

**SUBMISSION OF PROPOSAL FOR LOWER COST REGULATORY ALTERNATIVES
TO PROPOSED RULE PURSUANT TO SECTION 120.541, FLORIDA STATUTES AND
REQUEST FOR DRAW-OUT PROCEEDING PURSUANT TO SECTION 120.54(3)(C)2.,
FLORIDA STATUTES**

This submission of a proposal for lower cost regulatory alternatives and request for a draw-out proceeding are being submitted in response to a proposed rule by the District School Board of Pasco County ("District") to change the student attendance boundaries for Anclote High, Gulf Middle, Gulf High, J.W. Mitchell High, Paul R. Smith Middle, River Ridge Middle, River Ridge High and Seven Springs Middle to be effective July 1, 2018 ("Proposed Rule"). This proposal and request is being submitted in good faith by the undersigned individuals, who all reside within the student attendance boundaries affected by the Proposed Rule. Specifically, all of the undersigned individuals reside in the neighborhoods commonly known as Longleaf Neighborhoods 1-3 or Ellington (collectively "Longleaf/Ellington"), and the Proposed Rule, if adopted, will change the student attendance boundaries for Longleaf/Ellington from J.W. Mitchell High ("MHS") and Seven Springs Middle School ("SSMS") to River Ridge High ("RRHS") and River Ridge Middle School ("RRMS"). The undersigned individuals also have been judicially determined to be substantially affected persons with standing to challenge the Proposed Rule, or are similarly situated to other individuals who have been judicially determined to be substantially affected by the Proposed Rule.

I. Statement of Estimated Regulatory Costs ("SERC")

In the District's notice for the Proposed Rule, the District states that it "does not anticipate the adoption of this rule will...directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within 1 year after the implementation of the rule." This statement is factually inaccurate, and the Proposed Rule will clearly result in direct or indirect regulatory costs in excess of \$200,000 within 1 year after the implementation of the Proposed Rule. Specifically, the Proposed Rule will result in the following direct or indirect regulatory costs that will individually or cumulatively exceed \$200,000 within 1 year after the implementation of the Proposed Rule:

A. Additional Transportation Costs

The Proposed Rule changes the school attendance boundary for Longleaf/Ellington from MHS and SSMS, which are approximately 2 miles away from Longleaf/Ellington, to RRHS and RRMS, which are approximately 8 miles away from Longleaf/Ellington. Although the District does provide bus transportation to a zoned school, the District does not provide bus transportation for many other school related activities, such as school sponsored extra-curricular activities, parent/teacher conferences or orientations, or for students that may need to leave school early, or arrive late, due to illness or a medical appointment (collectively "Other School Related Activities"). This will result in additional travel time and fuel costs to parents and students that currently drive approximately 2 miles for Other School Related Activities, and now will have to drive approximately 8 miles for Other School Related Activities. Furthermore, those parents and students that are able to utilize school choice to attend MHS or SSMS no longer will be guaranteed daily bus transportation if the Proposed Rule is adopted, which will

result in additional daily travel time and fuel costs for these parents and students. Because the District has not analyzed these additional transportation costs, the District has no rational basis for concluding that these costs will not exceed \$200,000 within 1 year after the implementation of the Proposed Rule.

B. Lower Property Values

The study attached hereto as **Exhibit A** demonstrates that there is a direct correlation between school distance and property values, even if the schools are similar in quality. Therefore, based on the results of this study, the Proposed Rule will negatively affect the value of homes in Longleaf/Ellington by changing the attendance boundaries of these neighborhoods from schools that are approximately 2 miles away to schools that are approximately 8 miles away. Because the District has not analyzed the effect of the Proposed Rule on property values, the District has no rational basis for concluding that the negative affect on property values will not exceed \$200,000 within 1 year after implementation of the Proposed Rule.

