

ELIZABETH GALAIDA, et al.,

Appellant

v.

CARROLL COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-27

## OPINION

### INTRODUCTION

This case, *Galaida, et al.*, is one of five consolidated cases in an appeal challenging the December 9, 2015 decision of the Carroll County Board of Education (local board) to close three public schools, Charles Carroll Elementary School, New Windsor Middle School, and North Carroll High School. The Appellants in this case challenge the closure of New Windsor Middle School.<sup>1</sup> In accordance with COMAR 13A.01.05.07(A)(1), we transferred the matter to the Office of Administrative Hearings (“OAH”).

At OAH, the administrative law judge (“ALJ”), Harriet C. Helfand, issued separate proposed rulings for each of the cases after conducting hearings on Motions to Dismiss and Motions for Summary Affirmance filed by the local board. The ALJ determined in each case that there were no genuine disputes of material fact that would trigger an evidentiary hearing. She recommended that the State Board grant the local board’s Motion for Summary Affirmance and uphold the local board’s school closure decision. These Appellants filed exceptions to the ALJ’s Proposed Ruling on Motion for Summary Affirmance.<sup>2</sup> Oral argument was held on June 28, 2016. This memorandum addresses only the exceptions filed by the *Galaida, et al.* Appellants.<sup>3</sup>

### FACTUAL BACKGROUND

Before we review the facts of this case, we wish to acknowledge the concerns of the Appellants about certain text messages between board members and communication between board members and County Commissioners about the closure process and result. These communications, and the Appellants’ belief that their views were not fairly considered, lead us to question the full transparency of the board and the administration in conducting the closure process. If board members and the administration are viewed as working secretly behind the scenes, distrust arises in the community about the decisions being made.

We have reviewed especially the text messages sent between September 3, 2015 and November 9, 2015. Over that time, the Vice President of the board texted, at one time or another,

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<sup>1</sup> The appellants in the other cases challenge the closure of Charles Carroll Elementary School and North Carroll High School.

<sup>2</sup> Appellants are represented by William J. Sinclair, Esq.

<sup>3</sup> The other Appellants in the consolidated cases also filed exceptions to the ALJ’s proposed rulings. We have addressed those exceptions in separate memoranda.

all other members of the board commenting, among other things, on the various closure plans, what was wrong with them, how one or another would rip “this county totally apart” including her own neighborhood. The board members texted back their own views of the various closure plans and options under consideration. They texted enrollment data, sometimes inaccurately. All of this took place outside of the public view on a matter of extraordinary public concern. Given the abbreviated methods of texting, the texts are often cryptic and difficult to put in context. When exposed to public view, as they have been in this case, they can be interpreted as part of a secret decision making plan.

We do not conclude that the apparent lack of transparency makes the decision of the board illegal, unreasonable, arbitrary, or capricious. We offer, however, a word of caution to the board that e-mails and texting between board members discussing the public business can undermine the credibility of the decision made and of the board as a whole. It leads to the anger and loss of trust in the board, as demonstrated by the public and the Appellants in this case.

Closing schools is always a decision fraught with controversy. To exacerbate that with what appears to be behind the scenes secret “discussion” by board members is, in our view, unwise and certainly questionable boardmanship. If the board has no policy on using electronic media to communicate with one another, we strongly advise that they develop one.

Finally, in the context of the facts of this case, it is important to keep in mind that government officials work for the public.

We now turn to the facts of this case.

Between 1993 and 2004, Carroll County experienced a historic increase in school enrollment. Since 2005, the population of the public schools in Carroll County has steadily declined. The decline in population is expected to continue into the foreseeable future. The local board has expressed concern about the decline since 2007, and had contemplated ways to adapt its facility usage to address this decline since 2010.

State aid to local school systems is based on a per-pupil funding formula and relative wealth allocation. Because of the enrollment decline, the school system has lost revenue requiring the local board to eliminate school programs and positions. Revenue loss has also impacted the local board’s ability to pay school employees competitive salaries which currently rank near the bottom of similarly situated employees in the State.

Because of the decline in enrollment, some Carroll County public schools are underutilized. Overall, school utilization is expected to decline over the next ten years.

New Windsor Middle School is slated for closure. Total functional student capacity at New Windsor Middle School is 430. The local board’s optimum size for a middle school is 750. New Windsor Middle School’s enrollment in 2014 was 396, and is projected to decline to 297. Within the next five years, New Windsor Middle School will need a roof replacement and a new HVAC system. These improvements are expected to cost approximately \$11,475,000.00.

Since at least 2012, the local board has explored the issue of school utilization. In April 2012, the local board, in conjunction with the Board of County Commissioners (“BCC”), commissioned a study of facility usage and school consolidation. This study was never completed. In 2013, the local board hired an independent consultant, MGT of America (“MGT”), to complete the utilization study and make recommendations. On December 11, 2013,

MGT presented its final report to the local board. MGT presented its final report to the BCC on January 8, 2014.

In its report, MGT recommended closing two elementary schools and one middle school, and replacing the three schools with a new K-8 school complex. The MGT report also recommended balancing enrollments and developing clean feeder patterns across the system. The MGT recommendation for the K-8 school did not come to fruition.

In February 2015, the local board approved the Superintendent's recommendation to appoint a Boundary Adjustment Committee ("BAC") to address the decline in student enrollment and the effective and efficient use of school facilities, including the possibility of school closures. The local board instructed the BAC to produce a report by September 2015.

In May 2015, the Superintendent submitted the annual, proposed Educational Facilities Master Plan ("Master Plan") to the local board. The Master Plan recommended that the local board begin the process to close Charles Carroll Elementary School for the 2016-2017 school year. The local board adopted the Master Plan at its June 10, 2015 meeting.

It is at this juncture that the texting between board members began.

The local board gave public notice of its September 9, 2015 meeting, indicating that the agenda included the presentation of the BAC recommendations.

At the September 9, 2015 meeting of the local board, the BAC presented its final report. The report contained two options for school closures and redistricting, and contained a timeline for feedback, the public hearing process, and a final decision, and provided contact information for offering feedback, as well as additional information. Option 1 recommended the closure of Charles Carroll Elementary School and balancing enrollments across the remaining schools. The BAC determined that Option 1 was insufficient to address the decline in enrollment or to adequately reduce expenses. Option 2 recommended the closure of North Carroll High School, New Windsor Middle School, Charles Carroll Elementary School, Sandymount Elementary School and Mt. Airy Elementary School and balancing enrollments across the remaining schools. The BAC recommended this option.

At the September 9, 2015 meeting, five members of the public offered public comment. The local board directed the Superintendent and the BAC to develop other options for consideration that would impact fewer students than Option 2.

The local board gave public notice of its September 28, 2015 work session on the BAC.

The BAC produced a draft of Option 3 at the public work session on September 28, 2015. Option 3 recommended the closure of North Carroll High School, New Windsor Middle School, Charles Carroll Elementary School, Sandymount Elementary School and Mt. Airy Elementary School and balancing enrollments across the remaining schools. The difference between Option 2 and 3 was the setting of different school boundaries. The local board asked the BAC to consider another option.

The local board gave public notice of its October 14, 2015 meeting where it would be considering additional BAC options. At the October 14, 2015 meeting of the local board, the BAC presented the final version of Option 3 and a draft of Option 4. The Superintendent

presented a historical timeline of the demographic and budgetary issues involved in arriving at the various options. Twenty-five citizens addressed the local board at the meeting.

The local board gave notice of its public work session scheduled for October 26, 2015, regarding the BAC recommendations.

At the October 26, 2015 public work session of the local board, the Superintendent determined that Option 4 lacked clarity and viability. The BAC never produced a final version of Option 4. At the work session, the Superintendent also informed the local board that he had met with the BAC and asked it to produce another option, one that would close Charles Carroll Elementary School, New Windsor Middle School, and North Carroll High School and limit redistricting as much as possible, and that, in the future, the local board could consider other closures or boundary adjustments, if needed.

The local board provided public notice of its meeting scheduled for November 11, 2015, indicating that the Superintendent would present his recommendation for school closures.

At the November 11, 2015 meeting, the Superintendent presented a Superintendent's Final School Closure and Boundary Adjustment Recommended Plan ("November 11 Plan"). The November 11 Plan recommended the following actions effective for the 2016-2017 school year:

- Consolidate Manchester Valley High School and North Carroll High School boundaries and combine the student population at Manchester Valley High School;
- Adjust New Windsor Middle School, Mt. Airy Middle School, and Northwest Middle School boundaries and redistrict the New Windsor Middle School students to Mt. Airy Middle School and Northwest Middle School;
- Adjust Charles Carroll Elementary School, Ebb Valley Elementary School, Runnymede Elementary School, and William Winchester Elementary School and redistrict Charles Carroll Elementary School students to Ebb Valley Elementary School, Runnymede Elementary School, and William Winchester Elementary School;
- Limit other redistricting to Runnymede Elementary School, Taneytown Elementary School; Elmer A. Wolfe Elementary School, Westminster Elementary School, William Winchester, Ebb Valley Elementary School, and Manchester Elementary School.
- Students whose schools remain open and are affected by boundary line adjustments have an option to remain at their current school under certain conditions, if the parent provides transportation;
- Form a Joint Committee with Carroll County government to determine whether any closed school buildings or grounds are needed for any other school system purpose. If not, the buildings and properties would be transferred back to Carroll County as surplus, and the Carroll County Commissioners would determine the final disposition of the buildings and property.

The November 11 Plan recommended that for the 2017-2018 school year the BAC would continue to meet and recommend additional schools to be considered for closing and recommend a comprehensive redistricting to balance enrollments among the remaining schools.

The November 11 Plan listed and analyzed the following: selection of schools; organizational efficiencies, operational savings, and capital cost avoidance; one-time and on-going offsets to savings: relocation of regional programs, reimbursement of State bond debt; on-going offsets to savings: student transportation; impact of declining enrollment on school system; school utilization rates (current and projected); anticipated growth (and student yield); revenue outlook: State aid, and local revenue. The November 11 Plan also included a section on the analysis of the impact of the school closing on the following factors: (1) student enrollment trends; (2) age or condition of facilities; (3) transportation; (4) education programs; (5) racial composition of student body; (6) financial considerations; (7) student relocation; and (8) impact on community and geographic attendance area for school or schools to which students will be relocating. (Local Bd. Mtn., Ex. 27, November 11 Plan).

The local board provided public notice of the December 1, 2, and 3, 2015 public hearings on the proposed school closures and of its regular and special board meeting on December 9, 2015. The notices indicated that the school closures and boundary adjustments would be considered at the special meeting. The local board also posted messages to all of the school system parents via the Blackboard Contact Message Center (“Blackboard”) on November 13, 25, and 30 and December 2 and 3, 2015, providing notice of the public hearings on school closures and boundaries to be held December 1, 2, and 3, 2015 and of the special local board meeting to be held on December 9, 2015.

On December 3, 2015, Governor Larry Hogan wrote to Warren I. Sumpter, President of the Maryland Association of Boards of Education, and Dr. Theresa Alban, President of the Public School Superintendents Association of Maryland, informing them that he intended to include new funding in the FY-17 budget “to assist local jurisdictions that have been facing the challenge of maintaining adequate funding during the same time that their student enrollments have declined.” The Governor’s letter noted Carroll County’s 7% decrease in enrollment, as well as greater levels of decreased enrollment in other counties. The Governor proposed a stop-gap funding of \$4 million for Carroll County Public Schools and expressed an interest in deferring school closings to create more time to create a more comprehensive plan.

On December 9, 2015, the local board held its special board meeting. At the start of the meeting, eighteen citizens offered public comment on the school closures and redistricting. The Superintendent then reviewed his Final School Closure and Boundary Adjustment Recommended Plan (“Final Plan”).

The Final Plan was an updated version of the November 11 Plan. It was substantially identical to the November 11 Plan with various additions resulting from information obtained since the November 11 Plan was published. The additional material consisted of information on the issue of reimbursement of State bond debt, indicating a total maximum outstanding State debt on the three schools of \$653,347; updated utilization and enrollment analysis using the 2015 enrollment figures as the baseline; and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen minute shift to the school schedule.

In his presentation, the Superintendent reviewed all five options that had been considered by the local board, the points of discussion and public hearings, information on additional State funding, the actions of the local board, and the Final Plan. The Assistant Superintendent reviewed the boundary adjustment recommendations and maps for each school, outlining the

current attendance boundaries and proposed boundaries under the Final Plan. Ultimately, however, the Superintendent offered the Final Plan.

The Final Plan included the recommendation from the November 11 Plan to close Charles Carroll Elementary School, New Windsor Middle School, and North Carroll High School, effective July 1, 2016. The Superintendent requested that the November 11 Plan, updated by the Final Plan, be incorporated by reference into a motion as the local board's Final Plan. The Superintendent also recommended that he provide written notification of the local board's decision to the affected communities in the geographic attendance areas of the schools to be closed and the schools to which students would be relocated. The notification would also advise recipients of their right to appeal the local board's decision to the State Board within 30 days of the date of the local board's decision. The local board adopted the Final Plan by a vote of 4-1. (The Final Plan is incorporated by reference into this Opinion).

On December 10, 2015, the Superintendent sent a letter to parents, guardians, and other community members describing the events of the December 9, 2015 meeting, including the motion approved by the local board and a copy of the Final Plan. The letter advised the recipients of their right to appeal the local board's decision to the State Board. On that same day, the local board posted a message to all school system parents via Blackboard providing notice about the local board's decision. Personnel at the affected schools were also mandated to post information about the local board's school closure decision on the homepage of each school's website advising parents of the local board's school closure decision, stating that their school had been impacted by the decision and referring them to the school system's website.

Thereafter, the five Appellant groups filed their appeals. The State Board consolidated the cases and referred them to the OAH. At OAH, the ALJ conducted separate motions hearings on each of the five cases. On April 11, 2016, the ALJ conducted a motions hearing on the local board's Motion for Summary Affirmance with regard to the *Galaida, et al.* Appellants. On May 5, 2016, the ALJ issued a Proposed Ruling on Motion for Summary Affirmance ("Proposed Ruling") in this case, finding that there were no material facts in dispute, and that the local board did not act arbitrarily, unreasonably or illegally in its adoption of the Final Plan. The ALJ recommended, therefore, that the State Board grant the local board's Motion for Summary Affirmance and affirm its decision.

### STANDARD OF REVIEW

This appeal involves a school closure decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05A. See also *Bushey Drive Elementary School Parents v. Bd. of Educ. of Montgomery County*, 1 Op. MSBE 441 (1976) (State Board will not overrule a school closing decision unless it finds it to be arbitrary, unreasonable or illegal.).

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the proposed decision. See Md. Code Ann., State Gov't §10-216(b).

