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LOS ALTOS SCHOOL DISTRICT; BOARD OF
11 TRUSTEES OF THE LOS ALTOS SCHOOL
DISTRICT; and JEFFREY BAIER

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA

14 BULLIS CHARTER SCHOOL,

15 Petitioner,

16 v.

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

20 Respondents.
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ENDORSED

2013 JUN -4 P 3: 26

David H. Yamazaki, Clerk of the Superior Court
County of Santa Clara, California

By: A. PACHECO

Case No. 113CV245684

**LOS ALTOS SCHOOL DISTRICT ET AL'S
OPPOSITION TO BULLIS CHARTER
SCHOOL'S MOTION FOR JUDGMENT
ON PETITION FOR WRIT OF MANDATE**

Date: June 20, 2013
Time: 9:00-a.m.
Dept.: 9
Judge: Hon. Mark Pierce

*[Filed concurrently with Declaration of
Raymond A. Cardozo and Second Declaration of
Raymond A. Cardozo (filed conditionally under
seal)]*

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TABLE OF ABBREVIATIONS

BCS	Petitioner Bullis Charter School
BPEF	Bullis-Purissima Elementary School Foundation
<i>Bullis IV</i>	<i>Bullis Charter School v. Los Altos School Dist.et al.</i> , 200 Cal.App.4th 296 (2011)
Cardozo	The first declaration of Raymond A. Cardozo accompanying this opposition memorandum
CCP	California Code of Civil Procedure
District	Respondents Los Altos School District, the Board of Trustees the Los Altos School District, and Superintendent Jeffrey Baier
Ed. Code	California Education Code
FACC	The District's First Amended Cross Complaint against BCS in Case No. 1-12-CV 232187, Dkt. #52
FO	The District's Final Offer of Facilities To BCS For 2013-14 School Year
<i>LAICHS</i>	<i>Los Angeles Int'l Charter High Sch. v. Los Angeles Unified Sch. Dist.</i> , 209 Cal.App.4th 1348 (2012)
MPA	BCS's Memorandum of Points and Authorities in Support of its Motion for Judgment, filed May 14, 2013, Case No. 113CV245684, Dkt. #13
SCCOE	Santa Clara County Office of Education
Pet.	BCS's Verified Petition for Writ of Mandate, filed May 2, 2013, Case No. 113CV245684, Dkt. #1
Prop. 39	Proposition 39 [California Education Code § 47614]

I. INTRODUCTION

A decade ago, after the District closed a local public school, an irate group started BCS to form a school that this small group, rather than officials elected by the taxpayers, would control. BCS's founders established a fundraising arm ("BPEF"), raised vast private funds, and demanded the District handover the closed public school site for BCS's exclusive use. After the District instead opened a public school on that site, BCS has used its private wealth to launch a decade of lawsuits against the District in pursuit of BCS's site acquisition strategy. Six different judges of this Court have rejected BCS's legal gambits. This is its latest lawsuit, and it too lacks merit.

Proposition 39 directs school districts to share facilities fairly among all in-district students enrolled in district and charter schools. Under the statute and its implementing regulations, the annual facilities allocation process involves discretionary judgment as to what facilities allocation will best serve all pupils, while ensuring reasonably equivalent treatment to all. Accordingly, the District's elected officials have devised fair sharing arrangements that have enabled all its public schools and BCS to thrive. Because BCS craves exclusivity, not fair sharing, however, it has turned the annual facilities process into a decade of annual BCS lawsuits.

For the 2004-2005 school year, the District placed BCS's then 141 in-District pupils in facilities in which the District previously had housed 579 District pupils. Because that allocation required BCS to share a campus (Egan) with another District school, BCS sued and demanded that this Court order the District to give BCS its own site in Los Altos Hills. Judges McKenney, Cabrinha, and Nichols rejected each of these BCS lawsuits.

BCS next sought its own site indirectly. In 2009, BCS sued, claiming it was entitled to more raw acreage in its facilities. This Court (Judge Kleinberg) entered judgment for the District. In October 2011, the court of appeal affirmed in part and reversed in part. It found errors in the District's acreage calculations but did not state BCS must receive its own site.

For its offer of facilities to BCS for the 2012-13 school year, the District exhaustively revamped its methodology to comply with the court of appeal's directions and allocated BCS 60 percent more acreage than it had received in 2009-10—adding facilities on a second campus (Blach) to augment an expanded allocation of facilities on the Egan campus. BCS sued again and moved for

1 judgment. In that motion, it no longer complained about its acreage, but instead complained about
2 its furnishings and the District's analysis of its projected enrollment. Judge Lucas rejected those
3 arguments, and Judge Overton denied another BCS motion in the 2012-13 litigation.

4 For 2013-14, BCS proposed a "compromise" under which it would receive more facilities on
5 the Egan and Blach campuses. The District offered BCS more facilities on those two sites, including
6 unprecedented additional sharing arrangements with District pupils. Alas, BCS has sued again.
7 Now, it claims the District cannot house BCS on two campuses and must give BCS a single school
8 site—exactly the opposite of its own "compromise" position just months ago. BCS had it right the
9 first time—the law permits the District (and BCS's own) two site offer.

10 Prop. 39 states the facilities provided to a charter school must be contiguous, but also states
11 existing facilities must be shared fairly among all students. Thus, the implementing regulations and
12 cases state that a district should start with a presumption in favor of providing a single site, but must
13 also balance the impact of doing so on other pupils and need not reconfigure existing facilities to
14 accommodate the charter school's configuration. The cases are also clear that this delicate balance is
15 a matter committed to the school district's discretion and is reviewed by a mandamus court only for
16 abuse of discretion—i.e., whether the district's decision was arbitrary and capricious.

17 Here, BCS has a kindergarten through eighth grade ("K-8") configuration that is found
18 nowhere else in the District—which has seven K-6 elementary schools and two 7-8 junior high
19 schools. The single site that BCS has demanded—Covington—is a K-6 school that lacks junior high
20 facilities, so the District was not required to place BCS on that site. The District deliberated at
21 length and fashioned a fair sharing arrangement that complies with the law and does not remotely
22 approach an abuse of discretion. The Court should enter judgment for the District.

