



Bullis Charter School
102 West Portola Avenue
Los Altos, CA 94022
www.bullischarterschool.com

BY EMAIL AND FACSIMILE DELIVERY

January 2, 2014

Superintendent Jeff Baier
Los Altos School District
201 Covington Road
Los Altos, CA 94024

RE: BCS Reaffirmation of Proposition 39 Projections for the 2014-2015 School Year

Dear Superintendent Baier and LASD Trustees:

I write on behalf of the Bullis Charter School ("BCS") and the many local families it serves to reaffirm pursuant to 5 CCR § 11969.9(e) BCS' projection of 711 students for the 2014-2015 school year, of whom BCS reasonably projects 678 will reside within the boundaries of the Los Altos School District ("LASD" or "District").

I. A Simple Proposal to Protect Children

Unfortunately, the District has become prosecutor, judge, and jury in the enrollment projection process, each year arguing for its own projections and then sitting in final judgment of which projections it will use to allocate facilities.¹ Then after April, as the facts roll in and it becomes clear the District projections for the coming school year were inaccurate, the District refuses to make any adjustments to accommodate the BCS students it failed to correctly forecast. Few would consider the District an impartial arbiter on this matter. But if the District would just put the children first, it could greatly lessen the impact on them of future projection errors. The District can take the following simple actions unilaterally to protect these children:

- 1) The District can agree to add more portables to the BCS campus over the summer if after the end of the 2013-14 school year BCS documents it has more in-district students enrolled for 2014-15 than the District projects in its Final Offer for 2014-2015.** Nothing in the law prevents the District from doing this just like it does at other local public schools to provide these children with a facilities allocation. Adding

¹In addition to the projected enrollment at BCS, the projected enrollment at the District comparison schools similarly impacts the Proposition 39 analysis. While the District puts BCS' enrollment projection under a grade level by grade level microscope, no similar process of downward adjustment of comparison school projections based on errors in prior grade level forecasts is ever made. This practice results in a built-in bias to under allocate facilities to BCS in the District's annual Proposition 39 analysis.

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portables to an existing BCS site would not take away any facilities from students at District schools.

- 2) **The District can provide BCS with a Final Offer of facilities that will allow BCS to have all its students at school simultaneously, just like at District schools.** To allow for the fact that projections are rarely perfect, the District's offer should anticipate that somewhat more than the 711 total students BCS has projected for 2014-15 may be onsite at one time, just like the District comparison sites can house students in excess of their forecast.

Nothing in the law prevents the District Trustees from taking the above actions to meet their statutory duty to local children attending BCS.

II. Introduction

It is unfortunate that LASD, with yet another under-projection of BCS students, apparently plans to continue its annual pattern of providing facilities insufficient to accommodate BCS students as they would be accommodated if they attended a LASD-run school. We respectfully ask you to reconsider.

For the 2013-14 school year, the District failed to allocate ANY facilities to 34 BCS in-district K-5 students or to adjust its allocation at the Egan site over the summer to account for them. The District's combination of a multisite offering with illegal grade level restrictions and impermissible enrollment caps disguised as tight "site capacity"² limits aggravates this injustice by barring K-5 students from effectively sharing facilities at the Blach BCI campus. This is not how the District treats in-district or out-of-district students attending District-run schools.

If only LASD's Board would take seriously its obligation to treat all resident public school students equally, it would be easy to ensure that all children are allocated a share of facilities.

Each year, for students attending District-run comparison schools:

- The District plans facilities needs for students using forecasts that are intentionally higher than its "best guess".³

² BCS only occupies portions of the District sites at Egan and Blach. The District's practices discriminate against BCS students by uniquely applying to them "capacity" restrictions that it does not apply to its own students even on the same sites. Furthermore, the District impermissibly claims to be unable to accommodate all enrolled public school BCS students at the sites provided to BCS, while at the same time accommodating private preschool students at the Blach site. The District should not be leasing facilities to private schools when it claims it has insufficient facilities for all the public school students.

³Demographer's Report dated March 2, 2012 page one.

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- The District treats its fall forecast as just an estimate, not a limit on enrollment. It plans its sites so they each have room for additional students above its fall forecast, and often admits more students, including out-of-district students, than its fall forecast at some of its sites.
- The District allocates facilities at its sites to out-of-district students at resident taxpayers' expense, and designs flexibility into its site management to ensure that both they and their in-district schoolmates can simultaneously be on campus.
- If it turns out that the District underestimated enrollment at one of its sites, it adds portable buildings as needed prior to the start of school for the additional students.
- The District makes sure that EVERY STUDENT at the comparison schools is allocated a full share of classroom space, as well as the requisite furniture and equipment, and appropriate access to field and blacktop space.

In contrast, each year for BCS and its students:

- **The District plans facilities using a low forecast of in-district students that is more likely to understate than overstate BCS' actual enrollment.** The District has not once in 10 years forecast more students for even a single BCS grade level than BCS forecast, even though actual BCS in-district enrollment for individual grades has often been higher than BCS forecast.
- **The District treats its fall projection for BCS as an enrollment limit, not just an estimate.** It plans its site/sites for BCS assuming the total number of students BCS has forecast will not be allowed to attend school at the same time, let alone allowing room for any additional students onsite that BCS has a legal right to enroll.
- **The District adversely impacts BCS' in-district students relative to their District peers by failing to similarly plan for out-of-district students at BCS.** Unlike the District, BCS MUST admit certain out-of-district students under State law.
- **When the District underestimates in-district enrollment at BCS (as has been the case the last few years), the District refuses to add portable buildings to accommodate the additional in-district students enrolled.**
- **The District regularly FAILS TO TAKE ANY CORRECTIVE ACTION to ensure that every in-district student at BCS receives an allocation of facilities and is able to attend school together with all their fellow schoolmates.**

