



**LEGAL DEPARTMENT
1010 EAST TENTH STREET
TUCSON, ARIZONA 85717-0400**

To: Governing Board, TUSD

From: Julie C. Tolleson, General Counsel

Re: Investigative Findings – Case No. 08-12-1080 (Access to Board Meetings) United States Department of Education, Office of Civil Rights

Executive Summary

In evaluating public access to Governing Board meetings, I was tasked in particular with reviewing policies and practices around security, site selection, and interpreter availability. The goal of the review is to ensure that TUSD Governing Board meetings reasonably accommodate the need of the public generally to attend and participate (to the extent required by Arizona Open Meetings laws) and in particular to ensure that non-English speakers have access to information and interpreters sufficient to allow attendance and participation. The investigation focused on practices in 2011-2012 but is updated to describe modifications and improvements made since that time. Our Resolution Agreement with the United States Department of Education, Office of Civil Rights also requires me to make any appropriate recommendations for remedial action.

A thorough investigation revealed no evidence of intentional discrimination against Latinos or non-English speakers in the notice and conduct of Board meetings. Moreover, security protocols – while developed in response to a specific crisis in April 2011 – evolved in accordance with sound practice. Occupancy limits for the Governing Board meeting room are regulated in accordance with set standards for fire safety. Likewise, practices surrounding access to interpreters reveal no evidence of discriminatory intent *or* impact. The District generally – and the Governing Board more specifically – have routinely secured interpreters in a variety of languages to assist non-English speakers at public meetings. Those protocols have improved in accordance with the Resolution Agreement in this case under which Spanish-language

information has been added visibly to the District website and to Governing Board meeting notices.

The investigation revealed one area of concern: the lack of a protocol or process for ensuring that Governing Board meetings are held in an appropriate space when the agenda includes items of high public interest. TUSD has held public meetings in a number of large venues over the past 36 months. Some of those meetings have included emotionally-charged matters ranging from school closures to elimination of magnet designations. However, notwithstanding the District's anticipation that the January 10, 2012 meeting would draw an overflow crowd, witnesses and documents reveal that no meaningful consideration was given to moving the meeting to a venue consistent with the public's right of attendance. Accordingly, as will be discussed more fully below, I recommend that the Governing Board develop a 1) specific alternative meeting space plan for matters of large public concern; and 2) a specific protocol describing how the decision to change a meeting location would be made.

Background

On January 17, 2012, Mr. Silverio Garcia filed a complaint with the United States Department of Education, Office of Civil Rights ("OCR") alleging discrimination on the basis of national origin. Specifically, Mr. Garcia charged that TUSD 1) discriminated against Latinos and limited their participation at Board meetings by selecting a meeting venue that the District knew could not accommodate all of those interested in attending; and 2) discriminated against limited English proficient (LEP) community members by failing to provide interpreters at Governing Board meetings, and through the lack of Spanish-language information on its website.

On April 18, 2012, OCR opened the matter¹ for investigation. In particular, the OCR evaluated whether the January 10, 2012 Board meeting was improperly held in too small a venue (the Governing Board room at 1010 10th Street) to accommodate the interested Latino community. At that meeting, the Governing Board considered an adverse ruling in which an administrative law judge had found that the District's Mexican American Studies (MAS) program violated state law. This curriculum had generated substantial public interest, particularly in the Latino community. OCR also inquired whether TUSD was unfairly chilling the Latino community through the presence of law enforcement and whether meetings violated the rights of LEP persons by failing to have Spanish-language interpreters available. Finally, OCR investigation

¹ Mr. Garcia also alleged that the District violated applicable discrimination laws in suspending its former Mexican-American Studies (MAS) Program, but that issue is outside the scope of this report.

reviewed the TUSD website and related policies, seeking to determine whether the interests of Latino and LEP families were adequately addressed thereby.

