

SAN DIEGO CITY SCHOOLS
Office of General Counsel

CO-LOCATION OF FANNO ACADEMY CHARTER SCHOOL
AT CARVER ELEMENTARY SITE

May 24, 2005

Introductory Statement

In November 2000, the voters of California passed Proposition 39. Proposition 39 provided, among other things, that a certain portion of such bond proceeds must go toward charter school facilities. Proposition 39 also amended the Education Code to mandate that school districts provide facilities to charter schools, with certain limitations, and in a manner fair to both charter schools and traditional district schools needs.

Background

On March 23, 2004, the Board of Education (1) approved and affirmed the recommended policies and procedures articulated in this report and in Exhibit 1 hereto for implementation of Proposition 39, (2) instructed staff to continue working with the charter school community to resolve outstanding issues and disputes to the greatest extent possible under the current circumstances, and (3) directed staff to incorporate charter facility issues into the District's long range facilities policy and plan and develop a process for inclusion of charter school facilities in future facilities bond measures.

On March 28, 2005, the Board approved revised policies and procedures for allocation of District facilities to charter schools under Proposition 39.

The District approved the Fanno Academy Charter School on October 28, 2003 for a K-8 grade configuration. Carver Elementary School is a K-5 year-round school.

At the April 26, 2005 meeting, this Board directed staff to prepare a report on the potential co-location of charter school Fanno Academy, with Carver Elementary at the current Carver Elementary site.

In response to that Board direction, the Chief of Staff and Office of General Counsel coordinated an interdisciplinary effort to evaluate the possible co-location. This effort included Facilities, Instructional Facilities, Instructional Support, Finance, School Choice, and General Counsel.

Process and Policy

On March 28, 2005, the Board approved the following process for allocating facilities to a charter school under Proposition 39. These procedures are based on the policies articulated in Exhibit 1 hereto. Italicized are the amendments to that policy being proposed at this same Board of Education meeting in a separate report.

If staff is able to identify space that might be available for a charter school under Education Code section 47614, the District will utilize the following procedure:

1. Board determination that a site is excess or has no reasonably foreseeable District use;
2. ***In addition to any applicable school closure or excess school property procedures for community outreach and input, District staff will conduct community outreach to advise the community of the potential for allocation of the facility to a charter school, and to solicit input regarding that allocation. The Board may determine that school closure or excess school property procedures are adequate for this purpose, that community outreach and input on the allocation shall be included in those procedures, or that a separate or additional community outreach and input effort is appropriate.***
3. Notify all applicant schools that have not already received facilities that the particular space(s) is/are available;
4. Ask that those schools interested in occupying the space identify themselves to the District in writing;
5. Conduct an evaluation of each school's proposed use of the available space to determine the priority order in which the applicants would be offered the space(s). The evaluation would be based on the following criteria (not in priority order):
 - a. Compatibility between the space requested and the space available;
 - b. Compatibility between the location requested and location available;
 - c. Compatibility between the school program, the site ***and its community***;
 - d. The financial ability of the applicant school¹ to afford site costs or enhancements;
 - e. Applicant history of academic success;
 - f. The highest and best District use of the site, and
 - g. When temporary and transitional co-location of programs on a single site is at issue, the compatibility of the applicant program and the existing program.

¹ References to applicants include the applicant's sister and parent organizations.

6. To the extent options arise outside the above scenario, staff, and ultimately the Board, will evaluate and explore such alternatives with charter schools in good standing and that have submitted applications under this procedure.

Items 1 through 4 above set forth the sequence necessary to implement the Board-approved Proposition 39 facilities policies and procedures. Item 6 offers some flexibility in exceptional circumstances. Therefore, absent exceptional circumstances, the first step in the Board-approved process is a determination that “a site is excess or has no reasonably foreseeable District use.” Unless this Board wishes to waive the above process, the Board should first make the quoted determination.

