

DANIELLE MARTIN, *ETAL.*,

Appellants

v.

GARRETT COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-35

OPINION

Appellants filed this appeal of the decision of the Garrett County Board of Education (local board) to close Dennett Road Elementary and Kitzmiller Elementary School prior to the start of the 2012-2013 school year. As is required by COMAR 13A.01.05.07(A)(1), this Board referred the case to the Office of Administrative Hearings for review by an Administrative Law Judge (ALJ).

On August 2, 2012, the ALJ issued a proposed decision recommending that the State Board affirm the Garrett County Board of Education's Motion for Summary Affirmance because the Appellants failed to raise any issues of material fact, and affirm the local board's decision to close Dennett Road Elementary and Kitzmiller Elementary Schools prior to the 2012-2013 school year. The ALJ notified all parties that any exceptions to his decision were to be filed within 15 days of receipt of the decision. No exceptions were filed.

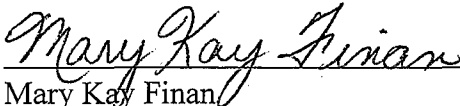
We have reviewed the ALJ's decision. It is comprehensive, well-reasoned, and his recommendation to affirm the local board is supported by the facts and the law. Accordingly, we adopt the Administrative Law Judge's Proposed Decision as the opinion of this Board and affirm the Garrett County Board of Education's decision to close Dennett Road Elementary and Kitzmiller Elementary Schools.



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Charlene M. Dukes

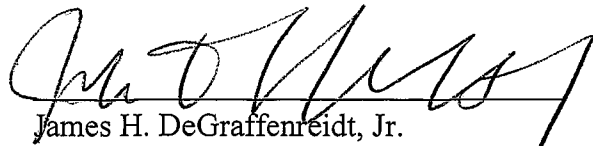
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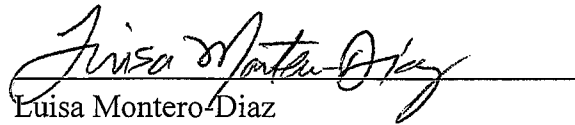
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Mary Kay Finan

Vice President

  
James H. DeGraffenreid, Jr.


  
S. James Gates, Jr.

  
Luisa Montero-Diaz

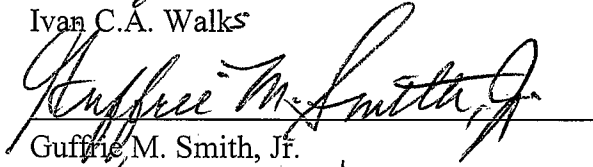
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Madhu Sidhu

  
Donna Hill Staton

Ivan C.A. Walks

  
Guffie M. Smith, Jr.

  
Kate Walsh

August 28, 2012

DANIELLE MARTIN, *ET AL.*,

APPELLANTS

v.

GARRETT COUNTY BOARD OF

EDUCATION

\* BEFORE MICHAEL J. WALLACE,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-BE-16-12-25858

\* \* \* \* \*

**PROPOSED RULING ON GCBOE'S MOTION FOR SUMMARY AFFIRMANCE**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
UNDISPUTED FACTS  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On April 24, 2012, the Garrett County Board of Education (GCBOE) decided to close Dennett Road Elementary School (Dennett Road) and Kitzmiller Elementary School (Kitzmiller), both in Garrett County, Maryland prior to school year 2012-2013, effective August 2012. On or about May 7, 2012, Danielle Martin, Diane Donham, Gayla Lewis, Tawnya House, Amanda Herman and Stephanie Schoch (Appellants) filed a Notice of Appeal with the Maryland State Board of Education (MSBE). On or about June 26, 2012,<sup>1</sup> the MSBE transmitted the appeal to the Office of Administrative Hearings (OAH) to conduct a contested case hearing. COMAR 13A.01.05.07A(1).

<sup>1</sup> The letter enclosing the Transmittal is dated June 26, 2012; however, the letter and the Transmittal are date-stamped as received on June 27, 2012.

On June 21, 2012, the GCBOE filed a Motion for Summary Affirmance (Motion). To date, the Appellant have not filed a response.<sup>2</sup>

The Appellants are proceeding pro se in this matter and the GCBOE is represented by Edmund J. O'Meally and Andrew G. Scott, Pessin Katz Law, P.A.

The contested case provisions of the Administrative Procedure Act, the procedural regulations for the MSBE, and the Rules of Procedure of the OAH govern procedure in this matter. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp 2011); COMAR 13A.01.05; COMAR 28.02.01.

