



Charter School Facilities and Proposition 39: Legal Implications for School Districts

September 2005

Background

In July of this year, the California Court of Appeal handed down a ruling in the case of *Ridgecrest Charter School v. Sierra Sands Unified School District* which has an enormous impact on school districts and how Proposition 39 charter school facilities requests are handled.

The court held that while school districts have discretion in determining whether a charter school will be housed in a single site, under Proposition 39 districts must, to the maximum extent practicable, consider the needs of charter students and district students equally. The court's opinion goes on to state that it was the intent of the Legislature via AB 544 (the legislation that created charter schools) to reduce, if not eliminate, the practical distinctions between charter schools and district-run schools. Therefore, according to the court, charters students *are* district students for purposes of allocation of facilities.

The stated intent of Proposition 39 (approved by voters in November 2000) is that "public school facilities should be shared fairly among all public school pupils, including those in charter schools." Pursuant to Proposition 39, school district-provided facilities are to be reasonably equivalent to those of other public schools in the district and are to be contiguous. State Board of Education regulations define "contiguous" as on one school site or adjacent to a school site. The regulations also provide that if the charter school's in-district students cannot be accommodated on one site, contiguous can mean facilities at more than one site, provided the district minimizes the number of sites and considers student safety.

Facts of the case

In accordance with Proposition 39 and its implementing regulations, the Ridgecrest Charter School submitted a written facilities request to the Sierra Sands Unified School District for classroom and non-teaching space to accommodate a projected 233 "in-district students" in grades K-8. "In-district students" are those students who would be eligible to attend district schools by virtue of living in the district.¹

District staff analyzed the request by identifying a comparison group of K-8 district students and made an offer staff considered "reasonably equivalent" to facilities provided to other district students.

¹ Facilities requests based upon projections of fewer than 80 units of average daily attendance for the year may be denied by the district. (Ed. Code 47614, subd. (b)(4).



The district's offer included 9.5 classrooms at four elementary schools and, for the middle school level, at a single middle school site.

The charter school objected, arguing that the offer violated Proposition 39 because the offered classrooms were located at five different district school sites and, therefore, were not "contiguous" within the meaning of the Education Code. Ridgecrest argued that Title 5 regulations require the district to provide facilities at one school site unless there is no single site physically large enough to handle the charter's student population. Under the charter school's theory, the ability of the district to "accommodate" a charter school's student relates only to the physical capacity of the site.

When making its offer, the district focused on the term "accommodated" as used in the Title 5 regulations and argued that the district had discretion to determine whether it could "accommodate" the charter students on a single site by considering all of the circumstances and analyzing the impact of the request on the district's educational program. If all of the charter students were to be housed on one school site, the district would be forced to dismantle its education programs, such as class size reduction, or to redraw attendance boundaries.

Court Rulings

The trial court held that the charter school did not have a right to a single school site. That court also held that the district had discretion in the allocation of facilities and, although the district's discretion was not absolute, Ridgecrest did not demonstrate that the district abused its discretion in allocating space at multiple sites.

The appellate court concurred with the trial court in its determination of school district discretionary authority and also rejected Ridgecrest's "single school site mandate" theory. This holding accepted the position of both the district and the California School Boards Association's Education Legal Alliance as asserted in an amicus brief filed in support of the district.

However, the appellate court overruled the trial court finding that the district did not abuse discretion in responding to the facilities request holding that the district's offer did not conform to the Education Code's intent to equalize the treatment of charter and district-run schools. The appellate court interpreted the terms "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. Thus, districts must begin with the assumption that all charter students will be assigned to a single school site and then adjust other factors to accommodate this goal. How those factors will be weighed and whether those factors would make a single school site feasible will be a case-by-case determination.

In this case, the court found that the district abused its discretion because it failed to demonstrate that it could not accommodate the charter at a single school site or that it had minimized the number of sites.



The court also found that the district's rationale in support of the multi-site offer was insufficient because the superintendent's recommendation did not address the legal requirement for contiguous facilities. According to the court, when reviewing whether facilities are being "shared fairly," a district "must offer some explanation for its decision regarding how the facilities will be allocated between the charter school and the district-run schools." The court ordered the district to issue a new facilities offer consistent with the court's findings.

Implications of the decision

As charter schools increase in number across the state, even those districts not currently sponsoring a charter school or not serving as a chartering authority will be faced with Proposition 39 requests to provide facilities. This decision underscores the importance of making sure that a district's facilities offer thoroughly complies with all legal requirements and offers a sufficient explanation to support a district's decision regarding allocation of space. Although not set forth in the statute or regulations, this opinion makes clear that districts should provide a statement of reasons to support its decisions regarding allocation of space to charter schools.

Technically the holding of this case applies only to districts in the Fifth Appellate district (Central Valley counties), but nonetheless all school districts should take into consideration this court's perspective of the requirements of Proposition 39. In addition, the California Charter Schools Association (CCSA) has created a Charter Schools Legal Defense Fund which will be available to CCSA member charter schools and development groups facing legal challenges. The fund provides twenty-four month zero interest loans for qualifying member schools to cover legal expenses. Given the significant support this will give charter operators, it is expected that more charter schools will be willing to take districts to court over facilities issues.

Recommendations:

- The court was extremely clear that districts must view charter school students as equals with students in district-run schools. This premise must be at the heart of all charter facilities decisions.
- Because section 47614 (a)² of the Education Code requires that the facilities "be shared fairly among all public school pupils, including those in charter schools," districts must plan for some, if not

considerable, disruption and dislocation among the district's non-charter students, staff and programs.

² 47614. (a) The intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools.

(b) Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.



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- If the district determines that it cannot provide a charter school with a single site or contiguous facilities, it must provide an explanation that is thorough enough, and factual enough, to permit effective review by the courts.
- The governing board of the district must ensure that the superintendent and staff have made every effort to find a facility sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonable equivalent to those in which the students would be accommodated if they were attending other public schools of the district.
- School districts and boards should consult with district legal counsel as to whether board decisions responding to charter school facilities requests comply with the court's decision, Education Code, and Title 5 regulations.

Contact Information

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