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JUL - 3 2012

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

BULLIS CHARTER SCHOOL,
Petitioner,

v.

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

Respondents.

CASE NO. 109CV144569

**MOTION TO COMPEL
COMPLIANCE WITH
JUDGMENT AND WRIT**

Date: August 15, 2012
Time: 9:00 a.m.
Judge: Hon. Patricia Lucas
Dept: 2

Petition Filed: June 10, 2009

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1 INTRODUCTION

2 The Court of Appeal reviewed a lengthy record and made an unambiguous finding in this
3 case: “based upon Bullis’ projected 345 students, *the appropriate size of the charter school site*
4 *would have been 8.37 acres*; the Egan site, according to the District, was only 6.2 acres.” (*Bullis*
5 *Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1050 (*Bullis*), italics
6 added (rev. denied Jan. 18, 2012).)

7 The Court of Appeal stated not once, but twice, that to house Bullis’ projected K-6
8 students, and considering the facilities provided to comparison schools, the District was required
9 to provide Bullis with approximately 8.37 acres: “The Egan site is significantly smaller than any
10 of the five comparison group school sites. When the acres-per-student formula is considered, *the*
11 *Egan site is still only 74 percent (6.2 acres divided by 8.37 acres) of the size that would be*
12 *considered comparable.*” (*Bullis, supra*, Cal.App.4th at p. 1052, italics added.)

13 For the upcoming school year, the popular Bullis has approximately 100 *more* in-District
14 K-6 students. If the Court of Appeal found that 8.37 acres would have been “considered
15 comparable” for 345 students, how much space did the District decide to give Bullis’ 439 in-
16 District K-6 students for the upcoming school year? A remarkable 7.45 acres—almost one acre
17 *less* than what the Court of Appeal said was comparable for approximately 100 fewer students.

18 And where will the Bullis campus be located? On the same temporary “camp site”
19 comprised solely of portables on the outskirts of a middle school property. The District has kept
20 Bullis here even after representing to the County Board of Education in 2008 that the “maximum
21 capacity” of this temporary camp site is 360 students.

22 SUMMARY OF ARGUMENT

23 The District’s Final Offer (“FO”) of facilities for the upcoming school year is deficient for
24 many reasons, including each of the following:

25 (1) the Bullis K-6 in-District students are provided substantially less space than K-6
26 students at comparable schools;

1 (2) the K-6 students are not given reasonable access to the limited additional facilities that
2 have been provided at the temporary camp site, nor are those facilities configured in a logical or
3 comparable manner;

4 (3) the District continues to under—and selectively—measure comparison group schools,
5 thus distorting its Proposition 39 analysis, and does not allocate Bullis space comparable to the
6 actual amount of space enjoyed by comparison schools; and

7 (4) the District has provided facilities for Bullis' 7th and 8th graders on a separate campus
8 on the opposite side of the District. Those facilities are inadequate, among other reasons, because
9 (a) there is virtually no indoor nonteaching space provided at all, (b) much of the space that is
10 provided is unusable, (c) the same limited space is offered for a multitude of unrelated functions
11 that cannot be housed together, (d) Bullis staff members and children must travel between
12 campuses in the middle of the school day, and (e) critical facilities—such as a lunch server, a
13 nurse's room, and administrative space—are missing from the space provided.¹

14 We attach two photos to this brief that illustrate these points. Eyring Exhibit B is a photo
15 of the Egan site. The part circled in blue is the Bullis facility that the Court of Appeal said was
16 not adequate. The part circled in red is the sparse additional facilities that the District has
17 provided. Eyring Exhibit I is a photo of the Blach campus. The District outlined the parts of that
18 campus that have been allocated for Bullis' 7th and 8th grade students.

19 STATEMENT OF FACTS

20 Proposition 39 compelled school districts to grant contiguous facilities, including teaching
21 stations, specialized classrooms, and non-teaching station space, to public charter schools in
22 conditions reasonably equivalent to those at district-run schools—notwithstanding that it required
23 reallocation of facilities currently in use. (*Ridgecrest Charter School v. Sierra Sands Unified*
24 *School Dist.* (2005) 130 Cal.App.4th 986, 998, fn. 13 (*Ridgecrest*).) Instead of allowing school
25 districts “to provide its castoff school property to charter schools at no cost” (*Bullis, supra*, 200

26 ¹ Bullis has a projected enrollment of 54 in-District 7th and 8th grade students in 2012-
27 2013. Even the District's own demographer projected that Bullis would have 38 in-District 7th
28 and 8th graders, but the District has offered facilities to only 27 of them.