### **ISSUES**

- (1) Does the Appellants' appeal raise genuine issues of material fact?
- (2) Is the GCBOE entitled to summary affirmance as a matter of law?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The GCBOE submitted the following exhibits in support of its Motion:

- GCBOE Ex. 1: Minutes of the GCBOE, September 15, 2010
- GCBOE Ex. 2: Superintendent's Recommendations, April 5, 2011
- GCBOE Ex. 3: Minutes of the GCBOE, April 26, 2011
- GCBOE Ex. 4: 5 Year Plan, December 13, 2011
- GCBOE Ex. 5: Garrett County Schools 5 Year Plan Proposal Outline, December 13, 2011
- GCBOE Ex. 6: Garrett County Schools 5 Year Plan Proposal, December 2011
- GCBOE Ex. 7: Minutes of the GCBOE, December 12, 2011

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<sup>2</sup> On June 28, 2012, a letter was sent from Jackie C. La Fiandra, Assistant Attorney General, to Danielle Martin reminding her that a Motion for Summary Affirmance had been filed and that a response to this Motion was due on or before July 9, 2012.

- GCBOE Ex. 8: Certificate of Publication in the Republican, January 13, 2012
- GCBOE Ex. 9: Minutes of the GCBOE, February 14, 2012
- GCBOE Ex. 10: Garrett County Schools Timeline, undated
- GCBOE Ex. 11: Minutes of the GCBOE, March 13, 2012
- GCBOE Ex. 12: Minutes of the GCBOE, April 10, 2012
- GCBOE Ex. 13: Minutes of the GCBOE, April 24, 2012
- GCBOE Ex. 14: Superintendent's Recommendations, April 24, 2012
- GCBOE Ex. 15: Superintendent's Final Recommendation for Closure of Dennett Road Elementary, April 24, 2012
- GCBOE Ex. 16: Memorandum to Parents of Dennett Road Elementary School from Sue F. Waggoner, Interim Superintendent, dated April 25, 2012
- GCBOE Ex. 17: Policies and Procedures Handbook, Closing of Schools
- GCBOE Ex. 18: Appeal request from Appellants, dated May 1, 2012, follow-up letter dated May 20, 2012 and GCBOE response dated May 29, 2012

The Appellants did not submit any documents for consideration.

#### **UNDISPUTED FACTS**

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

1. The GCBOE has faced significant budget challenges and declining student enrollments for several years.
2. During the 2010-2011 school year, then Superintendent Dr. Wendell Teets<sup>3</sup> recommended that Bloomington Elementary School (Bloomington) and Kitzmiller be considered

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<sup>3</sup> Dr. Teets retired effective June 30, 2011. Mrs. Waggoner succeeded Dr. Teets as Interim Superintendent effective July 1, 2011, in accordance with Md. Code Ann., Educ. §4-201(d).

for possible closure.<sup>4</sup>

3. Dr. Teets reported that, at that time, Bloomington and Kitzmiller had the lowest student enrollments and highest costs of operation per student in Garrett County, forcing large numbers of students into multi-grade classes.<sup>5</sup>

4. In April of 2011, the GCBOE voted to approve the Superintendent's recommendation to close Bloomington but, because of an unexpected last-minute increase in non-recurring fiscal year (FY) 2012 funding by the Garrett County Commissioners, the GCBOE decided to allow Kitzmiller to remain open for the 2011-2012 school year.<sup>6</sup>

5. At the GCBOE's December 13, 2011 meeting, Mrs. Waggoner presented a Five Year Plan illustrating the GCBOE's current and projected budget deficiencies and enrollment declines as well as a variety of proposals, ranging from the elimination of the drivers' education program to proposed grade re-alignments and school closings, to help address these deficiencies while maintaining a quality educational program for all students.<sup>7</sup>

6. At this meeting, Mrs. Waggoner expressed her opinion that, due to a then-projected FY 2013 budget shortfall of \$3,000,000 (\$2,600,000 of which was the result of declining enrollment), it might be necessary to close one or more schools.<sup>8</sup> To that end, Mrs. Waggoner

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<sup>4</sup> See GCBOE Exhibit 1 page 2. All references to Minutes of the Meetings of the GCBOE are highlighted within the exhibit materials submitted by the GCBOE.

<sup>5</sup> *Id.*; Kitzmiller was the next most expensive school to operate in Garrett County, second only to Bloomington. See page 23 of the Power Point Presentation entitled "Superintendent's Recommendations, Board of Education Meeting, April 5, 2011." GCBOE Exhibit 2.

<sup>6</sup> See GCBOE Exhibit 3, pp 2-3.

<sup>7</sup> GCBOE Exhibits 4, 5, and 6. These documents, along with others referenced herein, are posted on the Garrett County Public Schools website at <http://www.ga.k12.md.us/>. Any such documents were posted shortly after they were presented at each respective GCBOE Meeting.

