



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

Comprehensive Prop. 39 Update

This comprehensive Legal Alert provides an overview of the changes to the Proposition 39 regulations, which includes important changes in the due dates and supporting documentation for these requests, a revised Proposition 39 request form, a recent court case on Proposition 39, an update on the current challenge by the Education Coalition to the State Board of Education's new regulations, as well as information about a series of workshops in collaboration with the California Charter Schools Association regarding Proposition 39.

New Proposition 39 Regulations Effective for 2009-2010 School Year

Proposition 39 requires school districts to make reasonably equivalent facilities available to every charter school operating within its boundaries. In January the State Board of Education approved important changes to the Proposition 39 implementing regulations. These changes clarify and expand the Proposition 39 responsibilities for schools districts and charter schools, as well as alter and amend the timelines and procedures for requesting facilities. The changes become operative with the requests submitted by charter schools during the 2008-09 school year for use of facilities in 2009-10.

Summary of Changes in the Regulations

The new regulations contain many new changes and clarifications; we have included a brief summary of some of the changes here, but encourage you to review the complete text of the new regulations and contact our office with any questions. A copy of the new regulations may be found on our website at the following link.

Furnishings and Equipment

The new regulations change the definition of “furnished and equipped” to require a district to provide furnishings and equipment equal to those provided to students at the comparison schools. The new regulations also require districts to provide furnishings and equipment not just for the classroom, but also for student services that directly support instruction; this would potentially include “furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not an integral part of the building or building system, and certain intangible assets, such as major software programs” if these furnishings are also provided to students in the comparison schools.

Facilities Costs (pro rata share)

The new regulations clarify the manner in which facilities costs, and therefore the pro rata share, must be calculated. The new regulations also contain new definitions of the terms “general fund,” “facilities costs,” and “unrestricted revenue,” and clarifies the

maintenance and facilities costs that are to be included. Moreover, the new regulations confirm that if a school district charges a charter school for facilities costs, and if the district is the charter school's authorizing entity, the facilities are not considered substantially rent free and the district may only charge up to a 1% oversight fee.

District will also now be required to provide their annual pro rata share charges to the California Department of Education, which will post them on its website.

Additional Changes

In addition, the new regulations contain many other changes and clarifications, including:

- Clarifying that district and charter schools can mutually agree on an alternative manner for the district to satisfy its Proposition 39 responsibilities.
- Allowing charter schools to receive facilities allocations based on ADA for nonclassroom based students by agreement with the district, but only to the extent that those students are actually in a classroom and under the direct supervision and control of the charter school.
- Moving more strongly towards requiring districts to provide contiguous sites to their charter schools. Specifically, if a district's preliminary or final offer does not provide for a contiguous 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.
- Providing that if a district does not have comparison schools that serve similar grade levels as the charter school, the appropriate allocation is a contiguous, existing facility "that is most consistent with the needs of students in the grade levels served at the charter school." Consequently, if a charter school operates in a kindergarten through eighth grade configuration and the district only operates school sites in a kindergarten through fifth grade and sixth grade through eighth grade configuration the district must still provide the charter school with a single contiguous site.
- Clarifying the proper allocation of specialized teaching space, by requiring that districts allocate the space based on three factors: 1) the grade levels of the charter school's in-district students; 2) the charter school's total in-district classroom ADA; 3) and the per-student amount of specialized classroom space in the comparison group schools. The new regulations also require districts to negotiate in good faith with the charter school to establish time allocations and schedules for non-teaching space, including athletic fields, administrative space, kitchens, and play space.

- Adding the condition of athletic fields and/or play area space into the evaluation of whether a facility is in reasonably equivalent condition.
- Providing that a conversion charter school in its first year of allocation is exempt from over-allocation charges.
- Ensuring that conversion schools are entitled to remain in their original location unless they request a change or make a material revision to their charter to change their location and limit a school district's ability to change a conversion charter school's former attendance area.
- Providing additional clarification on how a charter school must support its ADA projections in its annual requests, including a clause that the documentation must be sufficient for the district to determine the reasonableness of the projection, but need not be verifiable for precise arithmetical accuracy. Under the new regulations the charter school must only provide supporting documentation with its request if the charter school is in its first year of operation or to the extent that it projects a substantial increase in in-district ADA.
- Requiring a district to express its objections to ADA projections by **December 1**; if it does not do so by the deadline, the original projections are no longer subject to challenge, and the district must base its offer of facilities on those projections. The new regulations also require a charter school to respond to any district concerns by **January 2**; if it does not, the district's projections are no longer subject to challenge, and the district may base its offer of facilities on those projections. Lastly, the district must provide a written preliminary offer by **February 1** with a level of specificity previously only required of final offers.
- Providing additional detail as to the kind of information that must be provided by the district in its final offer and must be included in the Facilities Use Agreement, including reciprocal hold-harmless/indemnification and a provision that the district will be responsible for any modifications necessary to maintain the facility in compliance with Education Code section 47610(d) and 47610.5.
- Requiring that the facilities now be furnished, equipped and available for occupancy by the charter school at least ten working days prior to the first day of instruction of the charter school -- but allows the district to shorten this timeline to seven working days for "good cause."

