

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
191 N. First Street  
San Jose, CA 95113-1090

TO: Paul C. Minney  
Young Miney & Corr, LLP  
701 University Avenue Suite 150  
Sacramento, CA 95825

RE: Los Altos School District, et al vs Bullis Charter School  
Case Nbr: 1-13-CV-245000

PROOF OF SERVICE

Proposed Statement of Decision

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

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Parties/Attorneys of Record:

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 9/4/13. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Mary Chaney, Deputy

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**FILED**

SEP 4 2013

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY MARY CHANEY DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

LOS ALTOS SCHOOL DISTRICT; BOARD OF TRUSTEES OF THE LOS ALTOS SCHOOL DISTRICT; JEFFREY BAIER, in his capacity as District Superintendent,

Plaintiffs,

v.

BULLIS CHARTER SCHOOL, and DOES 1-100,

Defendants

THE BULLIS-PURISSIMA ELEMENTARY SCHOOL d/b/a BULLIS CHARTER SCHOOL,

Petitioner,

LOS ALTOS SCHOOL DISTRICT; BOARD OF TRUSTEES OF THE LOS ALTOS SCHOOL DISTRICT; JEFFREY BAIER, in his capacity as District Superintendent,

Respondents.

Case Nos. 1-13-CV-245000  
and 1-13-CV-245575 (coordinated)

**PROPOSED STATEMENT OF  
DECISION**

Pursuant to California Rules of Court, Rule 3.1590(c)(1), the following tentative decision is the Court's proposed Statement of Decision, subject to a party's objection under subdivision

1 (d).

2 If there is no timely objection by any of the parties, the Court intends to file the tentative  
3 decision as a Statement of Decision within twenty (20) days of service of this amended tentative  
4 decision.

5 **I. PROCEDURAL BACKGROUND.**

6 Although there is a long history of litigation between the parties, these two cases, which  
7 were consolidated by stipulation on May 31, 2013, arose after the Los Altos School District  
8 (“LASD” or “the District”) passed Resolution 12/13-18 to respond to a Request for Proposal  
9 (“RFP”) to purchase a possible site for Bullis Charter School (“BCS”) located within the City of  
10 Sunnyvale and beyond the geographical limits of LASD.

11 When LASD could not obtain what it considered a satisfactory reply from BCS on the  
12 legality of the proposal, it filed Action No. 1-13-CV-245000 on April 19, 2013, seeking  
13 declaratory relief. Eleven days later, BCS filed for a writ of mandate to set aside LASD’s  
14 Resolution 12/13-18 and prohibit the District from proceeding with the potential purchase.

15 **II. GENERAL LEGAL FRAMEWORK AND HISTORY.**

16 In the District’s complaint for declaratory relief, filed on April 19, 2013, after outlining  
17 some of the history between the parties, LASD, in paragraph 20, asserts, “Regardless of whether  
18 the District acquires the Raynor property [Sunnyvale], it is important to the interests and in the  
19 interest of the tax-paying public to have clarity and certainty regarding whether the facilities law  
20 permits the District to meet its obligations by locating the charter school outside the District  
21 boundaries.”

22 After reciting that an actual controversy exists in paragraph 23, the District states in  
23 paragraph 24, “LASD seeks a declaration on behalf of itself and the general public that section  
24 11969.6 of Title 5 of the California Code of Regulations allows the District to meet its  
25 obligations under Proposition 39 by offering facilities to the charter school at the Raynor  
26 property or another site located outside District boundaries.” (emphasis added.)

27 In BCS’s verified petition for a writ of mandate filed on April 30, 2013, BCS alleges in  
28 paragraph 4, “LASD’s latest attempt to disadvantage the in-district students who chose to attend

1 Bullis is an attempt to purchase property far outside the District’s geographical boundaries and to  
2 forcibly relocate Bullis there against its will. LASD adopted a resolution directing its staff and  
3 attorneys to respond to the City of Sunnyvale’s request for a proposal for the sale, redevelopment  
4 and use of the Raynor activity center located at 1500 Partridge Avenue in the City of Sunnyvale  
5 (the Raynor property). Not only is the proposed school site outside the school district’s  
6 boundaries, but it is *two school districts away*.”