## RELEVANT LAW

### *State Regulations Governing School Closings – COMAR 13A.02.09.01*

- A. Each local board of education shall establish procedures to be used in making decisions on school closings.
- B. The procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on the following factors:
  - (1) Student enrollment trends;
  - (2) Age or condition of school buildings;
  - (3) Transportation;
  - (4) Educational programs;
  - (5) Racial composition of student body;
  - (6) Financial considerations;
  - (7) Student relocation;
  - (8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.
- C. The procedures shall provide, at a minimum, for the following requirements:
  - (1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following:
    - (a) The public hearing shall take place before any final decision by a local board of education to close a school;
    - (b) Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the public meeting
  - (2) Adequate notice to parents and guardians of students in attendance at all schools that are being considered for closure by the local board of education. The following apply:
    - (a) In addition to any regular means of notification used by a local school system, written notification of all schools that are under consideration for closing shall be advertised in at least two newspapers having general circulation in the geographic attendance area for the school or schools proposed to be closed, and the school or schools to which students will be relocating.
    - (b) The newspaper notification shall include the procedures that will be followed by the local board of education in making its final decision;
    - (c) The newspaper notification shall appear at least 2 weeks in advance of any public hearings held by the local school system on a proposed school closing.
- D. The final decision of a local board of education to close a school shall be announced at a public session and shall be in writing. The following apply:
  - (1) The final decision shall include the rationale for the school closing and address the impact of the proposed closing on the factors set forth in Regulation .01B;

- (2) There shall be notification of the final decision of the local board of education to the community in the geographical attendance areas of the school proposed to be closed and school or schools to which students will be relocating.
- (3) The final decision shall include notification of the right to appeal to the State Board of Education as set forth in Regulation .03.

*Local Board's Administrative Procedures for Public School Closures*

I. Facilities Master Plan

The Facilities Master Plan for the [local board] is updated and approved by the Board on an annual basis. Listed in the plan are new schools, renovations, and additions to existing facilities. The plan covers a ten (10) year period and provides a total system perspective of facilities needs.

Anticipated school closings should be highlighted in the plan as far in advance as possible.

The Facilities Master Plan shall be presented to the [local board] at the April meeting of the Board to report format and presented for Board approval at the regular meeting of the Board in June. This allows one month for public comment and questions related to the plan prior to adoption.

II. State Mandates

A. Factors to be Considered: Consideration shall be given, at a minimum, to the impact of the proposed closing in the following:

Student enrollment trends;

Age or condition of school building;

Transportation;

Education Programs;

Racial compositions of student body;

Financial considerations;

Student relocation;

Impact on community in geographic attendance area for school or schools, to which students will be relocating.

B. Public Hearing: Concerned citizens shall be permitted to submit their views at a public hearing or submit written testimony or data on the proposed school closing.

C. Date of Decision: Except in emergency circumstances, the decision to close a school shall be announced at least ninety (90) days before the school is scheduled to be closed, but not later than April 30 of any school year.

III. Local Assumptions

A. Decisions about utilization of public education should concentrate on equitable delivery of educational services and/or safety. Minimal disruption to all established educational programs should be sought.

B. In addition to public education program considerations, the percentage of utilization of a public school building should be considered.



C. The closing of a public school should not be considered unless the building is not essential to the system-wide provision of educational opportunity.

D. Expenditures related to support services and to the equitable delivery of education program should be kept in balance.

E. Except in cases of emergency all school closing[s] should be scheduled to occur on July 31 of any year.

#### IV. Implementation

If the Superintendent of Schools determines that it is appropriate to consider the closing of a public school facility, the following steps shall be employed:

- A. The Director of School Support Services shall, by February 15, prepare a report to the [local board] advising the Board of the proposed school closing and rationale for the recommendation.
- B. A public hearing shall be held to afford citizens the opportunity to express their views orally or to submit written testimony or data on the proposed school closing.
- C. Notification of the public hearing date, deadline for submission of written testimony, and the procedures to be followed by the [local board] in making the final decision shall be given through school newsletter and shall be advertised in at least (2) two newspapers having general circulation in the geographic area for the school proposed to be closed and the school or schools in which students will be relocating. The notification shall appear at least two (2) weeks in advance of the public hearing.
- D. The public hearing shall be held no later than March 15.
- E. The deadline for written testimony or data shall be no later than March 31.
- F. Announcement for the school closing will be made by the [local board] no later than April 15.
- G. The final decision of the [local board] shall be announced at a public session and in writing. The final decision notification shall include the rationale for the closing and address the impact on the State mandated consideration listed in Section II. The final decision shall include notification of the right to appeal to the [State Board] within thirty (30) days after the decision of the [local board]. Notification will take place as described above in Section IC, Item C.

(Local Bd., Ex. 41).

#### LEGAL ANALYSIS

##### *Individual Versus System-wide Analysis of School Closure Factors*

The Appellants maintain that COMAR 13A.02.09.01B requires an individualized analysis of the school closing factors and that the local board failed to do so. The regulation states that the final decision of the local board shall include the rationale for the school closing and address the impact of the proposed closing on the eight factors set forth in the regulation. COMAR 13A.02.09.01D(1). Appellants claim that the local board did not consider the

individual impact of New Windsor Middle School's closure on each of the regulatory factors, but rather collectively considered the impact of all of the closures system-wide in violation of the regulation. Appellants base their position on the regulatory language, the historical context of the regulation, and the fact that local boards in some other school closing appeals before the State Board used an individualized approach.

On this issue, the ALJ stated as follows:

In their Response, the Appellants allege that it was improper for the Local Board to conduct and create a system-wide analysis of school closings and further, that the Local Board failed to take all of the regulatory factors into consideration when designating New Windsor as one of the schools to be closed. In part, the Appellants base their contention as to the breadth of the Final Plan on wording in COMAR 13A.02.09.01B(1) that uses the singular in its designation of "school" and "closing," arguing that this language mandates that only an individual school be considered, and not made part of a comprehensive plan. The Local Board counters the Appellants' argument, noting that Section 4-120(a) of the Education Article provides that "if a county board considers it practicable, it shall consolidate schools," and emphasizes the use of the plural. Md. Code Ann., Educ. §4-120(a)(2014). The Local Board further notes that the State Board has recognized and approved a number of incidences where county school systems underwent a system-wide analysis and ultimately consolidated schools. *See Blezejack v. Kent County Bd. of Educ.*, MSBE Op. No. 10-41; *Martin v. Garrett County Bd. of Educ.*, MSBE Op. No. 12-35; *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09. The language of the statute, which trumps that of the regulation, which must be in concert with its controlling statute, plainly does not restrict the consolidation of schools to a single unit.<sup>4</sup> *See Dep't of Human Res., et al. v. Hayward*, 426 Md. 638, 658 (2012)(regulations promulgated by administrative agencies must be consistent, and not in conflict with the statute the regulation is intended to implement). Moreover, clearly the State Board has not restricted school closings to one school alone, and has permitted school systems to close and consolidate multiple schools when necessary.

(Proposed Ruling at 36- 37). In response to the Appellants' argument that the use of the term "consolidate" in Education Article §4-120(a) has no bearing on the closing of schools, the ALJ noted that the term "consolidate" presumes that at least one or more schools has closed. *Id.* at 36.

As referenced above, COMAR 13A.02.09.01B mandates that each local board establish procedures that "shall ensure, at a minimum, that consideration is given to the impact of the proposed *school* closing on the following factors: (1) student enrollment trends; (2) age or

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<sup>4</sup> In our view, as set forth herein, the regulation is in concert with the statute.

condition of school buildings; (3) transportation; (4) educational programs; (5) racial composition of student body; (6) financial considerations; (7) student relocation; and (8) impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.” (emphasis added).

We are not persuaded by the Appellants’ argument that the plain language of the regulation precludes a system-wide approach. In our view, reference to “school” in the singular merely means that the impact of the school closing on the various factors must be considered in some way. We do not think it limits the local board’s analysis to a school by school individualized review. We find that a reasonable interpretation of the provision allows either type of analysis. Obviously a local board will conduct an individual analysis in the case of a single school closure. In a multiple school closing when a system-wide decision to close schools is made, the local board’s considerations must go beyond the micro level. We believe this is particularly true when there are system-wide financial considerations due to budget reductions, declining enrollments are projected and other system-wide concerns are at issue. When multiple schools are proposed for closure, the impact of those closures do not occur in isolation and, in our view it reflects sound educational and public policy when a local board analyzes the impact of the closures in light of the comprehensive school closing plan.

There is no one way for a local board to present the consideration of school closure factors. Different boards may choose different ways to analyze the information. Some may choose to provide separate analyses for each school proposed for closure, some may choose to provide a single system-wide analysis, and some may choose to provide a hybrid analysis using both approaches. We point out that in *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09 (2005) (affirming local board’s decision to close multiple schools), the local board used the hybrid approach, considering some of the school closing factors individually and some of the factors system-wide with regard to the closure of Beall and Westmar High Schools.<sup>5</sup> What matters is that consideration is given to all of the factors, whether individually or collectively.

We point out, however, that the full record in this case demonstrates that the board did indeed consider each of the factors individually as to each school proposed for closure. They also viewed the impact of the closures systemically.

#### *COMAR School Closing Factors - Preliminary Matters*

##### 1) Weight of School Closing Factors

As a preliminary matter we note that although COMAR requires a local board to consider each of the factors, the State Board has already determined that a school closing decision need not be supported by every school closing factor in order to be upheld. *See Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000). In addition, it is up to the local board to determine the weight to be accorded each factor. *Kensington Elementary Sch. PTA v. Montgomery County Bd. of Educ.*, 2 MSBE 671 (1982). As stated in *Kensington*, *supra*

[O]ne cannot test arbitrariness and unreasonableness by a mathematical count of the Board’s solution criteria. Circumstances vary from school to school as to the degree of weight to which each criterion is entitled. So long as there is

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<sup>5</sup> The issue raised here was not specifically addressed in the cited cases.

adequate reason, supported by at least one criterion, the local board's decision in a school closing case should prevail.

Thus, even one factor can be found reasonably to justify a school closing decision if it outweighs all of the other factors.

In this case, not every criterion may support the decision to close the schools. As the ALJ stated, "the regulations do not mandate that each factor must be identically weighted, simply that each be given consideration" and the "State Board has not mandated an equal allocation of significance or scrutiny for all eight factors." (Proposed Ruling at 39).

## 2) Adequacy of Rationale

As another preliminary issue, Appellants argue that not all of the local board's findings are discussed in the wording of the analysis for the Final Plan, and that the "grounds have been cobbled together from various disparate parts of the record, as if the information's appearance somewhere in some document means it was necessarily 'considered' by the [local board] as required by COMAR 13A.02.09.01B." (Exceptions at 19).

In *Slider, II, et al. v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000), the State Board upheld a school closing decision despite the appellants' argument that the written rationale inadequately addressed the school closing factors because it lacked sufficient detail. We stated in that case:

We also concur with the Administrative Law Judge's comment that the written rationale could have been set forth in more detail and referenced more information that the evidence in the record shows was actually considered. Nonetheless, we agree with the ALJ that the written rationale provided by the majority members of the local board in context of the entire record is sufficient to satisfy the requirements of COMAR 13A.02.09.01D.

(*Slider* at 1). The ALJ in *Slider* explained that ignoring the additional documents "which address relevant issues and factors that support the Board's closing and consolidation decision, would improperly exalt form over substance." (*Id.* at ALJ 51). Thus, there is nothing improper about the ALJ looking to other evidence in the record to determine if the local board considered the closing factors.

While the wording of the rationale in this case could have included some additional information regarding the school closing factors, the Final Plan included numerous documents that were part of the local board's consideration. Most of the information is either written somewhere in the rationale itself or discerned from the attached items or those referenced in the bibliography. These items include: Appendix A: Birth by Jurisdiction 2003-2013; Appendix B: Migration Charts; Appendix C: Enrollment and Utilization Charts; Appendix D: Color Coded Utilization Charts; Appendix E: Student Relocation Counts; Appendix F: Student Ride Times; Appendix G: Student Distances to School; Appendix H: Student Demographic Analysis; Appendix I: Facilities Utilization Study Financial Index; Appendix J: Building and Core Staff Costs; Appendix K: In and Out Charts (students redistricted to and from); and a bibliography of references used to compile and analyze the data used to produce the plan. In addition, the record

in this appeal contains numerous documents that were considered during the school closure process even though they were not attached to the Final Plan.

### 3) Missing Data

Appellants claim that the local board's decision is illegal because the September 30, 2015 enrollment figures were not specifically listed in either the November 11 Plan or the Final Plan. Appellants refer here to data showing 2015 actual enrollment for all schools as of September 30, 2015 and projected enrollments through 2025 calculated using the 2015 figures. (Exceptions at 2-4).

The local board explains that the school closure analysis in this case spanned several years, during which time enrollment figures changed as each additional year of enrollment data became available. The November 11 Plan does not contain the actual 2015 enrollment figures or future enrollment projections using those figures because the Maryland State Department of Education had not yet certified that information at the time the November 11 Plan was released. (Local Bd. Resp. to Except. at 23, n.7). Once the September 30, 2015 data became available, the local board updated information in the Final Plan projecting what the student enrollment in the remaining schools and school utilization would look up to 2025, if New Windsor Middle School were closed. Those projections used the actual 2015 enrollment data.

#### *Consideration of School Closing Factors*

Appellants argue that the local board's decision is illegal because the local board failed to consider all eight COMAR factors in its analysis of the Final Plan. (Exceptions at 14-29). The ALJ found, however, that the "Local Board delineated the factors and clearly outlined its consideration of each." (Proposed Ruling at 37). We address each factor below.

#### 1) Student Enrollment Trends

Appellants argue that the local board failed to consider student enrollment trends with regard to New Windsor Middle School in the Final Plan. (Exceptions at 21-22).

The Final Plan recognizes that New Windsor Middle School had a student population that was below capacity and diminishing, that New Windsor Middle School capacity for 430 students was less than either Mt. Airy Middle School or Northwest Middle School, and below the local board's 750 optimum capacity for a middle school. (Final Plan at 5). It states that the closure raises total middle school utilization from 86% to 91%, raises utilization at Northwest Middle School so that all middle schools have 2014 utilization above 70%; and reduces from 6 to 3 the number of schools that will have utilization under 70% during the projection period. (*Id.* at 15-16).

In addition, the Final Plan explains that the closure causes minimum displacement of middle school students, impacting only two other schools. (*Id.* at 5). This is because 46% of the students currently at New Windsor Middle School matriculate to South Carroll High School to the south and 54% of the students matriculate to Francis Scott Key High School to the northwest. (*Id.* at 26-27). The closure consolidates New Windsor Middle School students into Mt. Airy Middle School those students who would already be going to South Carroll High School and consolidates into Northwest Middle School those students who would already be going to Francis Scott Key High School, thereby aligning the feeder pattern to high school 100%.

