



September 10, 2019

Santa Clara County Board of Education
Mary Ann Dewan, Ph.D., County Superintendent of Schools
1290 Ridder Park Drive
San Jose, CA 95131

Re: Los Altos School District
Bullis Charter School

Dear Dr. Dewan and Santa Clara County Board of Education:

The Los Altos School District Board (“LASD” or “Board”) sends this correspondence seeking significant steps to end the longstanding **discrimination** at Bullis Charter School (“BCS”) and ensure equitable access to *all* students. Not only has BCS fostered **discriminatory** impacts since it initiated its program nearly 15 years ago, it now intends to give enrollment priority to students who reside in the wealthiest and least socioeconomically diverse area within LASD (the “**Exclusionary Los Altos Hills Preference**”). Based upon the information presented below it is long past time for you, as the BCS authorizer, to act. Both the Santa Clara County Board of Education (“SCCBOE”) and the County Superintendent must take the requisite steps to **protect** our public education system. To meet these obligations, the Board asks that you, among other things, take the following actions:

- Reject the Exclusionary Los Altos Hills Preference;
- Develop a comprehensive **desegregation** plan designed to ensure a student population that mirrors the demographics within the LASD boundaries;
- Ensure that the **desegregation** plan include: transparent lottery conducted by the Santa Clara County Office of Education (“SCCOE”) staff, priority preference for free and reduced lunch students, English Language Learners (“ELL”), special needs students and other underrepresented students, and restricted growth until such time as the discrimination is corrected;
- Hold BCS accountable to the requirements of a school operating in the public school system.

Board of Trustees

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As you know, BCS's failure to serve a student population that reflects the demographics within the LASD boundaries has long been a concern for LASD, its parents, and the community at large – a concern that has been voiced for many years including at the SCCBOE meetings. In fact, the SCCBOE recognized BCS's continuing failure to meet this statutory requirement (Ed. Code, § 47605(b)(5)(G)) when it considered the most recent renewal of its charter for another term.

When BCS sought the approval of the LASD to operate a charter school in the district, LASD rejected the application, believing that a charter school would do little more than divide an educational community that was serving well *all* public school students in the District. The SCCBOE nonetheless approved the charter and SCCBOE and its Office of Education thus assumed the responsibility to ensure BCS would deliver educational services in alignment with current educational expectations and at the same time would not implement policies that **discriminate** against students, or effectuate policies that create a **discriminatory** disparate impact against vulnerable students.

LASD's worst fears have been realized. BCS has engaged in systematic **discrimination** throughout its fifteen plus years of existence, and SCCBOE/SCCOE has throughout done little to fulfill its mandatory duty to restrain the long running **discrimination** at BCS. The combination of BCS's **discrimination** and SCCBOE/SCCOE's neglect has not only harmed students but produced ever increasing adverse financial impacts on LASD, and is tearing apart a community that has an exceptional commitment to the highest quality public education yet whose laudable aspirations are stymied by an unregulated, divisive and **discriminatory** charter school.

The straw that threatens to break the camel's back, and that prompts this letter, is BCS's recently announced proposal to *reinstate* a **discriminatory** admissions preference that gives priority to students who reside in the wealthiest and least socioeconomically diverse area within LASD (the "Exclusionary Los Altos Hills Preference"). This **discrimination** coupled with unregulated charter school student enrollment growth results in a negative fiscal impact to the district, threatens to force cuts to district staffing, educational programs and class sizes, and erodes opportunities for students in our traditional neighborhood public schools. This "two-tier" educational system is a disservice to taxpayers who fund our schools and an injustice to the students in our neighborhoods.

Six years ago, LASD brought a court action to seek a judicial declaration regarding the illegality of BCS's **discriminatory** practices. At this time, several SCCBOE trustees expressed concern about BCS's practices and whether they should preclude renewal of BCS's charter. Trustee Anna Song noted in a formal communication to the BCS Board, "BCS has performed abysmally in serving socioeconomically disadvantaged students." Joe DiSalvo, another SCCBOE trustee, stated at an April 3, 2013 board meeting, "I don't want to be too melodramatic here but I'm thinking there's an emerging board majority that

would not renew what you have." (See <https://www.sccoe.org/countyboard/Pages/2012-13.aspx>). He added, "I feel like my vote furthered a divide in an exceptional community in California, the United States and the world." (*Id.*) Michael Chang, another trustee, stated at the April 3, 2013 meeting, "we would like to see more ethnic and income diversity in your student population and that we made the point that we were looking for outcomes not your outreach efforts ..." (*Id.*)

As the concerns over discriminatory policies and practices mounted, BCS avoided further scrutiny by entering a settlement of LASD's action in which BCS pledged to be more inclusionary. Yet, over the six years that has followed that settlement, BCS has become even more discriminatory in the population it has enrolled. BCS now seeks to literally turn back the clock to reinstate a discriminatory preference for families that reside in an area that is among the wealthiest 0.0001% of the entire state of California. SCCBOE/SCCOE must act to not only reject that proposal but to take further action that brings BCS into compliance with law.

