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LOS ALTOS SCHOOL DISTRICT; BOARD OF  
11 TRUSTEES OF THE LOS ALTOS SCHOOL  
DISTRICT; and TIM JUSTUS  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA  
15

16 BULLIS CHARTER SCHOOL,  
Petitioner,  
17

18 v.

19 LOS ALTOS SCHOOL DISTRICT;  
BOARD OF TRUSTEES OF THE LOS  
20 ALTOS SCHOOL DISTRICT; and TIM  
JUSTUS, in his capacity as District  
Superintendent,  
21

22 Respondents.

Case No. 109CV 144569

**DECLARATION OF RANDY KENYON IN  
SUPPORT OF RESPONDENTS'  
OPPOSITION TO MOTION TO COMPEL  
COMPLIANCE WITH JUDGMENT AND  
WRIT**

Hearing Date: August 15, 2012

Judge: Hon. Patricia Lucas

Dept: 2

Petition Filed: June 10, 2009

23 I, Randy Kenyon, declare:

24 I am Assistant Superintendent, Business Services, for the Los Altos School District,  
25 Respondent in the above matter, and have held that position since 1987. I have personal  
26 knowledge of the matters stated in this declaration and could testify to them if called as a witness.  
27

28 1. I have prepared Proposition 39 facilities offers for Bullis Charter School on behalf

- 1 -

1 of the District since 2004. BCS has been located at the Egan site since the 2004-2005 school  
2 year. The 2012-2013 Final Offer was the first year that the District also offered BCS facilities at  
3 another District site, Blach Jr High School. I was involved in making calculations of teaching  
4 space, specialized teaching space, non-teaching space and total site size at the comparison group  
5 schools for the 2012-2013 Final Offer of Facilities to BCS. The Final Offer placed BCS's K-6  
6 students at Egan Jr High School ("Egan"), and its seventh and eighth grade students at Blach Jr  
7 High School ("Blach"). The following chart depicts the greater amount of space offered to BCS  
8 for 2012-2013 as compared to 2009-2010:  
9

	<i><b>2009-10 Offer</b></i>	<i><b>2012-13 Offer</b></i>
Total acreage provided to BCS	6.23	11.04
Total square footage of classroom space provided to BCS	14,400	19,200
Total number of buildings provided to BCS	29	34.5
BCS grade configuration	K-6	K-8
Campuses to be shared with BCS	1 (Egan Jr. High)	2 (Egan Jr. High and Blach Jr. High)

19  
20 At Egan, the District allocated 1.44 acres more for BCS's grades K-6 than it did in the  
21 2009-2010 Final Offer. The District also allocated an additional 3.37 acres for BCS's 7-8 students  
22 at Blach. BCS's claim that the District has contended in 2008 that the maximum capacity is 360  
23 students (BCS Opposition, p. 4, line 16) is incorrect since the Final Offer allocates 1.44 more  
24 acres and 5.5 more buildings at Egan to BCS. Moreover, the Final Offer states that there is no  
25 restriction on BCS as to how it allocates the facilities at Egan and Blach among its different grade  
26 levels, excepting that the specialized space at Blach is limited to seventh and eighth graders.  
27 (Final Offer, (Eyring Decl., Exh. A, p. 28))  
28

2. In allocating facilities to BCS, the District measured and considered the total site size offered to BCS in comparison to that of the comparison group schools. The following chart, which appears on pages 20-21 of the Final Offer (Declaration of Andrea Eyring in Support of Motion to Compel Compliance with Judgment ("Eyring Decl."), Exh. A, pp. 020-021), shows that BCS's square footage per unit of average daily attendance ("SF/ADA") is commensurate with that of the District's elementary schools, and far in excess of the District's junior high schools:

Total SF/ADA at Elementary and Junior High School Sites:

**ELEMENTARY SCHOOLS K-6**

<b>SCHOOL (ADA)</b>	<b>SITE SIZE</b>	<b>SF/ADA</b>
<i>BCS at Egan (439)</i>	334,079 SF	761
<i>Almond (548)</i>	433,137	790.40
<i>Covington (519)</i>	471,174	907.85
<i>Gardner (324)</i>	434,293	1,340.41
<i>Loyola (583)</i>	435,600	747.17
<i>Santa Rita (547)</i>	493,099	901.46
<i>Springer (535)</i>	435,600	814.21

**JR. HIGH SCHOOLS 7-8**

<b>SCHOOL (ADA)</b>	<b>SITE SIZE</b>	<b>SF/ADA</b>
<i>BCS at Blach (27)</i>	146,620 SF	5430.37
<i>Blach (464)</i>	624,866 SF	1346.69
<i>Egan (559)</i>	486,155 SF	869.69

(See, Eyring Decl., Exh. A, p. 020-21)

The District has re-measured the total acreage offered to BCS at Egan since the issuance of the Final Offer and determined that it measures 334,079 SF.

