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BULLIS CHARTER SCHOOL
8

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

17 Respondents.
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CASE NO. 109CV144569

**SUPPLEMENTAL
DECLARATION OF WANNY
HERSEY IN SUPPORT OF
BULLIS CHARTER SCHOOL'S
VERIFIED PETITION FOR WRIT
OF MANDATE AND
COMPLAINT FOR
DECLARATORY RELIEF**

The Honorable James P. Kleinberg

Hearing: September 29, 2009

Petition Filed: June 10, 2009

1 1. I am the Superintendent and Principal of Bullis Charter School (“Bullis”), a
2 position I have held since Bullis opened in the Fall of 2004. I have personal knowledge of the
3 facts set forth herein, and I could and would testify competently to them if called as a witness.

4 2. Since Bullis’s inception, enrollment has grown steadily. The following chart
5 shows Bullis yearly enrollment, as reported to the California Department of Education:
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School Year	Student Enrollment
2004-2005	170
2005-2006	228
2006-2007	257
2007-2008	286
2008-2009	325

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13 3. The 2009-2010 school year began on August 19, 2009. As of that date, 2009-2010
14 enrollment was 342.

15 4. Similarly, since Bullis’s inception, enrollment of students who reside within the
16 Los Altos School District (“in-District students”) has grown. The following chart shows Bullis’s
17 yearly in-District enrollment reported to the county:
18

School Year	In-District Enrollment
2004-2005	121
2005-2006	166
2006-2007	199
2007-2008	237
2008-2009	295

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25 5. As of August 19, 2009, there were 318 in-District students enrolled in Bullis for
26 the 2009-2010 school year.
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1 6. Because the number of applications we receive exceeds, by far, the number of
2 openings we have, Bullis maintains a wait list of students who wish to attend should a spot
3 become available. After our annual lottery, which occurs in mid-February, 428 students were on
4 Bullis’s waitlist, 209 of whom reside within the Los Altos School District. As of the first week in
5 September, our waitlist had 406 students on it, 182 of whom live within the Los Altos School
6 District.

7 7. In 2008-2009, Bullis had 209 kindergarten applications for 57 spots. In 2009-
8 2010, Bullis had even more kindergarten applications – as of September 4, 2009, there were 249
9 applications for the same 57 spots.

10 8. The number of kindergarteners we accept is based in part on the amount of space
11 we have on the Egan Camp site to accommodate students in the kindergarten year and as they
12 progress through the upper grades. Thus, if Bullis’s campus were larger, we would be able to
13 accept a larger kindergarten class.

14 9. Open enrollment for grades K-6 for the 2009-2010 school year began on
15 November 3, 2008, and ran through January 30, 2009. Consistent with our yearly practice, we
16 continued to accept enrollment applications beyond the open enrollment period, up to and through
17 the start of the school year in August 2009.

18 10. Although we intended to begin a 7th grade program in August 2009, we did not
19 hold open enrollment for 7th grade in November 2008. At the time we began K-6 open
20 enrollment, our application to expand Bullis to include a middle school program in 2009-2010
21 was still pending before the Santa Clara County Board of Education (“SCCBE”), Bullis’s
22 chartering agency. The SCCBE did not approve Bullis’s expansion until later in November 2008.

23 11. More importantly, we did not hold 7th grade open enrollment because at that time
24 we did not know if we would have any facilities to house Bullis’s projected 7th grade. Bullis
25 relies on the Los Altos School District (“LASD”) for school facilities, which they offer
26 (preliminarily) in January preceding the upcoming school year. At the time we began 2009-2010
27 open enrollment, I, along with Bullis Board members, had serious concerns that LASD would not
28 offer adequate 7th grade facilities.

1 12. My concern grew from LASD's outspoken and hostile opposition to Bullis's
2 middle school expansion, which continued well after the SCCBE approved Bullis's middle school
3 expansion for 2009-2010. I first spoke to LASD Superintendent Tim Justus about our plan to
4 open a middle school in or around August 2008. During that meeting, Superintendent Justus
5 responded favorably to the news about Bullis's plans to expand. He told me that he understood
6 why Bullis would want to open a middle school based on the success of its K-6 program and
7 some parents' desire to keep their children at the school through grades 7 and 8. However, the
8 next day, Superintendent Justus emailed me, and expressed strong opposition to Bullis's middle
9 school expansion. I was surprised because his initial reaction was markedly different.

