

Charter School Prop. 39 Facilities Requests are Due November 1

Commonly referred to as Prop. 39, Education Code section 47614 requires that school districts provide facilities to charter schools. Charter schools must request facilities for the 2013-2014 school year, in writing, by **Thursday, November 1, 2012**. Even proposed charter schools can request facilities if they submit their request by November 1, 2012 and have their charter approved by March 15, 2013.

Once a school district receives a facilities request from a charter school, the following deadlines are triggered:

December 1 - Deadline for a school district to express, in writing, any objections to the charter school's projected average daily attendance (ADA). If this deadline passes without objection by the district, the district will likely be required to base its facilities offer on the charter school's in-district ADA projections.

January 2 - Deadline for the charter school to respond to any objections raised by the school district regarding ADA projections.

February 1 - Deadline for the school district to provide a preliminary offer of facilities to the charter school, along with detailed information about the offer and a draft facilities use agreement.

March 1 - Deadline for the charter school to respond to the preliminary offer.

April 1 - Deadline for a final offer of facilities by the school district.

May 1 - Deadline for acceptance of offer of facilities by charter school.

Given these tight timelines, it is critical that a facilities request be reviewed shortly after receipt to determine the reasonableness of the charter school's ADA projections, and, if necessary, to consult legal counsel on this issue.

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In the past year, two court decisions have highlighted the challenges school districts face in meeting their Prop. 39 obligations. Both cases illustrate the tension courts perceive in ensuring that charter school students and school district are housed in equivalent facilities. First, a court of appeal has recently ruled, in *Los Angeles International Charter High School v. Los Angeles Unified School District* (October 11, 2012) __Cal.App. __ (2012 WL 4830249), that Prop. 39 does not mandate that school districts place charter schools in the exact location requested by the charter school. However, districts must make reasonable efforts to locate charter schools near their requested locations.

In this case, the charter school requested space at a specific campus. The District offered facilities at a site other than the site requested by the charter school, because its campus size and condition was equivalent or better than the conditions at the other comparison schools. The offered site had grade-alike classrooms available in a building that was separate from the main part of campus, but with a wide array of shared-use facilities. It also offered the best ratio of classrooms to students, and specialized and non-teaching space, such as an office, library, athletic fields and a cafeteria. The site had undergone significant modernization and renovation, which surpassed renovations at the other comparison schools. The court agreed with the District's conclusion that all the other comparison schools were operating at or near capacity, and that only the offered site met all of the Prop. 39 factors, including proximity to the charter school's preferred site.

The District also provided convincing evidence of the harmful impact that carving out space at the charter school's preferred site would have on the District school's current student population and staff. In order to house 157 charter school students at that site, the District would have had to redistribute eight classrooms serving 40 classes, displacing 240 students and eight teachers from their existing classrooms, and the timing was such that this would have taken place in the middle of the school year. The court agreed that this transition would have interrupted the instructional program and ongoing education of the District's students.

Reasoning that Prop. 39 requires that facilities be shared fairly, and that charter school students should not be treated more favorably, the court concluded that the District had appropriately balanced the needs of the charter school's in-district students with the needs of the students in District-run schools. This significant conclusion may help districts evaluate how to balance Prop. 39 requests against the needs of their own students.

This decision is very recent. We will keep you apprised if the matter is appealed to California's Supreme Court.

In another well-publicized decision issued last fall, the appellate court in *Bullis Charter School v. Los Altos School District*, (2011) 200 Cal.App.4th 1022, found, among other errors, that a school district had inaccurately used comparison school data and had also incorrectly compared the size of the facilities offered against the size of the comparison sites' facilities.. This decision put school districts on notice that they must make careful efforts to measure accurately the classroom and non-classroom space of its comparison schools and accurately portray the facilities offered to its charter schools. See [Client News Brief Number 70](#) dated November 2011, for a more detailed discussion of the *Bullis Charter School* case.

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These two cases illustrate the complexity of responding to Prop. 39 requests, the need for school districts to provide rationale and accuracy when responding to Prop. 39 requests, as well as the escalating tensions between school districts and charter schools over securing adequate facilities. Prop. 39 litigation will generally be decided on each case's very specific facts. The court will want to see that the school district documented a serious and objective analysis prior to making its offer of facilities.

For assistance with processing Prop. 39 facilities requests or with any charter school matter, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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