C. Litigation Costs and Damages

As evidenced by the most recent litigation challenging the 2017-18 attendance boundaries for the west side middle and high schools (“2017-18 Litigation”), a change of school attendance boundaries affecting established neighborhoods (such as Longleaf/Ellington) will almost certainly result in additional litigation costs to the District and regulated parents and students in excess of \$200,000. For example, the District’s own fees and costs of defending the 2017-18 Litigation likely was in excess of \$200,000, and the District likely will be responsible for paying a significant portion of the litigation fees and costs incurred by the regulated parents and students for the 2017-18 Litigation. Although the District may assume that the Proposed Rule is insulated from legal challenge because the District has revamped its legal notice and process for boundary modifications, and because it has eliminated boundary committees, this assumption is not correct. Specifically, the Proposed Rule remains subject to legal challenge for a number of reasons, including the following:

1. The Proposed Rule is effectively Option 5, which also was created by the Boundary Committee, and therefore remains subject to invalidation for all the reasons that Option 4A-2 was invalidated. Furthermore, to the extent the Proposed Rule relies on data, analysis or decisions that were created or made by the Boundary Committee, the Proposed Rule remains subject to invalidation for all the reasons that Option 4A-2 was invalidated. This will continue to be an issue as long as the District continues to rely on Chris Williams (a member of the Boundary Committee) to prepare the attendance boundaries, and the District should retain an independent consultant, without any prior history with the Boundary Committee, to prepare any new attendance boundaries.
2. The District has not prepared a SERC for the Proposed Rule as required by Sections 120.54(3)(b) and 120.541(1)(b), Florida Statutes. Therefore, the Proposed Rule is an invalid exercise of delegated legislative authority pursuant to Section 120.52(8)(a), Florida Statutes.

3. The Proposed Rule is vague, fails to establish adequate standards for District decisions, or vests unbridled discretion in the District. Therefore, it is an invalid exercise of delegated legislative authority pursuant to Section 120.52(8)(d), Florida Statutes. Specifically, the Proposed Rule consists only of a proposed map depicting boundary changes, and fails to explain the effect of the proposed boundary changes on school choice, and fails to explain which students will or will not be grandfathered under the proposed boundary changes. Furthermore, the proposed map includes the phrase “(6th, 9th Phased)” without any explanation as to what this phrase means, or which schools and students this phrase applies to. The undersigned recognize that the District has published a “Questions and Answers” form on its website that addresses some of these issues, but these “Questions and Answers” do not appear to be incorporated into the Proposed Rule, even by reference.

4. The Proposed Rule is arbitrary and capricious and an invalid exercise of delegated legislative authority pursuant to Section 120.52(8)(e), Florida Statutes. Specifically, the Proposed Rule will result in RRMS becoming overcapacity immediately, and RRHS becoming overcapacity in the near future, according to the District’s own projections. Therefore, the Proposed Rule effectively moves the overcapacity problem from MHS/SSMS to RRHS/RRMS, without moving any areas out of the RRHS/RRMS boundaries to address the overcapacity problem created by the Proposed Rule. Meanwhile, the Proposed Rule leaves Gulf Middle, Gulf High and Anclote High under-capacity, even in Year 10. Furthermore, the Proposed Rule, like previously invalidated Option 4A-2, continues to separate the interconnected neighborhoods of Fairway Springs, Longleaf and Ellington into different attendance boundaries, and breaks a feeder pattern, without any rational basis. It is also unclear whether the Proposed Rule applies the “6th, 9th Phasing” to Longleaf/Ellington for the reasons stated in comment #3 above. To the extent it does not, there is no rational basis for this distinction, particularly since RRMS and RRHS are more overcrowded (and thus more in need of phasing in) than Anclote High School and Paul R. Smith Middle School.

5. Because the Proposed Rule will negatively affect property values, and because many parents purchased and invested in their homes in reliance upon the existing attendance boundaries, the Proposed Rule will subject the District to claims for damages pursuant to Section 70.001, Florida Statutes and/or regulatory taking claims under Penn Central Transp. Co. v. New York City, 434 U.S. 104 (1978). School overcrowding is a County-wide issue, and any solution to this issue should be borne by the public at large instead of the limited number of property owners that will be bearing a disproportionate share of this burden through the Proposed Rule. See Section 70.001(3)(e), Florida Statutes.

6. Because the Proposed Rule is effectively Option 5, which was created by a Boundary Committee that considered race as a factor in its decision-making process, it is in violation of the 14th Amendment equal protection clause. See Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007). Again, this will continue to be an issue until the District retains an independent consultant to prepare any new attendance boundaries.
7. Because the Proposed Rule lacks any rational basis as it relates to Longleaf/Ellington, for the reasons stated in comment #4 above, the Proposed Rule appears to be a retaliatory effort by the District to punish Longleaf/Ellington for exercising their First Amendment rights to expose the District's Sunshine Law violations and failure to strictly comply with the requirements of the Administrative Procedure Act, which is actionable under 42 U.S.C. § 1983.

