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BULLIS CHARTER SCHOOL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

BULLIS CHARTER SCHOOL,
Petitioner,

v.

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

Respondents.

112 CV 232187
CASE NO.
VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF

ENDORSED

112 CV 12 D 3-14

D. Wendel

INTRODUCTION

This case illustrates why it is essential that the judicial branch of government intervene when the executive branch fails to comply with the law. This lawsuit is brought because even after being told by the Court of Appeal that it has violated the law, the Los Altos School District has refused to “share fairly” its school facilities with the only charter school in the District.

Bullis Charter School is a successful public K-8 charter school located in Los Altos, California. Since its creation in 2003, the school has received substantially more applications than it has seats available, and its students have outperformed students at other public schools. Unfortunately, despite its success, Bullis Charter School has not enjoyed the support of the local school district. Instead, the District has done everything possible to make it difficult for Bullis Charter School to succeed, as illustrated by the following:

- When the parents first approached the District about forming a charter school, the District refused.
- When the County Board of Education asked the parents to give the District another chance to authorize the charter school, the District again refused.
- When the District’s former superintendent was asked about Bullis, he said that his “first priority” was to the other students in the District, and his “second priority” was Bullis.
- When the District failed to block Bullis’s formation, Bullis adopted “key criteria” seeking to restrict the number of families Bullis serves: (1) “**Cap student enrollment**” and (2) “**Maintain enrollment to grades K-6 (no 7th & 8th grade).**”
- While Bullis consistently has many more applicants than its facilities can accommodate, the District each year places Bullis’s K-6 students on a site far smaller than the 10-acre minimum site size of the District’s own K-6 schools (even those with fewer students enrolled and no waiting list).
- When Bullis logically sought to be placed on the closed elementary school site that was nearest to where the plurality of Bullis families resided, the District repeatedly

1 denied the request while the site remained largely vacant for years.

- 2 • When Bullis's charter came up for renewal, the District opposed Bullis before the
- 3 County Board.
- 4 • When the charter school requested a lottery preference from the County to address
- 5 demand exceeding its capacity at the facilities provided by the District, the District
- 6 opposed it, and then filed a lawsuit challenging the County-approved preference.
- 7 • When the District's own "acres needed" calculation showed that Bullis's
- 8 increasing enrollment required a site larger than the Egan camp site, the District
- 9 inexplicably stopped using that calculation.
- 10 • When the charter school sought to expand to include grades 7 and 8, the District
- 11 actively opposed it.
- 12 • When the charter school sought its second charter renewal from the County Board,
- 13 the District again opposed Bullis.
- 14 • Earlier this year, the District argued to the County Board that Bullis's charter
- 15 should be rescinded and the charter school shut down for alleged improper
- 16 activities by Bullis.

17 Having failed in its desire to prevent Bullis from forming, the District has concocted
18 various methods of trying to restrict Bullis's growth, most notably assigning Bullis space on a
19 "temporary camp site" on the edge of a middle school campus with considerably less space than
20 every other district school. In an effort to stop the District's unlawful conduct, Bullis filed suit on
21 June 10, 2009, challenging the District's Offer of Facilities for the 2009-2010 school year.

22 On October 27, 2011, the Sixth Appellate District, after reviewing a voluminous record,
23 issued a detailed published opinion finding that the District had violated the law in numerous
24 ways with respect to the allocation of school facilities to Bullis. Significantly, the Sixth District
25 found that the acreage provided to Bullis was not reasonably equivalent to that provided other
26 schools:

27 [B]ased on Bullis's projected 345 students, *the appropriate size of*
28 *the charter school site would have been 8.37 acres*; the Egan site,
according to the District, was only 6.2 acres.

1 (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1051, italics added
2 (*Bullis*.) The Sixth District also found that the District failed to allocate reasonably equivalent
3 specialized and nonclassroom building space:

4 Allowing a school district to allocate only some portion of
5 nonclassroom space to a charter school based upon an evaluation of
6 limited areas of the comparison group schools would be contrary to
7 the intent of the voters adopting Proposition 39 that school district
8 facilities be “shared fairly” among all public school pupils. (*Id.* at
9 p. 1049.)

10 As is true with classroom space and non-teaching space, the
11 regulations require that the school district offer and provide
12 specialized classroom space to charter schools consistently with the
13 reasonable equivalence standard of Proposition 39.... [T]he District
14 here fails that standard. (*Id.* at pp. 1060-1061.)

15 The opinion was based on Bullis’s in-district enrollment during the 2009-2010 school
16 year. Although Bullis’s current enrollment of **435** in-district K-6 students is significantly higher
17 than the enrollment in 2009-2010, the District has steadfastly refused to provide Bullis with a
18 reasonably equivalent site. Instead, Bullis’s K-6 students remain on the same temporary camp
19 site that the Sixth District held was not reasonably equivalent to the sizes of the other schools.

20 Since the 2009-2010 school year Bullis has expanded its grade levels and offers an
21 integrated K-8 program. Bullis currently has 40 in-district 7-8 students, giving it a total of 475 in-
22 district K-8 students. For the current school year, the district has split Bullis onto two separate
23 sites and provided Bullis’s 7th and 8th grade students with empty, unfurnished portables, and
24 inaccessible and unusable space at the new second site. In addition, the District has unilaterally
25 refused to provide Bullis with all of the educational facilities at the camp site that the District
26 agreed to provide in its Final Offer of Facilities. To make matters worse, the District rejected
27 Bullis’s reasonable projections and offered facilities for just 27 7th and 8th grade students—far
28 fewer than those actually enrolled at Bullis.

 When Bullis moved to enforce the Judgment that followed the published opinion and to
seek relief for the current academic year, the District argued that a new lawsuit had to be filed.
Although Bullis disagrees, it is filing this action in an attempt to expedite resolution of these
issues in order to obtain the reasonably equivalent educational facilities its students are entitled to.

