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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sonal Murarka, Director – Office of Charter Schools
Kelly Krag-Arnold, Policy Specialist – Office of Charter Schools

Board Meeting Date January 27, 2021

Subject Resolution No. 2021-0036 - Finding That A Charter School Cannot Be Accommodated At A Single Site And Written Statement Of Reasons Explaining The Finding

Action Approval of Resolution No. 2021-0036 - Finding That A Charter School 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 2021-22 school year, the District received Proposition 39 facility requests from 14 charter schools. Six (6) of these schools signed in-lieu leases with the District and withdrew from Prop 39, and 1 school signed an in-lieu lease for part of their school and partially withdrew from Prop 39 for 2021-22. 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 as described 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 school:

- American Indian Public Charter School II

The Staff Report outlines the process used by the District to determine the multi-site offer to the charter school that could not be accommodated at a single site. The Staff Report also explains how the multi-site offer minimizes the number of sites offered and considers the factors as outlined in the Staff



Report. The Resolution, based on the Staff Report, makes the required legal findings in support of the multi-site offer.

Fiscal Impact

No direct funding implications from multisite resolution. However, there are positive funding implications from Prop 39 offers because of the pro rata (rental fee) that charter schools pay if they lease space through Prop 39.

Attachments

Resolution No. 2021-0036 - Finding That A Charter School Cannot Be Accommodated At A Single Site And Written Statement Of Reasons Explaining The Finding

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

Resolution No. 2021-0036

**Finding That A Charter School 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 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;”

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 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, 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, 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 2021-22 school year, 14 charter schools requested facilities under Proposition 39:

- Achieve Academy
- American Indian Public Charter School I
- American Indian Public Charter School II
- American Indian Public High School
- Aspire ERES Academy
- Cox Academy
- East Bay Innovation Academy
- Envision Academy
- Francophone Charter School
- Latitude 37.8 High School
- Leadership Public Schools-Oakland R&D
- Unity Middle School
- Urban Montessori
- Yu Ming;

WHEREAS, for the 2021-22 school year, the following schools have notified OUSD that they have fully withdrawn from consideration for Proposition 39 after signing in-lieu leases with the District:

- Achieve Academy
- Cox Academy
- Francophone Charter School
- Leadership Public Schools-Oakland R&D
- Unity Middle
- Urban Montessori;

WHEREAS, for the 2021-22 school year, the following school has notified OUSD that it has partially withdrawn from consideration for Proposition 39 after signing in-lieu leases with the District for part of their grade span:

- East Bay Innovation Academy;

WHEREAS, on or before February 1, 2021, District staff will make a Preliminary Offer of Facilities under Proposition 39 to all charter schools who requested facilities and who have not fully withdrawn such a request;

WHEREAS, for the 2021-22 school year, the District will make preliminary Proposition 39 single site offers to the following charter schools:

- American Indian Public Charter School I
- American Indian Public High School
- Aspire ERES Academy
- East Bay Innovation Academy
- Envision Academy
- Latitude 37.8 High School
- Yu Ming;

WHEREAS, for the 2021-22 school year, the District will make a preliminary Proposition 39 multi-site offer to the following charter school:

- American Indian Public Charter School II;

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 a single site offer for American Indian Public Charter School II, including at any of the sites requested;

WHEREAS, the District can provide American Indian Public Charter School II with a multi-site offer 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, 2021 involving co-location at the following sites:

- American Indian Public Charter School II
 - Montera Middle School, 5555 Ascot Dr, Oakland, CA 94611
 - McClymonds High School, 2607 Myrtle St, Oakland, CA 94607.

NOW, THEREFORE, BE IT RESOLVED, the Board of Education (“Board”) hereby finds, determines, declares, orders and resolves, in accordance with Proposition 39 and its associated regulations, for the reasons set forth herein and as further expressed in the Staff Report, that the District cannot accommodate the in-district average daily classroom attendance of American Indian Public Charter School II at a single school site for the 2021-22 school year and that the Preliminary Offer of Facilities to American Indian Public Charter School II minimizes the number of sites offered and considers the factors as outlined in the Staff Report.

Passed by the following vote:

PREFERENTIAL AYE: Jessica Ramos

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

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

NOES: Mike Hutchinson

ABSTAINED: None

RECUSE: None

ABSENT: VanCedric Williams, Samantha Pal (Student Director)

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 1/27/____, 2021.

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OAKLAND UNIFIED SCHOOL DISTRICT



Shanthi Gonzales
President, Board of Education



Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Preliminary Staff Report

Process for Determining that Charter Schools
Cannot Be Accommodated at a Single School
Site for 2021-22 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 14 Proposition 39 requests from charter schools for the 2021-22 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 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;
- The right of both charter students and OUSD students to enjoy reasonably equivalent facilities;
- 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 2021-22

The below table shows a list of District school sites that are calculated to have 2 or more underutilized classrooms.

Site Name	Capacity Number of underutilized classrooms
Allendale	3
Bret Harte	9
Bridges Academy (Melrose)	3
Brookfield	12
Burckhalter	3

Carl Munck/Hintul Kuu CDC	3
Castlemont	6
Coliseum College Prep (Havenscourt)	12
Community United/Futures (Lockwood)	2
Dewey	4
East Oakland Pride (Webster)	10
Elmhurst	5
Franklin	10
Fremont	4
Frick	5
Fruitvale	4
Garfield	6
Grass Valley	4
Hoover	2
Horace Mann	5
Howard	6
Kaiser	11
Laurel	5
Madison Park 6-12	4
Madison Park TK-5 (Sobrante Park)	2
Markham	14
McClymonds	23
MLK	2
Montera	14
New Highland Acad / RISE Community (Highland)	9
Parker	6
Prescott	10
Sankofa (Washington)	5
Skyline	8
Think College Now/International Community	2
West Oakland Middle School (Lowell)	7
Westlake	12

Note: Above capacity numbers are calculated after accounting for existing District programs as well as charter schools that have a Board-approved lease for the 2021-22 school year.