III. BCS' 711 Planned Student K-8 Seats for 2014-15

BCS plans to offer a total of approximately 711 seats for its K-8 program at the start of 2014-15. BCS stated this on page 2 of its November 1, 2013 letter requesting facilities. Under the law, the District is required to "make reasonable efforts to accommodate the growth of the charter school *and in no event shall take any action to impede the charter school from expanding enrollment*

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to meet pupil demand." Ed. Code §§ 47605(d)(2)(C), (j). This is true whether the demand is from in-district students, out-of-district students, or both. Not providing facilities for out-of-district BCS students and barring them entirely from setting foot on a school site at the same time as their in-district schoolmates are two very different things. The District apparently thinks it can do both.

The District cannot prohibit BCS from expanding to 711 openings, and BCS must admit **all** students who apply pursuant to a random drawing until it has filled its openings. Ed. Code §47605(d)(2)(A). Even the District's erroneously low counter projection acknowledges that at least 85% of these students are likely to reside in-district. (Response to BCS Enrollment Projections (hereafter "District Response"), pg. 5 projecting 605 in-district students). In reality BCS' students are currently 95% in-district and as we have shown, this percentage is likely to remain similar or increase in 2014-15 as out-of-district students in the upper grades graduate and most new students reside in-district. This is not a case of a charter school forcing a school district that does not itself serve out-of-district students to allow such students onto a school site it provides to a charter school.

We therefore put you on notice that regardless of the in-district student projection LASD uses in its Prop 39 analysis for the coming year (and regardless of the per-student space allocation LASD provides), LASD needs to provide facilities that do not exclude any of BCS' 711 expected students from simultaneously attending their school. Please make certain to provide BCS with a Final Offer that does not purport to restrict the number of students who can attend BCS simultaneously at LASD provided facilities to fewer than 711 students. Providing a site or sites that the District asserts cannot simultaneously have 711 students onsite will be an admission that the District has failed to provide sufficient facilities under the law. It will mean that BCS in-district students are not being accommodated in the manner they would be at District comparison schools, where they and their schoolmates face no such restrictions and there is substantial room for additional students. It will also be an admission that the District has taken an illegal action to impede BCS' growth by allocating inadequate facilities that it knows will not allow BCS to expand its enrollment to meet pupil demand as planned and timely disclosed to the District.

Because the District last year provided a campus across two non-adjacent sites and imposed improper grade level restrictions on one of these sites, we briefly address here these practices in connection with alleged site capacity.

BCS continues to believe that it is legally entitled to facilities on a single school site or immediately adjacent sites under the law, but recognizes that the District asserts it may split BCS onto sites that are not adjacent. BCS reserves the right to challenge this practice at any time

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depending on the circumstances, although BCS has indicated a willingness to consider certain specific two site solutions for BCS as part of a compromise negotiated agreement.

BCS has a statutory right to a fair and proportional share of public school facilities administered on behalf of the public by the District. The relationship between the District and BCS is not equivalent to a private landlord-tenant arrangement as the District is fond of suggesting, because a tenant does not have a pre-existing right to a proportionate share of the land controlled by the landlord. Nor is a private landlord administering their land on behalf of the public as a whole.

The District's ability to impose use restrictions on Prop 39 facilities offered to BCS is not unfettered, and BCS believes that restrictions on BCS' educational program such as grade level restrictions are improper. BCS similarly reserves the right to challenge this practice at any time that the District attempts to impose it, depending on the circumstances.

BCS has notified the District in its facilities request for 2014-2015 of its intent to run an integrated K-8 program, which by its nature requires the ability to mingle BCS students from all those different grade levels on the same school site at certain times. BCS therefore expects the District to provide facilities that accommodate this aspect of the charter school's educational program. It makes no more sense to offer facilities that fail to accommodate known aspects of BCS' educational program than it does to offer facilities that do not allow all of BCS' students to attend its school.

However, Bullis recognizes that regardless of which students actually use particular facilities, the District practice has been to allocate facilities based upon grade levels. Bullis provided on page 2 of its facilities request the breakdown of expected openings by grade level, totaling 711 openings. Should the District again offer BCS two non-adjacent sites and allocate each based upon the number of students in specific grade levels, please use this chart to make sure the offer allows at least the total number of students (not just in-district students) indicated for those grade levels on that site simultaneously. For example, BCS' K-4 openings in that chart total 445 students, K-5 totals 520 students, 5-8 totals 266 students, and 6-8 totals 191 students.

IV. Overview of BCS In-District Student Growth for 2014-2015

BCS has projected a year over year increase in in-district ADA for 2014-2015 of 16% overall. As the District knows, in 2013-2014 BCS successfully added new classes in K-3 grade levels. Other than next year's additional kindergarten spots and the limited number of additional seats offered in the 4th grade discussed below, all of BCS' growth in 2014-2015 is simply the result of the natural progression of the prior expansion as the existing larger cohorts of mostly in-district students advance a grade level.

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47 of the 95 net in-district additions BCS projects are for the 7th grade. Although as the District noted in 2013-14 BCS had just 19 in-district 7th grade students, BCS has a current cohort of 66 rising sixth grade in-district students. **Current 6th grade parents have provided both the District and BCS with a parent petition (copy attached as Exhibit A and B) already signed by parents of at least 58 current sixth grade students publicly affirming that their child plans to return to BCS for 7th grade next year. This is powerful evidence in support of the large increase in in-district 7th grade students that BCS has forecast.**

Putting aside the 7th grade, BCS projects that its in-district student count in the other grades will grow to 612 from 564, or just 8.5%. This is very modest growth for BCS by historical standards. Last year BCS grew its number of in-district students by almost 23%.

