IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

PROMISE PUBLIC SCHOOLS, INC., Petitioner/Plaintiff, v. SAN JOSE UNIFIED SCHOOL DISTRICT; and DOES 1 through 10, inclusive, Respondents/Defendants.	CASE NO.: 18CV325491 **ORDER GRANTING PROMISE'S MOTION FOR ISSUANCE OF PETITION FOR WRIT OF MANDATE**

The Motion for Issuance of Petition for Writ of Mandate, brought by PROMISE PUBLIC SCHOOLS, INC. ("Promise") requests that Respondent SAN JOSE UNIFIED SCHOOL DISTRICT ("District") be directed to immediately make a preliminary offer of reasonably equivalent, contiguous and furnished and equipped facilities in the downtown San Jose area, pursuant to Proposition 39, sufficient to accommodate Promise's projected in-district average daily attendance ("ADA") of 193.64, in preparation for Promise's incoming students.

A. Proposition 39 and its Regulations

Charter schools are, by law, part of California's public school system and students who attend charter schools are public school students. (*Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125; see Ed. Code § 47614, subd. (a).) Proposition 39 is a statutory initiative approved by the voters of California in November of 2000 which commands that "public school facilities should be shared fairly among all public school pupils, including those in charter schools." (Ed. Code § 47614(a).) School districts are required to provide public school "facilities sufficient 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 the other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped and shall remain the property of the school district." (Ed. Code § 47614.)

For a charter school to be eligible to receive Proposition 39 facilities, it must submit a request for facilities to the school district by November 1 in the year preceding the year in which facilities are to be allocated. (Cal. Code Regs., tit. 5, § 11969.9, subd. (b).) Under the Education Code, if the charter school provides the district with a reasonable projection of in-district ADA of at least 80, the district must provide the charter school facilities commensurate with that projection. (Educ. Code § 47614, subd. (b)(2).)

On or before December 1, the school district "shall review the charter school's projections of in-District and total ADA and in-District and total classroom ADA and . . . express any objections in writing and state the projections the district considers reasonable. If the district does not express objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge, and the school district shall base its offer of facilities on those projections." (Cal.

Code Regs., tit. 5, § 11969.9, subd. (d).)[1] By January 2, the charter school must respond to the District's objections, if any, and "shall reaffirm or modify its previous projections as necessary to respond to the information received from the district." (Cal. Code Regs., tit. 5, § 11969.9, subd. (e).)

By February 1, the school district must provide the charter school with a preliminary proposal for reasonably equivalent, contiguous, and furnished and equipped facilities sufficient for the established In-District ADA projection. (Cal. Code Regs., tit. 5, § 11969.9, subd. (g).)

By March 1, the charter school shall review and comment on the preliminary proposal, as well as express concerns and make counter-proposals to the school district. (Cal. Code Regs., tit. 5, § 11969.9, subd. (g).)

By April 1, the school district must provide a final offer of reasonably equivalent, contiguous, and furnished and equipped facilities to the charter school sufficient for the established In-District ADA projection. This final offer notification must specifically identify, among other things, the location and specific facilities allocated. (Cal. Code Regs., tit. 5, § 11969.9, subd. (h).) The charter school has 30 days from receipt of the final offer to notify the district if it intends to occupy the space. (Cal. Code Regs., tit. 5, § 11969.9, subd. (i).)

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[1] ADA stands for Daily Average Attendance. The ADA number is different than the enrollment number. Attendance is the presence of a student on days when school is in session. Enrollment is when a student signs up to attend a school. School districts are only obligated under Proposition 39 to allocate reasonably equivalent school facilities to accommodate the number of units of ADA representing students who would otherwise be eligible to attend the school district's schools.

B. Standard of Review

A California school district's obligation under Proposition 39 are mandatory obligations enforceable by traditional mandate under Code of Civil Procedure § 1085. (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1034.) "Our high court has described the appropriate level of judicial scrutiny of agency action in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other. [citation.] Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." (Id. at 1036 [internal quotation marks removed].) The Sixth District Court of Appeal also adopted some guiding principles: "'Courts exercise limited review in ordinary mandamus proceedings. They may not reweigh the evidence or substitute their judgment for that of the agency. They uphold an agency action unless it is arbitrary, capricious, lacking in evidentiary support, or was made without due regard for the petitioner's rights. [Citations.] However, courts must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute. [Citation.]'" (Ibid.)

