

Bullis Mountain View

Delivery method:
Email and hand delivered

October 31, 2018

Superintendent Rudolph
Mountain View Whisman School District
Board of Education
1400 Montecito Avenue
Mountain View, CA 94043

RE: Request for Proposition 39 Facilities for the 2019-20 School Year

Dear Superintendent Rudolph:

I am writing on behalf of the Bullis Mountain View Charter School (“Charter School”) to request reasonably equivalent school facilities from the Mountain View Whisman School District (“District”) pursuant to Education Code Section 47614 (i.e., Proposition 39) and Title 5 of the California Code of Regulations (“CCR”) Section 11969.1 through 11969.11, as amended (“Implementing Regulations”).

Proposition 39, passed by the voters of California on November 7, 2000, requires school districts to make available, to each charter school operating within the school district, school facilities sufficient for each 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 school district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. In addition, the school district must make reasonable efforts to provide the charter school with facilities near to where the charter school desires to be located. (See Education Code Section 47614(b)).

The Proposition 39 Implementing Regulations, adopted by the State Board of Education (“SBE”) in 2002, and amended in 2008, require the Charter School to make an annual written request for facilities. Title 5 CCR Section 11969.9(c)(1) specifies the information that must be included in the annual facilities request. This request, along with the information submitted herewith, meets and exceeds the requirements of Education Code Section 47614 and the Implementing Regulations

Projected Average Daily Attendance (ADA)

In accordance with Education Code Section 47614(b)(2), the District is required to allocate school facilities to the Charter School for the following school year based upon a projection of average daily classroom attendance provided by the Charter School.

Proposition 39 Request: 2019-20 School Year

The Charter School’s Governing Board has determined that a reasonable projection of the Charter School’s in-District average daily classroom attendance for the 2019-20 school year is 159.6. The following is a break down of the Charter School’s projected average daily attendance (“ADA”) as required by 5 CCR Section 11969.9(c)(1). The Charter School’s ADA figures are based on the methodology outlined in the following section.

Please note:

- “Prior year” means the fiscal year prior to the year in which a facilities request is made. For this request, the prior year is 2017-18.
- “Current year” means the fiscal year in which a facilities request is made. For this request, the current year is 2018-19.
- “Request year” means the fiscal year for which facilities are being requested. For this request, the request year is 2019-20.

Table 1: Total ADA

A	B	C	D
Grade Level	<u>Actual Total Prior Year (P-2)</u>	<u>Projected Total Current Year</u>	<u>Projected Total Request Year</u>
TK			24.7
K			63.65
1			41.8
2			29.45
3			
4			
5			
Total			159.6

Table 2: Total In-District ADA

A	B	C	D
Grade Level	<u>Actual Total Prior Year (P-2)</u>	<u>Projected Total Current Year</u>	<u>Projected Total Request Year</u>
TK			24.7
K			63.65
1			41.8
2			29.45
3			
4			
5			
Total			159.6

Table 3: Total Classroom ADA

A	B	C	D
Grade Level	Actual Total Prior Year (P-2)	Projected Total Current Year	Projected Total Request Year
TK			24.7
K			63.65
1			41.8
2			29.45
3			
4			
5			
Total			159.6

Table 4: Total In-District Classroom ADA

A	B	C	D
Grade Level	Actual Total Prior Year (P-2)	Projected Total Current Year	Projected Total Request Year
TK			24.7
K			63.65
1			41.8
2			29.45
3			
4			
5			
Total			159.6

The following tables represent the projected **in-District ADA** (from Table 2 above) and **in-District classroom ADA** (from Table 4 above) broken down by grade level and the school in the District the pupils are otherwise eligible to attend. (5 CCR Section 11969.9(c)(2).)

Table 5: In-District ADA Broken Down by Grade Level and District Schools Where Pupils Would Otherwise Attend:

School Name/Grade	TK	K	1	2	3	4	5	6	7	8	9	10	11	12
Mariano Castro Elementary	3.8	8.55	1.9	2.85										
Theuerkauf Elementary	1.9	8.55	3.8	4.75										
Monta Loma Elementary	3.8	8.55	5.7	.95										
Garbriela Mistral Elementary	.95	.95	2.85	3.8										
Edith Landels Elementary	5.7	19	7.6	7.6										
Benjamin Bubb Elementary	.95	2.85	9.5	2.85										
Stevenson Elementary	0	0	0	0										