7 The writ petition in paragraph 5 points out that Education Code § 35271(a) strictly limits  
8 school district’s acquisition of property outside its boundaries only to “sites immediately  
9 adjacent to the school sites of the District within its boundaries. ... Such sites become part of the  
10 District upon its acquisition, so the District only owns sites within its boundaries.” (Ed. Code §  
11 17217.) The charging allegation goes on to assert, “As explained by the California Attorney  
12 General, this statute means that a school district may not establish a school outside its boundaries  
13 on a site that is not immediately adjacent to a school site within its boundaries.”

14 In its prayer for relief, BCS requests the Court “set aside the resolution of the Board of  
15 Trustees of Los Altos School District authorizing the District staff to respond to a request for a  
16 proposal issued by the City of Sunnyvale ... as a possible site for Bullis Charter School ...” and  
17 further order the District to “... comply with their duties under California law governing the  
18 purchase of real property by school districts; ...” and “exercise continuing jurisdiction over this  
19 action to ensure that Respondents comply with the writ of mandate; ...” (emphasis added.)

20 Both parties seek attorneys’ fees under Code of Civil Procedure § 1021.5.

### 21 **III. GENERAL FACTUAL HISTORY.**

22 The parties generally agree on the following history:

- 23 1. Bullis Charter School was established on September 3, 2003 when it was chartered by  
24 the Santa Clara County Board of Education effective October 18, 2003.<sup>1</sup>
- 25 2. As a public charter school, Bullis is part of the California public school system.

26  
27 <sup>1</sup> The District apparently refused twice to charter BCS. As a result, BCS appealed to the Santa  
28 Clara County Board of Education for its charter document.

- 1           3. Education Code § 47614 and its implementing regulations (California Code of  
2 Regulations Title 5, Section 11969.1, et seq.), commonly known as Proposition 39,  
3 require a school district to make available to a charter school facilities sufficient to  
4 accommodate all of the charter schools in-district students in conditions of  
5 “reasonable equivalency” to those of the District students.
- 6           4. Since the formation of BCS, there has been protracted litigation between BCS and the  
7 District.<sup>2</sup>
- 8           5. Over time, the enrollment in both the District schools and Bullis have increased. At  
9 the present time, BCS intends to grow to 900 students and the District anticipated  
10 more than 4,500 students. The increasing enrollment presents a challenge to both  
11 entities.<sup>3</sup>
- 12           6. The major contention in this case is the District’s assertion that section 11969.6 of  
13 Title 5 of the California Code of Regulations, implementing Proposition 39, allow a  
14 school district to “... satisfy the requirements of Education Code § 47614 by  
15 providing facilities that are located outside the school district’s boundaries.”  
16 Conversely, BCS insists that, “because Bullis Charter School was approved by a  
17 County Office of Education on appeal, after being denied by the governing board of  
18 the school district, Bullis Charter School may locate only within the geographical  
19 boundaries of Los Altos School District because a charter petition approved on appeal  
20 is subject to the same geographic and site limitations to which it would otherwise be  
21 subject if it received approval from the District to which it originally submitted its  
22 petition.”

23  
24  
25 <sup>2</sup> See Sixth District Court of Appeal opinion entitled *Bulls Charter School v. Los Altos School*  
26 *District* filed on October 27, 2011, 200 Cal.App.4th 1022. Also see Case No. 1-13-CV-245684  
27 where the Honorable Mark H. Pierce on June 24, 2013 found that LASD had not abused its  
discretion in its offer of facilities to Bullis and denied Bullis’s request for a preemptory writ.  
What other litigation the parties may have engaged in is not clear to this Court.

28 <sup>3</sup> See June 11, 2013 Declaration of Superintendent Jeffery Baier.

