



Santa Clara County Office of Education

Mary Ann Dewan, Ph.D.  
County Superintendent of Schools

May 21, 2021

***SENT VIA EMAIL (MISRAEL@BULLISCHARTERSCHOOL.COM)***

Bullis Charter School  
c/o Maureen Israel, Superintendent  
102 West Portola Ave.  
Los Altos, CA 94022

**Re: Notice in Accordance with Education Code Section 47607(e) and Notice of Concern**

Dear Members of the Board and Ms. Israel:

The Santa Clara County Board of Education<sup>1</sup> initially authorized Bullis Charter School in or about November 2003, and its current term runs through June 30, 2022. Bullis Charter School is governed by The Bullis-Purissima Elementary School, a nonprofit public benefit corporation. In this Notice, for all purposes, a reference to “Bullis Charter School” or “Bullis” or “BCS” or “School” or “Charter School” shall constitute a reference to The Bullis-Purissima Elementary School and its Board of Directors, and a reference to “The Bullis-Purissima Elementary School” or “Bullis-Purissima” shall constitute a reference to Bullis Charter School. The School, the corporation, and the corporate Board will be referred to herein collectively and/or individually and interchangeably as “BCS.” Without regard to the terminology used, throughout this Notice, all references are intended to and do apply to the nonprofit corporation, its Board of Directors, and the School and, to the extent the School and corporation are separate entities, SCCOE holds both responsible for all matters.

SCCOE is sending this notice (“Notice”) pursuant to Education Code Section 47607(e)<sup>2</sup> as notice of SCCOE’s determination that BCS is demonstrably unlikely to successfully implement the program set forth in its expected charter renewal petition (“Charter”) because BCS is not serving all pupils who wish to attend, and SCCOE is providing BCS a reasonable opportunity to cure the violations. If BCS fails to cure the violations set forth in this Notice, including providing and implementing a corrective action plan, SCCOE may deny BCS’s renewal Charter in accordance with Section 47607(e). This Notice also serves as a general notice of concern consistent with SCCOE’s general oversight obligations whereby SCCOE is notifying BCS of the concerns described herein and SCCOE’s expectation and requirement that BCS will take all necessary and appropriate steps to remediate these concerns.

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<sup>1</sup> The Santa Clara County Board of Education, the Santa Clara County Superintendent of Schools, and the Santa Clara County Office of Education are collectively referred to herein as “SCCOE.”

<sup>2</sup> All further statutory references are to the Education Code unless otherwise indicated.

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## **I. BACKGROUND**

BCS is expected to submit its renewal Charter during the 2021-22 school year. In addition to the other bases for denial of a charter renewal, a chartering authority may deny a renewal upon a finding that the school is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial fiscal or governance factors, or because the charter school is not serving all pupils who wish to attend. In this context, “not serving all pupils who wish to attend” means situations in which a charter school is not serving all demographic groups, including but not limited to, historically underserved student groups and/or students based on their academic performance. To deny on this basis, SCCOE must first provide BCS with at least 30 days’ notice of the violation(s) and a reasonable opportunity to cure the violation(s). (Ed. Code § 47607(e).) SCCOE desires to provide BCS as much time as possible to cure the violations detailed herein, including through development and implementation of a corrective action plan.

As BCS is aware, concerns about a lack of diversity in BCS’s student body, has long been a concern of SCCOE. While not the first time this concern was raised by the Los Altos School District (“LASD”), members of the public, and/or SCCOE, during the fall and winter of 2019 a great deal of discussion was brought to SCCOE’s attention concerning enrollment at BCS. In February 2020, SCCOE sent BCS correspondence about these issues, specifying that despite the disagreement among BCS, LASD, and members of the local community who had all provided SCCOE various information on this topic, at that juncture SCCOE wanted to focus on what SCCOE trusts are the shared expectations and priorities of ensuring fair and equal access to all schools for all students, without regard to any protected characteristics.

We believe that it is appropriate to repeat much of the information contained in that prior letter in the context of this Notice, as the concerns, motivations, and ideals remain consistent. Over the last few years, numerous changes have been made to the Charter Schools Act (“CSA”) that have focused on ensuring that charter school admissions are fair, open, equal, and non-discriminatory; that no students are discouraged from enrolling in any charter school for any reason; and that charter school admissions do not result in limiting charter school enrollment on the basis of protected characteristics. These revisions to the law governing charter schools have been far-reaching, impacting enrollment preferences and practices, mandating that charter schools define the means by which they will ensure that their student enrollment is reflective of the racial and ethnic, special education, and English learner populations of their local community, and including consideration of whether a charter school is serving all pupils who wish to attend when determining whether to renew a charter. In light of these changes, there can be no doubt that the Legislature and Governor, as well as the public education advocates who provided input into these statutory changes – which included advocates from the charter school community – perceived unequal access to all charter schools, and high performing charter schools in particular, to be a substantial concern requiring remediation by charter schools and authorizers.