23 II. FACTS AND PROCEDURAL HISTORY

24 A. Background: Genesis of The Current Facilities Dispute

25 1. The District And Its Thriving Neighborhood School Organization

26 The District includes the City of Los Altos, town of Los Altos Hills, and parts of Mountain
27 View and Palo Alto. It has long produced among the highest achieving public schools in California,
28 which has driven up Los Altos real estate values and rendered the public schools among the town's

1 most valuable assets. (Cardozo, Ex. A at 6-7) By design, each public elementary school in Los
2 Altos is in the center of the neighborhood and its boundaries are defined to allow for the effective
3 use of streets and sidewalks for student transport and community use of the school. (*Id.* at 8, 10, 46)
4 People move to Los Altos with the intent to enroll children in particular neighborhood schools,
5 property values are tied to those schools, and children grow up together in these neighborhoods and
6 form close relationships with other children, teachers, and parents there. (*Id.*)

7 District residents elect its governing Board of Trustees and may replace those who do not
8 serve public education well. Since BCS's 2003 formation, the voters have elected several different
9 District Trustees. (*Id.*, Ex. K) In that same period, BCS has appointed its own leaders, who further
10 BCS exclusively, without regard to its impact on public education or the taxpaying public's wishes.
11 (*Id.*, Ex. L) In 2003, there were about 3,900 pupils in District public schools. Currently, about 4,500
12 pupils are enrolled in the District's seven K-6 elementary schools and its two junior high schools and
13 475 in-District pupils are enrolled at the K-8 BCS. (*Id.*, Ex. D at 1-2; *id.*, Ex. M at Ex. W, p. 17)
14 Under Prop. 39, the District has a duty to share those same facilities that 3,900 pupils had shared in
15 2003 with all 5,000 current District and BCS pupils. (*Id.*, Ex. J, at 14) This includes a duty to
16 consider not only the needs of the 475 BCS pupils but also the impact of the facilities options on the
17 other 4,500 public school District pupils.

18 **2. The District Houses 579 District Students In The Egan K-6 Facilities, But After** 19 **BCS Is Formed, Allocates Those K-6 Facilities To BCS's 141 Pupils**

20 In the early 2000's, to accommodate District pupils during school renovations, the District
21 constructed K-6 elementary school facilities on one of its largest sites, Egan Junior High School.
22 (Cardozo, Ex. M at 246 of Kenyon Depo.) The K-6 facilities at Egan housed 579 pupils from the
23 Almond elementary school in 2002-2003, and 541 elementary school students from the Santa Rita
24 school in 2003-2004. (*Id.*, Ex. J at 84) These facilities were intended to provide the District students
25 as close to a modernized campus as it could provide, using modular buildings, which the District
26 also uses at all other school sites. (*Id.*, Ex. M at 246 of Kenyon Depo.)

27 In 2003, the District closed the Bullis-Purissima ("B-P") Elementary School in Los Altos
28 Hills. (Cardozo, Ex. M at Ex. W, p. 2-3) This sparked a movement to start a charter school and a

1 movement by Hills residents to reopen the public school in the Hills. (*Id.*) Several District leaders
2 approached BCS's founders to urge collaboration on reopening B-P as a neighborhood public
3 school. (*Id.*) The BCS founders insisted upon forming BCS, and obtained approval for its charter
4 from the SCCOE. (*Id.*) BCS and BPEF quickly established an expectation that any family who
5 enrolls at BCS must contribute thousands of dollars per year to BPEF [*Id.*, Ex. J at 107-08, 313, 318,
6 360, 689-91] and used other methods to achieve enrollment demographics that enable BCS to raise
7 far more in private funds per capita than is raised to support District schools and to enroll fewer
8 children with learning disabilities or English Language Learners [*Id.*, Ex. J at 115, 333, 614].

9 In its initial marketing, BCS pointed to a study that showed "why smaller schools are better
10 for your child's education" and stated BCS "is planned to be a smaller neighborhood school with
11 200-400 students." (Cardozo, Ex. M at Ex. X) BCS projected enrollment of 141 pupils for its first
12 year (2004-2005) and demanded that the District handover the B-P site for the exclusive use of those
13 141 pupils. The District instead allocated the Egan K-6 facility to BCS.

14 **3. After Private Donors Give BCS Millions Of Dollars To Purchase A School Site,**
15 **BCS Uses Those Private Funds To Sue The Local Public School District That Is**
16 **Trying To Provide A Free Public Education To All Equally**

17 BCS filed lawsuits in 2004 and 2005 that demanded this Court order the B-P site be given to
18 BCS (Nos. 1-04-CV 019781, 1-04-CV 027980 ("*Bullis I-III*"). In 2005, BCS's Board Chair
19 announced it had raised \$5 million plus in private funds that had been donated to acquire a school
20 site in Los Altos Hills ("Los Altos Hills Site Fund"). (Cardozo, Ex. M at BCS396) Meanwhile, this
21 Court (Judges McKenney, Cabrinha, Nichols) rejected BCS's demands for a B-P site handover.

22 The Town of Los Altos Hills proposed a reorganization that would grant the B-P site to BCS.
23 A county-wide committee determined, however, that the District needed the site because student
24 population was growing, so Los Altos Hills should remain in the District. The District reopened a
25 public school (Gardner Bullis) on the former B-P site. (*Id.*, Ex. J at 4) Although the Los Altos Hills
26 Site Fund was raised to serve public education in Los Altos Hills, as far as the District knows, no
27 Fund monies have been contributed to aid Hills public school pupils who attend Gardner Bullis.

28 Instead, BCS decided to use the multi-million dollar Los Altos Hills Site Fund to sue the

District under Prop. 39. It filed an action that challenged the District's offer of facilities for the 2009-10 school year. (No. 1-09-CV 14456 ("*Bullis IV*")) This Court (Judge Kleinberg) again granted judgment for the District. BCS appealed. The District then offered facilities to BCS for 2010-11, and BCS accepted and occupied them. The District did so again for 2011-12, and BCS accepted and occupied the offered facilities. (Cardozo, Ex. J at 11, 26)

In October 2011, the court of appeal reversed in part and affirmed in part the *Bullis IV* judgment. *Bullis IV*, 200 Cal.App.4th 1022. After construing the Prop. 39 regulations to resolve then unsettled issues, the court of appeal identified six areas in which the District's calculations in its 2009-10 facilities offer were non-compliant. (*Id.* at 1043-64)