Further, the Final Plan indicates that the closures improve the total utilization at the elementary, middle and high school levels. As a result, this option makes a more efficient use of facility resources which will allow the system to provide more resources toward the instructional program. (*Id.* at 16). It also indicates that the closure of the three schools reduces system-wide capacity and increases K-12 utilization from 82% to 87%. *Id.* Based on this information, there can be no dispute that the local board considered student enrollment trends when it made its closure decision. The ALJ was correct.

2) Age or Condition of School Buildings

The Appellants dispute that the local board considered the age and condition of New Windsor Middle School and claim that the ALJ merely equated the physical condition of buildings with financial projections. (Exceptions at 22-23). The Final Plan explains that the BAC rejected the concept of recommending the closure of schools in priority order for modernization. Therefore, the analysis of this factor focused on renovation needs at the schools. The Final Plan explains that New Windsor Middle School was scheduled for a roof replacement and an HVAC upgrade, which would have resulted in a capital cost of \$11,475,000. (Final Plan at 7). The fact that the condition of the school building is linked to a repair cost which could be avoided by its closure does not mean that age or condition factors were not considered. The two issues are intertwined, as they are in many cases, because the condition of a facility can have a profound effect on financial considerations due to the need for facility upgrades and maintenance. Therefore, the ALJ correctly found that the local board considered this factor. (Proposed Ruling at 37).

3) Transportation

In addition to the number of buses needed and cost, the rationale also addresses the number of students affected by the closures, redesign of bus routes, distances to be traveled, and ride times. The rationale states:

Closing the three schools requires the reassignment of approximately 549 elementary school students, 382 middle school students and 737 high school students. In an effort to lessen the impact on student ride time, this plan reassigns students from the closing schools into the adjacent schools. These new boundaries will require that Transportation staff redesign bus routes to meet the new boundaries and new feeder patterns.

(Final Plan at 17-18). The distance and ride time comparison is set forth in Appendices F and G. The rationale also explains that “significant analysis and rerouting of buses will be needed at all levels” and that the new boundaries will impact only 7% of all students. (*Id.* at 18). The ALJ was correct to conclude that the local board considered the impact of New Windsor’s closure on transportation.

4) Educational Programs

Appellants claim that the ALJ erred by finding that the local board considered the impact of New Windsor Middle School’s closure on educational programs. Appellants themselves acknowledge, however, that the Final Plan indicates that the closure of New Windsor Middle School will require the relocation of the middle school autism program. The BAC had identified

Shiloh Middle School as the new site for this relocation. (*Id.* at 18). The Final Plan states that “Shiloh’s current and projected enrollments will more than accommodate the relocation of the autism program without the need for relocating students or making major building modifications.” (*Id.* at 5).

In addition, the Final Plan explains that an analysis was conducted regarding the percentage of students identified as Limited English Proficient (“LEP”). This area did not increase or decrease more than 1% from the current minimum or maximum percentage. (*Id.* at 18). This translates into there being no real increased need for LEP programming. Although this information is not located in the “Education Programs” section of the rationale this does not discount the fact that it was included in the Final Plan.

Furthermore, the Final Plan points out that the closing will result in all middle schools in the County having more optimal enrollments which means there will be consistency of educational programs and course offerings across the system. *Id.* Although Appellants note that New Windsor is not specifically named, it is the only middle school being closed, thus the result is directly attributable to its closing. The ALJ was correct.

#### 5) Racial Composition of Student Body

The Appellants maintain that the local board failed to consider the impact of New Windsor’s closure on the racial composition of the student body.

The Final Plan states as follows:

The analysis of the racial composition of the student body was conducted by comparing the minimum and maximum percentages of the student population for county schools at each school level - elementary, middle and high. In addition to the six racial designations reported to the Maryland State Department of Education (African American, American Indian or Alaskan Native, Asian, Pacific Islander, white, and Multi-Racial), analysis included Hispanic students as well as students in the special services groups including students on Free and Reduced Meals (FARMS) which is the federal proxy for poverty, students identified as Limited English Proficient (LEP), Special Education students with Individualized Education Plans (IEP), and students receiving services under Section 504 of the Rehabilitation Act of 1973, as amended (Sec 504). In the recommendation, no area reviewed increases or decreases more than 1% from the current minimum or maximum percentage.

The underlying data for this analysis is set forth in the Student Demographic Analysis included as Appendix H of the Final Plan. The chart sets forth for each elementary, middle and high school the percentage of students in the indicated racial categories in the 2014-2015 school year. New Windsor Middle School’s percentages are essentially on par with the other middle schools at 3% African American, 0% American Indian or Alaskan Native, 2% Asian, 2% Multi-Racial, 0% Pacific Islander, 93% White, and 2% Hispanic. The chart compares these numbers to what the percentages would be under the Final Plan. The ALJ correctly found that that the local

board considered this issue and determined that the racial composition of schools would essentially not be affected by the Final Plan. (Proposed Ruling at 38.).

6) Financial Considerations

The Appellants did not argue that the local board failed to consider the impact of New Windsor Middle School's closure on financial considerations.

7) Student Relocation

Appellants argue that local board failed to consider this factor. (Exceptions at 27-29). We disagree.

The Final Plan mentions that the school closure results in the relocation of 382 middle school students and limits the redistricting to the surrounding schools. (Final Plan at 20). It also states that "[t]his focused approach to redistricting allows for the possibility of future closures and minimizes the likelihood that students will be redistricted again in the future." *Id.* In addition, as the ALJ highlighted, "[w]hen the Local Board considered student relocation, it took into account that fact that the students redistricted to Mt. Airy Middle School and Northwest Middle School would remain with the same students from middle school through high school, a transition that would cause minimal disruption." The information regarding the improvement of the middle to high school feeder patterns is set forth in the Final Plan at pages 21 and 26-28. Although that information is not under the "student relocation" heading, it speaks to the issue and therefore the substance is there. The ALJ was correct that the local board considered student relocation in its closure decision.

8) Impact on Community in Geographic Attendance Area for School Proposed to be Closed and School, or Schools, to Which Students Will Be Relocating

The Appellants argue that the local board failed to take into consideration the impact of closing New Windsor on the communities in the geographic attendance area for the school proposed to be closed or the schools to which students will be relocating. (Exceptions at 15). The ALJ found, however, that the local board appropriately addressed this factor when it considered that "aligning the feeder pattern of the redistricted New Windsor Middle School keeps peers together throughout the remainder of their school careers" and when it "reached out to the Community Advisory Council[.]" ("CAC"). Although Appellants claim that the analysis is merely a regurgitation of statistics and projections regarding utilization, the information can reasonably be viewed as relevant to the impact on the communities.

The ALJ noted the holding in *Marsh* which limits consideration of impact on the community to the educational impact on the community. *See Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-99 at ALJ 50-51(2005)(stating that "[t]he BOE's only responsibility under the regulatory scheme is to assess the education-related impact a school closing has on the community. It is not required to assess the impact a school closing has on civic groups, nor is it required to assess the loss of the school building as a place of shelter."). While we do not disagree with the Appellants that some of the information in the analysis of this factor is not relevant to the community impact issue, we disagree that the factor was not considered in terms of the education-related impact. The ALJ was correct to conclude that the local board considered the community impact factor.



Appellants also claim that “the Community Advisory Council did not present concerns, provide research and recommendations, or otherwise react to the proposal to close New Windsor, as required by the [local board’s] and the Community Advisory Council’s bylaws.”<sup>6</sup> (Exceptions at 32). Appellant is referring here to provisions that state that a CAC “shall consider matters pertinent to public education and present concerns and recommendations in accordance with its by-laws to the Board for consideration and possible action.” (Opp. to Local Bd. Mtn. Summ. Aff. Ex. K - Local Bd. Policy BDF: Advisory Councils to the Bd. of Educ. of Carroll County & Ex. L – CAC Bylaws). The local board disputes Appellants’ assertion, citing to the CAC meeting minutes contained in the record. (Local Bd. Reply Mem., Exs. 1 & 2; App. Opp. Mem., Ex. M). The minutes from the May 11, 2015 CAC meeting indicate that the CAC was to be actively involved in providing input to the school closing process. (App. Opp. Mem., Ex. M). The minutes from the September 16, 2015 meeting show that the Superintendent sought input from the CAC. (Local Bd. Reply Mem., Ex. 1). The ALJ found that the local board “demonstrated that representatives of the Local Board informed the CAC of the process, kept it updated and sought its input.” (Proposed Ruling at 41). We concur.

#### *Other Alleged Violations*

The Appellants maintain that the local board was required to hold a new hearing on the Final Plan after adding the updated enrollment projections. They argue as follows:

The November 11 Proposal relied on outdated 2014 enrollment projections even though the [local board] had been in possession of the current projections since Sept. 30, 2015, and the December 9 Proposal with (some) updated projections had never been subject to public comment, testimony or hearing, both of which are inconsistent with the timelines set forth in the Facilities Master Plan.

(Exceptions at 32).<sup>7</sup>

As stated previously, the local board has explained that the September 30, 2015 enrollment figures were not available until after the release of the November 11 Plan because they had not yet been certified by the Maryland State Department of Education. (Local Bd. Resp. to Except. at 23, n.7). With regard to the lack of hearing after the inclusion of updated enrollment projections using 2015 enrollment data in the Final Plan, the ALJ found that inclusion of the updates was of no real significance and did not require more hearings. (Proposed Decision at 40). The ALJ stated:

Similarly, the Appellants’ claim that the Local Board never held public hearings on the correct plan is without foundation. The Local Board correctly notes that the Final Plan is substantially identical to the November 11 Plan, albeit with a few semantic tweaks and updates that have no significant impact. The essential portions of the November 11 Plan were unchanged by the Final

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<sup>6</sup>The Community Advisory Council (“CAC”) is a standing committee of the local board and serves as a channel for public concerns, advice, and information to and from the board.

<sup>7</sup> The Facilities Master Plan states, “Enrollment Projections are developed annually in October. Projection figures for budget preparation shall be supplied to the Superintendent/Designee prior to November 1.” (Facilities Master Plan 2015-2024 (6/10/15) at 3-18).

Plan and any additions to the November 11 Plan did not alter the factors considered by the Local Board or its ultimate conclusion.

*Id.* We agree. The updated projections merely demonstrate what the populations at the middle schools would be after the closure using the most current data. A comparison of the projections to the ones contained in the November 11 Plan shows that they are not substantially different. (See Nov. 11 Plan & Final Plan, Appendix D).

Appellants also argue that the director of school services should have prepared the November 11 Plan instead of the Superintendent and that the closure should have been scheduled for July 31 instead of July 1, as required by the local board's Administrative Procedure for Public School Closings (IV.A) & (III.E), respectively. (Exceptions at 32). Appellants maintain, therefore, that the *Accardi* doctrine requires the State Board to find the local board's adoption of the Final Plan to be illegal.

With regard to preparation of the November 11 Plan, the ALJ found that this was a "*de minimus* error, if at all, as the State Board has held that a recommendation is not even considered a 'proposed school closing' until made by the Superintendent." See *Blazejack*, MSBE Op. No. 10-41 at 37-39." (Proposed Ruling at 40). We agree. Although the ALJ does not specifically address the school closure date, we find that as to both of these issues, the Appellants have not shown that a violation of the procedures would require reversal under the *Accardi* doctrine.

The *Accardi* doctrine requires government agencies to "scrupulously" observe their own rules, regulations or procedures or else subject the agency action to invalidation. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). While the Maryland Court of Appeals has held the *Accardi* doctrine applicable to administrative agencies in Maryland, it does not apply to purely procedural rules that do not invade fundamental constitutional rights or are not mandated by statutes, but are adopted primarily for the orderly transaction of business." *Pollack v. Patuxent Institution Bd. of Rev.*, 374 Md. 463, 503 (2003). In addition, a complainant must still show that prejudice to him or her resulted from the agency violation in order for the agency decision to be struck down. *Id.*

The State Board has repeatedly held, however, that the *Accardi* doctrine is inapplicable to school closure appeals. See, e.g. *Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 at ALJ 63 (2000) (reasoning that the *Accardi* doctrine did not apply given that "the procedures at issue do not affect individual rights because a resident of a school district possesses no liberty or property interest in having a school in his district remain 'as is,' without changes occasioned by closure or consolidation."); *Blazejak*, MSBE Op. No. 10-41 (2010) (finding that the "*Accardi* doctrine is inapplicable to the alleged procedural violations [school closure] in this case based on the Court of Appeals' holding that there is no right or privilege to attend a particular school under State law absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion.").


Appellants' disagreement with the method of analysis and final decision does not render the school closure decision arbitrary, unreasonable or illegal. See *Langston Hughes Community Action Assn v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-34 at 2 (2015) (stating that the State Board may "not substitute [its] judgment for that of the local board's 'even though it may be that another plan of the [local board's] might have been better or at least as good as the present one.'") (citing *Adams*, 3 Op. MSBE 143, 155 (1983)). As summed up by the ALJ:


The Local Board's basis for adoption of the Final Plan may be controversial, and opposed by all of the Appellants of the consolidated cases, but it was neither arbitrary, unreasonable, nor illegal. The Local Board became aware of Carroll County's demographic challenges a number of years prior to the adoption of the Final Plan, and comprehensively acted to address those pressing concerns. It followed its own guidelines and State mandated procedure to collect and analyze relevant data, consider options, publish notice, provide numerous opportunities for community input, and reach a reasoned decision. It is likely that any option adopted by the Local Board would have stimulated some controversy; pressing financial issues forced the Local Board to make decisions that would have been unpopular to at least some portion of the school community. Failing to act, however, was not an option. The decline in overall enrollment precipitated reductions in financial resources, and the Local Board went to great lengths to perform the research and render a reasonable decision that took into account all of the regulatory factors that were required in acting to close or consolidate schools.

(Proposed Ruling at 43).

CONCLUSION

For all of the reasons stated above, we adopt the Proposed Ruling of the ALJ except to the extent modified herein. We grant the local board's Motion for Summary Affirmance and uphold the Carroll County Board of Education's school closing decision. We caution the board on using electronic media to discuss upcoming decisions, and we recommend that they review their policy on this practice or establish one that has clear guidelines.

  
\_\_\_\_\_  
Guffrie M. Smith, Jr.  
President

  
\_\_\_\_\_  
S. James Gates, Jr.  
Vice-President

Absent  
\_\_\_\_\_  
James H. DeGraffenreidt, Jr.

  
\_\_\_\_\_  
Linda Eberhart

  
\_\_\_\_\_  
Chester E. Finn, Jr.