1 Finally, because the District has engaged in a pattern of obstructionist and proven
2 unlawful conduct to hamper Bullis's growth, and demonstrated that the District lacks the desire or
3 political will to provide Bullis with adequate facilities, Bullis is requesting that a special master
4 be appointed to oversee the annual Proposition 39 process, or that this Court provide alternative
5 ongoing relief, to ensure Bullis's students are allocated a reasonable share of public school
6 facilities. The alternative—an annual lawsuit to challenge the District's continued improper
7 conduct—is very expensive, a waste of judicial resources, unlikely to be resolved in time to
8 provide effective judicial relief, and simply not acceptable.

9 **PETITION**

10 PETITIONER AND PLAINTIFF BULLIS CHARTER SCHOOL ("Petitioner," "Bullis,"
11 or "Charter School") brings this action seeking a writ of mandate on behalf of itself and its
12 475 current in-district K-8 students, as well as the many prospective students who are on its
13 current waiting list or who will enroll in future years, to compel Los Altos School District, Board
14 of Trustees of the Los Altos School District, and Superintendent Jeffrey Baier (collectively
15 "Respondents," "LASD," or "District") to provide reasonably equivalent facilities to Bullis
16 students in accordance with Proposition 39 and Implementing Regulations. Bullis further seeks
17 declaratory relief regarding this same issue.

18 Respondents are failing to meet the needs of the public school students who live within
19 District borders, because Respondents refuse to comply with the law that requires California
20 school districts to share district facilities fairly with *all* public school students, even those who
21 choose to attend public charter schools. To remedy this immediate and ongoing harm, Petitioner
22 seeks a peremptory and/or alternative writ of mandate to compel Respondents to
23 (1) accommodate kindergarten through eighth grade students on a contiguous site reasonably
24 equivalent in site size, facilities (including total building space per student), and conditions to
25 those provided at comparison District-run schools; (2) provide reasonably equivalent furniture
26 and equipment to Bullis as provided to comparison schools; (3) abide by the terms of the Final
27 Offer of Facilities, and not unilaterally change the offered facilities therein or Bullis's rights of
28 access to them; (4) in the Proposition 39 analysis of comparison schools, count (and allocate

comparable space for) *all* space at comparison schools (regardless of the intended functional use of such space by either district or charter school), including any new facilities that have been added to the comparison schools for the current academic year; and (5) provide Bullis with a facilities allocation for both its K-6 and 7-8 students based upon Bullis's documented projection, not the District's counter-projection, so long as Bullis has reaffirmed (or duly modified) its projection in writing after reviewing District objections pursuant to California Code of Regulations, title 5, section 11969.9, subdivision (c)(3)(e).

By this Verified Petition and Complaint, Petitioner alleges:

THE PARTIES

1. Bullis is a successful public charter school located in Los Altos, California. Bullis was established in the spring of 2003, after Respondents closed Bullis-Purissima Elementary School ("Bullis-Purissima"). A group of neighborhood parents sought approval from Respondents of a charter petition to form a new elementary school in place of Bullis-Purissima. Twice rejected by Respondents, Bullis sought and obtained approval of its petition from the Board of Trustees of the Santa Clara County Office of Education ("County Board" or "SCCOE"). The County Board approved Bullis's application and continues to serve as Bullis's chartering authority. From its inception in the 2004-2005 school year through the 2008-2009 school year, Bullis served students in grades K-6. Over Respondents' objections, the County Board approved a change to the Bullis charter, allowing Bullis to expand to include seventh and eighth grades. Bullis currently enrolls K-8 students.

2. Respondent Los Altos School District is a K-8 public school district duly organized and existing under the laws of the State of California.

3. Respondent Board of Trustees of the Los Altos School District is an elected body with authority to govern LASD and to ensure that LASD complies with the law.

4. Respondent Jeffrey Baier is Superintendent of LASD, and as such is responsible for the day-to-day operations of LASD, including its compliance with Proposition 39. Superintendent Baier is sued here solely in his official capacity.

JURISDICTION AND VENUE

5. A court may issue a writ of mandate to “compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded.” (Code Civ. Proc., § 1085, subd. (a).) Courts must ensure that an agency has adequately considered all relevant factors and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute. A writ “*must* be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” (Code Civ. Proc., § 1086, italics added.)

6. Bullis asks the Court to compel Respondents to act in a manner consistent with Proposition 39 and Implementing Regulations, and to prohibit Respondents from arbitrarily and capriciously harming Bullis students through Respondents’ failure to provide Proposition 39-compliant facilities. Without Court intervention, Respondents’ refusal to comply with Proposition 39 and Implementing Regulations will unfairly and unlawfully deprive Bullis of the ability to fully serve its K-8 students and their families, enroll and serve additional prospective students (including the many on Bullis’s waitlist), and otherwise contribute to offering the children in its local public school community the best education for them.

7. Section 1060 of the Code of Civil Procedure provides that where there is an “actual controversy” relating to the legal rights and duties of the respective parties, “[a]ny person . . . who desires a declaration of his or her rights or duties with respect to another . . . may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties.” (Code Civ. Proc., § 1060.)