In September 2013, the District and OCR reached a Resolution Agreement in which the Board agreed to a number of remedial measures, including:

- Placing a link to the Spanish translation of its interpreter policies and procedures on the website;
- Posting the Governing Board meeting schedule on the website in English, Spanish, Arabic, Somali, Chinese, Nepali, and Vietnamese;
- Agreeing to post notices of public hearing on the TUSD website in Spanish;
- Providing Governing Board personnel (including Board members) with meaningful access training in accordance with materials approved by OCR; and
- Conducting an internal review of “its practices and procedures at Board meetings generally, and most notably, the Board meeting held on January 10, 2012.”

This report reflects the required internal review noted above and, pursuant to the terms of the Resolution Agreement in OCR Case # 08-12-1080, will include the following:

- (a) Review and analysis of practices and procedures at Board meetings both generally and specifically at the Board meeting on January 10, 2012, including whether security procedures are appropriate to ensure that there is no intimidation of individuals seeking to speak or attend, whether procedures for selecting the meeting space are appropriate to accommodate community interest, whether procedures allow for adequate public input, and whether the procedures are adequate to provide meaningful access for LEP and Latino individuals; and
- (b) Recommendations on potential reviews to its practices and procedures for Board meetings to help remedy any issues identified.

Conduct of Investigation

The internal review in this matter included a review of all written Board policies, regulations, and protocols regarding the conduct of Board meetings, the availability of interpretive services, and the use of law enforcement, metal detectors, and other security measures. My review included policies and procedures in place prior to 2012 and those adopted subsequent to the very large Board meetings associated with the MAS dispute.

In addition, I interviewed two members of Board staff and two members of the Governing Board who were present for the 2011 and 2012 meetings. I interviewed the District's Chief Operations Officer, Director of School Safety, and leadership from the District's Department of Language Acquisition. More informally, I visited with Mary Canty (regarding technical and a/v issues for Board meetings), and Desegregation Director Sam Brown.

I reviewed Board minutes, including executive session notes, emails exchanged between the former Superintendent, General Counsel, Director of School Safety, and others. I listened to the full audio recordings of the May 3, 2011, May 10, 2011, and January 10, 2012 Board meetings. I reviewed a number of news reports describing both the events of January 10, 2012 and a disruption of the April 2011 Governing Board meeting (also regarding Mexican American Studies). Finally, video footage regarding the meetings of April and May 2011 and January 2012 are available via websites such as YouTube.com.

Findings and Analysis

I. Practices and Procedures Regarding Governing Board Security

The security protocols the District used on January 10, 2012 (and continuing to present) cannot be evaluated without some relevant historical perspective. On April 26, 2011, the TUSD Governing Board was forced to cancel a meeting when supporters of the District's embattled MAS program stormed an already-packed Governing Board meeting room and students took seats on the dais and chained themselves to chairs. A raucous and uncontrolled two hour protest ensued in which a standing-room only crowd played music, waved signs, chanted slogans, and refused to disperse.

On May 3, 2011, the Governing Board met again. Once again, the large crowd included protestors concerned with the future of MAS. Video depicts hundreds of protestors surrounding the District's main office, listening to audio broadcasts of the events from inside the Board's public meeting space. Tucson Police were present at the request of TUSD's School Safety Department and officers removed several protestors by

force. Ultimately, there were seven arrests and a number of injuries. Press reports state that TPD had approximately 100 officers in the vicinity of the District's central offices, in addition to helicopter support and crowd control fencing. Video of the evening shows armed officers in riot gear. Claims that public expression was quashed by the alleged "militarization" of Board meetings created a public backlash.

The Governing Board adopted its meeting security policy (BBAB) on October 25, 2011. It provides that "[a]ll persons and their belongings are subject to a search for weapons prior to entering a Board meeting" and that those who refuse consent will be denied entry. It provides that the public will be seated in provided chairs and that when such seating is full, "no additional persons shall be permitted to enter the Board room until seats become available." *Governing Board Policy BBAB*. There is no allegation that this policy is being applied disparately based on national origin, LEP status, or any other basis, and I find no evidence of discrimination in the conduct of public screening of board meeting attendees.

a. Governing Board Meeting Security Procedures Generally

With the exception of the May 2011 meeting at which TPD officers participated in crowd control (with unfortunate results), Governing Board meeting security is entrusted to the TUSD Department of School Safety under the leadership of its Director, Jeff Coleman. School Safety staffing levels vary depending on the meeting agenda and the crowd expectations based on information available to school security. Governing Board meeting security generally consists of the presence of four plainclothes School Safety officers. Usually, two of those officers are assigned to control of the public entrance to the Board meeting, one is stationed in the Governing Board room, and one is placed near the dais.

