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11 Attorneys for Mendoza Plaintiffs

12
13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,
 16 Plaintiffs,
 17 v.
 18 United States of America,
 19 Plaintiff-Intervenors,
 20 v.
 21 Anita Lohr, et al.,
 22 Defendants,
 23 Sidney L. Sutton, et al.,
 24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' OPPOSITION
TO TUSD'S "MOTION TO AMEND
ORDER ON GRADE
RECONFIGURATION"**

Hon. David C. Bury

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1 Maria Mendoza, et al.,
2 Plaintiffs,
3 United States of America,
4 Plaintiff-Intervenor,
5 v.
6 Tucson United School District No. One, et
7 al.,
8 Defendants.

Case No. CV 74-204 TUC DCB

9
10 **INTRODUCTION**

11 This Court issued its Order regarding the District’s Notice and Request For
12 Approval for grade reconfigurations at five schools (“NARA”) (Doc. 1869) on March 8,
13 2016 (Doc. 1909). The District, having failed to file a motion for reconsideration of that
14 March 8 Order (“Grade Reconfiguration Order”) within 14 days of the filing of the Order
15 as required under LRCiv 7.2(g)(2), filed the pending motion on April 1, 2016. That the
16 District captioned its motion a “Motion to Amend Order on Grade Reconfiguration (ECF
17 1909)” (hereinafter “District Motion”), does not change the fact that it is in actuality an
18 untimely motion for reconsideration since it asks the Court to correct what it asserts are
19 manifest errors in the Grade Reconfiguration Order. Because the District failed to provide
20 any explanation for its untimely motion, much less make a showing of good cause under
21 LRCiv 7.2(g)(2), this Court should deny the District Motion in its entirety.

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25 In the unlikely event this Court is inclined to review the substance of the District
26 Motion, it should apply the applicable standard of LRCiv 7.2(g)(1), which requires a
27 showing of manifest error. With regard to each requested “correct[ion]” that does not
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1 directly and exclusively relate to USP language, the District has failed to provide any
2 evidence to support a showing of manifest error.

3 First, in direct conflict with its own documents, the District makes the unsupported
4 assertion that there are no restrictions limiting access to Borman Elementary. However,
5 the record shows that “security protocols” cause Borman to “almost exclusively” be
6 attended by children or grandchildren of service members. This is precisely the point the
7 Court’s statement (which TUSD asks this Court to reconsider) makes, and the District’s
8 requested modification therefore is inaccurate, unsupported by any evidence of manifest
9 error, and would eliminate the important and relevant point the Court was making.
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12 Second, the District misunderstands this Court’s accurate references to Robert-
13 Naylor as a school with a very high percentage (a/k/a concentration) of minority students
14 by taking one of those references out of context. It therefore has made no showing of
15 manifest error with regard to this requested change.
16

17 Third, the District fails to provide any citation or evidence in support of its request
18 that this Court eliminate language detailing the District’s failure to consider integrative
19 proposals that would make south and centrally located K-8s attractive to Anglo students
20 and that would move these students to schools in the south portion of the District.
21 Moreover, the record reflects that the District initially resisted any consideration of
22 integrative options as it developed the reconfiguration proposals that were the subject of
23 the Grade Reconfiguration Order. The record also demonstrates that the Mendoza
24 Plaintiffs and the Department of Justice (DOJ) drove the District’s undertaking to look at
25 reconfigurations that had the potential of promoting integration, including the Cavett and
26 Catalina reconfigurations the District currently is analyzing, by repeatedly arguing that the
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1 District was obligated by the USP to evaluate potentially integrative proposals and by
2 urging the study of the possible Cavett and Catalina reconfigurations. In any event, the
3 District plainly misunderstands that the Court was correctly asserting that none of the
4 evidence the District presented in connection with its NARA evidenced consideration of
5 whether improvements could be made to schools centrally located or to the south of the
6 District to make them attractive K-8s for Anglo students residing on the northern portion
7 of the District.
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9 Last, each requested change reflected on page 14 of the proposed amended order
10 (attached to the District Motion) that does not directly and exclusively relate to USP
11 language is unnecessary as the discussion on page 14 would be accurate were this Court to
12 deny those requests. Moreover, the thrust of these changes would be to undermine the
13 point this Court was making regarding Magee's racial demographics. There therefore has
14 been no showing of manifest error.
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17 For the reasons detailed fully below, Mendoza Plaintiffs request that the Court deny
18 the District Motion in its entirety as untimely. In the event the Court decides to review the
19 substance of the District motion, Mendoza Plaintiffs respectfully request that the Court
20 deny each request that does not directly and exclusively relate to USP language, as
21 described fully below.
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1 **ARGUMENT**

2 **The District Motion Is an Untimely Motion for Reconsideration Unsupported by a**
3 **Showing of Good Cause**

4 Notwithstanding that the District captions its filing: “Motion to Amend Order on
5 Grade Reconfiguration,” the District Motion plainly is a motion for reconsideration as
6 demonstrated by the District’s opening and closing request that the Court “correct” its
7 grade reconfiguration order (District Motion at 2, 4) as detailed in the District Motion.
8 Indeed, the District even attached a proposed amended order (Doc. 1919-1) that contains
9 redlined strikethrough deletions of specific and purportedly erroneous language, and
10 edits/additions to other language in the Grade Reconfiguration Order. Motions for
11 reconsideration “point out with specificity the matters the movant believes were
12 overlooked or misapprehended by the Court... and any specific modifications being sought
13 in the Court’s Order.” (LRCiv 7.2(g)(1).) The “correct[ions]” sought in the District
14 Motion and the “specific modifications” reflected in TUSD’s proposed amended order
15 (Doc. 1919-1) demonstrate that the District Motion is unquestionably a motion for
16 reconsideration.
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21 LRCiv 7.2(g)(2) states that “[a]bsent good cause shown, any motion for
22 reconsideration shall be filed no later than fourteen (14) days after the date of the filing of
23 the Order that is the subject of the motion.” (LRCiv 7.2(g)(2).) The Court issued its Grade
24 Reconfiguration Order on March 8, 2016. Fourteen days after the filing of the Grade
25 Reconfiguration Order was March 22, 2016. TUSD filed the District Motion on April 1,
26 2016, ten days after the deadline to file a motion for reconsideration of the Court’s Grade
27 Reconfiguration Order had passed. It is therefore untimely. That TUSD captioned the
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1 District Motion as something other than a motion for reconsideration does not change the
2 fact that it was untimely filed.

3 Under LRCiv 7.2(g)(2), the District must make a showing of good cause for its
4 failure to have timely filed its motion for reconsideration. Here, the District has failed to
5 provide the court with ANY explanation for the delayed filing of the District Motion,
6 much less any showing of good cause. Mendoza Plaintiffs therefore request that this Court
7 deny the District Motion in its entirety as untimely under LRCiv 7.2(g)(2).
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11 **Even if this Court Is Inclined to Review the District Motion, the District has Provided**
12 **No Evidentiary Support for Most of the Changes it Seeks, and Therefore has Failed**
13 **to Make a Showing of Manifest Error**

14 If this Court is inclined to review the District Motion, the Court should hold the
15 District to the motion for reconsideration standard of LRCiv 7.2(g)(1): “The Court will
16 ordinarily deny a motion for reconsideration of an Order absent a showing of manifest
17 error or a showing of new facts or legal authority that could not have been brought to its
18 attention earlier with reasonable diligence.” (LRCiv 7.2(g)(1).) Because the District
19 Motion does not present “new facts or legal authority,” and instead requests a series of
20 “correct[i]ons,” this Court should require a District showing of manifest error for each
21 modification to the Grade Reconfiguration Order sought.
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24 As discussed below, except for those changes directly and exclusively based on the
25 language of the USP, the District has failed to show manifest error in the Grade
26 Reconfiguration Order, and indeed provides no evidentiary support for the purportedly
27 necessary “correct[i]ons” it seeks.
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1 *TUSD’s Own Documents Show that the Grade Reconfiguration Order Language*
2 *Relating to Borman Elementary to Which the District Objects Much More Accurately*
3 *Reflects the Issue of Access to that School than the Proposed “Correction.” Accordingly,*
4 *TUSD Has Failed to Make a Showing of Manifest Error.*

5 The Mendoza Plaintiffs understood this Court’s opening discussion of its decision
6 on the proposed Borman reconfiguration to express how very difficult, by virtue of
7 Borman’s location on the Davis-Monthan Air Force Base (“DMAFB”), it is for students
8 who are not children or grandchildren of service members to attend Borman Elementary.¹
9 (Grade Reconfiguration Order at 3.) The District now seeks to remove the language
10 reflecting that access issue, and in its place, requests that this Court describe Borman as
11 “primarily” serving children of service members (with no reflection of the existence of
12 access issues). (*See Proposed Order at 3:12-16.*) It bases its requested modifications on its
13 misleading assertion that **“there is no military base or other requirement that limits**
14 **attendance at Borman** to students whose parents or grandparents are in the military.”
15 (District Motion at 3:9-11(emphasis in original).)

16 However, the District’s own documents demonstrate that it is extremely difficult for
17 students who are not children or grandchildren of service members to attend Borman due
18 to access restrictions that as a practical matter limit attendance. Contrary to its misleading
19 statement above (*see id.*), the District’s own Borman desegregation impact analysis (DIA)
20 (Doc. 1869-2) states that “Borman is on a base and it is not feasible to pair or cluster it
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27 ¹ The Grade Reconfiguration Order sentence from which the District seeks to eliminate
28 language is the following (at 3:14-16): “Accordingly, many of the Borman students are not
TUSD students and TUSD students cannot attend Borman unless their parents or
grandparents are in the military.”

