Case No. S208611

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA CHARTER SCHOOLS ASSOCIATION,

Respondent and Plaintiff,

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT; BOARD OF EDUCATION OF THE LOS ANGELES UNIFIED SCHOOL DISTRICT; and RAMON C. CORTINES, in his capacity as Superintendent of Schools,

Appellants and Defendants.

SUPREME COURT
FILED

AUG 21 2013

Frank A. McGuire Clerk

Deputy

After a Decision by the Court of Appeal
Second Appellate District, Division Five
Case No. B242601

Los Angeles Superior Court Case No. BC438336
Honorable Terry A. Green, Judge Presiding, Dept. 14

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I. INTRODUCTION

Proposition 39 requires public school space to be "shared fairly among all public school pupils, including those in charter schools." (Ed. Code, § 47614, subd. (a).)[1] In order to achieve this fair sharing of facilities, Proposition 39 requires the Los Angeles Unified School District ("District" or "LAUSD") to accommodate all of a qualifying charter school's in-district students in District facilities with conditions reasonably equivalent to those in which the charter school's students would be accommodated if they attended District schools. (Ed. Code, § 47614, subd. (b).)

"*But I don't even have to convince anyone of fairness. It's just the reg.*" (RT, p. 7, lines 21 – 22, emphasis added.)[2] This statement, made by counsel for the California Charter Schools Association ("CCSA") to the Superior Court, is the crux of CCSA's position – now repeated before this Court – and it is wrong. The regulation referred to by counsel, and at issue here, was adopted by the State Board of Education to implement Proposition 39. Fairness is the heart of Proposition 39, as the first sentence of the enacted statute concisely makes clear, and so fairness must be at the heart of the regulations adopted to implement Proposition 39. The

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[1] Proposition 39 is codified at Education Code section 47614 and is further implemented in California Code of Regulations, title 5, section 11969.1 et seq.

[2] All references to the Reporter's Transcript ("RT") herein shall be to the Reporter's Transcript of Proceedings of Wednesday June 27, 2012, commencing at 9:43 am, lodged as Exhibit 57 in the Appendix of Exhibits in Support of Petition for Writ of Mandate or Other Appropriate Relief ("Appendix of Exhibits") in Case No. B242580. The RT is incorporated by reference in the record by Order of the Fifth Division of the Second District Court of Appeal dated August 3, 2012 pursuant to California Rules of Court, Rule 8.147, subd. (b). References to the RT shall be to the page number of the transcript, not to the page number of the Appendix of Exhibits.

District's allocation of facilities to charter schools accomplishes this intended outcome of fairness in a very practical sense.

Instead of seeking reasonably equivalent facilities for charter school students, CCSA asks this Court to order the District to accommodate charter school students in materially better and unequal conditions than traditional District school students. Specifically, CCSA asks this Court to ignore the plain language of the regulation, which requires the District to provide classrooms to charter schools in the same ratio it provides to its own students, and instead apply a mechanical approach that would obligate the District to allocate classrooms to charter schools at ratios as low as 10 to 15 students per classroom, while classrooms for students attending traditional District-run schools would then need to be allocated at triple or greater that number of students.

Such a scenario would subvert the Department of Education's ("Department") stated intent that "a school district's exercise of its discretion in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district run schools with respect to the allocation of space between them." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1001 ("*Ridgecrest*").) It would also subvert the Department's stated intent of ensuring that in crowded school districts, like the District, the burdens of inadequate space would be shared fairly. The Department declared, "charter schools would suffer *the same level of overcrowding* that school districts have." (10 Appellants' Appendix ("AA") 2685, emphasis added.)[3] "A holding that the District must provide facilities a charter school requests, on demand and without regard to

[3] References to the Appellants' Appendix are preceded by the volume number and then the consecutively paginated page number where the document is found.

overcrowding or the impact on other public school students, would tip the balance too far in favor of the charter school." (*Los Angeles International Charter School v. Los Angeles Unified School District* (2012) 209 Cal.App.4th 1348, 1362.)

The inherent unfairness in the approach advocated by CCSA is not merely conceptual or theoretical – it has real world consequences that the District, an entity charged with educating public school children, fundamentally understands. Providing classrooms to charter schools at the ratios advocated by CCSA would result in an annual over-allocation of hundreds of classrooms to charter schools beyond what was intended by Proposition 39. The District would be forced to allocate these additional classrooms on crowded District campuses that do not have this amount of spare classroom inventory. It has taken the District over a decade, and billions of dollars of voter approved bond funding, to alleviate some of the most severe overcrowding on its campuses. Even now, there are tens of thousands of District students learning in portable classrooms. Another 25 District schools remained on year-round calendars in the 2011-2012 school year, and each year, classrooms used for vital District programs, such as academic intervention, are eliminated to accommodate charter school students on District campuses.

The severe detrimental impact to public school children, dismissed by CCSA, necessarily flows from CCSA's flawed interpretation of California Code of Regulations, title 5, section 11969.3, subdivision (b)(1) ("section 11969.3, subdivision (b)(1)" or "Regulation"), which dictates the manner in which exclusive use classrooms are to be provided to charter schools requesting facilities under Proposition 39. Specifically, the Regulation states, "[f]acilities made available by a school district to a charter school shall be provided in *the same ratio* of teaching stations (classrooms) to ADA as those *provided* to students in the school district

attending comparison group schools." (Cal. Code Regs., tit. 5, § 11969.3, subd. (b)(1), emphasis added.)[4]

"Provided" is not defined in the Proposition 39 implementing regulations. The District interprets the Regulation in accordance with its plain meaning. Merriam Webster's dictionary defines "provide" as "to supply or make available." (Merriam-Webster's Online Dict. (2011) www.merriam-webster.com/dictionary/provide, definition no. 2.) Consequently, the word "provided" is used as a qualifier in the Regulation: only if a classroom is *supplied or made available* to students attending district comparison group schools should it be counted in determining the number of classrooms to provide to a charter school.

In accordance with this plain meaning expressed in the Regulation, the District provides exclusive use classrooms to charter schools' K-12 students at the exact same ratios the District provides exclusive use classrooms to traditional District schools' K-12 students. The District provides classrooms to its own students at ratios of no less than 24:1 for grades K-3, 30.5:1 for grades 4-6, 28:1 for grades 7-8 and 30:1 for grades 9-12. The District's methodology accommodates charter school students in at least the same conditions in which District students are accommodated. Hereinafter the District will refer to its methodology as the "Provided Approach."

Conversely, CCSA promotes an "Inventory Approach" that renders meaningless the word "*provided*" in section 11969.3, subdivision (b)(1). The Inventory Approach would require the District to provide charter schools classroom space based on a ratio of K-12 traditional District school students to *all District classrooms in existence*, and even those not yet in

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[4] ADA refers to "Average Daily Classroom Attendance." (Cal. Code Regs., tit. 5, § 11969.2, subds. (a), (c).)

existence, not just those actually provided to District K-12 students. The Inventory Approach artificially reduces the ratio at which charter schools are to be provided facilities to 10-15 students per classroom.

Specifically, CCSA maintains the District must count every classroom in a "gross inventory consisting of all classrooms owned or leased in the district," pursuant to California Code of Regulations, title 2, section 1859.31 ("section 1859.31."). However, section 1859.31 was not implemented as part of Proposition 39. Section 1859.31 is a regulation relating to the Leroy F. Greene School Facilities Act ("Greene Act"). The Greene Act requires preparation of a total school district classroom inventory to determine funding eligibility for facility construction and modernization. CCSA is wrong. While the Greene Act defines *what is a classroom*, whether that classroom should be counted for purposes of space allocation to a charter school is determined by whether it is *actually provided* to District school students.

The Inventory Approach is unfair. It requires the District to count classrooms exclusively occupied by charter school students, preschool students and adult education students, classrooms converted for other uses, such as the District's Police Department, and even classrooms contracted for, but not yet built, as if they are somehow provided to District students, and then allocate classrooms to charter schools based upon this fiction.

In an attempt to remedy the unfairness of the Inventory Approach, CCSA creates artificial exceptions. These artificial exceptions undermine the very premise of CCSA's argument, lack foundation in the statutory or regulatory language, and are contrary to well-established rules of statutory and regulatory interpretation.

As unanimously held by the Court of Appeal, the District's Provided Approach is a reasonable, plausible and equitable interpretation of section 11969.3, subdivision (b)(1). The Provided Approach is fair. Sharing

public school facilities unfairly and disproportionately, to the detriment of a particular class of public school children, distinguished only by whether they attend a charter school or a traditional District run school, cannot be the public policy of this state and does not meet the fundamental requirement of Proposition 39 that facilities be shared fairly.

