

How to Acquire Facilities under Prop. 39

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Paul Minney says “hello” from State Board
meeting ☹️



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Goals Today

- Primer on Prop. 39
- Understand Implementation Issues
- Charter school experiences
- Strategies for negotiations
- Update on new SBE regulations
- Update on Prop. 39 litigation
- Questions and responses



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Introduction

- Initiative passed November 2000
- Two major parts:
 - Lowered vote for bonds to 55%
 - Created obligation to provide facilities to charter schools
- Obligation to charter schools effective November 2003



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Intent of Prop. 39

- “...public school facilities should be shared fairly among all public school pupils, including those in charter schools.”
- “Students in public charter schools should be entitled to reasonable access to a safe and secure learning environment.”



School District Obligation

- Provide “reasonably equivalent” facilities to accommodate in-district students
- Facilities must be contiguous, furnished and equipped
- Make reasonable efforts to provide facilities where CS wishes to locate
- Do not move CS unnecessarily
- Provide deferred maintenance to facility



School District Rights

- Cannot be required to use unrestricted general fund revenue to rent, buy or lease facilities
- May charge a pro rata share of facilities costs
- CS must conduct routine maintenance
- Entitled to reimbursement for over-allocated space



Charter School Qualifications

- CS operating within district
- Providing education to in-district students or have identified 80 meaningfully interested in-district students
- Classroom based ADA only
- Timely request for facilities each year
- Projected 80 ADA of in-district students



Four Major Activities

- Facilities Requests
- ADA challenge, Response
- Preliminary Proposal, Response, and Final Offer
- Negotiations of Facilities Use Agreement



Facilities Requests

- Reasonable projections of ADA (in-district and total, by grade level and district school site) based on current ADA and expected changes
- Description of methodology for projections
- “if relevant, documentation of the number of in-district students meaningfully interested in attending that is sufficient for the district to determine the reasonableness of the projection...”
 - Relevant when: (a) CS not yet open; or (b) CS projects “substantial increase” in ADA.



Facilities Requests Cont.

- Include operational calendar
- Information on district school site and/or geographic area where CS wishes to be located
- Information on educational program needs as relevant to facilities
- May be required to submit on CDE form or other form created by district
- See Sample MYM Form – will be updated for 2010/2011 SY Request



School District ADA Challenge

- School district reviews projections of ADA and express, in writing, any objections and state ADA SD considers reasonable on or before by Dec. 1.
 - If no written timely objection – ADA not subject to challenge.
- On or before Jan. 1, CS shall respond, in writing, to SD objections and proposed ADA; CS shall reaffirm or modify its previous projections.
 - If no written timely response – SD ADA projection not subject to challenge.
 - Additional documentation?



Preliminary Proposal

- On or before Feb. 1 school district must provide preliminary proposal to include:
 - Projections of ADA
 - Location of site and arguably teaching stations, specialized and non-teaching stations allocation
 - Conditions pertaining to use of space – including draft use agreement
 - Pro rata share amount – description of methodology
 - List and description of comparison group schools
 - Description of differences between preliminary proposal and CS request



Response to Preliminary Proposal

- On or before March 1 the CS shall respond in writing expressing any concerns, addressing any differences between the preliminary offer and the request, and/or making counter proposals



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Final Offer

- Due by April 1st in writing
- Outlines teaching station, specialized and non-teaching station space for exclusive use and/or shared use
- The specific location of the space
- For shared use, the arrangements for sharing
- In-district ADA used for allocation, and explanation if different from CS's projection
- Pro rata share amount and payment schedule
- All conditions pertaining to use of space
- Response to CS concerns and/or counter proposals



Response to Final Notification

- CS must respond by May 1 or 30 days later
- District must provide furnished and equipped space 10 working days prior to instruction – for good cause may reduced to 7 working days
- Parties must negotiate agreement for use and payment of space (including insurance, maintenance etc.)



