

1 ARTURO J. GONZALEZ (BAR NO. 121490)
(AGonzalez@mofocom)
2 SUZANNA PACTH BRICKMAN (BAR NO. 250891)
(SBrickman@mofocom)
3 MAGGIE MAYO (BAR NO. 259685)
(MMayo@mofocom)
4 MORRISON & FOERSTER LLP
425 Market Street
5 San Francisco, California 94105-2482
Telephone: 415.268.7000
6 Facsimile: 415.268.7522

7 Attorneys for Petitioner
BULLIS CHARTER SCHOOL

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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

**SUPPLEMENTAL
DECLARATION OF ARTURO J.
GONZÁLEZ IN SUPPORT OF
BULLIS CHARTER SCHOOL'S
VERIFIED PETITION FOR WRIT
OF MANDATE AND
COMPLAINT FOR
DECLARATORY RELIEF**

Hearing: October 26, 2009
Time: 9:00 a.m.
Dept: 1

The Honorable James P. Kleinberg

Petition Filed: June 10, 2009

1 I, Arturo J. González, declare as follows:

2 1. I am a partner with Morrison & Foerster LLP, counsel for Petitioner Bullis Charter
3 School (“Bullis” or “the Charter School”) in this action. I am licensed to practice law in the
4 United States Supreme Court, the United States Court of Appeals for the Ninth Circuit, and all
5 state and federal courts in California. I have personal knowledge of the facts stated herein and
6 could testify competently to them if called upon to do so.

7 **DISTRICT FILES ERRONEOUS CALCULATIONS FOR CHARTER SCHOOL**

8 2. In the District’s 2009-2010 Proposition 39 Final Offer of Facilities, dated April 1,
9 2009, the District contended that it provided Bullis Charter School with **53,430** square feet of
10 blacktop and **87,310** square feet of turf. (*See* Exhibit A to 2009-2010 Final Offer of Facilities, a
11 true and correct copy of which I attach hereto as Exhibit 1.) Ten days ago, on October 9, the
12 District filed its “sur-reply” papers. The District included drawings by its architect, Lawrence
13 Schadt, which included a drawing of the charter school with measurements nearly matching those
14 in the District’s Final Offer of Facilities. (A true and correct copy of the charter school drawing
15 filed with this Court on October 9, 2009, is attached hereto as Exhibit 2.)

16 3. Last Tuesday, I took the deposition of the District’s architect. Mr. Schadt testified
17 that the numbers in his drawing for the charter school that were filed with this Court are wrong.
18 (Schadt Dep. 25:8-15; true and correct copies of excerpts from Mr. Schadt’s deposition are
19 attached hereto as Exhibit 4.) He testified that the drawing was based on a “very old” survey that
20 does not reflect the design of the charter school. (*Id.* at 23:22-24, 30:12-16, 39:6-21.) He further
21 testified that *before* his erroneous drawing was filed with this Court, he discussed this error with
22 Randy Kenyon, the District’s Assistant Superintendent, and with Donald Velez, the District’s
23 counsel in this case. (*Id.* at 54:17-55:3, 55:15-56:20.) Mr. Schadt testified that after discussing
24 this error with Mr. Kenyon, he prepared a corrected drawing of the charter school and provided
25 that drawing to the District *before* his declaration was filed. (*Id.* at 39:6-21, 40:21-25; a true and
26 correct copy of the corrected drawing is attached hereto as Exhibit 3.) Inexplicably, the District
27 filed the erroneous drawing with this Court, and not the corrected one. (Ex. 2; Schadt Decl. Ex. A
28 at 4.)

1 *excluding the grass*), and **other blacktop.**” (A true and correct copy of this email is attached
2 hereto as Exhibit 9; bold in original; emphasis added.)