Laurie Halverson / ds  
Laurie Halverson

Stephanie R. Iszard / ds  
Stephanie R. Iszard

Laura Weeldreyer / ds  
Laura Weeldreyer

Dissent:

Michele Jenkins Guyton / ds  
Michele Jenkins Guyton

Madhu Sidhu / ds  
Madhu Sidhu

Andrew R. Smarick / ds  
Andrew R. Smarick

June 30, 2016

**ELIZABETH GALAIDA,  
GREGORY GALAIDA,  
TERRENCE MAHONEY,  
MARY MAHONEY,  
HEATHER MCKENZIE,  
JOHN LEANNARDA,  
LESLIE DEERING,  
CHERYL CASE,  
ELA WISWAKARMA,**

**\* BEFORE HARRIET C. HELFAND,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No: MSDE-BE-16-16-02833**

**and**

**\***

**BAGUS WISWAKARMA,**

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**APPELLANTS**

**\***

**v.**

**\***

**BOARD OF EDUCATION OF**

**\***

**CARROLL COUNTY**

**\***

**\* \* \* \* \***

**PROPOSED RULING ON  
MOTION FOR SUMMARY AFFIRMANCE**

**BACKGROUND  
ISSUE  
SUPPORTING DOCUMENTATION  
UNDISPUTED FACTS  
DISCUSSION  
CONCLUSION OF LAW  
PROPOSED ORDER  
RIGHT TO FILE EXCEPTIONS**

**BACKGROUND**

On January 8, 2016, the Appellants<sup>1</sup> filed an appeal with the Maryland State Board of Education (State Board) of the decision of the Board of Education of Carroll County (Local

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<sup>1</sup> A number of Appellants who initiated the appeal withdrew their appearance prior to the April 11, 2016 motions hearing. The withdrawn Appellants include: Deborah Schneider; Rick Schneider; Lisa Kraft; Carolee Kinloch; Matthew Kinloch; Rima Allport; Jennifer Griffin; Wyatt Griffin; Barry Grimes; Melissa Grimes; Jerry Griffin; Dinah Griffin; and Tracy Sutkaytis. Additionally, other Appellants, namely Liza Hawkins; Sandy Brothers; Jennifer Johns; Kristy Harris; Jennifer Porter-Drake; Phil Drake; Edward Mahoney; Keri Pressimore; Rebecca Brightful (on May 2, 2016, OAH received a withdrawal from Ms. Brightful); Rosemary Kitzinger; Stacey Greene Hudson; Stacey

Board or BECC)<sup>2</sup> to close New Windsor Middle School (New Windsor) as of the 2016-2017 school year.<sup>3</sup>

On January 20, 2016, the State Board transmitted the appeal to the Office of Administrative Hearings (OAH) to conduct hearings before an Administrative Law Judge (ALJ) on this appeal and four other appeals filed pursuant to the Local Board's decision.<sup>4</sup> Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

On February 11, 2016, the Local Board filed a Motion to Dismiss<sup>5</sup> or in the Alternative for Summary Affirmance<sup>6</sup> (Motion) of its decision to close New Windsor, asserting, among other issues, that there are no genuine issues of material fact and that the Local Board is entitled to affirmance as a matter of law.

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French; Marsha Jackson Reed; Jeff Reed; Patina Casazza-Schumacher; Shannon Roberman; Sergey Roberman; Mark Truax; Krisha Davis; Cindy Casper; Nicole Wilson; Roxanne Welsh; Elizabeth Welsh; Jared Welsh; Kristy Dennsteadt; Rachel Boone; Brenda Barber; Rick Barber; Linda Johnson; David Johnson; and Evets Morgan, failed to appear at the April 11, 2016 motions hearing, either in proper person or represented by counsel. Due to the failure to appear at the motions hearing, counsel for the Local Board moved for default as to the absent Appellants. I granted the Local Board's motion for default as to the Appellants who failed to appear, none of whom requested postponements or otherwise indicated an inability to participate in the motions hearing. COMAR 28.02.01.23A and C. On April 21, 2016, I issued a Proposed Default Order proposing that their participation in the case be terminated.

<sup>2</sup> The Local Board is referred to in different ways in various documents, including "Carroll County Board of Education," and "Carroll County Public Schools." The correct nomenclature is the "Board of Education of Carroll County." All variations in the record refer to the same entity.

<sup>3</sup> The basis of the Appellants' appeal is the Local Board's adoption of the December 9, 2015 Superintendent's Final School Closure and Boundary Adjustment Plan (Final Plan). The Final Plan recommended the closure of three Carroll County schools, Charles Carroll Elementary School (Charles Carroll), New Windsor, and North Carroll High School (North Carroll). The instant appeal only addresses the closure of New Windsor.

<sup>4</sup> The other appeals filed with the State Board (and respective schools) and transmitted to the OAH are: Don Garmer v. BECC; Case No.: MSDE-BE-16-16-02660 (Charles Carroll and North Carroll); Lori Wolf v. BECC; Case No.: MSDE-BE-16-16-02597 (North Carroll); Harrison W., et al v. BECC; OAH Case No.: MSDE-BE-16-16-02815 (North Carroll); and Erin Sipes, et al v. BECC; Case No.: MSDE-BE-16-16-03180 (Charles Carroll). OAH consolidated the cases for the purpose of the proceeding. Separate rulings are being issued in all cases.

<sup>5</sup> The portion of the Motion concerning the Local Board's motion to dismiss based on standing is addressed in a separate Ruling. This Ruling only addresses the portion of the Motion requesting summary affirmance.

<sup>6</sup> Under COMAR 13A.01.05.03D, a motion for summary affirmance may be filed if there are no issues of material fact and the respondent is entitled to judgment as a matter of law. Such motions must include, among other things, any supporting documents, exhibits, and affidavits. COMAR 13A.01.05.03D(2)(e). Under the OAH Rules of Procedure, a party may file a Motion for Summary Decision on all or any part of an action, asserting therein that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. COMAR 28.02.01.12(D)(1). Motions for summary decision shall be supported by affidavits. *Id.* Affidavits in support of or in opposition to a Motion for Summary Decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated in the affidavit. COMAR 28.02.01.12(D)(1) and (3). I will apply the same standards for a decision on the Motion for Summary Affirmance as I would to a Motion for Summary Decision, because the Maryland State Department of Education COMAR provision and the OAH COMAR provision regarding such motions are essentially identical.

On March 9, 2016, I conducted an In-Person Prehearing Conference (Conference), at which time I scheduled dates for the filing of responsive motions, discovery, a motions hearing, and a hearing on the merits, if needed. On March 14, 2016, I issued a Prehearing Conference Report outlining the discussion at the Conference.

On March 18, 2016, William N. Sinclair, Esquire, and Kathleen Sinclair, Esquire, entered their appearance as counsel for the following Appellants: Cheryl Case; John Leannarda; Leslie Deering; Mary Mahoney; Terrence Mahoney; Heather McKenzie; Bagus Wiswakarma; and Ela Wiswakarma, and filed Appellants' Opposition to Appellee's Motion to Dismiss or in the Alternative for Summary Affirmance (Opposition).<sup>7</sup> On March 25, 2016, the Local Board filed a Memorandum in Reply to Opposition to Motion to Dismiss or in the Alternative for Summary Affirmance (Reply).

On April 11, 2016, I conducted a motions hearing during which the Local Board and the Appellants offered arguments on the Motion and Opposition.<sup>8</sup> William J. Sinclair, Esquire, represented the Appellants.<sup>9</sup> Edmund J. O'Meally, Esquire, and Adam Konstas, Esquire, represented the Local Board.<sup>10</sup>

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<sup>7</sup> The January 8, 2016 appeal designated Elizabeth Galaida as the representative of the named Appellants. At the March 9, 2016 Prehearing Conference, the Appellants were informed that non-attorneys are not permitted to represent other individuals or entities before the OAH. *See* Md. Code Ann., State Gov't § 9-1607.1 (2014) (an individual not licensed to practice law may only represent a party in a proceeding before the OAH in specifically designated matters).

<sup>8</sup> As the April 11, 2016 motions hearing was consolidated with the other appeals, I also heard arguments from the other respective appellants regarding their respective appeals.

<sup>9</sup> Counsel for the Appellants, Mr. Sinclair, had to leave prior to the conclusion of the hearing and requested that he be able to submit a supplemental memorandum in lieu of a response to the Local Board's oral presentation. I granted Mr. Sinclair's request, as well as a request from the Local Board that it be permitted to submit a written reply to Mr. Sinclair's memorandum, and set dates for receipt of the respective submissions. Per my schedule, on April 13, 2016, Mr. Sinclair, on behalf of his represented Appellants, submitted a Supplemental Memorandum in Support of Opposition to Appellee's Motion to Dismiss, or in the Alternative for Summary Affirmance (Supplemental Memorandum). On April 15, 2016, the Local Board submitted a Memorandum in Reply to Supplemental Memorandum in Support of Opposition to Motion to Dismiss or, in the Alternative, for Summary Affirmance (Supplemental Reply).

<sup>10</sup> At the April 11, 2016 motions hearing, Elizabeth and Gregory Galaida were also represented by Mr. Sinclair. Mr. and Mrs. Galaida were present, as was Leslie Deering. Counsel for the Local Board was accompanied by Stephen H. Guthrie, Superintendent of Schools, Local Board, and Jonathan D. O'Neal, Assistant Superintendent for Administration, Local Board.

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.01.05; COMAR 28.02.01. Any dispositive decision by the ALJ will be a recommendation in the form of a proposed decision to the State Board. COMAR 13A.01.05.07E.<sup>11</sup>

### **ISSUE**

Should the Local Board's Motion for Summary Affirmance be granted?

### **SUPPORTING DOCUMENTATION**

In support of its Motion, the Local Board submitted the following Attachments, supported by affidavit:

1. Enrollment Projections Analysis Report, 2014-15 to 2023-24, dated January 22, 2014
2. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated December 9, 2015 (Final Plan)
3. Board Minutes, Special Board Meeting, December 9, 2015
4. Slide of Town of Hampstead Council Meeting
5. Board Minutes, dated February 11, 2015
6. Board Minutes, dated April 29, 2015
7. Press Release re: September 9, 2015 Board Meeting, dated August 26, 2015
8. Affidavit of Brenda L. Bowers, dated February 8, 2016
9. Affidavit of W. Carey Gaddis, dated February 8, 2016
10. "What's Happening in Carroll County Public Schools"(Newsletter), dated September 4, 2015
11. Board Minutes, dated September 9, 2015

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<sup>11</sup> In an appeal of a school closing, the ALJ shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the proposed written decision to the parties. COMAR 13A.01.05.07E.



12. Report of the Superintendent's Boundary Adjustment Committee, dated September 9, 2015
13. News Release, dated September 10, 2015
14. Newsletter, dated September 11, 2015
15. Newsletter, dated September 18, 2015
16. Newsletter, dated September 25, 2015
17. News Release, dated September 18, 2015
18. Newsletter, dated October 9, 2015
19. News Release, dated October 6, 2015
20. Board Minutes, dated October 14, 2015
21. Report of the Boundary Adjustment Committee (Power Point), dated October 14, 2015
22. Newsletter, dated October 16, 2015
23. Newsletter, dated October 23, 2015
24. News Release, dated October 27, 2015
25. Newsletter, dated November 6, 2015
26. Board Minutes, dated November 11, 2015
27. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated November 11, 2015 (November 11 Plan)
28. News Release, dated November 12, 2015
29. Newsletter, dated November 24, 2015
30. Notices, Baltimore Sun, dated November 17, 2015; Northern News, dated November 19, 2015; and Advocate of Westminster and Finksburg, dated November 25, 2015
31. Posting on blackboard.com, dated November 13, 2015
32. Posting on blackboard.com, dated November 25, 2015
33. Posting on blackboard.com, dated November 30, 2015

34. Posting on blackboard.com, dated December 2, 2015
35. Posting on blackboard.com, dated December 3, 2015
36. News Release, dated November 24, 2015
37. Newsletter, dated December 4, 2015
38. Memorandum from Stephen H. Guthrie, Superintendent, to Parents, Guardians, and Community Members, dated December 10, 2015
39. Posting on blackboard.com, dated December 10, 2015
40. Email from W. Casey Gaddis to Thomas Clowes, *et al.*, dated December 10, 2015
41. Educational Facilities Master Plan 2015-2024, dated June 10, 2015
42. Redacted Student List Report
43. Emails, dated September 14, 2015; October 14, 15, 18, 21, 22, 26, 2015; November 13, 16, 24, 25, 2015; December 3, 4, 6, 7, 8, 31, 2015<sup>12</sup>
44. Notice from Board of County Commissioners of Carroll County, dated December 8, 2015
45. Affidavit of Stephen H. Guthrie

The Local Board submitted the following attachments, supported by affidavit, with its

Reply:

- 27A. Appendix C—Enrollment and Utilization Charts; BAC Current Boundaries; Elementary, Middle, and High Schools
- 2A. Appendix C—Enrollment and Utilization Charts; BAC Current Boundaries; Elementary, Middle, and High Schools
1. Community Advisory Council Meeting minutes, dated September 16, 2015; BAC Presentation to the Community Advisory Council, September 16, 2015 (Power Point); Instructional Effects of Declining Enrollments
2. Community Advisory Council Meeting minutes, dated November 17, 2015; Affidavit, Stephen H. Guthrie, dated March 24, 2016

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<sup>12</sup> The names of the authors of the various emails in this exhibit have been redacted; the recipients include members of the Local Board, members of the Boundary Adjustment Committee, and the County Commissioners of Carroll County. The content of the emails indicate that the authors are students, parents of students, teachers, and other members of the community.

The Appellants<sup>13</sup> submitted the following attachments with and/or in support of the Opposition:

1. Notice of Appearance, dated March 18, 2016
2. Affidavit of Ela Wiswakarma, dated March 18, 2016; Affidavit of William N. Sinclair, Esquire, dated March 18, 2016, with the following attachments:
  - A. CCPS Facility Utilization Study, dated December 11, 2013
  - B. Emails from Edmund O’Meally to Bill Sinclair, dated March 17 and 18, 2016
  - C. Educational Facilities Master Plan, dated June 10, 2015
  - D. Email from Jennifer Seidel to Stephen Guthrie, *et al.*, dated November 4, 2015
  - E. Email from Stephen Guthrie and Devon Rothschild, *et al.*, dated December 7, 2015
  - F. Various Charts
  - G. Document titled “Middle School Closures,” undated
  - H. Text Messages between Jennifer Seidel and Jim Doolan
  - I. Text Messages between Jennifer Seidel, Devon Rothschild, Jim Doolan, Bob Lord, Steve Guthrie, and Virginia Harrison
  - J. Emails between Elizabeth Galaida, Desirena Farmer, Amy Niedzalkoski, and Beth Gellman-Beer, dated January 13 and 19, 2016; February 4, 5, and 18, 2016; and March 4, 2016
  - K. CCPS Administrative Regulations; Board Policy BCF: Advisory Councils to the Board of Education of Carroll County, dated March 11, 2015
  - L. ByLaws, Community Advisory Council, CCPS, approved March 30, 2010, revised November 8, 2011
  - M. Minutes, Community Advisory Council Meeting, dated May 11, 2015; Board Agenda Item, dated May 13, 2015; Planning Process; Letter to Parents, undated; Board Agenda Item, dated February 11, 2015

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<sup>13</sup> “Appellants” represents the Appellants who are represented by Mr. Sinclair, who filed the March 21, 2016 Response.

