

FAIRFAX SCHOOL DISTRICT

School Board in Crisis

SUMMARY:

The Fairfax School District (District) is one of several small elementary school districts in the County of Kern. Most school districts utilize the Kern County Superintendent of Schools (KCSOS) Legal Service (Schools Legal) for their General Counsel. Schools Legal has a pool of attorneys available to school districts that have contracts for general counsel. The Fairfax School District has a \$47,000 annual contract with Schools Legal. Due to a conflict of interest, an investigative law firm was hired to inquire into the allegations made against a Board Member, which produced the Resolution of Censure (Censure) and Report. The Fairfax School Board (Board) failed to pass the Censure, due to objection from some Board Members, on the basis that two Board Members had not been given the opportunity to read the Censure or have discussion on the matter before a vote was demanded. Once the Censure motion was defeated by a 2 to 2 vote, said Board Member was accused of hiring an outside law firm to look after their own interests regarding the Censure. To date, the Board has not addressed the complaints against or the actions of said Board Member.

The community of the Fairfax School District is now seeking to remove three Board Members with a resign/recall campaign due to the failure to discipline said Board Member, and the hiring of an outside law firm. Over 100 members of the community have attended regular Board Meetings, in person or via Zoom, to voice support for their removal. Chaos was reported at the Board Meetings with no opportunity for exchange of information, either between Board Members or the community. The community expressed concern, “Is there going to be enough money for graduation?”

PURPOSE OF INQUIRY:

Pursuant to California Penal Code section 933.5, the Grand Jury investigated the operations, management, and actions of the Fairfax School District’s Board of Trustees.

METHODOLOGY:

The Grand Jury began their inquiry by reviewing citizen complaints, conducting Internet research, viewing video recordings of Board meetings, attending two Board meetings in person, and reviewing Board agendas and minutes. Local news articles provided background information on the Board’s actions. District officials and citizens, as well as present and past Board Members, were interviewed by the Grand Jury in an attempt to understand the community’s viewpoint on the operation of the District. The Grand Jury also reviewed the **fully redacted** 500 plus page investigative report (Report) and nine-page summary, as well as the **unredacted** report submitted to the District by the investigative law firm.

DISCUSSION OF FACTS:

HISTORY:

The Fairfax School District was formed on May 6, 1891, to serve a sparsely populated area on Bakersfield's eastern fringe. Unlike almost all other school districts, there was no center of population, as the area was made up almost exclusively of small family farms. One can only speculate as to how it was determined just where to build that first Fairfax schoolhouse.

During its first year of operation, 1891-92, the District's average daily attendance was eight students, and enrollment remained relatively small for the next twenty years. No attendance records were found for those years but we know from a 1911 directory of Kern County's public schools, titled, "List of Districts, Clerks, and Teachers", reflects that all grades at the Fairfax School were still being taught by a single teacher.

The District experienced moderate growth during the next 20 years, recording an average daily attendance for the 1932-33 school years of 101 students and a staff of three teachers; one who also served as the part-time principal.

Food service was first offered to Fairfax students in 1928 and was initiated by a founding member of the Fairfax PTA, who cooked the meals at home and transported the food to the school in kettles.

Bus transportation was first made available to Fairfax students in 1935 following the District's purchase of a used REO bus from Kern County High School District.

As originally configured, the Fairfax School District encompassed an area of 57 square miles and bore little resemblance to the Fairfax District of today. The original boundary lines formed a large rectangle, the sides being four miles long from north to south and 15 miles wide from east to west. The western terminus ran on a line one mile east of, and parallel to, present day Union Avenue. The District's eastern boundary, 15 miles wide, was approximately two miles beyond Bena Station, on the Southern Pacific Railroad. Current boundaries are reflected in Appendix A.

Currently the District serves approximately 2,700 students at four schools: Shirley Lane Elementary School, Virginia Avenue Elementary School, Zephyr Lane Elementary School, and Fairfax Junior High School. The District is a feeder district for Kern High School District (Mira Monte High School and Foothill High School).

FACTS:

- A. In May of 2020, the Board addressed the formal complaints of a Board Member's reported harassment of employees and other actions, creating a hostile work environment.
- B. On or about August 17, 2020, the Board retained an investigative firm to act solely as a factfinder (not legal counsel) and conduct a neutral, independent investigation into

all allegations raised by employee complaints. This firm had no bias or pre-existing knowledge of any concerns.

