

HARRISON W., et al. and  
LORI WOLF,

Appellant

v.

CARROLL COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-29

## OPINION

### INTRODUCTION INTRODUCTION

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

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

### FACTUAL BACKGROUND

Before we review the facts of this case, we wish to acknowledge the concerns of the Appellants about certain text messages between board members and communication between board members and County Commissioners about the closure process and result. These communications, and the Appellants’ belief that their views were not fairly considered, lead us to question the full transparency of the board and the administration in conducting the closure

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

<sup>2</sup> The *Harrison, W.* Appellants are represented by Donald J. Walsh, Esq.

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

process. If board members and the administration are viewed as working secretly behind the scenes, distrust arises in the community about the decisions being made.

We have reviewed especially the text messages sent between September 3, 2015 and November 9, 2015. Over that time, the Vice President of the board texted, at one time or another, all other members of the board commenting, among other things, on the various closure plans, what was wrong with them, how one or another would rip “this county totally apart” including her own neighborhood. The board members texted back their own views of the various closure plans and options under consideration. They texted enrollment data, sometimes inaccurately. All of this took place outside of the public view on a matter of extraordinary public concern. Given the abbreviated methods of texting, the texts are often cryptic and difficult to put in context. When exposed to public view, as they have been in this case, they can be interpreted as part of a secret decision making plan.

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

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

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

We now turn to the facts of this case.

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

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

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

There are two high schools in the northern area of Carroll County, Manchester Valley High School (“Manchester Valley”) and North Carroll High School, which is slated for closure. The schools are approximately four miles apart and both are underutilized. The utilization rates are expected to drop in each school over a ten year period.

North Carroll High School was built in 1976. The school is approved for a roof replacement, science classroom renovations and a fire alarm replacement over the next few years. Manchester Valley was opened in 2009 and is the newest high school in Carroll County. The school still carries local debt for its construction.

Since at least 2012, the local board has explored the issue of school utilization. In April 2012, the local board, in conjunction with the Board of County Commissioners (“BCC”), commissioned a study of facility usage and school consolidation. This study was never completed. In 2013, the local board hired an independent consultant, MGT of America (“MGT”), to complete the utilization study and make recommendations. On December 11, 2013, MGT presented its final report to the local board. MGT presented its final report to the BCC on January 8, 2014.

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

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

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

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

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

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

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

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

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

The local board gave public notice of its October 14, 2015 meeting where it would be considering additional BAC options. At the October 14, 2015 meeting of the local board, the BAC presented the final version of Option 3 and a draft of Option 4. The Superintendent presented a historical timeline of the demographic and budgetary issues involved in arriving at the various options. Twenty-five citizens addressed the local board at the meeting.

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

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

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

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

- Consolidate Manchester Valley High School and North Carroll High School boundaries and combine the student population at Manchester Valley High School;
- Adjust New Windsor Middle School, Mt. Airy Middle School, and Northwest Middle School boundaries and redistrict the New Windsor Middle School students to Mt. Airy Middle School and Northwest Middle School;
- Adjust the Charles Carroll Elementary School, Ebb Valley Elementary School, Runnymede Elementary School, and William Winchester Elementary School school boundaries and redistrict Charles Carroll Elementary School students to Ebb Valley Elementary School, Runnymede Elementary School, and William Winchester Elementary School;
- Limit other redistricting to Runnymede Elementary School, Taneytown Elementary School; Elmer A. Wolfe Elementary School, Westminster Elementary School, William Winchester, Ebb Valley Elementary School, and Manchester Elementary School.
- Students whose schools remain open and are affected by boundary line adjustments have an option to remain at their current school under certain conditions, if the parent provides transportation;

- Form a Joint Committee with Carroll County government to determine whether any closed school buildings or grounds are needed for any other school system purpose. If not, the buildings and properties would be transferred back to Carroll County as surplus, and the Carroll County Commissioners would determine the final disposition of the buildings and property.

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

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

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

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

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

The Final Plan was an updated version of the November 11 Plan. It was substantially identical to the November 11 Plan with various additions resulting from information obtained since the November 11 Plan was published. The additional material consisted of information on the issue of reimbursement of State bond debt, indicating a total maximum outstanding State

debt on the three schools of \$653,347; updated utilization and enrollment analysis using the 2015 enrollment figures as the baseline; and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen minute shift to the school schedule.

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

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

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

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

### STANDARD OF REVIEW

This appeal involves a school closure decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05A. See also *Bushey Drive Elementary School Parents v. Bd. of Educ. of*

*Montgomery County*, 1 Op. MSBE 441 (1976) (State Board will not overrule a school closing decision unless it finds it to be arbitrary, unreasonable or illegal.).

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

#### RELEVANT LAW

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

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

(c) The newspaper notification shall appear at least 2 weeks in advance of any public hearings held by the local school system on a proposed school closing.

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

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

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

I. Facilities Master Plan

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

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

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

II. State Mandates

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

Student enrollment trends;

Age or condition of school building;

Transportation;

Education Programs;

Racial compositions of student body;

Financial considerations;

Student relocation;

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

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

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



### III. Local Assumptions

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

### IV. Implementation

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

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

## LEGAL ANALYSIS

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

The Appellants maintain that COMAR 13A.02.09.01B requires an individualized analysis of the school closing factors and that the local board failed to do so. The regulation states that the final decision of the local board shall include the rationale for the school closing and address the impact of the proposed closing on the eight factors set forth in the regulation. COMAR 13A.02.09.01D(1). Appellants claim that the local board did not consider the individual impact of North Carroll High School's closure on each of the regulatory factors, but rather collectively considered the impact of all of the closures system-wide in violation of the regulation.

As referenced above, COMAR 13A.02.09.01B mandates that each local board establish procedures that "shall ensure, at a minimum, that consideration is given to the impact of the proposed *school* closing on the following factors: (1) student enrollment trends; (2) age or condition of school buildings; (3) transportation; (4) educational programs; (5) racial composition of student body; (6) financial considerations; (7) student relocation; and (8) impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating." (emphasis added).

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

There is no one way for a local board to present the consideration of school closure factors. Different boards may choose different ways to analyze the information. Some may choose to provide separate analyses for each school proposed for closure, some may choose to provide a single system-wide analysis, and some may choose to provide a hybrid analysis using both approaches. We point out that in *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09 (2005) (affirming local board's decision to close multiple schools), the local board used the hybrid approach, considering some of the school closing factors individually and some of the factors system-wide with regard to the closure of Beall and Westmar High Schools.<sup>4</sup> What matters is that consideration is given to all of the factors, whether individually or collectively.

### *Preliminary Matters*

#### Evidence to Support the Local Board's Rationale

Appellants appear to argue that the ALJ should not have found in the local board's favor because some parts of the board's rationale are insufficient. In *Slider, II, et al. v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000), the State Board upheld a school closing

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<sup>4</sup> The issue raised here was not specifically addressed in the cited cases.

decision despite the appellants' argument that the written rationale inadequately addressed the school closing factors because it lacked sufficient detail. We stated in that case:

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

(*Slider* at 1). The ALJ in *Slider* considered all documents referred to during the local board's decision making process. The ALJ explained that ignoring the additional documents "which address relevant issues and factors that support the Board's closing and consolidation decision, would improperly exalt form over substance." (*Id.* at ALJ 51). Likewise, there was nothing improper about the ALJ looking to other documents in the record to evaluate the local board's school closure rationale.

While the wording of the rationale in this case could have included some additional information regarding the school closing factors, the Final Plan included numerous documents that were part of the local board's consideration and support the local board's decision. Most of the information is either written somewhere in the rationale itself or discerned from the attached items or those referenced in the bibliography. These items include: Appendix A: Birth by Jurisdiction 2003-2013; Appendix B: Migration Charts; Appendix C: Enrollment and Utilization Charts; Appendix D: Color Coded Utilization Charts; Appendix E: Student Relocation Counts; Appendix F: Student Ride Times; Appendix G: Student Distances to School; Appendix H: Student Demographic Analysis; Appendix I: Facilities Utilization Study Financial Index; Appendix J: Building and Core Staff Costs; Appendix K: In and Out Charts (students redistricted to and from); and a bibliography of references used to compile and analyze the data used to produce the plan. In addition, the record in this appeal contains numerous documents that were considered during the school closure process even though they were not attached to the Final Plan.

#### *Consideration of School Closing Factors*

The Appellants argue that the local board's decision is illegal because it failed to consider several of the school closing factors set forth in COMAR. As referenced above, COMAR 13A.02.09.01B requires that a local board consider the impact of the proposed school closing on the following factors: (1) student enrollment trends; (2) age or condition of school buildings; (3) transportation; (4) educational programs; (5) racial composition of student body; (6) financial considerations; (7) student relocation; and (8) impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating. We address the arguments below:

#### Transportation

Appellants assert that the local board undertook no analysis of the impact of the school closure on transportation.<sup>5</sup> (*Harrison, W. Exceptions* at 24). We do not agree. In addition to the number of buses needed and cost, the analysis also addresses the number of students affected by the closures, redesign of bus routes, distances to be traveled, and ride times. The rationale states:

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

(Final Plan at 17-18). The distance and ride time comparison is set forth in Appendices F and G. They show that average distance traveled by a student to Manchester Valley for the 2016-2017 school year will be at 4.31 miles, which is below the County average of 4.56 for other high school students throughout the County. The maximum distance will remain at 9.62 miles, as it was in 2015-2016. (*Id.* at 55-57). In addition, for the 2016-2017 school year, the average distance is expected to increase only slightly from 4.33 to 4.56 miles. *Id.*

Appellants maintain that a local board must consider the safety and suitability of the new student travel routes under this factor, relying on *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09 (2003) and *Hall v. Somerset County Bd. of Educ.*, 4 Op. MSBE 628 (1986). (*Harrison, W. Exceptions* at 24). These cases do not so hold. The ALJ was correct to conclude that the local board considered the impact of North Carroll's closure on transportation.

#### Educational Programs

Appellants also maintain that the local board's decision is illegal because it failed to review the educational programs factor. (*Harrison, W. Exceptions* at 25). The Final Plan, however, demonstrates otherwise. In particular, the high school information was found to be the most compelling. The Final Plan states:

Nowhere in CCPS are students more disadvantaged by the inefficiencies this [declining school utilization] creates for educational and extracurricular opportunities than at these two schools. Staffing resources are stretched at both schools, course offerings cannot be provided despite efforts to provide shuttles and other creative means, and extracurriculars suffer. It is critical that our school system address these deficiencies, and a school closure is the most effective solution.

(Final Plan at 5). In addition, the Final Plan addresses the autism program, stating that the closure of North Carroll HS will require the relocation of the high school autism." (*Id.* at 5, 18). It points out that the relocation of the high school program to the chosen site of Winters Mill

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<sup>5</sup>The Appellants use a joint heading of "Transportation and Student Relocation" in their Exceptions, but the argument presented is on transportation alone. (Exceptions at 22-25). The student relocation factor is not otherwise mentioned in the Exceptions with respect to the local board's consideration of the COMAR factors.

High School will benefit the school system as a whole because of its central location which results in reduced transportation costs and ride times for students. *Id.*

The Final Plan also explains that an analysis was conducted regarding the percentage of students identified as Limited English Proficient (“LEP”), as Special Education with Individualized Education Plans, and as receiving services under Section 504. None of these areas increased or decreased more than 1% from the current minimum or maximum percentage. (*Id.* at 18.). This translates into there being no increased need for programming in these areas. Although this information is not located in the “Education Programs” section of the analysis, this does not discount the fact that it was included in the Final Plan.

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

The Appellants argue that the local board’s decision is illegal because it failed to take into consideration the impact of closing North Carroll High School on the communities in the geographic attendance area for the school proposed to be closed or the schools to which students will be relocating. (*Harrison, W. Exceptions* at 28-30). The ALJ found, however, that the local board appropriately addressed this factor. (*Harrison, W. Proposed Ruling* at 43). We agree that this factor was considered. The local board determined that the closure of North Carroll “will allow the communities to retain their historic relationship and sense of community.” (Final Plan at 6). The local board also recognized that the closure will “minimize the likelihood that the same students will be redistricted again in the future.” *Id.* at 21. Although the local board’s consideration of this factor is weak, it does not render the decision illegal because the local board did consider it. Nor does this render the local board’s decision arbitrary or unreasonable as long as there was adequate reason for its decision and it is supported by at least one of the school closing factors that outweighs the others. *See Kensington Elementary Sch. PTA v. Montgomery County Bd. of Educ.*, 2 MSBE 671 (1982).

Appellants assert that consideration of the impact on the communities should go beyond “educational impact.” (*Harrison, W. Exceptions* at 29-30). They cite to *Concerned Citizens of Seven, et al. v. Bd. of Educ. of Anne Arundel Cnty*, 7 Op. MSBE 654 (1997), in which we affirmed the ALJ’s proposed decision stating that the inability of students to participate in after school activities, such as sports offered through the recreation council, was “a valid consideration relating to the impact on the community” even though it was “not directly related to school.” That case predated *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-99 at (ALJ) 50-51 (2005), in which we held that “[t]he BOE’s only responsibility under the regulatory scheme is to assess the education-related impact a school closing has on the community. It is not required to assess the impact a school closing has on civic groups, nor is it required to assess the loss of the school building as a place of shelter.”

Local Board’s Procedures

Appellants argue that the local board failed to analyze various additional factors set forth in local board policy in making the school closure decision in violation of its own procedures. It argues that for each school proposed to be closed, the local board was also required to consider the follow:

- geographic location of eligible students
- school capacities and enrollment projections

- subdivision location
- subdivision multiplier
- subdivision build out rate
- desire to keep subdivision together
- maintenance of contiguous school service area
- number of students
- providing space for projected growth.

These are some of the factors set forth in the local board's Administrative Regulation JCAA on Boundary Adjustments.

The local board maintains that its Administrative Regulation on Boundary Adjustment are inapplicable to a school closure. Rather, it is the local board's Administrative Procedures for school closings that govern. We find this view to be reasonable. *See Maryland Transp. Authority v. King*, 369 Md, 274 (2002) (“a great deal of deference is owed to an administrative agency’s interpretation of its own regulation.”).