C. Evidentiary Objections

The Court received all evidence on which it relies through the parties' respective Requests for Judicial Notice, the parties' witness declarations and accompanying exhibits, and deposition transcripts submitted the District, subject to the written objections. If the court sustains an objection based on a stated ground, other objections to the same evidence based on other grounds are deemed moot.

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1. Requests for Judicial Notice

The parties' respective Requests for Judicial Notice are granted, subject to any evidentiary rulings below.

2. The District's Objections to Promise's Evidence

-The District's objection to paragraph 19 of the Declaration of Anthony Johnson is SUSTAINED as irrelevant since the District is only obligated to consider documentation submitted by the Charter School in support of its facilities request by December 1 under the Proposition 39 process.

-The District's objection to paragraph 2 through 7 of the Post-Hearing Declaration of A. Johnson and to the accompanying exhibits is SUSTAINED as irrelevant since the District is only obligated to consider documentation submitted by the Charter School in support of its facilities request by December 1 under the Proposition 39 process.

3. Promise's Objections to the District's Evidence

-Promise's objection to the Declaration of John R. Yeh, regarding the comments of Patrick Walsh is OVERRULED based on the grounds stated.

-Promise's Objections to paragraphs 9, 10, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26 and Exhibit F of the Declaration of Stephen McMahon are OVERRULED based on the grounds stated.

-Promise's Objections to the Declarations of Ana Martinez, Catalina Gomez, Sandra Camacho, Sandra Lomeli , Jose M. Palma, Merika De Villa, Imelda Cruz, Jenny Zepeda, Lila Chavez, Onofre Gonzalez, and Sarai Gomez are OVERRULED based on the grounds stated.

-Promise's Objections to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and Exhibit A to the Post-Hearing Declaration of Stephen McMahon are OVERRULED based on the grounds stated.

Promise's Objections to the Consideration of the Deposition Testimony of Ana Martinez, Sandra Lomeli, and Lilia Chavez are OVERRULED based on the grounds stated.

D. Factual Summary

1. Promise's Charter Application

On April 6, 2017 Promise submitted a charter petition to the District to establish a California public charter school. The District's Board of Education voted on June 1, 2017, to deny Promise's charter petition. Following an unsuccessful appeal to the Santa Clara County Board of Education, Promise appealed the denial to the State Board of Education. On January 19, 2018, the State Board of Education approved Promise's charter petition to open Promise Academy for the 2018-19 school year. As a condition of the State Board of Education's approval of Promise's charter, Promise must provide the State Board of Education with proof, by June 15, 2018, that it has made the necessary arrangements for school facilities for the coming year.

2. Promise's Request for Facilities

On October 31, 2017, pursuant to Proposition 39, Promise submitted its request to the District for reasonably equivalent school facilities to accommodate Promise's incoming in-district students, detailing the methods by which it came to its projected in-District ADA for the 2018-2019 school year.

Promise projected to have an in-District ADA of 193.64 for its 2018-19 school year, representing a total enrollment of 206 in-District students. (Johnson Decl., ¶ 5; Exhibit A) In support of its projections, Promise provided the District with 318 "Intent to Enroll" forms, each exhibiting parental

signatures and containing their averments to their "meaningful interest" in having their child(ren) attend Promise Academy.

Of the 318 Intent to Enroll forms submitted with its Proposition 39 request, 184 were collected as part of Promise's charter petition in April of 2017. Promise collected an additional 134 signed forms in subsequent months, for a total of 318. In coming to the projection of 193.64 in-District ADA, Promise utilized the 94% attendance rate in its charter petition budget, and factored in lottery preference for in-District students as required by law.

3. District Rejection

By letter dated November 30, 2017, the District wrote to Promise indicating it did not believe Promise was eligible for Proposition 39 facilities based on the District's own in-district ADA projection.

In its letter, the District explained that 216 remained from the 318 submissions after the District removed all duplicate submissions, all incomplete submissions, all incorrect grade submissions, and all addresses not located within the District.