## UNDISPUTED FACTS

Based upon the information of record, I find the following material facts about which there is no genuine dispute:

1. Between 1993 and 2004, Carroll County experienced a historic increase in school enrollment.
2. Since 2005, the school population of Carroll County has steadily declined; this decline is expected to continue for the foreseeable future. Since 2007, the Local Board has expressed concern about the decline, and since 2010, has contemplated ways to adapt its facility usage to address the decline.
3. State aid to local schools is based on a per-pupil funding formula and relative wealth allocation. Due to the decline in enrollment, the Local Board has lost revenue, and has had to eliminate school programs and positions. Loss of revenue has also impacted the Local Board's capacity to pay school employees competitive salaries, which currently rank near the bottom of similarly-situated employees in the State. Because of the lower enrollment, some of Carroll County's schools are underutilized. Overall, school utilization is expected to decline over the next ten years.
4. New Windsor has a student capacity between 400 and 510.<sup>14</sup> The Local Board's optimum size for a middle school is 750. New Windsor's enrollment in 2014 was 396, and is projected to decline to 297. The capacities of Mt. Airy Middle School (Mt. Airy) and Northwest Middle School (Northwest) are each 750 students.
5. Within the next five years, New Windsor will need a roof replacement and a new HVAC system. These improvements would cost approximately \$11,475,000.00.

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<sup>14</sup> The records indicate differences in this number. The November 11 Plan and Final Plan cite a capacity of 430. A chart included in the Educational Facilities Master Plan—2015-2024; Actual and Projected Enrollment, show New Windsor's State Rated Capacity as 510 and its functional capacity as 400. While this number is not consistent, the determination of optimum capacity and under-enrollment remain the same and are unaffected by the difference.

6. The Appellants are parents of students who attend New Windsor.
7. The Local Board has established administrative procedures for public school closings that contain the following procedures and timelines:

### PROCEDURE

#### I. Facilities Master Plan

The Facilities Master Plan for the [Local Board] is updated and approved by the Board on an annual basis. Listed in the plan are new schools, renovations and additions to existing facilities and the closing of obsolete or surplus facilities. The plan covers a ten (10) year period and provides a total system perspective of facilities needs.

Anticipated school closings should be highlighted in the plan as far in advance as possible.

The Facilities Master Plan shall be presented to the [Local Board] at the April meeting of the Board to report format and presented for Board approval at the regular meeting of the Board in June. This allows one month for public comment and questions related to the plan prior to adoption.

#### II. State Mandates

A. Factors to be Considered: Consideration shall be given, at a minimum, to the impact of the proposed closing on the following:

Student enrollment trends;

Age or condition of school buildings;

Transportation;

Education programs;

Racial composition of student body;

Financial considerations;

Student relocation;

Impact on community in geographic attendance area for school or schools, to which students will be relocating.

B. Public Hearing: Concerned citizens shall be permitted to submit their views at a public hearing or to submit written testimony or data on the proposed school closing.

C. Date of Decision: Except in emergency circumstances, the decision to close a school shall be announced at least ninety (90) days before the school is scheduled to be closed, but not later than April 30 of any school year.

III. Local Assumptions

- A. Decisions about utilization of public education facilities should concentrate on equitable delivery of educational services and/or safety. Minimal disruption to all established educational programs should be sought.
- B. In addition to public education program considerations, the percentage of utilization of a public school building should be considered.
- C. The closing of a public school should not be considered unless the building is not essential to the system-wide provision of educational opportunity.
- D. Expenditures related to support services and to the equitable delivery of education program should be kept in balance.
- E. Except in cases of emergency all school closing should be scheduled to occur on July 31 of any year.

IV. Implementation

If the Superintendent of Schools determines that it is appropriate to consider the closing of a public school facility, the following steps shall be employed:

- A. The Director of School Support Services shall, by February 15, prepare a report to the [Local Board] advising the Board of the proposed school closing and the rationale for the recommendation.
- B. A public hearing shall be held to afford citizens the opportunity to express their views orally or to submit written testimony or data on the proposed school closing.
- C. Notification of the public hearing date, deadline for submission of written testimony, and the procedures to be followed by the [Local Board] in making the final decision shall be given through school newsletter and shall be advertised in at least two (2) newspapers having general circulation in the geographic area for the school proposed to be closed and the school or schools to which students will be relocating. The notification shall appear at least two (2) weeks in advance of the public hearing.
- D. The public hearing shall be held no later than March 15.
- E. The deadline for written testimony or data shall be no later than March 31.

- F. Announcement for the school closing will be made by the [Local Board] no later than April 15.
- G. The final decision of the [Local Board] shall be announced at a public session and in writing. The final decision notification shall include the rationale for the closing and address the impact on the State mandated consideration listed in Section II. The final decision shall include notification of the right to appeal to the [State Board] within thirty (30) days after the decision of the [Local Board]. Notification will take place as described above in Section IV, Item C.

(Local Board #41)

- 8. Since at least 2012, the Local Board has explored the issue of school utilization. In April 2012, the Local Board, in conjunction with the Board of County Commissioners (BCC), commissioned a study of facility usage and school consolidation. This study was never completed.
- 9. Ultimately, in 2013, the Local Board hired an independent consultant, MGT of America (MGT), to complete the utilization study and make recommendations. MGT completed the study; on December 11, 2013, MGT presented its final report to the Local Board, and on January 8, 2014, MGT presented the report to the BCC.
- 10. In its report, MGT recommended closing two elementary schools and one middle school, and replacing the three schools with a new K-8 school complex. The MGT report also recommended balancing enrollments and developing clean feeder patterns across the system. The MGT recommendation for the K-8 school did not come to fruition.
- 11. In February 2015, the Local Board approved the Superintendent's<sup>15</sup> recommendation to appoint a Boundary Adjustment Committee (BAC) to address the decline in student enrollment and the effective and efficient use of school facilities, including

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<sup>15</sup> Stephen H. Guthrie.

the possibility of school closures. The BAC was given a charge to produce a report by September 2015.

12. In May 2015, the Superintendent submitted his annual, proposed Educational Facilities Master Plan (EFMP) to the Local Board. The EFMP recommended that the Local Board begin the process to close Charles Carroll, one of the elementary schools noted in the MGT recommendation, for the 2016-2017 school year. The Local Board adopted the EFMP at its June 10, 2015 meeting.
13. On August 26, 2015, the Local Board issued a press release announcing that the Local Board would meet on September 9, 2015. The press release noted that the agenda items of the meeting would include the presentation of the BAC recommendations and noted “[t]here will be time for citizen participation at this meeting. The public is encouraged to attend.” (Local Board #7) The September 9, 2015 meeting was also announced in the September 4, 2015 newsletter of the Office of Community and Media Relations (OCMR).<sup>16</sup> The OCMR newsletter also stated that the agenda items of the meeting would include the presentation of the BAC recommendations and noted “[t]here will be time for citizen participation at this meeting. The public is encouraged to attend.” (Local Board #10)
14. At the September 9, 2015 meeting of the Local Board, the BAC presented its final report. The report contained two options for school closures and redistricting, and contained a timeline for feedback, the public hearing process, and a final decision, and provided contact information for offering feedback, as well as additional information.

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<sup>16</sup> The OCMR is part of the Local Board and publishes a weekly newsletter called “What’s Happening in Carroll County Public Schools.”



15. Option 1 included the closing of Charles Carroll and balancing enrollments across the remaining schools. The BAC determined that Option 1 was insufficient to address the decline in enrollment or adequately reduce expenses.
16. Option 2 recommended the closure of North Carroll, New Windsor, Charles Carroll, Sandymount Elementary School (Sandymount) and Mt. Airy and balancing enrollments across the remaining schools. The BAC recommended this option.
17. At the September 9, 2015 meeting, in which five members of the public offered comment, the Local Board directed the Superintendent and the BAC to develop other options for consideration that would impact fewer students than Option 2.
18. On September 10, 2015, the Local Board issued a press release announcing a Local Board public work session meeting on September 28, 2015. The Local Board also announced the work session through the OCMR's September 11, and 18, 2015 newsletters. On September 18, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for October 14, 2015. The press release noted that there would be time for citizen participation at the meeting and that the public is encouraged to attend. The September 25, 2015 OCMR newsletter also announced the September 28, 2015 BAC work session, noting that although there would be no citizen participation, the public is encouraged to attend. Notice of the October 14, 2015 meeting was also published in the September 25, 2015 OCMR newsletter, which noted that at that meeting, there would be time for citizen participation and the public is encouraged to attend.
19. In response to the Local Board's direction, the BAC produced a draft of Option 3 at the public work session on September 28, 2015.

20. Option 3 recommended the closure of the same three elementary schools as set forth in Option 2, as well as New Windsor and North Carroll. The difference between Options 2 and 3 involved setting different boundaries.
21. At the September 28, 2015 work session, the Local Board asked the BAC to consider another option, which resulted in a draft of Option 4. Option 4 recommended the closing of East Middle School and related relocation of students.
22. On October 6, 2015, the Local Board issued another press release announcing the October 14, 2015 meeting. The press release stated that there would be time for citizen participation at the meeting and that the public is encouraged to attend.
23. On October 9, 2015, the OCMR newsletter also announced the October 14, 2015 meeting, and that its agenda would include hearing additional options from the BAC. The newsletter included the following: "Citizen participation is included in this meeting. However, the time for citizen participation will be limited as the Board has a full agenda. The Board of Education wishes to remind the public that when it provides specific direction to staff regarding boundary line adjustments and potential school closures, four hearings in different parts of the county will be set up to receive citizen input. The Board of Education will consider all public input prior to taking any action on boundary line adjustments or school closures." (Local Board #18)
24. The BAC presented the final version of Option 3 and a draft of Option 4 at the October 14, 2015 public meeting of the Local Board. At the meeting, the Superintendent presented a historical timeline of the demographic and budgetary issues involved in arriving at the various options. Twenty-five citizens addressed the Local Board at the meeting.

25. The OCMR published an announcement of the Local Board's public work session to be held on October 26, 2015, regarding the BAC recommendations in its October 16, and 23, 2015 newsletters.<sup>17</sup>
26. At the October 26, 2015 public work session, the Superintendent determined that Option 4 lacked clarity and viability. The BAC never produced a final version of Option 4.
27. Also at the October 26, 2015 public work session, the Superintendent informed the Local Board that he had met with the BAC and asked it to produce another option, one that would close Charles Carroll, New Windsor, and North Carroll and limit redistricting as much as possible, and that, in the future, the Local Board could consider other closures or boundary adjustments, if needed.
28. On October 27, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for November 11, 2015. The press release stated that the Superintendent would present his recommendation for potential school closures, and that citizen participation would be included in the meeting. The Local Board also announced the November 11, 2015 meeting in the OCMR's November 6, 2015 newsletter. The newsletter also stated that citizen participation was to be included in the meeting.
29. On November 11, 2015, the Superintendent presented a Superintendent's Final School Closure and Boundary Adjustment Recommended Plan (November 11

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<sup>17</sup> The October 16, 2015 OCMR newsletter also announced a town meeting to be hosted by Board President James Doolan and Superintendent Guthrie to be held on October 20, 2015. Members of the community were invited to attend the meeting and address their concerns or ask questions.

Plan).<sup>18</sup> The November 11 Plan recommended the following for the 2016-2017

school year:

- Consolidate Manchester Valley and North Carroll boundaries and combine the student populations at Manchester Valley;
- Adjust New Windsor, Mt. Airy, and Northwest boundaries and redistrict the New Windsor students to Mt. Airy and Northwest;
- Adjust Charles Carroll, Ebb Valley Elementary School (Ebb Valley), Runnymede Elementary School (Runnymede), and William Winchester Elementary School (WW) and redistrict Charles Carroll students to Ebb Valley, Runnymede, and WW;
- Limit other redistricting to Runnymede; Taneytown Elementary School (Taneytown); Elmer A. Wolfe Elementary School (Elmer Wolfe); Westminster Elementary School (Westminster); WW; Ebb Valley; and Manchester Elementary School (Manchester);
- Students whose schools remain open and are affected by boundary line adjustments have an option to remain at their current school under certain conditions, if the parent provides transportation;<sup>19</sup>
- Form a Joint Committee with Carroll County government to determine whether any closed school buildings or grounds are needed for any other school system purpose. If not, the buildings and properties would be transferred back to Carroll County as surplus, and the Carroll County Commissioners would determine the final disposition of the buildings and property.

30. The November 11 Plan recommended the following for the 2017-2018 school year:

the BAC will continue to meet and recommend additional schools to be considered for closing and recommend comprehensive redistricting to balance enrollments among the remaining schools.

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<sup>18</sup> In addition to the Superintendent's presentation and other agenda items, twenty citizens addressed the Local Board regarding school closures and redistricting.

<sup>19</sup> The conditions include students entering into the highest grade at the affected school; students who have siblings who would be enrolled in a different school; and students who currently have an approved out-of-district request to attend an underpopulated school.

31. The November 11 Plan addressed the following in its analysis as to the selection of schools:

New Windsor Middle

The Superintendent agrees with the BAC recommendation that a middle school should be closed and further agrees that an analysis of factors concludes that New Windsor Middle is the viable selection. Like Charles Carroll at the elementary level, New Windsor's capacity of 430 is well below the Board's optimum size for a middle school of 750. New Windsor's current actual enrollment (2014) was 396 and is projected to decline to 297 by the end of the enrollment projection period.

Although East Middle remains a capital priority, the Superintendent does not believe it is feasible to close East Middle. Closure of East would result in large scale relocation of middle school students throughout the county, severely misaligned feeder patterns, and an overall middle school utilization at 98%, which is too high for the most effective operation of schools and would allow no flexibility for unanticipated enrollment changes. Instead, the Superintendent will recommend that the Board include both a modernization and system renovations for East Middle in the Educational Facilities Master plan and CIP as a top priority. This will allow the County the option of either the modernization or replacing major systems in the building.

By contrast, New Windsor Middle's closure will result in a minimum displacement of middle school students. The only students impacted will be the currently enrolled New Windsor students who will be relocated to either Mt. Airy Middle or Northwest Middle.

Closing New Windsor requires the relocation of the regional middle school autism program. The program would be moved to Shiloh Middle School under this plan. Shiloh's current and projected enrollments will more than accommodate the relocation of the autism program without the need for relocating students or making major building modifications.