School Safety added screening by hand-held metal detector immediately in the wake of the April 2011 board meeting. Approximately six months later, the District acquired a walk-through metal detector. Currently, members of the public seeking admission to Governing Board meetings must empty their pockets and walk through the detector. Purses and bags are opened and subject to physical inspection. No identification is requested, and there are no physical pat-downs. The use of metal detectors in connection with school board meetings has become standardized practice for urban and suburban districts throughout the country. The District also made adjustments to seating configurations, resulting in a loss of approximately three of the seats previously allotted to the public.

b. Security Specific to January 10, 2012

On December 27, 2011, the Administrative Law Judge rendered his decision, triggering a time-limited window in which TUSD could file an appeal. The next meeting of the Governing Board was scheduled for January 10, 2012. At that time, the Board

would be called upon to decide whether or not to appeal the decision and defend its MAS curriculum or to accept the ruling and suspend the program. District personnel knew – based on events of the April 2011 Governing Board meeting and because the issue had repeatedly triggered significant public interest – that the meeting would generate high attendance and substantial emotion. The security planning for the January 10, 2012 board meeting was informed in large part by TUSD’s desire to prevent a recurrence of the board meetings from April and May 2011.

In the days between the December 27, 2011 decision and the January 10, 2012 board meeting, the TUSD Department of School Safety reasonably anticipated the risk of renewed protests and developed a variety of contingency plans to be triggered in the event of protests or walkouts at campuses or the central office. For the Board meeting in particular, School Safety issued specific security assignments and operational instructions but did not request the attendance or participation of Tucson Police, although pre-meeting planning involved designating specific contact personnel in the event police assistance was required.

On January 10, 2012, security was generally handled consistent with the procedures described above. Prior to the meeting, School Safety personnel arranged for Tucson Police to provide back-up assistance on an “on call” basis in the event of a substantial disruption. TPD officers were staged off-site and ultimately did not participate.

Starting at 3:45 pm on the day of the Governing Board meeting, School Safety restricted admission to the District’s central offices to those who work in the building or had legitimate verifiable business within the building. All persons who entered the Board’s public meeting room were searched using the walk through magnetometer and, as needed, a hand-held wand. All handbags and backpacks were subject to visual inspection. Pursuant to security protocols, once all seating in the room filled, the venue was closed to entrance.

During the final Board vote, a number of outside spectators jumped the barriers put in place by school security and began to pound on the Board meeting room windows. School Safety officers and members of the public scuffled. Some outside were wearing masks, and the reaction to the Governing Board decision (suspension of the program) was a fierce and emotional one. Ultimately the crowd dispersed without further incident and I find no reports of police involvement, arrests, or injuries. Four School Safety officers handled the outside situation peacefully.

I find nothing in review of the January 10, 2012 Board meeting that suggests improper or excessive conduct by school security. TPD was neither present nor involved. The metal detector use was consistent with the process developed for Board meetings generally and resulted in the confiscation of pepper spray from one attendee. There is no evidence of intimidation of persons seeking to attend or speak. To the

extent that persons were excluded from the small confines of the Board's public meeting space, such exclusion was consistent with the requirements of public safety, including, but not limited to, sound fire code enforcement practices.

II. Practices and Procedures Regarding Selection of Meeting Space

a. Meeting Space Protocols Generally

The Board's public meeting space has a seating capacity of 141, leaving room for a central aisle for ingress and egress. No specific written policy or procedure dictates when and whether meetings of the Governing Board are conducted at a site other than 1010 E. 10th Street, Tucson. However, a review of recent history reveals that public meetings have been held at alternative sites with some consistency.

