

No. 21A590

IN THE
Supreme Court of the United States

COALITION FOR TJ,

Applicant,

v.

FAIRFAX COUNTY SCHOOL BOARD,

Respondent.

On Emergency Application to Vacate the Stay of the U.S. Court of Appeals for the Fourth Circuit

**RESPONSE IN OPPOSITION TO APPLICANT'S
EMERGENCY APPLICATION TO VACATE THE STAY PENDING APPEAL**

Sona Rewari
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 955-1500

Trevor S. Cox
HUNTON ANDREWS KURTH LLP
951 E. Byrd Street
Richmond, VA 23219
Telephone: (804) 788-7221

Donald B. Verrilli, Jr.
Counsel of Record
Ginger D. Anders
Xiaonan April Hu
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Avenue NW,
Suite 500 E
Washington, DC 20001
Telephone: (202) 220-1100
Donald.Verrilli@mto.com

Counsel for Respondent

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Respondent Fairfax County School Board states that it has no parent corporation and that there is no publicly held company that owns 10% or more of its stock.

TABLE OF CONTENTS

	<u>Page</u>
RULE 29.6 STATEMENT	i
INTRODUCTION	1
STATEMENT	5
A. Factual Background	5
B. Procedural History	10
REASONS THE APPLICATION SHOULD BE DENIED	13
I. THIS COURT IS UNLIKELY TO GRANT REVIEW	14
II. THE COURT OF APPEALS DID NOT ERR, MUCH LESS DEMONSTRABLY ERR, IN GRANTING THE STAY APPLICATION	17
A. The Court of Appeals Correctly Determined that the Board has Made a Substantial Showing of Likelihood of Success on the Merits	17
1. The Coalition did not (and cannot) show that the Plan disparately impacted Asian-American applicants	17
2. The Coalition failed to show that the Board’s decision to adopt the Plan was motivated by discriminatory intent or an intent to achieve racial balancing	27
B. The Court of Appeals Correctly Determined that the Board Will Be Irreparably Harmed Absent a Stay.....	35
C. The Court of Appeals Correctly Determined that a Stay is in the Public Interest.....	38
III. ISSUANCE OF THE STAY DID NOT AND DOES NOT CAUSE THE COALITION IRREPARABLE HARM	38
CONCLUSION.....	40

TABLE OF AUTHORITIES

	<u>Page(s)</u>
FEDERAL CASES	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	27
<i>Ass’n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.</i> 8:20-02540-PX, 2021 WL 4197458 (D. Md. Sept. 15, 2021)	16
<i>Beame v. Friends of the Earth</i> , 434 U.S. 1310 (1977).....	39, 40
<i>Boston Parent Coal. for Academic Excellence Corp. v. Sch. Comm. of City of Boston</i> , 996 F.3d 37 (1st Cir. 2021).....	20, 34
<i>Brnovich v. Democratic Nat’l Comm.</i> , 141 S. Ct. 2321 (2021).....	25, 33
<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989).....	16, 33, 34
<i>Coleman v. Paccar, Inc.</i> , 424 U.S. 1301 (1976).....	4, 14
<i>Crawford v. Bd. of Educ. of City of Los Angeles</i> , 458 U.S. 527 (1982).....	33
<i>Dep’t of Homeland Sec. v. Regents of the Univ. of California</i> , 140 S. Ct. 1891 (2020).....	2, 18, 33
<i>Doe ex rel. Doe v. Lower Merion Sch. Dist.</i> , 665 F.3d 524 (3d Cir. 2011).....	27
<i>Ferring Pharm., Inc. v. Watson Pharm., Inc.</i> , 765 F.3d 205 (3d Cir. 2014).....	38
<i>Fisher v. University of Texas at Austin</i> , 136 S. Ct. 2198 (2016).....	1, 34
<i>Fisher v. University of Texas at Austin</i> , 570 U.S. 297 (2013).....	1, 16, 29, 34
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003).....	31, 34

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
<i>Hayden v. Cnty. of Nassau</i> , 180 F.3d 42 (2d Cir. 1999).....	20, 21
<i>Hazelwood Sch. Dist. v. United States</i> , 433 U.S. 299 (1977).....	19
<i>Holtzman v. Schlesinger</i> , 414 U.S. 1304 (1973).....	4, 14
<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985).....	31
<i>League of United Latin Am. Citizens v. Perry</i> , 548 U.S. 399 (2006).....	27
<i>Lewis v. Ascension Par. Sch. Bd.</i> , 806 F.3d 344 (5th Cir. 2015)	20, 26, 27
<i>Maryland v. King</i> , 567 U.S. 1301 (2012).....	13
<i>N. Carolina State Conf. of NAACP v. McCrory</i> , 831 F.3d 204 (4th Cir. 2016)	20
<i>N.Y. City Transit Auth. v. Beazer</i> , 440 U.S. 568 (1979).....	19
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	12
<i>O'Connor v. Bd. of Educ. of Sch. Dist. 23</i> , 449 U.S. 1301 (1980).....	36
<i>Personnel Adm'r of Mass. v. Feeney</i> , 442 U.S. 256 (1979).....	27, 30, 32
<i>Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott</i> , 134 S. Ct. 506 (2013).....	4, 35
<i>Rothe Dev., Inc. v. United States Dep't of Def.</i> , 836 F.3d 57 (D.C. Cir. 2016).....	34

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
<i>Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN)</i> , 572 U.S. 291 (2014).....	3, 33
<i>Spurlock v. Fox</i> , 716 F.3d 383 (6th Cir. 2013)	34
<i>Texas Dep’t of Hous. and Cmty. Affs. v. Inclusive Communities Project, Inc.</i> , 576 U.S. 519 (2015).....	16, 33
<i>United States v. O’Brien</i> , 391 U.S. 367 (1968).....	31
<i>Veasey v. Perry</i> , 574 U.S. 951 (2014).....	39
<i>Veasey v. Perry</i> , 769 F.3d 890 (5th Cir. 2014)	39
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	17, 27, 32
<i>Wards Cove Packing Co. v. Atonio</i> , 490 U.S. 642 (1989).....	<i>passim</i>
<i>Washington v. Davis</i> , 426 U.S. 229 (1976).....	18, 19, 32
<i>Watson v. Fort Worth Bank & Tr.</i> , 487 U.S. 977 (1988).....	18, 22, 23, 25, 26
<i>Williams v. Rhodes</i> , 393 U.S. 23 (1968).....	39
FEDERAL STATUTES	
42 U.S.C. § 2000e-2(k).....	1
OTHER AUTHORITIES	
TJ Alumni Action Group, <i>Debunking the Lie</i> (2022), available at https://www.tjaag.org/debunking-the-lie	6

INTRODUCTION

In this case, the district court rendered an unprecedented ruling that the race-neutral policy for admitting students to the Thomas Jefferson High School for Science & Technology (TJ)—a policy that relies on initiatives akin to the University of Texas “Top Ten Percent plan” that this Court has endorsed¹—intentionally discriminated against Asian Americans in violation of the Equal Protection Clause of the Fourteenth Amendment. The court of appeals was entirely within its authority to stay the district court’s judgment. Indeed it would have been an abuse of the court’s equitable authority to deny a stay.

That is so for at least the following reasons:

First, the district court’s finding that TJ’s admissions policy had a disparate impact on Asian American applicants lacked any support in the record and disregarded this Court’s precedents. The percentage of Asian American applicants receiving offers is considerably higher than the percentage of Asian Americans who applied for admission. Asian Americans were therefore not disadvantaged relative to students of other races. See *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 650-52 (1989), *superseded by statute on other grounds by* 42 U.S.C. § 2000e-2(k). The district court nevertheless found disparate impact because the percentage of Asian American applicants receiving offers was lower than under prior admissions policies. But such year-over-year comparisons do not prove cognizable disparate impact; such comparisons are not probative of

¹ See *Fisher v. University of Texas at Austin*, 570 U.S. 297, 312, 315 (2013); *id.* at 333 (Scalia, J., concurring) (“blacks and Hispanics attending the University were admitted *without discrimination* under the Top Ten Percent plan,” which was enacted expressly to increase representation of Blacks and Hispanics) (emphasis added); *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198, 2242 (2016) (Alito, J., joined by Roberts, C.J., and Thomas, J., dissenting) (“UT previously had a race-neutral plan that it claimed had ‘effectively compensated for the loss of affirmative action,’ and UT could have taken other steps that would have increased the diversity of its admitted students without taking race or ethnic background into account.” (citation omitted)).

whether the Plan rendered it disproportionately difficult for Asian Americans, relative to members of other races, to gain admission to TJ (as Judge Rushing acknowledged in dissenting from the stay grant, A-App. 19a²). And the district court made no real effort to show that the alleged disparate impact was caused by the challenged features of the plan as opposed to other factors that could well have explained the difference.

Second, the district court’s finding that the Fairfax County School Board (the “Board”) acted with invidious discriminatory intent against Asian Americans when it adopted the policy likewise lacked any support in the record and disregarded this Court’s precedents. The district court asserted, without citing any supporting evidence, that the Board’s concededly race-neutral policy is an exercise in “racial balancing.” But it is nothing of the sort. It sets no racial quotas, goals, or targets. And it is administered in a race-blind manner. Board regulations forbid consideration of race in admissions decisions, and all applications are anonymized so evaluators do not know the race of any individual applicant. The district court simply slapped the pejorative “racial balancing” label on a race-neutral measure to improve geographic, socioeconomic and racial diversity, without any basis in the record.

The district court also held that the Board necessarily acted with invidious intent because it was foreseeable that its admissions policy would result in fewer Asian Americans receiving admissions offers than under prior admissions policies. But this Court has *never* accepted such reasoning as a basis for inferring invidious intent. See *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1915 (2020) (the fact that rescinding the DACA program foreseeably had an “outsized” impact on “Latinos[, who] make up a large share of the unauthorized alien population” did not raise a plausible inference of invidious purpose); *Schuetz v. Coal. to*

² Citations to the Coalition’s appendix use the form “A-App.” Citations to the Board’s appendix use the form “R-App.”

Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN), 572 U.S. 291, 313 (2014) (plurality op.); *id.* at 330-331 (Scalia, J., joined by Thomas, J., concurring in the judgment) (foreseeable impact of constitutional amendment eliminating racial preferences did not raise inference of discriminatory purpose). If the district court’s “zero sum” reasoning were correct, then the University of Texas Top Ten Percent Plan and all other race-neutral public initiatives to improve diversity would be presumptively unconstitutional if they were even minimally successful in achieving their desired aims.

Third, the irreparable harm that the Board would suffer absent a stay is palpable and grave. Final admissions decisions for the freshman class that will enter TJ are due this month. School officials have expended enormous time and effort processing thousands of applications for admission. Overhauling the admissions process at this late date would be convulsive. It would require an enormous expenditure of time and effort to create an entirely new process; burden and upset the applicants and their families who expect to receive admissions decisions by the end of this month; irreparably damage the Board’s standing in the eyes of the community, thereby harming the Board’s ability to discharge its responsibilities; and result in students choosing other highly competitive options over TJ because they will not have TJ offers in hand before they must decide on offers from other schools.

Fourth, Applicant Coalition for TJ (the “Coalition”) will suffer no irreparable harm if the admissions process moves forward. The Coalition’s allegation of irreparable harm is entirely derivative of its merits arguments, and those arguments are—as demonstrated—deeply flawed. In all events, in analogous contexts (such as the electoral process) this Court has held that even presumptively unconstitutional policies that inflict harms comparable to those alleged here can be implemented pending appeal when making fundamental changes to the policy would be highly

disruptive. And the Coalition has identified only two children of Coalition members who may be affected by the challenged policy,³ whereas enjoining the policy will likely harm many Asian American students from low income families who were disadvantaged by prior admissions policies and are now able to compete on a more equal footing.

This Court has repeatedly emphasized that vacatur of a stay pending appeal is an extraordinary remedy “reserved for exceptional circumstances.” *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308 (1973) (Marshall, J., in chambers). An applicant seeking such extraordinary relief must demonstrate that this Court would very likely review the case after final disposition in the court of appeals; the court of appeals was “demonstrably wrong” to enter a stay; and the applicant will be irreparably harmed absent a stay. See *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers). These standards are to be applied with deference to the court of appeals’ considered judgment, especially where, as here, the court of appeals “is proceeding to adjudication on the merits with due expedition.”⁴ *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., joined by Thomas, J., and Alito, J., concurring in denial of application to vacate stay) (citation omitted).

For the reasons set forth above, and for other reasons set forth in this opposition, the Coalition cannot possibly satisfy this demanding standard. The court of appeals did not err, much less “demonstrably err,” in entering the stay; there is little prospect of review by this Court if the court of appeals reverses the district court on the basis of the arguments set forth in this opposition; the Fourth Circuit has scheduled the appeal for expedited briefing and argument; and the equities

³ The Coalition has invoked associational standing and this is not a class action.

⁴ The Fourth Circuit has ordered expedited briefing and argument in this case. The Board’s Opening Brief is due May 6 and oral argument has been scheduled for the second week of September.

overwhelmingly favor maintaining the status quo. The motion to vacate should therefore be denied.

STATEMENT

A. Factual Background

TJ is a Governor’s School located in Fairfax County, Virginia. Its mission is to “provide students with a challenging learning environment focused on math, science, and technology, to inspire joy at the prospect of discovery, and to foster a culture of innovation based on ethical behavior and the shared interests of humanity.” R-App. 98a. It is one of 19 regional public schools in Virginia that provide advanced studies and require students to apply for admission. R-App. 30a.

Prior to 2021, to be eligible for admission to TJ, an applicant was required to reside in one of the five participating school divisions, be enrolled in 8th grade, have a minimum core 3.0 grade point average (GPA), have completed or be enrolled in Algebra I, and pay a \$100 application fee. R-App. 99a. Applicants meeting these criteria were then required to take three standardized tests—the Quant-Q, the ACT Inspire Reading, and the ACT Inspire Science.⁵ Those who achieved a certain percentile ranking on the tests and continued to maintain a 3.0 GPA advanced to the semi-finalist round, where they were administered an exam that included three writing prompts and a problem-solving essay, and were asked to submit two teacher recommendations. R-App. 99a. Applicants were chosen for admission based on a holistic assessment of the student’s performance on all of these metrics—the standardized tests, the written exam, teacher recommendations, and grades, among others. R-App. 99a-100a.

⁵ Two of these tests, the ACT Inspire Reading and the ACT Inspire Science, were recently discontinued by the testing service and are no longer available for use.

Under this admissions policy, students at just eight of Fairfax County’s twenty-six middle schools accounted for 87% of the County’s share of TJ’s admitted students in the four years preceding 2020. R-App. 180a-181a. During that same period, students who qualified for Free or Reduced-price Meals (FRM) made up less than 2% of admitted students and English Language Learners (ELL) made up less than 1% of students offered admission to TJ. See R-App. 182a. In 2019, 1.23% and 3.29% of all offers went to Black and Hispanic applicants, respectively. See TJ Alumni Action Group, *Debunking the Lie* (2022), available at <https://www.tjaag.org/debunking-the-lie>. These figures were consistent with prior application cycles. *Id.*

In the summer of 2020, state officials expressed concern that TJ had historically admitted very few disadvantaged students (including “children from Asian working class families”), and that perhaps such students were not being given an equal opportunity to apply for (and attend) Governor’s Schools in the state, including TJ. R-App. 140a-141a. A few months later, Superintendent Scott Brabrand proposed that the Board modify the TJ admissions process to encourage students from disadvantaged groups to apply and advance in the admissions process; remove historical barriers to access; and include students from every part of the County and neighboring jurisdictions. R-App. 142a. Dr. Brabrand proposed a merit lottery, which would eliminate the three standardized tests, one qualitative assessment, the \$100 application fee, and teacher recommendations, but increase the minimum required GPA from 3.0 to 3.5. R-App. 142a. Students who qualified under the proposed criteria would be sorted into one of five regional pools (each with an equal number of allocated seats) based on their residence. R-App. 142a. Names would be selected at random from each pool until each region’s seats were filled.⁶ R-App. 142a. The presentation

⁶ The Coalition’s assertion in its factual statement that “a holistic process with geographic considerations would be the key to accomplishing the Board’s racial ends” badly misstates the evidence. Br. 7. The record reflects instead that members of the Board understood that increasing

included slides showing the projected impact of the merit lottery on racial and socioeconomic diversity for the TJ student body. R-App. 130a-131a.

The merit lottery proposal proved to be controversial, both among Board members and in the community. R-App. 148a-149a. The Coalition, for its part, opposed the merit lottery and proposed that the Board should instead adopt a “Second-Look Semifinalist Alternative to the Merit Lottery” (the “Second-Look Proposal”). The Coalition advanced this proposal for the express purpose of promoting geographic, socioeconomic, and racial diversity. R-App. 144a. The Coalition’s proposal retained the standardized tests but guaranteed that a minimum of five applicants from every middle school in the County would advance to the semifinal round, where applications by candidates from “underrepresented background[s]” would be “evaluated favorably and weighted in the admission process” as a part of a holistic, qualitative evaluation. See R-App. 216a-217a. The Coalition acknowledged that its proposal, if adopted, “would result in disproportionately more Black and more Hispanic students benefiting,” R-App. 144a, and “materially increase both the geographic and the socioeconomic diversity at TJ.” R-App. 216a.

In response to criticisms of his initial proposal, Dr. Brabrand proposed a revised version of the merit lottery. R-App. 144a. The revised proposal would have set aside 100 seats for the top overall applicants, who would be selected—not at random, like the students chosen through each regional lottery—but instead based on a holistic review of student applications, which would have included two qualitative assessments and four Experience Factors. R-App. 145a. Those Experience Factors were: (i) whether the student qualified for and received free or reduced-price meals;

geographic representation at TJ would likely lead to a more socioeconomically and racially diverse student body. A-App. 48a-48a.

(ii) whether the student was an English-Language Learner; (iii) whether the student had an Individualized Education Plan, meaning the student had special education needs; and (iv) whether the student attended a historically underrepresented public middle school. R-App. 145a.

After lengthy debate and consideration of feedback from the community, the Board declined to adopt the revised merit lottery proposal in October. R-App. 145a. Some Board members were concerned that the lottery might disadvantage Asian Americans. R-App. 234a. Board member Stella Pekarsky explained that she also believed that the lottery was not the best way to “spot[] and cultivat[e] STEM talent and passion among academically exceptional students at *all* of [FCPS’s] middle schools.” R-App. 234a-235a. The Board voted unanimously to eliminate the application fee and the standardized-test requirements. R-App. 145a. The Board also directed the Superintendent to increase the size of TJ’s admitted class from 480 to 550 students. R-App. 145a.

Over the next ten weeks, the Board considered two other proposals submitted by Dr. Brabrand—one that would have instituted a hybrid merit lottery and another that would have eliminated the lottery component and would instead allocate all 550 seats for admission based on a holistic review of each candidate, including the presence of Experience Factors. R-App. 147a. At no point during this process did Dr. Brabrand or his staff project the impact of the holistic review proposal on student body demographics. R-App. 147a.

In December 2020, following public comment, the Board rejected the hybrid merit lottery proposal by a vote of 8 to 4. R-App. 149a. The Board voted instead to adopt its own modified version of the holistic review proposal (the “Plan”). As adopted, the Plan guaranteed that each of Fairfax County’s twenty-six middle schools, and every public middle school in the other four participating school districts, would be allocated slots in the incoming class equal to 1.5% of the school’s eighth-grade student population. R-App. 149a, 205a. Students would be evaluated based

on a holistic, *race-blind* review of their applications, including their GPA (which had to be 3.5 or higher), performance on two written assessments, and Experience Factors. R-App. 149a. Each middle school’s allocated seats would be offered to the highest evaluated students from each school. R-App. 149a. The remaining applicants would compete for about 100 unallocated seats. R-App. 149a. The Board also adopted a mandate requiring the use of “only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.” R-App. 224a. Both the Plan and the accompanying mandate were adopted by a near-unanimous vote—with 10 Board members in favor, 1 abstaining, and 1 against—and in the complete absence of any information predicting how, if at all, the Plan would affect the racial makeup of TJ’s student body. R-App. 149a. The regulation codifying these changes was promulgated in April 2021. It expressly provides that “[c]andidate name, race, ethnicity, or sex . . . will not be provided to admissions evaluators.” R-App. 204a. Applicants are instead identified by an applicant number. R-App. 204a.

After the Plan was adopted, applications to TJ increased significantly. R-App. 180a. A total of 3,470 students applied to TJ in 2021, compared to 2,543 students in 2020 and 2,771 students in 2019. R-App. 180a. The first class admitted under the Plan (the Class of 2025) ultimately included not only far higher proportions of low-income students, English language learners, and women than preceding classes, but also students from all twenty-six Fairfax County middle schools eligible for admission. R-App. 150a-151a.

Under the Plan, Asian-American applicants received 54.36% of the offers extended, despite representing only 48.59% of the applicant pool. R-App.182a. The number of Asian-American students admitted from underrepresented Fairfax County middle schools increased by nearly 600%—from five offers for the Class of 2024 to twenty-nine offers for the Class of 2025. R-App.

184a; Dkt. No. 107-1.⁷ The number of low-income Asian-American students who received offers similarly increased from one student for the Class of 2024 to 51 students for the Class of 2025. See Dkt. No. 107-1. For twenty-three of the twenty-six Fairfax County public middle schools, Asian Americans received a far higher proportion of offers relative to their representation in the student body. *Id.* For example, Asian Americans accounted for approximately 78% of all offers made to students attending Frost Middle School (one of six feeder schools to TJ prior to the Plan) despite making up approximately 25% of the student body. *Id.* The same was true for non-feeder schools: Asian Americans accounted for 75% of all offers made to students attending Lanier Middle School—where approximately 24% of the student body identifies as Asian American. *Id.* The average GPA of all admitted students under the Plan—3.953—was virtually the same as in the prior year. R-App. 151a.

In October 2021, the Board began the process for admitting the Class of 2026. R-App. 241a. Admissions staff have devoted enormous time and effort to the selection process, which is nearly complete. Final admissions decisions are scheduled to be released in less than three weeks (April 30), in accordance with governing school regulations. R-App. 242a, A-App. 52a.

B. Procedural History

In March 2021, the Coalition sued the Board, alleging that the Plan violated the Equal Protection Clause. The Coalition argued that the Plan, while race-neutral, was “intended to reduce the percentage of Asian-American students who enroll in TJ, with the ultimate goal of racially balancing the school according to the racial demographics of Fairfax County.” R-App. 1a.

⁷ The Coalition attached the raw admissions data for the Classes of 2021 to 2025 as a sealed exhibit to the Coalition’s motion for summary judgment. That is Dkt. No. 107-1 in the district court. Because the exhibit is sealed, neither party has provided it to this Court, but the Board will do so upon request.

The Coalition twice moved for a preliminary injunction. The district court denied both motions, finding each time that the School Board and the public had a valid “interest in seeing that their schools operate in an orderly fashion,” and that “the entry of an injunction would harm the [Board] . . . more than . . . the plaintiffs.” R-App. 73a-74a, R-App. 95a.

Following cross-motions for summary judgment, the district court entered summary judgment for the Coalition on February 25, 2022. A-App. 23a. In an opinion that tracked the Coalition’s opening summary judgment brief nearly word-for-word, the court held that the Plan was subject to, and could not survive, strict scrutiny.⁸ The court concluded that the Plan had a disparate impact on Asian Americans because the Asian-American proportion of the admitted class was lower under the Plan than it had been in the years immediately preceding the Plan’s adoption. Having found disparate impact, the court then held that the Board acted with invidious discriminatory intent against Asian Americans because the Board set out “to increase Black and Hispanic enrollment, which would, by necessity, decrease the representation of Asian-Americans at TJ.” A-App. 49a-50a. Based on that “zero sum” Equal Protection analysis, the court enjoined the Board from “further use or enforcement of the Fall 2020 Admissions Plan.” A-App. 52a, A-App. 22a. The injunction required the Board to halt the 2022 admissions process (which is well underway, with 2,540 applicants having completed the process) and design a new policy from scratch—throwing the admissions process into chaos, inflicting severe harm on the thousands of children and families who are currently expecting admissions decisions next month and threatening irreparable damage to the Board and TJ. The Board sought a stay pending appeal, which the district court denied. A-App. 21a.

⁸ Compare A-App. 23a–53a (Memorandum Opinion) to A-App. 140a-174a (Coalition’s Motion for Summary Judgement).

The Board then sought, and the court of appeals granted, a stay pending appeal. See A-App. 1a. (concluding that the Board “has satisfied the applicable legal requirements for a stay pending appeal, see *Nken v. Holder*, 556 U.S. 418 (2009)”). In a concurring opinion, Judge Heytens explained the basis for the stay. After noting that “it is undisputed that the challenged admissions policy is *race neutral*—indeed, evaluators are not told the race or even the name of any given applicant”—Judge Heytens expressed “grave doubts about the district court’s conclusions regarding both disparate impact and discriminatory purpose, as well as its decision to grant summary judgment in favor of a plaintiff that would bear the burden of proof on those issues at trial.” A-App. 3a.

With respect to disparate impact, he concluded that the district court’s analysis “is likely flawed because it relies on the wrong comparator” (*i.e.* it compared admission percentages before and after adoption of the Plan rather than the percentage of Asian American admissions as compared to their percentage in the applicant pool) and because the district court drew an unexplained and unsupported inference that the Plan’s allocation of a fixed percentage of admissions slots to every public middle school caused the disparate impact. A-App. 7a.

With respect to discriminatory intent, Judge Heytens concluded that the “centerpiece of the district court’s analysis”—its conclusion that the Plan was adopted with invidious intent because it was “designed to increase Black and Hispanic enrollment, which would, *by necessity*, decrease the representation of Asian-Americans at TJ.” A-App. 8a-9a (emphasis added)—was flatly inconsistent with this Court’s Equal Protection precedents approving the use of race-neutral policies to increase socioeconomic and racial diversity in public education, housing, and government contracting. He likewise concluded that the district court likely erred in concluding that the Plan was adopted to achieve “racial balance.” He observed that the policy was race-neutral and “includes

no racial quotas or targets.” A-App. 11a. He also observed that “the Coalition appears to have *identified no evidence* that TJ’s current race neutral policy is intended to achieve a certain percentage of Black, Hispanic, or Asian American students.” A-App. 11a. (emphasis added).

Judge Heytens also found that the Board would suffer irreparable harm absent a stay. A-App. 12a-13a (noting that “[p]reventing elected representatives from carrying out ‘a duly enacted’ policy always ‘constitutes irreparable harm.’” (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers))). As he noted, it would wreak havoc to force the Board to scrap its existing admissions policy and adopt an entirely new one at this very late stage in the admissions process (after the expenditure of enormous time and effort) with only weeks to go before students and their parents expected to receive admissions decisions under the existing policy.

Judge Rushing dissented. In her view, the Board had not demonstrated irreparable harm because it could disregard the April deadline for admissions decisions and leave over 2500 students and their parents to wait while the Board developed a new policy. With respect to disparate impact, Judge Rushing acknowledged that the Coalition’s “year-over-year comparison may be influenced by other variables,” (and therefore not prove disparate impact), and she did not identify any way in which the challenged features of the plan disproportionately disadvantaged Asian Americans. A-App. 19a. But, she asserted, “disproportionate impact is but one factor to consider.” *Id.* With respect to discriminatory intent, she restated the district court’s unsupported assertion that the Board was engaged in “[r]acial balancing,” and (like the district court) cited no record evidence to support that assertion. A-App. 18a.

REASONS THE APPLICATION SHOULD BE DENIED

The Coalition asks this Court to vacate the stay pending appeal entered by the court of appeals. Vacatur of a stay issued below is an extraordinary remedy. “[T]his power should be

exercised with the greatest of caution and should be reserved for exceptional circumstances.” *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308 (1973) (Marshall, J., in chambers). An applicant seeking vacatur bears the burden of establishing that (1) the case “very likely would be reviewed here upon final disposition in the court of appeals”; (2) the applicant “may be seriously and irreparably injured by the stay”; and (3) the issuance of the stay was “demonstrably wrong” under “accepted standards.” *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers). The Circuit Justice or the Court owes “great deference” to the court of appeals’ conclusion that a stay should issue. *Garcia-Mir v. Smith*, 469 U.S. 1311, 1313 (1985) (Rehnquist, J., in chambers). “[D]eference . . . is especially warranted” when, as here, the court of appeals “is proceeding to adjudication on the merits with due expedition.” *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 571 U.S. 1061 (2013) (Scalia, J., joined by Thomas, J., and Alito, J., concurring in denial of application to vacate stay). The Coalition has not made the extraordinary showing necessary to overcome the deference owed to the court of appeals.

I. THIS COURT IS UNLIKELY TO GRANT REVIEW

This case is extremely unlikely to present an issue worthy of review by this Court for two reasons.

First, the case turns in significant part on a fact-bound threshold dispute over whether the Coalition met its burden of proving that the Plan has a disparate impact on Asian Americans. The Coalition acknowledges that its Equal Protection claim depends on such a showing. As explained in Judge Heytens’ stay opinion (and as set forth more fully below, see pp. 17-27, *infra*), however, the Coalition did not (and does not) come close to proving disparate impact. To the contrary, the percentage of Asian Americans receiving offers of admission under the Plan *exceeded* the percentage of Asian American applicants seeking admission. The district court nevertheless found disparate impact because the percentage of Asian American students admitted in 2021 was lower than

during the years immediately preceding the Plan’s adoption. But this Court’s precedents make clear that a bare year-over-year comparison of that kind does not prove disparate impact because in itself, such a comparison is not probative of whether the Plan rendered it disproportionately difficult for Asian Americans, relative to members of other races, to gain admission to TJ. See pp. 19-20, *infra*. Rather, a plaintiff must establish a substantial disparity between the racial composition of the admitted students and the racial composition of the eligible pool, and must also show that specific features of the challenged policy caused the disparity. See *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 650-52 (1989). The Coalition completely failed to do so.

The Coalition notes that the district court also pointed to the Plan provision allocating 1.5% of admissions offers to each public middle school as a source of disparate impact. But, as Judge Heytens correctly observed, “that conclusion is barely reasoned and is not supported by a single citation to the record.” A-App. 8a. Equally to the point, as Judge Heytens also noted, overwhelming record evidence refutes the assertion (see p. 24, *infra*). And it bears emphasis that the district court decided this case on summary judgment without even mentioning, much less seeking to reconcile its conclusions with, the voluminous evidence disproving the Coalition’s disparate impact allegations (even though the Coalition bore the burden of proof on this issue). The court of appeals’ review will be *de novo*, and the district court’s cursory factual “findings” will thus command no deference. This case is therefore likely to be resolved on the fact-specific basis that the Coalition has failed at the threshold to prove disparate impact—and such a resolution will not present any issue meriting this Court’s review.

Second, even apart from these fact-bound shortcomings in the Coalition’s case, the Board is aware of no decision of any appellate court—and the Coalition has cited none—holding that public education authorities violate the Equal Protection Clause by adopting race-neutral student

admissions criteria in order to promote increased socioeconomic and racial diversity.⁹ To the contrary, this Court has repeatedly endorsed the use of race-neutral policies to promote diversity. See *Fisher v. University of Texas at Austin*, 570 U.S. 297, 312, 315 (2013) (universities must consider whether “workable race-neutral alternatives would produce the educational benefits of diversity” before considering race and remanding for further consideration of whether the university had done so); see also *Texas Dep’t of Hous. and Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015) (local housing authorities may “choose to foster diversity” with race neutral tools); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509-510 (1989) (governments may “increase the opportunities available to minority business” through measures such as altered “bidding procedures” that do not “classify[] individuals on the basis of race”). If the district court’s discriminatory intent analysis were correct, then all such race-neutral policies would be presumptively unconstitutional if they succeeded in their aim of fostering diversity to any material degree. That would be a sea change in the law, and would require overruling numerous rulings of this Court. See pp. 33-34, *infra*. And as the Coalition tacitly acknowledges (Br. 12), every court of appeals to have considered the question has rejected the reasoning on which the district court’s opinion in this case rests. Thus, if the court of appeals ultimately rejects the district court’s unprecedented invidious intent theory, such a ruling would be entirely in accord with this Court’s precedents and the rulings of every lower court to consider the issue, and would therefore present no question worthy of this Court’s plenary consideration.

⁹ Apart from the district court’s ruling in this case, the Coalition cited only one other decision that purportedly endorses its view of the law, *Ass’n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.* 8:20-02540-PX, 2021 WL 4197458 at *15-19 (D. Md. Sept. 15, 2021). But in that case, the district court simply denied a motion to dismiss on the ground that, if proven, allegations of intentional racial balancing could prove an Equal Protection violation. It expresses no disagreement with the established law discussed above.

II. THE COURT OF APPEALS DID NOT ERR, MUCH LESS DEMONSTRABLY ERR, IN GRANTING THE STAY APPLICATION

The court of appeals did not demonstrably err in concluding that the Board is likely to succeed on the merits of its appeal. The district court’s decision flies in the face of decades of this Court’s precedent establishing that race-neutral measures, including those adopted to promote diversity, are presumptively permissible under the Equal Protection Clause. When, as here, a policy is facially race-neutral, it is subject to strict scrutiny only if it (1) has a “racially disproportionate impact”; and (2) was enacted for an “invidious discriminatory purpose”—that is, for the *purpose* of harming a particular disfavored group. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-266 (1977). The Coalition did not come close to making the detailed factual showing that this Court has held is necessary to establish a racially disparate impact and invidious discriminatory purpose.

A. The Court of Appeals Correctly Determined that the Board has Made a Substantial Showing of Likelihood of Success on the Merits

1. The Coalition did not (and cannot) show that the Plan disparately impacted Asian-American applicants

The Coalition cannot demonstrate that the court of appeals demonstrably erred in concluding that the district court’s disparate-impact finding is likely to be reversed. The Plan did not disproportionately disadvantage Asian Americans in the application process. It gave them an equal opportunity to succeed—which they did. Asian-American students were by far the largest racial group among the students offered admission (54.36%); their share of offers exceeded their share of the applicant pool (48.59%); and (consistent with the Plan’s objectives of promoting geographic and socioeconomic diversity) far more Asian Americans from underrepresented schools and economically disadvantaged backgrounds were admitted than in any previous year. Under this Court’s precedents, those facts—and the Coalition’s total failure to offer evidence demonstrating

why and how the Plan’s features made it disproportionately difficult for Asian Americans to gain admission to TJ—justified granting summary judgment to the Board. See, e.g., *Wards Cove Packing Co.*, 490 U.S. at 650-652. Instead, the district court held that the Plan had a disproportionate impact on Asian-American applicants *as a matter of law* solely because the number and proportion of Asian-American offerees decreased in the Plan’s first year. That holding departs from this Court’s precedents, and its reasoning would enable plaintiffs to claim that any policy change that affects a public institution’s racial demographics has a suspect racially disproportionate impact. That is not the law, and for good reason: it would turn the previous status quo into a permanent quota. Cf. *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1916 (2020) (rejecting disparate-impact theory that would permit “virtually any generally applicable immigration policy [to] be challenged on equal protection grounds”).

To demonstrate an entitlement to summary judgment on disparate impact, the Coalition was obligated to prove on the basis of undisputed evidence: (1) a policy or practice; (2) a racially disparate effect; and (3) a causal relationship between the two. See, e.g., *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 994-995 (1988) (discussing evidentiary standard in the context of Title VII, and observing that the Court has “framed the test in similar terms” in the equal protection context); *Washington v. Davis*, 426 U.S. 229, 246-247 (1976) (in the equal protection context, disparate impact may be shown by establishing that the challenged “hiring and promotion practice[]” causes “substantially dispro[por]tionate numbers of blacks” to be disqualified). Thus, the Coalition bore the burden of demonstrating that (1) under the Plan, Asian-American applicants have disproportionate difficulty, relative to other racial groups, in gaining admission to TJ; and (2) that specific aspects of the Plan caused that disproportionate impact. The Coalition completely failed to muster the necessary proof—yet the district court found that the Coalition had proven

disparate impact as a matter of law, based on nothing more than its acceptance of the Coalition’s unsupported assertions.

a. In holding that the Plan has a disparate impact on Asian Americans, the district court relied exclusively on the fact that the “number and proportion of Asian-American students offered admission to TJ” was lower for students admitted under the Plan in 2021 than for classes selected under the previous admissions policy. A-App. 36a. The Coalition attempts to defend that holding here. Br. 8, 19-20. But this Court’s precedents make clear that a simple before-and-after comparison cannot establish a disparate impact, because Asian Americans’ performance under the previous policy is not the “proper baseline for comparison.” A-App. 7a. Rather, this Court has repeatedly reaffirmed that in order to demonstrate a disparate impact, the plaintiff must prove a substantial disparity between the racial composition of the successful applicants *and the racial composition of the eligible pool*. See, e.g., *Wards Cove*, 490 U.S. at 650-652 (comparison of all-white noncannery workforce to overwhelmingly nonwhite cannery workforce could not demonstrate a disparate impact on nonwhites, because the relevant question was whether nonwhites were disproportionately disadvantaged in seeking noncannery work, and thus a comparison to the “pool of qualified job applicants” for noncannery jobs was necessary); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-308, (1977) (The “proper comparison [is] between the racial composition of [the at-issue jobs] and the racial composition of the qualified . . . population in the relevant labor market.”); *N.Y. City Transit Auth. v. Beazer*, 440 U.S. 568, 584 (1979) (court must determine whether policy “has the effect of denying the members of one race equal access”); *Washington*, 426 U.S. at 235, 245 (test had racially disproportionate impact because substantially more African-American applicants than white applicants failed).

The Court’s requirement that plaintiff establish a disproportionate disadvantage relative to the racial composition of the applicant pool is a straightforward application of the broader principle that a plaintiff must present evidence that is actually probative of the ultimate question of racially disparate impact. The Coalition contends, and the district court held, that “Asian-American applicants are disproportionately deprived of a level playing field in competing” for admission, relative to members of other racial groups. A-App. 38a. But a before-and-after comparison of offers under the previous policy with a single year of offers under the Plan does not in itself prove anything about whether Asian Americans have more difficulty obtaining admission *than members of other racial groups*. Year-to-year fluctuations in the demographics of the admitted class could be explained by any number of unrelated factors. See p. 23, *infra*. For those reasons, and consistent with this Court’s precedents, courts of appeals considering the question have uniformly rejected attempts to establish a disparate impact merely by relying on before-and-after comparisons. See, e.g., *Lewis v. Ascension Par. Sch. Bd.*, 806 F.3d 344, 361 (5th Cir. 2015) (approving district court’s rejection of before-and-after comparison of the percentage of at-risk students admitted under challenged policy); *Boston Parent Coal. for Academic Excellence Corp. v. Sch. Comm. of City of Boston*, 996 F.3d 37, 46 (1st Cir. 2021) (comparison to performance under predecessor admissions plan was not “apt for purposes of determining adverse disparate impact”); *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 52 (2d Cir. 1999) (discounting before-and-after test performance comparison); *N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 232 (4th Cir. 2016) (election-to-election comparison of African-American voter turnout was not probative whether African Americans were disproportionately impacted by voting changes).¹⁰

¹⁰ The Coalition is incorrect in contending that *McCrory* supports their arguments. As Judge Heytens observed below, “*McCrory* specifically rejected an election-to-election comparison of voter turnout to assess disparate impact.” A-App. 7a (citing *McCrory*, 831 F.3d at 231-232). In

Considered against the correct baseline, the Plan unquestionably did not disadvantage Asian-American applicants. It is undisputed that under the Plan, Asian-American applicants' share of offers (54.36%) substantially exceeded their share of the applicant pool (48.59%). R-App. 151a. Indeed, Asian Americans were the only racial group that was substantially overrepresented compared to its share of the applicant pool, see p. 10, *supra*. R-App. 182a. Moreover, the Asian-American admissions rate under the Plan was 19.48%, well within the historical 2004-2020 range of 16.8% to 25%. See TJ Alumni for Racial Justice Amicus Br. 7-8 (4th Cir. Mar. 24, 2022). Those facts alone foreclose the Coalition's claim that Asian Americans were disadvantaged in the admissions process.

It blinks reality to argue, as the Coalition does, that the Plan disproportionately disadvantaged the only racial group that substantially *outperformed* its share of the applicant pool in obtaining admission to TJ. This Court has made exactly that point in an analogous hiring context, explaining that where nonwhite applicants outperformed their share of the eligible applicant pool, it would be "hard to see how" those plaintiffs could establish a racially disproportionate impact. *Wards Cove*, 490 U.S. at 652 (where nonwhite applicants obtained 17% of the offers for medical jobs, the fact that "less than . . . 17% of the applicants for these jobs were nonwhite" would likely preclude showing disparate impact); accord *Hayden*, 180 F.3d at 52. The district court therefore erred in holding that the Coalition had established a disparate impact.

Before this Court, the Coalition tweaks (Br. 19) its year-to-year disparate impact argument by highlighting a cherry-picked selection of six "feeder" middle schools that historically accounted

fact, *McCrorry* illustrates just how far short of the mark the Coalition's evidence falls: there, the court held that the *McCrorry* plaintiffs had established a disparate impact because they demonstrated that African Americans disproportionately used each of the removed voting mechanisms—such that the removal of those mechanisms disproportionately affected African-Americans relative to other races.

for a significant majority of offers for admission to TJ. Two of those schools had high proportions of Asian-American students. At those schools, the Coalition argues, “nearly 100 fewer Asian-American students get into TJ” under the Plan than in previous years. *Id.*

That argument is meritless for several reasons. For one, it relies on the non-probative year-to-year comparison. For another, the Coalition cannot establish that the Plan had a disparate impact on Asian Americans *overall* by choosing to focus solely on the subset of Asian Americans at six feeder schools. Under the Plan, the number of offers given to students of *all* races at the “feeder” schools decreased. That was to be expected: a primary purpose of the Plan was to lessen TJ’s reliance on a few feeder schools in the County by allocating seats to each public middle school in the County and in the other four participating school districts. At the same time, the Plan’s focus on increasing geographic diversity substantially *increased* the number of offers given to Asian Americans at other, non-feeder schools in Fairfax County: those offers rose sharply under the Plan, from 46 to 79. See R-App. 184a; p. 10, *supra*. In addition, Asian Americans benefited the most from the Plan’s effort to increase socioeconomic diversity. A-App. 110a. In 2020, under the previous policy, only one Asian American who was eligible for free and reduced meals received an offer, while in 2021, under the Plan, 51 such Asian Americans received offers, more than any other racial group. See p. 10, *supra*. The Coalition’s attempt to find a disparate impact by gerrymandering the Asian-American applicant pool thus fails.

b. The Coalition’s claim of disparate impact also falls short for a second reason: even if the year-over-year decrease in Asian-American offerees could demonstrate a disparate impact, the Coalition has not presented a shred of evidence—much less demonstrated as a matter of law—that the decrease was *caused* by the Plan. *Watson*, 487 U.S. at 994. It should be self-evident that the racial composition of the admitted students will naturally vary from year to year: because each

year’s applicant pool is composed of *different* students of all races, there is no reason to assume that the proportion of Asian-American students admitted in one year will replicate itself year after year—or that any differences would be statistically significant. Unsurprisingly, therefore, the record reveals multiple circumstances that explain the lower proportion of Asian-American admittees in 2021. For one thing, Asian-American students made up a smaller proportion of applicants under the Plan than in previous years—48.59% in 2021 compared to 56.08% in 2020. A-App. 151a. And the Plan generated more interest in TJ, resulting in approximately 900 more applicants in 2021. A-App. 180a. Given the expansion of the applicant pool, there was no reason to assume that the proportion of Asian-American admittees would remain constant.

The Coalition bore the burden of demonstrating that the Plan, and not those differences in the applicant pool, caused the decrease in Asian-American admittees. *Watson*, 487 U.S. at 994 (“[T]he plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group”). The Coalition’s proffered evidence did not come close to satisfying that burden. Yet in holding that “the undisputed evidence demonstrates precisely how [the Plan] caused, and will continue to cause, a substantial racial impact,” A-App. 37a, the district court uncritically accepted the Coalition’s conclusory assertions.

First, the district court fastened upon the Plan’s allocation of seats in the entering class “for students at each middle school amounting to 1.5% of the school’s eighth-grade class.” A-App. 37a. Under that system, “[t]he highest-evaluated students at each school . . . gain admission to TJ,” which means that *all students*, regardless of race, compete against other eligible applicants for the allocated seats at their middle school. A-App. 37a. Citing no supporting evidence, the district court concluded that this race-neutral allocation system “disproportionately forces” Asian-

American students to compete against one another for the allocated seats at each school. A-App. 37a. That makes no sense. While Asian-American students had an above-average representation at two middle schools, and thus may have primarily competed against each other at those schools, each racial group has a similarly above-average representation in at least two other participating schools in Fairfax County. A-App. 103a-108a. Thus, members of each racial group—not just Asian Americans—had to compete against more members of their racial group at certain schools.

Second, the district court concluded that the Experience Factor that benefits students who attended middle schools deemed “historically underrepresented at TJ” disadvantages Asian Americans in competing for the approximately 100 unallocated seats that remain after the 1.5% allocation is applied. A-App. 37a-38a. Although the district court did not explain its reasoning and provided no citations to the record, it appears to have concluded that Asian Americans at “feeder” schools were “placed at a significant disadvantage . . . compared to their peers at underrepresented schools.” A-App. 38a. In focusing exclusively on the subset of Asian Americans at feeder schools, however, the district court ignored the undisputed evidence that many *more* Asian Americans at non-feeder and underrepresented schools received offers than in previous years. See p. 10, *supra*. The court also ignored undisputed evidence that the underrepresented-schools factor could not have placed Asian Americans “at a significant disadvantage” because that factor played an extremely small role in determining who received unallocated offers in 2021. When offers were made under the Plan in 2021, eight of the ten historically underrepresented schools in the County did not exceed their total 1.5% allotment—meaning that no students from those schools competed for unallocated seats. A-App. 100a. Of the 88 unallocated offers made, only seven went to students at the other two underrepresented schools—and the majority of those receiving offers at the two schools were Asian American. *Id.* The other 81 unallocated offers went to students at the

same six “feeder” schools that the Coalition claims are being disproportionately harmed by the use of the underrepresented-school factor. Thus, the underrepresented-school consideration had almost no impact in awarding unallocated seats—and Asian Americans may well have received some of the seven unallocated offers made to students at underrepresented schools.¹¹ That evidence thus falls far short of establishing that the Plan caused the decrease in Asian American offers. See *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2346-2347 (2021) (it is insufficient to assert that a challenged practice disadvantages minorities to some unknown extent, without “concrete evidence” demonstrating how and to what extent minorities are “disproportionately disadvantaged”).

The bases on which the district court found that the Plan caused a disparate impact are thus insupportable. Perhaps recognizing as much, the Coalition argues for the first time (Br. 20), and again without evidentiary support, that Asian Americans were “substantially disadvantaged” by the underrepresented-schools factor and two other, unnamed Experience Factors. The Coalition bases that argument on the fact that while Asian Americans composed approximately 50% of the eligible applicant pool, they represented less than 50% of the students benefiting from each of the factors. That argument is forfeited because it was not raised in the courts below. It is meritless in any event. This Court has repeatedly held that a plaintiff cannot establish that a policy caused a disparate impact merely by identifying a statistical disparity. *Watson*, 487 U.S. at 994; *Wards Cove*, 490 U.S. at 650. Rather, the Coalition must demonstrate why any purported statistical disparity is statistically significant, that is, “sufficiently substantial [to] raise such an inference of

¹¹ The amicus brief submitted by the Commonwealth of Virginia incorrectly suggests (Br. 4) that the underrepresented-schools Experience Factor “targeted” Asian Americans because it “disadvantage[d] students attending the top middle-school gifted centers.” But of the thirteen middle-school gifted centers in the County, five *were* historically underrepresented schools, only six were feeder schools to TJ, and only two had above-average Asian American populations. A-App. 238a.

causation” of a disproportionate disadvantage to Asian-American applicants. *Watson*, 487 U.S. at 995; *Lewis*, 806 F.3d at 361 (to establish discriminatory effect in Equal Protection claim, plaintiff must demonstrate that the claimed disparities are statistically significant and likely to be reproduced over time).

Rather than explaining *how and why* the challenged Plan factors disproportionately harmed Asian Americans, the Coalition offers only the conclusory assertion (Br. 20) that in light of the factors, “it is no surprise” that the number of Asian-American offerees decreased under the Plan.¹² That would not be enough to carry the Coalition’s burden under any circumstance. But it falls particularly short here. For one thing, the number of students of *any* race who benefited from each factor was small in relation to the eligible applicant pool of 3,034 students. The special-education factor, for instance, gave extra points to all of 48 applicants, 15 of whom were Asian American. A-App. 112a. And the economic-disadvantage factor benefited only 387 applicants, of whom the largest proportion (131) were Asian American, A-App. 110a, while the underrepresented-schools factor affected 687 students, of whom Asian Americans represented the second-largest proportion (187 students), A-App. 113a. Moreover, in the cohort of applicants benefiting from the economic-disadvantage and underrepresented-schools factors, Asian Americans received a greater proportion of offers than students of any other race, and they also received offers in a higher proportion than their share of the applicants benefiting from each factor. And, of course, the three factors that the Coalition now targets did not prevent Asian Americans overall from receiving offers in a proportion substantially greater than their proportion of the applicant pool. See pp. 10, 21, *supra*.

¹² The Coalition is presumably referring to the special-education and economic-disadvantage factors in addition to the underrepresented-schools factor, as Asian Americans benefited from the remaining factor (English language learner) at a proportion (49.2%) greater than their proportion of the applicant population.

In sum, the Coalition has not come close to showing that the court of appeals demonstrably erred in concluding that the district court's disparate-impact finding is likely to be reversed.

2. **The Coalition failed to show that the Board's decision to adopt the Plan was motivated by discriminatory intent or an intent to achieve racial balancing**

Because the Coalition cannot demonstrate that the Plan had any discriminatory impact, it cannot establish that the Plan violates the Equal Protection Clause, and the Court need not consider discriminatory purpose. See, e.g., *Lewis*, 806 F.3d at 358-59 (“Because we resolve the district court's treatment of Lewis's alternative equal protection theory on the discriminatory-effect finding, we need not address . . . Lewis's proffered evidence of discriminatory purpose.”); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 549 (3d Cir. 2011).

In any event, the Coalition cannot show that the court of appeals demonstrably erred in concluding that the Board is likely to obtain reversal of the district court's conclusion that, as a matter of law, the Board adopted the Plan—which is race-neutral and race-blind—with the intent to discriminate against Asian-American applicants. It is black-letter equal protection law that when a challenged measure is facially race-neutral—as the Plan is—the plaintiff must demonstrate that the decisionmaker “selected or reaffirmed a particular course of action at least in part *because of*, not merely in spite of, its *adverse* effects upon an identifiable group.” *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (emphasis added; internal quotation marks omitted). “Discriminatory purpose” requires more than a decisionmaker's awareness of a foreseeable impact on a particular racial group. *Id.* Rather, the decisionmaker must act with “invidious discriminatory purpose”—that is, with a *desire* to inflict the adverse consequences on the disadvantaged group. *Arlington Heights*, 429 U.S. at 266; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 676-677 (2009) (same); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 516 (2006) (Scalia, J., dissenting) (explaining that under the test for discriminatory purpose, the relevant question is whether

the State “remove[d] Latinos from the district because they were Latinos”). The district court did not identify anything in the record that comes close to establishing that the Board acted with an invidious intent to disadvantage Asian Americans. Neither does the Coalition.

As an initial matter, both the district court and the Coalition tacitly concede that the record contains not a shred of evidence that the Board acted with the discriminatory intent required by *Feeney* and *Arlington Heights*—that is, a purpose of decreasing Asian-American enrollment in TJ. As the Coalition acknowledges, “the Board members did not express any hatred towards Asian-American students.” Br. 21 n.6. And there is not a single statement from *any* Board member or any official, at any level, expressing a desire to decrease Asian Americans’ share of the admitted class. Indeed, although the Coalition halfheartedly suggests (*id.*) that Board-member text messages on which the district court did not rely “recognized the anti-Asian nature of the proceedings,” those statements support the *Board*, not the Coalition. Two board members expressed concern that the never-adopted Hybrid Merit Lottery and Revised Hybrid Merit Lottery proposals would “whiten our schools and kick ou[t] Asians.” R-App. 234a. Consistent with that sentiment, the Board *rejected* those proposals in part because of Board-members’ worry that they would disadvantage Asian Americans. And one Board member expressed the concern that Superintendent Brabrand’s description of standardized-test preparation as “pay to play” would be “perceived as ‘racist’ by some Asian-American communities.” R-App. 234a. Board-member criticism of *other* officials’ statements as potentially offensive to Asian Americans shows sensitivity, not invidious intent.¹³ The Board, after all, was the decisionmaker—and the Board members who expressed

¹³ The Commonwealth’s amicus brief (Br. 4, 10) makes the same mistake of quoting isolated statements made by Superintendent Brabrand and the principal of TJ as evidence that the *Board*—the decisionmaking body under Virginia law—acted with discriminatory intent or an intent to pursue racial balancing. The Commonwealth’s attempts to manufacture discriminatory intent from this record lacks merit: the cited communications between Board members reveals that they

these concerns voted to adopt the Plan after concluding that it did not discriminate against any race. R-App. 235a.

Lacking any actual evidence of invidious intent, both the district court and the Coalition attempt to find the necessary discriminatory purpose in actions that this Court has long approved.

First, the district court held, and the Coalition echoes here, that the Board “sought racial balance.” Br. 22; A-App. 47a. That assertion is meritless. Racial balancing is the practice of defining sought-after diversity as “some specified percentage of a particular group merely because of its race or ethnic origin.” *Fisher*, 570 U.S. at 311 (citation omitted). Here, however, *every* statement identified by the district court merely expressed the hope that taking into account race-neutral factors such as geography and socioeconomic status would “result in greater diversity in the demographics,” as well as “increas[e] diversity” of *all* sorts. A-App. 49a. Indeed, in the very testimony that the Coalition misleadingly highlights (Br. 23), TJ’s admissions director emphasized that the Experience Factors were intended to “level the playing field” for *all* historically underrepresented groups—not only racial groups, but also English-language learners, students who had received special education, and “certainly” students from socioeconomically disadvantaged backgrounds. A-App. 188a.

The other snippets of the record that the Coalition cherry-picks (Br. 22-23) as proof of “racial balancing” only underscore the baselessness of that argument. The Coalition asserts (Br. 23) that “[b]oard members sought modeling to predict the precise racial effect of the bonus points” awarded for the Experience Factors, but that is a blatant misrepresentation. The portions of the

disagreed with Superintendent Brabrand, whose lottery proposals the Board ultimately rejected, and that they adopted a mandate requiring the use of “only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.” R-App. 224a. Rather than support the Commonwealth’s and Coalition’s arguments on discriminatory intent, the evidence in the record *refutes* them.

record cited by the Coalition do not even reference racial demographics, much less suggest that the Board engaged in racial modeling. A-App. 195a-196a; 232a-233a. In fact, it is undisputed that the Board never received *any* demographic data suggesting how each racial group would fare under each of the Experience Factors, and TJ’s admissions director testified during his deposition that he had no idea how the Experience Factors would impact diversity along any metric and never looked into it. See A-App. 155a-156a.

The Coalition also suggests that because “Board members also had data showing the racial composition of applicants and students admitted to TJ from each middle school in FCPS,” they should have “understood” that the 1.5% allocation would “limit enrollment from ‘feeder’ schools that had traditionally sent most of the Asian-American students to TJ.” Br. 23-24. But that amounts at most to an understanding that the 1.5% plan would likely redistribute spots from feeder schools to non-feeder schools—not that the plan would depress Asian-American enrollment, specifically. After all, only two of the feeder schools had high Asian American populations, and at least seven non-feeder schools in the County had proportions of Asian-American students comparable to that of the remaining four feeder schools. See A-App. 103a-108a. Allocating offers to the non-feeder schools therefore had no necessary or predictable consequences for Asian Americans’ share of the admitted class—and even if it did, this Court has held that foreseeing demographic consequences does not suffice to establish the necessary *intent* to inflict a racial disadvantage. *Feeney*, 442 U.S. at 278. And, again, it is undisputed that the County and its staff never conducted any analysis “to predict how the 1.5% plan would affect the racial makeup of students admitted to TJ under the new admissions process.” R-App. 179a. Finally, while the Coalition conclusorily states that the Board’s “goal was to have TJ’s demographics mirror the school system or Northern Virginia,” Br. 23 n.8, its only source for that statement is the district court’s opinion—

which itself cites *nothing* in the record to support the assertion. A-App. 51a. That is because there is no evidence that the Board sought to “mirror” any demographics. And if that had been the Board’s objective, it would not have designed the Plan as it did: not only did the Board never conduct or receive any analysis predicting the Plan’s racial impact, R-App. 149a, but the Plan is *race-blind* at every step, and it lacks any demographic targets.¹⁴

The Coalition’s argument therefore boils down to the extraordinary contention that simply because the Board sought to increase all types of diversity, the Court should *assume* without any further evidence that the Board was engaged in racial balancing. But this Court has long recognized that seeking to improve *diversity*—including geographic, socioeconomic, and racial diversity—is not the same as pursuing *racial balancing*, and that the former goal may be pursued through race-neutral methods. See *Grutter v. Bollinger*, 539 U.S. 306, 319 (2003). The Court has also emphasized that plaintiffs who seek to invalidate a race-neutral policy bear the heavy burden of affirmatively showing—not just speculating or presuming—that the decision maker acted with the intent to discriminate. See *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (observing that “[p]roving the motivation behind official action is often a problematic undertaking” and that the Court “eschew[s] guesswork” (quoting *United States v. O’Brien*, 391 U.S. 367, 383-384 (1968))). The Board’s stated objective of increasing all types of diversity simply does not suggest, much less establish, that the Board sought to match TJ’s racial demographics to any baseline.

Second, the district court held, and the Coalition argues, that any steps taken to improve educational access for underserved groups are by definition invidious discrimination against Asian

¹⁴ Unsurprisingly, the class admitted under the Plan bears little resemblance to the school system’s demographics. The County’s student population in the fall of 2019 was 37.8% White, 19.5% Asian, 26.8% Hispanic, 9.8% Black, and 5.7% two or more races. R-App. 109a. Students offered admission to the Class of 2025 under the Plan were 22.36% White, 54.36% Asian, 11.27% Hispanic, 7.09% Black, and 4.91% two or more races. R-App. 151a, 102a.

