

WILLIAM SLIDER, II, ET AL.,

Appellants

v.

ALLEGANY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-35

OPINION

This is a consolidated appeal involving six groups of Appellants who challenge the decision of the Board of Education of Allegany County to close, consolidate, and reconfigure various public schools in the county. The matter was transferred to the State Office of Administrative Hearings for expedited review. A hearing was held on June 7, 8, 13, 22, and 23, 2000, before an Administrative Law Judge (ALJ), who issued a proposed decision on July 17, 2000. A copy of the proposed decision is attached as Exhibit 1. The parties presented oral argument to the State Board on July 25, 2000.

We have reviewed the record in this matter including the comprehensive proposed decision of the Administrative Law Judge. We have also considered the well-stated arguments of the parties. As the Administrative Law Judge noted, the issues raised in this appeal have understandably aroused strong emotions among parents, students, concerned citizens, and elected officials of Allegany County. It is our view that the local board and school system staff could have been more diligent in allaying public concerns as the redistricting process moved forward.

For example, more effort could have been expended to have the transportation changes set forth with the redistricting scenarios. 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 the context of the entire record is sufficient to satisfy the requirements of COMAR 13A.02.09.01D.

Having given full consideration to the record in this matter in light of the issues raised by the parties, we adopt the Findings of Fact and Conclusions of Law as set forth by the Administrative Law Judge in Exhibit 1. For the reasons stated by the Administrative Law Judge, we affirm the closing, consolidation, and reconfiguration decision of the Board of Education of Allegany County.

Walter Sondheim, Jr.

President

Philip S. Benzil
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Marilyn D. Maulsby

Edward Root

John Wisthoff

DISSENT

Because I believe that the local board did not adequately set forth its rationale and did not present the transportation schedules in a timely manner with the redistricting scenarios, I would find that the local board acted arbitrarily, unreasonably, and illegally in this matter. I would therefore reverse the decision of the Board of Education of Allegany County.

Judith McHale

July 31, 2000

EXHIBIT 1

WILLIAM J. SLIDER, II, et al., * BEFORE DOUGLAS E. KOTEEN,
APPELLANTS * AN ADMINISTRATIVE LAW JUDGE
v. * OF THE MARYLAND OFFICE
BOARD OF EDUCATION OF * OF ADMINISTRATIVE HEARINGS
ALLEGANY COUNTY * OAH NO. MSDE-BE-04-200000003

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

This case arises from a decision by the Board of Education of Allegany County (“the Board”, or “BOEAC”) on April 24 and 25, 2000, to close, consolidate, and reconfigure public schools in the Allegany County School System resulting in nine (9) separate actions. Residents of various school districts within the County filed appeals on May 22, 23, 24, and 25, 2000, respectively, with the Maryland State Board of Education (“MSBE” or “State Board”) protesting the local Board’s decision. The State Board consolidated those appeals and, pursuant to the delegation of authority from the Maryland State Department of Education (“MSDE”), transmitted the appeals to the Office of Administrative Hearings (“OAH”) on May 30, 2000, for the purpose of conducting a consolidated and expedited contested case hearing.

In accordance with Md. Code Ann., Educ. §§ 2-205 and 6-202 (1999); and the Code of

Maryland Regulations (“COMAR”) 13A.01.01.03E(1), a hearing was convened on June 7, 8, 13, 22, and 23, 2000, before Douglas E. Koteen, Administrative Law Judge ("ALJ"), at the Center for Career and Technical Education, Route 220 South, Cumberland, Maryland. The Oldtown Appellants were represented by D. Bruce Poole, Esquire;¹ the Barton Appellants were represented by Eric B. Andrews, Esquire;² the Flintstone Appellants were represented by Denise M. Bowman, Esquire;³ and the Mt. Savage Appellants were represented by Donald S. Goldbloom, Esquire.⁴ Mark R. McLaughlin appeared pro se on behalf of himself and his wife, Sandra McLaughlin. Mary A. Walters appeared pro se. Rebecca Hartsock-Haines appeared pro se on behalf of herself and her husband, Richard L. Haines. Jane and James W. Crabtree did not appear, but filed a written waiver of appearance, dated June 5, 2000.⁵ G. Gary Hanna, Esquire,

¹The Oldtown Appellants included the following: William J. Slider, II, Kim Lehman, Sharon I. Dolly, Karen Blahut, Ruth L. and Leo M. Rose, Sandra Burns, Christina Mackereth, Belinda Joiner, Alesia Hose, and Lisa A. Piper. All appeared during the course of the hearing except for the following: Sharon L. Dolly, Lisa A. Piper, Leo M. and Ruth L. Rose, and Sandra Burns, who filed written waivers of appearance, dated June 7, 2000. (TR. 320; Oldtown Ex. 1).

²The Barton Appellants included the following: David and Donna Bradley, Mark and Marsha Bradley, James and Shelly Fitzgerald, Greg and Robin Bean, Charles Morgan, Ann Steele, Sherry Bittinger, Phil Whiteman and Janet Colmer, and Doris Gillis. All appeared during the course of the hearing.

³The Flintstone Appellants included the following: Edward and Cindy Robinette, Kenny Gilpin, Jeanette Rinehart, Ronald and Heidi Breeden, Greg Rinker, and Eilene Sipes. All appeared during the course of the hearing except for Greg Rinker, who filed a written waiver of appearance, dated June 7, 2000. (TR 332; Flintstone Ex. 1).

⁴The Mt. Savage Appellants included the following: Paul and Brenda Kirby, Randy and Tanya Kessell, Dale and Kim Lease, Danny and Cindy Roach, Terry and Kim Linn, Donald and Ruth Booth, Randall and Helena Murray, Sharon Ritchey, and Bernard and Brenda Robison. All appeared during the course of the hearing except for Randy and Tanya Kessell, who filed an undated written waiver of appearance. (TR 320; Mt. Savage Ex. 5).

⁵In their written waiver, Jane and James Crabtree designated Mary A. Walters to be a spokesperson on their behalf at the hearing. (Crabtree Ex. 1). Rebecca Hartsock-Haines appeared at the hearing but did not participate, other than to submit one document, and designated Mary A. Walters to be the spokesperson on behalf of herself and her husband, Richard L. Haines.

and Judith S. Bresler, Esquire, represented the Board of Education of Allegany County.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings, and the COMAR regulations governing appeals to the Maryland State Board of Education. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999); COMAR 28.02.01; and COMAR 13A.01.01.03.⁶

ISSUES

The issues on appeal are:

1) Whether the decision of the Allegany County Board of Education issued on April 24, and 25, 2000 regarding the closing, consolidation, and reconfiguration of public schools within the Allegany County School System resulting in nine (9) separate actions was arbitrary, unreasonable, or illegal; and

2) Whether the decision of the Allegany County Board of Education to reject the one (1) million dollar grant offered by the Governor and provided through the Maryland State Legislature is a separate appealable issue in this proceeding.

SUMMARY OF THE EVIDENCE

A. Exhibits

A List of Exhibits is attached to this decision.

B. Testimony

⁶The applicable regulations provide that a proposed decision shall be issued by an ALJ within forty-five (45) days of the hearing. COMAR 13A.01.01.03P(2)(c). As this matter was expedited, however, it was agreed among the parties and MSDE that this proposed decision would be issued on or before July 17, 2000.

