

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 th 6 th Street Boulder, Colorado 80302 303-441-3750	
EVAN HARVIE, KATHARINE ROSENTHAL, and THERESA SCHULTZ, Plaintiffs, v. BOULDER VALLEY SCHOOL DISTRICT BOARD OF EDUCATION, Defendant.	▲ COURT USE ONLY ▲
Attorney for Plaintiffs: Eric Maxfield, #29485 ERIC MAXFIELD LAW, LLC 357 S. McCaslin Blvd. Suite 200 Louisville, Colorado 80027 303-502-7849 Eric@ericmaxfieldlaw.com	Case No: Division:
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION	

Plaintiffs Evan Harvie, Katharine Rosenthal, and Theresa Schultz, through counsel Eric Maxfield of Eric Maxfield Law, LLC, move pursuant to C.R.C.P. 65 and § 24-6-402(9)(b), C.R.S., for an emergency preliminary injunction preserving the *status quo* and preventing implementation of Defendant Boulder Valley School District RE-2 Board of Education's September 22, 2026 school-closure and reconfiguration decision pending adjudication of Plaintiffs' Colorado Open Meetings Law claims.

[Plaintiffs' counsel conferred with Defendant's counsel and Defendants oppose the relief sought in this motion.]

REASON FOR REQUEST FOR EMERGENCY RELIEF

The issue presented by this motion is narrow and urgent. Plaintiffs do not ask the Court to decide whether Boulder Valley School District ("BVSD") should close schools because of declining enrollment. Nor do they ask the Court to substitute its policy judgment for that of the elected Board.

Plaintiffs ask the Court to preserve its ability to decide whether the Board complied with the Colorado Open Meetings Law ("COML") **before implementation of the challenged decision makes meaningful relief increasingly difficult or impossible.**

Introduction

BVSD's Long Range Advisory Committee (LRAC)

For years, BVSD's Board publicly relied on its Long Range Advisory Committee ("LRAC") to address declining enrollment. LRAC developed a public early-warning process designed so, in

LRAC's own words, that "the community is not surprised" by school closures. LRAC 9/22/25 Minutes, Ex. 15. Under that process, school communities would receive an “early warning” that it was being considered for closure, followed by a Community Engagement phase where the Board engaged staff to lead a community-based problem solving process prior to any closure decisions. Id. and see, e.g., LRAC 3/9/26 draft minutes, Ex. 5. BVSD posted LRAC’s process to its site and used it when LRAC’s metrics identified schools facing enrollment issues. See, <https://www.bvdsd.org/current-topics/long-range-advisory-committee/long-range-advisory-committee-metrics-and-recommendations>, and see Heatherwood Community Engagement Process site: <https://hee.bvdsd.org/about/community-engagement-process>.

In a September, 2025 article, Superintendent Anderson differentiated BVSD’s “different direction” of using the LRAC process to engage the community to “co-design” solutions from the “many school districts” who “respond [to declining enrollment] by closing schools”. Ex. 1. p. 7. Anderson touted the 2024 use of the LRAC process to prevent closure of Heatherwood Elementary where, during the “Community Engagement” the community co-created a plan to develop a STEAM¹ program with District seed money and created a neighbor-to-neighbor plan with the goal of getting more neighborhood students to attend Heatherwood instead of other BVSD, out-of-district, or private schools.

The Resilient Schools Proposal & the August 31 “*Let’s Talk*” Livestream

¹ The STEAM acronym stands for “Science, Technology, Arts, Engineering and Math.”

On August 25, 2026, however, contrary to both the LRAC process long posted and actively pursued by the District, the District presented its final Resilient Schools Proposal. It recommended closure of Birch, Douglass, Flatirons, and Mesa Elementary Schools, together with additional consolidations and reconfigurations. 8/25/26 Proposal, Ex.11.

All of these school communities were blindsided by the Proposal. Among the four schools, only Flatirons among those four schools had been identified by LRAC in March, 2026 as satisfying its Community Engagement Phase criteria, (3/9/26 draft Minutes, Ex. 5), but the community had not been engaged through the LRAC process. Birch, Douglass, and Mesa were not identified as meeting the LRAC metric for the Engagement Phase.

On August 31, 2026, six days after release of the bombshell Proposal, Superintendent Anderson and Board President Rajpal participated in a “*Let’s Talk*” livestream. In that broadcast, both asserted² that the Board had changed direction, with Rajpal stating that the Board had done a “sort of pivot” to a new “regional” approach at the October 21, 2025 meeting. But a regional approach was wholly consistent with the LRAC process. For instance, the LRAC Metrics and Recommendations provide: “District-wide responses and optimization of resources should also be explored when appropriate.” Metrics, Ex. 12.

² Superintendent Rob Anderson stated that he understood from the October 2025 Board meeting that the Board believed it “made most sense to move forward with . . . a regional approach” Minute 21:57 of “*Let’s Talk*” livestream: <https://www.youtube.com/watch?v=786Td5bFCdM> . Likewise, Board President Nicole Rajpal stated that the board “pivoted,” changed direction in October 2025. Id., link at 26:20.

The September 8, 2026 Public Comment Meeting

Public confusion and anger over the Proposal was swift and fierce. The Board scheduled a September 8, 2026, public comment session, which was moved to Monarch High School to accommodate the crowd. Roughly one hundred and eighty students and parents spoke against the Proposal over a number of hours.<https://www.dailycamera.com/2026/09/09/boulder-valley-parents-protest-school-closures/?clearUserState=true> and see Youtube recording of meeting at <https://www.youtube.com/watch?v=KAVEBx0i5MM>, at minute 53:34, “Tonight we have roughly 180 speakers signed up.”

Speakers at the meeting expressed confusion and anger over the process discrepancy³ and repeatedly cited the District’s bait and switch as it held the LRAC process out to the public while

³ Speakers at the September 8, 2026 public-comment meeting, <https://www.youtube.com/watch?v=KAVEBx0i5MM>, repeatedly identified the discrepancy between BVSD’s published warning and engagement process and its proposal to close Douglass. Lauren Kelso said, “There was a multi-year process of engagement with schools that had low enrollment. Your public engagement at best failed to give us a fair warning and at worst left us out of the conversation on purpose.” [Sept. 8 video, 1:59:36–1:59:43](#). Gloria Handyside said Douglass “never triggered the district’s own metrics for closure.” [Id. 2:08:48–2:09:04](#). Brian Ziegler said Douglass “operated well above established LRAC closure thresholds” and added, “We never were afforded a dedicated engagement session. We simply trusted your published rules.” [Id. 2:59:35–2:59:56](#). Whitney Adair said she reviewed the enrollment data and took the spring survey, believed “the process would follow those criteria,” and was blindsided by the proposal because Douglass had not met the stated criteria; she added, “Criteria appear to have changed without meaningful public notice.” [Id. 3:01:31–3:02:08](#). Ken Carlson said Douglass’s utilization data “doesn’t fit the criteria the district has offered for school closure.” [Id. 3:09:04–3:09:22](#). Nick Kerner said Douglass “never met the board’s own criteria for starting a community engagement process and thus we were not engaged,” and urged the Board to “engage with your school community so we can help come up with solutions together.” [Id. 3:11:27–3:12:12](#). Ben Smith asked Superintendent Anderson, “You’re having these conversations with Heatherwood,

secretly developing a plan that stripped all of LRAC’s protections, and offered the Board only an up or down vote.