8. Bullis asks the Court to declare that Respondents, through their deficient Final Offer of Facilities for 2012-2013, have violated Proposition 39 and its Implementing Regulations (1) by failing to provide Bullis with contiguous facilities, (2) by improperly and unnecessarily moving Bullis’s 7th and 8th grade students to a non-compliant distantly located site, (3) by failing to provide Bullis with reasonably equivalent facilities, furnishings, and equipment at the Egan Camp Site or at Blach, (4) by failing to provide Bullis’s K-6 students with a site that is reasonably

equivalent in size to the sites offered other students at the comparison schools, (5) by allowing the subjective use determinations made by District comparison schools and by Bullis of how to best use their respective space to control the analysis of how much space the District must allocate to Bullis, (6) by failing to “share fairly” the middle school facilities at Blach, (7) by failing to provide Bullis with accessible facilities, (8) by failing to accept the documented and properly reaffirmed enrollment projections made by Bullis for grades 7 and 8, (9) by failing to count all space, including new buildings added for the current school year, at comparison schools, (10) by unilaterally “withdrawing” or “exchanging” facilities that had been offered in the Final Offer of Facilities, and (11) by imposing sharing arrangements or other material restrictions on the use of offered facilities other than those specified in the Final Offer.

9. Without declaratory relief setting forth Respondents’ Proposition 39 obligations and Bullis’s rights, Respondents will continue to misapply Proposition 39 and its Implementing Regulations to Bullis’s detriment.

10. This action is properly filed in the Superior Court of California, County of Santa Clara, as Los Altos is located in Santa Clara County, is the principal place of business for Respondents, and is the principal place of all events at issue.

SUMMARY OF KEY FACTS

11. To improve the quality of all public schools and expand the public school choices available to parents and students, California’s Legislature enacted the Charter Schools Act of 1992, Education Code section 47600 *et seq.*, the overarching purpose of which “is to infuse the public school system with competition in order to stimulate continuous improvement in *all* its schools.” (*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1139 (*Wilson*).)¹ To this end, the Act declares that charter schools “are part of the Public School System” (§ 47615, subd. (a)(1)) and, as such, entitled to full and fair funding “equal to the total funding that would be available to a similar school district serving a similar pupil population.” (§§ 47630, subd. (a), 47615, subd. (a)(3).) Because charter schools are now “an integral part of the California

¹Undesignated section references are to the Education Code.

1 education system” (§ 47605, subd. (b)), “reasonable efforts” to accommodate their growth must
2 be made, and in no event may a school district take “any action to impede a charter school from
3 expanding enrollment to meet pupil demand.” (*Id.*, subds. (d)(2)(C), (j)(3).) In short, charter
4 schools are part of the public school system. (*Wilson, supra*, 75 Cal.App.4th at p. 1139.)

5 12. In part to encourage charter schools’ “use of different and innovative teaching
6 methods” (§ 47601(c)), charter schools are exempt from many of the laws governing school
7 districts. (§ 47610.) The Charter Schools Act is to be liberally construed to provide charter
8 schools with maximum flexibility to achieve the Legislature’s goals. (§ 47615(b).)

9 **A. Proposition 39.**

10 13. Proposition 39 was adopted by the California electorate in 2000 to express its
11 intent “that public school facilities should be shared fairly among all public school pupils,
12 including those in charter schools.” (§ 47614, subd. (a).) To that end, Proposition 39 requires
13 school districts to provide a fair share of school district facilities sufficient to accommodate in-
14 district public charter school students in conditions reasonably equivalent to those in which the
15 students would be accommodated if they were attending other public schools of the district. (*Id.*,
16 subd. (b).)

17 14. Regulations adopted in 2002 (and amended in 2008) implement Proposition 39.
18 (Cal. Code Regs., tit. 5, § 11969.1 et seq.)² The Regulations define how school districts are to
19 meet their obligation to provide a reasonably equivalent share of school district facilities to public
20 charter school students. (*Ibid.*)

21 **B. The Establishment of Bullis Charter School.**

22 15. Bullis, a successful public charter school in Los Altos, California, was established
23 in the spring of 2003 after the Los Altos School District closed Bullis-Purissima Elementary
24 School, the only public elementary school in Los Altos Hills.³

25 _____
26 ²All references to Regulations (and Regs.) are to the implementing regulations found in
title 5 of the California Code of Regulations.

27 ³Unless the context suggests otherwise, our references to the District include all
28 Respondents — the Los Altos School District, its Board of Trustees, and Jeffrey Baier in his
capacity as the District’s Superintendent.

1 16. There are several ways in which community members, parents, or teachers may
2 establish a charter school. (§ 47605.) Under the approach taken by Bullis’s founding families,
3 the proponents submit to the school district’s governing board a petition signed by at least half of
4 the parents or legal guardians of pupils expected to enroll in the charter school during its first year
5 of operation. (*Id.*, subd. (a)(1)(A).)

6 17. Upon receipt of the petition, the school district must (within 30 days) hold a public
7 hearing and (within 60 days) grant or deny the charter, “guided by the intent of the Legislature
8 that charter schools are and should be an integral part of the California educational system and
9 that establishment of charter schools should be encouraged.” (§ 47605, subd. (b).) The district’s
10 governing body must grant the charter if it is satisfied that the charter “is consistent with sound
11 educational practice” (*ibid.*); if it denies the charter, it must make “written factual findings,
12 specific to the particular petition,” that the proposal is legally deficient for one or more of the
13 reasons stated in the statute. (*Ibid.*) Where the district denies the charter, the proponents may
14 submit their petition to the county board of education (which applies the same statutory criteria).
15 (*Id.*, subds. (b), (j)(1).)

16 18. The Bullis founders initially submitted a charter petition to the District, which
17 denied the petition. Bullis successfully appealed to the Santa Clara County Board of Education.
18 (§ 47605, subd. (j)(1).) Before it approved the charter petition, the County Board gave the
19 District another opportunity to do so itself and thus become the chartering authority, but the
20 District again declined. As a result, the County Board (as chartering authority) assumed
21 responsibility for Bullis and thus visits the school multiple times each year, ensures that Bullis
22 submits all required reports, monitors Bullis’s financial condition, and communicates with the
23 California Department of Education about any material changes to Bullis’s charter or operation.
24 (§ 47604.32, subds. (a)-(e).)