1 Cal.App.4th at pp.1039-1040), Proposition 39 requires that “[e]ach school district shall make
2 available, to each charter school operating in the school district, facilities sufficient for the charter
3 school to accommodate all of the charter school’s in-District students in conditions reasonably
4 equivalent to those in which the students would be accommodated if they were attending other
5 public schools of the district.” (Ed. Code § 47614, subd. (b).)

6 **Bullis.** Bullis is a successful charter school established in the spring of 2003. (*Bullis*,
7 *supra*, 200 Cal.App.4th at p. 1031.) Bullis’ founding families submitted a petition to establish a
8 charter school to the Los Altos School District (the “District”). (*Id.*) The District denied the
9 petition, and Bullis appealed to the Santa Clara County Board of Education. The County gave the
10 District another opportunity to approve the petition, but the District again refused. The County
11 then approved the charter school application. (*Id.*)

12 Bullis was founded after the District closed the Bullis-Purissima Elementary School, a
13 neighborhood school that served students in parts of Los Altos and Los Altos Hills. The District
14 cited declining enrollment as a primary reason for closing Bullis-Purissima. (*See* González Dec.
15 Ex. Z, p. 2.) Because the Bullis-Purissima site was vacant following the 2002-2003 school year,
16 Bullis asked (under Proposition 39) to occupy it. (González Dec. Ex. Z, p. 3.) The District
17 rejected this request, and instead placed Bullis on the temporary Egan “camp site” for its opening
18 in the fall of 2004. (*Ibid.*) The Egan camp site was erected on the corner of the Egan Junior High
19 School campus, and it was used to house students from District-run schools on a short-term basis
20 while their permanent campuses were remodeled. (González Dec. Ex. Z, p. 4; Spector Dec. ¶ 2.)

21 For the next five years, the former Bullis-Purissima site remained almost entirely vacant.
22 Bullis renewed its request to occupy the site. The District refused. (Spector Dec. ¶ 3.) Instead,
23 in 2008, just a few years after closing the school due to declining enrollment, the District opened
24 a new school—Gardner Bullis—on the site. (Spector Dec. ¶ 4; González Dec. Ex. Z, pp. 3-4.)
25 The District cited growing enrollment, even though the District’s demographers projected
26 enrollment to remain well within the overall capacity of the then-existing six District K-6 schools
27 (Oak, Loyola, Covington, Santa Rita, Almond, and Springer). (González Dec. Ex. Z, p. 3;
28 Spector Dec. ¶ 4.) In order to increase enrollment to just 200 students at the new Gardner Bullis

1 school, the District substantially redrew attendance boundaries and encouraged out-of-District
2 students to enroll. (Spector Dec. ¶ 5; González Dec. Ex. Z, pp. 3-4.)

3 Bullis has enjoyed enormous success since it opened in 2004. (Hersey Dec. ¶ 3.) As a
4 result, demand for enrollment has steadily grown. (*Id.* ¶¶ 3, 4.) Further, community members
5 and parents, impressed with the success of the Bullis model, wanted to keep children at Bullis
6 beyond the 6th grade. (Hersey Dec. ¶ 7; *see also Bullis, supra*, 200 Cal.App.4th at p. 1031.) In
7 the fall of 2008, Bullis applied for, and received, an amendment to its charter expanding it from a
8 K-6 to a K-8 school. (Hersey Dec. ¶¶ 8, 9.) The District, predictably, opposed Bullis' request to
9 add grades 7 and 8. (Hersey Dec. ¶ 9; *Bullis, supra*, 200 Cal.App.4th at p. 1031.) Significantly,
10 one of the reasons the District gave for opposing Bullis' expansion was that the temporary camp
11 school where Bullis was located had a "maximum capacity" of 360 students. (Hersey Dec. ¶ 8.)

12 In June 2012, Bullis graduated its first 8th grade class; in June 2013, it will graduate its
13 first class of 8th graders who attended Bullis since kindergarten. (Hersey Dec. ¶ 9.)

14 Although Bullis has thrived, it has faced considerable difficulties as a result of the
15 facilities offered by the District. In 2012-2013, Bullis expects to serve 515 K-8 students, nearly
16 all of whom reside in the District. (Hersey Dec. ¶ 6.) Yet, even though the District has admitted
17 that the "**maximum capacity**" of the camp site is **360** students, the District has again placed
18 Bullis on the Egan camp site. (Hersey Dec. ¶ 8, Ex. K; Eyring Dec. ¶ 4.)