This was the ambush that Vice President Medler attempted to avoid when he asked the Board months earlier, on April 8, 2026 to be straightforward with the public by identifying real, schools slated for planned closure. Ex. 7.

The District’s Response to the Public Outcry

On September 15, 2025, the Board held a five-plus hour work session addressing many aspects of the Proposal. At the meeting, Board member Temu Otting noted that some families “hadn’t engaged as much because they weren’t considering that they were going to be put in this proposal for a consolidation or a closure” (<https://www.youtube.com/watch?v=VK1IgiOakvk> 0:44:39–0:45:17).

Confusion had arisen due to the District’s use of the same term “community engagement” meetings to mean something entirely different than it had meant under LRAC. Under LRAC, the term meant *affected community* engagement, meaning engagement *after the specific school had*

which I appreciate. Why didn’t Douglas get that same opportunity?” [Id. 3:34:26–3:34:35](#). Elena Shiveley said, “it appears you’ve abandoned your own process and criteria you spent years selling to us.” [Id. 3:51:36–3:51:44](#). Lynn Pearson said, “Heatherwood was given this chance and other schools should be given the same.” [Id. 4:42:28–4:42:36](#). Amanda Calendarer said Douglass was “operating at 67% capacity,” above “the 60% threshold that initially triggered warnings about underutilized schools”; Kelly Fry likewise said it was “at 67% capacity,” above the “60% threshold for even an advisory review in past processes.” [Id. 4:52:49–4:53:08](#); [id. 5:15:17–5:15:35](#). Douglass’s 2024–25 school profile, hosted on the Colorado Department of Education’s website, states that the school “showed high levels of growth and achievement over the past two school years,” including a 95.6% score on its 2024 School Performance Framework. [CDE SchoolView, Douglass Elementary School Profile](#).

been identified for possible closure. But in the leadup to releasing the Proposal, the District used the same term to describe generalized meetings on declining enrollment *prior to the identification of particular schools for closure.* With no reason to believe their own school was at risk, no one had any reason to attend.⁴ Yet the Board treated those hollow meetings as evidence of engagement it never truly offered.

Anderson defended the district's broad outreach, apparently blaming⁵ those who chose not to participate in generic meetings on declining enrollment, concluding that they had failed to

⁴ On April 10, 2026, the District posted "What to expect at the community engagement sessions" (Ex. 13) with the following language:

The sessions will focus on what is happening at our elementary and PK-8 schools because that is where the impacts of declining enrollment are being felt most.

This is your opportunity to bring forward input that will shape the options for the Board to consider in August. These sessions are part of our commitment to engage with our community and listen **before** creating specific school adjustment options. The only decision that has been made so far is that BVSD cannot continue the status quo of operating a growing number of under-enrolled schools. (emphasis added)

Although it had been alerted to the problem, the District chose to ignore the irrelevance of its "engagement" sessions generally addressing declining enrollment, especially for families whose children attended schools that exceeded the LRAC metrics.

⁵ While the reasons a parent might not attend a generic meeting addressing district wide declining enrollment escaped Superintendent Anderson, it was clear to Board Vice President Alex Medler. Indeed, after the first new-style "community engagement meeting" was held on or about April 8, 2026, emailed Anderson stating:

"On balance, I think the discussions went as hoped and people were super engaged in what we wanted them to discuss, and not what would have otherwise happened if we just asked for public input on a "district school closure plan"... In all these cases, it would

“realize the magnitude of that opportunity.” Anderson did, however, acknowledged that the “engagement” sessions prior to presentation of the Proposal “wasn’t an engagement process per LRAC” (0:46:31–0:47:52).

An important statement at the September 15, 2026 work session was Board member Unger’s acknowledgement, appearing to build on President Rajpal and Superintendent Anderson’s statements during the *Let’s Talk* broadcast about a “pivot” dating back to the October 21, 2025 meeting, that the Board had made a decision to “move from LRAC.”

<https://www.youtube.com/watch?v=VK1IgiOakvk&t=942s> at Minute 1:43:45.

While this appears to be the first time the Board publicly acknowledged its abandonment of the LRAC process, it cannot identify a noticed public meeting where the highly consequential

help to say: "close one of the schools, and consolidate or redistribute the students", it seems like we are sugar coating that by not starting with, "close a school, and then..." it makes more sense. And just use the figures right away to explain these concisely and use examples of real schools to help focus people. By not using the close word, and staying so conceptual, we lose a lot of concrete thinkers....”

Anderson responded: “Hey Alex, Thanks for the feedback. We have made significant improvements and adjustments to the presentation. I think we are ready for next week!” Exhibit 7. Nonetheless, no changes were made to provide up-front, clear closure language, and no examples of real schools facing possible closure were presented. Vice President Medler’s recommendation that public engagement in the abstract was no substitute for disclosure of the Board’s actual plan aligns with COML’s requirement that the public receive notice of the public business actually being conducted by the Board.

abandonment of LRAC's metrics, early warning system, and affected-community engagement process was formally acted on after public discussion.

The District did, however, provide further information about the source of its decision to abandon the LRAC process in an FAQ which, on information and belief, was added to its website at some point after the September 8, 2026 public comment meeting. The FAQ asks:

Why is the district moving straight to closures instead of identifying schools for the community engagement phase as outlined in the Long Range Advisory Committee metrics?

<https://www.bvdsd.org/current-topics/declining-enrollment/declining-enrollment-frequently-asked-questions?utm>

"At the Oct. 21, 2025 work session, it became clear that too many schools would be approaching the engagement phase identified in the metrics at the same time to be able to conduct individual community engagement processes and that it would make more sense to take a regional approach toward taking action. The LRAC metrics call for taking a regional approach were appropriate." Ex. 9.

On its face, reliance on LRAC's metrics as authority to abandon LRAC's metrics is nonsensical.