Preliminary & Final Proposal – Typical Deficiencies

- Late preliminary/final proposals
- No comparison group established
- District claim of “no space”
- Aggregating/fractionalizing teaching station offer
- Non-contiguous offers/grade level considerations
- Old/worn down facilities
- Offer of facilities far away from student population
- Insufficient specialized and non-classroom space allocation
- Excessive pro rata share amount
- Over-reaching facilities use agreement as condition
- 3% oversight fee in addition to pro rata share
- Insufficient documentation claimed/unilateral ADA reduction



Typical Facilities Use Agreement Provisions

- Furnishings, Fixtures & Equipment
- Utilities/telecommunications
- Over-allocation fees
- Pro rata share and other fees
- Oversight fees
- Maintenance and Operations
- Condemnation/destruction
- Exclusive use provisions
- Recitals
- Share use provisions
- ADA allocation provisions
- Term/renewal
- Termination
- Civic Center Act



Typical Facilities Use Agreement Provisions Cont.

- Installation of improvements
- Condition of Property/ liability for compliance with laws
- Environmental hazards
- Title to property
- Insurance (see subsequent slides)
- Finger printing
- Indemnification
- Full Satisfaction of Prop. 39
- Dispute resolution
- Attorney's fees
- Access
- Notice



Facilities Use Agreement – Typical Deficiencies

- Pushing legal compliance onto charter school – provided “as is”
- Civic Center control by District
- Not full school year use
- Unilateral indemnification
- Excessive insurance
- Termination for breach w/o notice or upon revocation/non-renewal
- Oversight plus pro-rata share
- No signage rights
- Unilateral atty’s fees
- No dispute resolution provision
- Destruction provisions don’t provide alternative space
- No default for District breach
- Mandating shared use
- Incorporation of District policies (sometimes contrary to Prop. 39)
- Requiring school to comport with consent decrees
- No recognition of charter school’s property rights



Changes to SBE Prop. 39 Regulations

- Effective with 2009/2010 facilities process
- Express allowance for non-classroom ADA qualification
- Improved definition of “Contiguous”
- Expanded F&E definition
- Clarification of grade level comparison group
- Clarification of comparison group “condition” criteria
- Addition of conversion school provisions
- Clarifications on the pro rata share calculation
- Requirement to post pro rata share on CDE website
- Clarification on pro rata share and oversight fees



Changes to SBE Prop. 39 Regulations (cont.)

- Procedures and timelines revised:
 - New school petition timelines changed
 - New and ongoing schools submittal due on or before Nov. 1
 - Clarifies supporting documentation obligation
 - District to respond to projections by Dec. 1
 - CS must respond by Jan. 2
 - Preliminary offers are due by Feb. 1 (expanded offer requirements include all conditions on use of space and the comparison schools).
 - CS response due March 1
 - Final offers due by April 1 (must include written response to CS concerns).
- Facilities must be made available 10 days before instruction
- Insurance obligations clarified
- Requires reciprocal hold-harmless
- Clarifies district obligation to maintain legal compliance
- Voluntary mediation of disputes



Proposition 39 Litigation Overview

- Sequoia Union High School District v. Aurora Charter High School (2003)
- Allianza Charter School v. Pajaro Valley Unified School District (2004)
- Renaissance Academy v. Los Angeles Unified School District (2005)
- Environmental Charter High School v. Centinela Valley Union High School District (2004)
- Bullis Charter School v. Los Altos School District (2005)
- Ridgecrest Charter School v. Sierra Sands Unified School District (2005)
- California Charter Schools Association et al v. San Diego Unified School District (2006)
- California Charter Schools Association, Green Dot, PUC et al v. LAUSD (2008)
- New West v. LAUSD (2008)
- CSBA v. SBE (Prop. 39 regulations)(2008)
- MATES v. Conejo Valley USD (2009)



MIDDLETON, YOUNG & MINNEY, LLP

Questions and Responses

Thank you for attending...



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