

DRAFT 03-18-22

April 1, 2022

VIA E-MAIL - DAVE.FEHTE@CLAYTONVALLEY.ORG

Dave Fehte, Interim Executive Director
Clayton Valley Charter High School
1101 Alberta Way
Concord, CA 94521

Re: Mt. Diablo Unified School District/Clayton Valley Charter High School
Proposition 39 Facilities Request for 2022-2023
Final Offer of Facilities

Dear Mr. Fehte:

Mt. Diablo Unified School District ("District") makes this Final Facilities Offer to the Clayton Valley Charter High School ("Charter School") for the 2022-2023 school year under Cal. Admin. Code, title 5, §11969.9(h).

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 Facilities Offer complies with all of the requirements of Proposition 39 and Cal. Admin. Code, title 5, §11969.9(h).

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 November 1, 2021. The Charter School's Request for Facilities was based upon a projected in-District ADA of 2050.10. The District issued a Preliminary Offer of Facilities on a projection of 2050.10 in-District classroom ADA on February 1, 2022. The Charter School, in a February 28, 2022 letter, stated that "[o]ther than the radio station issue, CVCHS agrees to accept the current school site and does not request an allocation of additional space to address any issues of reasonable equivalence."

B. 2022-2023 Final 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 ADA of 2050.10 in-District students.

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

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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.

The District must first identify the high school attendance area in which the largest number of in-District Charter School students resides. Education Code §17070.15(b) defines “attendance area” as “the geographical area serving an existing high school and those junior high schools and elementary schools included therein.” Based on the information provided in the Charter School’s facilities request, the District has determined that the greatest number of Charter School students lives within the Concord High School attendance areas.

2. Facilities Offered

The District offers the Charter School facilities at the following location: 1101 Alberta Way, Concord, CA 94521, at the configuration set forth in the Final Offer of Facilities for the 2021-2022 school year, with the exceptions set forth below.

- 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:

	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 resources	C.C.R., tit. 5, § 11969.3(c)(1)(D)
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)

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The District has considered capacity, condition, location, and other relevant factors, using as a point of reference the comparison group schools identified above to allocate a facility to the Charter School that meets Proposition 39 standards for “reasonable equivalence.” A copy of that analysis is attached as **Exhibit A**.

ii. Capacity

Classroom Space

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.”

Specialized Teaching Space

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.

Non-Teaching Space

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 following inventory of teaching space, specialized teaching space, and non-teaching space, taken from **Exhibit B**, shows the amount of space allocated to the charter school, relative to the comparison group schools, by two measures: total square footage and square footage per ADA.

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CONCORD 1,142.70 ADA		CVCHS 2050.10 ADA			
Classroom	SF	Classrooms	SF	Classrooms	SF
201	822	A1	1,075	F2	866
202	814	A2	1,075	F4	859
204	814	A3	1,321	F6	859
205	814	A4	1,065	H5	960
206	814	A5	1,321	H6	960
207	822	A7	1,075	H7	960
209	814	A9	1,075	H9	960
210	814	B1	828	I1	960
211	814	B2	828	I2	960
212	822	B3	828		
301	814	B4	828		
302	814	B5	828		
303	814	B6	828		
304	822	B7	828		
305	807	B8	828		
306	814	B9	828		
308	814	B10	828		
309	814	B11	828		
310	822	B12	954		
311	807	B13	836		
312	814	C2	836		
313	814	C4	828		
401	754	C6	828		
402	661	C7	828		
403	835	C8	828		
404	754	C9	828		
406	835	C10	828		
507	1,163	C11	836		
512	814	C12	828		
513	822	C14	836		
P1	960	D2	1,427		
P2	960	D4	1,420		
702	960	E4	828		
703	960	E5	828		
704	960	E7	828		
707	960	E9	828		
708	960	E11	828		
709	960	E13	836		
Total (38)	32,252	Total (47) 41,957			
1142.7 ADA	30.07 ADA/Room	2050.10 ADA 43.61 ADA/Room			