25 19. Although the District declined to serve as chartering authority, it remains obligated
26 to allocate, without bias, a reasonably equivalent share of all public school facilities it administers
27 to all public school students residing in its territory, including Bullis’s students. (§ 47614, subds.
28

1 (a), (b)(5); *Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130
2 Cal.App.4th 986, 992, fn. 5 (*Ridgecrest*).⁴

3 **C. The Egan Camp Site.**

4 20. In the fall of 2003, after receiving its charter from the County Board, Bullis asked
5 the District for permission to use the closed Bullis-Purissima campus. Although the campus was
6 empty and the plurality of Bullis's in-district students resided in the attendance area of the closed
7 school, the District denied that request and instead, placed Bullis in portable buildings on a
8 portion of the Egan Junior High School campus. In 2000, these portables were obtained by the
9 District as part of a temporary "camp" site to house students while the District's schools were
10 extensively remodeled. Approximately \$120 million was spent modernizing and upgrading all of
11 the other schools in the District.

12 21. Since its inception, Bullis has annually requested to occupy the former Bullis-
13 Purissima campus, which, until 2008, was mostly vacant.⁵ Respondents have rejected Bullis's
14 requests. Once the District re-opened the Bullis-Purissima campus, Bullis asked the District to
15 award it its own full size site, either the Bullis-Purissima site or another reasonably equivalent site
16 within the Los Altos High School attendance area. The District has refused.

17 22. Although Bullis has grown from 121 kindergarten through sixth-grade (K-6) in-
18 district students in 2004-2005 to 435 in-district K-6 students (and a total of 475 in-district K-8
19 students) for the 2012-2013 school year, the District has housed Bullis's K-6 students on the same
20 cramped portion of the "temporary" camp site for the last nine years.

21
22 ⁴A student is an "in-district student" of a school district if he or she is entitled to attend
23 the schools of the school district and could attend a school district-operated school, except that a
24 student eligible to attend the schools of the school district based on interdistrict attendance
pursuant to Education Code sections 46600-46611 or based on parental employment pursuant to
Education Code section 48204(b) shall be considered a student of the school district where he or
she resides." (Regs., § 11969.2, subd. (c).)

25 ⁵In the fall of 2008, Respondents opened the Gardner Bullis Elementary School
26 ("Gardner") on the former Bullis-Purissima campus. Respondents did so despite Bullis's request
27 to locate on that campus and despite having recently closed that campus due to declining
28 enrollment. Respondents also knew that Bullis would have more than one and a half times the
number of students at the proposed new District-run school in the current year and knew that
more students living in the Los Altos Hills area surrounding the former Bullis-Purissima campus
attend Bullis than were likely to attend the new school on that site.

23. The lack of reasonably equivalent facilities forces Bullis to make many compromises that, viewed collectively, seriously affect both Bullis's current students and the applicants on its waiting list (larger facilities would permit Bullis to enroll more in-district students in the public school of their choice). With its current facilities, Bullis must often adapt its undersized library and teaching spaces for other programs, forgo or limit desired programs like onsite childcare, and cancel certain classes because of insufficient facilities. Special education students (those needing occupational and speech therapy, and similar programs) and the English Language Learners program are served in the teachers' lounge, the teachers' workroom, the library, or outside, depending on availability. Bullis's students' use of outdoor turf areas is seriously restricted, disrupting basic programs.

D. The District Files Suit Against Bullis's Lottery.

24. Bullis, its teachers and educational program, have been the recipients of countless awards. For example, since inception, Bullis has been ranked in the top 1% of all California elementary schools. In February 2006, its principal was named by the California Charter School Association as Charter School Principal of the Month, and in 2008 Bullis was named a California Distinguished School.

25. Bullis's success has had significant practical consequences. With more applicants than seats available, in early 2005, Bullis introduced a public lottery for oversubscribed openings pursuant to Education Code section 47605, subdivision (d)(2)(B), granting preference, as required by law, to current and in-district students.

26. Aware that Bullis was born of, and flourished from, a spirit of community and volunteerism, Bullis administration, teachers, and families became increasingly concerned about maintaining Bullis's defining and unique characteristic—that of a "neighborhood school." Thus, in October 2007, Bullis requested, and the County Board approved, a charter amendment that included a preference for half of any oversubscribed openings at each grade level to be filled by in-district students residing in the former Bullis-Purissima attendance area. Respondents opposed Bullis's request, and in early 2008, filed suit challenging the County Board's approval of the revision to Bullis's charter. On May 22, 2008, the Honorable Kevin Murphy denied LASD's

Petition for Writ of Mandate and upheld the County Board's decision to approve Bullis's lottery preferences.

E. The District Opposes Bullis's Expansion.

27. Notwithstanding the statutory mandate to encourage charter school expansion (§§ 47601, 47605, subd. (d)(2)(C)), the District has repeatedly and openly opposed any increase in Bullis's size and its planned expansion to grades seven and eight by placing and keeping Bullis on an undersized site. Indeed, the District itself listed its "key criteria" in its dealings with Bullis as (1) "**Cap student enrollment**" and (2) "**Maintain enrollment to grades K-6 (no 7th & 8th grade).**"

28. Because children currently attending Bullis—and their families—have a unique sense of school loyalty and want to remain at Bullis beyond grades K-6, and in response to a demand from the community, Bullis (on September 26, 2008) submitted to the County a proposed charter revision (§ 47607) to allow the addition of grades seven and eight. The District objected to that proposed expansion. On October 15, 2008, the District's former Superintendent Tim Justus spoke at a County Board meeting in opposition to Bullis's proposed middle school.