SCCOE expressed concern about the percentages of BCS’s enrolled students who are socio-economically disadvantaged, English Learners, and students with special needs, being smaller than their counterpart percentages at LASD. SCCOE also noted that through the years, it has consistently expressed concern about BCS’s enrollment of socio-economically disadvantaged

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students, and the BCS administration has expressed a desire to serve a broader spectrum of students, including increasing enrollment of socio-economically disadvantaged students.

LASD and individual members of the local community have made a variety of allegations about the causes for the enrollment disparities. SCCOE has received anecdotal reports that, in the past, BCS employees have improperly informed potential families that BCS does not provide the full continuum of services to students with disabilities. There have been concerns with the manner in which BCS has marketed its requests for substantial financial donations and whether, even when specifically noting that donations are voluntary, the way the requests are conveyed to potential families implies that donations are required or that the children of families who cannot or will not donate may not be offered initial or continued enrollment at BCS.

SCCOE is also aware that BCS has attempted to counter these allegations, including through comparisons to the enrollment percentages at a number of individual LASD schools and disagreement over the significance of the disparities. BCS has also asserted that it has experienced substantial growth in enrollment of students with special needs in recent years. Additionally, in December 2019, BCS cooperated with the County and entered into a First Amended Memorandum of Understanding terminating the previous admission preference for residents of the former Bullis-Purissima Elementary School, which was a major source of concern relative to enrollment of socio-economically disadvantaged students.

Just as expressed in the February 2020 correspondence, while there is an unfortunate history of tension and disputes between LASD and BCS, rather than continuing to focus on those disagreements, SCCOE's goal is for BCS and SCCOE to work cooperatively with an emphasis on serving student needs, ensuring equal access, and stopping the cycle of allegations, counter-arguments and defenses that are not serving our students or community. SCCOE continues to want to provide assistance to BCS to create and implement an effective plan whereby BCS can increase its efforts and successes in enrolling a more diverse student population consistent with the letter and spirit of the law.

At that time, the County endeavored to initiate a cooperative and creative dialogue with BCS to develop an effective plan consistent with what we believe to be our shared desires and priorities of ensuring equal access and continuing BCS's strong educational program. The County requested that BCS develop a results-oriented plan, consistent with the revised provisions of the CSA. As SCCOE explained, we believed that this plan must include, but is not limited to, concrete means of increasing outreach efforts and the dissemination of information targeted at addressing any lingering misapprehensions about enrollment at BCS, including relative to donation expectations/requirements and assurances that BCS welcomes and serves all students, including by providing the full continuum of placements and services to students with special needs. As before, SCCOE stands ready to support BCS in the development and implementation of this plan.

We were pleased that BCS received SCCOE's correspondence in the manner in which it was intended, as an invitation to move forward in a strong, productive, and collaborative fashion to implement the mission of educating and serving all students and to alleviate any and all real or perceived disparities in the educational opportunities and services afforded by BCS. Notably, on

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March 4, 2020, BCS “warmly” accepted SCCOE’s “forward-looking invitation to collaborate and develop a strong plan to educate and serve all students in our community.” BCS expressed a desire to work with SCCOE “to develop an effective plan consistent with our shared desires and priorities of ensuring equal access and continuing BCS’s strong educational program.”

To be clear, SCCOE continues to believe that our mutual focus should be educating students, and SCCOE continues to look forward to working with BCS in furthering the statewide mandate to expand access to charter schools. That purpose and focus have not changed.

SCCOE recognizes that BCS objected to the County Board’s May 5, 2021, agenda item whereby the County Board authorized the issuance of this Notice, and delegated authority to the County Superintendent or designee to send this Notice. (A response to BCS’s specific objections is set forth below.) However, the CSA has been revised to include a finding that the charter school is demonstrably unlikely to successfully implement the program set forth in its charter because it is not serving all students who wish to attend as a separate cause for denying renewal of any charter school. That cause for denial is clearly and directly related to the concerns with access and diversity in BCS’s enrollment that BCS itself previously agreed to work with SCCOE to correct. The CSA mandates specific procedures be followed when this is an issue or finding facing a charter school that could affect the renewal of the school’s charter. The first step in that procedure is the issuance of at least 30 days’ notice to the charter school, and the provision of a reasonable opportunity to cure the violation, including by creating and implementing a corrective action plan. Thus, this Notice, and the corresponding opportunity to cure and correct these concerns, are clearly and explicitly for BCS’s benefit and provide BCS added protections and opportunity to resolve matters that could negatively impact BCS’s request to have its Charter renewed.

