

LANGSTON HUGHES COMMUNITY  
ACTION ASSOCIATION,

Appellant

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-34

## OPINION

### INTRODUCTION

The Langston Hughes Community Action Association<sup>1</sup> (Appellant) has appealed the decision of the Baltimore City Board of School Commissioners (local board) to close Langston Hughes Elementary School (“Langston Hughes”). Pursuant to COMAR 13A.01.05.07A, the State Board transferred the appeal to the Office of Administrative Hearings. An administrative law judge (ALJ) issued findings of fact, conclusions of law, and a proposed decision recommending the State Board grant the local board’s motion for summary affirmance and uphold the school closure. The Appellants filed no exceptions to the proposed decision.

### FACTUAL BACKGROUND

We adopt the findings of fact as outlined in pages 5 to 11 of the ALJ’s proposed decision.

### STANDARD OF REVIEW

The local board’s decision will be upheld unless the Appellant proves that the decision was arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05A; 13A.02.09.03B.

### LEGAL ANALYSIS

COMAR 13A.02.09.01B requires that a local board consider eight factors in deciding whether to close a school. During a motions hearing before the ALJ, Appellant argued that consideration of the factors should have led the local board to decide to keep Langston Hughes open. In addition, Appellant maintained that the local board should explain how much weight it gave each factor in its decision to close the school.

#### *School closure factors*

---

<sup>1</sup> The appeal was filed by the Langston Hughes Community Action Association on behalf of the association and local parents, students, and the surrounding community. No specific parents or community members were identified, however, in the record as parties. Accordingly, the Langston Hughes Community Action Association is the only recognized Appellant.

The eight factors that must be considered as part of a school closure decision are:

- (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 the school proposed to be closed and school, or schools, to which students will be relocating.

COMAR does not require a local board to explain how much weight it placed on each factor. The regulation simply requires that a local board consider each of the factors as part of its decision-making process. We have previously recognized that closing a school is a policy decision which a local board “is uniquely qualified to make.” *Bushey Drive Elementary School Parents v. Bd. of Educ. of Montgomery County*, 1 Op. MSBE 441 (1976). We do not substitute our judgment for that of the local board “even though it may be that another plan of the [local board] might have been better or at least as good as the present one.” *Adams v. Montgomery County Bd. of Educ.*, 3 Op. MSBE 143, 155 (1983). Instead, we examine whether the local board’s decision, in light of the record, was arbitrary, unreasonable, or illegal. In affirming the local board’s decision to close Langston Hughes, we believe it is helpful to review the eight COMAR factors and the information upon which the local board relied in making its decision.

#### *Student enrollment trends*

The record shows that enrollment at Langston Hughes has declined approximately 20 percent since the 2010-11 school year, from a high of 222 students in 2011-12 to 156 students in 2013-14 and 176 students in 2014-15. The growth between 2013-14 and 2014-15 is entirely due to additional students registered in pre-kindergarten. Enrollment in K-5 has steadily dropped each year, from 179 students in 2010-11 to 133 students in 2014-15. (Motion, Attachment 20, pp. 31-32).

Appellant argued that the declining enrollment was solely the result of BCPS announcing as part of its 10-Year-Plan that Langston Hughes would close in 2017. This closure was later accelerated to the 2015 school year. Although Appellant seems to suggest that this announcement was purposefully designed to decrease enrollment at the school, no evidence was presented to support that conjecture. In our view, it was reasonable to provide the community

advance notice of BCPS's intentions once the school system had a proposal in place. The subsequent drop in enrollment was one of many factors that the local board took into account in deciding to close the school. It was not unreasonable to do so.

#### *Age or condition of school buildings*

As the record reflects, Langston Hughes is 39 years old and sits on 2.4 acres of land, making further expansion difficult. The BCPS 10-Year Plan rated all district buildings and assigned them an "Educational Adequacy Score" to gauge whether they met BCPS standards "for supporting excellent teaching and learning." BCPS set the target Educational Adequacy Score at 80. Langston Hughes had a score of 52, indicating that the building did not meet school system standards. (Motion, Attachments 22, 24).

The two schools that students will transfer to, Pimlico and Arlington, also received low scores. Those two buildings, however, are scheduled for renovation in the early part of the BCPS 10-Year Plan. In contrast to Langston Hughes, both schools sit on approximately 7 acres of land and can be expanded to accommodate more students. (Motion, Attachments 22, 24).

The record shows that BCPS considered the age, renovation costs, and small size of the Langston Hughes building when compared to other nearby schools as factors in its closure decision. Appellant presented no evidence to the ALJ to dispute these facts, but merely argued that the facility was one of the best in the district.

#### *Transportation*

Langston Hughes is located .9 miles away from both Pimlico and Arlington. (Motion, Attachment 20, p. 34). Children who live more than a mile away from the school are provided free transportation. For the remainder of students, BCPS created a transportation plan that was developed by school staff members who walked through the neighborhood, following the routes children would be taking to school. (Motion, Attachment 20, pp. 35-36). Appellant raised concerns about the safety of children walking through certain neighborhoods on their way to Langston Hughes, but provided no evidence to suggest that the BCPS transportation plan would not account for student safety in the form of crossing guards and other measures.