- C. The results of the 2020 November Election changed the make-up of the Board, adding one new member and removing a 20-year member (President of the Board for several terms), resulting in a three member alliance.
- D. The two-month investigation resulted in the Report delivered to the Board on November 10, 2020, at a cost of \$40,000. The Report consisted of over 110 pages along with 450 pages of attachments. A nine-page summary with a list of recommendations, including a Censure of the Board Member, was presented to the Board at the Regular Board Meeting on December 15, 2020.
- E. Fairfax School District **“PROPOSED” RESOLUTION NO. 2021-08, A Resolution by the Governing Board to Censure Trustee (redacted) For Abusive and Inappropriate Conduct**, was made available to the Board Members through Schools Legal for review and placed on the agenda for the Regular District Board Meeting on December 15, 2020. With no allowed discussion from the Board, the vote was 2 to 2 with one abstention, defeating the Censure.
- F. At the next Regular District Board Meeting, January 14, 2021, with no allowed discussion, agenda item J.2. was approved by a 3 to 2 vote to hire an outside law firm. Two Board Members attempted to question the need for said hiring, due to the fact that the first time they heard of the firm was when they saw it on the agenda. No Request For Proposal (RFP) was submitted by any law firm as required by Board Bylaws.

Agreement For Legal Services with the outside law firm include:

- “SCOPE OF SERVICE, Client hires Attorney as its legal representative/counsel with respect to matters Client specifically refers to Attorney. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and respond to Client’s inquiries.”
- “CONSULTANT SERVICES, Attorney may provide consulting services in addition to or in support of legal services provided pursuant to this Agreement, through qualified non-attorney Communication Services and Education Consultants. These services are intended to support Client with Communications work or educational consultant services related to labor and employment matters, special education and student matters, high-profile litigation and settlement agreements, in addition to employee, community, inter-governmental and media relations.”

- G. The President of the Board called a Special Board Meeting on February 3, 2021, with only one action agenda item, D.1.: “Per Board Bylaw No. 9124, the Board may contract for temporary specialized legal services without initiating an RFP when a majority of the Board determines that the unique demands of a particular issue or emergency situation so requires. The Board will consider approving an agreement with (redacted) LLP for purposes of assistance regarding unique censure motion, and related issues, including but not limited to the 2020 investigation and PRA request for the same.” The Board approved the action on a 3 to 2 vote, with no discussion allowed from Board Members or the public.
- H. Pursuant to the COVID-19 protocol, the Board meetings are conducted by a link to meeting (via Zoom), as per, “Notice of Teleconferencing Pursuant to Executive Order N-29-20 and Government Code section 54953; The Board will conduct this meeting via teleconference or video conference, with one or more board members participating from remote locations via telephone or other electronic means. Voting at this meeting shall be by roll call. Members of the public wishing to observe/listen to the meeting or make public comments as authorized under Government Code section 54954.3 may do so at the following location: 1500 S. Fairfax Rd, Bakersfield, CA 93307. Voting at this meeting shall be by roll call. Social distancing measures will be implemented to address public health issues relating to the Coronavirus (COVID 19).”
- I. The outside law firm submitted an invoice to the District dated February 23, 2021, for 12.00 hours of legal services from January 18, 2021 to January 29, 2021, in the amount of \$3,230. Billing details include: teleconferencing with the board leadership; communication with two board members; communication with board members; and correspondences with the board president.
- A second invoice was received by the District dated March 22, 2021, for 30.40 hours of legal services from February 1, 2021 to February 25, 2021, in the amount \$7,976. Billing details include: review and analyze correspondences from general counsel; strategy regarding special meeting; review of agenda; strategize redactions in the investigative report; and review Fair Political Practices Commission complaint against trustees.
- J. The District’s General Counsel is Schools Legal as per an annual retainer contract for \$47,000.
- K. Board Bylaws state the appropriate behavior and actions for both Board Members and District Superintendent.