The Appellants presented testimony from the following witnesses:⁷

Oldtown Appellants:

1. William J. Slider, II, Parent and Party
2. Alesia D. Hose, Parent and Party
3. Robert King, Supervisor of Transportation, BOEAC
4. Timothy C. Woodring, Vice President, BOEAC
5. Dr. John O'Connell, Superintendent of Schools, Allegany County Public Schools
6. Dale R. Lewis, President, Allegany County Board of Commissioners
7. Dr. Donna D. Truesdell, Member, BOEAC (Accepted as an expert in curriculum development and administration of public education for grade schools, K-12)

Mt. Savage Appellants:

1. Paul E. Kirby, Parent/Appellant
2. Louis Petronella, Teacher, Mt. Savage School
3. Sharon Ritchey, Parent/Appellant
4. Richard Burkhart, Busdriver for BOEAC
5. Charles M. Shaffer, Student
6. Joshua Clites, Student

Barton Appellants:

1. Donna Bradley, Parent/Appellant

Flintstone Appellants:

1. Jeanette Rinehart, Parent/Appellant
2. Eilene Sipes, Parent/Appellant
3. Edward Robinette, Parent/Appellant

Walters Appellant

1. Mary A. Walters, Parent/Appellant.

The Board presented testimony from the following witnesses:

1. Dr. William J. AuMiller, Assistant Superintendent for Instruction and Staff Development,

⁷The witness list set forth below reflects the party that actually called the witness. As the appeals were consolidated by the MSBE, and a consolidated hearing was conducted on those appeals, all parties were afforded the opportunity to question each of the witnesses that testified.

- Allegany County Public Schools
2. Robert King, Supervisor of Transportation, BOEAC
 3. Patrick J. McWhirter, Assistant Supervisor of Finance, BOEAC
 4. James Stakem, Allegany County Commissioner
 5. Jerry L. Frantz, Director of Finance for Allegany County
 6. John Wagoner, Assistant Superintendent for Administrative Finance, BOEAC
 7. John M. Robb, Jr., Esquire, Member, Allegany County Chamber of Commerce
 8. Ken Baxter, Science Teacher, Beall High School
 9. Timothy C. Woodring, Vice President, BOEAC (also recalled by the Board after V. Montana's testimony)
 10. Vincent G. Montana, Supervisor of Maintenance and School Construction, BOEAC.

FINDINGS OF FACT

Based upon the evidence presented, the following stipulations were entered into by the parties:

1. There were no other meetings held by the Board between April 11, 2000 and April 24, 2000 pertaining to consolidation and redistricting. (TR 326).
2. Barton Elementary School was operating at 55% capacity during the 1999-2000 school year. (TR 393-396; Barton Ex. 1). There was a projection for an increase in enrollment at Barton Elementary School through the year 2005. (TR 503).
3. The notice from the Board announcing that a public hearing would be held on April 11, 2000 regarding proposed plans for the reconfiguration, realignment, closing and/or consolidation of the Allegany County Public Schools, also included notice that the final decision of the Board would be announced at a special public session then scheduled for April 13, 2000. (TR 400; Jt. Ex. 1).
4. The Board did not follow the time line established in the old internal Board policy regarding the retirement of facilities. (TR 648; Jt. Ex. 13).
5. The statement of David A. Treasure, Deputy Director, Division of Budget Analysis, Maryland Department of Budget and Management, dated June 12, 2000 (Flintstone Ex. 2), would be confirmed and ratified by the testimony of Mr. Treasure. In addition, Mr. Treasure would testify that the \$1 million funds remain available today. They have not been removed from the adopted budget, and they will in fact become available July 1, 2000, and remain available through June 30, 2001, subject to the terms and conditions that are outlined in Mr. Treasure's statement and as reflected in Exhibit one (Senate Bill 150) and Exhibit two (April 13, 2000 letter from Valerie V. Cloutier, Esquire, to G. Gary Hanna, Esquire) attached to Mr. Treasure's statement. (TR 767-768;

Flintstone Ex. 2).

6. As a result of the consolidation plan, the Board of Education of Allegany County eliminated fifty (50) positions, including teachers, cafeteria workers, maintenance persons, and custodians. On April 24, and 25, 2000, the Board did not know exactly how many positions would end up being eliminated. (TR 1307-1311).

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Board was experiencing budget problems and began to consider the closing and reconfiguration of County schools in September 1999. In the latter part of 1999, and thereafter, the Board's finance office was projecting a substantial budget deficit for the School System, and this information was provided to the Board and the public. (TR 1128-1129). There is currently a budget crisis in the Allegany County School System that was widely known. (TR 686, 1128). The Board is required to submit a balanced budget every year and is responsible for developing a balanced budget. (TR 682-683). Additionally, Allegany County has the lowest starting teachers' salaries in the State, and the second lowest maximum teachers' salaries in Maryland. (TR 697-700, 1169-1170; BOE Ex. 25). The Board has engaged in considerable discussion since November 1999 regarding consolidation, the budget crisis, declining student enrollment, inequities in the availability of educational opportunities, and low teachers' salaries, and has considered public input on these matters. (TR 707, 1391-1402). There were several board meetings conducted in the winter and the spring of 2000 that were devoted almost entirely to discussion of issues of consolidation, the various scenarios, and rationales supporting them. (TR 709, 1391-1402; Jt. Ex. 2).

2. The Stakeholders Budget Advisory Commission ("Advisory Commission") is a

committee formed by the Board for the purpose of reviewing the budgetary process and searching for ways to save money. Timothy C. Woodring, Vice President of the Board, is the only Board member who is also a member of the Advisory Commission. (TR 1375). In November 1999, Woodring made a lengthy presentation to the Board on behalf of the Advisory Commission addressing school occupancy rates, school costs, and population trends. The Advisory Commission then voted unanimously to recommend to the Board that consolidation be addressed in the County and that consolidation be considered as a referendum issue. (TR 1377).

3. On November 2, 1999, the Board also began to consider establishing new internal procedures for school closings and consolidation. (Jt. Ex. 2, November 2, 1999 Minutes, pp. 1-2). At the November 2, 1999 meeting, the Board discussed recommendations from the Advisory Commission to hire an independent consultant to review the County School System and recommend the most efficient configuration, and place a referendum issue on the November 2000 ballot regarding consolidation of the School System. (TR 1377; Jt. Ex. 2, November 2, 1999 Minutes). After that Board meeting, an opinion was received from the Attorney General's Office advising that placing the consolidation issue in a ballot referendum would be unconstitutional. (Jt. Ex. 2, November 9, 1999 Minutes).

4. The internal procedures of the Board, adopted on June 15, 1993, required that a coordinating council's recommendations regarding the closing and consolidation of schools be presented to the Board not later than the first Board meeting in September of each year. The internal procedures also required that the Superintendent's recommendations regarding closings and consolidations be presented to the Board in January. The Board's internal procedures also required that public hearings regarding the closing or consolidation of schools be held during the

months of January and February. (TR 416-417, 612-615; Jt. Ex. No. 13).

5. The coordinating council had disbanded several years earlier, and did not meet in 1999 to address issues of closings and consolidations. (TR 646-647). The last report filed by the coordinating council under the policy was in 1993. (Jt. Ex. 2, December 7, 1999 Minutes).6 .

At a Board meeting on December 14, 1999, the Board voted unanimously to accept the proposed revisions to the Board's internal rules regarding closing and consolidation, as a first reading (FILE FL and FL-R). The Board also voted unanimously to request the Superintendent to investigate the configuration of the School System and present for consideration multiple scenarios regarding reconfiguration. (TR 1382; Jt. Ex. 2, December 14, 1999 Minutes). The Advisory Commission recommended that administrative staff provide a review of the projected School Board budget for the 2000-2001 school year, and also recommended that the Board further consider issues of reconfiguration. (Jt. Ex 2, Dec. 14, 1999 Minutes).

