

Proposition 39 Charter Schools Co-Location Policy

SUMMARY

This Proposition 39 Charter Schools Co-Location Policy (“Policy”) is established pursuant to the Board of Education Resolution entitled, “Creating a Charter Schools Co-Location Policy to Mitigate Impacts Caused by Proposition 39” (Res-026-22/23), adopted on September 26, 2023 (“Resolution”).¹

BACKGROUND

Education Code section 47614 (“Proposition 39”) states, in part: “Each 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. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district.” Proposition 39 required the State Department of Education to propose regulations implementing the law, which were subsequently adopted (and amended) by the State Board of Education. (See Cal. Code Regs., tit. 5, §11969.1 *et seq.*)

The Resolution states, in part, that “it is the responsibility of the Governing Board of the Los Angeles Unified School District to ensure the best possible learning environment for our students, which includes a commitment to continuous evaluation and improvement of existing practices, policies, and procedures, including those relating to the District’s Proposition 39 compliance efforts and resulting impacts caused by co-locations.” The Resolution also states that “[t]he co-location of charter schools, pursuant to Proposition 39 is often detrimental to District schools and the students they educate, and has a tangible negative impact on the District’s ability to maintain and grow important priorities including, but not limited to, Black Student Achievement Program (BSAP), Priority Schools, and Community Schools.” With the foregoing in mind, the Resolution directs the development of this Policy in a manner that is operationally feasible and permitted by law.

The District is committed to ensuring that the safety and educational needs of all public school students, both District and charter, are considered when its facilities are shared as prescribed by California law.

¹ While different Proposition 39 compliance options may exist, this Policy focuses on co-location pursuant to the Resolution. The Policy will go into effect at the start of the Proposition 39 cycle for the 2025-26 school year, and its terms shall be applied to the extent they are operationally feasible and permitted by law.

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POLICY

I. Matching Guidelines

In order to make a contiguous offer of Proposition 39 space to a charter school in facilities with reasonably equivalent conditions to those which would accommodate the charter students if they otherwise attended District schools, the District is guided by the following matching guidelines:

The District's Proposition 39 Matching Guidelines

1. Consider student safety and welfare
2. Identify reasonably equivalent facilities
3. Minimize the number of sites assigned
4. Make reasonable efforts to provide facilities near to where the charter school wishes to locate
5. Avoid moving a charter school unnecessarily
6. Minimize disruption to District and charter programs
7. Fairly balance the needs of District and charter programs
8. Avoid displacing any District students from their school of attendance
9. Maximize use of unallocated classroom space (i.e., those with no designated use and would be vacant/unassigned in a particular fiscal year, as identified in the District's annual comprehensive analysis of space on District school sites. Classrooms used to provide additional programming or services are not considered unallocated classroom space, and are categorized according to their specific designation)².

The above-listed matching guidelines are just that – guidelines – and cannot be applied in a vacuum and without rationale. In allocating space to a charter school, pursuant to applicable law, the District must consider the impacts on other public school students, both those attending District schools and those attending other charter schools requesting space. The District's matching guidelines are used by staff in conjunction with thoughtful consideration of school and site conditions and the real-world impacts on all public students in developing a co-location offer for each charter school.

Before the matching process commences, the District undertakes a comprehensive analysis that assesses capacity at school sites throughout the District. This analysis begins with District administrators and other staff specifically identifying and validating the current and anticipated utilization of standard- and small-size classroom spaces as/for teaching stations, set-asides, special education programs, existing charter schools, preschools, alternative/adult education, other third-party users, or options programs; or marked as swing spaces needed for construction projects, out of service, or mandated for removal due to legal and/or safety requirements.

With these data, and consistent with the aforementioned guidelines, District staff attempts to accommodate each charter school at a single school site, and looks for available facilities sufficient to accommodate the entirety of the charter school's projected in-district classroom ADA within its

² This definition is pursuant to the Resolution's direction to, "clarify the definition of an empty classroom for the purposes of co-location."

