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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sonali Murarka, Executive Director, Office of Charter Schools
Kelly Krag-Arnold, Deputy Director, Office of Charter Schools

Meeting Date January 26, 2022

Subject Resolution No. 2122-0155 - Finding That Charter Schools Cannot Be Accommodated At A Single Site And Written Statement Of Reasons Explaining The Finding

Ask of the Board Adoption by the Board of Education of Resolution No. 2122-0155 - Finding that Charter Schools Cannot Be Accommodated at a Single Site and Written Statement of Reasons Explaining the Finding

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

Discussion For the 2022-23 school year, the District received Proposition 39 facility requests from 10 charter schools. Six of these schools anticipate signing an in-lieu lease with the District, at which point the District will no longer be required to make them a Proposition 39 offer for 2022-23, and two schools have agreed to an extension with the intent to withdraw from Proposition 39 for 2022-23. The District identified an inventory of facility spaces that are available to fulfill the remaining facilities requests. In matching the District's available space with charter school requests, the District considered factors as permitted in Proposition 39 as described, at least in part, in the Preliminary Staff Report ("Staff Report") appended to the Resolution.

As explained in the Staff Report, the District cannot accommodate single site offers for the following charter schools:

- East Bay Innovation Academy
- Yu Ming

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.

The Staff Report also explains how the multi-site offers minimize the number of sites offered and consider the factors as outlined in the Staff Report. The Resolution makes the required legal findings in support of the multi-site offers.

Fiscal Impact

No direct funding implications. However, there are positive funding implications from Proposition 39 facilities offers because of the pro rata (rental) fee that charter schools pay if they use space under Proposition 39 (or through in-lieu leases).

Attachment(s)

Resolution No. 2122-0155 - Finding That Charter Schools Cannot Be Accommodated At A Single Site And Written Statement Of Reasons Explaining The Finding (including attached Staff Report)

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

Resolution No. 2122-0155

**Finding That Charter Schools Cannot Be Accommodated At A Single Site and Written
Statement Of Reasons Explaining The Finding**

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 are 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 traditional 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”;

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, § 11969.2(d) requires the 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, District staff has evaluated all feasible facilities allocation options and considered capacity, condition, location, and other relevant factors using a set of “comparison schools” as a point of reference in order to make preliminary offers to charter schools that meets Proposition 39 standards for “reasonable equivalence”;

WHEREAS, Cal. Code Regs., tit. 5, § 11969.3 states that OUSD “is not obligated to pay for the modification of an existing school site to accommodate the charter school’s grade level

configuration”;

WHEREAS, in determining reasonable equivalent facilities allocations to charter schools and in meeting their Proposition 39 obligations, school districts have the discretion 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, 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, for the 2022-23 school year, 10 charter schools requested facilities under Proposition 39:

- American Indian Public Charter School I
- American Indian Public Charter School II
- American Indian Public High School
- ASCEND Charter School
- Community School for Creative Education
- East Bay Innovation Academy
- Francophone Charter School
- Learning Without Limits
- Urban Montessori
- Yu Ming;

WHEREAS, for the 2022-23 school year, the following schools have notified OUSD that they intend to fully withdraw from consideration for Proposition 39 after signing in-lieu leases with the District:

- American Indian Public High School
- ASCEND Charter School
- Community School for Creative Education
- Francophone
- Learning Without Limits
- Urban Montessori;

WHEREAS, for the 2022-23 school year, the following schools have agreed to a 30-day extension in regards to their preliminary offer with the intent to fully withdraw from consideration for Proposition 39 after AIMS High School has signed an in-lieu lease with the District:

- American Indian Public Charter School I
- American Indian Public Charter School II;

WHEREAS, on or before February 1, 2022, District staff will make a Preliminary Offer of Facilities in accordance with Proposition 39 to all charter schools who requested facilities and who have

not withdrawn such a request or received an extension;

WHEREAS, for the 2022-23 school year, the District will make a preliminary Proposition 39 multi-site offer to each the following charter schools:

- East Bay Innovation Academy
- Yu Ming

WHEREAS, as provided in the Preliminary Staff Report (“Staff Report”) which is attached hereto as Appendix A and incorporated by reference herein, the District cannot accommodate single site offers for East Bay Innovation Academy and Yu Ming, including at any of the sites requested;

WHEREAS, the District can provide East Bay Innovation Academy and Yu Ming with multi-site offers of reasonably equivalent facilities; and

WHEREAS, the Staff Report recommends the District offer the following charter schools a preliminary offer of facilities on or before February 1, 2022 at the following sites:

- East Bay Innovation Academy
 - Hillside Campus, 2369 84th Avenue, Oakland, CA
 - Montera Middle School, 5555 Ascot Dr, Oakland CA
- Yu Ming
 - East Oakland Pride, 8000 Birch St, Oakland, CA
 - Markham Elementary, 7220 Krause Ave, Oakland, CA.