The District met the requirements of the court of appeal decision and Judgment by adding additional acreage and determining that the SF/ADA average for BCS students was commensurate with those of students at the comparison group schools. To ensure that BCS

1 received a reasonably equivalent facility, the District followed the following directives of the  
2 Court's Judgment:

- 3 • " ... [T]he District shall consider total site size and account for (and allocate  
4 reasonably equivalent building and outdoor space to Bullis for) all building and outdoor  
5 space on any an all comparison school sites (regardless of how it is utilized). (Judgment  
6 p. 2, para. 3)
- 7 • "The District shall instruct its architect to measure all outdoor space (not just "K play  
8 area," "non-K blacktop," and "turf area") at comparison schools. (Judgment p. 2, para. 5)
- 9 • "The District shall provide an accurate measurement of the amount of building and  
10 outdoor space offered to Bullis, based on the correct configuration of that campus and a  
11 prororation of shared use space, proportionate to time allocation and use restrictions the  
12 District imposes on that space. (Judgment pp. 2-3, para. 6)
- 13 • "The District shall offer Bullis facilities (such as a childcare facility and amphitheatre)  
14 reasonably equivalent to those at comparison schools." (Judgment p. 3, para. 8)]

15 As the District noted in its Final Offer, "the amounts of space allocated to BCS for  
16 teaching, non-teaching and specialized teaching space in excess of its allocation were considered  
17 in weighing the total site size factor. BCS students enjoy greater SF/ADA than District students  
18 for over 79% of the time between 8:30 a.m. - 3:00 p.m." (See, Final Offer (Eyring Decl., Exh. A,  
19 pp. 020-22))

20 3. The District took extensive steps to accurately capture the site size of the  
21 comparison group schools. First, the District obtained County Assessor's Maps of every  
22 comparison group school. (See, Final Offer, Eyring Decl., Exh. A, Exhibit H thereto, pp. 052,  
23 071, 095, 112, 133, 147, 164, 190; Schadt Decl., ¶4; Korovesis Decl., ¶4) Using the Assessor's  
24 Maps, the District determined the total acreage of every comparison group school, and listed that  
25 calculation on the "Checklist for Space and Size Inventory" for each school. (See, Eyring Decl.,  
26 Exh. A, pp. 046, 064, 089, 105, 124, 142, 156, 179; Schadt Decl., ¶¶ 2-4; Korovesis Decl., ¶¶ 2-

1 4)<sup>1</sup> The District also calculated the overall area for the space allocated to BCS at Egan and  
2 Blach. Second, the District's architects walked each site and visually determined the room and  
3 space configurations at each school. I also walked each site and conducted a visual survey of the  
4 room and space configurations. Third, the architects took information from the walkthroughs and  
5 created updated building drawings and current configurations and dimensions. (Schadt Decl., ¶¶  
6 2-3; Korovesis Decl., ¶3) Fourth, as subsets of the entire footprint at each site, they also  
7 calculated other areas specifically designated on the space and size checklists. (Schadt Decl., ¶ 2-  
8 5; Korovesis Decl., ¶¶2-4) The Assessor's Maps, revised architectural drawings, and space  
9 checklists were all attached as exhibits to the Final Offer. (See, Final Offer (Eyring Decl., Exh. A,  
10 Exh. H thereto)) Finally, the District's architect has also recounted all of the space. (Schadt  
11 Decl., ¶¶2-7; Korovesis Decl., ¶¶2-4)

12  
13  
14 4. During the process of calculating school footprint sizes, the Springer area was  
15 adjusted to reflect the size acreage shown on the Assessor's map, which was smaller than the site  
16 size shown in the architect's site plans. (Schadt Decl., ¶4; Korovesis Decl., ¶¶ 3-4) The architect  
17 did re-measure the Springer site and adjusted its measurements between the Preliminary and Final  
18 Offers. (*Id.*) The adjustment to the Springer footprint accounts for 30,056 SF of the variance in  
19 outdoor space measurement about which BCS complains. (*Id.*)