<sup>8</sup> GCBOE Exhibit 7.

proposed, *inter alia*, that the GCBOE consider closing Dennett Road, Kitzmiller, and Friendsville Elementary (Friendsville), explaining that this plan “is the most viable based on the dramatic anticipated losses for this year and in the foreseeable future for at least the next five years.”<sup>9</sup>

7. Mrs. Waggoner also stated at this meeting that she would establish advisory committees for Friendsville, Dennett Road, and Kitzmiller to investigate the impact of the closures of those schools based on the following factors (Closing Factors):

- (1) student enrollment trends;
- (2) age or condition of buildings;
- (3) transportation;
- (4) educational programs;
- (5) racial composition of the student body;
- (6) financial considerations;
- (7) student relocations; and
- (8) impact on the community in the geographic attendance area of the school(s) proposed to be closed and the school or schools to which the students will be relocated.<sup>10</sup>

8. Mrs. Waggoner further proposed that public hearing dates be set in January 2012 for Dennett Road, Friendsville, and Kitzmiller, with the Friendsville public hearing to take place on January 18, 2012, the Kitzmiller public hearing to take place on January 19, 2012, and the Dennett Road public hearing to take place on January 24, 2012.<sup>11</sup>

9. Notices were initially placed in *The Garrett County Republican* on December 29, 2011, and subsequently on January 5, 2012, January 12, 2012, April 5, 2012, and April 18, 2012.

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<sup>9</sup> *Id.* at pp. 5-6.

<sup>10</sup> *Id.* at p. 6.

<sup>11</sup> *Id.*

10. Notices were also initially placed in *The Cumberland Times News* on December 29, 2011, and subsequently on January 5, 2012, January 12, 2012, April 5, 2012, and April 18, 2012.

11. These notices advertised the public meetings at Dennett Road, Friendsville, and Kitzmiller, informed the public about the process and times when Mrs. Waggoner would make her final recommendation to the GCBOE, informed the public of when the GCBOE would make its final decision, and informed the public of the make-up dates for the rescheduled meetings.<sup>12</sup>

12. Those notices also explained the procedures that the GCBOE would follow in making its decision, including the fact that members of the public would be permitted to speak at each meeting.<sup>13</sup>

13. At the GCBOE's February 14, 2012 meeting, Mrs. Waggoner presented a revised timeline for projected school closures, which was unanimously approved by the GCBOE.<sup>14</sup>

14. Mrs. Waggoner revised the timeline because of the possibility that legislation proposed by the local delegation to the General Assembly might provide some additional funding relief to the GCBOE that could impact the consideration of school closings.<sup>15</sup>

15. Mrs. Waggoner cautioned that because "the funding is not definite at this time . . . the process must move forward."<sup>16</sup>

16. The advisory committees were scheduled to present their respective reports at the

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<sup>12</sup> See Notices published in *The Garrett County Republican* and *The Cumberland Times News*, GCBOE Exhibit 8.

<sup>13</sup> *Id.*

<sup>14</sup> See GCBOE Exhibit 10, p 2.

<sup>15</sup> See Exhibit 9, at p. 2.

<sup>16</sup> *Id.* In addition, COMAR 13A.02.09.02 provides that, "[e]xcept in emergency circumstances, the decision to close a school shall be announced . . . not later than April 30 of any school year."



GCBOE's March 13, 2012 meeting, the Superintendent was scheduled to make her recommendation on school closures at the GCBOE's April 10, 2012 meeting, and the GCBOE indicated that it would hold a special meeting on April 24, 2012 at which it would vote on Mrs. Waggoner's final recommendation regarding the school closures.<sup>17</sup>

17. At the GCBOE's March 13, 2012 meeting, the advisory committees presented their respective reports.<sup>18</sup>

18. Each advisory committee reported to the GCBOE on the Closing Factors, and members of the public were given a full and fair opportunity to express their views on the proposed school closings.<sup>19</sup>

19. At the GCBOE's April 10, 2012 meeting, with the full support of her administrative staff, Mrs. Waggoner recommended that the GCBOE close both Dennett Road and Kitzmiller and relocate the students to surrounding schools that had adequate capacity.<sup>20</sup> Mrs. Waggoner explained that her recommendation was based primarily on the "current financial situation" and with the ultimate purpose of "preserv[ing] our excellent school system."<sup>21</sup>

20. The GCBOE's President, Charlotte Sebold, announced that the GCBOE would hold a special meeting on April 24, 2012 to vote on Mrs. Waggoner's recommendation to close the two schools.<sup>22</sup> She further advised that further public comment would be allowed prior to the

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<sup>17</sup> See GCBOE Exhibit 9, at p. 2.

<sup>18</sup> See GCBOE Exhibit 11, at pp 3 and 4.