Issuing notice pursuant to Section 47607(e) is a formal legal procedure mandated by law that directly relates to renewal or nonrenewal of BCS’s renewal Charter. This Notice is consistent with SCCOE’s prior clearly stated concerns and the need for BCS to remediate those concerns. As noted during the May 5 SCCOE public meeting, this Notice is not a decision to deny BCS’s Charter. Rather, it is a clear statement and notice to BCS that this is an issue of serious concern that BCS is expected to rectify. This is entirely consistent with our February 2020 letter and invitation to BCS to work collaboratively to develop and implement meaningful changes necessary to ensure access and inclusivity at BCS. Once again, SCCOE hopes that BCS takes these matters seriously, and also understands and accepts that this Notice is a continuation of the opportunity for BCS to take significant steps to implement our shared priorities and the mandates of the CSA in collaboration with SCCOE.

## **II. FINDINGS**

SCCOE hereby notifies BCS of evidence that BCS is not serving all students who wish to attend. This evidence constitutes cause for denying BCS’s renewal if not remedied and affords BCS a reasonable opportunity to address these concerns. The CSA has always required that charters include a description of the means by which the charter school will achieve a balance of racial and

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ethnic pupils reflective of the general population of the school district in which they are located. As of July 1, 2020, the requirement has been expanded such that charter schools are to provide the means by which they will also achieve a balance of special education pupils and English learner pupils reflective of the district in which they operate. Moreover, the CSA includes a variety of other requirements and prohibitions mandating equal access and nondiscrimination in access to and ongoing enrollment at charter schools. Section 47607(d) and (e) make clear that equity in access and a charter school's success in ensuring this equity and that it enrolls and serves all students is fundamental and necessary to a determination whether to renew a charter school petition. Importantly, Section 47607(e) explicitly specifies that notwithstanding the multi-tiered approach to renewal decisions based on a particular charter school's performance on the California State Dashboard, any charter school, even those with the highest Dashboard performance, may be denied renewal if they are not serving all students who wish to attend. Consistent with these requirements of the CSA, SCCOE has been and continues to monitor BCS's enrollment and demographic data.

It appears that BCS has misconstrued the statutory language that a charter school "is not serving all students who wish to attend" in the context of this Notice. In a May 5, 2021, letter to SCCOE, BCS asserted that it "cannot serve all students and families who wish to attend" because it receives more applications than it has spaces, so must admit students on the basis of a public random drawing. The language that a charter school "is not serving all pupils who wish to attend" is taken directly from Section 47607(e) and does not refer to BCS's inability to enroll all applicants because of capacity considerations. In fact, the public random drawing process for selecting students when a charter school has more applicants than spaces is a fundamental legal requirement of the CSA. Clearly, this additional cause for nonrenewal is not directed at penalizing charter schools that are successful enough to have more applicants than spaces, which then follow the CSA's admissions lottery mandates. The fact that this is not what the statute means by "failing to serve all students who wish to attend" is also clear from the provisions of Section 47607(d) and (e) that link this finding to data about charter school enrollment patterns disaggregated by race, ethnicity, and pupil groups; other data from CDE; and substantial complaints that a charter school is not complying with the due process protections required to be provided prior to suspending, expelling, or otherwise involuntarily removing a student from attendance at a charter school.

Rather, this is the language that the Legislature used to refer to situations in which a charter school is not serving all demographic groups, including but not limited to historically underserved student groups and/or students based on their academic performance. As such, the fact that BCS cannot accommodate all applicants because it does not have space is not a defense to or a correction of the concerns detailed in this Notice. It is important to recognize, however, that BCS is able to seek approval of admissions preferences to be implemented in the public random drawing process that are designed to assist in remediating these concerns. Thus, despite being at capacity and unable to accept all applicants, BCS can modify not only its outreach and recruitment efforts, but also its public random drawing process to assist in these efforts.

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**A. BCS Enrollment and Demographic Data.**

At the commencement of the 2020-21 school year, SCCOE requested from the California Department of Education (“CDE”) all the demographic data for the SCCOE-authorized charter schools in their last year of their charter term that Section 47607(d) specifies CDE will provide to charter school authorizers. CDE provided some demographic data for every charter school authorized by SCCOE, including BCS and all the charter schools that were not in the last year of their terms. Contrary to Section 47607(d), however, the data provided by CDE did not include all the information specified in that statute. Section 47605(d) specifies that CDE is to provide a variety of “aggregate data reflecting pupil enrollment patterns at the charter school” during the school’s current term, and “cumulative data” is specifically defined as “the total number of pupils, disaggregated by race, ethnicity, and pupil subgroups, who enrolled in school at any time during the school year.” The data provided by CDE was not disaggregated by race, ethnicity, or any other pupil group. Thus, while the data indicated some information about total enrollment, how many students left BCS at different times, and the respective CAASPP results for students who remained enrolled at BCS and those who left, it did not provide any information relevant to enrollment at BCS relative to race, ethnicity, or any other pupil group. As such the data provide by CDE at that time is not pertinent to SCCOE’s consideration of whether BCS is serving all pupils who wish to attend or this Notice.