#### *Allegations of Arbitrary or Unreasonable Decision*

Appellants maintain that the local board's school closing decision was arbitrary or unreasonable for various reasons. We address them below:

#### Student Enrollment/School Utilization Figures

Appellants maintain that the local board's decision to close North Carroll High School is arbitrary and unreasonable because the enrollment figures were flawed. They maintain that the numbers do not take into consideration growth in the area of the County in which the school is located into consideration. (*Harrison, W. Exceptions* at 17). The Final Plan shows, however, that the local board did consider future growth in its analysis of student enrollment, finding that growth was unlikely and enrollment in the school system has continued to decline since 2005. (*See Final Plan* at 11-12). Nevertheless, the local board gave the benefit of the doubt to those anticipating new growth and analyzed the amount of growth and yield required to replace the student capacity eliminated by the closures. *Id.* It concluded that “[a]pplying even the unlikeliest of scenarios and ignoring County and municipal adequate public facilities ordinances, there is no reasonable conclusion that new growth will out-distance this recommendation.” *Id.*

Appellants also claim that the enrollment figures are inaccurate because they are “an ever shifting collection of enrollment data which changed in the [school system’s] records. . . .” and the figures did not attach the 2015 student enrollment at each of the schools. (*Harrison, W. Exceptions* at 15). The school closure analysis in this case spanned several years, during which time enrollment numbers changed as each additional year of enrollment data became available, which affects projections for future years. The BAC Report, the options document prepared for the local board, and the November 11 Plan each used the 2014 enrollment figures for its projections. (*Final Plan* at 15). Those documents do not use the actual 2015 enrollment figures or future enrollment projections using those figures because the Maryland State Department of Education had not yet certified that information at the time of their release. Once the September 30, 2015 enrollment data became available, the local board updated information in the Final Plan projecting what the student enrollment in the remaining schools and school utilization would look up to 2025, if North Carroll High School were closed. Those projections used the actual

2015 enrollment data. (Final Plan, Appendices C & D at 37-49). Appellant's argument fails to recognize the realities of a student enrollment analysis.

Appellants claim further that there is a dispute over the data because the Maryland Department of Planning found that the 2015 actual enrollment on the local board's calculation worksheet is not consistent with the official actual enrollment listed by MSDE. (*Harrison, W. Exceptions* at 16). As the local board points out, the difference noted by MDP is small and advised the school system that it could use the local enrollment projections (2016-2025) for updating the 2016 Educational Facilities Master Plan.

The Appellants also argue that closure is inconsistent with sound educational policy because once closure and consolidation takes place, it placed utilization at Manchester Valley above 100% utilization for 2015 school year and considerably higher than all other high schools in Carroll County during the projection period. (*Harrison, W. Exceptions* at 18). The 2015 projection was a hypothetical. It demonstrated what enrollments at the remaining high schools would have been if North Carroll had been closed during the 2015 school year. Manchester Valley is projected to be at 100% utilization in 2016 with decreases over the projection period. This is considered adequate utilization. (See Final Plan at 44, Appendix C & 48, Appendix D).

The Appellants also argue the closure of North Carroll is inconsistent with the "School Community Concept" in which each town has its own school rather than having larger schools covering greater geographical areas. (*Harrison, W. Exceptions* at 19-20). There is nothing that requires the local board to adopt such an approach. As we stated in *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09 (2009):

Appellant also argues that recommendations to create community schools were ignored. To the contrary the record discloses that the ALJ did note that Appellant offered evidence of the community school concept to rebut the local board's use of school underutilization as a basis for closing and consolidating certain schools. However, as the ALJ explained, implementation of the school community school concept would do nothing to address underutilization. State-rated capacity considers only the student population, not, for example, the number of adults who go to evening gymnastics classes. We concur with the ALJ's conclusion that while the community school concept might be beneficial for some members of the community, the concept does nothing to alleviate underutilization of the school with respect to its State-rated capacity.

*Id.* at 5.

#### Age or Condition of School Buildings

Appellants argue that there was no evidence that "the age or condition of North Carroll was such that it needed to be closed." (*Harrison, W. Exceptions* at 21). This argument assumes that the local board must rely on this factor to justify the school closing. A local board's school closing decision need not be supported by every factor. See *Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000). In addition, it is up to the local board to determine the

weight to be accorded each factor in its decision making process. *See Kensington Elementary Sch. PTA v. Montgomery County Bd. of Educ.*, 2 MSBE 671, 681 (1982).

The local board was merely required to consider the age or condition of school buildings in its decision, which it clearly did. The Final Plan recognizes that Manchester Valley is the newer school building, having opened in 2009. North Carroll needed a new roof and was the second high school modernization priority following Westminster High School. (Final Plan at 5-7). The ALJ found that the local board “properly analyzed the age and condition of the affected schools, recognizing that, given the comparison of age and condition, Manchester Valley was the logical survivor if either school could not remain economically operational.” (*Harrison, W.* Proposed Ruling at 41). We concur.

### Financial Considerations

Appellants question the accuracy of the \$2,891,912 operational cost savings from the eliminations of core staffing and building costs,<sup>6</sup> claiming that the eliminated positions were not actually filled during the current school year. (*Harrison, W.* Exceptions at 26). They also question salary savings given that North Carroll teachers would be moving to Manchester Valley. *Id.* The local board has explained that operational savings associated with the school closings is a *recurring* cost savings associated with eliminating non-teaching positions tied to the school. (Reply to Opp. Mtn. Summ. Aff. at 17). The local board has also indicated that it reached agreements with the five unions representing employees regarding employee transfers and most of the employee reductions will be absorbed through attrition. *Id.*

Appellants also claim that the local board “hid from the public that CCPS intended to use New Windsor [Middle School] for its headquarters.” They argue that given the intent to have the building remain open, any cost savings based on avoidance of future capital improvement costs and the reduction of core staffing and building costs will never be realized (*Harrison, W.* Exceptions at 26-27). The Final Plan indicates a capital cost savings of \$11,475,000 due to the need to replace New Windsor’s HVAC System and roof. (Final Plan at 7). It also indicates a core staffing and building cost savings of \$1,238,788 988 in the school’s operation budget. (Final Plan at 7, 62 (Appendix A), and 65 (Appendix J).

The local board maintains that the possible relocation of school system headquarters to one of the schools proposed to be closed was not a secret and had been discussed publically on multiple occasions since September 2015. (Reply to Opp. Mtn. Summ. Aff. at 17). While we agree that it would have been more transparent for the local board to address the cost savings impact of New Windsor’s closure if New Windsor were to become the school headquarters, at the time the local board adopted the Final Plan, no decision on the relocation had been made. Whether or not it the offices will be relocated to New Windsor remains to be seen. Nevertheless, if New Windsor were to be used for this purpose, the local board claims that the capital savings associated with closing the school would still be realized to some extent because the local board would no longer have the capital costs for maintaining its current headquarters’ building. (Reply to Opp. Mtn. Summ. Aff. at 17).

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<sup>6</sup> Core staffing cost savings in the operational budget is the recurring cost savings associated with the elimination of non-teaching positions tied to the school buildings (e.g., principals, assistant principals, athletic directors, coaches, custodians, and food service). It does not include teachers. (Final Plan at 64, Appendix I).



As the ALJ stated:

The Appellants have combined various documents, including hand-picked portions of notes and emails of members of the Local Board to try and construct a scenario where they allege that the “true intentions” of the Local Board were to “support a hidden public agenda for the school’s properties.” While the Appellants’ allegations may be provocative, they offer no credible or substantive evidence to assert a genuine dispute of material fact [regarding the] facts that support the Local Board’s reasonable and legal actions in adopting the Final Plan.

(*Harrison, W.* Proposed Ruling at 38). We concur.

Appellants have presented a litany of issues that they believe the local board should have considered in its analysis of the impact of the school closure on the COMAR factors. They assert that the local board’s failure to consider all of these issues renders the school closing decision arbitrary or unreasonable. A local board is not required to discern and analyze every possible issue that relates to each of the COMAR factors. Rather, as explained above, the local board is simply required to consider the impact of the closure on the factor in making its decision.

In addition, we reiterate that COMAR does not require a local board to explain how much weight it has placed on each factor. *Langston Hughes Community Action Assn v. Baltimore City Bd. of Sch. Commr’s*, MSBE Op. No. 15-34 (2015). So long as there is adequate reason, one criterion alone can outweigh the others such that a local board’s decision should prevail. See *Kensington Elementary Sch. PTA v. Montgomery County Bd. of Educ.*, 2 MSBE 671 (1982),


As summed up by the ALJ:

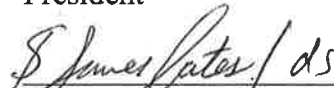
The Local Board’s basis for adoption of the Final Plan may be controversial, and opposed by all of the Appellants of the consolidated cases, but it was neither arbitrary, unreasonable, nor illegal. The Local Board became aware of Carroll County’s demographic challenges a number of years prior to the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

(Proposed Ruling at 40-41).

CONCLUSION

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

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

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

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

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

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

  
\_\_\_\_\_  
Laurie Halverson

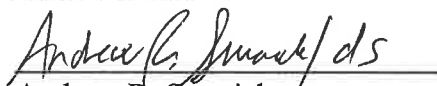
  
\_\_\_\_\_  
Stephanie R. Iszard

  
\_\_\_\_\_  
Laura Weeldreyer

Dissent:

  
\_\_\_\_\_  
Michele Jenkins Guyton

  
\_\_\_\_\_  
Madhu Sidhu

  
\_\_\_\_\_  
Andrew R. Smarick

June 30, 2016

HARRISON W.,

\*

BEFORE HARRIET C. HELFAND,

LAUREN B.,

\*

AN ADMINISTRATIVE LAW JUDGE

APPELLANTS

\*

OF THE MARYLAND OFFICE

v.

\*

OF ADMINISTRATIVE HEARINGS

BOARD OF EDUCATION OF

\*

OAH No: MSDE-BE-16-16-02815

CARROLL COUNTY,

\*

RESPONDENT

\*

\* \* \* \* \*

**PROPOSED RULING ON  
MOTION FOR SUMMARY AFFIRMANCE**

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

**BACKGROUND**

On January 6, 2016, the Appellants<sup>1</sup> filed an appeal with the Maryland State Board of Education (State Board) of the decision of the Board of Education of Carroll County (Local

<sup>1</sup> The Appellants named in the initial appeal were: Harrison W.; Lauren B.; Ryan Warner, Mayor of Manchester; Christopher Nevins, Mayor of Hampstead; North Carroll Recreation Council; Belisimo's; and Illiano's J&P Restaurant. A ruling is being issued in the instant case granting the Local Board's Motion to Dismiss as to Mayor Warner's; Mayor Nevins'; North Carroll Recreation Council's; Belisimo's; and Illiano's J&P Restaurant's lack of standing to pursue the appeal. Only Harrison W. and Lauren B. remain as appellants in this matter.

Board or BECC)<sup>2</sup> to close North Carroll High School (North Carroll) as of the 2016-2017 school year.<sup>3</sup>

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

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

On March 9, 2016, I conducted an In-Person Prehearing Conference (Conference), at which time I scheduled dates for the filing of responsive motions, discovery, a motions hearing,

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

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

<sup>4</sup> The other appeals filed with the State Board (and respective schools) and transmitted to the OAH are: Don Garmer v. BECC; Case No.: MSDE-BE-16-16-02660 (Charles Carroll and North Carroll); Lori Wolf v. BECC; Case No.: MSDE-BE-16-16-02597 (North Carroll); Elizabeth Galaida, *et al* v. BECC; Case No: MSDE-BE-16-16-02833 (New Windsor); and Erin Sipes, *et al* v. BECC; Case No.: MSDE-BE-16-16-03180 (Charles Carroll). All OAH proceedings consolidated the cases for the purpose of the proceeding. Separate rulings are being issued in all cases.

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

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

and a hearing on the merits, if needed. On March 14, 2016, I issued a Prehearing Conference Report outlining the discussion at the Conference.

On March 18, 2016, the Appellants filed a Response to the Local Board's Motion (Response), and on March 25, 2016, the Local Board filed a Memorandum in Reply to the Appellant's Response (Reply). On April 8, 2016, the Appellants filed a Supplement to the Response (Supplement). On April 11, 2016, the Local Board filed a Memorandum in Reply to the Supplement.

On April 11, 2016, I conducted a motions hearing during which the Local Board and the Appellants offered arguments on the Motion and Response.<sup>7</sup> Donald J. Walsh, Esquire, and Dawn A. Nee, Esquire, represented the Appellants.<sup>8</sup> Edmund J. O'Meally, Esquire, and Adam Konstas, Esquire, represented the Local Board.<sup>9</sup>

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

### **ISSUE**

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

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<sup>7</sup> As the April 11, 2016 motions hearing was consolidated with the other appeals, I also heard arguments from the other respective appellants regarding their respective appeals.

<sup>8</sup> Counsel for the Appellants was accompanied by Susan W. (mother of Appellant Lauren B.) and Tammy Ledley, Town Manager, Hampstead.

<sup>9</sup> Counsel for the Local Board was accompanied by Stephen H. Guthrie, Superintendent of Schools, Local Board, and Jonathan D. O'Neal, Assistant Superintendent for Administration, Local Board.

<sup>10</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.