10 13. Superintendent Justus, LASD Board members, and other LASD representatives
11 voiced opposition to Bullis's plans to open a middle school. I attended the Fall 2008 meetings of
12 the SCCBE in which Bullis's application to begin a middle school in 2009-2010 was discussed.
13 At each of these meetings, Superintendent Justus and/or other LASD representatives expressed
14 opposition to Bullis's middle school plan. At several points, people from LASD told the SCCBE
15 that LASD would not have adequate facilities to provide to Bullis for its 7th grade program. I also
16 read various documents, including letters submitted to the SCCBE, written by Superintendent
17 Justus and/or LASD representatives (including LASD's lawyers) that expressed the same
18 sentiment. In addition, LASD representatives were quoted in local newspapers stating that LASD
19 would be unable or unwilling to provide Bullis with necessary middle school facilities.

20 14. LASD's Preliminary Offer of Facilities, made on January 30, 2009 pursuant to
21 Proposition 39, underscored my concerns. In that letter, LASD offered facilities for kindergarten
22 through sixth grade "*exclusively*" and made no mention of the 7th grade facilities that we
23 requested.

24 15. Because we were still hoping to open a 7th grade in 2009-2010, we hired legal
25 counsel to write letters to LASD reaffirming our request for facilities. LASD did not respond to
26 any of our lawyers' follow-up letters, nor did their final offer provide any facilities for our desired
27 7th grade program (the final offer also provided facilities for grades K-6 "*exclusively*"). It was
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1 not until after April 1, 2009, the date of LASD's Final Offer of Facilities, that it became clear that
2 Bullis would not be able to enroll a 7th grade in 2009-2010 because we were given no facilities.

3 16. I understand that LASD is now saying that it was clear that we would not have 7th
4 grade in 2009-2010 because we did not hold open enrollment for 7th grade in November 2008
5 when we held the K-6 open enrollment, and for this reason, LASD did not provide 7th facilities.
6 LASD's logic is wrong. In fact, the exact opposite is true: we did not hold 7th grade open
7 enrollment because of the uncertainty that LASD created about whether it would provide the
8 facilities necessary for Bullis to move forward with the 7th grade program in 2009-2010.

9 17. I have been an educator for nearly 25 years, and principal of Bullis since it opened.
10 I felt it would have been irresponsible and dishonest to ask parents to enroll their children in the
11 7th grade when it was looking like LASD would not provide 7th grade facilities. I felt particularly
12 concerned because I knew that some parents might only participate in Bullis's open enrollment
13 and thus miss their opportunity for priority admission in other public middle schools and/or
14 private schools. I also know the Bullis parent community well, and I spoke to parents who were
15 eager to see their 6th grade students continue at Bullis in 2009-2010 as 7th graders. I understood
16 that those parents would be disappointed, and perhaps even dissatisfied, if we enrolled their
17 children and then decided we could not have the program because we did not have the practical
18 means to begin the 7th grade program -- facilities. I felt it was my professional responsibility --
19 and only fair to Bullis families -- to wait to have 7th grade open enrollment until we were
20 confident that we would have the facilities we needed for the program to begin. As it turns out,
21 my fears and concerns became reality when the LASD refused to provide us with 7th grade
22 facilities.

23 18. Had LASD provided the facilities we needed to move forward with the middle
24 school program in 2009-2010, we would have held a second open enrollment specifically for 7th
25 grade applicants.

26 19. I also understand that LASD is now arguing that because Bullis did not take Board
27 actions with respect to the 7th grade in the early 2009 time frame, Bullis was not genuine about its
28 intent to start a 7th grade in 2009-2010. Again, LASD's conjecture is incorrect. First, prior to

1 January 2009, Bullis had spent 12 months planning a 7th grade program – including curriculum
2 development and planning/reorganization of staff credentialed to teach middle school – that was
3 ready for implementation in August 2009 had LASD provided facilities. Moreover, the
4 proposition that Bullis’s Board took no action with respect to implementation of the 7th grade
5 program after January 2009 is inaccurate. On the contrary, the Bullis Board hired legal counsel
6 and had numerous discussions in closed session meetings from January to June 2009 about how
7 to move forward with the middle school program in 2009-2010. Although these conversations
8 are confidential (because they involved legal counsel and/or occurred in closed session), they
9 resulted in Morrison & Foerster, our legal counsel, sending multiple letters to LASD requesting
10 7th grade facilities so Bullis could initiate the middle school program in 2009-2010. Despite those
11 letters, no 7th grade facilities were provided.