1. Fairfax Board Bylaw 9200, in pertinent part, include the following:

- “The Governing Board recognizes that the Board is the unit of authority over the District and that a Board member has no individual authority. Board members shall hold the education of students above any partisan principle, group interest, or personal interest.”
- “Unless agreed to by the Board as a whole, individual members of the Board shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee.”
- “Individual Board members do not have the authority to resolve complaints. Any Board member approached directly by a person with a complaint should refer the complainant to the Superintendent or designee so the problem may receive proper consideration and be handled through the appropriate district process.”
- “A Board member whose child is attending a district school should be aware of his/her role as a Board member when interacting with district employees about his/her child. Because his/her position as a Board member may inhibit the performance of school personnel, the Board member should inform the Superintendent or designee before volunteering in his/her child’s classroom”

2. Fairfax Board Bylaw 9005.1, in pertinent part, include the following:

- “Board members will:
 - Understand and respect the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the Superintendent and staff.
 - Communicate directly with the Superintendent wherever a question or concern is raised by a staff member, student, parent, or community member.
 - Communicate one-on-one with the Superintendent when an individual concern arises; without allowing the matter to fester.”
- “Board members and Superintendent will:
 - Act with dignity, and understand the implication of demeanor and behavior.
 - Recognize and respect difference of perspectives and style on the Board and among staff, students, and the community.”

3. Fairfax Board Bylaw 9010, in pertinent part, include the following:

- “The Governing Board recognizes the rights of Board members to freely express their views and encourages open discussion of issues during the Board meetings. The Board believes that effective Board members have a responsibility to express themselves, whether in agreement or disagreement with the Board majority, in ways that promote the Board’s ability to govern the district.”
 - “When speaking to community groups, the media, or other members of the public, individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board. Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.”
 - “All public statements authorized to be made on behalf of the Board shall be made by the Board president or, if appropriate, by the Superintendent or other designated representative.”
- L. As per Fairfax Board Bylaw 9124: “At his/her discretion, the Board president or Superintendent may confer with the district legal counsel subject to any limits or parameters established by the Board. In addition, the Superintendent or Board president may contact district legal counsel to provide the Board with legal information or advice when so directed by a majority of the Board. Individual Board members other than the Board president may not seek advice from district legal counsel on matters of district business unless so authorized by a majority of the Board.”
- M. The scheduled Regular Board Meeting on April 8, 2021, was canceled due to lack of a quorum. Over 30 people in attendance expressed concerns for not taking care of District business such as, the consent agenda, payroll, purchasing of new equipment, and the Superintendent’s evaluation.
- N. The Special Board Meeting on April 14, 2021, had only three agenda action items: Consent Section, D.1. Warrants/Payroll; D.3. Confidential Management Director of Maintenance, Operation, and Transportation; and D.4. Resignation/Retirement.
- O. After January 2021, personal contact information for all Board Members is no longer available on the District’s website.
- P. The District has scheduled and canceled two community requested town hall meetings for the month of March 2021.

FINDINGS:

- F1. The 2020 November election has changed the make-up of the Board, resulting in a divided and dysfunctional School Board.
- F2. The actions of the Board at the Regular Meeting of the Board of Trustees on December 15, 2020, was not the end of the investigation, Report, and/or Censure. The Board Member contacted and negotiated a contract with an outside law firm without the approval or knowledge of the entire Board. The Special Board Meeting on February 3, 2021, served the purpose to address any wrong doings from the Regular Board Meeting on January 14, 2021, regarding the hiring of the outside law firm. Invoices from the law firm for the months of January and February of 2021, indicate that only a few Board Members had contact with the firm. This leaves a minority of the Board and the community believing that the purpose was to solely protect the Board Member from Censure and to re-redact the Report for public release. Unfortunately, according to the Agreement For Services, the SCOPE and CONSULTANT SERVICES are unlimited.
- F3. The requests for the Fairfax School District - (redacted) Investigation: Detailed Investigation Report Client-Matter: SC050/014 Report under the Public Records Act (PRA), only provided the Report that was redacted by both Schools Legal and the outside law firm, before being made available to the public. This created a public report that has pages completely blacked out, including most dates, times, and names, making it impossible to read and understand the concerns.
- F4. When Board meetings are conducted via Zoom, and all Board Members do not turn on their cameras, it is very difficult to follow the meeting, see Board Member's reactions, or know if they are actually present. This concerns the community, as well as other Board Members.
- F5. When Board Members vote on agenda items without discussion and stop other Members from questioning and/or discussing the purpose of the action, it leaves the public with the suspicion that a closed door or outside planning/discussion took place prior to the meeting. Board Members need to be schooled on the requirements of the Ralph M. Brown Act, and allow for Board Member discussion on the agenda items in public meetings.
- F6. The Board's authorized investigation into the complaints of a hostile working environment and abusive behavior by the Board Member, resulted in an extensive Report with recommendations. The Board has not taken any formal action to resolve the complaints and/or control the behavior of said Board Member.
- F7. Three Board Members were not in attendance at the Regular Board Meeting on April 8, 2021, eliciting outrage by the community. Some Board Members canceled minutes before the scheduled start of the meeting.

