

Acquiring Facilities under Prop. 39

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Goals Today

- Primer on Prop. 39
- Understand how to request Prop. 39 facilities
- Strategies for negotiations
- 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



Intent of Prop. 39

- Education Code Section 47614.
- “...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.”



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School District Obligation

- Make “reasonably equivalent” facilities available to accommodate in-district students
- Facilities must be contiguous (located on one site or immediately adjacent). If district does not allocate CS a contiguous facility, district governing board must adopt written statement of reasons explaining why CS can’t be accommodated at a single site.
- Facilities must be “furnished and equipped” (expanded definition).
- Make reasonable efforts to provide facilities where CS wishes to locate
- Do not move CS unnecessarily
- Provide deferred maintenance to facility



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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, plus district's actual costs of oversight up to 1% of CS's revenue (or 3% if no pro rata share charged)
- CS must conduct routine maintenance
- Entitled to reimbursement for over allocated space



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Charter School Qualifications

- CS operating within district
- Project at least 80 ADA of in-district students
- Classroom based ADA only, but school district may choose to include non-classroom based ADA
- Timely request for facilities each year (on or before Nov. 1)
- NEW Schools: charter must also be submitted on or before Nov. 1, and charter must be approved before March 15.



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Five Major Activities

- Facilities Request
- Preliminary Proposal and CS Response
- Negotiations
- Final Offer of Facilities and CS Response
- Facilities Use Agreement Negotiations



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Plan Ahead!

- Plan before you make your request:
 - Nothing beats a good working relationship with the district
 - Be aware of facilities that may close in the future, bond campaigns (past and future), or unique program needs that the district may have.
 - Your knowledge of the district's history, timing and needs may help you get more than the statutory minimum.



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Plan Ahead!

- Gathering signatures of meaningfully interested students and increasing your wait list may help justify larger space to grow.
- Understand your in-district and out-of-district student needs.
- Know your comparison group of schools and, if possible, their condition and capacity. The facility that you are entitled to under Prop. 39 must be “reasonably equivalent” to those in your comparison group.



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Strategies

Approach Your Prop 39 Request as a Negotiation

- Look for ways that your school can bring something to the table that is added value to your school district. (e.g., Prop. 1D or other funds for buildings and/or improvements)
- Know the number of in-district students that the school district must house and the number of students that are out of the school district that you would like to house.
- Out-of-district students may bring “eligibility” from other school districts that your school district can convert into additional facility grants.



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Strategies

Approach Your Prop 39 Request as a Negotiation

- The school district may suffer from “declining enrollment” and decreased facility eligibility.
- Selling/leasing of surplus facilities is a complex legal process. Your use of a facility may allow the school district to retain its facility and to keep it maintained for future growth.
- Know what your district has done with other charter schools.
- Know what other school districts are doing.



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Facilities Requests

- Are due to the district on or before November 1, for both new and existing schools
- NEW SCHOOLS: charter petition must also be submitted on or before November 1.
- Seek legal counsel to review your requests before it is submitted! (CCSA is coordinating pro bono legal review of requests in certain regions.)



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Facilities Requests (cont'd)

- Facilities requests consist of:
 - Reasonable projections of ADA (both in-district and out, classroom based and non-classroom based, by grade level and district school site)
 - Description of methodology for projections
 - “if relevant (for a school not yet operating or school projecting a “substantial increase” in in-district ADA), documentation of the number of in-district students meaningfully interested in attending...”



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Facilities Requests (cont'd)

- Facilities requests must consist of (cont'd):
 - CS's operational calendar
 - Info on school site and/or general geographic area wish to be located
 - Info on educational program relevant to facilities
- You may be required to submit on CDE form or other form created by district - find out if your district has a policy and/or requires a form.



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Facilities Requests (cont'd)

- Let's take a look at our template request



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You submitted your request - now what?

- Under revised regulations, district must respond in writing with any concerns about CS's ADA projections on or before December 1, otherwise CS's projections are deemed valid.
- CS has until on or before January 2 to respond in writing to district's concerns. CS must modify or reaffirm its projections.



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Preliminary Proposal

- District must make preliminary proposal of facilities to CS on or before Feb. 1.
- District must do some homework first to determine reasonably equivalent facilities:
 - Develop comparison group of schools (district-operated schools of similar grade levels in the HS attendance area the majority of CS students would have attended)
 - Determine teaching stations, specialized and non-teaching stations allocation (capacity)
 - Assess conditions of facilities in comparison group



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Preliminary Proposal

- Proposal must include, at a minimum:
 - Projections of in-district ADA on which proposal is based;
 - Specific location(s) of space;
 - All conditions pertaining to use of space, including draft Facilities Use Agreement (FUA);
 - Pro rata share amount;
 - Methodology used to determine pro rata share;



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Preliminary Proposal

- Proposal must include, at a minimum (cont'd):
 - List and description of comparison group schools used in developing proposal; and
 - Description of differences between proposal and request.
- CS must respond to preliminary proposal on or before March 1 and may make counter-proposals.



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What is “pro rata share?”