12 20. I also understand that Superintendent Justus has said that on February 2, 2009, I
13 told him that Bullis would not be starting a 7th grade in 2009-2010. I did not say this, nor are
14 there any circumstances under which I would I have said this, because at that time, such a
15 statement would have been inaccurate – we were still hoping to start a 7th grade in August 2009.
16 The primary focus of my February 2 meeting with Superintendent Justus was LASD’s proposed
17 parcel tax. He and I discussed a letter he received that day from our lawyers requesting that any
18 parcel tax measure include a provision for full and fair pro rata funding for such a tax to in-
19 District Bullis students. After I met with Superintendent Justus, he sent me an email summarizing
20 what we discussed. There is no mention in that email of any statement by me that we would not
21 be having a 7th grade in 2009. (A true and correct copy of this email is attached hereto as Exhibit
22 1.)

23 21. The LASD’s assertion that they ignored our formal requests for 7th grade facilities
24 because of a statement that I allegedly made is particularly surprising – and disappointing – to me
25 because Bullis made no fewer than 5 formal requests, under Proposition 39, for 7th grade facilities
26 in 2009-2010. Three of these letters came from our lawyers, responding to LASD’s offer of
27 facilities for grades K-6 “*exclusively*” and sent after the purported evidence of our lack of intent
28 to start 7th grade in 2009-2010. At no time did LASD representatives call, email, request to meet,

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or in any way follow-up with me about whether Bullis was serious about its request for 7th grade facilities, or to confirm the statement that they now claim I made to Superintendent Justus. Had they done so, I would have corrected Superintendent Justus' misunderstanding and reaffirmed the request that we made numerous times in writing for 7th grade facilities beginning this year.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12 day of September, 2009, at Los Altos, California.

Wanny Hersey ✓

Exhibit 1

REDACTED

Tim Justus

From: Tim Justus
Sent: Friday, February 06, 2009 2:55 PM
To: Margot
Subject: Re: Update

Everyone is putting a great deal of effort in planning on how we can address these budget problems.

Tim

On 2/6/09 2:43 PM, "Margot Harrigan" <mharrigan@paarc.org> wrote:

Sounds like you had a very busy, but productive week, Tim.
M

Margot Harrigan
Director of Development

American Red Cross
Silicon Valley Chapter
400 Mitchell Lane
Palo Alto, CA 94301
phone: 650 688 0438 (p)
fax: 650 327 4255 (f)
harriganm@usa.redcross.org <<mailto:harriganm@usa.redcross.org>>

From: Tim Justus [<mailto:tjustus@losaltos.k12.ca.us>]
Sent: Friday, February 06, 2009 2:23 PM
To: bcooper@lasdschools.org; mgoines@lasdschools.org; mharrigan@lasdschools.org;
dluskin@lasdschools.org; dpefley@lasdschools.org
Subject: Update

Hi Everyone,

I had my meeting with Wanny this week. We discussed some current issues like parking lot problems, signage, enrollment projections for next year and what's the future look like. The parking lot issues is congestion at dismissal time which I think can be alleviated by some reminders for our Egan staff and parents. The signage issue is about moving the Egan sign from it's current location to next to the gym. Brenda has asked that we do this to alleviate some confusion. BCS is projecting an enrollment of approximately 360 students for next year. Wanny indicated that she does want to eventually have a 7th and 8th grade but is not going to bring that on if it impacts her K-6 program. We agreed to have periodic meetings the rest of the year to discuss the future and how we can work together for the good of the communities students.

EXHIBIT

7
7-21-09

Tim Justus
Superintendent
201 Covington Road • Los Altos, CA • 94024
650-947-1152

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brighter minds make a world of difference

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