## SUPPORTING DOCUMENTATION

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

1. Enrollment Projections Analysis Report, 2014-15 to 2023-24, dated January 22, 2014
2. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated December 9, 2015
3. Board Minutes, Special Board Meeting, December 9, 2015
4. Slide of Town of Hampstead Council Meeting
5. Board Minutes, dated February 11, 2015
6. Board Minutes, dated April 29, 2015
7. Press Release re: September 9, 2015 Board Meeting, dated August 26, 2015
8. Affidavit of Brenda L. Bowers, dated February 8, 2016
9. Affidavit of W. Carey Gaddis, dated February 8, 2016
10. "What's Happening in Carroll County Public Schools"(Newsletter), dated September 4, 2015
11. Board Minutes, dated September 9, 2015
12. Report of the Superintendent's Boundary Adjustment Committee, dated September 9, 2015
13. News Release, dated September 10, 2015
14. Newsletter, dated September 11, 2015
15. Newsletter, dated September 18, 2015
16. Newsletter, dated September 25, 2015
17. News Release, dated September 18, 2015
18. Newsletter, dated October 9, 2015
19. News Release, dated October 6, 2015

20. Board Minutes, dated October 14, 2015
21. Report of the Boundary Adjustment Committee (Power Point), dated October 14, 2015
22. Newsletter, dated October 16, 2015
23. Newsletter, dated October 23, 2015
24. News Release, dated October 27, 2015
25. Newsletter, dated November 6, 2015
26. Board Minutes, dated November 11, 2015
27. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated November 11, 2015
28. News Release, dated November 12, 2015
29. Newsletter, dated November 24, 2015
30. Notices, Baltimore Sun, dated November 17, 2015; Northern News, dated November 19, 2015; and Advocate of Westminster and Finksburg, dated November 25, 2015
31. Posting on blackboard.com, dated November 13, 2015
32. Posting on blackboard.com, dated November 25, 2015
33. Posting on blackboard.com, dated November 30, 2015
34. Posting on blackboard.com, dated December 2, 2015
35. Posting on blackboard.com, dated December 3, 2015
36. News Release, dated November 24, 2015
37. Newsletter, dated December 4, 2015
38. Memorandum from Stephen H. Guthrie, Superintendent, to Parents, Guardians, and Community Members, dated December 10, 2015
39. Posting on blackboard.com, dated December 10, 2015
40. Email from W. Casey Gaddis to Thomas Clowes, *et al.*, dated December 10, 2015

41. Educational Facilities Master Plan 2015-2024, dated June 10, 2015
42. North Carroll Recreation Council (NCRC) Bylaws, revised September 2014
43. Packet of Responses re: Boundary Adjustment Report
44. Notice from Board of County Commissioners of Carroll County, dated December 8, 2015
45. Hampstead Community Comprehensive Plan map, dated July 13, 2010; Town of Hampstead Resolution 2010-01, dated July 13, 2010; Town of Hampstead Planning and Zoning Commission Resolution PZC-2010-01, dated July 28, 2010; Hampstead Community Comprehensive Plan, dated July 13, 2010
46. Permit 7-22:23-1138, Maryland Department of the Environment, issued January 16, 2009, with attachments
47. Affidavit of Steven M. Johnson, dated February 8, 2016
48. Letter from Kathryn M. Rowe, Assistant Attorney General, Office of Counsel to the General Assembly, to the Honorable George C. Edwards, dated November 1, 2013
49. Affidavit of Stephen H. Guthrie

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

Reply:

1. Email between Arabia Davis and William Caine, with attached State Rated Capacity Calculation Worksheets, dated December 2, 2015
2. Minutes of Community Advisory Council (CAC), dated September 16, 2015; BAC Presentation to the CAC (Power Point), dated September 16, 2015; Instructional Effects of Declining Enrollments; Local Board Policy—Advisory Councils to the Local Board (Purpose and Policy Statement, etc.); Local Board Policy—Advisory Councils to the Local Board (General Guidelines, etc.)
3. DVD—Kiefer Mitchell
4. Board Agenda Item: Ratification of Carroll County Education Association (CCEA) Bargaining Agreement—Assignment of Displaced Employees Memorandum of Understanding, dated January 13, 2016; Memorandum of Understanding Between Board of Education and CCEA; Board Agenda Item—Ratification of Carroll Association of School Employees (CASE) Bargaining Agreement—Assignment of Displaced Employees Memorandum of Understanding, dated January 13, 2016; Memorandum of Understanding Between Board of Education and CASE, dated



January 13, 2016; Board Agenda Item: Ratification of American Federation of State, County and Municipal Employees (AFSCME) Bargaining Agreement—Assignment of Displaced Employees Memorandum of Understanding, dated January 13, 2016; Memorandum of Understanding Between Board of Education and AFSCME; Board Agenda Item: Ratification of Administrators and Supervisors (A & S) Bargaining Agreement—Assignment of Displaced Employees Memorandum of Understanding, dated January 13, 2016; Memorandum of Understanding Between Board of Education and A & S; Affidavit of Stephen H. Guthrie, dated March 24, 2016

The Appellants submitted the following attachments in support of their Response:<sup>11</sup>

1. Emails between Jennifer Seidel and Stephen Guthrie, dated November 4, 2015<sup>12</sup>
2. Document entitled “High School Closures”
3. Email from Stephen Guthrie to Richard Rothschild, dated November 13, 2015
4. Handwritten notes
5. Emails between Kate Redding and Jonathan O’Neal, dated September 23, 2015
6. Portions of Local Board website: Community Advisory Council; Board-Appointed Committees
7. Email from Lisa R. Householder Carroll to Penny Rockwood, et al, dated January 26, 2016
8. Portion of Local Board document “Section 3 Goals, Standards, and Guidelines,” 2013-2014
9. The Superintendent’s Final School Closure and Boundary Adjustment Recommended Plan, dated December 9, 2015
10. Email between Christopher Hartlove to Cynthia McCabe, et al, with attachments, dated December 15, 2015
11. Pages from Superintendent’s Proposed 2016-2017 Operating Budget

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<sup>11</sup> Attachments 1-26 were filed with the Response; Attachments 28 and 29 were filed with the Supplement. The attachments were accompanied by an affidavit, signed by the Appellant’s counsel, that the documents attached were copies of documents provided by the Local Board or obtained from the Carroll County website, but that “[i]n certain cases, only the relevant or pertinent pages of lengthy exhibits have been copied. Full copies of the documents or reports referenced can be produced if and when necessary.”

<sup>12</sup> James Doolan, Devon Rothschild, Robert Lord, and Virginia Harrison were also included as recipients of the emails.

12. Documents including Power Point presentation; Local Board Enrollment Projections 2011-12 to 2020-21; 2012-13 to 2021-22; 2013-14 to 2022-23; 2014-15 to 2023-24; 2015-16 to 2024-25
13. Local Department Final Facility Utilization Study, dated December 11, 2013
14. Letter from Stephen H. Guthrie to Richard Rothschild, dated June 12 2012; Notes titled "Discussion with Commissioner Rothschild Facilities Study," dated August 20, 2012
15. Emails between Jonathan O'Neal and William Caine, dated January 23 and 24, 2014; email from Dodds Cromwell and Jonathan O'Neal, dated January 15, 2014
16. Email from Kimberly Dolch to Thomas Clowes, *et al.*, dated January 13 and 19, 2016; Steven Johnson to Kimberly Dolch, dated January 13 and February 3, 2016; and Kimberly Dolch and Jason Arnold, dated February 3, 2016
17. Pages from Local Department Handbook, revised January 12, 2011, "Authority and Responsibilities of the Board of Education"
18. Power Point: "Buildable Land Inventory Carroll County Maryland," dated January 2012
19. Green Ribbon Schools 2014 School Nominee Presentation Form, dated January 10, 2014
20. Emails between Stephen Guthrie and various students, dated December 1, 9, 10, 11, 22, and 27, 2015
21. Charts/Lists: "Students Enrolled in Courses Outside of Their Home Building 2015-2016"; "Concurrent/Dual Enrollment SY2014-SY2016"; "Students from NCHS taking classes at MVHS"
22. Pages from "High School Program of Studies and Career Pathways Planning Guide 2016-2017"
23. Email from Christopher Hartlove to Cynthia McCabe, *et al.*, with attachment, dated December 15, 2015
24. Preliminary Report on the Impact of School Size, prepared for the Maryland State Department of Education, submitted January 21, 2015
25. Traffic Impact Study, Manchester (Northeast) High School, dated October 2006, revised November 2006

26. Letter from Larry Hogan, Governor, to Warren I. Sumpter and Dr. Theresa R. Alban, dated December 3, 2015
27. (not included)
28. Letter from Roberta J. Windham, Esq., to Stephen Guthrie, dated March 24, 2016
29. Emails between Devon Rothschild and Stephen Guthrie, dated December 31, 2014 and January 3, 2015

### **UNDISPUTED FACTS**

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

1. Between 1993 and 2004, Carroll County experienced a historic increase in school enrollment.
2. Since 2005, the school population of Carroll County has steadily declined; this decline is expected to continue for the foreseeable future. Since 2007, the Local Board has expressed concern about the decline, and since 2010, has contemplated ways to adapt its facility usage to address the decline.
3. State aid to local schools is based on a per-pupil funding formula and relative wealth allocation. Due to the decline in enrollment, the Local Board has lost revenue, and has had to eliminate school programs and positions. Loss of revenue has also impacted the Local Board's capacity to pay school employees competitive salaries, which currently rank near the bottom of similarly-situated employees in the State.
4. Because of the lower enrollment, some of Carroll County's schools are underutilized. Overall, school utilization is expected to decline over the next ten years.

5. The Local Board operates two high schools in the northern area of Carroll County, Manchester Valley High School (Manchester Valley) and North Carroll. North Carroll and Manchester Valley are approximately four miles apart.
6. Both Manchester Valley and North Carroll are currently underutilized. Utilization rates are expected to drop in each school within a ten-year period.
7. North Carroll was built in 1976. The Local Board has approved North Carroll for a roof replacement project. North Carroll is also approved for science classroom renovations and a fire alarm replacement over the next several years.
8. Manchester Valley was opened in 2009, and is the newest high school in Carroll County. Manchester Valley still carries local debt for its construction.
9. The Appellants are students at North Carroll (Harrison W.) and Manchester Valley (Lauren B.).
10. The Local Board has established administrative procedures for public school closings that contain the following procedures and timelines:

#### PROCEDURE

##### I. Facilities Master Plan

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

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

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

II. State Mandates

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

Student enrollment trends;  
Age or condition of school buildings;  
Transportation;  
Education programs;  
Racial composition of student body;  
Financial considerations;  
Student relocation;  
Impact on community in geographic attendance area for school or schools, to which students will be relocating.

- B. Public Hearing: Concerned citizens shall be permitted to submit their views at a public hearing or to submit written testimony or data on the proposed school closing.
- C. Date of Decision: Except in emergency circumstances, the decision to close a school shall be announced at least ninety (90) days before the school is scheduled to be closed, but not later than April 30 of any school year.

III. Local Assumptions

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

#### IV. Implementation

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

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

(Local Board #41)

- 11. Since at least 2012, the Local Board has explored the issue of school utilization. In April 2012, the Local Board, in conjunction with the Board of County Commissioners

(BCC), commissioned a study of facility usage and school consolidation. This study was never completed.

12. In 2013, the Local Board hired an independent consultant, MGT of America, to complete the utilization study and make recommendations. MGT completed the study; on December 11, 2013, MGT presented its final report to the Local Board; and on January 8, 2014, MGT presented the report to the BCC.
13. In its report, MGT recommended closing two elementary schools and one middle school, and replacing the three schools with a new K-8 school complex. The MGT report also recommended balancing enrollments and developing clean feeder patterns across the system. The MGT recommendation for the K-8 school did not come to fruition.
14. In February 2015, the Local Board approved the Superintendent's<sup>13</sup> recommendation to appoint a Boundary Adjustment Committee (BAC) to address the decline in student enrollment and the effective and efficient use of school facilities, including the possibility of school closures. The BAC was given a charge to produce a report by September 2015.
15. In May 2015, the Superintendent submitted his annual, proposed Educational Facilities Master Plan (EFMP) to the Local Board. The EFMP recommended that the Local Board begin the process to close Charles Carroll, one of the elementary schools noted in the MGT recommendation, for the 2016-2017 school year. The Local Board adopted the EFMP at its June 10, 2015 meeting.
16. On August 26, 2015, the Local Board issued a press release announcing that the Local Board would meet on September 9, 2015. The press release noted that the agenda

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<sup>13</sup> Stephen H. Guthrie.

items of the meeting would include the presentation of the BAC recommendations and noted “[t]here will be time for citizen participation at this meeting. The public is encouraged to attend.” The September 9, 2015 meeting was also announced in the September 4, 2015 newsletter of Office of Community and Media Relations (OCMR).<sup>14</sup> The OCMR newsletter also stated that the agenda items of the meeting would include the presentation of the BAC recommendations and noted “[t]here will be time for citizen participation at this meeting. The public is encouraged to attend.” (Local Board #10)

17. At the September 9, 2015 meeting of the Local Board, the BAC presented its final report. The report contained two options for school closures and redistricting, and contained a timeline for feedback, the public hearing process, and a final decision. It provided contact information for offering feedback, as well as additional information.
18. Option 1 included the closing of Charles Carroll and balancing enrollments across the remaining schools. The BAC determined that Option 1 was insufficient to address the decline in enrollment or adequately reduce expenses.
19. Option 2 recommended the closure of North Carroll, New Windsor, Charles Carroll, Sandymount Elementary School (Sandymount) and Mt. Airy Elementary School (Mt. Airy) and balancing enrollments across the remaining schools. The BAC recommended this option.
20. At the September 9, 2015 meeting, during which five members of the public offered comment, the Local Board directed the Superintendent and the BAC to develop other options for consideration that would impact fewer students than Option 2.

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<sup>14</sup> The OCMR is part of the Local Board and publishes a weekly newsletter called “What’s Happening in Carroll County Public Schools.”



21. On September 10, 2015, the Local Board issued a press release announcing a Local Board public work session meeting on September 28, 2015. The Local Board also announced the work session through the OCMR's September 11, and 18, 2015 newsletters.
22. On September 18, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for October 14, 2015. The press release noted that there would be time for citizen participation at the meeting and that the public is encouraged to attend. The September 25, 2015 OCMR newsletter also announced the September 28, 2015 BAC work session, noting that although there would be no citizen participation, the public is encouraged to attend. Notice of the October 14, 2015 meeting was also published in the September 25, 2015 OCMR newsletter, which noted that at that meeting, there would be time for citizen participation and the public is encouraged to attend.
23. In response to the Local Board's direction, the BAC produced a draft of Option 3 at the public work session on September 28, 2015.
24. Option 3 recommended the closure of the same three elementary schools as Option 2, as well as New Windsor and North Carroll. The difference between Options 2 and 3 involved setting different boundaries.
25. At the September 28, 2015 work session, the Local Board asked the BAC to consider another option, which resulted in a draft of Option 4. Option 4 recommended the closing of East Middle School and related relocation of students.

26. On October 6, 2015, the Local Board issued another press release announcing the October 14, 2015 meeting. The press release stated that there would be time for citizen participation at the meeting and that the public is encouraged to attend.
27. On October 9, 2015, the OCMR newsletter also announced the October 14, 2015 meeting, and that its agenda would include hearing additional options from the BAC. The newsletter included the following: "Citizen participation is included in this meeting. However, the time for citizen participation will be limited as the Board has a full agenda. The Board of Education wishes to remind the public that when it provides specific direction to staff regarding boundary line adjustments and potential school closures, four hearings in different parts of the county will be set up to receive citizen input. The Board of Education will consider all public input prior to taking any action on boundary line adjustments or school closures." (Local Board #18)
28. The BAC presented the final version of Option 3 and a draft of Option 4 at the October 14, 2015 public meeting of the Local Board. At the meeting the Superintendent presented an historical timeline of the demographic and budgetary issues involved in arriving at the various options. Twenty-five citizens addressed the Local Board at the meeting.
29. The OCMR published an announcement of the Local Board's public work session to be held on October 26, 2015, regarding the BAC recommendations in its October 16, and 23, 2015 newsletters.<sup>15</sup>
30. At the October 26, 2015 public work session, the Superintendent determined Option 4 lacked clarity and viability. The BAC never produced a final version of Option 4.

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<sup>15</sup> The October 16, 2015 OCMR newsletter also announced a town meeting to be hosted by Board President James Doolan and Superintendent Guthrie to be held on October 20, 2015. Members of the community were invited to attend the meeting and address their concerns or ask questions.