29. At the County Board meeting on November 19, 2008, SCCOE staff stated that Bullis's petition satisfied the requirements under the Education Code and County Board policy, and that therefore there was no valid reason to deny Bullis's petition. Among other findings, the SCCOE found that the proposed revision to Bullis's charter contained a reasonably comprehensive description and would not result in an unsound educational program. The County Board voted 6-0 to approve the revision of the Bullis charter, thus allowing the addition of grades seven and eight in the fall of 2009.

F. Bullis Designated District's "Second Priority."

30. Respondents operate under the faulty notion that in-District students who choose to attend District-run schools are entitled to preferential treatment over in-District students who choose to attend public charter schools operating within the District. (See, e.g., Newell, *LASD rejects charter school foundation's offer*, Los Altos Town Crier (May 27, 2009) <[http://www.losaltosonline.com/index.php?option=com_content&task=view&id=17691&Itemid](http://www.losaltosonline.com/index.php?option=com_content&task=view&id=17691&Itemid=sf-3193514)

=56> [as of September 12, 2012], quoting the District’s former Superintendent Tim Justus (“My first priority is to the children who choose to attend schools under our jurisdiction. . . . My second priority is to make sure the charter school has appropriate facilities.”).)

G. Bullis Facilities Request for the 2009-2010 Academic Year.

31. Bullis’s timely request for facilities for the 2009-2010 school year asked the District for a share of teaching stations (classrooms), specialized classroom space, and non-teaching station space reasonably equivalent to that allocated to comparable District-run schools. In addition, Bullis specifically asked for facilities important to its educational mission (space such as art, music, and computer rooms, a PTA room, and a before- and after-school care room). In all, Bullis asked for a 10-acre site with buildings and outdoor facilities sufficient to accommodate its in-district students in conditions reasonably equivalent to those at the District-run sites they would otherwise attend.⁶

32. Based on its analysis of the facilities at five District-run elementary schools, the District (on January 30, 2009) submitted to Bullis the District’s Preliminary Offer of Facilities in which it offered Bullis the same cramped location it occupied in 2008-2009, including a “shared” turf field (with Bullis’s use limited to two days per week) and a multi-purpose room that Bullis had already built at its own expense.

33. Bullis replied on February 27, 2009, and (as required by Regs., § 11969.9, subd. (g)) identified its primary areas of concern, including:

The District’s failure to consider school-site size in its reasonable equivalence analysis (AA 175-176);

The District’s failure to provide specialized teaching space and

⁶Bullis must submit a new written facilities request to the District for each school year. (Regs., § 11969.9, subds. (a), (b).) Its request for facilities for the 2009-2010 school year contained all the required information, including projected K-7 enrollment. (Regs., § 11969.9, subds. (b), (c)(1).) In response, the District was required to review Bullis’ enrollment projections and (on or before December 1) express any objections and counter-projections. (Regs., § 11969.9, subd. (d).) Bullis was required to respond to the District by January 2, reaffirming or modifying its projections. (*Id.*, subd. (e).) By February 1, the District had to submit a “preliminary offer” of facilities to Bullis. (*Id.*, subd. (f).) If dissatisfied, Bullis had to respond by March 1. (*Id.*, subd. (g).) By April 1, the District had to respond with a “final offer” of facilities and, by May 1, Bullis had to notify the District of Bullis’ intent to occupy the offered space. (*Id.*, subds. (h), (i).)

1 “non-teaching station” space sufficient to accommodate students in
2 conditions reasonably equivalent to those at District-run schools
(AA 176-178);

3 The District’s inclusion in its offer, in lieu of District-provided
4 space, of a multi-purpose room that Bullis built itself to augment its
Proposition 39 facilities (AA 180); and

5 The District’s inclusion of the entire turfed area, without regard to
6 the sharing arrangements it imposed on that area, in its reasonable
equivalency analysis (AA 178).

7 34. The District submitted its Final Offer of Facilities to Bullis on April 1, 2009. The
8 Final Offer asserted that much of the specialized classroom and non-teaching station space
9 provided at comparison schools “fall[s] outside of those contemplated by the regulation” and thus
10 need not be provided to Bullis. (Final Offer at p. 5.) At the end of the statutory process, Bullis
11 had no choice but to notify the District that it would occupy the offered space, if it wanted to open
12 for the new school year. (Regs., § 11969.9, subd. (i).)

13 **H. Bullis Files Suit, and the Trial Court Denies Bullis’s Petition.**

14 35. The facts summarized above were presented to the trial court in Bullis’s combined
15 verified petition for a writ of mandate and complaint for declaratory relief filed on June 10, 2009.
16 The petition was heard on October 26, 2009, after which the trial court denied, in part, Bullis’s
17 petition. On January 19, 2010, the trial court entered a final judgment against Bullis and in favor
18 of the District.

19 **I. The Sixth District Reverses in a Published Opinion.**

20 36. On October 27, 2011, the Sixth District reversed, holding (among other things)
21 that:

22 (a) the definition of “non-teaching station space” includes *all* non-classroom
23 space, and that the District’s argument that non-teaching station space is limited to those
24 categories specifically enumerated in the regulation or to those common to all comparison group
25 schools was an improper interpretation of the statute and regulations (*Bullis, supra*, 200
26 Cal.App.4th at pp. 1046-1049);

27 (b) school districts must provide accurate measurements of space offered to
28 charter schools—by, for example, accurately measuring such space, pro-rating the amount of

1 space offered by shared-use restrictions applied to that space, and not “counting” space provided
2 by the charter school itself (*id.* at pp. 1058-1059); and

3 (c) school districts must accurately measure all indoor space at comparison
4 group schools, and that the assignment of arbitrary “measurements” to such space misreads and
5 misapplies the regulation defining the process through which school districts must allocate
6 teaching station, non-teaching station, and specialized classroom space (*id.* at pp. 1060-1061).

