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**Analysis of BoE Member proposal to move MKES traditional sections
to another school effective 2017-18**

April 5, 2017

Background:

During its March 29, 2017 BoE Meeting, a BoE member proposed to mandate students at MKES in traditional classes attend another elementary school; WPES was stated. This analysis is to provide the BoE with data and information to help the BoE analyze and resolve this matter.

Legal

Our legal firm provided the following opinion related to the matter under consideration. Below contains the contents of a memorandum provided by Keane and Beane, P.C.

You asked this office to review a proposal to modify the parameters of the Dual Language Bilingual Education Program ("DLBE") currently in place at the Mount Kisco Elementary School ("MKES"). My understanding of the facts is as follows:

- *The Bedford Central School District assigns students to elementary schools based upon attendance zones. Typically, the only exceptions made are for classified students recommended for special education programs housed in schools other than their home school.*
- *The DLBE is housed at MKES.*
- *Any student at MKES is eligible to participate in the DLBE Program. (I understand that the upper grades (grades 4 and 5 at this time; and, also K) at MKES are not in the DLBE Program.)*
- *Parents/guardians can choose to have their children opt out of the DLBE Program. To the extent that the opt out option is chosen, these children are placed in regular classes on their grade level, taught exclusively in English. (These sections are locally referred to as "traditional.")*
- *There have been small numbers of students who have opted out of the DLBE, resulting in one class on each grade level (at MKES) that is significantly smaller than the norm across the District – class size ranges from approximately (10 to 20) students (in these "traditional" sections). These students remain a class cohort as they advance from grade to grade, subject only to additional students opting out of the DLBE, (and new students moving into the MKES attendance area).*
- *The District had a Space and Enrollment Committee reviewing aspects of how the attendance zones have impacted the enrollment in the five elementary schools in the District. The fact that the DLBE is housed at MKES (was) a factor discussed by the Committee. The proposal at issue (was discussed and the committee recommended a special committee convene in Sept. 2017 to study this very issue.)*
- *A proposal (by a BoE member at a public BoE meeting) has been made to have the students that opt out of the DLBE be reassigned to another elementary school (the suggestion was West Patent Elementary School), and integrated into the classes there, so as to address the small opt out class size issue at MKES. This proposal would make it*



a requirement (for students in the MKES traditional sections) to move to another elementary school, (i.e. WPES).

I have two legal concerns relating to the proposal.

- *First, such a proposal would require a change to Board of Education policy. The Board of Education has the power to establish the way in which students are assigned to schools within the District. Accordingly, any change to the traditional attendance zone enrollment process would require Board of Education action in one of two ways:*
 - *Making an exception to current Board policy or (2) establishing a new policy encompassing the change in attendance zone enrollment. I note that while the Board of Education has a policy that allows for “exceptions” to attendance zones currently (Policy #5153 “Change in Resident’s Attendance Areas”), it does not have an existing policy that establishes the attendance zone enrollment that the District has been utilizing for decades. Therefore, to adopt the proposal being considered, the Board would need to establish a new policy, setting forth the attendance zones and any exceptions thereto.*
- *The second concern is that the unintended consequence of this proposal could open the District up to legal scrutiny due to demographic shifts that may occur. It is my understanding that most of the students who are opting out of the DLBE would identify as non-Hispanic. To the extent that 40 to 50 non-Hispanic students are shifted from MKES to another elementary school in the District, will necessarily have an impact on the percentages of Hispanic student enrollment in MKES (it will rise) and may have an impact on the percentage of Caucasian students in the school in which they are sent (it may rise too). Should the proposal go into effect as it was explained to me, more students may opt out to take advantage of a change in elementary schools. This could make the demographic shift even more dramatic.*
 - *The Department of Education’s Office of Civil Rights has investigated school districts when faced with situations where schools are perceived as imbalanced from a demographic point of view. OCR has become involved even when those imbalances are due to natural attendance zone/residency patterns. To have a policy or practice that would make exceptions to the natural attendance zone/residency pattern that could result in a greater demographic imbalance would present a red flag to OCR. This type of finding would especially be of concern if the proposal is adopted without due consideration.*
 - *First, I note that you had a Space and Enrollment Committee that met and considered many different options regarding attendance zones, realignment of students in the elementary schools and other such concerns. The fact that this proposal was examined by the Committee (and deferred for special analysis) may lead OCR to determine that there was another reason, other than space or enrollment figure concerns, at play in making the change.*
 - *Similarly, I am concerned that without a review as to whether the proposal would be a cost savings, cost neutral or result in additional costs to the District, a negative inference as to motive behind the proposal may be drawn.*





This would be especially true if additional costs were added to the budget by adopting the proposal.