Americans, merely because Asian Americans represented the existing majority under the previous admissions policy. In the Coalition’s view, because the admissions process is “zero-sum”—that is, there is a finite number of admissions slots—increasing the representation of any one underrepresented racial group may foreseeably lessen the representation of more highly represented racial groups. That is nothing more than an argument that in the admissions context, an impact on the existing majority group is particularly foreseeable—and that a foreseeable racial impact is equivalent to invidious discriminatory intent. That argument cannot be reconciled with decades of this Court’s precedents. *Feeney* and *Arlington Heights* make clear that even if a race-neutral policy has a foreseeable adverse impact on a particular racial group—which the Plan does not, for the reasons explained above—the decisionmakers’ knowledge of that foreseeable impact falls far short of the necessary invidious intent to disadvantage the disfavored racial group. *Feeney*, 442 U.S. at 279; *Arlington Heights*, 429 U.S. at 266-267.

Numerous lines of well-established doctrine depend on that principle. In *Washington v. Davis*, for instance, the Court acknowledged that “a whole range of tax, welfare, public service, regulatory, and licensing statutes” may foreseeably “be more burdensome” for particular racial groups—but the Equal Protection Clause permits the government to maintain those policies despite its knowledge of their impact. *Washington*, 426 U.S. at 248. If knowledge of a likely adverse impact on a particular race equated to invidious discriminatory intent, then the government would have to discontinue any race-neutral policy shown to have a disparate impact—and it would not be able to enact new policies with similarly foreseeable effects.

But this Court has long held exactly the opposite. The Equal Protection Clause permits states to repeal “legislation designed to ameliorate race relations or to protect racial minorities,” even though such a repeal foreseeably may have a “disproportionally adverse effect on a racial

minority.” *Crawford v. Bd. of Educ. of City of Los Angeles*, 458 U.S. 527, 539, 537-538 (1982). And the Court recently upheld a state constitutional amendment nullifying existing racial preferences in education, holding that the amendment did not reflect invidious discrimination despite its predictable adverse effect on members of some racial groups. *Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN)*, 572 U.S. 291, 313 (2014) (plurality op.); *id.* at 330-331 (Scalia, J., joined by Thomas, J., concurring in the judgment) (amendment’s foreseeable impact did not raise inference of discriminatory purpose). Similarly, in the voting context, the Court has held that because “members of a racial group” may share “voting preferences,” election laws enacted with “partisan motives” may have a foreseeable adverse impact on particular racial groups, but that does not make such laws impermissibly racially motivated. *Brnovich*, 141 S. Ct. at 2349. And in the immigration context, this Court held that the fact that rescinding the DACA program foreseeably had an “outsized” impact on “Latinos[, who] make up a large share of the unauthorized alien population” did not raise a plausible inference of invidious purpose. *Regents of the Univ. of California*, 140 S. Ct. at 1915.

Under the Coalition’s view, however, all of these actions and enactments would be motivated by invidious discriminatory intent and therefore constitutionally suspect. That cannot be the law. If it were, innumerable institutions and government entities would lose the flexibility to enact neutral policies that this Court’s equal protection doctrine has long safeguarded.

Moreover, the requirement of invidious discriminatory intent is no doubt why this Court has long held that increasing minority participation is a legitimate (and, indeed, laudable) interest that justifies race-neutral measures and does not trigger strict scrutiny—even when such measures, under the Coalition’s view, would have the “zero-sum” effect of reducing representation of the existing majority. See *Texas Dep’t of Hous. and Cmty. Affs.*, 576 U.S. at 545; *J.A. Croson Co.*,

488 U.S. at 507, 509-510. Members of this Court have repeatedly reaffirmed that educational institutions may adopt race-neutral admissions plans with the objective of increasing representation of underrepresented minorities. See, e.g., *Fisher*, 136 S. Ct. at 2242 (Alito, J., joined by Roberts, C.J., and Thomas, J., dissenting) (“UT previously had a race-neutral plan that it claimed had ‘effectively compensated for the loss of affirmative action,’ and UT could have taken other steps that would have increased the diversity of its admitted students without taking race or ethnic background into account.” (citation omitted)); *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 333 (2013) (Scalia, J., concurring) (“blacks and Hispanics attending the University were admitted *without discrimination* under the Top Ten Percent plan,” which was enacted expressly to increase representation of Blacks and Hispanics) (emphasis added); *Grutter*, 539 U.S. at 342 (explaining that universities “can and should draw on the most promising aspects of these race-neutral alternatives” designed to increase racial diversity). Similarly, every court of appeals to consider reasoning like the district court’s and the Coalition’s has resoundingly rejected it as a “contort[ion]” of Equal Protection doctrine. See, e.g., *Boston Parent Coal.*, 996 F.3d at 48 (that reasoning “would pretty much mean that any attempt to use neutral criteria to enhance diversity—not just measures aimed at achieving a particular racial balance—would be subject to strict scrutiny”); *Rothe Dev., Inc. v. United States Dep’t of Def.*, 836 F.3d 57, 72 (D.C. Cir. 2016) (“Mere foreseeability of racially disparate impact, without invidious purpose, does not trigger strict constitutional scrutiny.”); *Spurlock v. Fox*, 716 F.3d 383, 395 (6th Cir. 2013).

To accept, as the district court wrongly did, the Coalition’s argument that the Board acted with discriminatory intent on this record would turn decades of equal protection precedent on its

head and amount to “quite the judicial bait-and-switch.” A-App. 10a. The court of appeals’ decision that the Board has made a strong showing it is likely to succeed on the merits of its appeal is not wrong, much less demonstrably wrong.

B. The Court of Appeals Correctly Determined that the Board Will Be Irreparably Harmed Absent a Stay

The court of appeals also correctly concluded that the Board will suffer irreparable harm without a stay. The district court’s injunction required the Board to abandon the current admissions process, pursuant to which 2,540 students have completed all of the steps necessary to apply for admission and await admissions decisions that must be announced within three weeks from now; design and implement a new admissions policy from the ground up in a matter of weeks; and require current applicants immediately to comply with that policy. Contrary to the Coalition’s arguments, Br. 25, the Fourth Circuit did not “reflexively” stay the injunction. Instead, as Judge Heytens’ concurrence makes clear, the panel majority carefully reviewed the factual record and found that forcing the Board to hurriedly craft an admissions plan from scratch and apply it to more than 2,500 students would “irreparably damage [the Board’s] credibility and reputation in the community” and “irreparably harm TJ’s ability to compete for students, many of whom apply to other selective schools with late spring enrollment deadlines.” A-App. 13a. When the court of appeals entered that stay on March 31—nearly two weeks ago—admissions officials resumed the substantial efforts necessary to evaluate the applications. The Coalition’s inexplicable delay of eight days in filing its vacatur application has thus only increased the irreparable harm that the Board and TJ would suffer if the injunction were reinstated.

The court of appeals’ finding of irreparable harm is entitled to “great deference,” and may be overturned only if it reflects a “clear violation of accepted legal standards.” *Planned Parenthood of Greater Tex. Surgical Health Servs.*, 134 S. Ct. at 507 (Scalia, J., joined by Thomas,

J., and Alito, J., concurring in denial of application to vacate stay); *O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1304 (1980) (observing that the power to “dissolve the stay entered by the Court of Appeals . . . is to be exercised with the greatest of caution and should be reserved for exceptional circumstances” (citation and internal quotation marks omitted)). Notably, the Coalition does not—and did not—dispute that it is impossible for the Board to revert to using its prior admissions process, which relied on administering standardized tests that are no longer available. Nor does the Coalition dispute that the school regulations require admissions decisions to be made no later than *this month*, and that requiring the Board to design a new admissions policy on a highly compressed timetable will irreparably “damage” the Board’s credibility and reputation.¹⁵ R-App. 242a, A-App. 52a. And the Coalition does not dispute that in light of the compressed timetable, the Board would be unable to solicit feedback from community stakeholders before adopting the new policy, or engage in the informational sessions and other forms of community outreach ordinarily provided to families with prospective applicants. R-App. 244a. Complying with the district court’s injunction thus would not only irreparably damage the Board’s relationship with the community, but would inflict significant harm on the thousands of students who are relying on an orderly admissions process.

Implicitly conceding all of those points, the Coalition argues (Br. 25) only that the Board cannot possibly have suffered irreparable harm because it was on notice as of August 2021 that if the district court granted the Coalition’s motion for summary judgment, it would need to create

¹⁵ Dissenting below, Judge Rushing suggested that the Board could simply “move the April deadline” for admissions decisions, A-App. 16a—but postponing the deadline long enough to develop a new admissions policy with the necessary public input would vitiate the expectations of thousands of students and their parents who currently expect decisions imminently, who will be frustrated and concerned by the delay, and who may well be impeded in their choice about where to attend high school as a result.

and implement a new admissions plan.¹⁶ That argument is, as Judge Heytens put it, “completely unrealistic.” A-App. 12a. Public entities could not operate if, every time they were sued, they had to preemptively design new policies to hedge against the possibility of injunction. It would have been enormously wasteful of public resources for the Board to have designed a backup admissions plan before a decision on the merits given (1) that the Coalition’s arguments on the merits represented a drastic departure from more than three decades of established Supreme Court precedent, see pp. 19-21, 27-34, *supra*; (2) that the Board had absolutely no guidance as to what types of changes, if any, the district court would have considered constitutional if it chose to adopt the Coalition’s arguments; and (3) the near-certainty that the creation of any alternative plan would have been used by the Coalition to undermine the Board’s arguments on the merits at the summary judgment stage. The Board did not invite—much less forfeit any claim to—irreparable harm simply because it failed to draft a highly speculative and uncertain alternative admissions plan during the course of litigation, and the Coalition cites no cases in its application supporting such a proposition.

What is more, the passage of time since the Fourth Circuit issued its stay has only magnified the risk of irreparable harm that the Board will suffer should this Court lift that stay. The Coalition’s decision to wait eight days to file its application to vacate the stay, despite knowing that final admissions decisions were just two or three weeks away, has significantly exacerbated

¹⁶ Amicus the Commonwealth of Virginia asserts (Br. 14) that the Board could simply eliminate the 1.5% allocation and the “underrepresented schools” Experience Factor. But the Coalition itself disagreed with that proposal below, arguing that the Board should drop the 1.5% allocation and *all* Experience Factors. Either way, the district court’s injunction forbids use of the *entire* Plan. A-App. 22a. And as Judge Heytens observed, the district court’s reasoning is so unbounded that it is unclear whether either proposal would remedy the purported constitutional defect. A-App. 13a.

the irreparable injury to the Board's and TJ's credibility and goodwill in the community that would flow from vacating the stay at this late date.

The irreparable injuries that the court of appeals found would be inflicted on the Board have long been held to be quintessential harms that are incapable of being measured, which makes them, by definition, irreparable. See, e.g., *Ferring Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.3d 205, 211-212 (3d Cir. 2014). The Fourth Circuit's majority's decision did not demonstrably err in applying these principles to find that the Board has shown irreparable harm sufficient to justify issuance of a stay.

C. The Court of Appeals Correctly Determined that a Stay is in the Public Interest

For similar reasons, the Fourth Circuit majority panel also did not demonstrably err in concluding that the public interest favors a stay of the district court's unprecedented order. Under school regulations, admissions decisions must be released at the end of this month to more than 2,500 applicants and their families. Allowing the district court's order to take effect would have upended the entire admissions process and produced substantial delays in extending offers to the Class of 2026. R-App. 240a-241a, 243a. As Judge Heytens rightly observed, this, in turn, would have caused "thousands of students and their families" to be thrown into "disarray" while waiting for decisions, adding to their distress during an already stressful admissions process. A-App. 14a.

III. ISSUANCE OF THE STAY DID NOT AND DOES NOT CAUSE THE COALITION IRREPARABLE HARM

The Coalition's claim that the Fourth Circuit's stay is causing ongoing irreparable harm to the Coalition and its members depend entirely on the argument that the Plan is unconstitutional. Because the Fourth Circuit panel majority did not demonstrably err in concluding that the Board has shown a substantial likelihood of success on the merits, see pp. 17-34, *supra*, there exists no basis to find that the stay has caused (or will cause) the Coalition irreparable harm.

In all events, the Coalition’s claim of irreparable harm fails for two additional reasons. First, this is not a class action and, as Judge Heytens observed, the Coalition has “identified only two children of its members who are even eligible for admission to TJ this year, and those children may yet be admitted.” A-App. 13a-14a. It is therefore exceedingly uncertain that staying the district court’s order would have any impact on the Coalition’s members and their children, much less cause the Coalition irreparable harm when the vast majority of its members do not even have students eligible to apply to TJ this admissions cycle. Second, this Court has held that being subject to an unconstitutional rule is not invariably sufficient to warrant immediate injunctive relief that would disrupt public expectations and burden the state. In the analogous context of elections rules, for example, the Court has long held that the state’s interest in avoiding the burdens and disruptions of altering election rules shortly before a scheduled election outweighs any harm to the plaintiffs from being subject to unconstitutional or otherwise illegal elections rules. *Williams v. Rhodes*, 393 U.S. 23, 35 (1968) (declining to grant affirmative injunctive relief to candidates unconstitutionally excluded from ballot because it would be “extremely difficult” to reprint ballots); *Veasey v. Perry*, 769 F.3d 890 (5th Cir. 2014) (granting stay pending appeal of final order enjoining racially discriminatory voter ID law because election was imminent); *Veasey v. Perry*, 574 U.S. 951 (2014) (declining to vacate stay). So too here: the district court’s injunction will cause the Board and TJ irreparable harm and throw thousands of families in the region into uncertainty.

Indeed, this Court should accord the Coalition’s claim of irreparable harm particularly little weight in light of the Coalition’s delay in seeking vacatur before this Court. If the Coalition were concerned about irreparable harm arising from application of the Plan, it should have acted in a manner that would facilitate, not stymie, the Board’s creation of a new policy. Cf. *Beame v.*

Friends of the Earth, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers) (“The applicants’ delay in . . . seeking a stay vitiates much of the force of their allegations of irreparable harm.”).

Finally, the Coalition misrepresents the proceedings below in claiming that absent a stay, the Board will likely use the Plan in *next year’s* admission cycle while the case proceeds before the Fourth Circuit. As the Coalition knew when it filed its application with this Court, the Board successfully moved to expedite the appeal for the express purpose of ensuring that the Fourth Circuit is able to adjudicate the Plan’s validity *before* next year’s admission cycle begins. In granting that motion, the court of appeals scheduled oral argument for September 2022, thereby providing adequate time for a decision before the admission cycle begins.

CONCLUSION

The application to vacate the stay pending appeal should be denied.

Dated: April 13, 2022

Sona Rewari
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1500

Trevor S. Cox
HUNTON ANDREWS KURTH LLP
951 E. Byrd Street
Richmond, VA 23219
(804) 788-7221

Respectfully submitted,

/s/ Donald B. Verrilli, Jr.

Donald B. Verrilli, Jr.

Counsel of Record

Ginger D. Anders
Xiaonan April Hu
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Avenue NW,
Suite 500 E
Washington, DC 20001
(202) 220-1100
Donald.Verrilli@mt.com

Counsel for Respondent

APPENDICES

INDEX OF APPENDICES

APPENDIX A: Complaint (Dkt. 001, March 10, 2021).....	1a
APPENDIX B: Answer (Dkt. 049, June 4, 2021)	26a
APPENDIX C: Transcript of 05/21/2021 Motions Hearing (Dkt. 052, June 21, 2021)	40a
APPENDIX D: Transcript of 09/17/2021 Motions Hearing (Dkt. 079, November 8, 2021).....	76a
APPENDIX E: Parties’ Stipulation of Uncontested Facts (Dkt. 95, December 3, 2021)	98a
APPENDIX F: TJ Admissions Merit Lottery Proposal School Board Work Session 9/15/2020 (Dkt. 103-7, December 3, 2021).....	105a
APPENDIX G: Brief in Support of Defendant’s Motion for Summary Judgment (Dkt. 111, December 3, 2021)	132a
APPENDIX H: Declaration of Jeremy Shughart (Dkt. 111-4, December 3, 2021).....	173a
APPENDIX I: Coalition for TJ “Second Look Semifinalist Proposal” Alternative to the Merit Lottery (Dkt. 111-19, December 3, 2021).....	214a
APPENDIX J: Minutes of 12/17/2020 Fairfax County School Board Meeting (Dkt. 112-8, December 3, 2021)	222a
APPENDIX K: Declaration of Stella G. Pekarsky (Dkt. 126-9, December 23, 2021).....	232a
APPENDIX L: Declaration of Jeremy Shughart (Dkt. 146-1, March 4, 2022).....	237a

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

COALITION FOR TJ,

Plaintiffs,

v.

FAIRFAX COUNTY SCHOOL BOARD;
and DR. SCOTT BRABRAND, in his official
capacity as Superintendent of the Fairfax
County School Board,

Defendants.

No. 1:21-cv-296

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Coalition for TJ (Coalition) brings this civil rights lawsuit for declaratory and injunctive relief to vindicate the rights of Asian-American public school children in and around Fairfax County, Virginia, to compete on an equal footing for admission to the nationally-ranked Thomas Jefferson High School for Science and Technology (TJ) without regard to their race.

2. TJ is an Academic-Year Governor's School administered by Fairfax County Public Schools (FCPS). This action concerns FCPS' recently-implemented overhaul of the TJ admissions process, which eliminated the long-standing race-neutral standardized admissions test. The Coalition alleges that these changes were specifically intended to reduce the percentage of Asian-American students who enroll in TJ, with the ultimate goal of racially balancing the school according to the racial demographics of Fairfax County.

3. The Coalition's members are concerned parents who reside in and around Fairfax County. The Coalition is multi-cultural and multi-racial, and a majority of its members are Asian-

American. Many Coalition members are parents of current eighth grade students who have already been affected by the changes to the TJ admissions criteria, while others have children who will be affected in the coming years.

4. Defendants are the Fairfax County School Board and the Superintendent of FCPS, Dr. Scott Brabrand. Board Members and Superintendent Brabrand, as well as other FCPS officials, have repeatedly spoken of the need to racially balance TJ and have directed derogatory racial comments towards Asian-American families. FCPS' recent overhaul of the TJ admissions process was intended to achieve Defendants' goals of racially balancing the student population by reducing the number of Asian-American students at TJ. And it will have its desired effect. Unless enjoined by this Court, the number of Asian-American students in the incoming TJ Class of 2025 is likely to be cut in half—not because of a drop in the number of qualified Asian-American applicants, but due entirely to Defendants' stated desire to manipulate TJ's demographics.

5. Overwhelming public evidence exists that the new TJ admissions process was adopted with the purpose of disadvantaging Asian-American students and reducing Asian-American enrollment at TJ. As such, these changes violate the Equal Protection Clause.

6. The Equal Protection Clause is a promise that government at every level will treat every American as an individual, not simply as a member of his or her racial group. Policies like the one implemented by FCPS stand in direct opposition to that promise.

JURISDICTION AND VENUE

7. This action arises under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §§ 1981 and 1983. The Court has jurisdiction over these federal claims

under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)–(2). Defendants reside within this district and a substantial part of the events giving rise to this claim have occurred or will occur in the Eastern District of Virginia.

9. The challenged policy remains in effect. A live controversy exists between the parties.

PLAINTIFF

10. Plaintiff Coalition for TJ is an organization of primarily Asian-American parents with a mission to advocate for diversity and excellence at TJ. The Coalition was formed in response to FCPS’ efforts to racially balance TJ, and Coalition members regularly attend and speak at School Board meetings, organize rallies, write to School Board members and legislators, engage in public service, and educate their community on the value of merit-based admissions for specialized schools like TJ.

11. The Coalition is made up of approximately 5,000 supporters, mostly residents of Fairfax County, and many members have children enrolled in public schools in Fairfax County. Members include parents of current eighth graders who have applied to TJ and will be evaluated under TJ’s new discriminatory admissions criteria. Members also include parents of younger children who are currently part of FCPS’ Advanced Academic Programs (AAP)¹ or are enrolled

¹ FCPS’ Advanced Academic Programs (AAP) are a “continuum of advanced academic services for students K-12 that builds upon students’ individual strengths and skills and maximizes academic potential for all learners.” <https://www.fcps.edu/academics/academic-overview/advanced-academic-programs>. Students are evaluated for admission into AAP in second grade or may be referred to the program in other years. *Id.* Students qualifying for the highest AAP level, Level IV, receive full-time advanced instruction in grades 3-8 and may enroll in Honors

in similar advanced programs at other local school districts or private schools and who intend to apply to TJ when they reach eighth grade. These children will also be subject to FCPS' discriminatory admissions criteria when they are old enough to apply to TJ.

12. Without this Court's intervention, Coalition members' children will be denied the opportunity to compete for admission to TJ on an equal footing with other applicants because of their race. Thus, Coalition members "are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 342 (1977) (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). The prospective relief Plaintiff seeks, if granted, will "inure to the benefit of those members of the association actually injured," and so the individual participation of each injured Coalition member is not required. *Warth*, 422 U.S. at 511, 515.

13. Several Coalition members have children who are already subject to the discriminatory admissions practices challenged in this lawsuit. Among these are Srikanth Akunuri (child S.V.A. is an eighth grader at Mercer Middle School who has applied for admission to TJ), Hanning Chen (child K.S.C. is an eighth grader at Cooper Middle School who has applied for admission to TJ), Justin Jia (child C.J. is an eighth grader at Longfellow Middle School who has applied for admission to TJ), Raja Kakayadi (child A.K. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ), Dheeram Kallem (child T.K. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Yuhong Lin (child A.Y. is

classes at their base school or attend their assigned AAP center school. *Id.* Currently, 14 of 26 FCPS middle schools offer AAP Level IV students honors programs, which are required for admission to TJ under the challenged admissions process. <https://www.fcps.edu/academics/elementary-school-academics-k-6/advanced-academics/advanced-academic-level-iv-center>.

an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Everett Liu (child E.L. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ), Qingying Lu (child A.G. is an eighth grader at Frost Middle School who has applied for admission to TJ), Ying Y. McCaskill (child D.M. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Mahua Mitra (child S.M.K. is an eighth grader at Kilmer Middle School who has applied for admission to TJ), Hemang Nagar (child A.N. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), Pratyush Nutalapati (child A.N. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), James Pan (child H.P. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ), Mayuri Prodhuturi (child A.B. is an eighth grader at Rocky Run Middle School who has applied for admission to TJ), Vijayram Raghavan (child V.V. is an eighth grader at Rocky Run Middle School who has applied for admission to TJ), Tilak Venigalla (child S.V. is an eighth grader at Rachel Carson Middle School who has applied for admission to TJ), and Sampath Yarlagadda (child A.Y. is an eighth grader at Rocky Run Middle School who has applied for admission to TJ).

14. Other Coalition members have younger children who intend to apply to TJ when they reach eighth grade and will be subject to the discriminatory admissions practices challenged in this lawsuit. Among these are Srinivas Akella (child R.A. is a seventh grader at Rachel Carson Middle School and has been identified as a gifted learner and admitted into Advanced Academic Programs), Srikanth Akunuri (child S.A. is a fourth grader at Arcola Elementary School), Kamal Karnathi (child A.K. is a seventh grader at Farmwell Station Middle School and has been identified as a gifted learner), Rajiv Sharma (child P.S. is a fourth grader at Louise Archer Elementary School, has been identified as a gifted learner and admitted into Advanced Academic Programs),

Himanshu Verma (child N.V. is a sixth grader at Churchill Road Elementary School, has been identified as a gifted learner and admitted into Advanced Academic Programs), and Zhihua Zeng (child D.Z. is a seventh grader at BASIS Independent McLean, has been identified as a gifted learner and admitted into Advanced Academic Programs).

15. Rachel Carson Middle School, where the children of Coalition members McCaskill, Venigalla, Kallem, Lin, Nagar, Nutalapati, and Akella are currently students, enrolls approximately 1,474 students in grades 7 and 8. As of the 2019-2020 school year, Carson MS is 30.32% White, 46.45% Asian-American, 6.83% Black, 10.15% Hispanic or Latino, and 6.25% other.² In 2018, the most recent year for which school-level data is publicly available, Carson MS had 292 students apply for admission to TJ and 78 students accepted.

16. Longfellow Middle School, where the child of Coalition member Jia currently attends, enrolls approximately 1,329 students in grades 7 and 8. As of the 2019-2020 school year, Longfellow MS is 49.85% White, 26.35% Asian-American, 4.42% Black, 12.13% Hispanic or Latino, and 7.26% other. In 2018, Longfellow MS had 185 students apply for admission to TJ and 62 students accepted.

17. Kilmer Middle School, where the child of Coalition member Mitra currently attends, enrolls approximately 1,130 students in grades 7 and 8. As of the 2019-2020 school year, Kilmer MS is 46.01% White, 23.87% Asian-American, 4.25% Black, 18.92% Hispanic or Latino,

² School Profile, http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13::NO::P0_CURRENT_SCHOOL_ID,P0_EDS L:171,0.

and 6.94% other.³ In 2018, Kilmer MS had 126 students apply for admission to TJ and 37 students accepted.

18. Rocky Run Middle School, where the children of Coalition members Prodhuturi, Raghavan, and Yarlagadda currently attend, enrolls approximately 1,049 students in grades 7 and 8. As of the 2019-2020 school year, Rocky Run MS is 32.07% White, 44.71% Asian-American, 4.64% Black, 13.33% Hispanic or Latino, and 5.25% other.⁴ In 2018, Rocky Run MS had 175 students apply for admission to TJ and 33 students accepted.

19. FCPS students identified as gifted learners are admitted to the district's Advanced Academic Program (AAP). Each of the FCPS students of Coalition members named in this Complaint are enrolled in the district's full-time AAP, also known as Level IV, which delivers a highly challenging instructional program in four core subject areas for grades 3-8.⁵ AAP Level IV students may choose to attend honors classes at their zoned middle schools or an Advanced Academic Level IV Center instead. Rachel Carson, Kilmer, Rocky Run, and Longfellow middle schools are Advanced Academic Level IV Centers.⁶

³ School Profile,
http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:071,0.

⁴ School Profile,
http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:251,0.

⁵ FCPS, "Full-Time Advanced Academic Program, Grades 3-8 (Level IV)," <https://www.fcps.edu/academics/elementary-school-academics-k-6/advanced-academics/full-time-advanced-academic-program>.

⁶ <https://www.fcps.edu/academics/elementary-school-academics-k-6/advanced-academics/advanced-academic-level-iv-school>

DEFENDANTS

20. Defendant Fairfax County School Board (“the School Board”) operates FCPS, a public school system with 198 public schools in Fairfax County, Virginia.⁷ FCPS enrolls over 188,000 students in pre-kindergarten through 12th grade and is the largest public school district in the Commonwealth of Virginia. *Id.*

21. Defendant Dr. Scott Brabrand is the Superintendent of FCPS and is sued in his official capacity. As Superintendent, Dr. Brabrand is responsible for the operations of FCPS, including implementing policies enacted by the School Board. In 2020, Dr. Brabrand undertook a complete change of the TJ admissions process in order to “make TJ’s admissions better reflect the county as a whole.” He has guided the admissions changes process, worked with FCPS and TJ officials to develop a new TJ admissions plan, led virtual town hall meetings to address TJ’s demographics and the plan to change the TJ admissions process, and presented multiple iterations of a new TJ admissions plan to the School Board at working group meetings and School Board meetings.

GENERAL FACTUAL ALLEGATIONS

Thomas Jefferson High School for Science and Technology

22. TJ is the top-ranked public high school in the nation.⁸ Founded in 1985 to improve STEM education in northern Virginia, TJ enrolls approximately 1,800 students at its campus in Alexandria. The majority of TJ’s students are residents of Fairfax County, but a limited number of

⁷ FCPS, “About Us,” <https://www.fcps.edu/about-fcps>.

⁸ U.S. News & World Report, <https://www.usnews.com/education/best-high-schools/virginia/districts/fairfax-county-public-schools/thomas-jefferson-high-school-for-science-and-technology-20461>.

students from three surrounding counties (Arlington, Loudoun, and Prince William) and the City of Falls Church are also eligible for admission.

23. TJ is incredibly diverse. Its current student body is approximately 79% non-white and 21% white.⁹ The TJ Class of 2024 is 73% Asian-American, 1% Black, 3.3% Hispanic or Latino, 6% other, and 17.7% white.¹⁰ The Asian-American student population at TJ is diverse as well, with at least thirty nationalities represented, including students whose families hail from India, Pakistan, South Korea, Japan, Vietnam, China, and the Philippines.

24. TJ is one of nineteen Virginia Academic-Year Governor's Schools, which provide "gifted high school students" with "acceleration and exploration in areas ranging from the arts, to government and international studies, and to mathematics, science, and technology."¹¹ TJ is administered by FCPS and funded in part through the Virginia General Assembly with a special funding allocation.¹²

25. When TJ first opened its doors in 1985, Fairfax County had approximately 650,000 residents and was approximately 85% white, 6% Black, 3% Hispanic, and 4% "Asian and American Indian."¹³ Following the growth of Northern Virginia's science and technology sector,

⁹ FCPS, TJ School Profile, http://schoolprofiles.fcps.edu/schlprfl/f?p=108:13:::NO::P0_CURRENT_SCHOOL_ID,P0_EDSL:300,0.

¹⁰ Press Release, FCPS, *TJHSST Offers Admission to 486 Students* (June 1, 2020), <https://www.fcps.edu/news/tjhsst-offers-admission-486-students>.

¹¹ Virginia Dep't of Education, "Academic-Year Governor's Schools," https://www.doe.virginia.gov/instruction/governors_school_programs/academic_year/index.shtml.

¹² Virginia Dep't of Education, "Governor's School Programs," https://www.doe.virginia.gov/instruction/governors_school_programs/.

¹³ 1985 Fairfax County Profile, Fairfax County Office of Research and Statistics at II-12, https://www.fairfaxcounty.gov/demographics/sites/demographics/files/assets/fairfaxcountyprofiles/profile_1985.pdf.

the demographics of Fairfax County shifted: today, Fairfax County is home to over one million residents and is approximately 61% white, 10% Black, 16% Hispanic,¹⁴ and 19% Asian and Pacific Islander.¹⁵

Previous TJ Admissions Process

26. Prior to the challenged changes to the TJ admissions process, selection for a seat at TJ was solely merit-based. To be eligible to apply to TJ, eighth graders were required to reside in Fairfax, Arlington, Loudoun, or Prince William counties or the City of Falls Church; have completed or be enrolled in Algebra I; have a core GPA of 3.0; and pay the \$100 application fee, which could be waived for those with financial need.

27. The primary method for determining admissions was a standardized test consisting of Quant-Q, ACT Inspire Reading, and ACT Inspire Science components. The TJ admissions test is famously rigorous and competitive; many students spend months (if not years) studying for the three-part test. Test preparation was often a family affair, with families joining in to help quiz and cheer on their students. Student applicants scoring highly enough to become semi-finalists advanced to part two of the admissions process, which required two teacher recommendations, a “Student Information Sheet,” in which applicants responded to three writing prompts, and a problem-solving essay.

28. In a typical year, the 480 to 500 highest-scoring applicants received offers to attend TJ.

¹⁴ For the purposes of this data, “Hispanic persons may be of any race.” Demographic Reports 2019, County of Fairfax, Virginia, at II-6, <https://www.fairfaxcounty.gov/demographics/sites/demographics/files/assets/demographicreports/fullreport.pdf>.

¹⁵ *Id.*

FCPS Seizes Opportunity to Overhaul TJ's Admissions Process

29. In its 2020 budget bill, the Virginia General Assembly required each Academic-Year Governor's School to "set diversity goals for its student body and faculty, and develop a plan to meet said goals in collaboration with community partners at public meetings." 2020 Va. Acts 183. Reports of these efforts, due to the Governor by October 1, 2020, were required to include "utilization of universal screenings in feeder divisions; admission processes in place or under consideration that promote access for historically underserved students; and outreach and communication efforts deployed to recruit historically underserved students." *Id.* Schools were also instructed to include the "racial/ethnic make-up and socioeconomic diversity of its students, faculty, and applicants." *Id.*

30. This reporting requirement was minimal, with schools instructed that the report "should end up rather simple, sticking closely to the specific wording of the budget language, with some basic data." But Superintendent Brabrand and the School Board saw it as an opportunity to completely overhaul the TJ admissions process in order to racially balance the school's demographics, going far beyond the minimal reporting requirements requested by the Department of Education.

31. Superintendent Brabrand's initial plan, presented to the School Board on September 15, 2020, suggested eliminating the standardized admissions test, thereby radically altering what had been a fundamental part of TJ admissions. He also recommended eliminating the TJ application fee, teacher recommendations, and the problem-solving essay; and adding a student questionnaire or essay.¹⁶ The proposal created five "regional pathways," to which

¹⁶ FCPS, "TJ Admissions Merit Lottery Proposal School Board Work Session Sept. 15, 2020," [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BTGKX652F413/\\$file/TJHSST%20Admissions%20Merit%20Lottery%20Proposal.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BTGKX652F413/$file/TJHSST%20Admissions%20Merit%20Lottery%20Proposal.pdf).

applicants were assigned based on their middle school, after which admissions would be determined by a lottery in each regional pathway.¹⁷ Each regional pathway was allocated 70 seats at TJ, with additional seats for students applying from Loudoun, Arlington, and Prince William counties and the City of Falls Church.¹⁸ Region 1 included Rachel Carson Middle School, while Region 2 included both Kilmer and Longfellow middle schools.¹⁹ Region 5 included Rocky Run Middle School.²⁰ According to FCPS' projections, had the proposed changes been applied to the admissions process for the Class of 2024, Asian-American student enrollment at TJ would have dropped from 73% to 54%, while Black enrollment would have increased from 1% to 7%, Hispanic enrollment would have increased from 3% to 8%, and enrollment of students identifying as two or more races would have increased from 5% to 6%.²¹ White students would have seen the greatest gains, from 18% under the old system to 25% under the proposed changes.²²

¹⁷ *Id.* at 11-17.

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 16.

²⁰ *Id.*

²¹ *Id.* at 20.

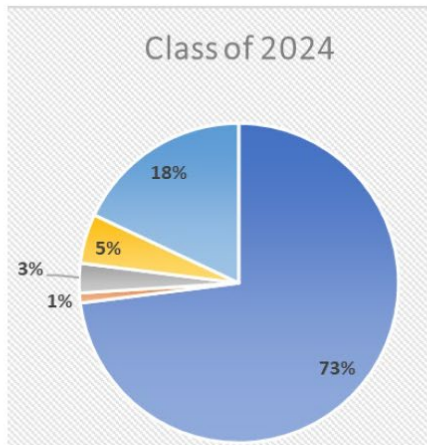
²² *Id.* at 18-20. The proposal also retroactively applied the proposed merit lottery to the Classes of 2015 and 2019. Had the proposed merit lottery been in place when those classes were admitted, Asian-American student enrollment would have shrunk 15% and 18%, respectively. No other single racial group would have experienced drops in enrollment.

Impact of Merit Lottery – Class of 2024



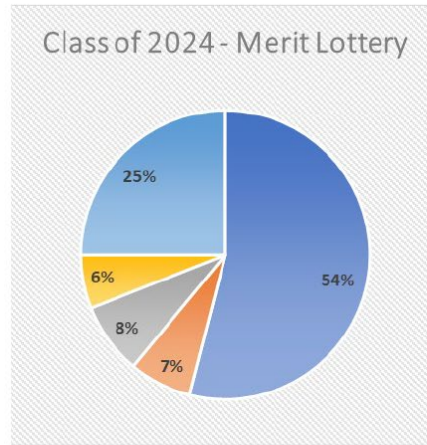
School Board
Work Session
9/15/2020

Percent of Offered Students Using Current Holistic Process

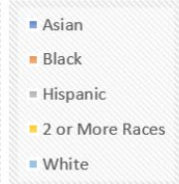


Economically Disadvantaged: 0.6%
English Language Learners: 0.6%

Percent of Offered Students Using Merit Lottery



Economically Disadvantaged: 10.3%
English Language Learners: 3.4%



Source: FCPS

32. Superintendent Brabrand presented three modified versions of his initial proposal throughout the fall of 2020. Each proposal included elimination of the standardized admissions exam. And in each proposal, the regional pathways remained the same.

33. On October 6, 2020, the School Board hastily accepted Superintendent Brabrand’s recommendation to eliminate the standardized TJ admissions test, which was scheduled to take place the next month.²³ Despite the magnitude of the decision to eliminate the longstanding TJ admissions test and the immediate impact on the hundreds of eighth grade students who had spent

²³ Minutes, Fairfax County School Board, Oct. 6, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BWXV9A7A33D8/\\$file/10-06-20%20EWS%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BWXV9A7A33D8/$file/10-06-20%20EWS%20FINAL.pdf).

months preparing, the vote was held at a “work session,” not a regular school board meeting. *Id.* School Board work sessions typically do not include votes, and there is no opportunity for public comment.

34. The October 6, 2020, work session’s published agenda did not advise the public that the School Board would vote on any changes to the TJ admissions policy; rather, it stated: “Today’s presentation will provide an update to the September 15, 2020, work session on the effort of continuous improvement of the Admissions Process for [TJ]. The presentation will provide information regarding the current admissions process and proposed changes for future admissions processes.”²⁴ Nevertheless, without hearing public comment, the School Board voted at the meeting to eliminate the TJ admissions test.

35. At its regular school board meeting two days later, on October 8, 2020, the School Board did not vote to ratify or in any way affirm its vote at the working session.²⁵ Instead, a majority of School Board members voted to defeat a measure that would have called for further public engagement on the TJ admissions process.²⁶

²⁴ Available at <https://go.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=BRDK8M4D80B8>.

²⁵ Minutes, Fairfax County School Board, Oct. 8, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BXLT2W693F5A/\\$file/10-08-20%20ERM%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BXLT2W693F5A/$file/10-08-20%20ERM%20FINAL.pdf).

²⁶ Fairfax County School Board, Agenda Item Details for October 8, 2020, Regular Meeting, <https://go.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=BRDK8M4D80B8> (The defeated motion read: “I move to direct the Superintendent to develop and implement a public engagement plan regarding TJ admissions prior to bringing the updated TJ plan to the Board in December. This plan should allow for more thorough community input and dialogue on TJ admissions. This public engagement can include public hearings, interviews, panel and focus group discussions and other forms of collaborative discourse. At minimum input should be solicited on how best to determine merit, design an admissions process aimed at ensuring the demographics at TJ are more representative of our regional student demographics, and how to communicate the TJ opportunity to our communities.”).

36. The School Board voted to adopt the new, challenged admissions policy on December 17, 2020.²⁷ The new admissions process was immediately implemented and applies to the incoming TJ freshman Class of 2025 and to future years. Under the new process:

The top 1.5 percent of the eighth grade class at each public middle school meeting the minimum standards will be eligible for admission. ¶ A holistic review will be done of students whose applications demonstrate enhanced merit; 550 seats will then be offered to the highest-evaluated students. Students will be evaluated on their grade point average (GPA); a portrait sheet where they will be asked to demonstrate Portrait of a Graduate attributes and 21st century skills; a problem-solving essay; and experience factors, including students who are economically disadvantaged, English language learners, special education students, or students who are currently attending underrepresented middle schools.²⁸

The new admissions process does not rely on Superintendent Brabrand’s proposed regional pathways, but its limitation on how many students may be accepted from each middle school, when coupled with the concentration of Asian-American students at Carson, Kilmer, Rocky Run, and Longfellow middle schools and their history of sending high numbers of students to TJ, will accomplish a similar racial balancing.

School Board Members and Superintendent Brabrand Display Clear Racial Motive in Changing TJ’s Admissions Process

37. Bias against Asian-American students at TJ did not arise overnight. For example, in 2018, a retired Rachel Carson Middle School teacher testified before the Virginia General Assembly that the parents of Asian-American students are “ravenous” and implied they break

²⁷ Minutes, Fairfax County School Board, Dec. 17, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BY5JH34D3388/\\$file/12-17-20%20ERM%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BY5JH34D3388/$file/12-17-20%20ERM%20FINAL.pdf).

²⁸ *School Board Choses Holistic Review as New Admissions Policy for TJHSST*, FCPS News Release, Dec. 18, 2020, https://www.fcps.edu/news/school-board-chooses-holistic-review-new-admissions-policy-tjhsst?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

immigration laws to move to the United States “however they come here” from India in order to enroll their children in TJ.²⁹

38. These racially discriminatory comments were echoed by members of a statewide summer 2020 working group convened by Virginia Secretary of Education Atif Qarni to address diversity, equity, and inclusion at Virginia Governor’s Schools. One member of the working group, Dr. Robert Lowerre, Director of the Maggie L. Walker Governor’s School in Richmond, noted that “communities of people,” meaning the Asian-American community, had figured out how to push their students into Governor’s Schools. State Delegate Mark Keam was more incendiary, telling the group of the “unethical ways” Asian-American parents “push their kids into [TJ],” when those parents are “not even going to stay in America,” but instead are “using [TJ] to get into Ivy League schools and then go back to their home country.”

39. Superintendent Brabrand, TJ Principal Ann Bonitatibus, and School Board member Karen Keys-Gamarra were members of the working group. They carried the tone of racial discrimination back to Fairfax County, where Brabrand and the School Board began work on the challenged changes to the TJ admissions process.

40. On June 7, 2020, Bonitatibus emailed TJ students and family members, noting that TJ “is a rich tapestry of heritages; however, we do not reflect the racial composition in FCPS. Our 32 black students and 47 Hispanic students fill three classrooms. If our demographics actually represented FCPS, we would enroll 180 black and 460 Hispanic students, filling nearly 22

²⁹ *Retired FCPS Teacher Singles Out Students from India and Calls Parents “Ravenous,”* YouTube (Sept. 23, 2020), https://www.youtube.com/watch?v=0rWdIXuYFqA&ab_channel=AsraNomani.

classrooms.”³⁰ This email put the focus squarely on race and the racial balance at TJ, foreshadowing changes to come.

41. In an August 2020 town hall meeting hosted by the Fairfax County, Virginia, chapter of the NAACP, Brabrand complained that TJ students spent “thousands upon thousands” of dollars on test prep for the TJ admissions test, laying the groundwork for negative stereotyping of TJ’s majority Asian-American student body.³¹ Later, in a September 8, 2020, listening session for students of TJ and the Maggie L. Walker School, Virginia Secretary of Education Atif Qarni reinforced Brabrand’s stereotypes, comparing test preparation to illegal “performance enhancement drugs.”³²

42. On September 15, 2020, Superintendent Brabrand presented the first admissions change proposal to School Board at a work session.³³ Brabrand stated the “need to recognize” that “TJ should reflect the diversity of Fairfax County Public Schools, the community, and of Northern Virginia,” lamenting that “the talent at Thomas Jefferson currently does not reflect the talent that exists in FCPS.”³⁴ These assertions regarding “diversity” and “talent” refer to the majority Asian-American composition of TJ’s student body.

³⁰ Ann N. Bonitatibus, Message from the Principal, June 7, 2020, <https://content.govdelivery.com/accounts/VAEDUFCPS/bulletins/28f8d9f>.

³¹ Fairfax County NAACP, *Town Hall on Systemic Racism*, Facebook (Aug. 5, 2020), https://www.facebook.com/watch/live/?v=650397622538856&ref=watch_permalink at 1:28:31.

³² *Virginia Education Secretary Compares Test Prep to Using Illegal Performance Enhancing Drugs*, from Listening Session with TJ Students held, YouTube Sept. 8, 2020 (Sept. 13, 2020), https://www.youtube.com/watch?v=w5RcAhRyB6g&ab_channel=AsraNomani.

³³ *FCPS School Board Work Session – 9-15-20 – TJ Admissions Review*, YouTube (Sept. 15, 2020), https://www.youtube.com/watch?v=n3FS9TY0lcg&list=PLSz76NCRDYQF3hPS2qS2SGEcoO4_Yd7Z&index=51&ab_channel=FairfaxCountyPublicSchools.

³⁴ *Id.* at 4:31–5:04.

43. Brabrand showed School Board members a slide depicting the demographics of the FCPS student population in 2019³⁵ before turning the presentation to over to FCPS Chief Operating Officer Marty Smith, who started by echoing Brabrand’s discriminatory assertions that “the diversity at TJ doesn’t currently reflect the diversity of Northern Virginia and the talent at TJ does not reflect the talent in Fairfax County Public Schools.”³⁶ Moving on to a slide that showed 15 years of TJ admissions data by race, including the trend of more Asian-American students winning seats at TJ, Smith noted that “[i]t’s important to note that some of the gaps that we’ve seen over time for some of our groups of students have only gotten wider with regard to the applicant pool.”³⁷ He noted that “past boards have been focused on diversity at TJ for quite some time,”³⁸ but despite previous changes to the TJ admissions process, “we haven’t realized the outcomes that we were looking for, which is why we’re bringing this proposal to [the School Board] today.”³⁹ The “outcomes” Smith was looking for refers to the racial composition to TJ.

44. Dr. Ann Bonitatibus, TJ’s Principal, also attended the September 15 working group and noted that while TJ is a “wonderfully diverse school,” FCPS was making “efforts to ensure that we are more demographically representative of the region.”⁴⁰ In fact, Bonitatibus shared that one of the reasons she was attracted to the role at TJ “was the notion that the school could be more represented in its region.”⁴¹ She stated that “we are all united in believing that there is a statistically

³⁵ *Id.* at 6:00.

³⁶ *Id.* at 7:31.

³⁷ *Id.* at 7:58.

³⁸ *Id.* at 9:15.

³⁹ *Id.* at 9:43.

⁴⁰ *Id.* at 33:25.

⁴¹ *Id.* at 1:28:40.

significant enough difference in the [racial] disparities that we're seeing that action does need to be taken. . . . And I am fully supportive of FCPS efforts to advance the representative demographics at our school.”⁴² Bonitatibus’ talk of “representation” and the “efforts to advance the representative demographics at our school” clearly reference the Board’s attempts to racially balance the student body at TJ.

45. When asked to report on her experience at the state working group over the summer, Board member Karen Keys-Gamarra stated “there was pretty much a unanimous view about the culture of these schools being not as healthy as I know all of us on this board would like to hear from our students.”⁴³ Board member Melanie Meren went a step further and described majority-Asian-American TJ’s culture as “toxic”⁴⁴ for Black students. Member Karl Frisch decried “the culture that we allow in the system.”⁴⁵ At the September 15 meeting alone, concern for TJ’s “culture” was referenced ten times. On information and belief, the Board Members’ repeated references to TJ’s toxic culture refers to the racist “Tiger Mom” stereotype of Asian-American parents who push their children to achieve academic success at all costs, as well as the racist stereotype of Asian-Americans being anti-Black.

46. At the school board work session on October 6, 2020, when the Board voted to eliminate the TJ admissions test, the discussion between the Board and Brabrand make it clear that racial balancing was the goal. Brabrand noted that the proposed changes to the admissions process, which eliminated the race-neutral admissions test, “eliminat[es] the testing component that

⁴² *Id.* at 1:29:37.

⁴³ *Id.* at 44:50.

⁴⁴ *Id.* at 1:24:00.

⁴⁵ *Id.* at 2:09:52.

squeezed out talent and squeezed out diversity in our system.”⁴⁶ Principal Bonitatibus again highlighted the desire for a “student body that more closely aligns with the representation in FCPS” and “Northern Virginia.”⁴⁷ Board Member Abrar Omeish stated that a key point was to “make sure there’s representation” that “should be proportional to the population numbers” of Fairfax County.⁴⁸

47. The School Board and FCPS officials repeatedly discussed the TJ admissions test—the test by which Asian-American students earned their places at TJ—as biased, resulting in presence at TJ of “students who have been [in] Test Prep since second grade.”⁴⁹ This language directly attacks the Asian-American families whose children hope to apply to TJ, demeaning students’ hard work and families’ sacrifices as “pay to play.”⁵⁰ Board Member Keys-Gamarra recognized this discriminatory language towards Asian-American families:

And I want to say, just as we are concerned about certain communities feeling that we are maligning them by talking about tests, we must be very careful and we must be cognizant of how demeaning these types of comments are and that many people consider these comments to be rooted in racism. I’m not saying it’s intentional, but we need to be mindful.”⁵¹

⁴⁶ Fairfax County Public Schools, *FCPS School Board Work Session TJ Admission 10-6-20*, YouTube (Oct. 6, 2020), https://www.youtube.com/watch?v=FgTgmNYUw88&ab_channel=FairfaxCountyPublicSchools at 6:57, 10:12.

⁴⁷ *Id.* at 29:41.

⁴⁸ *Id.* at 1:02:50.

⁴⁹ *Id.* at 3:40:00.

⁵⁰ *Id.* at 36:43.

⁵¹ *Id.* at 2:58:12.

Projected Effects of TJ Admissions Process Changes

48. After the initial proposal to the School Board, Superintendent Brabrand's subsequent presentations did not include projected demographic outcomes of the proposed admissions policy changes. However, analysis of publicly available data shows that Asian-American enrollment—and only Asian-American enrollment—will markedly decline at TJ under the new admissions policy.

49. Under the new admissions policy, each middle school is allocated seats in the incoming TJ freshman class equivalent to 1.5% of the middle school's eighth grade enrollment, regardless of how many students each middle school has historically sent to TJ. Four middle schools—Rachel Carson, Longfellow, Rocky Run, and Kilmer—traditionally account for the majority of TJ admissions and also have higher Asian-American student populations than most other FCPS middle schools. By severely limiting the number of students who can be accepted at TJ from those middle schools, which by proxy limits the number of qualified Asian-American applicants, future TJ classes will have a radically different racial composition, by design.

50. For example, in the Class of 2022, admitted under the previous admissions system, Rachel Carson MS had 78 students accepted to TJ out of an eighth grade class of 804 students (46% of whom were Asian-American). That means that nearly 10% of the school's eighth graders were accepted to TJ. Under the new admissions system, Rachel Carson MS would have been allocated just 12, or 1.5% of its total eighth grade population.

51. Students at Longfellow MS would similarly have seen their chances for a seat at TJ drop dramatically—the TJ class of 2022 includes 62 Longfellow alumni out of an eighth grade class of 669 (27% of whom were Asian-American). Had the new admissions system been in place, Longfellow would have been capped at 10 TJ seats.

52. Overall, Plaintiff's data analysts project that Asian-American student enrollment at TJ will drop from 73% under the merit-based race-blind admissions system to 31% under the new racial-balancing admissions system for the Class of 2025.⁵² No other racial group is projected to lose seats. The greatest beneficiary of the new admissions system in terms of increased population will be white students.

53. As a result of the new policy designed to reduce Asian-American enrollment at TJ, qualified TJ applicants among the children of Coalition for TJ members will be denied admission to TJ in this and future years.

CAUSE OF ACTION

(Violation of the Equal Protection Clause of the Fourteenth Amendment, through 42 U.S.C. § 1983)

54. Plaintiff hereby realleges each and every allegation contained in Paragraphs 1 through 53 as though fully set forth herein.

55. The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

56. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

⁵² In reaching this projection, Coalition data analysts assumed that the holistic evaluation component of the challenged admissions process will act to keep the racial distribution of students selected for TJ similar to the racial distribution of students eligible to apply for TJ, which is 31% Asian-American, 5% Black, 8% Hispanic or Latino, 48% white, and 8% other. While the challenged admissions process' problem solving essay may increase the number of Asian-American and white students selected, that effect will be countered by the inclusion of "experience factors" in the holistic evaluation.

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

57. Defendant Fairfax County School Board is a “person” within the meaning of 42 U.S.C. § 1983, *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 663 (1978), as is Defendant Superintendent Brabrand, who is sued in his official capacity for declaratory and injunctive relief, *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 n.10 (1989).

58. Defendants have acted and are acting “under color of state law” within the meaning of Section 1983.

59. A facially neutral state action violates the Equal Protection Clause when it is enacted with a racially discriminatory purpose. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977). A racially discriminatory purpose does not imply any animus on the part of the decisionmaker towards a particular racial group. *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016). Nor does it require a showing that race was the predominant consideration of the decisionmakers. *Arlington Heights*, 429 U.S. at 265. A racially discriminatory purpose simply implies that the decisionmakers acted “at least in part ‘because of,’ not merely ‘in spite of,’ [the challenged policy’s] adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

60. In changing the TJ admissions criteria to disadvantage Asian-American students, Defendants acted with a racially discriminatory purpose.

61. Defendants have been forthright that the changes to the TJ admissions policy are intended to reduce the proportion of Asian-American students enrolled at TJ because they are “overrepresented” compared to the rest of FCPS. The public comments and writings of Dr. Brabrand and his staff, as well as those of multiple School Board members, indicate that the challenged admissions policy is intended to act as a proxy in order to racially balance TJ, using

the racial demographics of FCPS as a baseline. Even if Defendants had additional, race-neutral motives for the TJ admissions policy changes, race was the dominant concern of Dr. Brabrand and members of the School Board in changing the TJ admissions policy.

62. The new TJ admissions process intentionally harms Asian-American students—indeed, it must do so in order to succeed.

63. The new TJ admissions process is subject to strict scrutiny because, although facially race-neutral, it was enacted with discriminatory intent.

64. Defendants do not have a compelling governmental interest that justifies racially discriminatory action toward Asian-American students, including children of Coalition members.

65. Defendants' revision of the TJ admissions policy is not narrowly tailored to further any governmental interest.

66. Defendants' revision of the TJ admissions policy is not necessary to remedy past discrimination for which the government is responsible.

67. Because Defendants' changes to TJ's admissions process were enacted for a racially discriminatory purpose and further no compelling government interest, they violate the Equal Protection Clause.

68. Plaintiff and Plaintiff's members have been and will be harmed by Defendants' revisions to the TJ admissions criteria.

69. Plaintiff is entitled to injunctive and declaratory relief enjoining Defendants from continuing to use the challenged admissions process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. An entry of judgment declaring that Defendants' changes to TJ's admissions process violate the Equal Protection Clause.
2. An entry of a permanent injunction against Defendants prohibiting them from continuing to enforce the challenged admissions procedure.
3. An entry of an order requiring Defendants to return to the admissions procedure in place for entry into TJ in the fall of 2020.
4. An award of attorney's fees and costs in this action pursuant to 42 U.S.C. § 1988.
5. An award of nominal damages in the amount of \$1.00.
6. An award of any further legal or equitable relief this Court may deem just and proper.

Dated: March 10, 2021.

ERIN E. WILCOX*,
N.C. Bar No. 40078
CHRISTOPHER M. KIESER*,
Cal. Bar No. 298486
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
EWilcox@pacificlegal.org
CKieser@pacificlegal.org

**Pro Hac Vice Pending*

Respectfully submitted,

s/ Alison E. Somin
ALISON E. SOMIN, Va. Bar No. 79027
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 610
Arlington, Virginia 22201
Telephone: (202) 557-0202
Facsimile: (916) 419-7747
ASomin@pacificlegal.org

GLENN E. ROPER*, Colo. Bar No. 38723
Pacific Legal Foundation
1745 Shea Center Dr., Suite 400
Highlands Ranch, Colorado 80129
Telephone: (916) 503-9045
Facsimile: (916) 419-7747
GERoper@pacificlegal.org

Counsel for Plaintiff

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:21-cv-00296-CMH-JFA
)	
FAIRFAX COUNTY SCHOOL BOARD,)	
)	
Defendant.)	

ANSWER

Defendant Fairfax County School Board, by counsel and pursuant to Federal Rules of Civil Procedure 8 and 12(a)(4)(A), answers the allegations in the complaint by plaintiff Coalition for TJ as set forth below, in numbered paragraphs corresponding to the paragraph numbering of the complaint.

1. The School Board lacks knowledge or information about the motivation of the Coalition for TJ in bringing this action, and denies the remaining allegations in paragraph 1.

2. The School Board admits the first sentence of paragraph 2. As for the second sentence, the School Board admits that the TJ admissions policy was revised to eliminate the previous standardized-testing requirements, but denies the characterization of those previous requirements. The School Board admits that the Coalition makes the claim alleged in the third sentence, but denies the truth of that claim.

3. The School Board lacks knowledge or information sufficient to admit or deny the allegations in paragraph 3.

4. In response to the first sentence, the School Board admits that it is the defendant but states that Superintendent Brabrand was dismissed as an official-capacity defendant on May 21, 2021. The School Board denies the remaining allegations in paragraph 4.

5. Denied.

6. The first sentence of paragraph 6 states a legal conclusion to which no response is required. The School Board denies the allegations made in the second sentence of paragraph 6.

7. Paragraph 7 states legal conclusions to which no response is required, except the School Board denies that the Coalition is entitled to the relief claimed.

8. Paragraph 8 states legal conclusions to which no response is required.

9. The School Board admits the first sentence of paragraph 9. The second sentence of paragraph 9 states a legal conclusion to which no response is required.

10. The School Board lacks knowledge or information sufficient to admit or deny the allegations in paragraph 10.

11. The School Board lacks knowledge or information sufficient to admit or deny the allegations in paragraph 11 about the Coalition's membership, and denies the remaining allegations including the allegations that the TJ admissions criteria are "discriminatory." The School Board admits the allegations in the first three sentences in footnote 1. It denies the allegations made in the final sentence of footnote 1.

12. Denied.

13. The School Board lacks knowledge or information sufficient to admit or deny that the persons listed in paragraph 13 are members of the Coalition but denies that any of its members or their children are being subjected to any "discriminatory" admissions practices by the School Board. The School Board admits that the named parents have children with the

referenced initials enrolled at the FCPS schools identified, and those students have applied for admission to TJ. The School Board admits that S.V.A. is an eighth grader at Mercer Middle School who has applied for admission to TJ, A.K. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ, and E.L. is an eighth grader at Nysmith School for the Gifted who has applied for admission to TJ. It denies that James Pan has an eighth-grader with the initials H.P. who has applied for admission to TJ.

14. The School Board lacks knowledge or information sufficient to admit or deny that the persons listed in paragraph 14 are members of the Coalition or that the children of those persons intend to apply to TJ in the future but denies that any of its members or their children will be subjected to any “discriminatory admissions practices” by the School Board. The School Board admits that the named parents have children with the referenced initials receiving Level IV services at the FCPS schools identified, but lacks knowledge or information sufficient to admit or deny that these FCPS students intend to apply to TJ in the future. It lacks knowledge or information sufficient to admit or deny the allegations in paragraph 14 regarding the parents of students who are not enrolled in FCPS or the students’ intentions to apply to TJ in the future.

15. The School Board lacks knowledge or information sufficient to admit or deny that the persons listed in paragraph 15 are members of the Coalition. It admits the remaining allegations in paragraph 15.

16. The School Board lacks knowledge or information sufficient to admit or deny that the persons listed in paragraph 16 are members of the Coalition. It admits the remaining allegations in paragraph 16.

17. The School Board lacks knowledge or information sufficient to admit or deny that the persons listed in paragraph 17 are members of the Coalition. It admits the remaining allegations in paragraph 17.

