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

11  
12 BULLIS CHARTER SCHOOL,

13 Petitioner,

14 v.

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

18 Respondents.

**CASE NO. 109CV144569**

**[PROPOSED] JUDGMENT AND  
ORDER GRANTING WRIT OF  
MANDATE AND  
DECLARATORY RELIEF**

Hearing: September 29, 2009  
Time: 9:00 a.m.  
Dept: 1

The Honorable James P. Kleinberg

Petition Filed: June 10, 2009



1 *Ridgecrest*). Proposition 39 requires school districts to “equalize the treatment of charter and  
2 district-run schools with respect to the allocation of space between them.” *Id.* at 1001.

3 3. To that end, school districts must provide charter schools teaching stations  
4 (classrooms) in the same ratio of students to classroom as the student to classroom ratio at district  
5 schools. (5 CCR, § 11969.3, subd. (b)(1).) Charter schools are entitled to reasonably equivalent  
6 specialized classroom space, based on the charter schools grade levels, total in-district classroom  
7 average daily attendance, and the per-student amount of specialized classroom space in the  
8 comparison group schools. (5 CCR, § 11969.3, subd. (b)(1).) Finally, school districts “*shall*”  
9 provide to the charter school the same per-student amount of “non-teaching station space” as  
10 available in comparison group schools. (5 CCR, § 11969.3, subd. (b)(3).) “Non-teaching station  
11 space is *all* of the space that is not identified as teaching station space or specialized classroom  
12 space,” including outdoor space. *Id.* (emphasis added). “‘School site size’ is also one of the  
13 factors considered in determining whether a site is ‘reasonably equivalent’[citation]” to other  
14 schools. *Ridgecrest, supra*, 130 Cal.App.4th at 1000.

### 15 *The Parties*

16 4. The parties agree that Petitioner Bullis Charter School is a highly successful public  
17 charter school located in Los Altos, California. Founded in 2003 after the closure of a District-  
18 run neighborhood elementary school (Bullis-Purissima), Bullis hails most of its kindergarten  
19 through sixth grade students from the District’s attendance area in which the former Bullis-  
20 Purissima school was located.

21 5. Unfortunately, the parties’ relationship has been contentious since before Bullis  
22 opened. For example, Respondents refused to approve Bullis’s initial petition to start a charter  
23 school. After the petition was approved by the Santa Clara County Board of Education,  
24 Respondents again declined to serve as Bullis’s oversight authority.

25 6. Respondents have consistently rejected Bullis’s request to occupy the former  
26 Bullis-Purissima campus, even though that site remained predominately vacant until 2008. In that  
27 year, Respondents reopened an elementary school on that campus, even though only five years  
28 earlier they closed it due to cost and projected enrollment.

1 *Present Lawsuit*

2 7. Since its inception, Bullis has consistently grown, both in overall enrollment and,  
3 more importantly for purposes of this case, in the number of students who reside within the  
4 District (“in-District students”). The present dispute relates to that growth.

5 *I. The Failure to Provide Seventh Grade Facilities*

6 8. With a waitlist of over 400 students, approximately 200 of whom reside within the  
7 District, and growing parent interest in keeping their children at Bullis beyond the sixth grade,  
8 Bullis considered the possibility of expanding to include a middle school program. In February  
9 2008, Bullis began the formal process of expanding. Several Bullis witnesses discussed in  
10 declarations the months of research, curriculum development, and parent surveying, among other  
11 things, Bullis devoted to the middle school expansion project. The goal was to open a 7<sup>th</sup> grade in  
12 the Fall of 2009. Thus, in Fall 2008, Bullis brought a petition before the Santa Clara County  
13 Board of Education to formally amend their charter from grades K-6 to grades K-8. Respondents  
14 submitted written objections to Bullis’s request and Respondents’ Superintendent attended the  
15 County Board of Education meeting to speak against Bullis’s request to expand. Over  
16 Respondents’ objections, the County Board approved Bullis’s petition in November 2008.

17 9. At the same time it was preparing to go before the County Board, Bullis also  
18 submitted to Respondents its formal Proposition 39 facilities request for the 2009–2010 school  
19 year, which included a request for 7<sup>th</sup> grade facilities. There is no dispute that Bullis’s facilities  
20 request was timely and proper; indeed, in its December 2008 response to Bullis’s request, even  
21 Respondents projected that Bullis would have 13 in-District 7<sup>th</sup> graders in 2009–2010. (Amended  
22 Petition Ex. 2.)