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Science		Science	
Room	SF	Room	SF
503	1,171	A8	1,125
601	842	A10	835
602	1,143	D1	1,243
603	1,143	D3	1,243
604	1,271	D5	1,243
605	1,324	D6	1,243
606	1,203	D8	1,250
607	1,203	E6	828
608	1,274	E8	1,243
		E10	1,243
Total (9)	10,574	Total (10)	11,496
1142.7 ADA	9.25 SF/ADA	2050.10 ADA	5.60 SF/ADA

Art/Music		Art/Music	
Room	SF	Room	SF
208	1,624	C3	1,065
504	1,621	M1	1,620
505	814	M2	3,240
506	822	M3	1,620
701	1,920	S1	1,760
Band	2,040	S5	2,208
Choral	1,040		
Total (7)	9,881	Total (6)	11,513
1142.7 ADA	8.65 SF/ADA	2050.10 ADA	5.61 SF/ADA

SPED		SPED	
Room	SF	Room	SF
203	814	C1	836
307	1,171	E1	836
405	661	E2	836
501	814	E3	828
502	814	F8	859
509	691	F10	859
510	465	H4	960
511	465	H8	96
514	342		
705	960		
706	960		
Total (11)	8157	Total (8)	6110
1142.7 ADA	7.14 SF/ADA	2050.10 ADA	2.98 SF/ADA

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Computer/Tech		Computer/Tech	
Room	SF	Room	SF
508	1,171	A6	1,124
804	1,749	S4	3,864
Total (2)	2,920	Total (2)	4,988
1142.7 ADA	2.56 SF/ADA	2050.10 ADA	2.43 SF/ADA

Other		Other	
Room	SF	Room	SF
801 (Woodshop)	3,090	See "NSHS" Below.	
803 (Leadership)	2,206		
609/NI	361		
Total (2)	5,657	Total	
1142.7 ADA	4.95 SF/ADA	2050.10 ADA	1.42 SF/ADA

TLC (non-District)¹	
Room	SF
712	960
713	960
714	960
Total (3)	2880
Average	960
1142.7 ADA	0.00 SF/ADA

2050.10 ADA 0 SF/ADA

Weight Room		Weight Room	
Room	SF	Room	SF
802	3,995	F12	859
Total (2)	3,995	F14	866
1142.7 ADA	3.50 SF/ADA	Total (2)	1725
		2050.10 ADA	.84 SF/ADA

NSHS (non-District)²		NSHS (provided to CVCHS)	
Room	SF	Room	SF
710	960	H1	960
711	960	H2	960
		H3	960
Total (2)	1920	Total (3)	2880
1142.7 ADA	0.00 SF/ADA	2050.10 ADA	1.40 SF/ADA

¹ "Transitional Learning Center, not a part of Concord High School
² "Necessary Small High School" (now Summit High (Continuation) School).)

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Auto		Auto	
Room	SF	Room	SF

805	4,090
1142.7 ADA	3.58 SF/ADA

S6	4,128
2050.10 ADA	2.01 SF/ADA

Bath/Boiler		Bath/Boiler	
Room	SF	Room	SF

Bath	2,052
1142.7 ADA	1.80 SF/ADA

Bath	2,300
Boiler	1,656
Total (2)	3,956
2050.10 ADA	1.92 SF/ADA

Staff		Staff	
Room	SF	Room	SF

300	319
314	360
315	144
316	108
610	301
612	301
613	308
614	301
Total (8)	2142
1142.7 ADA	1.87 SF/ADA

C5	1,420
2050.10 ADA	.69 SF/ADA

Administration		Administration	
Room	SF	Room	SF

507A	162
515	114
516	114
517	114
Admin	4,601
Total (4)	5,105
1142.7 ADA	4.47 SF/ADA

	6,017
2050.10 ADA	2.93 SF/ADA

Gymnasium		Gymnasium	
Room	SF	Room	SF

Locker B	7,774
Locker G	5,400
Gym	12,296

Large	10,290
Little	5,400
Lck/B	7,583
Lck/G	5,178

Total (3)	25,470
1142.7 ADA	22.29 SF/ADA

Total (4)	28,451
2050.10 ADA	13.87 SF/ADA

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Kitchen		Kitchen	
Room	SF	Room	SF
	2,756		2,600
1142.7 ADA	2.41 SF/ADA	2050.10 ADA	1.26 SF/ADA