<sup>19</sup> *Id.*

<sup>20</sup> See GCBOE Exhibit 12.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

GCBOE's final vote.<sup>23</sup>

21. At the GCBOE's April 24, 2012 meeting, members of the public were given another opportunity to comment on the proposed school closings,<sup>24</sup> and Mrs. Waggoner provided the GCBOE with a Power Point presentation regarding her recommendations.<sup>25</sup>

22. After reviewing the Closing Factors for Dennett Road and Kitzmiller, the information presented by the advisory groups, the public comments, and the budget analysis and projections for the 2012-2013 school year, Mrs. Waggoner recommended that both Dennett Road and Kitzmiller be closed in August, 2012 prior to the start of the 2012-2013 school year with the students relocated to other area elementary schools.<sup>26</sup>

23. Mrs. Waggoner's presentation established that:

- (1) Both Dennett Road and Kitzmiller had suffered significant losses in enrollment with no projections that the enrollment loss would significantly reverse.
- (2) The Garrett County Public School System had experienced drastic decreases in state funding due to the loss of over 20% of its enrollment since 2000 -- the largest enrollment decline in the entire State of Maryland.
- (3) County-wide enrollment is projected to continue to decline through 2019.
- (4) Garrett County was the only county in Maryland to experience an increase in wealth in FY 2013, which had the adverse result of further declines in state funding.<sup>27</sup>

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<sup>23</sup> *Id.* at pp. 4-5.

<sup>24</sup> See page 1 GCBOE Exhibit 13. Named Appellants Danielle Martin, Diane Donham, and Amanda Herman, among others, offered public comments regarding the school closures at this meeting.

<sup>25</sup> *Id.* at pp. 1-2; see also GCBOE Exhibit 14.

<sup>26</sup> See GCBOE Exhibit 13 at pp. 2-6; see also GCBOE Exhibit 15.

<sup>27</sup> The impact of a county's per capita wealth under the current state funding formula is an elusive factor as Mrs. Waggoner explained in the Five Year Plan report presented at the December 13, 2011 meeting, see GCBOE Exhibit 6 (noting that, "the major variable within projecting our loss of state aid is the *elusive* wealth factor" and that despite "having a FARMS percentage of approximately 45.2% and a median income in \$40,000 range[,] we are rated by the state funding formula as being the 7<sup>th</sup> wealthiest county in Maryland").

- (5) The loss of state funding could continue and be even greater as Garrett County's wealth ratio increases compared to the rest of the State.
- (6) Closing Dennett Road would provide a projected cost savings of approximately \$1,214,150, which represented 59% of the total budget shortfall for FY 2013.
- (7) Consolidating the special education center for the southern region of the school system at Yough Glades Elementary School (Yough Glades) would provide greater efficiency, especially considering Yough Glades' close proximity to Dennett Road.
- (8) Closing Kitzmiller would provide a projected cost savings of approximately \$279,000, which represented 33% of the remaining budget shortfall for FY 2013.
- (9) Although the savings associated with closing Kitzmiller (Garrett County's oldest school)<sup>28</sup> were not as significant as the savings associated with closing Dennett Road, closing Kitzmiller provided the second most cost savings in the County, and relocating students from Kitzmiller to Broad Ford Elementary School (Broad Ford) would increase efficiency because enrollment at Kitzmiller had declined to a mere 49 students during the 2011-2012 school year -- almost half of the school's 2000 enrollment. Moreover, the closing of Kitzmiller would improve educational opportunities because students who were forced into multi-grade classrooms at Kitzmiller would benefit from the increased opportunities for services at Broad Ford, which has both the capacity and the personnel to support classes for each grade level.
- (10) Bus routes were already established and there was sufficient capacity to transport Dennett Road and Kitzmiller students to Broad Ford, Crellin Elementary School, and Yough Glades.
- (11) Closing Dennett Road and Kitzmiller would save the school system considerable capital expenditure funds since Dennett Road would soon need a new roof,<sup>29</sup> and Kitzmiller would require costly infrastructure repairs in order to maintain the building.
- (12) Class sizes at Broad Ford, Crellin, and Yough Glades would remain well within state averages despite the closure of Dennett Road and Kitzmiller.

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<sup>28</sup> As noted in the Dr. Teets' Recommendation to close Kitzmiller in 2011, Kitzmiller was built in 1923 and would not qualify for state funding for renovations and repairs due to its low enrollment. See GCBOE Exhibit 2, at p. 29.

<sup>29</sup> As Mrs. Waggoner noted in the Five Year Plan presented at the December 13, 2011 meeting, Dennett Road is "in need of renovation it has not had a new roof since it was built in 1957 with repairs in 1987." See GCBOE Exhibit 6, at p. 7.