Subsequently, the District revamped its methodology to comply with the court of appeal's directions and to prepare a new facilities offer to BCS for 2012-13. (Cardozo, Ex. J at 87) Unlike in 2009-10, BCS was now a K-8 school, its seventh and eighth grade had to be housed in facilities appropriate for junior high pupils, and enrollment at BCS and other District schools had grown. The District allocated BCS facilities at the Egan K-6 site, and additional facilities on the Blach Junior High campus. (*Id.*) This mirrored the configuration that BCS's K-8 pupils would receive if they attended a District school—elementary school pupils are housed separate from the junior highs. (Final Offer, BCS797) The 2012-13 offer allocated BCS 60 percent more acreage than it had received in 2009-10, afforded it more classroom space per pupil than was allocated to the pupils at District schools, and gave it substantial additional facilities. (*Id.* at 86-104)

4. In BCS's 2012-13 Lawsuit, BCS Refrains From Moving For Judgment On The Propriety Of The District Offering BCS Facilities On Two Sites; Judges Lucas And Overton Rejects All Issues BCS Raised; Judge Lucas Also Sanctions BCS

After receiving the District's 2012-13 facilities offer, BCS moved this Court in the 2009-10 offer case to order the District to handover one of four school sites that BCS covets. ("*Bullis V*") After Judge Lucas expressed skepticism, BCS, without waiting for the Court to rule, filed a new lawsuit challenging the District's 2012-13 facilities offer. (No. 1-12-CV-232187 "*Bullis VI*") Judge Lucas then denied BCS's motion filed in the 2009-10 offer case. (Cardozo, Ex. B) BCS then moved for a writ of mandate in its new 2012-13 offer lawsuit, raising three issues—none of which claimed

1 the District was required to give BCS a single site. (Cardozo, Ex. D) Judge Lucas held a hearing on
2 this motion in October 2012 and issued a tentative ruling adverse to BCS. After learning it was
3 about to lose, BCS appealed from Judge Lucas's denial of its *Bullis V* "motion" in the 2009-10 offer
4 case. (No. H038982) In November 2012, Judge Lucas adopted her tentative ruling and denied
5 BCS's motion for a writ on all issues it had raised. (Cardozo, Ex. E) Among other things, the Court
6 rejected BCS's claim that the District was required to adopt BCS's 2012-13 enrollment projections,
7 and held the District had the discretion to make counterprojections. (*Id.*)

8 Also in November 2012, Judge Lucas sanctioned BCS \$51,000 in the 2009-10 offer case for
9 discovery stonewalling in connection with BCS's pending motion for \$1.3 million in attorney's fees
10 in that case.¹ (*Id.*, Ex. C) BCS filed an appellate writ petition to challenge that ruling, but the Sixth
11 District Court of Appeal summarily denied its writ petition. (No. H039074)

12 Meanwhile, in November 2011, *Bloomberg* wrote an article [Cardozo, Ex. J at 360-64], that
13 discussed whether charter schools were "bring[ing] a whole new level of inequality to public
14 education" by "siphoning off money and the strongest students, leaving school districts with higher
15 expenses and fewer resources for poor, immigrant and special-needs kids." The article noted BCS
16 had performed "abysmally in serving socioeconomically disadvantaged students," described
17 "aggressive" BCS requests for \$5,000 per child in "donations," which, "[p]arents often refer to" as
18 "tuition." (*Id.* at 363; *see* 318) One BCS parent described the "donation" as a "bargain" compared
19 to the \$25,000 per year in private school tuition he had paid before enrolling his child at BCS. (*Id.* at
20 364) In mid-2012, the U.S. Government published a report describing under-enrollment of children
21 with disabilities in charter schools [*id.* at 326-27], prompting the *Wall Street Journal* and others to
22 note a trend of charter school practices that boost test scores and the schools' bottom lines but that
23 conflict with public school mandates of equal educational opportunity, at no charge. (*Id.* at 329-31)

24 ¹ BCS had moved for \$1.3 million in private attorney general fees (CCP § 1021.5), arguing its 2009-
25 10 offer lawsuit was an "enormous financial burden" that served the general public's interests. To
26 explore whether public or private interests would be served by ordering a public school district to
27 pay \$1.3 million to BCS, the District served discovery aimed at unearthing how BCS paid for the
28 lawsuit. BCS refused to provide any discovery, and falsely represented to Judge Lucas there was no
litigation fund. It was only after this Court sanctioned BCS that BCS produced discovery disclosing
there was a litigation fund, and that far from incurring an "enormous financial burden," BCS had not
paid for the lawsuit but had instead used BPEF's Los Altos Hills Site Fund to pay for it. (Cardozo
Ex. C)

Members of the public came forward with evidence of BCS discrimination against children with disabilities and other practices that have produced disparities in the demographics of the pupils enrolled at BCS and the District schools and corresponding disparities in the resources available to BCS and the District's pupils. (*Id.* at 20-24) The public asserted that because the facilities laws require fair sharing to level resource disparities, the District's facilities allocations must address this inequitable BCS behavior. (*Id.*) But, because the law is unclear on how such practices impact facilities allocations, in November 2012, the District cross-complained ("FACC") in the 2012-13 offer case to seek judicial clarification of the District's statutory duties.

BCS then scorched the earth in an attempt to obstruct or stall the FACC. It both demurred to and filed an anti-SLAPP motion to strike the FACC, but Judge Lucas overruled the demurrer and denied the anti-SLAPP motion. (*Id.*, Ex. G & H) It moved for judgment on the pleadings on the FACC, but Judge Overton denied that motion. (*Id.* Ex. I) It then noticed an appeal from this Court's denial of the anti-SLAPP motion (No. H039442), which notice has stayed the 2012-13 offer case. The District has moved the court of appeal to dismiss that appeal and sanction BCS.