3 13. Mr. Schadt testified that after sending his initial measurements to Mr. Kenyon on
4 March 6, 2008, he sent *different* measurements to Mr. Kenyon six days later, on March 12, 2008.
5 (Ex. 4 at 27:14-18, 27:23-28:6.) Those measurements included highlighted numbers that were
6 “recalculated areas per your request.” (A true and correct copy of this email is attached hereto as
7 Exhibit 10; highlighting in email in original.) As a result of the “recalculations,” the blacktop
8 measurements for Santa Rita were reduced by approximately 10,000 square feet. (Ex. 4 at 28:7-
9 15.) Mr. Schadt could not recall why this reduction was made. (*Id.* at 29:13-20.)¹

10 14. During Mr. Schadt’s deposition, I marked as Exhibit 2 a more legible copy of his
11 drawings than that filed with this Court on October 9, 2009. A true and correct copy of those
12 drawings is attached hereto as Exhibit 11. I asked Mr. Schadt about the drawings.

13 15. Mr. Schadt testified that he was not asked to count—and therefore did not count—
14 more than 60,000 square feet of turf at Santa Rita, and a large patch of grass at Gardner Bullis.
15 He failed to count the Gardner Bullis turf because “it was not a sports field.” He also did not
16 count a large part of the baseball field at Covington and space he identified as play area because it
17 was not in the area circled by Mr. Kenyon. (Ex. 4 at 59:1-7; 60:25-61:4, 72:12-16, 72:22-73:14,
18 73:20-22, 74:1-16; 74:24-75:4, 75:16-76:10.) Thus, none of these areas are included in the
19 architectural drawings attached to his declaration and filed with this Court. (True and correct
20 copies of three photographs of Santa Rita and Gardner Bullis that I showed Mr. Schadt at his
21 deposition are attached hereto as Exhibits 12-14; Exhibit 13 is a close-up of the uncounted area.)

22 _____
23 ¹ Before the architect produced these emails, Mr. Kenyon was asked in deposition why the
24 numbers had changed so dramatically in 2008. For example, the District’s measurements for the
25 turf at Almond were reduced from 159,000 square feet in 2007 to 132,000 square feet in 2008.
26 Mr. Kenyon said that he could not recall, but “assumed” that he may have received “more
27 accurate” measurements in 2008. (Kenyon Dep. 102:4-12; true and correct copies of excerpts
28 from Mr. Kenyon’s deposition are attached hereto as Exhibit 20.) When asked who provided him
with measurements in 2008, he said he could not recall “exactly where I got the numbers.” (*Id.* at
102:20-103:3.) He never mentioned Mr. Schadt. At no point during his two sessions of
deposition did Mr. Kenyon mention that he had provided Mr. Schadt with specific directions to
count only limited, specified areas of the comparison schools.

1 16. In deposition, Mr. Schadt also testified that he did not count a large outdoor
2 amphitheatre at Covington and a large cement area near the amphitheatre. He said that it was an
3 “oversight.” (Ex. 4 at 59:1-60:8.) However, Mr. Schadt produced an email dated October 1,
4 2009, where Mr. Kenyon gives him instructions on what part of the Covington campus he should
5 measure. Those instructions do not include the amphitheatre. (*Id.* at 53:1-4; a true and correct
6 copy of this email is attached hereto as Exhibit 15.) In addition, this area is not circled on the
7 drawing that was produced last Thursday by Mr. Kenyon’s counsel. (*See* Ex. 6 at 2.)

8 17. Mr. Schadt also testified that the architectural drawings filed with this Court do not
9 count a significant amount of paved space at Loyola Elementary school because “its concrete, not
10 blacktop.” (Ex. 4 at 63:19-65:17.)

11 **COMPARING BULLIS TO OTHER DISTRICT ELEMENTARY SCHOOLS**

12 18. Mr. Schadt testified that the comparison schools are each substantially larger than
13 the Bullis Charter School site. (*Id.* at 69:21-70:3.) He also testified that the areas in between
14 classroom buildings at the comparison schools are considerably larger than the areas in between
15 the portables at Bullis Charter School. (*Id.* at 60:19-24.) He was not asked to measure those
16 areas. (*Id.* at 59:10-24.) Mr. Schadt also testified that there are substantially more lunch tables at
17 Loyola and Covington than at Bullis Charter School. (*Id.* at 81:10-82:2.) He was not asked to
18 measure the lunch areas either. (*Id.* at 76:7-10.)