The District then further removed 66 submissions "of parents that previously verified that they are not meaningfully interested in Promise Academy." This previous verification of lack of meaningful interest came from a telephone survey the District conducted in connection with Promise's previous Charter application ("first telephone survey") in May of 2017—five months before Promise made its Proposition 39 request for facilities.

Thus, 150 submissions remained, of which 16 were previously confirmed to the District's satisfaction as having meaning interest based on the District's first telephone survey. The remaining 134 submissions were collected after the charter application process and therefore were not part of the District's first telephone survey. Of these "new" 134 submissions, the District decided to apply a 55% rejection rate based on "the previous verification yielded a rate of 55% not meaningfully interested in

Promise Academy" from the first telephone survey. Projecting this verification yield rate of 55% to the 134 submissions that were not part of the first telephone survey, the District arrived at a projection of 61 as having meaningful interest in Promise, and thereby automatically rejected 73 (or 55% of the 134 submissions) as not meaningfully interested. Adding to 61 to "the 16 previously verified responses" of meaningful interest from the first telephonic survey, the District arrived at "a total of 77 reasonably projected verified responses" of meaningful interest.

Applying the ADA rate of 94% to the remaining 77 submissions which the District deemed to be "reasonably projected verified responses," the District's in-district ADA projection for Promise was 73, a figure under the minimum ADA of 80 at which a charter school is eligible for Proposition 39 facilities. (See Education Code section 47614(b)(5).)

4. Protest and Second Telephone Survey

On December 31, 2017, Promise wrote back to protest the District's counter-projection of 73, reaffirm its in-District ADA projection of 193.64, and further defend the reasonableness of Promise's in-District ADA projection of 193.64.

Over January 23 and 24, 2018, the District conducted telephonic surveys of Promise's 134 most recent Intent to Enroll form signatories ("second telephone survey"), the same group of submissions to which the District had previously applied the 55% yield rate. From the second telephone survey, the District found that "36 in-District students did verify as meaningfully interested in attending Promise Academy for the 2018-19 school year, 72 in-District students did not verify as meaningfully interested in attending Promise Academy for the 2018-19 school year, and the District was unable to receive verification from 42 in-District students."[2] For the last group of 42 written and signed submissions of

[2] By "unable to receive verification" the District meant that it could not reach the parents by telephone.

meaningful interest for which the District could not reach the parents by telephone, the District decided not to count them.

On March 30, 2018, the District wrote to Promise to formally deny Promise any school facilities for the coming school year.

E. Discussion

Education Code section 47614 provides, that upon a charter school providing a school district with a reasonable projection of the in-District ADA for the request year and "[t]he district shall allocate facilities to the charter school for that following year based upon this projection." (Ed. Code § 47614 subd. (b)(2.) Applied here, if Promise's projections are reasonable, the District must accept those projections and allocate facilities based on those ADA projections. (*Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 195.)

1. Standard of Reasonableness

The standard for a reasonable projection under Proposition 39 is not stringent. The law merely requires that the charter school "must offer some explanation in its facilities request for the basis for its projection." (*Id.* at 195-96.) A charter school's explanation need not "demonstrate arithmetical precision in its projection or provide the kind of documentary or testimonial evidence that would be admissible at a trial." (*Id.* at 196.) A charter school need only provide "documentation of the number of in-District students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy." (*California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530, 564-65.)

Moreover, the requirement that a school district rely on a charter school's projections is self-enforcing because charter schools have a strong incentive not to overestimate enrollment, because they must pay for over-allocated space. (Ed. Code, § 47614, subd. (b)(2); Cal. Code Regs., tit. 5, § 11969.8. See *Sequoia Union High School Dist. v. Aurora Charter High School, supra*, 112 Cal.App.4th at 196 ["the school is subsequently penalized if its projection was incorrect by having to reimburse the district for over-allocated space].) In this case, if it proves that Promise has over-projected its in-district ADA, the District will be entitled to collect an "over-allocation penalty." (Cal. Code Regs. tit. 5 § 11969.8.) This disincentive to over-projection argues against making the Proposition 39 review by a chool district of a charter school's request for facilities an adversarial and evidence-gathering process.