The following chart provides some prospective:

Year	BCS In-district Enrollment	Annual In-district enrollment growth
2004-2005	120	N/A
2005-2006	165	37.5%
2006-2007	195	18.2%
2007-2008	241	23.6%
2008-2009	301	24.9%
2009-2010	306	1.7%
2010-2011	378	23.5%
2011-2012	433	14.6%
2012-2013	475	9.7%
2013-2014	583	22.7%
Avg. Annual Growth Percentage (9 years)		19.6%

BCS has conservatively projected in-district enrollment growth well below this historical average. In fact, using the historical methodology the District generally relies upon, one might expect the District to argue BCS' forecast for 2014-15 is too low. Instead, the District has projected that BCS will only grow its in-district enrollment 3.8% in 2014-2015. That may seem like rapid growth for a school district growing far more slowly if at all, but it does not reflect reality at BCS.

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V. The District's "Cherry-Picking" Grade Level Analysis

Ed. Code §47614(b)(2) states that "Each year each charter school desiring facilities from a school district in which it is operating shall provide the school district with a *reasonable projection* of the charter school's average daily classroom attendance by in-district students for the following year." The *projection* that must be evaluated for "reasonableness" is a single projection of in-district ADA for the entire charter school. While one understandably makes an estimate of the number of students at each grade level to form an overall projection of charter school in-district ADA, the District's practice of challenging the reasonableness of selective individual grade level estimates while ignoring contrary trends in other grade levels is improper and results in downward bias in the overall District counter projection.

If the charter school's projection of in-district ADA for the charter school as a whole is reasonable, "[t]he district *shall* allocate facilities to the charter school for that following year based upon this projection." (Ed. Code 47614(b)(2); See also *Sequoia Union High School District. v. Aurora Charter High School*, 112 Cal.App.4th 185)⁴

Furthermore, the questionable historical variance analysis on very small sample sizes that the District often relies upon ignores the fact that each year BCS makes its new projection based on the actual enrollment of the prior year, not its prior forecast. Thus, without actual proof of a built-in forecasting bias, the prior year variances in after the fact cherry-picked grade levels are not predictive of future forecast errors. In fact, it demonstrates the forecasting bias in the District counter projection, since the counter projection adjusts the overall BCS projection by applying its methodology selectively only when it would lead to a downward adjustment for a given grade level.

Statistically, one would expect that the forecasts of some grade levels each year would be too high and others too low. The District improperly highlights the former and ignores the latter in order to improperly bias its own total ADA forecast for BCS to the downside. Since the District insists on analyzing in detail selected individual grade level variances, we will review individual grade level estimates in this response. However, we will review every individual grade level to highlight the built in bias in the District's methodology.

⁴By requiring that the benefit of the doubt in charter enrollment projections be given to charter schools and their students (coupled with financial remedies for the school district for substantial over-projections), the statutory scheme is designed to err on the side of making sure all students are allocated a share of facilities so they do not suffer the harm that BCS students currently do because of district-imposed under-projections of charter enrollment.

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VI. The District's Faulty "Numerical Analysis" of BCS' In-District Projection

Last year the District significantly under-projected the number of BCS in-district students in grades K-4. For the last four years, the District's counter projections have understated actual BCS enrollment every year, by an average of 15 in-district children per year. The District has now made an annual habit of failing to provide an allocation of facilities to all the in-district children at BCS. The District should put a priority on making sure each in-district student enrolling in BCS will have a fair allocation of public facilities. Instead, its priority in its forecasting is to minimize its allocation of facilities to BCS children.

Each time the District fails to allocate facilities to BCS children based upon its erroneous counter projections, there is no remedy short of costly litigation for these students. As a practical matter, **BCS children have simply paid for the District's "errors" by not receiving the facilities they would have gotten if the District used the actual enrollment number** or made a simple after the fact adjustment as proposed above. By contrast, the Education Code protects the District should it use a BCS projection that turns out to be significantly too high. If the District provides an extra portable or two based upon a significantly faulty BCS projection, BCS can be assessed a financial penalty. The children, however, are protected.

The reason the Education Code provides a remedy if a charter school projection is significantly inaccurate, but not if a District projection is similarly inaccurate, is not because the State does not care about charter school students getting a fair share of facilities. Rather, it is that **school districts are supposed to use the charter school's enrollment projection unless it is entirely unreasonable**. Ed Code § 47614(b)(2). "The statute does not require the [charter] school to demonstrate arithmetical precision in its projection or provide the kind of documentary or testimonial evidence that would be admissible at a trial. Rather, the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space." (*Sequoia Union High School District. v. Aurora Charter High School*, 112 Cal.App.4th 185, 196.) Nothing in the District Response supports a conclusion that BCS' projection of 678 in-district ADA for 2014-2015 is unreasonable.

The District notes that last year BCS projected growth of 140 in-district students, but grew by "just" 108 in-district students. (District Response, p. 2). Somehow the District thinks that the admitted fact that BCS grew by 108 in-district students last year (or 22.7%) supports a District projection that BCS will grow by only 22 in-district students this year (or 3.8%). This makes no sense. If BCS was able to grow by 108 in-district students last year, why is it unreasonable for BCS to project an additional 95 in-district students this year off a larger base?

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Last year BCS grew its in-district enrollment by 22.7% (108 divided by 475). This year BCS projects in-district enrollment growth of just 16.3% (95 divided by 583). That is neither out of line with BCS' historical growth pattern or last year's growth.

a. Overview of Differences in the District's Grade Level Forecasts

As usual, the District makes no upward adjustments to any of BCS' grade level estimates of in-district students, but provides a lower estimate for grades K, 4, 6, 7, and 8.