B. The Current Lawsuit: The District's Offer of Facilities To BCS for 2013-14

In November 2012, BCS requested that the District provide BCS facilities for 2013-14, and demanded the District close its Covington elementary school and assign that site for BCS's exclusive use. (Pet., Ex. 3 at BCS146-47) BCS projected enrollment of 615 in-District students, an increase of 145 students that far exceeded BCS's historical average growth of 45 in-District students per year. In a November 30, 2012 letter, the District advised BCS that BCS's projected enrollment was "overly aggressive" and the District was thus asserting its right to provide counter-projections. The District reasonably forecast 572 in-District BCS students for 2013-14. (*Id.* at BCS185)

The District held a special Board Meeting on November 5 to receive input from the BCS board and the community on facilities issues, and dozens of parents expressed their views. (Cardozo, Ex. O; FO at BCS794-96) The District also convened facilitated sessions in which the public, including BCS parents, expressed their views on facilities options. (Cardozo, Ex. A) The strongest preference was for locating a new school site to house BCS. (FO at BCS795) Second in public preference was continuing the arrangement of sharing facilities on 2 campuses. (*Id.* at

BCS794-95) Strong opposition was expressed to closing Covington—or any other neighborhood public school—and handover of the site to BCS. (*Id.* at BCS795-96)

In late January 2013, BCS’s publically announced it was willing to “compromise” by accepting an offer that continued to allocate BCS facilities at the Egan and Blach sites, and outlined the facilities it said would be acceptable. (Cardozo, Ex. P-Q) In a letter from its Board Chair to the President of the District’s Board of Trustees, BCS listed the following as its first reason for the advantages of its proposal: “[w]e see the following current benefits to the District and the community: [The proposal of a split campus] Does not require a single District student to change schools; Does not require the District to close any program at any site . . .” (*Id.* at Q)

After receiving this extensive public and BCS input, the District’s board passed a January 30, 2013 resolution, making findings as to why it could not place BCS on a single site and noting a two site offer’s advantages, similar to what BCS had noted. (FO, Ex. G (Resolution) BCS792-804) Among other things, the District found that Covington houses 9 District special education programs and redistributing this vulnerable population was unadvisable. (*Id.*) BCS’s proposed plan would also harm the District’s neighborhood-school model in which each school is a thriving learning community, with a long track record of distinguished performance. (*Id.*) In addition, Covington has facilities only for K-6 pupils, not specialized junior high facilities, and the facilities laws state a district is not required to construct additional facilities to accommodate a charter school’s configuration—like BCS’s K-8 configuration that is not found at any District school. (FO, BCS797)

Two days later, the District provided its preliminary offer to BCS, which outlined a two site configuration that continued BCS’s placement at Egan and Blach. (Pet., Ex. 5 at BCS235-580) The District then met with BCS representatives to discuss the issues. On March 1, 2013, BCS submitted its response to the preliminary offer and its own counterproposal. (*Id.*, Ex. 7 at BCS581-654) In its counterproposal, BCS accepted the two site concept, but proposed significant modifications to the offered facilities at Blach. (*Id.* at BCS600; *see id.* at BCS581-654) BCS also requested *inter alia* 7 more classrooms at Egan for all BCS students, specialized art, science and music teaching space, and designated space for Kindergarten and child care, totaling more than 32,000 square feet for BCS’s exclusive use. (*See id.* at BCS603-05) BCS also sought 60,000 square feet of shared space at Egan.

(*Id.*) Throughout March, the District took public comments on BCS's counterproposal and the facilities issues and examined those issues at length during several board meetings.

On April 1, 2013, after these extensive deliberations, the District issued its final facilities offer for 2013-14 to BCS. (FO at BCS655) The offer allocates BCS's projected 443 K-5 students the same perimeter of space at Egan occupied by BCS's current 439 K-6 pupils, plus one more classroom. (*Id.* at BCS658-61) For BCS's 129 projected 6-8 grade in-District students, the offer provides BCS an additional 2,358 square feet at Blach above that proposed in the preliminary offer, to accommodate a teacher lounge, physical education locker room and an enlarged office and library. (*Id.* at BCS661-64) The offer also incorporates sharing arrangements under which BCS students will have access to the same facilities provided to District pupils. (*Id.* at BCS665) Thus, BCS students will have access to specialized teaching space including a science classroom, drama/chorus room multi-purpose room and PE facilities. (*Id.* BCS662-65) BCS's sixth grade will have access to all specialized space except the science lab. (*Id.* at BCS665-66) Thus, they will receive a full middle school experience in 2013-14 that is not available to sixth graders at District schools. (*Id.*)

The District explained that to promote student safety and maintain the separation of primary and junior high students, BCS's K-3 students will not have access to Blach facilities. (*Id.* at BCS666). Access to Blach PE facilities will be limited to BCS grades 6-8 only based on age-appropriate factors, consistent with other District schools, and to avoid having students of disparate ages sharing PE space. (*Id.* at BCS665-66) Within days of receipt of the final offer, BCS served notice of its "intent to occupy" the offered facilities. (Pet., Ex. 9 at BCS867).

On May 3, 2013, BCS served this action challenging the offer under Prop. 39, and raising a claim for alleged CEQA violation.² Eleven days later, and before the case was even at issue, BCS

² Also in May of 2013, a community-driven task force assessing these facilities challenges published its final report. (Cardozo, Ex. A) Formed in December 2012, the task force was comprised of stakeholders from the cities the District serves—Los Altos, Los Altos Hills, and Mountain View—as well as members of the District and BCS boards. It met over five months with assistance from a professional facilitator, and input from parents and community members. In its report, the task force recognized that a 23% growth in student enrollment over the past decade has put pressures on the District, and its 9 campuses and 10 schools. (*Id.* at 6) To relieve those pressures, the task force examined all options for BCS in light of its intent to grow to 900 students, including the feasibility of maintaining BCS's two site configuration, relocating BCS to an existing District site, and acquiring a new site for BCS. (*Id.* at 3) The task force recognized that closing a neighborhood school and assigning that site to BCS would "create a community uproar, especially in a period of long term enrollment growth." (*Id.* at 48) Thus, the task force recommended the District work with

Continued on next page

unilaterally noticed a motion for judgment on its Prop. 39 claim on minimum notice and without meeting and conferring with the District on the hearing date. (Cardozo ¶ 3) After the District applied for ex parte relief, it agreed to forego its right to first answer the BCS petition before the scheduling of motions and agreed to have the Prop. 39 claim heard expeditiously via BCS's motion.

III. ARGUMENT

A. The Charter Schools Act And Proposition 39

The Charter Schools Act of 1992 ("CSA") was enacted "to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure." (Ed. Code § 47601) The intent was to enable choice and competition "to stimulate continual improvements in all public schools" [*id.*], with "special emphasis on expanded learning experiences for pupils who are identified as academically low achieving" [*id.*, § 47601(b), 47615(a)(1)]. Thus, the CSA aims to uplift public education for all, particularly the most disadvantaged—not to create exclusive enclaves that benefit a few at the expense of other public school pupils. Indeed, the latter conflicts with constitutional and statutory requirements that public education be free and reasonably uniform from one school to the next. (Cal. Const., art. XI, §§ 5, 7.5, 8; Ed. Code §§ 200-0201, 220-221.1, 235.)