II. STATEMENT OF FACTS AND STATEMENT OF THE CASE

A. Background Regarding District Facilities

1. The District is the Largest and Most Overcrowded School District in California

The District is the second largest school district in the nation, and is by far the largest in California, with approximately five times as many students as the next largest school district in the state (San Diego Unified School District). (4 AA 1074.) Between the mid-1980s and the mid-2000s the District experienced enormous growth, adding approximately 200,000 students – a number that is itself larger than any other school district in California. (Motion Requesting Judicial Notice in Support of Answer Brief on the Merits ("RJN") Exh. 1, p. 2.) By 2002, over 100,000 more students were enrolled in the District than it had seat for them to occupy on a two-semester calendar. (*Ibid.*)

The District was unable to afford to build new classroom capacity for several decades. As a result, the District implemented interim strategies to accommodate the increase of approximately 200,000 students in just over twenty years. (2 AA 1081, ¶ 7.) These extreme measures included placing its schools on multi-track, year-round calendars, involuntarily busing students over long distances, adding portable classrooms on playground space to increase capacity, and forcing teachers to travel between classrooms. (4 AA 1075-1076, ¶ 9.) By 2002, over 354,000 students attended schools operating on multi-track, year-round calendars, reducing the number of days these students attended school. (RJN, Exh. 2,

p. 92.) Similarly, more than 15,000 students could not attend neighborhood schools due to overcrowding and were bused to other campuses, sometimes more than an hour away. (*Ibid.*)

2. Voter Approved Local Bond Measures Provided Funding to Help Alleviate Severe Overcrowding on District Campuses

In addition to these stopgap measures, the District instituted the New School Construction and Modernization Program composed of state and local bond funds. (4 AA 1074, ¶ 7.) Since 1997, the District has placed five local bond measures before the electorate (1997 Proposition BB, 2002 Measure K, 2004 Measure R, 2005 Measure Y and 2008 Measure Q) to provide funding for new classroom capacity to relieve severe overcrowding at the District's campuses. (4 AA 1089, ¶¶ 27, 28; RJN, Exhs. 1 & 2 pp. 1-123.) Voters approved the local measures based upon the District's promise that all District students would be able to attend neighborhood schools on a traditional 2-semester calendar. (4 AA 1089, ¶ 29.)

3. The District Allocated Portions of Local Bond Funding to Charter School Facilities

In addition, Measures K, R and Y provided $50 million, $20 million and $50 million dollars, respectively, for the expansion of charter school facilities throughout the District. (3 AA 674.) Local bond Measure Q, passed in November 2008, allocates at least an additional $450 million to provide charter schools reasonably equivalent new and existing facilities. (*Ibid.*) Consequently, charter schools within the District have benefitted from the direct allocation of bond funds, and from occupying facilities on modernized or newly constructed, less crowded campuses across the District. In fact, for the 2011-2012 school year, the District offered approximately 26,000 seats to charter schools at 99 District campuses pursuant to Proposition 39. (7 AA 1824 and 8 AA 2022.)

4. District Facilities Still Remain Crowded

While the District's K-12 enrollment has declined from the record high it experienced in 2002, this decline and the District's New School Construction and Modernization Program have not created the "odd" situation of surplus facilities as falsely alluded to in CCSA's Opening Brief on the Merits. (CCSA's Opening Brief on the Merits, "Opening Brief," p. 16.) Rather, the opposite is true.

First, enrollment decline has been offset by the 26,000 seats offered to charter school students. (7 AA 1824 and 8 AA 2022.) Second, the District's New School Construction and Modernization Program alleviated *some*, but not all, of the most severe overcrowding. During the 2009-2010 school year, approximately 120,000 K-12 District students were required to attend schools operating on a three-track calendar, which maximized the number of students that could attend a particular campus by shortening the instructional school year. (4 AA 1074, ¶ 6). A consent decree required the District to eliminate this type of multi-track calendar, known as "Concept 6," by July 1, 2012. (4 AA 947, 4 AA 1075, ¶ 8.) In addition, as of the 2011-2012 school year, another 25 District schools, equating to 33,854 classroom seats, continued to operate on year-round academic calendars. (4 AA 1083, ¶ 13.) Moreover, in the 2010-2011 school year, five schools capped enrollment. This required students to be involuntarily bused out of their neighborhoods. (4 AA 1084, ¶ 14.)

Although the District has made great strides in systematically reducing severe overcrowding, even at the completion of the District's New School Construction and Modernization Program, tens of thousands of students will remain in portable classrooms and the majority of the District's schools will be much larger than the state average. (RJN, Exh. 1, p. 3.)

Corresponding with this reduction in severe overcrowding, the District has experienced an increase in academic performance. In 2005, the District had a base Academic Performance Index ("API") score of 649. (RJN, Exh. 3, p. 124.) The District's base score increased significantly, to 729 in 2011 and 746 in 2012. (*Id.* at pp. 126-127.)

5. The District's Facilities Include Classrooms for Programs in Addition to K-12 Instruction

The District's K-12 campuses are shared with *all* public students within the City of Los Angeles, as well as 31 other cities within Los Angeles County. Consequently, the District's campuses house programs beyond K-12 instruction. For example, State Preschool programs are run on 77 elementary school campuses across the District. (RJN, Exh. 4, pp. 128-130.) Likewise, nearly 14,000 preschool students, across 280 elementary school campuses, are enrolled in the School Readiness Language Development Program ("SRLDP"), which prepares English Language Learners for kindergarten curriculum through primary language instruction. (RJN, Exh. 5, pp. 131-142.) The District's secondary school campuses also include classrooms for adult education. (1 AA 66.)

Certain District classrooms across K-12 campuses have been appropriated for essential uses that benefit all students learning in District facilities. Many of the District's campuses were not built with police stations or space for police services. The Los Angeles School Police Department serves to protect all children and adults that attend programs on District campuses, including those in charter schools. (9 AA 2418.) Consequently, the District's police services occupy classrooms on District campuses. (*Ibid.*)

Through the Proposition 39 allocation process, classrooms across District school sites are exclusively occupied by charter school programs. (7 AA 1824; 8 AA 2022.) In addition, the District's campuses include a

wide range of specialized programs in classrooms that are shared with charter school students, such as parent centers, learning centers for special and general education students, and rooms for occupational and physical therapy. (1 AA 66; 9 AA 2413-2414, 2421.) Many of these specialized classrooms serve students with disabilities and others with learning challenges. These spaces also provide opportunity for parental involvement vital to academic performance.

B. Background of Issue Before the Court

1. The Parties Entered into a Settlement Agreement Acknowledging the Burdens of Inadequate Space Must be Shared Fairly Between District Schools and Charter Schools

On May 17, 2007, CCSA, a registered lobbyist corporation, initiated two actions against the District claiming that it failed to comply with Proposition 39 in extending facilities offers to charter schools. (1 AA 63.) On April 22, 2008, CCSA and the District entered into a Settlement Agreement ("Agreement"), and the lawsuits were dismissed. (1 AA 63-79.) Paragraph 3 of the Agreement stated that should a CCSA member charter school submit a future facilities request that was legally sufficient under Proposition 39, the District shall make a facilities offer to that charter school that complies with Proposition 39. (1 AA 64.)

Notably, the Agreement contemplated the continuing overcrowding on District campuses, which CCSA now denies. The Agreement stated, "Petitioners [including CCSA] recognize the need to share fairly the burdens caused by inadequate space in all LAUSD public schools for all public school students." (1 AA 65). The Agreement acknowledged Proposition 39 would not be implemented in a way that would require the District to reinstate the very stopgap measures, such as multi-track calendars, involuntarily busing students, eliminating full day kindergarten

programs and forcing teachers to travel across classrooms, that took more than a decade and billions of dollars in voter-approved funds to mitigate. (1 AA 65.)

The Agreement also contemplated that specialized spaces would not be eliminated, but would be shared by the District and charter school programs. (1 AA 66.) Finally, the Agreement specifically acknowledged the need for other programs to be accommodated in classrooms on District K-12 campuses, such as early and adult education. (1 AA 66-67.)

2. CCSA Initiated this Action Against the District

On May 24, 2010, CCSA filed a Complaint against the District. (1 AA 1-310.) On September 8, 2010, CCSA filed a Motion for Summary Adjudication. (2 AA 311-339.) The Superior Court granted CCSA's motion in part, and required the District to make Proposition 39 compliant offers to all CCSA member charter schools that submit legally sufficient facilities offers for future school years until the term of the Agreement ended on June 30, 2013. (6 AA 1603-1609.)

However, the Superior Court order did not require the District to make Proposition 39 offers that would have harmful impacts solely to District students. (*Ibid.*) The District instituted further administrative improvements that led to categorical compliance with Proposition 39 for the 2011-2012 school year. (4 AA 1603-1065.)

3. The District's Facilities Offers for the 2011-2012 School Year Complied with Proposition 39

On April 1, 2011, the District issued final notifications of space offered for the 2011-2012 school year to all 71 eligible charter schools that submitted facilities requests. This resulted in Proposition 39 compliant offers of approximately 26,000 seats to charter schools at 99 District schools. (7 AA 1824 and 8 AA 2022.) Nonetheless, CCSA moved the trial court to enforce its December 7, 2010 order. (6 AA 1610-1629.)

The Superior Court refused to find the District's final offers failed to comply with the court's December 7, 2010 order. Instead, the court simply directed the District to provide limited supplemental information to charter schools. (8 AA 2093-2096.)

4. The District's Facilities Offers for the 2012-2013 School Year Complied with Proposition 39

On April 1, 2012, the District offered approximately 21,000 seats to charter schools for the 2012-2013 school year, of which nearly 16,000 were accepted. (10 AA 2701 and 10 AA 2717.)