SCCOE has reviewed the verified CALPADS data on the demographic breakdown of the enrollment at BCS and at LASD, the school district in which BCS is located, for the period 2016-17 through 2020-21 (thereby including the last year of BCS’s prior charter term through the first four of the five years of BCS’s current charter term). The data is from census day data for each respective year, and CDE reports of this data can be found at the following link: <https://dq.cde.ca.gov/dataquest/>. This demographic data is summarized below. The percentage for each student group is listed first, with the actual number of students in each group listed below the percentage:

**NUMBER AND PERCENTAGE OF TOTAL ENROLLMENT AT BCS AND LASD FOR 2017-2021**

<b>STUDENT GROUP</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
<b>BCS TOTAL ENROLLMENT</b>	825	879	915	1,039	1,093
<b>LASD TOTAL ENROLLMENT</b>	4,527	4,403	4,246	3,999	3,576
<b>BCS ENGLISH LEARNERS</b>	10.9% 90	10.1% 89	4.5% 41	5.7% 59	6.7% 73
<b>LASD ENGLISH LEARNERS</b>	12.7% 575	13.1% 577	12.9% 548	11.1% 444	9.5% 337
<b>BCS RECLASSIFIED FLUENT ENGLISH PROFICIENT</b>	6.7% 55	9.0% 79	14.3% 131	14.0% 145	12.8% 140

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<b>STUDENT GROUP</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
<b>LASD RECLASSIFIED FLUENT ENGLISH PROFICIENT</b>	8.3% 374	9.3% 411	8.9% 380	10.6% 423	11.0% 392
<b>BCS STUDENTS W/DISABILITIES</b>	5.6% 46	6.9% 61	7.0% 64	6.7% 70	6.7% 73
<b>LASD STUDENTS W/DISABILITIES</b>	9.0% 407	8.7% 383	9.20% 391	9.50% 380	9.34% 334
<b>BCS SOCIO-ECONOMICALLY DISADVANTAGED</b>	0.8% 7	1.6% 14	1.2% 11	1.4% 15	1.7% 19
<b>LASD SOCIO-ECONOMICALLY DISADVANTAGED</b>	5.5% 249	6.2% 273	6.1% 259	6.0% 240	6.7% 240
<b>BCS AFRICAN AMERICAN</b>	1.2% 10	1.1% 10	1.0% 9	0.5% 5	0.4% 4
<b>LASD AFRICAN AMERICAN</b>	0.5% 23	0.5% 22	0.5% 21	0.6% 24	0.6% 20
<b>BCS ASIAN</b>	45.9% 379	47.0% 416	50.0% 460	52.0% 539	55.1% 602
<b>LASD ASIAN</b>	31.9% 1,444	33.6% 1,479	34.2% 1,452	34.4% 1,376	34.8% 1,246
<b>BCS HISPANIC</b>	4.4% 36	4.2% 37	3.8% 35	3.9% 41	3.3% 36
<b>LASD HISPANIC</b>	8.0% 362	7.6% 335	7.9% 335	8.0% 320	8.4% 300
<b>BCS WHITE</b>	27.6% 228	25.8% 227	25.5% 233	22.5% 234	21.3% 233
<b>LASD WHITE</b>	47.3% 2,141	45.4% 1,999	44.0% 1,868	43.2% 1,728	41.1% 1,470
<b>BCS TWO OR MORE RACES</b>	17.5% 144	18.5% 163	18.3% 167	16.7% 174	15.4% 168
<b>LASD TWO OR MORE RACES</b>	11.4% 516	11.7% 515	12.0% 510	12.4% 496	12.7% 453

SCCOE also reviewed the following information that BCS provided concerning the results of its public random admissions drawing for its kindergarten class of 2021-22 (which is reportedly the only grade level at which BCS experienced any meaningful new enrollment for 2021-22 due to BCS's capacity limits). BCS informed SCCOE that it had admitted 102 kindergarteners and provided the available demographic data for the 81 kindergarteners who had completed their registration as of the date that BCS provided the data.<sup>3</sup> (This means that more than 20 percent of

<sup>3</sup> At this time BCS has not provided SCCOE additional information for the remaining newly admitted kindergarteners.

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the newly admitted kindergarteners are not accounted for by this data.) BCS did not have any information about how many of the incoming kindergarteners are socioeconomically disadvantaged because that determination is based on qualification for free and reduced price meals, which information is not gathered until the beginning of the school year. The demographic data for these 81 kindergarten students is summarized below.