A. The Law Prohibits Policies/Systems That Produce Discriminatory Impacts

Access to public education is a fundamental right afforded the highest levels of protection under California law. (*Serrano v. Priest* (1971) 5 Cal.3d 584 ("*Serrano I*") ["the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'"]; *Serrano v. Priest* (1976) 18 Cal.3d 728, 766 [affirming *Serrano I* and applying strict scrutiny to examining discriminatory school financing system].)

Accordingly, California law forbids any charter school provisions, practices, rules or other systems that result in a disproportionate impact on a protected group. (*Serrano I*, 5 Cal.3d at p. 589 [striking down the state's school funding system as unconstitutional due to its disparate impact upon socioeconomically disadvantaged students]; *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 296 [schools are "not constitutionally free to adopt any facially neutral policy it chooses, oblivious to such policy's actual differential impact on the minority children in its schools"]; *Griggs v. Duke Power Company* (1971) 401 U.S. 424 [an admissions scheme that is on its face arguably neutral is discriminatory if it has a disparate impact on a protected group].)

Despite this controlling law, County Superintendent Dr. Mary Ann Dewan recently responded to concerns raised by Eric Shiu, an LASD parent, by stating:

Bullis is required to conduct any admissions lottery in accordance with the preferences as set forth in its charter and cannot deviate from those approved preferences, including by adding additional preferences, without processing a request for a material revision to its charter. Neither the community nor SCCBOE can unilaterally impose additional preference requirements in the middle of Bullis' charter term. If you would like to

recommend that Bullis change or add to its admission preferences, those suggestions should be recommended to Bullis, and the charter school could seek such changes if it chooses.

The response reflects an alarming misunderstanding of the SCCBOE's/SCCOE's role in charter school oversight. The statement that "Bullis is required to conduct any admissions lottery in accordance with the preferences set forth in its charter and cannot deviate from the approved preferences" serves to reinforce discrimination, rather than seek to correct it. This stated policy, together with approval of the admissions provisions and the failure to take any corrective action, makes the SCCOE and SCCBOE complicit in the discrimination.

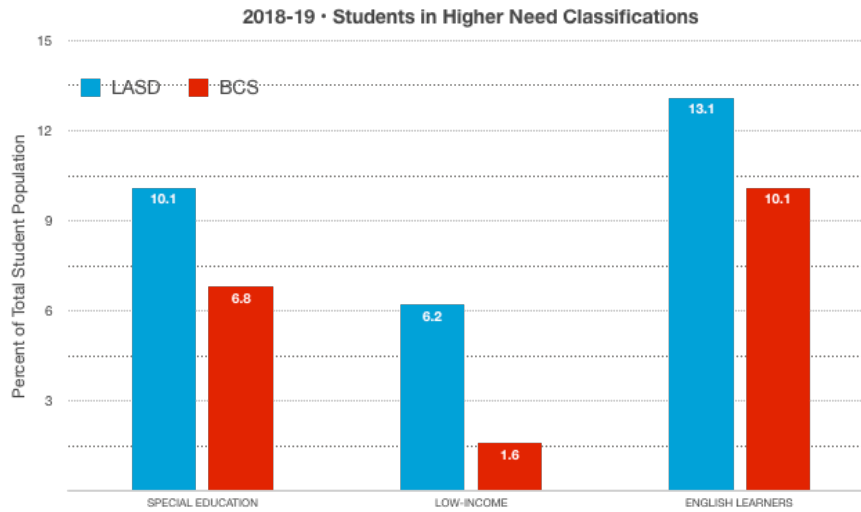
Contrary to Dr. Dewan's statement, BCS and the SCCOE/SCCBOE must ensure that BCS: (1) complies with its duty to ensure that the racial and ethnic balance of its pupils is reflective of the general population residing within LASD boundaries (Ed. Code, § 47605(b)(5)(G); Charter, p. 23); and (2) does not take any action that adversely affects protected groups of students (Cal. Const. art. I § 7; Ed. Code, § 200 et seq.)

