

Paul D. Fogel (SBN 70859)
 pfogel@reedsmith.com
 Raymond A. Cardozo (SBN 173263)
 rcardozo@reedsmith.com
 REED SMITH LLP
 101 Second Street, Suite 1800
 San Francisco, CA 94105
 Tel: 415.543.8700 Fax: 415.391.8269

John R. Yeh (SBN 154576)
 E-mail: jyeh@bwsllaw.com
 Donald A. Velez (SBN 143132)
 E-mail: dvelez@bwsllaw.com
 BURKE, WILLIAMS & SORESENSEN, LLP
 2440 West El Camino Real, Suite 620
 Mountain View, CA 94040-1499
 Tel: 650.327.2672 Fax: 650.688.8333

Attorneys for Respondents
 LOS ALTOS SCHOOL DISTRICT; BOARD OF
 TRUSTEES OF THE LOS ALTOS SCHOOL
 DISTRICT; and TIM JUSTUS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SANTA CLARA

BULLIS CHARTER SCHOOL,

Petitioner,

v.

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

Respondents.

Case No. 109CV144569

**[PROPOSED] ORDER SUSTAINING
 OBJECTION TO JURISDICTION,
 DENYING BULLIS CHARTER SCHOOL'S
 MOTION COMPEL COMPLIANCE AND
 GRANTING RESPONDENTS' CROSS-
 MOTION FOR DECLARATORY RELIEF**

Date: August 15, 2012
 Time: 9:00 a.m.
 Dept: 2

Judge: Hon. Patricia Lucas

[PROPOSED] ORDER

The motion of Petitioner Bullis Charter School to compel compliance with the judgment and writ and the cross motion of Respondents Los Altos School District, the Board of Trustees of the Los Altos School District, and Tim Justus, in his capacity as District Superintendent (together, “Respondents”) for declaratory relief pursuant to California Code of Civil Procedure section 1060 came on for hearing on August 15, 2012, at 9:00 a.m. in Department 2 of the above-entitled Court. Having read and considered the motions, memoranda of points and authorities, objection to jurisdiction, accompanying declarations and exhibits, other pleadings and papers on file herein, and after all parties had an opportunity to be heard, and good cause appearing, the Court hereby SUSTAINS the objection, denies BCS’s motion and GRANTS Respondents’ motion.

First, the motion raises new issues that are outside the scope of the judgment and writ, and therefore, BCS should have filed a new mandate action instead of its motion.

In any event, the motion record fails to demonstrate that the District abused its discretion in its 2012-2013 offer of facilities to BCS. BCS’s motion is therefore denied.

Respondents’ cross-motion demonstrates an actual controversy regarding whether a public school district can consider a charter school’s selectivity in admissions and resulting resource disparity in evaluating a charter school’s request for facilities under Proposition 39. Proposition 39 provides: “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’s students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools in the district.” § 47614, subd. (b). Because Prop. 39 and the regulations assume the charter school is a public school—open on an equal terms to all and free of charge—neither address how the facilities comparison works if a school selectively grants admissions preferences to a particular segment of a school district or otherwise selects a pupil population that is not representative of the district in which the charter school is located and if it engages in practices that yield private fundraising at a level disproportionate to that available to the District’s public school pupils. To achieve Prop. 39’s stated goal of “conditions reasonably equivalent,” such facts must be relevant considerations in a facilities analysis.

1 The precise weight to be given to such facts is not determined at this stage. The evidence in
2 the motions record includes statistical disparities in the relevant student populations and in private
3 fundraising that are inconsistent with the most basic public school criteria that the school be open on
4 an equal opportunity basis and free of charge, evidence that BCS has employed illegal admissions
5 practices, and evidence that it has persisted in its practices even after concerns were raised and has
6 changed only when effectively or implicitly forced to do so, and troubling direct evidence of
7 behavior suggestive of invidious discrimination. This evidence suffices to preclude BCS from
8 obtaining any relief regarding its 2012-2013 offer because, regardless of BCS's attempts to explain
9 the evidence, the record is undisputed that it has applied a preference for a select subset of the
10 District and has achieved a substantial private fundraising disparity—whatever its means of getting
11 there.

12 Since there are no issues left to resolve regarding the 2012-2013 offer, the precise weight to
13 be given to BCS's selectivity and resource disparity is a matter for the District's discretion in
14 formulating future facilities offer. Among other things, if BCS elects to request public facilities
15 from the District in the future, the District may, as a precondition to considering that request, require
16 BCS to produce information to permit the District to evaluate BCS's admissions and fundraising and
17 any other practices relevant to its claimed status as a public school and may give appropriate weight
18 to the results of that inquiry in formulating its future facilities offers.

19 In future facilities offers, in analyzing reasonable equivalence, the District is entitled to either
20 (1) recalculate its facilities measurements the comparison group schools to remove the impact of
21 private funding contributions so that the measurement captures only the facilities that would have
22 been available at those schools if the District had received no private contributions, or (2) consider
23 whether with the District's offered facilities and the private contributions BCS receives from its
24 fundraising foundation and other sources, whether the educational conditions as a whole at BCS are
25 reasonably equivalent to the conditions at the comparison group schools.

26
27 DATED: _____, 2012

Hon. Patricia M. Lucas
Judge of the Superior Court