Even if the District is ultimately successful in defending the foregoing legal challenges to the Proposed Rule, the cost of the District litigating the foregoing legal challenges will almost certainly exceed \$200,000 within the first year of implementation of the Proposed Rule.

II. Lower Cost Regulatory Alternatives¹

In an effort to minimize or avoid the regulatory costs set forth above, the undersigned propose in good faith the following lower cost regulatory alternatives to the Proposed Rule which, individually or cumulatively, will substantially accomplish the objective of the Proposed Rule being implemented (relief of school overcrowding):

A. Earlier Construction of new Wings or Reliever Schools

In lieu of the Proposed Rule, the District should immediately begin design and construction of (a) new wings at the MHS or SSMS campus, (b) the Starkey K-8, and/or (c) the new high school north of S.R. 54 (behind Asturia) where the District recently acquired land. Construction of these new facilities will provide relief to MHS and SSMS, without overcrowding RRHS and RRMS. The undersigned recognize that the District's existing funding sources may not be sufficient to begin immediate design and construction of these new facilities; however, the District has funding sources available that could be adopted and utilized to construct these new facilities. Specifically, the District could authorize a referendum for a general obligation bond, or for the adoption of the ½ cent sales tax for schools, either of which likely would be sufficient

¹Because of the tremendous disruption caused to the lives of students and parents of Longleaf/Ellington by the illegal rezoning approved by the School Board in January, 2017 and voided by the Circuit Court in January, 2018, whichever of the Lower Cost Regulatory Alternatives the District selects, the undersigned propose that all students in Longleaf/Ellington be provided guaranteed bus transportation by the District from Longleaf/Ellington to both MHS/SSMS and RRHS/RRMS to the same extent they would if Longleaf/Ellington were zoned for either of those schools.

to begin earlier construction of reliever facilities. Furthermore, either of these options would ensure that the burden of school overcrowding is properly borne by the public at large, and not by the limited number of property owners that are subject to the Proposed Rule. The use of general obligation bonds or sales tax to construct needed public facilities is not a new concept in Pasco County and is even supported by some influential members of the Pasco Republican Party. For example, the Pasco County Sheriff is supporting a general obligation bond referendum in 2018 for a new jail, and the Pasco County Board of County Commissioners is supporting a general obligation bond referendum in 2018 for new fire stations and other needed public infrastructure. At a minimum, the District should place at least one of these funding sources on the ballot for 2018 to determine if this alternative is viable. Although there are costs associated with this alternative, these are costs that the District eventually will have to expend to construct these new facilities in the future, so the only true additional costs to the District are (a) the cost (if any) of placing a referendum on the ballot and (b) any interest expense associated with borrowing the funds to construct the facilities earlier. These additional costs are unlikely to exceed the regulatory costs of the Proposed Rule, particularly if the Proposed Rule results in protracted litigation and/or damages.

B. Meaningful Address Verification

In lieu of the Proposed Rule, the District should implement meaningful address verification to ensure that all students that currently attend, or plan to attend, overcrowded schools legally reside in the attendance boundaries for these schools. The District has in the past taken the position that there are legal or practical constraints to this alternative, but the District has so far failed to explain why other Florida jurisdictions, such as the Broward County School District, are able to implement this alternative, but the Pasco County School District cannot. A copy of Broward County's address verification policy is attached hereto as **Exhibit B** (specifically Policy 5.1D1 – 5.1D10 on pages 7-8), and the undersigned specifically propose that the Broward County address verification policy be adopted as a lower cost regulatory alternative to the Proposed Rule.

C. Administrative Rezoning (Rezoning Vacant Land Pre-Construction)

In lieu of the Proposed Rule, the District should create a rule whereby vacant land is administratively rezoned (by District planning staff, the District Superintendent or the School Board) before the vacant land is developed, such as at the time of building permit, plat or site plan approval, or potentially even earlier in the development process. Homeowners that are zoned for a particular school before they ever purchase their home cannot claim detrimental reliance or damages, because the change in boundaries occurred before they purchased their home. The District recently rezoned vacant land from Trinity Oaks Elementary School to Seven Springs Elementary School without any significant controversy, but the District has missed, or is about to miss, opportunities for similar rezonings of vacant land in projects such as Starkey Ranch, Asturia, South Branch Ranch, and Longleaf Neighborhoods 4 and 5. Accordingly, the District should immediately adopt and implement a rule that allows vacant land that is proposed to be developed to be administratively rezoned pre-construction as an alternative to the Proposed Rule. The Seminole County School District has adopted a similar rule. See **Exhibit C**, page 240 (5.31.IV.C).