Frank L. Huff Elementary	1.9	7.6	5.7	4.75										
Vargas	5.7	7.6	4.75	1.9										

Table 6: In-District Classroom ADA Broken Down by Grade Level and District Schools Where Pupils Would Otherwise Attend:

School Name/Grade	TK	K	1	2	3	4	5	6	7	8	9	10	11	12
Mariano Castro Elementary	3.8	8.55	1.9	2.85										
Theuerkauf Elementary	1.9	8.55	3.8	4.75										
Monta Loma Elementary	3.8	8.55	5.7	.95										
Garbriela Mistral Elementary	.95	.95	2.85	3.8										
Edith Landels Elementary	5.7	19	7.6	7.6										
Benjamin Bubb Elementary	.95	2.85	9.5	2.85										
Stevenson Elementary	0	0	0	0										
Frank L. Huff Elementary	1.9	7.6	5.7	4.75										
Vargas Elementary	5.7	7.6	4.75	1.9										

Table 7: In-District Students Broken Down by Grade Level and District Schools Where Pupils Would Otherwise Attend:

School Name/Grade	TK	K	1	2	3	4	5	6	7	8	9	10	11	12
Mariano Castro Elementary	4	9	2	3										
Theuerkauf Elementary	2	9	4	5										
Monta Loma Elementary	4	9	6	1										
Garbriela Mistral Elementary	1	1	3	4										
Edith Landels Elementary	6	20	8	8										
Benjamin Bubb Elementary	1	3	10	3										
Stevenson Elementary	0	0	0	0										
Frank L. Huff Elementary	2	8	6	5										
Vargas Elementary	6	8	5	2										

Methodology Used In Making ADA Projection:

Title 5 CCR Section 11969.9(c)(1)(B) requires the facilities request to include a description of the methodology for the ADA projections. The Charter School utilized the following methodology in calculating the ADA projections:

The Charter School's projections are based on a projected first year enrollment of 168 students, all of whom will be in-District students.

This enrollment projection is based on the enrollment projected in the Charter School's charter petition, and is supported by the signatures of 146 meaningfully interested in-District families, representing 171 meaningfully interested students. This includes 151 signatures attached to the Charter School's charter petition, and 147 Intent to Enroll forms, representing 171 unique students. In other words, at this very early date, the Charter School has already collected the names and addresses of meaningfully interested students representing over 100% of the Charter School's projected ADA. Projections are based on both the intent to enroll forms, and signatures to the charter petition as well as the historic interest for our flagship school, BCS. There are no less than 171 interested students based on the charter petition and enrollment forms to date, alone. Given the overwhelming interest in BCS by Mountain View residents, we believe BMV will have the same level of interest, resulting in 100% capacity for our anticipated program for 2019-20.

It is reasonable for the Charter School to project that all of its students will be in-District, as all of the Intent to Enroll forms and petition signatures collected by the Charter School are from in-District students. In addition, the charter petition provides a preference for in-District students, so it is highly unlikely that any out of District students will be admitted through the lottery.

The attendance rate used by the Charter School is 95%. This is reasonable because as we create an intentionally diverse school, we are estimating school attendance in a conservative manner to accommodate the diversity of families in Mountain View. This is also the attendance rate used in our charter and budget, and is a conservative attendance rate, given that the average attendance rate at the Charter School's sister school in the Los Altos School District is 97.6%, and the Charter School anticipates having a high attendance rate in its first year of operation. Students who engage in PBL and highly engaging learning often attend school at high rates.

The Intent to Enroll forms and petition signatures collected all represent meaningfully interested parents as they were collected from parents who are very familiar with Bullis' program. The Intent to Enroll forms and petition signatures were collected at 16 parent information meetings that were held from August to October of this year to share information about the school; at the information meetings we explained in detail the proposed school, including the educational model. We also provided copies of the petition at those meetings so parents could familiarize themselves with our school. Families were also provided with information about Prop. 39, and the reasons for collecting Intent to Enroll forms, as well as an explanation as to what parents were attesting to by signing the form (that they are meaningfully interested in enrolling their child in Bullis, but are not guaranteed enrollment in the school or obligated to enroll their child). Therefore, families were very familiar with the Charter School and its proposed program when they signed the Intent to Enroll forms. Given that the Charter School is a new school that has not yet commenced operations, and yet was still able to collect petition signatures and Intent to Enroll forms

representing 95% of its projected enrollment, its projections are not only reasonable but conservative.