- Pro rata share may not exceed the following calculation:
(The district’s facilities costs paid for with unrestricted revenues from district’s general fund,
Divided by:
The total number of square feet of district space)
Multiplied by:
The total number of square feet allocated to the CS



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What is “pro rata share?” (Cont’d)

- This calculation is complex. “Facilities costs” is a defined term that includes certain costs and excludes others.
 - Generally includes SD contribution to DM account
 - Does not include SD costs for RRGGM
 - If over \$1.00/sq. foot probably miscalculated.
- All CS in district must be charged same per-square-foot-charge/based upon current year expenditures
- CS must now submit their per-square-foot-charge on CDE website.



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Negotiations Process/Issues

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



Final Notification

- Due on or before April 1st
- Final Notification must identify:
 - teaching station, specialized and non-teaching station space for exclusive use and/or shared use
 - For shared space, arrangements for sharing
 - District's In-district ADA assumption and why if different from CS's projection.



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Final Notification (Cont'd)

- Final Notification must identify (cont'd)
 - Response to CS's concerns and counter-proposals, if any
 - Pro rata share amount and payment schedule
 - All conditions pertaining to the space
 - Specific location of space
- CS must respond by May 1 or 30 days later



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Final Notification (Cont'd)

- District must provide furnished and equipped space 10 working days prior to instruction (was 7 days) - can be 7 working days for "good cause"
- Parties must negotiate agreement for use and payment of space (including insurance, maintenance etc.)



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Preliminary & Final Proposal - Typical Deficiencies

- Late proposals
- No comparison group established
- District claim of “no space” - no offer at all
- Aggregating/fractionalizing teaching station offer
- Non-contiguous offers without written findings/grade level considerations
- Old/worn down facilities
- Offer of facilities far away from student population



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Preliminary & Final Proposal - Typical Deficiencies (Cont'd)

- Insufficient classroom, non-classroom and specialized classroom space allocation
- Excessive pro rata share amount/mandatory RRGGM charges
- Over-reaching facilities use agreement as condition
- 3% oversight fee in addition to pro rata share
- Insufficient documentation claimed
- unilateral ADA reduction



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Typical Facilities Use Agreement Provisions

- Recitals
- Exclusive use provisions
- Shared use provisions
- ADA allocation provisions
- Term/renewal
- Termination
- Civic Center Act
- Furnishings, Fixtures & Equipment
- Installation of improvements
- Condition of Property
- Liability for compliance with laws
- Environmental hazards
- Title to property
- Insurance
- Finger printing



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Typical Facilities Use Agreement Provisions (Cont'd)

- Utilities/telecommunications
- Over-allocation fees
- Pro rata share and other fees
- Oversight fees
- Maintenance and Operations
- Condemnation/destruction
- Indemnification
- Full Satisfaction of Prop. 39
- Dispute resolution
- Attorney's fees
- Access
- Notice



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Typical Facilities Use Agreement Deficiencies

- Requiring CS to use certain district services, such as gardening, custodial
- Pushing legal compliance onto charter school - provided "as is" (revised regulations clarify legal compliance is district obligation)
- Civic Center compliance controlled by district
- Not full school year use
- Unilateral indemnification (now must be reciprocal)
- Excessive insurance (revised regulations clarify insurance obligations)
- Termination for breach w/o notice or upon revocation/non-renewal



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Typical Facilities Use Agreement Deficiencies (Cont'd)

- Oversight plus pro-rata share
- No signage rights
- Unilateral attorney's fees
- No dispute resolution provision
- Destruction provisions don't provide alternative space
- No default for District breach
- Inequitable allocation of shared spaces
- Incorporation of District policies (sometimes contrary to Prop. 39)
- Requiring school to comport with consent decrees
- No recognition of CS's property rights



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Proposition 39 Litigation

- *New West Charter Middle School v. LAUSD* (2008; 2009)
 - NW secured a judgment against LAUSD requiring LAUSD to offer NW a Prop. 39 compliant site. NW also received a damages award, which was affirmed on appeal.
 - NW filed successive writs of mandate against LAUSD in 2009 and 2010 resulting from LAUSD's "offers" of facilities for the 09-10 and 10-11 school years.
- *California Charter Schools Association, Green Dot, PUC et al. v. LAUSD* (2008; 2010)
 - Resulted in a settlement agreement requiring LAUSD to, among other things, make Prop. 39-compliant facilities offers to schools and set aside LAUSD's illegal Prop. 39 policy.
 - LAUSD's compliance with settlement agreement has been deficient. CCSA sued LAUSD in May 2010 to enforce settlement agreement and compel LAUSD's compliance with Prop. 39.
- Several additional Prop. 39 cases have been litigated over the past six years. A summary of Prop. 39 cases is on CCSA's website.



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Update on Legal Challenge to Revised SBE Prop. 39 Regulations

- Calif. School Boards Association lawsuit filed in 2008 challenged validity of revised regulations, which were effective with the 2009-2010 facilities request cycle.
- CCSA, with assistance of MYM and Procopio, intervened in the lawsuit and successfully defended the vast majority of the new regulations.
- The trial court issued an order invalidating only a small portion of the regulations. The revised regulations are still valid, including the new timelines pending the final decision on the appeal.
- The sections of the regulations that were struck down by the trial court were those:
 - requiring districts to provide conversion charter schools with their existing site after the first year of operation
 - restricting districts' ability to change conversion schools' attendance areas.



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Questions and Responses

Thank you for attending!



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