

# How to Acquire Facilities under Prop. 39?

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# Goals Today

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

# 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

# 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 ID 80 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
- Preliminary Proposal
- Negotiations
- Final Notification

# Facilities Requests

- Reasonable projections of ADA (in-district and total, by grade level and district school site)
- Description of methodology for projections
- “if relevant, documentation of the number of in-district students meaningfully interested in attending...”

# Facilities Requests Cont.

- Include instructional calendar
- Info on geographic area wish to be located
- Info on educational program relevant to facilities
- May be required to submit on CDE form or other form created by district

# Preliminary Proposal -- Process

- District must determine reasonably equivalent facilities
  - Develop comparison group of schools (similar grade level, majority of students would have attended)
  - Determine teaching stations, specialized and non-teaching stations allocation (capacity)
  - Assess conditions of facilities

# Preliminary Proposal

- District must provide opportunity to respond to concerns re projection prior to preliminary proposal
- Outlines proposed space to be allocated
- Outlines pro rata share amount
- Provide reasonable opportunity to review and comment before final offer

# Negotiations Process\Issues

- Timelines and procedures may be changed by agreement
- How to handle out of district students
- In lieu of agreements
- Multi year agreements
- Other services arrangements/costs (e.g., custodial, grounds etc.)

# Final Notification

- Due by April 1st
- Outlines teaching station, specialized and non-teaching station space for exclusive use and/or shared use
- In-district ADA assumption of notice and why if different from projection
- Pro rata share amount and payment schedule

# **Final Notification cont.**

- CS must respond by May 1 or 30 days later
- District must provide furnished and equipped space 7 days prior to instruction
- 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 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

- Recitals
- Exclusive use provisions
- Share use provisions
- ADA allocation provisions
- Term/renewal
- Termination
- Civic Center Act
- Furnishings, Fixtures & Equipment
- Utilities/telecommunications
- Over-allocation fees
- Pro rata share and other fees
- Oversight fees
- Maintenance and Operations
- Condemnation/destruction
- 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
- Contiguous definition improvement
- Expanded FF&E definition
- Grade level comparison group clarification
- Clarification on 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 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)

**Questions and Responses**

**Thank you for attending....**