B. Bullis Continues To Underserve Marginalized Pupils

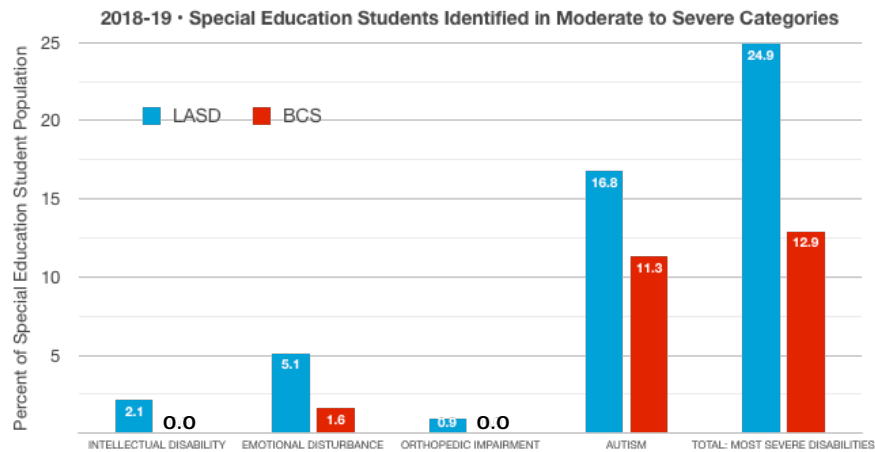
It is the requirement and the responsibility of public schools in the State of California to serve all students.

Publicly-available data from the California Department of Education shows the discriminatory/disparate impact on protected classes of students through BCS's practices. In 2018, 6.2% of LASD's students were identified as socioeconomically disadvantaged, whereas only 1.6% of BCS's pupil population was identified as the same. Similarly, in 2018, the District's English learner population was 13.1%, whereas BCS lagged again at 10.1%. BCS's stated intention to invoke a preference for students residing within the Los Altos Hills – a zip code recognized as one of the wealthiest in the country – will only serve to exacerbate the now longstanding discriminatory impact upon these protected classes of students.

BCS's underservice of students with disabilities – particularly those whose disabilities tend to require more resources to serve – is notably stark. During the seven (7) years from 2012-13 through 2018-19, LASD's enrollment of special education pupils has averaged 9.5% of its pupils, whereas BCS averaged only 5.6% of its students.



Equally troubling, BCS’s underservice of students with disabilities is compounded by the types of pupils it serves. Some disabilities require more educational resources than others – for example, Speech Language Impairment (“SLI”) and Specific Learning Disability (“SLD”) typically require less resources than Intellectual Disabilities, Emotional Disturbance, or Orthopedic Impairment. While LASD’s ratio of SLI/SLD students (i.e., lower cost special education students) has fallen significantly, BCS continues to maintain a high ratio of such students. BCS consistently enrolls a *far* lower ratio of high cost special education students than LASD:



The data reflects that not only has BCS underserved students with disabilities when compared to LASD, but it has evaded its obligation to serve the full spectrum of disabilities and abrogated its responsibility to educate those pupils who need the most intensive care. The data as well as the information from parents who have had their special needs students turned away from BCS confirm that **discrimination** is occurring. What has developed is a charter school, ostensibly required to be part of the public school system, serving a narrow student population and failing to serve all pupils in the community – this is not what the law intended. (*Wilson v. State Bd. of Educ.* (1999) 75

Cal.App.4th 1125, 1137 [“the establishment of charter schools does not create a dual system of public schools”].)

C. BCS’s Discrimination and Resulting Segregation Mirrors a Disturbing Statewide Trend Among California’s Charter Schools.

As a recent study documented and summarized:

“It’s clear, **there is a high cost to California school districts as a result of how unequally charter schools enroll both special education students in general and students with hardest-to-serve disabilities in particular.** This cost is borne by districts as a result of California’s formula for funding special education, which distributes funding roughly on a total per pupil basis, with no accounting for whether or not a student has a disability, or the severity of their disability.” See <https://www.cta.org/stateofdenial>. (Highlight in original.)