31. Also at the October 26, 2015 public work session, the Superintendent informed the Local Board that he had met with the BAC and asked it to produce another option, one that would close Charles Carroll, New Windsor, and North Carroll and limit redistricting as much as possible, and that, in the future, the Local Board could consider other closures or boundary adjustments, if needed.
32. On October 27, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for November 11, 2015. The press release stated that the Superintendent would present his recommendation for potential school closures, and that citizen participation would be included in the meeting. The Local Board also announced the November 11, 2015 meeting in the OCMR's November 6, 2015 newsletter. The newsletter also stated that citizen participation was to be included in the meeting.
33. On November 11, 2015, the Superintendent presented a Superintendent's Final School Closure and Boundary Adjustment Recommended Plan (November 11 Plan).<sup>16</sup> The November 11 Plan recommended the following for the 2016-2017 school year:
- Consolidate Manchester Valley and North Carroll boundaries and combine the student populations at Manchester Valley;
  - Adjust New Windsor, Mt. Airy, and Northwest Middle School (Northwest) boundaries and redistrict the New Windsor students to Mt. Airy and Northwest;
  - Adjust Charles Carroll, Ebb Valley Elementary School (Ebb Valley), Runnymede Elementary School (Runnymede), and William Winchester Elementary School (WW) and redistrict Charles Carroll students to Ebb Valley, Runnymede, and WW;

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<sup>16</sup> In addition to the Superintendent's presentation and other agenda items, twenty citizens addressed the Local Board regarding school closures and redistricting.

- Limit other redistricting to Runnymede; Taneytown Elementary School (Taneytown); Elmer A. Wolfe Elementary School (Elmer Wolf); Westminster Elementary School (Westminster); WW; Ebb Valley; and Manchester Elementary School (Manchester);
- Students whose schools remain open and are affected by boundary line adjustments have an option to remain at their current school under certain conditions, if the parent provides transportation;<sup>17</sup>
- Form a Joint Committee with Carroll County government to determine whether any closed school buildings or grounds are needed for any other school system purpose. If not, the buildings and properties would be transferred back to Carroll County as surplus, and the Carroll County Commissioners would determine the final disposition of the buildings and property.

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

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

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

North Carroll

The Superintendent concurs with the BAC recommendation that North Carroll is the only feasible option for a high school closure. High school data are the most compelling for a school closure. Current aggregate utilization is 79% and is projected to drop to 69% by the end of the projection period. In northern Carroll, this is even more pronounced. As noted above, both northern high schools are just above 60% utilization today and projected to be in the 50% range by the end of the projection window.

Nowhere in CCPS are students more disadvantaged by the inefficiencies this creates for educational and extra-curricular opportunities than at these two schools. Staffing resources are stretched at both schools, course offerings cannot be provided despite efforts to provide shuttles and other creative means, and extra-curricular programs

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<sup>17</sup> The conditions include students entering into the highest grade at the affected school; students who have siblings who would be enrolled in a different school; and students who currently have an approved out-of-district request to attend an underpopulated school.

suffer. It is critical that our school system address these deficiencies, and a school closure is the most effective solution.

Of the two area high schools, which are located four miles apart, Manchester Valley is the newest, having opened in 2009. From facility condition, educational condition, and fiscal perspectives, it would be illogical to close the more modern school. Furthermore, Manchester Valley still carries local debt.

By contrast, North Carroll was constructed in 1976. It has a roof replacement project scheduled within the current CIP<sup>18</sup> window. Also, based on the Modernization Needs Analysis in the Board's Educational Facilities Master Plan, which dictates priorities in the CIP, North Carroll is the second high school modernization priority following Westminster High.

Closing North Carroll requires the relocation of the regional high school autism program. The program would be moved to Winters Mill High School under this plan. Winters Mill's current and projected enrollments under this will more than accommodate the relocation of the autism program without the need for relocating students or making major building modifications.

The Superintendent's final recommendation modifies the BAC Report's high school boundaries and creates a new boundary for Manchester Valley that includes almost the entire current student populations from both northern high schools. Although the new school population will be over capacity initially, both projected enrollments and changes to state-rated capacity will leave the school under capacity within the projection period. This change will allow the communities to retain their historic relationship and sense of community.

36. The November 11 Plan listed and analyzed the following: Organizational Efficiencies, Operational Savings, and Capital Cost Avoidance;<sup>19</sup> One-Time and On-Going Offsets to Savings; Reimbursement of State Bond Debt; On-Going Offsets to Savings: Student Transportation; Impact of Declining Enrollment on the School

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<sup>18</sup> Capital Improvement Plan.

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

analysis of available revenue sources; school utilization rates; and anticipated growth and yield.<sup>20</sup>

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

**1. Student Enrollment Trends:**

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

At the high school level:

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

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

*System Advantages*—This plan improves the total utilization at the elementary, middle, and high school levels. As a result, this option makes a more efficient use of facility resources which will allow the system to provide more resources toward the instructional program.

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<sup>20</sup> The November 11 Plan also included boundary maps, graphs of feeder patterns, graphs of comparative school populations, the following Appendices: Appendix A: Births by Jurisdiction 2003-2013; Appendix B: Migration Charts; Appendix C: Enrollment and Utilization Charts; Appendix D: Color Coded Utilization Charts; Appendix E: Student Relocation Counts; Appendix F: Student Ride Times; Appendix G: Student Distances to School; Appendix H: Student Demographic Analysis; Appendix I: Facilities Utilization and Study Financial Index; Appendix J: Building and Core Staff Costs; Appendix K: In and Out Charts (re: students restricted to and restricted from schools); and a bibliography of references used to compile and analyze the data used to produce the plan.

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

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

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

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

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

## **3. Transportation:**

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

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

decrease in number of schools to be serviced. Charles County Elementary is a third transportation tier school. Many of the elementary schools contiguous to these three schools are also third transportation tier schools thereby lessening the potential need for additional bus resources.

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

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

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

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

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

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

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

*Overview of Impact*—The analysis of the racial composition of the student body was conducted by comparing the minimum and maximum percentages of the student population for county schools at each school level, elementary, middle and high. In addition to the six racial designations reported to the Maryland State Department of Education (African American, American Indian or Alaskan Native, Asian, Pacific Islander, white, and Multi-Racial), analysis included Hispanic students as well as students in the special services



groups including students on Free and Reduced Meals (FARMS) which is the federal proxy for poverty, students identified as Limited English Proficient (LEP), Special Education students with Individual Education Plans (IEP), and students receiving services under Section 504 of the Rehabilitation Act of 1973, as amended (Sec 504). In the recommendation, no area reviewed increases or decreases more than 1% from the minimum or maximum percentage.

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

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

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

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

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

## **6. Financial Considerations:**

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

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

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

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

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

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

## **7. Student Relocation:**

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

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

*System Challenges*—This plan requires the reassignment of 1,668 students, or approximately 7% of all students. Although this plan does not redistrict as many students as other options, it still requires the relocation of a large number of students. As a result this will require adjustments for parents and students attending new schools, and potential school time/bus schedule changes. This makes the elementary to middle feeder pattern more fragmented, but improves the middle to high feeder pattern. Currently there are seven elementary schools whose students will be split and attend more than one middle school. This plan increases that number to eight elementary schools whose students are split. At the secondary level, there are currently four middle schools whose students are split and attend more than one high school. This plan would result in only two middle schools whose students are split and attend multiple high schools.

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

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

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

This plan places North Carroll High students into two adjacent high schools, Manchester Valley High and Westminster High. As a result, Manchester Valley and Westminster will have 2014 utilizations of 112% and 87% respectively. Although this plan leaves Manchester Valley above 100%, a

change to the State Rated Capacity of the building will improve this utilization number. Based on a current review of State Rated Capacity, the State Rated Capacity of Manchester Valley would increase to 1,389. After this change, the school would only have a utilization above 100% in 2014 and 2015. This option does not require any high schools to change transportation tiers.

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

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

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

regarding the November 11 Plan and the public hearings concerning the proposed school closures and boundary adjustments to be held on December 1, 2015 at North Carroll; on December 2, 2015 at Winters Mill High School; and on December 3, 2015 at Francis Scott Key High School. The notices all included information regarding the public hearings related to a special Local Board meeting to take place on December 9, 2015. The notices also explained the procedures for the public to submit oral and written testimony at the public hearings.

41. On November 24, 2015, the OCMR newsletter announced the December 1, 2, and 3 public hearings and a regular Local Board meeting on December 9, 2015, and a special Local Board meeting regarding school closures and boundary adjustments on December 9, 2015. The newsletters also included information regarding public comment/written testimony/data to be offered at the December 1, 2, and 3, 2015 meetings and at the December 9, 2015 special meeting.
42. On November 24, 2015, the Local Board issued a press release announcing the December 9, 2015 special Local Board meeting. The press release also stated that the meeting would address the November 11 Plan and that members of the public would be permitted two minutes per person to speak or present written testimony of data.
43. On December 3, 2015, Governor Larry Hogan wrote to Warren I. Sumpter, President of the Maryland Association of Boards of Education and Dr. Theresa Alban, Public School Superintendents Association of Maryland, informing them that he intended to include new funding in the FY-17<sup>21</sup> budget to “assist local jurisdictions that have been facing the challenge of maintaining adequate funding during the same time that their student enrollments have declined.” The Governor’s letter noted Carroll

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<sup>21</sup> Fiscal Year 2017.

County's 7% decrease in enrollment, as well as greater levels of decreased enrollment in other counties. In the letter, the Governor proposed stop-gap funding of \$4 million for Carroll County schools, and also expressed an interest in deferring school closings to create more time to create a more comprehensive plan.

44. The December 4, 2015 OCMR newsletter announced the December 9, 2015 regular and special Local Board meetings, and included information regarding citizen participation.
45. The Local Board also posted messages to all of the school system parents via the Blackboard Contact Message Center (Blackboard)<sup>22</sup> on November 13, 25, and 30 and December 2 and 3, 2015, providing notice of the public hearings on school closures and boundaries to be held on December 1, 2, and 3, 2015, and of the special Local Board meeting to be held on December 9, 2015.
46. The Local Board held a special board meeting on December 9, 2015. At the beginning of the meeting, eighteen citizens offered comments regarding school closures and redistricting.
47. Following the citizen's comments, the Superintendent reviewed the Final Plan. The Final Plan presented at the December 9, 2015 meeting was an updated version of the November 11 Plan. The Final Plan was substantially identical to the November 11 Plan, with some additions that resulted from information obtained since the November 11 Plan was published. The additional material consisted of information regarding the issue of reimbursement of State bond debt, indicating a total maximum outstanding State debt on the three schools of \$653,347; updated utilization and

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<sup>22</sup> Blackboard is an internet-based information system in which educational institutions can post messages accessible to participants.

enrollment analysis using the 2015 enrollment figures as the baseline;<sup>23</sup> and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen-minute shift to the school schedule.

48. In his presentation, the Superintendent reviewed all five options that had been considered by the Local Board, the points of discussion and public hearings, information on additional state funding, the actions of the Local Board, and the Final Plan. Following the Superintendent's report, Assistant Superintendent Jonathan O'Neal reviewed the boundary adjustment recommendations and maps for each school, outlining the current attendance boundaries and proposed boundaries under the Final Plan.
49. Ultimately, the Superintendent offered the Final Plan, which included the recommendation of the November 11 Plan to close Charles Carroll, New Windsor, and North Carroll, effective July 1, 2016. The Superintendent requested that the November 11 Plan, updated by the Final Plan, be incorporated by reference into a motion as the Local Board's Final Plan. The Superintendent, in his presentation, also recommended that the Superintendent provide written notification of the Local Board's decision to the affected communities in the geographic attendance areas of the schools to be closed and the schools to which student would be relocated. The

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<sup>23</sup> This change resulted in the following language on p. 16 of the Final Plan compared to p. 15 in the November 11 Plan (at the fourth bullet point under "At the high school level" and below that section): "Currently there are no high schools with utilization above 100% for any portion of the projection period. Based current, approved State Rated Capacities, the State Rated Capacity of Manchester Valley would increase to 1,383. After this change, the school would only have a utilization above 100% based on 2015 State-certified enrollments. During the time period of the BAC process until the November 11, 2015 Board meeting, the most recent State-Certified enrollment were the September 30, 2015. Accordingly, the BAC Report, the options prepared for the Board, and the Superintendent's November 11, 2015 Recommended Plan used the 2014 enrollment figurers as the initial numbers. Subsequent to the [Appendices] C and D have been updated in this version of the Superintendent's final Recommended Plan to apply the 2015 enrollment figures as the baseline."

notification would also advise recipients of the right to appeal the Local Board's decision to the State Board within thirty days of the date of the decision.

50. Local Board member Virginia Harrison moved that the Final Plan be accepted. The motion was seconded by Local Board member and Vice President Bob Lord. Four Local Board members, President James Doolan, Mr. Lord, Ms. Harrison, and Jennifer Seidel voted in favor of the Final Plan; one Local Board member, Devon Rothschild, voted against the Final Plan. Matthew Saxton, Student Representative to the Local Board, expressed agreement with the Final Plan.
51. On December 10, 2015, the Superintendent sent a letter to parents, guardians, and community members describing the events of the December 9, 2015 meeting, including the motion approved by the Local Board and a copy of the Final Plan. The letter also included a statement informing the recipients of the right to appeal the Local Board's decision to the State Board, in writing, within thirty days of the decision.
52. On December 10, 2015, the Local Board posted a message to all CCPS parents via Blackboard, containing a notice of the Local Board's decision.
53. On December 10, 2015, W. Carey Gaddis, Supervisor of Community & Media Relations, CCPS, issued an email to personnel at all of the affected schools mandating them to place the following message on the homepage of each school's website: "On Wednesday evening, December 9, the Board of Education approved a school closure and boundary adjustment plan. (name of school) is one of the schools impacted in the plan.<sup>24</sup> Please visit the Carroll County Public Schools website at

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<sup>24</sup> Each affected school was to insert the name of the school in the message.



<http://www.carrollk12.org/boe/boundaryadjustment/default.asp> to review the official notification of the Board's decision and the final report and recommendation.”

54. On January 6, 2016, the Appellants appealed the Local Board's decision with the State Board.

## DISCUSSION

### Legal Framework

The law applicable to this matter is the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the OAH, and the COMAR regulations governing appeals to the State Board. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 28.02.01; and, COMAR 13A.01.05.02 through 13A.01.05.09. Relevant case law and State Board decisions are also applicable, if relevant.

