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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

BULLIS CHARTER SCHOOL, Plaintiff, Petitioner, and Appellant, v. LOS ALTOS SCHOOL DISTRICT et al., Defendants and Respondents.	H035195 (Santa Clara County Super.Ct.No. CV144569) ORDER MODIFYING OPIONION AND DENYING PETITION FOR REHEARING

BY THE COURT:

It is ordered that the opinion filed herein on October 27, 2011, be modified in the following particulars:

On page 11, after partial paragraph ending *"supra*, 112 Cal.App.4th at p. 195.)", add the following three paragraphs:

The District argues, belatedly,[1] that the de novo standard of review enunciated in *Sequoia* is inapplicable here. Rather, it contends that—because the matter was decided

[1] After the filing of the opinion, the District filed a petition for rehearing raising arguments and citing authorities it failed to present before the case was argued and decided. (Indeed, the District cited 39 cases in the petition that it had not cited in the respondents' brief.) To the extent that the petition raises new arguments and cites new authorities, it is an improper. (See *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1092, abrogated on other grounds in *Martinez v. Combs* (2010) 49 Cal.4th 35, 66 ["arguments . . . cannot be raised for the first time in a petition for rehearing"]; *Midland Pacific Bldg. Corp. v. King* (2007) 157 Cal.App.4th 264, 276 [same].) We nonetheless have chosen to address the standard of review question raised in the District's petition.

below on disputed facts—this court must review whether the trial court's findings and judgment " 'are supported by substantial, credible and competent evidence.' [Citation.]" (*Environmental Charter High School, supra,* 122 Cal.App.4th at p. 145.) We disagree with the District that such a review standard applies here.

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." (*Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700.) " 'However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed.' [Citation.]" (*Agosto v. Board of Trustees of Grossmont-Cuyamaca Community College* (2010) 189 Cal.App.4th 330, 336; see Cal. Civil Writ Practice (Cont.Ed.Bar 4th ed. 2011) § 11.16, pp. 256-257.) The interpretation of a statute is a question of law subject to independent review. (*Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1491; see also *Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 933.)

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.[2] The

[2] Although it was argued repeatedly in the respondents' brief that the appellate court was precluded from reweighing the evidence or substituting its judgment for that of the agency's, the District did not argue in its brief that the trial court's decision was based upon a resolution of evidentiary disputes and that therefore our review of that decision was limited to determining whether there was substantial evidence to support it. At oral argument, when asked whether the case at trial turned on the truth or falsity of claims made by the parties, the District's counsel acknowledged that it did not and that it was "a legal issue" at stake here. The fact that the controversy centered on the methodology used by the District in the Facilities Offer—and that the case below did not turn on 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 non-classroom 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 after-school child care 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.

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resolution of factual disputes concerning the objective measurement of certain relevant space at the comparison group schools or at the Egan site—was underscored further at oral argument. The District's counsel, responding to a question of the court, conceded that there was no factual dispute at the trial level concerning the accuracy of square footage numbers (listed in Bullis's opening brief) reflecting space at the comparison group schools the District excluded in its Proposition 39 analysis.

There is no change in judgment. The petition for rehearing is denied.

Dated: _____

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Duffy, J.*

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Rushing, P.J.

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Grover, J.**

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* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

** Judge of the Monterey County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.