final Offers included multi-site offers because the decreased number of requests resulted in the number of potential sites for the requesting charter schools to increase.

Impact on OUSD Students, Schools and Programs:

The District's Strategic Plan

Community-centered schools and school districts such as OUSD provide a wealth of benefits for student learning, health and safety, and for the community at large. A Community School is a strategy for organizing the resources of the community around student success. It is both a place and a set of partnerships between the school and other community resources. Its integrated focus on academics, services, supports and opportunities leads to improved student learning, stronger families and healthier communities. Schools become centers of the community and are open to everyone. These Community Schools are based on a "developmental triangle," which calls for a strong instructional program, expanded learning opportunities through enrichment, and services designed to remove barriers to students' learning and healthy development, so that they can thrive academically and socially. (Community School, Thriving Students, A five year strategic plan, Summary Report, Oakland Unified School District, p. 4. ("Strategic Plan").)²

² www.thrivingstudents.org/sites/default/files/Community-Schools-Thriving-Students-Strategic-Plan.pdf.

The District is in the fourth year of its five-year Community Schools, Thriving Students Strategic Plan. The focus of the Strategic Plan is to serve all of Oakland's children in every neighborhood by providing high quality Community Schools where children, adults, and the community thrive. The District is in the process of building Community Schools to ensure all children have access to high quality public schools in the neighborhoods where they live. (Strategic Plan, p. 3.) Comprehensive data compiled over the last 20 years demonstrates that students in full service Community Schools show significantly improved academic performance; improved attendance, stay in-school rates, and graduation rates; and improved student behavior, family health, parental involvement, and youth community involvement. (Strategic Plan, p. 6.) Displacing children attending neighborhood schools would thwart their very purpose of a Community School and prevent these displaced students from receiving the benefits a Community School is intended to provide. Therefore, the District prioritized its strategic policy of Community Schools and avoided displacement of existing District or charter students and programs.

A full-service Community School provides comprehensive health and social services, which address barriers to learning. (Strategic Plan, p. 6.) To that end, as of August 7, 2013, the District had opened 15 school-based health clinics. These school-based health centers offer mental health counseling, physical examinations, STD screening and treatment and myriad other health services. Moreover these health clinics serve charter school students as well as students attending District schools. For instance, the West Oakland Middle School Clinic serves not only West Oakland Middle School, but also KIPP Bridge Middle School, a charter school. School site space is critical to the continued operation and viability of these health clinics. Displacing these programs to provide a single site offer of space to a charter school would be detrimental to the health and well-being of both District students and charter students.

Correlation Between Displacement and Dropout Rates:

Displacing children out of their neighborhood schools has far-reaching safety, instructional, and social implications. Studies establish that disrupting a child's school placement increases dropout rates. (See, Rumberger & Lim, *Why Students Drop Out: A Review of 25 Years of Research*, California Dropout Research Project (October 2008).) In 1998, the seminal study conducted on the educational consequences of student mobility found a high causal connection between student mobility and an increased risk of high school drop-out. The results of this study indicate that controlling for other predictors, students who made even one non-promotional school change between the eighth and twelfth grades were *twice* as likely to not complete high school as students who did not change schools. (Rumberger & Larson, *Student Mobility and the Increased Risk of High School Dropout* American Journal of Education 107 (November 1998).)

Newcomer Program:

Oakland is a "sanctuary" city. As such, Oakland Unified School District serves an ever increasing number of students who have been in the United States for less than 3 years and who speak a language other than English at home. Serving an ever increasing number of students that are

new to the United States is an urgent and compelling issue that requires a system-level response.

Most of our newest arrivals fall into the status of refugee, asylee, and/or unaccompanied minor, many of whom are fleeing violence, human trafficking or persecution in their home country. The District is working across multiple departments and in many schools (including Fremont High School and Bret Harte Middle School) to build systems to support these students as they transition into our schools and communities. The Newcomer Program emphasizes 4 Goals:

- Support the growth and development of programs that proactively meet the demands of increasing newcomer enrollment
- Provide research-based newcomer-specific resources and professional development to newcomer teachers and leaders
- Establish and recognize newcomer programs as specialized programs with aligned central policies and resources
- Ensure access to culturally sensitive mental health, health, legal services and other social services for newcomer students and their families

