



**EAST BAY INNOVATION
ACADEMY**

April 29, 2018

By Hand Delivery and Email: leslie.jimenez@ousd.org

Leslie Jimenez
Office of Charter Schools
Oakland Unified School District
1000 Broadway, Suite 639
Oakland, CA 94607

***Re: East Bay Innovation Academy
Response to District's Final Offer
Proposition 39 2018-2019***

Dear Ms. Jimenez:

East Bay Innovation Academy ("EBIA" or "Charter School") is in receipt of the Oakland Unified School District's ("District") April 1, 2018 letter ("Final Offer") regarding EBIA's request for facilities under Proposition 39 ("Prop. 39") for the 2018-2019 school year.

The District's Final Offer is for exclusive use of a total of twenty-seven (27) "teaching stations/specialized classrooms," consisting of seven (7) classrooms at Frick Impact Academy, twelve (12) classrooms at Thurgood Marshall Elementary School, and eight (8) classrooms at Webster. The Final Offer also allocates EBIA exclusive use of two (2) office/storage spaces (623 sq. ft.) along with shared use of 20,679 sq. ft. of interior non-teaching space and 82,474 sq. ft. of exterior non-teaching station space at Frick, plus exclusive use of one (1) office (897 sq. ft.) along with shared use of 8,538 sq. ft. of interior non-teaching space and 105,810 sq. ft. of exterior non-teaching station space at Webster, and exclusive use of the non-teaching station space at Marshall. The Preliminary Proposal is based on a projected in-District ADA of 495.73.

Section 11969.9(i) of the Prop. 39 Implementing Regulations (the "Implementing Regulations") requires EBIA to notify the District whether or not EBIA intends to occupy the offered space. Accordingly, despite the deficiencies in the Final Offer (which are identified herein to the extent practicable, with all rights reserved) and as set forth in EBIA's response to the Preliminary Proposal, which is incorporated herein by reference, EBIA accepts and intends to occupy the offered space at Marshall only, without acknowledging the legal sufficiency of the Final Offer under applicable local, state, or federal law and without waiving any of its legal rights under applicable local, state, or federal law, including Proposition 39 rights and remedies. Consistent with EBIA's recent conversation with you, the District has agreed that EBIA will accept the allocated space at Marshall and reject the allocated space at Webster and Frick.

As EBIA is accepting the District's offer of space at Marshall and intends to occupy the space offered by the District at Marshall during the 2018-2019 school year, the remainder of this letter will focus on EBIA's concerns regarding the legal deficiencies of the District's offer of space at Frick and Webster, while continuing to reserve all rights and remedies.

While EBIA appreciates the District's efforts to provide additional information regarding the facilities that exist at the comparison schools, the Final Offer fails to meet the legal requirements of Prop. 39 in several respects, as summarized below and as set forth in EBIA's response to the Preliminary Proposal, which is incorporated herein.

Allocation of Non-Contiguous Facilities

In its Request, EBIA indicated its preference to be located on a single site large enough to accommodate its entire projected in-District ADA. The express provisions of Proposition 39 require that the District allocate facilities to the Charter School that are "contiguous, furnished, and equipped." (Education Code Section 47614(b).) This requirement exists irrespective of the grade level configuration of a charter school. (5 CCR Section 11969.3(a).) The Court in *Ridgecrest* noted that "all else being equal, a charter school should be housed at a single site if one exists with the capacity to handle all the school's students." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal. App. 4th 986, 1000, emphasis added.) There is absolutely no evidence that the District has done so here. Rather, it appears that after looking at the extra space available at its District sites, the District decided to locate EBIA across three separate sites.