Library		Library	
Room	SF	Room	SF
400	3,936		4,356
1142.7 ADA	3.44 SF/ADA	2050.10 ADA	2.12 SF/ADA

MUR		MUR	
Room	SF	Room	SF
	8,056		6,775
1142.7 ADA	7.04 SF/ADA	2050.10 ADA	3.30 SF/ADA

The District evaluated the teaching station, specialized teaching space, and non-teaching space received by the Charter School against the amount available to students at the comparison group school by two measures: total classrooms/square footage, and classrooms/square footage per ADA. Because the charter school is “a charter school established at an existing public school site pursuant to Education Code [section] 47605(a)(2),” the District has not considered moving it, or offering facilities, at another site, and the charter school acknowledges that “the District will make available the Charter School’s existing school site.” (Request, p. 8.) Therefore, the District expects that continued allocation of the charter school’s existing facilities will meet the District’s obligations under Proposition 39.

The facilities offered to the Charter School in this Final Offer are depicted in the diagram attached as **Exhibit C**, as set forth above, and including furnishings and equipment. The District confirms the Charter School’s agreement not to use the radio studio (Room M-4) and the attached corollary space, to which the District holds the right to exclusive use and access, and removes Room S-2 from the previously-stated restriction.

3. 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. Final Facilities Offer – Other Terms and Conditions

1. Miscellaneous

This offer of facilities, should it be accepted, is valid only for the 2022-2023 school year and may not be approved for allocation in future years.

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

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District's facilities allocation. A copy of a proposed agreement is attached as **Exhibit D**. The District provides this proposed agreement without prejudice to its right to propose or modify terms during the process of negotiating the agreement.

2. Pro-Rata Share

In the event that the Charter School occupies the facilities identified in this Final Offer for 2022-2023, Charter School's annual payment to the District, under Cal. Admin. Code title 5, § 11969.7, will be a sum of no less than that set forth in **Exhibit E**. The Charter School's February 28, 2022 letter did not contest the pro-rata share, and therefore the Charter School has waived any objections to the District's calculations.

3. Response to Charter School February 28, 2022 Letter

Under Cal. Admin. Code tit. 5, § 11969.9(h), the District shall "review[] any concerns and/or counter proposals made by the charter school" and provide a "response to the charter school's concerns and/or counter proposals (if any)."

The Charter School's February 28, 2022 response to the Preliminary Offer reuses prior boilerplate arguments, and contains a number of errors and misstatements. For example, the Charter School falsely claims that "the District is required to perform an analysis of the condition of the CVCHS site compared to the comparison high school each year; the Preliminary Offer does not contain this analysis." (February 28, 2022 letter, p. 2.) However, the Charter School is not entitled to simply ignore the "condition" analysis contained in Exhibit A of the Preliminary Offer to manufacture this false argument.

The Charter School also cites "[w]ork on the Northgate campus" in support of its reasonable equivalence argument. (February 28, 2022 letter, p. 2.) However, the District did not use Northgate High School as a comparison group school in the Preliminary Offer, so the Charter School's reference to this site is irrelevant.

In terms of capacity, the Charter School, in its February 28, 2022 letter, stated that "[o]ther than the radio station issue, CVCHS agrees to accept the current school site and does not request an allocation of additional space to address any issues of reasonable equivalence."

4. Conclusion

Cal. Admin. Code tit. 5, § 11969.9(i) provides as follows:

The charter school must notify the school district in writing whether or not it intends to occupy the offered space. This notification must occur by May 1 or 30 days after the school district notification pursuant to subdivision (h), whichever is later. The charter school's notification can be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the school district that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the school district by this deadline that it intends to occupy the offered space, then the space shall remain available for school district programs and the charter school shall not be entitled to use facilities of the school district in the following fiscal year.

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

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP

/SIGNATURE/

John R. Yeh

JRY: HLH
Enclosures
cc: Adam Clark, Ed.D., Superintendent
Mt. Diablo Unified School District