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

#### D. Motion for Summary Decision.

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

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

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

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

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

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

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

insufficient to defeat a summary judgment motion. *Anderson*, 477 U.S. at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. *See Engineering Mgt. Serv., Inc. v. Maryland State Highway Admin.*, 375 Md. 211, 226 (2003). Additionally, the purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. *See Goodwich v. Sinai Hospital of Baltimore, Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). Only where the material facts are conceded, undisputed, or uncontroverted and the inferences to be drawn from those facts are plain, definite and undisputed does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

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

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

...  
[T]he trial court, in accordance with Maryland Rule 2-501(e), shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. . . . Thus, once the moving

party has provided the court with sufficient grounds for summary judgment, [i]t is...incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this *by producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit. . . . “Bald, unsupported statements or conclusions of law are insufficient.”

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

Moreover, when a motion for summary judgment is supported by an affidavit and exhibits and no opposing affidavit is filed, the non-moving party is considered to have admitted, for the purpose of summary judgment, all statements of fact in the moving party’s affidavit. *Alamo Trailer Sales, Inc., v. Howard County Metropolitan Comm’n*, 243 Md. 666, 668 (1966) (property owners’ allegation that public hearings related to classification and taxation of land as commercial property were not held according to law was insufficient to preclude summary judgment in the absence of an affidavit supporting the allegation). A mere general denial of facts set forth in the moving party’s affidavit is not enough to show that there is a general dispute as to a material fact. *Id.*

*Regulations Relating to Appeals to the State Board*

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

Under COMAR 13A.01.05.05B, 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. “Arbitrary” (and “capricious,” its usual companion) is best understood as a reasonableness standard, and so long as an administrative decision is reasonable or rationally motivated, it will not be struck down as arbitrary or capricious. *Harvey v. Marshall*, 389 Md. 243, 296-97 (2005). Some examples of decisions that are arbitrary or capricious include situations where an agency acts in a way contrary to or inconsistent with an enabling statute’s language or policy goals, if an agency acts irrationally inconsistent with previous agency decisions, or if the agency treats similarly situated individuals differently without a rational basis for the deviation. *Harvey*, 389 Md. at 303-04; *Montgomery County v. Anastasi*, 77 Md. App. 126, 138-39 (1988). Arbitrary and capricious review must be performed on a case-by-case basis, as the outcome necessarily depends on the specific facts of each case. The test is whether a reasoning mind could have reached the factual conclusion the agency reached, consistent with the proper application of controlling legal principles. *Travers v. Baltimore Police Dep’t*, 115 Md. App. 395, 420 (1997). Moreover, in such a case, great deference must be accorded to the agency. *Id.* See also *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628 (2002).

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

Under COMAR 13A.01.05.05D, the Appellants have the burden of proof, by a preponderance of the evidence, at a hearing on the merits. As this is a Motion for Summary Affirmance, the burden of proof is on the Local Board as the moving party. Generally a party asserting the affirmative of an issue bears the burden of proof in a proceeding before an

administrative body. See *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959) (“the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body”).

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

COMAR 13A.01.05.07E. The State Board shall make a final decision in all appeals.

#### Procedures Governing School Closings

A local board of education<sup>25</sup> shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01A. COMAR 13A.02.09.01B-D sets forth the following guidelines for those procedures:

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

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

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<sup>25</sup> Under COMAR 13A.01.05.01B(6), the Respondent is a “local board.”

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

- (1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following:
  - (a) The public hearing shall take place before any final decision by a local board of education to close a school;
  - (b) Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the public meeting.
- (2) Adequate notice to parents and guardians of students in attendance at all schools that are being considered for closure by the local board of education. The following apply:
  - (a) In addition to any regular means of notification used by a local school system, written notification of all schools that are under consideration for closing shall be advertised in at least two newspapers having general circulation in the geographic attendance area for the school or schools proposed to be closed, and the school or schools to which students will be relocating;
  - (b) The newspaper notification shall include the procedures that will be followed by the local board of education in making its final decision;
  - (c) The newspaper notification shall appear at least 2 weeks in advance of any public hearings held by the local school system on a proposed school closing.

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

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

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

### Analysis

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

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

In this matter, the Appellants have not offered any genuine issues of material fact in dispute. The Appellants' Response and Supplemental Response are replete with accusations, denunciations, and theories of some kind of conspiratorial plot by the Local Board to eliminate schools in order to further a nefarious agenda. The Appellants have combed various documents, including hand-picked portions of notes and emails of members of the Local Board to try and construct a scenario where they allege that the "true intentions" of the Local Board were to "support a hidden public agenda for the schools' properties." While the Appellants' allegations may be provocative, they offer no creditable or substantive evidence to assert a genuine dispute of the material facts upon which the Local Board's Motion is based, the facts that support the Local Board's reasonable and legal actions in adopting the Final Plan.



For example, in addition to alleging that Local Board members plotted with the Superintendent to effectively steal school buildings for administrative use, the Appellants deride the Local Board for building Manchester Valley in the first place, as if having made one mistake, the Local Board now owes North Carroll the right to remain operational in the face of declining enrollment and diminished resources. The Appellants further complain that the Local Board has failed to consider the impact of the consolidation on the surrounding communities of North Carroll and Manchester Valley. By this, the Appellant expresses concern for the businesses in Hampstead and Manchester—issues not justiciable to the instant case. The duty of the Local Board is to the school community and its concern must center upon the educational impact on the students and families who belong to that community. *See Marsh v. Allegany County Bd. of Educ.*, MSDE Op. 05-09 (2005).

In their Response, the Appellants dwell on what they believe the Local Board has not considered in its analysis and decision, suggesting that the information sought and obtained by the Local Board was either flawed or skewed. What they have not offered, however, are material facts. The Appellants argue that the Local Board did not fully consider the eight required regulatory factors; however, they have provided no evidence to support that claim. The evidence demonstrates that each factor was given full consideration. For example, the Appellants allege that the Local Board “artificially downwardly adjusted” student enrollment figures, yet they offer no evidence of manipulation or improper calculation. Similarly, no evidence has been provided to indicate that the Local Board failed to explore aspects regarding any of the factors. The State Board has not mandated an equal allocation of significance or scrutiny for all eight factors. To the contrary, the State Board has held that “as long as there is adequate reason, supported by at least one criterion, the local board’s decision in a school

closing case should prevail.” *See Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000) at 53 (citing *Kensington Elementary School PTS v. Montgomery County Bd. of Educ.*, MSBE Op. 82-31 (1982) at 681).

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

The Local Board’s basis for adoption of the Final Plan may be controversial, and opposed by all of the Appellants of the consolidated cases, but it was neither arbitrary, capricious, unreasonable, nor illegal. The Local Board became aware of Carroll County’s demographic challenges a number of years prior to the adoption of the Final Plan, and comprehensively acted to address those pressing concerns. It followed its own guidelines and State mandated procedure to collect and analyze relevant data, consider options, publish notice, provide numerous opportunities for community input, and reach a reasoned decision. It is likely that any option adopted by the Local Board would have stimulated some controversy; pressing financial issues forced the Local Board to make decisions that would have been unpopular to at least some portion of the school community. Failing to act, however, was not an option. The Local Board

maintained two under-enrolled high schools within a small radius. The decline in enrollment precipitated reductions in financial resources, and the Local Board could not prudently maintain the status quo. Difficult decisions had to be made, and the Local Board went to great lengths to perform the research and render a reasonable decision that took into account all of the regulatory factors that were required in acting to close or consolidate schools.

The Local Board extensively explored and placed great emphasis on student enrollment trends, recognizing the substantial decline in student enrollment and its crucial impact on the economic viability of the school system and the affected schools. The Local Board properly analyzed the age and condition of the affected schools, recognizing that, given the comparison of age and condition, Manchester Valley was the logical survivor if either school could not remain economically operational. The Local Board considered the issues of transportation as to all of the three types of schools, including the redesign of bus routes, “transportation tier” times, distance, and determined that current bus service to the high schools was sufficient; given the relative proximity of the schools, this does not appear to be an unreasonable conclusion.

As to education programs, in ruling upon the Local Board’s Motion, I must determine whether there are material facts that would establish that the Local Board’s decision was either (1) contrary to sound education policy or (2) could not have been reasonably reached by a reasoning mind. COMAR 13A.01.05.05B. Section 2-205 of the Education Article gives the State Board the power and duty to determine the elementary and secondary educational policies of the State. Section 4-108(3) provides that each county board shall “[s]ubject to this article and to the applicable bylaws, rules, and regulations of the State Board determine, with the advice of the county superintendent, the educational policies of the county school system.” Neither the courts nor the State Board, the agency which has delegated to me the authority to issue this

Proposed Order, and whose policy I am obligated to follow,<sup>26</sup> has specifically defined the term “sound educational policy.” The “reasoning mind” standard set forth in COMAR 13A.01.05.05B(2) is a broad standard giving great deference to the decisions made by local boards of education in determining school boundaries and the assignment of students.

In adopting the Final Plan, the Local Board reasoned that due to the current stretching of staff, more academic opportunities would be created by combining the resources of North Carroll and Manchester Valley. Additionally, in its analysis, the Local Board identified the relocation of the high school autism program to Winters Mill High both an advantage and a challenge, noting that the change to a more central location would reduce transportation costs and ride times for students and increase the consistency of educational programs and course offerings even if it were required to incur a one-time cost to modify classrooms.

The racial composition of the student body was fully considered, even if that factor was not as significant demographically as it might have been in other jurisdictions. The Local Board found that the school closures would have minimum impact on the racial composition of the affected schools.

Viewing the entirety of the comprehensive process and the ultimate production of the Final Plan, financial considerations loomed large in the Local Board’s determination. The Local Board scrutinized the data regarding the potential costs and cost avoidance associated with each of the various options studied, and came to the conclusion that the Final Plan encompassed the most reasonable approach to solving the financial predicament of the Carroll County school system. The Local Board reasonably identified the financial advantages and challenges of the Final Plan in reaching a functional and rational solution to a long-standing and seemingly disastrous and insurmountable problem, if not timely addressed.

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<sup>26</sup>See Md. Code Ann., State Gov’t § 10-214(b) (2014).

The Appellants dispute the Local Board's emphasis on the financial crisis facing the school system. Their claim, however, falls short. For example, the Appellants assert that the Local Board's concern over funding has been essentially cured by the offer of the Governor to add an additional \$4 million in educational grant funds, and that the Final Plan should not go forward in light of increased resources. What the Appellants fail to note is that this addition, not earmarked for any specific use, based on declining enrollment and reductions in State formula funding, would be a one-time, stop-gap occurrence, with no guarantee of repetition. The letter offered by the Appellants<sup>27</sup> indicates that the Governor hoped that the addition would "allow local leaders to defer school closings being considered for next year." However, the Governor, in his magnanimity, did not make the funding contingent on a rejection of the Final Plan, a function reserved to the Local Board. Although a temporary infusion of funds would be a welcome gift to any school system, it would be imprudent for a school system to base planning and operations solely on a grant that may never be repeated. However beneficial, a possible single infusion of funds does not negate the reasonableness of the Local Board's consideration of long-term financial concerns as a factor in adopting the Final Plan.

The Local Board fully recognized the issues associated with student relocation, and analyzed the data to reach a plan to achieve the goal of reducing operational costs in a manner that would only affect 7% of the entire county student population. The Local Board reasoned that the Final Plan, while having more of an effect on the elementary and middle school feeder pattern, would improve the middle to high school feeder pattern. As to the impact on the community in the geographic attendance area, the Local Board fully analyzed the effect the Final Plan would have in relocating the North Carroll students to Manchester Valley and Westminster High. While acknowledging that the relocation would boost Manchester Valley enrollment to

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<sup>27</sup> Appellants' Ex. 26.

temporarily exceed State Rated Capacity, the Local Board reasoned that this utilization would only last through 2015, which has passed.<sup>28</sup> The Local Board further noted that even if the relative utilization rates might be uneven, it minimized the likelihood that the same students would be redistricted in the future.

The Appellants also argued that the Final Plan was but a first step in a two-part plan of redistricting, and that it would be impractical, as well as unfair, to implement the Final Plan when a more comprehensive plan is forthcoming. This assertion, however, is speculative. Although the Local Board appears to have left a possibility open regarding future plans, there is no evidence of the development of future, more extensive closings or relocations.

The fact remains that the Local Board performed its regulatory duty of considering each of the eight required factors. Although there may be disagreement by the Appellants with the Local Board's analysis and ultimate decision, it is clear from the record that the Local Board carefully and comprehensively sought and acquired data, thoughtfully sifted through and analyzed that information, and reached a rational decision that was consistent with statutory and policy goals.

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

In short, the Local Board's adoption of the final plan was not illegal. COMAR 13A.01.05.05C. The Local Board followed the process set forth in its own policy documents, as

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<sup>28</sup> Moreover, State Rated Capacity has been defined as 85%; therefore the true utilization of Manchester Valley would not be a true 100% capacity, and the number of students would not exceed that number.

well as that provided in COMAR 13A.02.09.01. Authorized to engage in school closings, the Local Board conducted numerous public meetings, distributed information, allowed public comment, published its findings in communication outlets of record, and, in total, engaged in all of the actions it was mandated to do by law. The Appellants' allegations of illegality, based on fragments of email and a theory of collusion, are unavailing.

The Local Board, in its authority, under established procedures, rendered its decision under the law. The record is very clear that the Respondent complied with the Education Article, MSDE regulations pertaining to school closings, and its own internal regulations and policies in the manner and method in which it decided to adopt the Final Plan.

The Local Board has demonstrated that its decision was premised on a broad spectrum of considerations, as detailed above. Thus, its decision was not arbitrary and unreasonable and was consistent with a conclusion that could have reasonably been reached by a reasoning mind. Neither were the actions of the Local Board illegal. The undisputed material facts demonstrate that the Local Board's decision was reasonable under the standards set forth in COMAR 13A.01.05.05, and the Appellant has failed to show any genuine dispute of material fact to contradict the Local Board's adherence to those standards. Accordingly, I find that the Local Board is entitled to summary affirmance as a matter of law. COMAR 13A.01.05.05.03D; COMAR 28.02.01.12D. As such, a hearing on the merits in this matter is no longer required and, therefore, the merits hearing scheduled for May 31, June 1-3, 7-10, and 13-17, 2016 is cancelled.

