



Date: February 4, 2023
To: Board of Directors of Navigator Schools
From: Kevin Sved
Subject: Preliminary Prop 39 Offer from Hayward Unified School District

Navigator Schools / Hayward Collegiate received the preliminary Proposition 39 offer from Hayward Unified School District on February 1, 2023. The offer is for space at the former Cherryland Elementary School site which is 2.9 miles away from the current site. The drive time to Cherryland from the current site is approximately 8-18 minutes depending on time of day and traffic. This offer is consistent with the offer of previous years, and the site would be shared with the [Key Academy](#) charter school. The offer includes 10 classrooms with shared use of playgrounds and the multipurpose room /gymnasium.

In the past, Hayward Collegiate has declined the offer due two main reasons. First, the location was considered to be inconvenient for the majority of parents, and many might choose an alternate school option. Secondly, there is a five year lease commitment to the owner of the current Hayward Collegiate site which runs through June 2024.

Due to the space challenges at Hayward Collegiate's current location, the Proposition 39 offer from Hayward Unified School District merits full consideration and thoughtful analysis. Navigator Schools has until March 1, 2023 to reply to the offer with comments, concerns, questions, or preliminary acceptance. The District then has until April 1, 2023 to issue a final Proposition 39 offer, with the charter school having until May 1 to accept or reject the final offer or potentially pursue legal remedies. It is anticipated that the Navigator Schools Board of Directors will make a final decision on the location for 2023-24 during its board meeting on April 4, 2023, after the final Proposition 39 offer from Hayward Unified School District is received.

Over the course of the next six weeks, staff will take the following steps:

- 1) Engage the Navigator Board and Finance Committee in dialogue about this topic
- 2) Develop plans for operating at the current site for 2023-24 which would require use of the social hall / cafeteria as a classroom space
- 3) Conduct outreach to Hayward Unified School District with the goal of receiving a final offer that features a school site that is closer to the current campus
- 4) Engage parents to determine their level of support or concern with moving to the Cherryland site
- 5) Evaluate other solutions to the facility challenges for 2023-24, including operating a split site

Please review the following overview of the Proposition 39 process, including a summary of the advantages and disadvantages of Prop 39. This is an excerpt from the packet provided to the Board at the outset of the onboarding/re-reboarding meetings held in September, 2022. Lastly, the preliminary Prop 39 offer from Hayward Unified School District is attached.

(Excerpt from Facilities Section of Onboarding / Reboarding packet)

Proposition 39

Proposition 39 (Prop 39) was passed by California voters in 2000, amending the Education Code to require school districts to make facilities available to public charter schools serving students who reside in the district. In addition to meeting the eligibility requirements, there are specific dates which must be met for a charter school to preserve its right to district facilities. The first deadline is November 1, when charter schools must submit facilities requests to the school district in which the school is located. The other critical dates in the Prop 39 timeline are listed in Table 1.

Table 1. Proposition 31: Important Dates

November 1	Charter schools submit facilities requests to the school district in which the school is located with supporting evidence to justify the number of in-district pupils for the following school year.
December 1	District responds if it challenges the charter's enrollment projections.
January 1	Charter responds to district challenges (if applicable).
February 1	District provides a preliminary facilities offer.
March 1	Charter responds to the district's preliminary offer.
April 1	District provides a final facilities offer.
May 1	Charter responds to the district's final offer.

Prop 39 facilities provided by Gilroy Unified School District for Gilroy Prep School (GPS) and by the Hollister Elementary School District for Hollister Prep School (HPS) have been critical for the ongoing success and stability of GPS and HPS. In addition, the launch of Watsonville Prep School (WPS) was also aided by the Pajaro Valley Unified School District's facilities through Prop 39 from July 2019 to September 2021. Prop 39 typically results in a Facilities Use Agreement signed by both the district and charter which details the exclusive space provided to the charter; the space to be shared such as cafeteria, multipurpose room, parking, and playfields; fees to be assessed; and the obligations of both parties, including facilities maintenance and upkeep.

The advantages of Prop 39 include an inexpensive facilities solution with minimal responsibilities for the charter regarding facilities planning and maintenance. Charters

are typically charged two percent of LCFF revenues. Alternatively, districts can charge charters a pro rata share of facilities expenses.

One disadvantage of Prop 39 is the year-to-year nature of the process. Each year, the charter must go through the same burdensome Prop 39 process which, depending on the district and related political environment, can pose instability for the charter school. For example, WPS required additional classrooms for its second year (2020-21), and the district offered a split-site solution, with K-2 classes held on one campus and Grade 3 classes held on a separate campus one mile away.

One way that charters can circumvent the annual Prop 39 process while still benefiting from some of Prop 39's advantages is to enter into a long-term facilities use agreement with the district. Often referred to as an "in lieu of Prop 39 deal," the charter and district agree to terms for multi-year facilities use. Typically, the charter commits to a higher annual facility fee or agrees to cover the costs of maintenance or other facility improvements as incentives for the district to forgo flexibility that the year-to-year Prop 39 program provides districts regarding allocation of facilities.