Notwithstanding the District's categorical compliance with Proposition 39 for the 2012-2013 school year, on May 17, 2012, CCSA again filed a Motion to Enforce the Court's December 7, 2010 order with regard to the District's facilities offers for the 2012-2013 school year. CCSA asserted the District's final facilities offers for the 2012-2013 school year failed to comply with section 11969.3, subdivision (b)(1) ("Motion"). (8 AA 2149-2168.) On June 27, 2012, the Superior Court issued an order granting CCSA's Motion. (10 AA 2805-2808.)

The District appealed the Superior Court's injunctive order. The Fifth Division of the Second Appellate District reversed, unanimously holding that the District's allocation of exclusive use classroom space to charter schools complied with Proposition 39. (*California Charter Schools Association v. Los Angeles Unified School District*, formerly published at (2012) 212 Cal.App.4th 689 ("*CCSA v. LAUSD*").)

The Court of Appeal applied canons of construction embedded in over 80 years of jurisprudence and determined the District's interpretation of section 11969.3, subdivision (b)(1) is consistent with the plain meaning of the Regulation, avoids anomalous results, and is consistent with the intent of Proposition 39. (*CCSA v. LAUSD*, *supra*, 212 Cal.App.4th at p. 695.)

III. THE DISTRICT COMPLIES WITH THE LETTER AND SPIRIT OF PROPOSITION 39 IN ALLOCATING CLASSROOMS TO CHARTER SCHOOLS

In 2000, the voters of California approved Proposition 39, which amended Education Code section 47614 to require public school facilities to be "shared fairly" among students attending District operated schools and charter schools. (Ed. Code, § 47614, subd. (a); *California School Boards Association v. State Board of Education* (2011) 191 Cal.App.4th 530, 539.)

In order to achieve fair sharing of facilities, Proposition 39 mandates "reasonable equivalence" in the facilities provided to charter school and traditional District school children. (Ed. Code, § 47614, subd. (b).) The Proposition 39 implementing regulations set forth criteria to be used to determine the type and quantity of facilities to be allocated to charter schools. "Reasonable equivalence is determined using two primary criteria: "capacity" and "condition." (Cal. Code Regs., tit. 5, § 11969.3, subd. (b).) The issue before the Court focuses on the "capacity" of facilities provided to charter schools and, in particular, the number of exclusive use classrooms allocated to charter schools.

The regulation at issue, section 11969.3, subdivision (b)(1), dictates the manner in which exclusive use classrooms are to be provided to charter schools requesting facilities under Proposition 39. As noted earlier, the Regulation states, "[f]acilities made available by a school district to a charter school shall be provided in *the same ratio* of teaching stations (classrooms) to ADA as those *provided* to students in the school district attending comparison group schools." (Cal. Code Regs., tit. 5, § 11969.3, subd. (b)(1), emphasis added.)

The District and CCSA present competing interpretations of the Regulation. In strict compliance with the Regulation, in determining the

ratio of students to classrooms used to allocate space to charter schools, the District's Provided Approach counts classrooms actually "*provided*" to District students in the comparison group schools.

The District's Provided Approach does not count classrooms used for non-K-12 instructional purposes, such as classrooms used for preschool programs, adult education programs, or police services; nor does it count classrooms occupied by co-located charter schools or classrooms that do not yet exist. For classrooms on a District school campus used for special education space or some other specialized purpose, the charter school is provided proportionate shared use of that space pursuant to California Code of Regulations, title 5, section 11969.3, subdivisions (b)(2) and (b)(3).

Conversely, CCSA espouses an "Inventory Approach" that ignores the methodology required by section 11969.3, subdivision (b)(1). CCSA's interpretation of the Regulation requires the District to count gross classrooms based on a school inventory created pursuant to an unrelated regulation not part of Proposition 39, California Code of Regulations, title 2, section 1859.31. CCSA's Inventory Approach has nothing to do with how classrooms are "*provided*" to District students, but rather focuses on classrooms that are *not provided* to District students and seeks to have them artificially counted as if they were.

A. The District Accommodates Charter School Students How They Would Be Accommodated If They Attended District Schools

Education Code section 47614, subdivision (b), provides "[e]ach school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students *in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district.*" (Ed. Code, § 47614,

subd. (b), emphasis added.) The District accommodates every qualifying charter school student in conditions actually equivalent to what would have been provided if the student attended a District operated school.

The State Board of Education is empowered to adopt regulations implementing Education Code section 47614 and to define the phrase "conditions reasonably equivalent." (Ed. Code, § 47614, subd. (b)(6).) Consequently, when examining section 11969.3, subdivision (b)(1) of the Proposition 39 implementing regulations, it is imperative to keep at the forefront the mandate that a charter school's in-district students are treated as they would be if they attended other public schools in a school district.

The District interprets the Regulation in harmony with Education Code section 47614, subdivision (b). Specifically, the District provides classrooms to its own students in ratios of no less than 24:1 for grades K-3, 30.5:1 for grades 4-6, 28:1 for grades 7-8 and 30:1 for grades 9-12. (10 AA 2717-2718.) The District offers classrooms to charter schools using the *same* ratios. (*Ibid.*)

Frequently, District students are assigned to classrooms in much higher numbers than reflected in these ratios due to factors such as the District's obligation to accept all eligible students, budget and staffing limitations and facilities issues. None of these factors are considered when allocating facilities to charter schools. Therefore, charter schools, in many cases, are provided with facilities based on more favorable ratios than their District school counterparts. (10 AA 2717, ¶ 7.)

B. The District Interprets the Regulation in Accordance with its Plain Meaning

The Court of Appeal correctly determined the District's Provided Approach interprets section 11969.3, subdivision (b)(1) in accordance with its plain meaning. (*CCSA v. LAUSD*, *supra*, 212 Cal.App.4th at p. 695.) Regulatory language is the most reliable indicator of regulatory intent, and

consequently, regulatory interpretation must begin there. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 51.) When interpreting a regulation, the words of the regulation are afforded their plain and ordinary meaning. "The plain meaning rule presupposes that statutory words and phrases are used in their common and ordinary sense. Thus, courts should give effect to statutes according to the usual, ordinary import of the language employed in framing them." (*Merrill v. Department of Motor Vehicles* (1969) 71 Cal.2d 907, 918.)

Section 11969.3, subdivision (b)(1) states, "[f]acilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those *provided* to students in the school district attending comparison group schools." (Cal. Code Regs., tit. 5 § 11969.3, subd. (b)(1), emphasis added.) Merriam Webster's dictionary defines "provide" as "to supply or make available." (Merriam-Webster's Online Dict. (2011) www.merriam-webster.com/dictionary/provide, definition no. 2.) The word "provided" is used as a qualifier in the regulation. Only if a classroom is *supplied or made available* to students attending comparison group District schools should it be counted in determining the number of classrooms to provide to a charter school.

Section 11969.3, subdivision (b)(1) also defines what constitutes a "classroom." "The number of teaching stations (classrooms) shall be determined using the classroom inventory prepared pursuant to California Code of Regulations, title 2, section 1859.31." (Cal. Code Regs., tit. 5, § 11969.3, subd. (b)(1).)

Section 1859.31 was not implemented as part of Proposition 39. Section 1859.31 is a regulation relating to the Greene Act, which establishes a program, administered by the State Allocation Board, to distribute state funds to school districts for facility construction and

modernization. (Cal. Code Regs., tit. 2, § 1859.) Section 1859.31 requires preparation of a total district inventory to determine funding eligibility, and provides:

> The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district . . . . For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:
>
> (a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC; . . .
> (f) used for preschool programs;
> (g) converted to any non-classroom purpose including use by others; . . . . (Cal. Code Regs., tit. 2, § 1859.31.)

This regulation, therefore, defines as a "classroom" one that has been contracted for but not yet built, one used for preschool programs, or used by non-K-12 students. While the Greene Act defines *what is a classroom*, whether that classroom should be counted for purposes of space allocation to a charter school is determined by whether it is *actually provided* to District school students.

"A regulation should be interpreted to be 'made reasonable and workable.'" (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 18.) Therefore, the District reads the reference to the Greene Act in conjunction with the remainder of the regulation:

> "Facilities made available by a school district to a charter school shall be provided in *the same ratio* of teaching stations (classrooms) [*defined in California Code of Regulations, title 2, section 1859.31*] to ADA as those *provided* to students in the school district attending comparison group schools." (Cal. Code Regs., tit. 5 § 11969.3, subd. (b)(1), emphasis added.)

Under the District's interpretation of the Regulation, since classrooms not yet built, used by preschoolers or used by others are *not* provided to students attending comparison group schools, these spaces are not counted in determining the number of classrooms to provide to charter schools.

Under CCSA's Inventory Approach the word "provided" is rendered meaningless. (Opening Brief, p. 23.) Therefore, as explained more fully below, under CCSA's interpretation, classrooms to which District K-12 students have no access are counted. This methodology grossly skews the ratios at which charter school students are provided classrooms resulting in unfair sharing of facilities to the detriment of students in traditional District schools.

C. The Norming Ratio Employs the Methodology Required by the Regulation

The crux of CCSA's argument is that the District's norming ratio employs a completely different methodology than is required by the Regulation. This red herring argument must be dispelled from the outset. The sole difference between the Provided Approach and the Inventory Approach is which classrooms are counted in the denominator of the ratio of students-to-classrooms used when allocating classrooms to charter schools. The Court of Appeal held that the denominator in the ratio is derived by determining how many classrooms are *provided* to in-district students, not gross classroom inventory.

