



March 1, 2019

Ayindé Rudolph, Ed.D.  
Superintendent  
Mountain View Whisman School District  
1400 Montecito Ave.  
Mountain View, CA 94043

***Re: Bullis Mountain View Charter School  
Response to Preliminary Offer  
Proposition 39 2019-20***

Superintendent Rudolph:

Bullis Mountain View Charter School ("BMV") is in receipt of the Mountain View Whisman School District's ("District") Preliminary Proposal for facilities ("Preliminary Proposal") for the 2019-20 school year.

The District's offer is for seven (7) exclusive use teaching stations, one (1) exclusive use classroom for special education and flexible instruction purposes, including but not limited to resource and small group space, RSP, speech/CHAC, EL, SDC/LC, counseling and mixed use instructional space, pull-out instruction, conferences or discretionary use," exclusive use of unidentified "administrative office space," exclusive use of one (1) classroom for "library and additional study space," and shared access to adult and boys and girls restrooms, 30% shared use of the field space, blacktop space, and play equipment at the Montecito school site, and is based on a projected in-District ADA of 159.6.

BMV first wishes to take the opportunity to express its appreciation for the efforts of District staff to identify facilities that work for BMV' program, and BMV anticipates accepting the space that the District has offered. However, as Section 11969.9(g) of the Proposition 39 Implementing Regulations (the "Implementing Regulations") requires BMV to respond to the District's Preliminary Proposal, to express any concerns, address differences between the preliminary proposal and the charter school's facilities request as submitted pursuant to subdivision (b), and/or make counter proposals, BMV will note several issues with the Preliminary Proposal.

### **Comparison Schools**

The Implementing Regulations provide an analysis by which a school district must determine whether a facility is reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district. First, pursuant to 5

CCR Section 11969.3(a), the District must identify a comparison group of district-operated schools with similar grade levels to the Charter School.

5 CCR Section 11969.3(a) defines the process for identifying comparison schools as follows:

“The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area...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.

For school districts whose students do not attend high school based on attendance areas, the comparison group shall be **three schools** in the school district with similar grade levels that the largest number of students of the charter school would otherwise attend. For school districts with fewer than three schools with similar grade levels, the comparison group shall be all schools in the school district with similar grade levels.”

(Emphasis added.)

As the District only serves grades TK-8, its students do not attend high school based on attendance areas. Therefore, the comparison group should only be “**three schools** in the school district with similar grade levels that the largest number of students of the charter school would otherwise attend.” Instead, the District has identified all of its elementary schools as the comparison group.

A review of BMV’s request shows that the largest number of students would otherwise attend Edith Landels Elementary School, Monta Loma Elementary School, and Theuerkauf Elementary School.

#### **THE DISTRICT’S ALLOCATION OF SPECIALIZED CLASSROOM SPACE AND NON-TEACHING STATION SPACE**

BMV is also entitled to reasonable allocations of specialized classroom and non-teaching station space. Section 11969.3(b)(2) requires that, if a school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the Proposition 39 offer of facilities provided to a charter school must include a share of the specialized classroom space. The Preliminary Offer must include “a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space.” (5 CCR § 11969.3(b)(2).) 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.

In addition, the District must provide non-teaching station space commensurate with the in-District classroom ADA of BMV and the per-student amount of non-teaching station space in the comparison group schools. (5 CCR § 11969.3(b)(3).) Non-teaching space is all of the space at the comparison school that is not identified as teaching station space or specialized space and includes, but is not limited to, administrative space, a kitchen/cafeteria, a multi-purpose room, a library, a staff lounge, a copy room, storage space, bathrooms, a parent meeting room, special education space, nurse's office, RSP space, and play area/athletic space, including gymnasiums, athletic fields, locker rooms, and pools or tennis courts. (*Ibid.*)

The allocation of specialized classroom space and non-teaching space is based on an analysis of the square footage of each category of space available to students at the comparison schools (i.e., the per-student amount of specialized classroom/non-teaching space in the comparison group schools). (5 CCR § 11969.3(b)(2)(C).)

While the Preliminary Proposal states that the District analyzed the specialized classroom and non-teaching station space on the comparison school campuses, the Preliminary Proposal does not share any of this data. Prop. 39 requires a level of transparency by school districts in explaining how they calculated the space to be offered to a charter school<sup>1</sup>

This difficulty is exemplified by the fact that the District has not provided an allocation of certain kinds of space that exist at all of the comparison schools. More specifically, all of the comparison schools (either those identified by the District or BMV) have Multi-Purpose Room space and a kitchen/cafeteria or other dedicated location for meals to be warmed and students to eat. Yet the Preliminary Proposal does not include an allocation of either MPR or kitchen/cafeteria space. As charter schools are now required to provide their eligible students with meals each day, the lack of legally compliant food service space is extremely problematic.

In addition, no parking is offered. We would ask that the Final Offer clarify how the District proposes to share the parking on the site with BMV.