But even more astonishingly, the District's own data disproves the claim. Slide 14 from the very slideshow linked as a PDF to this Agenda item, see,

[https://go.boarddocs.com/co/bvdsd/Board.nsf/files/DMJTXV756DA8/\\$file/Enrollment%20Worksession%20_%2010.21.2025%20\(1\).pdf](https://go.boarddocs.com/co/bvdsd/Board.nsf/files/DMJTXV756DA8/$file/Enrollment%20Worksession%20_%2010.21.2025%20(1).pdf), explicitly states that *only a single school* was forecast under to enter the engagement process by 2027, *while only three schools* were forecast to need engagement by 2029. The District cannot claim that too many schools would approach engagement.

If the Board had, in fact, decided to abandon the LRAC process in October of 2025, as it claims, in addition to adopting this critical policy change in public, it would also have stopped LRAC's ongoing process and meetings. Instead, LRAC remained publicly active after October 2025, continued meeting under its established structure, and continued publishing metrics and Community Engagement Phase determinations. The draft minutes from its March 2026 meeting identified Heatherwood and Flatirons as meeting the Community Engagement Phase criteria. Even now, *after* having adopted the Proposal the District's FAQ answer still expressly cites to the LRAC metrics.

WHAT ACTUALLY HAPPENED ON OCTOBER 21, 2025

So what occurred at this meeting identified by the District as the source of the abandonment of LRAC and the origin of the new direction? The October 21, 2025 Agenda noticed a "Declining Enrollment Work session"⁶ as an "Information" item to include updated enrollment analyses to "inform future planning efforts" and an update on LRAC's "current work related to enrollment and long-term planning." Agenda item 3.01 Ex. 2.

The meeting recording shows that while the Board discussed using LRAC's metrics in a regional approach and touched on the possibility of changing LRAC's process, it did not explicitly

⁶ According to BVSD policy, no decisions could have been made under this Agenda item, since BVSD policy expressly prohibits the taking of Board action "during . . . work sessions or retreats." https://www.bvsd.org/about/board-of-education/policies/policy/~board/b-policies/post/bam?utm_source=chatgpt.com

discuss or decide to abandon the LRAC metrics, or its early warning and community engagement phases of the LRAC process to eliminate the opportunity for the affected school communities to work with the District to find solutions prior to any final closure decision.⁷

<https://www.youtube.com/watch?v=LnZcXZHRw5g>.

Colorado Open Meetings Law (COML) cases focus on whether the public can observe and participate in the formation of policy, rather than just witnessing the final tally of a predetermined decision. *Cole v. State*, as discussed in *COHVC*, ¶ 31; *Costilla County*, 88 P.3d 1177, 1194 (Colo. 2004). Here, the Board's abandonment of the LRAC process was secret; it was never noticed, or publicly discussed or decided.

The Board's secret decision to abandon the LRAC process for an undisclosed one violated COML. Further the board treated its secret October 2025 abandonment of LRAC's metrics, early warning and affected-community engagement as settled when heard comment on and voted to adopt the Proposal. Since public comment on the Proposal only offered a chance to contest the merits of the specific proposal while withholding any meaningful opportunity to address the abandonment of the metrics, early warning and affected-community engagement, the public never saw the board decide that governing question.

⁷ The slide deck included as a PDF with this October 21, 2025 Agenda item was likewise silent on these issues.

In a letter dated September 14, 2026, Plaintiffs warned the Board of COML violations including 1) the adequacy of public notice provided for discussion of school-closure related issues, 2) the District's secret abandonment of LRAC's longstanding framework for addressing declining enrollment, and 3) the lack of transparency surrounding the development of the Proposal. Ex. 8.

The Board ignored these warnings and is now moving quickly to implement this formal action taken in violation of COML.

Unless the status quo is preserved, BVSD can begin the numerous administrative acts necessary to make the closure decision a practical *fait accompli*: assigning students to new neighborhood schools, determining receiving schools through Choice Enrollment, restructuring programs, reallocating staff, making personnel decisions, altering enrollment and open enrollment processes, planning transportation routes, committing resources, making plans for using the closed school buildings and communicating irreversible expectations to hundreds, even thousands, of families and employees across the District. As discussed more fully in section VIII below, Plaintiffs do not seek to prevent BVSD from contingency planning including offering parents a mechanism to *apply* for Choice Enrollment in both scenarios including invalidation of the Proposal or its validation. Such contingency planning is appropriate to protect parents, students, and administrators from uncertainty during the pendency of this action.

But emergency action is needed since, the further implementation proceeds, the harder it becomes to restore the public to the position COML guaranteed it before the policy was formed.

That is precisely the circumstance for preliminary relief. COML expressly authorizes courts to "issue injunctions to enforce the purposes of" the statute. § 24-6-402(9)(b), C.R.S. Enacted by a citizen initiative over half a century ago, COML requires that any meeting of a public body where public business is discussed, or formal action is taken, must be open to the public. § 24-6-402(2)(a)-(b). The statute "was conceived to 'afford the public access to a broad range of meetings at which public business is considered.'" *Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223, 227 (Colo. 2007) (quoting *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 652 (1978)). COML declares that it is "a matter of statewide concern and the policy of [Colorado] that the formation of public policy is public business and may not be conducted in secret." § 24-6-401, C.R.S.

Here, each of the six factors identified in *Rathke v. MacFarlane*, 648 P.2d 648, 653–54 (Colo. 1982), favors preservation of the *status quo* pending an expedited determination on the merits.

FACTUAL BACKGROUND

Plaintiffs incorporate by reference the factual allegations in the Verified Open Meetings Law Complaint filed contemporaneously with this Motion.

A. The Board Established LRAC to Conduct Long-Term Facility Planning Through a Public Process.

Board Policy BDFF provides that the Board "shall appoint" LRAC, which "shall develop recommendations to ensure sound long-term facility decisions consistent with the needs of the School District and in support of the School District's strategic initiatives."

The policy further describes LRAC as providing accountability, engagement, and communication with the Boulder Valley community so stakeholders are engaged and their priorities reflected in Board decisions. The Board noticed, publicly discussed, and voted to create the LRAC at its June, 14, 2022 meeting. See Minutes, Ex. 14. In June 2023, LRAC presented a two-tier framework addressing declining enrollment. A school entered the Advisory Phase when it had fewer than two classes per grade and enrollment below 60 percent of capacity. A school entered the Community Engagement Phase when it had 1.5 classes per grade or fewer, enrollment below 50 percent of capacity, and was projected to remain at that level for at least five years.

