

April 1, 2011

VIA U.S. MAIL, FAX AND EMAIL

Mark Kushner
Flex Public Schools
555 Post Street
San Francisco, CA 94201
mkushner@flexsf.org

RE: Final Offer of Facility Space for the 2011-2012 School Year
Glenbrook Middle School—2351 Olivera Road, Concord, CA 94520

Dear Mr. Kushner:

On November 7, 2000, California voters passed Proposition 39. A portion of this initiative amended Education Code section 47614 to mandate that school districts make excess facility space available to in-district charter school students, if certain conditions are met, in a manner that is fair to all public school students. The California Department of Education has also promulgated implementing regulations, most of which took effect on August 29, 2002.

To the extent possible, the Mt. Diablo Unified School District ("District") has attempted to match Flex Public School's ("Charter School" or "Flex") facility request with space available based on the compatibility of the following features:

- The quantity of classroom space requested and the excess classroom space available.
- The grades served by each program when programs are co-located.
- The school program and the site.
- The location requested and the location available.

On February 25, 2011, the District provided Flex a Proposition 39 Preliminary Facility Offer to occupy space for **one year only** at Glenbrook Middle School, as required by the California Code of Regulations, Title 5.

Pursuant to the Charter School's March 11, 2011 response to the District's preliminary offer, the District has taken into consideration concerns expressed with respect to custodial services, verification of certain aspects of the per square foot calculation, telephone systems, data lines, and related equipment. The District is committed to

developing a mutually agreed plan to resolve these issues prior to finalizing a Facilities Use Agreement, a draft of which is attached to this letter.

2011-2012 FINAL SPACE OFFER

All concerns set forth in Flex's March 11, 2011, response to the preliminary offer will be addressed in the Facilities Use Agreement.

This letter constitutes a final offer of facility space as required by the California Code of Regulations, Title 5. Education, Division 1. California Department of Education, Chapter 11. Special Programs, Subchapter 19, Charter Schools, Article 3. Facilities for Charter Schools, Section 11969.9 (5 CCR s 11969.9 Cal. Admin. Code Tit. 5, s 11969.9). The District makes the following offer of facility space at Glenbrook Middle School to Flex:

- Exclusive use of five (5) teaching stations identified as Rooms 701-705 on the attached map
- Exclusive use of one (1) room to be used as administrative space identified as Room 706 on the attached map
- Shared use of the multi-purpose room/cafeteria identified as Dining Room/Auditorium on the attached map
- Shared use of the PE building, a science lab (Room 800), hard court, turf, and parking identified as such on the attached map

This offer is based on an in-district classroom ADA assumption of 121 students in grades 9-12 at Flex.

The District and the charter school shall negotiate a Facilities Use Agreement regarding use of and payment for the space. The agreement shall contain: for shared space, the arrangements for sharing; specific location(s) of the space; all conditions pertaining to the space; the pro rata share amount; and the payment schedule.

The space allocated by the District will be furnished with desks and chairs, equipped with blackboards, and available for occupancy by the Charter School ten days prior to Flex's first day of instruction in 2011-2012.

Flex must report actual ADA to the District every time it reports ADA for apportionment purposes. The reports must include in-district and total ADA and in-district and total classroom ADA. Flex must maintain records documenting the data contained in the reports. These records shall be available on request by the District.

Flex and the District may negotiate separate agreements and/or reimbursement arrangements for specific services not considered part of facilities costs as defined in Section 11969.7. Such services may include, but are not limited to, the use of additional space and operations, maintenance, and security services.

ANNUAL PRO RATA SHARE & PAY SCHEDULE

All charter schools that choose to accept a Proposition 39 offer to occupy District facilities will be charged a facilities use rate that represents the charter school's pro rata share of general fund expenditures for the last fiscal year for costs for building and grounds deferred maintenance, as allowed by statute and regulations.

Flex's annual rate includes its contribution for use of classrooms and administration space, shared access to special classrooms and non-classroom space. There may be additional pro rata charges for required services to the entire facility, such as sewer charges, and gas, water and electricity. These terms and rates will be part of a final Facilities Use Agreement.

Flex will be charged, at the actual cost, for any extra or extended services provided by the District. Flex will be responsible for acquiring its own basic and long distance telephone service and Internet connectivity. Flex will not be part of District's e-mail network or its telephone system. This access must be separately acquired by Flex after consulting with the District's facility staff regarding its installation at the site.

The estimated pro rata share amount that Flex will pay for this space will be \$74,874.87. This is an estimated amount because by law, facility charges to charter schools must be based on the actual costs for the year immediately preceding the charter school's use of the facilities (in this case 2010/11). However, the District will not be able to determine its actual facilities cost for the current school year until well after the deadline for making this offer. Flex's final pro rata share will be finalized after the District has closed its books for the current school year.

The payment schedule for the pro rata share amount, which takes into account the timing of revenues from the state and from local property taxes, is as follows:

- 25% by September 1, 2011;
- 25% by December 31, 2011;
- 25% by March 31, 2012; and
- 25% by June 30, 2012.

RESPONSE

Please notify the District via the undersigned in writing whether or not Flex intends to occupy the offered space no later than: **5:00 PM, Monday, May 2, 2011** - thank you.

Flex's notification can be withdrawn or modified before this deadline as the District and Charter School negotiate terms of the Facilities Use Agreement. After the deadline, if Flex has notified the District that it intends to occupy the offered space, it is committed to paying the pro rata share amount as identified. If Flex does not notify the District by this deadline that it intends to occupy the offered space, then the space shall remain available for alternative use and Flex shall not be entitled to use facilities of the District in 2010-2011.

A response to this final facility offer by fax, mail, or personal delivery must be **received by 5:00 p.m., Monday, May 2, 2010**, at the following address:

Mt. Diablo Unified School District
Attention: Deborah A. Cooksey, Associate General Counsel

<u>MAIL</u> or <u>DELIVERY</u> :	<u>FAX</u>
1936 Carlotta Drive	925-680-2505
Concord, CA 94519-1397	

Please do not contact the principal of the school currently operating at the site. Contact the Office of General Counsel to schedule a site visit or to discuss any location terms and conditions that would apply to the site offered.

If you would like to schedule another viewing of the site or if you have any questions, please contact me at cookseyd@mdusd.k12.ca.us

Sincerely,

Deborah A. Cooksey
Associate General Counsel


cc: Steven Lawrence, Ph.D., Superintendent
Gregory Rolen, General Counsel
Jeff McDaniel, Director of Facilities, Operations and Energy Conversation

Enclosure



SITE PLAN

SCALE: 1" = 80'-0"

<p>MDUSD M.T. DRAKE WHITE SCHOOL DISTRICT MANAGEMENT, OPERATIONS AND FACILITIES</p> 	<p>DISTRICT: DIST-PH# DATE: 1/11/11 DRAWN BY: KKH DESIGNED BY: N/A APPROVED BY: N/A PROJECT NUMBER: N/A</p>	<p>SITE PLAN</p>
		<p>GLENBROOK MIDDLE SCHOOL 2351 OLIVERA RD CONCORD, CA 94520</p>
<p>©2011 MDUSD ALL RIGHTS RESERVED</p>	<p>DATE: 2/20/07</p>	<p>DATE: N/A</p>
<p>SCALE: AS NOTED</p>	<p>SHEET NUMBER: EDU-1</p>	<p>DATE: N/A</p>