In order to determine that a school site or other district facility is excess or has no foreseeable use, the District would ordinarily go through a series of steps. Prior to closing an operating school site, the district would go through the “school closure process outlined in Administrative Procedure 3113. If, after going through that process, the Board determined to close the school, the Board would then determine whether the site was “excess or had no reasonably foreseeable district use.” That inter-departmental analysis would occur via the district Facilities, Facilities Planning, Financial and Instructional Support functions. Once determined “excess,” the Excess School Property Committee would review the potential uses of the property per Education Code section 17387 and Administrative Procedure 3105. The Board may also determine that the site has “no reasonably foreseeable district use” and may be allocated to a charter school or schools under district Proposition 39 policy. Once that determination is made, the Proposition 39 allocation procedure would be followed.

For a non-academic district facility or property, if that property had not already been declared excess, staff would perform that analysis and make a recommendation to the Board. The Board would make the determination and send the property to the Excess School Property Committee for review, or determine that as there is no “reasonably foreseeable district use” the property may be allocated to a charter school or schools under the Proposition 39 policy. The District would then conduct community outreach via the excess school property process or through a Proposition 39 specific process.

Allocation of portions of the Carver Elementary site without going through the above process would require waiver of these procedures and the policies stated in Exhibit 1 hereto.

Co-Location

The Board should also note District policy on co-location:

12. Consistent with the obligation to ensure the integrity of district programs, the district will consider temporary co-location of a district school and a district-authorized charter school on a case by case basis in the context of transitioning a school site to charter or other use under the following conditions:

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- a. Fairness to district students,
- b. Compatible class configurations and grade levels,
- c. Compatible uses of the site,
- d. Compliance with the Field Act and all other state, federal and local requirements,
- e. Provision of separate street access,
- f. Charter school responsibility for compliance with all federal, state and local laws and regulations, including, but not limited to all land use and environmental concerns,
- g. Charter school compliance with all aspects of its charter,
- h. Charter school acceptance of all liability (and indemnity of the district) arising out of its use of the site,
- i. Complete legal and physical separation of the traditional district program and the charter school program,
- j. No adverse effect on the traditional district program at the site,
- k. Charter school to provide appropriate and adequate custodial and maintenance effort to avoid diminution in value, and
- l. Charter school to exercise proper and adequate supervision over its students, staff, parents, visitors, and others.

13. If a site is determined excess and the District makes that site available for charter school allocation, the District will consider co-location of more than one charter school at the site.

At this time, there has been no finding that the site in excess or has no District use. If the Board waives the finding that the site is excess or has no District use, the Board must determine whether the current Carver Elementary School site is ripe for co-location under the Board policy stated above. To do so, the Board must first determine whether the current Carver Elementary facility will likely close as a District-run school or move or transition to charter use. If not, then the Board must alter or waive its co-location policy to allow co-location when there are no plans to move or close an existing program or school.

Based on the above, unless the Board determines that the current proposal warrants deviation from the stated Proposition 39 policy and procedure, staff recommends that the following occur prior to the Board directing co-location between Carver Elementary and Fanno Academy:

1. Determine that the site is excess or that there is no reasonably foreseeable District use and that the site may be allocated for charter use;
2. Conduct community outreach to advise the Carver community and solicit input on the allocation;
3. As we are outside Proposition 39 timelines, advise all District authorized charter schools of the opportunity to co-locate at the current Carver site; and

4. Conduct an evaluation consistent with District Proposition 39 procedures to determine which applicant charter school is the appropriate program for the facility.

The Carver Site

In 2004, staff recommended closure of Rolando Park Elementary due to significantly declining enrollment there, and to reassign that school's attendance boundary and population to the Carver Elementary School site. At that time the Carver site had the classroom capacity/infrastructure to handle the combined populations; Rolando Park did not. The Board chose not to close Rolando Park Elementary.

As a result of that decision, the District made use and plans for use of excess capacity at Carver rather than let it sit idle. These actions include the placement of two new SEEC classes for 2005-06, the need for which was identified by the Special Education department. The District will also identify Carver as the neighborhood K-5 school for the geography that has been assigned to Darnall Charter School, coincident with the structure of the new Darnall charter agreement. While Darnall will probably continue to attract a significant number of area students due to proximity and program, there is the potential for enrollment increase at Carver.

Therefore, Instructional Facilities staff does not recommend the closure of the Carver school/program.