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stated general geographic area of interest. District staff first identifies the classroom inventory by grade level configuration within each geographic region. Grade-alike matches typically provide reasonably equivalent space; therefore, the District shall generally seek to allocate space in grade-alike school facilities. The District next identifies whether the charter school is currently occupying a District school site identified in its general geographic area of interest and, when feasible, matches the charter school to that District school site. The District then examines and identifies the general geographic areas of interest of other charter schools. Multiple charter schools often request space in the exact same location, so the District must assess competing geographic as well as particular site interests. The assessment includes examining whether the potential match would maximize the utilization of available classrooms and whether the match represents a full, single-site offer. Priority is given to where these two goals can be achieved. In doing so, considerations of student safety and welfare are kept at the forefront. Based on an examination of these criteria, a preliminary match is made.

II. Supporting the District's Most Fragile Students and Schools, Key Programs, and Student Safety

As operationally feasible and permitted by law, and so that the District can focus on supporting its most fragile students and schools, key programs, mandates, and student safety, the District avoids Proposition 39 co-locations that (pursuant to the Resolution):

- Are on school sites with the District's Priority Schools, BSAP schools, and/or Community Schools³;
- Compromise a District school's capacity to serve neighborhood children; and/or
- Result in grade span arrangements that negatively impact student safety and build charter school pipelines that actively deter students from attending District schools.

Each of the factors above are determined based on the specific facts and circumstances of each particular situation. Additional performance indicators may be considered as part of the District's analysis.

The foregoing is applicable in the following instances:

1. New Proposition 39 Co-Locations: When a charter school that is not occupying a District school site pursuant to Proposition 39 submits a written facilities request for a particular fiscal year.
2. Existing Proposition 39 Co-Locations: When a charter school that is occupying a District school site pursuant to Proposition 39 submits a written facilities request for a particular fiscal year, and (a) the facilities request identifies additional or different District school sites and/or general geographic areas in which the charter school wishes to locate (except where the additional or different District school sites and/or general

³ District terminology is subject to change. Also, per BUL-5532.1, November 1 of each year is the current internal deadline for District schools to identify all anticipated uses of classrooms for the subsequent school year.

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geographic areas identified are deemed to be secondary preference locations to the District school site(s) occupied by the charter school); or (b) existing conditions change for reasons including, but not limited to, insufficient space, addition of grade levels, and other material revisions to a charter school's operative charter.

- “Insufficient space” may result from various circumstances, as advised by Region Leadership and approved by the Superintendent (or designee(s)), including, but not limited to, construction projects, changes to classroom inventory, adjustments to projected enrollment/average daily attendance (“ADA”), changes in grade configurations, and/or academic or enrichment/support programs and services.
- “Addition of grade levels” occurs when a charter school submits a request for a material revision to its operative charter proposing to serve additional grade levels, it is approved by the charter school's authorizer while the charter school is occupying a District school site pursuant to Proposition 39, and the charter school projects in its facilities request that it will serve students in any new grade levels added pursuant to the material revision; however, this does not include a previously authorized roll-out of grade levels (i.e., a plan to successively add grade levels served by the charter school) set forth in its operative charter approved prior to occupying a particular District school site pursuant to Proposition 39.
- “Other material revisions to a charter school's operative charter” is a change to the charter school's operative charter, approved by its chartering authority, that potentially impacts the charter school's facilities needs in the particular fiscal year for which it submits a written facilities request (e.g., without limitation, changes to the charter school's authorized enrollment capacity).

III. Preserving Programmatic Spaces Essential to Enriching Instruction and Student Health and Human Services

The District preserves District schools' programmatic spaces that are essential to enriching instruction and student health and human services. Potential examples include music rooms, robotics labs, maker spaces, computer labs, contractually required spaces for itinerant staff to perform their work and provide direct services to students, intervention rooms (i.e., classrooms dedicated to regular and articulated intervention services for struggling students), and parent centers.