20  
21 5. In addition, the Covington acreage was adjusted to exclude space allocated for the  
22 District office. The District office is co-located at the Covington site, and is not used as part of  
23 the Covington program. The District office space accounts for 154,256 S.F. of the Covington  
24 footprint. (Schadt Decl., ¶4; Korovesis Decl., ¶¶ 3-4)

25 6. Within each space calculation at each school, there was not a separate calculation  
26

27  
28 <sup>1</sup> The District used a different methodology to determine total site size in the Preliminary Offer, which explains the  
variance in the calculations between the Preliminary and Final Offers.

for parking lots because parking lots were calculated as part of the space already contained within the Total Site Size, not separately called out, and not included in the "Other Outdoor Space" calculation. (Schadt Decl., ¶¶ 6-7)

7. I believe that the adjustments to the Springer and Covington acreage, and the inclusion of the parking lots at each site within "Total Site Size" instead of in a separate measurement, along with other factors discussed below, account for the 10.54 acres that BCS claims that the District excluded. In fact, the District did not exclude any space, and accounted for all space, indoor and outdoor, at the comparison group schools. (Schadt Decl., ¶¶ 6-7)

8. In addition to total site size, the District calculated the SF/ADA ratio for the classroom space offered to BCS students as well. The following charts, which appear on p. 17 of the Final Offer (*See*, Final Offer, Eyring Decl., Exh. A, p. 017), contain a comparison of the SF/ADA ratio for BCS and the comparison group schools at the K-6 grade levels:

Classroom Square Footage at Elementary School Sites: (Final Offer, p. 17)

SCHOOL (ADA)	KINDERGARTEN	GRADES 1-6
BCS at Egan (439)	2,880 SF/60 ADA 48.0 SF/ADA	14,400 SF/379 ADA 37.99 SF/ADA
Almond (548)	2,755 SF/77 ADA 35.78 SF/ADA	17,067 SF/471 ADA 36.24 SF/ADA
Covington (519)	2,965 SF/75 ADA 39.54 SF/ADA	16,124 SF/426 ADA 37.85 SF/ADA
Gardner (324)	2,149 SF/40 ADA 53.73 SF/ADA	10,249 SF/284 ADA 36.09 SF/ADA
Loyola (583)	3,039 SF/59 ADA 51.51 SF/ADA	19,160 SF/504 ADA 38.02 SF/ADA
Santa Rita (547)	3,335 SF/57 ADA 58.51 SF/ADA	17,592 SF/477 ADA 36.88 SF/ADA
Springer (535)	2,841 SF/69 ADA 41.18 SF/ADA	16,709 SF/448 ADA 37.30 SF/ADA

For Kindergarten, BCS's SF/ADA per classroom is 48.0, compared to 45.32 at the comparison group schools. For Grades 1-6, BCS's SF/ADA is 37.99, compared to 37.13 for the comparison group schools. (*See*, Eyring Decl., Exh. A, p. 017)

The following chart shows the SF/ADA ratios for grades seven and eight at BCS and the comparison group schools. (*See*, Eyring Decl., Exh. A, p. 017):

Classroom Square Footage at Junior High School Sites: (Final Offer, p. 17)

<b>SCHOOL (ADA)</b>	<b>GRADES 7-8</b>
BCS at Blach (27)	1920 SF/27 ADA 71.12 SF/ ADA
Blach (464)	12,907 SF/464 ADA 27.82 SF/ADA
Egan (559)	15,049 SF/559 ADA 26.93 SF/ADA

While BCS complains that it has been placed in modular (“portable”) classrooms, such classrooms are more cost-effective and provide the District with badly needed flexibility in its facilities allocation among charter schools and District schools. As the “Reasonable Equivalence Analysis” attached as Exhibit B to the Final Offer shows, almost all District comparison schools have modular classrooms. Functionally, modular classrooms serve as teaching spaces no less effectively than do permanent buildings.

9. The District also took extensive steps to comply with the court of appeal decision with respect to the consideration and identification of non-teaching space at the comparison group schools. The first step was to use the architect’s site plans to identify each category of non-teaching space at the comparison group schools. (Schadt Decl., ¶¶2-3, 5-7; Korovesis Decl., ¶¶ 2-4) The following charts show the categories of identified non-teaching space at the District’s elementary and junior high comparison group schools:

<b><i>Identifiable Categories of Non-Teaching Space in Comparison Group Schools – Elementary Schools</i></b>	
Administrative Space	Multi-Purpose
Teacher Workroom	Childcare
Teacher Lounge	Amphitheatre
Storage	Boys/Girls Bathroom
Custodial	Adult Bathrooms
Servery	Kindergarten Playground
PTA	Non-Kindergarten Blacktop
Library	Turfed Area