The report also summarized the fiscal impact of this charter school discrimination on three public school districts – San Diego Unified School District, Los Angeles Unified School District, and Oakland Unified School District – as follows:



D. The SCCBOE/SCCOE Has The Legal Obligation To Exercise Oversight To Address BCS’s Discriminatory Conduct and Impacts

SCCOE and its Board may not continue to turn a blind eye to the BCS practices that have resulted in disproportionate impact on these protected groups of students. Aside from your responsibilities to *all* students within the county, an authorizer who knows, or has reason to know, of a charter school’s noncompliance in meeting the requirements to

serve a comparable student population or to otherwise engage in discrimination/discriminatory practices, can be held liable for the injury caused by the charter school's actions. (Ed. Code, § 47604(c).) In fact, failure to take action in the face of acknowledged discrimination creates an independent liability for the authorizer for its own failure to act.

We note that the County Superintendent's statement to Mr. Shiu takes a very narrow view of oversight and the role of the authorizer. However, oversight not only includes the tasks identified in Education Code section 47604.32, it also includes the obligation to take action where there is a: (1) violation of the charter; (2) a violation of law; (3) a failure to meet pupil (academic) outcomes; and/or (4) fiscal mismanagement. (Ed. Code, § 47607(c).) In fact, any protection from liability under Education Code section 47604(c) is dependent upon the authorizer's compliance "with all oversight responsibilities required by law *including, but not limited to*, those required by Section 47604.32 and subdivision (m) of Section 47605." As such, there is far more to meeting the obligations of an authorizer including, as stated above, taking action under Education Code section 47607(c) in the face of violations.

While authorizers have broad discretion, they must hold charters accountable. The court has expressly acknowledged "[l]ocal school districts and county boards of education, as well as parents and teachers, have a right to expect that charter schools will hew not just to the law, but to their charters ..." The court held that these groups may file suit against an authorizer to require it to take action to hold the charter to account for violations. (*California School Boards Association v. State Board of Education* (2010) 186 Cal.App.4th 1298, 1326.)

We understand that Dr. Dewan is operating under the understanding that because BCS was authorized on appeal to the County rather than as a countywide benefit charter school, SCCBOE's/SCCOE's oversight role is "limited." Such an assertion is baseless and contrary to law. The Charter Schools Act makes no distinction in an authorizer's oversight duties dependent upon how it received a charter petition. (Ed. Code, § 47604(c) ["An authority that grants a charter to a charter school" must comply with oversight duties].) The agency that authorizes a charter school is then fully responsible for overseeing it in compliance with law – any other interpretation would be considered unconstitutional. (*California School Bds. Assn., supra*, 186 Cal.App.4th at 1326 ["It is, thus, the very control and oversight by public officials that legitimize charter schools. If monitoring and enforcement are, in reality, either lax or nonexistent, then the entire statutory scheme governing charter schools is called into question."]; *Wilson v. State Bd. of Educ.* (1999) 75 Cal.App.4th 1125, 1139 ["the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, county boards of education, the Superintendent and the Board."].)

E. **BCS's Continuing Discrimination Arises From The Fact That The School Was Formed For A Discriminatory Purpose**

The need for SCCBOE/SCCOE to act is even more apparent when one considers that BCS was founded to create an exclusionary school, a purpose that is antithetical to the public school system. From BCS's inception, its exclusionary purpose has injected division and discrimination into an otherwise exceptional public school system and the discrimination has grown over time and has reached a breaking point. An overview of BCS's history illustrates the adverse impact that BCS's formation has had on the LASD public school community.

1. **The Bullis Charter School Forms For Reasons That Bear Little Relation To The *Raison D'Être* For Charter Schools: Expanding Opportunities For Those That The Public School System Is Underserving**

The Charter Schools Act declares charter schools to be "part of the public school system" and places "special emphasis on expanding learning opportunities for pupils who are identified as academically low achieving." (Ed. Code, § 47601(b).) To that end, the charter school laws require charter schools to admit pupils on an equal opportunity basis, prohibit the charging of tuition, and require the chartering authority to "consider increases in public academic achievement for *all groups* of pupils served by the charter school as the most important factor in determining whether to grant charter renewal." (Ed. Code, § 47605(a)(3)(A) [emph. added].) Thus, the idea is to provide parents and pupils in poorly performing public schools with expanded educational choices that advance improvement, particularly in groups underserved by the existing public school system.

LASD has long produced among the highest achieving public schools in California, and a community dedicated to producing quality education for every public school pupil—in every demographic category. The residents vote to tax themselves to fund the public schools and parents volunteer countless time to help the schools.