**CONCLUSION OF LAW**

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

**PROPOSED ORDER**

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

May 5, 2016  
Date Order Mailed

\_\_\_\_\_  
Harriet C. Helfand  
Administrative Law Judge

Doc #161837

**RIGHT TO FILE EXCEPTIONS**

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



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<p><b>LORI WOLF,</b></p> <p><b>APPELLANT</b></p> <p><b>v.</b></p> <p><b>BOARD OF EDUCATION OF</b></p> <p><b>CARROLL COUNTY,</b></p> <p><b>RESPONDENT</b></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p><b>BEFORE HARRIET C. HELFAND,</b></p> <p><b>AN ADMINISTRATIVE LAW JUDGE</b></p> <p><b>OF THE MARYLAND OFFICE</b></p> <p><b>OF ADMINISTRATIVE HEARINGS</b></p> <p><b>OAH No: MSDE-BE-16-16-02597</b></p>
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**PROPOSED RULING ON**  
**MOTION FOR SUMMARY AFFIRMANCE**

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

**BACKGROUND**

On January 6, 2016, the Appellant filed an appeal with the Maryland State Board of Education (State Board) of the decision of the Board of Education of Carroll County (Local Board, BECC or Respondent)<sup>1</sup> to close North Carroll High School (North Carroll) as of the 2016-2017 school year.<sup>2</sup>

On January 20, 2016, the State Board transmitted the appeal to the Office of Administrative Hearings (OAH) to conduct hearings before an Administrative Law Judge (ALJ)

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<sup>1</sup> The Local Board is referred to in different ways in various documents, including “Carroll County Board of Education,” and “Carroll County Public Schools.” The correct nomenclature is the “Board of Education of Carroll County.” All variations in the record refer to the same entity.

<sup>2</sup> The basis of the Appellant’s appeal is the Local Board’s adoption of the December 9, 2015 Superintendent’s Final School Closure and Boundary Adjustment Plan (Final Plan). The Final Plan recommended the closure of three Carroll County schools Charles Carroll Elementary School (Charles Carroll), New Windsor Middle School (New Windsor), and North Carroll. The instant appeal only addresses the closure of North Carroll. Portions of documents cited in this ruling will refer to items which affect North Carroll, but not necessarily the other affected schools.

on this appeal and four other appeals filed pursuant to the Local Board's decision.<sup>3</sup> Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

On February 11, 2016, the Local Board filed an Alternative for Summary Affirmance<sup>4</sup> (Motion) of its decision to close North Carroll, asserting, among other issues, that there are no genuine issues of material fact and that the Local Board is entitled to affirmance as a matter of law.

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

On March 21, 2016, the Appellant filed a Response to the Local Board's Motion (Response), and on March 25, 2016, the Local Board filed a Reply to the Appellant's Response.

On April 11, 2016, I conducted a motions hearing during which the Local Board and the various Appellants offered arguments on the Motion and Response.<sup>5</sup> At this time, the Appellant did not offer any argument into the record, and deferred to the presentation offered by Donald J.

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<sup>3</sup> The other appeals filed with the State Board (and respective schools) and transmitted to the OAH are: Don Garmer v. BECC; Case No.: MSDE-BE-16-16-02660 (Charles Carroll and North Carroll); Harrison W., *et al.* v. BECC; Case No.: MSDE-BE-16-16-02815 (North Carroll); Elizabeth Galaida, *et al.* v. BECC; Case No.: MSDE-BE-16-16-02833 (New Windsor); and Erin Sipes, *et al.* v. BECC; Case No.: MSDE-BE-16-16-03180 (Charles Carroll). All OAH proceedings consolidated the cases for the purpose of the proceeding. Separate rulings are being issued in all cases.

<sup>4</sup> Under COMAR 13A.01.05.03D, a motion for summary affirmance may be filed if there are no issues of material fact and the respondent is entitled to judgment as a matter of law. Such motions must include, among other things, any supporting documents, exhibits, and affidavits. COMAR 13A.01.05.03D(2)(e). Under the OAH Rules of Procedure, a party may file a Motion for Summary Decision on all or any part of an action, asserting therein that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. COMAR 28.02.01.12(D)(1). Motions for summary decision shall be supported by affidavits. *Id.* Affidavits in support of or in opposition to a Motion for Summary Decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated in the affidavit. COMAR 28.02.01.12(D)(1) and (3). I will apply the same standards for a decision on the Motion for Summary Affirmance as I would to a Motion for Summary Decision, because the Maryland State Department of Education COMAR provision and the OAH COMAR provision regarding such motions are essentially identical.

<sup>5</sup> As the April 11, 2016 motions hearing was consolidated with the other appeals, I also heard arguments from the other respective appellants regarding their respective appeals.

Walsh, Esquire, who represented and offered argument on behalf of his clients, the Appellants in OAH Case No.: MSDE-BE-16-16-02815 (Harrison W., *et al* v. BECC). Edmund J. O'Meally, Esquire, and Adam Konstas, Esquire, represented the Local Board.<sup>6</sup>

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.01.05; COMAR 28.02.01. Any dispositive decision by the ALJ will be a recommendation in the form of a proposed decision to the State Board. COMAR 13A.01.05.07E.<sup>7</sup>

### **ISSUE**

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

### **SUPPORTING DOCUMENTATION**

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

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

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<sup>6</sup> Counsel for the Local Board was accompanied by Stephen H. Guthrie, Superintendent of Schools, Local Board, and Jonathan D. O'Neal, Assistant Superintendent for Administration, Local Board.

<sup>7</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.

9. Affidavit of W. Carey Gaddis, dated February 8, 2016
10. "What's Happening in Carroll County Public Schools"(Newsletter), dated September 4, 2015
11. Board Minutes, dated September 9, 2015
12. Report of the Superintendent's Boundary Adjustment Committee, dated September 9, 2015
13. News Release, dated September 10, 2015
14. Newsletter, dated September 11, 2015
15. Newsletter, dated September 18, 2015
16. Newsletter, dated September 25, 2015
17. News Release, dated September 18, 2015
18. Newsletter, dated October 9, 2015
19. News Release, dated October 6 , 2015
20. Board Minutes, dated October 14, 2015
21. Report of the Boundary Adjustment Committee (Power Point), dated October 14, 2015
22. Newsletter, dated October 16, 2015
23. Newsletter, dated October 23, 2015
24. News Release, dated October 27, 2015
25. Newsletter, dated November 6, 2015
26. Board Minutes, dated November 11, 2015
27. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated November 11, 2015
28. News Release, dated November 12, 2015
29. Newsletter, dated November 24, 2015
30. Notices, Baltimore Sun, dated November 17, 2015; Northern News, dated November 19, 2015; and Advocate of Westminster and Finksburg, dated November 25, 2015

31. Posting on blackboard.com, dated November 13, 2015
32. Posting on blackboard.com, dated November 25, 2015
33. Posting on blackboard.com, dated November 30, 2015
34. Posting on blackboard.com, dated December 2, 2015
35. Posting on blackboard.com, dated December 3, 2015
36. News Release, dated November 24, 2015
37. Newsletter, dated December 4, 2015
38. Memorandum from Stephen H. Guthrie, Superintendent, to Parents, Guardians, and Community Members, dated December 10, 2015
39. Posting on blackboard.com, dated December 10, 2015
40. Email from W. Casey Gaddis to Thomas Clowes, *et al.*, dated December 10, 2015
41. Educational Facilities Master Plan 2015-2024, dated June 10, 2015
42. Hampstead Community Comprehensive Plan, dated July 13, 2010
43. Affidavit of Steven M. Johnson, dated February 8, 2016
44. Affidavit of Stephen H. Guthrie, dated February 10, 2016

The Appellant submitted the following in support of her Response:<sup>8</sup>

- A. Memorandum from Stephen H. Guthrie to “Parents, Guardians, and Community Members,” dated December 10, 2015
- B. The Superintendent’s Final School Closure and Boundary Adjustment Recommended Plan, dated December 9, 2015
- C. Board Agenda Item “Approval of School Closure and Boundary Line Adjustment Plan,” dated December 9, 2015

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<sup>8</sup> In her Response, the Appellant incorporated by reference documents included with her January 6, 2016 appeal. Neither the appeal nor the Response included any affidavits.

## UNDISPUTED FACTS

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

1. Between 1993 and 2004, Carroll County experienced a historic increase in school enrollment.
2. Since 2005, the school population of Carroll County has steadily declined; this decline is expected to continue for the foreseeable future. Since 2007, the Local Board has expressed concern about the decline, and since 2010, has contemplated ways to adapt its facility usage to address the decline.
3. State aid to local schools is based on a per-pupil funding formula and relative wealth allocation. Due to the decline in enrollment, the Local Board has lost revenue, and has had to eliminate school programs and positions. Loss of revenue has also impacted the Local Board's capacity to pay school employees competitive salaries, which currently rank near the bottom of similarly-situated employees in the State.
4. Because of the lower enrollment, some of Carroll County's schools are underutilized. Overall, school utilization is expected to decline over the next ten years.
5. The Local Board operates two high schools in the northern area of Carroll County, Manchester Valley High School (Manchester Valley) and North Carroll. North Carroll and Manchester Valley are approximately four miles apart.
6. Both Manchester Valley and North Carroll are currently underutilized. Utilization rates are expected to drop in each school within a ten-year period.
7. North Carroll was built in 1976. The Local Board has approved North Carroll for a roof replacement project. North Carroll is also approved for science classroom renovations and a fire alarm replacement over the next several years.

8. Manchester Valley was opened in 2009, and is the newest high school in Carroll County. Manchester Valley still carries local debt for its construction.
9. The Appellant is the parent of a child who attends North Carroll.
10. The Local Board has established administrative procedures for public school closings that contain the following procedures and timelines:

### PROCEDURE

#### I. Facilities Master Plan

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

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

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

#### II. State Mandates

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

Student enrollment trends;

Age or condition of school buildings;

Transportation;

Education programs;

Racial composition of student body;

Financial considerations;

Student relocation;

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

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



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

### III. Local Assumptions

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

### IV. Implementation

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

- A. The Director of School Support Services shall, by February 15, prepare a report to the [Local Board] advising the Board of the proposed school closing and the rationale for the recommendation.

A public hearing shall be held to afford citizens the opportunity to express their views orally or to submit written testimony or data on the proposed school closing.

- B. Notification of the public hearing date, deadline for submission of written testimony, and the procedures to be followed by the [Local Board] in making the final decision shall be given through school newsletter and shall be advertised in at least two (2) newspapers having general circulation in the geographic area for the school proposed to be closed and the school or schools to which students will be relocating. The notification shall appear at least two (2) weeks in advance of the public hearing.

- C. The public hearing shall be held no later than March 15.
- D. The deadline for written testimony or data shall be no later than March 31.
- E. Announcement for the school closing will be made by the [Local Board] no later than April 15.
- F. The final decision of the [Local Board] shall be announced at a public session and in writing. The final decision notification shall include the rationale for the closing and address the impact on the State mandated consideration listed in Section II. The final decision shall include notification of the right to appeal to the [State Board] within thirty (30) days after the decision of the [Local Board]. Notification will take place as described above in Section IV, Item C.

(Local Board #41)

11. Since at least 2012, the Local Board has explored the issue of school utilization. In April 2012, the Local Board, in conjunction with the Board of County Commissioners (BCC), commissioned a study of facility usage and school consolidation. This study was never completed.
12. In 2013, the Local Board hired an independent consultant, MGT of America, to complete the utilization study and make recommendations. MGT completed the study; on December 11, 2013, MGT presented its final report to the Local Board, and on January 8, 2014, MGT presented the report to the BCC.
13. In its report, MGT recommended closing two elementary schools and one middle school, and replacing the three schools with a new K-8 school complex. The MGT report also recommended balancing enrollments and developing clean feeder patterns across the system. The MGT recommendation for the K-8 school did not come to fruition.

14. In February 2015, the Local Board approved the Superintendent's<sup>9</sup> recommendation to appoint a Boundary Adjustment Committee (BAC) to address the decline in student enrollment and the effective and efficient use of school facilities, including the possibility of school closures. The BAC was given a charge to produce a report by September 2015.
15. In May 2015, the Superintendent submitted his annual, proposed Educational Facilities Master Plan (EFMP) to the Local Board. The EFMP recommended that the Local Board begin the process to close Charles Carroll, one of the elementary schools noted in the MGT recommendation, for the 2016-2017 school year. The Local Board adopted the EFMP at its June 10, 2015 meeting.
16. On August 26, 2015, the Local Board issued a press release announcing that the Local Board would meet on September 9, 2015. The press release noted that the agenda items of the meeting would include the presentation of the BAC recommendations and noted "[t]here will be time for citizen participation at this meeting. The public is encouraged to attend." (Local Board #7). The September 9, 2015 meeting was also announced in the September 4, 2015 newsletter of Office of Community and Media Relations (OCMR).<sup>10</sup> The OCMR newsletter also stated that the agenda items of the meeting would include the presentation of the BAC recommendations and noted "[t]here will be time for citizen participation at this meeting. The public is encouraged to attend." (Local Board #10)

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<sup>9</sup> Stephen H. Guthrie.

<sup>10</sup> The OCMR is part of the Local Board and publishes a weekly newsletter called "What's Happening in Carroll County Public Schools."

17. At the September 9, 2015 meeting of the Local Board, the BAC presented its final report. The report contained two options for school closures and redistricting, and contained a timeline for feedback, the public hearing process, and a final decision. It provided contact information for offering feedback, as well as additional information.
18. Option 1 included the closing of Charles Carroll and balancing enrollments across the remaining schools. The BAC determined that Option 1 was insufficient to address the decline in enrollment or adequately reduce expenses.
19. Option 2 recommended the closure of North Carroll, New Windsor, Charles Carroll, Sandymount Elementary School (Sandymount) and Mt. Airy Elementary School (Mt. Airy) and balancing enrollments across the remaining schools. The BAC recommended this option.
20. At the September 9, 2015 meeting, during which five members of the public offered comment, the Local Board directed the Superintendent and the BAC to develop other options for consideration that would impact fewer students than Option 2.
21. On September 10, 2015, the Local Board issued a press release announcing a Local Board public work session meeting on September 28, 2015. The Local Board also announced the work session through the OCMR's September 11, and 18, 2015 newsletters.
22. On September 18, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for October 14, 2015. The press release noted that there would be time for citizen participation at the meeting and that the public is encouraged to attend. The September 25, 2015 OCMR newsletter also announced the September 28, 2015 BAC work session, noting that although there would be no

citizen participation, the public is encouraged to attend. Notice of the October 14, 2015 meeting was also published in the September 25, 2015 OCMR newsletter, which noted that at that meeting, there would be time for citizen participation and the public is encouraged to attend.

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

28. The BAC presented the final version of Option 3 and a draft of Option 4 at the October 14, 2015 public meeting of the Local Board. At the meeting the Superintendent presented an historical timeline of the demographic and budgetary issues involved in arriving at the various options. Twenty-five citizens addressed the Local Board at the meeting.
29. The OCMR published an announcement of the Local Board's public work session to be held on October 26, 2015, regarding the BAC recommendations in its October 16, and 23, 2015 newsletters.<sup>11</sup>
30. At the October 26, 2015 public work session, the Superintendent determined Option 4 lacked clarity and viability. The BAC never produced a final version of Option 4.
31. Also at the October 26, 2015 public work session, the Superintendent informed the Local Board that he had met with the BAC and asked it to produce another option, one that would close Charles Carroll, New Windsor, and North Carroll and limit redistricting as much as possible, and that, in the future, the Local Board could consider other closures or boundary adjustments, if needed.
32. On October 27, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for November 11, 2015. The press release stated that the Superintendent would present his recommendation for potential school closures, and that citizen participation would be included in the meeting. The Local Board also announced the November 11, 2015 meeting in the OCMR's November 6, 2015 newsletter. The newsletter also stated that citizen participation was to be included in the meeting.