7. At a January 4, 2000 Board meeting, there was a discussion of the referendum issue and transportation issues. At the January 11, 2000 Board meeting, there was a constituent suggestion that the Board petition the State to take over the County School System due to the difficult financial conditions. There was also a discussion regarding the comparison of course offerings between Ft. Hill and Oldtown Schools, the establishment of school community committees, and historical reports regarding the prior consideration of consolidation issues. (TR 1382-1383). The Board also decided in this meeting not to hire a consultant because of concern that a study would not be completed in time to achieve timely results. (TR 1386-1387; Jt. Ex. 2, Jan. 11, 2000 Minutes). The Board voted unanimously to have the Superintendent establish community committees at each County school, and have the Superintendent report on initial

configuration options at the Board's February work session. The Board also voted to place a moratorium on new programs. (Jt. Ex. 2, Jan. 11, 2000 Minutes).

8. On January 11, 2000, the Board adopted the new internal procedures for the closing and consolidation of schools that eliminated certain procedures and time frames set forth in the old internal procedures. The new procedures required that the Board consider the factors for closings and consolidations set forth in COMAR 13A.02.09.01. (TR 417, 612-615, 649-650; Jt. Ex. 14).

9. At the February 1, 2000 work session, the Board received the Superintendent's proposed scenarios, the Superintendent presented a brief overview of the scenarios, and he and staff responded to questions from Board members. Additional scenarios were presented and/or offered by constituents and citizen groups. At that Board meeting, there were several hours of public comment and extensive discussion regarding the scenarios, cost savings, educational opportunity, student enrollment and relocation, community impact, and transportation issues. At that meeting, after extensive discussion, the Board recommended that scenarios 4, 5, and 6C be forwarded for further study, and agreed to further study of the constituent scenarios. (TR 1388, 1425-1426; Jt. Ex. 2, February 1, 2000 Minutes). The Board did not exclude all other scenarios at that time and invited the public to submit additional scenarios. (TR 1389; Jt. Ex. 2, February 1, 2000 Minutes). Scenarios 4, 5, and 6C involved primarily Flintstone, Oldtown, Mt. Savage, Beall High School, Barton, George's Creek, and Westmar Middle. (Jt. Ex. 19).

10. The scenarios developed by the Superintendent, which included input from the school committees, made detailed reference to where the students would be reassigned to attend school under each of the various scenarios. The scenarios also addressed other COMAR factors,

including financial considerations, transportation, and student enrollment. (Jt. Ex. No. 19; TR 336, 473-474).

11. On February 3, 2000, Dr. AuMiller issued a memorandum to school principals regarding guidelines for the establishment of school community committees. The memorandum directed the school committees to, among other things, review information presented by the Superintendent and others, consider and address the COMAR factors, submit reports to the Superintendent, and present oral reports at the public hearing. (TR 1384; BOE Ex. 35). In the winter of 2000, the school community committees began to meet regarding the closing and consolidation of schools. (TR 721-722).

12. At a February 8, 2000 Board meeting, which lasted nearly six (6) hours, thirty-five (35) constituents spoke regarding the issue of school consolidation. Discussion was held regarding the scenarios and school committees, and additional constituent scenarios were accepted for review. Transportation and budget issues were also discussed, and the Board voted unanimously to accept an offer for a consultant. A motion that school committees meet, consider the scenarios, and submit a report by March 7, 2000, passed unanimously. (Jt. Ex. 2, February 8, 2000 Minutes). At a March 8, 2000 Board meeting, increases in the projected budget deficit were discussed, and consolidation, transportation, student relocation, finance issues, and the development of a performance audit were discussed. (TR 1390; Jt. Ex. 2, March 8, 2000 Minutes).

13. At the March 14, 2000 Board meeting, which lasted four (4) hours, there were discussions regarding the budget and financial considerations, a performance audit, the scenarios, the Board's time line, and cost savings from consolidation. The Superintendent reviewed three

(3) levels of proposed recommendations for reconfiguration, realignment, and consolidation. That was followed by an extensive discussion where constituents presented their views regarding the consolidation and closure of various schools. Sheree Witt, the Executive Director of Pupil Services and Special Education for the Board, addressed issues concerning student relocation and community impact. The Board voted to conduct a public hearing on April 4, 2000 to consider the recommendations presented by the Superintendent, and also established procedures to be followed at the public hearing. The Board passed several motions to have the closure of Barton Elementary, Oldtown School, and Allegany High School be considered at the upcoming public hearing, and discussed that the three levels of consolidation presented by the Superintendent would also be considered at the public hearing. The Board agreed to meet on March 20, 2000 to discuss the school community reports. (TR 1390, 1426-1427; Jt. Ex. 2, March 14, 2000 Minutes).

14. A special session Board meeting was held on March 16, 2000, addressing budgetary issues and procedures and notice for the public hearing. The Board also addressed their procedures for reviewing the school community reports, and agreed to visit and take bus rides regarding the schools potentially affected by consolidation. (Jt. Ex. 2, March 16, 2000 Minutes). The Board held a special session and work session on March 20, 2000 to discuss the performance audit, the budget crisis, and the school community reports. The Board reviewed cost figures related to the closing of Barton Elementary, Oldtown School, and Allegany High School, and discussed that a bus trip and school site visitations responded to some of the main concerns of the community reports. The Board also discussed notice issues regarding the public hearing and issues related to the proposed closings and other proposed scenarios. (Jt. Ex. 2, March 20, 2000 Minutes).

15. The Board held a special session meeting on March 22, 2000 to discuss budget and public hearing issues. The Board voted to change the date for the public hearing to April 11, 2000 to occur after the close of the legislative session and the presentation of budget outcomes. The Board also voted to hold a special session on April 13, 2000 to make a decision on consolidation. The Board also discussed that it would recess after the consolidation vote to enable the staff to draft a written rationale, and then the Board would reconvene to approve the rationale. (Jt. Ex. 2, March 22, 2000 Minutes).

16. In January 1999, the Allegany County Chamber of Commerce asked John M. Robb, Jr., a member of the Chamber of Commerce, to conduct an analysis of the Allegany County School Board budget. (TR 1315). Robb formed a committee of seven (7) persons, undertook a lengthy investigation, and gathered information from independent sources and Board personnel. The Chamber of Commerce committee (“Chamber committee”) presented its own report to the Board prior to the April 11, 2000 public hearing, which concluded that the Board was not operating in the most efficient and economical manner. The Chamber committee’s report recommended closing more school buildings than the consolidation plan subsequently announced by the Allegany County Board of Education on April 24, 2000. (TR 1320; Jt. Ex. 4). The Chamber committee recommended the consolidation of schools based on student enrollment, costs, curriculum, building usage, testing, instructional staff, and transportation. The Chamber’s proposed consolidation plan would reduce the number of high schools (grades 9-12) in Allegany County from eight to four,⁸ reduce the number of middle schools (grades 6-8) to three, and close

⁸Apparently, the Chamber considered the Center for Career and Technical Education (“Career Center”) to be a separate high school, and the Board did not.

two elementary schools. The Chamber committee's report recommended closing Westmar Middle School, Barton Elementary School, and Oldtown School. (TR 1317-1320, 1343; BOE Ex. 18).

17. The second recommendation of the Chamber committee was to reduce by 10% the number of instructional personnel and mid-level administration, and effect a similar reduction in fixed charges and plant operations, which together constituted more than 76% of the School Board budget. The Chamber sought to accomplish this reduction without terminating employees, through voluntary retirement incentives and a hiring freeze. (TR 1317-1318; BOE Ex. 18).