F8. The community is still demanding a town hall meeting for the opportunity to voice their opinions and address District concerns.

F9. The Grand Jury determined the Board Member failed to follow:

- Board Bylaws
- Education Code
- Government Code
- Ralph M. Brown Act
- Robert's Rules of Order
- Ethics law and principles

Furthermore, without Board approval, the Board Member contacted a law firm(s), negotiated a contract, and allowed no discussion on the agenda item before voting to hire the outside law firm.

F10. The Fairfax School District - (redacted) Investigation: Detailed Investigation Report Client-Matter: SC050/014 Report confirmed, with Grand Jury witness statements, that the Board Member did engage in abusive conduct toward classified employees in a demanding or aggressive manner; asked questions that should be directed to the Superintendent; requested reports, projects, or information directly; criticized classified employees to other employees; stated during public comment at board meetings and on their Facebook page that classified employees failed to wear masks at work; monitored classified employees during job duties by following, videotaping, photographing, and reporting tardiness to their supervisors. The above actions are in violation of Board Bylaws, Government Code, and ethics law and principles.

F11. The Censure and its recommendations did not pass at the Regular Board Meeting on December 15, 2020. The Board has neither addressed nor acted upon concerns regarding the behavior of the Board Member's conduct.

F12. Personal contact information for Board Members is not posted or readily available to the public on the website. Therefore, the public does not have the ability to contact a Board Member to share or discuss District concerns or verify their residency within the District, as per Education Code section 35107(a) and Fairfax Board Bylaw 9220.

F13. The majority of the Board did willfully and knowingly allow the bullying of the minority in order to stop discussion and force a vote on agenda items at two or more District Board meetings.

F14. The Fairfax School District - (redacted) Investigation: Detailed Investigation Report Client-Matter: SC050/014 Report, confirmed with Grand Jury witness statements, that there were violations of Board Bylaws 9200 and 9005.1. The Board Member was performing management and administrative functions without the proper authority. Evidence supported that the Board Member engaged in abusive, and

unprofessional conduct, lacking “civility, dignity and respect.” It also was determined that, the Board Member’s misconduct might “impair” their “ability to carry out” their authorized responsibilities as a trustee. Therefore, it is foreseeable that the Board Member’s **“usurpation of administrative duties might create a conflict”** preventing their service as a Board Member. This Board Member is the major contributing factor to the dysfunction of the Fairfax School District Board.

- F15. The cost of legal services paid by the District in the last 12 months, e.g., Schools Legal, outside law firm, and investigative law firm, may be placing a burden on the District’s budget and taking funds that are not being used for the direct education of students. This is prompting community members to ask, “Is there enough money left for graduation?”

COMMENTS:

The Grand Jury has considered the Accusation Process (Penal Code § 922) to weigh allegations of misconduct against the Fairfax School District Board Member. Due to the time restraints of this year’s Jury, it is not feasible to complete the process at this time. Future Grand Juries may consider this process if the conduct of the Board Member continues.

The Fairfax community has taken the initial step to **“take back OUR District”** and remove three Board Members by serving them with recall papers at the Regular Meeting of the Board of Trustees on May 4, 2021. The community must now express their concerns about the operation of the District.

RECOMMENDATIONS:

- R1. The Board should organize a retreat to provide extensive training and hire a conflict resolution specialist to build communication skills, hopefully building trust among Board Members. These team building activities should be completed before October 1, 2021. (Finding 1)
- R2. The Board should consult Schools Legal regarding The Brown Act, ethics training, and conflicts of interest. All Board Members must be re-trained on proper behavior and subsequent actions as a Board Member by October 1, 2021. (Findings 1 and 5)
- R3. By September 1, 2021, the Board should review, follow, and/or update all current Board Bylaws, and conduct Board Meetings using Robert’s Rule of Order allowing for complete discussion before a vote is taken. (Findings 5 and 13)
- R4. The Board should immediately work on methods for conducting meetings that allow for easier public access. (Findings 4 and 5)