#### *Educational programs*

One reason presented by BCPS for closing Langston Hughes was that it was difficult to provide a full range of programming to students given its smaller size. (Motion, Attachment 20, p. 32). Although Appellant argued that Langston Hughes has more diverse programming than other schools, BCPS provided evidence that all core classes are the same between Langston Hughes and Pimlico and Arlington. There also was not a significant difference in test scores, contrary to Appellant's allegations. At Langston, 69 percent of students were proficient or advanced in math and 62 percent were proficient or advanced in reading; 58 percent of students at Arlington were proficient or advanced in math and 74 percent were proficient or advanced in reading; and 54 percent were proficient or advanced in math at Pimlico and 59 percent were proficient or advanced in reading. (Motion, Attachment 20, p. 31; Attachments 29-31).

Although Appellant mentioned the availability of Spanish and Korean language classes at Langston Hughes as a unique feature, those classes are actually part of an after-school program offered by Appellant, not a part of the actual BCPS curriculum. (Motion, Attachment 25, p. 40). Appellant provided no evidence to counter the local board's explanation of educational programming and did not explain why Appellant could not continue to offer after-school programs at different schools or at another location in the community.

Appellant also argued, without citing any legal authority, that closing the school might violate the constitutional right of students to be provided an education under the Maryland Constitution. There is no indication from the record that students from Langston Hughes will not be provided with their full educational rights.

#### *Racial composition of the student body*

Langston Hughes has a student body that is 95 percent African American. Pimlico has a 98 percent African American student body and Arlington has an 89 percent African American student body. (Motion, Attachment 20, p. 33). The ALJ found the racial and ethnic differences between the schools were not significant and the racial composition of Pimlico and Arlington was not expected to change by the addition of Langston Hughes students. (ALJ Decision, at 6). Appellant suggested that the closure decision may be "race-based" but offered no evidence to support that claim or an explanation of how BCPS improperly considered race in its decision.

#### *Financial considerations*

BCPS estimated it would save roughly \$3.8 million in repair costs over 10 years, and an additional \$70,000 per year in maintenance costs if the school closed. (Motion, Attachment 20, p. 35). Appellant argues that it would cost less to move students to Langston Hughes than to renovate Pimlico, but offered no evidence to back up this assertion. Appellant has not disputed the financial savings presented by the local board or offered evidence to suggest that keeping Langston Hughes open would be more cost-effective.

#### *Student relocation*

Students were scheduled to relocate to Pimlico and Arlington, both located within a mile of Langston Hughes. Transferring those students to the new school would not push either school over its capacity. Both schools are scheduled for renovations that would allow for additional expansion as student enrollment increases. (Motion, Attachment 20, p. 33).

Appellant sought to have the ALJ take judicial notice of the fact that students perform worse after changing schools. The ALJ declined to do so and Appellant has not provided any evidence to support this argument. Other concerns about whether Langston students would fit in at their new schools are speculative and Appellant provided no evidence to support them.

#### *Impact on community in geographic attendance area for the school proposed to be closed and school, or schools, to which students will be relocating*

The core of Appellant's argument was focused on this factor. (Appellant's Motion in Opposition, Mitchell and Giles Affidavits). Langston Hughes was described as an "oasis" and the "heart of the community" by one witness quoted in the ALJ's recommendation. (ALJ Decision, at 19). It would be difficult to conclude from the record that closing Langston Hughes will not have a negative impact on the surrounding community, which views the school as a wonderful neighborhood resource. This factor supports keeping the school open, but we cannot say it was unreasonable for the local board to decide that the other factors ultimately outweighed the community's interest in keeping its neighborhood school. As we have previously stated, "[w]hile neighborhoods quite understandably become attached to their schools and want to see them kept open even if they are only partially used, it can readily be understood that local boards prefer to consolidate school operations." *Bushey*, 1 Op. MSBE at 442.

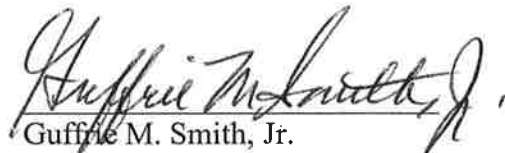
#### *Additional arguments of Appellant*

Appellant argued that the local board acted arbitrarily by choosing to close Langston Hughes while reversing course on closing another school. It also argued that a prior BCPS closure decision that was later reversed demonstrated past arbitrariness by BCPS.

Every school closure decision presents a unique set of facts and circumstances. As part of the BCPS 10-Year Plan, approximately 26 buildings were to be vacated. (Motion, Attachment 17). Three schools, including Langston Hughes, were recommended for accelerated closure in the summer of 2015. (Motion, Attachment 17). There is no indication from the record that Langston Hughes was arbitrarily singled out. The local board demonstrated that it followed the procedures required by law and considered the factors outlined in COMAR. Our review of the record finds support for its decision. The Appellant presented little evidence before the ALJ and filed no exceptions to the recommended decision. The fact that the local board reached a different conclusion from members of the community about the wisdom of closing Langston Hughes does not render the decision arbitrary, unreasonable, or illegal.

#### CONCLUSION

For all of these reasons, we adopt the recommendation of the ALJ affirming the local board's decision to close Langston Hughes and amend the decision to include our additional legal analysis.

  
Guffie M. Smith, Jr.

President



S. James Gates, Jr.

Vice-President



James H. DeGraffenreid, Jr.



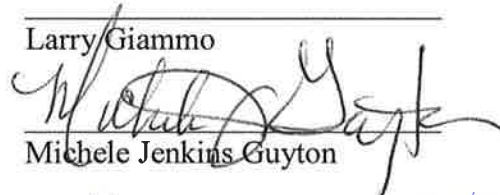
Linda Eberhart



Chester E. Finn, Jr.