The point was predictability. School communities would receive warning and engagement before major decisions like closure were made. LRAC met continuously from 9/28/22 and utilized LRAC's metrics in 2024, to identify Heatherwood Elementary School for engagement.

According to the LRAC meeting minutes from 9/22/25, LRAC considered adding a third metric to their 2023 metrics, concerning middle schools. § 4.E.d. and e of the Minutes (Ex. 15):

d. Metrics show intentionality in this work as well as community involvement via the committee;

e. Metrics serve as an early warning system so that the community is not surprised;

LRAC continued to meet on a regular schedule through the 2025-2026 school year.

B. The September 22, 2025 LRAC Notice Did Not Disclose a Proposed Change in That Process.

LRAC's September 22, 2025 agenda identified attendance boundaries, an October 21 Board update, middle-level metrics, and future enrollment discussions. Its proceedings continued to characterize the metrics as an "early warning system so that the community is not surprised."

Nothing in the agenda indicated to an ordinary member of the public that LRAC would discuss or recommend abandoning or modifying its metrics, early warning system, or affected-community engagement process. Yet, Board President Rajpal subsequently attributed BVSD's "pivot" in part to LRAC's work. Either LRAC materially discussed or recommended that change without notice or reflecting the discussion and recommendation in its minutes,⁸ or the issue did not come from LRAC.

C. The Board Identifies October 21, 2025 as the Pivot away from LRAC.

The Board's October 21, 2025 work session addressed LRAC and declining enrollment.

The Agenda for the October 21 work session did not notice the topic of abandoning LRAC's metrics, early warning system, or its affected-community engagement process and although the general topic of addressing declining enrollment was addressed, the recording does not reflect discussion or action abandoning these LRAC processes. Notwithstanding a lack of direction or consensus at the meeting, Superintendent Anderson told the Board, "Your direction has been

⁸ Because LRAC meetings are not recorded, the minutes are the agendas and minutes are the only remaining record of what transpired at the meetings.

very clear; I understand." BVSD later identified this meeting⁹ as the point at which the District would discontinue reliance on the LRAC metrics, early warning or affected-community engagement process for assessing possible school closure.

If the decision to discontinue use of the LRAC framework occurred at the October 21, 2025 meeting, it occurred without full notice as required by the COML at § 24-6-402(2)(c)(I), without public discussion or vote, and was not reflected in the meeting minutes. And the Board identifies no other properly noticed public meeting at which that discussion and decision, and policy direction was given.

D. Through the 25/26 Academic year, LRAC Continued Operating under Its Public Framework.

The discrepancy between BVSD's later description of an October 2025 "pivot" and its public-facing process was particularly apparent at LRAC's March 9, 2026 meeting. Though LRAC's agenda did not notify the public that it would discuss particular school closures or closure candidates, its minutes nevertheless record discussion of community concern about closures, particular schools, and school-specific criteria. Most significantly, the minutes state:

"Two schools—Heatherwood and Flatirons—currently meet the community engagement criteria."

⁹ See p. 9-10 above and the FAQ posted on BVSD's site explaining the District's decision to jump straight to school closure through the Proposal rather than using the LRAC framework. https://www.bvsd.org/current-topics/declining-enrollment/declining-enrollment-frequently-asked-questions?utm_

Thus, months after the October 21, 2025 pivot, the public-facing LRAC process continued to operate under its metrics/framework and continued to communicate that its school-specific framework remained operative.

The BVSD staff continued to echo its reliance on the LRAC, with the Chief Communications Officer stating on the August 31, 2026 *Let's Talk* program, that "I think it was really crucial that we have that committee, that long range advisory committee working with us."

<https://www.youtube.com/watch?v=786Td5bFCdM> (minute 24:40).

E. BVSD's Community Engagement In the Lead-Up to Public Release of the Proposal was Ineffective to the Point of Meaninglessness.

BVSD was well aware that its "Community Engagement" meetings were all but irrelevant to BVSD parents, especially those affiliated with schools that exceeded LRAC's metrics. First, the District effectively ignored Board Vice President Medler's statement of the obvious, that abstract discussions about district-wide declining enrollment couldn't be expected to draw attention absent the naming of specific schools targeted for closure See n. 6 above.

The District also lulled families into a sense of false security by proceeding with the charade of the LRAC meetings and process after the October 21, 2025 meeting it now cites as the moment when the District pivoted away from reliance on LRAC. Thus a parent interested in District closure plans who reviewed the March 9, 2025 draft LRAC minutes, would have been assured that the LRAC framework was still in use due to Heatherwood and Flatirons being specifically flagged for the Engagement criteria.

According to Plaintiff Rosenthal,

The District engaged with Heatherwood in 2024. After the August 25, 2026 announcement, I reviewed District materials and found draft March 9, 2026 meeting minutes indicating that Flatirons and Heatherwood met the Engagement Phase criteria. Before August 25, no District communication informed me that Flatirons was being assessed for closure.

Affidavit of Rosenthal, Exhibit 16.

Of course, the Board's redesigned generic "engagement" process wasn't designed to get feedback on the actual Proposal it was cooking up in secret. The Board's campaign of strategic vagueness was intended to block public feedback until after the creation of a single plan, upon which the Board would take an up or down vote. While the October 21, 2025 meeting did not address abandonment of the LRAC metrics and process, Superintendent Anderson's description describing "*unproductive*" community engagement efforts hit the nail on the head:

"How do I see unproductive community engagement around school closures? Looks something like this. District cooks up a bunch of solutions in the background, considers some things, rolls it out to community, gives them little bit of time to how do you feel about it? and then plans to press forward, right? I haven't seen that go well at all." See Oct. 21, 2025 Board meeting <https://www.youtube.com/watch?v=LnZcXZHRw5g>; Minute 2:29:17–2:29:42.

Anderson's scenario was a textbook example of what COML seeks to prevent. The public's right under the COML, as interpreted by the Colorado Supreme Court, is that citizens be given a greater opportunity [through open, public meetings] to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved."

O'Connell v. Woodland Park Sch. Dist., 576 P.3d 197, 204 (Colo. 2025) citing *Cole v. State*, 673 P.2d 345, 347 (Colo. 1983); and to see also *Bagby v. Sch. Dist. No. 1*, 186 Colo. 428, 528 P.2d 1299, 1302 (Colo. 1974) (holding that because the COML is "designed [p]recisely to prevent the

abuse of 'secret or "star chamber" sessions of public bodies,'" the COML "should be interpreted most favorably for the beneficiary, the public" (quoting *Dobrovolny v. Reinhardt*, 173 N.W.2d 837, 840 (Iowa 1970))).

Critically here, the COML provides for invalidation of decisions made in violation of COML:

"[n]o resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets" these requirements. § 24-6-402(8), C.R.S.