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<sup>11</sup> The October 16, 2015 OCMR newsletter also announced a town meeting to be hosted by Board President James Doolan and Superintendent Guthrie to be held on October 20, 2015. Members of the community were invited to attend the meeting and address their concerns or ask questions.

33. On November 11, 2015, the Superintendent presented a Superintendent's Final School Closure and Boundary Adjustment Recommended Plan (November 11 Plan).<sup>12</sup> The November 11 Plan recommended the following for the 2016-2017 school year:

- Consolidate Manchester Valley and North Carroll boundaries and combine the student populations at Manchester Valley;
- Adjust New Windsor, Mt. Airy, and Northwest Middle School (Northwest) boundaries and redistrict the New Windsor students to Mt. Airy and Northwest;
- Adjust Charles Carroll, Ebb Valley Elementary School (Ebb Valley), Runnymede Elementary School (Runnymede), and William Winchester Elementary School (WW) and redistrict Charles Carroll students to Ebb Valley, Runnymede, and WW;
- Limit other redistricting to Runnymede; Taneytown Elementary School (Taneytown); Elmer A. Wolfe Elementary School (Elmer Wolf); Westminster Elementary School (Westminster); WW; Ebb Valley; and Manchester Elementary School (Manchester);
- Students whose schools remain open and are affected by boundary line adjustments have an option to remain at their current school under certain conditions, if the parent provides transportation;<sup>13</sup>
- Form a Joint Committee with Carroll County government to determine whether any closed school buildings or grounds are needed for any other school system purpose. If not, the buildings and properties would be transferred back to Carroll County as surplus, and the Carroll County Commissioners would determine the final disposition of the buildings and property.

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

the BAC will continue to meet and recommend additional schools to be considered

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<sup>12</sup> In addition to the Superintendent's presentation and other agenda items, twenty citizens addressed the Local Board regarding school closures and redistricting.

<sup>13</sup> The conditions include students entering into the highest grade at the affected school; students who have siblings who would be enrolled in a different school; and students who currently have an approved out-of-district request to attend an underpopulated school.

for closing and recommend comprehensive redistricting to balance enrollments among the remaining schools.

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

North Carroll

The Superintendent concurs with the BAC recommendation that North Carroll is the only feasible option for a high school closure. High school data are the most compelling for a school closure. Current aggregate utilization is 79% and is projected to drop to 69% by the end of the projection period. In northern Carroll, this is even more pronounced. As noted above, both northern high schools are just above 60% utilization today and projected to be in the 50% range by the end of the projection window.

Nowhere in CCPS are students more disadvantaged by the inefficiencies this creates for educational and extra-curricular opportunities than at these two schools. Staffing resources are stretched at both schools, course offerings cannot be provided despite efforts to provide shuttles and other creative means, and extra-curricular programs suffer. It is critical that our school system address these deficiencies, and a school closure is the most effective solution.

Of the two area high schools, which are located four miles apart, Manchester Valley is the newest, having opened in 2009. From facility condition, educational condition, and fiscal perspectives, it would be illogical to close the more modern school. Furthermore, Manchester Valley still carries local debt.

By contrast, North Carroll was constructed in 1976. It has a roof replacement project scheduled within the current CIP<sup>14</sup> window. Also, based on the Modernization Needs Analysis in the Board's Educational Facilities Master Plan, which dictates priorities in the CIP, North Carroll is the second high school modernization priority following Westminster High.

Closing North Carroll requires the relocation of the regional high school autism program. The program would be moved to Winters Mill High School under this plan. Winters Mill's current and projected enrollments under this will more than accommodate the relocation of the autism program without the need for relocating students or making major building modifications.

The Superintendent's final recommendation modifies the BAC Report's high school boundaries and creates a new boundary for Manchester Valley that includes almost the entire current student populations from both northern high schools. Although the new school population will be over capacity initially, both projected enrollments and

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<sup>14</sup> Capital Improvement Plan.



changes to state-rated capacity will leave the school under capacity within the projection period. This change will allow the communities to retain their historic relationship and sense of community.

36. The November 11 Plan listed and analyzed the following: Organizational Efficiencies, Operational Savings, and Capital Cost Avoidance<sup>15</sup>; One-Time and On-Going Offsets to Savings; Reimbursement of State Bond Debt; On-Going Offsets to Savings: Student Transportation; Impact of Declining Enrollment on the School System; Utilization Rates—Current and Projected; Anticipated Growth; and Revenue Outlook: State Aid; Local Revenue. The November 11 Plan also included extensive analysis of available revenue sources; school utilization rates; and anticipated growth and yield.<sup>16</sup>

37. The November 11 Plan included the following eight factors and supporting reasons:<sup>17</sup>

### **1. Student Enrollment Trends:**

*Overview of Impact*—In order to examine current utilization percentages and to evaluate the impact this recommendation has on these utilization percentages, schools were placed into categories based on their utilization percentages for the ten year projection period (See Appendix C). The following four categories were used: Over-Utilized: >100%; Adequate: 80%-100%; Approaching Under-Utilized: 70%-80%; Under-Utilized <70%. (See Appendix D). Closing the three schools will reduce the system wide K-5

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<sup>15</sup> The November 11 Plan described “capital cost avoidance” as an assumption that projects have been or will be approved by Carroll County, but recognized that none of the cited projects for the schools recommended for closure have been funded by Carroll County. The November 11 Plan noted, however, that “in recent years, the County capital plan has focused on systems renovations for our schools, such as roof and HVAC replacements, as funds are available. It is therefore, more reasonable to assume that the County may eventually fund systems renovations as funds are available than it is to assume that they will fund a modernization.” The system replacements listed for North Carroll in the November 11 Plan are: HVAC system: FY 18: \$3,781,000; Science Classroom Renovations: FY 18: \$1,740,000; and Fire Alarm Replacement: FY 19: \$385,000. These equal a total “cost avoidance” of \$5,906,000.

<sup>16</sup> The November 11 Plan also included boundary maps, graphs of feeder patterns, graphs of comparative school populations, the following Appendices: Appendix A: Births by Jurisdiction 2003-2013; Appendix B: Migration Charts; Appendix C: Enrollment and Utilization Charts; Appendix D: Color Coded Utilization Charts; Appendix E: Student Relocation Counts; Appendix F: Student Ride Times; Appendix G: Student Distances to School; Appendix H: Student Demographic Analysis; Appendix I: Facilities Utilization and Study Financial Index; Appendix J: Building and Core Staff Costs; Appendix K: In and Out Charts (re: students restricted to and restricted from schools); and a bibliography of references used to compile and analyze the data used to produce the plan.

<sup>17</sup> I have not singled out North Carroll from this portion of the November 11 Plan; the factors include analysis of North Carroll as well as the other affected schools.

capacity to 29,046. Based on 2014 total enrollment and this new capacity number, total K-12 utilization would increase from 82% to 87%.

At the high school level:

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

Currently there are no high schools with utilization above 100% for any portion of the utilization period. This plan would result in Manchester Valley having a utilization above 100% during the projection period. However based on a current review of State Rated Capacities, the State Rated Capacity of Manchester Valley would increase to 1,389.<sup>18</sup> After this change, the school would only have a utilization above 100% in 2014 and 2015.

*System Advantages*—This plan improves the total utilization at the elementary, middle, and high school levels. As a result, this option makes a more efficient use of facility resources which will allow the system to provide more resources toward the instructional program.

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

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

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

*System Advantages*—The closure of the three schools in the Superintendent's plan will result in total capital cost avoidance of \$20,631,000 (detailed above). This (sic) cost avoidance figures recognizes that the County has no plan to

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<sup>18</sup> "State Rated Capacity" is calculated as 85% of the customary definition of capacity, as explained in the hearing by the Local Board. This was supported by a chart included in the Local Board's supporting documentation offered, under affidavit, in OAH Case No.: MSDE-BE-16-16-02815.

fund any modernization project in the future, beyond CCCTC, and focuses on the estimated budget costs for systems renovations at the three schools.

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

### **3. Transportation:**

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

*System Advantages*—It is anticipated that some additional buses may be necessary to address longer travel distances for some students. However, there is also the possibility of needing fewer buses in some areas due to the decrease in number of schools to be serviced. Charles County Elementary is a third transportation tier school. Many of the elementary schools contiguous to these three schools are also third transportation tier schools thereby lessening the potential need for additional bus resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

## **6. Financial Considerations:**

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

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

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

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

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

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

The estimate cost for on-going offsets due to student transportation changes is less than \$300,000. While this reduces the operational savings, the \$5 million in savings is not greatly impacted.

## **7. Student Relocation:**

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

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

*System Challenges*—This plan requires the reassignment of 1,668 students, or approximately 7% of all students. Although this plan does not redistrict as many students as other options, it still requires the relocation of a large number of students. As a result this will require adjustments for parents and students attending new schools, and potential school time/bus schedule changes. This makes the elementary to middle feeder pattern more fragmented, but improves the middle to high feeder pattern. Currently there are seven elementary schools whose students will be split and attend more than one middle school. This plan increases that number to eight elementary schools whose students are split. At the secondary level, there are currently four middle schools whose students are split and attend more than one high school. This plan would result in only two middle schools whose students are split and attend multiple high schools.

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

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

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

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

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

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

38. On November 12, 2015, the Local Board issued a press release announcing that public hearings regarding proposed school closures and boundary adjustment would be held on December 1, 2, and 3, 2015, at three different locations. The press release indicates that boundary maps based on the proposed school closures would be on display at the meeting, and that oral testimony would be permitted, but would be

limited in order to allow as many individuals as possible to speak, but that individuals could submit written testimony and/or data in lieu of an oral presentation.

39. The November 12, 2015 press release also announced a special meeting of the Local Board on December 9, 2015, to be held at Westminster High School. The press release indicated that members of the public would be permitted two minutes per person to speak, or present written testimony or data prior to the Local Board's final vote.
40. On November 17, 2015, the Local Board placed public notices in the *Baltimore Sun* and *Carroll County Times*, both newspapers of general circulation delivered and sold daily throughout Carroll County, including all geographic areas impacted by the November 11 Plan. These notices provided the public with detailed information regarding the November 11 Plan and the public hearings concerning the proposed school closures and boundary adjustments to be held on December 1, 2015 at North Carroll; on December 2, 2015 at Winters Mill High School; and on December 3, 2015 at Francis Scott Key High School. The notices all included information regarding the public hearings related to a special Local Board meeting to take place on December 9, 2015. The notices also explained the procedures for the public to submit oral and written testimony at the public hearings.
41. On November 24, 2015, the OCMR newsletter announced the December 1, 2, and 3 public hearings and a regular Local Board meeting on December 9, 2015, and a special Local Board meeting regarding school closures and boundary adjustments on December 9, 2015. The newsletters also included information regarding public comment/written testimony/data to be offered at the December 1, 2, and 3, 2015 meetings and at the December 9, 2015 special meeting.



42. On November 24, 2015, the Local Board issued a press release announcing the December 9, 2015 special Local Board meeting. The press release also stated that the meeting would address the November 11 Plan and that members of the public would be permitted two minutes per person to speak or present written testimony of data.
43. On December 4, 2015 OCMR newsletter announced the December 9, 2015 regular and special Local Board meetings, and included information regarding citizen participation.
44. The Local Board also posted messages to all of the school system parents via the Blackboard Contact Message Center (Blackboard)<sup>19</sup> on November 13, 25, and 30 and December 2 and 3, 2015, providing notice of the public hearings on school closures and boundaries to be held on December 1, 2, and 3, 2015, and of the special Local Board meeting to be held on December 9, 2015.
45. The Local Board held a special board meeting on December 9, 2015. At the beginning of the meeting, eighteen citizens, including the Appellant, offered comments regarding school closures and redistricting.
46. Following the citizen's comments, the Superintendent reviewed the Final Plan. The Final Plan presented at the December 9, 2015 meeting was an updated version of the November 11 Plan. The Final Plan was substantially identical to the November 11 Plan, with some additions that resulted from information obtained since the November 11 Plan was published. The additional material consisted of information regarding the issue of reimbursement of State bond debt, indicating a total maximum outstanding State debt on the three schools of \$653,347; updated utilization and

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<sup>19</sup> Blackboard is an internet-based information system in which educational institutions can post messages accessible to participants.

enrollment analysis using the 2015 enrollment figures as the baseline;<sup>20</sup> and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen-minute shift to the school schedule.

47. In his presentation, the Superintendent reviewed all five options that had been considered by the Local Board, the points of discussion and public hearings, information on additional state funding, the actions of the Local Board, and the Final Plan. Following the Superintendent's report, Assistant Superintendent Jonathan O'Neal reviewed the boundary adjustment recommendations and maps for each school, outlining the current attendance boundaries and proposed boundaries under the Final Plan.

48. Ultimately, the Superintendent offered the Final Plan, which included the recommendation of the November 11 Plan to close Charles Carroll, New Windsor, and North Carroll, effective July 1, 2016. The Superintendent requested that the November 11 Plan, updated by the Final Plan, be incorporated by reference into a motion as the Local Board's Final Plan. The Superintendent, in his presentation, also recommended that the Superintendent provide written notification of the Local Board's decision to the affected communities in the geographic attendance areas of the schools to be closed and the schools to which student would be relocated. The

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<sup>20</sup> This change resulted in the following language on p. 16 of the Final Plan compared to p. 15 in the November 11 Plan (at the fourth bullet point under "At the high school level" and below that section): "Currently there are no high schools with utilization above 100% for any portion of the projection period. Based current, approved State Rated Capacities, the State Rated Capacity of Manchester Valley would increase to 1,383. After this change, the school would only have a utilization above 100% based on 2015 State-certified enrollments. During the time period of the BAC process until the November 11, 2015 Board meeting, the most recent State-Certified enrollment were the September 30, 2015. Accordingly, the BAC Report, the options prepared for the Board, and the Superintendent's November 11, 2015 Recommended Plan used the 2014 enrollment figures as the initial numbers. Subsequent to the [Appendices] C and D have been updated in this version of the Superintendent's final Recommended Plan to apply the 2015 enrollment figures as the baseline."

notification would also advise recipients of the right to appeal the Local Board's decision to the State Board within thirty days of the date of the decision.