19 **The Lawsuit.** This lawsuit arises from the District's 2009-2010 facilities offer, which
20 (like all its prior offers) placed Bullis on the same undersized temporary camp site made up
21 entirely of portable buildings. In 2009-2010, Bullis projected 327 K-6 and 18 7th grade students.
22 (Eyring Dec. ¶ 5.) Bullis filed this action on June 10, 2009, seeking a writ of mandate and
23 declaratory relief. On November 24, 2009, Judge James Kleinberg issued an order denying
24 Bullis' requested relief.

25 On October 27, 2011, the Sixth District reversed, holding that "[t]he court . . . should have
26 granted mandamus and declaratory relief finding that the District's Facilities Offer for the 2009–
27 2010 School Year did not comply with Proposition 39 and the implementing regulations."
28 (*Bullis, supra*, 200 Cal.App.4th at p. 1064.) The Court of Appeal found that the District engaged

1 in a number of tactics—including deliberately and grossly understating the size of comparison
2 public schools (and thus distorting its analysis of what constituted “reasonably equivalent”
3 facilities for Bullis)—that resulted in Bullis’ being placed on a temporary campus that “is only 74
4 *percent . . . of the size that would be considered comparable*” to comparison schools. (*Id.* at p.
5 1052, italics added.) The Court of Appeal held that the temporary site—in size and facilities—
6 did not meet the reasonable equivalence requirement. (*Id.* at pp. 1030, 1052, 1062-1064.)

7 **Procedural Posture.** On March 23, 2012, this Court issued a Judgment and Order
8 Granting Writ of Mandate and Declaratory Relief. Over the District’s objection, this Court noted
9 that it has “continuing jurisdiction to make any orders necessary and proper for the complete
10 enforcement of the writ,” and held that “the temporary camp site referenced in the Court of
11 Appeal’s opinion is not reasonably equivalent to the District’s own comparison schools.”
12 (González Dec. Ex. X, p. 4.) A Peremptory Writ of Mandate was issued on May 31, 2012,
13 commanding the District to provide Bullis with “facilities that are reasonably equivalent to the
14 sites enjoyed by comparison schools.” (*Id.* Ex. Y, p. 2.)

15 **The Parties’ Continuing Relationship and the District’s 2012-2013 Offer.** Bullis’
16 projected K-7 in-District enrollment number in the appellate opinion was 345. Bullis’ projected
17 in-District K-8 enrollment for the next school year is nearly 150 students larger, 493.² (Medlin
18 Dec. Ex. M, pp. 6, 19.) While the Bullis community hoped that the appellate court’s opinion
19 would finally lead to reasonable facilities, that unfortunately did not happen. Instead, the District
20 has offered Bullis the same campus for a much larger number of students, and continues to
21 employ practices in its Proposition 39 allocation that the Court of Appeal held to be non-
22 compliant. (Eyring Dec. ¶¶ 4-6.) Moreover, recognizing that Bullis has substantially exceeded
23 the camp site’s capacity, the District has assigned 27 projected 7th and 8th grade students to a few
24 portables on a campus several miles across town, even though the Egan camp site offered to
25 Bullis’ K-6 is adjacent to middle school facilities (not offered to Bullis).

26 ² This includes Bullis’ projected 439 in-District K-6 students and 54 in-District 7th/8th
27 grade students. Together with out-of-District students, Bullis projects 515 students total. (Hersey
28 Dec. ¶ 6.)

Bullis’ Efforts to Mediate. In early 2012, the Bullis Board reached out to the District with an invitation to mediate, with the intent to reach a long-term solution regarding facilities. (Moore Dec. ¶ 4.) Bullis and District representatives met for five mediation sessions. (*Id.* ¶ 5.) In May 2012, the parties reached a tentative agreement establishing a long-term solution regarding facilities allocation to Bullis, and issued a joint press release detailing the agreement’s “key terms.” These key terms—including the agreement that no later than the 2014-2015 school year, Bullis would be relocated to one of four specific existing school sites—were publicly discussed by the District and Bullis throughout May. (*Id.* ¶¶ 6-8.)

On May 20, 2012, with no explanation, the District publicly disseminated a draft agreement that was materially different from the terms that the parties' representatives had agreed to. Inexplicably, the District has told Bullis that the District is not willing to abide by the terms of the agreement reached in mediation. (Moore Dec. ¶ 9.)