For example, since January 2011, the Governing Board has conducted 11 meetings at larger alternate sites. Information provided by Governing Board staff reflects that seven of those meetings involved the issue of school closures, one was a special meeting regarding the hiring of a new superintendent, and three are identified as Board Retreats. No specific person or department is formally tasked with evaluating the need to change the meeting venue. Rather, the decision to hold such meetings at alternative sites appears to involve some general informal consensus of Governing Board staff, the Governing Board leadership, and the Superintendent.

In addition to Governing Board meetings, the District held other large public events at locations away from central offices. For example, in 2012 the District's Desegregation Department held a series of three public meetings regarding a variety of issues, including ongoing debates about the future of ethnic studies curricula. In 2013, that same department held several public meetings at school sites regarding the future of the District's various magnet programs. In June 2013, TUSD held a community forum for the superintendent finalist (Dr. Sánchez) in the auditorium at Catalina High School.

In the immediate wake of the cancelled April 2011 Board meeting, School Safety evaluated the prospects for holding the next meeting of the Governing Board at Catalina High School. At that time, security concerns precluded the use of Catalina Magnet High School. Concerns included that the area to secure (approximately 9,000 square feet) was excessive and that "capacity is approximately 850, too large a group to control if there is an issue." School Safety estimated a minimum security staffing requirement of 26-31 persons. In addition, ongoing construction at Catalina HS restricted access to emergency exits and there were no restrooms in the stage access area where the Board and staff would be seated.

Within the last year, TUSD Operations personnel revisited the question of having a specific alternative large meeting space for Board meetings. In the past two years, most off-site board meetings have been held in the auditorium at Catalina Magnet High

School (with an auditorium capacity of around 800 persons). However, security costs alone increase more than \$750 per event for meetings held at Catalina.

The TUSD Department of School Safety also conducted security analyses for possible public meetings at Tucson Magnet High School, Utterback Magnet Middle School, Safford K-8 Magnet School, and the Carpenters Hall at 606 S. Plumer. Each site has pros and cons, but virtually any off-site meeting comes with additional security and audio-visual staffing expenses, and substantial logistical inconveniences. No formal decision has been made as to which space most appropriately balances cost, security, and public access.

b. January 10, 2012

Promptly following the administrative law judge's decision on December 27, 2011, District personnel began to discuss, internally, the likelihood of public response or protest. Based on my review of materials and interviews with involved personnel, it cannot reasonably be disputed that Governing Board staff, the Superintendent's Office, and School Safety anticipated an overflow crowd. However, multiple witnesses aver that there was *no* consideration given to moving the Governing Board meeting to a space large enough to accommodate more of the interested public.

The Boardroom is separated from the building lobby by a glass barrier. Once the room filled, overflow attendees were not permitted to stand outside the glass barrier but instead were directed to stand outside and away from the building. No restroom or water facilities are available outside.

An overflow crowd of well over 100 persons was outside the District's administrative offices during the January 10, 2012 Board meeting. An audio feed of the Board meeting was broadcast to the outside crowd using a pair of external speakers and the crowd was separated from the building by temporary fencing. Although the speakers are technologically sufficient to broadly and audibly broadcast the meeting in the area in front of 1010, there is no mechanism for controlling crowd noise. Accordingly, despite the capacity of the public address system, there were complaints that the crowd in the street could not adequately hear the proceedings.

The evidence is unclear whether the failure to move the January 10, 2012 Governing Board meeting was a product of a specific decision or benign inaction. Governing Board staff, Operations personnel, and School Safety representatives do not recall any discussion or decision point related to site selection. Other witnesses – including two Governing Board members – recall asking about relocating the meeting and believe that the refusal to consider such a move came directly from the office of then-Superintendent John Pedicone. TUSD personnel responsible for a/v support report that the direction to install external speakers came from the Superintendent's office. However, compliance with the public access requirements of the Open Meeting

Law rests with the Governing Board itself, and it is the Board that becomes the target of public reaction or – as here – regulatory inquiry.