18. A notice of public hearing was published in a timely manner in the Cumberland Times-News, of Cumberland, Maryland; the Republican, of Oakland, Maryland; the Morgan Messenger, of Berkeley Springs, West Virginia; the Hancock News, of Hancock, Maryland; and the Mineral Daily News Tribune, of Keyser, West Virginia. The Cumberland Times-News and the Mineral Daily News Tribune are daily newspapers. (Jt. Ex. 3). The notice of public hearing included the date, time, location, and purpose of the public hearing scheduled for April 11, 2000. It also included the procedures to be followed by the Board in making its final decision, and the time limits for the submission of written and oral testimony. The notice further included a list of sending schools, receiving schools, and schools being considered for closure. The notice also stated that the final decision of the Board to reconfigure, realign, close, or consolidate schools would be announced at a special public session then-currently scheduled for April 13, 2000. (Jt. Ex. 3).

19. The Board held an emergency special session at 8:00 a.m. on the morning of March 31, 2000 in which it voted 2-2 to reject a \$1 million grant from the Governor to assist in

funding public education in Allegany County for the 2000-2001 school year. One member of the five person Board had attended the meeting by telephone, but was unavailable at the time of the vote, due to a poor telephone connection. The Board had been advised at that morning meeting of the existence of the grant and that there was a 9:00 a.m. deadline on its acceptance. The Governor's offer of the \$1 million grant was conditioned on the Board agreeing not to adopt a consolidation plan for the County schools for the 2000-2001 school year. (Jt. Ex. 2, March 31, 2000 Minutes).

20. Later that same day, with all Board members present, the Board held a second emergency special session. The Board was advised at this second meeting that the deadline on acceptance of the grant had been extended by the State Legislature. The Board voted to reconsider the earlier vote, and then voted to accept the \$1 million grant, with the condition that an educationally balanced county wide consolidation plan be delayed for this year, provided adequate funding was received from the State and from the County Commissioners. The Board sought to replace language in the legislation requiring geographical balance with language calling for educational balance. (TR 361-363). Although the Board voted to accept the grant with certain conditions, it also voted to continue on a parallel track with the understanding that if the \$1 million grant was ultimately accepted, the Board would delay consolidation until the following year, and if it voted to reject the grant, it would move forward with consolidation for the 2000-2001 school year. (TR 363-364; Jt. Ex. 2, March 31, 2000 Minutes).

21. In March 2000, the Superintendent reviewed a performance audit that had been undertaken by the Prince George's County Public Schools to help develop a plan for a similar audit in Allegany County. At a special session of the Board on April 7, 2000, the Board voted to

recommend the inclusion of certain language in an RFP for a performance audit to study the efficient operation of the Allegany County School System. (Jt. Ex. 2, April 7, 2000 Minutes). The language recommended by the Board for the RFP required a comprehensive assessment of the Allegany County School System, including an evaluation of issues relevant to the closing, consolidation, or reconfiguration of schools. (TR 724-735). The Board's recommendation went to the MSDE because that agency would actually be drafting the RFP. (TR 762). The State offered to assist the Board by providing substantial funding for a \$200,000 audit. The State Board offered to fund \$155,000, the Board agreed to fund \$10,000, and the County Commissioner s agreed to fund the remaining \$35,000. (TR 603, 618-619, 651-652).

22. The RFP for the performance audit was issued by MSDE and generated only one proposal. No contract has yet been awarded for the performance audit. (TR 1206).

23. At the April 7, 2000 meeting, the Board also decided to seek a legal opinion from the Attorney General's office regarding the effect of the conditions attached to the Governor's \$1 million grant. (Jt. Ex. 2, April 7, 2000 Minutes). At a Board meeting held on April 11, 2000, before the public hearing, the Board voted to change the date of the final vote on consolidation from the scheduled date of April 13, 2000, because the Board was still waiting for a legal opinion from the Attorney Generals' office regarding the conditions attached to the grant. The Board did not set a date but agreed to meet promptly to decide the consolidation issue as soon as it received the legal opinion. (Jt. Ex. 2, April 11, 2000 Minutes).

24. The Maryland Legislature concluded its 2000 session on April 10, 2000. (TR 418).

25. On April 11, 2000 a public hearing was held by the Board at Ft. Hill High School

for approximately seven to eight (7-8) hours to permit the citizens of Allegany County to address their concerns regarding a consolidation plan for the Allegany County Public Schools for the 2000-2001 school year. Allegany County citizens made oral presentations at that public hearing and numerous issues were discussed regarding proposed consolidation. (TR 515-516). Approximately sixty to seventy (60-70) constituents spoke at the hearing and all of the school community committees reported. (TR 1390-1391).

26. The Assistant Attorney General for MSDE issued an opinion on April 13, 2000 regarding the conditions attached to the \$1 million grant. (TR 666-667; Flintstone Ex. 2). The opinion concluded that while some of the language in the legislation was nonbinding, it did impose some legal duties on the Board. (Flintstone Ex. 2; Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2).

27. On April 24, 2000, the Board met in a special public session to further consider the \$1 million grant, in light of the Attorney General's opinion regarding the conditions included with the grant. (TR 327). The Board voted to rescind its March 31, 2000 action accepting the \$1 million grant and voted, instead, to reject the grant. The Board objected to language in the legislation that required the closings, consolidation, and reconfiguration to be as geographically balanced as possible. The Board sought, instead, that the consolidation plan be educationally equitable rather than geographically balanced, and rejected the grant because, among other reasons, its objection to the conditions attached to it. (TR 353-362). Additionally, the \$1 million grant was a one-time only grant, would be insufficient to fund the Board's entire budget deficit, would have only delayed consolidation, and would not have increased educational opportunities for the students. The Board estimated that there would still be a deficit of as much as \$900,000,

even if the \$1 million grant were accepted. (TR 1145-1146, 1444-1445).

28. The April 24, 2000 meeting was scheduled for the purpose of considering the Attorney General's opinion with regard to conditions attached to the grant. (TR 631; Jt. Ex. 10). The Board added the consolidation vote to the agenda during the course of the meeting. (Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2). The Board's internal Agenda policy permits agenda items to be raised from the floor during the course of a Board meeting, and that practice was regularly followed. (Jt. Ex. 2, 8).

29. When the Board announced its decision on April 24, 2000 with regard to closings, consolidations, and reconfiguration, it did not at that time present a written rationale for its decision. (TR 336). Monday, April 24, 2000 was a holiday (Easter Monday), and School offices were closed that day. Consequently, the Board voted to reconvene on Tuesday, April 25, 2000 to prepare and consider a written rationale in support of its consolidation decision. (Jt. Ex 2; Oldtown Ex. 2).

30. After the Board voted to reject the \$1 million grant, the Board then agreed to consider its determination regarding the consolidation plan at the same meeting. The Board addressed and considered many of the COMAR factors at the April 24, 2000 meeting before making its final decision regarding the closing and consolidation plan. (TR 626, 635, 638; Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2). The Board also considered the COMAR factors during months of Board meetings, at the public hearing, through consideration of school committee reports, and through preparation and consideration of numerous consolidation scenarios. (TR 368, 1391-1392, 1423-1424). The Board also received and considered vast amounts of information from the Superintendent and his staff, the Advisory Commission, the

Chamber committee, and the County Commissioners regarding finances and budget projections, student enrollment and population trends, student relocation, condition of buildings, transportation, educational programs, racial composition, and community impact. (TR 720, 1391-1402).

31. When the Board made its determination on April 24, 2000 to close, consolidate, and reconfigure the schools in the Allegany County School System, it voted on and announced the following actions:

1. Close Oldtown (K-12) School;
2. Convert Flintstone (K-12) School to a K-5 School;
3. Convert Mt. Savage (K-12) School to a K-5/6-8 School;
4. Convert Beall Elementary (K-6) School to K-5 School;
5. Convert Frost Elementary (K-6) School to K-5 School;
6. Convert Beall Jr.-Sr. High (7-12) School to 9-12 School;
7. Close Barton Elementary (K-5) School;
8. Discontinue the 10th grade program at Center for Career & Technical Education;
9. Move the Vocational Agriculture Program from Flintstone School to the Career Center and consider adding a horticulture program.