LEGAL STANDARD

Under Code of Civil Procedure sections 128, 177, 187, and 1097,³ trial courts have jurisdiction to enforce the writs and judgments they issue—and this Court in any event expressly retained jurisdiction to enforce its Judgment. (*Prof. Engineers in Cal. Government v. State Personnel Bd.* (1980) 114 Cal.App.3d 101, 109; *see also* González Dec. Ex. X, p. 4.) This authority, though codified in the California Code of Civil Procedure, is inherent to a court issuing a writ. (*Security Trust & Savings Bank v. S. Pacific Railroad Co.* (1935) 6 Cal.App.2d 585, 589 [without power to enforce its orders, a court’s “decree would, in many cases, be useless”].) Continued jurisdiction to enforce an order prevents the expense of filing additional actions, and provides final justice for the parties. (*Gonzales v. Internat. Assn. of Machinists* (1963) 213 Cal. App. 2d 817, 820 “[T]he purpose of the court’s . . . continuing jurisdiction over the case was to do full and final justice between the parties, without the necessity of filing a new action.”.) This Court may modify its Judgment and Order to aid in enforcement, issue new enforcement orders, appoint a referee to oversee enforcement, and impose fines, among other punishments. (Code

³ Undesignated section references are to the Code of Civil Procedure.

1 Civ. Proc. §§ 128, 177, 187, 639, 1097; *Molar v. Gates* (1979) 98 Cal.App.3d 1, 25; *Stoneham v.*
2 *Rushen* (1984) 156 Cal.App.3d 302, 310; *Kent v. Superior Court* (1951) 106 Cal.App.2d 593.)

3 ARGUMENT

4 I. THE DISTRICT OFFERS THE SAME CAMPUS FOR EVEN MORE 5 STUDENTS BEYOND THE CAMP SITE'S "MAXIMUM CAPACITY," 6 AND THUS VIOLATES PROPOSITION 39 AND THE COURTS' ORDERS

7 The Court of Appeal found that the Egan camp site was far too small for Bullis' 345
8 students. Yet, although Bullis' K-6 program will have at least 439 in-District students this fall
9 (Medlin Dec. Ex. M, p. 5), 79 more than the District's stated "maximum capacity" of the
10 Egan site, the District nevertheless has offered only 7.45 acres on the *same temporary camp site*.
11 (Hersey Dec. ¶ 5; Eyring Dec. ¶ 6.) That is almost an acre short of what the Court of Appeal said
12 was "appropriate" for approximately 100 fewer students—8.37 acres. Bullis remains on the
13 smallest site in the District—one much smaller than the 10-acre minimum enjoyed by comparison
14 group schools.⁴ (González Dec. Ex. AA.)

15 This Court also held that the "District violated Proposition 39 and its regulations by . . .
16 housing Bullis in-District students on a temporary campus with significantly less per-in-District
17 space than at comparison schools." (González Dec. Ex. X, p. 3.) Ignoring this express mandate,
18 the District continues to offer Bullis in-District K-6 students significantly less space per student
19 (740 square feet) than is enjoyed by students (in-District and out-of-District) at comparison
20 schools (943 square feet). (Eyring Dec. ¶ 11.) Using the same methodology that the Court of
21 Appeal used to determine the "appropriate size" of a "comparable" Bullis campus (*Bullis, supra*,
22 200 Cal.App.4th at pp. 1051-1052), the District, had it considered site size, would have
23 determined that a 9.5-acre site would have been "appropriate" for Bullis' 439 in-District K-6
24 students alone. (Eyring Dec. ¶ 12.) Thus, in 2012-2013 the Egan site is still only 78 percent
25 (7.45 acres divided by 9.5 acres) of the size that would be considered comparable for just in-

26 ⁴ Bullis' population is *larger* than at least two of the District's K-6 schools; one of the
27 District's comparison schools (Gardner Bullis) had a 2011-2012 enrollment of *both* in-District
28 and out-of-District K-6 students that is only 67% of Bullis' projection for in-District K-6 students
alone. (Eyring Dec. ¶ 6; Spector Dec. ¶ 6 [noting that total Gardner Bullis enrollment—including
in- and out-of-District students—was 298 in 2011-2012].)

1 District K-6 students. (*Compare Bullis, supra*, 200 Cal.App.4th at p. 1052 [“the Egan site is still
2 only 74 percent (6.2 acres divided by 8.37 acres) of the size that would be considered
3 comparable”].)⁵

4 **II. BULLIS’ K-6 FACILITIES ARE NOT REASONABLY EQUIVALENT TO**
5 **THOSE AT THE COMPARISON GROUP SCHOOLS**

6 This Court directed the District to “provide Bullis with facilities that are reasonably
7 equivalent to the sites enjoyed by comparison schools.” (González Dec. Ex. X; Ex. Y.) The
8 District still has not done so.