(13) If Dennett Road and Kitzmiller were not closed, program and personnel reductions would be necessary and detrimental to the school system.<sup>30</sup>

24. At the GCBOE's public meeting on April 24, 2012, the Board voted to accept Mrs. Waggoner's recommendations to close both Dennett Road and Kitzmiller effective August 2012, prior to the start of the 2012-2013 school year.<sup>31</sup>

25. The GCBOE's decisions were set forth in writing, and on April 25, 2012, it notified the affected communities by notifying the parents of students enrolled at Dennett Road, Kitzmiller, Broad Ford, Crellin, and Yough Glades, of its final decision to close Dennett Road and relocate its students to Broad Ford, Crellin, and Yough Glades, and of its final decision to close Kitzmiller and relocate its students to Broad Ford.<sup>32</sup>

26. Included in these notices was information regarding the right to appeal the GCBOE's decision to the MSBE within thirty days of the GCBOE's April 24, 2012 decision.<sup>33</sup>

### DISCUSSION

As indicated in their Notice of Appeal, the Appellants appealed the decision to close Kitzmiller and Dennett Road prior to the beginning of the 2012-2013 school year, contending that the decision was "preconceived before [the] vote on April 24, 2012." The Appellants further contend that "trying to cram our children in classrooms is not the answer." Essentially, the Appellants disagreed with the decision to close Kitzmiller and Dennett Road and to send the

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<sup>30</sup> See GCBOE Exhibit 13, at pp. 2-6; see also GCBOE Exhibit 15.

<sup>31</sup> See GCBOE Exhibit 13, at pp. 4-6.

<sup>32</sup> See GCBOE Exhibit 16.

<sup>33</sup> *Id.*

children who were attending these schools to other elementary schools in Garrett County. The Appellants argued that the decision to close the schools was made before there was a special session of the Board of County Commissioners where it could be decided whether to allocate additional funds to the budget in order to keep these schools open. The Appellants further argued that because “pink slips” were issued to teachers on April 25, 2012, less than twenty-four after the decision had been made to close the schools that the GCBOE had predetermined that the schools would indeed close. The Appellants requested that MSBE evaluate the GCBOE decision to close Kitzmiller and Dennett Road.

**Legal Standard**

Pursuant to section 4-108 of the Education Article of the Annotated Code of Maryland, the GCBOE is charged, in pertinent part, as follows:

**4-108. Duties in General**

Each county board shall:

- (1) To the best of its ability carry out the applicable provisions of this article and the bylaws, rules, regulations, and policies of the State Board;
- (2) Maintain throughout its county a reasonably uniform system of public schools that is designed to provide quality education and equal educational opportunity for all children;

Section 4-109 of the Education Article provides:

**§ 4-109. Establishment of Public Schools**

(a) *County board may establish schools* - Subject to approval by the State Superintendent and in accordance with the applicable bylaws, rules, and regulations of the State Board, a county board may establish a public school if, in its judgment, it is advisable.

(b) *Schools as part of State Program* - On approval by the State Superintendent, any school established under this section becomes a part of the State program of public education.

(c) *Geographical attendance areas* - With the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.

Section 4-120 provides:

**§ 4-120. Consolidation of schools; transportation of Students**

(a) *Consolidation of schools*. -- If a county board considers it practicable, it shall consolidate schools.

(b) *Transportation of pupils*. -- Each county board shall arrange for the transportation of students to and from consolidated schools.

The decision of a local board to close and consolidate schools is the exclusive province of the local board and may be reversed only if arbitrary and unreasonable or illegal. COMAR 13A.02.09.03A; COMAR 13A.01.05.05A. *See also Coleman v. Howard Co. Bd. of Educ.*, MSBE Op. No. 05-32 (Sept. 27, 2005) (challenge of board decision to reassign ninth and tenth grade students from one high school to another as part of overall redesign of school boundaries); *Slider v. Allegany Co. Bd. of Educ.*, MSBE Op. No. 00-35 (July 31, 2000) (challenge of board decision to close, consolidate, and reconfigure various public schools).

COMAR 13A.01.05.05 provides in pertinent part as follows:

\* \* \*

B. A decision may be arbitrary or unreasonable if it is one or more of the following:

- (1) It is contrary to sound educational policy; or
- (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

C. 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 unlawful procedure;

- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

The burden of proof is on the Appellants to prove their case by a preponderance of the evidence. COMAR 13A.01.05.05D.

The Court of Appeals has recognized that, in general, courts will not attempt to substitute their judgment for the expertise of local school boards, acting within their discretion. *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967) (parents sought to restrain school board from transferring children from one elementary school to another). Thus, I will give due deference to GCBOE's decision.

### **Summary Affirmance**

In its Motion, the GCBOE contends that there are no genuine issues of material fact and that it is entitled to affirmance of its decision to close Dennett Road and Kitzmiller as a matter of law because its decision was not arbitrary and unreasonable or illegal. COMAR 13A.01.05.03D. The Appellants in their appeal contend that this decision was preconceived and that the decision should be reconsidered. The Appellants, however, did not respond to the GCBOE's Motion.

