

May 6, 2009

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By Telefacsimile, Email and U.S. Mail

Tim Justus  
Superintendent, Los Altos School District  
201 Covington Road  
Los Altos, California 94024

Re: Proposition 39 Final Offer of Facilities for 2009-2010 to Bullis Charter School

Dear Superintendent Justus:

We write on behalf of the Board of Bullis Charter School ("BCS") regarding the Los Altos School District's ("District") final offer of facilities for the 2009-2010 school year, contained in a letter from you to Wanny Hersey, dated April 1, 2009. On April 24, 2009, BCS notified the District that it intends to occupy said facilities in the 2009-2010 school year. In no way should this letter be construed as a revocation or modification of BCS's intent to occupy.

We seek clarification regarding the disparity between the site size of each comparison school as listed in the District's chart entitled "Analysis of Reasonably Equivalent Space for a Charter School under Proposition 39: Size and Condition" (Preliminary Offer Exhibit A, at 2) and the total square footage of facilities and space at each comparison school as listed in the District's chart entitled "Analysis of Reasonably Equivalent Space for a Charter School under Proposition 39: Capacity" (Final Offer Exhibit C). The site size as listed in the "Size and Condition" chart far exceeds, and in some cases more than doubles, the total square footage of the facilities and space at each comparison school as listed in the "Capacity" chart. In the "Size and Condition" chart, the District acknowledges that each campus has a site size of at least 10 to 11.3 acres (at least 435,600 to 492,228 square feet).<sup>1</sup> See Preliminary Offer Exhibit A, at 2. However, in the "Capacity" chart, on which the District calculates its allocation of space to BCS, the District only accounts for roughly 131,000 to 277,000 square feet of space per campus. See Final Offer Exhibit C. This leaves a significant amount of

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<sup>1</sup> The District indicates that Covington has a site size of "10+" acres. BCS understands that Covington's campus is roughly 14.5 acres (631,620 square feet), without accounting for District offices located on the school's campus. If the District disagrees, please provide the actual site size of the Covington campus as required by the regulations, with a map identifying the areas included in the elementary school campus.

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space (roughly 215,000 to 476,000 square feet per campus) unaccounted for in the District's allocation of space to BCS under Proposition 39.

Under Proposition 39 and its implementing regulations, all space and facilities on a comparison school campus must be one of the following: teaching station space (classrooms), specialized classroom space, or non-teaching space. "Non-teaching station space" is "all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative space, kitchen, multi-purpose room, and play area space." Cal. Code Regs. tit. 5, § 11969.3(b)(3) (emphasis added). Thus, the definition of "non-teaching space" under the regulations is quite simple: all space that does not fall into the "teaching station space" or "specialized classroom space" categories but nonetheless exists at comparison schools. Given this "catch-all" definition for non-teaching station space, any facility that exists on comparison school sites must fall into one of these three categories of facilities, and, at the very least, be considered in a school district's reasonable equivalence analysis.

Based on correspondence with Mr. Yeh regarding the 2008-2009 Facilities Use Agreement, we understand the District takes the position that some space, such as parking areas, falls within none of the three categories of facilities and somehow is excluded from consideration under Proposition 39.<sup>2</sup> However, "[a] school district's obligation to provide facilities under section 47614 is not limited to facilities actually used by students or strictly necessary for classroom instruction. Rather, section 47614 requires school districts to make available facilities sufficient to accommodate all of the charter school's in-district students, in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools in the district." (*California School Boards Association v. California State Board of Education* (Cal.Super.Ct., Nov. 24, 2008, No. 34-2008-00016957), \*6). "[A] school district's exercise of its discretion in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space

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<sup>2</sup> In discussions concerning the 2008-2009 Facilities Use Agreement, specifically regarding the District's refusal to provide parking areas to BCS under Proposition 39, counsel for the District stated that "Proposition 39 does not include parking, but only furnishings 'necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction.'" (See Email from John Yeh, dated April 29, 2009, quoting from the definition of "furnished and equipped" in Section 11969.2(e)). BCS is puzzled by this explanation as the definition cited only requires "reasonably equivalent furnishings" which could be little or none depending on the facility in question. A similar strained reading of the old regulations was recently rejected by a California court noting that, "[T]he fact that the 2002 regulations referred to furnishings necessary for classroom-based instruction does not mean that school districts were only required to provide furnished classrooms." (*California School Boards Association v. California State Board of Education* (Cal.Super.Ct., Nov. 24, 2008, No. 34-2008-00016957), \*7).

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between them.” *Ridgecrest Charter Sch. v. Sierra Sands Unified Sch. Dist.* (2005) 130 Cal.App.4th 986, 1001.

BCS would like clarification of the District’s position regarding space it does not believe is covered by Proposition 39. BCS requests that the District provide a specific listing of all of the space on each comparison school campus that was excluded from the District’s analysis, as well as an explanation as to why the District contends that such space was properly excluded from its Proposition 39 analysis. Such a record is required to evaluate whether or not the District has complied with Proposition 39 and its implementing regulations.

We would appreciate a response on or before Monday, May 11, 2009.

Sincerely,

  
Arturo J. González

cc: John Yeh  
Bullis Charter School Board of Directors