

M E M O R A N D U M

Staff Summary #7.c.

Date: April 10, 2019
To: Members of the California School Finance Authority
From: Katrina M. Johantgen, Executive Director
Subject: Consideration of Appeal Regarding the Charter School Facility Grant Program – Summit Public Schools - Tamalpais (Summit-Tamalpais)

Background: In 2017-18, Education Code Section 47614.5 (Charter School Facility Grant Program (Program)) was amended to include that facility rent or lease agreements not exceed the prior year’s reimbursable costs on file with the California School Finance Authority (Authority). These costs are subject to an adjustment using the annual Cost Of Living Adjustment (COLA) percentage. The change also mandated that applicants seeking reimbursement for New Facility Agreements provide evidence that the agreements be at or below Fair Market Rent.

Program Regulations state that costs associated with facility rents or leases as evidenced by an executed rental or lease agreement and beginning with the 2017-18 funding round, shall be subject to one of the following conditions: (A) Reimbursable facility rent or lease costs do not exceed prior year’s reimbursable costs on file with the Authority, subject to an adjustment of the annual COLA Index (COLA Cap); and the Authority shall base the annual COLA Index adjustment on the end of the prior year’s monthly rent. Or (B)The rent or lease costs of New Facility Agreements are at or below Fair Market Rent based on an Independent Appraisal as described in section 10170.6(d) and paid for by the Applicant. If the Independent Appraisal finds the rent and lease costs above the Fair Market Rent, the costs will be based on Fair Market Rent as determined by the Independent Appraisal.

“Cost of Living Adjustment Index” (COLA Index) shall mean a percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 10 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 10 of the preceding fiscal year, as reported by the Department of Finance. Section 10170.2(h).

“New Facility Agreement” shall mean either 1) a rental or lease agreement for a facility not previously occupied by the charter school; 2) a rental or lease agreement that includes additional square footage not included in the previous year’s agreement; or 3) a new agreement for existing facilities or square footage when the existing lease is up for renewal or expires. Section 10170.2(s).

Issue: Summit-Tamalpais filed a Program application for 2017-18 facility costs. The Authority’s review of the relevant lease between Summit-Tamalpais and Hilltop Community Ventures, LLC, determined that it was subject to the COLA Cap for the following reasons:

- The lease reflected no changes in the school site location;
- The scope of the facilities to which Summit-Tamalpais had access had not changed; and
- The lease had not expired.

On October 18, 2018, the Authority received an appeal relating to the lease agreement and 2017-18 eligible costs under the Program on behalf of Summit-Tamalpais. The appeal referenced increased square footage in facility usage based on increasing student enrollment, as well as general statements of hardship that would be suffered by the school should the increased award not be granted. The table below reflects the award based on COLA versus the New Facility Agreement.

Award Comparison Tables

Reimbursable Lease Costs Based on COLA			Reimbursable Lease Costs Based on Appraisal		
2017-18 COLA CAP Lease Costs		\$97,751.50	2017-18 Appraisal CAP Lease Costs		\$226,833.00
Other Costs		\$0.00	Other Costs		\$0.00
75% of Annual Facility Costs:		\$73,313.63	75% of Annual Facility Costs:		\$170,124.75
Award per P-2 (ADA x \$1,117)	223.75	\$249,928.75	Award per P-2 (ADA x \$1,117)	223.75	\$249,928.75
2017-18 Total Eligible Award (Lesser of the Two)	75% Cap	\$73,313.63	2017-18 Total Eligible Award (Lesser of the Two)	75% Cap	\$170,124.75
Initial Apportionment 50%		\$42,694.00	Initial Apportionment 50%		\$42,694.00
Second Apportionment 75%		\$21,347.00	Second Apportionment 75%		\$21,347.00
Final Apportionment 100%		\$9,272.63	Final Apportionment 100 %		\$106,083.75

Delta	\$96,811.13
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On February 1, 2019, the Authority reaffirmed its initial determination and denied Summit-Tamalpais’ appeal for the reasons stated above. Authority Counsel reviewed the lease in question and concluded that, while the lease shows a significant increase in rent each year and appears to tie that increase to anticipated enrollment increases, the lease shows the school renting the entire facility at all relevant times and does not contain any provision correlating rent with each year’s increase in enrollment. Accordingly, the lease is not a “New Facility Agreement” as defined by Program Regulations and the use of COLA Cap is appropriate for calculating the grant amount. On March 1, 2019, Summit-Tamalpais sent a letter requesting an appeal to the Board restating the arguments in its appeal to Authority staff.

Recommendation: Staff recommends denial of the appeal on behalf of Summit-Tamalpais based on its failure to meet the definition of a “New Facility Agreement” under Program Regulations.

Attachments:

- Attachment #1 - Award Comparison Tables
- Attachment #2 - Summit-Tamalpais 2nd Appeal
- Attachment #3 - CSFA Appeal Response
- Attachment #4 - Summit-Tamalpais 1st Appeal
- Attachment #5 - Lease at 3020 Hilltop Mall Rd