
From: David Spector [dspector@legaladv.com]
Sent: May 22, 2009 2:33 PM
To: 'Randy Kenyon'; 'Andrea Eyring'; 'Wanny Hersey'
Cc: jyeh@mbdlaw.com; Gonzalez, Arturo J.; Brickman, Suzanna Pacht
Subject: RE: field use

Dear Randy:

BCS finds the current proposed sharing solution for the soccer field area unacceptable. We do not understand the statement that Egan is unable to keep its students off the soccer field at recess and lunch times on Monday, Tuesday and Friday, since you have indicated they can do so on Wednesday and Thursday. If necessary, the District can simply erect a fence with a gate on the Egan side of the field just as it did on the BCS side of the field. We also do not understand the basis for your view that your offer complies with the District's legal obligations.

California Code of Regulations section 11969.9(h)(2) requires a district's facilities offer to include "for shared space, the arrangements for sharing". Section 11969.7(c) states that "Space allocated by the school district to the charter school shall include a portion of shared space where a charter school shares a campus with a school district-operated program." (emphasis added)

The District's preliminary offer of March 18, 2008 that BCS accepted provided that "[t]he turfed area may be used by BCS on an exclusive basis during regular school hours of BCS". This turfed area was identified as 91,410 sq. ft. and included the soccer field area. Egan nonetheless continued to use the soccer field area during regular school hours of BCS, and BCS attempted in good faith to negotiate a specific agreement to share use of the soccer field area with Egan middle school during the 2008-2009 school year at the District's request.

Throughout the school year we have attempted to get Egan scheduling information sufficient to negotiate a specific sharing arrangement for the soccer field, but as you know for many months that information was not provided. We have proposed a number of fair procedures for each school to choose either certain time periods of the day, certain days of the week, or certain months of the year during which each school would have use of the soccer field. By contrast, the response you have given has ignored these proposals but rather has Egan simply selecting all three days of the week it wants to use the soccer field and giving BCS the remaining two. There is no consideration in this process for what days or times are best for the BCS schedule.

A key part of our negotiating difficulty here is the apparent wide difference of opinion as to what the District's legal obligation is concerning the turf area. If we could get closer to common ground on these obligations, I believe we would be better able to negotiate an acceptable agreement.

We have repeatedly stated BCS' view that only a portion of shared space counts toward the square footage the District must provide, since the space at comparison sites is available for exclusive use by those schools. You stated in your April 29 email that your attorney indicated "that under sharing we can still claim the entire SF of the area being shared," regardless of the time allocation offered to the charter school. Can you or your attorney provide any legal basis for that position? Are you saying that 5% use of a field area, 50% use of a field area, and 100% exclusive use of a field area are all reasonably equivalent?

As recently as the end of April we had been discussing sharing the soccer field on an "equal basis". Then, in that same email of April 29, you stated that your attorney indicated the methodology intended in Prop 39 for allocating shared space is to compare the ADA of the charter to that of the district-run program on the shared site (in this case Egan). You indicated that this suggests a 65/35 split because Egan is larger than BCS, which led to your proposal of giving BCS use of the soccer field for just 2 days of Egan's choice. Yet 11969.3(b)(3) requires the District to provide access to "non-teaching station space commensurate with the

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in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools "(emphasis added). What is the legal basis for arguing that the sharing allocations the charter is entitled to vary based upon the ADA of Egan (which the District does not include in the comparison group)?

I am sending this email to our respective attorneys as well in the hopes that if they can collectively clarify the legal framework here, we can work towards an acceptable solution.

Best Regards,
David

From: Randy Kenyon [mailto:rkenyon@losaltos.k12.ca.us]
Sent: Thursday, May 21, 2009 9:37 AM
To: David Spector; Andrea Eyring; Wanny Hersey
Subject: field use

I erred in saying OK to use the soccer field during recess and lunch. Egan students have access to those areas during the times you indicated and, for safety reasons and proper supervision, Egan staff doesn't want the possibility of students commingling.

You have full access to the field all day on Wed, Thurs—so it's not an issue on those days.

Let's resolve the field use issues for next year BEFORE school ends this year. I know how frustrating it has been this year.

Randy Kenyon
Los Altos School District