**DEMOGRAPHIC DATA FOR 81 OF 102 KINDERGARTEN STUDENTS ADMITTED  
FOR THE 2021-22 SCHOOL YEAR**

<b>STUDENT GROUP</b>	<b># OF STUDENTS</b>	<b>PERCENTAGE OF 81 STUDENT KINDER ENROLLMENT</b>
<b>ASIAN</b>	39	48.1%
<b>WHITE</b>	15	18.58%
<b>TWO OR MORE RACES</b>	29	35.8%
<b>HISPANIC</b>	5	6.2%
<b>AFRICAN AMERICAN</b>	0	0%
<b>STUDENTS WITH DISABILITIES*</b>	1*	1.2%*
<b>POTENTIAL ENGLISH LEARNERS</b>	35**	43.2%**

\* This is the number of students who self-identified as having a current IEP, but this information is limited because incoming kindergarten students may have not yet been identified as qualifying for services pursuant to the Individuals with Disabilities Education Act (“IDEA”).

\*\* This is the number of students who have a home language survey indicating a language other than English, but do not have initial ELPAC test results confirming their status as English learners.

**B. Analysis of Demographic Data**

SCCOE staff that specializes in statistical analysis conducted statistical analyses of the above-described demographic data for the following four student groups: Hispanic students; students who are English learners; students who are socioeconomically disadvantaged; and students with disabilities. The specific results of these statistical analyses are attached as Exhibit 1 and can be summarized as follows:

- As of the 2020-21 academic year, the proportions of LASD’s student body who are Hispanic, English learners, socioeconomically disadvantaged, and with disabilities are all statistically significantly higher than the proportions of the student body in those student groups at BCS

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- There is no meaningful difference in the proportion of Hispanic students enrolled at BCS from 2016-17 to 2020-21
- The proportion of English learners enrolled at BCS in 2020-21 is statistically significantly lower than the proportion enrolled in 2016/17
- The proportion of students who are socioeconomically disadvantaged enrolled at BCS in 2020-21 is statistically significantly higher than the proportion enrolled in 2016-17
- There is no meaningful difference in the proportion of students with disabilities enrolled at BCS from 2016-17 to 2020-21
- There is no meaningful difference in the proportion of Hispanic students enrolled at LASD from 2016-17 to 2020-21
- The proportion of English learners enrolled at LASD in 2020-21 is statistically significantly lower than the proportion enrolled in 2016/17
- The proportion of socioeconomically disadvantaged students enrolled at LASD in 2020-21 is statistically significantly higher than the proportion enrolled in 2016-17
- There is no meaningful difference in the proportion of students with disabilities enrolled at LASD from 2016-17 to 2020-21
- From 2016-17 to 2020-21, the proportions of English learners enrolled at BCS and at LASD both statistically significantly decreased; however, the rate of decline was twice as great for LASD, though in 2021, the proportion of English learners at LASD remains statistically significantly higher than the proportion enrolled at BCS
- From 2016-17 to 2020-21, the proportions of socioeconomically disadvantaged students enrolled at BCS and at LASD both statistically significantly increased
- From 2016-17 to 2020-21, both BCS and LASD observed no meaningful difference in the proportions of Hispanic and students with disabilities served
- From 2016-17 to 2020-21, the proportion of Hispanic students at both BCS and LASD did not change significantly; however, as of 2020-21, the proportion of students who are Hispanic is statistically, significantly higher at LASD than at BCS
- From 2016-17 to 2020-21, the proportion of students who are socioeconomically disadvantaged increased significantly at both BCS and LASD, and in 2020-21, the proportion of socioeconomically disadvantaged students enrolled is statistically, significantly higher at LASD than at BCS.

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- From 2016-17 to 2020-21, both BCS and LASD experienced a significant decrease in the proportion of English learner enrollment, and in 2020-21, the proportion of English learners at LASD is statistically, significantly higher than the proportion enrolled at BCS; however, the rate of decline from 2016-17 to 2020-21 in the number of English learners enrolled was twice as great for LASD
- From 2016-17 to 2020-21, the proportion of Students with Disabilities at both BCS and LASD did not change significantly; however, as of 2020-21, the proportion of Students with Disabilities is statistically, significantly higher at LASD than at BCS

Overall, it is clear that BCS is serving statistically significantly lower proportions of all four of these student groups than is LASD. While the proportion of Hispanic students and students with disabilities at BCS remained steady during this period, and the proportion of socioeconomically disadvantaged students at BCS increased significantly at the same time, in all three cases BCS continues to remain statistically significantly below LASD. Similarly, while the proportion of English learners enrolled at both LASD and BCS declined significantly, and the decline at LASD was two times greater than at BCS, nevertheless, BCS continues to serve a statistically significantly lower proportion of English learners than does LASD.

