Court of Appeal Rules Unequivocally for Bullis Charter School in Challenge to Los Altos School District's Proposition 39 Offer of Facilities

The Sixth District Court of Appeal announced a sweeping verdict in favor of Bullis Charter School yesterday that will substantially improve all charter schools' likelihood of receiving reasonably equivalent public school facilities under Proposition 39. The Court of Appeal, in the matter of *Bullis Charter School v. Los Altos School District* (Case Number H035195), "explored the practical meaning of the reasonable equivalence mandate" of Proposition 39 and concluded the Los Altos School District ("District") violated Proposition 39 and the Implementing Regulations in numerous ways in its final facilities offer to the Charter School for the 2009-2010 school year.

The Court of Appeal concluded that the District's offer of facilities did not comply with Proposition 39 and its Implementing Regulations for the following reasons:

1. The District's facility offer excluded from consideration over one million square feet of non-teaching station space at the comparison group of schools. The District had excluded from the comparison group of schools any space that it deemed to be not "functional" space or space that was not "common" to all five comparison group schools, in an obvious effort to reduce the amount of space that it would have to provide to the Charter School.

2. The District failed to include total school "site size" (acreage) in its analysis of the facilities available at the comparison group of schools. The facility allocated to the Charter School was half the total acreage of the comparison group of schools with equivalent ADA.

3. The District overstated the facilities being offered to the Charter School because it failed to reduce its offer by the percent of time that the shared space was actually made available to the Charter School (for example, the District counted 100% of the square footage of the play fields that it allocated to the Charter School, even though the Charter School was only allowed to use the space 40% of the week—two days a week).

4. The District violated Proposition 39 by including space that the Charter School had purchased in calculating its allocation of space to the Charter School. Specifically, the Charter School had purchased a multi-purpose room and placed it on the campus; the District offered the Charter School's multi-purpose room back to the Charter School as part of meeting its Proposition 39 obligations.

5. The District used an arbitrary "standard size" in calculating the square footage of certain facilities in the comparison schools – with the "standard size" being smaller than the actual size - thereby understating the reasonably equivalent size of the facility to be offered to the Charter School. Specifically, the District created

a fictional "standard size" for certain facilities (for example, libraries) that significantly understated the actual average square footage of the libraries at the comparison group of schools.

The court concluded that, in the aggregate, the District's facilities offer was inconsistent with the mandate of Proposition 39. The court held that "in making its facility offer, the school district must make a good faith effort to consider and accurately measure all of the facilities of the comparison group schools and accurately describe the facilities offered to the charter school."

While the 48-page opinion has numerous quote-worthy provisions, other areas of the court's opinion that are important to the charter school movement and the full implementation of Proposition 39 include the following:

1. The court concluded that even though the school year in question (2009-2010) had passed, the issues presented to the appellate court were not moot. Its thorough explanation of why the court considered this matter even though the school year had passed should put to rest any arguments by school districts that once the school year in question passes, Proposition 39 issue becomes moot and should not be considered by the courts.

2. The District also violated Proposition 39 by failing to identify and consider such non-teaching station spaces as childcare facilities, amphitheaters, etc. that did not exist at all of the comparison group of schools. The court did say, however, that the obligation to account for all this type of space does not imply that the District necessarily must offer and supply a charter school "each kind of facility (such as child care and outdoor amphitheater facilities)" existing at any comparison group school. But the District must consider all of this space in determining whether the total allocation of facilities is reasonably equivalent. The court noted that a district might provide certain types of facilities that are less than average compared to the comparison group of schools as long as the other offered facilities are "qualitatively superior to those of the comparison group of schools."

If a school district to which you are applying for Proposition 39 facilities has taken one or more of these types of actions in response to prior Proposition 39 requests, please do not hesitate to contact Paul Minney pminney@mymlaw.com or Sarah Kollman skollman@mymlaw.com so we can assist you in understanding your rights under this new court decision going forward.

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