2. District Review is Limited

If the District's position is accepted, a school district would have the right to gather evidence to rebut or impeach the documentary support a charter school provides with its Proposition 39 request, or the right to obtain its own confirmation or verification of meaningful interest directly from the parents despite the submitted signed documents expressing their meaningful interest. A school district would also have the discretion to weigh its rebuttal evidence against the charter school's supporting documentation, and then holds the authority to rule on the quality of the competing evidence according to its own subjective standard of proof. This cannot be so. Proposition 39 and its implementing regulations describe, if anything, an iterative, good faith protocol for the procurement of district school facilities by eligible charter schools. It is plainly rooted in Proposition 39's command "that public school facilities should be shared fairly among all public school pupils, including those in charter schools." (Education Code section 47614(a).)

"Considered together, the provisions of Regulations, section 11969.9 require a charter school to provide a school district with some explanation, based on a documentary showing, of its ADA projections. Although the School District Associations argue more information is necessary, we see no

reason to believe, on this facial challenge to the regulation, that the information required by section 11969.9 will be insufficient to allow a school district to carry out its duties to evaluate the facilities request and provide reasonably equivalent facilities." (*California School Bds. Assn. v. State Bd. Of Education* (2010) 191 Cal.App.4th 530, 565.)

Moreover, the Final Statement of Reasons approved by the State Board of Education relative to what information should form the basis for a reasonable ADA projection stated as follows: "Required information would be limited to names and addresses, consistent with the statement of legislative intent in EC section 49073.5 to 'minimize' the release of telephone numbers 'in the absence of express parental consent.' Names and addresses should be sufficient foundational information for school districts to determine the reasonableness of ADA projections."

Thus, it is evident that the scope of a school district's review of the required level of meaningful interest in a charter school's request for facilities is limited, especially that charter schools have an incentive to not overestimate its projected ADA in light of the reimbursement penalty and that school districts have an incentive to minimize the amount of facilities they must allocate to charter schools with no countervailing penalty.[3]

In sum, a district review does not entail a separate confirmation or verification to the school district directly from the parent of his or her meaningful interest in a charter school. A district may review the charter school's projections and supporting documentation for obvious defects, such as listing a child outside the qualifying age range, listing a child who resides outside the a district boundaries, listing of incorrect grades, more than one submission by the same student to the same

[3] The District's reliance on an acknowledgment by the parents in the Intent to Enroll form that they understand that the District may contact them directly to verify their responses is not well taken, as the District is still bound by the scope of review established by Proposition 39. Moreover, the District still proceeded to conduct the second telephone survey despite objection by Promise in its letter dated December 31, 2017.

charter school, etc.. The screening process reducing the submissions from 318 to 216, as described in the District's letter of November 30, 2017, is a good illustration as to the functions of the District and scope of its review when considering a request for facilities.[4]

A school district, however, impermissibly exceeds the scope of its review when it embarks on gathering independent evidence to rebut or impeach a timely Proposition 39 request, or to insist on the school district obtaining its own confirmation or verification of meaningful interest directly from the parents. If this is permitted, one could also imagine a situation in which a parent is repeatedly disturbed by a charter school or a school district trying to gather impeaching, rebuttal, or rehabilitating evidence, with no mechanism under Proposition 39 to evaluate and adjudicate dueling evidence.

Accordingly, the court finds that Proposition 39 does not permit by the District the use of results from its surveys of interested parents as a basis for rejecting signed Intent to Enroll forms or other documentation supporting meaningful interest.

3. The District's Second Telephone Survey Was Untimely

Upon receipt of a Proposition 39 request, the school district shall "review" the charter school's ADA projections and, "on or before December 1, express any objections in writing and state the projections the district considers reasonable. If the district does not express objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge, and the school district shall base its offer of facilities on those projections." (Cal. Code Regs.,

[4] It is questionable, however, whether the District could disregard submissions by the same students to more than one charter school without crediting any or all of the affected charter schools. Here, two students expressed meaningful interest in Promise and Perseverance Preparatory. It is reasonable for a student have meaningful interest in more than two schools although ultimately he or she could only enroll in one. It should be noted that the net loss for Promise on this basis is only one student, as the first student had three submissions, two for Promise and one for Preparatory, and one submission for Promise was retained.

tit. 5, § 11969.9, subd. (d).) Any objection must be based on a review of the charter's supporting documentation.