Bullis Charter School, Los Altos has historically had a long waitlist of parents who reside within the MVWSD boundaries and wish to attend Bullis Charter School – on average approximately 175 students. As such, it is very likely that many parents will be interested in enrolling in the Charter School.

Supporting Documentation

Title 5 CCR Section 11969.9(c)(1)(C) requires the facilities request to include supporting documentation. The Implementing Regulations state that when a charter school is not yet open (i.e., not yet providing instruction) or to the extent an operating charter school projects a substantial increase in in-District ADA, the annual request must include documentation of the number of in-District students meaningfully interested in attending the Charter School. Please be advised that because the Charter School is not yet open, we have attached and incorporated herein by reference the following supporting documentation that fully substantiates the reasonableness of our in-District ADA projections for the 2018-19 school year:

- (1) Signed parental “Intent to Re/Enroll” Forms for all students for the request year;
- (2) Parents’ signatures attached to charter petition.

As you review the Charter School’s ADA projections and supporting documentation, please keep in mind that the Proposition 39 regulations do not specify or require a particular type of supporting documentation to be used. Charter Schools may submit any type of supporting documentation which they used to arrive at their ADA projections. This documentation must be “sufficient for the district to determine the reasonableness of the projection, but ... need not be verifiable for precise arithmetical accuracy.” (Section 11969.9(c)(1)(C); emphasis added.) The supporting documentation is intended only to demonstrate reasonableness of Charter School’s request, not mathematical exactitude, and need not be independently verified by the District.

More importantly, if the District is planning to contact parents to verify their meaningful interest, please be aware that two courts recently held that “counter-surveys” are inconsistent with the Implementing Regulations. Specifically, in *Rocketship v. Mt. Diablo Unified School District* (Contra Costa County Superior Court, Case No. N17-0137), the Court stated that “the regulations do not authorize a district to blithely discard the school’s methodology and documentation by conducting its own wholly independent counter-survey.” The Court finds that the scope of “review” permitted to a school district is very limited. The district may review the charter school’s projections for obvious defects, such as listing a child outside the qualifying age range, listing a child who resides outside the district boundaries, etc. The district may also review whether the school’s documentation reasonably supports the school’s projection.

The Court in *Promise Academy v. San Jose Unified School District* (Santa Clara County Superior Court, Case No. 18CV325491) further held that “it is evident that the scope of a school district’s review of the required level of meaningful interest in a charter school’s request for facilities is limited... In sum, a district review does not entail a separate confirmation or verification to the school district directly from the parent of his or her meaningful interest in a charter school. A district may review the charter school’s projections and supporting documentation for obvious defects, such as listing a child outside the qualifying age range, listing a child who resides outside

district boundaries, listing of incorrect grades, more than one submission by the same student to the same charter school, etc....A school district, however, impermissibly exceeds the scope of its review when it embarks on gathering independent evidence to rebut or impeach a timely Proposition 39 request, or insist on the school district obtaining its own confirmation or verification of meaningful interest directly from the parents....Proposition 39 does not permit the District the use of results from its survey of interested parents as a basis for rejecting signed Intent to Enroll forms or other documentation supporting meaningful interest.”

Interpreting the implementing regulations to provide a narrow scope of review is bolstered by a consideration of the parties’ respective incentives. Charter schools have a strong incentive not to overestimate enrollment, because they must pay for empty classroom space. (Ed. Code, § 47614, subd. (b)(2); Cal. Code Regs., tit. 5, § 11969.8. See, *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 196 [“the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space”].) Hostile school districts, on the other hand, have every incentive to underestimate enrollment because they face no countervailing financial penalty. The regulations cannot be interpreted so as to give school districts carte blanche to lowball projected enrollment, thereby starving potentially viable charter schools of the classroom facilities they need to grow and thrive. Proposition 39 was enacted to prevent such conduct, and not to enable it.”

Therefore, we anticipate that the District will not contact parents to verify their meaningful interest, as their signature on an intent to enroll form stating their meaningful interest is sufficient. Instead, we anticipate the District will conduct a good-faith review, of the form described in the *Rocketship* and *Promise* decisions, of the actual supporting documentation submitted by the Charter School to determine if the Charter School’s projections are reasonable.