- ***It is this office's opinion that the type of proposal being considered be studied to get a firmer handle on what the consequences of same would be. If such consequence would be a shift in demographics as suggested above and not result in any discernable positive budgetary benefit, there remains the likelihood of a negative finding by OCR, should they investigate the way students are assigned amongst the elementary schools.***

School Capacity and Enrollment Issues

As of this time, we do not have a firm number of students who will participate in traditional first grade for 2017-18, as the deadline for parents to make a decision is April 19th.

Per enrollment projections as of April 3, 2017 for all schools for 2017-18, the closest school geographically that could accommodate all the students in traditional sections is WPES. BHES does have space to accommodate some of the grade levels; however, splitting the students amongst multiple schools will likely have a negative impact on the sense of membership felt by students and families in a school community, and cause additional transitions for students during the elementary years. Therefore, if the proposal is enacted, we would recommend attempting to send all the students to one school, namely WPES.

By way of background data, the following are approximate enrollments and capacities of each elementary school:

	Current Building Enrollment	Number of Students your building can effectively and safely serve
BHES	302	350
BVES	269	410
MKES	585	600
PRES	314	437
WPES	346	480





The following are enrollments by demographic subgroups in current MKES traditional sections:

School	Courses	Hispanic (#)	Hispanic (%)	Asian (#)	Asian (%)	Pacific Islander (#)	Pacific Islander (%)	Black (#)	Black (%)	White (#)	White (%)	Multi racial (#)	Multi racial (%)	Total (#)
MKES	Grade K	61	68%	2	2%	0	0%	1	1%	23	26%	3	3%	90
MKES	Grade 1	3	27%	1	9%	0	0%	1	9%	6	55%	0	0%	11
MKES	Grade 2	6	30%	0	0%	0	0%	0	0%	13	65%	1	5%	20
MKES	Grade 3	1	8%	2	17%	0	0%	0	0%	7	58%	2	17%	12
MKES	Grade 4	57	56%	1	1%	1	1%	3	3%	38	37%	2	2%	102
MKES	Grade 5	45	50%	2	2%	0	0%	1	1%	39	43%	3	3%	90
Total		173	53%	8	2%	1	0%	6	2%	126	39%	11	3%	325

The following are enrollments by demographic subgroups for all MKES sections:

School	Courses	Hispanic (#)	Hispanic (%)	Asian (#)	Asian (%)	Pacific Islander (#)	Pacific Islander (%)	Black (#)	Black (%)	White (#)	White (%)	Multi racial (#)	Multi racial (%)	Total (#)
MKES	Grade K	61	68%	2	2%	0	0%	1	1%	23	26%	3	3%	90
MKES	Grade 1, Grade 1 (Dual Language)	65	69%	1	1%	0	0%	2	2%	26	28%	0	0%	94
MKES	Grade 2, Grade 2 (Dual Language)	68	66%	2	2%	0	0%	2	2%	30	29%	1	1%	103
MKES	Grade 3, Grade 3 (Dual Language)	61	63%	5	5%	0	0%	4	4%	23	24%	4	4%	97
MKES	Grade 4	57	56%	1	1%	1	1%	3	3%	38	37%	2	2%	102
MKES	Grade 5	45	50%	2	2%	0	0%	1	1%	39	43%	3	3%	90
Total		357	62%	13	2%	1	0%	13	2%	179	31%	13	2%	576

The following are enrollments for MKES for 2017-18 by demographic breakdown if we assume all current traditional students move to WPES. We are also assuming the following:

- **ASSUMPTION:** 12 students in grade 1 traditional with the average demographic breakdown mirroring the average demographics of the other traditional class sections. .
- **ASSUMPTION:** Kindergarten with the same demographic breakdown as our current K class.