Here, the second telephone survey, conducted in January 2018, was untimely and the results cannot provide a basis for rejecting Promise's in-District ADA projection even if the survey was permissible under Proposition 39.

4. The District's Second Telephone Survey Was Flawed

From the results of its second telephone survey, the District characterized 72 parents who answered negatively to the question "are you planning to have [your child] attend Promise Academy next school year," as "Verified Not to Have Meaningful Interest in Promise Academy." The District then reduced its projection of Promise's in-district ADA accordingly.

The standard under Proposition 39, however, is not whether a parent is planning to have his or her child attend a particular charter school, but whether a parent is "meaningfully interested" in enrolling his or her child in that charter school. Thus, even Proposition 39 allows the District to directly survey a parent, the process here is flawed because the question posed to the parents was not in the language of the standard under Proposition 39. Asking about a plan to enroll as opposed to a meaningful interest inserted a higher standard than that required of Promise under Proposition 39, particularly at a time when it was still uncertain that Promise's charter would even exist in the Fall of 2018.

5. The District Acted Arbitrarily and Capriciously In not Counting Forms for Which the District Was Unable to Contact the Parents

When the District engaged in the second telephone survey of the "new" 134 submissions by Promise, the District was unable the parents of 42 students so the District did not count these 42 students in favor of Promise.

Not only the District insisted on the right to obtain independent verification directly from the parents, but when it failed to reach a parent it simply discarded that parent's existing and documented expression of meaningful interest. The court finds the District's action in this regard to be arbitrary and capricious.

6. The District Acted Arbitrarily and Capriciously in Applying the 55 Percent Rate

From its first telephone survey of parental interest (taken in May 2017 at the charter petition phase of Promise's existence), the District extrapolated and later applied a 55% rejection rate to the group of 134 enrollment forms that came after the first telephone survey, thereby rejecting 73 expressions of parent interest in Promise in the Proposition 39 context without any further review or analysis.

First, the 55% percent rate is a derivative of a process which the court has already found herein to be not authorized under Proposition 36 in the context of district review of a request for facilities.

Second, the court finds that the artificial application of this 55% rate to the group of 134 "new" enrollment forms to be arbitrary and capricious.

7. Promise Provided a Sufficient Basis for Its Projection To Trigger the District's Duty to Provide a Preliminary Proposal

Pursuant to the lawful scope of a district review of a charter school's request for facilities under Proposition 39, Promise had provided the District with a reasonable projection[5] Accordingly, the District had a duty to make a preliminary offer of reasonably equivalent, contiguous and furnished and equipped facilities in the downtown San Jose area, pursuant to Proposition 39, sufficient to

[5] In fact, 216 remained from the 318 submissions after the District removed all duplicate submissions, all incomplete submissions, all incorrect grade submissions, and all addresses not located within the District. This is the permissible scope of review under Proposition 39. After applying the ADA rate of 94% to the remaining 216 submissions would yield a number higher than Promise's projected in-district average daily attendance ("ADA") of 193.64.

accommodate Promise's projected in-district average daily attendance ("ADA") of 193.64, in preparation for Promise's incoming students.[6]

F. A Statement of Decision Is Not Required

The District had submitted a Request for Written of Statement of Decision. However, this trial or hearing on Promise's Motion for Issuance of Writ of Mandate is not a "trial of a question of fact by the court." (See Code of Civil Procedure §632 and California Rules of Court, Rule 3.1590.) Indeed, the evidence in this matter was submitted to the court by the parties' respective Requests for Judicial the parties' witness declarations, and deposition transcripts. While certain evidence was subject to a party's evidentiary objections, there are no disputed facts for the court to resolve. Indeed, it is the recollection of the court that at one point in the District's oral arguments, the District stated to the effect that while the parties disagreed on the law, the court was presented with uncontroverted evidence.[7]

Bullis Charter School v. Los Altos School Dist., supra, concerns a review of a denial of a petition for writ of mandamus concerning Proposition 39. In the trial court, "[t]he parties submitted substantial briefing and evidence in support of, and in opposition to, the Petition, including supplemental supporting and opposing papers. After hearing extensive argument, on November 24, 2009, the court issued an order denying the relief sought in the Petition." (*Bullis Charter School v. Los Altos School Dist., supra,* 200 Cal.App.4th at 1032.) On appeal, the Sixth District Court of Appeal applied a *de novo*

