

June 2, 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 94202

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), in a final effort to seek clarification and corrective action regarding the Los Altos School District's ("District") final offer of facilities, contained in a letter from you to Wanny Hersey, dated April 1, 2009. We have previously sought to resolve our client's concerns (discussed below) in letters to the District dated March 30, 2009, May 6, 2009, and May 22, 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.

In your final offer, you identify facilities that BCS can use during the 2009-2010 school year. As we have previously asserted, we do not believe that the District's facilities offer complies with Proposition 39. Accordingly, we request that you immediately correct the following deficiencies:

First: The District has failed to offer facilities for BCS's seventh grade despite the fact that each communication from BCS to the District pursuant to the regulations has requested seventh grade facilities for the 2009-2010 school year. The District's only justification appears to be alleged off-the-record remarks made outside the Proposition 39 process, which the District purports to support by a newspaper article. *See* Final Offer at 3. The District has no legal authority to rely on such extraneous, hearsay material, to ignore BCS's Proposition 39 facilities request, and to fail to allocate facilities to an entire grade level. The District could have contacted BCS in writing at any time if it needed clarification on the request for 7<sup>th</sup> grade facilities before completing its final offer, but it chose not to do so. In fact, in response to comments District Board members made at one of their public Board meetings,

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BCS reaffirmed its request for seventh grade facilities in writing to the District as recently as March 30, 2009, but the District simply ignored this letter. Uncertainty about what facilities would be provided, and the District's ultimate failure to offer any seventh grade facilities has obviously hampered BCS's desire to offer a seventh grade class for the 2009-2010 school year. Please let us know immediately if the District will honor its obligation to provide BCS with 7th grade facilities for the upcoming 2009-2010 school year.

Since the enrollment process for the 2010-2011 seventh grade class will get underway in earnest this fall, BCS must have clarity now that it will not face a repeat of this non-compliant behavior by the District. Thus, BCS requests that the District immediately provide assurances that it will offer seventh grade facilities that are contiguous and reasonably equivalent to those given to District-run schools for the 2010-2011 school year.

Second: The District does not offer BCS K-6 facilities that are reasonably equivalent to those at District-run schools. On May 6, 2009, we wrote to the District to seek clarification of the District's position that certain non-teaching space facilities requested by BCS "fall outside of those contemplated by the regulation." See Final Offer at 5. We explained that the District's position is unsustainable under the Proposition 39 regulations, which provide a catch-all definition of non-teaching space as "*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, we asked that you provide a listing of *all* space at District-run comparison group schools and that you explain what and why certain space was excluded from the District's analysis. The District did not respond. We now ask that you correct this deficiency by accounting for *all* space at District-run schools and by accommodating BCS students on a contiguous site reasonably equivalent in facilities (including teaching station space, specialized classroom space, and all other non-teaching station space) and size to those provided to comparison District schools.

Third: The District's offer of shared-use turf area is legally deficient.<sup>1</sup> As a preliminary matter, the District fails to specify the terms of sharing upon which the turf area is offered. The regulations specifically require that the District identify all sharing arrangements. Cal. Code Regs., tit. 5 § 11969.9 subd. (h)(2). As you are aware, in the 2008-2009 school year, disagreement about how the turf area would be shared between Egan and BCS prevented the parties from signing a facilities use agreement until May 2009. For most of the school year BCS's right to use the soccer field area was unspecified, and when it attempted to use the area BCS children were at times forced by Egan staff to vacate the field before completing their activities. BCS made several proposals throughout the year to share field use in a fair manner that considered the educational programs of both schools as required by

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<sup>1</sup> On May 22, 2009, we wrote to the District concerning the issue of shared turf area. Over a week has past and BCS has received no response.