7 37. The Court of Appeal made specific note of the massive amount of uncounted
8 space: “Indeed, the amount of unreported ‘non-teaching station space’ at the five comparison
9 group schools was *over one million square feet.*” (*Id.* at p. 1062, italics in original.)

10 38. With respect to the Egan Camp Site offered to Bullis by the District, the Court of
11 Appeal held that “based upon Bullis’s projected 345 students, *the appropriate size of the charter*
12 *school site would have been 8.37 acres*” and found that “the Egan site is . . . only 74 percent (6.2
13 acres divided by 8.37 acres) of the size that would be considered comparable” to comparison
14 school campuses. (*Id.* at pp. 1050, italics added, 1052.)

15 39. The Court of Appeal further held that the District engaged in a number of unlawful
16 tactics—including overstating the amount of space offered to Bullis by, for example, not
17 accounting for use restrictions on space offered to Bullis, and underallocating building space to
18 Bullis by, for example, using arbitrary undersized “standard room sizes”—that resulted in Bullis’s
19 improper placement on the Egan Camp site. Accordingly, the Court of Appeal held that the
20 temporary site—in size and facilities—did not meet the reasonable equivalence requirement, and
21 that “[t]he court . . . should have granted mandamus and declaratory relief finding that the
22 District’s Facilities Offer for the 2009-2010 School Year did not comply with Proposition 39 and
23 the implementing regulations.” (*Id.* at pp. 1030, 1047, 1052, 1062-1064.)

24 40. The District filed a Petition for Rehearing, which the Court of Appeal denied. The
25 District also filed a Petition for Review and Request for Depublication, both of which the
26 California Supreme Court denied. On March 21, 2012, the trial court issued a judgment granting
27 Bullis’s requested writ, and on May 31, the Clerk issued the writ.

1 41. For two intervening school years (2010-2011 and 2011-2012) while awaiting the
2 Court of Appeal decision, Bullis's students remained on essentially the same undersized Egan
3 Camp site the District offered in 2009-2010. In 2010-2011 Bullis began its 7th grade and grew to
4 378 K-7 in-district students on the Egan Camp site. In 2011-2012 Bullis began its 8th grade and
5 grew to 433 K-8 students on the Egan Camp site.

6 **J. Bullis's Facilities Request for the Current 2012-2013 Academic Year.**

7 42. Bullis's timely request for facilities for the 2012-2013 school year again asked the
8 District for an approximately 10-acre or larger contiguous site (as all the District's schools enjoy)
9 sufficient to accommodate its in-district students in conditions reasonably equivalent to those at
10 the District-run sites they would otherwise attend. In its written facilities request, Bullis
11 submitted substantial documentation to support its projected enrollment of 439 in-district K-6
12 students and 54 in-district 7th and 8th grade students.

13 43. On November 30, 2011, the District served Bullis with "Objections to Projections"
14 in which the District indicated that it would provide facilities for only 405 in-district K-6 students
15 and 27 7th and 8th grade students, for a total of 432, compared to Bullis projection of 493
16 students.

17 44. On December 30, 2011, Bullis responded to the District's Objections to
18 Projections and reaffirmed its projection of 493 students and again supported that projection with
19 additional documentation that substantially refuted the District's assertions.

20 45. The District (on February 1, 2012) submitted to Bullis the District's Preliminary
21 Offer of Facilities in which it offered Bullis the same cramped location it has occupied since the
22 2004-2005 school year for its K-6 students and a gerrymandered portion of Blach Middle School
23 on the other side of the District for Bullis's 7th and 8th graders, which is in large part unusable
24 space, including significant inaccessible portions of uneven woodchips and turf. The space
25 offered, while impracticably far from Bullis's main campus, lacks many facilities basic to a
26 school site. Offering Bullis a site on the other side of the District violates the Education Code,
27 which requires "reasonable efforts to provide the charter school with facilities near to where the
28 charter school wishes to locate." (§ 47614.)

1 46. The District's Preliminary Offer adopted Bullis's K-6 projection of 439 in-district
2 students but offered facilities for only 27 middle school students, instead of the 54 projected by
3 Bullis.

4 47. Bullis replied on March 1, 2012, and (as required by Regs., § 11969.9, subd. (g))
5 identified its primary areas of concern, including:

- 6 • The District proposal to place the 439 BCS K-6 in-district
7 students on the same temporary camp site that the Court of
8 Appeal said failed to satisfy the reasonably equivalent
9 standard for just 327 in-district students who were located at
10 that site in 2009-2010;
- 11 • Refusing to use Bullis's reasonable projections for 7th and
12 8th graders; and
- 13 • Failing to provide Bullis with a single contiguous site.

14 48. The District submitted its Final Offer of Facilities to Bullis on March 31, 2012.
15 The Final Offer asserted that the District would stand by its projections and provide facilities for
16 only 27 7th and 8th grade students. In the Final Offer, the District said that it "intends to
17 construct a Multi-Purpose room at Egan and offers one-half of the City Gym at Egan until such
18 time as the Multi-Purpose room is completed." (Final Offer at p. 30.)

19 49. At the end of the statutory process, Bullis had no choice but to notify the District
20 that Bullis would occupy the offered space, if it wanted to open for the new school year.

21 **K. Failed Mediation and Motion to Compel.**

22 50. In an effort to resolve the short-term and long-term issues that have plagued Bullis,
23 Bullis met with the District in a formal mediation with retired Justice Richard J. McAdams. The
24 mediation resulted in a framework agreement between the settlement teams, which included
25 Board members for the District and Bullis, and the District's Superintendent. Both parties issued
26 a joint press release publishing the terms of the framework agreement. Bullis's Board adopted
27 that framework agreement, but the District's Board did not.