Two problems compounded the failure to engage in a specific analysis and decision-making process regarding the meeting venue: 1) the District had no formally established alternate venue that met the needs of access, security, and technology associated with a board meeting; and 2) no internal protocol or procedure obligated a particular department or person with evaluating the pros and cons of moving the Governing Board meeting. Accordingly, although the meeting was not moved, no document or witness identifies a decision maker or decision-making process. Without both a point person designated to consider the need for an alternative venue and a specific venue already identified for such occasions, the District lacked a ready structure for meeting the public's needs.

III. Practices and Procedures Regarding Public Participation

As a threshold matter, Arizona law does not provide a right of *participation* for the public at school board meetings. Rather, the Arizona Open Meeting Law, A.R.S. § 38-431 et. seq., requires only that “all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings.” A.R.S. § 38-431.01(A). To facilitate the listening opportunities for the interested public, at relevant times hereto, TUSD contemporaneously audio streamed its Board meetings on the District website and on some occasions added external speakers outside the District offices. Since that time, the District added live video streaming of its Board meetings as an additional option for public access. However, neither audio nor video streaming addresses the statutory presumption in favor of actual public attendance.

Although school boards are not obligated to provide for a “call to the public” during meetings (A.R.S. § 38-431.01[H]), the TUSD Governing Board provides for public members to speak at Board meetings under a structured “call to the public” protocol. Each speaker must fill out a request form and is limited to 3 minutes. The Board has discretion to extend the “call to the public” time (normally scheduled for 45 minutes).

Procedures regarding public participation at meetings of the Governing Board are described in Governing Board Policy BDAA, which provides in pertinent part:

Public Participation at Board Meetings:

With the exception of executive sessions, all meetings with the Governing Board are open to the public and public participation is welcomed. Members of the public may speak during the Call to the Audience portion of the agenda. The Board President shall be

responsible for recognizing speakers and for maintaining proper order by setting such limitations as may be appropriate.

- The Call to the Audience shall be for 45 minutes at Regular Board Meetings and 20 minutes at Special Board Meetings unless otherwise indicated on the agenda. Call to the Audience may be extended beyond the time listed on the agenda only by majority vote of the Board. Call to the Audience will be eliminated at meetings where the only action is to move into Executive Session.
- *Public Comments*
 - All speakers must complete the Call to the Audience form including name, address, affiliation, and topic.
 - State your name.
 - Be as brief as the subject permits.
 - When possible, avoid repeating what a previous speaker may have stated.
 - The time of public presentations shall be limited to three (3) minutes unless a shorter time is announced by the President at the beginning of the Call to the Audience.
- *Board Comments*
 - Members of the Board shall not discuss or take legal action on matters raised during a Call to the Audience unless the matters are properly noticed pursuant to A.R.S. § 38-431.01 (G).
 - At the conclusion of the Call to the Audience, the Governing Board President will ask if individual members wish to respond to criticism made by those who have addressed the Board, wish to ask staff to review a matter, or wish to ask that a matter be put on a future agenda.
 - When a Governing Board member has spoken about a particular member of the public's criticism, or asked that a particular matter be reviewed by staff, or asked that a particular matter be put on a future agenda, he/she will not be recognized again until others who wish to speak have spoken.

On January 10, 2012, the Governing Board extended the call to the public time long enough that every speaker who filled out a request card was permitted to speak. There is no evidence that any person was denied the opportunity to participate in call to the public.

Video available online² reveals that on both April 26, 2011 and May 3, 2011, the Governing Board meeting was not merely standing room only, it was packed with almost no route of egress. In early 2012, Deputy Arizona State Fire Marshal Frederick Durham toured the Board Room to confirm the adequacy of the District's recently-revised plan to regulate room capacity. He opined in writing: "For the record, TUSD must keep all exits clear of any obstruction, and occupancy loads must not be exceeded. The main entry way must not be used for any overflow seating, crowds must not be allowed to congregate in the lobby." Limitations on the number of persons in the Governing Board's public meeting room are both reasonable and necessary for security and safety and there is no evidence that such limits have been applied disparately or inconsistently with the intent or impact of restricting community access or participation.