(Jt. Ex. No. 4).

32. The Board's decision on April 24, 2000 did not include a determination as to which schools the affected students would attend, and this issue was not addressed in the Board's April 25, 2000 written rationale. At the April 24, 2000 meeting, the Board voted to defer the decision regarding student reassignment to the Superintendent and his staff as an administrative decision to be determined later. (TR 287, 302-303, 305, 334-335, 345-350, 427-433, 446-447, 645, 931, 1446-1447, 1472; Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2). Student reassignment was delegated to the Superintendent because the Board sought input from him as an

educational professional, and also sought to coordinate the reassignment of students with the transportation plan. (TR 1472-1473).

33. Actual course offerings are not determined until students have been afforded an opportunity to make course selection requests and the data from that information has been analyzed. Teacher assignments are also dependent upon student course requests. (TR 893-894). The consolidation plan was designed to reduce the number of teachers who would be required to teach courses outside of their areas of certification. (TR 894-895).

34. The Board decided on April 24, 2000, as part of the consolidation plan, that the Flintstone Agricultural Program would be moved to the Career Center. (TR 868, 748-749; Jt. Ex. 4). Subsequent to that decision, the Superintendent and his staff determined that the Agricultural Program would also be made available at Ft. Hill High School. (TR 833-834, 868-869). This expansion would enable the School System to continue offering the Agricultural Program as a four (4) year program, rather than limiting it to two (2) years at the Career Center, where only juniors and seniors will attend for the upcoming school year, pursuant to the consolidation plan. (TR 833, 870-872). The science labs at Ft. Hill are sophisticated and well equipped. (TR 838).

35. A written rationale for the Board's decision regarding closings, consolidations, and reconfiguration was prepared on April 25, 2000 over the course of four to five hours, by Superintendent of Schools, Dr. John O'Connell, Assistant Superintendent for Instruction and Staff Development, Dr. William J. AuMiller, and Board Counsel, G. Gary Hanna. In its meeting later in the day on April 25, 2000, the Board reviewed the draft of the written rationale line by line, made changes, and adopted the written rationale. (TR 337-340, 424, 908-909, 930). The Superintendent is also the Secretary/Treasurer of the Board. (Jt. Ex. 4; TR 930). The written

rationale addressed each of the COMAR factors, but did not address how each COMAR factor would impact each of the affected schools. (Jt. Ex. 4; TR 759, 878-879).

36. At a Board meeting on May 2, 2000, the Board considered where the Oldtown and Flintstone students would attend school and whether any students would be sent to school in West Virginia or Washington County. (Tr 429-430, 1475). The Superintendent announced that a transportation plan had been developed that would allow all Allegany students to remain in county and in compliance with the one hour limitation of the busing law. (TR 1475). The Superintendent presented final plans for student reassignment and transportation at a Board meeting on June 6, 2000. The Board voted to confirm the Superintendent's recommendations regarding student reassignment at a Board meeting on June 14, 2000. (TR 431-432, 1447-1448, 1475-1476). The final student reassignment plan was substantially consistent with the proposed reassignments set forth in the Superintendent's scenarios. (TR 1476-1477). The only changes made to the proposed reassignments set forth in the scenarios related to the Barton closing, and those adjustments were made based on parental requests raised after the consolidation decision was announced. (TR 1476). The final plan for student reassignment has not officially been disseminated to the public. (TR 431-433, 474-475, 505, 740, 1447).

37. As a result of the consolidation plan, the Board determined that the Oldtown K-12 School would be closed. (Jt. Ex. No. 4). The Board subsequently determined that Oldtown K-5 students would attend Flinstone Elementary, Oldtown 6-8 students would attend Washington Middle School in Cumberland, and Oldtown 9-12 students would attend Ft. Hill High School in Cumberland. (TR 285-286). One aspect of the student reassignment plan that delayed the Superintendent's decision was a determination as to whether any of the affected Oldtown students

would attend school in Paw Paw, West Virginia. (TR 286-287).

38. As a result of the consolidation plan, the Board determined that Barton Elementary School would be closed. The Board subsequently determined that Barton students who live in the McCoole, Route 220 area, would be reassigned to Westernport Elementary School, and students who live in the Barton and Moscow areas would be reassigned to George's Creek Elementary School. (TR 303-304).

39. As a result of the consolidation plan, the Board determined that the Mt. Savage School would be converted from a K-12 School to a K-5 and a 6-8 School, effectively closing the high school portion of the School. The Board subsequently determined that the high school students in grades 9-12 who formerly attended Mt. Savage School, would attend the converted Beall High School (9-12). (TR 384-385). The Board also considered whether students in the Mt. Savage district who were attending Allegany High School would continue to attend Allegany or would be reassigned to Beall High School. (TR 384). It had not been decided as of April 24, 2000 where the students from Corriganville and Eilerslie would be attending high school. (TR 458, 645). There will be a greater student enrollment at Mt. Savage School as a result of consolidation. (TR 930).

40. As a result of the consolidation plan, the Board determined that the Flintstone School would be converted from a K-12 School to a K-5 School. The Board subsequently determined that the high school students in grades 9-12 who had formerly attended the Flintstone School, would attend Ft. Hill High School. (TR 446-447). The Board also decided subsequently that the middle school students in grades 6-8 who had formerly attended the Flintstone School would attend Washington Middle School. There are sixty (60) Flintstone students who live closer

to Hancock in Washington County than to Cumberland, and the Board also considered whether any displaced Flintstone students would attend school in Hancock. (TR 447, 452, 634, 1214).

41. As a result of the consolidation plan, there will be additional bus trips between the cities of Mt. Savage and Frostburg, and buses will be passing each other on those roads. (TR 310-311, 638-639, 695, 751-752). School buses have traveled Route 36, driven through the same tunnels, and used the same roads since the schools in the Frostburg and Mt. Savage areas were established. (TR 313, 929-930). The school committees obtained information regarding a five (5) year accident study from the state highway administration. (TR 312). The Board included estimates for additional transportation costs in its scenarios. (Jt. Ex. 19). The recent renovation of Mt. Savage School led the Board to use certain roads, not used previously, during the two (2) year period while the renovation was ongoing. (TR 1012-1018).

42. The Board's Transportation Supervisor has been working on developing a revised transportation plan for the Allegany County School System for the 2000-2001 school year in light of the decision announced by the Board on April 24, 2000 to close and consolidate schools. The revised transportation plan was not finalized at the time the Board announced its decision on consolidation, because it could not be completed until after the Board determined which schools would be affected by the plan. (TR 475). In preparation for developing a revised transportation plan, the Transportation Supervisor began studying the proposed scenarios after they were prepared. The revised transportation routes to be utilized under the consolidation plan have not yet been announced to the public. (TR 605, 635, 740).

43. The guidelines for the Allegany County Public Schools include exceptions to the general requirement that roads on which students walk include sidewalks and five (5) foot

shoulders. These exceptions are generally applicable on isolated roads in rural areas. (TR 314-315).

44. The consolidation plan will cause some affected students to experience longer bus rides in traveling to their newly assigned schools. (TR 482). Some school children who live in the Oldtown School District traveled up to forty-five (45) minutes by school bus from home to school during the 1999-2000 school year. (TR 123). Some school bus commutes in other Maryland jurisdictions exceed one hour. (Jt. Ex. 2).