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Cal. Code Regs. tit. 5, § 11969.3(b)(3). BCS explained that its program would be least disrupted by sharing the field on a time of day basis, but this was rejected out of hand based upon Egan's preferences. BCS then suggested numerous additional ways to establish time allocations taking the needs of both schools into account (e.g., 50/50 split by alternate picking of months or weeks on the calendar, or a 60/40 split by days of the week, allowing the party with 40% use to choose the days on which it has exclusive use). As a result of the District's failure to implement any fair process for allocating use of the soccer field, BCS's use was limited and uncertain until May 14, 2009. On that day the District assigned BCS use of the soccer field area on Wednesdays and Thursdays only for the remaining weeks of the school year, based solely on Egan's scheduling needs and with no consideration of any disruption to BCS's educational program. The District must provide specific information about how it proposes to share any space it offers for shared use in a manner that will be compliant with Proposition 39.

Moreover, the District inappropriately accounts for the entire shared use space in its reasonable equivalency analysis (and charges BCS rent for the entire square footage), notwithstanding the fact that BCS does not have full use of it and that to the best of our knowledge no comparison group school is required to share its turf area or outdoor space during school hours. In the past, the District has made blanket assertions that it "can still claim the entire [square footage] of the area being shared" and that Egan is entitled to a greater time allocation of shared turf area because its student body is larger than that of BCS. Neither argument is sustainable. The District must account for the shared nature of the turf area in its reasonable equivalency analysis.

Fourth: the District purports to "offer" BCS the multi-purpose room that BCS already owns. This is improper. Under Proposition 39, the District must provide BCS with "public school facilities." BCS built its own multi-purpose room precisely because the District refused to provide an adequate facility that was reasonably equivalent to those at District-run schools. The District may not now attempt to satisfy its Proposition 39 obligations by "offering" a facility BCS had to pay for to make up for the unlawful shortcomings of the District's past offers. Moreover, the District may not charge BCS a pro rata share of facilities costs for the multi-purpose room, as the Final Offer attempts to do.

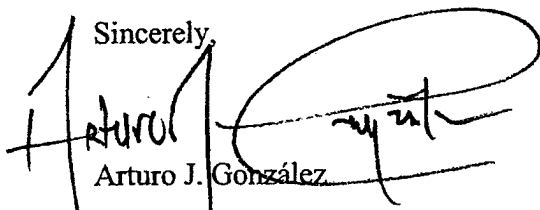
Fifth: The District "conditions" its offer of facilities upon BCS and the District's agreeing to a facilities agreement for 2008-2009 no later than May 1, 2009 and upon the parties' agreeing to a facilities agreement for 2009-2010 before BCS may occupy the space in August. *See* Final Offer at 10. These "conditions" on the District's offer of facilities are inappropriate and not permitted under Proposition 39 and its implementing regulations. The District has an unequivocal legal obligation to provide BCS with facilities pursuant to Proposition 39 and its implementing regulations. The District cannot escape its obligations by including all-or-nothing conditions on the provision of facilities, particularly when such

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“conditions” relate to events that are not wholly within BCS’s control and for which the regulations set no deadlines (such as the negotiation of a facilities agreement pursuant to Cal. Code Regs. tit. 5, § 11969.9(k)). Contrary to the District’s assertion in its final offer, section 11969.9(h)(5) does not allow the District the opportunity to revoke entirely its Proposition 39-mandated facilities offer. Proposition 39 and its implementing regulations plainly make clear that this type of condition “pertaining to the space” is neither contemplated nor permissible.

We have made repeated efforts to engage in productive dialogue with the District about the 2009-2010 facilities offer, but thus far our efforts have been futile. We now ask that you respond to this letter no later than Tuesday, June 9, 2009 so BCS can know how best to proceed. Time is of the essence, especially with BCS’s desire to begin a seventh grade program. Unless the District takes corrective measures, BCS will have no choice but to seek judicial intervention.

Sincerely,



Arturo J. González

cc: John Yeh, Esq.  
Bullis Charter School Board of Directors



To:

NAME:	FACSIMILE:	TELEPHONE:
Tim Justus Los Altos School District	650.947.0118	650.947.1150
cc: John R. Yeh Miller Brown & Dannis	415.543.4384	415.543.4111

FROM: Arturo J. Gonzalez      DATE: June 2, 2009

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