1 with an off-base school due to... (DMAFB) access restrictions” (at 2). The District’s
2 Notice and Request for Approval (“NARA”) (Doc. 1869) goes further by detailing that
3 “[b]ecause Borman is located on [DMAFB], security protocols make it difficult for parents
4 or guardians not affiliated with the base to access the school” (at 9, n.13 (emphasis
5 added)).
6

7 Thus, in conflict with its own documents, the District seeks changes to page three of
8 the Grade Reconfiguration Order that would eliminate language directed at describing
9 access restrictions making it difficult for children and grandchildren of non-service
10 members to attend Borman. In fact, as stated above, the District goes so far as to request
11 that the Court modify its language that Borman “serves children of military personnel...”
12 to say Borman “*primarily* serves children of military personnel” (*see* Doc. 1919-1 at 3:13-
13 14 (emphasis added)), notwithstanding that the very District Motion requesting this change
14 (and the NARA cited in support of the request which contains identical language) go much
15 further and expressly state that “Borman students are **almost exclusively** children or
16 grandchildren of service members, or of employees or affiliates of” DMAFB (Doc. 1919 at
17 3:11-12; Doc. 1869 at 9:12-13 (emphasis added)). Indeed, these statements as well as
18 those in TUSD’s NARA (Doc. 1869) and Borman DIA (Doc. 1869-2) are much more
19 closely reflected by the language currently in the Court’s Grade Reconfiguration Order
20 than that which the District seeks to have it replaced with, which acknowledges no issues
21 of access at Borman. Thus, the District has failed to demonstrate manifest error and the
22 changes it seeks would only serve to eliminate the valid and relevant point this Court was
23 making.
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1 Mendoza Plaintiffs respectfully request that if this Court is inclined to modify the
2 language at issue, that it describe access to Borman as follows: “[S]ecurity protocols make
3 it difficult for parents or guardians not affiliated with the [Davis-Monthan Air Force] base
4 to access the school’ such that ‘Borman students are almost exclusively children or
5 grandchildren of service members, or of employees or affiliates of’ the base.” Not only
6 would such a modification more accurately describe access to Borman than the changes
7 TUSD requests in the District Motion, but it also reflects TUSD’s own language assessing
8 access to Borman.
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12 *The Court Plainly did not Commit Manifest Error with Its Reference to Roberts-*
13 *Naylor as a School with a High Concentration of Minority Students; District Enrollment*
14 *Data Confirms that Fact.*
15

16 The District apparently misunderstands the Grade Reconfiguration Order to assert
17 that the Court erred in its description of Roberts-Naylor. This Court introduces discussion
18 of Roberts-Naylor in the Grade Reconfiguration Order with a description of its student
19 demographics: “According to Plaintiffs Fisher, Roberts-Naylor’s student body is now 11%
20 Anglo making it a racially concentrated minority school. [citation omitted] (TUSD
21 estimates its minority population at 80% (58% African American; 22% Latino)[.]” (Grade
22 Reconfiguration Order at 4:6-9.) Thus, the Court’s first reference to Roberts-Naylor as a
23 “racially concentrated minority school” was a reflection of the fact that the school’s
24 minority student populations, taken together, make up the vast majority of the total student
25 population. Plainly, given the context of its statements and the data it was citing, the Court
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1 was not asserting that Roberts-Naylor was “racially concentrated” as that term is defined
2 under the USP.

3 Read in context, the Court’s second reference to Roberts-Naylor as “racially
4 concentrated,” (with which the District takes issue), was a second reference to the fact that
5 the school’s African American and Latino student populations together total 80% of the
6 student body. Mendoza Plaintiffs therefore do not believe there has been any error at all,
7 let alone a showing of manifest error; rather, the District has misunderstood the Court by
8 failing to place the reference within the context of the Court’s discussion of Roberts-
9 Naylor. Mendoza Plaintiffs therefore respectfully request that this Court reject the
10 District’s request for modification of the language on page six of the Grade
11 Reconfiguration Order (*see* Doc 1919-1 at 6:4).

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16 *The District Provides NO Evidence to Show Manifest Error with Regard to the*
17 *Court’s Statements About the District’s Failure to Present Options to Move Anglo Students*
18 *South, or Efforts to Make Centrally Located or Schools in the Southern Portion of the*
19 *District Attractive to Anglo Students. Indeed, TUSD’s Own Grade Reconfiguration NARA*
20 *Corroborates the Contested Statement*

21
22 The District seeks elimination of the Grade Configuration Order statement:
23 “Except for Drachman, TUSD has not considered the option of moving Anglo students
24 south. TUSD has not considered whether improvements could be made to any schools
25 centrally located or to the south of the District which would make them attractive K-8
26 schools for Anglo students residing on the north side of the District.” (District Motion at
27 3.) In making its request, the District without providing ANY supporting evidence of
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1 either the assertions it makes or of manifest error,² simply asserts that it has for years, on
2 an ongoing basis, considered and implemented the very improvements the Court
3 referenced with respect to three magnet K-8s, and that it considered, proposed, and is
4 currently analyzing potential Cavett Elementary and Catalina High School reconfiguration
5 changes. (District Motion at 3.) However, the record demonstrates that the contested
6 statements in the Grade Reconfiguration Order are wholly accurate.
7

8 Contrary to the District's assertions, the record shows that as TUSD initially
9 developed its grade reconfiguration proposals, it did not give ANY consideration to the
10 potential Cavett/Catalina proposals it is now analyzing (or to ANY proposal developed for
11 the specific purpose of furthering the integration of its schools); rather, given the District's
12 failure to consider and develop proposals to integrate its schools,³ the Department of
13 Justice (DOJ) and Mendoza Plaintiffs repeatedly urged the District to both take a
14 comprehensive look at potential pro-integrative reconfigurations, which led to the
15 identification of the potentially integrative Cavett/Catalina reconfiguration, and to further
16 analyze and develop a DIA for the Cavett/Catalina reconfigurations.⁴
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20 ² The District fails to provide even a single citation in support of the assertions it makes in
21 support of its request for modifications to page 16 of the Grade Reconfiguration Order.
(District Motion at 3:14-25.)

22 ³ During development of the District's grade reconfiguration proposals, the Mendoza
23 Plaintiffs and DOJ disagreed with TUSD about whether under USP Section II, D, 2, the
24 District was obligated to evaluate and propose scenarios to increase the integration of its
schools. (*See* Doc. 1869-8 at 8; Doc 1869-9 at 45, 48.) Mendoza Plaintiffs do not now
burden the Court with a full recital of that disagreement.

25 ⁴ Indeed, as the District stated to its Governing Board at the time it was considering action
26 on the grade reconfiguration proposals that were the subject of the NARA: "Th[e]
27 Cavett/Catalina] concept developed based on a study of grade-configuration changes
28 throughout the district as requested by the Mendoza plaintiffs and DOJ... it has not been
evaluated by the [TUSD Student Assignment] committee or staff in terms of its
community support, feasibility, impact on Utterback and integration benefits. Staff will
evaluate this and present it for consideration... in the second semester of SY 2015-16."
("Grade Reconfiguration Change Summaries and Recommendations" (Doc. 1869-9),

1 When the District initially began development of its grade reconfiguration proposals
2 through its student assignment committee (SAC), it gave no consideration to proposals that
3 would increase integration and instead merely cited “Provide grade reconfiguration
4 changes **that do not hinder desegregation**” as a SAC goal. (*See* July 22, 2015 SAC
5 Meeting Presentation, attached hereto as Exhibit A (emphasis added).) Both the Mendoza
6 Plaintiffs and DOJ urged the District to revise its SAC goals to expressly include changes
7 that would increase integration at TUSD schools. (*See* Email thread containing Mendoza
8 Plaintiffs’ August 5, 2015 email and DOJ’s August 7, email, attached hereto as Exhibit B.)

9
10 On September 25, 2015, the District submitted to the Special Master and Plaintiffs
11 its draft grade reconfiguration proposals (including draft DIAs). (*See* Nodine Declaration
12 at 2.) Notably, the student assignment committee (SAC) goals in that submission, which
13 were revised “[b]ased on feedback” from the Special Master and plaintiffs, contemplated
14 potential integration strategies ONLY “through [each] proposed change itself, or through
15 strategies related to the proposed change” (9/25/15 Grade Reconfiguration Proposals and
16 DIAs (“9/25 Proposals”) attached as Exhibit A to Nodine Declaration, at 1-2),
17 notwithstanding that for many weeks, the Mendoza Plaintiffs and DOJ had urged the
18 District to comprehensively consider grade reconfigurations that could increase integration
19 and not just the reconfigurations that were the subject of the NARA⁵.

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24 attached to Declaration of Bryant Nodine in support of NARA (Doc. 1869-8) (“Nodine
25 Declaration”) as Exhibit E, at 10.)

26 ⁵ *See, e.g.*, Exhibit B; TUSD Actions and Responses Based on SMP Comments (“TUSD’s
27 Plaintiff Communications Summaries”), attached as Exhibit B to Nodine Declaration, at 1
28 (Mendoza Plaintiffs’ 7/22/15 Comment: “Statement of purpose is inadequate (must include
the goal of increasing integration of the District’s schools)”), at 2 (Mendoza Plaintiffs’
8/5/15 Comment: “No evidence that the proposed scenarios were developed in accordance

1 That submission also stated that “at the request of Mendoza counsel, TUSD staff
2 evaluated the integrative impacts of grade configuration change options more
3 comprehensively” and determined that the “change of Cavett ES from K-5 to K-6 and,
4 coincidentally, adding a junior high to Catalina HS” could have a potentially integrative
5 effect. (Appendix A to 9/25 Proposals, at 1.) Notably, although the District identified
6 these reconfigurations as potentially integrative, it did not develop or provide the
7 “Executive summaries includ[ing] a description of the proposal, and analysis of integration
8 strategies... pros and cons, costs, and proposal evaluations by the SAC” for those
9 reconfigurations, as it did with the reconfigurations that were the subject of the NARA.
10 (See Appendix B to 9/25 Proposals at 1.) Nor did it contain any suggestion that the
11 District would move forward analysis or development of the Cavett or Catalina
12 reconfigurations. (See Appendix A to 9/25 Proposals at 1.) The DOJ and Mendoza
13 Plaintiffs therefore subsequently urged the District to further analyze and develop a DIA
14 for the Cavett/Catalina reconfigurations.⁶
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19 with the USP mandate to propose and evaluate scenarios to increase integration of TUSD
20 schools”), at 2 (DOJ’s 8/7/15 Comment: “District should change the goal to ‘increase the
21 integration of the schools”), at 3-4 (Mendoza Plaintiffs’ 8/18/15 Comments: Broaden the
22 committee’s charge to include... grade reconfiguration[s that] would increase
23 integration... there is no comparable goal to increase integration; should be added...
24 District is not comprehensively considering the proposal in an effort to increase integration
25 of TUSD schools”), at 6 (Mendoza Plaintiffs’ 8/27/15 Comment: “Add a stand alone goal
26 to increase the integration of District schools... review with the particular goal of assessing
27 whether any schools or combinations of schools could increase integration”); at 6 (DOJ’s
28 9/2/15 Comment: “The process should include a serious and good-faith attempt to promote
desegregation”).

⁶ (See e.g., TUSD’s Plaintiff Communication Summaries at 7 (DOJ’s 10/2/15 comment), at
8 (Mendoza Plaintiffs’ 10/2/15 Comment: (Mendoza Plaintiffs “ask that the District
provide for Cavett and Catalina as well as for the other affected schools referenced in the
brief discussion of this scenario in Appendix A the information and analysis that would
comprise a DIA for this scenario”), at 10 (DOJ’s 10/12/15 Comment: (DOJ “expect[s]
TUSD to continue to examine the Cavett-Catalina possibility, and to give that idea due
weight and consideration”), at 11 (Mendoza Plaintiffs’ 10/16/15 Comments).)