28 51. After the District's Board rejected the settlement agreement, Bullis filed a motion
with this Court to enforce the Judgment. Among other things, Bullis raised the fact that its in-
district enrollment of K-6 students had increased by nearly 100 students, a far greater increase

1 than at any of the comparison schools. Nonetheless, and in spite of the clear language in the
2 published appellate opinion, the District has again placed Bullis's K-6 students on the Egan site
3 for the upcoming school year, and has provided Bullis with far less than the 8.37 acres that the
4 Court of Appeal said was "appropriate" for far fewer Bullis students.

5 **L. District Reneges on Agreement for Use of Half the Egan Gym.**

6 52. On August 20, 2012, the evening before school began at Bullis, the District's
7 counsel sent a letter to Bullis's counsel advising that the District would not be providing Bullis
8 students use of the 4,971-square-foot half gym that was promised in the Final Offer of Facilities,
9 but would instead offer a significantly smaller 1,920-square-foot portable "until such time that the
10 parties reach an alternative agreement or receive further judicial guidance."

11 **M. Bullis Students Arrive to Empty and Inadequate Classrooms at Blach.**

12 53. Because the District knows that the space provided at the Egan camp site is far less
13 than what Bullis is entitled to, the District has allocated space to Bullis's 7th and 8th graders at
14 Blach Middle School on the other side of the District. The Blach facilities (as well as many
15 facilities at Egan) were not made available on August 1, as promised, and when school did start,
16 the rooms at Blach were (and remain) almost completely empty, with no desks or equipment.
17 The Bullis students went to Blach the second week of school to try to make use of those facilities
18 and sat on the floor in one of the empty portables. With respect to the "shared space" that was
19 offered at Blach for only 27 students, that space was completely inadequate because Bullis has 40
20 in-district 7th and 8th grade students. As a result, many of the students had to sit on the floor in
21 the specialized teaching space at Blach. Because it is not practical to study in empty rooms or
22 rooms that are far too small for Bullis's 40 in-district 7th and 8th graders, and because the district
23 has failed to fairly share the Blach facility, Bullis seventh and eighth graders are now forced to
24 share the Egan site with the K-6 students.

25 **THE LAW**

26 54. The law requires that a district must give a "charter school's in-district students . . .
27 *the same consideration* as students in the district-run schools." (Regs. § 11969.2, subd. (d),
28 italics added; *Ridgecrest, supra*, 130 Cal.App.4th at p. 999.)

1 55. The notion that in-district students who attend District-run schools should be given
2 any preference or “first priority” is plainly foreclosed by law, and has specifically been rejected
3 by the courts. (§ 47615, subds. (a)(1)-(2) [“Charter schools are part of the Public School
4 System”; “Charter schools *are under the jurisdiction of the Public School System*,” italics added];
5 *Ridgecrest, supra*, 130 Cal.App.4th at p. 998 [“We begin by addressing what appears to us to be a
6 faulty premise underlying the District’s position: the notion that charter school students are not
7 ‘district’ students, with the implication their needs therefore must yield to those of the students in
8 the district-run schools in deciding how to allocate space among them. . . . We interpret the Act
9 differently.”].)

10 **Bullis and Students, Current and Prospective, Suffer from Respondents’ Actions**

11 56. Bullis, its students, and its prospective students have been harmed by
12 Respondents’ long-standing failure to comply with Proposition 39, and by Respondents’
13 unyielding efforts to thwart the livelihood and growth of the Charter School. Similarly, Bullis
14 students suffer from Respondents’ persistent refusal to treat Bullis students “fairly” and to
15 provide a reasonably equivalent share of District facilities—including teaching station,
16 specialized classroom, and non-teaching station space—to Bullis. Bullis students are housed on a
17 significantly smaller campus, with considerably fewer facilities in a considerably smaller space
18 than those available at comparison group schools.

19 **FIRST CAUSE OF ACTION**

20 **(WRIT OF MANDATE)**

21 57. Bullis re-alleges and incorporates by reference each and every allegation contained
22 in paragraphs 1-56, inclusive.

23 58. Respondents have a mandatory, non-discretionary, and ministerial duty under
24 Proposition 39 to provide Bullis with a reasonably equivalent share of District facilities.
25 Respondents breached this mandatory duty and violated their obligations under Proposition 39.
26 Alternatively, to the extent any discretion is involved, Respondents abused their discretion by
27
28

1 failing to consider all relevant factors and failing to demonstrate a rational connection between
2 those factors, the choices made, and the purposes of the enabling statutes.

3 59. Specifically, Respondents have violated the law as follows:

- 4 • They have failed to honor the terms of the Final Offer of Facilities by unilaterally
5 withdrawing use of half of the gym at Egan;
- 6 • They have improperly rejected Bullis's documented and reaffirmed in-district
7 enrollment projections;
- 8 • They have improperly and unnecessarily attempted to move Bullis's 7th and 8th
9 grade students to Blach;
- 10 • They have failed to provide Bullis's K-6 students with a site size that is reasonably
11 equivalent to the site size provided to students at comparison schools;
- 12 • They have failed to provide Bullis with an allocation of building space reasonably
13 equivalent to the total building space provided to each of the comparison schools
14 (determined independently of each school's chosen functional use of its space);
- 15 • They have failed to properly furnish and equip the facilities provided to Bullis;
- 16 • They have failed to provide Bullis with contiguous facilities and have improperly
17 divided Bullis into two sites;
- 18 • They have failed to include new portable buildings at comparison schools in their
19 Proposition 39 analysis;
- 20 • They have failed to provide Bullis students with accessible facilities at Blach; and
- 21 • They have failed to provide Bullis with adequate facilities at Blach, in part because
22 they have provided facilities for only 27 in-district students.