PROJECTIONS														
School	Courses	Hispanic (#)	Hispanic (%)	Asian (#)	Asian (%)	Pacific Islander (#)	Pacific Islander (%)	Black (#)	Black (%)	White (#)	White (%)	Multi racial (#)	Multi racial (%)	Total (#)
MKES	Grade K	61	68%	2	2%	0	0%	1	1%	23	26%	3	3%	90
MKES	(Dual Language)	48.8	68%	1.6	2%	0	0%	0.8	1%	18.4	26%	2.4	3%	72
MKES	(Dual Language)	62	75%	0	0%	0	0%	1	1%	20	24%	0	0%	83
MKES	(Dual Language)	62	75%	2	2%	0	0%	2	2%	17	20%	0	0%	83
MKES	(Dual Language)	60	71%	3	4%	0	0%	4	5%	16	19%	2	2%	85
MKES	Grade 5	57	56%	1	1%	1	1%	3	3%	38	37%	2	2%	102
Total	Total	350.8	68%	9.6	2%	1	0%	11.8	2%	132.4	26%	9.4	2%	515





Some initial conclusions:

- If we assume 12 students opt for the grade 1 traditional program at MKES for 2017-18, then the total number of students in traditional sections for 2017-18 in grades 1-4 would be **55** (assuming other families do not wish to choose the traditional option if this is presented).
 - Grade 1 - 12
 - Grade 2 - 11
 - Grade 3 - 20
 - + Grade 4 - 12
 -
 - 55
- BHES does not have the capacity (about 48 spots) to absorb that entire group, especially if it grows as a result of the “third option.”
- WPES appears to have more than enough capacity (134 spots) to absorb the entire group, even if more parents choose the traditional option.
- **We suggest, if and when such a model is considered and/or implemented, there is benefit to sending all the traditional students to one school, rather than splitting them between various schools, to attempt to maintain a sense of community and continuity for those children and families.** I have spoken with the principal and she states she could make it work.
- If students in the traditional sections are sent to another elementary school without a corresponding plan and effort to recruit students from across the District to “opt-in” to MKES DLBE, the following demographic shifts would occur (this assumes the number of opt-outs from DLBE does not grow as a result of the option to go to another school):
 - The percentage of Hispanic students at MKES is estimated to increase from 62% to 68% (see above tables).
 - The percentage of White students at MKES is estimated to decrease from 31% to 26%.
 - See the above legal opinion regarding potential implications of these estimated demographic shifts.

(NOTE: If effort were made to recruit students from across the district to “opt-in” to MKES DLBE, many factors need to be carefully analyzed including transportation costs, building capacities, etc.)

Grade-level analysis:

WPES Grade 1

- Actual numbers of students in the traditional section unknown at this time.
- **ASSUMPTION:** Conservatively, let us assume grade 1 tradition at MKES has 12 students.
- We currently predict 52 grade 1 students at WPES with 3 sections of appx. 17.
- This would yield 64 in WPES grade 1 with a average class size of appx. 21.
- Result - no class break and a **savings of a position at MKES.**

WPES Grade 2

- Currently predict 47 students; 3 sections; appx. 16 students per section.
- There are 11 students in MKES traditional grade 1.





- This would yield 58 in WPES grade 2; 3 sections with an average class size of 19 students.
- Result - no class break and a **savings of a position at MKES.**

WPES Grade 3

- WPES is expected to have 55 students in grade 3 next year; 3 sections of appx. 18 students per section.
- If the traditional MKES section moved to WPES, this would yield 75 students in grade 3; 4 sections (one additional section) of appx. 19 students.
- Result - a class break required; **no savings expected.**

WPES Grade 4

- Currently predict 59 students, 3 sections; appx. 20 students per section.
- There are 12 students in MKES traditional grade 3.
- This would yield 71 students at WPES grade 4. With 3 sections, class sizes would be 24. The limit is 25. There is a potential for a needed break if we wish to remain within guidelines. **We recommend not counting on any savings from this move.**

Potential Personnel Savings is estimated at 2 positions = appx. \$200,000 including benes and ancillary costs.

Transportation

Current analysis indicates that implementing this plan at this time would result in the need for approximately three (3) additional buses at the **cost of \$84,000 per bus; total of \$252,000.** An analysis of the students in traditional grades indicates the addresses are distributed throughout the Mt. Kisco community. We may be able to absorb these students on morning runs with the buses dropping off at Mt. Kisco then driving to WPES and BHES. This would increase ridership time on the bus.

An analysis of the afternoon availability of vehicles would make it difficult to absorb these students on existing runs. The district benefits by using the same bus for multiple routes. By the time MS/HS runs are complete the buses would not get to Mt. Kisco before 3:30 or later, necessitating the additional two 20-34 passenger vehicles.