49. Local Board member Virginia Harrison moved that the Final Plan be accepted. The motion was seconded by Local Board member and Vice President Bob Lord. Four Local Board members, President James Doolan, Mr. Lord, Ms. Harrison, and Jennifer Seidel voted in favor of the Final Plan; one Local Board member, Devon Rothschild, voted against the Final Plan. Matthew Saxton, Student Representative to the Local Board, expressed agreement with the Final Plan.
50. On December 10, 2015, the Superintendent sent a letter to parents, guardians, and community members describing the events of the December 9, 2015 meeting, including the motion approved by the Local Board and a copy of the Final Plan. The letter also included a statement informing the recipients of the right to appeal the Local Board's decision to the State Board, in writing, within thirty days of the decision.
51. On December 10, 2015, the Local Board posted a message to all CCPS parents via Blackboard, containing a notice of the Local Board's decision.
52. On December 10, 2015, W. Carey Gaddis, Supervisor of Community & Media Relations, CCPS, issued an email to personnel at all of the affected schools mandating them to place the following message on the homepage of each school's website: "On Wednesday evening, December 9, the Board of Education approved a school closure and boundary adjustment plan. (name of school) is one of the schools impacted in the plan. Please visit the Carroll County Public Schools website at <http://www.carrollk12.org/boe/boundaryadjustment/default.asp> to review the official notification of the Board's decision and the final report and recommendation."

53. On January 6, 2016, the Appellant appealed the Local Board's decision with the State Board.

## DISCUSSION

### Legal Framework

The law applicable to this matter is the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the OAH, and the COMAR regulations governing appeals to the State Board. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 28.02.01; COMAR 13A.01.05.02 through 13A.01.05.09. Relevant case law and State Board decisions are also applicable.

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

#### D. Motion for Summary Decision.

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

Summary decision is appropriate where there is no genuine issue of material fact and a party is entitled to prevail as a matter of law. The requirements for summary decision under COMAR 28.02.01.12D are virtually identical to those for summary judgment under Maryland

Rule 2-501, which contemplates a “two-level inquiry.” See *Richman v. FWB Bank*, 122 Md. App. 110, 146 (1998). The *Richman* court held in pertinent part that:

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

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

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

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

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

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. *See Engineering Mgt. Serv., Inc. v. Maryland State Highway Admin.*, 375 Md. 211, 226 (2003). Additionally, the purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. *See Goodwich v. Sinai Hospital of Baltimore, Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). Only where the material facts are conceded, undisputed, or uncontroverted and the inferences to be drawn from those facts are plain, definite and undisputed does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

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

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

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

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

Moreover, when a motion for summary judgment is supported by an affidavit and exhibits and no opposing affidavit is filed, the non-moving party is considered to have admitted, for the purpose of summary judgment, all statements of fact in the moving party's affidavit. *Alamo Trailer Sales, Inc., v. Howard County Metropolitan Comm'n*, 243 Md. 666, 668 (1966) (property owners' allegation that public hearings related to classification and taxation of land as commercial property were not held according to law was insufficient to preclude summary judgment in the absence of an affidavit supporting the allegation). A mere general denial of facts set forth in the moving party's affidavit is not enough to show that there is a general dispute as to a material fact. *Id.*

*Regulations Relating to Appeals to the State Board*

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

Under COMAR 13A.01.05.05B, 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. "Arbitrary" (and "capricious," its usual companion) is best understood as a reasonableness standard, and so long as an administrative decision is reasonable or rationally motivated, it will not be struck down as arbitrary or capricious. *Harvey v. Marshall*, 389 Md. 243, 296-97 (2005). Some examples of decisions that are arbitrary or capricious include situations where an agency acts in a way contrary

to or inconsistent with an enabling statute's language or policy goals, if an agency acts irrationally inconsistent with previous agency decisions, or if the agency treats similarly situated individuals differently without a rational basis for the deviation. *Harvey*, 389 Md. at 303-04; *Montgomery County v. Anastasi*, 77 Md. App. 126, 138-39 (1988). Arbitrary and capricious review must be performed on a case-by-case basis, as the outcome necessarily depends on the specific facts of each case. The Court of Special Appeals explained the "reasoning mind" standard in *Travers v. Baltimore Police Department*, 115 Md. App. 395, 420 (1997). The test is "whether a reasoning mind could have reached the factual conclusion that the agency reached, consistent with the proper application of controlling legal principles." *Id.* Further, "review of an administrative agency's factual findings entails only an appraisal and evaluation of the agency's fact-finding and is not an independent decision on the evidence." *Id.* As such, great deference must be accorded to the agency. *Id.*; see also *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628 (2002).

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

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



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

COMAR 13A.01.05.07E. The State Board shall make a final decision in all appeals. COMAR 13A.01.05.09A.

Procedures Governing School Closings

A local board of education<sup>21</sup> shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01A. COMAR 13A.02.09.01B-D sets forth the following guidelines for those procedures:

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

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

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

- (1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following:
  - (a) The public hearing shall take place before any final decision by a local board of education to close a school;

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<sup>21</sup> Under COMAR 13A.01.05.01B(6), the Respondent is a "local board."

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

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

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

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

### Analysis

It is abundantly clear that the Appellant, as well as many others in the North Carroll community, strongly wish for the school to remain open, and have the Local Board's adoption of the Final Plan reversed. The present issue, however, is whether the Appellant has raised genuine

issues of material fact that would result in a finding that the Local Board is not entitled to summary affirmance as a matter of law.

In this matter, the Appellant has not offered any genuine issues of material fact in dispute. The Appellant's response is bare of any such assertions, other than references to her appeal. At the motions hearing, the Appellant did not offer any additional argument, and deferred to argument presented by counsel for appellants in another of the consolidated cases.

The Appellant's appeal primarily consists of allegations that the Local Board did not fully consider certain factors in making its decision, and that it unlawfully discontinued consideration of Option 4. However, outside of summarizing the objections of the single member of the Local Board who disagreed with the adoption of the Final Plan, the Appellant has offered no material facts to support her contention. Similarly, her deferral to the arguments of other appellants has not satisfied the raising a genuine dispute of material facts to overcome summary affirmance.<sup>22</sup>

The Local Board's basis for adoption of the Final Plan may be controversial, and opposed by all of the appellants of the consolidated cases, but it was neither arbitrary, capricious, unreasonable, nor illegal. The Local Board became aware of Carroll County's demographic challenges a number of years prior to the adoption of the Final Plan, and comprehensively acted to address those pressing concerns. It followed its own guidelines and State-mandated procedure to collect and analyze relevant data, consider options, publish notice, provide numerous opportunities for community input, and reach a reasoned decision. It is likely that any option adopted by the Local Board would have stimulated some controversy; pressing financial issues forced the Local Board to make decisions that would have been unpopular to at least some portion of the community. Failing to act, however, was not an option. The Local Board

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<sup>22</sup> See Ruling on Motion for Summary Affirmance; OAH Case No.: MSDE-BE-16-16-02815.

maintained two under-enrolled high schools within a small radius. The decline in enrollment precipitated reductions in financial resources, and the Local Board could not prudently maintain the status quo. Difficult decisions had to be made, and the Local Board went to great lengths to perform the research and render a reasonable decision that took into account all of the regulatory factors that were required in acting to close or consolidate schools.

The regulations do not mandate that each factor must be identically weighted, simply that each be given consideration. The Local Board fulfilled its obligation to consider each of the eight factors and properly described its actions and rationale for each in the Final Plan. The determination of these factors, based on analysis and reasoning, supported the Local Board's decision. While the Appellant may not agree with the Local Board's conclusions, that alone does not render the Local Board's decision arbitrary or unreasonable.

The Local Board extensively explored and placed great emphasis on student enrollment trends, recognizing the substantial decline in student enrollment and its crucial impact on the economic viability of the school system and the affected schools. The Local Board properly analyzed the age and condition of the affected schools, recognizing that, given the comparison of age and condition, Manchester Valley was the logical survivor if both schools could not remain economically operational. The Local Board considered the issues of transportation as to all of the three types of schools, including the redesign of bus routes, "transportation tier" times, and distance, and determined that current bus service to the high schools was sufficient. Given the relative proximity of the schools, this does not appear to be an unreasonable conclusion.

As to education programs, in ruling upon the Local Board's Motion, I must determine whether there are material facts that would establish that the Local Board's decision was either (1) contrary to sound education policy or (2) could not have been reasonably reached by a reasoning mind. COMAR 13A.01.05.05B. Section 2-205 of the Education Article gives the

State Board the power and duty to determine the elementary and secondary educational policies of the State. Section 4-108(3) provides that each county board shall “[s]ubject to this article and to the applicable bylaws, rules, and regulations of the State Board, determine, with the advice of the county superintendent, the educational policies of the county school system.” Neither the courts nor the State Board, the agency which has delegated to me the authority to issue this Proposed Order, and whose policy I am obligated to follow,<sup>23</sup> has specifically defined the term “sound educational policy.” The “reasoning mind” standard set forth in COMAR 13A.01.05.05B(2) is a broad standard giving great deference to the decisions made by local boards of education in determining school boundaries and the assignment of students.

In adopting the Final Plan, the Local Board reasoned that due to the current stretching of staff, more academic opportunities would be created by combining the resources of North Carroll and Manchester Valley. Additionally, in its analysis, the Local Board identified the relocation of the high school autism program to Winters Mill High as both an advantage and a challenge, noting that the change to a more central location would reduce transportation costs and ride times for students and increase the consistency of educational programs and course offerings, even if it were required to incur a one-time cost to modify classrooms.

The racial composition of the student body was fully considered, even if that factor was not as significant demographically as it might have been in other jurisdictions. The Local Board found that the school closures would have minimum impact on the racial composition of the affected schools.

Viewing the entirety of the comprehensive process and the ultimate production of the Final Plan, financial considerations loomed large in the Local Board’s determination. The Local Board scrutinized the data regarding the potential costs and cost avoidance associated with each

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<sup>23</sup>See Md. Code Ann., State Gov’t § 10-214(b) (2014).

of the various options studied, and came to the conclusion that the Final Plan encompassed the most reasonable approach to solving the financial predicament of the Carroll County school system. The Local Board reasonably identified the financial advantages and challenges of the Final Plan in reaching a functional and rational solution to a long-standing and seemingly disastrous and insurmountable problem, if not timely addressed.

The Local Board fully recognized the issues associated with student relocation, and analyzed the data to reach a plan to achieve the goal of reducing operational costs in a manner that would only affect 7% of the entire county student population. The Local Board reasoned that the Final Plan, while having more of an effect on the elementary and middle school feeder pattern, would also improve the middle to high school feeder pattern. As to the impact on the community in the geographic attendance area, the Local Board fully analyzed the effect the Final Plan would have in relocating the North Carroll students to Manchester Valley and Westminster High. While acknowledging that the relocation would boost Manchester Valley enrollment to temporarily exceed State Rated Capacity, the Local Board reasoned that this utilization would be brief.<sup>24</sup> The Local Board further noted that even if the relative utilization rates might be uneven, it minimized the likelihood that the same students would be redistricted in the future.

The fact remains that the Local Board thoroughly performed its regulatory duty of considering each of the eight required factors. Although there may be disagreement by the Appellant with the Local Board's analysis and ultimate decision, it is clear from the record that the Local Board carefully and comprehensively sought and acquired data, thoughtfully sifted through and analyzed that information, and reached a rational decision that was consistent with statutory and policy goals.

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<sup>24</sup> Moreover, State Rated Capacity has been defined as 85%; therefore the true utilization of Manchester Valley would not be a true 100% capacity, and the number of students would not exceed that number.

Moreover, the Local Board has demonstrated that there is no material fact in issue as to whether its decision to adopt the Final Plan was legal.<sup>25</sup> Its decision was not unconstitutional; it did not exceed the statutory authority or jurisdiction of the Local Board; did not misconstrue the law; did not result from an unlawful procedure; was not an abuse of discretionary powers; and was not affected by any other error of law. Moreover, the Appellant did not specifically point to any material facts to suggest that any of these actions occurred.

The only issue raised as to legality in the Appellant's appeal was the Local Board's lack of consideration of Option 4 in favor of the Superintendent's recommendation of Option 5. As to that issue, the Local Board argues that the Superintendent was required by law to make a recommendation to the Local Board. Neither COMAR 13A.02.09, nor the Local Board's procedures require that the Superintendent's ultimate recommendation be from any particular source, including the BAC. The decision of the Local Board is not illegal if there is another plan that some might have found preferable or at least as good as the Final Plan. The State Board held in *Langston Hughes v. Baltimore City Board of School Commissioners*, MSDE Op. No. 15-43 (2015), citing *Adams v. Montgomery County Board of Education*, 3 Op. MSBE 143, 155 (1983), that it does "not substitute [its] 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.'" The decision to adopt a plan for school closures and redistricting that is in the best interest of the school system as a whole is precisely the type of discretion that is given to a local board. The State Board has recognized that "closing a school is a policy decision which a local

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<sup>25</sup> While the Appellant did not raise any issue of material facts in her Response, the Appellants upon whose arguments at the hearing she relied, raised an issue regarding communication between the Superintendent and others concerning the future use of one of the other schools for offices, claiming that this, somehow, was a decisive and improper factor in the Local Board's decision. I have discounted that argument as immaterial, irrelevant, and misleading, and have more extensively described my analysis in my ruling in the other case. See OAH Case No.: MSDE-BE-16-16-02815.

board 'is uniquely qualified to make.'" *Bushey Drive Elementary School Parents v. Bd. of Educ. Of Montgomery County*, 1 Op. MSBE 441 (1976).

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

The Local Board, in its authority, under established procedures, rendered its decision under the law. The record is very clear that the Respondent complied with the Education Article, MSDE regulations pertaining to school closings, and its own internal regulations and policies in the manner and method in which it decided to adopt the Final Plan.

The Local Board has demonstrated that its decision was premised on a broad spectrum of considerations, as detailed above. Thus, its decision was not arbitrary and unreasonable and was consistent with the conclusion that could have reasonably been reached by a reasoning mind. Neither were the actions of the Local Board illegal. The undisputed material facts demonstrate that the Local Board's decision was reasonable under the standards set forth in COMAR 13A.01.05.05, and the Appellant has failed to show any genuine dispute of material fact to contradict the Local Board's adherence to those standards. Accordingly, I find that the Local Board is entitled to summary affirmance as a matter of law. COMAR 13A.01.05.03D; COMAR 28.02.01.12D. As such, a hearing on the merits in this matter is no longer required and, therefore, the merits hearing scheduled for May 31, June 1-3, 7-10, and 13-17, 2016 is cancelled.



### **CONCLUSION OF LAW**

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

### **PROPOSED ORDER**

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

May 5, 2016  
Date Order Mailed

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Harriet C. Helfand  
Administrative Law Judge

HCH/cj  
#161835

### **RIGHT TO FILE EXCEPTIONS**

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

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