32. The November 11 Plan listed and analyzed the following: Organizational Efficiencies, Operational Savings, and Capital Cost Avoidance;<sup>20</sup> One-Time and On-Going Offsets to Savings; Reimbursement of State Bond Debt; On-Going Offsets to

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<sup>20</sup> The November 11 Plan described "capital cost avoidance" as an assumption that projects have been or will be approved by Carroll County, but recognized that none of the cited projects for the schools recommended for closure have been funded by Carroll County. The November 11 Plan noted, however, that "in recent years, the County capital plan has focused on systems renovations for our schools, such as roof and HVAC replacements, as funds are available. It is therefore, more reasonable to assume that the County may eventually fund systems renovations as funds are available than it is to assume that they will fund a modernization." (Local Board #27) The system replacements listed for North Carroll in the November 11 Plan are: HVAC system: FY 18: \$3,781,000; Science Classroom Renovations: FY 18: \$1,740,000; and Fire Alarm Replacement: FY 19: \$385,000. These equal a total "cost avoidance" of \$5,906,000.

Savings: Student Transportation; Impact of Declining Enrollment on the School analysis of available revenue sources; school utilization rates; and anticipated growth and yield.<sup>21</sup>

33. The November 11 Plan included the following eight factors and supporting reasons:

**1. Student Enrollment Trends:**

*Overview of Impact*—In order to examine current utilization percentages and to evaluate the impact this recommendation has on these utilization percentages, schools were placed into categories based on their utilization percentages for the ten year projection period (See Appendix C). The following four categories were used: Over-Utilized: >100%; Adequate: 80%-100%; Approaching Under-Utilized: 70%-80%; Under-Utilized <70%. (See Appendix D). Closing the three schools will reduce the system wide K-5 capacity to 29,046. Based on 2014 total enrollment and this new capacity number, total K-12 utilization would increase from 82% to 87%.  
At the high school level:

- Current 2014 total high school utilization is 79%. This plan would increase the total high school utilization to 88%.
- Currently, Manchester Valley and North Carroll have 2014 utilization percentages below 70%. This plan would result in all schools having 2014 utilizations above 70%.
- Currently four (4) high schools are projected to have utilization percentages below 70% between now and 2024. This plan would result in only South Carroll having a projected utilization below 70% at the end of the projection period.

Currently there are no high schools with utilization above 100% for any portion of the utilization period. This plan would result in Manchester Valley having a utilization above 100% during the projection period. However based on a current review of State Rated Capacities, the State Rated Capacity of Manchester Valley would increase to 1,389. After this change, the school would only have a utilization above 100% in 2014 and 2015.

*System Advantages*—This plan improves the total utilization at the elementary, middle, and high school levels. As a result, this option makes a

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<sup>21</sup> The November 11 Plan also included boundary maps, graphs of feeder patterns, graphs of comparative school populations, the following Appendices: Appendix A: Births by Jurisdiction 2003-2013; Appendix B: Migration Charts; Appendix C: Enrollment and Utilization Charts; Appendix D: Color Coded Utilization Charts; Appendix E: Student Relocation Counts; Appendix F: Student Ride Times; Appendix G: Student Distances to School; Appendix H: Student Demographic Analysis; Appendix I: Facilities Utilization and Study Financial Index; Appendix J: Building and Core Staff Costs; Appendix K: In and Out Charts (re: students restricted to and restricted from schools); and a bibliography of references used to compile and analyze the data used to produce the plan.

more efficient use of facility resources which will allow the system to provide more resources toward the instructional program.

*System Challenges*—This plan closes three (3) schools and limits the redistricting to the surrounding schools. Although this focused approach to redistricting allows for the possibility of future closures and minimizes the likelihood that students will be redistricted again in the future, it does not balance utilizations across the county. As a result, several schools will remain under-utilized or over-utilized until a comprehensive redistricting process takes place.

## **2. Age or Condition of Facilities:**

*Overview of Impact*—The Committee rejected the concept of recommending the closure of schools in priority order for modernization. Therefore, with the exception of Charles Carroll, the other schools being recommended for closure are not scheduled for modernization in the 2016-2024 Educational Facilities Master Plan and are rated as being in fair condition.

*System Advantages*—The closure of the three schools in the Superintendent’s plan will result in total capital cost avoidance of \$20,631,000 (detailed above). This (sic) cost avoidance figures recognizes that the County has no plan to fund any modernization project in the future, beyond CCCTC, and focuses on the estimated budget costs for systems renovations at the three schools.

*System Challenges*—Although this plan provides cost avoidance for the systemic renovations at the three schools, the need for additional capital funding to maintain and improve the remaining forty (40) school buildings remains a critical need.

## **3. Transportation:**

*Overview of Impact*—Closing the three schools requires the reassignment of approximately 549 elementary students, 382 middle school students and 737 high school students. In an effort to lessen the impact on student ride time, this plan reassigns students from the closing schools into the adjacent schools. These new boundaries will require that Transportation staff redesign bus routes to meet the new boundaries and new feeder patterns. In our preliminary review of the current school bell times, it will be necessary for Ebb Valley Elementary to change from their current first transportation tier school time of 7:45 a.m.—2:45 p.m. to a third tier time of 9:30 a.m.—4:00 p.m. No other significant school time changes are anticipated; however, significant re-routing of buses will be needed to accommodate the new school boundaries. The average county-wide student (all levels) distance from home to school will increase under this plan to 3.45 miles (see Appendix G).

*System Advantages*—It is anticipated that some additional buses may be necessary to address longer travel distances for some students. However, there is also the possibility of needing fewer buses in some areas due to the decrease in number of schools to be serviced. Charles County Elementary is a

third transportation tier school. Many of the elementary schools contiguous to these three schools are also third transportation tier schools thereby lessening the potential need for additional bus resources.

While more analysis is required, the current (2015-16 school year) number of buses needed to service New Windsor Middle School and North Carroll High School appears sufficient to cover the new middle and high school boundaries and associated transportation requirements.

*System Challenges*—Significant analysis and re-routing of buses will be needed at all levels (elementary, middle, and high). The new boundaries will impact 7% (1668/25,297) of all current students (9/30/14 enrollment). Of those impacted, approximately 1416/1668 students are being relocated due to their school closing. The remaining 252 students relocated are all elementary school students.

#### **4. Education Programs:**

*Overview of Impact*—The recommendation to close New Windsor Middle School and North Carroll High School will require the relocation of the middle school and high school autism programs. The new sites identified by the BAC are Shiloh Middle and Winters Mill High. Furthermore, the closing of these two schools will result in all middle and high schools in the CCPS having more optimal student enrollments.

*System Advantages*—Relocating the high school autism program to Winters Mill High, a more central location, would benefit the school system in reduced transportation costs and ride times for students. In addition, the more optimal enrollments at the secondary level will increase the consistency of educational programs and course offerings across the system.

*System Challenges*—Relocating autism program sites will result in the system incurring one-time costs to modify existing classroom space to meet the specifications of classrooms appropriate for an autism program.

#### **5. Racial Composition of Student Body:**

*Overview of Impact*—The analysis of the racial composition of the student body was conducted by comparing the minimum and maximum percentages of the student population for county schools at each school level, elementary, middle and high. In addition to the six racial designations reported to the Maryland State Department of Education (African American, American Indian or Alaskan Native, Asian, Pacific Islander, white, and Multi-Racial), analysis included Hispanic students as well as students in the special services groups including students on Free and Reduced Meals (FARMS) which is the federal proxy for poverty, students identified as Limited English Proficient (LEP), Special Education students with Individual Education Plans (IEP), and students receiving services under Section 504 of the Rehabilitation Act of 1973, as amended (Sec 504). In the recommendation, no area reviewed



increases or decreases more than 1% from the minimum or maximum percentage.

At the elementary level, the highest percentage of FARMS students increases from 44% to 45% and this highest percentage of IEP students decreases from 16% to 15%. Both of these changes occur at Taneytown. Additionally, the highest percentage of LEP students increases from 5% to 5.1%. This change occurs at William Winchester.

At the middle level two changes in demographics occur, both related to Northwest Middle. First, the highest percentage of FARMS students increases from 33% to 34%. Additionally, the highest percentage of Hispanic students changes from 2% to 3%. This change is not an increase at Northwest, but do (sic) to the closure of New Windsor which was at 2%.

At the high school level three changes in demographics occur. First, the highest percentage of FARMS students increases from 34% to 35%. Next, the highest percentage of 504 students decreases from 5% to 4%. Both of these changes occur at Francis Scott Key. Finally, the lowest percentage of students identified as Multi-racial increases from 1% to 2%. This occurs at Manchester Valley.

*System Advantages*—No system advantages relative to the racial composition of the student body are noted.

*System Challenges*—No system challenges relative to the racial composition of the student body are noted.

## **6. Financial Considerations:**

*Overview of Impact*—As noted above in the report, the Superintendent took a more realistic approach to determining the likely capital cost avoidance. This differs from the approach in the original BAC Report, as the BAC was limited to summarizing the budget estimates of approved projects in the Board's CIP. The closure of the three schools in Superintendent's plan will result in a total capital cost avoidance of \$20,631,000 (detailed above). This cost avoidance figures recognizes that the County has no plan to fund any modernization project in the future, beyond CCCTC, and focuses on the estimated budget costs for systems renovations at the schools.

There will also be an overall operational savings of \$5,119,463 based on the eliminated core staff and core building costs for the three school closures (See Appendix J). The amount of savings excludes any offsets that may be required for school closure, such as increased transportation costs.

*System Advantages*—The capital cost avoidance of \$20,631,000 will allow for a reprioritization of capital requests for systems renovations which are backlogged in the CIP and the years beyond the six-year CIP window. As noted in the report above, the Superintendent will recommend in future CIP requests both modernizations and systems replacements for the highest priority schools.

The \$5,119,463 in operational savings from the closure of the three schools offers the Board revenue within the budget to address system needs and priorities. The Board is pressured by annual reductions in state aid based significantly on declining student enrollment. Additionally, the Board has highlighted competitive employee salaries as a primary goal, which requires a large infusion of revenue. The school closure savings could represent a small portion of the revenue needed for that goal. Potentially, the core staff reduced in the proposed school closures could become reallocated positions focused on identified system needs that have remained unfunded such as special education, gifted and talented, and resource teachers.

Current student enrollment and ten year enrollment projections illustrate that there is sufficient capacity across the system to support the proposed closures. The resulting alignment of enrollment with capacity will create a more efficient and effective delivery of staffing and other resources to support schools while allowing some flexibility for program development and enrollment shifts.

*System Challenges*—Based on the school closures in this plan, the middle and high school regional autism centers will be relocated. There would be an initial cost, one-time, that would be required to make these changes. The cost will be limited to no more than \$100,000 total as a high estimate. This is not an impediment to the overall \$5 million dollars in recurring cost reductions. The estimate cost for on-going offsets due to student transportation changes is less than \$300,000. While this reduces the operational savings, the \$5 million in savings is not greatly impacted.

## **7. Student Relocation:**

*Overview of Impact*—This plan closes three schools which results in new school boundaries for schools at all levels. Based on 2014 enrollment, the closure of Charles Carroll Elementary School, New Windsor Middle School, and North Carroll High School requires the reassignment of 1,668 (549 elementary, 382 middle, and 737 high) students.

*System Advantages*—This plan closes three schools and limits the redistricting to the surrounding schools. This focused approach to redistricting allows for the possibility of future closures and minimizes the likelihood that students will be redistricted again in the future. Although this plan does not balance enrollments system wide, it does still achieve the goal of reducing the operational costs of having too much capacity system-wide.

*System Challenges*—This plan requires the reassignment of 1,668 students, or approximately 7% of all students. Although this plan does not redistrict as many students as other options, it still requires the relocation of a large number of students. As a result this will require adjustments for parents and students attending new schools, and potential school time/bus schedule changes. This makes the elementary to middle feeder pattern more

fragmented, but improves the middle to high feeder pattern. Currently there are seven elementary schools whose students will be split and attend more than one middle school. This plan increases that number to eight elementary schools whose students are split. At the secondary level, there are currently four middle schools whose students are split and attend more than one high school. This plan would result in only two middle schools whose students are split and attend multiple high schools.

### **8. Impact on Community in Geographic Attendance Area for School or Schools to which Students will be Relocating**

*Overview of Impact*—This plan places Charles Carroll Elementary students into three adjacent school attendance areas: Ebb Valley Elementary, Runnymede Elementary, and William Winchester Elementary. This plan does not balance enrollments, so it does not look to address the over-utilization of William Winchester Elementary. The reason for this approach was the possibility of future school closures. The result of this plan is that these three schools have 2014 utilizations between 90% and 107%. Additionally, this plan would require Ebb Valley Elementary to move from a first tier transportation school to a third tier transportation school.

This plan places New Windsor Middle students into two adjacent middle schools: Mt. Airy and Northwest. As a result, Mt. Airy and Northwest will have 2014 utilizations of 102% and 92% respectively. Although this results in Mt. Airy Middle being above 100% projections indicate the utilization will fall below 100% after 2015. All middle schools are 2<sup>nd</sup> tier schools, so this option does not require any middle schools to change tiers.

This plan places North Carroll High students into two adjacent high schools, Manchester Valley High and Westminster High. As a result, Manchester Valley and Westminster will have 2014 utilizations of 112% and 87% respectively. Although this plan leaves Manchester Valley above 100%, a change to the State Rated Capacity of the building will improve this utilization number. Based on a current review of State Rated Capacity, the State Rated Capacity of Manchester Valley would increase to 1,389. After this change, the school would only have a utilization above 100% in 2014 and 2015. This option does not require any high schools to change transportation tiers.

*System Advantages*—This plan focuses on only redistricting students related to the closure of the three schools. Although this does result in some uneven utilizations at certain schools, it does minimize the likelihood that the same students will be redistricted again in the future.

*System Challenges*—This plan requires Ebb Valley Elementary to change from a first tier school to a third tier school. This will require the community to adjust to school starting and ending one hour and forty five minutes later.

34. On November 12, 2015, the Local Board issued a press release announcing that public hearings regarding proposed school closures and boundary adjustment would be held on December 1, 2, and 3, 2015, at three different locations. The press release indicated that boundary maps based on the proposed school closures would be on display at the meeting, and that oral testimony would be permitted, but would be limited in order to allow as many individuals as possible to speak, but that individuals could submit written testimony and/or data in lieu of an oral presentation.
35. The November 12, 2015 press release also announced a special meeting of the Local Board on December 9, 2015, to be held at Westminster High School. The press release indicated that members of the public would be permitted two minutes per person to speak, or present written testimony or data prior to the Local Board's final vote.
36. On November 17, 2015, the Local Board placed public notices in the *Baltimore Sun* and *Carroll County Times*, both newspapers of general circulation delivered and sold daily throughout Carroll County, including all geographic areas impacted by the November 11 Plan. These notices provided the public with detailed information regarding the November 11 Plan and the public hearings concerning the proposed school closures and boundary adjustments to be held on December 1, 2015 at North Carroll; on December 2, 2015 at Winters Mill High School; and on December 3, 2015 at Francis Scott Key High School. The notices all included information regarding the public hearings related to a special Local Board meeting to take place on December 9, 2015. The notices also explained the procedures for the public to submit oral and written testimony at the public hearings.