The differences regarding the kindergarten and 4th grade estimates challenge BCS' ability to expand its openings in those grades with new in-district students, while the District bases its lower 7th and 8th grade forecasts on substantial attrition in the 6th and 7th grade cohorts as they advance.

Finally, the District's lowering of the 6th grade in-district forecast by two students is based upon a flawed and ridiculously picky historical "calculation" that asserts a BCS forecasting bias based upon the smallest of variances.

BCS discusses below the forecast for each grade level that makes up its overall projection that 678 in-district students (and therefore 33 out-of-district students) will fill its 711 planned capacity for 2014-2015.

b. Kindergarten

The District projects BCS will have one *less* in-district kindergarten student next year (80) than it has currently (81), even though BCS is *adding* a new kindergarten class in response to strong demand. This defies logic and reason.

It is entirely illogical to think BCS would elect to add a new kindergarten class if it did not have substantial in-district demand. The damage to BCS from failing to fill the new class would be considerable. Rather, BCS based its decision on the fact that for each of the **last 5 years** BCS has had more than 140 in-district registrants for kindergarten at its annual lottery. In fact, last year, despite the District's extensive claims that the negative publicity it helped generate about BCS would depress enrollment for a new kindergarten class, BCS had 146 in-district registrants participating in its kindergarten lottery, and more who applied thereafter but were of course unable to get in because all the seats were filled with in-district registrants.

Looking back at recent history, for 2013-2014 BCS added a new kindergarten class and estimated 20 in-district students would fill it. The District ignored the history of overwhelming demand and long wait lists for BCS kindergarten and projected that BCS would only fill 15 new kindergarten spots with in-district students. **In fact, BCS' kindergarten estimate was conservative.** BCS filled 81 spots with in-district kindergarten students, with many registrants

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left on its wait list just as in prior years. **As a result the District did not allocate any facilities to 6 in-district kindergarten children at BCS.**

Rather than learn from that experience, the District now asserts that BCS will fill its new kindergarten class with *exactly zero* in-district students. It seems that the District only examines historical figures when it can twist them to support a lower allocation of District facilities. Here, the logical conclusion from the historical record is clear; BCS will fill its kindergarten with in-district students and have many more left on its waiting list after its random lottery.

The District's limited argument appears nonsensical. The District states that BCS "assumes that it will be able to populate a full cohort of 100 kindergarteners...through its wait list." (District Response, pg. 3) However, BCS has received over 140 **new** in-district applicants for kindergarten for each of the last 5 years during its open enrollment period. This consistent pattern of far more in-district registrants each year than are needed to fill 100 kindergarten spots is sufficient documentation to support BCS' projection.

Furthermore, there are already 37 in-district siblings of current BCS students that have indicated their intent to enroll in kindergarten at BCS for 2014-2015. **Thus, BCS only has 63 remaining kindergarten spots to be filled, not the 100 the District claims in the District Response.** The 37 in-district siblings represent a net addition of 11 over the number of kindergarten siblings in 2013-14. By themselves these 11 fill more than half of the incremental kindergarten spots BCS is offering in 2014-2015. There is no basis for the District to project that BCS will be unable to fill the 9 remaining incremental kindergarten openings with in-district students in 2014-2015 given the historical overwhelming demand.

As the District knows, BCS' open enrollment period is currently on-going but it and the BCS random lottery will be completed well before the District makes its final offer. BCS would be happy to provide a sworn statement, under penalty of perjury, of the number of in-district kindergarten students randomly accepted by BCS at the lottery. If the District is truly interested in accurately providing facilities to the appropriate children, rather than in trying to shortchange BCS students, this should be more than sufficient.

c. First Grade

For 2013-14 BCS estimated adding a class and 20 additional in-district students. The District made the same unsubstantiated claims regarding the expected impact on BCS enrollment of the "heated exchanges" in the community the District itself helped promote. The District insisted on using a projection that BCS would add only 15 in-district first graders. **BCS' estimate was exactly accurate, and the District failed to allocate ANY facilities to BCS for 5 first graders or to adjust its allocation over the summer to provide for them.**

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d. Second Grade

For 2013-14 BCS estimated adding a class and 18 additional in-district students. The District made the same unsubstantiated claims as for first grade above. The District insisted on using a projection that BCS would add only 13 additional in-district second grade students. BCS in fact added 22 additional in-district students to this grade. **BCS' estimate was conservative and the District failed to allocate ANY facilities to BCS for 9 second graders or to adjust its allocation over the summer to provide for them.**

e. Third Grade

For 2013-14 BCS estimated adding a class and 17 additional in-district students. The District made the same unsubstantiated claims as for first grade above. The District insisted on using a projection that BCS would add only 12 additional in-district third grade students. BCS in fact added 20 additional in-district students to this grade. **BCS' estimate was again conservative and the District failed to allocate ANY facilities to BCS for 8 third graders or to adjust its allocation over the summer to provide for them.**

f. Fourth Grade

Fourth grade is admittedly more complex under the BCS model and the District's projection appears to indicate that the District does not understand the facts. Like at many schools, BCS class sizes for K-3 classes are smaller than the target class size for grades 4-8. Therefore, BCS always adds new openings (or "expansion seats") each year to the fourth grade, beyond any cohort attrition, to reach the intended larger class sizes. For 2014-15 BCS has an advancing cohort of current third graders including 83 in-district students. BCS expects these students to advance to fourth grade with minor attrition, and to add a net total of 16 additional in-district students beyond any needed to offset attrition for a total of 99 in-district fourth graders. This will provide the target fourth grade class size of 25, just as BCS has targeted in recent years.