**Identifiable Categories of Non-Teaching Space in Comparison Group Schools – Junior High Schools**

Administrative Space	Project Room
Teacher Workroom	Student Store
Teacher Lounge	Counseling
Storage	PE Teaching
Custodial	Gymnasium
Servery	Track
PTA	Tennis courts
Library	Boys/Girls Bathroom
PE Locker Rooms	Outdoor Space

10. For each category of non-teaching space that could be categorized by function, the District, using the architect's site plans, measured its square footage. (Schadt Decl., ¶¶2-3, 5-7; Korovesis Decl., ¶¶ 2-4) The following chart, by way of example, illustrates the methodology for calculating the administrative space at Almond Elementary School. The first step was to identify each of the component spaces of the office space at Almond, and the corresponding square footage, using the architect's site plans for that school. This information is contained in the chart below (See, Eyring Decl., Exh. A, Exh. H thereto, p. 049):

<b>Room</b>	<b>Square Footage</b>
Reception (Room "01")	726
Health (Room "02")	213
Health Toilet (Room "03")	61
Office (Room "04")	247
Office (Room "05")	246
Office (Room "06")	210
Office (Room "07")	210
Electrical/M.P.O.E (Room "08")	168
Hall (Room "13")	321
Total SF Administrative	2,402 SF

11. Under the category of "Administrative" space in the "Space and Size Checklist"



1 attached as Exhibit H to the Final Offer, the District calculated the per-ADA square footage of  
2 administrative space at Almond to be 4.39 SF/ADA (2,402 SF/548 ADA). (See, Eyring Decl.,  
3 Exh. A, Exh. H thereto, p. 049)

4 12. For the Multi-Purpose Room (MPR) at Almond, the District identified and  
5 calculated the component spaces for the MPR, as well as the MPR itself, as indicated on the  
6 architect's site plans:  
7

8 <b>Room</b>	<b>Square Footage</b>
9 Multi-Purpose (Room "09")	3,529
10 Storage (Room "10")	469
11 Ramp (Room "11")	174
12 Stage (Room "12")	876
13 Total Multi-Purpose Room	5,048

14  
15 Similarly, the District determined the SF/ADA ratio for students at Almond for the MPR  
16 to be 9.22 SF/ADA (5,248 SF/548). (See, Eyring Decl., Exh. A, Exh. H thereto, p. 050)  
17

18 13. The District performed similar calculations for every category of space at the  
19 comparison group schools. As is shown on the chart below, the District made space calculations  
20 for a total of 333 categories of space at the 8 comparison group schools:

21	<b>Number of Categories (Buildings)</b>	<b>Total Calculations</b>
22 Teaching space	6 Elementary Schools 2 Junior High	114 29
23 Non-Teaching Space	16 (6 Elementary Schools) 16 (2 Junior High)	96 32
24 Specialized Teaching Space	7 (6 Elementary Schools) 10 (2 Junior High) <sup>2</sup>	42 20
25 Total Calculations		333

26 14. To further comply with the directive in the court of appeal opinion, the District  
27

28 <sup>2</sup> Source: Final Offer, pp. 28, 32. (See, Eyring Decl., Exh. A, Exh. H thereto, pp 28, 32)

created a category of "Other Outdoor Space" to account for space that was not included in the measurement of teaching space, specialized teaching space, or categorized non-teaching space. The District's architect measured the following "Other Outdoor Space" at the comparison group schools that was not already measured (Schadt Decl., ¶¶5-7):

<i>Comparison Group Site</i>	<i>Other Outdoor Space Measurement (SF)</i>
Almond	136,750
Covington	143,720
Gardner	210,698
Loyola	157,526
Santa Rita	138,244
Springer	124,497
Blach	237,203
Egan	158,896

The measurements of "Other Outdoor Space" were included in the space and size charts for each of the comparison group schools, and considered by the District in making its allocation of facilities to BCS, specifically, providing additional outdoor space about which BCS complains. (Eyring Decl., Exh. A, Exh. H thereto, pp. 48 (Almond), 66 (Covington), 89 (Gardner), 107 (Loyola), 124, (Santa Rita), 143 (Springer) 159 (Blach) and 185 (Egan)) (Schadt Decl., ¶¶5-7)

15. The District's Final Offer allocated additional indoor space to counter BCS's provision of its own MPR, and stated that the District would install an MPR and provide access to ½ of the City Gym in the interim. (Final Offer (Eyring Decl., Exh. A, p. 030)) The 4,971 SF that BCS complains about (Eyring Decl., p. 4, ¶12) refers to ½ the square footage of the City Gym referenced in the Final Offer. However, based on a SF/ADA ratio, 4,971 SF exceeds what BCS would be entitled to under a reasonable equivalence standard. (Eyring Decl., Exh. A, p. 029) Based on the SF/ADA ratio at the comparison group schools, the MPR allocation to BCS would be 3,459.32 SF. (*Id.*) Therefore, the MPR space that the District offered, as well as the MPR that the District is willing to install, exceeded BCS's entitlement on a SF/ADA basis.