A charter school comes into existence through the grant of a charter petition by the governing board of a local school district (Ed. Code § 47605), county board of education (*id.* § 47605.6), or State Board of Education (*id.* § 47605.8), or, as in this case, by a grant by a county board of education on appeal from a district denial (*id.* § 47605(j)).³

BCS and the stakeholder cities to acquire two additional school sites—one site to permanently house BCS and another site for a District school. While the task force suggested the District first look within its boundaries to identify a site for BCS, the task force recognized that, under certain conditions, BCS could be placed outside the District boundaries. (*Id.* at 4, 52)

³ In 2011, SCCOE renewed BCS's charter by a divided 5-2 vote. (Cardozo, Ex. O) Reasonable minds may, and did, disagree on the wisdom of charter renewal in a district where the public schools performed exceptionally well, and where the charter school serves the most privileged and shuns others. As SCCOE board member Anna Song wrote to the BCS Board, "BCS has performed abysmally in serving socioeconomically disadvantaged students." (*Id.*, Ex. J at 280) Joe DiSalvo, one of 5 SCCBOE board members who voted in 2011 to renew BCS's charter, stated at an April 3, 2013 meeting, "I don't want to be too melodramatic here but I'm thinking there's an emerging board majority that would not renew what you have," and, "I feel like my vote furthered a divide in an exceptional community in California, the United States and the world." (*Id.*, Ex. N) Michael Chang, another board member who voted with the 5-2 majority in 2011, but recently expressed skepticism, stated, "we would like to see more ethnic and income diversity in your student population and that we made the point that we were looking for outcomes not your outreach efforts. . ." (*Id.*)

Prop. 39 states “[e]ach school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school’s in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished and equipped.” (*Id.* § 47614(b).) The intent is “facilities should be shared fairly among all public school pupils, including those in charter schools.” (§ 47614(a).)

Thus, the law’s text and stated intent include three key points: (1) the reasonable equivalence comparison is to what charter school pupils would get “if they were attending other public schools of the district”—not any unique benefits a charter school would like to furnish its own pupils; (2) the law calls for fair sharing of facilities, not exclusivity, and (3) the needs of all public school pupils must be considered equally—the charter school is not entitled to special treatment. Accordingly, a district must consider the impact of facilities allocations on all district pupils and balance the interest of charter and district students. *See Los Angeles Int’s Charter High Sch. v. Los Angeles Unif. Sch. Dist.* (2012) 209 Cal.App.4th (“*LAICHS*”), at 1362 (“A holding that the District must provide facilities a charter school requests on demand and without regard to overcrowding or the impact on other public school students, would tip the balance too far in favor of the charter school.”)⁴

B. Where A Charter School Has A Configuration Not Found At Other District Schools, The Proposition 39 Regulations Specify The District Need Not Reconfigure Its Existing Facilities And May Place The Charter School On More Than One Site

Cal. Admin. Code tit. 5, § 11969.2(d) states “facilities are ‘contiguous’ if they are contained on the school site or immediately adjacent to the school site,” but also adds:

If the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, *contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider student safety.* In evaluating and accommodating a charter school’s request for facilities pursuant to Education Code section 47614, the charter school’s in-district students must be given the same consideration as students in the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous. If a school district’s preliminary proposal or final notification presented pursuant to subdivisions (f) or (h) of section 11969.9 does not accommodate a charter school at a single school site, the district’s governing board must first make a finding that the charter school could not be accommodated at a single site and adopt a written

⁴ The California Supreme Court declined BCS’s request to depublish *LAICHS*. (No. S207208)

1 statement of reasons explaining the finding.

2 Section 11969.3(a) states the District need not modify facilities to accommodate the charter
3 school's configuration: "the district is not obligated to pay for the modification of an existing school
4 site to accommodate the charter school's grade level configuration." The District must provide
5 certain specialized facilities to junior high pupils. (*See, e.g., id.* § 11969.3 (a)(1))

6 Reading these provisions together, it is plain that (a) a district may provide facilities on more
7 than one site if it makes a written finding that the charter school could not be accommodated at a
8 single site, (b) for a single site option to qualify, it must be configured as-is in a way that will
9 accommodate the charter school's entire population—the District does not have to reconfigure a site
10 for the charter school, and (c) elementary school facilities do not suffice for junior high pupils.

11 **C. Because BCS's K-8 Configuration Does Not Exist At Any Other District School, The**
12 **District Did Not Abuse Its Discretion In Offering Facilities To BCS On Two Sites**

13 **1. Whether To Place A Charter School On More Than One Site Is A Complex,**
14 **Discretionary Judgment That Is Reviewed Solely For Abuse Of Discretion**

15 In Prop. 39 cases, "[c]ourts exercise limited review in ordinary mandamus proceedings.
16 They may not reweigh the evidence or substitute their judgment for that of the agency. They uphold
17 an agency action unless it is arbitrary, capricious, lacking in evidentiary support, or was made
18 without due regard for the petitioner's rights." *Sequoia Union High Sch. Dist. v. Aurora Charter*
19 *High School* (2003) 112 Cal.App.4th 185, 194-5. As the Sixth District recently noted, "mandamus
20 lies only . . . to compel the performance of a duty that is purely ministerial in character" but not "if
21 the duty is not plain or is mixed with discretionary power or the exercise of judgment." *Mooney v.*
22 *Garcia* (2012) 207 Cal.App.4th 229, 233. Thus, mandamus is inappropriate in Prop. 39 disputes
23 where the statute "leaves room for discretion." *LAICHS*, at 1368.