The District's Findings do not indicate the District considered redrawing District attendance boundaries, increasing District class sizes or the negative impact on the safety of EBIA's students that would occur if they are required to travel between three separate school sites in one day. Instead, the District's Findings focus primarily on the impact to District students of allocating to EBIA a single District school site – with no analysis of the safety issues facing EBIA's students. EBIA believes there are several District sites in EBIA's requested geographical area that are large enough to accommodate EBIA's entire in-District enrollment in reasonably equivalent facilities. Thus, the District's failure to offer EBIA a contiguous site violates Prop. 39 and its Implementing Regulations.

Allocation of Teaching Station Space

EBIA is concerned that the District has not properly calculated the Average ADA to teaching station ratio at the comparison schools. The Final Offer fails to include the number of teaching stations used to determine the ADA to teaching station ratio and the District's Exhibit C suggests the District is in fact using class size averages in violation of *California Charter Schools Association v. Los Angeles Unified School District* (2015) 60 Cal. 4th 1221, rather than the actual number of teaching stations to ADA at the comparison schools to determine the ADA to teaching station ratio at the comparison schools.

Moreover, as empty classrooms are not accounted for anywhere else in the District's offer, those rooms must be included in the teaching station to ADA ratio analysis. In addition, now that the information in the Jacobs report is available, this data makes clear that there are

many classrooms on the comparison school campuses that have not been included in the teaching station to ADA ratio calculation, but are not accounted for anywhere else. As an example, the District claims a teaching station to ADA ratio of 25.14 for Montera Middle School, with an ADA of 721.44. This ratio requires 29 classrooms on the site. Yet the Jacobs report reveals there are at least 30 classrooms on the site, for a corrected teaching station to ADA ratio of 24.04. Similarly, the District claims a teaching station to ADA ratio of 26.30 for Skyline, with an ADA of 1626.19. This ratio requires 62 classrooms on the site. Yet the Jacobs report reveals there are at least 63 classrooms on the site – and an additional ten (10) rooms for special education which are not accounted for elsewhere in the District’s calculation, despite the requirement that the District allocation special education space commensurate with the space available at the comparison schools. Including these special education teaching stations in the ratio calculation results in a ratio of 22.27.

As stated in EBIA’s response to the Preliminary Proposal, based on EBIA’s review of publicly available information, EBIA determined it is entitled to at least twenty-five (25) teaching stations, i.e., four (4) more teaching stations than the District allocated to EBIA.

Allocation of Specialized Classroom and Non-Teaching Station Space

EBIA is entitled to reasonably equivalent allocations of specialized classroom and non-teaching station space commensurate with its in-District ADA and the per-student amount of specialized classroom/non-teaching station space in the comparison group schools. (5 CCR § 11969.3(b)(2)-(3).)

The Final Offer allocated EBIA six (6) more classrooms than were allocated in the Preliminary Proposal as a result of the District’s determination that EBIA was entitled to approximately 4,320 sq. ft. of additional specialized classroom space. The District claims the 4,320 sq. ft. of additional classroom space is “more than covered in the allocation of 6 teaching space classrooms to the Charter School.” However, as stated in EBIA’s response to the Preliminary Proposal, the District may not combine different types and sizes of specialized classroom space and then allocate non-specialized classrooms to EBIA. If there are science labs, computer labs, music rooms, weight rooms, art rooms, and the like available at the comparison schools, then the District must allocate reasonably equivalent, fully furnished and equipped kinds of these spaces space and/or access to EBIA. A standard classroom does not have, for example, the risers in a choral classroom, the gas and water stations in a science classroom, or the computers in a computer classroom. Further, allocation of regular classrooms is not an acceptable manner to allocate specialized classrooms; often these spaces have unique furnishings, larger sizes and equipment or other design elements that cannot be replicated in a standard classroom. The District cannot force EBIA to create its own fully furnished and equipped specialized classroom space in a standard teaching station space. “[A] school district does not have the discretion to employ practices that are contrary to the very intent of Proposition 39 that school district facilities be “shared fairly among all public school pupils, including those in charter schools.” (*Bullis, supra*, at p. 336.)