1           16.     The District's "Space and Size Inventory Checklists" for each of the comparison  
2 group schools listed electrical rooms, both on the architect drawings and the charts for each site.  
3 (Eyring Decl., Exh. A, Exh. H thereto, pp. 049 (Almond – included in Office space), 065, 069  
4 (Covington – included in Office space), 093-094 (Gardner), 108 (Loyola – included in Office  
5 space), 127, 129 (Santa Rita), 143 (Springer – included in Office space), 162 (Blach) and  
6 188 (Egan).) At Gardner, the Electrical and Data rooms square footage are quite minimal: the  
7 Electrical Room is 162 SF and the Data Room is 106 SF total. (Eyring Decl., Exh. A, Exh. H  
8 thereto, pp. 093-094) Not all of the comparison group sites have separate Data Rooms.  
9 Covington has an 87, 115 and 242 SF data room (Eyring Decl., Exh. A, Exh. H thereto, p. 078-  
10 080); Loyola has a 125 SF Electrical/Data room (Eyring Decl., Exh. A, Exh. H thereto, p. 115);  
11 and Blach has a 145 SF "Data/Computer Hub" room. (Eyring Decl., Exh. A, Exh. H thereto, p.  
12 174) Because the space provided to BCS has a supply of electricity and data capabilities, the  
13 District did not separately allocate Electrical or Data rooms to BCS.  
14

15           17.     The District's Final Offer allocates BCS 1,440 SF for before and after-school  
16 childcare building space. (Eyring Decl., Exh. A, Exh. H thereto, pp. 29) BCS's SF/ADA  
17 entitlement to childcare space is 210.72 SF. (Id.) The 1440 SF of childcare building space is the  
18 same amount of building space for childcare at Santa Rita Elementary, which has approximately  
19 108 more students than BCS (about 25% more students). Also, BCS is able to use adjoining  
20 Kindergarten play area and the blacktop space as outdoor childcare play space. The District's  
21 Final Offer listed BCS' SF/ADA ratio as .48 for childcare (Final Offer, p. 29) (Eyring Decl., Exh.  
22 A, thereto, p. 028) I do not believe this figure is correct.  
23

24           18.     Certain students with special needs ("special education students"), such as those  
25 with autism, need a special day class in which they receive instruction pursuant to their  
26 Individualized Educational Program ("IEP") under the federal special education statute, the  
27  
28

1 IDEA. Typically, and in LASD, students requiring such services amount to approximately 10%  
2 of the student population of public schools. However, BCS is unique among public schools in  
3 that it has never enrolled a student requiring a Special Day Class ("SDC"), to my knowledge. To  
4 date, BCS not provided any evidence that it will enroll a student requiring a SDC for the 2012-  
5 2013 school year. Here, the District considered and listed the dimensions of its SDC space in  
6 order to provide measurements of subcategories of space. However, based on BCS's history of  
7 never enrolling a student requiring a SDC, the District did not allocate such a space to BCS.

9 19. The District considered and listed the dimensions of the only room in the District  
10 specifically designated in the architect's drawings as a kiln room. (148 SF at Covington School)  
11 (See, Eyring Decl., Exh. A, Exh. H thereto, p. 083) While other sites may have purchased a kiln  
12 with PTA funds and located it in existing space, Covington is the only District site with a kiln  
13 room specifically designated in the architect's drawings. The District considered and measured  
14 the kiln room at Covington, and determined that only Covington students have access to the kiln  
15 room out of all of the students in the entire District. The District properly used its discretion not  
16 to offer a kiln room to BCS.

