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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff
Kelly Krag-Arnold, Deputy Director, Office of Charter Schools

Meeting Date March 23, 2022

Subject Resolution No. 2122-0202 - Finding That EBIA Charter School Cannot Be Accommodated At A Single Site and Written Statement Of Reasoning; Adopting Issuance of Proposition 39 Facilities Offers and Directing Staff to Issue Written Final Offers in Compliance with Proposition 39

Ask of the Board Approval by the Board of Education of Resolution No. 2122-0202 - Finding That EBIA Charter School Cannot Be Accommodated At A Single Site and Written Statement Of Reasoning; Adopting Issuance of Proposition 39 Facilities Offers and Directing Staff to Issue Written Final Offers in Compliance with Proposition 39

Background California Education Code section 47614 requires school districts' facilities be shared fairly among all public school pupils, including charter school students. 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 The District must issue final offers of facilities to all eligible charter schools no later than April 1, 2022.

For the 2022-23 school year, the District received Proposition 39 facility requests from 10 charter schools. 4 of these schools have signed an in-lieu lease with the District and no longer require a Prop 39 offer, 2 of these schools anticipate signing an in-lieu lease with the District, at which point they will no longer require a Prop 39 offer, and 2 schools have agreed to an extension with the intent to withdraw from Prop 39. 2 of these schools, including East Bay Innovation Academy, that applied to Prop 39 must be issued final offers of facilities.

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 Staff Report appended to the Resolution.

As explained in the Staff Report, the District cannot accommodate a single site offer for East Bay Innovation Academy Charter School.

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

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

Anticipated revenue of approximately \$266,195, calculated as (\$9.54/sq ft) x (27,903 sq ft).

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

Attachment(s)

- Resolution No. 2122-0202
- Staff Report

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

Resolution No. 2122-0202

Finding That EBIA, a Charter School, Cannot Be Accommodated At A Single Site and Written Statement Of Reasoning; Adopting Issuance of Proposition 39 Facilities Offers 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 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, including East Bay Innovation Academy Charter School (“EBIA”);

WHEREAS, as provided in the Final Staff Report entitled “Process for Determining that EBIA Charter School Cannot Be Accommodated at a Single School Site for 2022-23 School Year” (“Staff Report”) which is attached hereto as Appendix A and incorporated by reference herein, the District cannot accommodate single site offers for EBIA;

WHEREAS, the District can provide EBIA with a multi-site offer of reasonably equivalent facilities; and

WHEREAS, the Staff Report recommends the District offer EBIA a final offer of facilities on or before April 1, 2022 at the following sites:

- Hillside Campus, 2369 84th Avenue, Oakland, CA 94605
- Montera Middle School, 5555 Ascot Drive, Oakland, CA 94611.

NOW, THEREFORE, BE IT RESOLVED, the Board of Education (“Board”) hereby allocates the following school sites to be the Final Offer of Facilities provided to EBIA for the 2022-23 school year under Proposition 39:

- Hillside Campus, 2369 84th Avenue, Oakland, CA 94605
- Montera Middle School, 5555 Ascot Drive, Oakland, CA 94611;

BE IT FURTHER RESOLVED, the Board hereby directs the Superintendent or designee to issue the Final Offer of Facilities to EBIA under Proposition 39 as described herein by the required deadline; and

BE IT FURTHER RESOLVED, for the reasons set forth herein and as further expressed in the Staff Report, the 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 EBIA at a single school site for the 2022-23 school year and that the Final Offer of

Facilities to EBIA minimizes 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 ____ day of _____, 2022, by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSED:

ABSENT:

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 _____, 2022.

Legislative File	
File ID Number:	22-0571
Introduction Date:	3/23/2022
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OAKLAND UNIFIED SCHOOL DISTRICT

Gary Yee
President, Board of Education

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Staff Report

Process for Determining that East Bay
Innovation Academy Charter School Cannot Be
Accommodated at a Single School Site for 2022-
23 School Year

Staff Report

Process for Determining That East Bay Innovation Academy Charter School (“Charter School” or “EBIA”) Cannot Be Accommodated at a Single Site for the 2022-23 School Year

Proposition 39:

Proposition 39 as its associated statutes and regulations (“Prop. 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, Prop. 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.

Prop. 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 Prop. 39, facilities shall be considered contiguous “if they are contained on the school site or immediately adjacent to the school site.” 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:

Prop. 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 Prop. 39 facilities requests from charter schools for the 2022-23 school year. In determining its allocation of reasonably equivalent facilities to the charter school, 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.

Multisite Offer

District staff first attempts to accommodate 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.

East Bay Innovation Academy (EBIA) is estimated to be eligible for **11 classrooms** plus specialized space. The charter school's entire in-District ADA cannot be accommodated at a single site.

Analysis of Charter School's Preferences

EBIA is entitled to 11 classrooms. 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

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 via a lease with the District that 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.

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.

Historical Context

Considering historical precedent, as shown in the table below, the number of final 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 final offers for 2022-23 are 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 Final Offers	Final Offers Including 3 or More Sites
2017-18	16	1	0
2018-19	17	10	3
2019-20	11	2	1
2020-21	14	1	0
2021-22	14	0	0
2022-23	10	2	0