In light of the above, the Carver site does not appear to fall within the District policy for approving co-location. The District will continue to operate Carver Elementary at that site.

If the Board elects to offer charter co-location at the Carver site, staff would first conduct public outreach and obtain community feedback prior to a recommendation of allocation or any recommendation as to the proposed recipient of the site. Importantly, pursuant to District Proposition 39 procedure, the opportunity should be offered to all District authorized charter schools to submit proposals for site use. District staff would then evaluate each proposal against the criteria set forth above to make a recommendation as to which charter school or schools would receive the allocation.

Instructional Implications

This District has traditionally avoided co-location due to the likely logistical and operational complications implicated by two schools operating on a site designed for one school. The policies articulated in Exhibit 1 hereto stipulate that no co-location may occur if such practice would negatively impact the existing traditional District program or students at the site. Experience and common sense indicate that such issues will negatively impact instruction and operation.

The logistics of co-location create significant operational challenges that inevitably impact instruction and learning. Some basic operational concerns are student and staff foot and vehicular traffic, increased maintenance needs, conflict between programs and scheduling, and disruption of routine to

accommodate an additional user on site. Time spent on logistical and operational complications will necessarily reduce time and attention paid toward instruction.

Facilities Implications

Carver Elementary School currently has 12 surplus portable classrooms that could be made available to the Fanno charter. These portables have not been site certified and will require foundation, access ramp and other code upgrades to meet current Division of State Architect requirements. If these classrooms are not used by the Fanno charter, they would be ultimately be removed from the site to replace older non certified portables at other sites, moved to a stockpile site or demolished, unless another program requirement was identified. Initially the Fanno charter may only require 8 portable classrooms for the proposed K-8 program, plus one portable for administration.

Potential facilities modifications include the construction of student toilets in one portable to accommodate kindergarten, construction of a new kindergarten play area and the development of a new parking lot and entry in front of the portables to be used by the school. Minor modifications to the existing phone and data service to accommodate the two programs will be provided.

This preliminary facilities analysis assumes that Fanno will share the existing bus drop off, food service, hard-court and playfields and the library with Carver Elementary. The analysis also assumes that no facilities modifications will be required to support the science curriculum for the 6-8 grade students at the school.

The estimated cost of the site certification for 12 portable classrooms is anticipated to be \$30,000 to \$40,000 each, for a total certification cost of \$360,000 to \$480,000. The construction of the kindergarten toilets, kindergarten play area, fencing, new parking and other minor modifications are anticipated to be in the range of \$200,000 to \$250,000.

Budget Implications

Total facilities cost is estimated at an upward limit of \$750,000. These costs would be eligible for use of State School Facilities Funds if the Board of Education elects to allocate such funds.

Public Support and Engagement Implications

If the Board elects to offer charter co-location at the Carver site, staff would first conduct public outreach and obtain community feedback prior to a recommendation of allocation, or a recommendation as to the proposed recipient of the site. Such feedback would be incorporated into the selection criteria. Allocation of sites to charter schools outside District policy and procedure may create heightened expectations in the charter community for allocation of District facilities. Such expectations would require attention and effort to manage given the District's policy against on-going co-location.

Policy Implications

Implementation of co-location between the current District program at the Carver Elementary site and the Fanno Academy Charter School program is not consistent with existing District policies approved by the Board on March 28, 2005 (see above).

In order to implement the proposed co-location, the Board would be waiving policy and procedure in four respects:

- Lack of a finding that the site is or will be designated excess or without District use;
- Co-location in a non-transitional context;
- Allocation without offering the opportunity to the larger charter community; and
- Allocation without analyzing which charter school is best suited to the site for minimized impact to the existing program.

Recommendation

The Superintendent recommends the Board decline to co-locate Fanno Academy Charter School with Carver Elementary for the 2005-2006 school year for the following reasons:

- Implementation would require waiver of policy and procedure in four important respects (see above);
- Cost (up to \$750,000)
- Likely negative impact to the existing program at the Carver Elementary site.

Prepared by Tad Seth Parzen, General Counsel

Attachments: Exhibit 1, Instructional Facilities, San Diego City Schools Policies and Practice

TSP:dmh