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February 1, 2023

VIA ELECTRONIC MAIL: kevin.sved@navigatorsschools.org

Kevin Sved, Chief Executive Officer
Hayward Collegiate Charter School
Navigator Schools
650 San Benito Street, Suite 230
Hollister, CA. 95023

Re: Proposition 39 Facilities Request for 2023-2024
Preliminary Offer of Facilities

Dear Mr. Sved:

The Hayward Unified School District (“District”) makes this Preliminary Offer of Facilities to the Hayward Collegiate Charter School (“Charter School”) for the 2023-2024 school year under Cal. Admin. Code, title 5, §11969.9(f).

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 of Facilities 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 about November 1, 2022. The Charter School’s Request for Facilities was based upon a projected in-District ADA of 157.13 in-District classroom ADA, grades K-4.

Exercising its rights under Cal. Admin. Code, title 5, §11969.9(d), the District, on December 1, 2022, made an ADA counterprojection of 141.53, grades K-5. The Charter School has accepted the District’s counterprojection.



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B. 2023-2024 Preliminary 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 A.D.A. of 141.53, grades K-5.

1. Methodology

Proposition 39 bases its reasonable equivalence analysis on a benchmark established by a group of comparison group schools. Cal. Admin. Code, title 5, § 11969.3 governs the identification of 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.



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The comparison group schools are the District elementary schools and middle schools feeding into the Hayward High School attendance area, the high school attendance areas in which the greatest number of Charter School students reside.¹ The comparison group schools are as follows: Elementary School – Burbank, Cherryland, East Avenue, Faith Ringgold School of Arts & Science, Fairview, Harder, and Stonebrae.²

2. Facilities Offered:

a. Reasonable Equivalence Methodology:

i. Condition:

In order to determine whether facilities are “reasonably equivalent,” the District compares the proposed facilities to District-operated schools constituting the comparison group of schools. The District may propose 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	C.C.R., tit. 5, § 11969.3(c)(1)(D)

¹ See <https://www.husd.us/measureh2018> for the District’s feeder school pattern.

² Strobridge Elementary School, formerly a comparison group school, will be closed starting the 2022-2023 school year.



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No.	Facility Characteristic – Capacity	Regulatory Authority
	resources	
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)

Based upon the District’s analysis of the condition of the comparison group schools, the facilities offered by the District meet Proposition 39 standards for “reasonable equivalence” based upon capacity, condition, location, and other relevant factors. **(See, Exhibit A.)**

ii. Capacity:

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.”

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

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.



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

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

The inventory of teaching stations, specialized teaching space, and non-teaching space at the comparison group schools, along with the calculation of the square foot to ADA ratio for each category of space, and site maps, can be found on Exhibit B.

The reasonable equivalence analysis of the teaching stations, specialized teaching space, and non-teaching space made available to students at the comparison group school yields the following space allocation to the Charter School:

HAYWARD COLLEGIATE (141.53. A.D.A. K-4)	
	K-5
Classrooms	6.19 @ 22.68 ADA per T.S.
STS/NTS	3.52 @ 23.87 SF/ADA
Total	9.71 Rooms

The District’s determination of the Charter School’s allocation of teaching stations, specialized teaching stations, and non-teaching space, based on the comparison group school analysis, is attached as **Exhibit C**.

3. Allocation of Facilities

The District offers the Charter School facilities at the following location: 585 Willow Avenue, Hayward, CA 94541, the former site of Cherryland Elementary School. The Charter School will be sharing the site with KEY Academy Charter School. The Charter School’s space allocation is below:



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a. Exclusive Use Space:

Rooms (9 Total)
31
32
33
34
35
36
37
38
39

b. Shared Space

The Charter School shall share the following space with the Key Academy.

Multi-Purpose Room	Library	Fields	Blacktop Space	Parking (First Come-First Serve)
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The two charter schools sharing the site will reach a sharing arrangement according to the schedule format below.

Example	Monday	Tuesday	Wednesday	Thursday	Friday
Recess / Break - a.m.	KEY	KEY	KEY	KEY	KEY
Recess / Break - a.m.	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate
Recess / Break 2 - a.m.	KEY	KEY	KEY	KEY	KEY
Lunch	KEY	KEY	KEY	KEY	KEY
Lunch	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate
Lunch	KEY	KEY	KEY	KEY	KEY
Recess / Break - p.m.	KEY	KEY	KEY	KEY	KEY
Recess / Break - p.m.	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate	Hayward Collegiate
Recess / Break 2 - p.m.	KEY	KEY	KEY	KEY	KEY

Specific times to be determined by KEY and Hayward Collegiate Charter School to optimize exclusive use



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The two charter schools sharing the site will also share the 2 sets of restrooms adjacent to rooms 9-12 and 13-16, as depicted in the site diagram attached as **Exhibit D**.

4. Contiguosness

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.” However, this provision is inapplicable since the District is offering the Charter School a single, contiguous site.

C. Preliminary Offer of Facilities – Other Terms and Conditions

1. Pro-Rata Share

In the event that Charter School occupies the facilities identified in this Final Offer for 2023-2024, Charter School’s annual payment to the District, under Cal. Admin. Code title 5, § 11969.7(f), will be a sum of no less than 3 percent of the revenue of the charter school under Education Code section 47613(b).

2. Miscellaneous

Should 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, similar to the form of the agreement attached as **Exhibit D**. The District reserves the right to propose or modify terms during the process of negotiating the agreement.

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

Thanks,

A handwritten signature in blue ink, appearing to read 'Allan Garde', is positioned above the typed name.

Allan Garde, Assistant Superintendent of Business Services
Hayward Unified School District