COMAR 13A.01.05.03 governs a local board's response to appeals. That regulation provides in pertinent part as follows:

#### D. Motion for Summary Affirmance.

(1) A motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent<sup>34</sup> is entitled to affirmance as a matter of law.

(2) A memorandum in support of or in opposition to a motion for summary affirmance shall contain the following:

- (a) A statement of the issues presented for review;

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<sup>34</sup> COMAR 13A.01.05.01B(9) defines "Respondent" as "the local board or other individual or entity which issued the decision that is on appeal."

- (b) A statement of the facts;
- (c) An argument which includes reference to relevant legal principles and State Board decisions, if any;
- (d) A short conclusion stating the relief sought; and
- (e) Any supporting documents, exhibits, and affidavits.

The OAH's Rules of Procedure have a similar standard for a motion for summary decision as that set out by the MSBE in its regulations governing motions for summary affirmance.

COMAR 28.02.01.12D provides:

- (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. . . .
- (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.

The OAH's rule regarding summary decision is largely based upon Maryland Rule 2-501, which governs motions for summary judgment in circuit court; namely, if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law, the motion must be granted. Because of the similarities between these three rules, I have relied upon appellate decisions interpreting Maryland Rule 2-501 for guidance in applying the MSBE's rule governing summary affirmance and the OAH's rule governing summary decision.

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 purposes 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 relating 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 genuine dispute as

to a material fact. *Id.*

For the reasons that follow, GCBOE's Motion is granted.

**Relevant Law**

COMAR 13A.02.09.01A provides that "[e]ach local board of education shall establish procedures to be used in making decisions on school closings." The local procedures must consider the impact of the proposed closing on the following Closing 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; and
- (8) Impact on the community in geographic attendance area for school proposed to be closed and school or schools to which students will be relocating.

COMAR 13A.02.09.01B.

The local procedures must also provide (1) a public hearing to permit concerned citizens an opportunity to submit their views prior to the final decision of the local board; and (2) notice to parents and guardians of students in attendance at schools considered for closure, including publication of the schools proposed for closure and the procedures that will be followed by the local board in making its final decision in two newspapers having general circulation in the geographic attendance area for the schools proposed to be closed and the schools to which students will be relocating at least two weeks prior to any public hearings to be held on the proposed closure. COMAR 13A.09.09.01C.

COMAR 13A.02.09.01D additionally mandates that the local procedures must provide that the final decision by a local board to close a school be announced at a public meeting, be made in writing, address the Closing Factors, and contain notification of the right to appeal the

decision to the MSBE; that notification of such decision be made to the community in the geographic attendance area of the school proposed to be closed and the school to which students will be relocating; and that the final decision include notification of the right to appeal to the MSBE within thirty days of the local board's final decision as set forth in COMAR 13A.02.09.03. COMAR 13A.02.09.02 finally provides that, "[e]xcept in emergency circumstances, the decision to close a school shall be announced at least 90 days before the date the school is scheduled to be closed but not later than April 30 of any school year."

County Board Policy 940 (Policy 940) was expressly established in accordance with COMAR 13A.02.09.<sup>35</sup> This policy satisfies each of the requirements set forth in COMAR 13A.02.09, with the additional requirement that the Superintendent form advisory groups "made up of staff members and members of the public selected by the Superintendent to investigate and report to the Superintendent the advantages and disadvantages of closing the school."<sup>36</sup>

As discussed below, there are no genuine issues of fact in dispute, and it cannot be disputed that the GCBOE's decisions to close Dennett Road and Kitzmiller were not arbitrary, unreasonable, or illegal. The Appellants failed to respond to the GCBOE's Motion and I will grant the GCBOE's Motion for Summary Affirmance without an evidentiary hearing or oral argument.

The MSBE 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. *See* COMAR 13A.02.09.03B; *See also* *Bushey Drive Elementary School Parents v. Bd. of Educ. of Montgomery Cnty.*, MSBE Op. No. 76-1 (1976), at 442 (stating that a

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<sup>35</sup> *See* GCBOE Exhibit 17.

<sup>36</sup> *Id.*

school closing decision is “the kind of policy decision which a local board is uniquely qualified to make,” thus, “this is not the kind of case in which the MSBE should substitute its judgment for that of the local board.”).

In this case, the Appellants failed to sustain their burden of demonstrating that the GCBOE’s decisions to close Dennett Road and Kitzmiller were arbitrary, unreasonable, or illegal as those terms are defined in COMAR. According to the MSBE and COMAR 13A.01.05.05B, a decision is “arbitrary or unreasonable” if the decision was “contrary to sound educational policy” or if “[a] reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.”