45. The transportation plan is being developed to comply with the State law requirement that school bus routes in Allegany County may not exceed a one-way maximum commute time of sixty (60) minutes or a commute distance of forty-five (45) miles, whichever is less. (TR 284-285, 290, 302, 305, 335, 351, 447-448, 451). To comply with that law, the Board will add buses and drivers, develop new routes, and adjust starting times at some schools. (TR 448). The adjustment of start times was not addressed in the Board's decision of April 24, 2000, and was not included in the Superintendent's scenarios because that solution was developed later. (TR 448-449).

46. The transportation plan will also adhere to the current practice that elementary students may walk or be transported up to one (1) mile to school or a bus stop, and middle and high school students may walk or be transported up to one and one-half (1-1/2) miles to school or a bus stop. The Board pays some parents who transport students a further distance to a bus stop based on time considerations or limitations on bus access to certain geographical areas. (TR 299-300).

47. Educational opportunity and fiscal responsibility were the overriding

considerations that motivated the Board's consolidation plan. (TR 890, 906). The minority Board members who voted against the consolidation plan never submitted a plan for balancing the School Board budget. (TR 1410-1411).

48. John Wagoner, Assistant Superintendent for Administrative Finance for the Board, prepared very preliminary budget projections in October 1999 for the Advisory Committee which indicated that the Board would have a projected shortfall for fiscal year 2001 of approximately \$1.9 million. (TR 1176; BOE Ex. 26). This deficit was based on additional spending requirements for the fund balance, salary increment increases, health insurance costs, full time school nurses, special education costs, delayed entry substitutes, and decreased revenues. (TR 1175-1176).

49. The Superintendent sent a letter in December 1999 to administrative and supervisory staff, union presidents, and members of the Advisory Committee requesting suggestions for possible reductions in the budget. Most of the responses proposed some form of consolidation or reconfiguration. (TR 1179; BOE Ex. 27). In December 1999, Wagoner was advised by the MSDE of a projected decrease in State revenues of \$862,000. (TR 1180). After receiving this information, Wagoner prepared another preliminary budget projection in early January 2000 that estimated the budget deficit at \$3.2 million, and a deficit projection of \$4.5 million if a 3% cost of living increase were factored in. (TR 1181-1185; BOE Ex. 28, 29). In February 2000, the Superintendent and Wagoner prepared a list of proposed cost saving measures to address the projected School Board deficit. The list proposed \$3.3 million in projected cost savings with the largest measure coming from a proposed consolidation plan. (TR 1184-1185; BOE Ex. 30). By February 23, 2000, the projected budget deficit had grown to \$3.8 million without a wage increase, and including a decrease in State aid to education, and increased health

insurance and special education costs. With the inclusion of a proposed 4% pay increase, the projected deficit was \$5.8 million. (TR 1188, 1389-1390; BOE Ex. 31).

50. The School Board determined that the highest cost per student for K-5 elementary schools was at Barton Elementary School where the cost per student was determined to be \$6,993.00. The highest cost per student at 6-8 middle schools was at Westmar Middle School, at a per student cost of \$6,422.00. The highest cost per student at a 7-12 junior/senior high school was at Oldtown School at a per student cost of \$6,896.00. Finally, the Board determined that the highest cost per student at a 9-12 high school was at the Career Center at a cost of \$6,738.00 per student. (TR 1084; BOE Ex. 21).

51. Allegany County is ranked 21st out of 24 jurisdictions in Maryland with regard to tax capacity, which is based on an analysis of the potential tax base of a local government. Allegany County also ranks 3rd out of 24 with regard to tax effort, which measures the extent to which the local tax base is actually taxed. (TR 1153-1155; BOE Ex. 24).

52. The projected deficit resulting from operating the School System under the *status quo* conditions increased as a result of higher than expected health insurance costs. An original estimate of a 12% increase in health insurance costs was subsequently revised to a 26% increase in such health costs, resulting in additional health insurance costs of \$732,000. (TR 464-465). The State ultimately provided the Board with about \$3 million, and the County Commissioners provided an additional \$1 million over the previous year, to assist the Board in funding the School System for the 2000-2001 school year. (585-586).

53. The Board requested funding from the Allegany County Board of Commissioners (“County Commissioners”) in the amount of \$25,210,619 for the Allegany County Public Schools

for the 2000-2001 school year. The County Commissioners did not fund the Board's entire funding request, but agreed to fund only \$24,030,000. (TR 581). The County Commissioners provided an additional \$1 million in funding for the Board beyond the previous year's budget due to the Board's difficult financial conditions. That \$1 million was not sufficient to remedy the Board's budget deficit. The County Commissioners could not provide additional money to the Board and still remain fiscally responsible. (TR 1129-1130, 1144).

54. At the request of the Allegany County Delegation to the State Legislature, MSDE hired an independent accountant to verify the assumptions used by the Board in projecting a budget deficit. The independent accountant, Price Waterhouse Coopers, verified that the assumptions used by the Board in projecting the operating deficit were reasonable and supported by factual data. (TR 1191-1192; BOE Ex. 32). By the time the Board voted on the consolidation plan, the Board had a projected deficit of \$6.4 million that was reduced to \$2.3 million after \$3 million in State aid and \$1 million in funding from the County Commissioners was considered. (TR 1198; BOE Ex. 33). The Superintendent projected the savings from the consolidation plan to be between about \$1.6 million and \$1.9 million. (TR 1200-1201). The four components related to the savings are closings, consolidations, no longer sending tenth graders to the Career Center, and increasing average student/teacher ratios. (TR 1289-1290).

55. As a result of the decline in State aid and limited revenues, the Board had to cut \$700,000 out of the existing school budget, and an additional \$250,000 out of the budget for instructional materials in fiscal year 1999. (TR 1164-1165). For the fiscal year 2000 budget, the Board had to take out all of its requests for additional funding, and had to cut an additional \$1.2 million dollars from the existing budget. The \$1.2 million included cuts in teaching positions,

teaching assistants in the kindergarten program, custodians, maintenance workers, and instructional materials. Moreover, no pay increases were granted that fiscal year. (TR 1166).

56. The consolidation plan will result in cost savings, in part, from the reduction in staff, such as teachers' and coaches' salaries. (TR 454-455, 480). The Board did not have a final projection for cost savings on April 24, 2000 as a result of the consolidation plan because a calculation of savings in personnel costs still had to be determined based on which staff took advantage of the retirement option and which staff took advantage of the bumping procedure. (TR 434-435, 1245). The projected cost savings were good estimates. (TR 442-443, 454-455).

57. After the consolidation plan was announced students were afforded an opportunity to make course selections at the school where they were projected to be reassigned. (TR 170-173, 186-187, 540). Some teachers have been notified by their principals regarding their teaching assignments for next year. (TR 230, 520).

58. There has been a consistent decline in student enrollment in the Allegany County Public Schools since 1970. (TR 714). There was a 5.5% decline in student enrollment in Allegany County during the period between the 1995-1996 school year and the 1999-2000 school year. (TR 795; BOE Ex. 4-8). The trend of declining enrollment also applies to the Mt. Savage, Oldtown, Flintstone, and Barton Schools, to varying degrees. (TR 796). The Maryland Office of Planning projects a further decline in student enrollment of 12% during the period, 2000 through 2008. (TR 713). Although the student enrollment projections predicted small increased enrollment at Barton Elementary over the next several years, the actual enrollment at Barton for the 1999-2000 school year was 5.5% below the enrollment projections, and after several years, the projections called for steady declines. (TR 932; BOE Ex. 9).