These statistics establish underrepresentation in all four student groups at BCS, evidencing that BCS continues to not serve all students who wish to attend BCS. BCS must address this concern, including the creation and implementation of a corrective action plan that will result in increasing the proportions of the BCS student body who are members of each of these student groups. Any such plan must also build in means by which BCS will continue to monitor its successes and, if necessary, pivot and enhance its methods to make real progress.

### **C. BCS's Efforts to Increase Enrollment Access and Diversity**

As noted above, BCS readily agreed to SCCOE's request to develop a results-oriented plan to increase equity in access and inclusivity at BCS. BCS also indicated that it has been working on that goal for several years. On March 5, 2021, in response to SCCOE's request for information, Superintendent Israel provided SCCOE with BCS's revised outreach plan, including details on additional steps that BCS planned to take. Ms. Israel also provided examples from BCS's outreach efforts, including a document entitled "Tips for Inviting Friends and Neighbors to Consider BCS;" "revised FAQ" (SCCOE is unsure whether this was newly revised or if it was used during the most recent open enrollment period); and some examples of advertising efforts. Those documents are attached as Exhibit 2.

While the documents speak for themselves, and we will not attempt to summarize all of the information contained therein, we will note a few highlights. BCS established a new Superintendent's Task Force, comprised of representatives from the BCS administration, staff Board, and Bullis Boosters Club (PTO) "focused on improving outreach to students and families who were underserved by [BCS] in the past." BCS, with the Task Force, developed a new campaign with a focus on welcoming students/families from across the community, including students with socioeconomic disadvantages, English learners, students with disabilities, and

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students of all races and ethnic backgrounds. BCS reported that the campaign strengthened BCS's outreach in key areas, including the San Antonio neighborhood (north of El Camino Real). BCS made the following "three major additions" to its outreach efforts:

- Recruiting current families and staff as Parent Ambassadors and providing them support with coaching and information resources. Materials were developed in English, Spanish, and Mandarin
- Hiring a part-time Community Outreach Coordinator, who has focused on expanding BCS's contact lists with programs/organizations that might be a source of new students; engaging new and potential parents through social media and parent chat rooms; and discussing volunteer opportunities for current families to build long-term connections between BCS and other programs and networks in the community
- Updating all resources (including print, online, and in social media) to reflect the children and families of BCS's community

BCS also explained that the COVID-19 pandemic impacted and limited some of its planned outreach efforts, particularly in-person outreach efforts. BCS pivoted to online efforts in light of the impacts of COVID-19 and plans to conduct more in-person outreach as public health restrictions allow.

Over the course of the last year, BCS has also had a number of conversations and virtual meetings with SCCOE Charter Schools Department Staff to discuss plans and means of increasing the effectiveness of its outreach efforts in recruiting students from the underrepresented student groups. While SCCOE believes that those conversations have been valuable, SCCOE notes that BCS declined to take SCCOE's strongest suggestion for making change, which was, prior to BCS's open enrollment period for the 2021-22 school year, seeking to add an enrollment preference for students who qualify for free or reduced price meals.

SCCOE acknowledges these efforts by BCS but believes that they are inadequate without more to result in the necessary progress in diversifying BCS's enrollment.

### **III. REMEDIAL/CORRECTIVE ACTION**

Based on the substantial issues and concerns described above, SCCOE is issuing this Notice supporting a determination that BCS is demonstrably unlikely to successfully implement its program because it is not serving all pupils who wish to attend, and as a general notice of concern about the need to correct the fact that the Hispanic, students with disabilities, English learner, and socioeconomically disadvantaged student groups are underrepresented at BCS. Consistent with Section 47607(e), BCS is being provided a reasonable opportunity to cure the concerns identified in this Notice, including providing a corrective action plan.

BCS must determine how it will resolve the concerns, including the development, submission, and implementation of a corrective action plan, which should also include details and explanations of

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how the proposal(s) will cure the concern(s). Equity, inclusion, and diversity are complex issues, and determining the most effective means of resolving these concerns is complicated. As such, SCCOE expects that BCS will engage the services of a professional expert(s) to assist in the development of BCS's corrective action plan, based on the specific facts and circumstances. As noted above, BCS has undertaken some efforts and measures to attempt to remediate these issues, and SCCOE has worked to provide suggestions and insights, but the services of experts on these complex questions is important to the likelihood of success. SCCOE continues to be ready to collaborate and support BCS in these efforts, and anticipates that the plan and BCS's response will include, at a minimum, the following, though this is not intended to be and should not be interpreted as the scope of what is required in order for BCS to cure and correct these concerns:

1. Engagement or retention of outside professional experts to assist BCS, including the Superintendent's Task Force, in developing plans and creating change to diversify BCS's applicant pool and enrollment
2. Addition of admissions preference(s) for students who reside within the attendance areas of the Santa Rita and Almond Elementary schools and/or students in other underrepresented student groups as permitted by law
3. Specific strategies to proactively overcome any perceptions that may exist that BCS does not welcome/serve all students with disabilities or provide the full continuum of placements and services and/or that monetary donations are required or expected