23 10. Nonetheless, Respondents’ Preliminary Offer of Proposition 39 Facilities, dated  
24 January 30, 2009, did not include facilities for Bullis’s 7<sup>th</sup> grade. Bullis’s counsel sent two letters  
25 to the District, dated February 27 and March 30, 2009, requesting that Respondents modify their  
26 offer to include 7<sup>th</sup> grade facilities. On April 1, 2009, Respondents issued their Final Offer, which  
27 failed to allocate 7<sup>th</sup> grade facilities. As the reason why they did not allocate 7<sup>th</sup> grade facilities,  
28

1 Respondents cited to an article in the local newspaper which discussed a vote by the Bullis Board  
2 to open a middle school “no later than 2010.” (Amended Petition, Ex. 7 at 0078.)

3 11. Respondents now argue that Bullis’s principal told the District’s superintendent  
4 that Bullis would not have a 7<sup>th</sup> grade in 2009–2010. Bullis’s principal denies making such a  
5 statement. In any event, the alleged conversation between the Bullis principal and District  
6 superintendent occurred *after* Respondents made their preliminary Proposition 39 offer without  
7 7<sup>th</sup> grade facilities. Respondents also claim that 2 Bullis Board members told members of the  
8 community that Bullis would not offer 7<sup>th</sup> grade. Again, those comments are denied by the Bullis  
9 Board members and were not heard by Respondents or their representatives.

10 12. Respondents’ failure to provide Bullis with 7<sup>th</sup> grade facilities violated Proposition  
11 39. A school district “shall” make available facilities sufficient for a charter school to  
12 accommodate its in-district students. (Ed. Code, § 47614, subd. (b).) A charter school shall  
13 provide a district with a reasonable projection of its enrollment and the district “*shall* allocate  
14 facilities to the charter school for that following year based upon this projection.” (Ed. Code, §  
15 47614, subd.(b)(2); emphasis added.)

16 13. It is undisputed that Bullis provided the District with a timely projection for  
17 seventh grade enrollment and request for facilities under Proposition 39. The law does not permit  
18 a school district to decide whether a charter school is serious about its request, or to refuse to  
19 provide facilities based on the charter school’s subjective intent. Indeed, the Legislature  
20 anticipated the possibility that a charter school might request more facilities than it will actually  
21 use, and provided a remedy:

22 If the charter school, during that following year, generates less  
23 average daily classroom attendance by in-district students than it  
24 projected, the charter school shall reimburse the district for the  
over-allocated space at rates to be set by the State Board of  
Education.

25 (Ed. Code, § 47614. subd. (b)(2).) Thus, if the District believed that Bullis was not sincere in its  
26 request for seventh grade facilities, the proper response would have been to provide facilities for  
27 the seventh grade and to seek reimbursement if Bullis chose not to proceed with a seventh grade  
28 program.

1 **II. Reasonably Equivalent Facilities**

2 14. The second issue in dispute relates to the facilities Respondents *did* provide Bullis.  
3 Bullis claims that the facilities offered for Bullis’s K-6 program, located on a portion of the Egan  
4 Junior High School campus (and known as the “Egan Camp site”) are not reasonably equivalent  
5 to those at comparison group schools. The Egan Camp site, which was meant to be a temporary  
6 campus when built, consists entirely of portable buildings. It is approximately half the size of the  
7 comparison schools and, as a result, lacks the courtyards, gardens, walkways, small fields, and  
8 trees available at each of the comparison schools. Unlike each comparison school, Bullis does  
9 not have facilities for before and after-school daycare, a PTA room, and or an outdoor  
10 amphitheater. Bullis built (at its expense) its own multi-purpose room, while Respondents  
11 provide each comparison school with multipurpose rooms.

12 15. Bullis identifies several flaws in Respondents’ Proposition 39 analysis, as well as  
13 several changes in the last 2 years that Bullis claims allow Respondents to disguise the fact that  
14 even by the District’s policies, practices, and standards, the Egan Camp site is too small to house  
15 Bullis. Based on Respondents’ new Proposition 39 methodology and reasonable equivalence  
16 analysis, Respondents systematically exclude large amounts of both indoor and outdoor space  
17 available at comparison schools from their reasonable equivalency analysis. Bullis argues, and  
18 the Court agrees, that this alone violates Proposition 39, which requires a school district to  
19 consider “*all*” space at comparison schools. (5 CCR, § 11969.3, subd. (b)(3), emphasis added.)

20 ***Respondents Change “Reasonably Equivalent” Analysis***

21 16. In its 2008–2009 facilities offer, after years of conducting their analysis in the  
22 same manner with virtually consistent measurements at comparison schools (and with the same  
23 three comparison schools, seemingly chosen pursuant to official District policy), Respondents’  
24 Proposition 39 methodology and analysis suddenly changed:

- 25 a. For the few categories of outdoor space at comparison schools that Respondents  
26 did include in their Proposition 39 analysis, measurements for these spaces, which  
27 had been consistent for 4 years, suddenly and without explanation shrunk  
28 substantially.