The District has counter projected that Bullis will add zero net additional in-district fourth grade students in 2014-2015. The District again argues that BCS must provide the District with details about its wait list process that the District no doubt wants for competitive purposes. However, once again the District ignores the BCS historical data that BCS receives substantial new in-district applications for its fourth grade openings each year. BCS has already informed the District that last year when BCS had 12 expansion seats available for fourth grade, it received 31 in-district registrations during the open enrollment period seeking to fill those seats.

BCS has every year added at least the net additional number of in-district students it projected to these fourth grade expansion seats. For each of the past 4 years, the District has counter-projected that BCS would be unable to do so. **Each of the past 4 years the District has been**

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wrong and BCS has been right with regards to fourth grade. The tables below show BCS' accurate estimates and the District's inaccurate projections for filling fourth grade expansion seats with in-district students over the past 4 years:

BCS In-district Estimates of Fourth Grade Over Time

Year	Advancing 3 rd grade in-district students (A)	4 th grade expansion seats (B)	BCS In-district Estimate (A+B)	Actual BCS In-district 4 th grade Enrollment (C)	% expansion seats filled by in-district 4 th graders (C/B)
2010-2011	39	8	47	48	111%
2011-2012	59	15	74	74	100%
2012-2013	62	12	74	74	100%
2013-2014	63	12	75	75	100%
2014-2015	83	16	99	TBD	TBD

LASD Faulty Fourth Grade Counter Projections Over Time

Year	4 th grade expansion seats	LASD Counter-Projection of net new in-district 4 th graders (C)	Actual net new in-district 4 th graders (D)	Percentage Shortfall by LASD Projection (D-C/D)
2010-2011	8	5*	9	44.5%
2011-2012	15	3	15	80%
2012-2013	12	7**	12	41.7%
2013-2014	12	6	12	50%
Total Last Four Years	47	21	48	56.25%

*The District projected a shortfall up to 6.4% in BCS K-6 enrollment. A 6.4% shortfall in fourth grade would equal a shortfall of 3 students from the projection.

**The District again projected a 6.4% shortfall for fourth grade enrollment equating to a shortfall of 5 students.

For the last four years, the District has underprojected the net increase in BCS fourth grade in-district students by more than half, while BCS' fourth grade estimates have been virtually exact. For 2013-14 BCS estimated adding 12 additional in-district students. The District made the same unsubstantiated claim that BCS would not fill all the expansion seats with in-district students. The District insisted on using a projection that BCS would add only 6 additional in-district fourth grade students. BCS in fact added 12 additional in-district students to this grade.

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BCS' estimate was exactly accurate, and the District failed to allocate ANY facilities to BCS for 6 fourth graders or to adjust its allocation over the summer to provide for them.

Rather than learn from experience, the District now asserts that BCS will fill its 16 fourth grade expansion seats in 2014-2015 with *exactly zero* in-district students. Again the District ignores the historical data and its limited argument is nonsensical.

BCS's fourth grade estimates are substantiated by these facts. The District has given no basis why BCS will not continue to fill its fourth grade expansion seats with in-district students.

As the District knows, BCS' open enrollment period is currently on-going but it and the BCS random lottery will be completed well before the District makes its final offer. BCS would be happy to provide a sworn statement, under penalty of perjury, of the number of in-district fourth grade students accepted by BCS at the lottery. If the District is truly interested in accurately providing facilities to the appropriate children, rather than in trying to shortchange BCS students, this should be more than sufficient.

g. Fifth Grade

For 2013-14 BCS estimated 74 in-district students. The District agreed. **The BCS estimate was exactly correct.**

h. Summary of K-5 District Projection at Egan for 2013-2014

BCS reported actual in-district K-5 enrollment for 2013-2014 of 477 students. **The District underprojected the number of BCS in-district students in grades K, 1, 2, 3, and 4. The District accepted BCS' accurate projection only for grade 5. As a result the District failed to allocate ANY facilities to BCS for 34 K-5 students or to adjust its allocation over the summer to provide for them.**

The District has accepted no responsibility for its errors and in fact currently prohibits the BCS K-5 in-district students (let alone their out-of-district classmates) from simultaneously being onsite at the Egan site. On the one hand the District claims the Egan site is reasonably equivalent for BCS' K-5 students, while on the other hand the District asserts that all of BCS' K-5 students cannot even attend school there together. Of course, the District has never complied with the finding of the Sixth District Court of Appeal that the Egan camp site provided to BCS was not adequate for 345 students, let alone for the 443 students the District allocated it for in 2013-2014 or the 477 K-5 in-district students that BCS actually enrolled.

i. Sixth Grade

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BCS has estimated it will have 74 in-district sixth grade students for 2014-2015 and the District has counterprojected with 72.

The fact that the District is asserting that a projection of 72 for sixth grade is reasonable makes the case that BCS' projection of 74 is also reasonable, as they are almost identical. The District has ignored the law that a charter school's projections do not have to be mathematically exact to be reasonable, and that the District must accept a charter school's reasonable projections.

The District argues that this fine tuning is justified because BCS assumed "zero attrition" for this cohort. This statement is incorrect (see VII(e) below). BCS assumes limited attrition in this cohort but based upon prior experience expects to replace the few students who leave with new in-district students.

The District's Exhibit A is titled "BCS's historical overprojection for Sixth Grade" but it shows no such thing. Over 10 years it shows 4 years when BCS *underestimated* its actual enrollment for this grade and 6 years when it overestimated its enrollment. Over the last four years BCS has *underestimated* its in-district enrollment for sixth grade twice. **The chart overall shows an alleged average "overprojection" of less than 1 student per year, a remarkably accurate forecasting record.** Over the last four years it shows an average overprojection of just 0.5 students out of an average class size of fifty, meaning an average overprojection error of just 1%.