Additionally, below are a variety of concepts for BCS's consideration in consultation with its professional expert to determine if they would be effective components of BCS's overall plan.:

1. Modification/limitation of existing admissions preferences
2. Simplify and provide assistance in understanding and completing the application process, including through information and application assistance meetings at times and locations convenient to the underrepresented communities and in multiple languages. Assist families to complete applications and paperwork required for enrollment after admission
3. Make hardcopies of applications and informational materials available at BCS, at each informational meeting, and at other locations throughout the community
4. Consider the word choice in FAQ and advertisements to ensure that it is accessible, clear, understandable, and welcoming
5. Consistently refer to the school and all of its programs as "free," rather than "tuition free," which may be clearer and cannot be misinterpreted to mean that there are costs aside from tuition

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6. Reintroduce BCS's summer kindergarten prep program for socioeconomically disadvantaged children and/or other programs that will engage the underrepresented student groups
7. Publicize more detailed information about how BCS provides the full continuum of placements and services for students with special needs
8. Implement school and community programs that celebrate diversity
9. Train staff members, volunteers, and parents who organize activities, run the Booster Club, seek donations, etc., on the requirements and prohibitions of the free schools guarantee and Education Code Section 49010 et seq. and prohibit any communications implying that donations or volunteerism are required or have any impact on a student's initial or continued enrollment or participation at BCS.

This is not intended to be a comprehensive list of actions that BCS should consider or implement but is provided as a resource to assist and support BCS in this process.

#### **IV. RESPONSE TO MAY 5, 2021, CORRESPONDENCE FROM BCS**

On May 5, 2021, BCS Superintendent Israel sent correspondence to the SCCOE opposing the County Board's authorization of the issuance of this Notice and delegation of the authority to the County Superintendent or designee to send this Notice, which was included on the agenda for that evening. SCCOE wants to take this opportunity to respond briefly to several assertions made by BCS in that correspondence. As an initial matter, SCCOE wants to note that contrary to the statement in the letter that this item came as a complete surprise to BCS, on April 22, 2021, SCCOE Charter Schools Department Director Fairley specifically mentioned to Ms. Israel the possibility of SCCOE issuing this notice, at which time Ms. Israel expressed no objection to such a course of action. BCS's apparent misunderstanding of the phrase "not serving all students who wish to attend" in the context of Section 47605(d) and (e) and this Notice is addressed above.

##### **A. This Notice is Not Statutorily Premature**

BCS incorrectly asserts that this Notice can only be based on data provided by the CDE "at the conclusion of the year immediately preceding the final year of the charter school's term." While it is true that Section 47607(d)(1) provides that at that point in the charter term SCCOE may request from CDE data about the students being served by BCS, this Notice is not limited only to that data or that timeline. Section 47607, subdivision (d)(1) makes the request for that data discretionary on the part of the charter authorizer; subdivision (d)(2) mandates that the chartering authority consider various data about whom the charter school is serving and how; and subdivision (d)(3) specifies that, as part of determining whether to renew a charter, the chartering authority "may make a finding that the charter school is not serving all pupils who wish to attend and, upon making such a finding, specifically identify the evidence supporting the finding." The data a chartering agency is required to review pursuant to subdivision (d)(2) is *not* limited only to the data that may

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be requested pursuant to Section 47607(d)(1), but also *any* data that may be provided by CDE and substantial complaints that the charter did not comply with the requirements of Section 47605(c)(5)(J). Moreover, subdivision (d)(3) specifies that the chartering authority must identify the evidence on which it relies in making this finding but includes no limitation on the source(s) of that evidence. There are no time parameters on the data or evidence that may be considered, nor any time limit on when the chartering entity may consider the data. Similarly, Section 47607(e), which provides specific authority to deny renewal if the charter school is not serving all pupils who wish to attend and provides for the provision of notice and an opportunity for the charter school to correct this concern, does not include any time restrictions on when this process can be commenced, other than a minimum notice period of 30 days.

BCS argues that by providing this Notice prior to the end of the penultimate year of its current Charter term – thus farther in advance of BCS’s request for renewal – SCCOE is “tainting what should be a fair renewal process, in violation of BCS’ right to due process.” While BCS does not explain precisely what it means by such claims, SCCOE disagrees. Due process is fundamentally notice and an opportunity to be heard. Rather than “tainting” or diminishing BCS’s due process rights relative to renewal, by providing this Notice at an earlier time, SCCOE is expanding BCS’s due process protections by providing extra notice and an additional opportunity to be heard and to remediate the issues raised herein. Having the County Board authorize issuance of the Notice in May 2021 rather than July 2021 in no way taints BCS’s renewal procedures. As specified in Section 47607, and noted during the May 5, 2021, meeting, this Notice is not a decision to deny renewal of BCS’s Charter. Rather, it is notice of concerns that could impact BCS’s renewal, and it is being issued now in order to afford BCS as much time and opportunity as possible to respond to those concerns, including the development and implementation of a corrective action plan. Delaying the issuance of this Notice would not provide BCS any additional due process protections.

