Oakland Unified School District

Office of Charter Schools

Proposition 39 Guide

(Updated August 2025)

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Proposition 39 Overview

Legislative Intent

The intent of Proposition 39 is to ensure "that public school facilities should be shared fairly among all public school pupils, including those in charter schools."

Constitutional Provisions

Proposition 39 was enacted in November 2000 and went into effect in 2003. It modified Article 16, Section 18 of the California Constitution to lower the vote requirement for passage of local school bonds from two-thirds to 55 percent. It also contained provisions calling for school districts to share fairly public school facilities with charter school students.

Statutory Provisions

Proposition 39 also added Section 47614 to the Education Code to require school districts to make facilities available to eligible charter schools. The essential provisions are:

- Each school district must make facilities available to each eligible charter school operating within its boundaries, including a new charter school that will begin operations in the forthcoming year.
- The facilities must be sufficient to accommodate the charter school's classroom-based in-district (i.e. Oakland resident) students.
- The facilities must be reasonably equivalent to the facilities in which the charter school's students would be housed if they attended district-run schools.
- The facilities must be contiguous, furnished, and equipped.
- Contiguous facilities also include facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.
- The district must make reasonable efforts to provide the charter school facilities near to where the charter school wishes to locate, and not move the charter school unnecessarily.
- The district may charge the charter school for the facilities. The maximum charge is a pro-rata share of the district's total general fund facilities costs. The share is based on the proportion of the district's total space allocated to the charter school.
- The district is not required to spend general fund monies to rent, buy, or lease facilities for the charter school.
- The facilities remain the property of the district. They do not become the property of the charter school.

Important Prop 39 Litigation

Ridgecrest Charter School v. Sierra Sands Unified School District 30 Cal. App. 4th 986 (2005)

The Court spoke to the school district's responsibility in responding to facilities requests, saying, "In summary, we conclude a school district's exercise of its discretion in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space between them. That is, we interpret "reasonably equivalent" and "shared fairly" to mean that, to the maximum extent practicable, the needs of the charter school must be given the same consideration as those of the district-run schools, subject to the requirement that the facilities provided to the charter school must be "contiguous." However, the court also acknowledged that "[c]harter school students are not entitled to better facilities choices than other district resident pupils." (*Ridgecrest v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986, 1001 (n. 16).)

Los Angeles International Charter School v. Los Angeles Unified School District 147 Cal.Rptr.3d 757 (2012)

The Court ruled that a school district was not obligated to grant the charter school its preferred location if placing the charter school at that location would force the district "to redistribute eight classrooms serving 40 classes, displace 240 students, and force eight teachers with five different periods each day to vacate their classrooms." School districts are allowed to "strike a fair balance between the needs of the charter school and those of the district-run schools."

Sources: Education Code section 47614; Cal. Admin. Code tit. 5, § 11969.1 *et seq.; "Guide to Proposition 39, the Implementing Regulations for the Charter School Facilities Provisions, and the Proposed Revisions to the Regulations,"* memorandum to members of the State Board of Education from William Ellerbee (Deputy Superintendent), January 29, 2007.

Proposition 39 Timeline

Nov 1	Charter School submits Prop 39 Facilities Request Form to OUSD Office of Charter Schools
Dec 1	District submits objections to Charter School's ADA projections ("Projection Objection Letter"), if applicable
Jan 2	Charter School responds to District's Projection Objection Letter, if applicable
Feb 1	District makes preliminary facilities offer to Charter School
Mar 1	Charter School responds to preliminary facilities offer
Apr 1	District makes final facilities offer to Charter School
May 1	Charter School notifies District to accept or decline the final facilities offer
June 30	District and Charter School finalize Facilities Use Agreement

Note: The District and requesting charter school may mutually agree to alternate timelines in order to accommodate mutually agreeable process and terms.

Proposition 39 Facilities Request Procedures

NOVEMBER 1: Charter School submits Prop 39 Facilities Request Form to OUSD Office of Charter Schools

A charter school must be operating in the school district as defined in Education Code section 47614 before it submits a request for facilities. A new or proposed charter school is eligible to request facilities for a particular fiscal year only if it submitted its charter petition or before November 1 of the fiscal year preceding the year for which facilities are requested (see Education Code sections 47605, 47605.5, 47605.6, or 47605.8). A new charter school is entitled to be allocated and/or provided access to facilities only if it receives approval of the petition before March 15 of the fiscal year preceding the year for which facilities are requested. Facilities requests based upon projections of fewer than 80 units of average daily classroom attendance for the year may be denied by the school district.