24 In *Ridgecrest v. Sierra Sands Unif. Sch. Dist.* (2005) 130 Cal.App.4th 986, the court of
25 appeal recognized this rule applies to a district's determination of how to comply with Prop. 39's
26 "contiguous" requirement, noting that how a district complies "was largely a matter committed to its
27 discretion." (*Id.* at 1003.) The reviewing court assesses only whether the district "adequately
28 consider[ed] all relevant factors, and has demonstrated a rational connection between those factors,
the choice made, and the purposes of the enabling statute." (*Id.* at 1006)

Ridgecrest demonstrates the type of irrational act that may support mandamus relief. There, a school district offered a charter school 9.5 classrooms spread over 5 sites that were separated by 65 miles while providing only a perfunctory explanation of this allocation. The court of appeal rejected the district’s claim that it had unlimited discretion over how to house the charter school, but also rejected the charter school’s claim it was entitled to a single site as long as one large enough to house its school existed. (*Id.* at 1001-02) After noting “all the factors—educational, logistical, financial, legal and practical—that ordinarily go into deciding how to assign students among the various schools within a district,” the court held “we believe the answer lies somewhere between, albeit toward the contiguity end of the scale.” (*Id.*) The court held the district should “begin with the assumption that all charter school students will be assigned to a single site, and attempt from there to adjust all other factors to accommodate that goal.” (*Id.*) “What all the other factors are, how much weight each ought to be given, and when the consideration of them will make the single site goal unfeasible, are all decisions that can only be made in light of the circumstances of the particular case.” *Id.* at 1002 (emph. added). On those facts, the court held “providing facilities at five different school sites does not strike a fair balance between the needs of the charter school, and those of the district-run school.” (*Id.* at 1006 (emph. added)) The court emphasized, however, that how a district complied “was largely a matter committed to its discretion.” (*Id.* at 1003)

Thus, contrary to BCS’s misstatements, *Ridgecrest* holds the contiguous rule does not:

- Inflexibly mandate a single site as long as any site exists that is large enough to house the charter school (*Compare* BCS MPA 9 (citing *Ridgecrest* and stating “contiguous” duty can be met with facilities on more than one site “[o]nly if there is no single site physically large enough to accommodate” the charter school) with *Ridgecrest* itself, 130 Cal.App.4th at 1001-02 (rejecting argument that “a district has no discretion to provide facilities at more than one site if it has at least one site that is physically capable of housing all the charter school’s students” on ground this “extreme” position is inconsistent with statutory requirement that facilities be shared “fairly” and all pupils receive reasonably equivalent treatment); see also *id.* at 1002 (describing single site not as an inflexible mandate but “goal” requiring consideration of multiple factors to determine whether single site is “unfeasible”).
- Strip districts of all discretion over this subject (*Compare* BCS MPA at 1 (mischaracterizing the issue as a “ministerial non-discretionary duty”) with *Ridgecrest* at 1002-03 (describing determination as a complex one involving multiple factors that “was largely committed to [the district’s] discretion.”).
- Require the district to ignore the interests of the pupils at district-run schools

(Compare BCS MPA at 10 with *Ridgecrest* at 1006 (calling for “fair balance between the needs of the charter school and those of the district-run school.”)).

Unlike here, moreover, *Ridgecrest* did not involve a charter school that was configured differently from all other district schools.

Other courts similarly recognize that districts have the discretion to weigh the interests of all pupils in making Prop. 39 facilities’ allocations. In *LAICHS*, for example, a charter school, LAICHS stated a preference to locate at Franklin High School. The district, LAUSD, offered facilities at Belmont High School, determining that placing LAICHS at Franklin would cause undue disruption to the Franklin program. In upholding the LAUSD’s exercise of discretion, the court of appeal noted that granting the charter school its preferred location would have required the redistribution of eight classrooms and 40 classes, displace 240 students, and force eight teachers with five different periods each day to vacate their classrooms. (209 Cal.App.4th at 1359-60.) After noting other effects of this disruption, the court of appeal held “the record here shows that the District balanced the needs of both LAICHS’ students and those in the district-run schools, and belies LAICHS’ assertion that the District ignored its location request ... [¶] More to the point, section 47614, subdivision (b) does not entitle LAICHS to facilities in the specific location it desires, if so doing would favor charter school students over other district students.” (*Id.* at 1362.) The Court added that to place LAICHS:

in the school in which it wants to be placed, would put LAICHS’ needs over those of the Franklin High School population and would not “strike a fair balance between the needs of the charter school and those of the district-run schools.” (Citation) A holding that the District must provide facilities a charter school requests, on demand and without regard to overcrowding or the impact on other public school students, would tip the balance too far in favor of the charter school. (*Id.*)

Accordingly, school districts have the discretion to balance all factors, and strike a fair balance between the needs of charter and district students. As *Ridgecrest* holds, this discretion and fair balancing applies to whether a charter school should be placed on more than one site.

2. The District Did Not Abuse Its Discretion In Light Of BCS’s Unique Configuration, And The Adverse Impact Of Other Allocations

BCS enrolls students in grades K-8. Aside from the Egan campus on which BCS sits, the District has no sites configured for all those grades. Its elementary schools are configured for grades K-6, and its junior high schools are configured for grades 7-8. (FO at BCS797)

The District exhaustively considered the issue, heard extensive public input, and its board considered the required factors and made findings required by Cal. Admin. Code tit. 5, § 11969.2(d) memorialized in its January 30, 2013 resolution. (Resolution BCS792-804) The District found:

Student Safety. With regard to student safety, the Resolution cited the following factors: (1) reduction of utilization at Egan by placing BCS grades 6-8 at Blach; (2) superior configuration of Blach to accommodate BCS, due to the greater availability of space there; and (3) closer proximity to BCS students from Sunnyvale, Cupertino and Mountain View. (*See id.* at BCS803)

Minimizing Number of Sites. The District has minimized the number of sites by placing the Charter School's students on only one additional site. (*See id.*)

Inability to Place Charter School at a Single Site. The Resolution has six pages of findings on this point. It notes the District did not have a single site containing K-8 facilities, other than Egan. (*See id.* at BCS798) There are also findings that the District would not be able to procure a 10th site in time for the 2013-2014 school year, and that BCS's plans to grow substantially beyond 2013-2014 further supported co-location of BCS's program. (*Id.*)

The Resolution also found that BCS's demand for a single school site had significant potential repercussions on District students. As the Board found, "[c]losing a high-performing District school would not further the policy of ensuring that District facilities are shared fairly between District and charter school students." (*Id.* at BCS800) Moreover, as the District has noted, even the population of the smallest District school, Gardner, would not fit into the margin of space available at the 3 closest elementary schools (Santa Rita, Covington, and Loyola.) (Cardozo, Ex. J at 103) By extension, closing any other elementary school and redistributing those students to the remaining schools would produce even greater overcrowding, traffic impacts and other adverse results.