1  
2 **IV. LEGAL ISSUES PRESENTED.**

3 Pursuant to a stipulation executed on May 31, 2013 (page 3, paragraph 3, at lines 13-17),  
4 the parties agreed to bifurcate and coordinate cases 1-13-CV-245000 and 1-13-CV-245575:

5 “The parties agree that the matter be bifurcated so that the court will  
6 hear the issues in the following order: (1) whether the District may  
7 acquire a school site outside of its boundaries without first complying  
8 with either Education Code § 17217 or 35261; and, if necessary  
9 (2) whether the District may offer a site outside its boundaries to BCS  
10 under Proposition 39 and section 11969.6 of Title 5 of the California  
11 Code of Regulations.”

12 **V. ANALYSIS.**

13 **LEGAL QUESTIONS**

- 14 1) Whether district may acquire site outside of its boundaries without  
15 complying with 17217 or 35261.  
16 2) Whether District may offer a site outside of its boundaries to BCS under  
17 Proposition 39 and Section 11969.6 of title 5 of the Code of Regulations.

18 **The “Contiguous” Requirement: Property Outside the School District Must Be Contiguous**

19 The furthest point that a public school property can be located is one contiguous to the  
20 school district. This requirement for acquiring contiguous property by the school district is  
21 satisfied when a property is “separated from the boundaries of the district by a road, street,  
22 stream, or other natural or artificial barrier or right-of-way.” Ca. Ed. Code, § 17217. School  
23 districts must comply with this requirement when purchasing or acquiring property; Education  
24 Code section 35271.<sup>4</sup>

25 The “Contiguous” requirement has been applied in two ways. The first application works  
26 under the premise that a school site should be set up at a single location or campus. If all

27  
28 <sup>4</sup> If purchase of property outside the school district meets all the proper statutory requirements,  
the property belongs to and is governed by the school district. Ca. Ed. Code, § 17217(a).

1 students cannot be accommodated at one location, then facilities to accommodate students must  
2 be adjacent to each other. Cal. Code Regs. tit. 5, § 11969.2. The intent of this provision is to  
3 promote public safety for school students and to not bias the educational opportunities and  
4 experience of charter school students from their in-district public school equals. It would unduly  
5 burden students if they had to travel to different facilities that were spread out across the entire  
6 school district.

7 The second application of “contiguous” clearly requires a school district purchasing or  
8 “acquir[ing] property to limit itself to property immediately adjacent to the district border and  
9 separated only by road, street, stream...” Ca. Ed. Code, § 17217.

10 To relocate the Bullis Charter School the Los Altos School District must strictly adhere to  
11 all of the requirements in California Education Code section 17217. This section provides the  
12 manner and conditions the school district must comply with in acquiring new school property.

13 This code section also requires the following be considered:

14 (1) The proposed site acquisition will not promote racial or ethnic discrimination or  
15 segregation.

16 (2) The proposed site acquisition will not result in any substantial increase in costs to  
17 the state.

18 (3) The proposed site acquisition will not significantly disrupt the educational  
19 programs in the school districts affected by the proposed site acquisition and will  
20 continue to promote sound education performance in those school districts.

21 (4) The proposed site acquisition will not result in a significant increase in school  
22 housing costs.

### 23 **How Proposition 39 Affects Relocation Efforts**

24 The school district must provide charter students with conditions *reasonably equivalent*  
25 to those of other public school students [emphasis added]. *Bullis Charter School v. Los Altos*  
26 *School Dist*, 200 Cal.App.4th 296, 1039 (2011). Proposition 39 amended Education Code  
27 section 47614 which reads, “the school district shall make reasonable efforts to provide the  
28 charter school with facilities near to where the charter school wishes to locate, and shall not  
move the charter school unnecessarily.” *Ridgecrest Charter School v. Sierra Sands Unified*

1 *School Dist*, 130 Cal.App.4th at 993-94. Despite the fact that in the present case, it is the school  
2 district and not the charter school that wishes to change location, the school district must still  
3 demonstrate that reasonable efforts were made to provide facilities where Bullis wishes to locate  
4 and that this relocation effort is in fact necessary.