The cherry-picking nature of the District's faulty analysis becomes apparent by applying its own measure to more recent time periods. Looking at just the last 7 years instead of the last 10 would entirely change the District's analysis, as shown in the chart below taken from the District's Exhibit A:

Year	BCS Projection	Actual	Difference	% Yield
07/08	23	39	+16	170%
08/09	42	39	-3	93%
09/10	42	33	-9	79%
10/11	38	43	+5	113%
11/12	43	48	+5	111%
12/13	48	43	-5	90%
13/14	73	66	-7	90%
Total	309	311	+2 (+0.3 per year)	101%

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Thus over the last 7 years BCS' estimate of in-district sixth grade enrollment shows no overestimation bias whatsoever and has been remarkably accurate. The District's assertion that its "analysis" justifies its reduction of the BCS estimate by two sixth grade students (or almost 3%) just emphasizes the District's obvious bias and discrimination against BCS students.

j. Seventh Grade

BCS has a 2013-2014 cohort of 66 in-district sixth grade students. BCS projects 66 in-district seventh grade students next year because it expects "most of its current 6th grade students will return as 7th grade students, and [BCS] will be able to successfully replace the few who choose not to return." (BCS Request, pg. 4)

The District counterprojects just 34 in-district students, predicting nearly 50% attrition and no new in-district seventh grade students. It bases this projection on the fact that as the middle school went through its start-up phase over the last few years and the District opposed it aggressively, BCS underestimated the impact of the District's aggressive actions and its decision to split BCS onto two sites roughly four miles apart. These District actions, including moving BCS' limited access to middle school facilities from Egan to Blach and creating substantial prolonged uncertainty over facilities for BCS middle school students, depressed BCS middle school enrollment below that BCS had forecast.

However, BCS has now operated during 2013-2014 on the two sites the District has provided and demonstrated to families that while the site configuration is not reasonably equivalent to that at the District comparison schools, BCS can still provide an outstanding and unique educational program. BCS has also proven the excellence of its now established middle school program, providing results and options that are superior to those of many local public schools as described in the BCS Request at page 4.

The fact that the historical information the District relies upon to predict substantial attrition among the sixth grade cohort is no longer valid is demonstrated by a recent parent petition submitted to both the LASD and BCS Boards by current sixth grade parents. These parents, having heard that LASD is threatening to withhold facilities from their children based upon a faulty assumption that most of their children will leave BCS at the end of this year, hastily circulated a petition among themselves after the District counter projection became public.

BCS has examined this parent petition and hereby verifies that the parents signing it represent 58 current and distinct sixth grade students residing in-district, as well as another whose family has stated they expect to move into the school district prior to the start of the new school year. These parents are willing to confirm publicly (despite the hostile behavior of certain community members towards BCS encouraged by the District Board's

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actions) what they already had indicated privately to BCS prior to November 1; that they are looking forward to their child returning to BCS for seventh grade. Parents of other current sixth grade students have privately indicated their meaningful interest in returning as well.

In addition, BCS' reasonable expectation that several new in-district students (either from other local schools or from families moving anew into the district territory) will likely enroll in the seventh grade if space is available further supports BCS' forecast.

In the face of this compelling information, we expect you will accept BCS' reasonable and documented projection of 66 in-district seventh grade students for 2014-2015, and take whatever action is necessary to make sure that these children are provided with reasonably equivalent facilities.

k. Eighth Grade

The District makes a similar argument, based upon prior years' data, to assert that BCS projection of 19 in-district eighth grade students in 2014-2015 is unreasonable. However, the same factors improving retention for seventh grade will likely improve retention for eighth grade as well.

Furthermore, in two of the three years the District relies upon for its analysis, BCS projected that it would have more in-district eighth grade students than the number of rising in-district seventh grade students. For 2014-2015, BCS is only predicting that it will have the same number of in-district eighth grade students as the current number of in-district seventh grade students. Therefore the BCS forecast is more conservative yet the District does not take that into account.

l. Conclusion of BCS K-8 Projection Analysis

As shown above, BCS' historically conservative projection of growth in in-district enrollment for 2014-2015 is reasonable. BCS accordingly reaffirms its enrollment forecast made in its letter of November 1, 2013 and asks the District to revise the in-district enrollment projection it plans to use for its facilities analysis accordingly. BCS further requests that the District modify its practices as suggested herein to put children first and make sure no in-district child is denied an allocation of public school facilities. There is no reason the District cannot take the actions outlined herein since the District already has a practice of modifying both the BCS and District campuses during the summer, including the frequent addition of portable buildings as needed.

As always, we hope this will be the year that your Board decides to work with us cooperatively to treat the needs and concerns of each BCS child with the same regard as those of other public school children.

VII. Some General Observations

a. The District and its Out-of-District Students

The District states on page 1 of the District Response that “the District must share its facilities with 5,100 in-district students”. It appears the District is counting out-of-district students attending its schools in this number, just as it counts them in allocating facilities. The District reported 4,543 **total** students this year including out-of-district students it voluntarily admits. Together with BCS’ 583 in-district students in the current year, this totals 5,126, **yet the District has far more than 26 out-of-district students at its schools. We do not know how many more because,** as the District has admitted, to date it has not released this year’s number of out-of-district students it has at each of its schools by grade level despite repeated requests for that public information and related documentation. Therefore, after subtracting the District’s out-of-district students, the remaining number of in-district students must be well below 5,100.