IV. Practices and Procedures Regarding Meaningful Access to LEP Persons

Current policy regarding interpreter support services for students and parents is in Board Policy KBF and accompanying regulation KBF-R. Current data suggests that over 3000 TUSD families are Limited English Proficient. The overwhelming majority are Spanish-speaking. In Governing Board policy KCF and its accompanying regulation KCF-R (adopted 2005), the District commits to ensuring communication with LEP students and their families. For many years, the District has provided interpreters for LEPs at Governing Board meetings upon request.

At the top of its section on the TUSD website, the Governing Board includes a hyperlinked reference to "[Servicios de Apoyo de Interpretación y Traducción para Estudiantes y Padres de Familia/Tutores.](#)" An adjacent link leads to legal materials and policies. Approximately three dozen Governing Board policies and associated regulations have been translated into Spanish and more are underway. In addition, the website includes a Spanish-language listing of scheduled Governing Board meetings and related notices.

There is no evidence that an LEP speaker sought or desired participation in the January 10, 2012 Governing Board meeting. Students, parents, and community members spoke in prior Governing Board meetings on the MAS topic without requesting an interpreter. The courses targeted for possible elimination were taught in

² Although Governing Board meetings were not yet being videostreamed in 2011, a search on You Tube reveals a number of video clips posted by the public.

English. Governing Board staff takes the position that it had no reason to believe that anyone would need interpretive services at that meeting.

The historic difficulty, however, is that there was no easy means for LEP families to be informed about the availability of interpreters or to know how to request one. Revisions to the website, at least for Spanish-speaking families, should assist in filling this information gap. Accordingly, although the Governing Board Office reports no interpreter requests for the previous 24 months, there is no way to evaluate whether the lack of requests simply reflects a lack of public need or whether the information was insufficiently accessible to LEP families. In either event, changes to both the web-based and written/posted Board meeting schedules and agendas visibly provide information to Spanish-speaking LEP families.

The Governing Board office employs three full-time employees who, among other duties, field calls from the public regarding board meeting issues. Two of those staff members are Spanish-speaking. There is no allegation that Board staff is not sufficiently accessible to the LEP public.

The Governing Board staff arranges for interpreters only when a specific request has been made, and they report that they have no record of requests for Spanish-language interpreters at the public portion of the Governing Board meetings. In April 18, 2011, the Governing Board arranged for Spanish and Arabic language interpreters for a school closure meeting at Carson Middle School, but this request came from the school itself.

I find no complaints or other evidence that a non-English speaker has been denied the opportunity to participate in Governing Board meetings due to interpreter unavailability. However, given the substantial number of LEP families in the District, Board staff should consider proactively arranging for interpreters when agendas include items of substantial public interest.

Findings and Recommendations

I. The Board Should Continue Its Practice of Avoiding Anticipatory/Pre-Emptive Involvement by Law Enforcement

Following the riotous conduct of protestors in April 2011, the TUSD School Safety Department pre-emptively requested the presence of TPD officers for the meetings of May 3rd and May 10, 2011. While the request for police presence in these circumstances was not inherently improper and reflects no discriminatory animus, once on scene TPD officers assumed authority and undertook aggressive crowd-control activity without regard to the wishes of TUSD leadership.

Review of news reports and video from the May 3, 2011 Governing Board meeting suggests that the Governing Board was directly blamed for the aggressive TPD response, though the evidence does not support that any TUSD personnel requested the use of riot gear, the use of physical force, or asked that members of the public be arrested. Essentially, then, TUSD School Safety requested assistance and such “assistance” quickly escalated beyond the District’s control.³

II. The Board Should Implement a Systematic Approach for Moving to Larger Meeting Space When Needed

The Governing Board has demonstrated the ability and willingness to meet at locations other than the Board meeting room at 1010 E. 10th Street. Moreover, the District has held large public meetings at various sites for a number of reasons, including school closures, magnet school designations, and introduction of the superintendent finalist. Off-site meetings have involved controversial issues and large crowds, yet the only time that an anticipated overflow audience was accommodated with speakers and security fencing was on four occasions: April 26, 2011, May 3, 2011, May 10, 2011, and January 10, 2012. Each of those meetings included an agenda item related to the future of MAS.