In 2003, the LASD closure of Bullis-Purissima Elementary School in Los Altos Hills, prompted a small group of parents to form BCS, seeking to establish a charter school that this small group, rather than elected public officials, would control. The founders soon raised over \$5 million in private funds and demanded that the District handover the closed school site to BCS. BCS also granted an admissions preference for residents of the former Bullis-Purissima elementary school—the Exclusionary Los Altos Hills Preference.

Thus, from the start, BCS's purpose was not to expand learning opportunities for an underserved group, but was instead to create a school where the District's wealthiest residents could combine private donations with public funds to establish a "semi-private school." (See "Taypayers Get Billed for Kids of Millionaires at Charter School," *Bloomberg* (Nov. 2011), [<https://www.bloomberg.com/news/articles/2011-11->

15/taxpayers-billed-for-millionaires-kids-at-charter-school].) To that end, BCS established an expectation that each pupil's family will donate more than \$5,000 per year in private funds, established an Exclusionary Los Altos Hills Preference to favor the wealthiest portion of LASD, and has engaged in a wide variety of other outreach, fundraising practices or messaging that has consistently *for 15 plus years* resulted in BCS under-enrolling low income, ELL and special needs students when compared to the enrollment of pupils in those same categories in LASD-run schools.

(See <https://www.bcsfoundation.com/two-students>; see also <https://www.bcsfoundation.com/annual-campaign>.)

In 2008, the District reopened the Gardner Bullis Elementary School in Los Altos Hills on the former Bullis-Purissima site, thereby eliminating the only ostensible ground BCS has ever given for its Exclusionary Los Altos Hills Preference. Nonetheless, BCS refused to drop the preference. LASD brought a petition for writ of mandate in court to attempt to challenge the preference, but the court ruled that LASD lacked standing to sue because SCCBOE had the authority and discretion to decide whether to allow the Preference. LASD now turns to SCCBOE to ensure that BCS does not bring this discriminatory preference back.

2. After SCCBOE Urges BCS To Improve Its Under-Enrollment Of Certain Students, And After Litigation Concerning BCS's Discriminatory Practices, BCS Enters A Settlement Agreement In Which It Suggests It Will Phase Out The Exclusionary Los Altos Hills Preference

After SCCBOE approved the Exclusionary Los Altos Hills Preference, notwithstanding the expressed concerns of SCCOE staff that the preference was discriminatory, members of LASD's public came forward with evidence of other discriminatory BCS practices. Among other things, this evidence showed that between 2003 and 2012, BCS illegally requested confidential health information and educational records from applicants before conducting its admissions lottery. This improperly suggested to potential applicants that factors such as a child's disability or prior academic performance could bear on whether BCS would admit the child, and that BCS could manipulate the information in its possession to discriminate in its admissions. In a May 30, 2012 letter, the County's Superintendent of Schools, Dr. Charles Weis, advised BCS that its application process "infringed on the rights of children and parents under state and federal laws protecting the privacy of confidential health information and the privacy of educational records."

Also in 2012, a number of LASD parents filed statements with this Board or declarations under penalty of perjury in court, attesting to BCS conduct hostile to special needs students during the admission process and afterwards. LASD filed a cross-complaint with the court, seeking a determination whether BCS was discriminating unlawfully in its practices and what remedies should follow for such discrimination. BCS tried repeatedly in the trial and appellate court to block the courts from addressing those

questions on their merits. But both the trial court and appellate court made rulings that made clear that BCS could not duck the **discrimination** allegations but would have to address those allegations on their merits. After suffering those rulings, in 2014, BCS entered a settlement agreement with LASD in which BCS agreed to limit its growth to around 900 pupils for five years, through the end of the 2018-19 school year and agreed to be more inclusive and less **discriminatory** in its admissions practices. During the course of the five-year agreement, as noted, several SCCBOE trustees took note of BCS's continued **discrimination**, demanded change, and questioned whether SCCBOE should renew its charter.

The settlement included a provision limiting the Exclusionary Los Altos Hills Preference. **At the time, LASD understood this provision would effectuate a permanent phase out of the Hills Preference—BCS was agreeing to eliminate the Exclusionary Los Altos Hills preference over time, but was keeping a limited version of it in place for the benefit of Los Altos Hills families who already had enrolled a child at BCS and would like a sibling to attend the same school.**