F. After Release of the Proposal on August 25, 2026, the Board held a public comment meeting

Both the decision to abandon the LRAC process and the actual Proposal were made in secret, outside fully noticed public meetings. Holding a marathon meeting for the public to comment after the sole proposal upon which the Board would take an up or down vote could not fix a broken process. COML guarantees the public the right to observe the creation of public policy as it happens by observing discussion and decision-making in fully noticed meetings open to the public.

G. The District, having Adopted the Proposal on September 22, 2026, is Now Taking Action to Effectuate it.

According to an email from the Flatirons Elementary School Principal to school staff on September 26, 2026,

As enrollment, budgets, and staffing allocations are finalized, Human Resources will work with school and department leaders to review impacted positions and determine placements based on staffing needs, available positions, qualifications, licensure, employment status, and seniority, as applicable. ...

Starting this week and continuing over the next few weeks, Human Resources will visit all affected schools to provide in-person presentations, explain the staffing process, and answer questions. Ex.17.

Implementation of the Resolution now threatens to transform that disputed formal action into operational reality before this Court can determine whether the process that produced it complied with Colorado law.

ARGUMENT

I. COML Authorizes Injunctive Relief.

COML begins with a direct statement of public policy:

"It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret."

§ 24-6-401, C.R.S.

Colorado courts therefore construe COML favorably to protect its "ultimate beneficiary, the public." *Cole v. State*, 673 P.2d 345, 349 (Colo. 1983). The General Assembly expressly gave courts authority to "issue injunctions to enforce the purposes" of COML upon application by any Colorado citizen. § 24-6-402(9)(b).

Under *Rathke*, Plaintiffs must establish:

1. a reasonable probability of success on the merits;
2. danger of real, immediate, and irreparable injury;
3. no plain, speedy, and adequate remedy at law;
4. that an injunction will not disserve the public interest;
5. that the balance of equities favors an injunction; and
6. that the injunction will preserve the status quo.

Rathke, 648 P.2d at 653–54. All six *Rathke* factors are satisfied here.

II. Plaintiffs Have a Reasonable Probability of Success on Their COML Claims.

A. The challenged decisions abandoning LRAC’s metrics, early warning and affected-community engagement and adopting the Proposal concerned the formation of public policy.

COML applies when there is a demonstrated link between the public body’s challenged actions and its policymaking powers. *Costilla County*, 88 P.3d at 1194. Here, both the decision to abandon LRAC’s metrics, early warning and affected-community engagement process and the Board’s vote to adopt the Proposal lie at the heart of the Board's policymaking function.

B. The October 21, 2025 Agenda failed to notice an agenda item of abandoning LRAC’s metrics, and early warning and affected-community engagement processes.

"Declining enrollment" on the October 21, 2025 agenda describes an enormous and vague subject that has been the subject of BVSD conversations for years.

The inclusion of this item on the Agenda failed to alert the public that the Board would abandon LRAC, the publicly established and long-standing framework for assessing school closure decisions. Thus, if, as the Board now claims, its decision to “move from” LRAC was made at the October 21, 2025 meeting, Plaintiffs have a substantial probability of establishing that the Board failed to provide the “full” notice required by § 24-6-402(2)(c)(I).

(1) there was no clear direction apparent in the October 21, 2025 meeting minutes or the recording; (2) Anderson said "direction has been very clear"; (3) no other Board meeting minutes reflect clear direction. If the policy direction had already been developed outside the meeting—

as Superintendent Anderson's statement that the Board's "direction has been very clear" permits an inference—Plaintiffs have a substantial probability of establishing a violation of COML's open-meeting requirement. § 24-6-402(2)(b).

C. The recording and minutes of the October 21, 2025 meeting disprove the District's claim that the this meeting constituted a public discussion and action or "pivot" to abandon LRAC.

The October 21, 2025 meeting failed to meet the District's billing of it. Instead, both the recording and minutes demonstrate that it could not provide notice to the public of a pivot from LRAC because abandonment of LRAC simply was not discussed or acted on. The Board's *post hoc* attempts to remake the October 21 meeting into the moment when the District discussed and formally acted to cut ties with LRAC is simply not born out by the recording. Thus, Plaintiffs have shown a likelihood of success on the merits of their claim that the Board never cut ties with the LRAC process at a noticed public meeting. Further, the Board's continuing reliance on LRAC, even in its recently posted FAQ shows that the Board never made a clear break from LRAC. Rather, the Board has sought to distance itself from LRAC now that its adoption of the Proposal has been challenged.

D. The September 22, 2026 Board Action Adopting the "Resilient Schools" Proposal, violated the COML.

Plaintiffs challenge the Board's adoption of the Proposal as the public rubberstamp of a decision that had already been finalized in private. If the Board already decided to bypass LRAC and close schools that exceeded its metrics but addressed other Board concerns, the September 22 vote was simply a rubberstamp of a previously-made decision.

Further, Slide 2 presented at the April 14, 2026 meeting presented the process through which any school closure decisions would be made, describing the “decision making” period with a first step from June through August to “Develop Options”, using the plural. Those options, again plural, are to be presented to the Board with the opportunity for community input. Only then, the following month was there to be presentation to the Board of a final plan for study. The Board issued only a final plan, a month early, in August, depriving the public of its promised opportunity to observe the Board assess options and to comment in real time.