NOW, THEREFORE, BE IT RESOLVED, for the reasons set forth herein and as further expressed in the Staff Report, the Board of Education (“Board”) hereby finds, determines, declares, orders, and resolves, in accordance with Proposition 39, that the District cannot accommodate the in-district average daily classroom attendance of either East Bay Innovation Academy and Yu Ming at a single school site for the 2022-23 school year and that the Preliminary Offers of Facilities to East Bay Innovation Academy and Yu Ming minimize the number of sites offered and consider the factors as permitted under Proposition 39.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 26th day of January, 2022, by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, VanCedric Williams, Mike Hutchinson, Shanthi Gonzales, Clifford Thompson, Vice President Benjamin "Sam: Davis, President Gary Yee

NOES: None

ABSTAINED: None

RECUSED: None

ABSENT: None

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at the Meeting of the Board of Education of the Oakland Unified School District held on January 26, _____, 2022.

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OAKLAND UNIFIED SCHOOL DISTRICT



Gary Yee
President, Board of Education



Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Preliminary Offers Staff Report

Process for Determining that Charter Schools
Cannot Be Accommodated at a Single School
Site for 2022-23 School Year

Staff Report

Process for Determining Charter Schools That Cannot Be Accommodated at a Single Site for the 2021-22 School Year

Proposition 39:

Proposition 39 requires that OUSD provide reasonably equivalent facilities to charter schools that meet the requirements for eligibility. The intent is for “public school facilities [to] be shared fairly among all public school pupils, including those in charter schools.”

Specifically, Proposition 39 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.

Proposition 39 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 Students and Programs:

Proposition 39 allows school districts to balance the needs and rights of district students and charter school students and to allocate facilities in a manner that ensures that public school facilities are shared fairly among all students.

Factors Considered by OUSD:

The District received 10 Proposition 39 requests from charter schools for the 2022-23 school year.

The District analyzed the factors listed below for each charter school and also analyzed additional student/staff welfare considerations specific to each charter school’s multi-site offer. In determining its allocation of reasonably equivalent facilities to the two charter schools, the District considered certain factors including (but not limited to) the following:

- Identification of an inventory of potential available space in which charter school requests can be accommodated;
- The charter school’s preferred location;
- The quantity of classroom space the charter school is entitled to;
- Whether the offered facilities meet Proposition 39’s “reasonable equivalence” requirements with respect to capacity and condition;
- The availability of specialized classroom space;
- Whether the District can avoid moving programs, whether charter or District, from their existing location, especially if that program serves a vulnerable population;
- The number of existing programs already at each District site, in recognition of the difficulty in designing schedules for more than 2 programs to share spaces such as cafeterias and playgrounds;
- Student safety, including the grade configuration of any co-located District school and charter school as well as travel time for multi-sited schools; and
- The grades served by programs at each district site.

Identification of Potential District Sites with Projected Capacity for 2022-23

The below table shows a list of District school sites that are calculated to have 3 or more underutilized classrooms.

| Site Name | Capacity # of underutilized classrooms |
|------------------------------|--|
| Brookfield | 16 |
| Franklin | 15 |
| Markham | 14 |
| Prescott | 14 |
| Bret Harte | 12 |
| East Oakland Pride (Webster) | 11 |
| New Highland / RISE | 10 |
| McClymonds | 9 |
| Castlemont | 8 |
| Garfield | 8 |
| Hillside - Castlemont | 8 |
| Parker | 8 |

| Site Name | Capacity # of underutilized classrooms |
|----------------------|--|
| WOMS/Bunche (Lowell) | 5 |
| Carl Munck | 4 |
| Laurel | 4 |
| Lockwood | 4 |
| Montera | 4 |
| Allendale | 3 |
| Bella Vista | 3 |
| Burckhalter | 3 |
| Grass Valley | 3 |
| Greenleaf (Whittier) | 3 |
| Horace Mann | 3 |

Note: Capacity numbers are calculated after accounting for existing District and charter school programs.

List of Charter School Applicants

District staff first attempts to accommodate a charter school's entire in-District ADA (of 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 at OUSD school sites that are immediately adjacent to each other. (Cal. Admin. Code tit. 5, § 11969.2.)

Except for the two charter school listed below, the other eight charter schools who submitted Proposition 39 requests have either withdrawn their facilities request or have agreed to 30-day extensions with the intent to withdraw their request while they pursue an OUSD Board-approved in-lieu of Proposition 39 leases.