LASD and BCS further pledged to work together during the five-year agreement to procure funding for a 10th school site to house BCS. Community volunteers from LASD and BCS then worked together to convince LASD voters to agree to tax themselves via a \$150 million bond measure. After the LASD voters approved that bond measure, LASD after an exhaustive search located **a remarkable opportunity to acquire land on terms highly advantageous to the LASD taxpayers in the North of El Camino ("NEC") area in Mountain View within LASD's boundaries. This site (the "10th Site") represented the best opportunity throughout the five-year agreement for a potential facilities option for BCS, and it met the promise both LASD and BCS had made to the community that a 10th Site would be located and developed. Furthermore it represented a wonderful opportunity for BCS—LASD would spend more than \$100 million to provide BCS brand new, exclusive use facilities on its own site.**

3. BCS Rejects A Preference For The Most Socioeconomically Diverse Area Of The District, But Then Seeks To Restore An Admissions Preference For The Wealthiest And Least Diverse Area Within The District

Because the City of Mountain View is partnering with LASD to effectuate the purchase of the 10th Site, the Mountain View City Council made clear that its approval of certain funding that would be part of the 10th Site acquisition was conditioned on LASD placing a school on the site that would grant an enrollment preference to residents of the NEC neighborhood. BCS's board president promptly declared that if BCS were placed on this site, BCS would NOT grant a preference for residents of the NEC neighborhood: "Bullis Charter School board president Joe Hurd told the Voice that the board has expressed zero interest in adding a neighborhood preference, and has sought an even-handed approach to serving students throughout the Los Altos School District." (

voice.com/news/2018/12/13/council-agrees-on-new-san-antonio-school; see also, http://mountainview.granicus.com/MediaPlayer.php?view_id=2&clip_id=3105.)

Yet, BCS more recently has advised LASD that BCS intends to restore the Exclusionary Los Altos Hills Preference. (A copy of the recent correspondence between LASD and BCS regarding the Los Altos Hills Preference is enclosed.) In other words, BCS's stated "even-handed approach to serving students throughout the Los Altos School District" consists of *rejecting* an admissions preference for the most socioeconomically diverse area in LASD—the NEC neighborhood—while *granting* a preference to the least diverse area—Los Altos Hills.

On June 19, 2018, BCS Board members Joe Hurd and Ann Waterman Roy gave public comment before the Mountain View City Council, appearing in their "individual capacities, not representing the [BCS] Board." Hurd and Waterman Roy proposed to open a new and *separate* charter school at the 10th Site with a preference for NEC students and LASD as the chartering authority. When Councilmember John McCallister asked if BCS would provide the same preference for NEC students if BCS "in its current form" were to be located at the 10th Site, the two BCS Board members demurred. (See http://mountainview.granicus.com/MediaPlayer.php?view_id=2&clip_id=3105.)

While BCS has *flaunted its obligation* as a public school to further education equity within LASD, BCS recently gave lip service to such goals when BCS sought approval to establish another charter school in the Mountain View Whisman School District ("MVWSD") stating that BCS wished to serve underprivileged students residing within the MVWSD. MVWSD demanded more than just lip service and instead required that BCS's proposed MVWSD charter school align its admission preferences to its stated goals to serve socio-economically disadvantaged and/or English language learners. In response, BCS refused to do so. MVWSD also required a charter board made up of MVWSD residents and reflective of the students BCS purportedly wished to serve: underprivileged students residing within MVWSD boundaries. Again, BCS refused. As a result, MVWSD exercised its obligations as a charter authorizer and revoked the BCS charter. This is a good example of the kind of oversight SCCBOE can and should exercise if BCS refuses to meet its obligation as a public school to serve all pupil communities.

As things now stand in LASD, BCS has grown to a population of over 1,100 pupils—more than 20 percent of the entire LASD public school pupil population. But as shown by its consistent under-enrollment of low income, ELL and special needs students, *BCS has grown to more than 20 percent of LASD by "skimming"* from only particular groups, while shunning others. This is intolerable, antithetical to public education and must be corrected.

F. This Board Must Not Allow BCS To Restore The Exclusionary Los Altos Hills Preference And Take Further Action To Correct BCS Discrimination

BCS's tone deaf plan to restore the Exclusionary Los Altos Hills Preference mandates swift and clear action from this Board that makes clear that the Preference cannot be restored. Indeed, even without that Preference, to paraphrase Ms. Song's comment from 2012, BCS continues to "perform[] abysmally in serving socioeconomically disadvantaged students." For it to restore the Preference despite that abysmal track record is to add insult to injury and amounts to sticking a finger in the eye of the principle of equality in educational opportunity.