EBIA is entitled to reasonably equivalent allocations of specialized spaces, and of furnishings and equipment that accompany those spaces in the comparison schools, and it anticipates receiving its full complement of the specialized space and the reasonably equivalent

furnishings and equipment therein.

The District's allocation of non-teaching space to EBIA in the Final Offer also fails to comply with Prop. 39 or its Implementing Regulations including its failure to identify the specific non-teaching station spaces to be allocated to EBIA and its allocation of non-teaching station space based on the percentage of EBIA's enrollment on the sites, none of which are comparison schools, as determined by the District. Furthermore, the District has ensured that its calculation misstates the actual per ADA amount of non-teaching station space by deducting the total "classroom space"¹ from the "total site area".² By using this formula, the District has assumed that all classrooms larger than 600 square feet are accounted for in its teaching station to ADA ratio – but by its own admission, the District's teaching station to ADA ratio calculation only includes rooms staffed by a teacher – not empty rooms, not classrooms used for storage or counseling or restorative justice or any other purposes. This space is also not necessarily captured by the specialized classroom allocation, as this is also based only on the number of classrooms larger than 600 square feet on the site, but does not actually determine the use of each space, or whether the proportion actually captures usage at each comparison school site.

Moreover, the District's calculations of the space to be allocated to EBIA are opaque and unverifiable and appear to exclude the following non-teaching spaces from its analysis and allocation to EBIA even though such spaces are available at the comparison schools: kitchen/servery, nurse/health clinic space, special day class/resource, and parent centers/community use rooms. Furthermore, while the Charter School appreciates the access to the significant additional data provided by the Jacobs report, as the District acknowledges, the Jacobs data is "approximate" and not as precise as the MKThink data. There also appears to be material differences in the square footage information provided by the Jacobs report and the MKThink reports from several years prior. The District has relied on the older MKThink information for the entire non-teaching station space analysis; even a comparison between Exhibits D, E, and F of the square footage of specific rooms and specific campuses demonstrates many differences in square footage for individual spaces. This makes it difficult for the Charter School to understand, verify and corroborate the square footage calculations performed by the District.

Critically, the District's Final Offer fails to allocate any special education space to EBIA. Instead, it states that the District will provide special education space upon EBIA providing evidence of serving in-District special education students. However, Prop. 39 and the Implementing Regulations do not require charter schools to provide evidence of serving special education students to receive the same ratio of special education/resource space per unit of ADA that exists at the comparison schools; rather, the District is required by law to provide an allocation of special education space that is reasonably equivalent to that existing at the comparison schools.

Pro Rata Share

¹ Defined as the square footage of all classrooms that are equal to or larger than 600 square feet "and any attached classroom storage space included in the Prop. 39 preliminary offers."

² The total square feet of outdoor and building square feet on the campus, including non-ground level building square footage.

As stated in EBIA's response to the Preliminary Proposal, EBIA prefers to perform its own custodial services and EBIA is willing to pay the actual utilities costs for the site separate from the pro rata share. As such, the pro rata share will need to be revised to provide for this arrangement and reduced proportionately if any of the allocated spaces are unavailable during the year due to construction. EBIA reiterates its previously stated objections concerning the District's inappropriate inclusion of its costs related to police services, emergency debt services, and insurance in the pro rata share.

Facilities Use Agreement

We are reviewing the draft FUA and look forward to negotiating the terms of the FUA over the next several weeks, as required by the Implementing Regulations. (5 CCR Section 11969.9(k).) EBIA's objections to the draft FUA are set forth in EBIA's response to the Preliminary Proposal and are incorporated herein. We note that our failure to mention a concern in this letter or in the response to the Preliminary Proposal should not be interpreted as acceptance of that term.

* * *

EBIA looks forward to the opportunity to discuss and negotiate the FUA with the District, along with EBIA's other above-referenced concerns, moving forward.

Sincerely,



Rochelle Benning

cc: EBIA's Board Members
Sarah Kollman, Young, Minney & Corr, LLP