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## Appellate Court Clarifies What School Districts May Charge Charter Schools for Facilities

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The California Court of Appeal has held that school districts must exclude maintenance and operations costs from their calculations when determining the pro rata fees of a charter school that pays for its own maintenance and operations. (*Mt. Diablo Unified School District v. Clayton Valley Charter High School* (2021) 69 Cal.App.5th 1004.) “Pro rata fees” are the “rent” a charter school pays to a school district for the charter school’s use of district facilities under Proposition 39 (Prop. 39).

### Background

In 2000, California voters adopted Prop. 39, which requires a school district to make facilities available to each charter school operating within the district. Prop. 39 permits school districts to charge charter schools a “pro rata share” of facilities costs for the use of district facilities. Pursuant to Prop. 39, the State Board of Education (SBE) adopted regulations to define and provide how the facilities costs are to be calculated. The calculations for determining a pro rata fee are complex.

The regulations state that, when calculating the pro rata fees, the facilities costs that a district pays with unrestricted general fund revenues include maintenance and operations costs. However, the regulations also state that facilities costs do not include any costs that are paid by the charter school for the ongoing operations and maintenance of the facilities that house the charter school.

### *Mt. Diablo Unified School District v. Clayton Valley Charter High School*

In this case, the school district and the charter school could not agree on a method of calculating the charter school’s pro rata share. In calculating its fees, the district excluded funds disbursed from the operations and major maintenance (OMM) account to pay for “operations,” but included funds disbursed from the OMM account for “maintenance.” The charter school claimed that it paid for its own operations and maintenance, therefore, those district costs should not be included in the district’s calculations of its own costs. However, the district made a distinction between “ongoing/routine maintenance” and “major maintenance,” and argued that the charter school is responsible for the latter. The district justified this distinction by stating in its brief that “major maintenance” is intended to “extend the life and value of a capital

asset,” whereas “ongoing/routine maintenance” is intended to “keep the physical plant and grounds open, clean, comfortable, and in working condition and a satisfactory state of repair.”

Each party filed an action seeking a determination of the amounts due. The trial court issued a judgment in favor of the district, holding that the regulations do not require any deduction or offset for operations and maintenance costs paid by a charter school. The charter school appealed.

The Court of Appeal reversed the judgment of the trial court and remanded the case for further proceedings. The analysis of the appellate court was fact-specific and centered around the district’s justification for making a distinction between “ongoing/routine maintenance” and “major maintenance.” The appellate court noted that the SBE added “plant maintenance and operations” costs to the definition of “facilities costs” to enable a district to obtain compensation for those services through a charter school’s pro rata share where the district provides such services. In contrast, the regulations adopted by the SBE require a district to exclude its districtwide plant maintenance and operations costs from its “facilities costs” when calculating the pro rata share if the charter school pays for its own operations and maintenance. The appellate court reasoned that if such costs were not excluded, then charter schools would be paying for the services twice, and the district would be receiving reimbursement for services it is not providing. The court did not find support for the district’s attempt to categorize certain of its maintenance costs as “major maintenance” (i.e., capital improvements), but left the door open for the trial court to do so on remand.

Additionally, the appellate court instructed that a school district must calculate a single, districtwide per-square-foot charge to apply to all charter schools in the district for which it provides operations and maintenance, and a single, although different, districtwide per-square-foot charge for charter schools for which the district does not provide those services.

Without changing the judgment, the appellate court later modified the opinion to add a footnote clarifying that the court makes no determination as to how costs should be calculated where a charter school pays for only a portion of its own operations and maintenance, as opposed to paying all costs for such services.

## Takeaways

When calculating the pro rata share to charge a charter school for use of district facilities, school districts must exclude operations and ongoing maintenance costs if the charter school pays for its own operations and maintenance.

If you would like more information about this case, or to discuss any charter school facilities or Prop. 39 issues, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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