Larry Giammo



Michele Jenkins Guyton



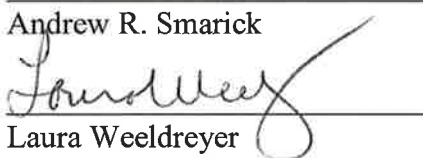
Stephanie R. Iszard



Madhu Sidhu



Andrew R. Smarick



Laura Weeldreyer

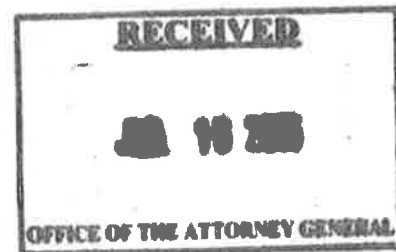
October 27, 2015

LANGSTON HUGHES COMMUNITY	*	BEFORE MICHAEL R. OSBORN,
ACTION ASSOCIATION, <i>ET AL.</i> ,	*	AN ADMINISTRATIVE LAW JUDGE
APPELLANTS	*	OF THE MARYLAND OFFICE
v.	*	OF ADMINISTRATIVE HEARINGS
BALTIMORE CITY BOARD OF	*	OAH No: MSDE-BE-16-15-09760
SCHOOL COMMISSIONERS,	*	
RESPONDENT	*	

\* \* \* \* \*

**PROPOSED DECISION ON RESPONDENT'S  
MOTION FOR SUMMARY AFFIRMANCE**

**BACKGROUND**  
**ISSUE**  
**EVIDENCE**  
**FINDINGS OF FACT**  
**DISCUSSION**  
**CONCLUSION OF LAW**  
**PROPOSED DECISION**  
**RIGHT TO FILE EXCEPTIONS**



**BACKGROUND**

On March 13, 2015, the Appellants filed an appeal of the decision of the Baltimore City Board of School Commissioners (Respondent or BCBSC) to close Langston Hughes Elementary School (LHES). On March 23, 2015, the Maryland State Board of Education (State Board) transmitted the appeal to the Office of Administrative Hearings (OAH) for a hearing before an administrative law judge (ALJ). 13A.01.05.07A(1).

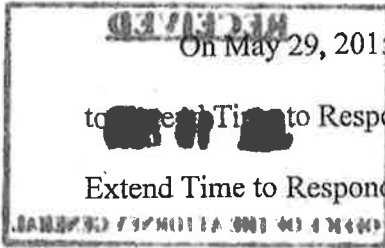
Procedure is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014), the regulations of the State Board, and the OAH Rules of Procedure. Code of Maryland Regulations (COMAR) 13A.01.05; COMAR 28.02.01. Any

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>1</sup>

On April 15, 2015, the Respondent filed a Motion for Summary Affirmance<sup>2</sup> (Motion) of its decision to close LHES, asserting therein that there are no genuine issues of material fact and that the Respondent is entitled to affirmance as a matter of law. On May 1, 2015, the Appellants filed a Response to the Motion.<sup>3</sup> The Appellant's Response did not address the substance or arguments in the Motion, but rather simply asserted that the Motion should be denied because there is sufficient cause for the appeal to move forward.<sup>4</sup>

On May 18, 2015, I issued a Prehearing Conference Report and Order, setting May 29, 2015 as the date by which the Appellants must submit any written Response to the Motion.

On May 29, 2015, Jill P. Carter, Esq., filed a Notice of Appearance along with a Motion to ~~Extend Time~~ to Respond to the Motion. On June 12, 2015, I granted the Appellants' Motion to Extend Time to Respond to the Motion, setting June 17, 2015 as the date by which a written



<sup>1</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.

<sup>2</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 28.01.01.12(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, set 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 28.01.02.12(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.

<sup>3</sup> The Appellants' Response to the Motion was part of the Appellants' Prehearing Conference Report, filed in advance of a May 12, 2015 Telephone Prehearing Conference.

<sup>4</sup> Under COMAR 28.02.01.12(D)(2), a response to a motion for summary decision shall identify the material facts that are disputed. Under COMAR 13A.01.05.03, an opposition to a motion for summary affirmance must contain a statement of the issue presented for review, a statement of the facts, an argument that includes reference to relevant legal principles and State Board decisions, if any, a short conclusion stating the relief sought, and any supporting exhibits, documents and affidavits.



Response must be submitted, and setting June 23, 2015 as the date for a hearing on the Motion.

On June 18, 2015, the OAH received the Appellants' Response.

On June 23, 2015, I heard arguments from the parties on the Motion. Lindsay E. Brecher, Associate Counsel-School Services, represented the Respondent. Jill P. Carter, Esq., represented the Appellants.

A hearing on the merits of the appeal is scheduled for July 20 through 24, 2015.<sup>5</sup>

### ISSUE

This issue is whether the Respondent's Motion for Summary Affirmance should be granted.