18 20. The District's Final Offer listed BCS's SF/ADA ratio as 1.48 for Science Flex  
19 space, and .63 for Art/Music Flex space. (Final Offer, p. 28) (Eyring Decl., Exh.A, Exh. H  
20 thereto, p. 028) I do not believe that those calculations are correct. A correct calculation of the  
21 SF/ADA for Art/Music Flex space at the comparison group schools, and for BCS, appears below:  
22  
23  
24  
25  
26  
27  
28

<b>SCHOOL (ADA)</b>	<b>ART/MUSIC SPACE ( in square feet)</b>	<b>SQUARE FEET PER /ADA (SF/ADA)</b>
<b>BCS at Egan (439)</b>	960	2.19 SF/ADA
<b>Almond (548)</b>	960	1.75 SF/ADA
<b>Covington (519)</b>	1436	2.77 SF/ADA
<b>Gardner (324)</b>	677	2.09 SF/ADA
<b>Loyola (583)</b>	960	1.65 SF/ADA
<b>Santa Rita (547)</b>	960	1.76 SF/ADA
<b>Springer (535)</b>	1440	2.69 SF/ADA
<b>Comparison School Average</b>	1,072 SF	2.11 SF/ADA

The District allocated BCS Science and Art/Music Flex space far in allocation to BCS's SF/ADA ratio. The District allocated BCS a 960 SF room *each* for Science Flex and Art/Music Flex space, in addition to offering *another* 2.0 units of flex space. (Final Offer, p. 28) (Eyring Decl, Exh.A, p. 028) BCS's 2.19 SF/ADA, multiplied by its ADA of 439, equals 961.41 SF, which is commensurate with the 960 SF offered by the District. In addition, BCS's SF/ADA exceeds that of 4 of the 6 K-6 comparison group schools.

21. I have reviewed the SF/ADA calculation for Science Flex space at the comparison group schools, and have included the corrected calculations below:

<b>SCHOOL (ADA)</b>	<b>SCIENCE SPACE ( in square feet)</b>	<b>SQUARE FEET PER /ADA (SF/ADA)</b>
<b>BCS at Egan (439)</b>	960	2.19 SF/ADA
<b>Almond (548)</b>	960	1.75 SF/ADA
<b>Covington (519)</b>	1312	2.77 SF/ADA
<b>Gardner (324)</b>	677	2.09 SF/ADA
<b>Loyola (583)</b>	960	1.65 SF/ADA
<b>Santa Rita (547)</b>	960	1.76 SF/ADA
<b>Springer (535)</b>	960	1.79 SF/ADA
<b>Comparison School Average</b>	971.5	1.96 SF/ADA

1 As set forth in the chart below, and as set forth in the checklists, BCS was allocated as  
2 much space, or greater space, than five of six comparison schools in science space. In addition,  
3 BCS was allocated as much square feet per ADA (SF/ADA), or greater, than five of six  
4 comparison schools. The evidence shows that it was properly allocated a reasonably equivalent  
5 amount of space for its students for science.

6 22. I have reviewed the Declaration of Andrea Eyring, specifically, her allegation that  
7 the District excluded approximately 10.54 acres, or 458,979 SF, of outdoor space at the  
8 comparison group schools. (Eyring Decl., p. 9, ¶32) The District did not deliberately exclude  
9 any space at the comparison group schools. I have reviewed the District's space chart and have  
10 determined the source of the variance between the District's total space calculation and Ms.  
11 Eyring's claim. The checklists showing "Other Outdoor Space" at the comparison schools  
12 (Eyring Decl., Exh. A, Exh. H thereto, pp. 48 (Almond), 66 (Covington), 89 (Gardner), 107  
13 (Loyola), 124, (Santa Rita), 143 (Springer) 159 (Blach) and 185 (Egan)) did not include the  
14 schools' parking space, which was not called out separately on the checklist for each school.  
15 (Schadt Decl., para. 4-7) However the parking space at the comparison group schools was  
16 considered by the District and included in the Total Site Size for each comparison group school.  
17 (Schadt Decl., para. 6; Korovesis Decl., para. 4.)  
18

19  
20 I have a prepared a chart listing the square footage of the parking lot space only at each of  
21 the comparison group sites. A true and correct copy of that checklist is attached as **Exhibit 1**.  
22 The first column lists the square footage of the parking lots at each site. The total area of all  
23 parking lots was 337,639 square feet. Then the total square footage for the parking lots is  
24 adjusted to subtract the kindergarten play area, which was separately counted and also included,  
25 for some schools, under either "Blacktop" or "Other Outdoor Space," to avoid double counting.  
26 To that total, in the next column, are additional site size adjustments based on the District's use of  
27 the total site acreage in the County Assessor's maps for each school site, as well as revisions to  
28

1 the architect's drawings. The total square footage from these categories, 477,017, accounts for  
2 virtually all of the variance claimed by Ms. Eyring in her declaration. It is important to note that  
3 while the Final Offer did not set out separate space calculations for the parking spaces at each  
4 comparison group site, it did include such space in the Total Site Size for each school.