Operational Calendar:

Title 5 CCR Section 11969.9(c)(1)(D) requires the facilities request to include the Charter School’s operational calendar. The Charter School’s operational calendar is attached for your review. The Charter School’s first day of instruction is on August 14, 2019, therefore we will need access to the facility on or before July 31, 2019, in order to prepare. Please note that Title 5 CCR Section 11969.9(j) requires the District to ensure that a furnished and equipped facility meeting the requirement of Proposition 39 be made available to the Charter School no less than ten (10) working days prior to the charter school’s first day of instruction. In addition, in accordance with Section 11969.5, the space allocated must be made available for the Charter School’s entire school year regardless of the School District’s instructional year or class schedule.

Educational Program:

Title 5 CCR Section 11969.9(c)(1)(F) requires the facilities request to provide information regarding the charter school’s educational program that is relevant to the assignment of facilities. The Charter School’s educational program does have unique facilities needs. As you are aware, key components of the educational program of the Charter School include a focus on STEAM and Project-Based Learning integrated into the school’s MakerSpace and art room. We plan to implement a program similar to that at Bullis Charter School, Los Altos and plan to utilize a room for a MakerSpace and integrated into art. In addition, we may offer after school theater classes and would need a location to do this. In addition to this, we will offer extra-curricular classes after school and plan to utilize classroom spaces in extended day activities each day. Staff will receive

professional development a minimum of five business days before school begins and five business days following the last day of school as well as throughout the year. As a result, we will continue to use the facilities during these times. We may also offer extra-curricular classes that begin before school starting at 7:30am. In addition, we will provide high-quality parent engagement and will need to use a multi-purpose room to hold parent education and parent meetings in the evenings over the course of the year.

In order to provide these aspects of our educational program, the facility allocated to the Charter School must provide the following:

- Dedicated room for a MakerSpace,
- Dedicated room for an art classroom,
- Use of the Multi or a similar space to use from 7:30am-5:30pm each day and on certain evenings.
- Dedicated room for Early Learners (TK + Young 5s) with a bathroom inside the room
- Two dedicated rooms for Kindergarten with a bathroom inside each room
- Four dedicated rooms for 1st – 2nd grade
- In order to provide equivalent facilities, we will also need sufficient play space for younger students in the TK (Early Learners) and Kindergarten classes.
- In order to provide equivalent facilities, we will also need sufficient play space for the elementary students in grades 1 and 2.

If the District's comparison schools include any facilities not identified here, the Charter School will also require a reasonably equivalent allocation of these spaces.

In addition, and in accordance with its charter and its budget, the Charter School will operate grade levels TK through 2 on one contiguous school site. It is critical for our students to be on one contiguous school site due to their young age. It is important for young children to have consistency in spaces and with the adults that they interact with. Consequently, the Charter School's educational program requires a single contiguous school site in which to operate.

Facility Location:

Title 5 CCR Section 11969.9(c)(1)(E) requires the Charter School to provide information regarding the District school site and/or general geographic area in which the Charter School wishes to locate. Based upon the needs of the Charter School and the residency of the projected student enrollment, the Charter School desires to locate its facility at a district facility that is serving the students of Mariano Castro Elementary, Theuerkauf Elementary, and/or Monte Loma Elementary. We intend to serve a diverse demographic and being within walking distance of the charter school, for low-income families is important in order to build an intentionally diverse school.

We are attaching a slide deck that was presented at the MVWSD board meeting on November 2, 2017. In this PowerPoint, the District shared data on which of its school locations have additional capacity for students. According to slide 12 in this presentation, Crittenden has space for 264 additional students and Theuerkauf has additional space for 133 students.

Procedures and Timelines:

In accordance with the Implementing Regulations, the District is required to review the Charter School's attendance projections and to express any objections that it has about the Charter School's attendance projections in writing on or before December 1, 2018. The Charter School must respond to the District's written objections, if any, on or before January 2, 2019, and will either reaffirm or modify its projections as it deems necessary. (5 CCR Section 11969.9(d).)