18. The School Board lacks knowledge or information sufficient to admit or deny that the persons listed in paragraph 18 are members of the Coalition. It admits the remaining allegations in paragraph 18.

19. The first sentence of paragraph 19 is denied as phrased. The School Board admits that the FCPS students identified by initials in paragraph 13 and 14 are receiving Level IV services and that the program offers a highly-challenging instructional program in four core subject areas for students in grades 3 through 8, and denies the remaining allegations in the second sentence. The School Board admits that AAP Level IV students can attend their base middle school or a Level IV Center, and denies the remaining allegations in the third sentence. The factual allegations in the fourth sentence are admitted.

20. Admitted.

21. The School Board admits that Dr. Brabrand is the division superintendent, and states that the claim against him in his official capacity has been dismissed. The School Board admits the allegations made in the second sentence of paragraph 21. The allegations made in the third sentence are denied. The School Board admits that Dr. Brabrand worked with FCPS staff to develop recommendations for the School Board on possible changes to the admissions policy for TJ, and that he participated in various meetings and presentations concerning potential changes to the TJ admissions policy, and denies the remaining allegations in the third sentence.

22. The School Board admits that the cited webpage for US News & World Report lists TJ as “#1 in National Rankings.” The School Board admits that TJ was established in 1985

as a high school with a focus on science and technology and that it is located in Alexandria, and denies the remaining allegations in the second sentence of paragraph 22. The School Board admits that the majority of students attending TJ are residents of Fairfax County and that students from Arlington, Loudoun, and Prince William Counties, and the City of Falls Church are also eligible to attend TJ, and denies the remaining allegations in the third sentence of paragraph 22.

23. In response to the first sentence, the School Board denies that TJ is “incredibly diverse.” The School Board denies the second sentence because the data cited does not match the data in footnote 9. The School Board admits the third sentence. The School Board admits that the Asian student population at TJ includes students whose ethnicities are potentially traceable to numerous Asian countries, but lacks information sufficient to admit or deny the remaining allegations in the fourth sentence of paragraph 23.

24. The School Board admits that TJ is one of 19 Academic-Year Governor’s Schools that provide students with advanced studies in areas ranging from the arts to government and international studies, and to mathematics, science, and technology; that all eligible students are allowed to apply for admission, regardless of whether they were previously identified as “gifted”; and that TJ is administered by the School Board and FCPS and funded in part through monies appropriated by the General Assembly. The School Board denies the remaining allegations in paragraph 24.

25. The School Board lacks knowledge or information sufficient to admit or deny the allegations in paragraph 25.

26. The School Board admits the allegations in paragraph 26, except for the comprehensiveness of the list of localities whose residents were eligible to apply to TJ and the suggestion that admission to TJ is no longer “merit-based.”

27. The School Board admits that the admissions process prior to the one challenged by the Coalition included standardized testing comprised of three components, the Quant-Q, the ACT Inspire Reading, and the ACT Inspire Science tests, and denies the remaining allegations made in the first sentence of paragraph 27. The School Board admits the allegations made in the second sentence of paragraph 27. It lacks sufficient information to admit or deny the allegations made in the third sentence of paragraph 27. The School Board admits the allegations made in the fourth sentence of paragraph 27.

28. The School Board admits that in recent years, the top 480 to 500 applicants would receive offers to attend TJ, and denies the remaining allegations in paragraph 28.

29. The Virginia Acts of Assembly chapter cited in paragraph 29 is incorrect. To the extent plaintiff intended to cite 2020 Va. Acts ch. 1289, item 145.C.27(i), the text of that budget item speaks for itself, and the Coalition’s characterizations of the bill are denied.

30. The School Board lacks knowledge or information sufficient to admit or deny the first sentence in paragraph 30. The second sentence is denied.

31. The School Board admits that Superintendent Brabrand presented a plan to the School Board on September 15, 2020, that included eliminating the use of standardized testing as part of the TJ admissions process, and denies the remaining allegations in the first sentence of Paragraph 31. The School Board admits the factual allegations in the second sentence. The School Board admits that the Superintendent proposed creating five “regional pathways” and use of a lottery within each pathway, and denies the remaining allegations in the third sentence. The

School Board denies the allegations in the fourth sentence as phrased, and refers to the TJ Admissions Merit Lottery Proposal cited in paragraph 31 and footnote 16 for its contents. The fifth and sixth sentences of paragraph 31 are admitted. The School Board denies the allegations in the seventh and eighth sentences as phrased, and refers to the TJ Admissions Merit Lottery Proposal cited in paragraph 31 and footnote 16 for its contents. The Coalition's characterizations of the projected effects as well as the allegations in footnote 22 are denied.

32. The School Board admits that Superintendent Brabrand made several presentations in the fall of 2020, and denies the remainder of the allegations in the first sentence of paragraph 32. The School Board admits that Superintendent Brabrand consistently recommended elimination of the standardized admissions tests, and denies the remainder of the allegations in the second sentence of paragraph 32. The School Board denies the allegations in the third sentence of paragraph 32.

33. The School Board admits that it voted to eliminate the standardized-testing prerequisite for admission to TJ on October 6, 2020, and that the tests ordinarily take place in November, but denies that it acted "hastily" as well as all other characterizations of its actions contained in the first sentence of paragraph 33. The School Board admits that the vote took place at a work session and denies the remaining allegations in the second sentence of paragraph 33. The School Board admits that it does not typically include a public comment period during work sessions and that work sessions do not typically include votes, but it denies the suggestion that it did not receive public comments on the Superintendent's recommendation to eliminate standardized testing prior to October 6, 2020, and further denies that taking a vote at a work session is improper or procedurally irregular.

34. The School Board admits that the agenda item for the October 6, 2020 work session contained the quoted text, that the School Board did not hear public comment at that particular work session, and that it voted at that work session to eliminate the standardized-testing component. All other allegations in paragraph 34 are denied, as is the suggestion that the School Board did not receive public comments on the Superintendent's recommendation to eliminate standardized testing prior to October 6, 2020.

35. The School Board admits that it did not vote at its regular meeting on October 8, 2020 to "ratify" or "affirm" the October 6 decision and denies that such a ratification was necessary. The text of the motion by School Board Member Sizemore Heizer speaks for itself. The School Board admits that the motion failed by a vote of zero in favor, seven opposed, and five abstaining. All other allegations in paragraph 35 are denied.

36. The School Board admits the allegations made in the first two sentences of Paragraph 36. The School Board admits that the language quoted in the third sentence is included in the minutes cited in footnote 27, but denies that the excerpted language fully describes the admission process to be applied. The School Board admits that the new admissions policy does not adopt the Superintendent Brabrand's proposed regional pathways, and denies all other allegations made in the last sentence of paragraph 36.

37. The School Board denies that it is biased against Asian-American students at TJ, as suggested in the first sentence of paragraph 37. The School Board lacks information and belief sufficient to admit or deny the second sentence.

38. The School Board lacks information and belief sufficient to admit or deny the allegations of paragraph 38.

39. The School Board admits that Superintendent Brabrand, TJ Principal Ann Bonitatibus, and School Board Member Keys-Gamarra attended some meetings of the 2020 working group, and denies the remaining allegations in the first sentence of paragraph 39. The School Board denies the allegation in the second sentence that they “carried the tone of racial discrimination back to Fairfax County.” The School Board admits that it and Dr. Brabrand worked on changes to the TJ admissions process.

40. The School Board admits that Principal Bonitatibus issued a statement on June 7, 2020, that contained the portions quoted in the first and second sentences of paragraph 40, but denies that the quoted portions represent full content or meaning of her message, and refers to the message itself for its content and meaning. The School Board denies the allegations in the third sentence.

41. The School Board admits that Superintendent Brabrand at the August 5, 2020 meeting used the words “thousands and thousands” to describe what some families are able to spend to prepare for the TJ admissions test, and denies the remainder of the allegations made in the first sentence of paragraph 41 and refers to the recording of the August 5, 2020 meeting for the full content of Dr. Brabrand’s remarks. The School Board denies that Dr. Brabrand propounded any “stereotypes,” and also denies that the video clip cited in footnote 32 supports the characterization of Secretary Qarni’s remarks alleged in the second sentence of paragraph 41; it lacks knowledge or information sufficient to admit or deny the allegations about who made the remarks, when they were made, or their context.

42. The School Board admits that Superintendent Brabrand presented a proposal to change the TJ admissions policy to the School Board at a work session on September 15, 2020, and denies the remaining allegations made in the first sentence of paragraph 42. The School

Board admits that, during the September 15, 2020 work session, Dr. Brabrand spoke the words that are quoted in the second sentence, but denies that the quoted portions accurately convey the full content or meaning of his remarks and refers to the recording of the meeting for their content and meaning. The School Board denies the allegations made in the third sentence of paragraph 42.

43. The School Board admits that, during the September 15, 2020 work session, Dr. Brabrand presented a slide depicting the demographics of the FCPS student population in 2019, that his statement was followed by remarks by FCPS Chief Operating Officer Marty Smith, who spoke the words that are quoted in the first sentence, but denies that either Brabrand or Smith made any “discriminatory assertions” and refers to the recording of the meeting for the full content and meaning of their remarks. The School Board admits that the slide shown by Mr. Smith showed 15 years of data relating to TJ admissions, but denies that the slide showed data only “by race.” The School Board admits that Mr. Smith spoke the words that are quoted in the second and third sentences, but denies that those words accurately represent the full content or meaning of his statements and refers to the recording of the meeting for their full content and meaning. The School Board denies the allegations made in the fourth sentence of paragraph 43.

44. The School Board admits that Dr. Bonitatibus on September 15, 2020, described TJ as a “wonderfully diverse school” and denies the remainder of the allegations made in the first sentence and refers to the recording of the meeting cited in footnote 33 for the full content and meaning of her remarks. The School Board denies that the second and third sentences of paragraph 44 accurately quote the words spoken by Dr. Bonitatibus during the meeting or conveys the full content or meaning of her remarks, and refers to the recording of the meeting for

their full content and meaning. The School Board denies the allegations made in the last sentence of paragraph 44.

45. The School Board admits that what was said by School Board Members Keys-Gamarra, Meren, and Frisch at the September 15, 2020 work session was recorded, and refers to the recording for the full content and meaning of their statements. All other allegations made in paragraph 45 are denied.

46. The School Board admits that what was said by Dr. Brabrand, Principal Bonitatibus, and Board Member Omeish at the September 15, 2020 work session was recorded, and refers to the recording for full content and meaning of their statements. All other allegations made in paragraph 46 are denied.

47. The School Board admits that what was said by School Board Members and staff at the September 15, 2020 was recorded, and refers to the recording for the full content and meaning of their remarks. The School Board denies the remaining allegations in paragraph 47, including the allegation that any of them “attack[ed]” or “demean[ed]” any “Asian-American families.”

48. The School Board admits the first sentence but denies the second.

49. The School Board admits that the policy allocates to each middle school seats equivalent to 1.5% of the middle school’s eighth-grade enrollment, but denies the suggestion that allocation operates as a cap. The School Board admits that a large proportion of students offered admission to TJ in recent years have come from the four middle schools identified in the second sentence, and denies the remaining allegations made in the second sentence of paragraph 49.

The School Board denies the allegations in the third sentence.

50. The School Board admits that 78 students from Rachel Carson Middle School were admitted to TJ as members of the class of 2022, and denies the remaining factual allegations in the first sentence of paragraph 50. It admits the allegations made in the second sentences, but denies the allegations made in the third sentence.

51. The School Board admits that 61 students from Longfellow Middle School were admitted to TJ as members of the class of 2022, and denies the remaining factual allegations in the first sentence of paragraph 51. It admits the allegations made in the second sentences, but denies the allegations made in the third sentence of paragraph 51.

52. The School Board lacks knowledge or information sufficient to admit or deny the content of the Coalition's own projections, but it denies that those projections as alleged in paragraph 52 and footnote 52 are accurate.

53. Denied.

54. The School Board restates its answers to paragraphs 1–53.

55. The text of the Equal Protection Clause speaks for itself.

56. The text of 42 U.S.C. § 1983 speaks for itself.

57. Paragraph 57 states legal conclusions to which no response is necessary. The official-capacity claim against Dr. Brabrand has been dismissed.

58. Paragraph 58 states a legal conclusion to which no response is necessary.

59. Paragraph 59 states legal conclusions to which no response is necessary.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record for all Parties.

By: _____ /s/

Stuart A. Raphael (VSB No. 30380)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 955-1500
Facsimile: (202) 778-2201
sraphael@HuntonAK.com

APPENDIX C

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE PLAINTIFF:
PACIFIC LEGAL FOUNDATION
By: MS. ERIN E. WILCOX
MR. CHRISTOPHER M. KIESER
930 G Street
Sacramento, California 95814
916.419.7111
ewilcox@pacificlegal.org
ckieser@pacificlegal.org

PACIFIC LEGAL FOUNDATION
By: MS. ALISON E. SOMIN
3100 Clarendon Blvd.
Suite 610
Arlington, Virginia 22201
202.557.0202
asomin@pacificlegal.org

FOR THE DEFENDANTS:
HUNTON ANDREWS KURTH LLP
By: MR. STUART A. RAPHAEL
MS. SONA REWARI
MR. MICHAEL DINGMAN
2200 Pennsylvania Avenue, NW
Washington, DC 20037
202.955.1500
sraphael@huntonak.com
srewari@huntonak.com

OFFICIAL U.S. COURT REPORTER:
MS. JULIE A. GOODWIN, CSR, RPR
United States District Court
401 Courthouse Square
Eighth Floor
Alexandria, Virginia 22314
512.689.7587

1 (MAY 21, 2021, 10:12 A.M., OPEN COURT.)

2 THE COURTROOM DEPUTY: Civil Action 21-CV-296,
3 *Coalition for TJ versus Fairfax County Public School Board, et*
4 *al.*

5 If counsel would please note your appearance for
6 the record.

7 MR. RAPHAEL: Stuart Raphael for the defendants, Your
8 Honor.

9 MS. WILCOX: Erin --

10 MR. RAPHAEL: I'm sorry. And with me is Sona Rewari,
11 my partner, and Michael Dingman.

12 MS. WILCOX: Erin Wilcox for the plaintiffs, Your
13 Honor. And with me is Alison Somin and Christopher Kieser.

14 THE COURT: All right.

15 Okay.

16 MR. RAPHAEL: Your Honor has two motions before you,
17 our motion to dismiss and then the plaintiffs have filed a
18 motion for preliminary injunction. I'm happy to take up the
19 motion to dismiss first if that is okay with you.

20 THE COURT: Go ahead.

21 MR. RAPHAEL: The most significant fact in this case
22 is that the policy that the plaintiffs are challenging here as
23 racially discriminatory specifically prohibits discrimination
24 on the basis of race. And this is found at ECF 22-1 at pages
25 4 and 5.

1 The December 17th policy provides that the
2 admissions process must use only race-neutral methods that do
3 not seek to achieve any specific racial or ethnic mix, balance,
4 or targets. In the implementing regulation, which is also in
5 the record at ECF 22-2 at page 4, provides that in accordance
6 with that policy the admissions evaluators are not even -- they
7 don't even know the race, ethnicity, or gender of any of the
8 applicants. There's a number assigned to each file, so it is
9 literally a race-blind policy.

10 Now, the plaintiff concedes that the policy is
11 facially race neutral - that's paragraph 63 of the complaint -
12 but they contend that it was nonetheless enacted for the
13 purpose of discriminating against Asian-Americans.

14 Now, we pointed out in our opening brief Justice
15 Scalia's concurrence in the *Schuette* case where he said that, a
16 policy that specifically prohibits discrimination on the basis
17 of race cannot -- cannot be as a matter of law
18 unconstitutional.

19 The plaintiffs say, well, that was just a
20 concurrence. And they're right as far as that goes.

21 But even assuming hypothetically that you could
22 envision a set of facts where a governmental body adopts a
23 facially race-neutral policy that prohibits discrimination on
24 the basis of race, surely the facts that you would have to
25 plead to show racial intent to discriminate must be a very

1 high burden, and the plaintiffs have not come close to pleading
2 anything like that here.

3 Before getting to the facts, I want to make sure
4 that we're all on the same page as to what the controlling law
5 is. The law allows governmental actors to adopt race-neutral
6 measures aware that -- of what the racial consequences might
7 be, and even with a motivation to help underrepresented
8 minorities.

9 The most recent Supreme Court case that sets forth
10 that proposition is the *Inclusive Communities* decision. That's
11 the Texas Fair Housing Act case from 2015 where the majority
12 wrote in an opinion by Justice Kennedy, Local housing
13 authorities may choose to foster diversity and combat racial
14 isolation with race-neutral tools, and mere awareness of race
15 in attempting to solve the problem of facing inner cities does
16 not doom that endeavor at the outset.

17 And of course that opinion cited Justice Kennedy's
18 concurrence in the *Parents Involved* decision from 2007, which
19 is widely cited as the leading authority that collects the
20 relevant case law on this. And Justice Kennedy said at pages
21 788 to 89 of his concurrence that, in the administration of
22 public schools by the state and local authorities, it is
23 permissible to consider the racial makeup of schools and to
24 adopt general policies to encourage a diverse student body one
25 aspect of which is racial composition. And he goes on to offer

1 a number of examples of race-neutral measures that could be
2 adopted for the purpose of promoting racial integration.

3 The Coalition doesn't dispute that this is the
4 governing law. It's been followed in four other circuits that
5 we've cited in our papers. It was recently followed by Judge
6 Trenga in the *Loudoun County* case, the *Boyapati* decision.

7 The Coalition quibbles about whether Justice
8 Kennedy's concurrence is controlling under the Supreme Court's
9 decision in *Marks* which looks at whether a concurring opinion
10 with the plurality opinion provides the -- the controlling
11 authority.

12 We think that it is legally controlling, just to --
13 just so we're clear. We think it is legally controlling
14 because the Supreme Court majority cited it for the same
15 proposition in the *Inclusive Communities* case. But even if you
16 thought it were just *dicta*, the Fourth Circuit held in its 2019
17 *en banc* decision in the *Manning* case that in this circuit,
18 courts should follow *dicta* in concurring opinions that provide
19 the fifth vote under the *Marks* line of cases.

20 No -- moreover, not as -- the plaintiffs don't cite
21 any court that suggests that the principles of *Parents Involved*
22 should not apply. So, that brings us to the motion to dismiss,
23 and the question is whether the plaintiffs have pleaded facts
24 sufficient to plausibly allege that the school board enacted
25 this policy for the purpose of harming Asian-Americans.

1 On a 12(b)(6) motion, as the Court is well aware,
2 you disregard conclusory assertions. That's the teaching of
3 *Iqbal* and *Twombly*. And where, as here, the plaintiff relies on
4 statements of school board members from public meetings, the
5 defendant can attach those statements, which we've done, and
6 those statements control over any kind of spin or puffing about
7 them in the complaint. You look to the statements directly.

8 We filed with our motion to dismiss the declaration
9 of Cindy Smoot at ECF 22-4. And Exhibit A to that declaration
10 sets out what the complaint alleges was said by the
11 superintendent and five of the 12 school board members, and
12 then what they actually said. And we included the video clips
13 as Exhibit B to that declaration.

14 The Coalition cites the statements of only five of
15 the 12 board members who voted for the policy. None of the
16 statements reflects any anti-Asian animus or an intent to
17 discriminate against Asian-Americans.

18 Now, it's important to focus on what the Coalition
19 concedes. They concede -- and this is at page 25 of their
20 12(b)(6) opposition brief, ECF 25. They concede that adopting
21 a race-neutral program with the hope of increasing enrollment
22 of Black and Hispanic students would not trigger strict
23 scrutiny. Of course, that's fully consistent with *Parents*
24 *Involved*.

25 The concession is this: Mere motive to increase

1 the representation of a particular racial group does not render
2 an action racially discriminatory for purposes of an *Arlington*
3 *Heights* analysis.

4 Given that concession, when you look at the
5 statements they attribute to board members and the
6 superintendent, they all fall into the safe harbor of
7 statements that at best show a desire to support an increased
8 enrollment of Black and Hispanic students at Thomas Jefferson
9 High School. None shows an intent to discriminate against
10 Asian-Americans or to harm Asian-Americans.

11 Now, at this point the dispositive case becomes the
12 Supreme Court's decision in *Personnel Administrator versus*
13 *Feeney*. That was the case where the Supreme Court upheld a
14 Massachusetts law that created hiring preferences for veterans.
15 Women plaintiffs sued and said, that law discriminates against
16 women because 98 percent of veterans are men.

17 And the U.S. Supreme Court said, no, no, it -- the
18 policy was not enacted to harm women. It was enacted to help
19 veterans, and it doesn't matter that it's disproportionately
20 beneficial to men. You have to show that it was enacted for
21 the purpose of harming women.

22 *Feeney* is cited by each of the four other circuits
23 that have followed *Parents Involved* as the rationale which
24 explains why helping underrepresented minorities doesn't mean
25 you're hurting others who are -- who are there. And so it's

1 just not enough to plead discrimination against Asian-Americans
2 to say, well, the school board wanted to help underrepresented
3 Black and Hispanic students.

4 They've also failed to show how any aspect of the
5 new admissions policy could have a discriminatory impact on
6 Asian-American students. *Inclusive Communities*, again, the
7 2015 Supreme Court case says, a disparate impact claim that
8 relies on a statistical disparity must fail if the plaintiff
9 cannot point to a defendant's policy or policies causing that
10 disparity.

11 They can't make that showing for any aspect to the
12 policy. For example, how does eliminating the \$100 application
13 fee disparately affect Asian-Americans, or increasing the
14 minimum GPA from 3.0 to 3.5, or eliminating the standardized
15 testing requirement, or eliminating the requirement that
16 students obtain two teacher recommendations? None of those
17 things has a disparate impact on Asian-Americans. And this
18 is -- their -- their best cases are -- which is that North
19 Carolina voting rights -- voting suppression case. In each of
20 the measures that was struck down in *McCrorry* was shown to have
21 a disproportionate impact on African-American voters.

22 So, for example, the elimination of the Souls to
23 the Poles early voting day overwhelmingly affected
24 African-American voters, and the legislature knew that. And so
25 the evidence there was overwhelming.

1 Here, the plaintiffs have done nothing to tie any
2 aspect of this policy to a disparate impact on Asian-Americans,
3 with one possible exception. They plead in paragraph 49 of
4 their complaint that -- that there would be a disparate impact
5 from the top 1.5 percent plan. This is the portion of the
6 policy that says that students who are in the top 1.5 percent
7 of their middle schools will be given admission to TJ.

8 But the flaw there is that they assume that it's
9 a -- they assumed when they filed the complaint that the 1.5
10 percent plan operates as a cap or a ceiling on admissions from
11 middle schools and it doesn't. It operates as a floor, so the
12 top 1.5 percent get in.

13 There's still a hundred seats left that are
14 unallocated, and folks -- students who are at the top of their
15 class but below the top 1.5 percent are still eligible for
16 admission to the school. In any event, they haven't shown how
17 that discriminates against Asian-Americans or singles
18 Asian-Americans out.

19 They also use the wrong baseline for determining
20 whether there is discrimination against Asian-Americans. They
21 want to use the baseline of how many -- what the percentage of
22 Asian-American students was in last year's class. In the -- in
23 the complaint it sets out in the attached -- in the citations
24 to the documents on which it relies.

25 Data that shows that the student population in

1 Fairfax County is 19.5 percent Asian. In 2019, 56 percent of
2 the students who applied for admission to TJ were Asian, and 73
3 percent were admitted. The plaintiff's theory is, well, if we
4 think that there are going to be fewer than 73 percent in the
5 next year's class, that's a disparate impact.

6 That is not how disparate impact analysis works.
7 The First Circuit pointed that out in the -- in the *Boston*
8 *Parents Coalition* case just last month.

9 If they were right, that that's how it works, then
10 if you adopted a completely random lottery it would -- it would
11 result in a reduction in the percentage of Asian students in
12 the class. That couldn't possibly be an equal protection
13 violation, but it would be under their theory, which it just
14 shows that their theory is wrong.

15 Now, they also advance this idea that a -- of a
16 zero-sum gain. That if you admit an additional Black or
17 Hispanic student, you're going to admit one less or one fewer
18 Asian-American student. That theory has a couple of
19 assumptions that are just wrong. The first is that there is
20 some different rule for admission for Black and Hispanic
21 students than Asian students. There's no different rule.

22 What -- their theory would be true if you had a
23 quota system. So, for example, the *Bakke* case involving the
24 Davis Medical School. There were 16 seats set aside for
25 minority applicants, and you could fairly make the argument

1 there that by guaranteeing a seat for a minority applicant
2 you're taking one away for a white applicant.

3 But here, there's no set-aside. There's no quota.
4 All students compete on the same -- on the same equal footing,
5 and it's race-blind. The top students get in regardless of
6 race. As I said at the outset, the admissions evaluators don't
7 even know the race of the students. And the class size
8 incidentally was increased from 480 students to 550 students,
9 so zero-sum theory just has no application here.

10 Last point on this before touching briefly on
11 standing.

12 The Coalition says, don't decide this on a 12(b)(6)
13 motion. Let it go into discovery. But in the words of the
14 Supreme Court in *Iqbal*, you can't unlock the doors to discovery
15 without pleading facts that plausibly allege that the defendant
16 engaged in intentional discrimination.

17 And of course, your colleague, Judge Trenga,
18 applied this principle in the *Loudoun County* case in *Boypati*.
19 He granted the motion to dismiss the challenge to Loudoun
20 County's admissions policy changes just a few months ago, and
21 of course -- and that was even assuming for argument's sake
22 that the Loudoun policy would have a disparate impact on Asian
23 students. He nonetheless found that there was no -- no
24 allegations pleaded of an intent to harm Asian-American
25 students, and again said, a desire to benefit underrepresented

Julie A. Goodwin, CSR, RPR

5/21/21

1 minorities does not equal an intent to discriminate against
2 Asian-Americans.

3 An even better example may be *Ashcroft versus Iqbal*
4 where the Supreme Court set forth the standards for a 12(b)(6)
5 motion that we now -- you know, we all apply. And you recall
6 in that case the plaintiff claimed that Attorney General
7 Ashcroft and FBI Director Mueller intended to discriminate
8 against him. He was an Arab Muslim from Pakistan, and he said,
9 they intended to discriminate against me in the post-9/11
10 policies that were adopted that resulted in his being subject
11 to harsh interrogation tactics.

12 The -- the majority in *Iqbal* said, no, no. The
13 much more plausible explanation for what happened was that
14 because the gentleman came from Pakistan and was connected
15 possibly with the 9/11 hijackers, that explains the policy much
16 more than an intent to discriminate on the basis of race or
17 ethnicity.

18 That was a much harder case than this one given
19 that there is zero evidence, zero allegations pleaded here of
20 an intent to discriminate on the basis of the students being
21 Asian-American. So, that case clearly stands for the
22 proposition that a 12(b)(6) dismissal is appropriate.

23 Now, I'll touch briefly on associational standing.

24 We've argued that the Coalition lacks associational
25 standing principally because the members don't have the ability

1 to control the decisions of the entity. And we've -- you know,
2 we'll stand on our brief on that. Think the law on that is
3 clear from the Supreme Court's decision in *Hunt* and from Judge
4 Cacheris' decision in *Heap*, but I acknowledge a dismissal for
5 lack of standing would be without prejudice. If you have any
6 doubts about what the right answer is on that, we would ask you
7 to reach the merits and to decide the case and dismiss it with
8 prejudice on a Rule 12(b)(6) motion. And in the event that
9 this case goes up on appeal, if the Court can see its way clear
10 to do it to deciding both issues, I think that would -- that
11 would be helpful to the Fourth Circuit.

12 Would you like me to yield and hear the -- so you
13 can hear the response to that in the PI motion, or should I
14 address the preliminary --

15 THE COURT: You can do that. We'll take them --

16 MR. RAPHAEL: On the PI motion? Yes.

17 So on the -- on the -- the plaintiff's -- and I
18 have only about maybe three or four minutes on this.

19 On the plaintiff's motion for a preliminary
20 injunction, they have to satisfy all four of the *Winter*
21 factors. *Blackwelder* is no longer the test in this circuit.
22 I've addressed likelihood of success on the merits. We think
23 you should dismiss the case. That they -- the case is
24 meritless.

25 With regard to irreparable harm, we don't think

1 that the Coalition has demonstrated it. Eighth graders who
2 applied to TJ are going to find out in just a few weeks if
3 they're getting in or not. The application process is
4 race-blind. There are no set-asides or reserved seats for
5 anybody, and I don't -- I don't think the plaintiffs can
6 plausibly show, and certainly not for a PI motion, how they're
7 about to be discriminated against on the ground that they are
8 Asian-American.

9 The balance of hardship clearly weighs against the
10 injunctive relief the plaintiffs are seeking. 3500 students
11 nearly, 3470, from a 130 middle schools have applied for
12 admission to TJ. 85 staff members of Fairfax County Public
13 Schools have been working virtually around the clock since
14 May 3rd processing those applications, including working on
15 weekends. They estimate a total of 3400 personnel hours to do
16 that.

17 It's -- and the decisions are going to be mailed
18 out in -- in just a few weeks in June. It's simply not
19 possible to revert to the old admission system at this point
20 for the new school year. Two of the standardized tests that
21 the plaintiffs want reinstated, the last day to take them is
22 today and they won't be offered again until after September.
23 School starts August 23rd.

24 The other test you could order the school board to
25 administer, but they couldn't do it before mid-July. And if

Julie A. Goodwin, CSR, RPR

5/21/21

1 that happened, they wouldn't be able to -- they'd have to redo
2 the admissions process because the old process allowed students
3 with GPAs as low as 3.0 to apply, so you would have to reopen
4 it. They couldn't finish it until mid-September at the
5 earliest, more likely October.

6 Again, school starts August 23rd. And the cost of
7 that would be nearly \$200,000. \$72,000 to administer the
8 Quant-Q exam, and then because the admissions evaluators would
9 have to work in the summertime when they're not on their -- an
10 annual contract, a year-long contract, the cost of that will be
11 nearly \$120,000. So, that totals \$191,409. And whether you
12 consider that is with a bond on that would be if they got an
13 injunction or as the harm to Fairfax County Public Schools, the
14 balance of hardship clearly weighs against the preliminary
15 injunction.

16 Public interest, likewise, weighs against a
17 preliminary injunction. It's simply not in the public interest
18 to disrupt the expectations of 3500 students and their families
19 who have done everything that they believed was needed to apply
20 to TJ and they're just waiting to hear the news in a couple
21 weeks and they -- who would be forced to find other -- make
22 other plans and arrangements for the upcoming school year.

23 As the First Circuit just said in the *Boston Parent*
24 *Coalition* case, the public interest is best served by
25 forbidding defendants to finalize and communicate admissions

1 decisions, not by entering plaintiff's proposed injunction and
2 throwing the school admissions process into chaos.

3 Last point on this laches. The plaintiff's delay
4 in bringing this suit and seeking a preliminary injunction is
5 really inexcusable. We didn't -- we've raised this argument in
6 our opposition to their PI motion. After that, we just
7 received the declarations they filed from Mr. Miller and
8 Ms. Nomani. And if you take a look at paragraph 5 of those
9 declarations, they say that they founded the Coalition in
10 August 2020 because they -- they believed, quote, that the new
11 policy, quote, would discriminate against Asian-American
12 applicants. They believed that in August of 2020. The
13 no-testing decision was made on October 6, 2020. The decision
14 to have the 1.5 percent plan was December 17th.

15 Why -- they -- they had one bite at the apple in
16 the *K.C.* case. Fourteen of the Coalition's members brought
17 suit there on state law grounds, and the district -- the trial
18 Court denied the preliminary injunction motion because it was
19 too late to change things, and it wasn't in the public
20 interest. And Judge Tran said they weren't likely to succeed
21 on the merits.

22 They waited another five weeks to file suit and
23 then six weeks after that to bring on the PI motion. The delay
24 is inexcusable. And as this Court said in *Perry versus Judd* in
25 an opinion that was affirmed by the Fourth Circuit, laches

1 applies with particular force in the context of preliminary
2 injunctions against governmental action, like we have here,
3 where litigants try to block imminent steps by the government.

4 And so for those reasons, we think you should
5 dismiss the complaint with prejudice and obviously deny the
6 preliminary injunction motion.

7 Thank you, Your Honor.

8 THE COURT: All right.

9 MS. WILCOX: Good morning, Your Honor. And may it
10 please the Court. My name is Erin Wilcox, and I represent the
11 plaintiff, the Coalition for TJ.

12 The Coalition for TJ alleges that defendants
13 intended to discriminate against Asian-American students when
14 they altered the admissions procedure at Thomas Jefferson High
15 School for Science and Technology. These allegations are -- of
16 discriminatory purpose are sufficient to survive the motion to
17 dismiss, and they're sufficient to show likelihood of success
18 on the merits for a preliminary injunction. So this Court,
19 with respect, we request this Court to grant a preliminary
20 injunction and to deny defendant's motion to dismiss.

21 Your Honor, on the merits, according to defendants,
22 Asian-American students are overrepresented at TJ compared to
23 the rest of the Fairfax County Public Schools. And I would
24 like to be clear that overrepresented is just a nicer way of
25 saying that there are too many Asian-American students at TJ

Julie A. Goodwin, CSR, RPR

5/21/21

1 and defendants would prefer there were fewer. The Coalition
2 contends that defendants have changed the admissions policy at
3 TJ at least in part so that incoming -- the incoming TJ
4 freshmen class will have fewer Asian-American students in it.

5 Overrepresentation is not an acceptable reason for
6 racial discrimination in K through 12 admissions. To succeed
7 an *Arlington Heights* claim, as the Coalition has alleged, the
8 Coalition must prove that the TJ admissions changes were due at
9 least in part to a racially discriminatory purpose. These
10 changes, Your Honor, were made in part because of their adverse
11 impacts on Asian-American students and not just in spite of
12 those adverse impacts. This is discriminatory intent, and that
13 is a violation of the equal protection clause.

14 Coalition has alleged numerous inference or
15 numerous evidence that would support an inference that the TJ
16 admissions process is motivated at least in part by a racially
17 discriminatory purpose. These inferences are everywhere
18 starting with an e-mail from the TJ principal, Ann Bonitatibus,
19 urging TJ parents last June to consider the racial makeup of
20 TJ, and that it was not representative of its community, and
21 then going on to provide examples of what TJ's racial makeup
22 ought to be in order to be more representative of its
23 community. That process ended with the passage of a racially
24 discriminatory process for TJ admissions in December.

25 The intent to discriminate against Asian-Americans

1 and the expected disparate impact shows up in the first draft
2 of their revised TJ admissions process that was presented last
3 September by Superintendent Brabrand. That racial
4 consideration was so significant in that draft that the
5 school -- or that Superintendent Brabrand not only applied the
6 process to the class of 2025 and showed what its racial impacts
7 would be through a pie chart, but he went back and applied that
8 to the classes of 2015 and 2019 as well. Those were outcomes
9 that they knew initially and were able to predict.

10 In all three cases, Asian-American enrollment and
11 only Asian-American enrollment decreased. Discriminatory
12 impact was not only expected, it was intended. When there are
13 a finite numbers of seats at TJ, you cannot intend to increase
14 seats for one race without expecting and knowing that that will
15 result in the decrease of another race.

16 Your Honor, while the defendant ceased modeling the
17 racial impact of its changes and later drafts, a Coalition for
18 TJ parent took on that work and crunched the numbers himself,
19 arriving at a 40 percent -- two percent decrease in
20 Asian-American students in the incoming class of 25 -- or 2025.
21 That would be this year's current 8th graders.

22 Race was mentioned more than just in passing. It
23 was more than just one consideration. It is the anchor of this
24 new admissions plan. This plan was chosen because of its
25 impact on Asian-American enrollment and not in spite of it.

Julie A. Goodwin, CSR, RPR

5/21/21

1 The historical backgrounds and other *Arlington*
2 *Heights* factors supports this. Coming back from a working
3 session in the summer, TJ's principal and a board member were
4 charged with increasing diversity at Governor's Schools. That
5 was the topic of the work session.

6 The Virginia Secretary of Education charged all
7 Governor's Schools with presenting a plan to increase their
8 diversity last year. So against this backdrop, TJ went much
9 further -- the defendants went much further than just a simple
10 form on how to increase diversity at TJ. They revamped the
11 entire process.

12 Throughout multiple meetings with the community
13 through the fall and with multiple school board meetings and
14 work sessions, balancing TJ was discussed. Racial
15 proportionality was discussed and at the tip of everyone's
16 mind.

17 And, Your Honor, irregularities in that process are
18 also a factor that supports an inference of racial intent. The
19 TJ admissions test, the objective measure of merit that had
20 been in place for several years and that students were
21 expecting to take in Oct -- or in November of last year, was
22 eliminated at a school board work session one month before the
23 test was set to be administered. As defendants point out, this
24 is not illegal under Virginia policy, but it's certainly
25 irregular and certainly a datapoint to support something

Julie A. Goodwin, CSR, RPR

5/21/21

1 unusual.

2 Your Honor, the 1.5 percent plan was ultimately
3 adopted with apparently little warning given to school board
4 members. One commented that she hadn't seen that plan until
5 4:30 that afternoon. These are unusual and irregular
6 procedures for a massive change that affected so many students
7 and so much of the community surrounding TJ.

8 And finally, Your Honor, we do have the statements
9 and comments surrounding these change at TJ that went on
10 throughout the fall and into the winter of last year. Your
11 Honor has been provided with those comments and they stand on
12 their own, but there's little doubt that when you read the
13 context, to understand the context of those statements, that
14 race was in the forefront of the decision maker's mind as they
15 were revamping the TJ process.

16 And, Your Honor, I will touch briefly on their
17 preliminary injunction as well, if that's all right.

18 THE COURT: Go ahead.

19 MS. WILCOX: Sure.

20 So, Your Honor, to truly return the Coalition to
21 its last uncontested status with defendants would require the
22 Court to reinstate the TJ admissions process prior to last
23 October. We understand that that is a difficult and a
24 complicated request. We are asking you to do it anyways
25 because of the rights that are at stake here.

1 Right now there are 8th graders whose applications
2 to TJ are pending under a process that discriminates based on
3 the race -- color of your skin. But, Your Honor, I would also
4 like to point out, in our briefing we've provided some other
5 options for the Court to consider. Notably, if the Court finds
6 that returning to the prior admissions process for this round
7 of 8th grade applicants is not possible, then eliminating the
8 1.5 percent plan would still relieve some of the injustice that
9 is being visited upon those Asian-American applicants.

10 But, Your Honor, we've also requested that -- or
11 want to draw the Court's attention really to the fact that the
12 current year 7th graders will be 8th graders starting in August
13 and will be applying to TJ this fall, so in about six months
14 they will be submitting their TJ applications. And there is
15 time, we believe, before those students engage in the TJ
16 admissions process to return to the last uncontested admissions
17 process in time for the defendants to put that in place, which
18 would happen during a school year and not during the summer.
19 And of course, that would apply to future rounds of students as
20 long as this litigation is pending.

21 And with that, Your Honor, thank you.

22 THE COURT: All right. What do you say about the
23 standing issue?

24 MS. WILCOX: Your Honor, on the standing issue, the
25 Coalition for TJ is a traditional membership organization. We

1 don't believe you even need to look to the -- whether it has
2 the traditional -- or features of a membership organization
3 because it is a membership organization.

4 As we've alleged in our complaint and buttressed by
5 the declarations of Ms. Nomani and Mr. Miller, the Coalition
6 for TJ has members. It has three tiers of members. It has a
7 leadership structure. Members communicate regularly through a
8 telegram chat app. They hold events and have all of the basic
9 traditional functions of a membership organization.

10 When members have disagreed with the mission of the
11 organization in the past, they're free to leave. So we believe
12 that there is no question that the Coalition for TJ is a
13 traditional membership organization. It has demonstrated
14 associational standing.

15 THE COURT: All right.

16 MS. WILCOX: Thank you.

17 MR. RAPHAEL: It's not enough to say we've alleged
18 intentional discrimination. You have to plead facts that
19 plausibly show intentional discrimination against
20 Asian-Americans, and I don't think the plaintiffs have really
21 responded to that problem. They -- they have conceded that an
22 effort to help underrepresented Black and Hispanic students
23 does not equal intentional discrimination against
24 Asian-Americans. And when Your Honor -- if you haven't had a
25 chance to look at it, if you look at the -- Exhibit A to

1 Ms. Smoot's declaration at ECF 22-4, it sets out what the
2 complaint says and then what the actual statements are, and the
3 actual statements control over what the complaint says.

4 Here's a good example. Paragraph 45 accuses Board
5 Member Meren of, quote, going a step further and describing the
6 majority Asian-American TJ culture as toxic for Black students.

7 What Meren actually said is, We've heard from a
8 student who I have spoken with many times now who tried to
9 bleach her skin because she didn't feel welcome as a Black
10 student in the school. It's toxic for those students who feel
11 left out.

12 So, the characterizations of these statements are
13 incorrect, and not one of these statement shows discrimination
14 against Asian-Americans or an intent to harm Asian-Americans.

15 I heard no response by Ms. Wilcox to the -- to the
16 overarching the -- the elephant in the room here, which is that
17 the policy not only prohibits the use of race; the admissions
18 evaluators don't know who -- don't know the race of the
19 applicants. The plaintiff has provided no explanation for how
20 that could possibly result in something that is racially
21 discriminatory, and they haven't explained how even the 1.5
22 percent plan could have a disparate impact on -- on Asian
23 students.

24 There is a statement Ms. Wilcox made about
25 referencing their -- their allegation, and they've got a

1 declaration from a parent whose last name is Verma that
2 predicts a 42 percent reduction in Asian-Americans. The
3 plaintiffs have no response to what we said about the problems
4 with that in our papers, which are Verma assumed that the 1.5
5 percent plan would operate as a cap. It doesn't. It's a
6 floor. And also provides no work product, that no -- doesn't
7 show his work. We have no idea how they came up with that
8 projection.

9 There has -- you heard nothing from Ms. Wilcox to
10 explain how any aspect of this policy could have a disparate
11 impact on Asian-Americans.

12 With regard to the claim of a procedural
13 irregularity, they say, well, the no-testing decision was
14 adopted at a school board work session, not a regular meeting.
15 They can see that that wasn't illegal, but they say it was
16 rushed.

17 You heard no response to what we said about that,
18 which is there's a good reason for why the board acted on
19 October 6th. The tests were to be taken in November, and it
20 takes time to order them, and students have to preregister for
21 them. So that's a much more plausible explanation for the
22 timing than some desire to discriminate against
23 Asian-Americans. It's not like another case that they -- was
24 their lead case in their briefing but you didn't hear mentioned
25 here, the *McCrary* case. That's the North Carolina voting

1 suppression case where what was procedurally irregular there
2 was the day after Shelby County came down from the Supreme
3 Court that eliminated the pre-clearance requirement, the
4 legislature rushed to pass a voter suppression bill and -- and
5 that was a procedural irregularity that actually bore upon
6 discriminatory effect or an intent. You have nothing like that
7 in this case.

8 There -- there is just no -- no allegation anywhere
9 in the complaint that shows an intent to harm Asian-Americans
10 or to prejudice against Asian-Americans.

11 And then last point on standing, you heard no
12 response to the problem that we've made, that we've pointed out
13 is the main problem, and that is the members don't have control
14 over the decisions of the entity. And that's a fundamental
15 requirement under *Hunt*, and he -- but we would ask you to
16 decide both issues and to dismiss the case with prejudice.

17 Thank you.

18 THE COURT: Well, they have allegations here that
19 there are a limited number of positions at TJ, so that this
20 desire to -- for diversity or for racial mixing goes at the
21 majority of the students who are there now, or the biggest
22 group of students who are there now, and that this has been
23 intentionally done. And while you -- you say that the policy
24 itself states that it's going to be race-neutral, everybody
25 knows that the policy is not race-neutral, and it's designed to

1 affect the racial composition of the school.

2 MR. RAPHAEL: So assuming all of that is true, under
3 *Parents Involved*, it is -- does not trigger strict scrutiny.
4 That's the holding of *Parents* -- of the concurrence in *Parents*
5 *Involved* and the four other circuits. Race consciousness does
6 not trigger strict scrutiny. What triggers strict scrutiny is
7 if you treat a particular individual differently because of
8 their race on purpose, and that's not happening here. And then
9 it's also not a limited number of --

10 THE COURT: Well, if -- if this policy -- it seems to
11 me that they're alleging that this school board has come up
12 with a policy that is directly aimed at reducing the number of
13 Asian students at TJ. And that can be done in a variety of
14 ways without just simply coming out and limiting the race of
15 the people that are there.

16 I don't know the numbers in these schools or -- but
17 I'm sure that you can change the numbers as to the -- how they
18 affect each school and each geographical area, and you could
19 probably come up with whatever you intended to do. And they
20 have some statements here that seem to indicate that that's
21 what it's about. We want more diversity, so that means we want
22 less Asians here.

23 MR. RAPHAEL: Well, but -- so we want more diversity,
24 that statement is fine. Right? That that -- they concede that
25 at page 25 of their opposition brief. Under *Parents Involved*,

1 wanting more diversity is --

2 THE COURT: Well, it's not the statement that bothers
3 me. It's what they're doing and how it affects the Asian
4 composition of the school.

5 MR. RAPHAEL: Yeah. Well, so --

6 THE COURT: I mean, you can say all sorts of good
7 things while you're doing others.

8 MR. RAPHAEL: Well, but, again, why wouldn't that
9 argument have applied in *Feeney* where the veterans preferences
10 reduced -- you know, benefitted 92 percent of veterans were
11 men, but they weren't -- it wasn't adopted to harm women.

12 You have to show an intent to harm Asian-Americans.
13 Wanting to help underrepresented minorities isn't enough, and
14 that's the holding of all the cases we've cited: *Parents*
15 *Involved*, the First Circuit, Third Circuit, Fifth Circuit,
16 Sixth Circuit, all of those cases say that. It's -- and if
17 you -- it's fine to try to plead intentional discrimination
18 against Asian-Americans, but you have to allege facts that
19 plausibly show that. And when you look at the statements that
20 they've cited in table -- in Exhibit A -- just please take a
21 look at that because the facts -- none of the statements
22 actually suggest an intent to harm Asian-Americans.

23 Last point on this. Suppose when law schools
24 didn't admit women and they were ordered to admit women under
25 the Equal Protection Clause, could a -- a male or a minority

1 male have said, this is hurting my chances of getting in now
2 because you're letting women in? Of course not. The intent is
3 not to discriminate against people who are there who are in the
4 majority. It's the -- at best an intent to help
5 underrepresented students. That does not trigger strict
6 scrutiny.

7 And that's where I think we really part company
8 with the plaintiffs. I mean, they -- they've conceded the
9 legal point. They've conceded that Justice Kennedy's
10 concurrence in *Parents Involved* is right. So in order -- so
11 nothing that says we want to help underrepresented Black and
12 Hispanic students, that is not enough to trigger strict
13 scrutiny. You have to show an intent to harm Asian-Americans.
14 And if they haven't pleaded that, they can't get in the door on
15 it. And that's really the critical, legal distinction here,
16 Your Honor.

17 THE COURT: All right.

18 Do you want to respond?

19 MS. WILCOX: I would love to. Thank you, Your Honor.
20 Just a couple of things.

21 First, I do want to make clear, though, we are not
22 conceding that *Parents Involved* that Justice Kennedy's
23 concurrence is controlling. The only controlling part of that
24 opinion is on narrow tailoring, and so we would not concede
25 that the compelling interest section of his concurrence is

1 controlling on this Court or any other.

2 Your Honor, also, I would like to point out that
3 *McCrorry* tells us that animus is not required for a finding of
4 discriminatory intent, only that the school board acted
5 intentionally to discriminate against Asian-Americans, but
6 there's no requirement that the school board had racist or any
7 kind of animus towards or was feeling racist or had any kind of
8 animus towards Asian-Americans.

9 Your Honor, regarding Mr. Verma, Himanshu Verma's
10 declaration and his findings, it's -- it doesn't matter whether
11 the 1.5 percent plan is a floor or a ceiling or a cap. What
12 matters is that it is a policy put in place that acts as a
13 proxy, a geographic proxy, essentially, for race, and it is
14 really targeting with excellent precision Asian-American
15 students who attend certain middle schools. Those middle
16 schools are getting drastically reduced numbers of seats at TJ.
17 And anyone who's left over from those middle schools who
18 doesn't fit into that 1.5 percent, which I should also point
19 out is not a pure ranking as best we can tell. It's not just
20 based on who has the highest GPA in those middle schools
21 because there are other holistic factors that the decision
22 makers will be considering. But whoever is left over after
23 that 1.5 percent, goes into this unallocated pool of seats that
24 competes against private school students, that competes against
25 home school students and everybody else who's left. So it's

1 really these students who are Asian and attend high performing
2 middle schools, these advanced academic center middle schools
3 are really doubly being targeted because of their -- their race
4 and abilities.

5 Your Honor, regarding the standing, touching on
6 that with the Coalition for TJ, there's no hard and fast
7 requirement that, for example, to be a membership association
8 you have to hold a vote, or there could be associations with
9 very strict rules and policies where members have very little
10 to no control over their leadership or the leadership's
11 decisions.

12 The Coalition for TJ tends to, as Ms. Nomani and
13 Mr. Miller testified, tends to operate by consensus. That's
14 how they work. But they still maintain a membership structure.
15 The members still converse and debate and engage with all
16 levels of leadership and membership on their decisions. And I
17 think there is simply no evidence that their leadership -- or
18 the members have no control over their leadership.

19 And, Your Honor, last point that I would like to
20 make. As far as canceling the admissions test one month before
21 it occurred, if only one month was all it took to prepare this
22 entire test and get that ready to go, then I think that might
23 lean towards considering how difficult it would be to
24 re-implement that test in future for future years of students.

25 All right. Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 MR. RAPHAEL: May I make one response?

3 THE COURT: You may use 30 seconds.

4 MR. RAPHAEL: Yes, Your Honor.

5 On *McCrorry*, *McCrorry* does not stand for the
6 proposition that Ms. Wilcox says. She says, you don't have to
7 show animus. That's not exactly right. What *McCrorry* said is,
8 we're not saying the legislature necessarily had racial hatred
9 against Black people. The legislature defended the decision by
10 saying, they -- they -- they adopted these suppression moves
11 because they wanted to discriminate against Democrats, and most
12 Black voters vote Democrat.

13 The Court said, that's -- that's still
14 discrimination on the basis of race. That's intentional
15 discrimination, and that's absent in this case. No factual
16 allegations to show it.

17 Thank you, Your Honor.

18 THE COURT: All right.

19 Well, I am -- as far as the standing issue is
20 concerned, I'm satisfied that this is a voluntary association
21 with members that set out to accomplish or be involved in some
22 common purpose and that they do have every right to bring this
23 lawsuit.

24 As to the motion to dismiss, I find that the -- the
25 plaintiff has stated a claim that can go forward. Some of your

1 arguments are well taken as far as the defendants here are
2 concerned, but I believe the plaintiff has made sufficient
3 allegations to go forward and to sort out the facts of the
4 case. So the motion to dismiss will be denied.

5 And as to injunctive relief, obviously there is --
6 some harm is going to come to the plaintiffs here as far as the
7 applications and who may or may not get into school. There is
8 also some irreparable harm that's going to come to the
9 defendants if I start enjoining a process that seems to be
10 completed and can't really be reworked.

11 I listened and thought about your alternative
12 remedies of reducing the one percent and 1.5 percent
13 requirement or getting rid of that, and I couldn't enjoin that.
14 I'm not sure what that would call for. Sometimes there are a
15 lot of unintended consequences of things that you do or try to
16 do and try not to do.

17 And again, to try to do it for the incoming
18 students for the following year, it would be the same kind of
19 thing, it seems to me, and probably not necessary. I mean,
20 this pandemic has slowed us down a little bit, but we can move
21 cases pretty quickly here and get them to trial and get them
22 resolved.

23 So, for those reasons -- and I'll just mention the
24 public interest. I believe in this case that the -- that the
25 public -- Fairfax public and Fairfax County has an interest in

Julie A. Goodwin, CSR, RPR

5/21/21

1 seeing that their schools operate in an orderly fashion and not
2 be interrupted. So I think that the balance of hardship here
3 or harm, the entry of an injunction would harm the defendants
4 more than they -- they would the plaintiffs. So I'm going to
5 deny the request for a preliminary injunction. And if you-all
6 get about working this case, well, we can move it along pretty
7 quickly I believe you'll find.

8 MR. RAPHAEL: The only remaining item, Your Honor, was
9 we also moved to dismiss the division superintendent in his
10 official capacity as duplicative. I don't think that's
11 disputed.

12 THE COURT: He will be dismissed in that capacity.

13 MR. RAPHAEL: Thank you, Your Honor.

14 THE COURT: All right. Thank you-all.

15 All right. We'll adjourn until Monday morning at
16 10:00 o'clock.

17 THE LAW CLERK: All rise.

18 (PROCEEDINGS CONCLUDED AT 11:01 A.M.)

19 -oOo-

20

21

22

23

24

25

APPENDIX D

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE PLAINTIFF:

PACIFIC LEGAL FOUNDATION
By: MR. CHRISTOPHER M. KIESER
MS. ERIN E. WILCOX
930 G Street
Sacramento, California 95814
916.419.7111
ckieser@pacificlegal.org
ewilcox@pacificlegal.org

PACIFIC LEGAL FOUNDATION
By: MS. ALISON E. SOMIN
3100 Clarendon Blvd.
Suite 610
Arlington, Virginia 22201
202.557.0202
asomin@pacificlegal.org

PACIFIC LEGAL FOUNDATION
By: MR. GLENN E. ROPER
1745 Shea Center Drive
Suite 400
Highlands Ranch, Colorado 80129
720.344.4881
geroper@pacificlegal.org

FOR THE DEFENDANTS:

HUNTON ANDREWS KURTH LLP
By: MS. SONA REWARI
2200 Pennsylvania Avenue, NW
Washington, DC 20037
202.955.1974
srewari@huntonak.com

HUNTON ANDREWS KURTH LLP
By: MR. DANIEL R. STEFANY
951 East Byrd Street
Riverfront Plaza - East Tower
Richmond, Virginia 23219
804.788.8200
dstefany@hunton.com

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALSO PRESENT:
MR. JEREMY SHUGHART, Director of Admissions
Fairfax County School Board
Thomas Jefferson High School for Science and Technology

OFFICIAL U.S. COURT REPORTER:
MS. JULIE A. GOODWIN, CSR, RPR
United States District Court
401 Courthouse Square
Eighth Floor
Alexandria, Virginia 22314
512.689.7587

1 (SEPTEMBER 17, 2021, 10:03 A.M., OPEN COURT.)

2 THE COURTROOM DEPUTY: Civil Action Number 21-CV-296,
3 *Coalition for TJ versus Fairfax County School Board, et al.*

4 Counsel, please note your appearances for the
5 record.

6 MR. KIESER: Christopher Kieser for plaintiffs --
7 plaintiff.

8 MS. REWARI: Good morning, Your Honor. Sona Rewari
9 from Hunton Andrews Kurth for the defendant, and with me is
10 Daniel Stefany, also from my firm, and Mr. Jeremy Shughart from
11 the Fairfax County Public Schools. Mr. Shughart has provided a
12 declaration in this case, and he is here to address any
13 questions the Court may have.

14 THE COURT: All right.

15 MS. REWARI: Thank you.

16 MR. KIESER: And with me is Erin Wilcox, Alison Somin,
17 and Glenn Roper, also for plaintiff.

18 THE COURT: All right.

19 This comes on on your motion.

20 MR. KIESER: Yes. Good morning, Your Honor, and I'll
21 be brief. Chris Kieser for the Coalition for TJ.

22 When we were here in May with much the same body of
23 evidence, this Court recognized the school board's overhaul of
24 the admissions criteria for Thomas Jefferson High School was
25 designed to effect the racial composition of the school. Since

1 that hearing, and the denial of the first preliminary junction
2 motion, we learned an important new data point. The first year
3 under the challenge plan, the Asian-American proportion of the
4 admitted class at TJ fell by more than a quarter.
5 Asian-Americans received almost 60 fewer seats at TJ, even
6 though FCPS doled out 60 additional offers.

7 The new data confirmed that not only was the plan
8 designed to effect the racial composition of the school, it
9 succeeded in doing so to the great detriment of atriium --
10 Asian-American students. That purpose and effect means the
11 Coalition is likely to succeed on the merits of its equal
12 protection claim.

13 The Court declined to issue a preliminary
14 injunction last time, as far as we understand, because it -- it
15 was confident that -- Your Honor was confident we could reach a
16 final decision in this case before an injunction would be
17 necessary for the class of 2026. But with the admissions
18 process scheduled to go into effect just -- begin in just over
19 a month, on October 25th, a preliminary injunction is necessary
20 now to preserve the status quo, the last uncontested status
21 between the parties. It's far from guaranteed that a final
22 decision on the merits would come early enough to provide
23 effective relief for RA and the class of 2026, as the Coalition
24 recognizes that the board's interest in not disrupting the
25 established admissions process increase once the process

1 begins.

2 Preliminary relief now would avoid that problem.

3 And the --

4 THE COURT: Now, I understand your concern, but
5 this -- the final pretrial conference is set for the end of
6 October. I can give you a January trial date, so we can have
7 this decided in January.

8 MR. KIESER: Your Honor, that -- that would be, of
9 course -- I mean, we would not object to that, of course, but I
10 think even then at that point by January the board's interest
11 in -- in not overhauling the -- the entire admissions process
12 that started in October would perhaps make it difficult for the
13 Court to issue an order, a prohibitory injunction enjoining the
14 board's actions from last fall and essentially requiring the
15 board to go back to the 2024 -- the class of 2024 admissions
16 process when the current process had already started. And
17 the -- and I would note that the current process has different
18 eligibility requirements, so there are some people who would be
19 eligible to apply under the old process who are not eligible.

20 THE COURT: But if some decision is made in January,
21 that gives plenty of time for the process to be straightened
22 out, doesn't it?

23 MR. KIESER: I mean, I -- I would recog -- I would
24 just note that as time goes on it makes -- it's very -- much
25 more difficult --

1 THE COURT: Well, I'm sure they're going to argue
2 that, but I -- it seems to me in the posture we're in that kind
3 of falls on deaf ears. I -- this is going to come up very
4 quickly. And if it's determined that this process has been
5 discriminatory, it seems to me there's plenty of time to change
6 it.