- 1           b. Respondents stopped using the actual measurements of indoor space at comparison  
2           schools in their Proposition 39 analysis, and instead began using what they termed  
3           “standard room sizes” to determine the amount of space to which Bullis is entitled.  
4           “Standard room sizes” are not documented, nor are they tied to actual room sizes.  
5           In most cases, they are smaller than or equal to the smallest such facilities at  
6           comparison school sites.
- 7           c. Respondents stopped following their own official policy on using three  
8           comparison school sites for purposes of Proposition 39, instead using five  
9           comparison school sites.
- 10          d. And finally, after using it in each facilities offer since Bullis opened, Respondents  
11          stopped calculating the “acres needed” by Bullis based on the acres per student at  
12          comparison group schools.

13          17. These changes corresponded with the opening of Gardner Bullis School, which,  
14          with high acreage and a small student body, was irrefutably a comparison school. Thus, by  
15          increasing the number of comparison schools from three to five, Respondents were able to lessen  
16          the impact of Gardner Bullis on the reasonable equivalence analysis. It also corresponds with the  
17          first year in which, using Respondents’ own policy and practice of calculating “acres needed” by  
18          Bullis, Bullis would have outgrown the Egan Camp site. Had Respondents continued this  
19          calculation (using their official policy of choosing 3 comparison schools), it would have shown  
20          that in 2008–2009 Bullis “needed” 8.5 acres. In 2009–2010, using this same District practice,  
21          Bullis would need a space of at least 9.4 acres. The Egan Camp site is only 5.67 acres (adjusting  
22          for Bullis’s allocation of 40% of the soccer field and including the parking lot).

23          18. The changes in Respondents’ methodology allowed them to justify keeping Bullis  
24          K-6 grades on a campus that, by Respondents’ own policy and practice, has, for at least the past  
25          two years, been too small to accommodate Bullis in-District children in conditions reasonably  
26          equivalent to District-run elementary schools.

27          19. Moreover, Respondents fail to follow Proposition 39 – let alone their own policies  
28          and practices – in allocating K-6 facilities. The Egan Camp site, which is comprised entirely of

1 portables and is located on the edge of the Egan Junior High School campus, is approximately  
2 half the size of District-run comparison elementary schools. Such a small facility fails to provide  
3 Bullis in-District students with reasonably equivalent conditions to those enjoyed by non-charter  
4 students, as required by Proposition 39.

5 20. Accordingly, a Peremptory Writ of Mandate shall issue requiring Respondents and  
6 their officers, agents, and employees to fulfill their duties and obligations to Bullis under  
7 Education Code Section 47614 and to

- 8 a. Locate Bullis on a larger site size reasonably equivalent to the 10 acre minimum at  
9 comparison school sites;
- 10 b. Provide reasonably equivalent facilities to all grade levels properly and timely  
11 requested by Bullis;
- 12 c. Account for site size and *all* space available on comparison school sites (regardless  
13 of whether or how it is utilized), including teaching station, specialized classroom,  
14 and non-teaching station space (including space not enumerated in the  
15 regulations), and
  - 16 i. End their practice of excluding space – whether used or not used by  
17 comparison schools – from their analysis of facilities and space located at  
18 comparison schools;
  - 19 ii. Consider actual room sizes of facilities at comparison schools to determine  
20 the size of facilities needed by Bullis, and end the practice of using  
21 “standard room sizes”;
  - 22 iii. Consider total building square footage at comparison schools, and square  
23 footage per student at comparison schools, in determining the size of  
24 indoor facilities needed by Bullis;
  - 25 iv. Offer Bullis before- and after-daycare facilities, an amphitheater, and other  
26 facilities that are located on each comparison school site.
- 27 d. Specify in their facilities offer all arrangements for sharing shared-use space;
- 28

- 1 e. Include only a portion of the shared use space, proportionate to time allocation and  
2 use restrictions Respondents impose on Bullis, in their reasonable equivalence  
3 analysis and as the amount offered to Bullis;
- 4 f. Refrain from charging Bullis full pro rata share of facilities' cost for facilities  
5 offered on a non-exclusive/shared use basis, such as the shared soccer field;
- 6 g. Refrain from including in its facilities offer facilities that Bullis owns (such as the  
7 multi-purpose room) and from charging Bullis a pro rata share of costs for the  
8 multi-purpose room that Bullis built and is responsible for maintaining; and
- 9 h. Refrain from including all-or-nothing conditions in its offer of facilities, such as  
10 the condition in its Final Offer for 2009–2010 stating that the offer was  
11 conditioned on the parties agreeing to a facilities agreement by May 1, 2009. Such  
12 a condition would provide too much leverage to the District in negotiations.  
13 Moreover, there is no provision in Proposition 39 or its implementing regulations  
14 to support such a unilaterally imposed deadline.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED:**