Although BCS ridicules these concerns with its characteristic "me-first" attitude, the Prop. 39 cases shows these are legitimate concerns that a district has the discretion to consider. For example, in *LAICHS*, the charter school argued the district should have accommodated its demand for its preferred location by redistributing students. (209 Cal.App.4th. at 1359) The court of appeal noted that the district was within its discretion in viewing this as an unfeasible solution:

As for Franklin High School, although there were 81 available seats dotted randomly

1 throughout the campus, these empty seats do not translate into a single, free
2 classroom. The District explained that “[a] school may be able to absorb 100 or more
3 students into its existing classrooms by adding three, four or five seats per
4 classroom,” but that is a different proposition than “provid[ing] three empty
5 classrooms with the same total number of contiguous available seats.” The difficulty
6 of carving out whole classrooms is compounded on the high-school level where
7 students do not sit in one room all day, but move around to different rooms, with
8 different groups of students, under the state-mandated curriculum. (*Id.*)

9 Similarly, here, the number of “open” seats at each District elementary school below the
10 desired cap of 600 students does not automatically translate into a “vacant” site for BCS. Vacant
11 seats at District schools are not susceptible to carving into a single site, and it would be a substantial
12 disruption to uproot an entire school—particularly one that is well-performing in its current
13 configuration—and scatter the students among the available open “seats” at other schools—
14 destroying existing relationships formed over years between families, teachers and pupils.

15 The District also found that closing the school the BCS demanded – Covington Elementary –
16 for the purpose of handing over that site to BCS would be particularly harmful because:

17 At least nine (9) special education programs housed at Covington School would be
18 adversely impacted if the District were to close Covington School. Special Education
19 students, more so than regular education students, are impacted by changes in familiar
20 routines, such as a change in their school location. (Resolution, BCS803)

21 It was well within the District’s discretionary powers to avoid the disruption of a special
22 education program to meet Prop, 39 obligations. In the Statement of Reasons supporting the Prop.
23 39 regulations, the California Charter Schools Association proposed that a provision be added to the
24 regulations requiring that the District place a charter school on a single site if one were available. In
25 noting that this language was rejected, the Statement of Reasons stated:

26 To narrow the reasons that a charter school cannot be accommodated to physical size
27 of facilities goes beyond statute and the *Ridgecrest* court decision, and may lead to
28 unintended consequences, such as the relocation of a program that serves special
students populations (e.g., continuation or special day classes). (FO at BCS687)

As this history makes clear, after *Ridgecrest*, a regulation was adopted that expressly permits
a District to place a charter school on more than one site [§ 11969.2(d)], and this regulation did not
intend the single site goal to be an inflexible mandate that operated to the exclusion of all other
factors. Rather, as *Ridgecrest* states, this is a matter over which a district must exercise discretion to
balance the need of *all* pupils and assess whether a single site is unfeasible.

Here, the record shows the District considered “all the factors—educational, logistical, financial, legal and practical—that ordinarily go into deciding how to assign students among the various schools within a district” [*Ridgecrest*, 130 Cal.App.4th at 1002] and arrived at a rational conclusion. That ends the inquiry. (See *Sequoia*, 112 Cal.App.4th 185 at 194-5, (“[c]ourts exercise limited review in ordinary mandamus proceedings. They may not reweigh the evidence or substitute their judgment for that of the agency.”))

D. BCS’s Other Arguments Are Also Meritless

BCS makes three other arguments, none of which have merit.

EC § 200. BCS states the District had no basis to cite Education Code § 200 et seq. in its Final Offer. Section 200 states California’s policy is to provide “equal rights and opportunities in the educational institutions of the state” as to all the State’s students. The District cited this statute in its Final Offer for the unremarkable proposition that it was required to consider all pupils’ interests equally. BCS complains that Section 200—which it sneers at as a “civil rights” provision—does not apply to the issues here. But, BCS does not dispute that the District was required to treat all pupils equally in allocating facilities. Thus, BCS’s assertions regarding Section 200 are immaterial.

CCSA v. LAUSD. Even more bizarre is BCS’s argument that the District relied on a “now superseded” case, *Cal. Charter Schools Assoc. v. Los Angeles Unif. Sch. Dist.* (2012) 212 Cal.App.4th 689 (“*CCSA v. LAUSD*”) in its Final Offer in determining the average daily attendance to teaching station ratio at the comparison schools. *CCSA v. LAUSD* was ordered published by the court of appeal on January 4, 2013 (2d Dist., No. B242601), and the District cited it in its April 1, 2013 Final Offer. Subsequently, the California Supreme Court granted review on April 17, 2013.

None of this has the slightest thing to do with this action. The case was citeable when the District cited it, and the Supreme Court granted review on the issue of whether a district can use so-called “norming ratios” in allocating classrooms. That issue is not posed in this case.

Conditions on Use of Blach and Egan Facilities. The District’s Final Offer contained the following conditions of use on the facilities allocated to BCS at Blach:

Site Maximum Capacity: Limit of 146 students at Blach, 469 at Egan.

Specialized Teaching Space (Grades 6-8): Limit of use of and access to the following

1 facilities at Blach to BCS' 6-8 graders: Home Arts, Science Lab and Drama/Chorus
2 Room. Limit of the science classroom is restricted to 7th and 8th graders, consistent
with District allocation of science classrooms at District schools.

3 Physical Education Space (Grades 6-8): Limit of shared P.E. facilities (track, field,
4 tennis courts, blacktop, gymnasium and Multi-Purpose Room [P.E. use]) within BCS'
allocated sharing time to BCS 6-8 grade students.