### **Pro Rata Share Calculation**

As the District is aware, the Proposition 39 implementing regulations set forth the detailed methodology for calculating the pro rata share, which is defined as “a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in Sections 11969.2(f) and (g) and hereinafter referred to as ‘unrestricted general fund revenues,’ divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school.” (5 CCR Section 11969.7.) Other than the pro rata share, the Charter School may not otherwise be charged for use of the space. (Education Code Section 47164.)

5 CCR Section 11969.7 provides that “facilities costs includes: (1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance

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<sup>1</sup> “The regulations prescribe 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 a district has complied with the regulation.” (*CCSA v. LAUSD*, *supra*, 60 Cal. 4th at 1236.)

Account (Education Code Section 17070.75), Routine Restricted Maintenance Account (Education Code Section 17014), and/or deferred maintenance fund; (2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund; (3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, that have not been included in paragraphs (1) and (2), according to school district schedules and practices”; and (4) debt service costs.

Facilities costs “do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item.” (5 CCR Section 11969.7(a), emphasis added.) Therefore, if a charter school is responsible for the cost of providing a category of work represented by certain facilities costs (such as custodial services or landscaping services) itself – none of the District’s facilities costs associated with that category of work may be included in the district’s calculation.

The Preliminary Offer states that BMV’ pro rata share is estimated to be \$165,638 for a total of 102,163.4 square feet of space. This suggests a per square foot amount of \$1.62.

Based on the information provided by the District regarding the estimated pro rata share for 2019-2020, BMV believes the District is improperly charging BMV for its allocated outdoor spaces. The District cannot include the square footage of outdoor space (fields, asphalt, etc.) in its calculation of the amount owed unless it also included the square footage of the District’s total outdoor spaces when calculating the per-square foot charge. Here, there is no evidence that the District included all of the District’s outdoor space when calculating its per-square foot charge, as typically the per square foot amount is well below \$1.00 if outdoor square footage is properly included.

The intent of the pro rata share, as evidenced by the bond language of the Proposition 39 initiative, as well as the Statements of Reasons accompanying the first and second iterations of the Proposition 39 Implementing Regulations, was to determine the amount of money the District spent to operate and maintain its facilities on a per square foot basis. This calculation was performed by dividing the district’s total facilities costs (minus costs paid for by the charter school) by the “total space” of the District. A charter school would then be required to pay its fair share of the District’s facilities costs, based on the “amount of space” it was allocated. In other words, the pro rata share charged to a charter school was expected to make the charter school’s use of a school district’s facilities as revenue-neutral as possible by reimbursing the school district for all costs it incurred in maintaining facilities use by the charter school.


As further explanation, “pro rata” is defined by the American Heritage College Dictionary as “in proportion; according to a factor that can be calculated exactly.” Proportion is then defined as “a relationship between quantities such that if one varies then another varies in a manner dependent on the first.” This intent to ensure that the amount charged by the charter school is proportional to the costs incurred by the District to maintain its facilities is further exemplified by the use of the word space in the regulation. The regulations do not define the term “space” but they do use the same term when describing both the manner in which the school district must perform the calculation (including the districts total space) as well as the manner in which the charter school must be charged for the amount of space allocated to the charter school. If the District is only including specific kinds of “space” (i.e. no outdoor space) when determining its

total space, but then including additional kinds of “space” (i.e. including outdoor space) when determining what the charter school owes, it is making the terms means different things on each side of the equation. As such, if it is including these outdoor spaces in its calculation of the charter school’s “amount of space” its pro rata share will not accurately reflect its per square foot costs incurred to operate and maintain its entire complement of facilities.

This is remedied, of course, by not including the outdoor space used by BMV in the cost charged to BMV. In order for the costs calculated by the District and paid for by BMV to actually be proportional, and thus reflect a pro rata share of the costs, the costs and square footage included in the calculation must reflect the costs and square footage being charged to BMV. If the District does not include its outdoor square footage in its pro rata share calculation, but then charges BMV for outdoor square footage on the Edison campus, the District is causing one quantity to vary without adjusting the other quantity and is overcharging BMV for its use of the facility, in violation of 5 CCR Section 11969.7. The District must therefore either only charge BMV for the square footage of the actual buildings it uses, or if it wishes to charge BMV for blacktop and field space, it must recalculate its pro rata share as set forth above.

Pursuant to 5 CCR Section 11969.7(c), the District may only charge the Charter School for a proportional amount of the pro rata share that reflects the percentage of time it is allocated use of the shared space (“The portion of the shared space to be included in the ‘space allocated by the school district to the charter school’ shall be calculated based on the amount of space allocated for the exclusive use of the charter school compared to the amount of space allocated to the exclusive use of the school-district-operated program.”) The Charter School anticipates that the District will work with the Charter School to finalize this calculation to be included in the Final Offer.

Sincerely,



Jennifer Anderson-Rosse  
Founding Head of School, BMV