### EVIDENCE

In support of the Motion the Respondent submitted the following Attachments:

1. Affidavit, Dr. Gregory Thornton, Chief Executive Officer, Baltimore City Board of School Commissioners (BCBSC), April 14, 2015 (2 pages);
2. Affidavit, Dawana Merritt Sterrette, Government Relations Officer, BCBSC, April 14, 2015 (2 pages);
3. Baltimore Sun certification of advertisement of Respondent in November 13, 2014 edition, November 13, 2014, with attached advertisement (4 pages);
4. The Daily Record, Notice of Public Hearing, November 12, 2014, (1 page);
5. Affidavit, Anne Fullerton, Director of Communications, BCBSC, April 1, 2015 (1 page);
6. Affidavit, Michelle Pettaway, Manager, BCBSC, April 14, 2015 (2 pages);
7. Affidavit, Larry Flynn, Director of Facilities design and Construction, BCBSC, April 15, 2015 (1 page);
8. Policy No. FCA, Title - Closing of Schools, BCBSC, effective November 9, 2010 (2 pages);
9. Administrative Regulation FCA-RA, Title - Closing of Schools, Regulations, effective November 9, 2010 (4 pages);
10. Transcript of BCBSC Hearing, December 2, 2014, transcript pages 1, 9-18, 38-42, 45-53, 56-60, 97-102;
11. Transcript of BCBSC Hearing, December 9, 2014, transcript pages 1, 63-72, 89-91, 93;
12. Affidavit, Nicole Price, Director of Family & Community Engagement, BCBSC, April 15, 2015 (2 pages);

---

<sup>5</sup> The parties will be notified separately that the hearing on the merits in this matter is cancelled.

13. LHES Steering Committee Notes of meeting of December 8, 2014 (10 pages);
14. LHES Steering Committee Notes of meeting December 15, 2014 (4 pages);
15. Affidavit, Jessica Clark, New Initiatives Specialist, BCBSC, April 14, 2015 (2 pages);
16. Baltimore City Public Schools presentation to the BCBSC, 2014 Portfolio Review and Recommendations, November 11, 2014 (27 pages);
17. Baltimore City Public Schools presentation to the BCBSC, 2014 Portfolio Recommendations, December 17, 2014 (27 pages);
18. Transcript of BCBSC Hearing, November 11, 2014, transcript pages 95-101, 125-131;
19. Transcript of Special Public Hearing of BCBSC, December 17, 2014, transcript pages 1-2, 25-31;
20. Baltimore City Public Schools, School Closures, School Relocations, and Building Surplusing, effective summer 2015, February 26, 2015 (62 pages);
21. Baltimore Sun, classified advertisement, February 27, 2015 (3 pages);
22. 21<sup>st</sup> Century Building – Baltimore City Public schools 10-Year Plan, approved by BCBSC January 8, 2013 (cover page and pages 35, 42, 144, 176;
23. Affidavit, Michael Sarbanes, Executive Director, Office of Engagement, BCBSC, April 15, 2015 (2 pages);
24. Jacobs Report, State of School Facilities, Baltimore City Public Schools, June 2012, cover page and pages 35-47;
25. Transcript of BCBSC Hearing, December 9, 2014, transcript pages 1, 35-45;
26. School Information, Baltimore International Academy Elementary/Middle School (1 page);
27. Affidavit, Eleanor Etheredge, Special assistant to the Chief Achievement and Accountability Officer, BCBSC, April 14, 2015 (2 pages);
28. Member Schools Testing – Reading, all students, years 2013-2014 (1 page)
29. Reading and Math Proficiency spreadsheet, LHES, Arlington Elementary School (Arlington) and Pimlico Elementary School (Pimlico) students, 2013 and 2014 (2 pages);
30. Science Proficiency, all students, years 2013-2014 (1 page);
31. Science Proficiency, LHES, Arlington and Pimlico students, years 2013-2014 (1 page);
32. Baltimore City Public Schools 2013-2014 School Survey Results Summary, LHES, (2 pages);
33. Baltimore City Public Schools 2013-2014 School Survey Results Summary, Pimlico, (2 pages);
34. Baltimore City Public Schools 2013-2014 School Survey Results Summary, Arlington, (2 pages);
35. School Profile, LHES, 2013 (4 pages);
36. School Profile, Pimlico, 2013 (4 pages);
37. School Profile, Arlington, 2013 (2 pages);
38. Affidavit, Thomas J. Stosur, Director of Planning, City of Baltimore, April 15, 2015 (1 page);
39. Affidavit, Ryan Hemminger, Budget Director, BCBSC, April 15, 2015 (2 pages);
40. Memorandum of Understanding for the Construction and Revitalization of Baltimore City Public Schools, Annual Report submitted to the Governor and Legislative Committees, October 1, 2014 (30 pages);

41. Presentation, Baltimore City Public Schools to Community Meeting, April 15, 2015 (26 pages);
42. Presentation, Baltimore City Public Schools, Portfolio Review, LHES, November 17, 2014 (5 pages);
43. Minutes of steering committee meeting with Langston Hughes Community on LHES Closure Recommendation, November 18, 2014 (3 pages); and,
44. Baltimore City Public Schools press release, "21<sup>st</sup> Century Buildings Initiative Moves Forward," September 23, 2014 (2 pages).

The Appellants submitted the following in support of their Response:

1. Affidavit, George E. Mitchell, June 15, 2015; and,
2. Affidavit, Teresa M. Giles, June 17, 2015.

### FINDINGS OF FACT

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. LHES is located at 5011 Arbutus Avenue, Baltimore City. It has students in pre-kindergarten (Pre-K) through grade 5. Motion Attachment 20, p. 33, and Motion Attachment 35.
2. Total student enrollment at LHES for the past five years has been as follows:

School Year	Pre-K	K-5	Total
2010-2011	41	179	220
2011-2012	47	175	222
2012-2013	48	169	217
2013-2014	19	137	156
2014-2015	43	133	176

Student enrollment has declined 20% since the 2011-2012 school year. Motion Attachment 20, pp. 31-32.

3. LHES is thirty-nine years old, and sits on approximately 2.4 acres. A savings of \$3,769,500.00 in repair costs to LHES will be realized over ten years, along with a \$70,627.00 savings in maintenance costs over the same period, if LHES is closed. Motion Attachment 20, p. 35.