The decisions to close Dennett Road and Kitzmiller were neither arbitrary nor unreasonable. COMAR 13A.02.09.01 sets forth in great detail the minimum required components of a county board’s procedures to be used in making decisions on school closings. It is undisputed that County Board Policy 940 satisfies the minimum required components set forth in COMAR 13A.02.09.01, and that the GCBOE complied with Policy 940 and COMAR 13A.02.09 in making its decisions to close Dennett Road and Kitzmiller. *See Slider v. Allegany Cnty Bd. of Educ.*, MSBE Op. No. 00-35 (2000), at 53 (citing *Kensington Elementary School PTA v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 82-31 (1982) at 681) (reasoning that “[w]here a county board abides by its own regulations and guidelines . . . one cannot test arbitrariness and unreasonableness by a mathematical count of the board’s solution criteria” and further providing that “so long as there is adequate reason, supported by at least one criterion, the local board’s decision in a school closing case should prevail”).

Notably, the Appellants do not allege that the GCBOE violated Policy 940 or COMAR 13A.02.09.01 and the closest they come to alleging such a violation is the allegation that the

GCBOE's "decision to close the schools was pre-conceived."<sup>37</sup> That argument, however, wholly ignores the fact that proposed school closings were the product of multi-year considerations at public meetings of the GCBOE. Moreover, that argument fails to recognize that in light of the financial difficulties facing the school system, Mrs. Waggoner began the procedures mandated by COMAR 13A.02.09 and Policy 940 approximately four months prior to the final vote to close Dennett Road and Kitzmiller by commencing further investigation into the merits of school closures and by establishing advisory committees to study the impact of the school closures based on the Closing Factors. The GCBOE complied with the process set out in COMAR 13A.02.09 and Policy 940, which expressly provide for an investigation that considers the Closing Factors and gives members of the public numerous opportunities to voice their opinions regarding the school closings. In Mrs. Waggoner's final recommendation to close the schools, she expressly stated that she based her recommendation on "input from the Advisory Group, public comment and a long term review of many factors."<sup>38</sup> Thus, I find that Mrs. Waggoner's recommendation and the GBBOE's decisions were far from pre-conceived.

Furthermore, it is undisputed that the Garrett County Public Schools are facing a drastic reduction in State aid in the amount of \$2,259,542.<sup>39</sup> The GCBOE's decision to close Dennett Road and Kitzmiller saved the school system a total of approximately \$1,493,150 and allowed the GCBOE to pass a balanced budget and prevent devastating cuts and losses while still

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<sup>37</sup> See GCBOE Exhibit 18.

<sup>38</sup> See GCBOE Exhibit 13, at pp. 2, 4.

<sup>39</sup> See GCBOE Exhibit 14, at p. 2.

maintaining state average class sizes at Broad Ford, Crellin, and Yough Glades.<sup>40</sup> Surely, this decision was not contrary to sound educational policy. Moreover, it cannot be plausibly argued that a reasoning mind could not have reasonably reached the same conclusion reached by the GCBOE. *See Blazejak v. Kent Cnty Bd. of Educ.*, MSBE Op. No. 10-41 (2010), at 53 (explaining that the “reasoning mind” standard “is a broad standard giving great deference to the decisions made by local boards of education.”). Consequently, the Appellants cannot meet their burden of demonstrating that the GCBOE’s decisions affirming Mrs. Waggoner’s recommendation to close Dennett Road and Kitzmiller were arbitrary or unreasonable. *See Slider*, MSBE Op. No. 00-35 at 53 (citing *Kensington*, MSBE Op. No. 82-31 at 681) (stating that “[s]o long as there is adequate reason, supported by at least one criterion, the local board’s decision in a school closing case should prevail.”).

Lastly, the decisions below were not illegal. Md. Code. Ann., Educ. § 4-109(c) provides the county boards with the statutory authority to determine the geographic attendance area of the schools, and COMAR 13A.02.09 empowers the local school boards to close schools so long as they establish procedures in accordance with COMAR 13A.02.09 and comply with those procedures. As demonstrated in detail above, this is exactly what occurred in this case: the GCBOE considered each of the Closing Factors; concerned citizens (including the Appellants herein) were permitted an opportunity to submit their views; the GCBOE provided notice to the community and to the parents and guardians of students at Dennett Road, Kitzmiller, Broad Ford, Crellin, and Yough Glades by newspaper advertisements placed at least two weeks prior to the meeting at which Mrs. Waggoner made her final recommendation; those notices contained the procedures the GCBOE would follow in making its final decision; Mrs. Waggoner formed

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<sup>40</sup> *See* GCBOE Exhibit 13, at pp. 3-6.

advisory groups to investigate and report to the GCBOE the advantages and disadvantages of the proposed school closures; and the final decision considered the Closing Factors, was in writing, was made prior to April 30, and was sent to the community and to the parents and guardians of the students at Dennett Road, Kitzmiller, Broad Ford, Crellin, and Yough Glades, along with information regarding the right to appeal the GCBOE decision. "The procedures in this case met the MSBE's requirements. The proceedings adhered to those procedures. The decisions were a reasonable result of those proceedings and should be upheld." *Elprin v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 83-6 (1983), at 99. Simply stated, the Appellants' disappointment in the GCBOE's decisions to close Dennett Road and Kitzmiller do not alter the crucial fact that the GCBOE's decisions were not illegal.