59. The decline in student enrollment in Allegany County has also led to a decline in the amount of State aid that is provided for education in Allegany County. (TR 1161). As a result of the declining enrollment, there was a reduction in State aid of \$750,600 for the 1999-2000 school year. (TR 1162). There has also been a reduction in the tax base with the loss of some high paying jobs, a decrease in State contribution to education, an increase in special education costs, and an increase in health insurance costs. (TR 1162-1163).

60. Several years ago the Board removed teachers from Oldtown, Flintstone, and Mt. Savage Schools and reassigned them to other schools in the County due to the decreasing enrollment at those schools. (TR 761, 1003). The Head Start Program is not a School Board program and is offered through the Department of Human Resources. (TR 761).

61. The Board has issued out-of-district permits to Allegany County students permitting them to transfer to schools outside of their geographical school district. As a result of the issuance of such out-of-district permits, Mt. Savage School has experienced a net loss of seventy-eight (78) students, Oldtown School has experienced a net loss of thirty-six (36) students, Flintstone School has experienced a net loss of thirty-five (35) students, and a net loss of five (5) students occurred at Barton Elementary School. (TR 850-851; BOE Ex. 16). One factor leading to requests for out-of-district permits is the limited educational opportunities at the smaller schools. (TR 917).

62. Mt. Savage, Oldtown, and Flintstone Schools are the only K-12 schools in the State of Maryland. (TR 830). They are also the smallest high schools in Maryland. (TR 532). There were three (3) students in the junior class at Oldtown School during the 1999-2000 school year. (TR 690-691). Barton Elementary School is the smallest school in Allegany County. (TR

717). All of the high schools in Allegany County are classified in the 1A category, which is the classification for the smallest high schools in Maryland. (TR 780; BOE Ex. 2). The categories range from 1A (the smallest) to 4A (the largest).⁹

63. It is necessary to have between 100 and 125 students per grade to be able to offer a full middle school concept, including faculty teams, double planning periods, the availability of exploratory programs with numerous courses and activities. This level of student enrollment enables the school to undertake appropriate scheduling and staffing to offer an appropriate middle school program. (TR 903-905). If teachers are shared between schools, it may result in a teacher spending more time on the road than in the classroom. (TR 907).

64. At a larger high school like Beall High School, teachers generally teach a fewer number of classes per day. This affords the teacher more preparation time during the school day, which enables the teacher to provide the students with a higher quality of instruction. In contrast, at a smaller school like Oldtown High School where there are fewer teachers assigned, a teacher must teach more courses per day. This reduces the amount of preparation time a teacher has during the school day, which negatively affects the quality of instruction the teacher can provide to his students. (TR 1349-1351). Students who take rigorous courses tend to have better educational performance. The rigor of the high school curriculum is the single best predictor of graduation from a four year college. (TR 1351-1352.)

65. Barton Elementary School operates under the Accelerated School Model. Other

⁹Although the 1A through 4A Classification system for Maryland high schools is prepared by the Maryland Public Secondary Schools Athletic Association to classify schools for athletic purposes, it nevertheless provides an appropriate comparison of the relative size of high schools throughout Maryland, based on student enrollment in grades 9-11. (BOE Ex. 2).

schools may also elect to use that model but, presently, there are no other schools in Allegany County that operate under the Accelerated School Model. (TR 865-866, 718, 741-742). Many of the features and educational concepts of the Accelerated School Model are used throughout the Allegany County schools in other schools that are not part of the Model, pursuant to the effective schools model. (TR 933). Barton was the highest performing elementary school in Allegany County on third grade composite MSPAP test scores, and was among the top ten schools in the State for the 1999-2000 school year. (TR 444, 506-507). The student/computer ratio at Barton was three to one this past year and among the best in the County. (TR 508, 863). Barton was receiving an \$80,000 grant from the Accelerated School Program, and an additional grant was available for the upcoming school year. Barton was to receive a \$20,000 MSPAP grant for the upcoming school year. These grants are not transferable once the School has closed. (TR 509, 938, 1237).

66. During the 1999-2000 school year, Oldtown School offered 17.4% of the courses approved by the Board for the high school students of Allegany County, Flintstone offered 34.2% of the approved courses, and Mt. Savage offered 37% of the approved courses. In contrast, Ft. Hill High School offered 79.2% of the approved high school courses, and Beall High School offered 58.9% of those courses. (TR 856-857; BOE Ex. No. 14). The consolidation plan was designed to increase educational opportunity and course selections for students formerly attending the smaller schools. Financial considerations limit the course offerings and staff available at the smaller schools and permit the School System to provide more extensive course offerings only at the larger schools. (TR 918, 928-929). The determination as to whether a course is taught at a particular school in a specific year is dependent upon the number of students requesting the

course, and the availability of staff to teach that course. (TR 874, 911, 936).

67. There were no Advanced Placement (“AP”) courses offered at the smaller high schools in Allegany County during the 1999-2000 school year. Mt. Savage and Flintstone Schools did, however, have a Distance Learning Lab (“DLL”) that allowed high school seniors to take classes for college credit while still attending high school. (TR 993-994). The DLL is a supplement for AP courses that are not offered at the smaller high schools. (TR 231-232). The DLL will be discontinued at Flintstone and Mt. Savage Schools as a result of the consolidation plan. (TR 449, 453). Over time, however, the DLL became a means for the smaller high schools to offer courses from the regular high school curriculum. (TR 1399-1400). The reassigned high school students from Oldtown, Flintstone, and Mt. Savage will have increased educational opportunities, including a wider range of courses, the availability of AP courses, and increased extracurricular activities, as a result of reassignment to the larger high schools, Ft. Hill and Beall High Schools, respectively. (TR 478-480, 718-719, 996, 1306).

68. Seventy-five percent (75%) of the high school students at the Flintstone School participate in the Agricultural Program. (TR 528). The Career Center offered students an opportunity to pursue vocational and completer programs in the tenth grade, which is a critical year for potential dropouts. (TR 924). A higher percentage of students from Oldtown, Flintstone, and Mt. Savage attend the Career Center. (TR 928). Flintstone School was remodeled in 1978. (TR 544).

69. A two year renovation of Mt. Savage School costing approximately \$5.7 million dollars was just completed in 2000. (TR 173; Mt. Savage Ex. 9). That renovation was originally planned with the expectation that the school would remain in its existing K-12 configuration. The

renovation also provided well-equipped science labs originally designed for high school students. (TR 901). The consolidation plan will result in a 36% increase in the enrollment at Mt. Savage after the high school students are reassigned to Beall High School, and middle school students from several schools are reassigned to Mt. Savage. (TR 930, Jt. Ex. 19, Scenario 5). The renovated science labs at the Mt. Savage School will be used by the middle school students and by some of the elementary students. (TR 456-457).

70. The Board is contemplating some minor additional renovations at Mt. Savage School involving the removal of three walls as a result of the decision to reconfigure Mt. Savage. The purpose of the additional renovations would be to create additional classrooms to accommodate the increased enrollment there. (TR 174, 457, 1439-1440, 1459-1461; Mt. Savage Ex. 13).

DISCUSSION

To prevail on their appeal, the Appellants must prove by a preponderance of the evidence that the decision of the Allegany County Board of Education was arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E. The applicable COMAR regulations address the standard of review as follows:

E. Standard of Review.

(1) Decisions.

(a) Decisions of a county board involving a local policy or a controversy and dispute regarding the rules and regulations of the county board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the county board unless the decision is arbitrary, unreasonable, or illegal.

(b) A decision may be arbitrary or unreasonable if it is one or more of the following:

- (i) It is contrary to sound educational policy;
- (ii) A reasoning mind could not have reasonably reached the conclusion the county board reached.

