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71 Stevenson Street, 19th Floor
San Francisco, CA 94105

Tel: 415-543-4111
Fax: 415-543-4384

SF FAX CENTER

TO: *29B* Arturo J. Gonzalez, Esa. **TEL:** 415-268-7000 **FAX:** 415-268-7522

FROM: John R. Yeh **DATE:** June 9, 2009

OUR FILE: *Los Altos School District/Bullis Charter School*

MATTER: 4530.1(408)

RE: RESPONSE TO June 2, 2009 LETTER

Total pages sent including cover page: 4

REMARKS:

Please see attached correspondence.

Hard copy _____ will _____ will not follow by mail.

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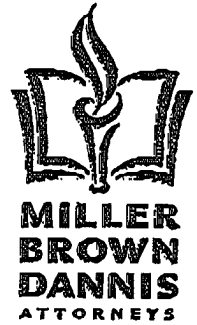
SAN FRANCISCO

LONG BEACH

SAN DIEGO

JOHN R. YEH
ATTORNEY AT LAW
jyeh@mbdlaw.com

SAN FRANCISCO



VIA FACSIMILE

June 9, 2008

Arturo J. Gonzalez, Esq.
Suzanna Pacht Brickman, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

Re: *Los Altos School District/Bullis Charter School*
Our File No.: 4530-10408

Dear Counsel:

This letter responds to your letter of June 2, 2009.

There is no indication that BCS is actually intending to add 7th grade for 2009-2010. Under the Proposition 39 regulations (5 C.C.R. section 11969.3(a)(2)), the comparison group schools "shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested." BCS cannot obtain an allocation of classroom space above and beyond the teaching-station to ADA ratio provided by Proposition 39 by demanding facilities for a grade level it does not intend to offer. BCS's tactic appears to be to demand facilities for 7th grade in an attempt to obtain space in excess of the teaching-station to ADA ratio provided by Proposition 39 to counter the effect of its non-District population, for which the District is not obligated to provide facilities. However, BCS's attempt amounts to nothing more than an attempt to game the Proposition 39 regulations in an attempt to squeeze an additional allocation of space from the District.

As the District's April 1, 2009 Final Offer of Facilities notes, the District's allocation of facilities meets the teaching station to ADA ratio both under BCS's ADA projections, and the District's counter projection. (Final Offer, p. 6, and Exhibit C). Therefore, BCS's argument exalts form over substance.

SAN FRANCISCO

71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH

301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO

750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

Arturo J. Gonzalez, Esq.
Suzanna Pacht Brickman, Esq.
June 9, 2009
Page 2

Since the process for requesting facilities for the 2010-2011 school year begins with BCS's request for facilities, which it must submit no later than November 1, 2009, the District is in no position to make any assurances regarding its facilities allocation for that school year.

We address the questions raised in your letter of May 6, 2009, regarding the disparity you perceive between the acreage of the comparison group schools and the square footage of the teaching, non-teaching and specialized space at those school sites. The District has reviewed the "Size and Condition" analysis attached to the District's Preliminary Offer, as well as the "Capacity" analysis in the Final Offer.

It does not appear that a comparison between site acreage and facility square footage at the comparison group schools is apt. The acreage of each site is a function of its total square footage as delineated by the perimeter and boundaries of the school site. By contrast, the total square footage of the teaching, non-teaching and specialized space at each site correlates to the square footage of functional, reasonably equivalent facilities, such as classroom space, specialized teaching space, playing fields and other play areas. Therefore, the square footage of space not included in the functional areas of the site – such as walkways, parking lot, foliage, and space between buildings – would be mutually exclusive from, and therefore not included, in the functional space. We believe that this accounts for the difference in the square footage of each site as defined by its acreage, and the square footage of the reasonable equivalent facilities.

Your June 2, 2009 letter also states that the District did not further explain its statement that BCS was demanding non-teaching space "outside of those contemplated by the regulation." We think that the District's April 1, 2009 Final Offer explains this statement sufficiently:

Mr. Gonzalez's correspondence enumerates facilities that BCS asserts the District was obligated pursuant to 5 C.C.R. section 11969.3(b)(3), but failed, to offer. Section 11969.3(b)(3) provides as examples of nonteaching station space "administrative space, kitchen, multi-purpose room, and play area space." However, Mr. Gonzalez's letter points to facilities that BCS believes it is entitled to, but that fall outside of those contemplated by the regulation, including a parent-teacher association room; before and after-school care facilities; covered walkways; concrete or blacktop in lunch area "as opposed to dirt (which turns into mud when it rains)"; and "[o]ther non-teaching space available [at comparison] schools," such as an amphitheater, etc. (Final Offer, p. 5)

Arturo J. Gonzalez, Esq.
Suzanna Pacht Brickman, Esq.
June 9, 2009
Page 3

We also direct your attention to the "Reasonable Equivalence" analysis attached as Exhibit C to the District's April 1, 2009 Final Offer, which lists the non-teaching space and square footage at each of the comparison group sites.

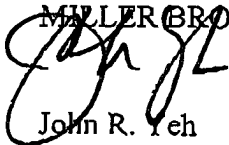
BCS also disputes the District's allocation of the turfed area to the charter school. However, the District's "Reasonable Equivalence" analysis attached as Exhibit C to the District's April 1, 2009 Final Offer clearly demonstrates that BCS's allocation of 87,310 square feet of turfed area is in excess of the 83,222 square feet as calculated with reference to the comparison group schools. 5 C.C.R. 11969.3(b)(3) also expressly contemplates that the allocation of non-teaching space shall be "commensurate" with its in-District ADA, and provides that the parties shall "establish time allocations and schedules so that educational programs of the charter school and school district are least disrupted." Therefore, the regulations require that the District allocate non-teaching space to the charter school commensurate with its in-District ADA and in a manner that does not disrupt existing schedules. This provision allows the District to allocate non-teaching space according to the charter school's commensurate in-District ADA with reference to the ADA of the shared site.

The District has never purported to "offer" the multi-use room to BCS. The Final offer clearly indicates that the multi-use room was "[b]uilt at BCS expense." (Final Offer, p. 9, n. 4).

Lastly, the Proposition 39 regulations clearly allow the District to impose "conditions pertaining to the space." (5 C.C.R. 11969.9(h)(5)) However, the District considers this condition to have been met as we understand that BCS's board has approved the facilities agreement.

Very truly yours,

MILLER BROWN & DANNIS



John R. Yeh

JRY/jh