This estimate includes an assumption of at least 12 students in the 2017-18 grade 1 traditional class. The estimate assumes some growth in the choice for the traditional option once the alternative to attend another school is introduced. The estimate of an additional three (3) buses we feel is conservative and reasonable. However, this estimate was done under significant time constraints and will need to be revisited.

Consideration of other support services and programming

There are potential costs associated with adding sections to WPES, which may include additional need for Tiered Support, Special Area Classes, ESOL Services, and Special Education services. There





would not likely be a corresponding reduction due to the small scale of the traditional classes at MKES, so this would be pure added expense.

A “ballpark” estimate would be 1.5 FTE in “pieces” with no benefits needed. So, let’s assume **\$112,500** with no benefits; this is a very rough estimate, as it is difficult to calculate within our time constraints and without a much deeper analysis. We simply can’t get more precise at this time given the time allowed for this analysis. It could be more; it could be less.

Other questions to be considered

- Will parents of students in grades 2-4 be permitted to opt-out and go to another school; or, is the opt-out only for incoming first graders? If opt-out is open to all grades, there is no way at this time to predict the number of sections that will be required; and, therefore, no way to predict potential savings or potential additional costs. If more families than the current number in traditional classes choose traditional, there may be additional transportation and/or personnel costs.
- Will we implement in a phased approach, beginning with one grade, or all grades in one year? Are there negative consequences, obstacles, and/or potential problems with implementation of all grades at one time?
- Is the implementation of this plan premature and disenfranchising of the Space and Enrollment Committee, which addressed this very issue and made a recommendation to convene a committee in September 2017 to study a model of this nature in depth? S and E spend 6 months working on this.
- What are the concerns with 2017-18 implementation even with the first grade, given that all the DLBE informational meetings have already occurred explaining and assuming the current model, and parents are making decisions based on those meetings and information?
- For incoming 1st graders, if parents have chosen DLBE, will they be allowed to change their mind and go to another school if we announce this?
- For upcoming 2nd grade students, if parents say they haven’t been happy with the DLBE program, and want their children to go to WPES, will we allow it? What about upcoming 3rd and 4th graders?
- What if a parent of a child in the traditional class does not want their child to go to WPES? Can we say they have to? How do we handle a small handful of traditional students at a grade level? The building administrators report that there are a number of traditional families who are opposed to the idea of leaving MKES, and who are happy with their experience thus far. How will decisions be made to factor in their positive experiences within the traditional setting?
- Are we going to be able to defend the last-minute nature of the decision? How will it look in terms of our competence as a governing body and administration, and our decision-making processes and approach?
- Are there other alternatives, like considering multi-age classrooms for 2017-18 while we carefully analyze the WPES option, or other options? E.G. group grade 1-2 together for a class of 22-24, even if we chose to provide co-teachers for that class?
- Are there consequences if our action causes a further demographic imbalance at MKES? Are there legal consequences and case law on this? Are there ethical consequences, i.e. is it right?





Are there cultural or climate consequences? Are there consequences on home values? Are there other consequences?

- Will families in general at MKES be concerned about the resulting change in demographics of the school?
- Would there be an option for parents in WPES to opt their children into the DLBE at grade 1?
- When a new student arrives, who does not have some exposure to the Spanish language; many times they are assigned to our traditional classroom. This will be most prevalent in grade 2-4 next year. Will these students be assigned to a neighboring school?
- What are the impacts on “the sibling factor?” How will families feel about having children in two different elementary schools, as there are scenarios under the proposed plan that this will likely occur?
- ***Is there time to fully analyze and vet out these questions?*** We believe not.

Summary

- Savings (personnel; 2 elementary sections) = appx. + **\$200,000**
- Additional Costs; transportation and ancillary support services = appx. \$252,000 + \$112,500 = - **\$364,500**
- **Estimated Net Cost = -\$164,500**
- We have very significant concerns that we do not have the time to fully vet and analyze the above questions and concerns; and, that the data contained herein needs to be vetted and carefully validated. We are concerned that by hastily attempting to solve one problem, we may create numerous other problems, including OCR concerns.
- We recommend moving forward with the Space and Enrollment Advisory Committee recommendation to study this carefully in Sept. 2017 and during the fall, and engage in a methodical, thoughtful process to develop a solution that balances meeting our objectives, minimizes risk, and has built into it preventative measures and contingent actions if problems occur.
- There are potential substantial concerns about the impact on Special Education Programming. These concerns will need to be identified and carefully analyzed.