7 MR. KIESER: Well, Your Honor, we would submit that
8 the best time to change the process, at least for the class of
9 2026, would be before the process begins, and that is within
10 the next five weeks. If we were to do it in January, the
11 logistical issues that the board mentions in their brief would
12 only increase, and the likelihood that the Court could order
13 effective relief by the end of January would be much less.
14 So I --

15 THE COURT: But the board's on notice. They
16 understand that we're trying this case, and we don't know what
17 the outcome is going to be yet, so they've got to be prepared
18 for that, don't they?

19 MR. KIESER: I'm -- that's certainly true, Your Honor,
20 but that's -- the same situation has been -- the same situation
21 has existed since Your Honor denied the motion to dismiss in
22 May, and yet even with this preliminary injunction motion, they
23 make the same arguments about overhauling the admissions
24 process at a late date. So I think those arguments continue
25 even though I think the board's been on notice --

1 THE COURT: Well, those arguments are always going to
2 be there, but it seems like that I'm in a -- in the same
3 position that I am -- that I was before. I mean, what kind of
4 disruption is it going to cause for me to give a preliminary
5 injunction now? I've been in the same position I was before,
6 it seems to me.

7 MR. KIESER: Well, I would submit, Your Honor, that a
8 preliminary injunction now for the class of the 2026 process
9 that is yet to begin is much less disruptive than say had you
10 ordered a preliminary injunction in May for the old admissions
11 process -- for the admissions process from last year, which was
12 almost complete.

13 At this point, you could issue an order and --
14 and -- and there would be ample time to prepare to change the
15 process for anything you might order. Whereas if you do it in
16 January, that might not be the case. And if -- I think if the
17 Court -- as you recognized in May, that disruption increases as
18 time goes on.

19 So, we would submit that a preliminary injunction
20 now would minimize the disruption and allow the Court to order
21 a prohibitory injunction that goes into effect five weeks
22 before the -- the admissions process begins. And that's --
23 that's our position on that. I mean, I understand if that's --

24 THE COURT: I understand your position.

25 MR. KIESER: And I guess, you know, as far as the --

1 the remaining factors, I mean, we think that -- we demonstrated
2 that at least one Coalition member will suffer irreparable harm
3 because if the Coalition is likely to succeed on the merits,
4 then the -- the Coalition member's child will have to compete
5 on an unequal playing field, and that isn't -- is the equal
6 protection injury under *Parents Involved* and *Northeastern*
7 *Florida*, so that's sufficient to satisfy the irreparable harm
8 argument.

9 And then as far as the public interest and the
10 balance of the equities, this case is against the government
11 defendants, so those -- those -- and it's a constitutional
12 case, so those factors merge. And generally speaking, the
13 Fourth Circuit in *Legend Night Club* and in *Newsome* has waived
14 the public interest in enforcing constitutional rights
15 significantly more than government arguments to -- that they
16 will be subject to hardship due to an injunction.

17 So we would submit that a preliminary injunction
18 is -- all four *Winter* factors are satisfied and the preliminary
19 injunction is -- is appropriate.

20 THE COURT: All right.

21 MR. KIESER: Thank you.

22 MS. REWARI: Good morning.

23 Your Honor, as you've recognized, you expressly
24 ruled on this issue back in May, and there are really no
25 grounds for reconsideration that are presented in the papers.

1 There's a suggestion that the Court miscalculated the timetable
2 for this case. And when we were here in May, there wasn't even
3 a scheduling order, so no one could have expected that this
4 case would be decided by October.

5 And the schedule even back in May was known because
6 Mr. Shughart supplied a similar declaration in May that
7 explained that historically the old process would start in
8 early September in order to be able to be completed in six
9 months. And of course, then Your Honor issued a scheduling
10 order in early June, and it showed the discovery cutoff was
11 going to be October 15th. The parties submitted a joint
12 discovery plan in which they sequenced discovery to be
13 completed by October 15th. There was no request for expedited
14 discovery or, you know, request to change the schedule at that
15 time.

16 And we are now a month from the close of discovery,
17 and we don't have any new evidence here that would warrant
18 reconsideration other than the outcome of the last admission
19 cycle, which I'll address because it doesn't show a
20 disproportionate impact. But that -- that is the only ground
21 that they have stated.

22 So, there's no way that anybody could have thought
23 this was going to be decided by October, even when we were here
24 in May. And the -- the rationale that we have the admissions
25 results of the current process also doesn't support a

1 consideration. The last time we were here the Coalition argued
2 for an injunction based on its own gloomy prediction that
3 Asian-American students would comprise only 31 percent of the
4 class of 2025, and that prediction came nowhere close to
5 reality.

6 The results are in, and the proportion of
7 Asian-American students in the class of 2025 is almost double
8 that prediction. It was 54 percent, even though their
9 proportion of the applicant pool was lower than it was the year
10 before. They're still the majority of students, and
11 Asian-American students have a larger share of the admitted
12 class than their share of the applicant pool. So they have an
13 even weaker argument now than they did back in May as to why
14 the preliminary injunction would be warranted.

15 And last time the Coalition offered two
16 declarations from two parents: One who had a child who was
17 applying as an 8th grader, and one who had a child that was a
18 7th grader. And they have the same two parents' declarations
19 again.

20 Now, tellingly, the parent who had the 8th grader
21 is not saying that 8th grader didn't get in. That parent is
22 now saying, I'm worried about my 7th grader a year from now not
23 getting in. That child is not even eligible to apply for this
24 and so wouldn't be affected by an injunction.

25 The second parent, the one who had a 7th grader

1 last year, is now saying, well, my 8th grader is going to
2 apply. But -- and he talks about the high qualifications of
3 his 8th grader, but there's no showing that that child is
4 unlikely to get in absent an injunction. In fact, the school
5 attended by that child had the highest number of students
6 admitted in -- in the class of 2025, and so there is no changed
7 circumstance that would warrant reconsideration here.

8 And, you know, we are talking as if it would be
9 possible to completely revert to the 2019 process now. And as
10 we pointed in our papers, and there's no dispute here, that the
11 old process was based on three standardized tests, two of which
12 are no longer available from the vendor. No one can get them.
13 They're not being offered for 8th graders at all this year.

14 And so if the Court were to order a preliminary
15 injunction, someone would have to figure out what is the
16 process going to look like because we cannot use the 2019
17 process. Are there going to be standardized tests? What tests
18 will those be? What scores will matter? How will we use those
19 scores? All of that is -- are matters of educational policy.
20 There's no expert to advise the Court on how to pick those. Is
21 the board on an injunction supposed to now make those decisions
22 in spring, this news on thousands upon thousands of
23 unsuspecting 8th graders who are expecting for the Court -- for
24 the board to follow the old process?

25 Mr. Shughart's declaration explains that last time

1 the School Board went through this three years ago when they
2 had to switch tests because the tests they were using was
3 discontinued by the vendor. The process took over a year.
4 There was significant, significant community engagement: Lots
5 of committees, lots of groups, lots of parent input. Lots of
6 school administrator, school teacher input.

7 And so the idea that we could have an injunction
8 today that would say, go pick some new tests, spring it on
9 students who haven't been preparing, who had no idea that a
10 standardized test could be coming, who are looking at the
11 regulation that's been on the books to the public for months
12 now saying that this is going to be the process, would be in a
13 public interest, I think strains credulity, Your Honor, because
14 this is not -- you know, they've said the balance of hardships
15 and public interests merge when the government is a defendant,
16 but in -- in many of those cases in terms of balancing the
17 hardships, you're looking at is this an action that affects one
18 person, the plaintiff, or the plaintiff's group, or are you
19 enjoining something that could have consequences for students
20 or for, you know, citizens beyond the people who are suing, and
21 this would have significant adverse consequences for the
22 children in Northern Virginia.

23 Fairfax County Public Schools is the defendant in
24 this case, but the school that we're talking about is a school
25 that is attended by students from five localities. The

Julie A. Goodwin, CSR, RPR

9/17/21

1 counties of Loudoun, Arlington, Prince William, the City of
2 Falls Church all send their students, and then we also have
3 private schools.

4 Mr. Shughart 's declaration noted that last year
5 we had 130 students from 130 schools apply to TJ admission, and
6 so this impact would impact all of those students who are
7 relying on the process that -- that is in the regulation.

8 And, you know, I understand that, as Your Honor
9 pointed out, if the Court were to find discrimination and enter
10 an injunction, all of these questions would have to be sorted
11 out. But what is the sense in deciding them now and then
12 re-deciding them if there's a different conclusion a few months
13 from now?

14 You know, plaintiffs have read a lot into Your
15 Honor's comments from the bench. Last time the same sentence
16 from your -- from the transcript is quoted five times in two
17 briefs. And, you know, I've looked carefully at what Your
18 Honor said, and it's clear to me from the transcript that you
19 were addressing the allegations of -- of what is alleged in the
20 case and not making a pronouncement from the bench on a motion
21 to dismiss that -- that this is a --

22 THE COURT: Well, you're correct about that. I've
23 made no findings of fact in this case at all, other than the
24 findings that I made in regard to the temporary restraining
25 order that I looked at initially.

1 MS. REWARI: Yes, and that's how I read your remarks,
2 and that's how we received your remarks. And so we expect that
3 there will be a full decision on the merits in this case, and
4 if the -- Your Honor is able to take us in January, we're --
5 we're -- you know, we're happy to have it tried in January, but
6 creating two rounds of uncertainty for students thousands upon
7 thousands of students who are impacted by this.

8 And -- and I would also note that this is a process
9 that has lots of components. Right? There's elimination of
10 the hundred dollar application fee. There's no -- there's
11 nothing about that that is racially discriminatory on its face.
12 There's no evidence that's -- that was intended to advantage or
13 disadvantage any group.

14 You have to be very cynical to say that that is a
15 proxy for race. There's no evidence that that's a proxy for
16 race. So you could have a process that -- that -- you know,
17 even if the Court were to rule adversely against the School
18 Board in January that says, you can keep that elimination of
19 the fee, there's nothing wrong with that, and that has a huge
20 impact. This year's class has 25 percent of economically
21 disadvantage students, a number that's never been seen at TJ
22 which has been historically very, very low, and nothing like
23 the student population that you see in Northern Virginia.

24 So this has had a huge impact on the students who
25 are eligible. And for the Court to now enjoin it would --

1 would have terrible consequences.

2 There's -- you know, there's another part of the
3 plan. For example, there's also the lack of -- you know, the
4 absence of teacher recommendations. Again, is that a proxy for
5 race? There's no argument how that's a proxy for race.

6 There's a one -- there's -- the board chose a plan
7 that is guaranteed to provide seats for eligible candidates
8 from each middle school in Fairfax County. For the first time
9 in at least 15 years, the TJ class of 2025 has students from
10 every single middle -- public middle school in Fairfax County,
11 26 of them.

12 Again, there's no argument, there's no evidence
13 that that is a proxy for race. But in Mr. Dec --
14 Mr. Shughart's declaration shows that historically the lion's
15 share, more than 87 percent of the seats went to 8 out of 26
16 middle schools. And while the plaintiffs have argued -- or
17 plaintiff has argued, well, Asian-American students are
18 clustered in just a few -- a few schools, we've provided
19 evidence in our papers that's not true. The number of the
20 schools they pick look a lot like other schools in terms of the
21 number of Asian-American students, the proportion of
22 Asian-American students in the population that have
23 historically sent few, if any, students to TJ.

24 And, Your Honor, you received a brief from a number
25 of amici that echo this point, and, in fact, show that there

1 are large segments of the Asian-American, to the extent you're
2 going to call Asian-Americans a single community, there are
3 segments of that community or sub-groups within the
4 Asian-American community that have benefitted from these
5 changes, and they would support these changes. So the idea
6 that the -- the plaintiff here represents the interest of
7 Asian-American students is one that we would not agree with.

8 There's -- there's also -- you know, we disagree on
9 the likelihood of success on the merits. And I'm happy to
10 address it if the Court wants to, but, you know, failure to
11 meet any of the elements under *Winter* requires denial of the
12 injunction. And I think the balance of hardships and the
13 public interest here strongly disfavor an injunction.

14 THE COURT: All right.

15 MS. REWARI: Thank you.

16 THE COURT: Anything you want to respond to?

17 MR. KIESER: Your Honor, I would make it just a couple
18 of points because I think on -- oh, sorry with the mask.

19 I think on the balance of equities and -- and the
20 public interest, we've -- we've sort of covered those points.
21 And -- and our position is still that, you know, in January
22 there may not be any way to -- to award effective relief for
23 the class of 2026 at TJ because of the fact that the process
24 will have gone all the way through at that point, or almost all
25 the way through.

1 And, you know, my friend on the other side talks
2 about, you know, the fact that they would have to find these
3 two new tests, but that -- that's going to be an issue in
4 January too, so -- and maybe even more difficult to do that in
5 January when you need to tell people by June whether they got
6 into TJ, so an injunction now would at least make the process a
7 little more smooth. And at least -- I mean, as we've talked
8 about, they've been on notice since May, so it's been what now,
9 six months that there's been a possibility that this might be
10 enjoined at some point? An injunction now would at least, you
11 know, give some clarity for the students who are applying
12 before the application process begins.

13 I just want to also address the disparate impact
14 point because I think under their -- their theory that the drop
15 from 73 percent to 54 percent isn't a disparate impact. It is
16 essentially saying that you can benchmark a racial -- racially
17 balanced class and say, well, as long as they're still
18 performing above that, that racial balance, whether it be the
19 proportion of students in Fairfax County Public Schools as a
20 whole or the applicant pool, then -- then the process or the
21 board's actions were not discriminatory. But as the --
22 especially as the order that we submitted as Exhibit 2 to the
23 reply brief, the *AFEF versus Montgomery County Board of*
24 *Education* explains, that's not the proper standard for
25 disparate impact under a -- in an *Arlington Heights* case. It's

Julie A. Goodwin, CSR, RPR

9/17/21

1 the effect of the actual decision.

2 So, here we have, you know, six years in a row
3 where there's only one year where the Asian-American proportion
4 of students at TJ was below 70 percent, and now it's 54
5 percent. That's a significant drop regardless of previous
6 projections. I mean, I think everyone would acknowledge that
7 it's very -- it was very difficult to project the outcome of
8 what would happen here because of the holistic factors that go
9 into evaluation, and so the 54 percent, which is in line with
10 the superintendent's prediction for his Merit Lottery Proposal
11 still represents a more than a quarter decline in the --
12 compared to the previous two years, class of 2024 and the class
13 of 2023. And any -- and their -- under their theory,
14 essentially as long as Asian-Americans were doing better than
15 the -- than the racial balance of the applicant pool, then
16 there could be no discriminatory intent. And I don't think
17 that that's the proper reading of *Arlington Heights*, *Feeney*,
18 and *McCrary*.

19 But if this comes down to the -- the balance of the
20 equities, I think our position is essentially the same as
21 before that, that effective relief has to happen now, and in
22 January there's no guarantee that there could be effective
23 relief for this -- this class. I mean, the Court could order
24 relief for the -- for the subsequent classes at that point
25 and -- and we would certainly hope that the Court could order

1 relief for 2026 of that -- the class of 2026 at that time, but
2 we would just submit that it would be more difficult to do so.
3 And so then an injunction now would solve that problem.

4 Thank you, Your Honor.

5 THE COURT: All right. I understand your position,
6 but I believe I'm in the same position that I am before. I
7 believe that the -- my entering of a preliminary injunction at
8 this time may cause more harm than good and might cause more
9 harm than leaving things alone. It certainly looks like it
10 would to me.

11 I mean, we can try this case in January and get a
12 decision. It seems to me that that's plenty of time to get
13 corrected whatever needs to be corrected, if that's warranted
14 from the findings after the trial of the case.

15 So your motion for a preliminary injunction will be
16 denied.

17 All right.

18 MR. KIESER: Your Honor, we did want to talk quickly
19 about the pretrial, about the date for the pretrial conference.

20 THE COURT: Go ahead.

21 MR. KIESER: We have a conflict for the current date,
22 and I think we've -- we talked about October 28th as a possible
23 change for that. Would that be possible to move it back to
24 October 28th?

25 THE COURT: Well, I'll do it on a Friday for you.

1 What's the date of the conflict?

2 MR. KIESER: It's currently the 21st. We can move it
3 to the -- yeah, we can move it to the --

4 MS. REWARI: Your Honor, excuse me. I'm sorry. I'm
5 scheduled to attend the Boyd-Graves Conference in Virginia on
6 the 29th, so I wouldn't be able to do the 29th.

7 THE COURT: Well, let me look here just a minute.
8 Maybe we can -- does that include the 28th too?

9 MS. REWARI: No, it does not, Your Honor.

10 THE COURT: What about October -- are you available on
11 the 22nd, Friday the 22nd?

12 MR. KIESER: No, ours is the 20th through the 22nd.
13 We're -- we have a firm-wide retreat that we all have to be
14 there.

15 THE COURT: Oh.

16 MR. KIESER: So it's the 20th through the 22nd.

17 THE COURT: Well, I can do it for you -- well, you
18 can't do it on the 28th though. You want to do it the 25th or
19 the 26th?

20 MR. KIESER: We can do the 28th.

21 MS. REWARI: Yes, Your Honor, I can do the 28th as
22 well. I just can't do the 29th.

23 THE COURT: Oh, you can do the 28th too. Okay.

24 MS. REWARI: Yes, yes, I can do the 28th.

25 THE COURT: All right. We'll move it to the 28th --

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

COALITION FOR TJ,

Plaintiff,

v.

FAIRFAX COUNTY SCHOOL BOARD,

Defendant.

No. 1:21-cv-00296-CMH-JFA

PARTIES' STIPULATION OF UNCONTESTED FACTS

The parties, Plaintiff Coalition for TJ and Defendant Fairfax County School Board, hereby stipulate the following facts to be true:

1. Thomas Jefferson High School for Science and Technology ("TJ") is a high school located in Alexandria, Virginia, that has been designated an academic-year Governor's School.
2. TJ is part of Fairfax County Public Schools ("FCPS"), a public school division in Fairfax County, Virginia.
3. TJ's mission is to provide students with a challenging learning environment focused on math, science, and technology, to inspire joy at the prospect of discovery, and to foster a culture of innovation based on ethical behavior and the shared interests of humanity.
4. FCPS is operated by the Fairfax County School Board, a public body comprised of twelve elected members, nine of whom represent each of Fairfax County's nine magisterial districts and three of whom represent the County at large. During the relevant time, Fairfax County School Board members were: Ricardy Anderson, Karen Keys-Gamarra, Karen Corbett Sanders, Megan McLaughlin, Melanie K. Meren, Karl Frisch, Elaine Tholen, Stella

Pekarsky, Tamara Derenak Kaufax, Abrar Omeish, Rachna Sizemore Heizer, and Laura Jane Cohen.

5. Students residing in five participating school divisions are eligible to apply to TJ: Fairfax County, Loudoun County, Prince William County, Arlington County, and Falls Church City.
6. Students must apply and be accepted in order to attend TJ.
7. The TJ admissions process is regularly reviewed for possible improvements. The components of the admissions process have been adjusted many times over the years.
8. FCPS periodically publishes a regulation, Regulation 3355, that describes the procedures for student selection and admission to TJ. Regulation 3355.13, issued in July 2018, accurately described the process that was used to select students entering TJ in the 2018-19 and 2019-20 school years.
9. Applicants seeking to enter TJ in the ninth grade in Fall 2020 were required to reside in one of the five participating school divisions, be enrolled in 8th grade, have a minimum core 3.0 grade point average (GPA), have completed or be enrolled in Algebra I, and pay a \$100 application fee (applicants with financial need could request a waiver of the application fee). Applicants who met those criteria were administered three standardized tests—the Quant-Q, the ACT Inspire Reading, and the ACT Inspire Science. Applicants who achieved certain minimum percentile rankings on the standardized tests and continued to maintain a minimum 3.0 GPA advanced to the “semi-finalist” round, in which they were administered an exam that included three writing prompts and a problem-solving essay. Semifinalists were also required to submit two teacher recommendations. Students were

selected for admission from the semifinalist pool based on a holistic review based on the selection criteria identified in Regulation 3355.13.

10. Before changes to the TJ admission policy were adopted by the Fairfax County School Board in October and December 2020, the TJ admissions process took five to six months to complete.
11. At a work session on October 6, 2020, the Fairfax County School Board voted unanimously to eliminate the standardized test and application fee components of the TJ admissions process and to increase the class size from approximately 480 to 550 students.
12. On December 17, 2020, the Fairfax County School Board voted to institute a new TJ admissions process. The new process was adopted by a 10-1-1 vote of the School Board. The new admissions process was not one of the two options proposed by the Superintendent.
13. Under the new TJ admissions process, applicants seeking to enter TJ in the 9th grade must reside in one of the five participating jurisdictions, be enrolled in 8th grade, have a minimum unweighted 3.5 GPA, be enrolled in a full-year honors Algebra I course or higher, an honors science course, and at least one other honors course or the Young Scholars program. Eligible students are administered two qualitative assessments. Evaluators are not told the gender, race, or ethnicity of applicants. Consideration is given to whether the applicant qualifies for Free or Reduced-price Meals, is an English Language Learner, has an Individualized Education Plan, or attends a historically underrepresented school.
14. Under the new TJ admissions process, each public middle school is guaranteed seats equivalent to 1.5% of its 8th-grade class size, with seats offered in the first instance to the

top applicants from that school. At least 100 other seats are not allocated to specific middle schools and may be filled by eligible applicants from all participating public middle schools.

15. FCPS Regulation 3355.14 accurately reflects the changes to the TJ admissions process that were implemented during the 2020-21 school year.
16. Regulation 3355.14 provides that the “admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).”
17. The Class of 2025 is the first freshman class admitted to TJ under the admissions process chosen by the Fairfax County School Board on December 17, 2020.
18. On June 23, 2021, FCPS publicly released information regarding the admissions offers for the TJ Class of 2025. For the first time in at least fifteen years, students from all 26 public middle schools in Fairfax County received admissions offers.
19. In 2021, 3,470 students applied for the TJ Class of 2025. Of those applicants, 3,167 students were found to be eligible under the application criteria, 133 of whom subsequently withdrew from the application process before offers were made. In the initial round, FCPS offered admission to 550 students and placed another 1,229 in the wait pool.
20. The racial demographics of those students who applied, who met the eligibility criteria, and who received offers on June 23, 2021, for the TJ Class of 2025 is as follows:

Race/Ethnicity	# of Apps.	% of Apps.	# of Elig. Apps.	% of Elig. Apps.	# of Offers	% of Offers
Asian	1,686	48.59%	1,535	50.59%	299	54.36%
Black (not Hispanic orig)	347	10.00%	272	8.97%	39	7.09%
Hispanic	380	10.95%	295	9.72%	62	11.27%
White (not Hispanic orig)	828	23.86%	726	23.93%	123	22.36%
Multiracial/Other	229	6.60%	206	6.79%	27	4.91%
Total	3,470		3,034		550	

21. On October 25, 2021, FCPS began accepting applications for the TJ Class of 2026.
22. In November 2021, FCPS published Regulation 3355.15 which accurately describes the admission process that it is following for admissions of students for the TJ Class of 2026.
23. The leadership of the Coalition for TJ includes parents and other individuals who identify as Asian-American, White, and Black.

Dated: December 3, 2021.

ERIN E. WILCOX*,
 Cal. Bar No. 337427
 CHRISTOPHER M. KIESER*,
 Cal. Bar No. 298486
 Pacific Legal Foundation
 555 Capitol Mall, Suite 1290
 Sacramento, California 95814
 Telephone: (916) 419-7111
 Facsimile: (916) 419-7747
 EWilcox@pacificlegal.org
 CKieser@pacificlegal.org

**Pro Hac Vice*

Respectfully submitted,

s/ Alison E. Somin
 ALISON E. SOMIN, Va. Bar No. 79027
 Pacific Legal Foundation
 3100 Clarendon Blvd., Suite 610
 Arlington, Virginia 22201
 Telephone: (202) 557-0202
 Facsimile: (916) 419-7747
 ASomin@pacificlegal.org

GLENN E. ROPER*,
 Colo. Bar No. 38723
 Pacific Legal Foundation
 1745 Shea Center Dr., Suite 400
 Highlands Ranch, Colorado 80129
 Telephone: (916) 503-9045
 Facsimile: (916) 419-7747
 GERoper@pacificlegal.org

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Counsel for Defendant are registered with the Court's CM/ECF system and will receive a notification of such filing via the Court's electronic filing system.

s/ Alison E. Somin
ALISON E. SOMIN, Va. Bar No. 79027
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 610
Arlington, Virginia 22201
Telephone: (202) 557-0202
Facsimile: (916) 419-7747
ASomin@pacificlegal.org
Counsel for Plaintiff

APPENDIX F

Exhibit 7

TJ ADMISSIONS MERIT LOTTERY
PROPOSAL
SCHOOL BOARD WORK SESSION
9/15/2020



Agenda



Background

- Current Application Process
- Previous Changes
- Results

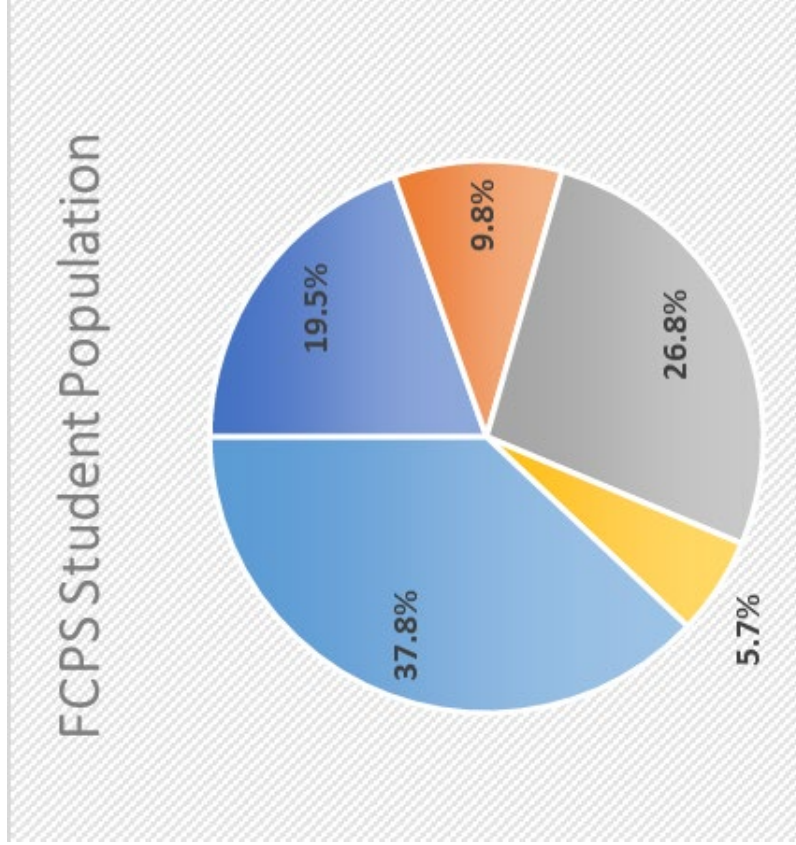
Merit Lottery Proposal

- Overview
- Model

Leading with Equity at the Center

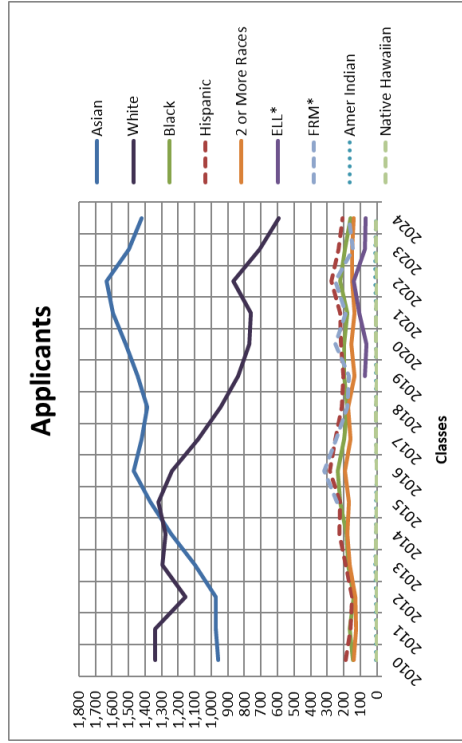
- TJHSST should reflect the diversity of FCPS, the community and Northern Virginia
- The talent at TJHSST does not reflect the talent in FCPS
- We recognize a comprehensive approach is needed to enhance diversity and inclusion at TJHSST
- The goal aligns with the One Fairfax initiative
- Three-pronged approach
 - **Admissions – Merit Lottery**
 - Enhanced pipeline
 - Enhanced wrap-around support for TJHSST students

FCPS Student Population (Fall 2019)

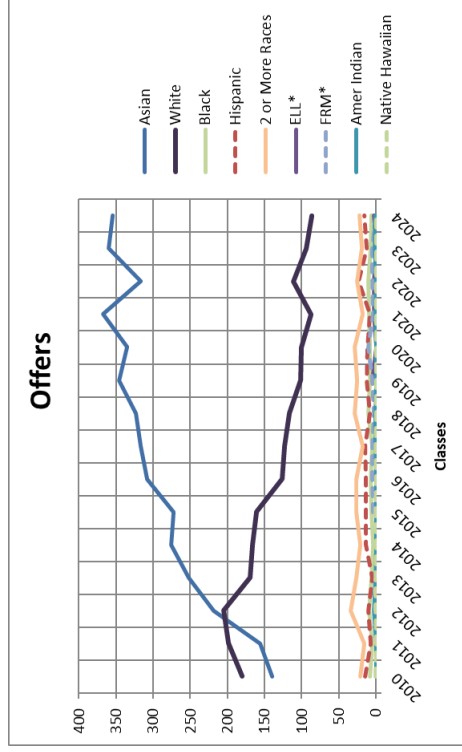


Economically Disadvantaged: 29.3%
English Language Learners: 27.4%

Historical Admissions Data



*FCPS students only



*FCPS students only

History of Admissions Changes

2011 (Class of 2016) – Outreach Specialist Position Created

2013 (Class of 2018) – Holistic Review

- Student Information Sheet proctored

2014 (Class of 2019) – Sliding Scale Adjusted

- Minimum semifinalist requirements lowered

2015 (Class of 2020) – Problem Solving Essay Added

2016 (Class of 2021) – Outreach Specialist Reduced to 0.5 Position

2017 (Class of 2022) – New Tests Introduced

- Quant-Q and ACT Aspire Reading & Science

These changes have not made a significant impact on the application pool or admitted student demographics

Current Admissions Process

Application

- Application Fee (\$100)
- Core GPA 3.0
- Algebra I
- 8th grade/residency

Semifinalist Considerations

- Percentile Ranks
- Quant-Q
- ACT Aspire Reading
- ACT Aspire Science
- Maintain Core GPA 3.0

Holistic Review

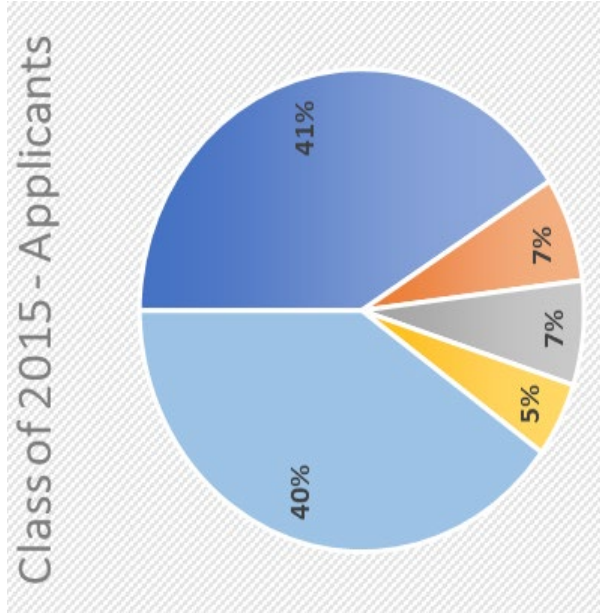
- Teacher Recommendations
- Student Information Sheet
- Problem Solving Essay
- Percentile Ranks
- Math & Science GPA

Offers

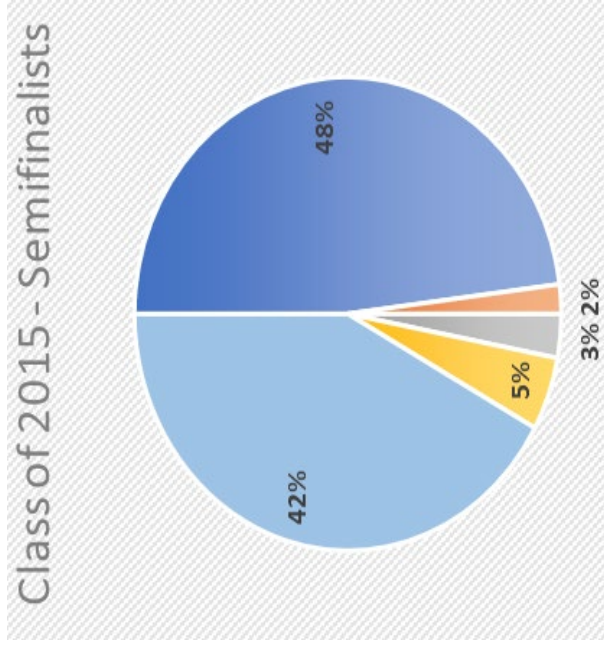
- Top 480-500 students receive offers

Impact of Testing – Class of 2015

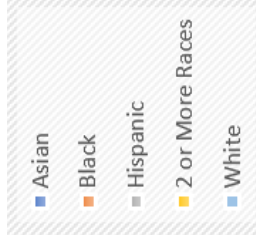
- Admissions Testing has been a barrier for historically underrepresented students to move to the semifinalist stage.



English Language Learners – 8.2%
Economically Disadvantaged – 7.3%

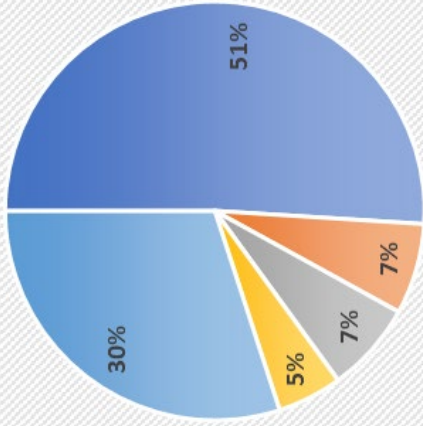


English Language Learners – 4.1%
Economically Disadvantaged – 1.6%



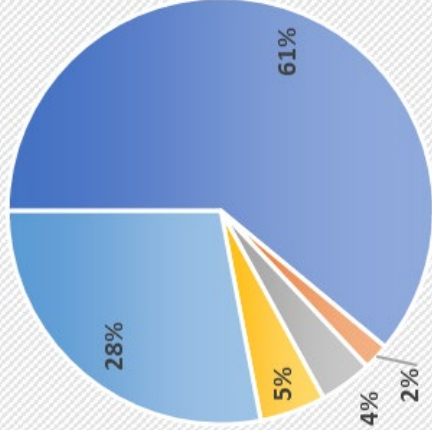
- Admissions Testing has been a barrier for historically underrepresented students to move to the semifinalist stage.

Class of 2019 - Applicants

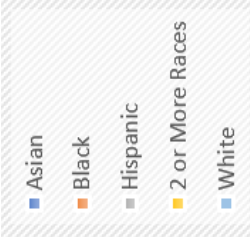


English Language Learners – 2.6%
 Economically Disadvantaged – 6.0%

Class of 2019 - Semifinalists

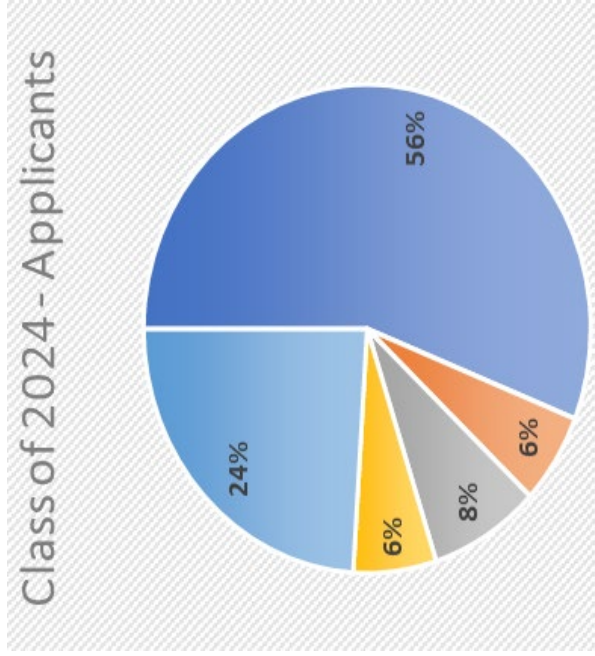


English Language Learners – 1.1%
 Economically Disadvantaged – 2.1%

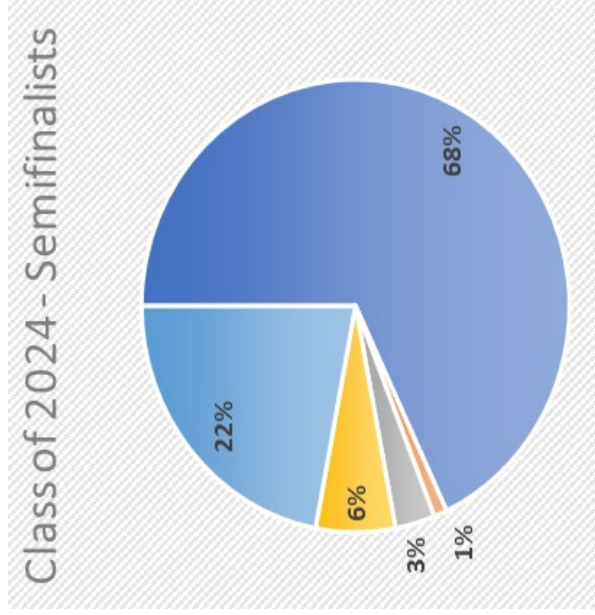


Impact of Testing – Class of 2024

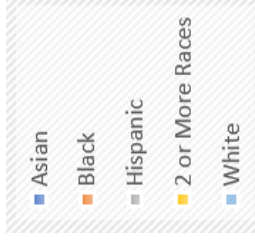
- Admissions Testing has been a barrier for historically underrepresented students to move to the semifinalist stage.



English Language Learners – 2.7%
Economically Disadvantaged – 7.2%

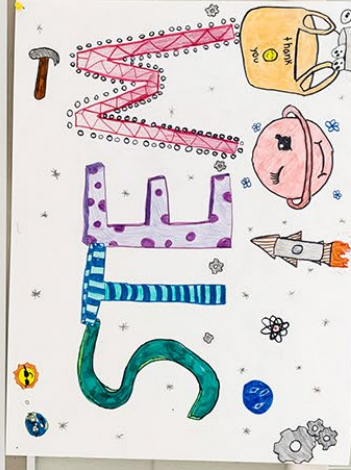


English Language Learners – 0.6%
Economically Disadvantaged – 1.4%



Merit Lottery Proposal

Expanding Our Talent Search



Current Process

- Application Requirements
 - Core class 3.0 GPA
 - Enrolled in Algebra I
 - Residency Requirements
 - Application Fee
 - Assessment Percentile Ranking
 - Quant-Q
 - ACT Aspire Reading & Science
- Holistic Review
 - Student Information Sheet
 - GPA
 - Teacher Recommendations
 - Problem-solving Essay
 - Assessment Percentile Ranking

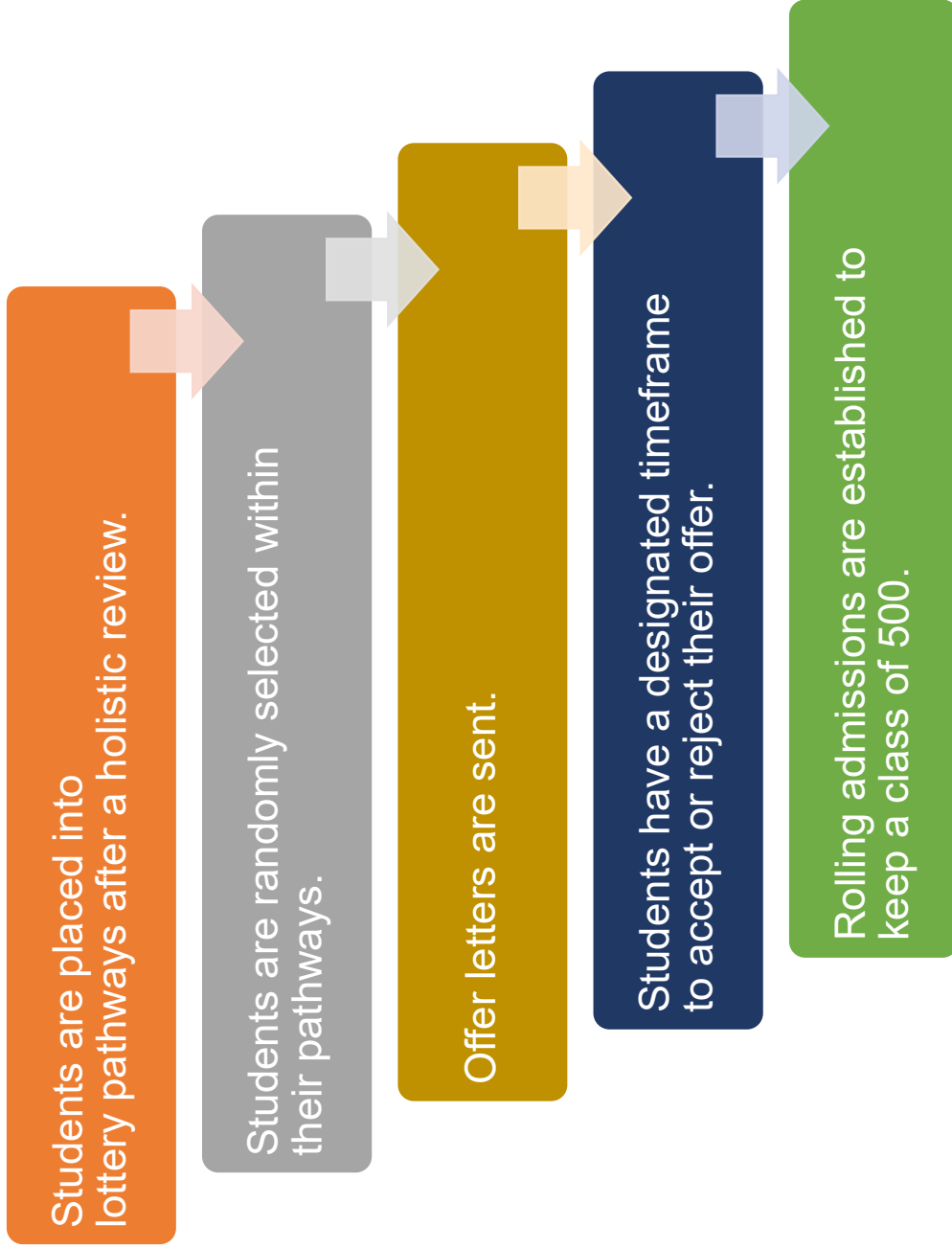
Proposed Process

- Application Requirements
 - **Core Class 3.5 GPA**
 - Enrolled in Algebra I
 - Residency Requirements
 - Revised Student Information Sheet to include questionnaire/essay
- Selection by Merit Lottery

Removes:

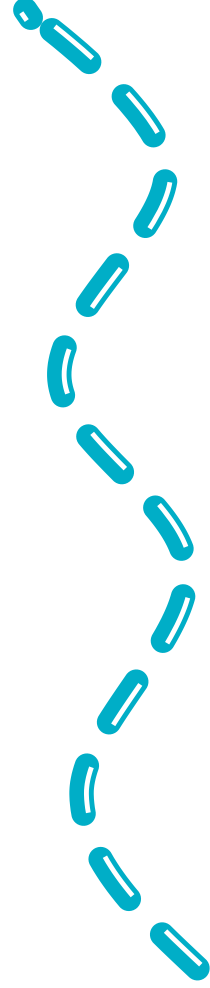
- Application Fee
- Assessment Percentile Ranking
- Teacher Recommendations
- Problem-solving Essay

Merit Lottery Process



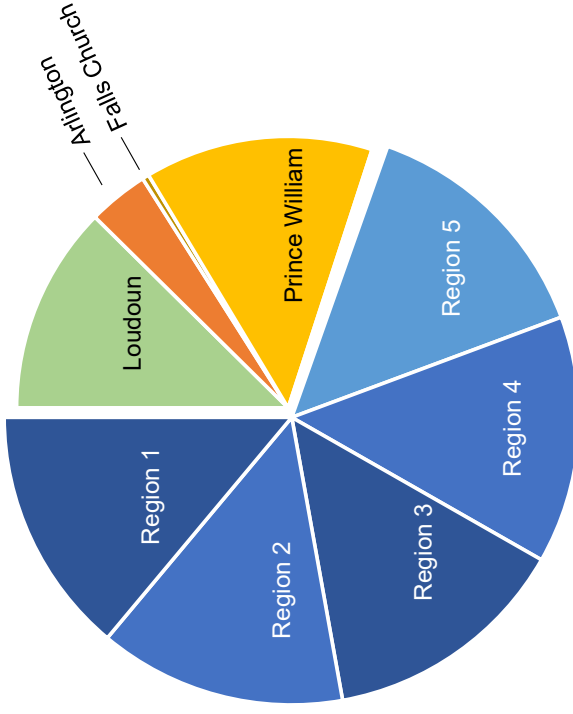
Pathways

- Pathways have been designed to ensure equitable access for students across all regions in FCPS and participating jurisdictions
 - Arlington County
 - Fairfax County
 - Falls Church City
 - Loudoun County
 - Prince William County
- Qualified students will be selected by a merit lottery within each pathway



Pathway Composition

- FCPS: 350 seats (70 per region)
- Loudoun: 62 seats
- Arlington: 18 seats
- Falls Church: 2 seats
- Prince William: 68 seats
- Private school applicants will be assigned a pathway based on residency



The numbers represented are based on the allowed ratio student cap for the 2019-2020 freshman application



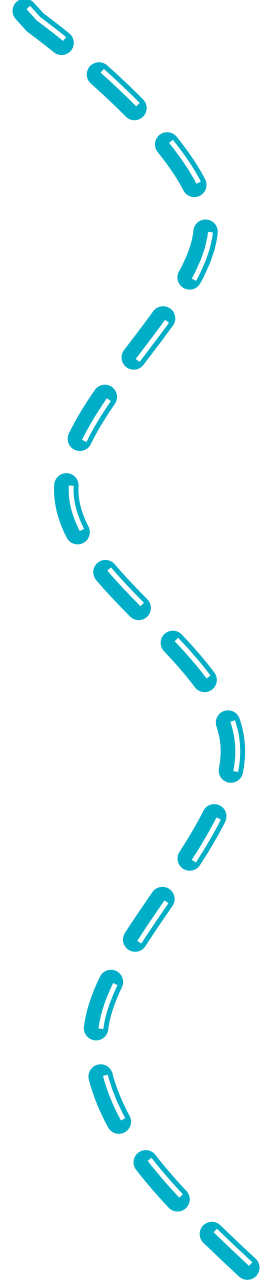


Fairfax County
PUBLIC SCHOOLS
ENGAGE • INSPIRE • THRIVE

FCPS Regional Pathways

<u>Region 1</u>	<u>Region 2</u>	<u>Region 3</u>	<u>Region 4</u>	<u>Region 5</u>
Carson	Glasgow	Hayfield	Irving	Franklin
Cooper	Holmes	Key	Lake Braddock	Frost
Herndon	Jackson	Sandburg	Liberty	Lanier
Hughes	Kilmer	Twain	Robinson	Rocky Run
Thoreau	Longfellow	Whitman	South County	Stone
	Poe			

Applicants will be placed in Region based on the students' base school



Rolling Admissions Process

Each pathway will maintain a list of students not chosen in the initial merit lottery. Students will be placed on the list in the order their names were drawn.

Openings in each pathway will be filled with the first name on the list for that pathway.

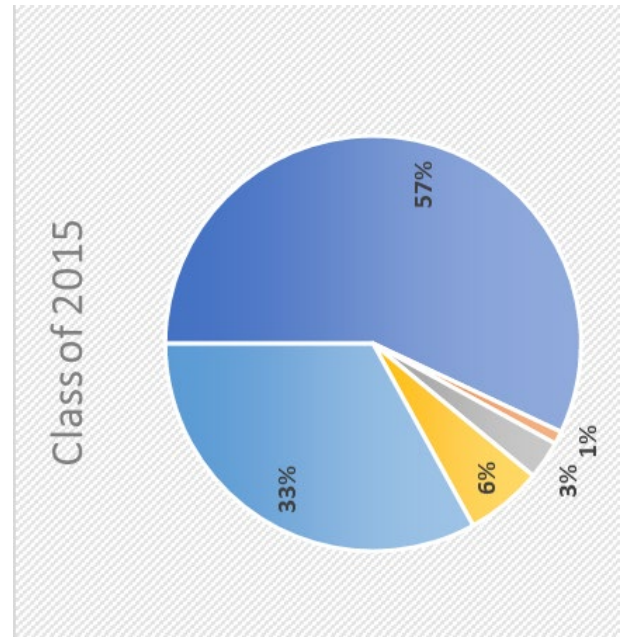
Should a non-FCPS pathway exhaust its list of students, the next eligible candidate off the FCPS list will be chosen.

As needed, additional applicants will be offered on the 1st and 15th of every month through end of 1st Quarter in order to maintain a class of 500.

Any student who declines the offer of admission will be removed from eligibility.

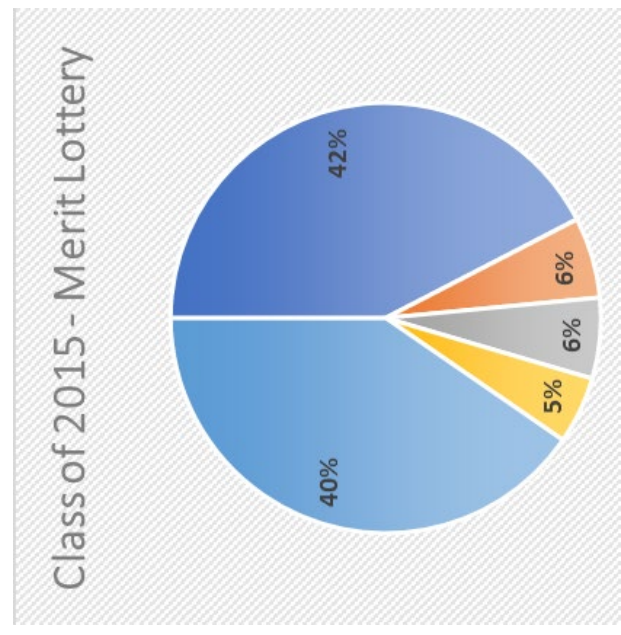
Impact of Merit Lottery – Class of 2015

Percent of Offered Students Using Current Holistic Process

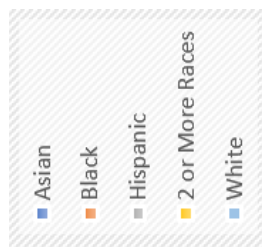


Economically Disadvantaged: 2.9%
English Language Learners: 0.8%

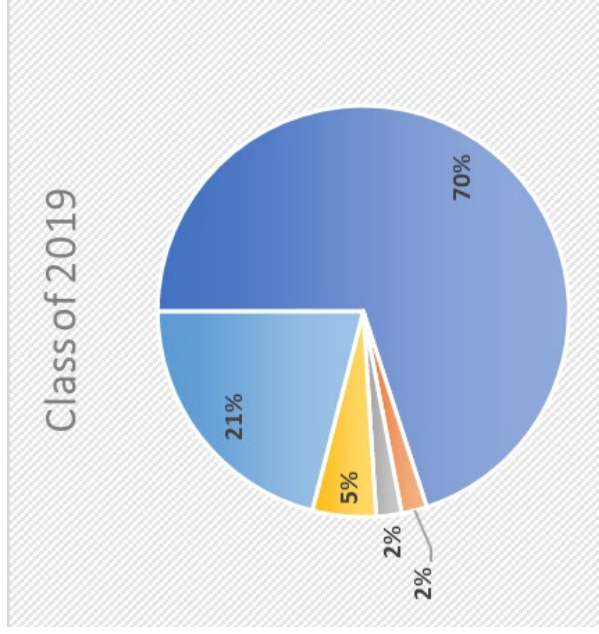
Percent of Offered Students Using Merit Lottery



Economically Disadvantaged: 7.0%
English Language Learners: 8.9%

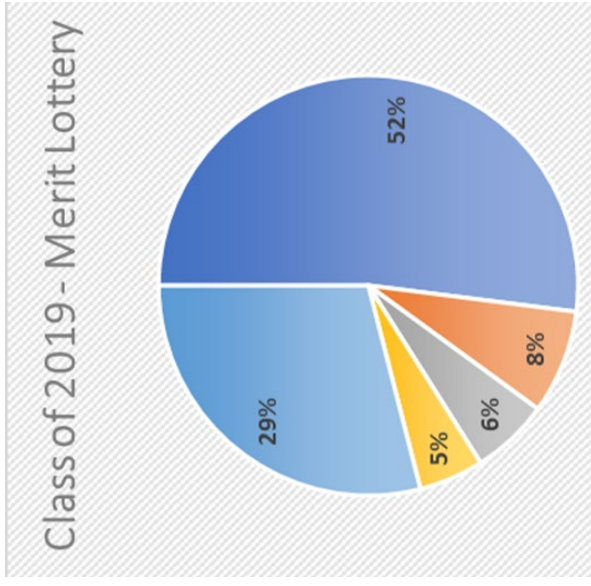


**Percent of Offered Students
Using Current Holistic Process**

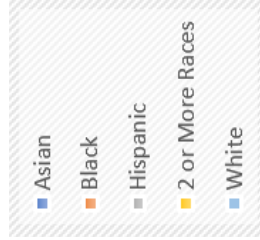


Economically Disadvantaged: 1.2%
English Language Learners: 1.0%

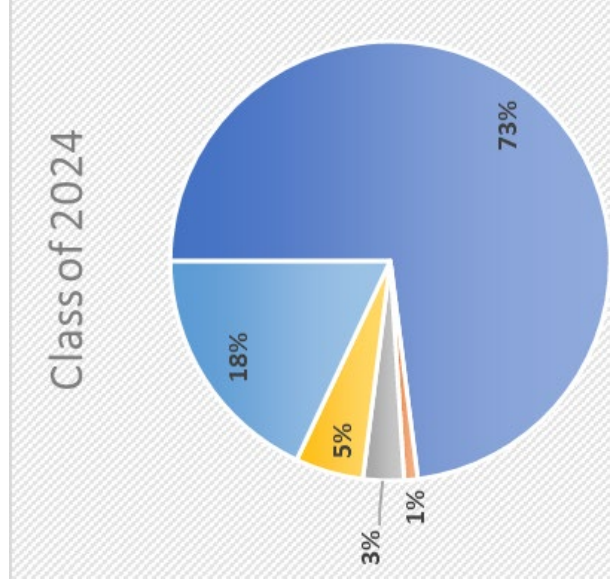
**Percent of Offered Students
Using Merit Lottery**



Economically Disadvantaged: 8.8%
English Language Learners: 2.3%

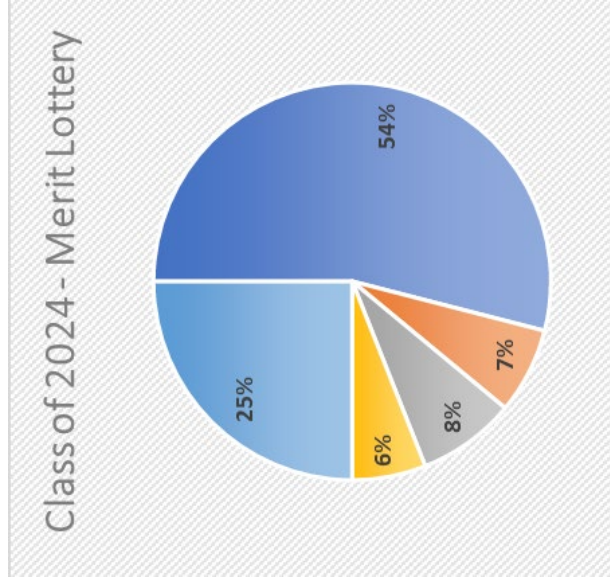


Percent of Offered Students Using Current Holistic Process



Economically Disadvantaged: 0.6%
English Language Learners: 0.6%

Percent of Offered Students Using Merit Lottery



Economically Disadvantaged: 10.3%
English Language Learners: 3.4%

Critical Decision Timeline: Current Process

- Application
 - Fall
- Ordering of Testing Materials
 - Beginning of October (paper or online)
- Testing
 - Late Fall
- Semifinalist Release
 - Mid –January
- Final Offers
 - April

Critical Decision Timeline: Revised Process

Board and Community Input

- Community Outreach/Town Halls
 - Late September/early October
- Final Proposal
 - October 8 School Board meeting

If Recommended

- Targeted Outreach
- Revisions to Regulation 3355
 - Late fall
- Development of Revised Process
 - Fall/winter
- Application
 - December/January
- Implement Merit Lottery
 - February/March

Targeted Outreach



Present to students in every public school (FCPS and participating jurisdictions)
Present to parents and the community in evening sessions



Send recruitment emails/letters to all eligible students



Conduct a virtual open house to include a tour, student speakers, teachers presenting their programs, and an overview of student supports



Conduct targeted recruitment of underrepresented students

Additional Work



- Enhancing the admissions process is one step in a multi-pronged strategy
- Enhancing and expanding the pipeline by ensuring equitable access to rigorous STEM instruction at the elementary and middle school level
- Ensuring a Caring Culture for all TJHSST students
 - Transition resources for students
 - Professional development for staff
 - Supporting unique needs of all learners
 - Wrap-around support for students

Appendix

Links to other schools using a Lottery System. Many of these schools are highly rated (US News Report) and use a similar variety of the lottery model to select students.

<http://www.enrollbasis.com/enrollment/enrollment-faqs/> (Basis – Arizona)

<https://www.gcpsk12.org/domain/6040> (Gwinnett)

<https://ics.lwsd.org/about-us/application-process> (International Community School - Washington)

http://www.mps.k12.al.us/for_parents/magnet_schools (Loveless/Montgomery Schools)

<https://rahs.highlineschools.org/admissions/lottery-process> (Raisbeck)

<https://www.usnews.com/education/best-high-schools/national-rankings/stem>



APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:21-cv-00296-CMH-JFA
)	
FAIRFAX COUNTY SCHOOL BOARD,)	
)	
Defendant.)	