5  
6 23. To double check the acreage at each of the comparison group sites, the District  
7 updated its records on site size for all comparison group sites to match the County Assessor's  
8 Office data and included the parcel maps in its offer. (Schadt Decl., para. 4; Korovesis Decl.  
9 para. 4) The District's architect mapped how the Covington site is split between Covington  
10 Elementary School and District Office functions and shows the net acreage available to the  
11 school. (Schadt Decl., para. 4.) The District updated its site size records to match County  
12 Assessor's maps and architect drawings of how the Covington campus is split between school and  
13 district use. (Schadt Decl., para.4) The revision to the Covington site size, based on the  
14 District's architects' calculation from the County Assessor's Map, was 149,556 SF. (See, Exhibit  
15 A hereto; Schadt Decl. 4). The District's architects also used the Count Assessor's Map to revise  
16 the site size of Springer School, and that calculation resulted in a revised site size that was 30,056  
17 SF smaller. (Exhibit A; Schadt Decl., para. 4)

18  
19 24. I have reviewed the Declaration of Andrea Eyring from the prior Superior Court  
20 proceeding complaining that the District did not count space at the comparison group schools that  
21 it considered unusable, specifically the following provisions:

- 22  
23 • "During his deposition, Mr. Kenyon testified that landscaped areas and gardens at  
24 comparison group schools are 'unusable,' and therefore LASD does not need to  
25 consider them in its Proposition 39 analysis."
- 26 • "I have visited each comparison group school and have seen that such 'landscaped  
27 areas' are used by and useful to students. When my children attended the former  
28 Bullis-Purissima school (now the Gardner Bullis comparison school), I observed  
children play in areas Mr. Kenyon identified as 'unusable.' The same was true of  
the Covington site."

- 1
- 2
- 3
- 4
- “At the Santa Rita site, in one ‘unusable’ area, which is an area with trees that LASD ignores in its Proposition 39 analysis, there is an outdoor stage. And, at Loyola and other LASD-run schools, students participated in the landscaping of such ‘unusable landscaped areas’ ....” (Declaration of Andrea Eyring in Support of BCS Verified Petition for Writ of Mandate, p. 3, para. 10)

5

6 The District, in preparing the 2012-2013 Final Offer to BCS, did not exclude any

7 “unusable space” from consideration in the comparison group schools. However, I note that in

8 her declaration in support of BCS’s current motion, Ms. Eyring now seems to regard similar

9 space as “unusable” when offered to BCS:

10

11

- “... [M]uch of the space is unusable mounds of dirt or strips of grass, and some of the new space is difficult (and in the winter, impractical) for the students to get to.” (Eyring Decl., p. 2, para. 4)

12

13

- “... [T]he only way that Bullis students are allowed to access a major part of the new space is through an unpaved, uneven, and extremely narrow foliage, made up of dirt, ground cover, and leaves.” (Eyring Decl., p. 2, para. 7)

14

15

- “The FO also provides Bullis additional unattractive space next to the tennis courts. This area is obstructed by a large tree and vegetation that severely diminishes the potential use of the space.” (Eyring Decl., p. 3, para. 10)

16

17

- “The largest grassy area provided by the District also has limited functionality. It is very sloped, going from the track (which Bullis does not have access to) down to the street.” (Eyring Decl., p. 9, para. 29)

18

19

20 Earlier in this litigation, BCS took the District to task for not including an unusable

21 “mound of dirt” in its comparison school group analysis.<sup>3</sup> However, BCS now finds presumably

22 similar “mounds of dirt” unusable. (Eyring Decl., p. 2. para. 4) From a practical point of view, it

23 is difficult to implement a Proposition facilities offer when BCS complains that such unusable

24 space is excluded, and then complains that such space is unusable when offered to it.

25

26 25. In the course of allocating BCS facilities located at Egan and Blach, the District

27

28 <sup>3</sup> Declaration of Arturo J. Gonzalez In Support of Verified Petition for Writ of Mandate, p. 5, para. 22, Exh. 7 at 82:16-10.