1 Thus, as discussed, the District initially had no intention of considering any
2 integration proposals as it developed the grade reconfiguration proposals that were the
3 subject of the Grade Reconfiguration Order at issue here. Significantly, the District did not
4 submit the Cavett or Catalina reconfigurations as part of the NARA the Court's Grade
5 Reconfiguration Proposals addressed. (*See* NARA.) The Court's statement that the
6 District did not consider the options of moving Anglo students south or making central and
7 south Tucson schools attractive to these students as part of its NARA reconfiguration
8 requests is therefore wholly accurate.

9
10 As to the District's assertions that it has for years considered and implemented
11 improvements at three K-8s at locations central and south of the District, Mendoza
12 Plaintiffs are uncertain as to what efforts the District refers to as it fails to provide any
13 support for its assertion. In any event, Mendoza Plaintiffs are well-aware of the recent
14 development of improvement plans to make each of the cited magnet schools attractive
15 (*see* Doc. 1803) under a Court Order that required the development of those plans (Doc.
16 1753 at 18). However, to say that the mandated long-overdue efforts to make attractive
17 and integrate these schools somehow rendered the contested Court statements inaccurate
18 is incorrect.

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21 The District's unsupported mischaracterization of the Cavett/Catalina
22 reconfigurations (negated by the record), and unsupported assertion with respect to three
23 K-8 magnet schools entirely misses the fact that this Court plainly was asserting that none
24 of the evidence that the District presented in connection with the District's NARA
25 evidenced consideration of whether improvements could be made to schools centrally
26 located or to the south of the District to make them attractive K-8s for Anglo students

1 residing in the northern portion of the District. Thus, because the contested Grade
2 Reconfiguration Order language is accurate and TUSD fails to provide any evidence to
3 support a showing of manifest error, Mendoza Plaintiffs respectfully request that the Court
4 deny the District’s request to “correct” this portion of the Court’s Grade Reconfiguration
5 Order.
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8 *The District Fails to Make a Showing of Manifest Error Regarding Those TUSD-*
9 *Requested Changes to Page 14 of the Grade Reconfiguration Order that Do Not Directly*
10 *and Exclusively Relate to USP Language. In Fact, Those Requested Changes Would*
11 *Undermine the Point this Court was Making with Respect to Magee’s Student*
12 *Demographics*
13

14 Mendoza Plaintiffs understand the District’s requested corrections reflected in its
15 proposed order at page 14, lines 1-3, 17-20, and the first requested change of line 21 to be
16 based directly and exclusively on the USP Sections defining what integrated and racially
17 concentrated schools are.
18

19 However, with regard to the remaining language for which changes are sought, this
20 Court was plainly making the points that (1) Magee is not now a racially concentrated
21 school (Grade Reconfiguration Order at 14:18-20), and that (2) Magee has a “healthy
22 racial mix” notwithstanding that it does not meet the definition of an “integrated school”
23 under the USP (*id.* at 14:21-22). If this Court were to decline to make the changes not
24 directly related to the definitions in the USP, the Grade Reconfiguration Order would be
25 perfectly accurate in its discussion – as indeed Hispanic students may make up 45%-70%
26
27 “of the student population without Magee being considered racially concentrated.” (There
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1 therefore exists no manifest error as to this language.) The District requests changes to
2 describe what shift in the Hispanic population at Magee would make it an integrated
3 school as defined by the USP. (Proposed Order at 14:19-22.) Indeed, the District goes so
4 far in the guise of seeking “correction” as to make the unnecessary and unwarranted
5 request that this Court add an entire sentence immediately following the requested changes
6 described above to detail the specific demographic changes that would cause Magee to be
7 classified as an integrated school under the USP definition. (*Id.* at 14:22-24.)

9 But the portion of the Court’s Grade Reconfiguration Order that the District seeks
10 to rewrite WAS NOT directed at detailing what would cause Magee to be defined as an
11 integrated school under the USP. To the contrary, the Court was making the point that
12 Magee is not racially concentrated and has a “healthy racial mix” notwithstanding that it
13 currently does not meet the definition of an integrated school under the USP. (Grade
14 Reconfiguration Order at 14:16-22.) Thus, the District not only fails to make a showing of
15 manifest error: its requested changes, if granted, would undermine the point this Court was
16 making. Mendoza Plaintiffs therefore respectfully request that this Court deny the
17 District’s request as to these modifications.

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1 **CONCLUSION**

2 For the reasons set forth above, Mendoza Plaintiffs request that the Court deny the
3 District Motion in its entirety as untimely. In the event the Court decides to review the
4 substance of the District motion, Mendoza Plaintiffs respectfully request that the Court
5 deny each request that does not directly and exclusively relate to USP language.
6

7
8 Dated: April 15, 2016
9

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EXHIBIT A

TUSD

Student Assignment Plan

Agenda

- Welcome
- Goals
- Evaluation Criteria List
- K-8 Guest Speakers
- 7-12th Grade Examples
- Student Assignment Plan Schools
- Next Steps/ Questions and Answers

TUSD

Goals

Goals

- Provide grade configuration changes that do not hinder desegregation.
- Provide grade configuration changes that enhance education.
- Ensure that the additional students can be added to the schools without detracting from existing programs or diverting resources from other schools.
- Provide grade change configurations that will be supported by the community.
- Ensure that the receiving facilities can support the additional grades with minimal facility investments.

TUSD

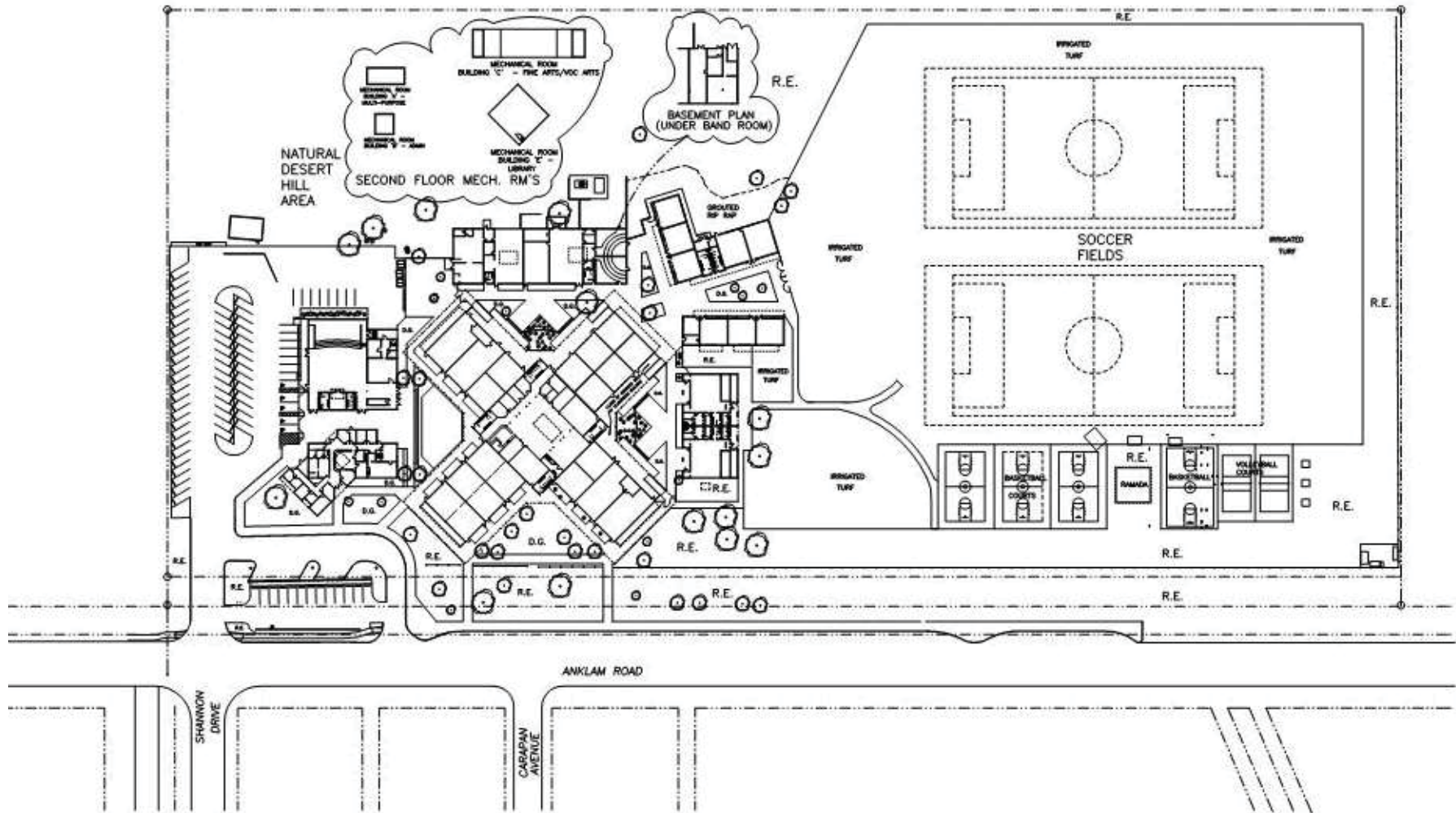
Evaluation Criteria

Evaluation Criteria

- Demographics (i.e., race, ethnicity, current and projected enrollment, current and project development patterns, socioeconomic status)
- Targeted operating capacities
- Current and planned instructional programs
- Effects on school desegregation
- Student transportation
- Feeder patterns
- Fiscal impacts

