

## Proposition 39 Regulations Amended

Proposition 39, passed by California voters in 1998, requires school districts to provide facilities to charter schools that request them in a timely manner. Implementation regulations for Proposition 39 are found in the California Code of Regulations, Title 5, Sections 11969.1 et seq.

The State Board of Education submitted, withdrew, and resubmitted amendments to the Office of Administrative Law (OAL) at the end of 2007. On February 28, 2008, the OAL approved the amendments to regulations that govern how school districts allocate facilities to charter schools. The amendments will go into effect thirty days from OAL's approval, March 28, 2008, and will make changes to the rules surrounding charter school requests for facilities.

The amendments to the regulations will not affect currently pending facilities requests; the regulations are to be enforceable for facilities requests received by school districts in the fall of 2008 for the 2009-10 school year.

The amendments are extensive; however, a brief summary of the amendments that will most impact school districts are listed below:

- **Charter School Facilities Must Be “Contiguous”**—The amendments state that, when a school district is evaluating a charter school's request for facilities, “the charter school's in-district students must be given the same consideration as students in the district-run schools, subject to the requirement that the facilities provided to the charter school *must* be contiguous” (CCR, Title 5, Section 11969.2[d]). The newly adopted regulations require that, if a school district cannot accommodate a charter school at a single school site, its governing board must make a written finding to that effect and adopt a written statement of reasons in support of that finding.
- **School District Must Provide Reasonable Equivalent Furnishings and Equipment for Charter Schools**—Proposition 39 states that charter school facilities provided by school districts shall be “furnished and equipped.” The amended regulations state that a facility will be “furnished and equipped” if it includes “reasonably equivalent” furnishings and equipment such as are found in the comparison group schools. The comparison was required before the amendments; however, the amended regulations go on to state that “equipment” is property that “does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year) by use.” Some examples included in the regulation are “furniture, vehicles, machinery, motion picture file, videotape” and “certain intangible assets, such as major software programs.” A school district can exclude furnishings and equipment paid for with nondistrict resources when determining reasonable equivalence.
- **“Conversion” Charter Schools May Retain Their Sites Indefinitely**—Some charter schools are created when a district school's parents or staff submit a petition to convert a district-operated school into a charter school; these are called “conversion” charter schools. Other “conversion” charter schools are those created as a remedy for poor performance under the state's Public School Accountability Act “unnecessarily,” but under the revised regulations, a “conversion” charter school will be entitled to remain in the school site in which it was operating when it became a charter school so long as the charter school requests the site from the school district on an annual basis.

Under the amended regulations, a school district must obtain a waiver to move a “conversion” charter school away from its existing location (proposed amendment to CCR, Title 5, Section 11969.3). The regulation also

provides that a “conversion charter school may, by revision to its charter, change its location and request different facilities from the school district in which it was located.” School districts must also seek “waivers” from the State Board of Education to change a charter school’s attendance area.

- **Information on a School District’s Facilities Charges Must Now Be Reported to the Department of Education**—Under Proposition 39, a school district can charge a charter school using school district facilities a pro rata share of its facilities costs. When the new regulations go into effect, each charter school will have to report to the California Department of Education (CDE) by June 1 of each school year the per-square-foot charge it is paying in the current fiscal year. School districts can provide explanatory information about the per-square-foot charge. The CDE will post the per-square-foot amounts and any explanatory information on its website (CCR, Title 5, 11969.7).
- **Tighter Timelines for Responding to Facilities Requests Are Imposed**—Proposition 39 regulations previously provided that a charter school must submit its facilities requests by October 1 of the school year. A school district must provide a preliminary offer of facilities, and must make a final offer by April 1. The amended regulations shorten this time period and impose deadlines for each action to be taken for consideration of a facilities request. Additionally, there are consequences for missed deadlines.

The new deadlines are as follows:

- **November 1**—Deadline for charter schools to submit facilities request for the next school year
- **December 1**—Deadline for school districts to review a charter school’s enrollment projections, express any objections in writing, and state the enrollment projections that the district considers reasonable. If a district misses this deadline, the charter school projections stand and the district must base its facilities offer on those projections.
- **January 2**—Charter school’s deadline for responding to any objections submitted by the district in response to the charter school’s enrollment projections. If a charter school misses this deadline, the district’s counter-projections stand and the district must base its facilities offer on the counter-projections.
- **February 1**—School district’s deadline to submit a preliminary proposal regarding the space to be allocated to the charter school. The preliminary proposal must include information related to in-district average daily attendance (ADA) projections on which the proposal is based, the specific location or locations of the space, the condition of the facilities, a description of the comparison schools used in developing the preliminary proposal, a draft facilities use agreement, the projected pro rata share amount, and a description of the methodology used to determine that amount. The district must also spell out the difference between what the charter school requested and what the district is offering by way of facilities.
- **March 1**—Charter school’s deadline to respond in writing to the district’s preliminary proposal. The charter school may express concerns, address any differences between its facilities request and the district’s preliminary proposal, and/or make counter proposals.
- **April 1**—School district’s last day to submit in writing a final notification of the space offered to the charter school. The offer must also address the charter school’s concerns and counter proposals, if any, and provide specific information about the capacities of the facilities offered.
- **By May 1 or within 30 days of the district’s final notification**—Charter school must notify the district in writing if it intends to occupy the space offered. If a charter school misses the deadline, it will not be entitled to use facilities of the school district in the following fiscal year.

We anticipate that these amendments to the regulations have the potential to further tensions between districts and charter schools. The California School Boards Association (CSBA) has opposed and may litigate the amendments. Stay tuned . . .