- **East Bay Innovation Academy** applied for facilities under Proposition 39 for its students in grades 9-12 and is estimated to be eligible for 11 classrooms and specialized space. The charter school's entire in-District ADA cannot be accommodated at a single site.
- **Yu Ming Charter School** applied for facilities under Proposition 39 for all its students and is estimated to be eligible for 16 classrooms and specialized space. The charter school's entire in-District ADA cannot be accommodated at a single site.

Multisite Offer

East Bay Innovation Academy

East Bay Innovation Academy (EBIA) is estimated to be eligible for **11 classrooms** plus specialized space. EBIA's high school grades are currently located in a private facility at 3800 Mountain Boulevard in the Oakland hills. The school's middle school grades are located in a District facility, the Marshall campus, at 3400 Malcolm Avenue. EBIA's lease at the Marshall campus expires on June 30, 2024.

EBIA requested a location that is "nearby the Marshall campus or our current private site (3800 Mountain Blvd)." EBIA further requested a number of facilities components related to their programming such as laboratories and technology infrastructure.

Analysis of Charter School's Preferences

EBIA is entitled to 11 classrooms. All except one of the District sites with 11 or more underutilized classrooms are elementary schools and do not offer many of the specific facilities components from EBIA's request or the types of specialized space to which EBIA is entitled. The one secondary school with 11+ underutilized rooms is Bret Harte Middle School. However, the high school site (Hillside) listed below was deemed to be a better fit with EBIA's needs. Therefore, the District considered how to make a responsive offer under Proposition 39 of more than one school site that included a high school site. Specifically, the preliminary offer includes the following two sites:

- Hillside Campus (adjacent to Castlemont High School)
2369 84th Avenue, Oakland, CA 94605
- Montera Middle School

5555 Ascot Drive, Oakland, CA 94611

Staff determined that an offer of two school sites that includes Hillside Campus and Montera Middle School would be responsive, as follows:

- Hillside Campus offers a separate (non co-located) campus that EBIA could entirely use for themselves and organize as they see fit to best meet their students' instructional needs. Furthermore, the Hillside Campus offers nearby access to additional specialized spaces at the Castlemont Campus if needed.
- Each of the two offer sites is close to one of EBIA's existing facilities. The Hillside Campus is within a 10-minute drive of the 3400 Malcolm Ave site, and Montera Middle School is within a 5-minute drive of the 3800 Mountain Blvd site.
- Both offer sites are secondary school sites that offer some specialized space and have facilities appropriately sized to serve EBIA's high school students.

Yu Ming Charter School

Yu Ming Charter School is estimated to be eligible for **16 classrooms** plus specialized space. The school is currently located in three private facilities in North/West Oakland: 1086 Alcatraz Avenue, 675 41st Street, and 2501 Chestnut Street.

The school requested a location that is "proximate to either a BART station or a major AC Transit line. The preference would be for a transit-rich location located to the West of Highway 13/I-580." Yu Ming further expressed a preference for "co-locating with an Elementary School" as opposed to a middle or high school.

Analysis of Charter School's Preferences

Yu Ming is entitled to 16 classrooms. The only District site with 16 underutilized classrooms is Brookfield Elementary, which is not in a transit-rich location. There was no other single dedicated site or single site co-location that has sufficient capacity to accommodate Yu Ming's entire in-district ADA. Therefore, the District considered how to make a responsive offer under Proposition 39 of more than one school site. Specifically, the preliminary offer includes the following two sites:

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

Staff determined that an offer of two school sites that includes East Oakland Pride Elementary School and Markham Elementary School would be responsive, as follows:

- These two offer sites are under 1 mile apart and less than a 15-minute walk from each other.
- These two offer sites are located in an area of East Oakland that is easily accessible by major AC transit lines. The sites are also located west of Highway 13/580.

- The choice of these two sites allows the District to minimize the number of sites included in this multisite offer, as both of these sites have over 10 underutilized classrooms. Yu Ming could thus choose to split its K-8 school across the two sites, since a substantive number of classrooms would be offered at each site.
- Both offer sites are elementary schools, which is responsive to Yu Ming’s specific request for an elementary site.

Historical Context

Considering historical precedent, as shown in the table below, the number of preliminary multi-site offers being issued for 2022-23 continues to reflect the District’s efforts to minimize such offers in recent years. The multi-site preliminary offer for 2022-23 is further contextualized by the fact that the District currently has three District schools that operate across multiple sites.

| Offer School Year | Requests Received | Multi-Site Preliminary Offers | Preliminary Offers Including 3 or More Sites |
|-------------------|-------------------|-------------------------------|--|
| 2017-18 | 16 | 6 | 3 |
| 2018-19 | 17 | 9 | 3 |
| 2019-20 | 11 | 5 | 3 |
| 2020-21 | 14 | 3 | 0 |
| 2021-22 | 14 | 1 | 0 |
| 2022-23 | 10 | 2 | 0 |