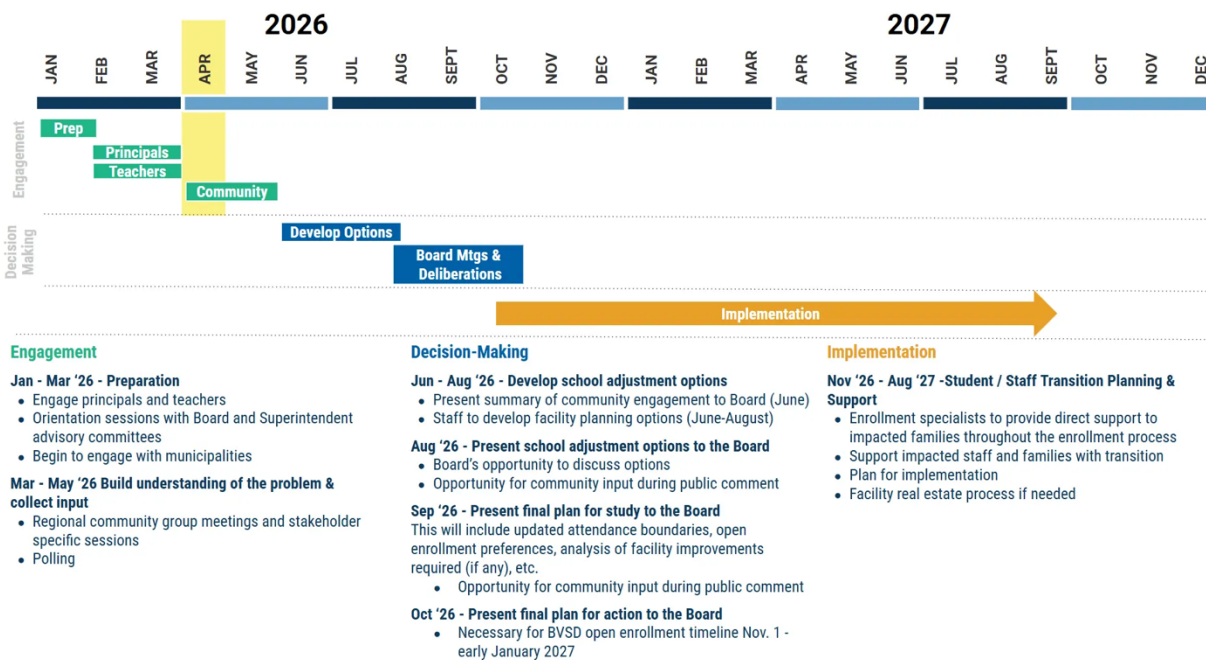


Exhibit 6. This slide acknowledged that the actual decision-making period was the lead-up to the August 25 Proposal release. Yet only the single Proposal was ever publicly revealed or discussed. The slide deck’s promise of the development of “options” is consistent with LRAC’s

development of a two-phased public process. Any decision to abandon LRAC's promise of this public process had to be made in public.

Because the District proceeded as though the underlying process decisions (i.e. the abandonment of LRAC and Slide. 2) were settled, the public never got to see the governing decision-making process.

During the summer of 2026, District staff developed the Resilient Schools proposal outside public meetings, providing the public with no opportunity to observe the process that produced the Resilient Schools proposal. Plaintiffs do not contend that COML required District staff to conduct all proposal development in public. Rather, Plaintiffs contend that the Board's policy decisions, direction, and criteria shaped the proposal during that period, and the public was not provided the notice and transparency of that policy direction required by COML. Further, public comment on a completed proposal cannot substitute for the public's statutory right to observe the creation of public policy while it is occurring.. Plaintiff Rosenthal's Affidavit demonstrates the result where the Board fails to hold the governing decision-making process in public. As she avers:

I am engaged in my school community. I attend every PTO meeting I can, and I paid attention to the District's long-range planning. Even so, I was blindsided by the August 25, 2026 announcement proposing to close Flatirons and three other elementary schools. I have long been aware of the Long Range Advisory Committee ("LRAC") and its Advisory and Engagement phases for schools that meet certain enrollment criteria. I understand LRAC's purpose has been to ensure community engagement before major decisions affecting a school's future are made.

Although Flatirons apparently met LRAC Engagement Phase criteria in 2025-26, neither I nor other Flatirons families were informed that our school was under consideration for closure. For years, I had heard occasional discussion about Flatirons' future and enrollment challenges. Because I understood the LRAC process to include an Engagement Phase, I expected that if Flatirons reached that stage, the District would formally engage with our community and explore potential solutions to enrollment challenges before developing a closure recommendation. Instead, the District organized general engagement sessions and a broad survey that did not mention potential closures. Because neither outreach mechanism mentioned school closures, neither elicited feedback on the community's support for closures or interest in developing alternative plans.

Because I did not know that closure of Flatirons was under consideration, the District's engagement sessions and surveys did not provide me with an opportunity to observe or participate in the formulation of the policy that ultimately led to the recommendation to close Flatirons.

Affidavit of Rosenthal, Exhibit 16.

Second, the Board's choice to proceed with a process that violated both LRAC and Slide 2's Timeline gives rise to an inference that board members were discussing public business in private.

Thus, despite the engagement on the general issue of declining enrollment, and despite the public comment session, the public could no longer observe the formation of policy in real time or meaningfully participate at the point when BVSD decided how it would identify closure candidates in the first place.

The Resolution adopted by the Board was adopted under a process that was changed and re-made without full notice (LRAC September 22, 2025, Board October 21, 2025), or entirely behind closed doors. The District and Board kept up a pretense of relying on LRAC's metrics

and recommendation framework through the LRAC's regular quarterly meetings and reference to its Engagement phase criteria in relation to two specific schools.

As noted by the Colorado Supreme Court in *Marble*, 181 P.3d at 1155, COML prohibits bad-faith circumvention of its requirements. Here, the Board's conduct fits that bill. However, as the *O'Connell* Court determined, "the COML is concerned with the fact of the violation, not with whether an alleged violation was intentional or unintentional." *O'Connell*, 2025 CO 55, ¶ 51. Here, Plaintiffs demonstrate a strong likelihood of success on the merits.

As a consequence of each of these COML violations, demonstrated in sections A-F, Plaintiffs have a reasonable probability of success on the merits and ask the Court to enjoin the Board from taking steps to effectuate its adopted Resolution, as described in more detail in the prayer below.

The Board's decision to eliminate the promised August presentation of "School Adjustment Options to the Board" with "opportunity for community input during public comment" supports an inference that the Board privately discussed public business in violation of COML .

The Board's publicly announced decision-making sequence, presented in the Board's Timeline Slide presented at the April 2026 Board Meeting and posted on BVSD's site, committed to an August presentation of "school adjustment options to the Board," followed by the "Board's opportunity to discuss options" and an "[o]ppportunity for community input during public comment." Only afterward would the District "[p]resent [a] final plan for study to the Board" in September and a "final plan for action" in October. This sequence represented a Board decision

to publicly consider alternatives before the District advanced a final plan. Instead, however, the District presented a single Resilient Schools Proposal, and the Board proceeded toward action on that proposal without the promised public comparison of alternatives.

Members of the public expressly called out this switch at the September 8, 2026 meeting. Parent David Quigley emphasized the published timeline's plural wording: "Develop school adjustment options. Options with an S," and "Staff to develop facility planning options June to August. Again, options with an S." He then observed, "***So, it seems like between June and August, suddenly the plan changed and we were all thrown by this.***" Recording, 5:16:46–5:17:22. (emphasis added). Another parent, Craig Dreer, stated the consequence directly: "You are being handed one. You cannot evaluate a recommendation when you're only given one option." Id., 1:50:38–1:50:44.