The District need not admit all these out-of-district students if its facilities are as scarce as it claims. However, it continues to recruit out-of-district families by sending glossy color brochures to out-of-district addresses inviting families to “New Family Information Night”. Presumably, the District does so because it is deemed beneficial to in-district students. If BCS in-district students were attending District schools, they would have the benefit of having out-of-district schoolmates on campus *and* would still get a full allocation of facilities under the Prop 39 analysis at the same time.

Instead, at BCS, they are not accommodated in a reasonably equivalent manner. At BCS they get a far smaller allocation of facilities than their District peers after considering out-of-district students at all sites. At BCS the District ignores BCS’ out-of-district students in attempting to cap the number of charter students on campus, while at District schools facilities planning accounts for the out-of-district students the District voluntarily admits.

b. The District’s Growth

The District states not only that it currently shares facilities among 5,100 in-district students (an overstatement), but that this is “a figure that continues to grow”. (District Response, p 1) The District demographer’s report does not support this conclusion. The Demographer’s medium forecast (by definition the most likely) shows LASD K-6 enrollment declining steadily beginning this year. LASD middle school enrollment is shown rising in 2014, then flattening for a few years, and then following the K-6 decline. Total LASD enrollment excluding out-of-district students is shown to begin decreasing steadily starting in 2015, falling by 567 students between then and the final forecast year of 2022.

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The only way the demographer's medium forecast can be squared with the District's assertion above even for the next several years is if the number of BCS in-district students is estimated by the District to grow rapidly. If the District concurs with BCS' forecast of such growth, shouldn't the District plan for it by providing BCS with facilities that have room for expansion?

c. The District as Competitor

The District aggressively competes with BCS for students. At the same time the District is supposed to be impartial in its allocation of public facilities between students choosing to attend District-run schools and those choosing to attend BCS. This creates an obvious conflict of interest the District makes no effort to address.

Instead, the District inappropriately uses its control of the facilities allocation process to enhance its competitive position by attempting to create a reinforcing spiral to suppress BCS enrollment. The District attempts to deter prospective BCS registrants with unsubstantiated allegations about BCS and threats that it will allocate even more inferior or far distant facilities to BCS, then cites those efforts (District Response, page 3) as a basis for projecting that fewer students will enroll in BCS without any substantiation. It then uses its own lower enrollment projections to further threaten to provide even worse facilities to BCS, and so on.

d. LASD's Continuing Bad Faith Demand for Personal and Competitive Information

The District filed legal papers asserting that BCS might be substantially overstating its in-district enrollment, yet the District has been silent on this score since receiving the names and addresses of current students it insinuated would support its baseless allegations. Still, the District continues to claim (District Response, page 5) that "the only way to verify BCS claims of in-District student counts is for the District to know the students' names and addresses". This is patently false.

BCS has repeatedly offered to have any reasonable third party confidentially verify its in-district student count using procedures agreed to by the District. Obviously, this would be an easy way for the District to verify the in-district status of BCS students without disclosing their private information to the District itself. In the past the District found verification by the Santa Clara County Board of Education acceptable, but now it cannot rely on the County Board or any other third party auditor to verify addresses?

Under another heavy-handed threat by the District to withhold facilities, BCS has elected to again provide the names and addresses of its current students to the District subject to privacy protections via our letter dated December 15, 2013. The District is required to prevent the use of this information for any unauthorized purpose or its disclosure to unauthorized persons.

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However, the fact that the District, while taking numerous actions hostile to BCS, is so insistent on directly receiving this information that could easily be misused for competitive purposes is troubling.

The District now goes still further and demands ever increasing details concerning each application to BCS and its disposition (District Response, page 4). No doubt such information would help the District fine tune its aggressive efforts to depress BCS enrollment that to date have been ineffective. Bullis is under no obligation to provide such sensitive information by registrants to an entity that is aggressively competing with it. Current registrants understandably do not want their information revealed to LASD while their children may be finishing out the current year at an LASD school.

None of this sensitive information is needed to determine the reasonableness of BCS' projection. BCS is an established charter school with a history of substantial and consistent growth and demand that exceeds capacity. As is shown above the District's counter-projections reflect the wishful thinking of a competitor rather than a fair impartial analysis.

e. Contrary to the District's Repeated Assertion, BCS has Incorporated a Reasonable Level of Attrition into its Forecast

"The District notes that BCS has assumed absolutely no attrition in every cohort of students returning..." (District Response, p. 2). The District's repeated charge that BCS assumes zero attrition is patently false. It represents either ignorance or intentional misstatement.

Unlike the District, BCS each year has to turn away many in-district students who wish to enroll because of lack of capacity. Bullis does not assume zero attrition as the District asserts. Rather, BCS makes the logical and reasonable assumption based upon its experience that even if it were to experience higher attrition than its low historical norms, it would easily replace any leaving students at most grade levels from the many more in-district students seeking to be admitted.

Furthermore, even the District, which has no backlog of demand at all, regularly assumes a certain number of new students will register to attend its schools at each grade level each year, replacing attrition from students who move away, etc. BCS also has new students who periodically add their names as they move into the area to the extensive waitlist BCS has had each year, to make up for the normal attrition it experiences.

f. "Site Capacity" at District Comparison Schools

Since the District chose to make alleged physical capacity at the sub portion of the Egan and Blach sites provided to BCS during 2013-14 an issue, we address it here. The allegation that the District's enforcement of what are effectively enrollment caps on BCS is required by CEQA is

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false. CEQA is about public disclosure of environmental impacts caused by new “projects” that entail physical changes to the environment (the “E” in CEQA). Nothing in CEQA permits a school district to cap enrollment of students in either a school district or a charter school because of an alleged shortage of physical space. CEQA cannot and does not prohibit a school district from serving every in-district student who applies regardless of how crowded its school facilities are; in fact, a school district cannot turn away district residents. CEQA merely requires an examination of whether certain mitigation measures are required due to “significant” physical changes to the environment necessary in order to serve those students. Here, the school sites are already physically constructed, so the only question is programmatic: Are students enrolled as District or BCS students? That is an irrelevant distinction under CEQA. The District has some flexibility in determining which reasonably equivalent facilities it will offer to service in-district charter students, but it does not have the authority to effectively limit the number of such students it will provide facilities for or allow a charter school to serve.