**BRIEF IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

Sona Rewari (VSB No. 47327)
Daniel Stefany (VSB No. 91093)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 955-1500
Facsimile: (202) 778-2201
srewari@HuntonAK.com
dstefany@HuntonAK.com

Trevor S. Cox (VSB No. 78396)
HUNTON ANDREWS KURTH LLP
951 E. Byrd Street
Richmond, VA 23219
Telephone: (804) 788-7221
Facsimile: (804) 788-8218
tcox@HuntonAK.com

Counsel for Defendant

December 3, 2021

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF UNDISPUTED MATERIAL FACTS (“SUF”).....	2
ARGUMENT	17
I. The Coalition lacks standing to maintain this suit.	18
A. The Coalition is not a traditional membership organization.....	19
B. The Coalition lacks functional equivalency with a traditional membership organization.....	20
II. The Coalition cannot prove a claim of intentional discrimination against Asian-American students.....	23
A. The admissions policy does not have a disparate impact on Asian Americans.	24
1. The policy does not disproportionately burden Asian Americans.....	24
2. The Coalition cannot prove disparate impact by comparing this year’s admission numbers to last year’s.	24
B. The Coalition cannot prove that the Board acted with a racially discriminatory purpose.....	26
1. The admissions policy is not discriminatory merely because the Board was aware that it could have an impact on racial diversity.....	26
2. The policy adopted by the Board is legally indistinguishable from the plans upheld across the country and the Coalition’s own proposal for TJ admissions.	28
3. The Coalition cannot show that the Board adopted changes to the TJ policy to reduce the number of Asian-American students.....	30
4. No procedural irregularities support the Coalition’s theories.....	32
5. The Coalition has not shown that any School Board members’ votes—let alone a majority’s—were motivated by discriminatory intent.	34
CONCLUSION.....	35
CERTIFICATE OF SERVICE	36

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	18
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	33
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	33
<i>Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.</i> , No. CV 21-10330-WGY, 2021 WL 4489840 (D. Mass. Oct. 1, 2021).....	25, 27, 29, 30
<i>Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.</i> , 996 F.3d 37 (1st Cir. 2021).....	<i>passim</i>
<i>Boyapati v. Loudoun Cty. Sch. Bd.</i> , No. 1:20-cv-01075, 2021 WL 943112 (E.D. Va. Feb. 19, 2021)	23, 28, 29, 30
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	18
<i>Christa McAuliffe Intermed. Sch. PTO, Inc. v. de Blasio</i> , 364 F. Supp. 3d 253 (S.D.N.Y.), <i>aff'd</i> , 788 F. App'x 85 (2d Cir. 2019).....	28
<i>Doe ex rel. Doe v. Lower Merion Sch. Dist.</i> , 665 F.3d 524 (3d Cir. 2011).....	28
<i>Anderson ex rel. Dowd v. City of Bos.</i> , 375 F.3d 71 (1st Cir. 2004).....	2, 26, 28
<i>Funeral Consumers All., Inc. v. Serv. Corp. Int'l</i> , 695 F.3d 330 (5th Cir. 2012)	22, 32
<i>Gettman v. DEA</i> , 290 F.3d 430 (D.C. Cir. 2002).....	22
<i>Grp. Health Plan, Inc. v. Philip Morris, Inc.</i> , 86 F. Supp. 2d 912 (D. Minn. 2000).....	20
<i>Health Research Grp. v. Kennedy</i> , 82 F.R.D. 21 (D.D.C. 1979).....	21

Heap v. Carter,
112 F. Supp. 3d 402 (E.D. Va. 2015)20, 21, 22, 23

Hunt v. Wash. State Apple Adv. Comm’n,
432 U.S. 333 (1977).....19, 20, 21, 23

Jeffries v. Harleston,
52 F.3d 9 (2d Cir. 1995).....35

Kawaoka v. City of Arroyo Grande,
17 F.3d 1227 (9th Cir. 1994)35

Kirkland v. Mabus,
206 F. Supp. 3d 1073 (E.D. Va. 2016)18

LaVerdure v. Cty. of Montgomery,
324 F.3d 123 (3d Cir. 2003).....35

Lewis v. Ascension Parish Sch. Bd.,
806 F.3d 344 (5th Cir. 2015)28

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992).....18, 19

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986).....18

Matthews v. Columbia Cty.,
294 F.3d 1294 (11th Cir. 2002)35

Md. Highways Contractors Ass’n, Inc. v. Maryland,
933 F.2d 1246 (4th Cir. 1991)20

Nationstar Mortg., LLC v. Ahmad,
155 F. Supp. 3d 585 (E.D. Va. 2015)18

Package Shop, Inc. v. Anheuser-Busch, Inc.,
CIV. A. No. 83-513, 1984 WL 6618 (D.N.J. Sept. 25, 1984)21, 22

Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1,
551 U.S. 701 (2007).....26, 27, 28

Personnel Adm’r of Mass. v. Feeney,
442 U.S. 256 (1979).....23, 30

Small Sponsors Working Grp. v. Pompeo,
No. 1:19-2600-STA-jay, 2020 WL 2561780 (W.D. Tenn. May 20, 2020)19, 23

Sorenson Commc’ns, LLC v. FCC,
897 F.3d 214 (D.C. Cir. 2018).....21

Spurlock v. Fox,
716 F.3d 383 (6th Cir. 2013)28

Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.,
576 U.S. 519 (2015).....26, 28

Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,
429 U.S. 252 (1977).....23, 32

White Tail Park, Inc. v. Stroube,
413 F.3d 451 (4th Cir. 2005)19

Wittman v. Personhuballah,
578 U.S. 539 (2016).....18

Statutes and Other Authorities

2020 Va. Acts ch. 1289.....4, 5

Va. Code Ann. § 2.2-3707 (Supp. 2020)10

Va. Code Ann. § 22.1-73 (2016).....10

Va. Code Ann. § 22.1-79(8) (Supp. 2020).....32

INTRODUCTION

Last fall, the Fairfax County School Board changed the admissions process for the Thomas Jefferson High School for Science and Technology (TJ) to eliminate historical barriers and expand access to the school for students from every part of the County and neighboring jurisdictions. These changes included eliminating the \$100 application fee and standardized testing, and guaranteeing each public middle school seats in the freshman class for its top applicants, in a number equal to 1.5% of each school's eighth-grade population. After many months and tens of thousands of pages of discovery, the Coalition for TJ has come up empty-handed on its hyperbolic claim that these changes constitute intentional discrimination against Asian-American students. There are no material facts in dispute, and the Court should grant summary judgment to the School Board for two main reasons.

First, the Coalition cannot carry its burden of establishing standing to maintain this suit. Discovery has fatally undermined the Coalition's claim that it has "associational standing" to sue on behalf of parents of Asian-American students applying to TJ. The Coalition is neither a traditional membership organization nor its functional equivalent.

Second, the Coalition cannot prove its Equal Protection Claim. Facially race-neutral admission policies do not trigger strict scrutiny, absent evidence of both a discriminatory impact and discriminatory intent. The Coalition can show neither. Asian-American students received the largest share of offers under the new policy, and their relative share of offers also exceeded their relative share of the applicant pool. In short, there was no disparate impact. The Coalition also cannot prove a discriminatory purpose. It cannot show that the Board voted 12–0 to eliminate standardized testing and application fees in order to harm (or even to benefit) any racial group. Nor can the Coalition show that the Board voted 10–1 to adopt a plan that gives the highest-evaluated students at every middle school access to TJ in order to harm (or even to

benefit) any racial group. What’s more, it could not have done so: the school system could not, and did not, calculate how the new policy would affect the racial demographics of TJ.

Longstanding Supreme Court jurisprudence makes clear that public school systems can use race-neutral means to promote equality of access for all groups, including racial minorities. They need not leave such progress to blind luck. In other words, the “motive of increasing minority participation and access is not suspect.” *Anderson ex rel. Dowd v. City of Bos.*, 375 F.3d 71, 87 (1st Cir. 2004). The Coalition’s erroneous legal arguments to the contrary have been rejected by jurists across the country, including Judge Trenga earlier this year. This Court should reject them as well.

STATEMENT OF UNDISPUTED MATERIAL FACTS (“SUF”)

1. TJ is one of 198 public schools operated by the School Board, which oversees the Fairfax County Public Schools (FCPS), the largest public school division in Virginia. Answer ¶ 20 (ECF No. 49).

2. TJ was established in 1985 as a high school for science and technology. Answer ¶ 22; Ex. 1, FCSB Policy 3355.4. It is open to residents of the counties of Fairfax, Arlington, Loudoun, and Prince William and the City of Falls Church. Answer ¶ 22.

3. TJ is one of 19 Academic-Year Governor’s schools in Virginia—regional schools that provide advanced studies in a variety of areas, that conduct admission by application, and that receive additional funding from the General Assembly. *Id.* ¶ 24.

4. Policy 3355.4 states the Board’s purpose in operating TJ. Ex. 1. Last amended in 2013, Policy 3355.4 recognizes “diversity of the student body and staff” as an “important factor in developing leaders who will be prepared to address future scientific and technological challenges.” *Id.* “Diversity is broadly defined to include a wide variety of factors, such as race, ethnicity, gender, English for speakers of other languages (ESOL), geography, socioeconomic

status[,] prior school and cultural experiences, and other unique skills and experiences.” *Id.* The Policy charges the Division Superintendent to “develop a comprehensive admissions process that establishes rigorous standards” and directs that “students meeting the established admissions standards shall undergo a comprehensive, holistic evaluation process...” *Id.*

5. FCPS periodically publishes a regulation, Regulation 3355, which describes the procedures for student selection and admission to TJ. *See* Ex. 2.

6. The admissions process at TJ is regularly reviewed for ways to better serve the community, while serving its mission and maintaining the high quality of education at the school. Ex. 3, Decl. of J. Shughart, ¶ 9.

7. Since 2013, students have been selected for admission to TJ based on a holistic review of numerous qualitative and quantitative components. *Id.* ¶ 4. Before Fall 2017, the TJ admissions process included one standardized admissions test. *Id.* ¶ 6. From Fall 2017 until the start of the 2020–21 school year, the admission process included three standardized tests, in mathematics, science, and reading comprehension. *Id.* ¶¶ 5, 7.

8. Before the admissions changes of 2020, the student body of TJ tended to be drawn from a small subset of middle schools, and included very few low-income students, English Language Learners, students receiving special education services, and students who identify as Black, Latino, or multiracial. Ex. 4, FCSB’s Ans. to Interrog. No. 11.

9. The admissions process in place before 2020 prevented talented students (including Asian Americans) deserving of admission from accessing TJ because of where they attended middle school. Ex. 5, Miller Dep., at 95:3–97:21.

10. For example, in the four admissions cycles before the 2020 changes, students at just eight of FCPS’s 26 middle schools accounted for 86.53% of FCPS students offered

admission to TJ. Ex. 3, Shughart Decl., ¶ 10(b). *See also* Ex. 6, Admissions Statistics (Sealed). During the same four-year period, students from economically disadvantaged households (based on qualifying for Free or Reduced-price Meals (FRM)) comprised less than 2%, and English Language Learners (ELL) comprised less than 1%, of students offered admission to TJ. Ex. 3, ¶ 17(a)&(b). By contrast, 29.3% of FCPS’s division-wide student body are FRM students, and 27.4% are ELL. Ex. 7, September 15, 2020 Presentation, at 4.

11. On May 27, 2020, the School Board was briefed by staff regarding potential changes to the admissions process projected to take effect for the 2022–2023 application year. Ex. 8, Brabrand Dep., at 70:12–14, 71:3–7; Ex. 9, May 27, 2020 TJ Admissions Proposal; Ex. 10, Executive Summary of Proposal. The presentation to the Board noted that “[t]alented students enrolled in each middle school have traits important to the mission and goals of [TJ] and could contribute to the school’s learning environment,” and that the changes would “more directly account for the fact that many students who want to enroll” at TJ “and who could be successful at” TJ “may have different academic, curricular, and personal experiences and differing arrays of strengths and interests.” Ex. 9 at 2.

12. The same month, May 2020, the Governor of Virginia signed into law the 2020–2022 biennial budget enacted by the General Assembly. 2020 Va. Acts ch. 1289. The budget included language that required each Academic Year Governor’s School to “set diversity goals” and “to develop a plan to meet said goals in collaboration with community partners at public meetings”; and to submit to the Governor, by October 1 of each year, a report on its diversity goals for student body and faculty, and on the status of implementing a plan to meet those goals. *Id.* § Item 145.C.27.i. The report was also to include information on the “racial/ethnic make-up and socioeconomic diversity” of students, faculty, and applicants and “admission processes in

place or under consideration that promote access for historically underserved students.” *Id.*

13. In June 2020, then-Chair of the Board Karen Corbett Sanders received correspondence from then-Virginia Secretary of Education Atif Qarni and a General Assembly member, calling attention to the new law and noting TJ’s very small proportions of disadvantaged students over the prior five years. Ex. 11; Ex 12. Division Superintendent Brabrand advised members of his senior staff to “plan on a work session” with the Board “on what we are putting in this report.” Ex. 12 at 1.

14. In Summer 2020, Secretary Qarni convened a working group to examine barriers to access at Governor’s Schools and ways to improve equity of access. Ex. 8, Brabrand Dep., at 58:4–14. Several FCPS staff members, including Dr. Brabrand, were invited to their meetings. *Id.* at 58:4–59:16. Though the Coalition decried the working group as “Anti-Asian,” Qarni, who himself is Asian, vehemently disagreed, pointing out that “[m]any children from Asian working-class families are also not benefiting from Governor Schools.” Ex. 13 at 4.

15. By August 2020, Dr. Brabrand had concluded that what FCPS submitted in its report on TJ’s diversity plan “would have impact on any additional action that the General Assembly or Governor” would take and that “a report” that “we’re just doing the same thing we’ve always done was not going to be received well.” Ex. 8, Brabrand Dep, at 55:6–56:9; Ex. 5, Miller Dep, at 70:5–8 (“[O]ur understanding was that Fairfax County was attempting to ‘get out ahead’ of what they thought Atif Qarni was going to demand that they do.”).

16. In early September 2020, Secretary Qarni announced that the Governor would release his own policy position on potential legislative changes to the admissions processes of Governor’s Schools, including TJ, around December 2020. Ex. 14.

17. Under the process for admission to TJ prior to 2020, applicants had to score above

certain percentile minimums on the standardized tests in order to advance to the “semifinalist” round where they were administered a qualitative exam and submitted two teacher recommendations. Ex. 3, Shughart Decl., ¶ 8(b)–(d). Students were then selected for admission from the semi-finalist pool, based on a holistic evaluation. *Id.* ¶ 8(e)–(f).

18. On September 15, 2020, Dr. Brabrand presented to the Board at a public work session a proposal to make multiple changes to the admissions process to enhance the pool of talented applicants and remove potential barriers that kept students from disadvantaged groups from applying or advancing in the admissions process. *Id.* ¶ 10(b). His “Merit Lottery Proposal” proposed to: eliminate the three standardized tests, one qualitative assessment, the \$100 application fee, and teacher recommendations; increase the minimum GPA from 3.0 to 3.5; and implement a lottery, under which qualified students would be considered in “Regional Pathways”—pools to which students would be assigned based on the FCPS administrative region in which they resided or their participating locality—each of which would be allocated an equal number of seats. Ex. 7 at 12–13. These “Regional Pathways” corresponded to the same five administrative Regions in which FCPS had been organized in since 2014. Ex. 3, ¶ 5.

19. Dr. Brabrand advised the Board that “admissions testing has been a barrier for historically underrepresented students to move to the semifinalist stage. We have applicants that have talent, that have merit, and those applicants are drained out in the semifinalist stage through the use of admissions test[ing]. It has had a disproportionate impact on the diversity of the existing application pool.” Ex. 15, Transcript of September 15, 2020 Work Session, at 15:5–14. He also explained that the “pathway” approach would ensure “equitable access for students across all regions in FCPS and in participating jurisdictions” and “create[] geographic diversity across Fairfax and participating jurisdictions.” *Id.* at 19:24–20:3, 21:15–17.

20. The Board discussed the Merit Lottery Proposal at length on September 15, 2020. *See generally id.* Each of the 12 Board Members spoke at the meeting, expressing their individual views and concerns. *Id.* Member Corbett Sanders noted that “this concept of a merit-based admission without a test ... is merit-based on GPA and a holistic review of kids. That is consistent with over a thousand universities across the United States, including Stanford, Columbia, Barnard, voted many of the top schools in the country.” *Id.* at 58:25–59:9. She further stated that “as the school board representative of a region of the county that has been historically underrepresented, to the point that kids don’t even bother applying anymore....I absolutely think that we have to do something new, and we have to do something that ensures that we have a holistic merit-based approach that creates opportunities and access for every child who needs to take advantage of a school like TJ and is not an environment in which we are actually disincenting kids so much so that they don’t even bother applying.” *Id.* at 136:4–17. Member Pekarsky shared the sense of “urgency” but expressed a “worry” that “with this lottery system...those kids who are truly highly exceptional will not get in” to TJ. *Id.* at 145:7–14.

21. The Board was advised that Dr. Brabrand and staff would engage in “community outreach” and bring a “final proposal” to the Board on October 8. *Id.* at 27:25–28:12. Over the course of the work session, Board members provided staff direction on more than two dozen “next steps,” including asking the State to allow additional time for submission of FCPS’s plan for TJ, evaluating the merits of a “school-based or pyramid approach,” and adding the topic of TJ admissions to the Board’s October 8 regular meeting agenda. *Id.* at 28:6–9; Ex. 16, FCSB Mtg. Minutes (September 15, 2020).

22. The Coalition publicly opposed the Merit Lottery Proposal, issuing a press release claiming that its analysis shows that “[a]ll racial minorities will lose” under the plan. Ex. 17.

23. On September 29, 2020, the Coalition submitted an alternative proposal for the Board’s consideration—its Second-Look Semifinalist Alternative to the Merit Lottery (the “Second-Look Proposal”). Ex. 18. That plan proposed to retain the standardized tests but to guarantee that a minimum of five applicants from every FCPS middle school would advance to the semifinal round, where candidates would be subjected to a holistic, qualitative evaluation in which “underrepresented background and moral traits to overcome these barriers” would be “evaluated favorably and weighted in the admissions process.” *Id.* at 4.

24. The Coalition agreed that some worthy applicants were not offered admission under the pre-2020 process because they lacked access to “practice taking standardized tests” and to “STEM enrichment,” and overall did “not have the same advantages as kids who have two parents.” Ex. 5, Miller Dep., at 98:7–16. In the Coalition’s view, a “disproportionate number” of such applicants “are Black and Hispanic, who live in parts of the county that are historically underrepresented.” *Id.* at 100:15–20. As a result, the Coalition believed that even its own “proposal would result in disproportionately more Black and more Hispanic students benefiting,” *id.* at 101:1–4, and would “materially increase both the geographic and the socioeconomic diversity at [TJ],” Ex. 18, at 3.

25. The Coalition also made its Second-Look Proposal in the hope that it would allow the School Board to focus on other matters because “addressing admissions at TJ” was already “taking up a disproportionate amount of the county’s time.” Ex. 5, Miller Dep. at 76:21–77:6.

26. On October 6, 2020, the Board held another work session regarding TJ admissions. In advance of the work session, Dr. Brabrand issued his “Revised Merit Lottery” Proposal. This proposal revised the original Merit Lottery proposal to set aside 100 seats for the top overall applicants. Ex. 19, FCSB Mtg. Agenda (October 6, 2020). These top 100 applicants

would be identified based on their scores using a holistic review process that included two qualitative assessments (the Student Portrait Sheet and the Problem Solving Essay) and four Experience Factors—namely, whether the student came from an economically disadvantaged household based on FRM , was an English-Language Learner, had an Individualized Education Plan, or attended a historically underrepresented public middle school. *Id.*

27. The Coalition voiced its opposition to the Revised Merit Lottery before the October 6 work session. It affirmed that “[t]he underrepresentation of Blacks and Hispanics at [TJ] is unacceptable” but lamented that, under the Superintendent’s revised proposal, only the “20 percent of students” admitted via the holistic review would be “chosen by merit” and represent the county’s “top STEM students.” Ex. 20, Coalition Email to School Board, at 2.

28. Meanwhile, individual Board members exchanged ideas for the framework of an admissions policy that would identify the most-qualified applicants from each middle school and ensure those students access to TJ. *See* Ex. 21, Emails from S. Pekarsky to K. Corbett Sanders.

29. On October 6, 2020, the School Board met for four-and-half hours to consider Dr. Brabrand’s “Revised Merit Lottery” proposal and other potential changes. *See* Ex. 22, FCSB Work Session Minutes (Oct. 6, 2020); Ex. 23, Transcript of October 6, 2020 Work Session.

30. The School Board did not approve Dr. Brabrand’s revised proposal at the October 6 work session. Instead, the Board voted unanimously, 12–0, to eliminate the application fee and the standardized-test requirements, and directed the Superintendent to increase the size of the admitted class to 550. Ex. 22 at 2. The School Board also directed Dr. Brabrand to return with revised admissions proposals that included a non-lottery option. *Id.* at 3.

31. The timing of the Board’s decision to eliminate standardized testing was driven, at least in part, by the fact that testing normally occurred in October and November. Ex. 23,

61:7–11, 63:7–64:11; Ex. 3, ¶¶ 10(b), 16. The COVID-19 pandemic also would have complicated testing and increased its cost. *Id.* ¶ 22.

32. The Board was not precluded by its own internal policy or Virginia law from taking a vote on the admission process at a work session. *See* Va. Code Ann. § 2.2-3707 (Supp. 2020); Va. Code Ann. § 22.1-73 (2016). The Board has previously taken votes at both work sessions and regular meetings. Ex. 8, Brabrand Dep. at 126:14–18.

33. Before the October 6 work session, the School Board had received public comment, through a variety of means, regarding TJ admissions. Ex. 24, Pekarsky Dep., at 25:5–8 (the School Board “heard lots of public comment regarding TJ and the admissions tests and the policy and process through many different avenues”); Ex. 8, 148:13–18 (discussing “extensive discussion, work sessions, community discussion, community feedback”).

34. Two days after the October 6 work session, the Coalition alerted the Board and school administrators to purportedly “egregious issues” uncovered by its “data team”—that the proposed increase of the minimum GPA from 3.0 to 3.5 would “maliciously eliminat[e] more Black and Hispanic students” and “deprive [them] of admission to TJ.” Ex. 25, Coalition Email to School Board. The Coalition faulted Dr. Brabrand, noting that he had admitted that FCPS “staff did not study the racial demographics within Fairfax County to determine who would qualify” before proposing to raise the minimum GPA from 3.0 to 3.5. *Id.*

35. On October 8, 2020, the Board held another regular meeting during which it received public comments on TJ admissions and held discussion on TJ admissions. Ex. 24, Pekarsky Dep., at 34:5–21; Ex. 26, FCSB Mtg. Minutes (October 8, 2020). A motion was made to direct the Superintendent to develop and implement a “stakeholder engagement plan” to “allow for more thorough community input and dialogue on TJ admissions” prior to bringing the

updated TJ plan to the Board in November, but the motion failed 0–7 with five abstentions. Ex. 26 at 4; *see also id.* at 5–6 (other TJ-related motions and votes).

36. On October 9, FCPS submitted the report on diversity goals required by the General Assembly. Ex. 27, Report. The report indicated TJ’s “long-term diversity goal is to increase the broad diversity that represents all participating jurisdictions,” with diversity “broadly defined to include a wide variety of factors,” including “race, ethnicity, gender, English Language Learners (ELLs), geography, [and] socioeconomic status.” *Id.* at 2. The report indicated TJ’s “short-term primary goal is to achieve a” talented student population “that is representative of the applicant population, with additional emphasis to increase the number of students in historically underrepresented groups applying to [TJ].” *Id.* The report was completed by FCPS staff, and the Board did not take any votes on what the report should include. Ex. 24, Pekarsky Dep., at 61:1–66:2.

37. At its October 22, 2020 meeting, the Board discussed some of the broader “systemic issues that impact TJ admissions,” and a motion by Board member Tamara Derenak Kaufax to address those issues passed 11–0. Ex. 24, 37:20–38:16; Ex. 28, FCSB Mtg. Minutes (October 22, 2020), at 4–5.

38. In November, the Superintendent made two “final proposals” for the School Board’s consideration. Ex. 3, ¶ 10(d). One was a “Hybrid Merit Lottery,” an updated version of the Revised Merit Lottery proposal under which the 100 highest-ranked applicants would be offered admission, and 450 seats would be allocated to other qualified applicants through a lottery. *Id.* The other was a “Holistic Review Proposal,” under which all 550 seats for admission would be allocated based on the same holistic review used to evaluate the top 100 applicants under the Hybrid Merit Lottery proposal. *Id.* Under both proposals, applicants would

be grouped into the administrative Region in which their middle school was located (or, for non-FCPS students, their jurisdiction of residence), with caps for each region. *Id.*

39. The Superintendent issued the proposals in a Powerpoint presentation and “White Paper” that were shared with the Board and the public on November 17, 2020. *See* Exs. 29 and 30. Dr. Brabrand’s staff did not do any modeling of the demographic results under the Holistic Review Proposal. Ex. 8, Brabrand Dep., at 106:5–107:3.

40. The same day, the Coalition issued a press release criticizing Dr. Brabrand’s proposals. Ex. 31. Among other things, the Coalition called on the School Board to reject Dr. Brabrand’s proposals and to “implement a ‘second look’ plan to increase representation of underrepresented minorities.” *Id.*

41. In early December, Secretary Qarni shared with Dr. Brabrand language drafted for proposed General Assembly legislation that would impose a new admissions policy for TJ and one other Governor’s School. Ex. 32. Among other things, the bill would expressly prohibit the use of standardized tests in the admission process, required preferred consideration of economically disadvantaged students, and cap at 5% the proportion of admitted students from any single school. *Id. See also* Ex. 33, Email from Secretary Qarni to S. Brabrand.

42. On December 7, 2020, the Board conducted another work session to discuss Dr. Brabrand’s final proposals. Ex. 3, ¶ 10(e); *see* Ex. 34, Transcript of December 7, 2020 Work Session; Ex. 35, FCSB Mtg. Minutes (December 7, 2020).

43. On December 17, the School Board met again, with a plan to make final decisions on the TJ admissions policy. Ex. 36, FCSB Mtg. Agenda (Dec. 17, 2020). Public comment was taken, during which multiple citizens addressed TJ admissions. Ex. 37, FCSB Mtg. Minutes (December 17, 2020), at 2.

44. A motion to adopt the Hybrid Merit Lottery Proposal failed 4–8. Ex. 37 at 4.

45. Another Board member moved to direct use of a holistic review process that would guarantee each public middle school seats in TJ’s freshman class for its highest-ranked candidates (based on increased GPA, Student Portrait Sheet, Problem Solving Essay, and Experience Factors), in a number equal to 1.5% of the school’s eighth-grade student population (the “1.5% Plan”). *Id.* at 4–5. This 1.5% Plan was designed to expand “the pipeline for each middle school” and provide “equity of access and opportunity.” *Id.* at 5.

46. In support of the 1.5% Plan, numerous Board members noted how, year after year, most of FCPS’s middle schools had very few, if any, students admitted to TJ. Ex. 38, Transcript of December 17, 2020 Mtg., at 116:13–15 (Cohen), 109:23–110:7 (Tholen), 110:17–23 (Pekarsky), 112:11–20 (Corbett Sanders), 122:11–17 (Sizemore Heiser), 138:25–139:8 (Keys-Gamarra), 144:23–145:4 (Corbett Sanders).

47. The Board approved the 1.5% Plan and the race-neutral mandate by a vote of 10–1–1. Ex. 37 at 4–5. The sole dissenting vote was cast by Chair Anderson. *Id.* Member McLaughlin abstained. *Id.*

48. In adopting the 1.5% Plan, the Board made clear that racial balancing and racial targets would be prohibited. The motion that carried expressly provided: “The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.” *Id.* at 4.

49. No one at FCPS conducted any analysis to predict how the 1.5% Plan would affect the racial makeup of students admitted to TJ. Ex. 3, Shughart Decl., ¶ 10(g). *See also* Ex. 8, Brabrand Dep., at 134:2–7 (Q: . . . Did you or your staff ever consider the racial impact of the decision to guarantee that 1.5 percent of schools feeds to TJ? . . . A: No.”).

50. Minutes and video recordings of each of the School Board meetings in which TJ admissions was discussed are available online at <https://www.fcps.edu/school-board/school-board-meetings>. The September 15, October 6, December 7, and December 17 meetings have also been transcribed for the Court's benefit. *See* Exs. 15, 23, 34, 38. No School Board member made any statements at any School Board meeting expressing intent to change any element of the admissions process at TJ in order to decrease the number of Asian-American students or even discussed Asian-American representation at TJ. *See id.*

51. The changes adopted at the December 17 meeting were effective with the admission process for the Class of 2025. Ex. 37 at 4. On April 28, 2021, FCPS staff updated Regulation 3355 to bring it in line with changes adopted by the Board in 2020. *See* Ex. 3, Shughart Decl. ¶ 11, Ex. B (FCPS Regulation 3355.14).

52. The 1.5% Plan is "facially race-neutral." Compl. ¶ 63. FCPS Regulation 3355.14 provides that "[c]andidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number...." Ex. 3, Shughart Decl. ¶ 11, Ex. B. TJ admissions officials have abided by this requirement. *Id.* ¶ 14.

53. FCPS received a significantly higher number of applications for entry into TJ's Class of 2025 than in prior years. *Id.* ¶ 15. A total of 3,470 eighth-graders from 130 different schools applied for admission to the Class of 2025. *Id.*

54. For the first time in at least 15 years, the Class of 2025 includes students from all 26 FCPS middle schools; each school filled its allocated seats with qualified applicants. Ex. 3, Shughart Decl., ¶ 16.

55. FRM students received 25% of admission offers for the Class of 2025. *Id.* ¶ 17.

ELL students received 5.45% of offers. *Id.* The proportion of women admitted in the Class of 2025—46%—was greater than in the four preceding classes: 41.8% (Class of 2024); 42.1% (Class of 2023); 42.68% (Class of 2022); 40.6% (Class of 2021). *Id.* ¶ 17(c).

56. The average GPA for applicants (3.91) was higher than it has been for five years. *Id.* ¶ 17. The average GPA of admitted students—3.9539—was within a hundredth of a point from the prior year. *Id.*

57. Asian-American students comprised a smaller proportion of total applicants in 2021 (48.59%) than in 2020 (56.08%). *Id.* ¶ 18. While the raw number of applications from Asian-American students increased, that increase was relatively smaller than the jumps in applications from all other racial groups. *Id.* As a result, Asian Americans were the only racial group whose share of the applicant pool fell this year. *Id.*

58. Asian Americans accounted for, by far, the largest share of students accepted into the Class of 2025 (54.36%). *Id.* ¶ 18.

59. Asian-Americans students were the only racial group other than Hispanic students whose representation in the accepted-students pool (54.36%) exceeded their representation of total applicants (48.59%). *Id.* Black, White, and Multi-Racial/Other students comprised smaller proportions of admitted students (7.09%, 22.36%, and 4.91%, respectively) than applicants (10.00%, 23.86%, and 6.60%, respectively). *Id.*

60. The Coalition predicted that Asian-American students would comprise only 31% of students receiving offers under the new policy. Compl. ¶ 52. According to the Coalition, its prediction was so off-base because “everyone would acknowledge that...it was very difficult to project the outcome of what would happen because of the holistic factors that go into evaluation” of the applicants. Ex. 39, Tr. of 9/17/21 Hr’g at 19:6–9.

61. The Coalition cannot identify any applicant who was denied admission to TJ on the basis of their race under the new policy. Ex. 40, Nomani Dep., at 183:19–184:2.

62. The Coalition does not intend to offer any expert testimony to prove its claim of disparate impact on Asian-American students. Ex. 41, Coalition’s Ans. to Interrog. No. 1.

63. The Coalition does not have a position on what process should be used for admission to TJ in lieu of the current process. Ex. 5, Miller Dep., at 88:16–17, 135:5–20.

64. The Coalition “came together” in August 2020. Ex. 40, Nomani Dep., at 14:12–19. It does not have a charter, articles of incorporation, or bylaws. *Id.* at 20:4–8, 41:18. It is not registered with any federal or state agency. *Id.* at 20:9–21:4.

65. The Coalition claims to have over 200 members. *Id.* at 62:2–5; *id.* at 82:1. The Coalition counts as “members” those who have completed a form on the “Contact Us” tab of its website and are joined to its messaging platform. *Id.* at 78:2–9.

66. The online contact form is not labeled as a “membership application.” *Id.* at 78:10–13; Ex. 42, Coalition for TJ “Contact Us” form. The form does not ask individuals to provide any address (home or business, in Virginia or not), phone number, school affiliation, or even whether they are parents of affected children. Ex. 40, Nomani Dep., at 83:1–17. The Coalition also does not collect racial information about its members. *Id.* at 93:6–7.

67. The sole requirement for membership in the Coalition is “supporting the mission of the organization.” *Id.* at 80:12–14. That mission, as described in deposition and on its website, is “to advocate for diversity and excellence at” TJ. *Id.* at 35:16–18. Yet, the Coalition reported a different mission to United Charitable last fall, when applying to become a fiscally-sponsored program of that 501(c)(3): “to conduct original research, journalism, and advocacy about significant public issues relegated [sic] to education, contribute to sound public policy

decisions and protect gifted and STEM education and the legal defense of the rights of students.”

Ex. 43, Letter from United Charitable; Ex. 40, Nomani Dep., at 144:7–16.

68. The Coalition has no formal membership approval process. *Id.* at 76:5–88:3.

69. The Coalition could not identify any members of its leadership team who are parents of seventh- and eighth-grade students planning to apply to TJ. *Id.* at 53:16–58:9.

70. The Coalition has no officers. *Id.* at 18:18–21, 41:13–15. It is led by unelected volunteers who “self-nominated” themselves by “just rais[ing] their hands.” *Id.* at 52:11–21.

71. The Coalition has never put any decisions to a vote, either by its unelected leaders or its members. *Id.* at 44:15–18, 51:2–6. The Coalition’s leadership meetings have no agendas. *Id.* at 132:9–12.

72. The Coalition has no operating budget or bank account. *Id.* at 93:8–14. It collects no dues or membership application fees from members. *Id.* at 65:13–18. It has: (1) raised \$150,000 for the Coalition for Diversity and Excellence in Education (a 501(c)(4) organization created by some of the Coalition’s leaders), *id.* at 95:14–96:4, 97:17–98:3, 99:20–22; (2) solicited donations for itself as a program of United Charitable, *id.* at 116:4–17, 119:17–120:1; and (3) solicited and continues to solicit donations via its webpage for the Coalition for Truth and Justice, *id.* at 116:4–17, 119:17–120:1. The Coalition for Truth and Justice is another informal group that was created by one of the Coalition’s leaders, due to United Charitable’s rules prohibiting program participants from being involved in litigation. *See id.* at 96:18–97:1.

ARGUMENT

Summary judgment is appropriate when “there is no genuine dispute as to any material fact” and “the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). It is not a “disfavored procedural shortcut, but rather [an] integral part of the Federal Rules . . . which are designed to ‘secure the just, speedy, and inexpensive determination of every action.’” *Nationstar*

Mortg., LLC v. Ahmad, 155 F. Supp. 3d 585, 589 (E.D. Va. 2015) (Hilton, J.) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (internal quotation omitted)).

When “a motion for summary judgment is properly made, the opposing party has the burden of showing that a genuine dispute of material fact exists.” *Kirkland v. Mabus*, 206 F. Supp. 3d 1073, 1080 (E.D. Va. 2016) (Hilton, J.) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)). “While the Court will view the facts and inferences drawn in the light most favorable to the nonmoving party, the party opposing the motion for summary judgment must put forth specific facts showing a genuine issue for trial.” *Nationstar Mortg., LLC*, 155 F. Supp. 3d at 589 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “[I]t is ultimately the nonmovant’s burden to persuade [the Court] that there is indeed a dispute of material fact. It must provide more than a scintilla of evidence—and not merely conclusory allegations or speculation—upon which a jury could properly find in its favor.” *Id.* (internal citation omitted).

Under these well-established standards, the Court should enter summary judgment for the Board on the Coalition’s single Equal Protection Clause claim.

I. The Coalition lacks standing to maintain this suit.

This Court previously declined to dismiss this suit based on the Coalition’s lack of standing. ECF No. 50 (order denying motion to dismiss). It found, at that preliminary stage, that the Coalition had adequately alleged it was “a voluntary association with members that set out to accomplish or be involved some common purpose.” ECF No. 52 at 33:20–22 (transcript of hearing). But the Coalition’s “need to satisfy the[] . . . requirements [of standing] persists throughout the life of the lawsuit.” *Wittman v. Personhuballah*, 578 U.S. 539, 543 (2016). “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice[.]” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (cleaned up). “In response

to a summary judgment motion, however, the plaintiff can no longer rest on such ‘mere allegations,’ but must ‘set forth’ by affidavit or other evidence ‘specific facts.’ ” *Id.* (quoting Fed. R. Civ. P. 56(e)).

Discovery confirms that the Coalition cannot carry its burden of establishing standing. *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 459 (4th Cir. 2005). “An *association* has standing to bring suit on behalf of its *members* when” it is either “a traditional voluntary membership organization,” like a trade association or union, or “its equivalent.” *Hunt v. Wash. State Apple Adv. Comm’n*, 432 U.S. 333, 344–45 (1977). The Coalition is neither.

A. The Coalition is not a traditional membership organization.

The Coalition possesses few, if any, of the features that characterize a traditional membership organization. *See, e.g., Small Sponsors Working Grp. v. Pompeo*, No. 1:19-2600-STA-jay, 2020 WL 2561780, at *6 (W.D. Tenn. May 20, 2020). The Coalition lacks even the basic formalities of a membership organization. It:

- does not have a charter, articles of incorporation, or bylaws, SUF #64;
- is not registered with any federal agency (such as the IRS) or Virginia agency (such as the Virginia Secretary of State), SUF #64;
- has no officers, SUF #70;
- is led by volunteers who “self-nominated” themselves by “just rais[ing] their hands,” SUF #70;
- has no agendas at meetings, SUF #71;
- collects no dues, SUF #72;
- has no operating budget or bank account, SUF #72;
- has no formal member application or approval process, SUF ##65-68; and
- has never put any decisions to a vote, SUF #71.

According to the Coalition, “The most formal thing that we did to institutionalize the

formation of Coalition for TJ was we created a Facebook page” that is “open” to the “public.” Ex. 40, Nomani Dep., at 18:14–19:2. It clearly is not a traditional membership organization.

B. The Coalition lacks functional equivalency with a traditional membership organization.

While an organization with no formal members can still have associational standing if it is the “functional equivalent of a traditional membership organization,” *Heap v. Carter*, 112 F. Supp. 3d 402, 418 (E.D. Va. 2015), the Coalition lacks that functional equivalency. As this Court explained in *Heap*, “[f]unctional equivalency is determined if the organization (1) serves a specialized segment of the community; (2) represents individuals that have all the indicia of membership, including (i) electing the entity’s leadership, (ii) serving in the entity, and (iii) financing the entity’s activities, and (3) its fortunes are tied closely to those of its constituency.” *Id.* These indicate whether members exercise the requisite “measure of control over the organization.” *Grp. Health Plan, Inc. v. Philip Morris, Inc.*, 86 F. Supp. 2d 912, 918 (D. Minn. 2000) (requirement “assures the substantial nexus between the organization and its members necessary to meet the Article III injury requirement”). *See also Hunt*, 432 U.S. at 344–45.

Although the burden rests with the Coalition to prove its standing, *see, e.g., Md. Highways Contractors Ass’n, Inc. v. Maryland*, 933 F.2d 1246, 1253 (4th Cir. 1991), the Coalition has brought forth no evidence to establish *any* of the required elements identified in *Heap*. The second *Heap* element is the one most obviously missing here. As summarized above, the Coalition does not bear *any* indicia of traditional membership, much less “*all* the indicia of membership” listed in elements 2(i)–(iii).

For starters, the Coalition’s consideration of what constitutes “membership” is so loose as to be meaningless. The Coalition has no formal criteria for membership—just “supporting the mission of the organization” can make one a member, but the Coalition has expressed its mission

in different ways to different audiences. SUF #67. The Coalition also counts as “members” those who have completed a form on the “Contact Us” tab of its website, and are thereby joined to the Telegram messaging application. SUF #65. But that form does not ask those filling out the form to state where they reside, their race, whether they have any children, much less whether their children are or could ever be eligible to attend TJ. SUF #66. Indeed, because the online contact form is not labeled as a “membership application,” SUF #66, the Coalition cannot even show that all the individuals who have filled out these forms actually know that they are “members” of an association. *See Sorenson Commc’ns, LLC v. FCC*, 897 F.3d 214, 225 (D.C. Cir. 2018) (holding that online-information forum with email “subscribers” and Facebook followers did not qualify as a membership association).

Even if the membership were carefully defined, the Coalition’s structure simply does not provide a “means by which [the members] express their collective views and protect their collective interests.” *Hunt*, 432 U.S. at 344–45. Relevant to *Heap* element 2(i), the Coalition has no officers, and instead is led by an unelected group of volunteers who “self-nominated” themselves by “just rais[ing] their hands,” SUF #70. The fact that the Coalition is “run by people who are self-appointed . . . weighs heavily against its being considered a membership organization.” *Package Shop, Inc. v. Anheuser-Busch, Inc.*, CIV. A. No. 83-513, 1984 WL 6618, at *40–41 (D.N.J. Sept. 25, 1984).

The absence of membership control means that the Coalition’s self-appointed leaders, not the members whom the Coalition purports to represent in this case, are the ones who chart the Coalition’s course and can make up the rules as they go along. Without that “element of [membership] control, there is simply no assurance that the party seeking judicial review represents the injured [p]arty, and not merely a well-informed point of view.” *Health Research*

Grp. v. Kennedy, 82 F.R.D. 21, 27 (D.D.C. 1979). In fact, the Coalition admits it has never put any decisions to a vote, which necessarily includes whether to initiate this lawsuit. SUF #71. See *Package Shop, Inc.*, 1984 WL 6618, at *41 (“Significantly, the alleged members of the organization did not vote to bring this lawsuit [T]here is no evidence that a majority of the membership would have approved this lawsuit.”).

The Coalition also has not adduced evidence showing that its members are financing the Coalition’s activities (*Heap* element 2(iii)). See *Funeral Consumers All., Inc. v. Serv. Corp. Int’l*, 695 F.3d 330, 344 n.9 (5th Cir. 2012) (“If the association seeking standing does not have traditional members, as here, the association establishes its standing by proving that . . . its members . . . finance the organization’s activities, including the case’s litigation costs.”). The Coalition has made clear it does not collect dues or membership application fees. SUF #72. While the Coalition admits to raising money for *other* groups, including at least one Rule 501(c)(4) political lobbying organization, SUF #72, it has failed to establish that its members are financing its activities. See *Gettman v. DEA*, 290 F.3d 430, 435 (D.C. Cir. 2002) (holding that *High Times Magazine* lacked standing to represent its readers’ interests because it failed to show that “its ‘readers and subscribers’ played any role in selecting its leadership, guiding its activities, or financing those activities”).

Just as the Coalition has not adduced evidence establishing the second *Heap* element, it cannot satisfy the first and third elements either. Those elements condition representational standing on the association’s serving “a specialized segment of the community,” such that the association’s “fortunes are tied closely to those of its constituency.” 112 F. Supp. 3d at 418. The Coalition’s broad membership is not so “specialized” or aligned with the relief sought here. To be sure, the Complaint alleges that the Coalition’s members include current parents of seventh-

and eighth-grade students planning to apply to TJ, Compl. ¶¶ 12–13—but the Coalition’s sworn testimony could not support that allegation, *see* SUF ##66–69.

In sum, discovery has confirmed that the Coalition is the kind of “loose-knit association” that, lacking membership control, cannot facilitate representational standing. *Hunt*, 432 U.S. at 344–45; *Heap*, 112 F. Supp. 3d at 419; *Small Sponsors*, 2020 WL 2561780, at *6.

II. The Coalition cannot prove a claim of intentional discrimination against Asian-American students.

Even if the Coalition could demonstrate associational standing, the School Board would still be entitled to summary judgment because the Coalition cannot prove that the TJ admissions policy violates the Equal Protection Clause.

To prevail, the Coalition must first demonstrate that the policy is subject to strict scrutiny. *See* Compl. ¶¶ 63–67 (alleging only that the policy does not withstand strict scrutiny). It cannot.

As the Coalition has always conceded, the new admissions policy is “facially race-neutral.” Compl. ¶ 63. A facially race-neutral policy is not subject to strict scrutiny unless the plaintiff can demonstrate *both* (1) that the policy has a “racially disproportionate impact”; *and* (2) that it had an “invidious discriminatory purpose.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977). *Accord Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) (“if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose”); *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.* (“*Boston Parent II*”), 996 F.3d 37, 45 (1st Cir. 2021); *Boyapati v. Loudoun Cty. Sch. Bd.*, No. 1:20-cv-01075 (AJT/IDD), 2021 WL 943112, at *8 (E.D. Va. Feb. 19, 2021) (Trenka, J.).

The Coalition cannot prove either, let alone both, elements.

A. The admissions policy does not have a disparate impact on Asian Americans.

The undisputed facts demonstrate that the Coalition cannot carry its burden of showing that the admissions policy disproportionately burdens Asian-American students.

1. The policy does not disproportionately burden Asian Americans.

The Coalition has adduced utterly no evidence that Asian-American students are disproportionately harmed by the TJ admissions policy. Asked which aspects of the policy it is contending disparately impacts Asian-American students, the Coalition stated: “The elimination of the nationally-normed, standardized admissions test, coupled with the 1.5% middle school limitation, had an adverse disparate impact on Asian-American students.” Ex. 41, Coalition’s Ans. to Interrog. 6. The only data that the Coalition cited as evidence of “disparate impact” was “the admissions statistics of the TJ Class of 2025.” *Id.*

But the admissions statistics of the TJ Class of 2025 show no evidence of any disparate impact on Asian-American students. On the contrary, Asian-American students were the largest racial group among the students offered admission (54.36%), and their share of offers was also higher than their share of the applicant pool (48.59%). SUF #59. Of the four other racial groups, three groups (Black, White, and Multi-Racial/Other students) each comprised shares of admissions offers *smaller* than their relative shares of the applicant pools. SUF #59. So the Coalition cannot show that the new policy leaves Asian-American students worse off than non-Asian-American students. The statistics demonstrate just the opposite.

2. The Coalition cannot prove disparate impact by comparing this year’s admission numbers to last year’s.

The Coalition cannot prove disparate impact by the theory—advanced in its failed renewed motion for preliminary injunction (ECF 59)—that Asian-American students were disparately impacted because the Asian-American students who applied for the Class of 2025

received a smaller share of offers than those who applied for the Class of 2024.

As the U.S. District Court for the District of Massachusetts recently explained in a similar case, “the comparator used by the Coalition [is] specious”:

The racial demographics . . . under the old plan were a disjunctive consequence year to year; there was no guarantee that any White or Asian student would even be admitted. To use a variable consequence as the baseline against which all future must comport is erroneous. White and Asian students are not “losing” seats simply because last year different White and Asian students were exceedingly privileged to win a high number of seats without any evidence that this year[’s] students would have fared the same.

Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos. (“*Boston Parent I*”), No. CV 21-10330-WGY, 2021 WL 4489840, at *15 n.20 (D. Mass. Oct. 1, 2021); *see also Bos. Parent II*, 996 F.3d at 46 (noting that plaintiff “offer[ed] no analysis or argument for why” comparing the projected admissions rate of Asian-American students to the previous year’s admissions rate is “apt for purposes of determining adverse disparate impact”).

The Coalition’s theory does not compare how the new policy affects Asian-American applicants to non-Asian-American applicants. Instead, it compares the Asian-American students who applied under the new policy in 2021 to the Asian-American students who applied under the old policy in 2020. It’s as meaningless as comparing the numbers in Harvard’s admitted class to Yale’s admitted class. To accept the Coalition’s comparison as meaningful, the Court would have to assume that the students of each of the five racial groups who applied in 2021 are identical to all the students of their respective racial groups who applied in 2020—an assumption that is tantamount to stereotyping all students based simply on their race. The Court should reject such a racially discriminatory and illogical assumption.

Even if the numerical differences between the Classes of 2024 and 2025 had any relevance, the Coalition has adduced no evidence that the differences are statistically significant.

A plaintiff who fails to “produce statistical evidence demonstrating a causal connection cannot make out a prima facie case of disparate impact.” *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 543 (2015); *Boston Parent II*, 996 F.3d at 46 (“[a] party claiming a disparate impact generally does not even get to first base” without evidence of statistical significance).

Without evidence of disparate impact, the Coalition’s Equal Protection claim fails.

B. The Coalition cannot prove that the Board acted with a racially discriminatory purpose.

Even if the Coalition could demonstrate that the admissions policy has a disparate impact on Asian Americans (which it cannot), summary judgment would still be appropriate because the Coalition cannot show that the Board adopted the changes for a discriminatory purpose.

1. The admissions policy is not discriminatory merely because the Board was aware that it could have an impact on racial diversity.

The Coalition has advanced the theory that the new admissions policy may be invalidated if the Board believed that the changes could, or would, have an impact on racial demographics. But that legal theory is foreclosed by Supreme Court precedent. *See Anderson*, 375 F.3d at 87 (“The Supreme Court has explained that the motive of increasing minority participation and access is not suspect.”).

Justice Kennedy’s concurring opinion in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), explains that public schools may adopt facially race-neutral policies to affect the racial composition of a school. *Id.* at 787–89 (Kennedy, J., concurring in part and concurring in the judgment). He stated: “In the administration of public schools . . . it is permissible to consider the racial makeup of schools and to adopt general policies *to encourage a diverse student body, one aspect of which is its racial composition.*” *Id.* at 788 (emphasis added).

[*School authorities*] concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students . . . *are free to devise race-conscious measures to address the problem* in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.

Id. at 788–89 (emphasis added).

Examples of such measures include “strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.” *Id.* at 789. These measures have been considered “for generations,” he said, and governmental actors “should be permitted to employ them with candor and with confidence that a constitutional violation does not occur whenever a decisionmaker considers the impact a given approach might have on students of different races.” *Id.* See also *Boston Parent I*, 2021 WL 4489840, at *15 (“It ought be remembered that geographic and socioeconomic diversity are appropriate, validated educational goals in their own right, without any regard to racial demographics.”).¹

Thus, ever since *Parents Involved*, courts have understood that race-neutral student-assignment plans adopted to promote equality of access for all students are subject only to rational-basis review, even if adopted with the hope or goal of improving racial diversity. The Supreme Court confirmed that point in 2015 in *Inclusive Communities*, where Justice Kennedy

¹ In his plurality opinion in *Parents Involved*, Chief Justice Roberts criticized the school districts for failing to show they had seriously considered “workable race-neutral alternatives,” 551 U.S. at 735—noting the record evidence of such alternatives that had not been considered or had been rejected without serious consideration. Such race-neutral alternatives included considering poverty or using a lottery to assign students to schools. See J.A. at *252a, *Parents Involved*, 551 U.S. 701 (2007) (No. 05-908) [available at 2006 WL 2468696].

explained that government officials may use “race-neutral tools” to “foster diversity and combat racial isolation” without running afoul of the Equal Protection Clause. 576 U.S. at 545.

2. The policy adopted by the Board is legally indistinguishable from the plans upheld across the country and the Coalition’s own proposal for TJ admissions.

Four federal circuits have followed Justice Kennedy’s *Parents Involved* opinion to hold that race-neutral public-school student-assignment plans are subject only to rational-basis review, even if adopted with the hope or goal of improving racial diversity. *See Anderson*, 375 F.3d at 87 (1st Cir. 2004) (“Contrary to plaintiffs’ arguments, the mere invocation of racial diversity as a goal is insufficient to subject the New Plan to strict scrutiny.”); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 553 (3d Cir. 2011) (upholding redistricting plan that was race neutral on rational-basis review, despite the school district’s awareness of racial consequences); *Lewis v. Ascension Parish Sch. Bd.*, 806 F.3d 344, 357 (5th Cir. 2015) (agreeing that “a school zoning plan that assigns students to schools based on their home addresses is facially race neutral, and the rezoning body’s consideration of demographic data in drawing the relevant geographic boundaries does not amount to making an express classification”); *Spurlock v. Fox*, 716 F.3d 383, 395 (6th Cir. 2013) (upholding geographic assignment plan); *see also Christa McAuliffe Intermed. Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 279–80 (S.D.N.Y.) (finding equal-protection challenge unlikely to succeed against race-neutral program designed to increase racial diversity at specialized public high schools), *aff’d*, 788 F. App’x 85 (2d Cir. 2019).

And this Court recently followed *Parents Involved* in a very similar case challenging the Loudoun County School Board’s decision to change the admissions policy at its exclusive STEM school to allot 75% of the seats to qualified students based on the geographic location of the student’s middle school. *Boyapati*, 2021 WL 943112, at *2. The plaintiff’s claim of

“discriminatory intent” against Asian American students could not be inferred simply because school officials acted “to promote the racial and ethnic diversity of admitted students”; it was not a “reasonable inference that the school’s plan was devised to discriminate against Asian students and not to promote socio-economic diversity.” *Id.* at *9. Likewise, the district court and First Circuit in *Boston Parent* found that the Boston school system’s zip-code-based student-assignment plan for its prestigious “Exam” schools did not trigger strict scrutiny despite that school board members expressed hope that the race-neutral plan would increase the number of historically underrepresented Black and Hispanic students. *Boston Parent I*, 2021 WL 4489840, at *10–11; *Boston Parent II*, 996 F.3d at 46–50. Indeed, “[t]o find such conduct subject to strict scrutiny would render any school admissions criteria subject to strict scrutiny if anyone involved in designing it happened to think that its effect in reducing the underrepresentation of a group was a good effect. Plaintiff cites no case so holding.” *Boston Parent II*, 996 F.3d at 50. The Coalition cannot distinguish the Board’s TJ admissions policy from the ones that have been upheld across the country.

Nor can the Coalition distinguish its own “Second-Look Proposal” for TJ admissions, which it repeatedly urged the Board to adopt, from the plan the Board adopted. Instead of eliminating the standardized tests and guaranteeing each middle school seats equivalent to the 1.5% of its eighth-grade population, the Coalition’s proposal would have retained the standardized tests but guaranteed each middle school at least five applicants in the semifinalist round. The Coalition touted its Second-Look Proposal as “a concrete proposal...to materially increase the numbers of underrepresented minorities at [TJ], while maintaining the excellence of education at [TJ].” Ex. 18, at 2. The Second-Look Proposal was also facially race-neutral but the Coalition believed that “there is a disproportionate number of kids, who are Black and

Hispanic, who live in parts of the county that are historically underrepresented and thus its proposal “would result in disproportionately more Black and more Hispanic students benefiting....” SUF #24. The Coalition’s own plan was a facially race-neutral plan intended to increase the representation of disadvantaged groups, including some racial minorities—the same objective that it accuses the Board of having and the objective it is contending is unlawful. The Coalition cannot explain why, under its reading of the law, the Board could have chosen the Second-Look Proposal but not the race-neutral 1.5% Plan.

3. The Coalition cannot show that the Board adopted changes to the TJ policy to reduce the number of Asian-American students.

The Coalition’s case is doomed not only by the law but also by the facts. The Coalition has turned up no evidence to prove its assertion that the admissions policy changes were “specifically intended to reduce the percentage of Asian-American students.” Compl. ¶ 2. It has argued that admissions are a “zero sum game” because measures that try to increase the representation of “underrepresented” groups necessarily mean decreasing access for other groups. ECF No. 25 at 24. Not so. “While the increase of a zero-sum resource to one group necessitates the reduction of that resource to others, the case law is clear -- the concern is action taken *because of* animus toward a group, not *in spite of* an action’s necessary effect on a group or groups. *Boston Parent II*, 2021 WL 4489840, at *15 (citing *Feeney*, 442 U.S. 258). *See also Boyapati*, 2021 WL 943112, at *8 (assuming that Loudoun County’s geography-based admissions policy would decrease Asian-American enrollment but finding no plausible allegation of intentional discrimination); *see also* FCSB 12(b) Br. 24–29, ECF No. 22.

The Coalition also has no evidence to back up its claim that the Board changed the TJ admissions policy because it would change the racial make-up of the school. ECF No. 69, at 8–9. Indeed, the undisputed evidence shows that no one at FCPS conducted “any analysis to

predict how the 1.5% plan would affect the racial makeup of students admitted to TJ under the new admissions process.” SUF #49. The absence of such evidence undermines any claim that the 1.5% Plan was an effort at racial balancing or “specifically intended to reduce the percentage of Asian-American students.” Compl. ¶ 2.

Moreover, the comments offered by Board members at the December 17, 2020 meeting, at which the 1.5% plan was adopted, made clear that middle-school diversity at TJ was the objective:

- Member Keys-Gamarra noted, “I am glad to see that we have these percentages that will come from every middle school, but I think it’s telling we’re talking about 1.5 percent; because that tells the public that we have middle schools where we didn’t even have 1.5 percent....” Ex. 38, Transcript of December 17, 2020 Mtg., at 138:25–139:8.
- Member Cohen celebrated that “[a]ll middle schools will now be represented at TJ.” *Id.* at 116:13–15.
- Member Tholen felt that the motion would “thoughtfully ensure the increased geographic diversity of entrants” and would “build the strength of the TJ pipeline in every single one of our middle schools.” *Id.* at 109:23–110:7.
- Member Pekarsky thought the motion “will ensure that we are identifying highly-qualified academically-exceptional students in all FCPS schools and providing them the opportunity to enroll at [TJ].” *Id.* at 110:17–23.
- Member Sizemore Heiser observed, “[I]t is important that TJ be the place where those who have that passion and aptitude for STEM can access it from all across the county.” *Id.* at 122:11–17.

As Member Corbett Sanders summarized it, the Board’s “desire” was “to ensure that there is equity of access and equity of opportunity for students throughout Fairfax County at each individual middle school in Fairfax County to be able to take advantage of the wonderful opportunities at TJ.” *Id.* at 112:11–20. That goal of ensuring County-wide geographic representation at TJ is entirely legitimate.

4. No procedural irregularities support the Coalition's theories.

In *Arlington Heights*, the Supreme Court observed that “[d]epartures from the normal procedural sequence . . . *might* afford evidence that improper purposes are playing a role.” 429 U.S. at 267 (emphasis added). Contrary to the Coalition’s suggestion, Compl. ¶¶ 33–35, nothing about the process the Board followed in adopting the new admissions policy—consisting of successive proposals, presentations, and many hours of debate over the course of many months, SUF ##12–43—demonstrates an improper, discriminatory motive.