5 Blach Facilities Limited to Grades 4-8: BCS students in grades K-3 will not have
6 access to any facilities at Blach.

7 Start/End times for BCS school day at Blach: BCS must maintain a school day
starting at 8:00 a.m. and ending at 4:30 p.m. (Final Offer at BCS666)

8 Cal. Admin. Code tit. 5, § 11969.9(h)(5) allows the District to impose conditions.⁵ The
9 District cited the following substantial evidence in its Final Offer to support the conditions:

10 **Physical Education Space:** "This access is based on age-appropriate access to those
11 facilities, as is generally replicated in District schools, and avoids having students of disparate age
12 ranges simultaneously sharing physical education space." (*Id.* at BCS665-66)

13 **Specialized Teaching Space:** "The basis for these restrictions is promotion of student safety
14 by limiting access to facilities traditionally used by junior high students to students falling within the
15 appropriate age range for those facilities. These restrictions are consistent with the historical
16 separation of primary grade students and junior-high aged students in District schools, for safety,
17 supervision and programmatic reasons." (*Id.* at BCS665-666)

18 **Blach's Limit to Grades 4-8:** "This condition is consistent with the separation of primary
19 and junior high school students in District schools, and is intended to promote student safety,
20 optimal supervision and the grouping of programmatic resources into age-appropriate groups." (*Id.*)

21 As noted, the text of the reasonable equivalence requirement makes clear the District's duty is
22 to afford conditions comparable to what pupils would receive at a District school—there is no duty
23 to accommodate the charter school's own idiosyncratic desires. The grade level allocations for BCS
24 are similar to the District's grade level configurations for its own schools. Far from being arbitrary,
25

26 ⁵ Section 11969.9(h)(5) states that "[o]n or before April 1, having reviewed any concerns and/or
27 counter proposals made by the charter school pursuant to subdivision (g), the school district shall
28 submit in writing a final notification of the space offered to the charter school. The notification shall
include a response to the charter school's concerns and/or counter proposals (if any). The notification
shall specifically identify: ... (5) all conditions pertaining to the space. ..."

these conditions bore a rational relationship to the promotion of reasonable equivalence in facilities and student safety. (*Ridgecrest*, 130 Cal.App.4th at 1002; *Sequoia*, 112 Cal.App.4th at 194-5)

Moreover, because BCS and District students will *share* a campus and facilities at Blach, the District was within its discretion in imposing reasonable conditions that considered the interests of both groups. Age appropriate groupings are a classic example of “the factors—educational, logistical, financial, legal and practical—that ordinarily go into deciding how to assign students among the various schools within a district.” (*Ridgecrest*, 130 Cal.App.4th at 1002)

BCS cites no authority that even remotely suggests the District lacked the discretion to impose such reasonable conditions. The case it cites, *United Teachers of Los Angeles v. Los Angeles Unif. Schl Dist.* (2012) 54 Cal.4th 504, did not deal with Prop. 39 facilities allocation, but with whether collective bargaining agreement provisions could lawfully govern the charter petitioning process.

In sum, the enrollment growth in the District requires sharing of sites, and BCS appeared to understand that in its “compromise” proposal to remain on the Egan and Blach sites. Unfortunately, sharing does not align with BCS’s view of itself as “our own distinct community with our own set of values” [Cardozo, Ex. R at 3], so BCS has filed yet another meritless lawsuit that asks this Court to second guess the District’s judgment calls. But, sharing is what *public* education is all about and is Prop. 39’s core command, and Prop. 39 commits this sensitive balancing process to the district’s discretion. BCS has not remotely demonstrated any ground for a writ of mandate.

E. Procedure: View Evidence Favorably To Non-Moving Party; Waiver/Unclean Hands

BCS moved for judgment before the District answered or could conduct discovery, and it recited a self-serving version of “facts” that contradicts this Court’s findings and evidence in earlier litigation. (Cardozo, ¶ 2) To provide a more complete picture, the District submits documents produced in the related litigation, earlier rulings and other evidence. (*Id.*) The District would have been entitled to seek a continuance to permit discovery. (CCP § 437c(h)-(i) (parties opposing summary judgment entitled to continuance to obtain discovery)) To meet the parties’ desire for expedited resolution, however, the District believes the Court can proceed on two conditions (1) evidence BCS produced in earlier litigation is admissible here without the necessity of repeating the discovery process in this action, and (2) the evidence is viewed in the light most favorable to the

1 non-moving party, the District. (*See* CCP §§ 1090, 1094 (mandate action to be decided on moving
2 papers only where answer/return raises no issue of material fact).)

3 Also, despite calling itself a “public charter school,” and repeatedly suing for equitable relief
4 on that basis, BCS and BPEF habitually hide their operations from public view—even after Judge
5 Lucas ordered BCS to provide discovery and sanctioned it \$51,000. This conduct has made the
6 litigation—which diverts scarce public education dollars from the pupils—expensive. The District
7 also has been forced to submit documents to the Court conditionally under seal because BCS and
8 BPEF have asserted overbroad and unsubstantiated confidentiality designations. (Cardozo, ¶¶ 6-9)
9 A review of the documents submitted conditionally under seal shows that in this action—which
10 concerns *public* school facilities—BCS’s and BPEF’s confidentiality demands cannot be reconciled
11 with California’s mandate of open government, accountability and transparency. (*See* Cal. Const.,
12 art. I, § 3). This behavior shows BCS has invoked this Court’s equitable mandamus powers for its
13 own tactical goals but has refused to accept the public transparency that comes with having done so
14 or with public school status. By this conduct, BCS has waived its right to equitable relief, or has
15 unclean hands that bar it from obtaining relief—as it cannot both call itself a “public school” to
16 demand equitable relief, yet hide its and its fundraising arm’s operations from public view.

17 IV. CONCLUSION

18 The Court should enter judgment for the District on BCS’s Prop. 39 cause of action.

19 DATED: June 4, 2013

Respectfully submitted,
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REED SMITH LLP


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LOS ALTOS SCHOOL DISTRICT et al.

PROOF OF SERVICE
Bullis Charter School v. Los Altos School District, et al.
Santa Clara Superior Court No. 113CV245684

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659. On June 4, 2013, I served the following document(s) by the method indicated below:

**LOS ALTOS SCHOOL DISTRICT ET AL.'S OPPOSITION TO MOTION
FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE**

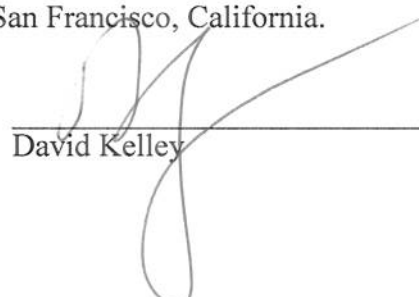
<input checked="" type="checkbox"/>	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business
<input checked="" type="checkbox"/>	by transmitting via email to the parties at the email addresses listed below:

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Attorneys for Petitioner Bullis Charter School

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 4, 2013, at San Francisco, California.



David Kelley

REED SMITH LLP

A limited liability partnership formed in the State of Delaware