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# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Jenine Lindsey, Interim General Counsel  
Kelly Krag-Arnold, Director, Office of Charter Schools

**Meeting Date** March 27, 2024

**Subject** Adopting Issuance of Proposition 39 Facilities Offers and Directing Staff to Issue Written Final Offers in Compliance with Proposition 39 for Aurum Preparatory Academy and East Bay Innovation Academy

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**Ask of the Board** Adopt Issuance of Proposition 39 Facilities Offers and Direct Staff to Issue Written Final Offers in Compliance with Proposition 39 for Aurum Preparatory Academy and East Bay Innovation Academy

**Background** California Education Code § 47614 requires school districts’ facilities be shared fairly among all public school pupils, including charter school students. In accordance, Proposition 39 is an annual process the district must engage in, by which charter schools apply for facilities space that is “reasonably equivalent” to the space that district school students receive. In the 2024-25 school year, 12 schools applied and 2 schools were issued Preliminary Offers on February 1, 2024 and March 1, 2024.

**Discussion** The District must issue Final Offers of facilities to all eligible charter schools no later than April 1, 2024. For the 2024-25 school year, the District received Proposition 39 facility requests from 12 charter schools. Of these 12 charter schools, 10 withdrew from Proposition 39. 2 of the remaining charter schools, including Aurum Preparatory Academy and East Bay Innovation Academy, must be issued a final offer of facilities in order to comply with Proposition 39.

**Fiscal Impact** Positive fiscal impact due to Prop 39 fees collected; amount depends on whether or not the charter school accepts their final offer.

Anticipated revenue estimated to be approximately \$86,713 from Aurum Preparatory Academy, calculated as (\$9.91/sq ft) x (8,750 sq ft).

Anticipated revenue estimated to be approximately \$417,274 from East Bay Innovation Academy, calculated as (\$9.91/sq ft) x (42,106 sq ft).

The costs of utilities and custodial are included in the above anticipated revenue.

**Attachment(s)**

- Resolution No. 2324-0069

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

**Resolution No. 2324-0069**

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

**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, section 11969.2(d) states that "facilities are 'contiguous' if they are contained on the school site or immediately adjacent to the school site";

**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";

**WHEREAS**, Cal. Code Regs., tit. 5, section 11969.2(d) requires the Board of Education ("Board") to make a finding if a charter school cannot 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;

**WHEREAS**, Cal. Code Regs., 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";

**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 (see, e.g., *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);

**WHEREAS**, Oakland Unified School District (“OUSD” or “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 make preliminary offers to charter schools that meets Proposition 39 standards for “reasonable equivalence” in terms of “capacity” and “condition”;

**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;

**WHEREAS**, a number of charter schools with private or non-District sites have historically made facilities requests to the District under Proposition 39, and ultimately do not complete the process, withdraw their request, or decline the facilities offered to them;

**WHEREAS**, for the 2024-25 school year, 12 charter schools requested facilities under Proposition 39:

- AIMS College Prep High School
- ASCEND
- Aurum Preparatory Academy
- Bay Area Technology School
- Community School for Creative Education
- East Bay Innovation Academy
- Envision Academy of Arts and Technology
- Francophone Charter School
- Learning Without Limits
- Oakland Unity Middle School
- Urban Montessori Charter School
- Yu Ming Charter School;

**WHEREAS**, for the 2024-25 school year, the following charter schools have notified OUSD that they have fully withdrawn from consideration for Proposition 39:

- AIMS College Prep High School
- ASCEND
- Bay Area Technology School
- Community School for Creative Education
- Envision Academy of Arts and Technology
- Francophone Charter School
- Learning Without Limits
- Oakland Unity Middle School
- Urban Montessori Charter School

- Yu Ming Charter School;

**WHEREAS**, on or before February 1, 2024, District staff made Preliminary Offers of Facilities under Proposition 39 to all charter schools who requested facilities and who had not fully withdrawn or extended such a request;

**WHEREAS**, on or before March 1, 2024, District staff made a Preliminary Offer of Facilities under Proposition 39 to the one charter school who requested facilities and had agreed to a 30-day extension from February 1, 2024;

**NOW, THEREFORE**, the Board of the District hereby allocates the following District school sites to be offered to the charter schools named below for the 2024-25 school year under Proposition 39:

Name of Charter School	Site to be Offered
Aurum Preparatory Academy	Hillside Campus 2369 84 <sup>th</sup> Avenue, Oakland, CA 94605
East Bay Innovation Academy	Bret Harte Middle School 3700 Coolidge Ave, Oakland, CA 94602

**NOW, THEREFORE, BE IT 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 \_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSE:

ABSENT:

**CERTIFICATION**

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on \_\_\_\_\_, 2024.

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**OAKLAND UNIFIED SCHOOL DISTRICT**

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Sam Davis  
President, Board of Education

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Kyla Johnson-Trammell  
Superintendent and Secretary, Board of Education