4. LHES students will transfer to Pimlico Elementary School (Pimlico) or Arlington Elementary School (Arlington). Pimlico is approximately .9 miles from LHES. Arlington is approximately .9 miles from LHES. Motion Attachment 20, p. 34.

5. A comprehensive transportation plan has been constructed to ensure LHES students transferring to new schools will go to and from school safely. The plan includes community involvement, walking buses,<sup>6</sup> school buses for students who live one mile or more from the new school, and crossing guards. Motion Attachments 19, pp. 28-30, and 20, p. 33. Development of the transportation plan included walks by staff members of the Baltimore City Public Schools through the neighborhood and along the routes transferring students will use to attend Pimlico and Arlington, and community input. Motion Attachment 20, pp. 35-36.

6. The very small size of the LHES program, and the decrease in enrollment since a high in the 2010-2011 school year, present a challenge to provide robust programming to LHES students. Overall enrollment at LHES is down 27% since 2007. Motion Attachment 16, and Motion Attachment 18, at p. 125.

7. LHES has a student body that is approximately 95% African-American. Racial composition at Pimlico is 98% African-American. Racial composition at Arlington is 89% African-American. Overall there are no significant racial or ethnic differences between LHES and Pimlico or LHES and Arlington. The racial composition at Pimlico and Arlington will not be affected by the attendance of LHES students. Motion Attachment 20, p. 33, and Motion Attachment 35.

---

<sup>6</sup> This term was not explained.

8. In 2013, students at LHES, Pimlico, and Arlington had the following Maryland School Assessment percentage scores in mathematics and reading for all grades, as follows:

School	Basic Math	Proficient Math	Advanced Math
LHES	31	46	23
Pimlico	46	47	7
Arlington	42	47	11

School	Basic Reading	Proficient Reading	Advanced Reading
LHES	38	48	14
Pimlico	42	54	5
Arlington	26	56	18

Motion Attachments 35, 36 and 37.

9. Both Pimlico and Arlington are scheduled for renovation and modernization early in the construction phase of the 21st Century Buildings 10-Year Plan, approved by the Respondent in January 2013. Construction plans at Pimlico and Arlington include hazardous materials surveys and abatement plans developed by construction engineers. Motion Attachment 7.

10. LHES sits on 2.53 acres of land, which is insufficient to support an expansion of the current building. It has a capacity of 305 students. Arlington sits on 7.18 acres, and has a capacity of 810 students. The 21<sup>st</sup> Century Building Plan includes construction to accommodate an additional 500 Pre-K to Grade 5 students. Pimlico sits on 7.05 acres, and has a current

capacity of 1,020 students. The 21<sup>st</sup> Century Building Plan includes construction to accommodate an estimated 800 Pre-K to Grade 8 students. Motion Attachments 14 and 17.

11. In 2012, the Respondent drafted the 21<sup>st</sup> Century Building Plan, which included long-range plans to build or renovate 138 buildings in the Baltimore City Public Schools. The draft 21<sup>st</sup> Century Building Plan included vacating 26 school facilities and increasing student populations at several facilities. The draft of the 21<sup>st</sup> Century Plan included LHES as one of the schools to be closed, with a scheduled closing date of 2017. Numerous community-based meetings and BCBSC meetings were conducted in 2012 regarding the 21<sup>st</sup> Century Building Plan. The community-based meetings included such a meeting at LHES, which lasted several hours, at which every person who had something to say was given an opportunity to be heard. The participants at the meetings discussed and explored several alternatives to closing LHES. Motions Attachments 13, 16, 22, and 23.

12. On January 8, 2013, the BCBSC approved the 21<sup>st</sup> Century Building Plan. Motion Attachment 22.

13. The Chief Executive Officer of the Baltimore City Public Schools (CEO) informed the Mayor of the City of Baltimore and the elected officials of the Maryland General Assembly who represent the City of Baltimore of each study that resulted in a recommendation by the CEO to the Respondent that LHES be closed or consolidated.<sup>7</sup> Communication with the Mayor of the City of Baltimore and elected officials took place in 2012 prior to the January 2013 vote to approve the 21<sup>st</sup> Century Building Plan. The CEO also communicated with the Mayor of the City of Baltimore and elected officials as part of the recommendation to accelerate the

---

<sup>7</sup> After a study has been completed to determine whether to close a public school in Baltimore City, the Chief Executive Officer shall inform the Mayor of Baltimore City and the members of the General Assembly who represent Baltimore City regarding the completed study at the same time that the study is submitted to the Baltimore City Board of School Commissioners. Md. Code Ann., Educ. § 4-317 (2014)

closing of LHES to 2015. On November 10, 2014, the CEO recommended to the Respondent that the slated 2017 closing of LHES be accelerated to 2015. Motion Attachments 1 and 2.

14. Notice of the recommendation that LHES be closed was published, and community meetings were held to provide the community an opportunity to be informed of school closing and an opportunity to provide comment. A steering committee composed of school leadership, parents, and a CEO's designee from the Offices of the Baltimore City Public Schools was formed, and held several meetings. The Respondent published to the affected community a notice of a proposed closing or consolidation, and notices of any upcoming meetings at which those interested could provide input relating to a proposed closing or consolidation. The Respondent met all hearing and meeting notice requirements.<sup>8</sup> Motion Attachments 8 and 9.