**B. BCS Has Not Exceeded the Applicable Legal Requirements**

SCCOE has not conflated “the obligation to admit all students” with the requirement that BCS describe the means by which it will achieve a pupil balance reflective of the population of LASD. While it is true that BCS is required to admit all students subject to capacity, the concern at issue in this Notice is that BCS is not *servicing* all students who wish to attend. Again, this is not a question simply of BCS being unable to admit all students because there are more applicants than spaces, but, rather, that BCS is not serving an appropriate mix of students, specifically the underrepresented student groups identified above. The CSA requires charter schools to describe the means by which they will achieve a balance of pupils reflective of the district in which they are located. This pupil balance is inextricably linked with consideration of whether BCS is serving all pupils.

Contrary to BCS’s assertion, BCS has not “exceeded” the requirements of the CSA because its Charter describes its “Outreach Recruitment Plan.” This Outreach Recruitment Plan is a mandatory Charter element and simply including it does not “exceed” the legal requirements, but, rather, at most would constitute compliance with the CSA’s requirements. Moreover, the CSA’s requirement is that the Charter describe “[t]he *means* by which the charter school will *achieve* a

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balance of” pupils. (§ 47605(c)(5)(G), emphasis added.) BCS has *not* achieved the requisite pupil balance, so its Outreach Recruitment Plan has not yet been successful. It is incumbent on BCS to make changes to its plans and operations to improve those outcomes.

SCCOE also notes that BCS attempted to rely upon a portion of a sentence taken out of context from a communication issued by SCCOE in 2012, almost a decade ago, as proof in opposition to the serious concerns described herein. As noted, BCS has taken the sentence out of context and has implied that it was a far broader statement than was the case. Moreover, the CSA has been substantially and repeatedly revised since that 2012 communication, including regarding both charter schools’ obligations relative to diversity in enrollment, specifically including for students with special needs, and the causes for nonrenewal of a charter, including for failure to serve all students who wish to attend.

### C. BCS’s Demographics

The demographic data is detailed above and will not be repeated here. However, SCCOE notes that it disagrees with BCS’s description of the import of that data in its May 5, 2021, letter, and the above-described data evidences SCCOE’s position. SCCOE agrees with BCS that continued engagement between SCCOE and BCS on diversity, access to enrollment, and actual enrollment at BCS is important. This Notice is neither superficial nor outside of the statutory parameters, and it is not intended as a source of contention between BCS and SCCOE. Rather, this Notice is an extension of the myriad prior communications between BCS and SCCOE about this important topic and the necessity of increasing diversity and access to BCS, to which BCS has been receptive. SCCOE has long made clear to BCS that these are vitally important issues, made even more so by the revisions to the CSA and the addition of failure to serve all pupils who desire to attend as a cause for denying charter renewal. The purpose and intent of this Notice is to comply with the procedural requirements of the CSA, and to provide BCS substantial notice and a meaningful and reasonable opportunity to remediate these concerns. As BCS is aware, these issues are not susceptible to quick or easy cures, which is why SCCOE has long been working with BCS on these matters and has now also afforded BCS the procedures and protections specified in the CSA.

### V. CONCLUSION

In compliance with SCCOE’s expectations in response to this notice of concern, and in accordance with Section 47607(e), please submit BCS’s response, including its corrective action plan, **by the earlier of (1) the date of submission of BCS’s renewal charter petition or (2) six weeks before commencement of BCS’s open enrollment period for the 2022-23 school year.** This affords BCS a reasonable opportunity to cure and to commence implementation of the corrective action plan prior to open enrollment for the next school year and provides SCCOE an opportunity to evaluate and, if necessary, work with BCS on its corrective action plan prior to any action on a BCS renewal Charter. SCCOE encourages BCS to commence curing and correcting and providing responsive information to and discussing its plans with SCCOE as quickly as possible. As always,

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SCCOE stands ready to collaborate with BCS and provide support and assistance to BCS's efforts to increase equity and access in its applicant pool and enrollment.

SCCOE looks forward to BCS's response to the concerns identified in this Notice. Should you have any questions regarding the foregoing, please do not hesitate to contact me or Director Fairley.

Very truly yours,

DocuSigned by:  
  
72890FED1F52493...

Mary Ann Dewan, Ph.D.  
County Superintendent

Attachments

cc: Santa Clara County Board of Education  
Mefula Fairley, Director  
Davina Harden, Esq.