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 OUSD school sites that are immediately adjacent to each other. (Cal. Admin. Code tit. 5, § 11969.2.)

The list below excludes six charter schools who submitted Proposition 39 requests that either have OUSD Board-approved in-lieu of Proposition 39 leases or withdrew their facilities request.

- **American Indian Public Charter School I** is estimated to be eligible for 9 classrooms and

specialized space. The charter school's entire in-District ADA can be accommodated at a single site.

- **American Indian Public Charter School II** is estimated to be eligible for 26 classrooms and specialized space. The charter school's entire in-District ADA cannot be accommodated at a single site.
- **American Indian High School** is estimated to be eligible for 15 classrooms and specialized space. The charter school's entire in-District ADA can be accommodated at a single site.
- **Aspire ERES** is estimated to be eligible for 13 classrooms and specialized space. The charter school's entire in-District ADA can be accommodated at a single site. (Aspire ERES has submitted a material revision to increase their enrollment cap. If the material revision is approved, this determination would be revisited.)
- **East Bay Innovation Academy** is estimated to be eligible for 9 classrooms and specialized space. The charter school's entire in-District ADA can be accommodated at a single site.
- **Envision Academy** is estimated to be eligible for 9 classrooms and specialized space. The charter school's entire in-District ADA can be accommodated at a single site.
- **Latitude High School** is estimated to be eligible for 7 classrooms and specialized space. The charter school's entire in-District ADA can be accommodated at a single site.
- **Yu Ming Charter School** is estimated to be eligible for 11 classrooms and specialized space. The charter school's entire in-District ADA can be accommodated at a single site.

Multisite Offer

American Indian Public Charter School II

American Indian Public Charter School II is estimated to be eligible for 26 classrooms plus specialized space. The school requested "to be located within the Laurel/Downtown/Chinatown neighborhood" in "a facility that is accessible to families that travel on foot or rely on public transportation". The school further listed specific sites they were interested in: Lincoln, La Escuelita, Santa Fe Elementary, Bella Vista, West Oakland Middle, Piedmont Elementary, Westlake, and Tilden.

The school is currently located at a private facility in downtown Oakland, which it has occupied for many years and shares with American Indian II.

Analysis of Charter School's List of Preferred Sites

- *Lincoln* – This site does not have underutilized classroom space. Relocating students at this school in order to accommodate the charter school's request would contradict the District's desire to minimize displacement of students. Further, Lincoln has a specific attendance area it serves and is the only neighborhood elementary school in that area.
- *La Escuelita* – This site does not have underutilized classroom space. Relocating students at this school in order to accommodate the charter school's request would contradict the District's desire to minimize displacement of students. Further, La Escuelita has a specific attendance area it serves and is the only neighborhood elementary school in that area. This site also already houses two schools: La Escuelita and MetWest.
- *Santa Fe* – This site does not have underutilized classroom space. This site houses special education staff and programming, including a Young Adult Program for students with severe special needs. Displacing this program would be a disruption for this particularly vulnerable student population.
- *Bella Vista* – This site does not have underutilized classroom space. Relocating students at this school in order to accommodate the charter school's request would contradict the District's desire to minimize displacement of students. Further, Bella Vista has a specific attendance area it serves and is the only neighborhood elementary school in that area.
- *West Oakland Middle School* – This site already houses three schools (2 district, 1 charter): West Oakland Middle, Bunche Academy, and Envision Middle School. This site will be the location of a Prop 39 offer to the charter school that has been occupying this space for the past two years, which serves to minimize displacement of both charter and district students. Furthermore, Bunch Academy serves a particularly vulnerable student population.
- *Piedmont Elementary* – This site does not have underutilized classroom space. Relocating students at this school in order to accommodate the charter school's request would contradict the District's desire to minimize displacement of students. Further, Piedmont Elementary has a specific attendance area it serves and is the only neighborhood elementary school in that area.
- *Westlake* - This site also already houses two schools: Westlake and MetWest. Furthermore, Westlake also serves a particularly vulnerable student population.
- *Tilden* – This site is already leased to a different charter school, which has exclusive use of the entire site.

Moreover, there was no other single dedicated site or single site co-location that has sufficient capacity. Accordingly, District staff were forced to consider how to make a responsive Prop. 39 offer of more than one school site, specifically:

- McClymonds High School
2607 Myrtle St, Oakland, CA 94607
- Montera Middle School
5555 Ascot Dr, Oakland, CA 94611

Based the factors set forth above, Staff determined that an offer of two school sites that includes McClymonds High School and Montera Middle School would be responsive. For example:

- McClymonds High School is less than a 5-minute drive from West Oakland Middle School, which was one of the charter school’s requested sites.
- 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. The charter school 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 sites offer the unique features that the charter school listed in its facilities request: a large space for the lunch program and a gymnasium and fields for physical education.

Summary and Conclusion

Considering historical precedent, as shown in the table below, the number of preliminary multi-site offers being issued for 2021-22 continues to represent a decline from prior years. The multi-site preliminary offer for 2021-22 is further contextualized by the fact that the District currently has and next year will continue to have two 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