23 60. Unless and until Respondent LASD is compelled to follow the law, Bullis's
24 current and prospective students will be deprived of their rights under Proposition 39 and
25 Implementing Regulations, because they will be forced to attend a school too small to
26 accommodate the Bullis student body comfortably and in conditions not reasonably equivalent to
27 those at District-run schools they could attend. In the case of students on the Bullis waiting list
28

1 and prospective students, their admission to Bullis may be delayed or entirely prevented by the
2 lack of sufficient facilities.

3 61. Bullis performed any and all conditions precedent to filing this action and has
4 exhausted its administrative remedies, if any, relating to this dispute.

5 62. Bullis has no plain, speedy, and/or adequate remedy in the ordinary course of law.

6 63. Without relief from this Court, Bullis students and prospective students and their
7 families are being, and will continue to be, irreparably harmed by Respondents' failure to perform
8 their legal duties under Proposition 39 and Implementing Regulations.

9 **SECOND CAUSE OF ACTION**

10 **(DECLARATORY RELIEF)**

11 64. Bullis re-alleges and incorporates by reference each and every allegation contained
12 in paragraphs 1-63, inclusive.

13 65. Section 1060 of the Code of Civil Procedure provides that "in cases of actual
14 controversy relating to the legal rights and duties of the respective parties . . . [a]ny person
15 . . . who desires a declaration of his or her rights or duties with respect to another . . . may ask for
16 a declaration of rights or duties, either alone or with other relief; and the court may make a
17 binding declaration of these rights or duties, whether or not further relief is or could be claimed at
18 the time."

19 66. An actual, present controversy exists between Respondents and Bullis with respect
20 to Respondents' obligations under Proposition 39.

21 67. Declaratory relief is necessary and proper at this time so that the parties may
22 ascertain their rights and duties under the law, and so that this dispute will not recur in future
23 school years.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioner Bullis prays:

26 1. That the Court issue a peremptory writ in the first instance commanding
27 Respondents to:
28

- 1 a. Provide reasonably equivalent, and accessible, facilities for Bullis that are
- 2 properly furnished;
- 3 b. Accommodate Bullis's K-8 grades on a contiguous site reasonably
- 4 equivalent in facilities and size to those offered at LASD-run schools, and
- 5 to provide reasonably equivalent teaching station, specialized classroom,
- 6 and non-teaching station space whether or not of a type specifically
- 7 enumerated in regulations;
- 8 c. Account for site size and all space available to comparison group schools,
- 9 including any new buildings or facilities that were added to the comparison
- 10 schools for the current academic year;
- 11 d. Cease considering any school's functional use determination of its District-
- 12 provided space as a factor in the analysis determining the reasonably
- 13 equivalent amount of building or outdoor space the District must allocate to
- 14 Bullis;
- 15 e. Honor the commitment in the Final Offer to provide Bullis with one half of
- 16 the City Gym until a multi-purpose room is constructed; and
- 17 f. Provide Bullis with facilities consistent with the projections provided by
- 18 Bullis.
- 19 2. That the Court, alternatively issue an alternative writ commanding Respondents to
- 20 do the same or, in the alternative, show why it should not do so, and thereafter issue a peremptory
- 21 writ;
- 22 3. That the Court issue a declaration that
- 23 a. Respondents' Final Offer violates Proposition 39 and its Implementing
- 24 Regulations, and that Respondents (1) are required to provide contiguous,
- 25 reasonably equivalent facilities to all grade levels reasonably projected by
- 26 Bullis; (2) are not permitted to unilaterally withdraw the half of the City
- 27 Gym that was offered in the Final Offer of Facilities; (3) are required to
- 28 provide Bullis site space and an amount of building space per in-district

1 student that is reasonably equivalent in both size and condition to *all* such
2 District space (regardless of its current or proposed functional use at any
3 district or charter school) at the comparison schools in accordance with
4 Bullis's in-district enrollment projections; and (4) are required to account
5 for all facilities at comparison group schools, including any facilities that
6 Respondents have added for the current academic year, and must conduct
7 their reasonable equivalency analysis in accordance with such
8 consideration; and

9 b. Bullis is legally entitled to: (1) reasonably equivalent, accessible, and
10 contiguous K-8 facilities; (2) school site size and other facilities/space
11 reasonably equivalent in both size and condition to that offered to
12 comparison group schools, regardless of whether any district school and
13 the charter school elect to use such space for the same educational purpose;
14 (3) the half of the City Gym that was offered in the Final Offer of Facilities
15 (until such time as a multi-purpose room reasonably equivalent in size and
16 condition is built); and (4) facilities that are equipped and furnished in a
17 manner that is reasonably equivalent to the comparison schools.

18 4. Because of the District's history of opposing the formation of Bullis, twice
19 opposing the renewal of Bullis's charter, opposing the expansion of Bullis, violating the law in
20 multiple ways as noted in the Sixth District's published opinion, and arguing to the County Board
21 earlier this year that Bullis's charter should be rescinded, it is imperative that the Court appoint a
22 special master to assume control of the Proposition 39 process and to allocate reasonably
23 adequate facilities to Bullis;

24 5. For the Court to exercise continuing jurisdiction over this action to ensure that
25 Respondent LASD complies with the writ of mandate of this Court;

26 6. For an award of costs and all reasonable attorneys' fees pursuant to Code of Civil
27 Procedure section 1021.5; and

28 7. Such other relief as the Court may find appropriate.

1 Dated: September 12, 2012

ARTURO J. GONZÁLEZ
SUZANNA PACHT BRICKMAN
MORRISON & FOERSTER LLP

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5 By: 

Arturo J. González

Attorneys for Petitioner
Bullis Charter School

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VERIFICATION

I, KEN MOORE, am Chair of the Board of Directors of Bullis Charter School, a party to this action, and I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know its contents. The facts stated therein are true and are within my personal knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 12th day of September, 2012 at Los Altos, California



KEN MOORE