The District's provision of classrooms to charter schools based on the same norming ratios utilized for students attending traditional District schools *ensures* that charter schools are provided facilities in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the District comparison group schools. Indeed, the District's "norming ratio" determines the number of students placed in every classroom by

grade level across the entire District. For example, the norming ratio for grades K-3 is 24. This means that each K-3 classroom in the District will have at minimum 24 students.

How the application of the Provided Approach reaches the intended result is best explained by the following example:

A charter school serves grades K-3 and projects an attendance of 120 in-district students. Its comparison group District school has 384 K-3 students and 20 classrooms, four of which are used by preschool students and 16 of which are used for K-3 instruction. Under the Provided Approach, the District applies the norming ratio for grades K-3 of 24:1. The charter school's 120 students are then provided classrooms at 24 students per classroom, entitling the charter school to five classrooms. In other words, the District divides the attendance of the 384 K-3 students *by the number of classrooms provided* to the K-3 students (16 classrooms), and does not count the four classrooms solely occupied by preschoolers (384 students ÷ 16 classrooms = 24 students per classroom). This results in the ratio of 24:1, entitling the charter school to five classrooms at the same ratio.

Conversely, under the Inventory Approach, the four classrooms used for preschool would be included in the denominator of the ratio even though they are not provided to any K-3 students. Thus, the charter school would be allocated seven classrooms at a ratio of only 19 students per classroom (384 students ÷ 20 classrooms = 19 students per classroom), even though the District students are actually in five classrooms at a ratio of 24 students per classroom.

Two classrooms is a big difference on a single campus with 20 classrooms, and the real world consequence of the Inventory Approach would result in an over-allocation of hundreds of classrooms to charter schools spanning the District. Using this same example under the

Inventory Approach, if the charter school was then co-located on a campus of 384 students with 25 total classrooms where, as before, four classrooms were used for non-K-3 instruction, the District would be forced to allocate seven classrooms to the charter school at a student-to-classroom ratio of 19:1. The District would then need to either load District students in the remaining 14 classrooms at a 27:1 ratio (384 ÷ 14 = 27), displace some of its students to non-neighborhood schools, or eliminate the preschool, health service, police service, or other non-K-3 instruction in the remaining four classrooms on that campus. The elementary math is inescapable - the Inventory Approach undermines the very purpose of Proposition 39 to ensure the fair sharing of public school facilities.

IV. CCSA'S INTERPRETATION OF THE REGULATION RESULTS IN INEQUITY IN FACILITIES ALLOCATION IN VIOLATION OF EDUCATION CODE SECTION 47614

To understand why the District's Provided Approach is the only equitable, workable and plausible interpretation of the Regulation, it is necessary to closely examine the application of CCSA's Inventory Approach and the anomalies and inequities that result.

A. CCSA's Interpretation of the Regulation Leads to Anomalous Results

While the Superior Court and the Court of Appeal disagreed in the outcome of their decisions, when analyzing the issue before them, both courts clearly agreed on one thing: CCSA's reading of the regulation leads to anomalous results.

The Superior Court expressly acknowledged:

> And what it says under (g) is that you count as inventory – or (a), for that matter – half-completed buildings are ones that are converted to non-classroom

> purposes. [5] That's what it says. *And it may be silly and it may result in an anomalous result*, but you have to call up the Board of Education and say, "What were you guys thinking?" (RT p. 43, lines 5-11, emphasis added.)

Likewise, the Court of Appeal unanimously declared, "[i]f we were to adopt the analysis proffered by CCSA, it may well have *anomalous results*. For example, the District would have to count classrooms not yet built and classrooms at closed school sites." (*CCSA v. LAUSD*, *supra,* 212 Cal.App.4th at p. 695.)

However, the Court of Appeal reached the correct conclusion by applying a well settled cannon of statutory and regulatory construction: "It is well-established that a statute open to more than one construction should be construed as to avoid anomalous or absurd results." (*Ludwig v. Superior Court*, *supra*, 37 Cal.App.4th at p. 18; quoted in *CCSA v. LAUSD*, *supra*, 212 Cal. 4th at p. 695.) This basic principle of statutory interpretation has been repeatedly cited by this Court. (See, e.g., *In re Eric J.* (1979) 25 Cal.3d 522, 537, "[W]here the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.")

CCSA maintains the District must use the Greene Act gross inventory list when determining the number of classrooms to be allocated to charter schools and count everything defined as a classroom in section 1859.31. CCSA's reading of the Regulation results in an anomaly because it requires the District to count classrooms in existence whether or not they

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[5] The Reporter's Transcript includes a typographical error and should state, "for that matter – half-completed buildings [*and*] ones that are converted to non-classroom purposes."

are provided to District students. As such, counting everything defined as a classroom under the Greene Act would require the District to count classrooms "converted to any non-classroom purpose including use by others." (Cal. Code Regs., tit. 2, § 1859.31, subd. (g).) This would necessarily require the District to count the hundreds of classrooms offered exclusively for use by 26,000 charter school students as if these classrooms were actually provided to District students. (7 AA 1824 and 8 AA 2022.) District students do not have access to any classrooms exclusively occupied by charter school students. Likewise, the District would be forced to count classrooms used for non-K-12 purposes, such as adult education programs, parent centers or Los Angeles School Police services. (4 AA 66.)

The Greene Act inventory also includes classrooms "used for preschool programs". (Cal. Code Regs., tit. 2, § 1859.31, subd. (f).) CCSA's Inventory Approach would require the District to count all of the classrooms used exclusively for state preschool programs on 77 elementary school campuses across the District and every classroom used for the nearly 14,000 preschool students enrolled in the SRLDP taught on 280 elementary school campuses across the District. (RJN, Exh. 4, pp. 128-130; RJN, Exh. 5, pp. 131-142.)

The Inventory Approach goes so far as to require the District to count classrooms for "which a contract was signed for the construction or acquisition of facilities." (Cal. Code Regs., tit. 2 § 1859.31, subd. (a).) Consequently, the District would be required to count classrooms not yet built as if District K-12 students were accommodated in these classrooms not yet in existence.

District K-12 students do not receive instruction in any of the aforementioned types of classrooms, yet under the Inventory Approach, these classrooms would be counted as if actually provided to District students. It is well settled that a regulation cannot be interpreted to have

these types of "absurd consequences," especially when the Provided Approach renders the regulation "reasonable, fair and harmonious with its manifest purpose" of accommodating charter school students and District students in conditions reasonably equivalent, resulting in a fair sharing of public school facilities.

B. CCSA's Proposed Solutions for the Anomalous Results of Its Construction of the Regulation Further Undermine its Position

In an attempt to reconcile the clearly anomalous results of its proposed interpretation of the Regulation, CCSA creates proposed "solutions" to save its construct. (Opening Brief, pp. 43-49.) However, these proposed fixes undermine the very premise of its argument and are contrary to well-established rules of statutory and regulatory interpretation.

1. CCSA's Solution for the Anomaly of Counting Classrooms Occupied by Charter School Students Contradicts Its Own Inventory Approach

CCSA has proposed two Band-Aid solutions to the anomaly of having to count classrooms exclusively occupied by charter school students as if actually provided to District students. First, CCSA states, the District could "exclude classrooms exclusively allocated to a charter school when determining the classrooms-to-ADA ratio at the comparison group school, and . . . exclude the charter school's ADA when calculating that comparison group school's classroom to-ADA ratio." (Opening Brief, pp. 48-49.) Second, CCSA states the District could "count all classrooms at the comparison group school campus, and . . . include the charter schools' in-district ADA when calculating that comparison group schools' classroom-to-ADA ratio." (Opening Brief, pp. 48-49.)

CCSA's proposed solutions undermine the entire premise of its argument, and requires CCSA to take contradictory positions to justify its

desired outcome. CCSA argues the District must count every classroom in the Greene Act inventory when allocating facilities to charter schools because this was the supposed intent of the drafters of the Regulation – i.e., the Department. To that end, CCSA chides the Court of Appeal for "failing" to defer to the regulatory intent by pointing to the Department's Final Statement of Reasons for its proposed amendment to section 11969.3, subdivision (b)(1), and arguing "*the Board only intended for 'interim housing' to be excluded from the classroom inventory used to make offers to charter schools.*" (Opening Brief, p. 34, emphasis added.) However, just a few pages later, when trying to overcome the clear absurdity of forcing the District to count classrooms actually occupied by charter schools, CCSA stakes out the *opposite* position and states the District can simply "*exclude classrooms [from the inventory] exclusively allocated to a charter school when determining the classrooms-to-ADA ratio at the comparison group school . . . .*" (Opening Brief, p. 48, emphasis added.) How could the District do that, when CCSA's entire theory is that the District must use the Greene Act inventory with the only permissible exclusion being interim housing? CCSA's newly minted "solution" eviscerates the premise of its argument.

CCSA's alternative "solution" of counting classrooms occupied by charter school students and then adding the charter school's ADA to the numerator of the ratio under section 11969.3, subdivision (b)(1) further undermines its position. *Nothing* in the language of section 11969.3, subdivision (b)(1), permits a school district to count those classrooms exclusively used by charter schools, and then add the charter school's in-district ADA to the comparison group school's ADA.

