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January 10, 2017

**BY EMAIL AND HAND DELIVERY**

Mr. Steve Zimmer, Board President  
Board of Education  
Los Angeles Unified School District  
333 South Beaudry Avenue, 24th Floor  
Los Angeles, CA 90017

Re: LAUSD Board of Education Meeting January 10, 2017, Agenda Item 12: Board of Education Report No. 297 - 16/17, Proposition 39 Charter Facilities Compliance for the 2017-2018 School Year

Dear Board President Zimmer and Members of the Board of Education:

On behalf of our client, the California Charter Schools Association (“CCSA”), this letter comments on the recommendations and proposed findings set forth in Board Report Number 297 - 16/17, Proposition 39 Charter Facilities Compliance for the 2017-2018 School Year (“Board Report”), which the Board will consider at today’s meeting.

CCSA continues to be disappointed in the number of multi-site offers recommended by LAUSD staff. For the 2017-18 school year LAUSD is recommending multi-site offers to 22 charter schools—close to 25 percent of the 94 schools that applied for facilities pursuant to Proposition 39. In addition, four of those schools are expected to operate over three, *and even four*, campuses, creating even more significant burdens to those schools and the public school students they serve. But most significantly, Staff’s recommendations and proposed findings still do not comply with Prop. 39 law. We respectfully request the Board reject the recommendations and proposed findings set forth in the Board Report and direct Staff to take all actions necessary to comply with Proposition 39 and minimize the number of multi-site offers made to charter schools for the 2017-2018 school year.

As was the case with last year’s multi-site findings, the Board Report fails to provide the Board with any meaningful information to substantiate its recommendations. While the Board Report includes a “Staff Report” for each of the 22 proposed multi-site offers, the Staff Reports and their proposed findings are virtually identical for each school and just about identical to the findings from last year. They are boilerplate, not the required meaningful analysis of the unique aspects of the individual charter school’s Proposition 39 applications.

It is evident that the proposed actions do not comply with LAUSD's legal obligations for many reasons, including those outlined below. Accordingly, we want to remind the Board that it has a mandatory legal obligation pursuant to Proposition 39 to fairly share its facilities with the Los Angeles public school students served by public charter schools.

1. **Staff's Recommendations Misstate LAUSD's Legal Obligations.** The proposed actions use the legally inadequate assumptions that LAUSD only needs to provide facilities to a charter school that LAUSD deems "available" and that hypothetical disruption to LAUSD's programs greatly outweighs the actual disruption to charter school programs by splitting the charter school up onto multiple sites. The courts have specifically rejected that faulty legal assertion. (*See, e.g., California School Boards Association v. State Board of Education* (2010) 191 Cal.App.4th 530; *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986.)

Proposition 39 is clear that "[e]ach 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." (Ed. Code, § 47614(b), emphasis added.) A school district's actions "in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act *to equalize the treatment of charter and district-run schools with respect to the allocation of space between them.*" (*Ridgecrest*, 130 Cal.App.4th at 1002, emphasis added.)

LAUSD must equitably share space, not just look for "available" space, even if that means there will be some actual disruption to school district students and programs. The self-serving Staff Reports fail to comply with this critical legal requirement.

2. **Recommended Offers are Based on an Improper Methodology.** As the Board is aware, the California Supreme Court ruled, on April 9, 2015, that LAUSD's use of "norming ratios" to allocate classrooms to charter schools violates the Prop. 39 implementing regulations. (*Cal. Charter Schools Ass'n v. Los Angeles Unified School Dist.* (2015) 60 Cal.4th 1221 (*CCSA v. LAUSD*)). The Supreme Court held that the law requires LAUSD to follow three steps in responding to a charter school's Prop. 39 request for classroom space:
  - a. First, LAUSD must identify comparison group schools as section 11969.3(a) of the Prop. 39 implementing regulations prescribes;
  - b. Second, LAUSD must count the number of classrooms in the comparison group schools *using the section 1859.31 inventory* and then adjust the number to reflect those classrooms "provided to" students in the comparison group schools in accordance with the Court's directions; and

- c. Third, LAUSD must use the resulting number as the denominator in the ADA/classroom ratio for allocating classrooms to charter schools based on their projected ADA.

(*CCSA v. LAUSD*, 60 Cal.4th at 1241.)

Under the Supreme Court's mandate in *CCSA v. LAUSD*, LAUSD was required change its process. Yet the Staff Reports continue to state for the 2017-2018 multi-site recommendations, as they did back in 2015-2016, before the Supreme Court's decision, that "staff applied standard formulae for the usage of classrooms in order to generate an objective and uniform assessment of the amount of classroom space available at District school sites." It is evident that Staff's Recommendations continue to violate the law by failing to comply with the requirements of Prop. 39 as mandated by the Supreme Court in *CCSA v. LAUSD*.