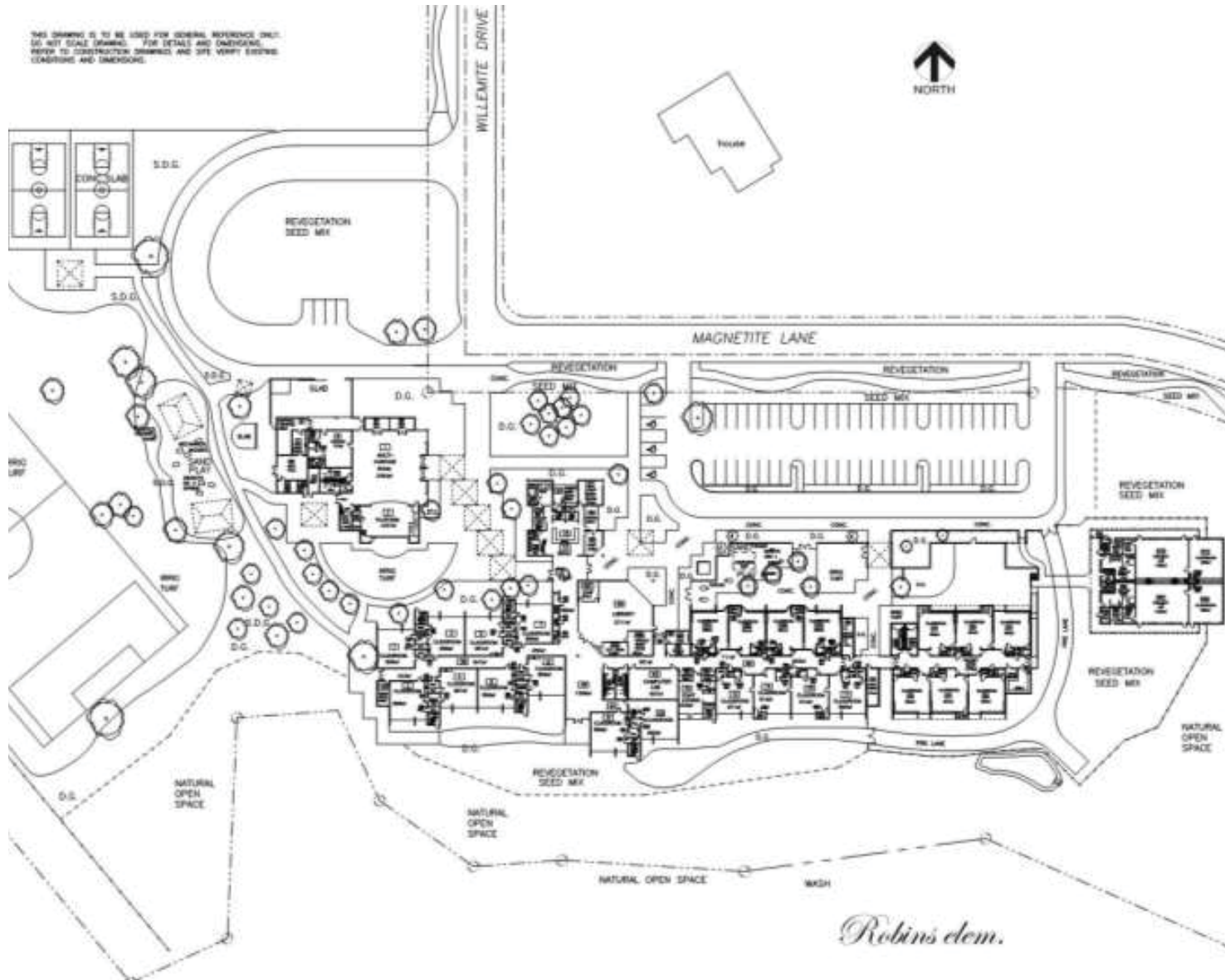
TUSD

K-8 Guest Speakers:

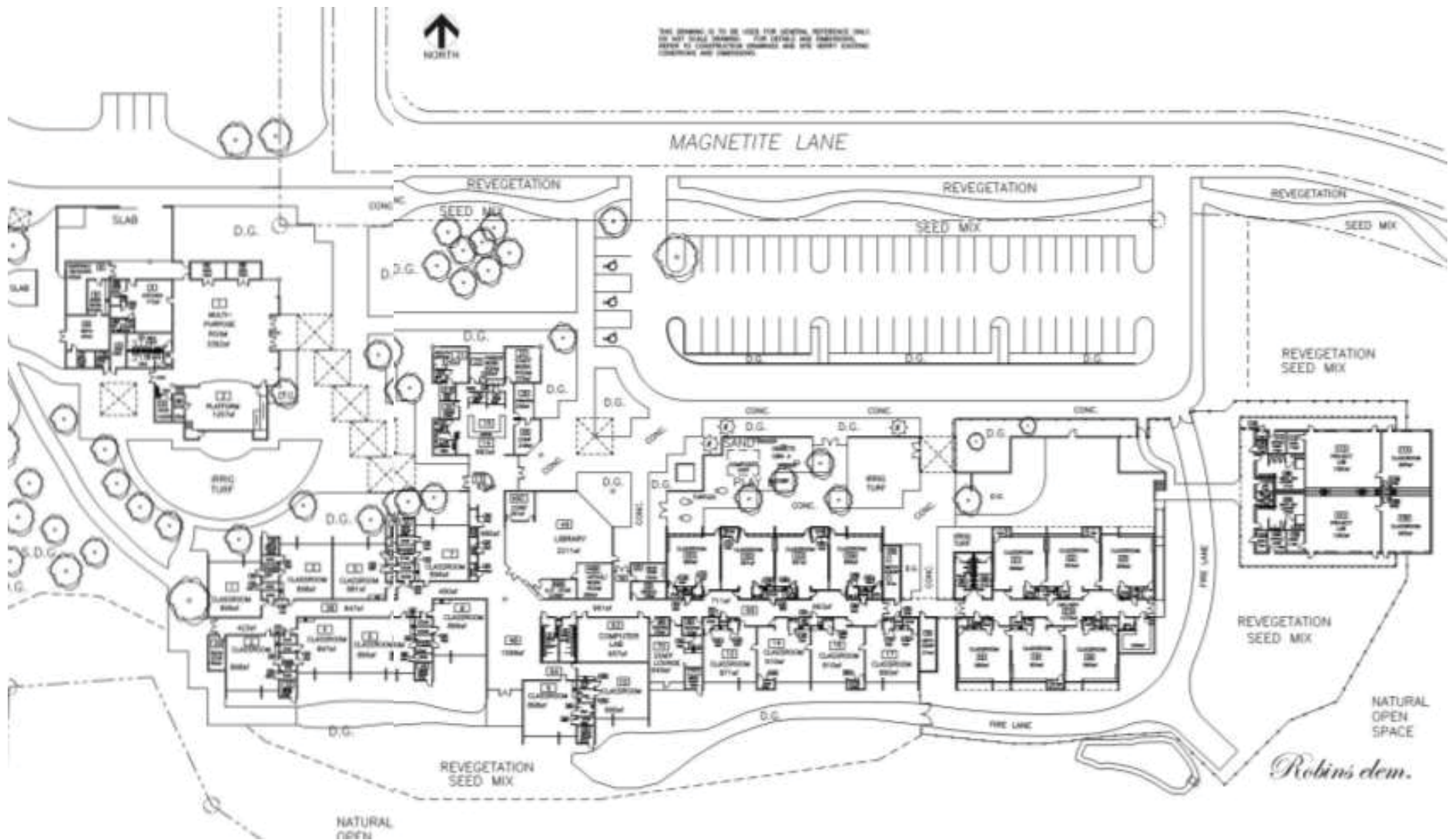


Maxwell m.s.

Morgan Maxwell K-8



Robins K-8 School



Robins K-8 School

TUSD

7-12th Grade Examples



Everett Middle School / High School



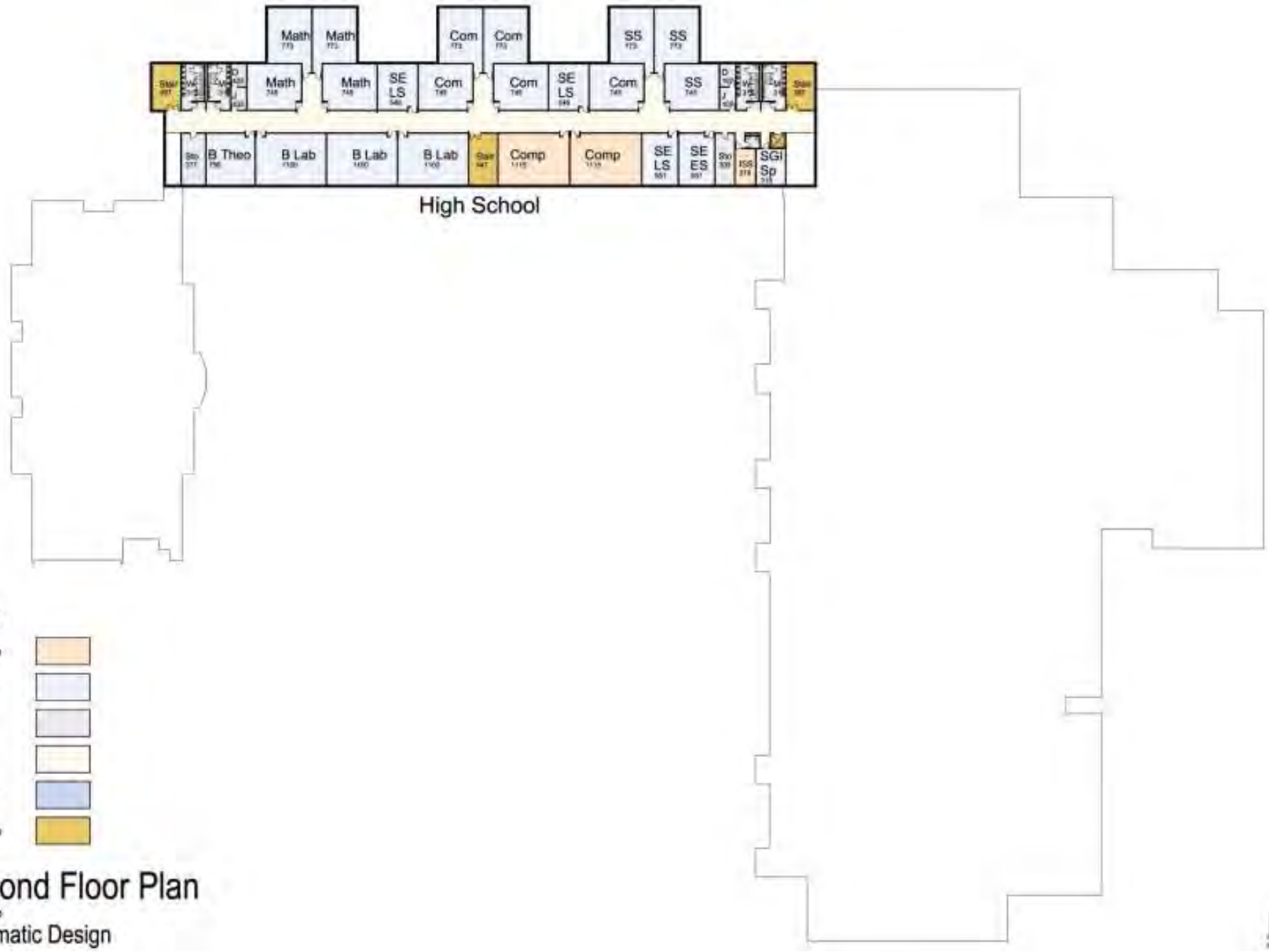
Schematic Design

Site Layout Plan
Landscape - Design

Everett Middle School / High School



Everett Middle School / High School



Everett Middle School / High School



Evie Garrett Dennis Campus



Evie Garrett Dennis Campus



Evie Garrett Dennis Campus



Evie Garrett Dennis Campus



Evie Garrett Dennis Campus





First Level Floor Plan



Second Level Floor Plan

TUSD

TUSD Schools

TUCSON UNIFIED SCHOOL DISTRICT DESEGREGATION IMPACT ANALYSIS

Action: Borman as a K-8 School

Summary

On June 21, 1977 Frank Borman Elementary School K-5 opened on Davis-Monthan Air Force Base to relieve overcrowding at the former Smith Elementary School, which closed in 2008. This is an analysis of the racial-ethnic composition of Borman as a K-5 school and an estimate of the impact of adding 6th-8th grades to that school.