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[6] For the reasons stated herein, the declarations of Ana Martinez, Catalina Gomez, Sandra Camacho, Sandra Lomeli , Jose M. Palma, Merika De Villa, Imelda Cruz, Jenny Zepeda, Lila Chavez, Onofre Gonzalez, and Sarai Gomez, and the deposition testimony of Ana Martinez, Sandra Lomeli, and Lilia Chavez bears no impact on Promise's submissions of meaningful interest on October 31, 2017. Not only this evidence was obtained after December 1, the deadline by which the District must object to Promise's ADA projection, but also constituted impeachment or rebuttal evidence of Promise's submissions in a manner not authorized by Proposition 39.

[7] It should be cautioned, however, that the court does not have the benefit of the transcript of the hearing to confirm its recollection.

standard of review rather than the more deferential substantial evidence standard because the matter involved a question of law where the facts were undisputed. (*Id.* at 1037.) The Court wrote:

> It is true that where a court's ruling on a traditional writ of mandate is founded on a resolution of conflicting evidence, the appellate court's inquiry [is] whether the findings and judgment of the trial court are supported by substantial evidence. However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed. The interpretation of a statute is a question of law subject to independent review. Notwithstanding the District's belated attempt in its rehearing petition to characterize the trial court's decision as one involving a resolution of disputed facts, it is clear that the matter here involves an interpretation of Proposition 39 and its implementing regulations, and their application to the District's Facilities Offer. The principal issues, as discussed, post, concern the propriety of the methodology employed by the District in the creation of the Facilities Offer—i.e., the exclusion of nonclassroom space of the comparison group schools, the inclusion among the facilities offered to the charter school of a soccer field used by Bullis only two days a week without proration due to its shared use, the failure to consider site size of the comparison group schools, the use of standard room sizes for certain rooms at the comparison group schools, and the failure to consider certain facilities (such as before- and afterschool childcare facilities) available at each of the comparison group schools. The District confuses disputes over the appropriate methodology for a Proposition 39 facilities offer that did exist and are at the heart of the controversy with disputes as to material facts (e.g., the objective measurements of the comparison group schools and the Egan site) which did not exist. The de novo standard of review enunciated in *Sequoia, supra*, 112 Cal.App.4th at page 195 is therefore appropriate here."

(*Id.* at 1037-1038 [citations, internal quotations marks, and footnote omitted].)

Similarly here, at issue before the court is the methodology used by the District in reviewing Promise's request for facilities which required the court to interpret Proposition 39 and its regulations. The facts relied on by the court herein are not disputed by the parties. Accordingly, as the matter before the court does not involve a "trial of a question of fact" by the court, a statement of decision is not required and the District's request for one is denied.

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G. Disposition

The motion of issuance of writ of mandate of Promise in this proceeding is GRANTED. Petitioner shall forthwith prepare an order that a writ of mandate issue under the seal of this Court compelling the District to make a preliminary offer by no later June 25, 2018, of reasonably equivalent, contiguous and furnished and equipped facilities in the downtown San Jose area, pursuant to Proposition 39, sufficient to accommodate Promise's projected in-district average daily attendance ("ADA") of 193.64. The order shall also establish deadlines for the rest of the Proposition 39 process as follows: By no later than July 6, Promise shall review and comment on the preliminary proposal, as well as express concerns and make counter-proposals in writing to the District. By no later than July 13, the District must provide a final offer of reasonably equivalent, contiguous, and furnished and equipped facilities to the charter school sufficient for the established In-District ADA projection. This final offer notification must specifically identify, among other things, the location and specific facilities allocated. By no later than July 30, 2018, Promise shall notify the District in writing of Promise's decision to accept or decline the District's final offer.

The deadlines provided herein are adjusted dates for compliance with Proposition 39 deadlines and are necessary in view of the regular deadlines having already expired due to the District's conduct in violation of Proposition 39 as addressed herein.

IT IS SO ORDERED.

Date: June 14, 2018

Thang N. Barrett
Judge of the Superior Court