2. CCSA's Solution for Avoiding the Need to Count Classrooms Not Yet Constructed Supports the District's Provided Approach

The central premise of CCSA's Inventory Approach is that the State Board of Education "only intended for 'interim housing' to be excluded from the classroom inventory used to make offers to charter schools." (Opening Brief, p. 34.) The Greene Act inventory includes a "classroom for which a contract was signed for the construction or acquisition of facilities." (Cal. Code Regs., tit. 2, § 1859.31, subd. (a).) Under the Inventory Approach, an unbuilt classroom would be counted. To side step the clear anomaly of having to count classrooms not even in existence as having been provided to District students, CCSA again directly contradicts its central argument and states unbuilt classrooms would not have to be counted.

What is most important about CCSA's position is the reasoning it offers in support. CCSA states:

> If a charter school student was attending an LAUSD comparison group school instead of the charter school, that student could not be accommodated in an unbuilt classroom. . . As such, the regulation should not be interpreted to mean that LAUSD must count unbuilt classrooms at comparison group schools . . . (Opening Brief, p. 45.)

CCSA is saying that since an unbuilt classroom is not provided to a student attending a District comparison group school, it should not be counted. *CCSA is exactly right.* Likewise, if a charter school student was attending a District comparison group school instead of the charter school, that student could not be accommodated in a classroom occupied by preschoolers, in a classroom used for adult education, in a classroom already occupied by charter school students or in a classroom that has been

offered to charter school students in the coming school year. Plainly then, the Regulation should not be interpreted to mean that the District must count these types of unusable classrooms, but not count another type of unusable classroom, the unbuilt classroom.

CCSA further argues that the District would only need to count unbuilt classrooms that will be completed by the next school year, because the ratio should be calculated based on a projected number of teaching stations. (Opening Brief, p. 45.) In other words, CCSA claims that if a District student would be provided or accommodated in a classroom for the next school year, that classroom should be counted in calculating the exclusive use classrooms to be provided to charter schools.

The District agrees with this basic reasoning because it is the District's position and the calculation required by the Regulation at issue. Only if the word "provided" is infused with its plain meaning ("to make available"), and only if classrooms provided to District students are counted, does the Regulation make sense and achieve the intended result.

3. CCSA Provides No Solution for the Anomaly of Counting Classrooms Used for Preschool, Adult Education, Police Services or other Non-K-12 Instructional Uses

Try as it may, CCSA cannot circumvent the fact that under its Inventory Approach the District would be left with the absurdity of counting classrooms actually used for preschool, adult education, police services or other non-K-12 purposes as if somehow provided for K-12 District instruction.

Instead of addressing this clear absurdity, CCSA pivots and argues the District's assertions are mere speculation and lack evidence. (Opening Brief, p. 39.) CCSA later hedges and states if its proposed reading of the Regulation results in an anomaly, these anomalous results would only exist

in "unique situations" and limited circumstances. (Opening Brief, pp. 46-47.) Both assertions are false. CCSA asks this Court to ignore the 26,000 seats offered to charter schools, the approximately 14,000 preschoolers, the adult education students, and the classrooms used for parent centers and police services, all of which equally benefit charter school students and traditional District school students. (1 AA 66, 7 AA 1824; 8 AA 2022; RJN, Exh. 4, pp. 128-130; RJN, Exh. 5, pp. 131-142.)

While CCSA argues public school facilities are held in trust by school districts for the enjoyment of all public school students, CCSA refuses to acknowledge that other public students, such as preschool children and adult education students, use District facilities. (Opening Brief, p. 1.) CCSA's claims are particularly suspect given that in the Agreement, CCSA expressly acknowledged the use of District facilities for non-K-12 instructional purposes, such as for preschool programs and adult education programs, and that these programs are located on the District's K-12 campuses. (1 AA 66-67.)

C. CCSA's Inventory Approach Renders Part of the Regulation Meaningless and Unlawfully Adds Language to the Regulation

Ironically, CCSA asserts the District's position violates the following rule of statutory construction: "[a] court 'may not broaden or narrow the scope of the provision by reading into it language that does not appear in it or reading out of it language that does.' (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545.)" (Opening Brief, p. 24.) It is actually CCSA's reading of the Regulation that transforms "meaningful words" in the Regulation into "meaningless surplusage." (See *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1135.) CCSA's Inventory Approach ignores the plain meaning of "provided" in section 11969.3, subdivision

(b)(1), striking the word entirely and transforming this "meaningful word" into "meaningless surplusage."

As discussed above, by eliminating "provided" as a modifier in determining which classrooms are to be counted, the Districts would be required to count classrooms occupied by charter school students, preschool students, adult education students, and even classrooms not yet built, resulting in substantially more classrooms for charter students at District student expense.

In trying to solve this self-inflicted anomaly, CCSA's proffered remedies only serve to further rewrite the Regulation, contrary to its central premise that the Greene Act inventory should be mechanically applied. One "solution" would require the District to add the charter school's ADA to the District's and then include the classrooms occupied by charter school into the numerator of the ratio. This solution would add words not in the Regulation and render an included word, "provided," meaningless surplusage.

Conversely, the Provided Approach gives meaning to every word and phrase. The District does not ignore the classroom inventory language in the Regulation as CCSA contends. As explained in Section III.B, *supra*, the District interprets it in accordance with its plain meaning.

As noted, section 11969.3, subdivision (b)(1) states that the number of classrooms shall be determined using the Greene Act inventory contained in section 1859.31, adjusted to exclude classrooms identified as interim housing. This portion of the Regulation describes what is a classroom, but section 11969.3, subdivision (b)(1) also states that the only classrooms to be counted are those *provided* to District students attending comparison group schools.

Likewise, the exclusion of "interim housing" in the Greene Act means exactly what it says, that "interim housing" is excluded from the

definition of "classroom" for purposes of the Regulation. Consequently, even if District students *are provided* emergency housing or temporarily leased facilities, those classrooms are not counted because they are temporary. This exclusion does not change the "provided" requirement, but rather excludes temporary housing from what is considered a classroom even if it is provided to District students.

The fact that the Department amended section 11969.3, subdivision (b)(1) in 2008, narrowing the definition of "interim housing" to specifically exclude portable classrooms not used to house students temporarily displaced for facilities modernization or used as emergency housing, simply means that after 2008 the definition of "classroom" clearly included all other portable classrooms. (CCSA's RJN, Exh. E, p. 204.) As a result, if a District K-12 student is provided such a portable classroom, then it must be counted in the ratio to determine the number of classrooms to provide to a charter school, *which the District does*. However, if a non-K-12 program is taught in a portable classroom, or if the Los Angeles School Police Department exclusively uses a portable classroom, it is obviously not provided to District students and not counted by the District for the purposes of Proposition 39.

D. The Inventory Approach Results in Accommodating Charter School Students in Materially Better Conditions than District Students Contrary to the Law and Regulatory Intent

CCSA's Inventory Approach results in providing exclusive use classrooms to charter schools based on absurdly low students to classroom ratios. Under this approach, charter schools would enjoy classrooms at as low as 10 or 15 students per classroom, while District students would occupy classrooms at twice or three times that number. Therefore, the Inventory Approach accommodates charter school students in substantially

better conditions than they would be accommodated if they attended traditional District schools, subverting the express intent of the Regulation.

1. The Inventory Approach Results in Highly Skewed Ratios to the Detriment of Traditional District School Students

CCSA's reading of the Regulation creates a mathematical fiction leading to charter schools receiving inflated classroom allocations because charter schools are allocated classrooms based on false and absurdly low student-to-classroom ratios at District comparison group schools.

In support of its Motion to Enforce the Court's December 7, 2010 Order ("Motion"), CCSA filed papers in which it applied its Inventory Approach to calculate a ratio of enrollment to gross classrooms at the comparison group schools of Goethe Charter School. (10 AA 2660-2664.) In its gross inventory calculations CCSA did not remove classrooms used as shared space, such as parent centers, resource rooms or rooms used for special education. (*Ibid.*) Nor did CCSA remove preschool classrooms. (*Ibid.*) Contrary to its central premise that no classrooms can be removed from the inventory other than those used for "interim housing," *CCSA removed those classrooms already occupied by charter school students*, because not even CCSA could bring itself to argue for the inclusion of the classrooms exclusively provided to charter schools within the classroom allocation ratio. (10 AA 2663, fn. 3.)

Based on the calculations presented in its Motion, CCSA claimed that students in comparison group schools were accommodated at ratios of 10 to 15 students per classroom and argued that charter school students were entitled to classroom allocations based on these absurdly low students per classroom ratios. (10 AA 2663.) In reality, children attending traditional District schools are not accommodated at these low ratios. (10 AA 2719, ¶ 13, 2724-2729.) CCSA's approach would create a scenario

where the charter schools' calculated ADA to classrooms ratio would be only 10 or 15 students per classroom, while District children are actually accommodated in classrooms at twice or three times that amount. (10 AA 2663.) Notably, the Inventory Approach requires classrooms exclusively occupied by charter schools to be counted as if they are actually provided to traditional District school students, which would thereby result in even lower ratios for charter schools.

As explained below, accommodating as few as 10 charter school students in a classroom, while on the same campus traditional District school students are accommodated at 25 or 30 students per classroom, does not accommodate charter school students "in conditions reasonably equivalent," as intended by the Regulation. (Ed. Code, § 47614, subd. (b).)