Impact Analysis

Current K-5 grade enrollment

As shown in Table 1, there are approximately 420 students at Fruchthendler—70 students per grade. Borman is integrated with a racial-ethnic composition which is primarily (54%) Anglo.

Impact on Borman as a K-8 School

The change component at Borman was estimated based on 65% of the current 5th graders transitioning into the 6th grade and then all of those transitioning into the 7th and 8th grades. The 65% is based on typical cohort progression ratios for 5th to 6th grade for K-8 schools. As the same students that are in the school now will form the 6th through 8th grades, there is no change to the racial-ethnic composition at Borman.

Table 1

Change Component (6th through 8th grades)

Grades	Anglo	Afr Am	Hisp	Nat Am	Asian-PI	Multi	Total
New 6th through 8th grades	83	18	35	0	5	13	154
	54%	12%	23%	0%	3%	8%	

Borman Impacts

Grades	Anglo	Afr Am	Hisp	Nat Am	Asian-PI	Multi	Total
Current K-5	255	57	108	1	14	40	475
	54%	12%	23%	0%	3%	8%	
Projected K-8	338	75	143	1	19	53	629
	54%	12%	23%	0%	3%	8%	

Borman has capacity to serve 629 students with resource rooms and a computer lab unaffected by adding students. Additionally, there are two rooms with walls that were added in the past: these wall could be removed to increase the capacity if needed.

Impact on Middle Schools

Adding the 6th-8th grades at Borman would have virtually no impact on middle schools. There are only five 6th-8th grade Borman Area students attending Roberts/Naylor (the school designated to receive Borman Area students) and less than 10 students from the Borman Area attending each other middle school.

Notes on the Above Demographic Analysis

- All of the projections are estimates based on current patterns of choice. The 5th to 6th transition rates at K-8 schools (50% to 80%) which supports the 65% used herein.
- The above estimates are based on current TUSD students on the 40th-day SY2014-15.

Renovation Costs

To be provided.

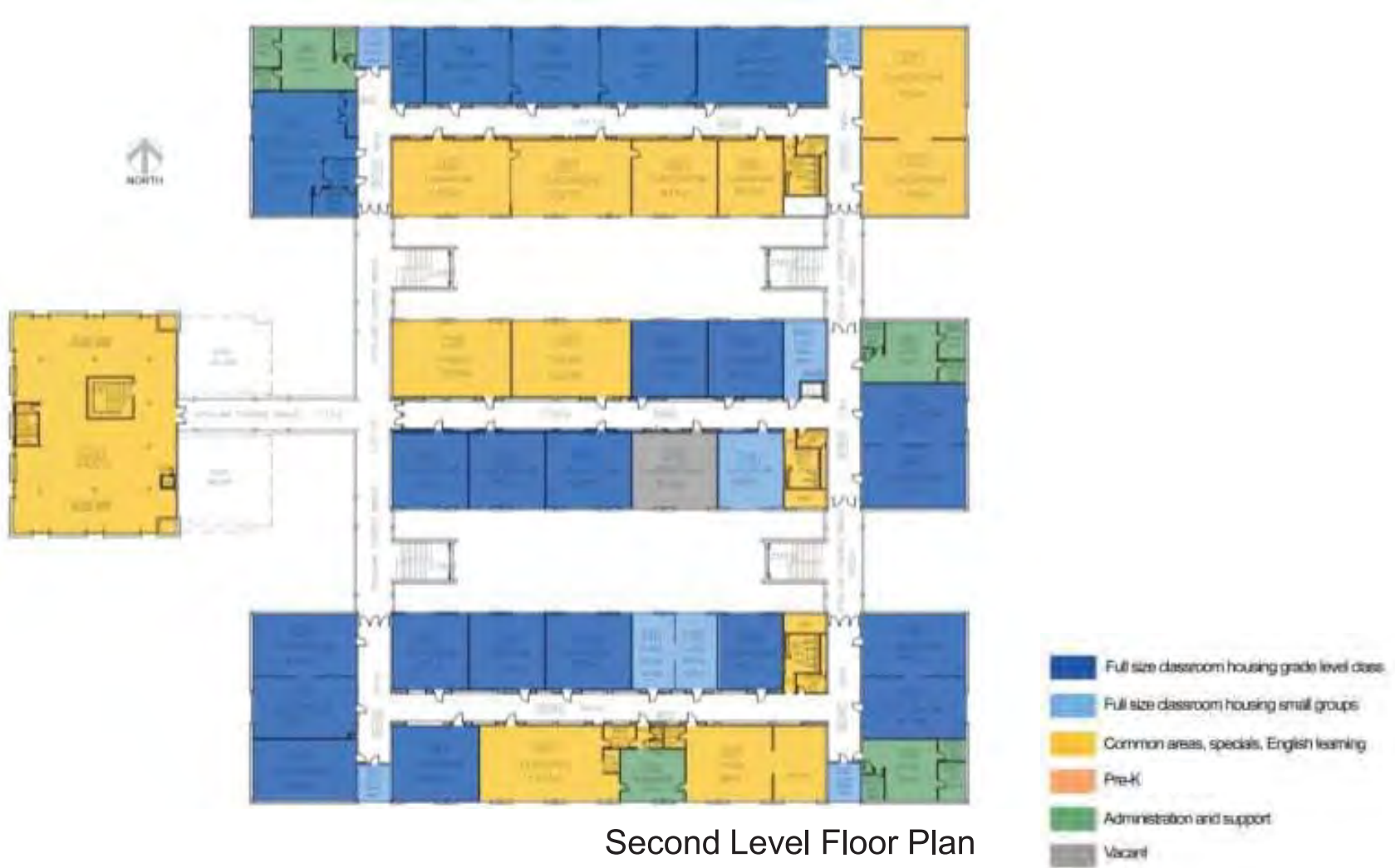
Transportation Costs

To be provided.



First Level Floor Plan

Sabino High School



Sabino High School

High School Enrollment Projections: Sabino

Enrollment Data

Mo-Year	Feeder: High School					Total
	8th	9th	10th	11th	12th	
Oct-06	242	383	366	394	407	1550
Oct-07	198	317	371	347	363	1398
Oct-08	161	333	322	386	328	1369
Oct-09	168	312	329	319	331	1291
Oct-10	149	326	284	327	302	1239
Oct-11	110	298	301	295	306	1200
Oct-12	122	243	270	294	289	1096
Oct-13	110	272	238	263	287	1060
Oct-14	91	263	254	235	257	1009

Non-neighborhood			Bldg. Permits
9th	TVSD 9th	TUSD 9th	
141	76	65	108
108	62	46	34
140	75	65	9
151	60	91	12
161	78	83	5
141	40	101	89
114	21	93	16
149	19	130	10
157	33	124	68
Wgt. Avg.			42

Enrollment Projections

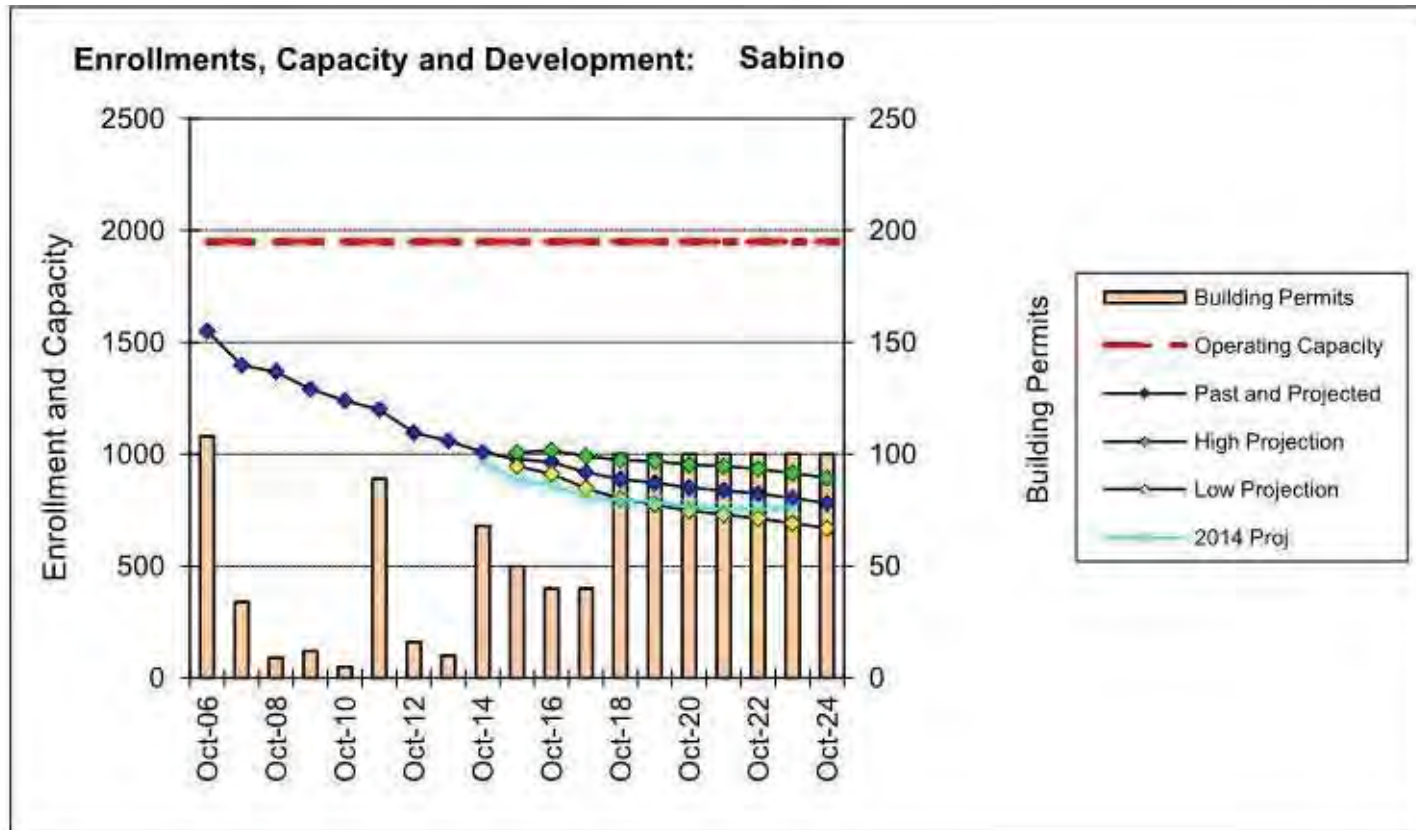
Mo-Year	Feeder: High School					Total
	8th	9th	10th	11th	12th	
Oct-15	93	249	244	250	234	977
Oct-16	74	247	230	240	248	965
Oct-17	76	228	228	226	238	920
Oct-18	70	230	210	224	224	888
Oct-19	64	225	214	209	224	872
Oct-20	58	219	209	212	210	850
Oct-21	59	216	204	207	212	839
Oct-22	51	214	201	202	207	824
Oct-23	48	204	199	199	202	804
Oct-24	46	196	189	197	199	781