9 **Inaccessible and Disjointed Facilities.** Each K-6 comparison school enjoys a logically
10 configured and integrated ten-acre minimum site. (González Exhibit AA, attached hereto, shows
11 each campus side-by-side.) The space offered to Bullis at Egan stands in stark contrast.

12 To reach 7.45 acres, the District engaged in a game of strategic gerrymandering, slicing
13 and dicing miscellaneous and marginal portions of outdoor land and tacking them to the 6.2-acre
14 site offered in prior years.⁶ (*See* Eyring Dec. Ex. B [2009-2010 site outlined in blue; 2012-2013
15 site outlined in red].) The additional space consists of disjointed, isolated, and small perimeter
16 areas. For example, the District allocates to Bullis the line of trees that outlines the athletic track
17 (which Bullis is not permitted to use), as well as the land bordering the gym.⁷ (*Id.* ¶¶ 7-10,
18 Ex. B.) The larger area provided is difficult—if not impossible—to access: Bullis students and
19 staff must traverse unpaved, uneven, and extremely narrow foliage that outlines the base of the
20 track. The “path” contains various obstacles, such as a sewage drain, tree stump, and mounds of
21 terrain; it will create difficulties in the rain and for students or staff with impaired mobility.

22 ⁵ The District purports to offer Bullis 11.04 acres (because the District uses inconsistent
23 measurements, the square footage does not always add up to this total). But, as the District
24 acknowledges, the 7.45 acres at the Egan site are offered to 94% of Bullis’ projected in-District
student body—i.e., its 439 projected in-District K-6 students—while the remaining acreage is
offered to 27 Bullis 7th and 8th graders on a campus several miles away. (Eyring Dec. ¶ 21.)

25 ⁶ With the exception of a new multi-purpose room, which will not be installed until at
least halfway through the school year, no additional buildings are offered on the Egan site.

26 ⁷ The District purports to offer several of these areas exclusively to Bullis, but then insists
27 that District students must be granted reasonable access to them (without pro-rating the
allocation, as required by the Courts’ orders). (Eyring Dec. ¶ 15; González Dec. Ex. X; Ex. Y.)

1 Moreover, the land that this “path” leads to is far from comparable to the large sports fields,
2 landscaping, open blacktops, and picnic areas enjoyed by the comparison group schools—it
3 consists largely of a patch of dirt with unkempt vegetation and oversized District storage bins.
4 (*Id.* ¶¶ 8-10.)

5 **The District Fails to Consider All Space.** The Court of Appeal held that the District
6 erred in only identifying and allocating to Bullis three types of non-teaching station space—K
7 play area, non-K blacktop, and turf. (*Bullis*, *supra*, 200 Cal.App.4th at p. 1047.) The court
8 further held that the District improperly considered and allocated facilities based on “a
9 comparison group school’s subjective use determination,” instead of the overall amount of non-
10 classroom space at comparison schools. (*Ibid.*) Although the District included a long list of
11 facilities at comparison schools as an appendix to its Final Offer, it did not change its practice of
12 selectively allocating to Bullis based on subjective use determinations by the comparison schools.
13 (Eyring Dec. ¶ 17.) The District thus failed to consider (and did not allocate reasonably
14 equivalent space for) large amounts of childcare space, electrical rooms, special day space, kiln
15 rooms, and flex rooms, among other facilities. (*Id.* ¶¶ 18, 35.) Moreover, the amount of outdoor
16 non-teaching space that the District did offer is grossly disproportionate to that at comparison
17 schools. (*Id.* ¶ 19 [the District offered 60.1% of turf, 69.5% of non-K blacktop, and 78.5% of K
18 play area offered at comparison schools].)

19 **III. THE FACILITIES THE DISTRICT OFFERS TO BULLIS’ 7TH AND 8TH** 20 **GRADERS ARE SIMILARLY DEFICIENT**

21 As discussed above, Bullis runs an integrated K-8 program. The District nevertheless
22 plans to isolate Bullis’ 7th and 8th grade students on the District’s Blach Junior High School,
23 several miles across town from the temporary camp site. These facilities are not comparable to
24 the District’s 7th and 8th grade schools.