The Coalition complains that the Board eliminated the standardized-testing requirement at the October 6, 2020 work session, asserting that “School Board work sessions typically do not include votes.” Compl. ¶ 33. But nothing in any Board policy or in Virginia’s open-meeting laws precludes it. SUF #32. The Board has taken votes at previous work sessions. SUF #32. The Coalition is likewise mistaken to suggest, Compl. ¶¶ 33–34, that the Board had to take public comment before voting to drop standardized testing. That decision is not among the narrow category of school-board actions for which Virginia law requires a prior public hearing. *See* Va. Code Ann. § 22.1-79(8) (Supp. 2020). In any event, the Board already had input from the public about the TJ admissions policy and the standardized-testing requirement. SUF #33. Indeed, this discussion occurred against the backdrop of a nationwide, decades-long (and accelerating) debate over the value and drawbacks of standardized testing.

Even assuming for argument’s sake that holding a vote at a School Board work session was uncommon, nothing supports the assumption that the School Board did so to harm or help a particular racial group. *All* TJ applicants would have needed to take the standardized tests the following month, and all under the complicating conditions and extraordinary precautions triggered by the COVID-19 pandemic. SUF #31. So the most obvious explanation for the timing of the decision was the desire to give families and staff sufficient time to change their

plans. *See* Ex. 23, at 64:11–65:1 (“[T]he decision on the test really is sensitive to really this week...because that testing normally happens in October and November.”). “As between that ‘obvious alternative explanation’ . . . and the purposeful, invidious discrimination [plaintiff] asks us to infer, discrimination is not a plausible conclusion.” *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567 (2007)).

Finally, the Coalition’s claim that the School Board “rushed” through—over the course of three months—changes to the admission process in order to obscure its racially discriminatory motives is disproved by the uncontested record. It is undisputed that Virginia legislation passed in May 2020 required Governor’s Schools to examine their admissions processes and submit by October 2020 their plans for increasing equality of access for students from disadvantaged backgrounds. SUF #12. It is also undisputed that Secretary Qarni was particularly focused on TJ and made clear that he and/or the Governor would be recommending changes to the admissions processes at TJ. SUF ##12–16. It is also undisputed that FCPS was “attempting to ‘get out ahead’ of what they thought Secretary Qarni was going to demand that they do.” SUF #15. Though the Coalition has pilloried Secretary Qarni’s efforts as anti-Asian, SUF #14, the record establishes that FCPS was trying to comply with and anticipate State-level legislative and administrative actions, which conclusively proves a legitimate, non-discriminatory purpose.

The Coalition’s legal theory that the Board “rushed” changes to TJ admission is also belied by its admission that the issue of TJ admissions was “taking up a disproportionate amount of the county’s time.” Ex. 5, Miller Dep., at 76:21–77:4. Indeed, the record shows that the Board devoted an inordinate amount of time to a subject that affected only a small segment of its 188,000+-student population, in the face of such pressing needs as how to return students to in-person learning during a global pandemic. *See generally* Pekarsky Dep., at 21–56 (describing

meetings and work sessions); Exs. 26, 28, 37; *see also, e.g.*, Ex. 23, Transcript of October 6, 2020 Work Session, at 197:11–16 (Sizemore-Heiser: “I do hope we get this done sooner than later...because it's taking away time [from] like things like getting back all of our kids into schools”); Ex. 38, Transcript of December 17, 2020 Board Meeting at 98:11–13 (Omeish: “[W]e’ve been hashing this out for many weeks and months.”); *id.* at 100:7–9 (Anderson: “[W]e have been debating this issue for many months now.”); *id.* at 118:5–10 (Meren: “I’ve learned a lot in these past months. I’ve read analysis, letters, reports, historical accounts of TJ and proposals, had conversations and I’m making the best decision I can tonight....”)

5. The Coalition has not shown that any School Board members’ votes—let alone a majority’s—were motivated by discriminatory intent.

Finally, there is no evidence that *any* School Board member, let alone a majority of 12 members, voted to change the TJ admissions policy out of anti-Asian-American animus.

The Coalition identified only a single Board member—Ricardy Anderson—as having had the goal of racial balancing. Ex. 5, Miller Dep., at 35:7–12. It offered merely that Anderson had “requested that the racial demographics of TJ reflect that...of the rest of...the catchment area, in particular, Fairfax County.” *Id.* at 35:9–12. But even if the Coalition could show that Anderson’s vote was improperly motivated (which it cannot), it would not affect the Board’s approval of the 1.5% Plan: she was the sole Board member to vote *against* it. SUF #47.

The Coalition has no evidence to substantiate the allegations in the Complaint that read discriminatory intent into statements by multiple Board members. *See, e.g.*, Compl. ¶¶ 45–47. Not one of the cited comments supports an inference of racism. At most, they show that some Board members were hopeful that the admissions policy changes would eliminate barriers to entry for historically disadvantaged groups at TJ—an objective that is permissible, *see* Part II.B.1 *supra*, and consistent with the Coalition’s own goals, SUF ##23–25, 27.

Yet, even if *all* of the comments attacked in the Complaint showed each individual speaker’s purported anti-Asian-American animus, the Coalition would still be without sufficient evidence to impugn the votes by the 12-member School Board, which were unanimous or near-unanimous. *See* SUF ##30, 47. As courts have regularly held in other contexts, an unconstitutional motive held by less than a majority of a multi-member municipal body is not attributable to the entire voting body. *See, e.g., Matthews v. Columbia Cty.*, 294 F.3d 1294, 1297 (11th Cir. 2002) (“Because policymaking authority rests with the Commission as an entity, the County can be subject to liability only if the Commission itself acted with an unconstitutional motive. An unconstitutional motive on the part of one member of a three-member majority is insufficient to impute an unconstitutional motive to the Commission as a whole.”); *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1239 (9th Cir. 1994) (rejecting equal protection challenge to city plan based on racist comments by city council member; noting “the council adopted the plan unanimously and there is no evidence that any other council member acted with discriminatory intent or that the council as a whole took the action with discriminatory intent”).² The Coalition falls well short of demonstrating racial bias by a majority of Board members.

CONCLUSION

The Court should grant summary judgment in favor of the School Board.

Respectfully submitted,

FAIRFAX COUNTY SCHOOL BOARD

² *Cf. LaVerdure v. Cty. of Montgomery*, 324 F.3d 123, 125 (3d Cir. 2003) (“It is undisputed that only a majority of the three-member Board is authorized to establish policy on behalf of the County. . . .Therefore, whatever the contents of Marino’s statements, because he was only one member of the Board, those comments do not constitute County policy.”); *Jeffries v. Harleston*, 52 F.3d 9, 14 (2d Cir. 1995) (“[T]he nine votes [of 14 on CUNY Board of Trustees] based on legitimate grounds constitute a superseding cause breaking the causal chain between the tainted motives [of non-voting CUNY Chancellor and City College] and the decision”).

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:21-cv-00296-CMH-JFA
)	
FAIRFAX COUNTY SCHOOL BOARD,)	
)	
Defendant.)	

DECLARATION OF JEREMY SHUGHART

My name is Jeremy Shughart, and I certify that the following information is true to the best of my knowledge, information, and belief.

1. I am over the age of 18 and make this declaration based on my own personal knowledge.
2. I am employed by the Fairfax County School Board as the Director of Admissions for the Thomas Jefferson High School for Science and Technology (“TJ”). I have been employed in that position since July 2013. Prior to that position, I was employed by Fairfax County Public Schools (“FCPS”) as the manager of the Office of Student Testing.
3. As the Director of Admissions for TJ, I oversee all aspects of the student selection and admissions process for that school. This includes leading the development and continued refinement of the online application process and assessment components, acting as the liaison with our participating jurisdictions, providing guidance on outreach, implementing any admissions changes, and coordinating the selection process for TJ student admissions.
4. FCPS periodically publishes a regulation, Regulation 3355, that describes the procedures for student selection and admission to TJ (“TJ Admissions Process”). The July 2018

revision of that Regulation, Regulation 3355.13, is attached as Exhibit A, and it accurately described the TJ Admissions Process that was used to select students entering TJ in the 2018-19, 2019-20, and 2020-21 school years. The TJ Admissions Process for students entering in Fall 2013 through Fall 2017 was described in earlier versions of Regulation 3355.

5. Since 2013, students have been selected for admission to TJ based on a holistic review of a number of qualitative and quantitative components. These components have been adjusted many times over the years. From Fall 2017 through Spring 2020, these components included an essay question; responses to a student information sheet; teacher recommendations; percentile ranks on math, reading & science assessment tests; grade point average; and math/science grade point average.

6. Until Fall 2017, the TJ Admissions Process included one standardized test—a Specialized High School Admissions Test that was customized by the test vendor (Pearson) exclusively for the TJ Admissions Process. When Pearson informed FCPS in early 2016 that it would discontinue that test after Fall 2016, FCPS undertook to select an alternative. After a lengthy and thorough evaluation and recommendation process, FCPS selected a combination of three tests from two different vendors: the ACT Aspire Reading, the ACT Aspire Science, and the Quant-Q as a mathematics assessment.

7. FCPS began using those three tests as part of the TJ Admissions process in the 2017-18 school year. That was the first time that a science assessment was used as part of the TJ Admissions process.

8. Before changes to the TJ admission policy were adopted by the Fairfax County School Board in October and December 2020, the TJ Admissions Process took five to six months to complete.

- a. Under that process, an application window opened for four weeks starting in early September and closing in late September or early October.
- b. Applicants who paid the application fee and met the eligibility criteria (8th-grade students residing in Fairfax County or another participating jurisdiction, enrolled in or already completed Algebra I, and having a 3.0 GPA in the core academic subjects at the end of 7th grade final marks and 8th-grade 1st-quarter marks) were administered the ACT Aspire Reading, the ACT Aspire Science, and the Quant-Q tests around the second week of November. The ACT Aspire Reading and Science tests were administered during a national testing window established by the exam vendor, which window typically closed in mid- to late November of each year. FCPS administered the Quant-Q exam, which constituted the math assessment, at the same time as the two ACT Aspire tests.
- c. After FCPS received the results of the ACT Aspire and Quant-Q assessments in early January, the applicant pool was narrowed in mid-January to a “semifinalist” pool, consisting of those applicants who scored above certain percentile minimums on the three exams and who had continued to maintain at least a 3.0 GPA in their core academic courses.
- d. In early or mid-February, the semifinalists were administered a qualitative admissions exam, consisting of a proctored administration of the Student Information Sheet and a Problem-Solving Essay. Semifinalists also were required to obtain two teacher recommendations and submit them in late January or early February.

- e. A team of highly-qualified, trained educators then spent four to six weeks conducting a holistic review of the semifinalists' complete application portfolios.
- f. Admissions offers were made to students by no later than the end of April. This timeline allowed for unsuccessful applicants to meet the deadlines for course selection for FCPS high schools, and as well as the admissions timetables for most area private and parochial schools, which typically have late Spring deadlines for enrollment in the next school year.

9. As part of the school system's commitment to equitable access and opportunities for all students, the TJ Admissions Process is regularly reviewed to identify ways that the process can be improved to better serve the community, without diminishing the quality of education at the school and while remaining faithful to its mission "to provide students with a challenging learning environment focused on math, science, and technology, to inspire joy at the prospect of discovery, and to foster a culture of innovation based on ethical behavior and the shared interests of humanity."

10. In the Fall of 2020, the School Board modified the admissions process for TJ.
- a. On September 15, 2020, the Division Superintendent at a public work session proposed to the School Board to make multiple changes to the TJ Admissions Process—the Merit Lottery Proposal. Those changes included eliminating the application fee, the three standardized assessment tests, one qualitative assessment, and teacher recommendations, while raising the minimum GPA from 3.0 to 3.5 and using a lottery system to select among a pool of qualified applicants. Under the Merit Lottery Proposal, students would be placed in "Regional Pathways" based on the FCPS administrative region in which they

resided or their participating locality, and a lottery would be used to select students from each Regional Pathways. These “Regional Pathways” relied on the same five administrative Regions in which FCPS had been organized since 2014. Each Region would be allocated an equal number of seats (70), and set numbers of seats would also be allocated for each participating jurisdictions. Those changes were intended to enhance the pool of talented applicants, remove potential barriers that were keeping students from disadvantaged groups from applying or making it to the semifinalist rounds. Eliminating the application fee would remove a financial barrier that prevented some students from seeking admission. Eliminating the standardized admissions tests would remove a barrier that prevented many students from disadvantaged backgrounds from continuing to the qualitative-assessment portion of the admissions process. Eliminating teacher recommendations would remove the subjectivity that may have worked against applicants from disadvantaged groups. The School Board did not act on the Superintendent’s Merit Lottery Proposal on September 15, 2020.

- b. On October 6, 2020, the Superintendent presented a Revised Merit Lottery proposal to the School Board. That proposal modified the original proposal in two main ways: (1) instead of using a lottery for all seats, the highest-evaluated students would be offered the first 100 seats, and (2) another 400 students would be selected through the Regional Pathway lotteries, with each Region’s seats capped according to its proportion of overall student enrollment.
- c. The School Board discussed potential changes to the TJ admissions policy at a lengthy work session on October 6, 2020, but it did not accept either the

Superintendent's Merit Lottery or the Revised Merit Lottery proposals. Instead, it voted to eliminate the \$100 application fee and the standardized testing as part of the TJ Admissions Process. It also directed the Superintendent to increase the size of the admitted class from 480 students to 550—50 more seats than contemplated by the Superintendent's proposal. It did not decide the remaining components of the admissions process at that time. The School Board's decision on October 6 enabled us to forgo arranging the ACT Aspire and Insight Assessment (Quant-Q) testing that would ordinarily have been administered before the end of November.

- d. In November 2020, the Superintendent made two "final proposals" for the remaining components of the process. The "Hybrid Merit Lottery" proposal closely resembled the Revised Merit Lottery, except that it incorporated the School Board's directive to expand the TJ freshman class size to 550. Unlike the first three proposals, the "Holistic Approach" proposal would not use a lottery at all. Instead, 8th-graders applicants who met the eligibility criteria would be evaluated based on their performance on two qualitative assessments, and four "experience factors" would also be considered—namely, whether the student qualified for Free or Reduced-price Meals, was an English Language Learner, had an Individualized Education Plan, or attended a historically underrepresented school. Each of FCPS's five administrative Regions would be allocated a number of seats in the class, as would other participating school divisions, and applicants would be considered against other students attending schools in the same Region.

- e. The School Board met on December 7, 2020, to discuss both of the Superintendent's final proposals. It did not choose either of them.
- f. On December 17, 2020, the School Board met again. It voted to adopt some of the Superintendent's ideas but not others: the floor for eligibility would be raised by increasing the minimum unweighted GPA from 3.0 to 3.5; 8th-grade applicants would be required to be enrolled in a full-year honors Algebra I course or higher, an honors science course, and at least one other honors course or the Young Scholars program; teacher recommendations would not be required, students would be administered two qualitative assessments; and evaluators would consider the four experience factors of whether the student qualified for Free or Reduced-price Meals, was an English Language Learner, had an Individualized Education Plan, or attended a historically underrepresented school. Instead of capping the number of students admitted from each region, the School Board directed the Superintendent to ensure that each middle school would have seats equivalent to 1.5% of its 8th-grade class size, with seats offered in the first instance to the top applicants from that school. Even if each middle school's 1.5% allocation were completely filled, approximately 100 seats at TJ would remain to be allocated among private-school and home-schooled students, as well as other eligible students who ranked below the top 1.5% of applicants from their middle school.
- g. The 1.5%-plan was not proposed by the Superintendent, and our staff did not conduct any analysis to predict how the 1.5% plan would affect the racial makeup of students admitted to TJ under the new admissions process.

11. On April 28, 2021, the Superintendent promulgated Regulation 3355.14 to incorporate and implement the policy changes adopted by the School Board in revising the admissions policy for TJ. A true and accurate copy is attached as Exhibit B.

12. Starting in January 2021, my office conducted the TJ Admissions Process in accordance with the policy changes adopted by the School Board the previous October and December. The application window for 9th-grade admissions opened on February 1 and remained open through February 26, 2021. We administered the qualitative assessment portion on March 15, 2021, with a make-up date on April 12, 2021. Our admissions evaluators began reviewing candidates for admission on May 3, 2021. Students were notified about admission decisions on June 23, 2021. Students began classes on August 23, 2021.

13. Students were offered admission in accordance with the 1.5%-plan prescribed by the School Board. Under this plan, each public middle school was guaranteed a number of seats equivalent to 1.5% of its 8th-grade student population. At least 100 other unallocated seats were available to all eligible applicants from all schools, including private schools and home school.

14. As Director of Admissions for TJ, I am responsible for overseeing the admissions process. I ensured that the admissions process followed this requirement in the regulation:

[T]he admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).

FCPS Regulation 3355.14.V.A.3.b.

15. This past spring, a total of 3,470 students applied to TJ from 130 different schools (including 13 home-school students). The number of applicants was significantly higher under the new admissions process than in prior years (2,543 students in 2020; 2,771 in 2019; 3,160 in

2018, and 2,902 in 2017). These numbers include students who did not meet the eligibility criteria or who withdrew themselves from the process before offers were made. We saw a 42.19% increase in applications from the 18 FCPS middle schools other than the eight FCPS middle schools that in the past four years have together accounted for 86.53% of FCPS's share of students offered admission.

16. In 2021, under the 1.5%-plan, all 26 middle schools fulfilled their seat allocations with qualified applicants, and all eligible applicants were considered for admission for the approximately 100 seats not allocated to any public middle school. As a result, the students who received offers to join TJ as 9th-graders in 2021, included, for the first time in at least 15 years, students from all 26 public middle schools in Fairfax County.

- a. In 2020, eight of FCPS's 26 middle schools had zero students offered admission to TJ. The eight schools collectively had a total of 11 students offered admission to TJ in the four years prior to 2021 (2017 to 2020).
- b. Another seven middle schools had just one to four students offered admission to TJ in 2020.
- c. Three more middle schools had just five to seven students offered admissions to TJ in 2020.
- d. By contrast, the four middle schools with the highest numbers of students offered admission in 2020, had 82 students (Rachel Carson), 57 students (Longfellow), 33 students (Cooper), and 32 students (Rocky Run).

17. The average GPA (grade point average) of applicants in 2021 increased to its highest level (3.845) in at least 5 years. The mean GPA of admitted students remained virtually

unchanged at 3.953 (3.962 in 2020). Plus, there were some differences in demographics of students admitted in 2021:

- a. In 2021, 25% of students offered admission to TJ came from economically-disadvantaged households. In 2020, less than 1% (0.82%) of students offered admission to TJ had come from economically-disadvantaged households. That proportion had not exceeded 2% in any of the four years prior to 2021.
- b. In 2021, 5.45% of FCPS students offered admission to TJ were English-Language Learners. In 2020, less than 1% (0.62%) of FCPS students offered admission to TJ were English-Language Learners. That proportion had not exceeded 1% in the any of the prior four years (2017-2020).
- c. Students admitted in 2021 also include a greater proportion of females-- 46%-- than in the years past (41.8% in 2020; 42.0% in 2019; 42.8% in 2018; and 40.6% in 2017).

18. I understand that Plaintiff is contending that admission rates for Asian-American applicants dropped by 20 percent in 2021. That is not correct. Asian-American students comprised a smaller proportion of the applicant pool in 2021 (48.59%) than in 2020 (56.08%). While the raw number of applications from Asian-American students increased, that increase was relatively smaller than the jumps in applications from all other racial groups. Moreover, the proportion of admitted students who are Asian-American is still larger than their proportion of the applicant pool: 54.36% of students offered admission; 48.59% of applicants. By comparison, Black, White, and Multi-Racial/Other students continued to comprise smaller proportions of admitted students (7.09%, 22.36%, and 4.91%, respectively) than their proportions of the applicant pool (10.00%, 23.86%, and 6.60%, respectively).

19. I understand that Plaintiff is also contending that four middle schools have been “hardest hit” by the new TJ Admission Process, and is also contending that these four schools—Carson, Kilmer, Longfellow, and Rocky Run—“all” have “large Asian-American populations.” Plaintiff has also described Kilmer and Longfellow as “majority Asian-American.” These statements, too, are incorrect.

- a. All 26 FCPS middle schools had students apply to TJ in numbers that were several multiples of the school’s number of allocated seats, but just seven of 26 FCPS middle schools had more students admitted than their allocated seats. Those schools were led by Carson (31 over allocation), Longfellow (18 over allocation), and Rocky Run (16 over allocation).
- b. Students from Carson, Longfellow, and Rocky Run account for 65 of the 88 (73.86%) unallocated seats that were offered to FCPS students.
- c. FCPS has no “majority Asian-American” middle schools. The demographics of all FCPS schools are publicly available at www.fcps.edu and includes this data for the previous three years.
- d. The proportions of Asian-Americans at Kilmer (25.49%) and Longfellow (27.66%), which Plaintiff describes as “majority Asian-American,” are similar to those at several middle schools that have been historically underrepresented in TJ admissions.
- e. For example, 26.25% of students at Franklin are Asian-American; that school had only six students were offered admission to TJ between 2017 and 2020.
- f. Similarly, 27.88% of students at Liberty are Asian-American; that school had only three students offered admission to TJ between 2017 and 2020.

- g. As another example, Lanier has a student population that is 23.99% Asian-American; that school had only seven students were offered admission to TJ between 2017 and 2020.
- h. The vast majority (71.24%) of the 299 Asian-American students who received admissions offers in 2021 came from middle schools other than Carson, Kilmer, Longfellow, and Rocky Run. That is a higher proportion than years past (53.52% in 2020; 60% in 2019; 47% in 2018, and 49.05% in 2017).
- i. The ratio of Asian-American student applications to Asian-American student admissions from Carson, Kilmer, Longfellow, and Rocky Run (5.56:1) is nearly identical to the ratio of Asian-American student applications to Asian-American student admissions from all other schools (5.67:1).

20. It would be impossible for FCPS to revert to using the old TJ admissions process for the 2021-22 school year.

- a. Earlier this year, the vendor that provided two of the three standardized tests that were used from 2017 to 2019—the ACT Aspire Reading and Science exams—announced that it is no longer offering those tests for 8th-grade students. The new products that it is offering are not comparable and would not be suitable for TJ admissions. Among other things, the new products are not secure tests, are not modular, and do not provide the same robustness of assessments provided by the ACT Aspire Reading and Science.
- b. While the third exam, the Quant-Q, is still being offered by its vendor, TJ admissions have never been based on only a math exam; it has always included a verbal exam portion. Under the previous application process, to advance to the

semi-finalist round, applicants needed to meet certain percentile rankings in each test to move forward in the process. Applicants needed to achieve a 50th percentile in math (Quant-Q), 75th percentile in reading (ACT Aspire: Reading), 75th percentile in science (ACT Aspire: Science) and achieve a higher percentile rank in either math or science of 75th percentile in math or 90th percentile in science.

- c. Selecting new tests to replace the ACT Aspire Reading and Science exams would take many months. When we had to select new standardized tests for TJ admissions for use in Fall 2017, we began the process in May 2016. The process included: (i) research of testing options; (ii) creation of a working group that included members of TJ Admissions Staff, TJ Administration and faculty, FCPS Office of Program Evaluation (now ORSI), Instructional Services - Advanced Academics, Math, Science, middle school principals, representatives from other participating jurisdictions, the Advanced Academics Programs Advisory Committee, and the Fairfax County Association for the Gifted; (iii) multiple meetings of the work group to develop and finalize recommendations; (iv) presentation of recommendations to the School Board; (v) contracting with the selected vendor; and (vi) presentations to families.

21. If the school system were ordered to use an admissions process that requires the Quant-Q exam alone, it would be extremely disruptive and burdensome to the thousands of students who are eligible to apply for admission to TJ this year. These students and their families are expecting the TJ admissions process to follow the process that was decided by the School Board in 2020 and is set forth in FCPS Regulation 3355.14.V.A.3.b, which does not include any standardized testing for admission. To suddenly revert to using a test for which

students have not been preparing would cause hardship and distress to these students and their families. This is especially so when students are still adjusting to a return five days per week of in-person learning after a year of hybrid or virtual instruction that was necessitated by the COVID-19 pandemic.

22. There would also be both a cost factor and a delay factor in using an admissions process that requires applicants to take the Quant-Q test alone.

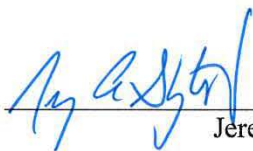
- a. As for the delay factor, the earliest that we could administer the Quant-Q exam would be in January 2022, assuming we are directed on September 17 to conduct such testing. That time would be needed for opening the application window (which opened on September 2nd in 2019), entering into a sole-source contract with the vendor (because our prior contract has expired), ordering exams, arranging test sites, and recruiting and training exam proctors. Adding the Quant-Q test to the admissions process could also adversely impact the administration of the two qualitative assessments which we have already scheduled to occur in late January 2022. This schedule was posted on our website in July 2021.
- b. Before the COVID-19 pandemic, it took weeks of planning and coordination to meet that requirement. In November 2019, for example, FCPS administered the two ACT Aspire tests and the Quant-Q at 16 testing sites, to approximately 2,500 applicants. In the weeks leading up to the exams, counselors at each site recruited teachers and staff to serve as test supervisors, examiners, and proctors. Staff were paid an hourly stipend for this additional work. In November 2019, a total of 196 extra personnel—16 test site supervisors, 120 test examiners, and 60 proctors—were used to administer the tests. While the amount of time for the examination

would be reduced by not administering the ACT Aspire exams, the same number of test sites combined with personnel would be required to administer the Quant-Q exam.

- c. The cost of administering the Quant-Q exam would be approximately \$72,000. This consists of ordering an estimated 3,000 exams to be administered at a cost of approximately \$39,000 (based on 2019 costs) and \$33,000 for the costs of proctoring the exams in a face-to-face environment (based on our actual costs in 2019).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2021.



Jeremy Shughart

Attachments:

Exhibit A
Exhibit B

Regulation 3355.13
Superintendent's Office
TJHSST Admissions
Effective 7/18/18

INSTRUCTION

Special Programs

Thomas Jefferson High School for Science and Technology (TJHSST)

This regulation supersedes Regulation 3355.12.

I. PURPOSE

To establish TJHSST as a Fairfax County public school and as one of the academic-year regional governor's schools for science and technology.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

- A. Sections V.A.1., V.A.3.a., V.A.5.b., and V.A.6.a. have been updated.
- B. Sections V.B.1., V.B.2.a. (4), V.B.3., and V.B.4. have been revised for clarity.
- C. Section VI has been revised to reflect updates in staff titles and department changes.
- D. Section VII.B. has been updated.
- E. Section IX.A. has been updated to reflect new graduation requirements.
- F. Section IX.C. has been revised for clarity.
- G. Section X.B.2. has been revised for clarity.

III. DESIGNATION AS A FAIRFAX COUNTY PUBLIC SCHOOL

TJHSST is a Fairfax County public school, having opened in 1985 under the sole direction and control of the Fairfax County School Board. As a Fairfax County Public Schools (FCPS) institution, all policies and regulations governing FCPS are applicable to TJHSST, with exceptions listed in this regulation and in annual notices issued in connection with this regulation.

IV. DESIGNATION AS AN ACADEMIC-YEAR GOVERNOR'S SCHOOL FOR SCIENCE AND TECHNOLOGY

TJHSST is annually designated by the Virginia Department of Education as an academic-year regional governor's school for science and technology. Such

designation:

- A. Provides certain state funding for the operation of the school.
- B. Requires that the school be available to eligible students whose parent(s) and/or legal guardian(s) is a full-time resident(s) of, and meets all the residency requirements of, the counties and cities of Northern Virginia under the following provisions:
 1. That each of the school divisions decide annually whether or not to participate in the regional school. School divisions choosing to participate are designated as cooperating school divisions.
 2. That eligible students from each cooperating school division may apply and be considered for admission to the school. The Division Superintendent may return a student to the cooperating jurisdiction with a prorated share of the tuition reimbursed.
 3. That the percentage of students admitted as part of any entering class from any cooperating school division outside Fairfax County will not exceed the percentage represented by that school division's portion of the entire population, as of the end of the last school year, at the grade level for which entrants are being determined.
- C. Requires a cooperative agreement regarding such control and operation of the school, which includes, but is not restricted to, provisions that:
 1. The school is a FCPS institution under the sole direction and control of the Fairfax County School Board.
 2. No regional governing body is created.
 3. Superintendents or his or her respective designees from cooperating school divisions so identified may, at their discretion, serve as an advisory group to the Superintendent of FCPS.
 4. FCPS will call and conduct meetings of the advisory group defined in Section IV.C.3. above.
 5. Each cooperating school division shall pay a per student tuition charge that shall be fixed annually by the cooperative agreement.
 6. The nonrefundable tuition paid by cooperating school divisions will be due December 1 of each year for the students from that school division who are enrolled in the school on September 30 of that year.
 7. Transportation for students attending TJHSST is the responsibility of, and is at the discretion of, the cooperating school division in which the student resides.

8. A processing fee is required for application to TJHSST. See the current version of Notice 5922, Student Fees.
9. FCPS will provide the necessary forms and materials and staff orientation, as required, and will schedule and conduct requisite examinations, scoring, and reporting of admissions results.

V. STUDENT SELECTION AND ADMISSIONS PROCEDURES

Each year TJHSST will admit approximately 480 ninth grade students who have committed to an intensive program focused on science, technology, engineering, and mathematics. No twelfth grade students will be admitted; however, tenth or eleventh grade students may be admitted by a placement process. See Section IV.B.

A. Selection of Ninth Grade Students

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants must be enrolled in grade 8 in any private or public school in the academic year preceding the year for which admission is sought. A student may not apply twice as an eighth grader into the ninth grade except in the case of extenuating circumstances. Enrollment in algebra 1 or a higher level mathematics course in grade 8 is a condition of eligibility.

2. Selection Criteria

Applicants will be selected using the following criteria:

- a. Aptitude for successful study of science, technology, engineering, and mathematics.
- b. Record of exceptional academic achievement.
- c. Commitment, intellectual curiosity, passion, and creativity in the study of science, technology, engineering, and mathematics.
- d. Background, skills, or experiences that promote the School Board's goal of providing diversity in the student body to enhance a unique learning experience and to develop future leaders.

3. Methods and Instruments of Measurement

- a. Exceptional quantitative skills, interest and aptitude for successful study of

science, technology, engineering and mathematics will be measured by admissions criteria.

- b. Prior exceptional academic achievement will be determined by the grade point average (GPA), which is an average of final marks earned in English, social studies, mathematics, and science in grade 7 and the first quarter marks in English, social studies, mathematics, science, and foreign language, if taken for high school credit, in grade 8, for determination of the semifinalist pool. After the semifinalist pool is established, final marks in grade 7 and first and second quarter in mathematics and science in grade 8 will be calculated for inclusion in the holistic review.
- c. Commitment, intellectual curiosity, passion and creativity in the study of science, technology, engineering, and mathematics will be determined by:
 - (1) Applicant responses to one essay question.
 - (2) Applicant responses on a student information sheet.
 - (3) Recommendations of one science or mathematics teacher and of one other teacher chosen by the applicant.
- d. Background, skills, or experience that promote the School Board's goal of providing diversity in the student body to enhance a unique learning experience and to develop future leaders will be determined by:
 - (1) Applicant responses to one essay question.
 - (2) Applicant responses on a student information sheet.
 - (3) Recommendations of one science or mathematics teacher and of one other teacher chosen by the applicant.
 - (4) Data from the original applicant's application form.

The admissions committee shall consider all these factors as part of the review process, designed to identify diverse student body consistent with the school's mission.

4. Admissions Calendar

The application deadline dates will be set each year and published in Notice 3355, Thomas Jefferson High School for Science and Technology Admissions Procedures. The application deadline for all eligible students seeking admission to the ninth grade will be no later than December 15 of the year preceding the year for which admission is sought. An exception is granted for students who become eligible by virtue of enrollment in a cooperating school division after September 30 of that year; the application deadline for those students will be no later than June 15 immediately preceding the academic year for which admission

is sought. See Section V.A.6.

5. Ninth Grade Admissions Process—Winter Round

The admissions process will be conducted by the admissions office of TJHSST. The admissions process will be completely independent of the TJHSST staff, except that the principal or designated school staff members will provide each year for the admissions office a profile of the last class of ninth, tenth, and eleventh grade successful applicants. This profile, along with other related data, will provide information and recommendations for improvement and refinement of the admissions process.

a. Admissions Process

Eligible students are assisted in making application by a local school counselor designated as that school's official contact with the admissions office.

b. Testing Procedure

The admission examination is administered in late November/early December, with a makeup testing date during the following week of the regular test date or for applicants who require special testing conditions. Test dates and test centers will be set each year and published in Notice 3355.

c. Selection Procedure

- (1) To achieve the annual enrollment objective, a maximum of five percent of the student spaces will be reserved for summer applicants in the summer round of the selection process.
- (2) The GPA and test score will be used to determine semi-finalist status.
- (3) Students not included in the semifinalist pool will be notified as soon as possible after the examination and will receive their test scores at that time.
- (4) Each member of the semifinalist pool must submit a student-authored information sheet, one essay, and provide two teacher recommendations.
- (5) Selection committee members are appointed by the Division Superintendent or his or her designee. Each committee will include school-based and central administration personnel, such as teachers, counselors, or administrators (retired or active), from FCPS or from the cooperating school divisions.
- (6) Applicant notification of the decisions regarding admissions will be no later than April 30 each year.
- (7) The admissions committee shall consider the entire application, including

all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission

- (8) A standing committee appointed by the Division Superintendent or his or her designee will be used to make final admissions decisions.

6. Ninth Grade Admissions Process—Summer Round

The procedures for the summer round of admissions are identical to those for the winter round selection process; see Section V.A.5., except that:

- a. Student application materials will be reviewed by the admissions committee, consisting of members who participated in the winter round selection process.
- b. All summer applicants will be notified of the decisions regarding admission no later than July 15. Students on the winter round waiting list will be offered admission at that time, if additional space is available.
- c. Students applying during summer round must have already completed algebra 1 during the eighth grade year.

B. Placement of Tenth and Eleventh Grade Students

Eligible ninth and tenth grade students may be considered for admission as tenth or eleventh grade students respectively at TJHSST if space is available. Spaces available will be determined by the admissions office and the principal, taking into account attrition rates. Applications for admission to the tenth or eleventh grades will not be considered midyear.

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants to grade 10 must be enrolled in grade 9 in any private or public school during the academic year preceding the year for which admission is requested. Applicants to the eleventh grade must be enrolled in grade 10 in any private or public school during the academic year preceding the year for which admission is requested. Eligible tenth graders applying to the eleventh grade are those who have not applied previously to TJHSST or those who have just moved to a cooperating school division.

2. Evaluation of Sophomore and Junior Applications

Sophomore and junior applicants are evaluated on the basis of:

- a. Aptitude, achievement, and interest in the study of science, mathematics, computer science, and related technological fields evidenced by:
 - (1) A student-authored information and data sheet and essays.
 - (2) Marks in mathematics, science, computer science, English, social studies, foreign language, and technology-related courses.
 - (3) Recommendations from current mathematics teacher, current science teacher, and one other adult chosen by the applicant.
 - (4) Test scores, as deemed appropriate.
- b. Readiness for research, experimentation, or independent study in one of the school's technology laboratories, evidenced by successful science fair projects and/or other experiences, activities, or projects (in or out of school) in science, engineering, computer science, and other areas of technology.

The admissions committee shall consider the entire application, including all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission.

3. Credits Required for Grade 10 Application

Completion of the following specified graduation credits prior to the beginning of the sophomore year is required for those requesting placement into the tenth grade:

English 9	1 credit
World Language	1 credit
Mathematics (Algebra 1, Geometry)	2 credits
Biology	1 credit
Health and Physical Education	1 credit
Elective (Technology preferred)	1 credit

4. Credits Required for Grade 11 Application

Completion of the following specified graduation credits prior to the beginning of the junior year is required for those requesting placement into the eleventh grade:

English 9 and 10	2 credits
Biology	1 credit
Chemistry	1 credit
World Language	1 credit (2 recommended)
Mathematics (Alg. 1, Geom., Alg. 2)	3 credits
Health and Physical Education	2 credits
World History and Geography 2	1 credit
Elective (Technology preferred)	1 credit

Students accepted into the eleventh grade with all the above credits would still need to take at least 13 additional credits to complete the graduation requirements for the TJHSST diploma. (See Section IX, Graduation Requirements.)

5. Tenth and Eleventh Grade Admission Process

The admissions process for tenth and eleventh grade students will be conducted by the admissions office of TJHSST.

a. Application Calendar

An application deadline for eligible ninth and tenth grade students will be set each year and published in Notice 3355. The application deadline for all eligible students seeking admission to the tenth or eleventh grade will be no later than June 15 immediately preceding the academic year for which admission is sought.

b. Admissions Process

Eligible students are assisted in making request for placement by the admissions office or by a local school counselor designated as that school's official contact with the admissions office.

c. Selection Procedure

(1) Students' records are reviewed by the admissions office and by a committee of faculty and staff members of TJHSST to determine which students have met all prerequisite courses and educational experience requirements.

(2) All students requesting placement will be notified of decisions by the admissions office no later than July 15 of each year.

VI. Appeals

A. Level 1 Appeal: Application Review

1. After receiving official notice of the admissions decision and within 10 business days of admissions decision announcement, if a parent and/or guardian disagrees with the decision, they may pursue an Application Review. The Application Review will ensure all admissions processes were accurately completed and the decision was correct. This process may include a meeting with the director of admissions and/or the Chief Academic and Equity Officer.
2. The decision of the Level 1 Appeal will be communicated to the parent and/or guardian in writing.

B. Level 2 Appeal: Exceptional Circumstances

1. A Level 2 Appeal form must be submitted within 10 business days after the Level 1 Appeal has been concluded. The Level 2 Appeal form will ask the parent and/or guardian to provide a written explanation of the exceptional circumstance that the Appeals Committee is to consider.
2. The Level 2 Appeal form must be submitted to the TJHSST Admissions Office. The TJHSST Admissions Office will ensure all appeal documents are submitted to the Appeals Committee. The parent and/or guardian is not allowed to submit additional credentials, documents or letters of recommendation.
3. The Appeals Committee will review the appeal.
4. The decision of the Appeals Committee will be communicated to the parent and/or guardian in writing and the Appeals Committee decision shall be final.

VII. RESIDENCY REQUIREMENTS

A. Continuing Residency Requirement

1. A parent and/or legal guardian of an admitted student must complete a residency verification form in order to register the student at TJHSST.
2. A student who is admitted to TJHSST must at all times continue to reside with a parent and/or guardian who is a full-time resident, and meets the residency requirements.

B. Change of Address Within Cooperating School Divisions

1. All changes of address from the time of application through graduation must be reported to the student services office immediately upon change of address. If there is a change of address, a parent and/or legal guardian must complete a new Residency Verification form with the school student services department.
2. If a student and his or her parent(s) or legal guardian(s) change their domicile to a location in another cooperating school division, the parent(s) and/or legal guardian(s) must verify the cooperating school division's percentage has not been exceeded for the student's class at TJHSST before any change of domicile.
3. A student who changes his or her domicile to a cooperating school division that has exceeded its percentage for the student's class at TJHSST may not continue to attend TJHSST.

VIII. STUDENT WITHDRAWAL AND REENTRY

A. Permanent Withdrawal

A student who is enrolled in TJHSST may at any time, with parental permission, voluntarily withdraw from the school and enroll in the public high school that serves the student's residential location or in the private school of his or her choice. A student who voluntarily withdraws from TJHSST during grade 9 is eligible to

reapply for admission to grade 10 at TJHSST, but readmission is not guaranteed. A student who voluntarily withdraws after grade 9 is not eligible to reapply to TJHSST.

B. Temporary Withdrawal

A student enrolled for at least one full academic year in TJHSST may withdraw for only one full academic year and be guaranteed automatic reentry provided all of the three following conditions are met:

1. The student and parents change their domicile to a location outside the boundaries of the cooperating jurisdictions for one full academic year but return to a cooperating school division whose percentage has not been exceeded for the class that the student seeks to reenter prior to reentry.
2. The student obtains (prior to the temporary withdrawal date), from the principal, written approval of the plan for the student's academic program during the withdrawal period.
3. The student successfully completes the proposed academic program and can meet the graduation requirements of TJHSST at the expected time of graduation for the class in which the student was originally enrolled.

IX. GRADUATION REQUIREMENTS

- A. The requirement for a student to earn a diploma shall be those in effect when the student enters the 9th grade for the first time. The following applies to 9th grade students who enter high school in 2013-14 and beyond.

To graduate from high school with an Advanced Studies Diploma, students shall meet the minimum requirements as outlined below which include 26 credits, 9 of which must be verified credits. A **standard** credit is earned when a student passes a course. A **verified** credit is earned when a student passes a course and the associated end-of-course SOL test. In some cases, student may utilize substitute tests or certifications to earn verified credits. State guidelines prescribe the number of verified credits required for graduation for students entering a Virginia public high school for the first time during tenth grade or after. Consult your school counselor for specific information.

Students receive credit toward graduation for high school courses taken and passed in middle school. These courses count toward credits in the required sequences as well as toward the total number of credits required for graduation and calculation of the grade point average (GPA). **Middle school parents may request that grades for any high school credit-bearing course taken in the middle school be removed from the student's high school transcript, and therefore the student will not earn high school credit for the course. In addition, the student will not be eligible for a verified credit in any course which has been removed from the transcript. The request to remove a course from the transcript must be made in writing to the middle or high school the student will attend the following year prior to the end of the first nine weeks.**

Advanced Studies Diploma Course Requirements (8 VAC 20-131-50)			
Subject Area	Standard Credits	Verified Credits	Jefferson Diploma ¹
English	4	2	4
Mathematics ¹	4	2	4 ⁷
Laboratory Science ²	4	2	4
History and Social Science ³	4	2	4 ⁸
*World Language ⁴	3		3 ⁹
Health and Physical Education	2		2
Fine Arts or Career and Technical Ed.	1		1 ¹⁰
Economics and Personal Finance	1		1
Electives	3		3 ¹¹
Student Selected Test ⁵		1	
Total Credits ⁶	26	9	26

*Foreign Language is designated World Language in FCPS.

1 Courses completed to satisfy this requirement shall include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The Board of Education shall approve courses to satisfy this requirement.

2 Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board shall approve courses to satisfy this requirement. Biology, chemistry, physics, and geosystems are required courses for all students.

3 Courses completed to satisfy this requirement shall include U.S. and Virginia history, U.S. and Virginia government, and world history/geography I and world history/geography II. AP world history satisfies the requirement for world history/geography II.

4 Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

5 A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the Board in 8 VAC 20-131-110.

6 Students shall successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

7 Does not include algebra I which is required for application and/or admission. Math sequence must terminate in at least AP calculus (AB or BC)

8 World history & geography 2, US/VA history, US/VA government. The fourth social studies requirement can be acquired by any non-AP social studies credit available at TJHSST.

9 Must have three consecutive years of the same language – Footnote #4 does not apply for the TJ Diploma.

10 The credit is earned via design & technology required for all matriculating students.

11 Computer science, snior research/mentorship, & an additional credit in math, science, technology, fine arts, or a fourth consecutive credit in world language must be taken to fulfill these 'elective' credits.

B. Exemption from the TJHSST Diploma Requirement

An enrolled student in the senior year may be granted an exemption, under exceptional circumstances, by the director of student services and the principal, from meeting the requirements for graduation from TJHSST if the student meets local and state requirements for graduation. A student who is granted an exemption from the TJHSST diploma may receive a generic diploma from FCPS and may participate in the TJHSST graduation ceremony.

C. Graduation Credit by Alternate Methods

Alternate methods of earning credit for graduation from TJHSST require approvals, before beginning any study or program, of the director of student services and the principal. Alternate methods must be ones sanctioned by the Virginia Board of Education and Fairfax County School Board directives.

X. ACADEMIC STANDARDS AND PROCEDURES

A. Academic Standards

An enrolled student shall maintain a cumulative B average (unweighted 3.0 grade point average) at the end of each school year in order to remain a student in good standing at TJHSST.

B. Academic Standards Procedure

1. For any student who is experiencing academic difficulty during the school year, TJHSST teachers and staff members will develop and document intervention strategies to help the student be academically successful at TJHSST.
2. At the end of the school year, if the student does not maintain the needed course of studies or fails to maintain a cumulative B average (unweighted 3.0 grade point average), the student may return to his or her base school. When there are exceptional circumstances, the parent can request consideration to the director of student services, the principal, and the regional assistant superintendent or his or her designee.

XI. CURRICULUM

The curriculum for TJHSST includes selected courses prescribed in the FCPS Program of Studies, as well as courses designed to explore new structures and methods in the sciences, technology, mathematics, humanities, and the arts. The curriculum for TJHSST must meet state governor's high school and FCPS academic requirements.

XII. PROGRAM

The eight-period day consists of seven academic classes and one required activity period. Students do not attend each course every day. Flexible scheduling allows all classes to meet for two double periods and one single period each week.

XIII. EXTRACURRICULAR ACTIVITIES

The extracurricular activities program for TJHSST is the same comprehensive extracurricular activities program, including athletics, as that approved for other high schools in FCPS. Any approved activity will be provided if sufficient student interest and participation exist.

Any student who transfers from TJHSST with no legal change in domicile will be ineligible, according to the Virginia High School League transfer rules, to participate for one semester in Virginia High School League-sanctioned activities of any Virginia high school.

XIV. PERSONNEL AND STAFFING

Staffing and personnel policies for TJHSST that differ from staffing and personnel policies for other Fairfax County public schools include the following:

- A. All instructional staff members will be employed for at least eight hours each working day.
- B. All instructional staff members will receive a salary scale adjustment.
- C. Criteria by which instructional staff members are selected will be determined by the Department of Human Resources with assistance from the administrative staff of TJHSST.

Legal reference: 8 VAC 20-131-110

See also the current version of:

Notice 3355, Thomas Jefferson High School for Science and Technology
Admissions Procedures
Notice 5922, Student Fees
Policy 3355, High School for Science and Technology Notice 5533, Thomas
Regulation 2431, Middle School Teacher's Guide: Grading and Reporting to
Parents
Regulation 2460, Requirements for Graduation and Graduation Seals of
Achievement

FAIRFAX COUNTY PUBLIC SCHOOLS

Exhibit A - Shughart Declaration

Regulation 3355.14
Superintendent's Office
TJHSST Admissions
Effective 04/28/2021

INSTRUCTION

Special Programs

Thomas Jefferson High School for Science and Technology (TJHSST)

This regulation supersedes Regulation 3355.13.

I. PURPOSE

To establish TJHSST as a Fairfax County public school and as one of the academic-year regional governor's schools for science and technology.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

- A. Sections V.A.1., V.A.3.a., V.A.5.b., and V.A.6.a. have been updated.
- B. Sections V.B.1., V.B.2.a. (4), V.B.3., and V.B.4. have been revised for clarity.
- C. Section VI has been revised to reflect updates in staff titles and department changes.
- D. Section VII.B. has been updated.
- E. Section IX.A. has been updated to reflect new graduation requirements.
- F. Section IX.C. has been revised for clarity.
- G. Section X.B.2. has been revised for clarity.

III. DESIGNATION AS A FAIRFAX COUNTY PUBLIC SCHOOL

TJHSST is a Fairfax County public school, having opened in 1985 under the sole direction and control of the Fairfax County School Board. As a Fairfax County Public Schools (FCPS) institution, all policies and regulations governing FCPS are applicable to TJHSST, with exceptions listed in this regulation and in annual notices issued in connection with this regulation.

IV. DESIGNATION AS AN ACADEMIC-YEAR GOVERNOR'S SCHOOL FOR SCIENCE AND TECHNOLOGY

TJHSST is annually designated by the Virginia Department of Education as an academic-year regional governor's school for science and technology. Such

designation:

- A. Provides certain state funding for the operation of the school.
- B. Requires that the school be available to eligible students whose parent(s) and/or legal guardian(s) is a full-time resident(s) of, and meets all the residency requirements of, the counties and cities of Northern Virginia under the following provisions:
 1. That each of the school divisions decide annually whether or not to participate in the regional school. School divisions choosing to participate are designated as cooperating school divisions.
 2. That eligible students from each cooperating school division may apply and be considered for admission to the school. The Division Superintendent may return a student to the cooperating jurisdiction with a prorated share of the tuition reimbursed.
- C. Requires a cooperative agreement regarding such control and operation of the school, which includes, but is not restricted to, provisions that:
 1. The school is a FCPS institution under the sole direction and control of the Fairfax County School Board.
 2. Superintendents or their respective designees from cooperating school divisions may, at their discretion, serve as an advisory group to the Superintendent of FCPS.
 3. FCPS will call and conduct meetings of the advisory group defined in Section IV.C.2. above.
 4. Each cooperating school division must pay a per student tuition charge that will be fixed annually by the cooperative agreement.
 5. The nonrefundable tuition paid by cooperating school divisions will be due December 1 of each year for the students from that school division who are enrolled in the school on September 30 of that year.
 6. Transportation for students attending TJHSST is the responsibility of, and is at the discretion of, the cooperating school division in which the student resides.
 7. FCPS will provide the necessary forms and materials and staff orientation, as required, and will schedule and conduct requisite examinations, scoring, and reporting of admissions results.

V. STUDENT SELECTION AND ADMISSIONS PROCEDURES

Each year TJHSST will admit approximately 550 ninth-grade students who have

committed to an intensive program focused on science, technology, engineering, and mathematics. No twelfth-grade students will be admitted; however, tenth or eleventh-grade students may be admitted by a placement process. See Section IV.B.

A. Selection of Ninth-Grade Students

1. Eligibility Requirements

- a. **Residency.** To be eligible for consideration, all applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Applicants enrolled in private school or homeschooled will be required to submit proof of residency in one of the cooperating school divisions at the time of application. Applicants must be enrolled in grade 8 in any private, homeschool or public school in the academic year preceding the year for which admission is sought. A student may not apply twice as an eighth grader into the ninth grade except in the case of extenuating circumstances.
- b. **Course Prerequisites.** To be eligible for consideration, applicants must be: (1) currently enrolled in, or have previously completed algebra 1, (2) enrolled in a full-year course of honors-level algebra 1 or a higher level honors mathematics course; (3) enrolled in honors science and one additional course or identified as a “Young Scholar”; and (4) have a 3.5 or higher GPA in all four core academic courses (math, science, history/civics, English/language arts and world language if taken for high school credit) at the time of application.

2. Selection Criteria

Applicants will be selected using criteria that consider only the following:

- a. Aptitude for successful study of science, technology, engineering, and mathematics.
- b. Record of exceptional academic achievement.
- c. Commitment, intellectual curiosity, passion, and creativity in the study of science, technology, engineering, and mathematics.
- d. Background, skills, or experiences that promote 21st Century Skills and develop future leaders; demonstrate the outstanding attributes of a communicator, collaborator, an ethical and global citizen, a creative and critical thinker, and a goal-directed and resilient individual; and qualities that enrich and cultivate diversity to enhance the learning experience for all students.

3. Methods and Instruments of Measurement

(a) In addition to each applicant's academic record, including GPA and coursework, admissions evaluators will consider:

- (1) Applicant responses to one problem-solving essay question.
- (2) Applicant responses on a student portrait sheet.
- (3) Background of educational challenges, specifically whether students are (or were) identified as English language learners, economically disadvantaged, eligible for special education services or attending a historically under-represented public middle school.

A public school is considered historically "underrepresented" if its average number of attending students offered admission to TJHSST based on the previous five years is at least three standard deviations below the school with the highest average number during the same period. For example, based on 9th grade admissions for the five years comprising the Classes of 2019 through 2024, the middle school with the highest five-year average of admitted students averaged 44 admission offers per year. Among all FCPS middle schools, the standard deviation of these five-year averages during the same period was 13. Based on this data, for Class of 2025 admissions, a middle school will be considered "underrepresented" if its average number of students offered admission to the Classes of 2019 through 2024 was five students or less per year (highest average minus three standard deviations, i.e., $44 - (3 \times 13)$). This same approach will be applied to other sending school divisions to identify underrepresented public schools in all participating jurisdictions, except Falls Church City, which has only one middle school. Underrepresented public schools will be identified each year based on the last five years of admissions data. The schools that are considered "underrepresented public middle schools" for that admissions cycle will be identified on the TJHSST admissions site and updated annually.

(b) In accordance with the policy directive of the School Board, the admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).

4. Admissions Calendar

The application deadline dates will be set each year and published in Notice 3355, Thomas Jefferson High School for Science and Technology Admissions Procedures. Starting with applicants for the Class of 2026, the application deadline for all eligible students seeking admission to the ninth grade will be no later than December 15 of the year preceding the year for which admission is sought. See Section V.A.6.

5. Ninth-Grade Admissions Process—Winter Round

The admissions process will be conducted by the admissions office of TJHSST. The admissions process will be completely independent of the TJHSST staff, except that the principal or designated school staff members will provide each year for the admissions office a profile of the last class of ninth, tenth, and eleventh grade successful applicants. This profile, along with other related data, will provide information and recommendations for improvement and refinement of the admissions process.

(a) Admissions Process

- (1) Students are assisted in making application by a local school counselor designated as that school's official contact with the admissions office.
- (2) Applications are screened for eligibility by admissions staff (See section V.A.1.a & b).
- (3) Students who meet the eligibility criteria are administered short answer and essay exams in a proctored environment (See Notice 3355) [See section V.3.a.(1) & (2)].
- (4) Complete application packets are provided to admissions evaluators. Admissions evaluators are appointed by the Division Superintendent or his or her designee. Evaluators will include school-based and central-administration personnel, such as teachers, counselors, or administrators (retired or active), from FCPS or from the cooperating school divisions.
- (5) Starting with the Class of 2026, Applicant notification of the decisions regarding admissions will be no later than April 30 each year.

(b) Seat Allocation Process. Each public school within Fairfax County and each cooperating school division will be presumptively allocated a number of seats equal to 1.5% of that school's 8th grade student population ("Allocated Seats"),. The remainder of seats will not be allocated to any specific public school ("Unallocated Seats"). In the event a school has fewer eligible applicants than its number of Allocated Seats, the difference will be treated as Unallocated Seats.

- (1) Allocated Seats. Applicants attending public school will be first evaluated against other applicants from the same school, and students with the strongest evaluated applications from that school will be offered admission.
- (2) Unallocated Seats. All remaining public school applicants and applicants who do not attend public school in Fairfax County or in a

cooperating division will be considered for the Unallocated Seats, which will be offered to the highest evaluated applicants in that group.

- (c) Admissions Decisions. All applicants will receive a decision on their application; Offer, Waitpool or No Offer.
- (i) **Offer:** Applicants offered admission for the upcoming Fall (9th grade) year must accept or decline by the stated deadline. Accepting the offer means the applicant is choosing to attend TJHSST the next school year. No deferrals are permitted. Students who accept the offer will go through the registration process. Declining the offer means the applicant has decided not to attend TJHSST. The decision to decline the offer is final, and applicants will not be provided with an option to receive the offer at a later date.
 - (ii) **Waitpool:** A waitpool of students will be created to offer additional students an opportunity to attend TJHSST when admitted applicants decline the offer of admission. Offers of admissions to students who have accepted to stay in the waitpool will be provided to the highest evaluated students remaining in the waitpool. Waitpool offers will continue to be made until all seats have been filled or until the beginning of the school year, which occurs first.
 - (iii) **No Offer:** Some applicants will not receive an offer to attend or be included in the waitpool. No Offer applicants are eligible to re-apply for the Sophomore Round of Admissions the following year contingent they maintain eligibility.

B. Placement of Tenth and Eleventh-Grade Students

Eligible ninth and tenth-grade students may be considered for admission as tenth or eleventh grade students respectively at TJHSST, if space is available. Spaces available will be determined by the admissions office and the principal, taking into account attrition rates. Applications for admission to the tenth or eleventh grades will not be considered midyear.

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants to grade 10 must be enrolled in grade 9 in any private or public school during the academic year preceding the year for which admission is requested. Applicants to the eleventh grade must be enrolled in grade 10 in any private or public school during the academic year preceding the year for which admission is requested. Eligible tenth graders applying to the eleventh grade are

those who have not applied previously to TJHSST or those who have just moved to a cooperating school division.

2. Evaluation of Sophomore and Junior Applications

Sophomore and junior applicants are evaluated on the basis of:

a. Aptitude, achievement, and interest in the study of science, mathematics, computer science, and related technological fields evidenced by:

- (1) A student-authored information and data sheet and essays.
- (2) Marks in mathematics, science, computer science, English, social studies, foreign language, and technology-related courses.
- (3) Recommendations from current mathematics teacher, current science teacher, and one other adult chosen by the applicant.
- (4) Test scores, as deemed appropriate (optional for Sophomore applicants).

b. Readiness for research, experimentation, or independent study in one of the school's technology laboratories, evidenced by successful science fair projects and/or other experiences, activities, or projects (in or out of school) in science, engineering, computer science, and other areas of technology.

The admissions committee will consider the entire application, including all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission.

c. The evaluation process will use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.

3. Credits Required for Grade 10 Application

Completion of the following specified graduation credits prior to the beginning of the sophomore year is required for those requesting placement into the tenth grade:

English 9	1 credit
World Language	1 credit
Mathematics (Algebra 1, Geometry)	2 credits
Biology	1 credit
Health and Physical Education	1 credit
Elective (Technology preferred)	1 credit

4. Credits Required for Grade 11 Application

Completion of the following specified graduation credits prior to the beginning of the junior year is required for those requesting placement into the eleventh grade:

English 9 and 10	2 credits
Biology	1 credit
Chemistry	1 credit
World Language	1 credit (2 recommended)
Mathematics (Alg. 1, Geom., Alg. 2)	3 credits
Health and Physical Education	2 credits
World History and Geography 2	1 credit
Elective (Technology preferred)	1 credit

Students accepted into the eleventh grade with all the above credits would still need to take at least 13 additional credits to complete the graduation requirements for the TJHSST diploma. (See Section IX, Graduation Requirements.)