In sum, the GCBOE's decisions to close Dennett Road and Kitzmiller were not arbitrary, unreasonable, or illegal. Accordingly, these decisions must be accorded prima facie correctness by the MSBE, and the MSBE cannot substitute its judgment for that of the GCBOE. *See* COMAR 13A.01.05.05A. Accordingly, the GCBOE's Motion for Summary Affirmance is hereby granted without the need for an evidentiary hearing or oral argument.

#### **CONCLUSIONS OF LAW**

I conclude that the Appellants' appeal does not raise genuine issues of material fact and that the GCBOE is entitled to summary affirmance as a matter of law. *Bushey Drive Elementary School Parents v. Bd. of Educ. Of Montgomery Cnty.*, MSBE Op. No. 76-1 (1976); *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464 (1967); *Elprin v. Howard Co. Bd. of Educ.*, 57 Md. App. 458 (1984); Md. Code Ann., Educ. § 4-120 (2008); COMAR 28.02.01.12D; COMAR 13A.01.05.03D; COMAR 13A.01.05.05A-E; COMAR 13A.02.09.01A-D; COMAR 13A.02.09.02; COMAR 13A.02.09.03A;. *See also Coleman v. Howard Co. Bd. of Educ.*, MSBE

Op. No. 05-32 (Sept. 27, 2005); *Slider v. Allegany Co. Bd. of Educ.*, MSBE Op. No. 00-35 (July 31, 2000).

**RECOMMENDED ORDER**

I **RECOMMEND** that the Motion for Summary Affirmance filed by the Garrett County Board of Education be **GRANTED** by the Maryland State Board of Education, and that the pre-hearing conference scheduled for August 20, 2012 be **CANCELLED**; and I further,

**RECOMMEND** that the decision of the Garrett County Board of Education to close Dennett Road Elementary School and Kitzmiller Elementary School prior to the 2012-2013 school year be **UPHELD** by the Maryland State Board of Education.

August 2, 2012  
Date Decision Mailed

\_\_\_\_\_  
Michael J. Wallace  
Administrative Law Judge

MJW  
#136279

**NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.



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DANIELLE MARTIN, *ET AL.*,

APPELLANTS

v.

GARRETT COUNTY BOARD OF

EDUCATION

\* BEFORE MICHAEL J. WALLACE,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-BE-16-12-25858

\* \* \* \* \*

**FILE EXHIBIT LIST**

The GCBOE submitted the following exhibits in support of its Motion:

- GCBOE Ex. 1: Minutes of the GCBOE, September 15, 2010
- GCBOE Ex. 2: Superintendent's Recommendations, April 5, 2011
- GCBOE Ex. 3: Minutes of the GCBOE, April 26, 2011
- GCBOE Ex. 4: 5 Year Plan, December 13, 2011
- GCBOE Ex. 5: Garrett County Schools 5 Year Plan Proposal Outline
- GCBOE Ex. 6: Garrett County Schools 5 Year Plan Proposal, December 2011
- GCBOE Ex. 7: Minutes of the GCBOE, December 12, 2011
- GCBOE Ex. 8: Certificate of Publication in the Republican
- GCBOE Ex. 9: Minutes of the GCBOE, February 14, 2012
- GCBOE Ex. 10: Garrett County Schools Timeline
- GCBOE Ex. 11: Minutes of the GCBOE, March 13, 2012
- GCBOE Ex. 12: Minutes of the GCBOE, April 10, 2012
- GCBOE Ex. 13: Minutes of the GCBOE, April 24, 2012

- GCBOE Ex. 14: Superintendent's Recommendations, April 24, 2012
- GCBOE Ex. 15: Superintendent's Final Recommendation for Closure of Dennett Road Elementary, April 24, 2012
- GCBOE Ex. 16: Memorandum to Parents of Dennett Road Elementary School from Sue F. Waggoner, Interim Superintendent, dated April 25, 2012
- GCBOE Ex. 17: Policies and Procedures handbook, Closing of Schools
- GCBOE Ex. 18: Appeal request from Appellants, dated May 1, 2012, follow-up letter dated May 20, 2012 and GCBOE response dated May 29, 2012

The Appellants did not submit any documents for consideration.