- R5. Starting immediately, the public should be allowed adequate time to express their concerns in open session at all Board Meetings and be respectfully addressed by the Board. (Findings 1, 5, 7, and 8)
- R6. In accordance with California Election Code, the Board should verify that Board Members are current residents within the District boundaries before the next Board Meeting. (See Appendix A) (Finding 12)
- R7. By September 1, 2021, the Board should complete the process and close the complaints against the Board Member. (Findings 6, 10, and 14)
- R8. The Board should immediately ensure that all Board Member's contact information is readily available to the public. (Finding 12)
- R9. The Board should immediately cease and desist bullying during meetings, allow for discussion and questions prior to the vote, and stop the practice of forcing Members to vote without having complete information. (Findings 13 and 14)
- R10. The Board should examine the funds spent on legal services, justify the need for multiple law firms, and report their findings to the public on or before the Regular Board Meeting in August 2021. (Finding 15)
- R11. By June 30, 2021, the Board should hold a town hall meeting, where public concerns can be addressed. (Finding 8)
- R12. The Board should remove the current President of the Board and train another Board Member to become President by June 30, 2021. This will eliminate a major contributor to the dysfunction of the Board. (Finding 14)

NOTES:

- The Fairfax School District should post a copy of this report where it will be available for public review.
- Persons wishing to receive an email notification of newly released reports may sign up at: www.kerncounty.com/grandjury.
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.kerncounty.com/grandjury.

RESPONSE REQUIRED WITHIN 90 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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GLOSSARY:

Bylaws: a rule made by a company or society to control the actions of its members.

California Public Records Act (PRA): establishes that public records are open to inspection at all times during the office hours of the State or local agency and every person has a right to inspect any public record, except as provided in the PRA (Government Code § 6253). Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record.

Cease and Desist: is a legally enforceable order from a court or government agency, directing someone to stop engaging in a suspicious or illegal activity that is infringing on your rights.

Censure: an official reprimand and statement of disapproval.

In Pertinent Part: is relating directly to the subject being considered.

Ralph M. Brown Act: (Government Code § 54950, et seq.) Public commissions, boards, councils and other legislative bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created.

Resolution: a firm decision to do or not to do something.

Request For Proposal (RFP): a business document that announces a project, describes it, and solicits bids from qualified contractors to complete it.

Robert's Rules of Order: a political book written by Henry Martyn Robert. It is the most widely used manual of parliamentary procedure in the United States. It governs the meetings of a diverse range of organizations (including church groups, county commissions, homeowners' associations, nonprofit associations, professional societies, school boards, and trade unions) that have adopted it as their parliamentary authority.

Terminus: the end of a railroad or other transportation route, or a station at such a point; a terminal.

BIBLIOGRAPHY:

AGREEMENT FOR LEGAL SERVICE:

[file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/J_2_FagenFriedmanFulcrostLLPContract_0%20\(1\).pdf](file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/J_2_FagenFriedmanFulcrostLLPContract_0%20(1).pdf)

THE BAKERSFIELD CALIFORNIAN:

Monday, February 1, 2021, “Fairfax school board majority hires new law firm without asking questions”

Friday, February 5, 2021, “Fairfax school board reapproves legal contract during raucous board meeting”

Saturday, May 8, 2021, “Three Fairfax school board members get recall notices”

BAKERSFIELD.COM NEWS:

https://www.bakersfield.com/news/despite-outcry-from-staff-fairfax-school-district-board-fails-to-censure-board-member-accused-of/article_a949e7d8-417d-11eb-ab0b-eba6de3b8d37.html

DISTRICT BYLAWS:

<http://www.gamutonline.com/district.net/district/fairfax/PolicyCategoryList/2375/9>

https://www.bakersfield.com/news/fairfax-school-board-reapproves-legal-contract-during-raucous-meeting/article_651a6f90-671d-11eb-8e4e-cbb13475d6ef.html

https://www.bakersfield.com/news/newly-hired-law-firm-is-at-work-asking-for-redactions-for-fairfax-school-board-president/article_1eadebba-6a68-11eb-9bea-ef1ea9b6a0c8.html

<https://www.kget.com/news/local-news/resolution-fails-to-pass-against-school-board-member-accused-of-abusive-bullying-conduct/>

FAIRFAX SCHOOL DISTRICT WEBSITE:

<https://www.fairfax.k12.ca.us/District>

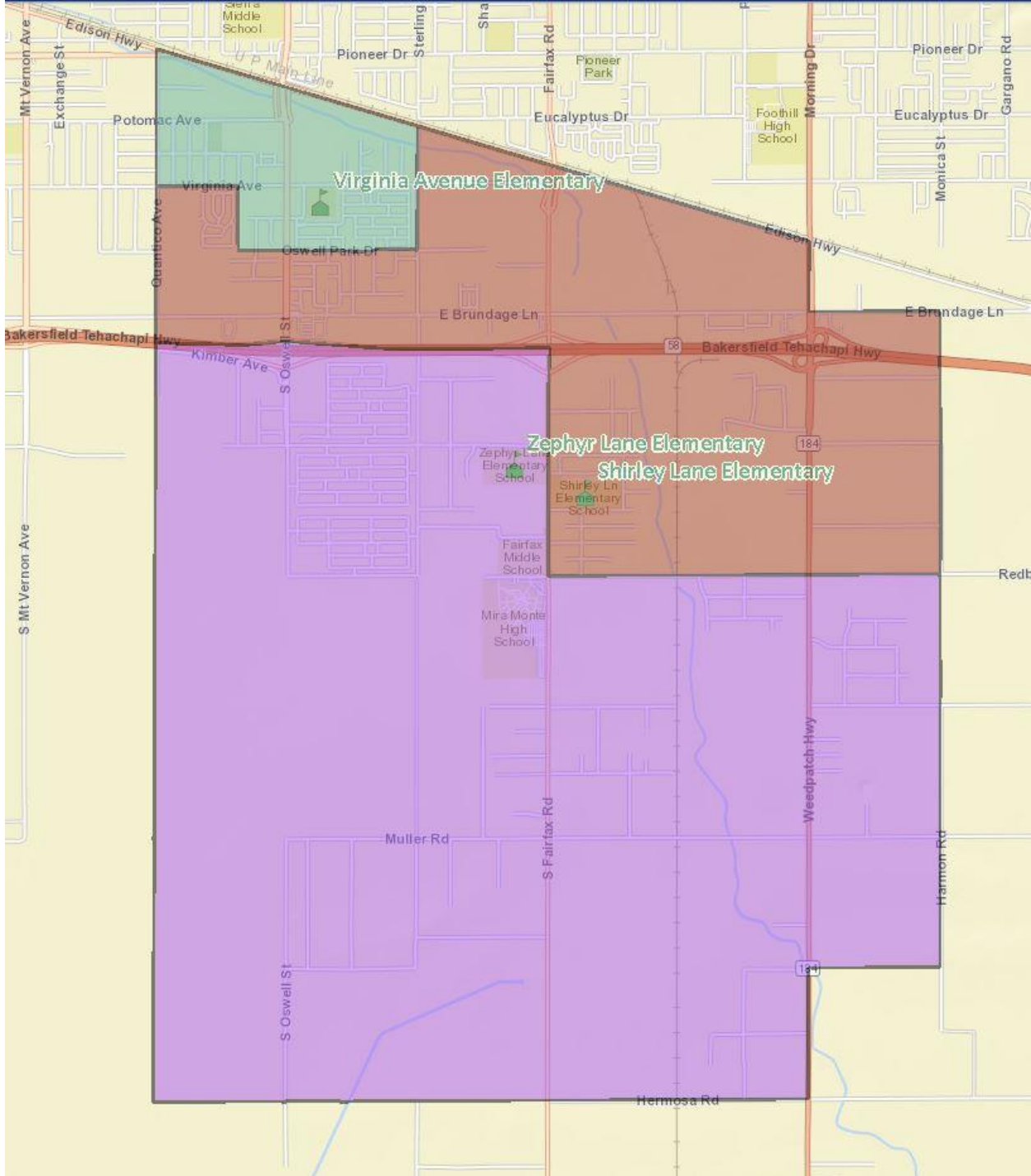
<Fairfax.cyberschool.com/District/1120-Untitled.html>

RESOLUTION 2021-08 CENSURE RESOLUTION:

[file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/I_1_Resolution202108CensureResolution_0%20\(1\).pdf](file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/I_1_Resolution202108CensureResolution_0%20(1).pdf)

APPENDIX A:

FAIRFAX SCHOOL DISTRICT BOUNDARY



Map provided by Fairfax School District Website – see link above