5. Tenth and Eleventh Grade Admission Process

The admissions process for tenth and eleventh grade students will be conducted by the admissions office of TJHSST.

a. Application Calendar

An application deadline for eligible ninth and tenth grade students will be set each year and published in Notice 3355. The application deadline for all eligible students seeking admission to the tenth or eleventh grade will be no later than June 15 immediately preceding the academic year for which admission is sought.

b. Admissions Process

Eligible students are assisted in making request for placement by the admissions office or by a local school counselor designated as that school's official contact with the admissions office.

c. Selection Procedure

- (1) Students' records are reviewed by the admissions office and by a committee of faculty and staff members of TJHSST to determine which students have met all prerequisite courses and educational experience requirements.
- (2) All students requesting placement will be notified of decisions by the admissions office no later than July 15 of each year.

VI. Appeals

A. Exceptional Circumstances Appeal

1. An Exceptional Circumstances Appeal form must be submitted within 10 business days after receiving official notice of the admissions decision. The Appeal form will ask the parent and/or guardian to provide a written explanation of the exceptional

circumstance that the Appeals Committee should consider.

2. The Appeal form must be submitted to the TJHSST Admissions Office. The TJHSST Admissions Office will ensure that all appeal documents are submitted to the Appeals Committee. The parent and/or guardian is not allowed to submit additional credentials, documents, or letters of recommendation.
3. The Appeals Committee will review the appeal.
4. The decision of the Appeals Committee will be communicated to the parent and/or guardian in writing and the Appeals Committee decision is final.

VII. RESIDENCY REQUIREMENTS

A. Continuing Residency Requirement

1. A parent and/or legal guardian of an admitted student must complete a residency verification form in order to register the student at TJHSST.
2. A student who is admitted to TJHSST must at all times continue to reside with a parent and/or guardian who is a full-time resident and meets the residency requirements.

B. Change of Address Within Cooperating School Divisions

1. All changes of address from the time of application through graduation must be reported to the student services office immediately upon change of address. If there is a change of address, a parent and/or legal guardian must complete a new Residency Verification form with the school student services department.
2. If a student and his or her parent(s) or legal guardian(s) change their domicile to a location in another cooperating school division, the parent(s) and/or legal guardian(s) must verify the cooperating school division's percentage has not been exceeded for the student's class at TJHSST before any change of domicile. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).
3. A student who changes his or her domicile to a cooperating school division that has exceeded its percentage for the student's class at TJHSST may not continue to attend TJHSST. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).

VIII. STUDENT WITHDRAWAL, REENTRY AND DEFERMENT

A. Permanent Withdrawal

A student who is enrolled in TJHSST may at any time, with parental permission, voluntarily withdraw from the school and enroll in the public high school that serves the student's residential location or in the private school of his or her choice. A

student who voluntarily withdraws from TJHSST during grade 9 is eligible to reapply for admission to grade 10 at TJHSST, but readmission is not guaranteed. A student who voluntarily withdraws after grade 9 is not eligible to reapply to TJHSST.

B. Temporary Withdrawal

A student enrolled for at least one full academic year in TJHSST may withdraw for only one full academic year and be guaranteed automatic reentry provided all three following conditions are met:

1. The student and parents change their domicile to a location outside the boundaries of the cooperating jurisdictions for one full academic year but return to a cooperating school division whose percentage has not been exceeded for the class that the student seeks to reenter prior to reentry.
2. The student obtains (prior to the temporary withdrawal date), from the principal, written approval of the plan for the student's academic program during the withdrawal period.
3. The student successfully completes the proposed academic program and can meet the graduation requirements of TJHSST at the expected time of graduation for the class in which the student was originally enrolled.

B. Deferment of Admissions

1. Students who are offered admissions are not permitted to defer the offer. The selection process will continue to offer any open seat to students in the waitpool. Therefore, students who do not accept admission would be required to reapply (if eligible) for the Sophomore Round.

IX. GRADUATION REQUIREMENTS

- A. The requirements for a student to earn a diploma are those in effect when the student enters the 9th grade for the first time. The following applies to 9th grade students who enter high school in 2013-14 and beyond.

To graduate from high school with an Advanced Studies Diploma, students must meet the minimum requirements as outlined below, which include 26 credits, 9 of which must be verified credits. A **standard** credit is earned when a student passes a course. A **verified** credit is earned when a student passes a course and the associated end-of-course SOL test. In some cases, students may utilize substitute tests or certifications to earn verified credits. State guidelines prescribe the number of verified credits required for graduation for students entering a Virginia public high school for the first time during tenth grade or after. Consult your school counselor for specific information.

Students receive credit toward graduation for high school courses taken and passed in middle school. These courses count toward credits in the required sequences as well as toward the total number of credits required for graduation and calculation of the grade point average (GPA). **Middle school parents may request that grades for any high**

school credit-bearing course taken in the middle school be removed from the student’s high school transcript, any removed grades will not earn high school credit for the course. In addition, the student will not be eligible for a verified credit in any course that has been removed from the transcript. The request to remove a course from the transcript must be made in writing to the middle or high school that the student will attend in the next school year no later than nine weeks after that school year begins.

Advanced Studies Diploma Course Requirements (8 VAC 20-131-50)			
Subject Area	Standard Credits	Verified Credits	Jefferson Diploma ¹
English	4	2	4
Mathematics ¹	4	2	4 ⁷
Laboratory Science ²	4	2	4
History and Social Science ³	4	2	4 ⁸
*World Language ⁴	3		3 ⁹
Health and Physical Education	2		2
Fine Arts or Career and Technical Ed.	1		1 ¹⁰
Economics and Personal Finance	1		1
Electives	3		3 ¹¹
Student Selected Test ⁵		1	
Total Credits ⁶	26	9	26

*Foreign Language is designated World Language in FCPS.

1 Courses completed to satisfy this requirement will include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The Board of Education shall approve courses to satisfy this requirement.

2 Courses completed to satisfy this requirement will include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board will approve courses to satisfy this requirement. Biology, chemistry, physics, and geosystems are required courses for all students.

3 Courses completed to satisfy this requirement will include U.S. and Virginia history, U.S. and Virginia government, and world history/geography I and world history/geography II. AP world history satisfies the requirement for world history/geography II.

4 Courses completed to satisfy this requirement will include three years of one language or two years of two languages.

5 A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the Board in 8 VAC 20-131-110.

6 Students must successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

7 Does not include algebra I, which is required for application and/or admission. Math sequence must terminate in at least AP calculus (AB or BC)

8 World history & geography 2, US/VA history, US/VA government. The fourth social studies requirement may be acquired by any non-AP social studies credit available at TJHSST.

9 Must have three consecutive years of the same language – Footnote #4 does not apply for the

TJ Diploma.

10 The credit is earned via design & technology required for all matriculating students.

11 Computer science, senior research/mentorship, and an additional credit in math, science, technology, fine arts, or a fourth consecutive credit in world language must be taken to fulfill these 'elective' credits.

B. Exemption from the TJHSST Diploma Requirement

An enrolled student in the senior year may be granted an exemption, under exceptional circumstances, by the director of student services and the principal, from meeting the requirements for graduation from TJHSST if the student meets local and state requirements for graduation. A student who is granted an exemption from the TJHSST diploma may receive a generic diploma from FCPS and may participate in the TJHSST graduation ceremony.

C. Graduation Credit by Alternate Methods

Alternate methods of earning credit for graduation from TJHSST require approvals, before beginning any study or program, of the director of student services and the principal. Alternate methods must be ones sanctioned by the Virginia Board of Education and Fairfax County School Board directives.

X. ACADEMIC STANDARDS AND PROCEDURES

A. Academic Standards

An enrolled student must maintain a cumulative B average (unweighted 3.0 grade point average) at the end of each school year to remain a student in good standing at TJHSST.

B. Academic Standards Procedure

1. For any student who is experiencing academic difficulty during the school year, TJHSST teachers and staff members will develop and document intervention strategies to help the student be academically successful at TJHSST.
2. At the end of the school year, if the student does not maintain the needed course of studies or fails to maintain a cumulative B average (unweighted 3.0 grade point average), the student may return to his or her base school. When there are exceptional circumstances, the parent may request an exception from the director of student services, the principal, and the regional assistant superintendent or his or her designee.

XI. CURRICULUM

The curriculum for TJHSST includes selected courses prescribed in the FCPS Program of Studies, as well as courses designed to explore new structures and methods in the sciences, technology, mathematics, humanities, and the arts. The curriculum for TJHSST

must meet state governor's high school and FCPS academic requirements.

XII. PROGRAM

The eight-period day consists of seven academic classes and one required activity period. Students do not attend each course every day. Flexible scheduling allows all classes to meet for two double periods and one single period each week.

XIII. EXTRACURRICULAR ACTIVITIES

The extracurricular activities program for TJHSST is the same comprehensive extracurricular activities program, including athletics, as that approved for other high schools in FCPS. Any approved activity will be provided if sufficient student interest and participation exist.

Any student who transfers from TJHSST with no legal change in domicile will be ineligible, according to the Virginia High School League transfer rules, to participate for one semester in Virginia High School League-sanctioned activities of any Virginia high school.

XIV. PERSONNEL AND STAFFING

Staffing and personnel policies for TJHSST that differ from staffing and personnel policies for other Fairfax County public schools include the following:

- A. All instructional staff members will be employed for at least eight hours each working day.
- B. All instructional staff members will receive a salary scale adjustment.
- C. Criteria by which instructional staff members are selected will be determined by the Department of Human Resources with assistance from the administrative staff of TJHSST.

Legal reference: 8 VAC 20-131-110

See also the current version of:

Notice 3355, Thomas Jefferson High School for Science and Technology
Admissions Procedures

Notice 5922, Student Fees

Policy 3355, High School for Science and Technology Notice 5533, Thomas

Regulation 2431, Middle School Teacher's Guide: Grading and Reporting to
Parents

Regulation 2460, Requirements for Graduation and Graduation Seals of
Achievement

FAIRFAX COUNTY PUBLIC SCHOOLS

APPENDIX I



Coalition for TJ “Second-Look Semifinalist” Alternative to the Merit Lottery



Introduction

The Coalition for TJ is composed of parents, students, and community members advocating for **diversity** and **excellence** at Thomas Jefferson High School for Science and Technology (“TJHSST”) We understand that Gov. Ralph Northam has issued a budget mandate that “each academic year, governor’s schools shall set diversity goals for its student body and faculty, and develop a plan to meet said goals in collaboration with community partners at public meetings.”

We are extremely disappointed at the so-called “merit lottery” proposed by Fairfax County Superintendent Dr. Scott Brabrand for admissions to TJHSST.

Dr. Brabrand’s plan fails to serve the interests of underserved communities in Fairfax County (the chief beneficiary of the proposal will be white students, who could approach 50% of TJHSST enrollment), and it fails to preserve the academic excellence of TJHSST. It is a plan plagued by self-contradictions.

Selection of the lottery pool is hardly based on “merit” with only a GPA requirement, Algebra 1 enrollment, and an essay. On the contrary, selection of matriculated students is based on a “lottery.”

The superintendent insists that the current TJ admission process is missing the “true talent” of Fairfax County Public Schools. We believe that this lottery plan will miss the BEST talent in Fairfax County. Moreover, [modeling data](#) prepared by data scientists in the Coalition for TJ reveals that this plan is *unlikely* to improve the representation of the underserved groups. Instead, it deprives the deserved opportunities of the most qualified STEM students in all groups.

Solutions

We hereby offer a concrete proposal and several recommendations to materially increase the numbers of underrepresented minorities at TJHSST, while maintaining the excellence of education at TJHSST:

The goal of TJHSST, a Governor’s School, is to promote STEM education in Fairfax County and surrounding jurisdictions. TJHSST aspires to create future science and technology leaders, a job it does extraordinarily well thanks to 35 years of sustained efforts by all stakeholders. The No. 1 rule of a fair screening plan is that it must not inadvertently screen out potential top candidates for the program. The lottery plan will randomly screen out the most talented STEM students because the lottery system is not designed to find the best STEM students -- it is designed to achieve “fairness”. By depriving TJHSST of these top STEM students, it will undermine the long-standing tradition of academic excellence of TJHSST. In return, the merit lottery offers a false impression of “fairness” while penalizing students (including those from underserved groups) who work hard and have great passions, depriving them of deserved opportunities.

The goal of a **diversity plan** should be to MAXIMIZE the potential of each eligible student who is interested in a STEM-focused education. A successful diversity plan should include:

1. A well-designed and tested admissions program;
2. Appropriate recruitment activities uniquely designed for the program;
3. An evaluation of the admission process;
4. Targeted recruitment activities;
5. Publicity about the program;
6. Community partnerships for long term commitment;

7. Communications and outreach to communities; and
8. Retention activities.

The lottery plan will inevitably fail the underserved groups in Fairfax and surrounding counties as it only addresses one of the above areas and addresses even that one poorly.

Coalition for TJHSST Action Proposal - Second-Look Semifinalists

To further improve the rigor of the current TJHSST admission process in screening for “hidden” talents, e.g. students who might have lower GPA or perform poorly on standardized tests but otherwise would bring unique value to the TJHSST community and benefit from the specialized STEM education at TJ, the Coalition for TJ proposes the following program:

The standardized test is to be administered in the same manner and with the same requirements as of now (3.0 GPA and Algebra 1 required). Prior to the release of the list of semifinalists, each of the Fairfax County’s 26 middle schools (as well as the other feeder counties and private schools) would have a “second look” and each public middle school would be ensured of having at least five (5) semifinalists. This would total approximately 115 Second-Look seats and make up 13-15% of the incoming TJHSST semifinalist class from the FCPS and home school cluster. Significantly, the Second-Look program would materially increase both the geographic and the socioeconomic diversity at TJHSST and should reduce the rate of offerees declining admission due to lack of peers from the same home school. Note that we chose five (5) so as to cause the number of Second-Look Semifinalists to be approximately 15% of the semifinalist pool.

For middle schools that have four (4) or more semifinalists named following the administering of the standardized test, the principals and staff of those schools will have the opportunity to name one additional “Second-Look Semifinalist” -- presumably someone extraordinary who nonetheless did not qualify based upon the standardized test. Written justification is required for recommending a Second-Look Semifinalist. As a result, each middle school will have a minimum of one Second-Look Semifinalist.

For middle schools with three (3) or fewer semifinalists (under-represented schools), the principals and staff of those schools will have the opportunity to name a sufficient number of “Second-Look Semifinalists” to bring the number of semifinalists from each middle school to five (5). For example, a school with three (3) semifinalists after the

administering of the standardized test may name two (2) additional Second-Look Semifinalists. At the other extreme, a middle school with no semifinalists following the administering of the standardized test would be permitted to appoint up to five (5) additional Second-Look Semifinalists.

The list of the Second-Look Semifinalists and justification for choosing these students will need to be submitted to the TJHSST admission office for final approval.

Second-Look Semifinalists would be deemed to receive a specified and pre-agreed “bump-up” on their score in the standardized test based on the amount necessary to raise the average score of the Second-Look Semifinalists to the average score of all semifinalists, although each Second-Look Semifinalist will be awarded an identical bump-up to their base score. For example, if the average test score of all the Second-Look Semifinalists is 11 points below the average of the other semifinalists, then each Second-Look Semifinalist will be awarded an identical 11 point bump-up to their base score as an additional reward for earning the special recommendation of their principals and teachers.

There will be no distinction made between standardized test semifinalists and Second-Look Semifinalists in the list of overall semifinalists released to the public. The names of Second-Look Semifinalists will not be released to the public.

At this point, all semifinalists (both standardized test semifinalists and Second-Look Semifinalists) will be given identical problem-solving essays and be subject to a holistic process for selecting the admitted class at TJ. We propose to conduct an individualized and qualitative assessment of each applicant, with the goal of identifying a pool of finalists that includes the top STEM achievers from all socio-economic backgrounds. For example, underrepresented background and moral traits to overcome these barriers are evaluated favorably and weighted in the admission process - methods used by many top universities in the country and merit-based award selection processes at regional and the national levels.

In summary, we strongly advocate for a plan to increase the diversity representation at TJHSST without compromising the academic rigor of TJ.

Coalition for TJHSST Additional Recommendations

The Coalition for TJ also proposes the following additional actions, in accordance with some well-established federal [guidelines](#) that have proven successful in increasing diversity while preserving excellence:

1. **Eliminate the source of inequity from the Advanced Academic Program**

Elementary students admitted to the AAP program have a higher chance to be ready for the rigorous standards of TJHSST education, yet underserved groups are underrepresented in the AAP program. To select students for the AAP program, FCPS administers the Naglieri Nonverbal Test (NNAT) to all registered students. The NNAT was designed to test the nonverbal non-knowledge-based critical thinking ability in young children; it is also race-blind according to [research](#). The data show that when Black and Hispanic students do submit intelligence tests, they are just as likely to gain admission as their white and Asian counterparts, per [AP analysis](#). However, the analysis also pointed out that “fewer than 50 Black and Hispanic second-graders have filed successful appeals.

That is less than 3 percent of the 1,737 second-graders admitted through the appeals process.”

We propose to eliminate the appeal process and instead offer additional opportunities to retake the NNAT test at FCPS when the test is administered again.

Policy and awareness of the opportunity should be publicized on FCPS and communicated by the gifted resource teachers, with special attention paid to cover the underserved population.

Each school should have at least one gifted resource teacher and proper teacher training for the AAP process should be in place in underserved areas.

2. **Sponsor summer and/or after-school STEM activities for underserved populations**

STEM-focused extracurricular activities are highly desired in the holistic admission process of TJHSST. To optimize exposure to the underserved population, we propose to offer extracurricular resources to underserved students, either through grants/aids to attend STEM-based summer camps or after school activities. We propose to engage TJHSST students and faculty to offer free resources for the underserved population, such as open lab sessions in the summer on a volunteer basis. One suggestion is to engage the infrastructure of the previous [VISION](#) and [LIFT](#) programs and make this a long-term sustainable effort. Considering having FCPS fund these activities.

3. **Open additional channels in TJHSST admission to screen for underserved populations**

For example, FCPS should start a diversity enrichment program that invites the underserved population to apply for entry to TJHSST. A holistic review process, as exemplified in the Second-Look Semifinalist proposal should still be present to ensure that the selected students, with proper training and support, could succeed in STEM.

4. Enhance targeted recruitment activities

Enhance recruiting at schools containing more underrepresented groups, engage diversity organizations, local chapters of professional organizations, and role models of the underserved community in the recruiting and publicizing of TJHSST admissions. There should be Spanish language outreach, text messaging, and social media-based outreach. Consider partnering with professional sports organizations to increase underrepresented outreach -- the Wizards and DC United (popular in Latin America) for example.

5. Develop retention activities

Although there are no accurate statistics, case reports showed that some underserved students did drop out of TJHSST due to paramount pressure to maintain a threshold grade (the current requirement of TJHSST is that accumulative GPA has to be >3.0). To further enrich the diversity plan, FCPS must engage peer mentoring resources and adequate faculty support to identify and address the needs of admitted underserved students. Peer-mentoring is already largely in place in TJHSST. Efforts should be made to provide full coverage to each individual underserved student with periodic evaluation of the mentoring outcomes. Provide summer classes for students who need academic support that is funded by FCPS (e.g., students with grades lower than "C" or so), similar to this program by the [Virginia Beach City Public Schools](#), which is completely free to students with academic needs including free transportation.

6. Increase diversity of staff

A fundamental reason for the lack of interest in TJHSST and AAP programs is the lack of diversity among the staff. In particular, there should be more Spanish-speaking staff. There have been calls for decades for FCPS to address this issue in its hiring practices, without adequate progress. Unless underserved communities are represented, they will feel voiceless and will be less likely to apply to TJHSST and AAP programs. The holistic process that FCPS is formulating is a majority view of the holistic process and is going to be very different from a holistic view from a more diverse administration perspective.

7. Free FCPS TJHSST test preparation fees for low-income households

Dr. Brabrand mentioned in the 9/23/2020 town hall meeting that test preparation offered by test providers and Fairfax County Public Schools places students from low-income households at a disadvantage. The Coalition for TJ has identified several providers, such as TJHSST Test Prep and Inspiring Test Preparation, that are willing to offer free test TJHSST admission test preparation services for those students at the end of the seventh grade with a 3.8 GPA or greater whose families' are considered 'low-income' and are eligible for the FCPS school lunch program. The Coalition for TJ recommends that FCPS pay for TJHSST Test Preparation for qualified applicants from low-income households.

8. Address anti-private school bias in admission selection

Each year, at a disproportionate rate, TJHSST denies offers of admission to several qualified applicants, who made it to the semi finalist round, from private schools that have GPAs of 3.8 or higher. TJHSST can increase its diversity increasing the number of applicants offered admission from this pool.

9. Improving oversight for the TJHSST admission process

A holistic admissions process that will identify the true STEM talent in the Fairfax community is needed, and we need to enhance the oversight and continuous monitoring of this process by local stakeholders. We echo the Loudoun County School Board's position to assemble a regional governing board with key local stakeholders to oversee policy change and administration of the TJHSST admission process. An example of this is the [Regional School Board at Maggie L. Walker Governor's School in Richmond](#). This will help create a stable learning environment at TJHSST and shield current and future TJHSST students from dramatic and destructive changes that disregard the best interest of the learners at FCPS.

10. Provide comprehensive support from different aspects

FCPS needs to collaborate with other agencies to allocate resources to help disadvantaged groups. Family is the first education environment for a child, yet too many students grow up in broken families, with a lack of parental involvement and support, and constantly face abuse and violence. For these students, STEM education or getting into TJHSST will be the last thing on their mind.

11. Enhance proper training with structured support

Regarding prep classes, there is criticism that TJHSST students are those privileged ones who can afford those prep classes and pay their way into TJ. Many don't believe that is true. However if such prep classes are believed to be so effective, and can help

students to advance, we would highly encourage FCPS to set up similar programs, like those Special ED programs with individual learning plans. Such a program would provide systematic, structured, and free tutoring programs to help those disadvantaged students to advance in STEM.

12. Allocate TJHSST resources through advanced technology

We need to think outside the box and seek creative solutions. The trend of distance learning and collaboration online is no longer a mystery, but a hard reality. We need to invest in advancing technology to enhance distance learning so that more students can have access to TJ. We need to give our teachers more freedom to teach, so they can leverage their passions and reach out to more students, and we need to give our students more freedom in course selections, so they can feed their curiosity and explore their capabilities at the click of their fingertips.

#TJHSST

APPENDIX J

MINUTES
Fairfax County School Board
Electronic Regular Meeting
Virtual

Electronic Regular Meeting

December 17, 2020

Board members and Division staff participated electronically via Blackboard Collaborate Ultra due to the COVID-19 emergency and the Governor of Virginia's amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One issued March 20; Executive Order Number 53: Temporary Restrictions On Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, And Closure Of K-12 Schools Due To Novel Coronavirus (Covid-19) issued March 23; Order of the Governor and State Health Commissioner Order of Public Health Emergency Two, issued March 25. Members of the public attended virtually via Public Access Channel 99 and at FCPS.EDU/TV.

1. CLOSED MEETING

Ms. Derenak Kaufax moved, and Mrs. Corbett Sanders seconded, that the Board will now make a motion to go into closed meeting to c to 1) consult with legal counsel regarding litigation or specific legal matters requiring the provision of legal advice by such counsel pursuant to Sections 2.2-3711(A)(7) and (A)(8) of the Code of Virginia, specifically *Q.T., et al. v. School Board, et al.*, Case No. 1:19-cv-1285; and 2) consult with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Section 2.2-3711 (A)(8) of the Code of Virginia, specifically personnel, Title IX and other federal matters. The motion passed 10-0-0: Ms. Omeish, Ms. Pekarsky, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. McLaughlin, Ms. Cohen, Mr. Frisch, and Dr. Anderson voted "aye"; Ms. Sizemore Heizer, and Ms. Keys-Gamarra were not present for the vote,

The Board met in closed session from 5:01 p.m. to 7:09 p.m. and took a brief recess from 7:09 p.m. to 7:17 p.m.

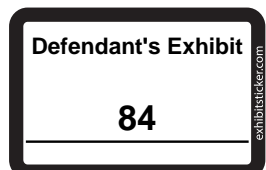
2. REGULAR MEETING

2.01 Call to Order/Pledge of Allegiance/Moment of Silence

Chairman Anderson called the meeting to order at 7:17 p.m. with the following Board members present:

Karen Corbett Sanders (Mt. Vernon)
Tamara Derenak Kaufax (Lee)
Ricardy Anderson (Mason)
Laura Jane Cohen (Springfield)
Karl Frisch (Providence)
Karen Keys-Gamarra (At Large; arr:5:04)

Megan O. McLaughlin (Braddock)
Melanie Meren (Hunter Mill)
Abrar Omeish (At Large)
Stella Pekarsky (Sully)
Rachna Sizemore Heizer (At Large; arr:5:04)
Elaine Tholen (Dranesville)



FCSB-TJ000002903

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

2

December 17, 2020

Also present were Division Superintendent Scott Brabrand; Deputy Superintendent Frances Ivey; Clerk of the Board Ilene Muhlberg; Deputy Clerk of the Board Beverly Madeja; Chief Operating Officer Marty Smith; Assistant Superintendent, Jeff Platenberg; Assistant Superintendent, Facilities and Transportation and certain other members of staff both in-person and virtually. The Student Representative to the School Board Nathan Onibudo was present.

Nathan Onibudo led the Pledge of Allegiance and the moment of silence.

2.03 Certification of Closed Meeting Compliance (Exhibit A)

Ms. Omeish moved, and Ms. Derenak seconded, that the Board in order to comply with Section 2.2-3712 (D) of the Code of Virginia, it is necessary for the Board to certify that since the Fairfax County School Board convened a closed meeting on December 17, 2020, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Board during the closed meeting. The motion passed unanimously.

2.04 Announcements (Exhibit B)

Nathan Onibudo announced that FCPS will celebrate National Mentoring Month in January 2021.

3. PRESENTATIONS TO THE SCHOOL BOARD

3.01 Citizen Participation (Exhibit C)

Nine citizens addressed the Board in the time reserved for citizen participation and three citizens delivered video testimony. Kimberly Adams addressed Agenda Item 4.05 – Superintendent Contract; Asra Nomani, Zia Tompkins, and Harry Jackson addressed Agenda Item 5.01 Monthly Report on Employee Separation; Akshay Deverakonda, Paul Thomas, Jun Wang, Srilekha Palle, and Michelle Cades addressed Agenda Item 4.02 – TJHSST Admissions; Jorge Torrico addressed Agenda Item 6.04 - Award of Contract- Robinson Secondary School Synthetic Turf Field Replacement Project. Video testimony was given by Norma Margulies on Agenda Item 5.01- Monthly Report on Employee Separation, and Teddy Geis and Fatimah Salem on Agenda Item 4.02 – TJHSST Admissions.

3.02 Student Representative Matters (Exhibit D)

The School Board congratulated Nathan Onibudo for his early acceptance into the University of Virginia. Student Representative Nathan Onibudo made brief comments.

3.03 FY 2022-2026 Capital Improvement Program (Exhibit E)

FCSB-TJ000002904

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

3

December 17, 2020

The Chair introduced the Superintendent to begin the presentation of the CIP. The Superintendent welcomed Jeff Platenberg, assistant superintendent, Facilities, who presented the FY 2022- 2026 Capital Improvement Program while highlighting the impact of COVID 19.

The Board discussed a new elementary school in the Providence district with possible funding source; COVID impacts on September 30 enrollement compared to the current overall enrollment; repurposing existing buildings; and outdoor learning spaces.

Mr. Platenberg announced that the Board will discuss the CIP in-depth at the January 5 work session, and then the CIP public hearing will be held on January 7, with Board action scheduled on February 4, 2021.

4. ACTION ITEMS

4.01 Confirmation of Action taken In Closed Meeting (Exhibit F)

Ms. McLaughlin moved, and Ms. Cohen seconded, that the Board authorize the Superintendent to execute the resolution agreement, according to the terms and conditions discussed in closed session. The motion passed unanimously.

4.02 Thomas Jefferson High School for Science and Technology (TJHSST) Admissions {TJ; WS 9/15/20; 10/6/20 WS; 11/17/20 WS; 12/7/20 WS} (Exhibit G)

[Clerk's note:Chair Anderson passed the gavel to Vice-Chair Pekarsky.]

Ms.Omeish moved, and Dr. Anderson seconded, that the Hybrid Merit Lottery presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Hybrid Merit Lottery of the Superintendent's presentation to the Board on December 7. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021.

The Board discussed that merit indicates that a student must meet eligibility for TJHSST admissions before entering the admissions lottery, that this has been recommended by community and national groups and noted the importance of giving every student an opportunity.

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

4

December 17, 2020

The motion that the Hybrid Merit Lottery presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Hybrid Merit Lottery of the Superintendent's presentation to the Board on December 7. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021, failed 4-8-0: Dr. Anderson, Ms. Omeish, Mr. Frisch, and Ms. Keys-Gamarra voted "aye;" Ms. Sizemore Heizer, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. McLaughlin, Ms. Cohen, and Ms. Pekarsky voted "no."

[Clerk's note: Vice-Chair Pekarsky passed the gavel back to Chair Anderson.]

Ms. Tholen, moved, and Ms. Pekarsky seconded, that the Holistic Review process presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Holistic Review Process outlined on pages 10, 11 and 12 of the Superintendent's presentation to the Board on December 7. The Superintendent's Holistic Review process must be modified to establish that, as part of the review process, the top 1.5% of the 8th grade class at each public middle school who meet the minimum standards--based on GPA in core classes, student portrait sheet, problem-solving essay and experience factors--will be eligible for admission. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021.

The Board discussed that the top 1.5% from each middle school could replace the previously discussed Regional pathway and expanding the pipeline for each middle school and all elementary school AAP programs, while providing STEM opportunities at all levels and equity of access and opportunity with additional experience factors.

The motion that the Holistic Review process presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

5

December 17, 2020

diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Holistic Review Process outlined on pages 10, 11 and 12 of the Superintendent's presentation to the Board on December 7. The Superintendent's Holistic Review process must be modified to establish that, as part of the review process, the top 1.5% of the 8th grade class at each public middle school who meet the minimum standards--based on GPA in core classes, student portrait sheet, problem-solving essay and experience factors--will be eligible for admission. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021, **passed 10-1-1**: Ms. Omeish, Mr. Frisch, Ms. Keys-Gamarra, Ms. Sizemore Heizer, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted "aye;" Dr. Anderson voted "no;" and Ms. McLaughlin abstained from the vote.

Ms. Omeish moved, and Ms. Cohen seconded, to require that the test (essay and SIS) be administered locally, at each middle school, to all eligible students (i.e. who meet the 3.5 GPA and Algebra 1 requirements), and to provide the opportunity to opt-out of taking the test should they so choose, by the admissions cycle for the class of 2026 (next year). To opt-out would be to eliminate oneself from consideration for TJ.

The Board stressed the need to decrease barriers by providing problem solving essay at all middle schools. The Board discussed that the ability to be automatically entered into admissions pool by meeting eligibility requirements could be more inclusive than opting in to the admissions process.

Ms. McLaughlin moved, and Ms. Meren seconded, to amend the main motion to remove the requirement that the problem-solving exams be administered at every single middle school.

The Board discussed the possibility of providing transportation to local test sites, and the need to be inclusive by providing access at every middle school to eliminate barriers to TJHSST admission.

The motion to amend the main motion, to remove the requirement that the problem-solving exams be administered at every single middle school, **failed 0-12-0**: Ms. Omeish, Ms. Pekarsky, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. McLaughlin, Ms. Cohen, Mr. Frisch, Dr. Anderson, Ms. Sizemore Heizer, and Ms. Keys-Gamarra voted "no."

The main motion, to require that the test (essay and SIS) be administered locally, at each middle school, to all eligible students (i.e. who meet the 3.5 GPA and Algebra 1 requirements), and to provide the opportunity to opt-out of taking the test should they so choose, by the admissions cycle for the class of 2026 (next year). To opt-out would be to eliminate oneself from consideration for TJ, **passed 11-1-0**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Tholen, Ms. Derenak Kaufax,

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

6

December 17, 2020

Ms. McLaughlin, Ms. Keys-Gamarra, Ms. Sizemore Heizer, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted "aye;" and Ms. Meren voted "no."

Ms. Omeish moved, and Ms. Cohen a follow-on motion to establish that, as part of the holistic review process, by the process for the 2027 class, the top percent of the 8th grade class at each public middle school in Fairfax County who meet minimum standards - based on GPA in core classes, student portrait sheet, problem-solving essay, and experience factors - shall be eligible for admission according to the percentage that is proportional to their population. This reflects the existing holistic review plan but calculates allotments of gifted students by school rather than by region.

The Board discussed that the percentage of individual middle schools reflect their percentage of FCPS population increase diversity and the feasibility of completing this work in 3 years. The Board discussed the variability in TJHSST's class population year to year.

Ms. Omeish moved, and Ms. Cohen seconded, to amend the follow-on motion to establish a goal of equitable representation by middle school for the class 2027 cohort.

The Board discussed the definition of equitable representation and that this goal was aspirational and would be clarified further at a later date.

The motion to amend the follow-on motion to establish a goal of equitable representation by middle school for the class 2027 cohort, **passed 7-4-1**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Keys-Gamarra, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted "aye;" Ms. McLaughlin, Ms. Tholen, Ms. Meren, and Ms. Derenak Kaufax voted "no;" and Ms. Sizemore Heizer abstained from the vote.

The follow-on motion to establish that, as part of the holistic review process, by the process for the 2027 class, the top percent of the 8th grade class at each public middle school in Fairfax County who meet minimum standards - based on GPA in core classes, student portrait sheet, problem-solving essay, and experience factors - shall be eligible for admission according to the percentage that is proportional to their population. This reflects the existing holistic review plan but calculates allotments of gifted students by school rather than by region, as amended, **passed 7-4-1**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Keys-Gamarra, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted "aye;" Ms. Tholen, Ms. Meren, Ms. McLaughlin, and Ms. Derenak Kaufax voted "no;" and Ms. Sizemore Heizer abstained from the vote.

Ms. Cohen moved, and Ms. Meren seconded, a follow-on motion to amend the family outreach/communication plan to include: Number of middle school students (by grade) interested in attending; Number of families who attend TJHSST outreach meetings; Number of applicants from first time (non-legacy) families;

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

7

December 17, 2020

Number of applicants from underrepresented student populations; Climate survey of TJHHST students; Parent engagement survey.

The Board discussed the need to set intentional goals and continue to increase accountability while improving community outreach and communication.

The follow-on motion a follow-on motion to amend the family outreach / communication plan to include: Number of middle school students (by grade) interested in attending; Number of families who attend TJHSST outreach meetings; Number of applicants from first time (non-legacy) families; Number of applicants from underrepresented student populations; Climate survey of TJHHST students; Parent engagement survey, **passed unanimously.**

Ms. Cohen moved, and Ms. Meren seconded, a follow-on motion to direct the superintendent to present an annual report in a public meeting to the board on TJ Admissions to include: diversity of admitted class, attrition rates and reason for students not attending or leaving the school, remediation efforts, STEM class offerings and participation in enrichment clubs, the preparation of this report will include input from the Chief Equity Officer on the ongoing efforts to enhance and diversify the educational environment of TJ, and input from stakeholders and community members, including from the Minority Student Achievement Oversight Committee and the Advanced Academic Program Advisory Committee reports. If adequate progress is not made on improving diversity, the board directs the Superintendent to propose additional tools available to obtain the goal of improving diversity which could include increased outreach, piloting a lottery or other tools that may be recommended by the Superintendent.

The Board stressed the need to evaluate the progress of these changes to TJHSST admission and discussed the importance of evaluating the impact of these changes and the continued importance of transparency in a public meeting.

The follow-on motion to direct the superintendent to present an annual report in a public meeting to the board on TJ Admissions to include: diversity of admitted class, attrition rates and reason for students not attending or leaving the school, remediation efforts, STEM class offerings and participation in enrichment clubs, the preparation of this report will include input from the Chief Equity Officer on the ongoing efforts to enhance and diversify the educational environment of TJ, and input from stakeholders and community members, including from the Minority Student Achievement Oversight Committee and the Advanced Academic Program Advisory Committee reports. If adequate progress is not made on improving diversity, the board directs the Superintendent to propose additional tools available to obtain the goal of improving diversity which could include increased outreach, piloting a lottery or other tools that may be recommended by the Superintendent, **passed unanimously.**

Ms. Meren moved, and Ms. McLaughlin seconded to reconsider the vote on the motion to require that the test (essay and SIS) be administered locally, at each middle school, to all eligible students (i.e. who meet the 3.5 GPA and Algebra 1

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

8

December 17, 2020

requirements), and to provide the opportunity to opt-out of taking the test should they so choose, by the admissions cycle for the class of 2026 (next year). To opt-out would be to eliminate oneself from consideration for TJ.

The Board discussed possible confusion due to the discrepancy between the motion displayed on BoardDocs and the motion stated by the member and considered if a second vote was necessary for confirmation of the wording.

The motion to reconsider the vote **failed 2-9-1**: Ms. Meren and Ms. McLaughlin voted "yes;" Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Keys-Gamarra, Mrs. Corbett Sanders, Ms. Cohen, Ms. Pekarsky, Ms. Tholen, and Ms. Derenak Kaufax voted "no;" and Ms. Sizemore Heizer abstained from the vote.

4.03 FY 2021 Midyear Budget Review [FNS; NB 12/3/20; WS 12/15/20] (Exhibit H)

Ms. Meren moved, and Ms. Derenak Kaufax seconded, that the School Board approve revenue and expenditure changes reflected in the FY 2021 Midyear Budget Review as detailed in the agenda item.

The Board discussed the expenditures included in the food and nutrition program and the increase from previous years, due to the pandemic.

The motion that the School Board approve revenue and expenditure changes reflected in the FY 2021 Midyear Budget Review as detailed in the agenda item, **passed 8-3-1**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Tholen, Ms. Derenak Kaufax, Ms. Meren, Ms. Cohen, and Ms. Pekarsky voted "aye;" Ms. McLaughlin, Ms. Keys-Gamarra, and Ms. Sizemore Heizer voted "no;" and Mrs. Corbett Sanders abstained from the vote.

4.04 PXXXX, New Policy Restraint and Seclusion [DSS NB 12/3/20/ PH 12/11/20] (Exhibit I)

Ms. Sizemore Heizer moved, and Ms. Omeish seconded, that the School Board approve the new Restraint and Seclusion Policy as presented and as detailed in the agenda item.

The Board expressed appreciation for the work of staff to further the goal of a caring culture by using positive intervention. The Board thanked the community, staff, and stakeholders' whose input help shaped this policy.

The motion that the School Board approve the new Restraint and Seclusion Policy as presented and as detailed in the agenda item, **passed unanimously**.

4.05 Consideration of extension to Superintendent contract (Exhibit J)

Ms. Omeish moved, and Ms. Sizemore Heizer seconded, that the School Board renew its contract with Dr. Scott Brabrand as Superintendent, and authorize the Chairman to execute the amended contract, as detailed in the agenda item.

FCSB-TJ000002910

FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

9

December 17, 2020

The Chair stated that the Superintendent's contract will be extended for 1 year beyond the June 30, 2021 end date.

The motion that the School Board renew its contract with Dr. Scott Brabrand as Superintendent, and authorize the Chairman to execute the amended contract, as detailed in the agenda item, **passed unanimously.**

5. CONSENT AGENDA

5.01 Monthly Report on Employee Separation- Confirm the separations for the period beginning November 1, 2020 and ending November 30, 2020. (Exhibit K)

Vice Chair Pekarsky stated that, without objection, the one item on the consent agenda would be adopted. Hearing no objections, the consent agenda was adopted.

6. NEW BUSINESS

6.01 FY 2022-2026 Capital Improvement Program [FTS; WS 1/5/21; 1/7/21 PH; Action 2/4/21;approve the Proposed FY 2022-2026 Capital Improvement Program.]- Approve the Proposed FY 2022-2026 Capital Improvement Program. (Exhibit L)

There was no discussion on this item.

7. SUPERINTENDENT MATTERS

The Superintendent made brief comments.

8. BOARD COMMITTEE REPORTS (Exhibit M)

December 8, 2020

Governance Committee - Karl Frisch, Chair

December 9, 2020

Audit Committee, Karen Keys-Gamarra, Chair

9. BOARD MATTERS

The Board agreed to cancel Board Matters due to the late hour.

10. ADJOURNMENT

The meeting was adjourned at 12:30 a.m. on December 18, 2020.

FCSB-TJ000002911

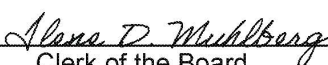
FAIRFAX COUNTY SCHOOL BOARD

Electronic Regular Meeting

10

December 17, 2020


Chairman of the Board


Clerk of the Board
Approved January 21, 2021

FCSB-TJ000002912

APPENDIX K

EXHIBIT 52

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:21-cv-00296-CMH-JFA
)	
FAIRFAX COUNTY SCHOOL BOARD,)	
)	
Defendants.)	

DECLARATION OF STELLA G. PEKARSKY

My name is Stella G. Pekarsky, and I certify that the following information is true to the best of my knowledge, information, and belief.

1. I am over the age of 18 and make this declaration based on my own personal knowledge.
2. I represent the Sully District on the Fairfax County School Board. I am currently the Chair of the Board. During the 2020-2021 school year, I served as the Vice Chair of the Board.
3. The process for admission to the Thomas Jefferson High School for Science and Technology (TJ) was discussed by the Board at many meetings during the 2020-2021 school year. It was the focus of the September 15, October 6., and December 7, 2020 work sessions. I received many emails from my constituents on the subject, and also spent dozens of hours outside of Board meetings, reading materials and talking to educators, administrators, parents, and my colleagues individually about TJ admissions and advanced academic programs.
4. I did not support the Superintendent’s initial Merit Lottery proposal for TJ admissions that was presented to the Board in September 2020, or the Hybrid Merit Lottery

proposal he presented in October. I voted against his Revised Hybrid Merit Lottery proposal when a motion was made to adopt the proposal on December 17, 2020. I was referring to the lottery idea and its projected effect on the demographics of admitted classes when I wrote in a text message to another Board member Abrar Omeish: “It will whiten our schools and kick our Asians. How does that help our goal of diversity?”

5. I also strongly disagreed with the Superintendent’s remarks comparing TJ exam preparation to “pay to play.” I believed that the parents who sent their children to these prep courses included many families of immigrants who valued hard work and education and who made huge sacrifices to prioritize their children’s education. I counseled the Superintendent not to talk about test prep as “pay to play.” I feared it was being perceived as “racist” by some Asian-American communities. I shared these views and what I had told the Superintendent with some colleagues on the Board, including with Ms. Omeish. Ms. Omeish and I exchanged several text messages in which we expressed our frustration with the Superintendent’s proposals, including those messages that have been appended as Exhibits I, J, K, L, and M to Plaintiff’s memorandum in support of its motion for summary judgment. I was upset that the Superintendent had offended some Asian-American groups and polarized our school community with his culturally insensitive remarks, which is why I wrote to Ms. Omeish in a text message that “Brabrand believes in getting attention. This is how he has screwed up TJ and the Asians hate us.”

6. Ms. Omeish also indicated to me in our discussions that she believed that the TJ admission process that was in place until fall 2020 “discriminated” against underprivileged students, which included some Asian-American students. That is what I understood her to be referring to in her text messages in Plaintiff’s Exhibit J when she said “They’re discriminated

against in this process too” and when she discussed how many Asian Americans also cannot afford test prep.

7. While I disagreed with the lottery approach, I agreed that FCPS needed to do better at spotting and cultivating STEM talent and passion among academically exceptional students at all of its middle schools. Along with Board members Karen Corbett Sanders and Elaine Tholen, I championed the idea among Board members of adopting a process that would ensure each middle school a certain minimum number of seats in the TJ freshman class.

8. Ms. Tholen made the motion on December 17, 2020, and I seconded, to direct the Superintendent to revise the TJ admissions process to use a holistic review that ensures that each public middle school would be able to admit 1.5% of its 8th grade class, with the seats going to the school’s top students as determined by the eligibility criteria and the components of the holistic review.

9. To my knowledge, the Board never received any data that showed the racial breakdown of students at each middle school who were eligible to apply to TJ. The Board also did not receive any modeling projecting the racial makeup of TJ under the 1.5% plan. The Board also did not receive modeling projecting the racial makeup of TJ admissions using the four “experience factors” to be used in the Holistic Review process. I do not recall ever seeing the data that is Exhibit 17 to the deposition of Jeremy Shughart that shows the numbers of eligible 8th-grade students and their proportions of 8th-grade classes at each middle school. To my knowledge, that email, which appears to have been sent to one Board member on the afternoon of December 17, 2020, was not shared with the whole Board.

10. I did not, and do not, believe that the TJ admission process prescribed by the Board in 2020 discriminated against Asian-American students. I did not, and do not, believe that

it advantaged students of any particular race. I would not have voted for any change to the TJ admissions process if I believed it to be racially discriminatory.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22, 2021.



Stella C. Pekarisky

APPENDIX L

EXHIBIT 1

237a

237a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:21-cv-00296-CMH-JFA
)	
FAIRFAX COUNTY SCHOOL BOARD,)	
)	
Defendant.)	

DECLARATION OF JEREMY SHUGHART

My name is Jeremy Shughart, and I certify that the following information is true to the best of my knowledge, information, and belief.

1. I am over the age of 18 and make this declaration based on my own personal knowledge.
2. I am employed by the Fairfax County School Board as the Director of Admissions for the Thomas Jefferson High School for Science and Technology (“TJ”). I have been employed in that position since July 2013. Prior to that position, I was employed by Fairfax County Public Schools (“FCPS”) as the manager of the Office of Student Testing.
3. As the Director of Admissions for TJ, I oversee all aspects of the student selection and admissions process for that school. This includes leading the development and continued refinement of the online application process and assessment components, acting as the liaison with our participating jurisdictions, providing guidance on outreach, implementing any admissions changes, and coordinating the selection process for TJ student admissions.
4. FCPS periodically publishes a regulation, Regulation 3355, that describes the procedures for student selection and admission to TJ (“TJ admissions process”). The July 2018

revision of that Regulation, Regulation 3355.13, is attached as Exhibit A, and it accurately described the TJ admissions process that was used to select students entering TJ in the 2018-19, 2019-20, and 2020-21 school years. The TJ admissions process for students entering in Fall 2013 through Fall 2017 was described in earlier versions of Regulation 3355.

5. The TJ admissions process described in Regulation 3355.13 took five to six months to complete.
 - a. Under that process, an application window opened for four weeks starting in early September and closing in late September or early October.
 - b. Applicants who paid the application fee and met the eligibility criteria (8th-grade students residing in Fairfax County or another participating jurisdiction, enrolled in or already completed Algebra I, and having a 3.0 GPA in the core academic subjects at the end of 7th grade final marks and 8th-grade 1st-quarter marks) were administered three standardized tests—the ACT Aspire Reading, the ACT Aspire Science, and the Quant-Q tests—around the second week of November.
 - c. The ACT Aspire Reading and Science tests were administered during a national testing window established by the exam vendor, which window typically closed in mid- to late November of each year. FCPS administered the Quant-Q exam, which constituted the math assessment, at the same time as the two ACT Aspire tests.
 - d. Before the COVID-19 pandemic, it took weeks of planning and coordination to be able to administer the standardized tests in November. Prior to the application window opening in September, my office would arrange approximately 16 sites in Fairfax County and neighboring counties for administration of the tests. Once the

application window closed, my office ordered tests based on the number of students who had applied. In the weeks leading up to the exams, counselors at each site recruited teachers and staff to serve as test supervisors, examiners, and proctors. Staff were paid an hourly stipend for this additional work. In November 2019, for example, FCPS administered the two ACT Aspire tests and the Quant-Q at 16 testing sites, to approximately 2,500 applicants, with the aid of a total of 196 extra personnel—16 test site supervisors, 120 test examiners, and 60 proctors.

- e. FCPS received the results of the ACT Aspire and Quant-Q assessments in early January. Once those results were received, the applicant pool was narrowed in mid-January to a “semifinalist” pool, consisting of those applicants who scored above certain percentile minimums on the three exams and who had continued to maintain at least a 3.0 GPA in their core academic courses.
- f. In early or mid-February, the semifinalists were administered a qualitative admissions exam, consisting of a proctored administration of the Student Information Sheet and a Problem-Solving Essay. Semifinalists also were required to obtain two teacher recommendations and submit them in late January or early February.
- g. A team of highly-qualified, trained educators then spent four to six weeks conducting a holistic review of the semifinalists’ complete application portfolios.
- h. Admissions offers were made to students by no later than the end of April. This timeline allowed for unsuccessful applicants to meet the deadlines for course selection for FCPS high schools, as well as the admissions timetables for most

area private and parochial schools, which typically have late Spring deadlines for enrollment in the next school year.

6. In 2021, my office conducted the TJ admissions process in accordance with the policy changes adopted by the School Board the previous fall. The process was described in Regulation 3355.14, a true and correct copy of which is attached as Exhibit B. The application window for 9th-grade admissions opened on February 1 and remained open through February 26, 2021. Once the application window closed, the process took four months to complete. We administered the qualitative assessment portion to applicants on March 15, 2021, with a make-up date on April 12, 2021. Our admissions evaluators began reviewing candidates for admission on May 3, 2021. Students were notified about admission decisions on June 23, 2021. Students began classes on August 23, 2021.

7. This year, my office began the process for the 2021-2022 (Class of 2026) admissions cycle in October 2021.

- a. The application window for 9th-grade admissions opened on October 25, 2021, and closed on November 19, 2021.
- b. Consistent with the changes adopted by the School Board in Fall 2020, applicants were not charged any fee to apply. Also consistent with those changes, applicants were required to meet more stringent criteria for eligibility than under the pre-2020 TJ admissions process. To proceed in the application process, 8th-grade applicants were required to have a minimum unweighted GPA of 3.5 (instead of the 3.0 as required under the prior process), and to be enrolled in a full-year honors Algebra I course or higher, an honors science course, and at least one other honors course or the Young Scholars program.

- c. We received 2,924 applications for admission to the TJ Class of 2026. Of those, 2,650 applicants met the eligibility criteria. We administered the qualitative assessment portion on January 29, 2022, with a make-up date on February 4, 2022.
 - d. We began assembling a team of admissions evaluators in January. The evaluators were scheduled to begin reviewing candidates for admission on March 3, 2022, based on the scoring rubric adopted in 2020. Due to the Court's ruling on February 25, 2022, however, we halted those efforts.
 - e. At present, 2,540 students have completed the application process and are awaiting admissions decisions. In accordance with Regulation 3355.15, a copy of which is attached as Exhibit C, we had expected to issue admissions decisions by the end of April 2022.
8. It would be impossible for FCPS to revert to using the same process for TJ admissions that was used just prior to the changes made by the Board in Fall 2020.
- a. In 2021, the vendor that provided two of the three standardized tests that were used from 2017 to 2019—the ACT Aspire Reading and Science exams—announced that it is no longer offering those tests for 8th-grade students. The new products that it is offering are not comparable and would not be suitable for TJ admissions. Among other things, the new products are not secure tests, are not modular, and do not provide the same robustness of assessments provided by the ACT Aspire Reading and Science.
 - b. While the third exam, the Quant-Q, is still being offered by its vendor, TJ admissions have never been based on only a math exam; it has always included a

verbal exam portion. Under the previous application process, to advance to the semi-finalist round, applicants needed to meet certain percentile rankings in each test to move forward in the process. Applicants needed to achieve a 50th percentile in math (Quant-Q), 75th percentile in reading (ACT Aspire: Reading), 75th percentile in science (ACT Aspire: Science) and achieve a higher percentile rank in either math or science of 75th percentile in math or 90th percentile in science.


9. Creating a new process to select students for the TJ Class of 2026 would be extremely disruptive and burdensome to students, families, and the school system.
 - a. Starting over with a new process would cause hardship and distress to the 2,540 students and their families who have completed their part in the TJ admission process and who are awaiting admissions decisions.
 - b. Starting anew at this juncture also would make it extremely difficult for my office to conduct a selective admission process on the timetable set forth in Regulation 3355.15 and our website, which promises decisions will be released by the end of April 2022. Delays will cause hardship and burden to our applicants, their families, and to TJ administration. Many TJ applicants also apply to other selective schools and programs, which typically have late Spring deadlines for enrollment in the next school year. All FCPS high schools require students to make course selections in the Spring. This timing ensures that school administration can then arrange staffing (including hiring of teachers) and build a schedule around those selections.

- c. Devising and implementing a new process also would not afford us any time to receive community input or feedback on potential alternatives, which will cause hardship and distress to students and families. The changes to the TJ admissions process that were made in 2020 were adopted by the School Board after months of discussion, debate, and stakeholder input. Prior to that, the most significant changes to the TJ admission process were the selection of the ACT Aspire and Quant-Q tests in 2017, which replaced a customized TJ admissions test that was discontinued by that test's vendor. These tests were first used in Fall 2017, after a process that began in May 2016 and that included: (i) research of testing options; (ii) creation of a working group that included members of TJ Admissions Staff, TJ Administration and faculty, FCPS Office of Program Evaluation (now ORSI), Instructional Services - Advanced Academics, Math, Science, middle school principals, representatives from other participating jurisdictions, the Advanced Academics Programs Advisory Committee, and the Fairfax County Association for the Gifted; (iii) multiple meetings of the work group to develop and finalize recommendations; (iv) presentation of recommendations to the School Board; (v) contracting with the selected vendor; and (vi) presentations to families.
- d. Each year, my office spends substantial time answering parent calls and emails, and conducting informational sessions and meetings to explain the TJ admissions process. We would not be able provide this service or conduct any of this community engagement and outreach if we are to craft and implement a new admissions process to select students for admission to TJ in the upcoming school

year, which would cause hardship for many of our thousands of families with prospective TJ students.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 4, 2022.



Jeremy Shughart

Attachments:

Exhibit A
Exhibit B
Exhibit C

EXHIBIT A

246a

246a

Regulation 3355.13
Superintendent's Office
TJHSST Admissions
Effective 7/18/18

INSTRUCTION

Special Programs

Thomas Jefferson High School for Science and Technology (TJHSST)

This regulation supersedes Regulation 3355.12.

I. PURPOSE

To establish TJHSST as a Fairfax County public school and as one of the academic-year regional governor's schools for science and technology.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

- A. Sections V.A.1., V.A.3.a., V.A.5.b., and V.A.6.a. have been updated.
- B. Sections V.B.1., V.B.2.a. (4), V.B.3., and V.B.4. have been revised for clarity.
- C. Section VI has been revised to reflect updates in staff titles and department changes.
- D. Section VII.B. has been updated.
- E. Section IX.A. has been updated to reflect new graduation requirements.
- F. Section IX.C. has been revised for clarity.
- G. Section X.B.2. has been revised for clarity.

III. DESIGNATION AS A FAIRFAX COUNTY PUBLIC SCHOOL

TJHSST is a Fairfax County public school, having opened in 1985 under the sole direction and control of the Fairfax County School Board. As a Fairfax County Public Schools (FCPS) institution, all policies and regulations governing FCPS are applicable to TJHSST, with exceptions listed in this regulation and in annual notices issued in connection with this regulation.

IV. DESIGNATION AS AN ACADEMIC-YEAR GOVERNOR'S SCHOOL FOR SCIENCE AND TECHNOLOGY

TJHSST is annually designated by the Virginia Department of Education as an academic-year regional governor's school for science and technology. Such

designation:

- A. Provides certain state funding for the operation of the school.
- B. Requires that the school be available to eligible students whose parent(s) and/or legal guardian(s) is a full-time resident(s) of, and meets all the residency requirements of, the counties and cities of Northern Virginia under the following provisions:
 1. That each of the school divisions decide annually whether or not to participate in the regional school. School divisions choosing to participate are designated as cooperating school divisions.
 2. That eligible students from each cooperating school division may apply and be considered for admission to the school. The Division Superintendent may return a student to the cooperating jurisdiction with a prorated share of the tuition reimbursed.
 3. That the percentage of students admitted as part of any entering class from any cooperating school division outside Fairfax County will not exceed the percentage represented by that school division's portion of the entire population, as of the end of the last school year, at the grade level for which entrants are being determined.
- C. Requires a cooperative agreement regarding such control and operation of the school, which includes, but is not restricted to, provisions that:
 1. The school is a FCPS institution under the sole direction and control of the Fairfax County School Board.
 2. No regional governing body is created.
 3. Superintendents or his or her respective designees from cooperating school divisions so identified may, at their discretion, serve as an advisory group to the Superintendent of FCPS.
 4. FCPS will call and conduct meetings of the advisory group defined in Section IV.C.3. above.
 5. Each cooperating school division shall pay a per student tuition charge that shall be fixed annually by the cooperative agreement.
 6. The nonrefundable tuition paid by cooperating school divisions will be due December 1 of each year for the students from that school division who are enrolled in the school on September 30 of that year.
 7. Transportation for students attending TJHSST is the responsibility of, and is at the discretion of, the cooperating school division in which the student resides.

8. A processing fee is required for application to TJHSST. See the current version of Notice 5922, Student Fees.
9. FCPS will provide the necessary forms and materials and staff orientation, as required, and will schedule and conduct requisite examinations, scoring, and reporting of admissions results.

V. STUDENT SELECTION AND ADMISSIONS PROCEDURES

Each year TJHSST will admit approximately 480 ninth grade students who have committed to an intensive program focused on science, technology, engineering, and mathematics. No twelfth grade students will be admitted; however, tenth or eleventh grade students may be admitted by a placement process. See Section IV.B.

A. Selection of Ninth Grade Students

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants must be enrolled in grade 8 in any private or public school in the academic year preceding the year for which admission is sought. A student may not apply twice as an eighth grader into the ninth grade except in the case of extenuating circumstances. Enrollment in algebra 1 or a higher level mathematics course in grade 8 is a condition of eligibility.

2. Selection Criteria

Applicants will be selected using the following criteria:

- a. Aptitude for successful study of science, technology, engineering, and mathematics.
- b. Record of exceptional academic achievement.
- c. Commitment, intellectual curiosity, passion, and creativity in the study of science, technology, engineering, and mathematics.
- d. Background, skills, or experiences that promote the School Board's goal of providing diversity in the student body to enhance a unique learning experience and to develop future leaders.

3. Methods and Instruments of Measurement

- a. Exceptional quantitative skills, interest and aptitude for successful study of

science, technology, engineering and mathematics will be measured by admissions criteria.

- b. Prior exceptional academic achievement will be determined by the grade point average (GPA), which is an average of final marks earned in English, social studies, mathematics, and science in grade 7 and the first quarter marks in English, social studies, mathematics, science, and foreign language, if taken for high school credit, in grade 8, for determination of the semifinalist pool. After the semifinalist pool is established, final marks in grade 7 and first and second quarter in mathematics and science in grade 8 will be calculated for inclusion in the holistic review.
- c. Commitment, intellectual curiosity, passion and creativity in the study of science, technology, engineering, and mathematics will be determined by:
 - (1) Applicant responses to one essay question.
 - (2) Applicant responses on a student information sheet.
 - (3) Recommendations of one science or mathematics teacher and of one other teacher chosen by the applicant.
- d. Background, skills, or experience that promote the School Board's goal of providing diversity in the student body to enhance a unique learning experience and to develop future leaders will be determined by:
 - (1) Applicant responses to one essay question.
 - (2) Applicant responses on a student information sheet.
 - (3) Recommendations of one science or mathematics teacher and of one other teacher chosen by the applicant.
 - (4) Data from the original applicant's application form.