5 Section 11969.6 of title 5 of the Code of Regulations does not apply to the issue before  
6 the Court. What this section says is that location requirements are subject to Education Code  
7 sections 47605 and 47605.1. Both of these code sections serve as an outline for how to petition  
8 for the establishment of a charter school and where one can be established. The Court finds this  
9 sections therefore inapplicable to the current issue of relocating an already established charter  
10 school.

11 California Education Code section 47605(a)(1)(B)(5) allows a charter school to establish  
12 one location outside the boundaries of the school district but within the same county. Where Ca.  
13 Ed. Code §47605(a)(1)(B)(4) and (B)(5) would apply, is when a charter school (not the school  
14 district) proposes to add additional locations for operation and where one of these locations is  
15 outside the boundary of the school district. *Id.* Essentially, the school district does not have the  
16 capacity to offer an additional site outside the boundaries of the school district because this  
17 power remains with the charter school in its petition for charter or to operate its charter at  
18 multiple locations. (emphasis added) The other code section, 47605.1 affirms what is already  
19 known, that a charter school “may establish charter school operations only within the  
20 geographical boundaries of the county in which that county board of education has jurisdiction.”  
21 Ed. Code, § 47605.1 (f) Therefore, the Court finds this code section irrelevant to the issue of  
22 relocation.

23 Los Altos School District erroneously cites to Education Code 35160 in an attempt to  
24 demonstrate why the school district has the power to move the location of the Bullis Charter. The  
25 code says: “On and after January 1, 1976, the governing board of any school district may initiate  
26 and carry on any program, activity, or may otherwise act in any manner which is not in conflict  
27 with or inconsistent with, or preempted by, any law and which is not in conflict with the  
28 purposes for which school districts are established. Ed. Code, § 35160. Since the education code



1 provides requirements for acquiring property in §17217 including the specific “contiguous”  
2 requirement for property outside the school district, section 35160 should not apply. While the  
3 Court understands that section 35160 gives broad power to the governing board of a school  
4 district, it is very clear that section 17217 outlines in detail the proper manner of acquiring a  
5 school site. As always, the specific statute controls the general powers.

6 **VI. RULING ON LEGAL ISSUES PRESENTED.**

7 **Question 1: Whether district may acquire site outside of its boundaries without**  
8 **complying with 17217 or 35261.**

9 **Answer to Q1:** The District must comply with Ed. Code §§ 17217 and 35261 in  
10 acquiring property.

11 **Question 2: Whether District may offer a site outside of its boundaries to BCS**  
12 **under Proposition 39 and Section 11969.6 of title 5 of the Code of Regulations.**

13 **Answer to Q2:** The District may offer a site outside its boundaries to a charter school  
14 under Proposition 39 only if the charter school requests such a site and only if that request is in  
15 conformity to the school’s charter.


16 **VII. DISPOSITION.**

17 The Court has been advised by the parties that the City of Sunnyvale elected to proceed  
18 with the sale of the Raynor property to another buyer. As a result, the writ petition Action No. 1-  
19 13-CV-245575 is moot and ordered dismissed.

20 The declaration of declaratory relief sought by LASD in Action No. 1-13-CV-245000 is  
21 DENIED.

22 As there is no prevailing party, the litigants are to bear their own costs and attorneys’  
23 fees.

24  
25 Dated: Sept. 4, 2013

26   
27 THE HON. FRANKLIN E. BONDONNO  
28 Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
191 N. First Street  
San Jose, CA 95113-10

**FILED**

SEP 4 2013

TO: FILE COPY

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY: *Mary Chaney*  
MARY CHANEY, DEPUTY

RE: Los Altos School District, et al vs Bullis Charter School  
Case Nbr: 1-13-CV-245000

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