25 Like the space offered to Bullis at Egan, the space at Blach consists of gerrymandered
26 patches of land that are pieced together into an illogical and largely inaccessible campus. (*See*
27 Eyring Dec. ¶ 28, Ex. I.) The District once again allocates to Bullis the narrow grass that outlines
28 the athletic track. The grass around the longest part of the track is extremely narrow, with various

1 obstacles, and cannot be used for sports or organized activities. The larger grass areas on the
2 short ends of the track are also unusable as sports fields. Both have uneven grass and are odd-
3 shaped. One area is sloped down to a busy city street, with no fence or barrier. (*Id.* ¶¶ 28-29, Ex.
4 J.) Moreover, like the patches added to the Egan site, the various patches of grass offered at
5 Blach are accessible only through unpaved areas made up of woodchips and dirt that were never
6 intended to be walkways, and that would turn to mud or slush in the rain. (*Id.* ¶ 28.)

7 The District offers shared use of more functional outdoor areas, such as the track and
8 tennis courts, on an extremely limited basis. Bullis' access to those facilities is so truncated—as
9 short as 14-minute “periods”—that these areas are practically unusable. (Eyring Dec. ¶ 30;
10 Hersey Dec. ¶ 15.) Bullis cannot run any organized program in such short periods (especially
11 since part of the time would be used for students to change clothing).⁸ (Hersey Dec. ¶ 15; Eyring
12 Dec. ¶ 30.) Moreover, the track and tennis courts are offered at the *same* time, further limiting
13 Bullis' ability to access the facilities offered. (Hersey Dec. ¶ 15.)⁹

14 **Missing Indoor Facilities.** The District omits critical indoor facilities from its 7th and
15 8th grade facilities offer. A few examples suffice: the District fails to offer administrative space,
16 a counseling room, a nurse's room, staff restrooms, food servery, locker room, and special
17 education space. (Hersey Dec. ¶ 16 [listing additional categories of missing space]; Eyring Dec.
18 ¶¶ 23-25.) This will cause significant problems—Bullis has no space to address student health
19 issues (there is no nurse's room) and no space to serve hot lunches. (Hersey Dec. ¶ 16; Eyring
20 Dec. ¶ 24.) Likewise, with no administrative space, Bullis has no private room to address student
21 disciplinary issues. (Hersey Dec. ¶ 16; Eyring Dec. ¶ 24.)¹⁰

22 ⁸ (*See Ridgecrest, supra*, 130 Cal.App.4th at p. 1005, fn. 18 [noting that charter school
23 would not be able to make effective use of a facility offered for 20 minutes, and that reasonable
equivalence requirement was thus likely not met].)

24 ⁹ The District offers Bullis access to the gym for one hour per week, far short of the
25 amount of time mandated by the State for weekly physical education. (Hersey Dec. ¶ 15.)

26 ¹⁰ The District's Final Offer suggests that Bullis can mitigate these deficiencies by using
27 specialized teaching space for these various needs. (Eyring Dec. ¶¶ 24, 25; Hersey Dec. ¶ 15.)
28 This suggestion is absurd. The District only offers two 960-square-foot portable rooms to serve
all specialized teaching—i.e., science, art, music, and woodworking, among other functions.
(Eyring Dec. ¶ 24.) The District cannot reasonably expect Bullis to administer insulin shots,

(Footnote continues on next page.)

1 **Split Campus.** Implicitly acknowledging the inadequate facilities offered to Bullis' 7th
2 and 8th graders, the District suggests that 7th and 8th grade students can travel to and from the
3 Egan camp site throughout the school day. (Eyring Dec. ¶ 26; Hersey Dec. ¶ 14.) The District's
4 split campus offer blatantly violates the reasonable equivalence requirement (each comparison
5 school enjoys a single site), as well as the Regulation that requires a school district to provide
6 "contiguous" facilities even where a charter school (like Bullis) has a grade level configuration
7 that is different from that of the district. (Cal. Code Regs., tit. 5, § 11969.3, subd. (a).)

8 Moreover, the split campus is entirely impractical, and threatens to undermine Bullis' core
9 K-8 program. (Hersey Dec. ¶¶ 12-14.) The District does not provide transportation between the
10 two sites. (Hersey Dec. ¶ 14; Eyring Dec. Ex. A.) Even if it did, the two campuses are miles
11 apart, on opposite sides of the District.¹¹ (Eyring Dec. ¶¶ 20-22, 26; Hersey Dec. ¶ 5.) Shuttling
12 students and staff across town would encroach on valuable and State-mandated instructional time,
13 and would introduce considerable safety concerns that are not present when students are housed
14 on one campus. (Eyring Dec. ¶ 26; Hersey Dec. ¶¶ 14, 18.)