37. On November 24, 2015, the OCMR newsletter announced the December 1, 2, and 3 public hearings and a regular Local Board meeting on December 9, 2015, and a special Local Board meeting regarding school closures and boundary adjustments on December 9, 2015. The newsletters also included information regarding public comment/written testimony/data to be offered at the December 1, 2, and 3, 2015 meetings and at the December 9, 2015 special meeting.
38. On November 24, 2015, the Local Board issued a press release announcing the December 9, 2015 special Local Board meeting. The press release also stated that the meeting would address the November 11 Plan and that members of the public would be permitted two minutes per person to speak or present written testimony of data.
39. On December 3, 2015, Governor Larry Hogan wrote to Warren I. Sumpter, President of the Maryland Association of Boards of Education and Dr. Theresa Alban, Public School Superintendents Association of Maryland, informing them that he intended to include new funding in the FY-17<sup>22</sup> budget to “assist local jurisdictions that have been facing the challenge of maintaining adequate funding during the same time that their student enrollments have declined.” The Governor’s letter noted Carroll County’s 7% decrease in enrollment, as well as greater levels of decreased enrollment in other counties. In the letter, the Governor proposed stop-gap funding of \$4 million for Carroll County schools, and also expressed an interest in deferring school closings to create more time to create a more comprehensive plan.
40. The December 4, 2015 OCMR newsletter announced the December 9, 2015 regular and special Local Board meetings, and included information regarding citizen participation.

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<sup>22</sup> Fiscal Year 2017.

41. The Local Board also posted messages to all of the school system parents via the Blackboard Contact Message Center (Blackboard)<sup>23</sup> on November 13, 25, and 30 and December 2 and 3, 2015, providing notice of the public hearings on school closures and boundaries to be held on December 1, 2, and 3, 2015, and of the special Local Board meeting to be held on December 9, 2015.
42. The Local Board held a special board meeting on December 9, 2015. At the beginning of the meeting, eighteen citizens offered comments regarding school closures and redistricting.
43. Following the citizen's comments, the Superintendent reviewed the Final Plan. The Final Plan presented at the December 9, 2015 meeting was an updated version of the November 11 Plan. The Final Plan was substantially identical to the November 11 Plan, with some additions that resulted from information obtained since the November 11 Plan was published. The additional material consisted of information regarding the issue of reimbursement of State bond debt, indicating a total maximum outstanding State debt on the three schools of \$653,347; updated utilization and enrollment analysis using the 2015 enrollment figures as the baseline;<sup>24</sup> and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen-minute shift to the school schedule.

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<sup>23</sup> Blackboard is an internet-based information system on which educational institutions can post messages accessible to participants.

<sup>24</sup> This change resulted in the following language on p. 16 of the Final Plan compared to p. 15 in the November 11 Plan (at the fourth bullet point under "At the high school level" and below that section): "Currently there are no high schools with utilization above 100% for any portion of the projection period. Based current, approved State Rated Capacities, the State Rated Capacity of Manchester Valley would increase to 1,383. After this change, the school would only have a utilization above 100% based on 2015 State-certified enrollments. During the time period of the BAC process until the November 11, 2015 Board meeting, the most recent State-Certified enrollment were the September 30, 2015. Accordingly, the BAC Report, the options prepared for the Board, and the Superintendent's November 11, 2015 Recommended Plan used the 2014 enrollment figures as the initial numbers. Subsequent to the [Appendices] C and D have been updated in this version of the Superintendent's final Recommended Plan to apply the 2015 enrollment figures as the baseline." (Local Board #2)

44. In his presentation, the Superintendent reviewed all five options that had been considered by the Local Board, the points of discussion and public hearings, information on additional state funding, the actions of the Local Board, and the Final Plan. Following the Superintendent's report, Assistant Superintendent Jonathan O'Neal reviewed the boundary adjustment recommendations and maps for each school, outlining the current attendance boundaries and proposed boundaries under the Final Plan.
45. Ultimately, the Superintendent offered the Final Plan, which included the recommendation of the November 11 Plan to close Charles Carroll, New Windsor, and North Carroll, effective July 1, 2016. The Superintendent requested that the November 11 Plan, updated by the Final Plan, be incorporated by reference into a motion as the Local Board's Final Plan. The Superintendent, in his presentation, also recommended that the Superintendent provide written notification of the Local Board's decision to the affected communities in the geographic attendance areas of the schools to be closed and the schools to which a student would be relocated. The notification would also advise recipients of the right to appeal the Local Board's decision to the State Board within thirty days of the date of the decision.
46. Local Board member Virginia Harrison moved that the Final Plan be accepted. The motion was seconded by Local Board member and Vice President Bob Lord. Four Local Board members, President James Doolan, Mr. Lord, Ms. Harrison, and Jennifer Seidel voted in favor of the Final Plan; one Local Board member, Devon Rothschild, voted against the Final Plan. Matthew Saxton, Student Representative to the Local Board, expressed agreement with the Final Plan.

47. On December 10, 2015, the Superintendent sent a letter to parents, guardians, and community members describing the events of the December 9, 2015 meeting, including the motion approved by the Local Board and a copy of the Final Plan. The letter also included a statement informing the recipients of the right to appeal the Local Board's decision to the State Board, in writing, within thirty days of the decision.
48. On December 10, 2015, the Local Board posted a message to all CCPS parents via Blackboard, containing a notice of the Local Board's decision.
49. On December 10, 2015, W. Carey Gaddis, Supervisor of Community & Media Relations, CCPS, issued an email to personnel at all of the affected schools mandating them to place the following message on the homepage of each school's website: "On Wednesday evening, December 9, the Board of Education approved a school closure and boundary adjustment plan. (name of school) is one of the schools impacted in the plan.<sup>25</sup> Please visit the Carroll County Public Schools website at <http://www.carrollk12.org/boe/boundaryadjustment/default.asp> to review the official notification of the Board's decision and the final report and recommendation." (Local Board #40)
50. On January 6, 2016, the Appellants appealed the Local Board's decision with the State Board.

## **DISCUSSION**

### **Legal Framework**

The law applicable to this matter is the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the OAH, and the COMAR regulations governing appeals

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<sup>25</sup> Each affected school was to insert the name of the school in the message.



to the State Board. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 28.02.01 and, COMAR 13A.01.05.02 through 13A.01.05.09. Relevant case law and State Board decisions are also applicable, if relevant.

The OAH's Rules of Procedure provide for consideration of a motion for summary decision under COMAR 28.02.01.12D. This regulation provides as follows:

D. Motion for Summary Decision.

- (1) Any party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Motions for summary decision shall be supported by affidavit.
- (2) The response to a motion for summary decision shall identify the material facts that are disputed.
- (3) An affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.
- (4) The judge may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Summary decision is appropriate where there is no genuine issue of material fact and a party is entitled to prevail as a matter of law. The requirements for summary decision under COMAR 28.02.01.12D are virtually identical to those for summary judgment under Maryland Rule 2-501, which contemplates a "two-level inquiry." See *Richman v. FWB Bank*, 122 Md. App. 110, 146 (1998). The *Richman* court held in pertinent part that:

[T]he trial court must determine that no genuine dispute exists as to any material fact, and that one party is entitled to judgment as matter of law. ... In its review of the motion, the court must consider the facts in the light most favorable to the non-moving party. ... It must also construe all inferences reasonably drawn from those facts in favor of the non-movant. ...

To defeat a motion for summary judgment, the non-moving party must establish that a genuine dispute exists as to a material fact.... A material fact is one that will somehow affect the outcome of the case. ... If a dispute exists as to a fact that is not material to the outcome of the case, the entry of summary judgment is not foreclosed....

*See also King v. Bankerd, Inc.*, 303 Md. 98, 111 (1985) (quoting *Lynx v. Ordnance Products, Inc.*, 273 Md. 1, 7-8 (1974)).

When ruling on a motion for summary decision, an administrative law judge may also consider admissions, exhibits, affidavits, and sworn testimony for the purpose of determining whether a hearing on the merits is necessary. *See Davis v. DiPino*, 337 Md. 642, 648 (1995).

In reviewing a motion for summary decision, an administrative law judge may be guided by case law that explains the nature of a summary judgment in court proceedings. The Supreme Court has noted, regarding the standard for summary judgment, “[b]y its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion. *Anderson*, 477 U.S. at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. *See Engineering Mgt. Serv., Inc. v. Maryland State Highway Admin.*, 375 Md. 211, 226 (2003). Additionally, the purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. *See Goodwich v. Sinai Hospital of Baltimore, Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby*

*Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). Only where the material facts are conceded, undisputed, or uncontroverted and the inferences to be drawn from those facts are plain, definite and undisputed does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

The Court of Special Appeals has discussed what constitutes a “material fact,” the method of proving such facts, and the weight a judge ruling upon such a motion should give the information presented:

“A material fact is a fact the resolution of which will somehow affect the outcome of the case.” . . . “A dispute as to a fact ‘relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment.’” . . . We have further opined that in order for there to be disputed facts sufficient to render summary judgment inappropriate “there must be evidence on which the jury could reasonably find for the plaintiff.”

...  
[T]he trial court, in accordance with Maryland Rule 2-501(e), shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. . . . Thus, once the moving party has provided the court with sufficient grounds for summary judgment, [i]t is...incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this *by producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit. . . . “Bald, unsupported statements or conclusions of law are insufficient.”

*Tri-Towns Shopping Ctr., Inc., v. First Fed. Sav. Bank of W. Md.*, 114 Md. App. 63, 65-66 (1997) (citations omitted) (emphasis in original).

Moreover, when a motion for summary judgment is supported by an affidavit and exhibits and no opposing affidavit is filed, the non-moving party is considered to have admitted, for the purpose of summary judgment, all statements of fact in the moving party’s affidavit.

*Alamo Trailer Sales, Inc., v. Howard County Metropolitan Comm’n*, 243 Md. 666, 668 (1966) (property owners’ allegation that public hearings related to classification and taxation of land as

commercial property were not held according to law was insufficient to preclude summary judgment in the absence of an affidavit supporting the allegation). A mere general denial of facts set forth in the moving party's affidavit is not enough to show that there is a general dispute as to a material fact. *Id.*

Regulations Relating to Appeals to the State Board

Decisions of a local board involving a local policy shall be considered "*prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal." COMAR 13A.01.05.05A. "The State Board will uphold the decision of the local board of education to close and consolidate a school unless the facts presented indicate its decision was arbitrary and unreasonable or illegal." COMAR 13A.02.09.03B.

Under COMAR 13A.01.05B, a decision may be arbitrary or unreasonable if it is: 1) contrary to sound educational policy; or, 2) if a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. "Arbitrary" (and "capricious," its usual companion) is best understood as a reasonableness standard, and so long as an administrative decision is reasonable or rationally motivated, it will not be struck down as arbitrary or capricious. *Harvey v. Marshall*, 389 Md. 243, 296-97 (2005). Some examples of decisions that are arbitrary or capricious include situations where an agency acts in a way contrary to or inconsistent with an enabling statute's language or policy goals, if an agency acts irrationally inconsistent with previous agency decisions, or if the agency treats similarly situated individuals differently without a rational basis for the deviation. *Harvey*, 389 Md. at 303-04; *Montgomery County v. Anastasi*, 77 Md. App. 126, 138-39 (1988). Arbitrary and capricious review must be performed on a case-by-case basis, as the outcome necessarily depends on the specific facts of each case. The test is whether a reasoning mind could have reached the factual

conclusion the agency reached, consistent with the proper application of controlling legal principles. *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 420 (1997). Moreover, in such a case, great deference must be accorded to the agency. *Id.* See also *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628 (2002).

Under COMAR 13A.01.05.05C, a decision may be illegal if it is one or more of the following: 1) unconstitutional; 2) exceeds the statutory authority or jurisdiction of the local board; 3) misconstrues the law; 4) results from an unlawful procedure; 5) is an abuse of discretionary powers; or 6) is affected by any other error of law.

Under COMAR 13A.01.05.05D, the Appellants have the burden of proof, by a preponderance of the evidence, at a hearing on the merits. As this is a Motion for Summary Affirmance, the burden of proof is on the Local Board as the moving party. Generally a party asserting the affirmative of an issue bears the burden of proof in a proceeding before an administrative body. See *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)) (“the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body”).

The administrative law judge shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations.

COMAR 13A.01.05.07E. The State Board shall make a final decision in all appeals. COMAR 13A.01.05.09A. An order granting a Motion for Summary Affirmance would have the effect of terminating the appeal, and thus a recommendation that the Motion be granted is appropriate as the State Board, and not the administrative law judge, has the final decision-making authority. An order denying the Motion would not have the effect of terminating the appeal, and thus the administrative law judge would have the authority to deny the motion without referring the

decision to deny the Motion to the State Board. *See also* COMAR 28.02.01.25C, the OAH Rules of Procedure, which provides that “[e]xcept as otherwise provided by law, when the judge is the final decision maker, the decision is the final decision for purposes of judicial review.”

*Procedures Governing School Closings*

A local board of education<sup>26</sup> shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01A. COMAR 13A.02.09.01B-D sets forth the following guidelines for those procedures:

B. The procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on the following factors:

- (1) Student enrollment trends;
- (2) Age or condition of school buildings;
- (3) Transportation;
- (4) Educational programs;
- (5) Racial composition of [the] student body;
- (6) Financial considerations;
- (7) Student relocation; [and]
- (8) Impact on [the] community in [the] geographic attendance area for [the] school proposed to be closed and [the] school, or schools, to which students will be relocating.

C. The procedures shall provide, at a minimum, for the following requirements:

- (1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following:
  - (a) The public hearing shall take place before any final decision by a local board of education to close a school;
  - (b) Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the public meeting.

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<sup>26</sup> Under COMAR 13A.01.05.01B(6), the Respondent is a “local board.”

- (2) Adequate notice to parents and guardians of students in attendance at all schools that are being considered for closure by the local board of education. The following apply:
- (a) In addition to any regular means of notification used by a local school system, written notification of all schools that are under consideration for closing shall be advertised in at least two newspapers having general circulation in the geographic attendance area for the school or schools proposed to be closed, and the school or schools to which students will be relocating;
  - (b) The newspaper notification shall include the procedures that will be followed by the local board of education in making its final decision;
  - (c) The newspaper notification shall appear at least 2 weeks in advance of any public hearings held by the local school system on a proposed school closing.

D. The final decision of a local board of education to close a school shall be announced at a public session and shall be in writing. The following apply:

- (1) The final decision shall include the rationale for the school closing and address the impact of the proposed closing on the factors set forth in Regulation .01B;
- (2) There shall be notification of the final decision of the local board of education to the community in the geographical attendance area of the school proposed to be closed and school or schools to which students will be relocating.
- (3) The final decision shall include notification of the right to appeal to the State Board of Education as set forth in Regulation .03.

The procedures established by the Local Board essentially mirror those set forth in COMAR 13A.02.09.01.