15. A LHES steering committee composed of Baltimore City Public School staff, LHES staff, and community leaders met on December 8 and December 15, 2014. The meetings addressed the following issues: transportation of children to new schools that would be provided by the Baltimore City Public Schools; how children would travel to and from new schools when no public transportation is available or when transportation to and from school would not be provided by Baltimore City Public Schools; student safety when walking to and from the new schools; planned pace of renovation of the schools to which LHES students would be transferred; asbestos and lead abatement at the new schools; the BCBSC voting process; factors relating to the recommendation to close LHES; methods of communication with parents and the community and community input before the initial decision to close LHES as part of the 21<sup>st</sup> Century Plan; LHES enrollment trends; meal program capacities; community supports at the new schools; age

---

<sup>8</sup> The Respondents did not assert that the Respondent failed to comply with any applicable public notice requirement, or failed to comply with any requirement that residents of the affected Langston Hughes community be provided an opportunity for input.

and size of LHES; and, financial investments planned by the City of Baltimore as part of neighborhood rehabilitation efforts in the areas of the new schools. Motion Exhibits 13, 14 and 15.

16. Hearings by the Respondent to consider the accelerated closing of LHES were scheduled and held on December 2, 2014 and December 9, 2014. These hearings were advertised in the November 13, 2014 edition of the Baltimore Sun, and were posted on the Baltimore City Public Schools' website and on the LHES website. The public hearings were also made part of automated recorded messages from the LHES automatic public information system. Motion Attachments 3, 5 and 6.

17. On December 17, 2014, the CEO appeared before a meeting of the Respondent. The CEO recommended, among other things, that closing LHES be accelerated from 2017 to 2015. The CEO provided, as part of his recommendations, a detailed analysis. This analysis included building utilization, academic performance, available resources, student distribution across grades, availability of programs, future demand, and geographic distribution of students. Motion Attachments 1, 10, 17 and 20.

18. On December 17, 2014, the Respondent voted to accelerate the closing of three schools, including LHES, from 2017 to 2015. Motion Attachment 19.

19. Factors considered by the Respondent to close LHES, and to accelerate the closing of LHES from 2017 to 2015, included: total student enrollment trends at LHES; age and condition of LHES and the cost of maintenance over ten years; financial stability of the Baltimore City School System; academic performance and programs available to students at Pimlico and Arlington compared to academic performance and programs available to students at LHES; transportation of students at LHES who will transfer to Pimlico and Arlington; distance



students will have to travel to attend the new schools; racial composition of LHES, Pimlico and Arlington; and impact on the community in the geographic attendance area for LHES, Pimlico and Arlington. Motion Attachment 20. An additional component of the Respondent's decision was that Pimlico lies in a part of the City of Baltimore designated for major redevelopment as part of the Park Heights Master Plan. Motion Attachments 38 and 39.

## **DISCUSSION**

### **Positions of the Parties**

The Respondent asserted both in its Motion and in its argument at the motions hearing:

- 1) That the Respondent is uniquely qualified to make the decision whether to close LHES and its decision to do so must be upheld unless the decision was arbitrary and unreasonable or illegal;
- 2) That there is no material issue of fact regarding whether the Respondent's decision to close LHES was arbitrary and unreasonable or illegal because it complied with all statutes, regulations and policies relating to school closings. Specifically, the Respondent considered LHES enrollment, its size, the academic performance of LHES and the schools to which current LHES students will be transferred, student distribution across grades, transportation options, financial stability, and various options for LHES student reassignment;
- 3) That officials of the Baltimore City Public Schools met over the course of several months in 2014 to discuss schools throughout Baltimore and to consider accelerating the closure of some schools, which resulted in a recommendation by the CEO of the Baltimore City Public Schools to the BCBSC that LHES be accelerated for closure from 2017 to 2015;

- 4) That the CEO presented his recommendations at a public hearing before the Respondent;
- 5) That the Respondent conducted two public hearings, and considered the results of several other steering committee and community meetings prior to voting on the CEO's recommendation; and,
- 6) That the Respondent properly voted to close LHES.<sup>9</sup>

The Appellants asserted in their written Response to the Motion:

- 1) That children perform worse in school when they are moved;
- 2) That the initial decision to close LHES was part of a 10-Year Plan developed by the Respondent in 2013, which included closing LHES in 2017. They assert that the declining enrollment at LHES may be as a result of parents' decisions not to enroll their children at LHES because it was slated for closing, and that whether this slated closing influenced the parents not to enroll their children at LHES is a material issue of fact that must be explored at a hearing;
- 3) That the Respondent voted to close Abbottston Elementary School as part of the same vote to approve the closing of LHES, but the Respondent later changed its decision as to Abbottston Elementary School in response to strong community support. They assert that State and city delegations that represent the Langston Hughes community have rallied in support of keeping LHES open, and that a decision to close LHES while keeping Abbottston Elementary School open is arbitrary and unreasonable. The Appellants assert that the decision to close LHES is race-based and thus unreasonable and illegal, and that the inconsistency in decisions to keep Abbottston Elementary School open while closing LHES presents a genuine issue of material fact that must be explored at a hearing;

---

<sup>9</sup> The full content of the Respondent's Motion for Summary Affirmance, consisting of 25 pages, plus 44 attachments, was referenced by the parties throughout the motions hearings.