19 **THE ARCHITECTURAL FIRM’S WEBSITE**

20 19. Mr. Schadt’s firm includes a number of photographs on its website of the work
21 that they have done on the District’s schools. Mr. Schadt confirmed that many of the spaces on
22 those photographs were not included in the measurements that were attached to his declaration
23 because he was not asked to measure them. For example, with respect to its work at Santa Rita
24 Elementary School, the website states:

25 New interventions include the addition of patios adjacent to each
26 classroom, skylights in the existing walkways, and new rooms
27 added to an existing classroom block. *These interventions*
28 *completely changed the operation, look, and feel of the campus,*
creating a hierarchy of outdoor circulation and social spaces and
expanding teaching space into previously underutilized outdoor
areas.

1 (*Id.* at 61:8-20; a true and correct copy of this document is attached hereto as Exhibit 16
2 [emphasis added].) Mr. Schadt testified that the “social spaces” (patios and walkways) referenced
3 on the website were not measured. (Ex. 4 at 61:25-62:17.) Another part of the website shows
4 large walkways and gathering areas at Santa Rita that were not counted. (*Id.* at 62:20-63:16; a
5 true and correct copy of this document is attached hereto as Exhibit 17.)

6 20. With respect to Loyola Elementary School, the website photos show grassy areas
7 with picnic benches near each classroom. Mr. Schadt testified that he did not count any of those
8 areas either. (Ex. 4 at 63:19-65:17; a true and correct copy of this document is attached hereto as
9 Exhibit 18.)

10 ARCHITECT SITE PLANS

11 21. Mr. Schadt brought to the deposition voluminous documents, including site plans
12 that his firm has filed with the California Division of State Architects for four of the comparison
13 group schools (Santa Rita, Loyola, Gardner, and Almond). He testified that the measurements in
14 those documents are accurate. (Ex. 4 at 67:17-23, 69:12-20.)

15 RESPONSIBILITY FOR “MAJOR MAINTENANCE”

16 22. In deposition, Mr. Kenyon testified that the District charges Bullis Charter School
17 a facilities cost for the multi-purpose room due to plumbing, utilities, and maintenance costs. We
18 pointed out in our reply papers that the multi-purpose room has no plumbing and that the charter
19 school was responsible for paying utilities and maintenance. (Reply Brief at 18-19.)

20 23. In its sur-reply, the District argues that since it is responsible for “major
21 maintenance” of the multi-purpose room, the fee is reasonable. (Sur-reply at 8:28.) Attached
22 hereto as Exhibit 19 is page 7 from the BCS Facilities Use Agreement, which the District relies
23 on. The relevant language in Section 12 states:

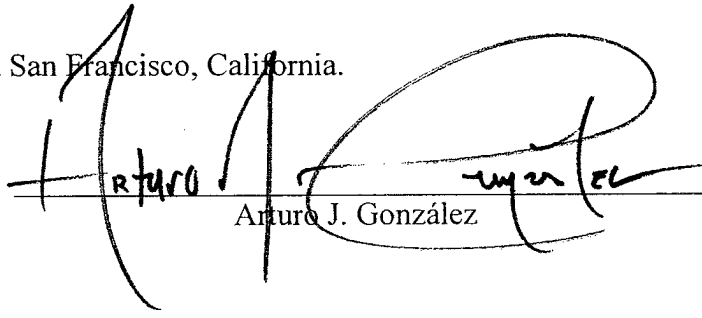
24 *Other than for the multi-purpose building* that may be built
25 pursuant to section 15 of this Agreement, for which the Charter
26 School agrees to assume full cost and responsibility for *all*
maintenance, repair, removal, and clean-up, District shall assume
the cost and responsibility for major maintenance

27 (Emphasis added.) We have never asserted during our lengthy representation of the charter
28 school that the District is responsible for “major maintenance” of the multi-purpose room.

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

Executed this 19th day of October, at San Francisco, California.



Arturo J. González