On December 14, 2016, the Board of Education adopted a Resolution reaffirming that District facilities and programs are a sanctuary for all children and adults. (Oakland Board of Education Resolution Number 1617-0089.) This Resolution was adopted in response to growing fears that governmental actions towards immigrants will have a chilling effect on the educational rights of immigrant students and families within the District. The Resolution restates the Board of Education's position that all students have the right to attend school regardless of the immigration status of the child or of the child's family members. It also provides that students will not be discriminated against because of their actual or perceived immigrant status, will not seek information about immigration status, and will take steps to protect personally identifiable information for being used for immigration enforcement to the extent possible. Given the number of newcomers that the District serves, the increasing concern regarding impermissible discrimination, and the importance of meaningful integration of this student population into the Oakland community, it is imperative that the District ensure equal access to District facilities and programs.

Displacing children out of their neighborhood schools which provide this vital program and provide on-site support would disproportionately impact the neediest of students.

Continuum of Services/Special Education Programs:

Oakland Unified School District serves more than 5,650 students identified as eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA"). Under the IDEA, the District is required to provide a continuum of services designed to ensure that "to the maximum extent appropriate" students with disabilities are educated with their typically developing peers. (20 U.S.C. §1412(a)(5)(A).) Consistent with this mandate and given

the high number of students with disabilities that are served within the District, the District must utilize site space to provide specialized academic instruction and related services to students with disabilities. Failing to allot school site space for the provision of small group specialized academic instruction, resource support, and related services to students with disabilities at their neighborhood schools would disproportionately impact students with disabilities and result in impermissible segregation, and exclusion from the least restrictive environment.

At-Risk Youth:

The detrimental impacts of non-promotion school site changes would be even more pronounced in the Oakland community which serves a large proportion of at-risk youth. African American and Latino students graduate from District high schools at a rate of 54% and 56%, respectively, compared with 79% for Asian Americans and 75% for white students. According to CST data, only 30% of Oakland's African American 3rd graders score proficient in English Language Arts. By the 3rd grade, that rate is only 15%. These inequities prevail outside the school experience as well. An African American child born in West Oakland is one and a half times more likely to be born premature, seven times more likely to be born into poverty, two and half times more likely to be behind in vaccinations, and more than five and a half times more likely to drop out (or be pushed out) of school. (Strategic Plan, p. 4.)

Forced classroom redistribution, displacement of students, and forcing teachers to vacate classrooms at neighborhood schools serving our at-risk youth would only serve to compound these disadvantages and thus disproportionately impact the neediest of students.

Gang Membership:

Additionally, the District spans the territory of more than 20 competing gangs. Gang violence is unfortunately prevalent on some campuses and within the neighborhoods of several District schools. (See, OUSD Gang Prevention and Intervention Handbook.) Displacing students who themselves or whose parents are tied to a particular gang and placing them in a school located in the territory of another gang would potentially breed gang warfare and violence affecting all children, teachers, staff and parents at a particular school.

Additionally, requiring students and their families to commute through and to the communities of rival gangs creates a huge concern for student and family safety before students even arrive at school grounds. Further, if students are placed in the position of risking their own safety just to travel to school, the likelihood of non-attendance, truancy, and drop-out increase exponentially.

The safety and welfare of all students is one of the District's paramount concerns and a material consideration when weighing whether to displace children from their existing school to accommodate a charter school.

Parental Involvement:

An additional consideration is the difficulty of sustaining the same level of parental involvement in schools located miles away from their neighborhoods that is currently enjoyed by maintaining neighborhood schools. California State Board of Education Policy #89-01 acknowledges that a critical dimension of effective schooling is parental involvement. This policy initiative states that research studies demonstrate parental involvement at school propels a child's educational career. Displacing students attending their local neighborhood school would make it more challenging for those children to reap the benefits of parental involvement in their new non-neighborhood schools. Moreover, parental involvement is of paramount importance to the success of the District's Community Schools model. Impediments to parental involvement, such as dislocating students to school sites miles from their neighborhoods, would prevent the District from successfully implementing a full service Community Schools District.

An alternative to displacing students that District Staff considered was adding all the charter school students to one site, even if the result was overcrowding. However, upon further review, this option was not feasible or practicable. Overcrowding would cause severe safety and operational impacts. Overcrowding on a shared campus would raise both schools' loading ratios, thereby disadvantaging both of these schools' children. Likewise, having hundreds of children over a school's capacity, sharing space would pose a great risk to student safety and well-being.