2. The Inventory Approach Subverts Regulatory Intent

CCSA argues that the Court of Appeal, in determining the District complied with section 11969.3, subdivision (b)(1), failed to defer to the administrative body that adopted these quasi-legislative regulations. (Opening Brief, p. 26.) CCSA is wrong. Accommodating charter school students in materially better conditions by applying CCSA's Inventory Approach was not the intent of the Department. This is clearly demonstrated by examining: (1) the purpose of section 11969.3, subdivision (b)(1); (2) the Final Statement of Reasons drafted by the Department in support of its proposed regulations implementing Education Code section 47614; and (3) the Department's responses to public comment regarding the implementing regulations.

An administrative agency only has the quasi-legislative power conferred by the enabling statute. Therefore, the scope and extent of the legislative or rulemaking power of an administrative agency depends on the

authorizing statute. (*Knudsen Creamer Co. of Cal. v. Brock* (1951) 37 Cal.2d 485, 492-493.)

The specific enabling statute at issue requires a school district to accommodate a charter school in "conditions reasonably equivalent" to those its students would be accommodated in if they attended District schools. (Ed. Code, § 47614, subd. (b).) It then states, "[t]he State Department of Education shall propose, and the State Board of Education may adopt, regulations implementing this subdivision, including but not limited to defining the terms . . . 'conditions reasonably equivalent.'" (Ed. Code, § 47614, subd. (b)(1)(6).)

The scope and purpose of section 11969.3, as stated in its heading, is to define "conditions reasonably equivalent" between charter and District operated schools, and subdivision (b) of section 11969.3 defines reasonably equivalent "capacity" of school facilities. (Cal. Code Regs., tit. 5, § 11969.3, subd. (b).)

For CCSA's reading of the Regulation to be correct, the State Board would have adopted a regulation resulting in charter school students *not* being accommodated in reasonably equivalent conditions. Such gross inequality is contrary to both the intent of the State Board as specifically explained by the Department.

The Department provided guidance as to the intended meaning of reasonably equivalent "capacity." Its Final Statement of Reasons in support of the Regulation describes section 11969.3 as dividing "'conditions reasonably equivalent' into two parts: the capacity of a facility proposed for a charter school and the condition of the facility . . . ." (10 AA 2673.) The Department further explained, "The second subdivision specifies the method for determining whether the capacity of the facility proposed for a charter school is reasonably equivalent to the capacity of facilities in the comparison group (*number of students per classroom, for*

example.)" (*Ibid.*, emphasis added.) Thus, according to the drafters of the Regulation, reasonably equivalent "capacity" translates into having the same number of students per classroom in a charter school as in its District comparison group schools.

The Department's intent of equalizing the number of students per classroom is further evidenced in its responses to public comment regarding its implementing regulations. Through the public comment process, the District raised concerns regarding California Code of Regulations, title 5, section 11969.2, which addresses where a charter school may be located. (10 AA 2685). Although this specific regulation is not at issue, the Department's response is directly pertinent to this discussion. The District commented that school districts should not be required to allocate a particular space in a situation where it would be required to increase involuntary busing or impose multi-track year-round education on additional students. (10 AA 2685.) The Department responded, "[i]t is important to note that *charter schools would suffer the same level of overcrowding that school district schools have*; the facilities provided to charter schools would have *the same number of classrooms per ADA as a group of school district comparison group schools*." (*Ibid.*, emphasis added.)

The Department contemplated that, in crowded school districts like the District, the burdens of overcrowding would be shared equally by charter school students and traditional District school students. Contrary to CCSA's assertion, the Department's clear intent was not to allow charter school students to occupy classrooms at much lower ratios than traditional District school students, or force District students to be involuntarily bused out of their neighborhood schools or placed on multi-track academic calendars to unfairly provide charter school students with a disproportionately larger number of classrooms.

V. THE INVENTORY APPROACH RESULTS IN SHARING FACILITIES UNFAIRLY TO THE DETRIMENT OF TRADITIONAL DISTRICT SCHOOL STUDENTS IN VIOLATION OF THE EDUCATION CODE

Providing classrooms to charter schools at ratios of 10 to 15 students per classroom would result in the annual over-allocation of hundreds of classrooms. To do so despite the District's facilities constraints would cause detrimental impacts solely borne by District children. Such a result is patently unfair and violates the Education Code.

A. The Inventory Approach Results in Detrimental Impacts to Children Attending their Neighborhood District School

To allocate classrooms for a charter school's exclusive use based on ADA ratios of 10 to 15 students per classroom would require providing hundreds of extra classrooms to requesting charter schools.

To illustrate, for the 2012-2013 school year, Ivy Academia Charter School ("Ivy"), projected an in-district classroom ADA of 1,120 students in grades K-12. (10 AA 2727.) The District offered Ivy 46 exclusive use classrooms resulting in an averaged ratio of 24 students per classroom, plus a proportionate allocation of shared use of other specialized space on the campus, such as special education rooms and parent centers, and non-teaching station space, such as fields and gymnasiums. (*Ibid.*) However, if the District was forced to provide Ivy classrooms at a ratio of only 15 students per classroom, Ivy would be entitled to 75 classrooms – 29 more classrooms than Ivy is legally entitled.

This enormous windfall would account for only one charter school. However, for the 2012-2013 school year, the District received facilities requests from 81 different charter schools. (10 AA 2717.) The District would be forced to allocate these hundreds of additional classrooms on crowded District campuses that do not have this additional inventory. It

has taken more than a decade, and billions of dollars, for the District to alleviate the most severe overcrowding on its campuses. However, the District's facilities still remain crowded. Even at the completion of the District's facilities construction program, there will be tens of thousands of students learning in portable classrooms and the majority of the District's schools will be larger than the state average. (RJN, Exh. 1, p. 3.) During the 2009-2010 school year, approximately 120,000 K-12 District students were required to attend schools operating on Concept 6 multi-track calendars.[6] (4 AA 1074, ¶6.) While a consent decree required the District to eliminate Concept 6 calendars, as of the 2011-2012 school year, another 25 District schools, equating to 33,864 classrooms seats, continued to operate on year-round academic calendars, other than Concept 6. (4 AA 1083, ¶13.) Likewise, in the 2010-2011 school year, five schools capped enrollment. This required 950 students to be involuntarily bused out of their neighborhood due to the lack of space to accommodate them in their local school. (4 AA 1084, ¶ 6.)

Moreover, even without allocating hundreds of extra classrooms, just to be able to make Proposition 39 offers of facilities to charter schools for the 2012-2013 school year, the District was forced to eliminate classrooms used for important District and local educational initiatives, such as those for academic intervention and computer labs. (4 AA 2107-2120.) This fact alone stands in sharp relief to CCSA's contention in its Opening Brief that the District's claims of harmful consequences are untrue. (CCSA Opening Brief, pp. 49-52.) Obviously, if the District is already eliminating its use of classrooms for vital programs in order to provide the number of classrooms to which charter schools are legally

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[6] Concept 6 is a three-track calendar that shortens the instructional year inconsistent with Education Code section 37670 but increases the amount of hours in the instructional day to bridge this shortfall.

entitled, the District does not have enough space to allocate the windfall of classrooms from the Inventory Approach without significant detrimental impacts to traditional District students.

The burden and harmful consequences of such over-allocations would be borne exclusively by children attending traditional District schools. To provide hundreds of additional classrooms to charter schools, the District would be forced to reinstate the same types of stopgap measures it fought so hard to eliminate. These measures include putting schools on multi-track calendars, adding portable classrooms to increase school capacity and forcing teachers to travel between classrooms. (4 AA 1075-1076, ¶ 9.) The District would need to put its students on buses and force them to travel outside of their neighborhoods, in some instances great distances, to make room for charter schools' extra allocations. (4 AA 1075-1076, ¶ 9; RJN, Exh. 2, p. 92.)

Such measures would undermine the very essence of traditional District schools, which provide education to children within their residence neighborhood. In contrast, charter schools are not neighborhood schools. The Charter Schools Act states, "admission to a charter school shall not be determined according to the place of residence of the pupil, or his or her parent or legal guardian." (Ed. Code, § 47605, subd. (d)(1).) Charter schools "shall admit all pupils who wish to attend the school." (Ed. Code, § 47605, subd. (d)(2)(A), emphasis added.) Some charter schools operating within the District draw students from as a many as 40 different District schools. (9 AA 2397-2401.) To dismantle the concept of a traditional neighborhood public school so that charter school students may occupy more classrooms than to which they are legally entitled does not equate to sharing facilities fairly.

Further, the District would be obligated to eliminate vital District programs that benefit the most vulnerable populations in the District.

Classrooms that would need to be eliminated currently provide space for special education, special needs and parent centers. (1 AA 66.) Eliminating space for these programs would have significant and long lasting detrimental impacts on children who are most in need. To avoid involuntarily busing its students or eliminating vital District programs, the District would have to raise the number of students per classroom at traditional District operated schools. The great advances the District has made in alleviating severe overcrowding on its campuses are attributable to the overwhelming support of local voters who, through approval of several local bond measures, made it possible to construct desperately needed facilities. (10 AA 1089-1090.) Through equitable allocations of space under Proposition 39, the District shares those facilities fairly with charter school students. The voters approved these bond measures based on the District's promise that all District students will be able to attend their neighborhood schools on a traditional two semester calendar. (4 AA 1089, ¶ 29.) Applying CCSA's Inventory Approach would require the District to break this promise to the voters, children and families of Los Angeles. CCSA asks this Court to order the District to move backwards and reinstate measures that require children to be involuntarily bused out of their neighborhoods or eliminate programs that serve the District's most needy children.