3. **The 2017-2018 Multi-Site Offers Are Not Transparent or Readily Verifiable.** The California Supreme Court in *CCSA v. LAUSD* also specifically found the Prop. 39 implementing regulations require LAUSD to comply with "a specific, *transparent* method for deriving the ADA/classroom ratio to be applied in allocating classrooms to charter schools, *thereby allowing charter schools and the public to readily verify*" whether such compliance occurred. (*CCSA v. LAUSD*, 60 Cal.4th at 1236, emphasis added.) Staff continued to fail comply with the transparency requirement of *CCSA v. LAUSD*. The 2017-2018 Staff Reports, which are virtually identical for each school, and just about identical to the 2016-2017 staff reports, do not allow CCSA, the public, or the Board to verify, let alone to "readily verify," whether Staff's recommendations comply with Prop. 39, the Prop. 39 implementing regulations, or the Supreme Court's mandate.
4. **The Conclusions Regarding Contiguity Violate the Implementing Regulations and Lack Factual Support.** The Implementing Regulations state that "facilities are 'contiguous' if they are contained on the school site or immediately adjacent to the school site." (Cal. Code Regs., tit. 5, § 11969.2(d).) The Implementing Regulations provide only a narrow exception. If the charter school genuinely cannot be accommodated on any single campus, only then do "contiguous facilities" also include "facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety." (*Id.*) In addition, the Regulations make clear that "[i]n evaluating and accommodating a charter school's request for facilities pursuant to Education Code section 47614, *the charter school's in-district students must be given the same consideration as students in the district-run schools.*" (*Id.*, emphasis added.)

In yet another violation of law, the Board Report ignores this requirement. The Staff Reports assert that the 22 proposed multiple-site offers, are "contiguous" because LAUSD is large. Specifically, the findings state that "[b]ecause of the short distance between the Recommended Co-Locations, they are contiguous facilities in a school district spanning 710 square miles and serving over 27 cities." The size of the

District is not relevant and does not transform non-contiguous facilities offers into contiguous offers.

5. **The Proposed Actions Do Not Account for Charter School Student Safety and Make Egregious Assumptions About the Charter School Community.** As was the case in both 2015-2016 and 2016-2017, the Staff Reports still contain self-serving statements with an unsubstantiated parade of horrors that focuses *entirely* on hypothetical impacts to students attending LAUSD-run schools, including, but not limited to, increased drop-out rates and assertions that accommodating charter schools on a single campus will forcibly displace students “who themselves or whose parents are tied to a particular gang” and “would potentially breed gang warfare and violence.” In violation of law, the Staff Reports still make no attempt to consider charter school student safety when a charter school is forced to occupy more than one campus. Rather the Staff Report makes baseless assumptions about the families that choose to send their children to public charter schools. For instance, the Staff Reports assert, without any evidence, that families that send their children to charter schools must have secured a means of transporting their child to school, and that “[a]s charter school parents have made a decision to place their child in a school outside of their neighborhood school, they must have weighed the safety implications of this decision for their child.”

By making multi-site offers for facilities miles apart, the Board Report’s recommendations and proposed findings did not assess the impact to charter school students’ safety or charter school staff and educational programs by splitting the charter schools across distant campuses. The Staff Reports make these omissions notwithstanding obvious and significant burdens of multi-site operations including additional personnel costs to operate multiple sites, the inability to hold school-wide events, and forcing students, parents and staff to travel between sites.

The Implementing Regulations are clear that “[i]n evaluating and accommodating a charter school’s request for facilities pursuant to Education Code section 47614, the charter school’s in-district students *must be given the same consideration as students in the district-run schools. . . .*” (Cal. Code Regs., tit. 5, § 11969.2(d), emphasis added.) In violation of that express mandate, Staff has failed to demonstrate that it genuinely considered anything other than LAUSD’s own interest and students in offering charter schools space at multiple, and in some instances distant, campuses. These proposed actions violate Proposition 39, as well as the equal protection rights of public school students attending charter schools.

6. **There Is No Substantive Analysis of the Comparison Schools and So The Proposed Actions Fail to Demonstrate “Reasonable Equivalency.”** The proposed actions make cursory conclusions, unsupported by facts or analysis (such as a comparison group schools analysis), that the multi-site offers are “reasonably equivalent” to the facilities public school students attending LAUSD-run schools enjoy. The Staff Reports merely assume, without any factual details, that “a significant majority of the District’s schools share reasonably equivalent

conditions...” Given the absence of any factual analysis of the actual conditions and capacities at comparison group schools, the Staff Reports do not comply with LAUSD’s legal obligations.

7. **The Board Report and Staff Reports Fail to Demonstrate Why Charter Schools Could Not Be Co-Located at the Requested Sites.** Given the cookie cutter nature of the Staff Reports and proposed findings, which are much like the prior year’s Staff Reports and proposed findings, Staff’s proposed actions once again make no effort to offer charter schools facilities at the requested facilities, and make no meaningful attempt to explain why the charter school request could not be met. There is no meaningful discussion of seat capacity compared to seats occupied at the desired site, and there is no reference to current or projected enrollment at the requested sites or any other significant analysis. Accordingly, there is no evidence at all upon which this Board can make the findings that Staff is proposing.
  
8. **The Staff Reports Refer to Extraneous Documents that Are Not Readily Accessible.** The Staff Reports attempt to justify many conclusions by referring to studies or websites that have not been provided to this Board, the public, or the charter schools impacted by the proposed actions. Without Staff presenting that information to the Board and making it publicly available, it does not constitute evidence before this Board and cannot form any basis for supporting the proposed actions.

We respectfully request the Board to reject the unlawful multi-site offers and direct LAUSD Staff to make facilities offers that comply with Proposition 39 and the Implementing Regulations.

Very truly yours,



James L. Arnone  
of LATHAM & WATKINS LLP

cc: David M. Huff, Esq., Orbach Huff Suarez & Henderson LLP  
Phillipa L. Altmann, Esq., CCSA