New or Altered Deadlines

As noted above the new Proposition 39 regulations alter the timelines for the Proposition 39 application and response process beginning with requests made during the 2008-09 school year for use of facilities in 2009-10. The table below summarizes the changes:

ACTION TO BE TAKEN	OLD REGULATIONS	NEW REGULATIONS
Existing charter schools submit Proposition 39 request	Before October 1	On or before November 1
Charter schools planning to open in the request year submit charter petition	Before November 15	On or before November 1
Charter schools planning to open in the request year have their charter petition approved	Before March 1	Before March 15
Charter schools planning to open in the request year submit Proposition 39 request	Before January 1	On or before November 1
Districts provide objections to ADA projections	Not specified	On or before December 1
Charter schools respond to any objections expressed by the district and to the district's projections	Not specified	On or before January 2
District's Preliminary Offer	Not specified	On or before February 1
Charter school response to Preliminary Offer	Not specified	On or before March 1
District's Final Offer	April 1	On or before April 1
Charter school notifies district whether it will occupy offered space	By May 1 or 30 days after the district notification of its final	By May 1 or 30 days after the district notification of its final

	offer, whichever is later.	offer, whichever is later.
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New Request Form Template:

The application process for requesting Proposition 39 facilities is technical and requires complete compliance with the regulations and school district policy, if any (a school district may adopt its own policies and procedures around facilities requests). In response to the new and extensive changes to the regulations, the Law Offices of Spector, Middleton, Young & Minney, LLP in collaboration with the CCSA has revised its sample Proposition 39 request form for the 2009-2010 school year. The updated form and instructions are now available on our website by clicking the following link: [Sample Prop. 39 Request form](#). PLEASE BE SURE TO USE THE UPDATED FORM AS OLDER FORMS MAY NOT CONTAIN THE INFORMATION NECESSARY TO SUBMIT A COMPLETE APPLICATION.

SMYM/CCSA Workshops on Prop. 39

In addition, in partnership with the CCSA, SMYM will also be holding a number of **Proposition 39 workshops** across the state. We encourage you to attend these workshops to learn more up-to-date information, and to prepare your 2009-2010 Proposition 39 request. For more information, as well as workshop dates and locations, please visit our website at www.smy charterlaw.com.

Education Coalition Files Lawsuit Against SBE's New Prop. 39 Regulations

On July 24, 2008, the California School Boards Association, along with the Association of California School Administrators and the California Association of School Business Officials, filed a lawsuit in Sacramento Superior Court against the State Board of Education, the State Superintendent of Public Instruction, and the California Department of Education. This lawsuit challenges the new Proposition 39 regulations on a number of legal bases, alleging, among other things, that the new regulations treat charter schools more favorably than school district schools, require the expenditure of unrestricted general funds, impose unfunded mandates, and contravene express statutory language. SMYM and the law offices of Procopio, Cory, Hargreaves & Savitch, LLP have filed papers with the court to allow it to intervene in this action on behalf of CCSA; the court granted the intervention at the end of August.

The petitioners had asked the court to invalidate all of the State Board of Education's revised implementing regulations immediately and to reinstate the prior regulations. The petitioners sought and received a court hearing date of October 17, 2008. We are vigorously fighting on behalf of all charter schools throughout the State of California to ensure the enforcement of the new regulations. However, to be cautious, given the uncertainty of the current litigation, there is no harm to charter schools to

submit their 2009/2010 Proposition 39 requests by the end of September (i.e. no later than **September 30**). If you have any questions or concerns regarding this suggestion please contact our office.

New West Charter School Wins Substantial Court Victory Against LAUSD re Prop. 39 Facilitates

Los Angeles Unified School District has a long history of noncompliance with Proposition 39. More recently, LAUSD made a number of deficient Proposition 39 final offers to charter schools by April 1, 2008. After New West Charter School accepted its offer of 14 classrooms to be co-located at Fairfax High School, LAUSD rescinded this offer. New West, with the assistance of SMYM and Procopio, filed a writ of mandate in Los Angeles Superior Court challenging LAUSD's actions. LAUSD filed over 800 pages in opposition.

In a 6 page decision, the trial court found in favor of the Charter School and dismissed LAUSD's opposition as a "parade of unproven horrors." The court concluded that "a charter school's right to equitably share school district facilities is unequivocal and mandatory, even if it might cause some disruption and dislocation of district students." The court concluded that LAUSD had no legal authority to withdraw its Proposition 39 offer and LAUSD must immediately make a legally compliant Proposition 39 offer to the Charter School. A copy of the court's decision can be found on our website at the following link.

The changes to the Proposition 39 regulations will have a significant impact on the Proposition 39 process. We encourage you to contact our office if you have any questions, or if you would like assistance in drafting your Proposition 39 request. Please contact Paul Minney (pminney@smymlaw.com) or Sarah Kollman (skollman@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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