Although the District has experienced a significant and steady increase in academic performance over the past decade, the detrimental consequences of an inequitable sharing of facilities with charter schools will inevitably take its toll. (RJN, Exh. 3, pp. 124-127.) This inequity in the allocation of public school facilities cannot be the policy of this state, and a careful examination of Education Code section 47614 demonstrates that indeed, it is not.

B. The Inventory Approach Subverts the Intent of Education Code section 47614

The central aim of statutory and regulatory interpretation is to ascertain legislative intent. (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 51.) This Court's "fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." (*Ibid.*) "The goal in interpreting a statute enacted by voter initiative is to determine and effectuate voter intent." (*Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 623, citing *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

The intent of the voters in passing Proposition 39 is clearly stated in the language of the statute. "The intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils . . . ." (Ed. Code, § 47614, subd. (a).)

Every appellate court analyzing Proposition 39 has reaffirmed the stated goal of creating fairness amongst public schools: "[A] school district's Proposition 39 obligation is to provide *its* facilities to charter schools in a manner that will promote the intent of 'public school facilities [being] shared fairly among all public school pupils, including those in charter schools.'" (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1059, emphasis in original; accord *Ridgecrest*, *supra*, 130 Cal.App.4th at. P. 1001, fn. 16 ["we agree . . . that '[c]harter school students are not entitled to better facilities choices than other district resident pupils.'")

In finding the District complied with section 11969.3, subdivision (b)(1), the Court of Appeal stated, "[w]e read regulation § 11969.3, subdivision (b)(1) as requiring the District to provide its facilities to charter schools in a manner that will promote the intent of Proposition 39 of public

school facilities being shared fairly among all pupils, including those in charter schools." (*CCSA v. LAUSD, supra*, 212 Cal.App.4th at p. 695.)

The intent and purpose of Proposition 39 is stated in the first sentence of the statute. The plain language of a statute controls, unless the words are ambiguous. (*People v. Maultsby* (2012) 53 Cal.4th 296, 299.) As pointed out by every appellate court analyzing Proposition 39, there is no ambiguity in the statute. Its aim is to share facilities fairly.

Instead of demonstrating the Inventory Approach results in sharing facilities fairly, CCSA simply argues, "*But I don't even have to convince anyone of fairness. It's just the reg.*" (RT, p. 7, lines 21-22, emphasis added.) Fairness cannot be eliminated from the analysis – fairness is the analysis. The sole purpose of the implementing regulations is to further effectuate the intent of the statute, and the central purpose of Proposition 39 is to ensure fair sharing of public school facilities.

CCSA has attempted to avoid the fairness argument by asserting the inherent inequity in providing charter school students facilities at much lower ratios than District school students is justified as "competition" within public schools. As stated by CCSA's counsel, "[t]his is exactly the point of the Charter Schools Act, to create competition and to allow charter schools to operate differently than district-run schools." (RT at p. 6, lines 8-10.) CCSA argues "competition" somehow justifies unfairly sharing facilities. CCSA's argument blurs the separate concepts of competition as discussed in the Charter Schools Act, and the stated purpose of Proposition 39 to share facilities fairly.

The Charter Schools Act provides various reasons for the establishment of charter schools. One such reason, highlighted by CCSA, is to "[p]rovide vigorous competition within the public school system to stimulate continual improvements in all public schools." (Ed. Code, § 47601, subd. (g).) The District does not dispute the coexistence of District

and charter schools stimulates the educational programs of both. In fact, the District has embraced the charter schools movement, and authorizes more charter schools than any other school district in the United States. However, the competition referred to in the Charter Schools Act is one of programs, lesson plans and curriculum – but *not* facilities. The clear purpose of Proposition 39 is to create a level playing field on which all public schools can compete programmatically, not handicap traditional District schools by providing materially less facilities than charter schools even when co-located on the same school site. On this fundamental point, the Superior Court was plainly incorrect (RT, p. 35, lines 14-22.) while the Court of Appeal got it right. (*CCSA v. LAUSD*, *supra*, 212 Cal.App.4th at p. 695).

C. Sharing Public School Facilities Unfairly Cannot be the Public Policy of this State

In construing a regulation, a court "may also consider the consequences of a particular interpretation, including its impact on public policy." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190.) The Inventory Approach would establish bad public policy.

The inherent unfairness in CCSA's Inventory Approach is not merely conceptual or theoretical. It has real world consequences that the District, an entity charged with educating all public school children, fundamentally understands. To illustrate, in response to the District's argument that it would be anomalous for the District to need to count preschool classrooms as if artificially provided to K-12 District students, CCSA responds if "*some preschool classrooms needed to be reallocated . . . no evidence shows that would be 'fundamentally unfair.*'" (Opening Brief, p. 47, emphasis added.)

CCSA's argument is unreasonable. To eliminate classrooms for early education to provide charter schools more classrooms than that to

which they are legally entitled is fundamentally unfair. The importance of early education has recently taken center stage in this country. President Barack Obama touted preschool as the bedrock of our children's educational foundation. In his February 2013, State of the Union address to the United States Congress, the President stated:

> Study after study shows that the sooner a child begins learning, the better he or she does down the road. But today, fewer than 3 in 10 four-year olds are enrolled in a high-quality preschool program. Most middle-class parents can't afford a few hundred bucks a week for private preschool. And for poor kids who need help the most, this lack of access to preschool education can shadow them for the rest of their lives . . .
>
> So let's do what works, and make sure none of our children start the race of life already behind. Let's give our kids that chance. (RJN, Exh. 6, p. 145.)

Fundamentally, "reallocating" (as CCSA terms it) preschool classrooms so that these children start "the race of life already behind" is unfair. Ousting preschoolers was not what the voters of this state intended in passing Proposition 39.

Moreover, preschool space is not the only non-K-12 instructional space on District campuses. Most of the District's campuses were built without police stations or space for police services. As the recent tragic events at Sandy Hook Elementary and elsewhere have sadly demonstrated, the need for police protection on our school campuses is a harsh reality, especially in dense urban areas such as Los Angeles. Consequently, the Los Angeles School Police Department occupies classrooms on District campuses. (9 AA 2418.) Applying CCSA's logic, to make room for charter school classrooms, if "some [police services] classrooms need to be reallocated . . . no evidence shows that would be 'fundamentally unfair.'" (Opening Brief, p. 47.)

Reallocating spaces necessary for the protection of all public school children (including co-located charter school students), adults and families on District campuses is fundamentally unfair. The Los Angeles School Police Department does not discriminate based on the status of a child learning on a District campus, and it protects charter school students and traditional District school students equally. (9 AA 2418.)

Eliminating spaces needed for preschool education and the protection of school children so that charter schools are provided a disproportionate allocation of classrooms cannot be the sound policy of this state.

VI. THE PROVIDED APPROACH RESULTS IN FAIRNESS IN FACILITIES ALLOCATION

Only when gross classroom inventory is qualified by what is "provided" to District students, is there a workable, reasonable and fair outcome as intended by Proposition 39. Under the Provided Approach, no language is added to or removed from the Regulation, and no new numbers of students must be added to the numerator in the ratio used to provide classrooms to charter schools. The Inventory Approach requires all of these changes in order to be workable.

Most importantly, the Provided Approach is fundamentally fair and causes no detrimental impacts to charter school students because the District accommodates charter schools students exactly how District students are accommodated.

A. The Provided Approach Results in Charter School Students Receiving the Number of Classrooms to Which They are Entitled Under the Law

CCSA speculates that "LAUSD's 'norming ratios' *may* have resulted in many charter schools receiving far fewer classrooms than they were entitled to under the law." (Opening Brief, p. 14, emphasis added.)

Not only has CCSA failed to provide any evidence to support this allegation, but the District has conclusively demonstrated CCSA's speculation is unsubstantiated.

In its Motion before the Superior Court, CCSA identified 12 charter schools it alleges were not provided facilities with reasonably equivalent capacity under Proposition 39. (8 AA 2170, ¶ 4.) CCSA claimed the ratios of students per classroom at these charter schools' comparison group schools were much lower than the space offered to the charter schools. (*Ibid.*)

The District reviewed each of CCSA's claims for the 12 charter schools in detail, and presented evidence demonstrating CCSA's claims were completely false. The District had allocated classrooms to charter schools in ratios of students per classroom that were either reasonably equivalent to – or more favorable than – the average ratios of students per classroom at their District comparison group schools. The District's analysis is summarized in the table below (10 AA 2719, ¶ 13, 2724-2729):

Charter School	**Ratio of Students to Classrooms Provided to Charter School**	**Average Ratio of District Students to Classrooms in Charter School's Comparison Group Schools**
Clinton MS	29.4	32.4
Citizens of the World - Hollywood	23.7	23.9
Citizens of the World – 2	23.8	24.1
CLAS Affirmation	24.1	22.9
Extera	24.2	23.0
Goethe	23.2	23.03

Health Services Academy	28.75	31.9
Ingenium	25.1	24.4
Ivy Academia	24.3	25.9
KIPP Empower	23.3	23.1
Magnolia Science Academy 4	26.3	26.5
WISH	22.3	23.4

The evidence in the record demonstrates that the Provided Approach ensures that charter school students are provided classrooms in conditions reasonably equivalent to or better than those in which they would be provided if the attended their District school.