At the September 15 work session, the Board and administration defended regional planning and general community engagement, but it did not identify a noticed Board discussion or decision to eliminate either LRAC's opportunity for affected communities to develop solutions after particular schools were identified for closure, or the Board's subsequently announced process providing TWO opportunities for public input, one in August in the context of the Board's discussion of adjustment options, and one in September after the final plan was presented.

The choice to dispense with these steps in the Board's publicly announced processes was itself public business under *Board of County Commissioners v. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004). *Costilla* requires "a demonstrated link between the meeting

and the policy-making powers of the government entity holding or attending the meeting.” Here, the connection is direct: the disputed procedural choices determined how the Board would develop and evaluate school-closure policy, which alternatives it would consider, and when affected communities could participate. Those choices concerned the formation of Board policy and were therefore subject to COML’s requirements for open discussion and properly noticed Board action. C.R.S. § 24-6-402(2)(b), (c).

The announced process, the Board’s subsequent departure from it, and the Board’s treatment of the replacement process as settled support the inference that the Board resolved these procedural choices in private. This undisclosed shift violated COML and denied the public access to the Board’s formation of the process through which schools closures would be assessed.

III. Implementation Creates a Real, Immediate, and Irreparable Injury.

This real, immediate, and irreparable injury factor is the core reason for emergency relief. The injury is not that Plaintiffs disagree with the closure decision. It is the impending loss of the statutory transparent public-process right COML protects. Once BVSD begins implementing the September 22, 2026 decision, each successive administrative step changes the *status quo*.

Students will be assigned elsewhere. Choice and enrollment decisions will be made based upon the announced closures. Teachers and administrators will make employment decisions. Programs will be moved. Receiving schools will plan around increased enrollment. Transportation and facility decisions will follow. Families will make educational and residential decisions in reliance on BVSD’s announced plans.

At some point, Defendant will inevitably argue that unwinding those actions would itself disrupt students and schools. That is precisely why relief is needed now rather than later.

A final judgment declaring (likely months from now) that the policymaking process violated COML cannot fully recreate the public's opportunity to observe and participate in policy formation before implementation made the decision practically difficult or impossible to reverse.

Plaintiff Rosenthal describes the real, immediate, and irreparable injury:

The Board has now adopted the Resilient Schools proposal, including Flatirons' closure. Absent a stay, families, including mine, must immediately begin planning for the 2027-28 school year. This involves decisions related to enrollment, transportation, childcare, work schedules, and other practical arrangements. Open enrollment begins on November 1, 2026, and families will be forced to make decisions while the legality of the closure process remains unresolved.

The Board has now adopted the Resilient Schools proposal, including Flatirons' closure. Unless the Court stays that decision, the District will begin implementing the closure through the open enrollment process, staffing decisions, special education transition planning, and facilities planning. Families, including my own, will be required to make decisions about where their children will attend school, which affects transportation, childcare, work schedules, and other practical arrangements for the 2027–28 school year.

Once families begin making enrollment and educational decisions in response to the closure, those decisions may be difficult or impossible to reverse. Students, families, teachers, and school communities will experience disruption that cannot be fully undone even if the closure decision is later set aside. A stay would preserve the status quo while the Court considers whether the District followed the law in reaching its decision.

Affidavit of Rosenthal, Exhibit 16.

COML expressly authorizes injunctions because declaratory relief is not sufficient to cause a local public body such as the Board to course correct and act with required transparency. § 24-6-402(9)(b). The Court's authority under this COML provision and the Rathke factors under C.R.C.P. 65 permit the court to fashion preliminary relief to course correct and avoid real,

immediate and irreparable harm. Having demonstrated irreparable harm and a likelihood of success on the merits, Plaintiffs respectfully request that the Court issue the preliminary relief described in the prayer below.

IV. Plaintiffs Have No Plain, Speedy, and Adequate Remedy at Law.

Damages cannot compensate Plaintiffs for the lost right to an open governmental process, and none are available under the COML. Nor can attorney fees or a retrospective declaration restore access to a public meeting that has already occurred or the lost opportunity to observe and participate in the formation of public policy before it is implemented.

The problem Plaintiffs seek to resolve with this Motion is temporal. The COML protects participation in the *formation of policy*, § 24-6-401, and that opportunity cannot be easily obtained after a policy, crafted in violation of the COML behind closed doors, has been implemented.

Without preliminary relief, the Court may ultimately decide that Plaintiffs were right but be confronted with a materially changed school system and an argument that effective relief has become impracticable. That is not an adequate remedy.

V. An Injunction Advances Rather Than Disserves the Public Interest.

The General Assembly has already identified the relevant public interest.

Open governmental policymaking is "a matter of statewide concern." § 24-6-401. Colorado courts consequently construe COML most favorably to protect "the public." *Cole*, 673 P.2d at 349.

The requested injunction would not order the Board to keep any school open permanently. It would not dictate enrollment policy. It would not substitute the Court's judgment for the Board's. It would merely preserve existing conditions long enough to determine whether the governmental process producing the closure decision complied with Colorado's Sunshine law. The public has an interest both in lawful school governance and in orderly school planning. A preliminary injunction protects both.

VI. The Balance of Equities Strongly Favors Temporary Preservation of the Status Quo.

The respective risks are asymmetrical. If an injunction enters and Defendant ultimately prevails, implementation of its proposal will have been delayed for the relatively short period necessary for expedited judicial review. If no injunction enters and Plaintiffs prevail, implementation may meanwhile have substantially changed staffing, enrollment, programming, transportation, facilities, and family expectations. The former injury is principally delay while the latter threatens the effectiveness of the remedy itself.

Moreover, BVSD was specifically cautioned, by notice from Plaintiffs, before September 22 of the alleged violations and requested not to proceed. It nevertheless chose to adopt the proposal.

Plaintiffs should not bear the equitable consequences of implementation Defendant commenced with actual notice that the legality of the underlying process was disputed. The equities therefore favor a preliminary preservation order coupled with expedited proceedings.

VII. The Injunction Preserves—Rather Than Alters—the Status Quo.

A preliminary injunction exists to preserve the *status quo* until the parties' rights can be adjudicated. *Rathke*, 648 P.2d at 653–54. The *status quo* includes not only the day-to-day operation of the affected schools before the September 22 decision, but more importantly, the expectations and planning assumptions of students, families, employees, and the District concerning the 2027-2028 school year. Absent preliminary relief, those expectations and assumptions will begin changing immediately as families make enrollment decisions, the District plans staffing and budgets, and preparations for implementation of Resolution 26-27 proceed.