1 considered the possibility of locating BCS at one of its existing elementary schools. The findings  
2 supporting that decision are contained in the Board-approved "Resolution of the Board of  
3 Trustees of the Los Altos School District in Support of the Preliminary Facilities Offer to Bullis  
4 Charter School for the 2012-2013 School Year." A true and correct copy of the Resolution is  
5 attached hereto as **Exhibit 2(G)**.<sup>4</sup> (This Board resolution was also attached as Exhibit G to the  
6 District's Final Offer.)  
7

8 The District operates seven elementary schools that will enroll over 3,500 students in  
9 2012-2013 and that are configured for pupils in grades K-6 , not in junior high school (i.e., they  
10 do not have lockers, science labs, a gym, or a track and field). It also operates two junior highs  
11 that are configured for those grades and that will enroll over 1000 students in 2012-2013.  
12

13 In deciding where to locate BCS, the District considered the capacity of each of its  
14 elementary schools sites, as well as voter intent. In 1998, over 75% of the voters in the District  
15 passed a bond measure that allowed for capital improvements used, in part, to reduce student  
16 populations in each of its schools to under 600. (See, Exh. B) The Board had approved school  
17 size targets of no larger than 530-580 and, indeed, since 2004-05, the year the capital  
18 improvements funded by the 1998 bond measure were completed, no District school has  
19 exceeded 600 pupils. (*Id.*)  
20

21 26. The Board has decided that the best educational practice for the District's students  
22 is to cap enrollment at its elementary schools at 600 students. (See, Exh. 2(G)) Following is a  
23 chart containing the projected enrollment at the District's elementary schools for the 2012-2013  
24 school year, and the "margin" of available spaces below 600 students.  
25

26 <sup>4</sup> The Declaration of Andrea Eyring filed in support of BCS's motion only attached selected exhibits to the District's  
27 Final Offer. To fix this omission, I am attaching true and correct copies of the omitted exhibits collectively under  
28 Exhibit 2, using the original exhibit letter as a sub-exhibit number: Exhibit 2(A): Map of District schools; Exhibit  
2(C): District's November 30, 2011 Objections to Projections; Exhibit 2(E): Proposed Facilities Use Agreement;  
Exhibit 2(F): Calculation of Pro-Rata Share; Exhibit 2(G): Board Resolution containing findings in support of  
facilities offer .

<i>School</i>	<i>Projected 2012-2013 Enrollment</i>	<i>Margin under 600</i>
Almond	548	52
Covington	519	81
Gardner	324	276
Loyola	583	17
Oak	460	140
Santa Rita	547	53
Springer	535	65

27. The District considered the impact on the other District schools of granting BCS's request that the District close one of its schools and give that site to BCS. Closing a school and displacing its students to allow BCS to take the site is not as simple as BCS suggests. For example, if the District closed the elementary school projected to enroll the smallest number of students (Gardner at 324), the District could not merely distribute the displaced Gardner students among the remaining District elementary schools, as BCS demands. Since Gardner is located in the Los Altos Hills, at the geographic edge of the District, its students could only be reassigned to the three schools closest to it: Santa Rita, Covington and Loyola. A true and correct copy of a map depicting the location of District schools is attached as **Exhibit 2(A)**.

As the chart below shows, there would not enough remaining capacity at those three sites to absorb the 324 displaced Gardner students.

<i>School</i>	<i>Remaining Capacity</i>
Santa Rita	53
Covington	81
Loyola	17
Total	268 (324 spaces needed for Gardner students).

28. Given the larger enrollment at the other elementary schools and similar geographic restrictions, closing any District elementary school would result in the same problem caused by the remaining adjacent elementary sites not having enough capacity to absorb the displaced students.

29. The programs and facilities offered by the District cannot be assessed without considering the role of the Los Altos Education Foundation (“LAEF”), which raises funds to support the District’s educational programs. I have conducted an analysis of the District’s facilities to determine how much classroom space can be attributed to private LAEF funding, as opposed to State funding. For the 2012-2013 school year, the LAEF is raising \$900,000 to fund K-6 class sizes and an additional \$485,000 for 5 junior high school teachers. I have determined that a total of 13 K-6, and 5 junior high classes District-wide, can be associated with LAEF funding. The net effect on the reasonable equivalence analysis of excluding these classrooms from the comparison group schools would be to reduce BCS’s allocation of classrooms by one at the K-6 grade level. There would no impact on junior high school classrooms.

30. School districts spend significant resources to build and maintain school sites. The approximate cost of building an elementary school site is \$25 million. In terms of fair market value, the average value of a District elementary school site is \$25 million. In the aggregate, the District's seven elementary school sites have a total fair market value of \$350 million.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13<sup>th</sup> day of July, 2012, in Los Altos, California.

Randy Kenyon