To receive facilities during a particular fiscal year**, a charter school must submit a Prop 39 Facilities Request Form** (available on https://www.ousd.org/officeofcharterschools/prop-39) to the District on or before November 1 of the preceding fiscal year.

The written facilities request consists of:

1. Reasonable projections of in-district (i.e. Oakland resident) and total ADA and in-district and total classroom ADA[1], based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year;
2. A description of the methodology for the projections;
3. Relevant (i.e. when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA) documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy;
4. Information regarding the district school site and/or general geographic area in which the charter school wishes to locate;
5. Information on the charter school's educational program, if any, that is relevant to assignment of facilities; and
6. The charter school's operational calendar.

Throughout the process, the District assesses the aggregate amount of facilities demanded by charter schools under Proposition 39, relative to the amount of available space in District facilities for the request year in question.

[1] Projections of in-district ADA, in-district classroom ADA, and the number of in-district students shall be broken down by grade level and by the school in the school district that the student would otherwise attend.

DECEMBER 1: District Submits Objections to Charter School's ADA Projections ("Projection Objection Letter"), If Applicable

The **school district shall review the charter school's projections of in-district and total ADA and, on or before December 1, express any objections in writing and state the projections the district considers reasonable.** If the district does not express objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge, and the school district shall base its offer of facilities on those projections.

JANUARY 2: Charter School Responds to District's Projection Objection Letter, If Applicable

On or before January 2, **the charter school shall respond to any objections expressed by the school district and to the district's projections as set forth above.** The charter school shall reaffirm or modify its previous projections as necessary to respond to the information received from the district by December 1. If the charter school does not respond by the deadline, the district's counter-projections provided above are no longer subject to challenge, and the school district shall base its offer of facilities on those projections.

FEBRUARY 1: District Makes Preliminary Facilities Offer to Charter School

On or before February 1**, the school district shall prepare in writing a preliminary proposal regarding the space to be allocated to the charter school** and/or to which the charter school is to be provided access. At a minimum, the preliminary proposal shall include:

1. the projections of in-district ADA on which the proposal is based;
2. the specific location or locations of the space;
3. all conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school's use of the space; and
4. the projected pro-rata share amount and a description of the methodology used to determine that amount. The district shall also provide the charter school 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 as submitted pursuant to subdivision (b), and/or making counter proposals.

MARCH 1: Charter School Responds to Preliminary Facilities Offer

The requesting charter school must respond to the District's preliminary offer on or before March 1. The charter school may provide feedback and state their continued interest or decline the offer. During this time, charters may also request to view the facility and begin discussions on any "in lieu" considerations.

APRIL 1: District Makes Final Facilities Offer to Charter School

On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school as set forth above, **the school district shall submit in writing a final notification of the space offered to the charter school**. The notification shall include a response to the charter school's concerns and/or counter proposals (if any). The notification shall specifically identify:

1. The classroom, specialized classroom, and non-classroom space offered for the exclusive use of the charter school and for each of these types of space, any space to which the charter is to be provided

access on a shared basis with district-operated programs;
2. For shared space, the arrangements for sharing;
3. The in-district 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 pursuant to subdivision (e), a written explanation of the reasons for the differences;
4. The specific location or locations of the space;
5. All conditions pertaining to the space;
6. The pro-rata share amount; and
7. The payment schedule for the pro-rata share amount, which shall consider the timing of revenues from the state and from local property taxes.

MAY 1: Charter School Notifies District to Accept or Decline the Final Facilities Offer

The **charter school must notify the school district in writing whether or not it intends to occupy the offered space**. This notification must occur by May 1 or 30 days after the school district notification, whichever is later. The charter school's notification can be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the school district that it intends to occupy the offered space, the charter school is committed to paying the pro-rata share amount as identified. If the charter school does not notify the school district by this deadline that it intends to occupy the offered space, then the space shall remain available for school district programs and the charter school shall not be entitled to use facilities of the school district in the following fiscal year.

The space allocated to the charter school by the school district (or to which the school district provides the charter school access) must be furnished, equipped and available for occupancy by the charter school for a period of at least ten working days prior to the first day of instruction of the charter school. This period is subject to reduction by the school district, but to no fewer than seven working days.

JUNE 30: District and Charter School Finalize Facilities Use Agreement

The school district and the charter school shall negotiate an agreement regarding use of and payment for the space. The agreement shall contain at a minimum, the information included in the notification provided by the school district to the charter school). In addition:

1. The charter school shall maintain general liability insurance naming the school district as an additional insured to indemnify the school district for damage and losses for which the charter school is liable. The school district shall maintain first party property insurance for the facilities allocated to the charter school;
2. The charter school shall comply with school district policies regarding the operations and maintenance of the school facility and furnishings and equipment;
3. A reciprocal hold-harmless/indemnification provision shall be established between the school district and the charter school; and
4. The school district shall be reasonable for any modifications necessary to maintain the facility in accordance with Education Code section 47610(d) or 47610.5.

Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education Code. §11969.9. Procedures and Timelines for the Request for, Reimbursement for, and Provision of, Facilities

Prop 39 Frequently Asked Questions

What is Proposition 39?

Proposition 39 provides for the allocation of facilities to charter schools. California voters passed Proposition 39 on November 8, 2000, and it went into effect in November 2003. Proposition 39 added Section 47614 to the California Education Code. The intent of Proposition 39 is to ensure ***"that public school facilities should be shared fairly among all public school pupils, including those in charter schools."*** As a result of Proposition 39, districts are required to provide facilities to eligible charter schools, subject to certain requirements.

What must districts do under Proposition 39?

School districts must provide charter schools with facilities that are "**reasonably equivalent**" to those used by district students for the students of the charter school who live within the District geographic boundaries. The facilities must be contiguous[2], furnished and equipped[3], and districts must make a reasonable effort to locate charter schools near the area in which the school wishes to locate, and not move the charter school unnecessarily. The district does have a right to move the charter school if it deems it necessary.

What ratio is used when providing a charter school with a facility under Proposition 39?

Districts must provide facilities in the same ratio of classrooms to ADA as provided in District-run comparison schools. Districts are also required to provide non-classroom space and specialized classroom space commensurate with the in-district (i.e. Oakland resident) ADA of the charter school, including administrative space, kitchen, multi-purpose room and play area space.

May districts charge the charter school for facilities costs?

Yes, the District charges the charter school for the facilities. The charge is a pro-rata share of the district's total general fund facilities costs. The share is based on the proportion of the district's total space allocated to the charter school and is defined in law. ***The district pro-rata share rate includes debt service to the state loan.***

What is included in the pro-rata share??

Under the Proposition 39 regulations, "Facilities Costs" includes "costs associated with plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases," including contributions to ongoing and major maintenance, routine restricted maintenance and deferred maintenance.

How does Prop 39 apply to conversion charter schools?

A conversion charter school generally remains at the school site where it was operating before it became a charter school as long as the charter school requests the site from the school district on an annual basis. Proposition 39 provides only that a school district could not move a charter school to another site "unnecessarily."

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[2] "Contiguous facilities" are contiguous if they are contained on the school site or immediately adjacent to the school site. If the in-district ADA of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.

[3] "Furnished and Equipped" - a facility is furnished and equipped if it includes reasonably equivalent furnishings and equipment necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools and if it has equipment that is reasonably equivalent to that in the comparison group schools.

How does the district assist with co-locating a charter school and district school?

Proposition 39 contemplates that charter schools and district schools may share school sites. Facilities Use Agreements for co-located schools will require establishment and ongoing use of a Shared Site Committee comprised of leadership and representatives from each school located on the campus. Schools will be assisted by central office staff in forming and maintaining shared site committees, including negotiating shared space calendars, norms for student behavior, and protocols for any shared staff.

What if a charter school withdraws its facilities request?

Charter schools may choose to withdraw their facilities requests for any reason. When a charter school withdraws, it remains eligible to request facilities in the subsequent year under Prop 39. Additionally, the district may negotiate a Facilities Use Agreement with a charter school at any time. If a charter school withdraws its request after having received a Preliminary Facility Offer by the District, the same facility may be considered for a Final Facility Offer to a different requesting charter school in the same year.

Do charter schools in District facilities under Prop 39 pay into the state loan? What else do they pay for?

Yes. Debt service is included in pro-rata share rates charged to charter schools under Prop 39 Facilities Use Agreements. Most "In Lieu" facilities use agreements also include provisions to include debt service in the agreed upon rates. Charter schools in District facilities also pay their share of utilities, ongoing maintenance, and in cases where custodial and school security services are provided by the District, a share of these expenses are also paid by the charter school.

How are district facilities allocated to charter schools?

The District considers the following:

- Required space to accommodate facilities request
- Location requested by charter school and residence of student population (if different)
- Grades spans to be served
- Unique program requirements
- Capacity to meet long-term facility needs
- Identified district needs, such as limited seats in a region in a particular grade span
- Impact on school District and other charter school programs.

The District conducts an annual assessment of facilities utilization by district school programs, as well as identifies spaces not currently occupied by district programs, to determine eligible spaces.