Furthermore, we look forward to receiving a written preliminary facilities proposal from the District on or before February 1, 2019, as required under the Implementing Regulations. (5 CCR Section 11969.9(f).) The preliminary proposal must include, at a minimum, the following information: (1) a breakdown of the number of teaching stations (classrooms), specialized and non-classroom based space to be allocated to the Charter School, with an indication as to whether the space is exclusive or shared use; (2) the projections of in-District classroom ADA on which the proposal is based; (3) the specific location of the space; (4) all conditions pertaining to the space, including a draft of any proposed agreement pertaining to the Charter School's use of the space, (typically referred to as a facilities use agreement); (5) the projected pro rata share amount and a description of the methodology used to determine that amount; and (6) a list and description of the comparison group schools used in developing its preliminary proposal, and a description of the differences between the preliminary proposal and the Charter School's facilities request. In accordance with the Implementing Regulations (5 CCR Section 11969.2(d)), if the District's preliminary proposal (or final notification) does not accommodate Charter School at a single school site, the District's governing board must first make a finding that the Charter School could not be accommodated at a single site and adopt a written statement of reasons explaining the finding. The Charter School has until March 1, 2019, to respond to the preliminary proposal, expressing any concerns, addressing differences between the preliminary proposal and the facilities request, and/or making counter proposals.

The Implementing Regulations Section 11969.9(h) requires the District to provide a written final notification regarding the space to be allocated to the Charter School prior to April 1, 2019. The final notification specifically must include, at a minimum, the following:

- (1) The teaching station, specialized classroom space, and non-teaching station space offered for the exclusive use of the charter school and the teaching station, specialized classroom space, and non-teaching station space which the charter is to be provided access on a shared basis with District operated programs, if any;
- (2) For shared space, if any, the proposed arrangements for sharing;
- (3) The in-District classroom ADA assumptions for the Charter School upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences;
- (4) The specific location of the space;
- (5) All conditions pertaining to the Charter School's use of the space;
- (6) The pro rata share amount and a description of the methodology used to determine that amount;
- (7) The payment schedule for the pro rata share amount, which shall take into account the timing of revenues from the state and from local property taxes; and
- (8) A response to the Charter School's concerns and/or counter-proposals, if any.

A California Court of Appeals decision has made clear that, in meeting their Proposition 39 obligation, school districts must give the same degree of consideration to the needs of charter school students as it does to the students in district-run schools. The court noted that “accommodating a charter school might involve moving district-operated programs or changing attendance areas” and that providing a contiguous school facility to a charter school might require disruption and dislocation among district students, staff and programs. (*Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986.) In addition, the Court concluded that a school district responding to a request for facilities must issue a statement of reasons at the time it makes its final determination that is “thorough” and “factual” enough to permit “effective review by the courts”; the statement of reasons issued by the school district must demonstrate that the district has “adequately considered all relevant factors” and that the district can “demonstrate a rational connection between those factors, the choice made, and the purposes of [Proposition 39].” Furthermore, as the District may be aware, two recent court cases clarified the manner in which a school district must allocate facilities to a charter school. Specifically, *Bullis Charter School v. Los Altos School District* (2011) 200 Cal.App.4th 1022, among other things, requires the District to perform a calculation of the square footage of all of the specialized and non-teaching station spaces at the comparison schools. The District must base its allocation of space to the Charter School on this analysis. In addition, the California Supreme Court has stated that a school district may not use its internal “norming ratios”, or student-teacher ratios, in determining the number of classrooms to offer to charter schools but rather must use the facilities inventory at comparison group schools to perform the teaching station to ADA analysis required by the Implementing Regulations. (*California Charter Schools Assn. v. Los Angeles Unified School District* (2015) 154 Cal.Rptr.3d 889.)

Although Proposition 39 requires the District to allocate a school facility for Charter School use, the Charter School is amenable to discussing alternative facilities arrangements that meet both the needs of the District and the Charter School.

The Charter School Governing Board has delegated to me the responsibility to negotiate the allocation of a facility under Proposition 39. All communications regarding this matter should be sent to my attention at the address below. My contact information is as follows:

Jennifer Anderson-Rosse
102 W. Portola Ave., Los Altos, CA 94022
650-947-4100
415-377-0592 (cell)
650-947-4989 (fax)
janderson@bullischarterschool.com

I appreciate your time and consideration of this request and I look forward to developing a mutually agreeable plan to meet the facilities needs of the Charter School’s in-District students.

Sincerely,

Jennifer Anderson-Rosse
Founding Head of School

cc:

Proposition 39 Request: 2019-20 School Year

Clara Roa, David Jacques, Patrick Walsh, Greg Brauner, Bertha Alarcon, Charter School
Board Members
Sarah Kollman, Legal Counsel

Attachments (the following attachments are incorporated by reference herein):

Attachment 1: Charter Petition Signatures

Attachment 2: Intent to Enroll Forms

Attachment 3: 2019-2020 Bullis Mountain View School Calendar

Attachment 4: North Bayshore Development and Impact on MVWSD Slide Deck