15 The split campus will cause significant disruption of Bullis' program. Because Bullis runs
16 an integrated K-8 program, Bullis' teachers cover a variety of subject matters and grade levels.
17 They, like Bullis' K-8 program, are not split between K-6 and 7th/8th grades. The split campus
18 would require teachers to travel—at their own expense or at Bullis'—between the campuses
19 multiple times a day. (Hersey Dec. ¶¶ 12-13 [numerous K-6 teachers and staff members also
20 serve Bullis' 7th and 8th graders].) Moreover, 7th and 8th grade students will be left without
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23 (Footnote continued from previous page.)

24 conduct staff meetings, or have children change into athletic clothing while specialized teaching
25 is in progress. Even if the various functions could co-exist, the District's architect confirmed that
26 the same space cannot be furnished and equipped to accommodate such functions. (*Id.* ¶ 25.)
Nor does the District offer any storage space, much less storage to be used for daily furniture and
equipment changes. (Hersey Dec. ¶ 16.)

27 ¹¹ Egan and Blach are the only two District-run junior high schools; they are
28 geographically spaced to serve the entire District.

critical staff members and services on site, including a nurse, administrators, a counselor, special education teachers, and music, art, drama, and language specialists. (*Id.* ¶ 13.)

IV. AS IN 2009-2010, THE DISTRICT DELIBERATELY MIS-MEASURED FACILITIES TO REDUCE THE APPARENT GAP BETWEEN WHAT WAS OFFERED TO BULLIS AND TO COMPARISON SCHOOLS

The Court of Appeal held that the District “must determine and utilize the applicable figures for the [space] considered by referring to the comparison group schools and relating those figures to the space offered to the charter school.” (*Bullis*, *supra*, 200 Cal.App.4th at p. 1061 [the District violated Proposition 39 by reducing measurements of certain outdoor areas without explanation, and by assigning arbitrary “measurements” to indoor space at comparison group schools].) Accordingly, this Court ordered the District to “disclose and utilize the actual size of building and outdoor space at comparison schools” and to “measure all outdoor space . . . at comparison schools.” (González Dec. Ex. X, p. 2.)

Far from “disclos[ing] and utiliz[ing]” the correct and current measurements of space at comparison group schools, the District’s 2012-2013 offer grossly understates the size of facilities at comparison schools. The effect is the same now as it was in 2009-2010—by inaccurate measurement, the District has effectively “reduc[ed] the [apparent] gap between the average space at the comparison schools and the analogous space offered to Bullis.” (*Bullis*, *supra*, 200 Cal.App.4th at p. 1045.)

The District Excludes Half a Million Square Feet of Outdoor Space. The courts’ orders make clear that the District must account for *all* space at comparison schools. As the Court of Appeal held, “[a] school district may achieve the mandate under Proposition 39 and the regulations . . . only if it considers the entire nonclassroom space [of comparison group schools] in the facilities offer.” (*Bullis*, *supra*, 200 Cal.App.4th at p. 1047 [instead of accounting for all outdoor space at comparison group schools and allocating reasonably equivalent space, the District “identifie[d] *a much smaller subset* of the [outdoor] nonteaching station space,” and ignored over one million square feet of space at comparison group schools], italics added; *see also* González Dec. Ex. X, p. 2 [“the District shall . . . account for . . . *all* . . . outdoor space on any and all comparison school sites”].)

1 The District's 2012-2013 Final Offer is similarly deficient. Although the Court of Appeal
2 expressly admonished against the District's practice of excluding hundreds of thousands of square
3 feet in 2009-2010, the District does so once again: it ignores nearly *half a million square feet*, or
4 **10.54 acres**, from its Proposition 39 analysis. (*Compare* Eyring Dec. ¶ 32 and *Bullis, supra*, 200
5 Cal.App.4th at p. 1044 [the District violated Proposition 39 because "large amounts . . . of
6 exterior square footage were not included in the District's calculations, thereby understating the
7 actual amount of outdoor space at the comparison schools"].)¹²

8 **The District Ignores Significant Amounts of Building Space.** The courts' orders make
9 clear that the District must account for *all* building space, and must allocate reasonably equivalent
10 amounts of that space to Bullis. (*Bullis, supra*, 200 Cal.App.4th at p. 1062 [the District violated
11 Proposition 39 because it "did not give an accurate report of the comparison group schools'
12 facilities"]]; *see also* González Dec. Ex. X, p. 2 ["the District shall . . . account for . . . *all* . . .
13 building . . . space" at comparison schools].) The District nevertheless provides an "incomplete
14 and inaccurate report of . . . the comparison group schools' facilities . . . , [which] caus[es] a
15 significant distortion of the Proposition 39 analysis with the result that Bullis's in-District
16 students were not afforded reasonable equivalence." (*Bullis, supra*, 200 Cal.App.4th at p. 1063.)