4) That it is a matter of public record that the Respondent has made arbitrary and unreasonable decisions in the past. The Appellants point to the decision to close Grove Park Elementary School, which was reversed by the Respondent after it concluded its decision was arbitrary and unreasonable; and,

5) To the extent that closing LHES will be detrimental to LHES students' programs and performance, the closing of LHES and forcing students to transfer to another school would trample on the constitutional rights of LHES students under Article 2 of the Maryland Constitution,<sup>10</sup> and would render the decision to close LHES illegal.<sup>11</sup>

The Appellants asserted in argument at the motions hearing:

1) That the COMAR provisions that direct the Respondent to consider various factors in making a decision to close or consolidate a school do not articulate the weight to be given to any specific factor, and that some factors, especially community impact, deserve to be given greater weight than others. Here, the Appellants assert, "nobody knows" the weight the Respondent gave to any particular factor, and that the weight the Respondent gave to each factor must be fully explored at a hearing on the merits;

2) That the 10-Year Plan anticipates deviations from it, and revising the plan to keep LHES open is an appropriate deviation;

---

<sup>10</sup> Article II of the Maryland Constitution pertains to the power of the Executive Department of State government. Md. Code Ann., Const., Article II, §§ 1-24 (2003). When asked at the motions hearing to explain how closing LHES violated Article II, the Appellants replied that children have a constitutional right to an education and that a full hearing on the merits was needed to develop evidence as to how closing LHES may violate that right.

<sup>11</sup> Under COMAR 13A.01.05.03, an opposition to a motion for summary affirmance must contain a statement of the issue presented for review, a statement of the facts, an argument that includes reference to relevant legal principles and State Board decisions, if any, a short conclusion stating the relief sought, and any supporting exhibits, documents and affidavits. The Appellants did not submit any supporting affidavits, exhibits, or documents to contradict those submitted as evidence by the Respondent, or cite any State Board decisions. The two brief affidavits submitted by the Appellants say, in essence, that LHES should not be closed. The Appellants requested at the motions hearing that I take judicial notice that academic performance declines when children move to a new school. I denied that request. *See generally* Maryland Rule 5-201. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *Abrishamian v. Washington Medical Group, P.C.*, 216 Md. App. 386, 413 (2014).

3) That the State Board reversed the decision by the Respondent to close Grove Park Elementary School (Grove Park), a small neighborhood-based elementary school much like LHES, and that the Respondent should anticipate the same result here and keep LHES open;

4) That the reasons the State Board reversed the Respondent's decision as to Grove Park must be fully explored at a hearing on the merits;

5) That community support to keep LHES open is very strong, that many Langston Hughes community members voiced their opposition to closing LHES at public meetings, and that it appears the Respondent applied the letter but not the spirit of laws that relate to school closings;

6) That the decision to close LHES had already been made and the views expressed at public meetings were ignored; and,

7) That the affidavit of Michael Sarbanes, Executive Director, Office of Engagement (Motion Attachment 23) demonstrates the extent of community support for keeping LHES open.

**Law Applicable to a Motion for Summary Affirmance**

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 to the State Board. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 28.02.01; COMAR 13A.01.01.03; 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) 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 as to the matters stated in the affidavit.
- (3) 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 that 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, such as the following: “Summary judgment is appropriate if there is 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*, 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).

### **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, capricious, 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.01.05.05B, 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. The word “arbitrary” means a denial subject to individual judgment or discretion, *Webster’s II New Riverside University Dictionary* 121 (1984) and made without adequate determination of principle. *Black’s Law Dictionary*, 55 (Abridged 5<sup>th</sup> Ed. 1983). *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.01.05.05.05D, 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 Respondent 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.<sup>12</sup> *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>13</sup> shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01. These procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on:

- 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

---

<sup>12</sup> The parties discussed whether the OAH has final decision-making authority on the Motion for Summary Affirmance, whether it is granted or denied, at the Motions hearing of June 23, 2015. I reached the conclusion after this discussion that a decision granting the Motion must be in the form of a proposed decision, while the OAH may deny the Motion and proceed to a hearing on the merits without submitting a proposed decision to the State Board.

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



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.

COMAR 13A.02.09.01B(1)-(8).

### **Analysis**

It is abundantly clear that many LHES community area residents, parents, and teachers do not want LHES to be closed.

But, what you can't see is the oasis that Langston Hughes is for the parents and students of this community. The school that has an active principal who cares for every student as her own, a group of involved parents that work hand in hand with committed staff to foster growth for each child. While Langston Hughes might be surrounded by a set of conditions that would lead many to give up, the school has become the heart of the community and its residents are dedicated to positive change and making the school thrive. . . . We have to stop thinking about decisions that are based on numbers about enrollment to capacity ratios. We have to consider factors that simply produce good citizens and good communities.

Motion Attachment 10, BCBSC meeting of December 2, 2014, at pp. 11-12.<sup>14</sup>

Langston Hughes is a great small school in which we have an outstanding principal and an outstanding educational environment for kids in Park Heights. So much so that I believe that our kids would need something like Langston Hughes to make sure that they can fulfill their dreams, their hopes and their desires.

*See also* Motion Attachment 11, BCBPS meeting of December 9, 2014, at pp 64-65.

(Comments of State Senator Lisa Gladden)

Much of the Appellants' concern over closing LHES is that the current transportation method includes providing public bus passes to children who live over a mile from school, and that those who live within a mile must walk. Parents of LHES students opposed to the closing of the school cite the dangerousness of a mile-long walk through crime infested streets as a reason not to close LHES. *See* Motion Attachment 13, and Motion Attachment 18, at pp. 127-28.

---

<sup>14</sup> This is a quote of an elected official whose name does not appear in the text of the pages of Attachment 10.

For you to close down Langston Hughes and have those kids walk all the way up to Pimlico and Arlington is dangerous. All I would like for you to do, I just ask you, please, all I want you to do is go to Langston Hughes and try to walk up there. During the daytime. Then you'll come back and say Mr. Mitchell, you are right. We can't put those children in harm's way.