The admissions committee shall consider all these factors as part of the review process, designed to identify diverse student body consistent with the school's mission.

4. Admissions Calendar

The application deadline dates will be set each year and published in Notice 3355, Thomas Jefferson High School for Science and Technology Admissions Procedures. The application deadline for all eligible students seeking admission to the ninth grade will be no later than December 15 of the year preceding the year for which admission is sought. An exception is granted for students who become eligible by virtue of enrollment in a cooperating school division after September 30 of that year; the application deadline for those students will be no later than June 15 immediately preceding the academic year for which admission

is sought. See Section V.A.6.

5. Ninth Grade Admissions Process—Winter Round

The admissions process will be conducted by the admissions office of TJHSST. The admissions process will be completely independent of the TJHSST staff, except that the principal or designated school staff members will provide each year for the admissions office a profile of the last class of ninth, tenth, and eleventh grade successful applicants. This profile, along with other related data, will provide information and recommendations for improvement and refinement of the admissions process.

a. Admissions Process

Eligible students are assisted in making application by a local school counselor designated as that school's official contact with the admissions office.

b. Testing Procedure

The admission examination is administered in late November/early December, with a makeup testing date during the following week of the regular test date or for applicants who require special testing conditions. Test dates and test centers will be set each year and published in Notice 3355.

c. Selection Procedure

- (1) To achieve the annual enrollment objective, a maximum of five percent of the student spaces will be reserved for summer applicants in the summer round of the selection process.
- (2) The GPA and test score will be used to determine semi-finalist status.
- (3) Students not included in the semifinalist pool will be notified as soon as possible after the examination and will receive their test scores at that time.
- (4) Each member of the semifinalist pool must submit a student-authored information sheet, one essay, and provide two teacher recommendations.
- (5) Selection committee members are appointed by the Division Superintendent or his or her designee. Each committee will include school-based and central administration personnel, such as teachers, counselors, or administrators (retired or active), from FCPS or from the cooperating school divisions.
- (6) Applicant notification of the decisions regarding admissions will be no later than April 30 each year.
- (7) The admissions committee shall consider the entire application, including

all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission

- (8) A standing committee appointed by the Division Superintendent or his or her designee will be used to make final admissions decisions.

6. Ninth Grade Admissions Process—Summer Round

The procedures for the summer round of admissions are identical to those for the winter round selection process; see Section V.A.5., except that:

- a. Student application materials will be reviewed by the admissions committee, consisting of members who participated in the winter round selection process.
- b. All summer applicants will be notified of the decisions regarding admission no later than July 15. Students on the winter round waiting list will be offered admission at that time, if additional space is available.
- c. Students applying during summer round must have already completed algebra 1 during the eighth grade year.

B. Placement of Tenth and Eleventh Grade Students

Eligible ninth and tenth grade students may be considered for admission as tenth or eleventh grade students respectively at TJHSST if space is available. Spaces available will be determined by the admissions office and the principal, taking into account attrition rates. Applications for admission to the tenth or eleventh grades will not be considered midyear.

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants to grade 10 must be enrolled in grade 9 in any private or public school during the academic year preceding the year for which admission is requested. Applicants to the eleventh grade must be enrolled in grade 10 in any private or public school during the academic year preceding the year for which admission is requested. Eligible tenth graders applying to the eleventh grade are those who have not applied previously to TJHSST or those who have just moved to a cooperating school division.

2. Evaluation of Sophomore and Junior Applications

Sophomore and junior applicants are evaluated on the basis of:

- a. Aptitude, achievement, and interest in the study of science, mathematics, computer science, and related technological fields evidenced by:
 - (1) A student-authored information and data sheet and essays.
 - (2) Marks in mathematics, science, computer science, English, social studies, foreign language, and technology-related courses.
 - (3) Recommendations from current mathematics teacher, current science teacher, and one other adult chosen by the applicant.
 - (4) Test scores, as deemed appropriate.
- b. Readiness for research, experimentation, or independent study in one of the school's technology laboratories, evidenced by successful science fair projects and/or other experiences, activities, or projects (in or out of school) in science, engineering, computer science, and other areas of technology.

The admissions committee shall consider the entire application, including all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission.

3. Credits Required for Grade 10 Application

Completion of the following specified graduation credits prior to the beginning of the sophomore year is required for those requesting placement into the tenth grade:

English 9	1 credit
World Language	1 credit
Mathematics (Algebra 1, Geometry)	2 credits
Biology	1 credit
Health and Physical Education	1 credit
Elective (Technology preferred)	1 credit

4. Credits Required for Grade 11 Application

Completion of the following specified graduation credits prior to the beginning of the junior year is required for those requesting placement into the eleventh grade:

English 9 and 10	2 credits
Biology	1 credit
Chemistry	1 credit
World Language	1 credit (2 recommended)
Mathematics (Alg. 1, Geom., Alg. 2)	3 credits
Health and Physical Education	2 credits
World History and Geography 2	1 credit
Elective (Technology preferred)	1 credit

Students accepted into the eleventh grade with all the above credits would still need to take at least 13 additional credits to complete the graduation requirements for the TJHSST diploma. (See Section IX, Graduation Requirements.)

5. Tenth and Eleventh Grade Admission Process

The admissions process for tenth and eleventh grade students will be conducted by the admissions office of TJHSST.

a. Application Calendar

An application deadline for eligible ninth and tenth grade students will be set each year and published in Notice 3355. The application deadline for all eligible students seeking admission to the tenth or eleventh grade will be no later than June 15 immediately preceding the academic year for which admission is sought.

b. Admissions Process

Eligible students are assisted in making request for placement by the admissions office or by a local school counselor designated as that school's official contact with the admissions office.

c. Selection Procedure

(1) Students' records are reviewed by the admissions office and by a committee of faculty and staff members of TJHSST to determine which students have met all prerequisite courses and educational experience requirements.

(2) All students requesting placement will be notified of decisions by the admissions office no later than July 15 of each year.

VI. Appeals

A. Level 1 Appeal: Application Review

1. After receiving official notice of the admissions decision and within 10 business days of admissions decision announcement, if a parent and/or guardian disagrees with the decision, they may pursue an Application Review. The Application Review will ensure all admissions processes were accurately completed and the decision was correct. This process may include a meeting with the director of admissions and/or the Chief Academic and Equity Officer.
2. The decision of the Level 1 Appeal will be communicated to the parent and/or guardian in writing.

B. Level 2 Appeal: Exceptional Circumstances

1. A Level 2 Appeal form must be submitted within 10 business days after the Level 1 Appeal has been concluded. The Level 2 Appeal form will ask the parent and/or guardian to provide a written explanation of the exceptional circumstance that the Appeals Committee is to consider.
2. The Level 2 Appeal form must be submitted to the TJHSST Admissions Office. The TJHSST Admissions Office will ensure all appeal documents are submitted to the Appeals Committee. The parent and/or guardian is not allowed to submit additional credentials, documents or letters of recommendation.
3. The Appeals Committee will review the appeal.
4. The decision of the Appeals Committee will be communicated to the parent and/or guardian in writing and the Appeals Committee decision shall be final.

VII. RESIDENCY REQUIREMENTS

A. Continuing Residency Requirement

1. A parent and/or legal guardian of an admitted student must complete a residency verification form in order to register the student at TJHSST.
2. A student who is admitted to TJHSST must at all times continue to reside with a parent and/or guardian who is a full-time resident, and meets the residency requirements.

B. Change of Address Within Cooperating School Divisions

1. All changes of address from the time of application through graduation must be reported to the student services office immediately upon change of address. If there is a change of address, a parent and/or legal guardian must complete a new Residency Verification form with the school student services department.
2. If a student and his or her parent(s) or legal guardian(s) change their domicile to a location in another cooperating school division, the parent(s) and/or legal guardian(s) must verify the cooperating school division's percentage has not been exceeded for the student's class at TJHSST before any change of domicile.
3. A student who changes his or her domicile to a cooperating school division that has exceeded its percentage for the student's class at TJHSST may not continue to attend TJHSST.

VIII. STUDENT WITHDRAWAL AND REENTRY

A. Permanent Withdrawal

A student who is enrolled in TJHSST may at any time, with parental permission, voluntarily withdraw from the school and enroll in the public high school that serves the student's residential location or in the private school of his or her choice. A student who voluntarily withdraws from TJHSST during grade 9 is eligible to

reapply for admission to grade 10 at TJHSST, but readmission is not guaranteed. A student who voluntarily withdraws after grade 9 is not eligible to reapply to TJHSST.

B. Temporary Withdrawal

A student enrolled for at least one full academic year in TJHSST may withdraw for only one full academic year and be guaranteed automatic reentry provided all of the three following conditions are met:

1. The student and parents change their domicile to a location outside the boundaries of the cooperating jurisdictions for one full academic year but return to a cooperating school division whose percentage has not been exceeded for the class that the student seeks to reenter prior to reentry.
2. The student obtains (prior to the temporary withdrawal date), from the principal, written approval of the plan for the student's academic program during the withdrawal period.
3. The student successfully completes the proposed academic program and can meet the graduation requirements of TJHSST at the expected time of graduation for the class in which the student was originally enrolled.

IX. GRADUATION REQUIREMENTS

- A. The requirement for a student to earn a diploma shall be those in effect when the student enters the 9th grade for the first time. The following applies to 9th grade students who enter high school in 2013-14 and beyond.

To graduate from high school with an Advanced Studies Diploma, students shall meet the minimum requirements as outlined below which include 26 credits, 9 of which must be verified credits. A **standard** credit is earned when a student passes a course. A **verified** credit is earned when a student passes a course and the associated end-of-course SOL test. In some cases, student may utilize substitute tests or certifications to earn verified credits. State guidelines prescribe the number of verified credits required for graduation for students entering a Virginia public high school for the first time during tenth grade or after. Consult your school counselor for specific information.

Students receive credit toward graduation for high school courses taken and passed in middle school. These courses count toward credits in the required sequences as well as toward the total number of credits required for graduation and calculation of the grade point average (GPA). **Middle school parents may request that grades for any high school credit-bearing course taken in the middle school be removed from the student's high school transcript, and therefore the student will not earn high school credit for the course. In addition, the student will not be eligible for a verified credit in any course which has been removed from the transcript. The request to remove a course from the transcript must be made in writing to the middle or high school the student will attend the following year prior to the end of the first nine weeks.**

Advanced Studies Diploma Course Requirements (8 VAC 20-131-50)			
Subject Area	Standard Credits	Verified Credits	Jefferson Diploma ¹
English	4	2	4
Mathematics ¹	4	2	4 ⁷
Laboratory Science ²	4	2	4
History and Social Science ³	4	2	4 ⁸
*World Language ⁴	3		3 ⁹
Health and Physical Education	2		2
Fine Arts or Career and Technical Ed.	1		1 ¹⁰
Economics and Personal Finance	1		1
Electives	3		3 ¹¹
Student Selected Test ⁵		1	
Total Credits ⁶	26	9	26

*Foreign Language is designated World Language in FCPS.

1 Courses completed to satisfy this requirement shall include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The Board of Education shall approve courses to satisfy this requirement.

2 Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board shall approve courses to satisfy this requirement. Biology, chemistry, physics, and geosystems are required courses for all students.

3 Courses completed to satisfy this requirement shall include U.S. and Virginia history, U.S. and Virginia government, and world history/geography I and world history/geography II. AP world history satisfies the requirement for world history/geography II.

4 Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

5 A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the Board in 8 VAC 20-131-110.

6 Students shall successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

7 Does not include algebra I which is required for application and/or admission. Math sequence must terminate in at least AP calculus (AB or BC)

8 World history & geography 2, US/VA history, US/VA government. The fourth social studies requirement can be acquired by any non-AP social studies credit available at TJHSST.

9 Must have three consecutive years of the same language – Footnote #4 does not apply for the TJ Diploma.

10 The credit is earned via design & technology required for all matriculating students.

11 Computer science, senior research/mentorship, & an additional credit in math, science, technology, fine arts, or a fourth consecutive credit in world language must be taken to fulfill these 'elective' credits.

B. Exemption from the TJHSST Diploma Requirement

An enrolled student in the senior year may be granted an exemption, under exceptional circumstances, by the director of student services and the principal, from meeting the requirements for graduation from TJHSST if the student meets local and state requirements for graduation. A student who is granted an exemption from the TJHSST diploma may receive a generic diploma from FCPS and may participate in the TJHSST graduation ceremony.

C. Graduation Credit by Alternate Methods

Alternate methods of earning credit for graduation from TJHSST require approvals, before beginning any study or program, of the director of student services and the principal. Alternate methods must be ones sanctioned by the Virginia Board of Education and Fairfax County School Board directives.

X. ACADEMIC STANDARDS AND PROCEDURES

A. Academic Standards

An enrolled student shall maintain a cumulative B average (unweighted 3.0 grade point average) at the end of each school year in order to remain a student in good standing at TJHSST.

B. Academic Standards Procedure

1. For any student who is experiencing academic difficulty during the school year, TJHSST teachers and staff members will develop and document intervention strategies to help the student be academically successful at TJHSST.
2. At the end of the school year, if the student does not maintain the needed course of studies or fails to maintain a cumulative B average (unweighted 3.0 grade point average), the student may return to his or her base school. When there are exceptional circumstances, the parent can request consideration to the director of student services, the principal, and the regional assistant superintendent or his or her designee.

XI. CURRICULUM

The curriculum for TJHSST includes selected courses prescribed in the FCPS Program of Studies, as well as courses designed to explore new structures and methods in the sciences, technology, mathematics, humanities, and the arts. The curriculum for TJHSST must meet state governor's high school and FCPS academic requirements.

XII. PROGRAM

The eight-period day consists of seven academic classes and one required activity period. Students do not attend each course every day. Flexible scheduling allows all classes to meet for two double periods and one single period each week.

XIII. EXTRACURRICULAR ACTIVITIES

The extracurricular activities program for TJHSST is the same comprehensive extracurricular activities program, including athletics, as that approved for other high schools in FCPS. Any approved activity will be provided if sufficient student interest and participation exist.

Any student who transfers from TJHSST with no legal change in domicile will be ineligible, according to the Virginia High School League transfer rules, to participate for one semester in Virginia High School League-sanctioned activities of any Virginia high school.

XIV. PERSONNEL AND STAFFING

Staffing and personnel policies for TJHSST that differ from staffing and personnel policies for other Fairfax County public schools include the following:

- A. All instructional staff members will be employed for at least eight hours each working day.
- B. All instructional staff members will receive a salary scale adjustment.
- C. Criteria by which instructional staff members are selected will be determined by the Department of Human Resources with assistance from the administrative staff of TJHSST.

Legal reference: 8 VAC 20-131-110

See also the current version of:

Notice 3355, Thomas Jefferson High School for Science and Technology
Admissions Procedures
Notice 5922, Student Fees
Policy 3355, High School for Science and Technology Notice 5533, Thomas
Regulation 2431, Middle School Teacher's Guide: Grading and Reporting to
Parents
Regulation 2460, Requirements for Graduation and Graduation Seals of
Achievement

FAIRFAX COUNTY PUBLIC SCHOOLS

EXHIBIT B

260a

260a

Regulation 3355.14
Superintendent's Office
TJHSST Admissions
Effective 04/28/2021

INSTRUCTION

Special Programs

Thomas Jefferson High School for Science and Technology (TJHSST)

This regulation supersedes Regulation 3355.13.

I. PURPOSE

To establish TJHSST as a Fairfax County public school and as one of the academic-year regional governor's schools for science and technology.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

- A. Sections V.A.1., V.A.3.a., V.A.5.b., and V.A.6.a. have been updated.
- B. Sections V.B.1., V.B.2.a. (4), V.B.3., and V.B.4. have been revised for clarity.
- C. Section VI has been revised to reflect updates in staff titles and department changes.
- D. Section VII.B. has been updated.
- E. Section IX.A. has been updated to reflect new graduation requirements.
- F. Section IX.C. has been revised for clarity.
- G. Section X.B.2. has been revised for clarity.

III. DESIGNATION AS A FAIRFAX COUNTY PUBLIC SCHOOL

TJHSST is a Fairfax County public school, having opened in 1985 under the sole direction and control of the Fairfax County School Board. As a Fairfax County Public Schools (FCPS) institution, all policies and regulations governing FCPS are applicable to TJHSST, with exceptions listed in this regulation and in annual notices issued in connection with this regulation.

IV. DESIGNATION AS AN ACADEMIC-YEAR GOVERNOR'S SCHOOL FOR SCIENCE AND TECHNOLOGY

TJHSST is annually designated by the Virginia Department of Education as an academic-year regional governor's school for science and technology. Such

designation:

- A. Provides certain state funding for the operation of the school.
- B. Requires that the school be available to eligible students whose parent(s) and/or legal guardian(s) is a full-time resident(s) of, and meets all the residency requirements of, the counties and cities of Northern Virginia under the following provisions:
 1. That each of the school divisions decide annually whether or not to participate in the regional school. School divisions choosing to participate are designated as cooperating school divisions.
 2. That eligible students from each cooperating school division may apply and be considered for admission to the school. The Division Superintendent may return a student to the cooperating jurisdiction with a prorated share of the tuition reimbursed.
- C. Requires a cooperative agreement regarding such control and operation of the school, which includes, but is not restricted to, provisions that:
 1. The school is a FCPS institution under the sole direction and control of the Fairfax County School Board.
 2. Superintendents or their respective designees from cooperating school divisions may, at their discretion, serve as an advisory group to the Superintendent of FCPS.
 3. FCPS will call and conduct meetings of the advisory group defined in Section IV.C.2. above.
 4. Each cooperating school division must pay a per student tuition charge that will be fixed annually by the cooperative agreement.
 5. The nonrefundable tuition paid by cooperating school divisions will be due December 1 of each year for the students from that school division who are enrolled in the school on September 30 of that year.
 6. Transportation for students attending TJHSST is the responsibility of, and is at the discretion of, the cooperating school division in which the student resides.
 7. FCPS will provide the necessary forms and materials and staff orientation, as required, and will schedule and conduct requisite examinations, scoring, and reporting of admissions results.

V. STUDENT SELECTION AND ADMISSIONS PROCEDURES

Each year TJHSST will admit approximately 550 ninth-grade students who have

committed to an intensive program focused on science, technology, engineering, and mathematics. No twelfth-grade students will be admitted; however, tenth or eleventh-grade students may be admitted by a placement process. See Section IV.B.

A. Selection of Ninth-Grade Students

1. Eligibility Requirements

- a. Residency. To be eligible for consideration, all applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Applicants enrolled in private school or homeschooled will be required to submit proof of residency in one of the cooperating school divisions at the time of application. Applicants must be enrolled in grade 8 in any private, homeschool or public school in the academic year preceding the year for which admission is sought. A student may not apply twice as an eighth grader into the ninth grade except in the case of extenuating circumstances.
- b. Course Prerequisites. To be eligible for consideration, applicants must be: (1) currently enrolled in, or have previously completed algebra 1, (2) enrolled in a full-year course of honors-level algebra 1 or a higher level honors mathematics course; (3) enrolled in honors science and one additional course or identified as a “Young Scholar”; and (4) have a 3.5 or higher GPA in all four core academic courses (math, science, history/civics, English/language arts and world language if taken for high school credit) at the time of application.

2. Selection Criteria

Applicants will be selected using criteria that consider only the following:

- a. Aptitude for successful study of science, technology, engineering, and mathematics.
- b. Record of exceptional academic achievement.
- c. Commitment, intellectual curiosity, passion, and creativity in the study of science, technology, engineering, and mathematics.
- d. Background, skills, or experiences that promote 21st Century Skills and develop future leaders; demonstrate the outstanding attributes of a communicator, collaborator, an ethical and global citizen, a creative and critical thinker, and a goal-directed and resilient individual; and qualities that enrich and cultivate diversity to enhance the learning experience for all students.

3. Methods and Instruments of Measurement

- (a) In addition to each applicant's academic record, including GPA and coursework, admissions evaluators will consider:
- (1) Applicant responses to one problem-solving essay question.
 - (2) Applicant responses on a student portrait sheet.
 - (3) Background of educational challenges, specifically whether students are (or were) identified as English language learners, economically disadvantaged, eligible for special education services or attending a historically under-represented public middle school.

A public school is considered historically "underrepresented" if its average number of attending students offered admission to TJHSST based on the previous five years is at least three standard deviations below the school with the highest average number during the same period. For example, based on 9th grade admissions for the five years comprising the Classes of 2019 through 2024, the middle school with the highest five-year average of admitted students averaged 44 admission offers per year. Among all FCPS middle schools, the standard deviation of these five-year averages during the same period was 13. Based on this data, for Class of 2025 admissions, a middle school will be considered "underrepresented" if its average number of students offered admission to the Classes of 2019 through 2024 was five students or less per year (highest average minus three standard deviations, i.e., $44 - (3 \times 13)$). This same approach will be applied to other sending school divisions to identify underrepresented public schools in all participating jurisdictions, except Falls Church City, which has only one middle school. Underrepresented public schools will be identified each year based on the last five years of admissions data. The schools that are considered "underrepresented public middle schools" for that admissions cycle will be identified on the TJHSST admissions site and updated annually.

- (b) In accordance with the policy directive of the School Board, the admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).

4. Admissions Calendar

The application deadline dates will be set each year and published in Notice 3355, Thomas Jefferson High School for Science and Technology Admissions Procedures. Starting with applicants for the Class of 2026, the application deadline for all eligible students seeking admission to the ninth grade will be no later than December 15 of the year preceding the year for which admission is sought. See Section V.A.6.

5. Ninth-Grade Admissions Process—Winter Round

The admissions process will be conducted by the admissions office of TJHSST. The admissions process will be completely independent of the TJHSST staff, except that the principal or designated school staff members will provide each year for the admissions office a profile of the last class of ninth, tenth, and eleventh grade successful applicants. This profile, along with other related data, will provide information and recommendations for improvement and refinement of the admissions process.

(a) Admissions Process

- (1) Students are assisted in making application by a local school counselor designated as that school's official contact with the admissions office.
- (2) Applications are screened for eligibility by admissions staff (See section V.A.1.a & b).
- (3) Students who meet the eligibility criteria are administered short answer and essay exams in a proctored environment (See Notice 3355) [See section V.3.a.(1) & (2)].
- (4) Complete application packets are provided to admissions evaluators. Admissions evaluators are appointed by the Division Superintendent or his or her designee. Evaluators will include school-based and central-administration personnel, such as teachers, counselors, or administrators (retired or active), from FCPS or from the cooperating school divisions.
- (5) Starting with the Class of 2026, Applicant notification of the decisions regarding admissions will be no later than April 30 each year.

(b) Seat Allocation Process. Each public school within Fairfax County and each cooperating school division will be presumptively allocated a number of seats equal to 1.5% of that school's 8th grade student population ("Allocated Seats"). The remainder of seats will not be allocated to any specific public school ("Unallocated Seats"). In the event a school has fewer eligible applicants than its number of Allocated Seats, the difference will be treated as Unallocated Seats.

- (1) Allocated Seats. Applicants attending public school will be first evaluated against other applicants from the same school, and students with the strongest evaluated applications from that school will be offered admission.
- (2) Unallocated Seats. All remaining public school applicants and applicants who do not attend public school in Fairfax County or in a

cooperating division will be considered for the Unallocated Seats, which will be offered to the highest evaluated applicants in that group.

- (c) Admissions Decisions. All applicants will receive a decision on their application; Offer, Waitpool or No Offer.
- (i) **Offer:** Applicants offered admission for the upcoming Fall (9th grade) year must accept or decline by the stated deadline. Accepting the offer means the applicant is choosing to attend TJHSST the next school year. No deferrals are permitted. Students who accept the offer will go through the registration process. Declining the offer means the applicant has decided not to attend TJHSST. The decision to decline the offer is final, and applicants will not be provided with an option to receive the offer at a later date.
 - (ii) **Waitpool:** A waitpool of students will be created to offer additional students an opportunity to attend TJHSST when admitted applicants decline the offer of admission. Offers of admissions to students who have accepted to stay in the waitpool will be provided to the highest evaluated students remaining in the waitpool. Waitpool offers will continue to be made until all seats have been filled or until the beginning of the school year, which occurs first.
 - (iii) **No Offer:** Some applicants will not receive an offer to attend or be included in the waitpool. No Offer applicants are eligible to re-apply for the Sophomore Round of Admissions the following year contingent they maintain eligibility.

B. Placement of Tenth and Eleventh-Grade Students

Eligible ninth and tenth-grade students may be considered for admission as tenth or eleventh grade students respectively at TJHSST, if space is available. Spaces available will be determined by the admissions office and the principal, taking into account attrition rates. Applications for admission to the tenth or eleventh grades will not be considered midyear.

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants to grade 10 must be enrolled in grade 9 in any private or public school during the academic year preceding the year for which admission is requested. Applicants to the eleventh grade must be enrolled in grade 10 in any private or public school during the academic year preceding the year for which admission is requested. Eligible tenth graders applying to the eleventh grade are

those who have not applied previously to TJHSST or those who have just moved to a cooperating school division.

2. Evaluation of Sophomore and Junior Applications

Sophomore and junior applicants are evaluated on the basis of:

- a. Aptitude, achievement, and interest in the study of science, mathematics, computer science, and related technological fields evidenced by:
 - (1) A student-authored information and data sheet and essays.
 - (2) Marks in mathematics, science, computer science, English, social studies, foreign language, and technology-related courses.
 - (3) Recommendations from current mathematics teacher, current science teacher, and one other adult chosen by the applicant.
 - (4) Test scores, as deemed appropriate (optional for Sophomore applicants).
- b. Readiness for research, experimentation, or independent study in one of the school's technology laboratories, evidenced by successful science fair projects and/or other experiences, activities, or projects (in or out of school) in science, engineering, computer science, and other areas of technology.

The admissions committee will consider the entire application, including all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission.

- c. The evaluation process will use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.

3. Credits Required for Grade 10 Application

Completion of the following specified graduation credits prior to the beginning of the sophomore year is required for those requesting placement into the tenth grade:

English 9	1 credit
World Language	1 credit
Mathematics (Algebra 1, Geometry)	2 credits
Biology	1 credit
Health and Physical Education	1 credit
Elective (Technology preferred)	1 credit

4. Credits Required for Grade 11 Application

Completion of the following specified graduation credits prior to the beginning of the junior year is required for those requesting placement into the eleventh grade:

English 9 and 10	2 credits
Biology	1 credit
Chemistry	1 credit
World Language	1 credit (2 recommended)
Mathematics (Alg. 1, Geom., Alg. 2)	3 credits
Health and Physical Education	2 credits
World History and Geography 2	1 credit
Elective (Technology preferred)	1 credit

Students accepted into the eleventh grade with all the above credits would still need to take at least 13 additional credits to complete the graduation requirements for the TJHSST diploma. (See Section IX, Graduation Requirements.)

5. Tenth and Eleventh Grade Admission Process

The admissions process for tenth and eleventh grade students will be conducted by the admissions office of TJHSST.

a. Application Calendar

An application deadline for eligible ninth and tenth grade students will be set each year and published in Notice 3355. The application deadline for all eligible students seeking admission to the tenth or eleventh grade will be no later than June 15 immediately preceding the academic year for which admission is sought.

b. Admissions Process

Eligible students are assisted in making request for placement by the admissions office or by a local school counselor designated as that school's official contact with the admissions office.

c. Selection Procedure

(1) Students' records are reviewed by the admissions office and by a committee of faculty and staff members of TJHSST to determine which students have met all prerequisite courses and educational experience requirements.

(2) All students requesting placement will be notified of decisions by the admissions office no later than July 15 of each year.

VI. Appeals

A. Exceptional Circumstances Appeal

1. An Exceptional Circumstances Appeal form must be submitted within 10 business days after receiving official notice of the admissions decision. The Appeal form will ask the parent and/or guardian to provide a written explanation of the exceptional

circumstance that the Appeals Committee should consider.

2. The Appeal form must be submitted to the TJHSST Admissions Office. The TJHSST Admissions Office will ensure that all appeal documents are submitted to the Appeals Committee. The parent and/or guardian is not allowed to submit additional credentials, documents, or letters of recommendation.
3. The Appeals Committee will review the appeal.
4. The decision of the Appeals Committee will be communicated to the parent and/or guardian in writing and the Appeals Committee decision is final.

VII. RESIDENCY REQUIREMENTS

A. Continuing Residency Requirement

1. A parent and/or legal guardian of an admitted student must complete a residency verification form in order to register the student at TJHSST.
2. A student who is admitted to TJHSST must at all times continue to reside with a parent and/or guardian who is a full-time resident and meets the residency requirements.

B. Change of Address Within Cooperating School Divisions

1. All changes of address from the time of application through graduation must be reported to the student services office immediately upon change of address. If there is a change of address, a parent and/or legal guardian must complete a new Residency Verification form with the school student services department.
2. If a student and his or her parent(s) or legal guardian(s) change their domicile to a location in another cooperating school division, the parent(s) and/or legal guardian(s) must verify the cooperating school division's percentage has not been exceeded for the student's class at TJHSST before any change of domicile. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).
3. A student who changes his or her domicile to a cooperating school division that has exceeded its percentage for the student's class at TJHSST may not continue to attend TJHSST. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).

VIII. STUDENT WITHDRAWAL, REENTRY AND DEFERMENT

A. Permanent Withdrawal

A student who is enrolled in TJHSST may at any time, with parental permission, voluntarily withdraw from the school and enroll in the public high school that serves the student's residential location or in the private school of his or her choice. A

student who voluntarily withdraws from TJHSST during grade 9 is eligible to reapply for admission to grade 10 at TJHSST, but readmission is not guaranteed. A student who voluntarily withdraws after grade 9 is not eligible to reapply to TJHSST.

B. Temporary Withdrawal

A student enrolled for at least one full academic year in TJHSST may withdraw for only one full academic year and be guaranteed automatic reentry provided all three following conditions are met:

1. The student and parents change their domicile to a location outside the boundaries of the cooperating jurisdictions for one full academic year but return to a cooperating school division whose percentage has not been exceeded for the class that the student seeks to reenter prior to reentry.
2. The student obtains (prior to the temporary withdrawal date), from the principal, written approval of the plan for the student's academic program during the withdrawal period.
3. The student successfully completes the proposed academic program and can meet the graduation requirements of TJHSST at the expected time of graduation for the class in which the student was originally enrolled.

B. Deferral of Admissions

1. Students who are offered admissions are not permitted to defer the offer. The selection process will continue to offer any open seat to students in the waitpool. Therefore, students who do not accept admission would be required to reapply (if eligible) for the Sophomore Round.

IX. GRADUATION REQUIREMENTS

- A. The requirements for a student to earn a diploma are those in effect when the student enters the 9th grade for the first time. The following applies to 9th grade students who enter high school in 2013-14 and beyond.

To graduate from high school with an Advanced Studies Diploma, students must meet the minimum requirements as outlined below, which include 26 credits, 9 of which must be verified credits. A **standard** credit is earned when a student passes a course. A **verified** credit is earned when a student passes a course and the associated end-of-course SOL test. In some cases, students may utilize substitute tests or certifications to earn verified credits. State guidelines prescribe the number of verified credits required for graduation for students entering a Virginia public high school for the first time during tenth grade or after. Consult your school counselor for specific information.

Students receive credit toward graduation for high school courses taken and passed in middle school. These courses count toward credits in the required sequences as well as toward the total number of credits required for graduation and calculation of the grade point average (GPA). **Middle school parents may request that grades for any high**

school credit-bearing course taken in the middle school be removed from the student's high school transcript, any removed grades will not earn high school credit for the course. In addition, the student will not be eligible for a verified credit in any course that has been removed from the transcript. The request to remove a course from the transcript must be made in writing to the middle or high school that the student will attend in the next school year no later than nine weeks after that school year begins.

Advanced Studies Diploma Course Requirements (8 VAC 20-131-50)			
Subject Area	Standard Credits	Verified Credits	Jefferson Diploma ¹
English	4	2	4
Mathematics ¹	4	2	4 ⁷
Laboratory Science ²	4	2	4
History and Social Science ³	4	2	4 ⁸
*World Language ⁴	3		3 ⁹
Health and Physical Education	2		2
Fine Arts or Career and Technical Ed.	1		1 ¹⁰
Economics and Personal Finance	1		1
Electives	3		3 ¹¹
Student Selected Test ⁵		1	
Total Credits ⁶	26	9	26

*Foreign Language is designated World Language in FCPS.

1 Courses completed to satisfy this requirement will include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The Board of Education shall approve courses to satisfy this requirement.

2 Courses completed to satisfy this requirement will include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board will approve courses to satisfy this requirement. Biology, chemistry, physics, and geosystems are required courses for all students.

3 Courses completed to satisfy this requirement will include U.S. and Virginia history, U.S. and Virginia government, and world history/geography I and world history/geography II. AP world history satisfies the requirement for world history/geography II.

4 Courses completed to satisfy this requirement will include three years of one language or two years of two languages.

5 A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the Board in 8 VAC 20-131-110.

6 Students must successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

7 Does not include algebra I, which is required for application and/or admission. Math sequence must terminate in at least AP calculus (AB or BC)

8 World history & geography 2, US/VA history, US/VA government. The fourth social studies requirement may be acquired by any non-AP social studies credit available at TJHSST.

9 Must have three consecutive years of the same language – Footnote #4 does not apply for the

TJ Diploma.

10 The credit is earned via design & technology required for all matriculating students.

11 Computer science, senior research/mentorship, and an additional credit in math, science, technology, fine arts, or a fourth consecutive credit in world language must be taken to fulfill these 'elective' credits.

B. Exemption from the TJHSST Diploma Requirement

An enrolled student in the senior year may be granted an exemption, under exceptional circumstances, by the director of student services and the principal, from meeting the requirements for graduation from TJHSST if the student meets local and state requirements for graduation. A student who is granted an exemption from the TJHSST diploma may receive a generic diploma from FCPS and may participate in the TJHSST graduation ceremony.

C. Graduation Credit by Alternate Methods

Alternate methods of earning credit for graduation from TJHSST require approvals, before beginning any study or program, of the director of student services and the principal. Alternate methods must be ones sanctioned by the Virginia Board of Education and Fairfax County School Board directives.

X. ACADEMIC STANDARDS AND PROCEDURES

A. Academic Standards

An enrolled student must maintain a cumulative B average (unweighted 3.0 grade point average) at the end of each school year to remain a student in good standing at TJHSST.

B. Academic Standards Procedure

1. For any student who is experiencing academic difficulty during the school year, TJHSST teachers and staff members will develop and document intervention strategies to help the student be academically successful at TJHSST.
2. At the end of the school year, if the student does not maintain the needed course of studies or fails to maintain a cumulative B average (unweighted 3.0 grade point average), the student may return to his or her base school. When there are exceptional circumstances, the parent may request an exception from the director of student services, the principal, and the regional assistant superintendent or his or her designee.

XI. CURRICULUM

The curriculum for TJHSST includes selected courses prescribed in the FCPS Program of Studies, as well as courses designed to explore new structures and methods in the sciences, technology, mathematics, humanities, and the arts. The curriculum for TJHSST

must meet state governor's high school and FCPS academic requirements.

XII. PROGRAM

The eight-period day consists of seven academic classes and one required activity period. Students do not attend each course every day. Flexible scheduling allows all classes to meet for two double periods and one single period each week.

XIII. EXTRACURRICULAR ACTIVITIES

The extracurricular activities program for TJHSST is the same comprehensive extracurricular activities program, including athletics, as that approved for other high schools in FCPS. Any approved activity will be provided if sufficient student interest and participation exist.

Any student who transfers from TJHSST with no legal change in domicile will be ineligible, according to the Virginia High School League transfer rules, to participate for one semester in Virginia High School League-sanctioned activities of any Virginia high school.

XIV. PERSONNEL AND STAFFING

Staffing and personnel policies for TJHSST that differ from staffing and personnel policies for other Fairfax County public schools include the following:

- A. All instructional staff members will be employed for at least eight hours each working day.
- B. All instructional staff members will receive a salary scale adjustment.
- C. Criteria by which instructional staff members are selected will be determined by the Department of Human Resources with assistance from the administrative staff of TJHSST.

Legal reference: 8 VAC 20-131-110

See also the current version of:

Notice 3355, Thomas Jefferson High School for Science and Technology
Admissions Procedures

Notice 5922, Student Fees

Policy 3355, High School for Science and Technology Notice 5533, Thomas
Regulation 2431, Middle School Teacher's Guide: Grading and Reporting to
Parents

Regulation 2460, Requirements for Graduation and Graduation Seals of
Achievement

EXHIBIT C

274a

274a

Regulation 3355.15
Superintendent's Office
TJHSST Admissions
Effective 11/09/2021

INSTRUCTION

Special Programs

Thomas Jefferson High School for Science and Technology (TJHSST)

This regulation supersedes Regulation 3355.14.

I. PURPOSE

To establish TJHSST as a Fairfax County public school and as one of the academic-year regional governor's schools for science and technology.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

A. Section V.A.1.b has been revised for clarity.

III. DESIGNATION AS A FAIRFAX COUNTY PUBLIC SCHOOL

TJHSST is a Fairfax County public school, having opened in 1985 under the sole direction and control of the Fairfax County School Board. As a Fairfax County Public Schools (FCPS) institution, all policies and regulations governing FCPS are applicable to TJHSST, with exceptions listed in this regulation and in annual notices issued in connection with this regulation.

IV. DESIGNATION AS AN ACADEMIC-YEAR GOVERNOR'S SCHOOL FOR SCIENCE AND TECHNOLOGY

TJHSST is annually designated by the Virginia Department of Education as an academic-year regional governor's school for science and technology. Such designation:

- A. Provides certain state funding for the operation of the school.
- B. Requires that the school be available to eligible students whose parent(s) and/or legal guardian(s) is a full-time resident(s) of, and meets all the residency requirements of, the counties and cities of Northern Virginia under the following provisions:
 - 1. That each of the school divisions decide annually whether or not to participate in the regional school. School divisions choosing to participate are designated as cooperating school divisions.
 - 2. That eligible students from each cooperating school division may apply and be

considered for admission to the school. The Division Superintendent may return a student to the cooperating jurisdiction with a prorated share of the tuition reimbursed.

- C. Requires a cooperative agreement regarding such control and operation of the school, which includes, but is not restricted to, provisions that:
 1. The school is a FCPS institution under the sole direction and control of the Fairfax County School Board.
 2. Superintendents or their respective designees from cooperating school divisions may, at their discretion, serve as an advisory group to the Superintendent of FCPS.
 3. FCPS will call and conduct meetings of the advisory group defined in Section IV.C.2. above.
 4. Each cooperating school division must pay a per student tuition charge that will be fixed annually by the cooperative agreement.
 5. The nonrefundable tuition paid by cooperating school divisions will be due December 1 of each year for the students from that school division who are enrolled in the school on September 30 of that year.
 6. Transportation for students attending TJHSST is the responsibility of, and is at the discretion of, the cooperating school division in which the student resides.
 7. FCPS will provide the necessary forms and materials and staff orientation, as required, and will schedule and conduct requisite examinations, scoring, and reporting of admissions results.

V. STUDENT SELECTION AND ADMISSIONS PROCEDURES

Each year TJHSST will admit approximately 550 ninth-grade students who have committed to an intensive program focused on science, technology, engineering, and mathematics. No twelfth-grade students will be admitted; however, tenth or eleventh-grade students may be admitted by a placement process. See Section IV.B.

A. Selection of Ninth-Grade Students

1. Eligibility Requirements

- a. Residency. To be eligible for consideration, all applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Applicants enrolled in private school or homeschooled will be required to submit proof of residency in one of the cooperating school divisions at the time of application. Applicants must be enrolled in

grade 8 in any private, homeschool or public school in the academic year preceding the year for which admission is sought. A student may not apply twice as an eighth grader into the ninth grade except in the case of extenuating circumstances.

- b. **Course Prerequisites.** To be eligible for consideration, applicants must:
- (1) have completed a full-year course of Algebra 1, or be currently enrolled in a full-year course of honors-level Algebra 1; applicants attending schools whose curricular programs do not include “honors” Algebra 1 courses must have completed or be enrolled in a full-year course of the highest level of Algebra 1 available at their school;
 - (2) be enrolled in honors science; applicants attending schools whose curricular programs do not include “honors” science must be enrolled in the highest level of 8th grade science available at their school;
 - (3) be enrolled in honors course in social studies or English/language arts, or identified as a “Young Scholar”; applicants attending schools whose curricular programs do not include “honors” courses in social studies or English/language arts must be enrolled in the highest level course available at their school in either social studies or English/language arts or identified as Young Scholar or identified as having advanced academic potential through a similar program designed to nurture such potential in students from underserved or disadvantaged backgrounds;
 - and (4) have a 3.5 or higher GPA in all core academic courses (math, science, social studies, English/language arts, and if taken for high school credit, world language) at the time of application.

2. Selection Criteria

Applicants will be selected using criteria that consider only the following:

- a. Aptitude for successful study of science, technology, engineering, and mathematics.
- b. Record of exceptional academic achievement.
- c. Commitment, intellectual curiosity, passion, and creativity in the study of science, technology, engineering, and mathematics.
- d. Background, skills, or experiences that promote 21st Century Skills and develop future leaders; demonstrate the outstanding attributes of a communicator, collaborator, an ethical and global citizen, a creative and critical thinker, and a goal-directed and resilient individual; and qualities that enrich and cultivate diversity to enhance the learning experience for all students.

3. Methods and Instruments of Measurement

- (a) In addition to each applicant's academic record, including GPA and coursework, admissions evaluators will consider:
- (1) Applicant responses to one problem-solving essay question.
 - (2) Applicant responses on a student portrait sheet.
 - (3) Background of educational challenges, specifically whether students are (or were) identified as English language learners, economically disadvantaged, eligible for special education services or attending a historically under-represented public middle school.

A public school is considered historically "underrepresented" if its average number of attending students offered admission to TJHSST based on the previous five years is at least three standard deviations below the school with the highest average number during the same period. For example, based on 9th grade admissions for the five years comprising the Classes of 2019 through 2024, the middle school with the highest five-year average of admitted students averaged 44 admission offers per year. Among all FCPS middle schools, the standard deviation of these five-year averages during the same period was 13. Based on this data, for Class of 2025 admissions, a middle school will be considered "underrepresented" if its average number of students offered admission to the Classes of 2019 through 2024 was five students or less per year (highest average minus three standard deviations, i.e., $44 - (3 \times 13)$). This same approach will be applied to other sending school divisions to identify underrepresented public schools in all participating jurisdictions, except Falls Church City, which has only one middle school. Underrepresented public schools will be identified each year based on the last five years of admissions data. The schools that are considered "underrepresented public middle schools" for that admissions cycle will be identified on the TJHSST admissions site and updated annually.

- (b) In accordance with the policy directive of the School Board, the admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).

4. Admissions Calendar

The application deadline dates will be set each year and published in Notice 3355, Thomas Jefferson High School for Science and Technology Admissions Procedures. Starting with applicants for the Class of 2026, the application deadline for all eligible students seeking admission to the ninth grade will be no later than December 15 of the year preceding the year for which admission is

sought. See Section V.A.6.

5. Ninth-Grade Admissions Process—Winter Round

The admissions process will be conducted by the admissions office of TJHSST. The admissions process will be completely independent of the TJHSST staff, except that the principal or designated school staff members will provide each year for the admissions office a profile of the last class of ninth, tenth, and eleventh grade successful applicants. This profile, along with other related data, will provide information and recommendations for improvement and refinement of the admissions process.

(a) Admissions Process

- (1) Students are assisted in making application by a local school counselor designated as that school's official contact with the admissions office.
- (2) Applications are screened for eligibility by admissions staff (See section V.A.1.a & b).
- (3) Students who meet the eligibility criteria are administered short answer and essay exams in a proctored environment (See Notice 3355) [See section V.3.a.(1) & (2)].
- (4) Complete application packets are provided to admissions evaluators. Admissions evaluators are appointed by the Division Superintendent or his or her designee. Evaluators will include school-based and central-administration personnel, such as teachers, counselors, or administrators (retired or active), from FCPS or from the cooperating school divisions.
- (5) Starting with the Class of 2026, Applicant notification of the decisions regarding admissions will be no later than April 30 each year.

(b) Seat Allocation Process. Each public school within Fairfax County and each cooperating school division will be presumptively allocated a number of seats equal to 1.5% of that school's 8th grade student population ("Allocated Seats"). The remainder of seats will not be allocated to any specific public school ("Unallocated Seats"). In the event a school has fewer eligible applicants than its number of Allocated Seats, the difference will be treated as Unallocated Seats.

- (1) Allocated Seats. Applicants attending public school will be first evaluated against other applicants from the same school, and students with the strongest evaluated applications from that school will be offered admission.
- (2) Unallocated Seats. All remaining public school applicants and applicants who do not attend public school in Fairfax County or in a

cooperating division will be considered for the Unallocated Seats, which will be offered to the highest evaluated applicants in that group.

- (c) Admissions Decisions. All applicants will receive a decision on their application; Offer, Waitpool or No Offer.
- (i) **Offer:** Applicants offered admission for the upcoming Fall (9th grade) year must accept or decline by the stated deadline. Accepting the offer means the applicant is choosing to attend TJHSST the next school year. No deferrals are permitted. Students who accept the offer will go through the registration process. Declining the offer means the applicant has decided not to attend TJHSST. The decision to decline the offer is final, and applicants will not be provided with an option to receive the offer at a later date.
 - (ii) **Waitpool:** A waitpool of students will be created to offer additional students an opportunity to attend TJHSST when admitted applicants decline the offer of admission. Offers of admissions to students who have accepted to stay in the waitpool will be provided to the highest evaluated students remaining in the waitpool. Waitpool offers will continue to be made until all seats have been filled or until the beginning of the school year, which occurs first.
 - (iii) **No Offer:** Some applicants will not receive an offer to attend or be included in the waitpool. No Offer applicants are eligible to re-apply for the Sophomore Round of Admissions the following year contingent they maintain eligibility.

B. Placement of Tenth and Eleventh-Grade Students

Eligible ninth and tenth-grade students may be considered for admission as tenth or eleventh grade students respectively at TJHSST, if space is available. Spaces available will be determined by the admissions office and the principal, taking into account attrition rates. Applications for admission to the tenth or eleventh grades will not be considered midyear.

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants to grade 10 must be enrolled in grade 9 in any private or public school during the academic year preceding the year for which admission is requested. Applicants to the eleventh grade must be enrolled in grade 10 in any private or public school during the academic year preceding the year for which admission is requested. Eligible tenth graders applying to the eleventh grade are those who have not applied previously to TJHSST or those who have just moved to

a cooperating school division.

2. Evaluation of Sophomore and Junior Applications

Sophomore and junior applicants are evaluated on the basis of:

- a. Aptitude, achievement, and interest in the study of science, mathematics, computer science, and related technological fields evidenced by:
 - (1) A student-authored information and data sheet and essays.
 - (2) Marks in mathematics, science, computer science, English, social studies, foreign language, and technology-related courses.
 - (3) Recommendations from current mathematics teacher, current science teacher, and one other adult chosen by the applicant.
 - (4) Test scores, as deemed appropriate (optional for Sophomore applicants).
- b. Readiness for research, experimentation, or independent study in one of the school's technology laboratories, evidenced by successful science fair projects and/or other experiences, activities, or projects (in or out of school) in science, engineering, computer science, and other areas of technology.

The admissions committee will consider the entire application, including all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission.

- c. The evaluation process will use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.

3. Credits Required for Grade 10 Application

Completion of the following specified graduation credits prior to the beginning of the sophomore year is required for those requesting placement into the tenth grade:

English 9	1 credit
World Language	1 credit
Mathematics (Algebra 1, Geometry)	2 credits
Biology	1 credit
Health and Physical Education	1 credit
Elective (Technology preferred)	1 credit

4. Credits Required for Grade 11 Application

Completion of the following specified graduation credits prior to the beginning of the junior year is required for those requesting placement into the eleventh grade:

English 9 and 10	2 credits
Biology	1 credit
Chemistry	1 credit
World Language	1 credit (2 recommended)
Mathematics (Alg. 1, Geom., Alg. 2)	3 credits
Health and Physical Education	2 credits
World History and Geography 2	1 credit
Elective (Technology preferred)	1 credit

Students accepted into the eleventh grade with all the above credits would still need to take at least 13 additional credits to complete the graduation requirements for the TJHSST diploma. (See Section IX, Graduation Requirements.)

5. Tenth and Eleventh Grade Admission Process

The admissions process for tenth and eleventh grade students will be conducted by the admissions office of TJHSST.

a. Application Calendar

An application deadline for eligible ninth and tenth grade students will be set each year and published in Notice 3355. The application deadline for all eligible students seeking admission to the tenth or eleventh grade will be no later than June 15 immediately preceding the academic year for which admission is sought.

b. Admissions Process

Eligible students are assisted in making request for placement by the admissions office or by a local school counselor designated as that school's official contact with the admissions office.

c. Selection Procedure

- (1) Students' records are reviewed by the admissions office and by a committee of faculty and staff members of TJHSST to determine which students have met all prerequisite courses and educational experience requirements.
- (2) All students requesting placement will be notified of decisions by the admissions office no later than July 15 of each year.

VI. Appeals

A. Exceptional Circumstances Appeal

1. An Exceptional Circumstances Appeal form must be submitted within 10 business days after receiving official notice of the admissions decision. The Appeal form will ask the parent and/or guardian to provide a written explanation of the exceptional

circumstance that the Appeals Committee should consider.

2. The Appeal form must be submitted to the TJHSST Admissions Office. The TJHSST Admissions Office will ensure that all appeal documents are submitted to the Appeals Committee. The parent and/or guardian is not allowed to submit additional credentials, documents, or letters of recommendation.
3. The Appeals Committee will review the appeal.
4. The decision of the Appeals Committee will be communicated to the parent and/or guardian in writing and the Appeals Committee decision is final.

VII. RESIDENCY REQUIREMENTS

A. Continuing Residency Requirement

1. A parent and/or legal guardian of an admitted student must complete a residency verification form in order to register the student at TJHSST.
2. A student who is admitted to TJHSST must at all times continue to reside with a parent and/or guardian who is a full-time resident and meets the residency requirements.

B. Change of Address Within Cooperating School Divisions

1. All changes of address from the time of application through graduation must be reported to the student services office immediately upon change of address. If there is a change of address, a parent and/or legal guardian must complete a new Residency Verification form with the school student services department.
2. If a student and his or her parent(s) or legal guardian(s) change their domicile to a location in another cooperating school division, the parent(s) and/or legal guardian(s) must verify the cooperating school division's percentage has not been exceeded for the student's class at TJHSST before any change of domicile. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).
3. A student who changes his or her domicile to a cooperating school division that has exceeded its percentage for the student's class at TJHSST may not continue to attend TJHSST. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).

VIII. STUDENT WITHDRAWAL, REENTRY AND DEFERMENT

A. Permanent Withdrawal

A student who is enrolled in TJHSST may at any time, with parental permission, voluntarily withdraw from the school and enroll in the public high school that serves the student's residential location or in the private school of his or her choice. A student who voluntarily withdraws from TJHSST during grade 9 is eligible to

reapply for admission to grade 10 at TJHSST, but readmission is not guaranteed. A student who voluntarily withdraws after grade 9 is not eligible to reapply to TJHSST.

B. Temporary Withdrawal

A student enrolled for at least one full academic year in TJHSST may withdraw for only one full academic year and be guaranteed automatic reentry provided all three following conditions are met:

1. The student and parents change their domicile to a location outside the boundaries of the cooperating jurisdictions for one full academic year but return to a cooperating school division whose percentage has not been exceeded for the class that the student seeks to reenter prior to reentry.
2. The student obtains (prior to the temporary withdrawal date), from the principal, written approval of the plan for the student's academic program during the withdrawal period.
3. The student successfully completes the proposed academic program and can meet the graduation requirements of TJHSST at the expected time of graduation for the class in which the student was originally enrolled.

B. Deferment of Admissions

1. Students who are offered admissions are not permitted to defer the offer. The selection process will continue to offer any open seat to students in the waitpool. Therefore, students who do not accept admission would be required to reapply (if eligible) for the Sophomore Round.

IX. GRADUATION REQUIREMENTS

- A. The requirements for a student to earn a diploma are those in effect when the student enters the 9th grade for the first time. The following applies to 9th grade students who enter high school in 2013-14 and beyond.

To graduate from high school with an Advanced Studies Diploma, students must meet the minimum requirements as outlined below, which include 26 credits, 9 of which must be verified credits. A **standard** credit is earned when a student passes a course. A **verified** credit is earned when a student passes a course and the associated end-of-course SOL test. In some cases, students may utilize substitute tests or certifications to earn verified credits. State guidelines prescribe the number of verified credits required for graduation for students entering a Virginia public high school for the first time during tenth grade or after. Consult your school counselor for specific information.

Students receive credit toward graduation for high school courses taken and passed in middle school. These courses count toward credits in the required sequences as well as toward the total number of credits required for graduation and calculation of the grade point average (GPA). **Middle school parents may request that grades for any high school credit-bearing course taken in the middle school be removed from the**

student's high school transcript, any removed grades will not earn high school credit for the course. In addition, the student will not be eligible for a verified credit in any course that has been removed from the transcript. The request to remove a course from the transcript must be made in writing to the middle or high school that the student will attend in the next school year no later than nine weeks after that school year begins.

Advanced Studies Diploma Course Requirements (8 VAC 20-131-50)			
Subject Area	Standard Credits	Verified Credits	Jefferson Diploma ¹
English	4	2	4
Mathematics ¹	4	2	4 ⁷
Laboratory Science ²	4	2	4
History and Social Science ³	4	2	4 ⁸
*World Language ⁴	3		3 ⁹
Health and Physical Education	2		2
Fine Arts or Career and Technical Ed.	1		1 ¹⁰
Economics and Personal Finance	1		1
Electives	3		3 ¹¹
Student Selected Test ⁵		1	
Total Credits ⁶	26	9	26

*Foreign Language is designated World Language in FCPS.

1 Courses completed to satisfy this requirement will include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The Board of Education shall approve courses to satisfy this requirement.

2 Courses completed to satisfy this requirement will include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board will approve courses to satisfy this requirement. Biology, chemistry, physics, and geosystems are required courses for all students.

3 Courses completed to satisfy this requirement will include U.S. and Virginia history, U.S. and Virginia government, and world history/geography I and world history/geography II. AP world history satisfies the requirement for world history/geography II.

4 Courses completed to satisfy this requirement will include three years of one language or two years of two languages.

5 A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the Board in 8 VAC 20-131-110.

6 Students must successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

7 Does not include algebra I, which is required for application and/or admission. Math sequence must terminate in at least AP calculus (AB or BC)

8 World history & geography 2, US/VA history, US/VA government. The fourth social studies requirement may be acquired by any non-AP social studies credit available at TJHSST.

9 Must have three consecutive years of the same language – Footnote #4 does not apply for the TJ Diploma.

10 The credit is earned via design & technology required for all matriculating students.

11 Computer science, senior research/mentorship, and an additional credit in math, science, technology, fine arts, or a fourth consecutive credit in world language must be taken to fulfill these 'elective' credits.

B. Exemption from the TJHSST Diploma Requirement

An enrolled student in the senior year may be granted an exemption, under exceptional circumstances, by the director of student services and the principal, from meeting the requirements for graduation from TJHSST if the student meets local and state requirements for graduation. A student who is granted an exemption from the TJHSST diploma may receive a generic diploma from FCPS and may participate in the TJHSST graduation ceremony.

C. Graduation Credit by Alternate Methods

Alternate methods of earning credit for graduation from TJHSST require approvals, before beginning any study or program, of the director of student services and the principal. Alternate methods must be ones sanctioned by the Virginia Board of Education and Fairfax County School Board directives.

X. ACADEMIC STANDARDS AND PROCEDURES

A. Academic Standards

An enrolled student must maintain a cumulative B average (unweighted 3.0 grade point average) at the end of each school year to remain a student in good standing at TJHSST.

B. Academic Standards Procedure

1. For any student who is experiencing academic difficulty during the school year, TJHSST teachers and staff members will develop and document intervention strategies to help the student be academically successful at TJHSST.
2. At the end of the school year, if the student does not maintain the needed course of studies or fails to maintain a cumulative B average (unweighted 3.0 grade point average), the student may return to his or her base school. When there are exceptional circumstances, the parent may request an exception from the director of student services, the principal, and the regional assistant superintendent or his or her designee.

XI. CURRICULUM

The curriculum for TJHSST includes selected courses prescribed in the FCPS Program of Studies, as well as courses designed to explore new structures and methods in the sciences, technology, mathematics, humanities, and the arts. The curriculum for TJHSST must meet state governor's high school and FCPS academic requirements.

XII. PROGRAM

The eight-period day consists of seven academic classes and one required activity period. Students do not attend each course every day. Flexible scheduling allows all classes to meet for two double periods and one single period each week.

XIII. EXTRACURRICULAR ACTIVITIES

The extracurricular activities program for TJHSST is the same comprehensive extracurricular activities program, including athletics, as that approved for other high schools in FCPS. Any approved activity will be provided if sufficient student interest and participation exist.

Any student who transfers from TJHSST with no legal change in domicile will be ineligible, according to the Virginia High School League transfer rules, to participate for one semester in Virginia High School League-sanctioned activities of any Virginia high school.

XIV. PERSONNEL AND STAFFING

Staffing and personnel policies for TJHSST that differ from staffing and personnel policies for other Fairfax County public schools include the following:

- A. All instructional staff members will be employed for at least eight hours each working day.
- B. All instructional staff members will receive a salary scale adjustment.
- C. Criteria by which instructional staff members are selected will be determined by the Department of Human Resources with assistance from the administrative staff of TJHSST.

Legal reference: 8 VAC 20-131-110

See also the current version of:

Notice 3355, Thomas Jefferson High School for Science and Technology
Admissions Procedures
Notice 5922, Student Fees
Policy 3355, High School for Science and Technology
Regulation 2430, Secondary Teacher's Guide: Grading and Reporting to
Parents
Regulation 2460, Requirements for Graduation and Graduation Seals of
Achievement

FAIRFAX COUNTY PUBLIC SCHOOLS