17 The District ignores over 33,500 square feet in childcare facilities at comparison schools.
18 Instead of considering the actual size of childcare facilities at comparison schools, the District has
19 instead assigned an arbitrary number to represent the purported childcare space per comparison
20 school student. (Eyring Dec. ¶ 35.) That, however, is not grounded in reality—it is neither the
21 actual nor the average amount of childcare space per comparison school student. (*Ibid.*) Based
22 on its invented childcare space per student, the District claims to owe Bullis only 210.72 square
23 feet of childcare space. That is in stark contrast to the 5,828-square-foot average childcare

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25 ¹² As in the 2009-2010 offer, the District's measurements of certain areas have also shrunk
26 suddenly and without explanation. (*Compare* Eyring Dec. ¶¶ 11, 33 [noting the change in
27 reported acreage for Springer and Covington] and *Bullis, supra*, 200 Cal.App.4th at pp. 1046,
28 1051 [noting that the District's measurement of certain outdoor areas shrunk without explanation;
also finding that the District failed to conduct a proper site size analysis, in part, because it did not
use an accurate measurement for the Covington site].)

1 facility enjoyed by each K-6 comparison school.¹³ (*Ibid.*) The practice is also in flagrant
2 disregard of the Court of Appeal and this Court, both of which specifically addressed, and
3 admonished against, the use of arbitrary, understated measurements (*Bullis, supra*, 200
4 Cal.App.4th at p. 1030; González Dec. Ex. X), and both of which held that reasonably equivalent
5 childcare should have been included in the District’s Proposition 39 analysis and allocation.
6 (*Bullis, supra*, 200 Cal.App.4th at p. 1061; González Dec. Ex. X.)

7 In the aggregate, the District excludes nearly 66,000 square feet of building space from its
8 Proposition 39 analysis, i.e., 20.9% of indoor square footage at K-6 comparison schools and 6.2%
9 of indoor square footage at 7th and 8th grade comparison schools. (Eyring Dec. ¶ 36.) That is a
10 far cry from the Court of Appeal’s and this Court’s mandate.

11 **The District’s False “Surplus.”** Based on these inaccurate reports and measurements,
12 the District has formulated what it “owes” to Bullis under Proposition 39. Of course, what the
13 District claims Bullis is entitled to is distorted, because it was calculated using inaccurate and
14 understated measurements of the comparison schools. Nevertheless, the District compares this
15 distorted calculation (of what it purportedly owes Bullis) to what it actually allocated to Bullis,
16 and incredibly, determines that it has offered Bullis a “surplus” of buildings. The District claims
17 that this supposed building “surplus” mitigates the obvious and persistent discrepancy between
18 the site size of Bullis and that of comparison schools. (Eyring Dec. ¶¶ 37, 38.)

19 Not so. The District’s “understatement of the comparison group schools’ square footage
20 . . . has reduced the actual gap between the average space at the comparison schools and the
21 analogous space offered to Bullis.” (*Bullis, supra*, 200 Cal.App.4th at p. 1045.) Had the District
22 accurately measured facilities at comparison schools, it would have determined that, far from
23 offering surplus facilities, the District’s allocation to Bullis’ K-6 students results in a deficit of
24 5,650 square feet, or six portable buildings. (Eyring Dec. ¶ 39.)¹⁴

25 ¹³ The District used the same tactic with respect to art/music and science space, ignoring
26 nearly 6,000 square feet of comparison school space. (Eyring Dec. ¶ 35.)

27 ¹⁴ The Court of Appeal also was clear that the District’s “material overstatement of the
28 amount of . . . space offered and provided to Bullis constitutes a violation of Proposition 39.”
(*Bullis, supra*, 200 Cal.App.4th at p. 1058; *id.* at p. 1059 [“[t]he District’s methodology of

(Footnote continues on next page.)

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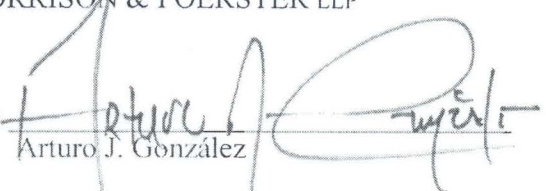
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Dated: July 3, 2012

ARTURO J. GONZÁLEZ
MIRIAM A. VOGEL
SUZANNA P. BRICKMAN
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By:

A handwritten signature in dark ink, appearing to read "Arturo J. González", is written over a horizontal line. The signature is stylized with a large, looping initial "A".

Arturo J. González

Attorneys for Petitioner
Bullis Charter School