Motion Attachment 18, at p. 98, BCBPS meeting of November 11, 2014. (Comments of George Mitchell, President, Langston Hughes Community Action Association)

Those in the LHES area feel the students are best served by a small community elementary school that is Pre-K through Grade 5, and is not a large regional school that serves Pre-K through Grade 8. Community members describe LHES as a place where many parents and grandparents walk their children or grandchildren to and from school, or older siblings walk younger siblings to and from school, and a community anchor. *See* Motion Exhibit 10, at pp. 9-18, and 38-39. *See also* Motion Attachment 12, affidavit of Nicole Price, Director of Family and Community Engagement, and Motion Attachments 13 and 4, Minutes of Steering Committee meetings of December 8 and December 15, 2014.

However, the arguments advanced by the Appellants do not address the issue on appeal, which is whether the Respondent acted arbitrarily and unreasonably, or illegally, in its decision to close LHES. Neither do their arguments address the issue in the Motion – whether there is any material fact in dispute relating to the issue whether the Respondent acted arbitrarily and unreasonably, or illegally, in its decision-making process.

As referenced above, the Respondent's decision to close LHES 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, capricious, or illegal. COMAR 13A.01.05.05A. The State Board will uphold the decision of the BCBSC to close LHES unless the facts presented indicate its decision was arbitrary and unreasonable or illegal. COMAR 13A.02.09.03B.

Under COMAR 13A.01.05.05B, the decision to close LHES 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.

The facts are undisputed. LHES is an aging small school with a declining student population. LHES presents challenges to Baltimore City Public Schools to provide robust educational opportunities. Racial composition at the schools to which LHES students will be transferred is comparable to LHES. Performance on standardized tests at Pimlico and Arlington is comparable to performance at LHES. The Respondent must maximize the benefit of its budget for all students throughout the Baltimore City Public School system. Thus, I find the Respondent's decision to close LHES is not contrary to sound educational policy.

The Respondent 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 the conclusion that could have reasonably been reached by a reasoning mind.

Under COMAR 13A.01.05.05C, the decision to close LHES 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. The Respondent has demonstrated that there is no material fact in issue as to whether its decision to close LHES was illegal. There are no facts upon which to premise a conclusion that the decision was unconstitutional, that it exceeded the authority of the BCBSC, that the BCBSC misconstrued the law, that the decision resulted from an unlawful procedure, that any abuse of discretion was involved, or that its decision was affected by an error of law.

The record is very clear that the Respondent complied with the Education Artciel, MSDE regulations pertaining to school closings, and its own internal regulations and policies in the manner and method in which it decided to close LHES. The CEO communicated with the City of Baltimore and elected officials who represent the City of Baltimore when he made his recommendation to accelerate the closing of LHES. Two steering group meetings and two BCBSC hearings were conducted relating to the acceleration of the closing. The Respondent's public hearings were properly published, community residents were given an opportunity to be heard and many were heard, following which the Respondent conducted a vote to accelerate the closing. The results of the Respondent's decision were properly published.

I find there is no material issue of fact and the Respondent is entitled to summary affirmance as a matter of law. COMAR 13A.01.05.05.03D and 28.02.01.12D. *Richman v. FWB Bank*, 122 Md. App. 110, 146 (1998). There is no genuine issue of material fact that will affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), *Goodwich v. Sinai Hospital of Baltimore, Inc.*, 343 Md. 185, 205-06 (1996). The inference to be drawn from the facts presented are plain, definite and undisputed, rendering summary affirmance appropriate. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

All criteria enumerated in COMAR 13A.02.09.01B(1)-(8) were considered. The Appellants did not submit any evidence to challenge the Respondent's evidence on this point.

Thus, I find there is no material fact in dispute whether the Respondent acted arbitrarily and unreasonably, or illegally, in its decision to close LHES, and thus the Respondent is entitled to summary affirmance of its decision to close LHES.


### CONCLUSION OF LAW

I conclude, as a matter of law, that there are no material facts in dispute as to whether the BCBCS acted arbitrarily and unreasonably or illegally in its decision to close LHES and that BCBCS is, therefore, entitled to Summary Affirmance of its decision. COMAR 13A.01.05.03D.

### PROPOSED DECISION

I **PROPOSE** that the Motion for Summary Affirmance of the decision of the Baltimore City Board of School Commissioners to close Langston Hughes Elementary School in 2015 be **GRANTED**.

July 15, 2015  
Date Order Mailed

  
\_\_\_\_\_  
Michael R. Osborn  
Administrative Law Judge

MRO/lc  
#157063

### 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.

**Copies Mailed To:**

Office of the Attorney General  
Maryland State Department of Education  
Attn: Jackie LaFiandra, AAG, State Board Appeals  
200 St. Paul Place  
Baltimore, MD 21202

George E. Mitchell  
Langston Hughes Community Action Association  
5014 Arbutus Avenue  
Baltimore, MD 21215

Sally A. Robinson, Esquire  
Senior Counsel  
Baltimore City Public Schools Office of Legal Counsel  
200 East North Avenue, Suite 208  
Baltimore, MD 21202

Lindsay Brecher, Esquire  
Attorney  
Baltimore City Public Schools Office of Legal Counsel  
200 East North Avenue, Suite 208  
Baltimore, MD 21202

Jill P. Carter, Esquire  
Attorney  
Law Office  
711 Saint Paul Street  
Baltimore, MD 21202