D. Use Outside Consultant to Create New Attendance Boundaries

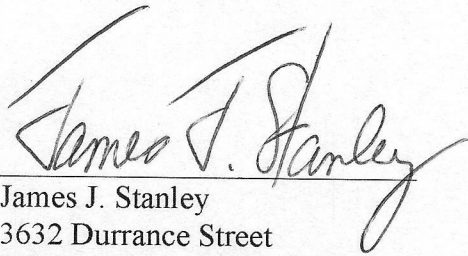
The undersigned propose that the District should immediately implement Alternatives A, B and/or C above as lower cost regulatory alternatives to the Proposed Rule. However, to the extent these alternatives are determined not to be lower cost regulatory alternatives that would substantially accomplish the objective of the Proposed Rule (relief of school overcrowding), and it is determined that boundary modifications affecting existing established neighborhoods is the only method of achieving the objective of the Proposed Rule (relief of school overcrowding), the undersigned propose that the District utilize an independent outside consultant to create the new attendance boundaries who has not been tainted or influenced by the Boundary Committee process, or by the 2017-18 Litigation. The fact that Chris Williams proposed a boundary modification map that is nearly identical to one of the boundary modification maps created by the Boundary Committee, and that results in overcrowding of RRHS and RRMS (while leaving other schools well under-capacity), demonstrates that he is not capable of separating himself from the Boundary Committee process and creating an objective boundary modification map that properly balances school populations. The creation of a boundary map by Chris Williams, or any other member of the District staff who was involved in the Boundary Committee process or 2017-18 Litigation, also will make the Proposed Rule easier to attack legally, for the reasons set forth above. The undersigned recognize that there could be some costs to the District to employ an independent outside consultant, but this cost will pale in comparison to the litigation costs the District likely will incur if the District proceeds with the Proposed Rule.

III. Request for Draw-Out Proceeding

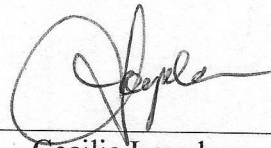
If the District disputes any of the factual or legal assertions set forth above, and elects to proceed with the Proposed Rule in lieu of the undersigned's proposed lower cost regulatory alternatives to the Proposed Rule, the undersigned hereby request a draw-out proceeding pursuant to Section 120.54(3)(c)2., Florida Statutes to address any disputed factual or legal assertions. The proposed workshop and public hearing that the District has scheduled for the Proposed Rule will not provide an adequate opportunity for the undersigned to protect their substantial interests, because the workshop and public hearing will not have a neutral decision-maker present (such as an Administrative Law Judge) who can render an objective and binding decision on any disputed factual or legal issues. For example, if the District disputes that the Proposed Rule will negatively affect property values, or disputes that this negative effect will result in potential liability to the District under Section 70.001, Florida Statutes, there will not be any independent and neutral decision maker present at the workshop or public hearing who is qualified to resolve these factual and legal disputes. Furthermore, although the District has not announced its procedures for the workshop and public hearing, it does not appear that the workshop and public hearing will provide any of the procedural protections available under Section 120.57, Florida Statutes, such as an opportunity for discovery and cross-examination.

We look forward to your response.

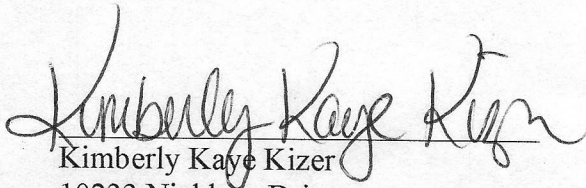
Sincerely,



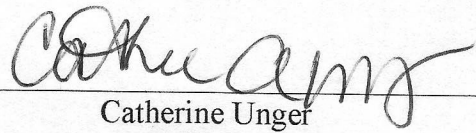
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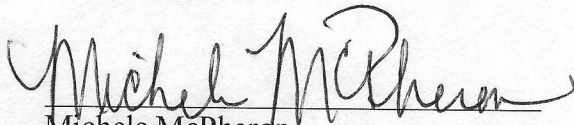
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