### Analysis

It is abundantly clear that the Appellants, as well as many others in the New Windsor community, strongly wish for New Windsor to remain open, and have the Local Board's adoption of the Final Plan delayed, if not reversed. The present issue, however, is whether the Appellants have raised genuine issues of material fact that would result in a finding that the Local Board is not entitled to summary affirmance as a matter of law.

As stated above, COMAR 13A.01.05.05A provides that the decision of a local board involving local policy be considered *prima facie* correct, and that the State Board may not substitute its judgment unless the decision is arbitrary, unreasonable, or illegal. In the instance of school closings or consolidations, the State Board will uphold the decision of a local board under similar standards, that is, unless the facts presented indicate that the decision was arbitrary and unreasonable or illegal. COMAR 13A.02.09.03B.

In this matter, the Appellants have not offered any genuine issues of material fact in dispute to demonstrate that the Local Board acted unreasonably. The Appellants' Response disputes some of the conclusions reached by the Local Board and questions the choices made by the Local Board. However, the arguments offered by the Appellants reflect a difference of opinion, but offer no creditable or substantive evidence to assert a genuine dispute of the material facts upon which the Local Board's Motion is based, facts that support the Local Board's reasonable and legal actions in adopting the Final Plan.

In their Response, the Appellants allege that it was improper for the Local Board to conduct and create a system-wide analysis of school closings and further, that the Local Board failed to take all of the regulatory factors into consideration when designating New Windsor as one of the schools to be closed. In part, the Appellants base their contention as to the breadth of the Final Plan on wording in COMAR 13A.02.09.01B(1) that uses the singular in its designation of "school" and "closing," arguing that this language mandates that only an individual school be considered, and not made part of a comprehensive plan.<sup>27</sup> The Local Board counters the Appellants' argument, noting that Section 4-120(a) of the Education Article provides that "if a county board considers it practicable, it shall consolidate schools," and emphasizes the use of the

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<sup>27</sup> In their Supplemental Memorandum, the Appellants further argued that "consolidate" has a different meaning than "close," and the statute's use of that term has no bearing on the closing of schools. I found that argument unavailing; by logic, if schools are consolidated, it would mean that where once there might have been two or more schools, after consolidation, there would be fewer left standing, necessarily indicating a closure.



plural. Md. Code Ann., Educ. § 4-120(a) (2014). The Local Board further notes that the State Board has recognized and approved a number of incidences where county school systems underwent a system-wide analysis and ultimately consolidated schools. *See Blazejack v. Kent County Bd. of Educ.*, MSDE Op. No. 10-41; *Martin v. Garrett County Bd. of Educ.*, MSBE Op. No. 12-35; *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09. The language of the statute, which trumps that of the regulation, which must be in concert with its controlling statute, plainly does not restrict the consolidation of schools to a single unit. *See Dep't of Human Res., et al., v. Hayward*, 426 Md. 638, 658 (2012) (regulations promulgated by administrative agencies must be consistent, and not in conflict with the statute the regulation is intended to implement). Moreover, clearly the State Board has not restricted school closings to one school alone, and has permitted school systems to close and consolidate multiple schools when necessary.

The Appellants' also contend that the Local Board failed to consider all of the factors required in COMAR 13A.02.09.01B. The Local Board counters the Appellants' argument, and sets forth, in their Reply and Supplemental Reply, its analysis of the eight factors *vis a vis* New Windsor, and how that examination led it to conclude that closing New Windsor was reasonable. The Local Board delineated the factors and clearly outlined its consideration of each. The Local Board recognized that *student enrollment trends* indicated that New Windsor, whose capacity was less than either of Mt. Airy or Northwest, and below the Local Board's optimum size, had a student population that was below capacity and diminishing. The Local Board also took into consideration that the closure of New Windsor would only be minimally disruptive to the system and only impact the two other schools. The Local Board considered the *age and condition* of the school and calculated that closing New Windsor, which had been scheduled for a roof replacement and HVAC upgrade, would avoid capital costs of \$11,475,000. The Local Board analyzed the *transportation* changes required to implement the Final Plan, and found that bus

service for New Windsor students assigned to adjacent schools would be sufficient and that transportation regarding feeder patterns for the students who would move on to high school would align.

The Local Board took a more global view of *education* programs and concluded that closing New Windsor and North Carroll and conforming to optimal student enrollments would increase programming and courses throughout the system. The Local Board also investigated the impact of closing New Windsor on students with IEP's, on Section 504 plans, and students with limited English proficiency and determined that it would have a minimal impact. The Local Board also determined that the relocation of the middle school autism program could be successfully accomplished. The Local Board also concluded that the *racial composition* of schools would essentially not be affected by the Final Plan, and noted that the Appellants did not allege that the Local Board failed to include *financial considerations* in its adoption of the Final Plan.

When the Local Board considered *student relocation*, it took into account the fact that students redistricted to Mt. Airy and Northwest would remain with the same students from middle school through high school, a transition that would cause minimal disruption. While it may not seem significant to the New Windsor students and their families at this time, the Local Board, in seeking to limit general displacement throughout the system, did consider that only 7% of the county students would be redistricted and that the Final Plan would reduce the likelihood of future redistricting.

As to the eighth factor, *impact on the community*, the Local Board contends that aligning the feeder pattern of the redistricted New Windsor students keeps peers together throughout the remainder of their school careers, and further notes that it reached out to the Community Advisory Counsel. The Local Board further emphasizes that, as stated in *Marsh*, the decisive

element to be examined for this factor is the educational impact on a community from a school closure, an element that the Local Board has examined and fulfilled.

The Appellants' unsupported contention, that the Local Board did not consider all eight factors, is refuted by the evidence. The State Board has not mandated an equal allocation of significance or scrutiny for all eight factors. To the contrary, the State Board has held that "as long as there is adequate reason, supported by at least one criterion, the local board's decision in a school closing case should prevail." See *Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000) at 53 (citing *Kensington Elementary School PTS v. Montgomery County Bd. of Educ.*, MSBE Op. 82-31 (1982) at 681).

The regulations do not mandate that each factor must be identically weighted, simply that each be given consideration. In this case, while the Local Board may have placed more significance on some factors over others (such as student enrollment trends and financial considerations over racial composition), it is clear that the Local Board reasonably considered each factor, as required by law, and reached a rational conclusion to adopt the Final Plan. The Local Board fulfilled its obligation to consider each of the eight factors and properly described its actions and rationale for each in the Final Plan. The determination of these factors, based on analysis and reasoning, supported the Local Board's decision. While the Appellants may not agree with the Local Board's conclusions, that alone does not render the Local Board's decision arbitrary or unreasonable.

The Appellants place great significance on areas in which they believe the Local Board acted illegally. The Appellants base this claim on what they term "numerous procedural violations," and recite a litany of alleged breaches and/or failure to follow the Local Board's Administrative Procedures included in the EFMP. Although the Appellants assert that the

alleged procedural errors are determinative, upon review, none of the Appellants' allegations rise to a material fact, and remain essentially, minimal, with bare significance.

The Appellants contend that the Local Board violated procedures that set forth specific dates for reporting, holding public hearings, and announcements, by February 15, March 15 and April 15, respectively. The fact remains, as presented as evidence supported by affidavit, that the Local Board not only adhered to this schedule, but improved upon it. The Local Board presented the November 11 Plan on November 11, 2015, months before the February [2016] deadline described in the EFMP. Multiple public hearings were held before and after this date, even when the EFMP and COMAR 13A.02.09 only mandate one.<sup>28</sup>

Similarly, the Appellants' claim that the Local Board never held public hearings on the correct plan is without foundation. The Local Board correctly notes that the Final Plan is substantially identical to the November 11 Plan, albeit with a few semantic tweaks and updates that have no significant impact. The essential portions of the November 11 Plan were unchanged by the Final Plan and any additions to the November 11 Plan did not alter the factors considered by the Local Board or its ultimate conclusion.<sup>29</sup>

The Appellants further assert that the Local Board did not reveal anticipated school closings as far in advance as required by the EFMP. The Local Board counters by quoting portions of the EFMP that plainly notes that decreased enrollment and commensurate lower funding, combined with schools operating at diminished capacity would necessitate "developing options to match student enrollment with school capacities," (Ex. 5), and also notes that this was

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<sup>28</sup> The Appellants further complain that the November 11 Plan was presented by the Superintendent, rather than the Director of School Services. This is a *de minimus* error, if at all, as the State Board has held that a recommendation is not even considered a "proposed school closing" until made by the Superintendent. See *Blazejack*, MSBE Op. No. 10-41 at 37-39.

<sup>29</sup> For example, the Appellants assert that the 2015 figures amended to the Final Plan only cite students at Mt. Airy and Northwest. However, the addition of the figures were only included to demonstrate what the populations of Mt. Airy and Northwest would be after the absorption of the New Windsor students, and had no impact on the findings regarding enrollment at New Windsor.

discussed at a public-attended Local Board meeting on February 11, 2015. The topic of closures continued to be discussed and, the EFMP's charge to the BAC included exploring those issues.

The Local Board also maintains that neither the Local Board's Administrative Procedures nor COMAR 13A.02.09 specifies a time frame or deadline for a local board to "anticipate" school closings, and that the Local Board properly followed all of the regulatory time frames in its formation and adoption of the Final Plan. As to the Appellant's allegation that the Local Board failed to properly inform the Community Advisory Council (CAC), the Local Board demonstrated that representatives of the Local Board informed the CAC of the process, kept it updated and sought its input.

The Appellants combine all of these alleged procedural deficiencies to charge the Local Board with acting illegally in its adoption of the Final Plan. I find that the Local Board has successfully refuted the Appellants arguments; however, even if some of the alleged violations had been established, the Appellants' contention that they defeated the Final Plan would remain unavailing. The Appellants accuse the Local Board of violating the *Accardi* doctrine<sup>30</sup> by failing to follow its own procedures. They also cite the Maryland case which discusses *Accardi*, *Pollock v. Patuxent Institution Board of Review*, 374 Md. 463 (2003). *Pollock*, however, does not support the Appellants' appeal, but rather bolsters the Local Board's argument regarding process.

The Court in *Pollock* held that an inflexible adherence to *Accardi* could be too strict or general, and that even if an agency failed to comply with its own rules, "claimants must demonstrate prejudice resulting from the violation to have the agency action invalidated." *Pollock*, 347 Md. at 496. The Appellant have not shown prejudice in this matter in any way related to any alleged breaches of procedure. Moreover, *Pollock* particularly addresses the issue

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<sup>30</sup> See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (holding that federal agencies must follow their own rules and that a failure to do so invalidates regulatory agency action).

of agency noncompliance in circumstances where fundamental rights guaranteed by the Constitution or statute are implicated. *Id.* at 503. In this matter, however, no fundamental rights come into play. The court has held that students have “no right or privilege to attend a particular school.” *Bernstein v. Bd. of Educ. of Prince George’s County*, 245 Md. 464, 472 (1967); *see also Elprin v. Howard County Bd. of Educ.*, 57 Md. App. 458, 464 (1984). Simply put, the Appellants have not shown that any procedural deviations have either prejudiced them or interfered with any of their fundamental rights.

The Local Board has demonstrated that there is no material fact in issue as to whether its decision to adopt the Final Plan was legal. Its decision was not unconstitutional; did not exceed the statutory authority or jurisdiction of the Local Board; did not misconstrue the law; did not result from an unlawful procedure; was not an abuse of discretionary powers; and was not affected by any other error of law.

In short, the Local Board’s adoption of the Final Plan was not illegal. COMAR 13A.01.05.05C. The Local Board followed the process set forth in its own policy documents, as well as that provided in COMAR 13A.02.09.01. Authorized to engage in school closings, the Local Board conducted numerous public meetings, distributed information, allowed public comment, published its findings in communication outlets of record, and, in total, engaged in all of the actions it was mandated to do by law. The Appellants’ allegations of illegality are unavailing.

The Local Board’s basis for adoption of the Final Plan may be controversial, and opposed by all of the Appellants of the consolidated cases, but it was neither arbitrary, unreasonable, nor illegal. The Local Board became aware of Carroll County’s demographic challenges a number of years prior to the adoption of the Final Plan, and comprehensively acted to address those pressing concerns. It followed its own guidelines and State mandated procedure to collect and

analyze relevant data, consider options, publish notice, provide numerous opportunities for community input, and reach a reasoned decision. It is likely that any option adopted by the Local Board would have stimulated some controversy; pressing financial issues forced the Local Board to make decisions that would have been unpopular to at least some portion of the school community. Failing to act, however, was not an option. The decline in overall enrollment precipitated reductions in financial resources, and the Local Board could not prudently maintain the status quo. Difficult decisions had to be made, and the Local Board went to great lengths to perform the research and render a reasonable decision that took into account all of the regulatory factors that were required in acting to close or consolidate schools.

Clearly, the Appellants care a great deal about New Windsor. The Local Board, however, must take a comprehensive view, and objectively make decisions based on financial, demographic and other relevant data in order to serve the entire system. The Local Board has demonstrated that its decision was premised on a broad spectrum of considerations, as detailed above. Thus, its decision was not arbitrary and unreasonable and was consistent with a conclusion that could have reasonably been reached by a reasoning mind. Neither were the actions of the Local Board illegal. The undisputed material facts demonstrate that the Local Board's decision was reasonable under the standards set forth in COMAR 13A.01.05.05, and the Appellants have failed to show any genuine dispute of material fact to contradict the Local Board's adherence to those standards. Accordingly, I find that the Local Board is entitled to summary affirmance as a matter of law. COMAR 13A.01.05.03D; COMAR 28.02.01.12D. As such, a hearing on the merits in this matter is no longer required and, therefore, the merits hearing scheduled for May 31, June 1-3, 7-10, and 13-17, 2016 is cancelled.

**CONCLUSION OF LAW**

I conclude, as a matter of law, that there are no material facts in dispute as to whether the Board of Education of Carroll County acted arbitrarily and unreasonably or illegally in its adoption of the Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, and that the Board of Education of Carroll County is, therefore, entitled to Summary Affirmance of its decision. COMAR 13A.01.05.03D.

**PROPOSED ORDER**

I **PROPOSE** that the Board of Education of Carroll County's Motion for Summary Affirmance be **GRANTED**.

May 5, 2016  
Date Order Mailed

#161839

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Harriet C. Helfand  
Administrative Law Judge

**RIGHT TO FILE EXCEPTIONS**

A party objecting to the administrative law judge's proposed decision may file exceptions with the State Board within 15 days of receipt of the findings. A party may respond to exceptions within 15 days of receipt of the exceptions. As appropriate, each party shall append to the party's exceptions or response to exceptions filings copies of the pages of the transcript that support the argument set forth in the party's exceptions or response to exceptions. If exceptions are filed, all parties shall have an opportunity for oral argument before the State Board before a final decision is rendered. Oral argument before the State Board shall be limited to 15 minutes per side. COMAR 13A.01.05.07.



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