1. Exclusive Use: School set asides provide space for programs that are vitally important to the curriculum of a particular District school. For Proposition 39 purposes, a school set aside is considered to be a specialized classroom or non-teaching station space. Whenever operationally feasible and permitted by law, a set aside that the District determines is “essential to enriching instruction and student health and human services” will be preserved (i.e., not offered as exclusive use space to the charter school). Based on the specific facts and circumstances of each particular situation, the District may determine that a District school site is able to fulfill its educational program with fewer set asides and that allocating such a space as an exclusive use space to a charter school

RECOMMENDED

is necessary to reduce the total number of District school sites with space allocated to the charter school. After conferring with school site administration and others (as appropriate), Region staff may recommend to the Superintendent whether to preserve any such space, and also how school site reorganization might allow for effective programming in a different configuration. The District may also identify alternative locations for programs in such spaces, where doing so minimizes the number of sites offered to a charter school.

2. Shared Use: When such a space is not offered as exclusive use teaching station space to the charter school, it is considered as part of the District's evaluation of shared use spaces allocated to the charter school. This may occur as follows:
 - i. Charter school is offered proportionate shared use of the space;
 - ii. If the space is determined to not be available for sharing, other reasonably equivalent space is identified by the Region for allocation to the charter school at an adjusted shared use percentage; or
 - iii. Additional options (as appropriate).

IV. Additional Items

As operationally feasible and permitted by law, the District ensures the following:

1. Region offices and impacted District principals are provided training and support regarding the Proposition 39 law, the District's matching guidelines, and this Policy as they relate to the District's Proposition 39 space matching process.
2. Communication with impacted school communities takes place as determined by Region Leadership in coordination with the School site administrator.
3. Region staff engages in robust information-gathering, including a site visit to the District school before recommending a co-location, and conducts an analysis of the specialized classroom spaces that are essential to enriching instruction and student health and human services.
4. Charter schools' ADA data is verified.
 - i. The District's Attendance & Enrollment Unit ("A&E") collects and reviews monthly classification reports and statistical reports from each charter school occupying Proposition 39 facilities, which contain self-reported data about enrolled charter students and attendance on a school month basis. A classification report is a "snapshot" of enrollment counts as of the last school day of the school month, by grade level, which includes students who enroll, withdraw, or are absent on the last day of the school month. A statistical report captures attendance and enrollment activity for the entire school month for every charter student enrolled at any point during the school month. A&E validates the data based on state guidelines to ensure that reports are consistent and complete. Additionally, A&E compiles

RECOMMENDED

information from each statistical report, calculates the ADA, and reconciles it with the charter school's ADA report submitted to the state. The District's certification helps ensure that the calculation for the ADA claimed is correct.

- ii. The District reviews each charter school's ADA data reported to the District pursuant to Proposition 39, and follows up as needed. In addition, each year the District sends each charter school a written reminder that it must notify the District when it anticipates it will have over-allocated space that could be used by the District. The District also follows internal administrative procedures to ensure the timely billing and collection of over-allocated space reimbursements.
- iii. The District reminds charter schools about their over-allocation obligations under Proposition 39 at various times each school year.

5. Alternative agreements are approved pursuant to the following process:

When a potential concept for an alternative agreement (i.e., a charter school and the District mutually agree (preliminarily) to an alternative to specific compliance with any of the provisions of the Proposition 39 implementing regulations) is identified and recommended by a Region office, staff advises the Board Office in which the potentially impacted District school site(s) is located. If the Board Office(s) does not object to the recommended concept, the Superintendent (or designee(s)) may execute an alternative agreement consistent therewith pursuant to the Board of Education's October 10, 2017 delegation of authority (LAUSD Board Report No. 025-17/18). If the Board Office(s) objects to the recommended concept, staff may assess whether to propose revisions to the concept for further consideration, withdraw the concept, and/or present the alternative agreement to the Board of Education for authorization before the Superintendent (or designee(s)) executes such an alternative agreement.

6. Charter schools' payments of facilities costs and over-allocated space reimbursements are monitored, enforced, and reported.

- i. The District maintains an up-to-date record of charter schools' pro rata share and fee-for-service charges, and pursues any outstanding amounts through the processes set forth in the applicable Single-Year Co-Location Charter School Facilities Use Agreement.
- ii. The District follows internal procedures detailing the specific internal timelines and responsibilities of various offices to ensure the timely invoicing and collection of over-allocated space reimbursements.