TUSD leadership was aware that there was substantial public interest in the agenda items set for January 10, 2012. Based on the attendance at previous Governing Board meetings concerning the future of the MAS program, it was abundantly clear that attendance would dramatically exceed the number of seats available in the meeting room. The District made a good faith effort to address the anticipated overflow with external speakers,⁴ but the failure to move the meeting to a larger facility unnecessarily burdened public opportunities to attend and listen.

To accommodate public attendance needs at Governing Board meetings involving matters of substantial public interest, I recommend the following:

- 1) Completion of site analysis and selection for alternative meeting sites in which Governing Board meetings may be conducted with room for at least 200 public attendees;

³ Whether the actions of TPD violated any applicable law enforcement standard or use of force policy is beyond the scope of this memorandum. The findings herein should not be construed as including an opinion as to any issue regarding the standards of conduct for police.

⁴ The audio of the January 10, 2012, reflects several instances in which the crowd kept outside the building complained of an inability to hear.

- 2) Have established systems for security, streaming technology, seating, audio/visual, disability access, and appropriate facilities at the alternate site so that if a meeting is relocated, it may proceed smoothly;
- 3) Establish a protocol for evaluating the need to relocate any particular Governing Board meeting to the alternate site, including a designated point person to make and/or document the final decision.

III. Spanish-Language Interpreters Should be Scheduled Even in the Absence of a Request by the Public Where Agenda Items Reasonably Suggest Interest Among LEP Constituents

Through its Language Acquisition Office, a long list of trained interpreters that can be scheduled upon request is available to the District. However, there is not a specific mechanism under which either Governing Board staff or TUSD leadership proactively evaluates the need for interpreters. Rather, the historical approach has been that no arrangements are made for interpreters unless the Governing Board office receives a request.⁵

The Governing Board office should likewise ensure that it has either a Spanish-speaking staff member or ready access to a Spanish-speaker to respond to telephonic inquiries from the LEP community. All requests for assistance in languages other than English or Spanish should continue to be routed through our Language Acquisition Department, which maintains a comprehensive interpreter list.

IV. The Board Should Continue to Ensure Availability of Spanish-Language Board Agendas and Policies

Both as part of its meaningful access obligations and consistent with the Unitary Status Plan, TUSD is in the midst of the labor-intensive work of translating Board policies, certain forms, student handbooks, and the like into several major languages. With regard to Board meetings, notices are now transcribed in Spanish and include a Spanish-language reminder regarding interpreter access. Although the overwhelming majority of the District's LEP families are Spanish-speakers, policies around student rights, discipline, and other matters of high importance to families are also being translated into several other languages. These efforts should continue.

⁵ Generally, Governing Board staff awaits a request from the public. However, Spanish and Arabic interpreters were present at one of the public hearings on school closures at the request of a school staff person.

Conclusion

Based on a thorough review, I conclude there is no evidence that security procedures or public input (i.e., “call to the public”) procedures impose unreasonable restrictions or burdens on the attendance and participation of LEP or Latino individuals. I am optimistic that improved visibility of Spanish language materials on the District’s website will provide additional assistance to LEP families seeking access to information or needing interpretive assistance.

However, I find that inadequate site selection procedures exist to accommodate community interest. As a result an *ad hoc* approach to site selection resulted in a scenario in which the right to “attend and listen” (in the words of the Open Meetings Law) was more restricted for those interested in MAS than for those interested in other topics, thus creating the appearance of a content-based distinction in site selection. By confirming in advance a specific location that is appropriately configured for security and access, and having a set protocol for determining when to hold Board meetings at the alternate site, the Governing Board can best ensure that the interests of all parties are adequately balanced.

I recommend that the Governing Board take the following actions:

- 1) Direct TUSD staff, by a date certain, to identify and recommend a specific alternative meeting site with room for at least 200 public attendees;
- 2) In connection with the site selected pursuant to recommendation # 1 above, direct TUSD staff to confirm systems for security, streaming technology, seating, audio/visual, disability access, and appropriate facilities at the alternate site; and
- 3) Establish a protocol for evaluating the need to relocate any particular Governing Board meeting to the alternate site, including a designated point person to make and document the final decision.