B. The Provided Approach Ensures a Charter School's Allocation of Classrooms is the Same as that of its Comparison Group District Schools

Despite clear evidence to the contrary, CCSA maintains norming ratios are a District-wide standard, and therefore, the District fails to focus on comparison group schools in its analysis. CCSA's contention is wrong.

CCSA focuses on language in the Department's Final Statement of Reasons in Support of California Code of Regulations, title 5, section 11969.3, subdivision (a)(2), which defines "comparison group" schools. The Department provided the following explanation for its definition of comparison group schools:

> Using all district-operated schools as the comparison group would present administrative and data problems for school districts. In addition, for large school districts, using all district-operated schools as the comparison group would result in a standard that might be significantly different than the neighborhood schools the charter school students would otherwise attend. (This is because in large school districts the condition in schools may vary widely from neighborhood to neighborhood.)" (10 AA 2673-2674.)

The point of CCSA's argument appears to be that because the District allocates facilities to charter schools at a ratio of students per classroom that is consistent by grade level District-wide, this allocation does not reflect the ratio of students to classrooms at each of a charter school's comparison group schools. CCSA's argument is a non sequitur. The District's norming ratio is a control that ensures the number of students to classrooms provided at each District school is consistent by grade level. Therefore, a charter school's comparison group schools will have a reasonably equivalent ratio of ADA to classrooms to the norming ratio at which the charter school was allocated facilities. (See Section VI.A, *supra*.)

The Department's concern that conditions of the facilities may vary from neighborhood to neighborhood within large school districts has been allayed by the fact that the District's norming ratio ensures the ratio of students-per-classroom is the same by grade level at each District school.

C. ***Bullis*** **Does Not Support CCSA's Position That the District Must Count Classrooms Not Provided for K-12 Instruction**

In a misguided attempt to support its position that the District must count classrooms not provided to K-12 students, CCSA likens its argument to one advanced in *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022 ("*Bullis*"). *Bullis* does not support CCSA's position nor is it in conflict with *CCSA v. LAUSD.*

In *Bullis,* a school district attempted to exclude shared non-classroom space that was *made available to district school students* at some campuses from its Proposition 39 comparison group analysis, merely because the type of space (e.g., a tennis court) was not common to all of a charter school's comparison group schools. The Court of Appeal found a comparison group school's determination of how to use the shared space

(such as whether to use a blacktop as a tennis court versus a basketball court) could not dictate the analysis. (*Id.* at p. 1047.) Rather, a school district must consider the total amount of *non-classroom* space *available* to the students at the comparison group schools when conducting a comparison group analysis. (*Ibid.*)

Unlike the school district in *Bullis*, the District considered all of the classrooms provided (i.e., made available) to traditional District school students attending a charter school's comparison group schools. The District counted every classroom actually provided, and applied the ratio of students to classrooms provided to allocate space to charter schools.

CCSA asks this Court to force the District to provide classrooms to charter schools that are not made available to K-12 students in traditional District schools. *Bullis* imposes no such requirement on school districts. Rather, the *Bullis* Court held, "a school district's Proposition 39 obligation is to provide its facilities to charter schools in a manner that will promote the intent of 'public school facilities [being] *shared fairly among all public school pupils*, including those in charter schools.'" (*Bullis, supra,* 200 Cal.App.4th at p. 1059, emphasis added.) The District's methodology is in harmony with *Bullis*, because it promotes fair sharing of facilities.

D. A School District Has Broad Authority to Create a Solution to Ensure Its Compliance with the Law

The District's reliance on a norming ratio is a method by which the District ensures compliance with section 11969.3, subdivision (b)(1). A school district may fashion any solution necessary to carry out its state mandated obligations provided that it is not in conflict with any law. Indeed, "the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is

not in conflict with the purposes for which school districts are established." (Ed. Code, § 35160.)

Further, the Legislature declared that school districts "should have the flexibility to create their own unique solutions" and consequently, "[i]t is the intent of the Legislature that Section 35160 be liberally construed to effect this objective." (Ed. Code, § 35160.1.)

In *Governing Board of Ripon Unified School District v. Commission on Professional Conduct* ("*Ripon*") (2009) 177 Cal.App.4th 1379, the Court of Appeal upheld a policy instituted by a school district to ensure its compliance with the requirements of the Education Code. The law at issue required all public school students who are not fluent in English to be taught by teachers certified to teach English learners. (Ed. Code, §§ 44253.3, 44253.4 and 44253.10; *Ripon, supra,* 177 Cal.App.4th at p. 1383.) To meet this directive, the school district adopted a rule requiring all of its teachers to become certified to teach English learners. The *Ripon* court affirmed the school district's authority to impose such a requirement. (*Ripon, supra,* 177 Cal.App.4th at p. 1382.)

The *Ripon* court cited Education Code section 35160 and noted, "[i]n general, a school district has all authority necessary to fulfill its purposes except as expressly limited or preempted by statute." (*Id.* at p. 1385.) Consequently, "there is a correlative limitation upon the authority of courts to control the actions of local school districts." (*Id.* at p. 1386.) The *Ripon* court continued by declaring "'that courts should give substantial deference to the decisions of local school districts and boards within the scope of their broad discretion, and should intervene *only in clear cases of abuse of discretion.*'" (*Ibid.*, quoting *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1017–1018, emphasis added.) *Ripon* concluded that the school district's actions were not in conflict with or preempted by any law and not in conflict with the purposes

for which school districts were established and, therefore, the school district did not abuse its discretion. (*Id.* at pp. 1386-1392.)

As in *Ripon,* the District's use of norming ratios to ensure compliance with section 11969.3, subdivision (b)(1) is not preempted by, or in conflict with, any law. Therefore, the District has not abused its broad discretion. To the contrary, the District's provision of facilities to charter schools based on the same norming ratios used to provide facilities to students attending traditional District schools ensures full compliance with section 11969.3, subdivision (b)(1). The District's methodology complies with the intent and letter of Proposition 39 and results in fair sharing of facilities. (Ed. Code, § 47614.)

The District's Provided Approach is also supported by *Hartzell v. Connell* (1984) 35 Cal.3d 899 (*Hartzell*), another decision interpreting a Department regulation. In *Hartzell*, the Court held a school district could not require students to pay fees to participate in extracurricular music and sports activities because such a fee requirement violated a Department regulation. (*Id.* at p. 913.)

As the Court of Appeal did in *CCSA v. LAUSD*, the *Hartzell* Court focused on the plain language of the regulation and the constructions supplied by the Legislative Counsel and the Department. (*Hartzell*, *supra*, 35 Cal.3d at p. 913.) The Court determined, "the plain language of the regulation and the constructions supplied by the Legislative Counsel and the Department of Education indicate that title 5, section 350 bars school districts from charging fees for educational extracurricular activities." (*Ibid.*) Consequently, *Hartzell* held the school district's fee program was in clear conflict with the pertinent regulation. (*Id.* at pp. 915-916.)

The plain meaning of section 11969.3, subdivision (b)(1), and the stated intent of both the Department and California voters conclusively demonstrate that the District's allocation of space to charter schools is not in conflict with any law, but instead fully complies with Proposition 39.

VII. CONCLUSION

On the same public school campus, is it fair to the public school children to give one class of such children, charter students, access to more classrooms for exclusive use than another class of children, traditional school district students? CCSA asks this Court to answer yes and the District asks that the answer be no.

Manipulating Proposition 39 ratios with artificially high classroom numbers and displacing thousands of District neighborhood students is unfair and contravenes the stated intent of voters in passing Proposition 39. The District seeks only to share its classrooms with charter schools fairly, and that charter schools be provided classroom space actually equivalent to classroom space provided to District students.

The people of our state said: "[t]he intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools." (Ed. Code, § 47614, subd. (a).)

This must be the policy of our state, as it treats the two classes of public students equally. This must be where the swing of this pendulum stops – at equality – as intended by the people and as required by the laws of this state.

The District respectfully requests that the Court affirm the decision of the Second District Court of Appeal.

Dated: August 20, 2013

Respectfully submitted,

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CERTIFICATION PURSUANT TO RULE 8.204(c)

I hereby certify that the foregoing brief contains 13,983 words and thereby complies with California Rules of Court, Rule 8.204(c). In making this certification, I have relied on the word count of the computer program used to prepare this brief.

Dated: August 20, 2013

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Miriam Lopez, am an employee in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1901 Avenue of the Stars, Suite 575, Los Angeles, California 90067-6007.

On August 21, 2013, I served the foregoing document described as:

ANSWER BRIEF ON THE MERITS

on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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_X_ (By Mail) I placed the envelope for collection and mailing on the date shown above, at this office, in Los Angeles, California, following our ordinary business practices.

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service in a sealed envelope with postage fully prepaid on the same day that the correspondence is placed for collection and mailing in the ordinary course of business. I am aware that a motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing of affidavit.

_X_ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2013, at Los Angeles, California.

Miriam Lopez

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