One of the core policies of the charter school laws is to allow innovators to take the basic per-pupil state allocation of funds and "do more with less"—i.e. use those same dollars to obtain improved academic performance from those who pose the greater educational challenges. Thus, when measuring charter schools, it should be a key goal that the accolades go to charter schools who educate the most effectively and raise scores among populations that historically have been more difficult or costly to educate.

By contrast, a charter school that "skims" the most affluent and educated families in a district and avoids those with greater challenges, then fundraises from its "skimmed" families, may yield a school with high test scores and academic achievement, may yield enthusiasm and satisfaction from the parents whose children attend the affluent "public" charter school, and may yield demand and a waiting list from others who want to enroll their kids in the affluent charter school. But none of those results, founded on discriminatory policies and practices, are the goals of public charter school law. And certainly, none can justify the discriminatory results -evidenced by the data - which such skimming generates.

Because the charter school laws aim to spur charter schools that will take on more difficult academic challenges, five key ways which a charter school's performance may be measured against the reason for allowing a charter school in the first instance are (a) is the charter school targeting a community in need?; (b) is it targeting the students who need the most help?; (c) how do its demographics compare to that of the district in which it sits?; (d) how much is it spending per pupil in combined public and private funding in comparison to the district in which it sits; and, (e) how much is the school improving academic performance among the groups that historically have posed greater educational challenges in the district in which it sits? (See, e.g., https://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2014/01/NAPCS_AchvmntStdy_D8.pdf_20110330T165151.pdf.)

Since BCS does not measure up against *any* of these factors, it is difficult to rationalize the existence of a charter school in Los Altos at all. But even assuming one can rationalize a "public" charter school that does *nothing* to expand educational opportunity for the groups that pose greater educational challenges, one cannot rationalize granting

an *admissions preference* to the area within LASD that will further skew already skewed demographics.

The reasons BCS gave in its letter that announced its planned restoration of the Exclusionary Los Altos Hills Preference do not withstand scrutiny. Although it touts its “hard fought” “victory” in persuading a judge to not enjoin the Exclusionary Los Altos Hills Preference in response to LASD’s 2008 lawsuit, it ignores that the judge (a) ruled that the decision whether to allow or disallow the preference rested in the first instance with BCS’s approving and oversight entity—this Board; and (b) the 2008 lawsuit did not examine the discriminatory results that have followed in the decade since that lawsuit was decided. SCCBOE/SCCOE should not be lulled into the belief that the court has approved the preference or the discriminatory impacts.

The question of whether this Board should allow the Exclusionary Los Altos Hills Preference is now before this Board in the first instance, and the Board must examine the Preference against the long history of BCS discrimination. Again, nothing in the 2008 court ruling justifies allowing the Preference to be reinstated in 2019.

Similarly, BCS’s reference to the history that led to adoption of the Preference over a decade ago only underscores how ridiculous that rationale is today. LASD now has a public school in Los Altos Hills, and BCS has grown into an 1,100 plus pupil school which represents over 20 percent of the entire District population. At that size, it is more critical than ever that BCS be held to its (selectively-invoked) objective of an “even-handed approach to serving students throughout the Los Altos School District.”

There is simply no place in the *public* school system for this exclusionary preference at a charter school that has spent 15 plus years skimming to admit a skewed population. BCS’s skewed demographic population warrants substantial remedial action. Instead, it proposes the entirely *unrepentant* act of reinstating the Exclusionary Preference.

We note that the California Attorney General recently brought an action against the Sausalito Marin City School District (“SMCSD”) based on allegations that a charter school in SMCSD had created segregation within that District. After settling the Attorney General’s action, SMCSD issued a press release that commendably stated: “The foundational edict and responsibility that we hold as a public school system is to provide an excellent education in a desegregated school. . . . We invite all of our community to stand courageously and make an enduring commitment to put an end to inequitable education, to embrace our differences, to work systematically toward change, and to adopt a plan toward desegregation.”

LASD stands committed to the same goal, but unfortunately, it must turn to this chartering authority to obtain the action necessary to end the 15 plus years of ever-increasing segregation of the public schools within LASD that BCS has caused and

continues to cause. It should not take a lawsuit by the Attorney General—or anyone else—to produce compliance with the foundational edict and responsibility to ensure equality that we hold as in the public school system.