The irony here must be expressly articulated: If the site(s) LASD allocates to BCS truly do not have the physical capacity to simultaneously allow the students BCS forecast during the Proposition 39 process and subsequently enrolled onto BCS’ campus, **then by definition the allocation does not accommodate the BCS in-district students in conditions reasonably equivalent to those of their District peers and violates Proposition 39.**

The District has NEVER told one of its school administrators that they cannot have more than a subset of their enrolled students on campus at any one time. The District has previously stated various desired enrollment levels for many District-run comparison schools but more than once exceeded these targets. It has never had hard enrollment caps on the number of students it would enroll in the district or the total number of students it would house on its sites. Nor could it legally do so. Site “capacity” is a misnomer for school districts. Districts must accommodate all children who reside within the district’s boundaries—sometimes that means children are accommodated in cramped, less-than-ideal circumstances if classroom buildings are scarce in relation to student population. That is not the case within LASD. So, as you and your staff are well aware, “capacity” at school sites mostly reflects a district choice. A site’s “capacity” is always a moving target dictated unilaterally by the District. Districts choose, as a programmatic and/ or policy matter, how many students are ideal for a given site. But school districts like LASD can never turn away an in-district child due to lack of “capacity”.

Furthermore, state law requires that “no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.” It goes without saying that in-district charter students also cannot be displaced by private preschools leasing facilities from a district. How can the District provide facilities for these students while limiting the number of in-district charter students who can attend school with their schoolmates?

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The District has repeatedly revised CEQA studies when necessary to address its own needs. The District compounds the significance of its erroneous under-projection of BCS students by allocating facilities with impermissible enrollment caps that leave no room for error. Nor do the caps allow for even a modest number of out-of-district students to be onsite with their schoolmates while District comparison schools allow for such students.

BCS has made repeated requests for the District to disclose the number of out-of-district students at each of its schools as it regularly did in prior years. The District has repeatedly refused to date to provide this basic public information for 2012-2013 and 2013-2014, even in response to a California Public Records Act request dated September 13, 2013. Of course you know that each year BCS provides such information about its own school to the District, and that similar information for District schools must be made publicly available. LASD Trustee Mark Goines acknowledged such information as public on August 29, 2013, yet LASD refuses to be forthcoming with all the public information. The District Demographer's Report dated April 19, 2013 indicates that the total number of out-of-district students has trended slightly upward in recent years (although it does not report on the current number). We have therefore conservatively estimated the total number of out-of-district students at each comparison school in 2013-2014 using the numbers the District provided the last time it disclosed this data for the 2011-2012 school year.

The resulting chart below shows the admitted physical capacity for additional students at each K-6 comparison site and the average excess capacity. We note that the District itself has exceeded some of these capacity numbers in the past⁵, so even if all the District sites were "full", the District would not prevent additional in-district students from being on site as the District attempts to do at BCS.

⁵ For example, Springer exceeded its "capacity" of 603 for three years in a row starting in the 2000-2001 school year.

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Admitted Capacity for Students above Forecast at Each Comparison Site

Comparison School Site	Admitted Capacity* (A)	Estimated number of out-of-district students 2013-2014** (B)	October 2, 2013 Actual Total Enrollment (C)	Calculated approximate number of in-district students 2013-2014 (C-B)	% Excess Capacity (A-(C-B))/A
Almond	623	12	510	498	20.1%
Covington	744	9	512	503	32.4%
Gardner Bullis	600	31	318	287	52.2%
Loyola	637	21	542	521	18.2%
Santa Rita	610	16	561	545	10.7%
Springer	603	6	522	516	14.4%
Average					24.67%

*These numbers are drawn from the CACF Bullis-Purissima Site Use & BCS Location Study dated May 30, 2006, supplemented by Mr. Kenyon's court declaration dated July, 2012.

**Randy Kenyon email dated February 28, 2012 listing interdistrict transfers by school.

In addition to the existing excess capacity at the above sites currently, the District Demographer has indicated the excess capacity at these K-6 sites will be increasing continuously over the next seven years.⁶ If the District provides BCS with a site solution that is so constrained that not a single additional student beyond BCS' projection of in-district students will be able to be on campus at the same time as their schoolmates, BCS students are by definition not being accommodated as they would on the District sites above.

⁶ The medium forecast for LASD Elementary Enrollments falls by over 200 students by 2016 from the 2013-14 reported total of 3,471, and then drops by an additional 258 students by 2020. (District Demographer's Report p. 56, dated April 19, 2013).

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Sincerely,



Wanny Hersey
Superintendent/Principal

Bullis Charter School
102 West Portola Avenue
Los Altos, CA 94022
T: 650.947.4100
F: 650.947-4983
E: whersey@bullischarterschool.com

cc: BCS Board Members
John Lemmo, Esq.

Attachments (the following attachments are incorporated by reference herein):

Exhibit A – 6th Grade Parent Petition December 30, 2013

Exhibit B – 6th Grade Parent Petition Addendum January 1, 2014