Plaintiffs do not ask the Court preliminarily to order BVSD to create a different school configuration. Plaintiffs ask only that the Court pause implementation of Resolution 26-27 while the Court decides whether the governmental process culminating in authorization of the Resolution was lawful. Indeed, every additional implementation step makes preservation more difficult. Once student placement, staffing, programming, budgets, transportation, and facilities are reorganized around the closures, the Board can argue that the *status quo* has itself changed. The purpose of preliminary relief is to prevent precisely that moving target.

VIII. Request for Relief and Expedited Merits Schedule.

Plaintiffs seek only that relief necessary to preserve the Court's ability to adjudicate their COML claims effectively.

The Requested Injunction Preserves the Status Quo While Protecting Families' Ability to Plan

Plaintiffs do not seek an injunction that prevents BVSD from planning for contingencies or that forces families to forego educational options while this action is pending. Rather, preliminary relief can—and should—distinguish between steps that preserve options and actions that implement the challenged school-closure decision and make meaningful final relief increasingly difficult or impossible. That approach best serves the purpose of preliminary relief: preserving the status quo and the Court's ability to afford effective relief after adjudication on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653–54 (Colo. 1982); *Zoning Bd. of Adjustment v. DeVilbiss*, 729 P.2d 353, 359 (Colo. 1986).

Accordingly, Plaintiffs request that the Court enjoin BVSD, pending further order, from materially implementing the Proposal, including by:

- (1) finally reassigning students from schools designated for closure because of the Resolution;
- (2) transferring or reassigning faculty or staff because of those closures;
- (3) relocating educational programs from affected schools;
- (4) materially altering affected or receiving facilities for purposes of implementing the closures or consolidations; or
- (5) taking other action that would materially impair BVSD's ability to operate the affected schools during the 2027–28 school year should Plaintiffs prevail.

The requested injunction need not prevent BVSD from continuing ordinary planning or taking measures necessary to preserve families' choices. BVSD may, for example, provide families

information concerning possible 2027–28 placements, conduct school visits and informational events, accept and process Choice Enrollment applications, conduct the Choice Enrollment lottery, and make **contingent offers of placement** for the 2027–28 school year. BVSD likewise may undertake contingent planning concerning staffing, transportation, enrollment, and facilities. Such activities may proceed so long as they do not result in implementation of the challenged closures before the Court can determine their legality.

This distinction is particularly important for Choice Enrollment. Families should not be forced to choose between protecting their children against the possibility that the Resolution ultimately takes effect and preserving the status quo Plaintiffs seek to protect in this litigation. The Court therefore should permit families to submit Choice Enrollment applications and BVSD to process those applications, conduct its lottery, and offer contingent placements, while providing that those actions do not alter students' existing placements pursuant to the challenged Resolution. A parent's application for or acceptance of such a placement should not constitute consent to implementation of Resolution 26-27, relinquishment of the student's existing placement, or waiver of any claim or relief in this action. See BVSD FAQ: <https://www.bvsd.org/parents-students/enrollment-center/choice-enrollment/frequently-asked-questions>.

Nor should enrollment decisions made by families in response to the challenged Resolution be permitted to manufacture a new *status quo*. For purposes of compliance with the preliminary injunction and the availability of final equitable relief, BVSD should not treat Choice Enrollment applications, contingent acceptances, withdrawals, or other enrollment

changes reasonably attributable to the announced closures as establishing that an affected school lacks sufficient enrollment to remain operational. Otherwise, the very implementation activity being challenged could become self-fulfilling: families reasonably protecting their children against announced closures could produce enrollment changes that BVSD later invokes as a reason the closures can no longer practicably be undone.

This tailored relief also minimizes hardship to BVSD or the public. BVSD remains free to prepare for either eventuality, and families remain free to protect their options. What BVSD may not do is transform the challenged Resolution into a *fait accompli* by reassigning students and employees, relocating programs, or altering facilities while judicial review remains pending. Otherwise, each additional implementation step makes restoration of the pre-Resolution circumstances more difficult and threatens the Court's ability to grant meaningful final relief. See *DeVilbiss*, 729 P.2d at 359.

The appropriate *status quo* therefore is not administrative paralysis. It is preservation of BVSD's practical ability to continue operating the affected schools in 2027–28 while permitting reversible planning that protects students, families, and the District regardless of the ultimate outcome. That limited injunction preserves rather than disrupts the parties' positions and appropriately balances the equities while this Court determines whether Resolution 26-27 was lawfully adopted.

WHEREFORE, Plaintiffs request an Order temporarily prohibiting Defendant Board, its officers, employees, and agents from taking actions implementing the September 22, 2026 adoption of the Resilient Schools Proposal that materially advance the closure, consolidation,

reconfiguration, reassignment, or relocation of schools, students, personnel, or programs affected by that decision.

Plaintiffs request that the Court enjoin BVSD, pending further order, from materially implementing the Proposal, including by:

- (1) finally reassigning students from schools designated for closure or consolidation because of the Resolution;
- (2) transferring or reassigning faculty or staff because of those closures or consolidations;
- (3) relocating educational programs from affected schools;
- (4) materially altering affected or receiving facilities for purposes of implementing the closures or consolidations; or
- (5) taking other action that would materially impair BVSD's ability to operate the affected schools during the 2027–28 school year should Plaintiffs prevail.

Plaintiffs do not seek to prevent BVSD from:

- (a) continuing ordinary operation of its schools;
- (b) gathering information;
- (c) analyzing enrollment;
- (d) communicating with affected communities;
- (e) conducting properly noticed public meetings concerning declining enrollment or Resilient Schools;
- (f) taking actions independently required for ordinary District administration that do not implement the challenged September 22, 2026 decision;
- (g) providing families information concerning possible 2027–28 placements;
- (h) conducting school visits and informational events;
- (i) accepting and processing Choice Enrollment applications;
- (j) conducting the Choice Enrollment lottery, and making **contingent offers of placement** for the 2027–28 school year; or

(k) undertaking contingent planning concerning staffing, transportation, enrollment, and facilities.

Such activities should be permitted to proceed so long as they do not result in implementation of the challenged closures before the Court can determine their legality.

Plaintiffs request the Court hold an expedited hearing (and anticipate filling a motion asking the Court to consolidate the preliminary injunction hearing with a merits hearing, thereby promptly and finally resolving the matter).

Respectfully submitted this 30th day of September, 2026.

/s/Eric Maxfield
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CERTIFICATE OF SERVICE

This is to certify that I have duly served this **UNOPPOSED MOTION TO EXCEED C.R.C.P. 121 PAGE LIMIT FOR EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** upon all parties herein by email, this 30th day of September, 2026:

Kristin C. Edgar
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Attorney for Defendant Boulder Valley School District Board of Education

/s/ Eric Maxfield