G. Conclusion

In light of the systemic **discrimination** fostered over the last 15 years, significant steps are required to bring BCS into compliance and to ensure access. It is imperative that the Exclusionary Los Altos Hills Preference be rejected. This action must be part of a comprehensive desegregation plan designed to ensure a student population that reflects the demographics within the LASD boundaries. Careful review of BCS culture and practices will be necessary to address this segregation. Because BCS's **discriminatory** practices are wide ranging, the plan should include, among other things, a transparent lottery conducted by the SCCOE staff, priority preference for students in higher need classifications (including those identified in the charts on page 5 of this letter), and restricted growth until such time as the discrimination is corrected. SCCBOE must act with intention to require a meaningful desegregation plan within six months and work diligently to end this **discrimination**.

We look forward to receiving your response.

Respectfully,



Jessica Spenser
President, Board of Trustees
Los Altos School District



Bryan Johnson
Vice President, Board of Trustees
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Vaishali Sirkay
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Los Altos School District

Santa Clara County Board of Education
Mary Ann Dewan, Ph.D., County Superintendent of Schools
September 10, 2019
Page 15

cc: Gavin Newsom, California Governor
Xavier Becerra, California Attorney General
Tony Thurmond, California Superintendent of Schools
Linda Darling-Hammond, President of California State Board of Education
Jerry Hill, California State Senator, 13th District
Marc Berman, California State Assembly, 24th District
Connie Leyva, Chair of California State Senate Education Committee
Patrick O'Donnell, Chair of California State Assembly Education Committee



June 19, 2019

The Honorable Jessica Speiser

Board President
Los Altos School District Board of Trustees
201 Covington Road
Los Altos, CA 94024

Dear Board President Speiser:

Joe Hurd, Chair of the Bullis Charter School ("BCS") Board of Directors (the "BCS Board"), has referred your May 28, 2019 letter regarding the status of the geographic preference (the "Preference") to me in my capacity as part of the team that negotiated the 2014 agreements.

The Preference was originally created to benefit those portions of Los Altos and Los Altos Hills that were within the Bullis-Purissima Elementary School attendance boundaries during the 2002-2003 school year. At one time, the Los Altos School District ("LASD") served that large area with four elementary schools, but closed them one-by-one over time until none remained. In 2003, when LASD closed the Bullis-Purissima Elementary School ("Bullis"), it then sought to enter into a long-term lease of the site now housing Gardner Bullis School to a third party. I believe all of us would agree in hindsight that it was a good thing that BCS supporters challenged that leasing effort and that LASD dropped the plan.

As you and your fellow Trustees probably recall, the addition of the Preference to BCS's status came only after quite a struggle. Indeed, after the Santa Clara County Board of Education ("SCCBOE") approved the Preference, LASD sued the SCCBOE, arguing that the Preference violated the law, but lost.

In the heavily-negotiated 2014 Facilities Use Agreement ("2014 FUA"), BCS agreed to "submit a redline petition or other documents required by Santa Clara County Board of Education seeking its approval to reduce the geographic preference as stated herein for the above five years," referencing the five school years beginning in 2015 and ending in 2020 (emphasis added). It was agreed that any change to BCS's charter would "be limited to that necessary to effectuate this provision." The preference-limiting paragraph begins by noting that the limitation is "[f]or the five years starting with the lottery for admission in the 2015-2016 school year.

The language above is quite clear. It is consistent not only with actual, but realistic, expectations. BCS agreed to limit the benefit of the hard-won provision, supported by a judge's ruling, that helps protect parts of Los Altos and Los Altos Hills from a future LASD board again leaving a large part of LASD – including the entire town of Los Altos Hills – with no public schools.

In return for reducing the Preference, BCS received tangible benefits from the negotiated FUA, namely the stability of known sites and facilities at a known cost—but only for a five-year period. Those benefits expire on June 30, 2019. It is only logical that the restriction on the Preference expires as well.





BULLIS charter school
A CALIFORNIA K – 8 PUBLIC SCHOOL

Your May 28 letter also refers to the “broad public process” “around a long-term facilities agreement.” My fellow BCS Board members and I, along with the rest of the BCS community, had understood from prior public LASD Trustee statements that BCS Board members would be included as a part of this broad public process. As of the date of this letter, no one from LASD or its communications firm has contacted any representative from the BCS Board to participate. The BCS Board looks forward to engaging constructively in that process, including design, as befitting the other of two signatories to any long-term facilities agreement. Any such process should include only those who have the long-term best interests of both LASD and BCS at heart.

Let me close by noting that the BCS Board understands that LASD may wish to extend the prior limitation to the Preference to any future long-term agreement, and the BCS Board expects that such extension will be part of the negotiations between the two parties.

Sincerely yours,

Francis La Poll