16 21. Respondents' Final Offer of Facilities violates Proposition 39 and its  
17 Implementing Regulations. To comply with Proposition 39,

- 18 a. Respondents are required to provide contiguous, reasonably equivalent facilities to  
19 all grade levels reasonably projected by Bullis;
- 20 b. Respondents are not permitted to prevent the operation of particular grade levels  
21 that Bullis has the legal right to operate and for which it requested facilities;
- 22 c. Respondents are required to consider school site size in determining whether  
23 Bullis students are being accommodated in conditions reasonably equivalent to  
24 those of students in comparison schools, and must provide Bullis site space in  
25 accordance with that consideration;
- 26 d. Respondents are required to account for all facilities (including all outdoor space)  
27 at comparison group schools as teaching station, specialized classroom, or non-  
28

1 teaching station space, and must conduct their reasonable equivalency analysis in  
2 accordance with such consideration;

- 3 e. Respondents are required to provide Bullis with comparable non-teaching station  
4 space (such as parking, walkways, gardens, and other outdoor space) that is not  
5 specifically enumerated in the regulations if such space is generally available at  
6 comparison group schools;
- 7 f. Respondents are required to identify with specificity in their facilities offer the  
8 arrangement for sharing shared-use space, and those arrangements shall consider  
9 Bullis’s educational program and daily scheduling needs;
- 10 g. Respondents are required to pro rate the amount of shared space offered, for the  
11 purposes of calculating the amount of space offered to Bullis and the amount to  
12 charge Bullis in pro rata share, by the percentage of time Bullis has access to such  
13 space (for example, if Bullis can only use the soccer field two days per week, only  
14 40% of the field should be considered as “offered” under Proposition 39);
- 15 h. Respondents are prohibited from including facilities Bullis already owns in their  
16 Proposition 39 offers of facilities and reasonable equivalency analysis, and are not  
17 permitted to charge Bullis a pro rata share of costs for facilities it owns and is  
18 responsible for maintaining; and
- 19 i. Respondents are not permitted to impose conditions on Proposition 39 offers of  
20 facilities that would permit them to revoke facilities offered altogether.

21 22. The temporary camp site Bullis currently occupies is not reasonably equivalent to  
22 the District’s own elementary schools, nor does it have space for Bullis’s projected 7<sup>th</sup> grade.

23 Bullis is legally entitled to:

- 24 a. Reasonably equivalent seventh grade facilities;
- 25 b. School site size and other facilities/space reasonably equivalent to that offered to  
26 comparison group schools;

- 1 c. Non-teaching facilities provided at comparison group schools that are not  
2 specifically enumerated in the regulations (such as before- and after-school care,  
3 outdoor stage, PTA room, walkways, and gardens);  
4 d. Shared-use space that is offered pro rated for purposes of reasonable equivalence  
5 and pro rata charge calculations;  
6 e. A facilities offer that includes specification of all sharing arrangements;  
7 f. Reasonably equivalent facilities that do not include the multi-purpose room Bullis  
8 built or other site improvements it undertakes to alleviate shortcomings in facilities  
9 offered by Respondents; and  
10 g. Proposition 39 facilities free from unreasonable restrictions and conditions.

11 23. Respondents are ordered to fully comply with Proposition 39 and the  
12 Implementing Regulations as to Bullis now and going forward.

13 24. Petitioner is the prevailing and successful party, and this Court retains jurisdiction  
14 to determine Petitioner's entitlement to reasonable attorneys' fees.

15 25. Petitioner is awarded its costs of suit.

16 26. The Court orders that should an appeal be taken from this Judgment and Writ of  
17 Mandate, "the appeal shall not operate as a stay of execution" pursuant to this Court's authority  
18 under Code of Civil Procedure section 1110b. The Petitioner has made a sufficient showing in its  
19 Amended Verified Petition and other arguments and evidence submitted to this Court that a stay  
20 would result in the denial of any relief to Petitioner.

21 27. The Court shall exercise continuing jurisdiction over this action to ensure that  
22 Respondents comply with this Judgment and Writ of Mandate.

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25 Dated: \_\_\_\_\_, 2009

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Hon. James P. Kleinberg  
Judge of the Superior Court