Non-neighborhood			Bldg. Permits
9th	TVSD 9th	TUSD 9th	
160	35	125	50
160	35	125	40
160	37	123	40
160	37	123	100
160	34	126	100
160	40	120	100
160	38	122	100
160	44	116	100
160	46	114	100
160	49	111	100
Build-out			598

Notes:

60% Confidence Intervals:
 1 year (±) 30
 10 year (±) 112

Portable Classrooms:
 0



High2015
SABH

TUSD Planning Services
1/26/2015



Fruchthendler Elementary School

Elementary School Enrollment Projections: Fruchthendler

Enrollment History

Mo-Year	pre-K	K	1st	2nd	3rd	4th	5th	6th	Total 1 - 6	Total w/o pK	Enr w/ pK
Oct-06	0	69	66	69	75	75	65	0	350	419	419
Oct-07	1	61	75	54	73	74	65	0	341	402	403
Oct-08	2	63	53	71	53	65	66	0	308	371	373
Oct-09	0	71	67	62	82	58	65	0	334	405	405
Oct-10*	0	62	79	73	70	88	57	0	367	429	429
Oct-11	2	56	61	80	72	67	87	0	367	423	425
Oct-12	1	72	64	65	82	69	52	0	332	404	405
Oct-13	0	71	62	58	53	72	63	0	308	379	379
Oct-14	0	51	69	64	57	49	59	0	298	349	349

* Van Horne merger

Non-Neigh. K	Births	Bldg. Permits
15	92	19
10	99	12
20	100	5
22	102	2
17	94	1
13	101	86
17	109	13
28	125	5
22	129	53
		34

Enrollment Projections

Mo-Year	pre-K	K	1st	2nd	3rd	4th	5th	6th	Total 1 - 6	Total w/o pK	Enr w/ pK
Oct-15	0	52	52	70	63	54	43	0	282	334	334
Oct-16	0	51	52	52	68	59	46	0	277	328	328
Oct-17	0	53	51	52	50	63	51	0	267	320	320
Oct-18	0	57	53	51	51	47	54	0	256	313	313
Oct-19	0	59	56	53	50	47	40	0	246	305	305
Oct-20	0	60	58	56	51	47	40	0	252	312	312
Oct-21	0	61	58	57	53	46	39	0	253	314	314
Oct-22	0	62	59	57	54	48	38	0	256	318	318
Oct-23	0	63	60	58	54	49	40	0	261	324	324
Oct-24	0	65	61	59	55	49	41	0	265	330	330

Non-Neigh. K	Births	Bldg. Permits
22	133	30
22	137	30
22	141	30
22	145	30
22	149	30
22	154	10
22	158	5
22	163	5
22	168	5
22	173	5
Build-out		150

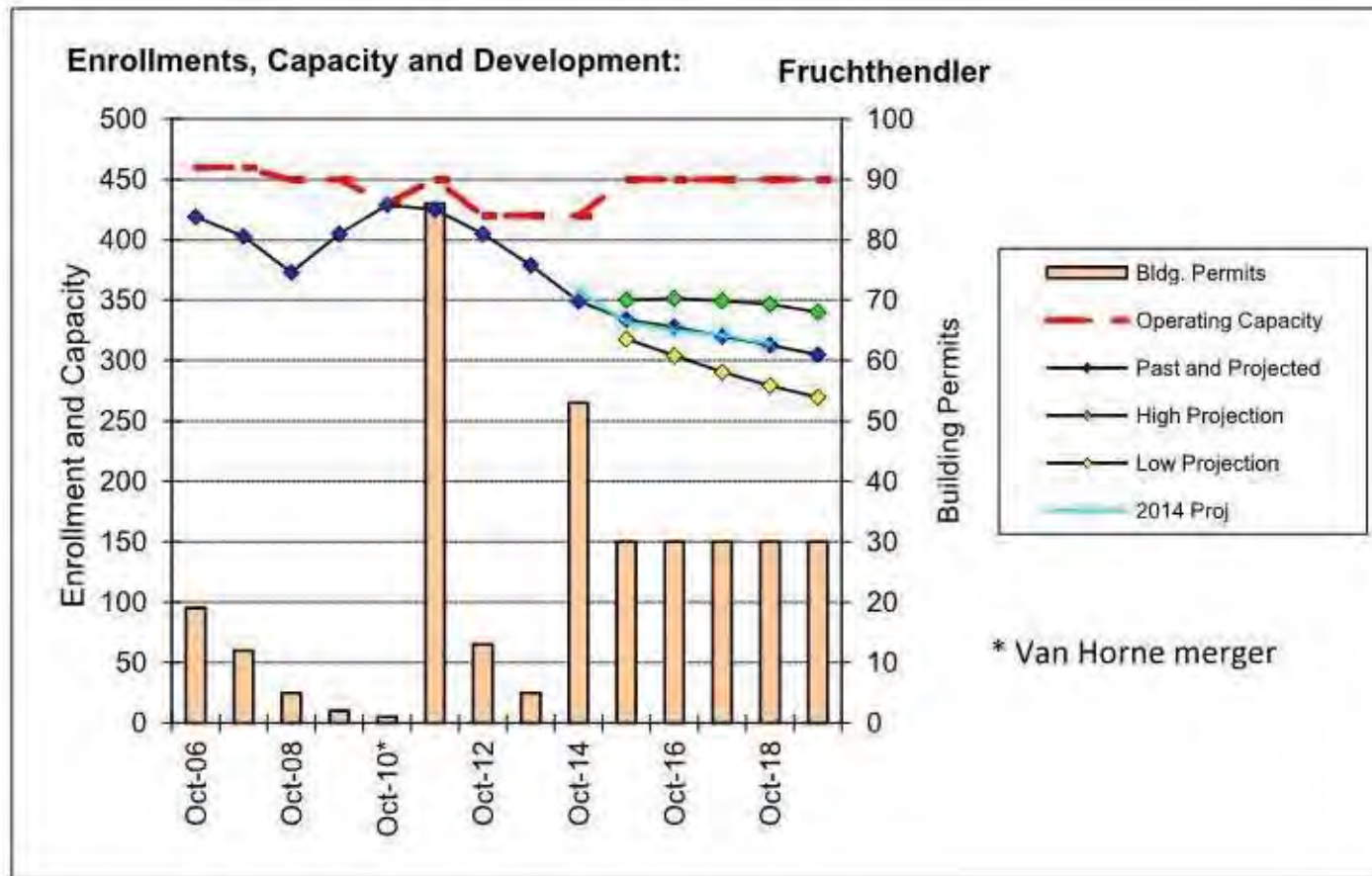
Notes:

60% Confidence Interval:

1 year (±) 16
5 year (±) 35

Portable Classrooms:

2



Elem2015_A to L
FRUE

TUSD Planning Services
1/27/2015

Elementary School Enrollment Projections: Collier

Enrollment History

Mo-Year	pre-K	K	1st	2nd	3rd	4th	5th	6th	Total 1 - 6	Total w/o pK	Enr w/ pK
Oct-06	0	49	52	65	46	58	72	0	293	342	342
Oct-07	0	66	56	59	66	51	70	0	302	368	368
Oct-08	2	38	59	47	55	60	46	0	267	305	307
Oct-09	0	49	39	63	46	48	54	0	250	299	299
Oct-10	0	35	54	38	67	54	53	0	266	301	301
Oct-11	1	32	42	52	40	63	51	0	248	280	281
Oct-12	3	27	33	47	44	36	51	0	211	238	241
Oct-13	0	37	34	27	45	36	33	0	175	212	212
Oct-14	0	28	30	31	30	45	31	0	167	195	195

Non-Neigh.	K	Births	Bldg. Permits
4		57	19
3		78	13
7		74	1
6		68	0
10		55	4
5		48	3
10		62	2
12		52	2
8		49	12

6

Enrollment Projections

Mo-Year	pre-K	K	1st	2nd	3rd	4th	5th	6th	Total 1 - 6	Total w/o pK	Enr w/ pK
Oct-15	0	27	29	28	32	29	40	0	158	185	185
Oct-16	0	25	29	28	30	32	27	0	146	171	171
Oct-17	0	27	27	28	30	30	29	0	144	171	171
Oct-18	0	26	29	26	30	30	28	0	143	169	169
Oct-19	0	25	28	28	28	30	28	0	142	167	167
Oct-20	0	23	26	26	29	27	27	0	135	158	158
Oct-21	0	23	24	25	28	29	25	0	131	154	154
Oct-22	0	22	23	22	26	27	26	0	124	146	146
Oct-23	0	21	22	21	23	25	24	0	115	136	136
Oct-24	0	20	21	21	22	22	22	0	108	128	128

Non-Neigh.	K	Births	Bldg. Permits
10		47	30
10		45	25
10		42	25
10		40	20
10		38	15
10		36	20
10		34	10
10		33	5
10		31	5
10		30	5

Build-out 189

Notes:

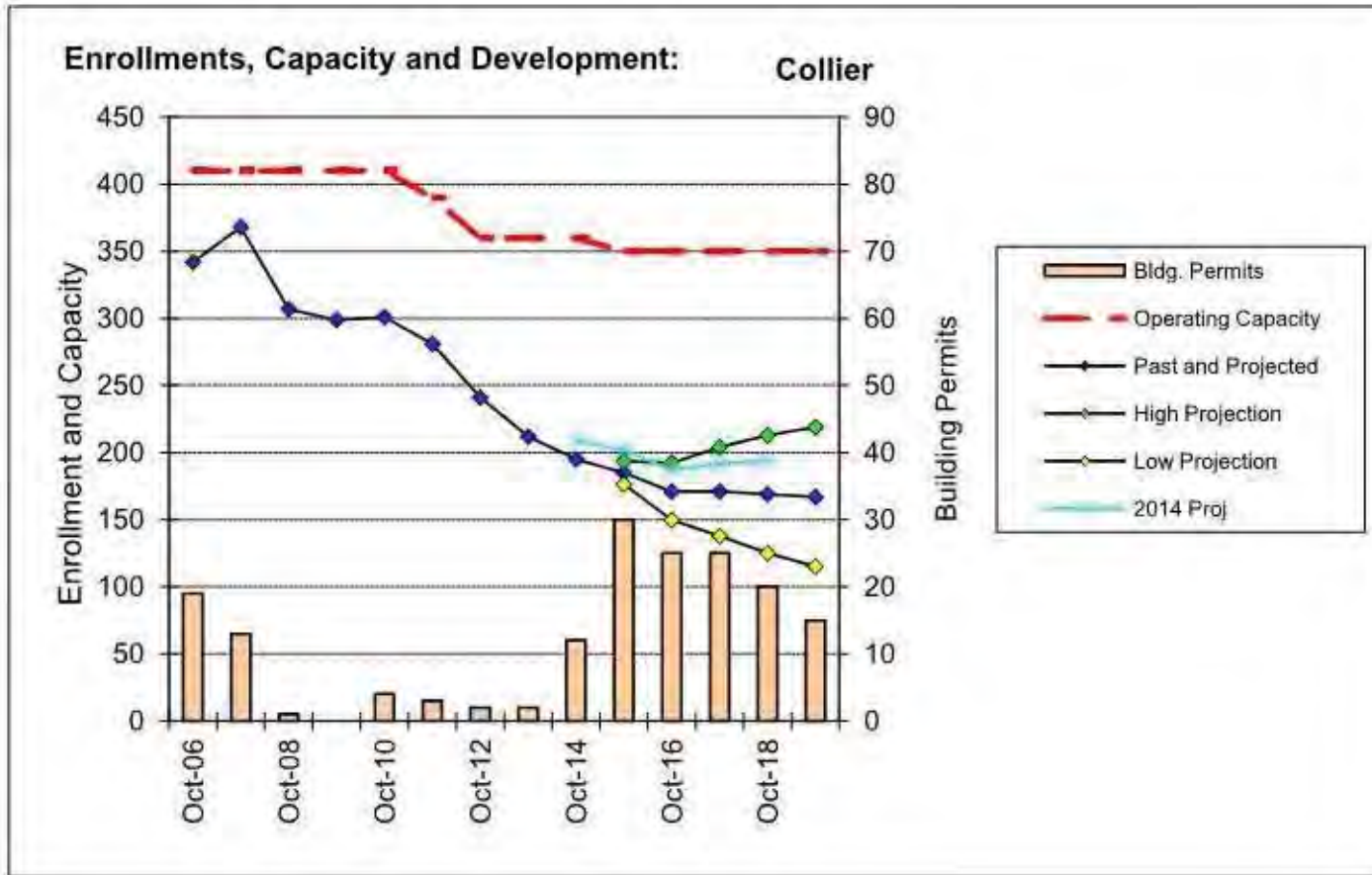
60% Confidence Interval:

1 year (±) 9

5 year (±) 52

Portable Classrooms:

3



Elem2015_A to L
COLE

TUSD Planning Services
1/26/2015



Borman Elementary School

Elementary School Enrollment Projections: Borman

Enrollment History

Mo-Year	pre-K	K	1st	2nd	3rd	4th	5th	6th	Total 1 - 6	Total w/o pK	Enr w/ pK
Oct-06*	13	99	94	74	81	74	57	0	380	479	492
Oct-07	9	94	86	73	69	58	51	0	337	431	440
Oct-08	11	87	88	77	60	55	57	0	337	424	435
Oct-09	15	118	82	82	70	60	43	0	337	455	470
Oct-10	13	89	108	68	68	66	60	0	370	459	472
Oct-11	11	111	96	94	66	63	58	0	377	488	499
Oct-12	19	125	90	76	71	55	53	0	345	470	489
Oct-13	38	112	97	75	69	61	46	0	348	460	498
Oct-14	33	101	91	69	63	62	56	0	341	442	475

* Smith closure

Non-Neigh.	K	Births	Bldg. Permits
	13	117	0
	15	125	0
	21	114	0
	18	87	0
	11	95	0
	19	140	0
	15	175	0
	7	169	8
	8	166	0

2

Enrollment Projections

Mo-Year	pre-K	K	1st	2nd	3rd	4th	5th	6th	Total 1 - 6	Total w/o pK	Enr w/ pK
Oct-15	33	94	84	71	58	57	55	0	325	419	452
Oct-16	33	94	79	66	60	52	51	0	308	402	435
Oct-17	33	103	79	62	56	54	46	0	297	400	433
Oct-18	33	108	86	62	53	50	48	0	299	407	440
Oct-19	33	110	90	67	53	48	44	0	302	412	445
Oct-20	33	111	92	70	57	48	43	0	310	421	454
Oct-21	33	111	93	72	59	51	43	0	318	429	462
Oct-22	33	111	92	73	61	53	45	0	324	435	468
Oct-23	33	110	92	72	62	54	47	0	327	437	470
Oct-24	33	110	91	72	61	55	48	0	327	437	470

Non-Neigh.	K	Births	Bldg. Permits
	10	162	10
	10	159	10
	10	156	10
	10	153	10
	10	150	10
	10	147	10
	10	144	10
	10	141	10
	10	138	10
	10	135	10
	Build-out		0

Notes:

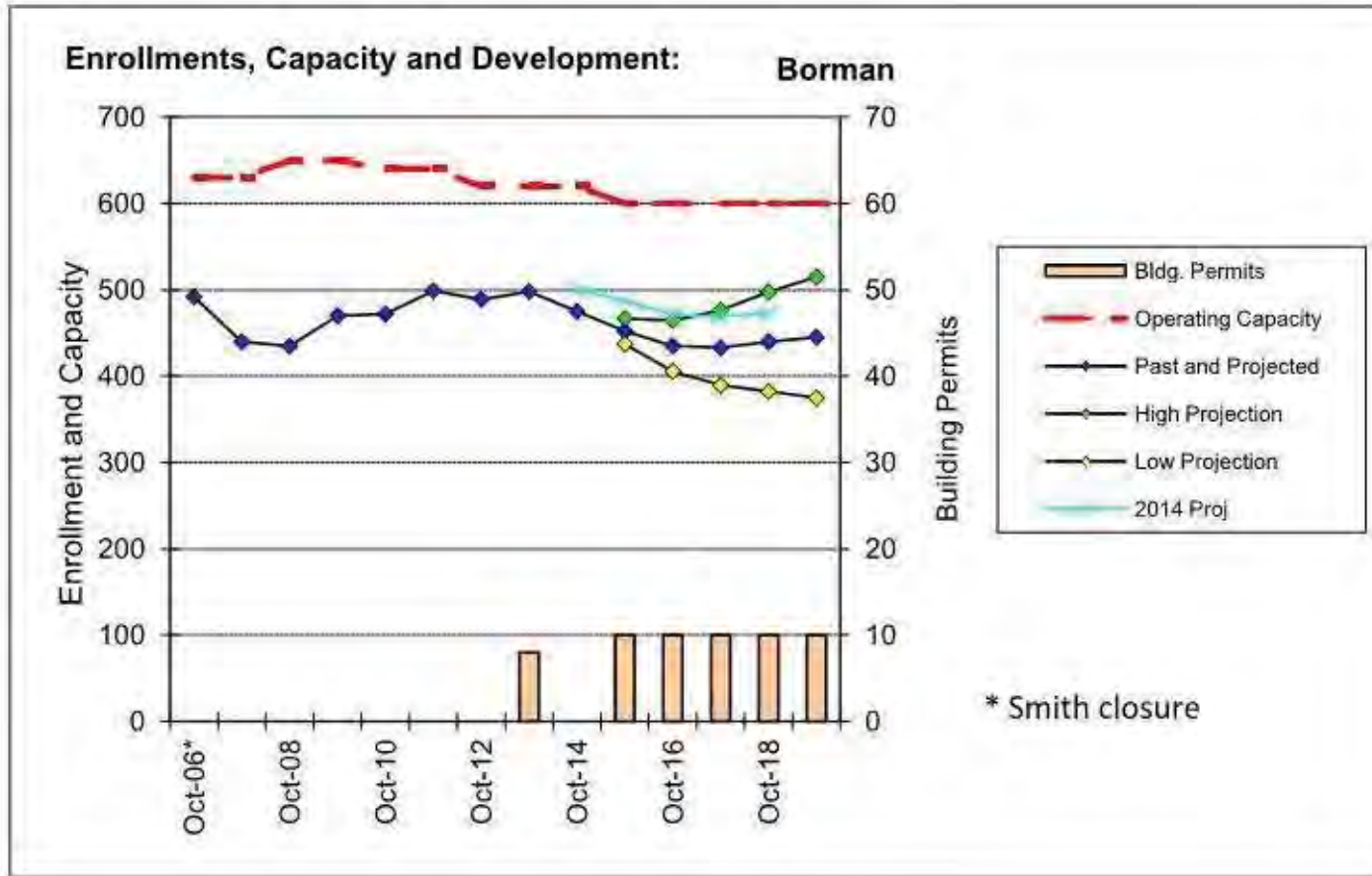
60% Confidence Interval:

1 year (±) 15

5 year (±) 70

Portable Classrooms:

0

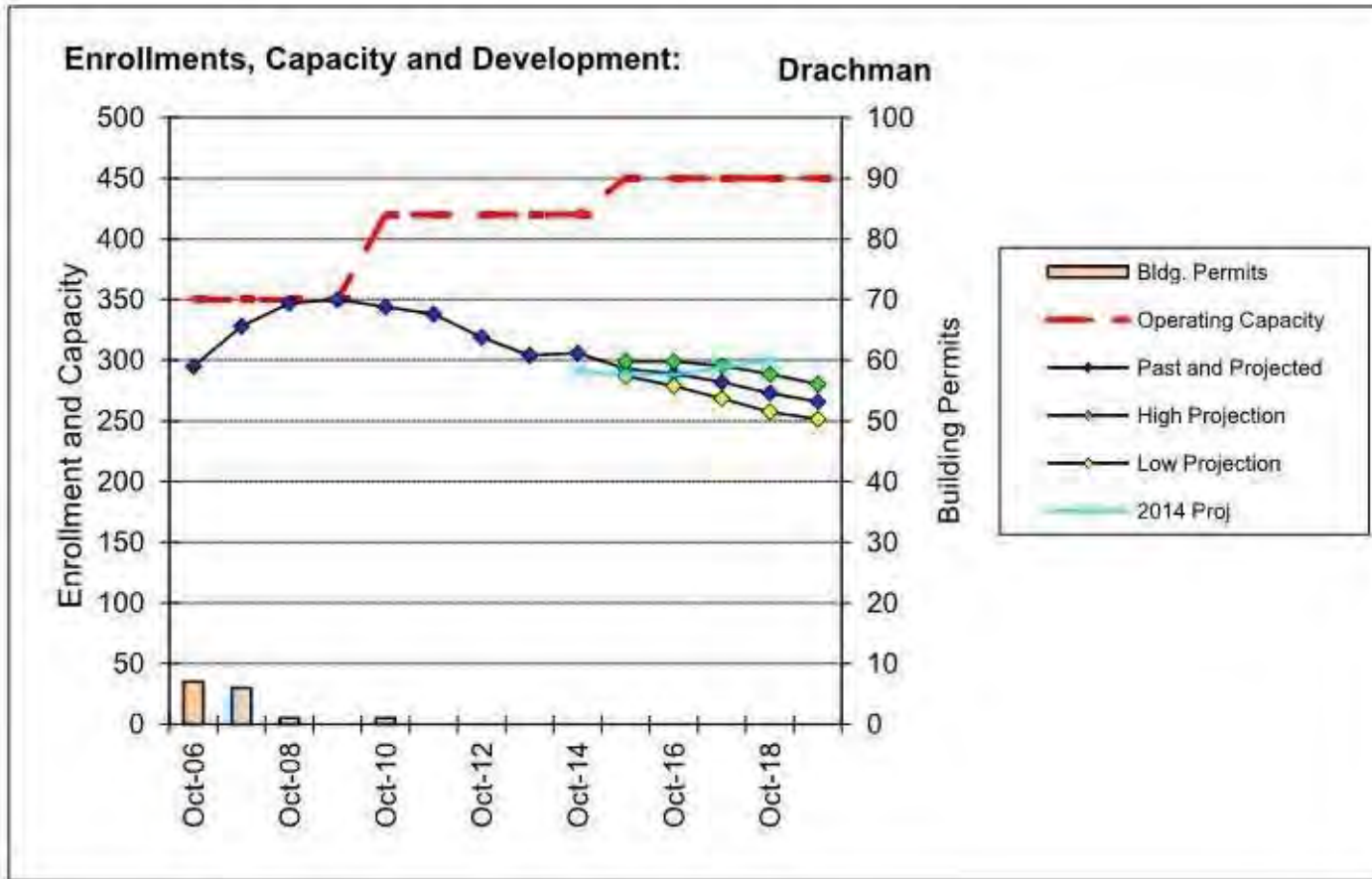


Elem2015_A to L
BOME

TUSD Planning Services
1/26/2015



Drachman Montessori



Elem2015_A to L
DRAE

TUSD Planning Services
1/26/2015

TUSD

Next Steps

Next Steps:

- August 5th SAC Meeting (TBD)
- August 19th SAC Meeting (Tentative)
- September 8th Governing Board Update
- September 16th SAC Meeting (Tentative)
- October 20th Governing Board Meeting
- November 10th Governing Board Meeting (Tentative)

EXHIBIT B

From: [Eichner, James \(CRT\)](#)
To: [Thompson, Lois D.](#); [martha.taylor@tusd1.org](#); [Bryant.Nodine@tusd1.org](#); [Brown, Samuel](#); [TUSD \(TUSD@rlaz.com\)](#); [wdh@umd.edu](#); [Savitsky, Zoe \(CRT\)](#); [rsjr3@aol.com](#); [wbrammer@rlaz.com](#); [Juan.Rodriguez@tusd1.org](#)
Cc: [Eichner, James \(CRT\)](#)
Subject: RE: Student Assignment Committee
Date: Friday, August 07, 2015 5:56:26 AM

Martha and Julie -

We share the concern raised by the Mendoza plaintiffs that the Student Assignment Committee has stated its goal as providing “grade configuration changes that do not hinder desegregation” rather than to “increase integration of the schools” as required by Section II(D)(2) of the USP. We therefore request that the District change its stated goals, and act in conformity with that goal going forward, or explain its failure to do so and engage with a dialogue with the Special Master and the plaintiffs about this issue.

Jim and Zoe.

From: Thompson, Lois D. [<mailto:lthompson@proskauer.com>]
Sent: Wednesday, August 05, 2015 3:03 PM
To: [martha.taylor@tusd1.org](#); [Bryant.Nodine@tusd1.org](#); [Brown, Samuel](#); [TUSD \(TUSD@rlaz.com\)](#); [Desegregation \(deseg@tusd1.org\)](#); [wdh@umd.edu](#); [Bhargava, Anurima \(CRT\)](#); [Savitsky, Zoe \(CRT\)](#); [Eichner, James \(CRT\)](#); [rsjr3@aol.com](#); [wbrammer@rlaz.com](#); [Juan.Rodriguez \(jrodriguez@MALDEF.org\)](#); [julie.tolleson@tusd1.org](#)
Subject: Student Assignment Committee

Martha, Counsel, and Special Master Hawley,

The Mendoza Plaintiffs appreciate that the District has provided access to the FTP site with the Student Assignment Committee (SAC) meeting materials. Mendoza Plaintiffs have reviewed the materials in the “2015-07-23 Meeting Report” folder. Unfortunately, those materials and the District’s email below raise a number of concerns. Prime among them is the following:

Mendoza Plaintiffs noted the District’s statement in the below email that it is “address[ing] the requests of various schools to revisit grade configurations” and its assertion that as a consequence, this “project is not undertaken as a USP-mandated boundary review.” The District is wrong. USP Section II, D, 2 clearly states that the “District shall review and/or redraw its attendance boundaries when it... repurposes or consolidates a school [or]... alters the capacity of a school.” Further, that USP section states that “[w]hen the District draws attendance boundaries, it **shall consider**” criteria that include “effects on school integration.” (Id.; emphasis added.) Therefore, this “project” does entail a USP-mandated boundary review. And, with respect to such review, the USP expressly requires that, “the District **shall propose and evaluate various scenarios...** in an effort to increase the integration of its schools.” (USP Section II, D, 2; emphasis added.)

Not surprisingly given the statements in the below email, Mendoza Plaintiffs have seen nothing in the SAC meeting materials for July 23, 2015 to suggest that the proposed scenarios were developed in accordance with the USP mandate to propose and evaluate scenarios to increase the integration of TUSD schools. The “2015-07-22 SAC Meeting Presentation” document recites instead as one of the project’s goals that “grade configuration changes ... do not hinder desegregation.” However, proposals that do not “hinder desegregation” may do nothing to further the effort to “increase the integration” of TUSD schools as is required by the USP. Nor do they suggest that integration-increasing scenarios have been considered. The District’s process and proposals to date therefore do not comply with USP Section II, D, 2.

Mendoza Plaintiffs raised this issue in an email dated July 22, 2015, just two days after having been informed of how the District intended to approach this project. At that time we stated: “Mendoza Plaintiffs ...will object to any process and outcome that does not include within it the goal of increasing the integration of the District’s schools.” We will request that the Special Master prepare a report and recommendation to the Court on the District’s failure to comply with USP Section II,D,2 absent an immediate revision of the student assignment process to comply with the requirements of the USP.

Mendoza Plaintiffs request that the District provide the plaintiffs and Special Master with the “brief district-wide study” it conducted on the basis of which it “concluded that these 5 schools helped distribute K-8s and alternative grade configurations across the district” (described in item 8.c. of the “2015-07-22 SAC Meeting Minutes” document). In addition, Mendoza Plaintiffs request the production of any material related to that district-wide study that evidences that the District evaluated scenarios for the purpose of determining whether they would increase the integration of its schools.

Additionally, Mendoza Plaintiffs understood from the July 24, 2015 teleconference that the parties and Special Master were in general agreement that the plaintiffs’ written comments would not be filtered or summarized by the District before being presented to the Governing Board for consideration, but would instead be subject to guidelines to be developed. (Clear recommendations and page limits were discussed as potential guidelines.) The Mendoza Plaintiffs were therefore a bit confused by the District’s statement below that “nothing shall prohibit the District from summarizing the feedback in an attempt to effectively and efficiently communicate with the Board.” Mendoza Plaintiffs request confirmation that that statement contemplates that the District may elect to summarize plaintiffs’ arguments when addressing the Board but that such summaries are not meant to take the place of plaintiffs’ written comments that the parties agreed would be provided directly to the Board under the Court’s June 12, 2015 order (Doc. 1809).

Lois D. Thompson

From: Taylor, Martha [<mailto:Martha.Taylor@tusd1.org>]
Sent: Monday, August 03, 2015 2:25 PM
To: Anurima Bhargava; James Eichner; Juan Rodriguez; Lois Thompson; Rubin Salter; Willis D. Hawley; Zoe Savitsky
Cc: Desegregation; Tolleson, Julie; RLL; Nodine, Bryant; Patterson, Charlotte
Subject: Student Assignment Committee

Dr. Hawley and counsel – Below is the report information from Bryant Nodine regarding the first meeting of the Student Assignment Committee.

Dr. Hawley and counsel: Contained herein is report information on the Student Assignment Committee’s first meeting on July 22. I apologize for not getting this information to all of you on the due date of July 23. In the future all due dates on the attached calendar will be met.

The materials and notes from that meeting are in an FTP site so everyone has immediate access at any point in the process to all relevant information. The sites will be updated after each meeting, with meeting information in a folder labelled by date within 48 hours of the meeting. All information provided there will comprise our reports to SMP. Specifics of the site are:

<https://ftp.dlrprojects.com>

Username: TUSD-SAC

Password: SACcommittee

In the meeting of July 22, the committee reviewed and agreed to use the relevant criteria from existing Regulation JC-R, to evaluate the grade configuration proposals. This project is not undertaken as a USP-mandated boundary review, but rather to address the requests of various schools to revisit grade configurations, often emphasizing the recruitment and retention of students to the District generally. Nevertheless, the review criteria include impacts on race, ethnicity and school desegregation. Preliminary desegregation impact analyses were provided to the committee.

A new schedule was developed (attached), at the request of the committee, to move the August 5 meeting, which is right before the start of school, to Monday, August 10. The schedule for reports to the SMP was also changed to provide 48 hours to fully update the ftp site.

Although we have had to delay one committee meeting, we will be able to keep the rest of the schedule intact and we still plan to meet with the SMP by phone conference or in person, in Tucson, on August 26. That meeting will be an opportunity for the SMP to be informed, to ask questions, and to provide preliminary feedback. We ask that the SMP provide feedback to the committee recommendations by Wednesday, September 2.

The SMP feedback will be provided to the Board as it is presented to District staff. The SMP comments should be in a standard format so the information is easily understandable, and they should be accompanied by recommendations that the Board can decide to act on or not act on. But nothing shall prohibit the District from summarizing the feedback in an attempt to effectively and efficiently communicate with the Board. Of course, our Governing Board members are elected officials and as such can receive public input at any time, both written and in the call to the audience portion of board meetings.

Thank you,
Bryant Nodine
TUSD Director of Planning Services

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