(c) A decision may be illegal if it is one or more of the following:

- (i) Unconstitutional;
- (ii) Exceeds the statutory authority or jurisdiction of the county board;
- (iii) Misconstrues the law;
- (iv) Results from an unlawful procedure;
- (v) Is an abuse of discretionary powers; or
- (vi) Is affected by any other error of law.

(d) The appellant shall have the burden of proof.

The COMAR regulations also set forth, at COMAR 13A.02.09, in pertinent part, the procedures that govern the closing of schools:

.01 Adoption of Procedures to Govern School Closings.

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 will 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 geographic 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.

.02 Date of Decision.

Except in emergency circumstances, the decision to close a school shall be announced at least 90 days before the date the school is scheduled to be closed but not later than April 30 of any school year. An emergency circumstance is one where the decision to close a school because of unforeseen circumstances cannot be announced at least 90 days before the date a school is scheduled to close or before April 30 of any school year.

.03 Appeal to State Board of Education.

B. The State Board of Education 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.

State law also provides that county boards of education are authorized to determine educational policy for a county school system, and that decisions regarding the closing and consolidation of public schools, and the transportation of students, are within the discretion of county boards of education. State law provides at Md. Code Ann., Educ. § 4-108 (1999), in pertinent part, as follows:

Each county board shall:

(1) To the best of its ability carry out the applicable provisions of this article and the bylaws, rules, regulations, and policies of the State Board;

(2) Maintain throughout its county a reasonably uniform system of public schools that is designed to provide quality education and equal educational opportunity for all children;

(3) Subject to this article and to 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[.]

The State education law further provides, at Md. Code Ann., Educ. § 4-120 (1999), as follows:

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

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

The Court of Appeals has consistently recognized that, in general, courts will not attempt to substitute their judgment for the expertise of local school boards, acting within their discretion.

Bernstein v. Board of Education of Prince George's County, 245 Md. 464, 476, 226 A.2d 243

(1967). Absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right or privilege to attend a particular school. *Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. at 472. It is noted that in the instant case, it is the Board of Education of Allegany County, and not the Appellants, that has relied on equal educational opportunity and financial considerations to support its decision to close the smallest high schools in the County and reassign those students to larger high schools where a larger number of course offerings and other activities will be available for the County's students, as well as its decision to close the smallest elementary school in the County.

The State Board of Education has the authority to explain the true intent and meaning of its bylaws, rules, regulations, and statutes within its jurisdiction, and its interpretations are entitled to deference. Md. Code Ann., Educ. § 2-205(e) (1999); Md. Code Ann., State Gov't § 10-214(b) (1999); *Bd. of School Com'rs of Baltimore City v. James*, 96 Md. App. 401, 423, 625 A.2d 361 (1993); *Bd. of Educ. of Baltimore County v. Ballard*, 67 Md. App. 235, 244, 507 A.2d 192 (1986). Accordingly, decisions of the State Board are controlling in considering the procedural and substantive issues raised by this appeal.

The Appellants contend that the decision of the Board of Education of Allegany County to close, consolidate, and reconfigure nine (9) schools and/or school programs was arbitrary, unreasonable, and illegal. The Appellants have raised numerous procedural and substantive arguments that will be addressed below. The Board contends that its decision was lawful and that there was no procedural or substantive error. For the reasons set forth below, I have concluded that the decision of the Board of Education of Allegany County was not arbitrary, unreasonable, or illegal, and will be affirmed.

I. Procedural Issues.

The decision of a local school board to close a school does not involve individual rights or privileges. That decision, instead, involves broad questions of policy in which community involvement must be afforded to interested parties. Where such policy determinations are to be made, however, the State Board of Education has decided that “there should not be imposed on local boards requirements of procedural due process so onerous as to seriously interfere with the abilities of boards to get their jobs done. What we look to is the substance of involvement, not the form.” *Alta Vista Elementary School PTA v. Bd. of Educ. of Montgomery County*, 1 MSBE 527, 528 (1976). In *Elprin v. Howard County Bd. of Ed.*, 57 Md. App. 458, 465, 470 A.2d 833 (1984), the Court of Special Appeals held that a resident of a school district possesses no liberty or property interest in a school in his district remaining “as is”, without changes that may be occasioned by closure or consolidation. Accordingly, the decision to close or consolidate schools is a quasi-legislative matter and the rights to be afforded to interested citizens are limited. Notice of Public Hearing/Date of Final Decision.

The Appellants contend that the notice of the public hearing was defective and violated the COMAR regulations. The evidence established that the Board advertised the notice of the public hearing in a timely manner in at least five (5) newspapers that serve Allegany County and surrounding areas, within the geographic areas of the schools proposed for closing and those proposed for the relocation of students. (Jt. Ex. 3). This included a daily paper, the Cumberland Times-News, located in Cumberland, Maryland; another daily newspaper, the Mineral Daily News Tribune, located in Keyser, West Virginia; the Republican, located in Oakland, Maryland; the Morgan Messenger, located in Berkeley Springs, West Virginia; and the Hancock News, located

in Hancock, Maryland. The argument set forth by Ms. Walters regarding the failure to publish in the Hampshire Review did not establish a violation. Although publication in the Hampshire Review may have also satisfied the publication requirement, the evidence established that the Board complied with the publication requirement based on the newspapers that carried the notice. The Board contended that the Cumberland Times-News was the only newspaper of general circulation in Allegany County, and this contention was not rebutted. The evidence established that both the Cumberland Times-News and Mineral Daily News Tribune were daily newspapers, and that the notice was published in both of those newspapers more than two (2) weeks before the public hearing. (Jt. Ex. 3). Accordingly, the evidence established that the Board complied with the notice requirement with regard to publication of the notice in at least two newspapers of general circulation in the affected areas at least two weeks before the public hearing. COMAR 13A.02.09.01C.

The Appellants also failed to establish that the contents of the Board notice of public hearing violated the requirements of COMAR. The notice included the procedures that were to be used by the Board in making its final decision. The notice addressed the date, time and location for the public hearing, described the procedures to be employed at the public hearing, and listed all of the County schools that would be affected by the proposed closings, consolidation, and reconfiguration. The notice listed expressly those schools that were proposed for closing. The notice also included a long list of County schools that were identified as sending schools, and those identified as receiving schools. Although there were some schools included on both lists, this was consistent with the substance of the proposed scenarios. (Jt. Ex. 19). For example, the proposed scenarios provided that some schools, like Flintstone School, would be sending students

in grades 6-12 to other schools, but would also be receiving students in grades K-5. Similarly, Mt. Savage School was listed as a sending school because students in grades 9-12 were to be sent to other schools, whereas Mt. Savage would be receiving students in grades 6-8. There was no requirement in COMAR, or elsewhere, that the details of the scenarios had to be described in the public notice. The long lists included in the notice of sending schools, receiving schools, and schools considered for closure, resulted from the existence of a large number of varied scenarios, and not due to any Board error. The public notice achieved its purpose, it put parents on notice as to which schools were proposed for closing, and which additional County schools were proposed to be otherwise affected by the consolidation plan.¹⁰ The scenarios were discussed at a number of public Board meetings after they were presented by the Superintendent and his staff, additional scenarios were accepted from the public, and the scenarios were made available to the school community committees for their review and consideration. (Jt. Ex. 2; BOE 35). The public was afforded a fair opportunity to comment on the proposals under consideration by the Board.

Finally, the Appellants argued that the notice was defective because it incorrectly listed the date on which the Board would vote on its final decision. This did not establish a procedural violation. The regulations required that the notice include the procedures that will be followed by the local board in making its final decision. The procedures were included in the notice. There was no specific requirement in COMAR that the date for the final decision be placed in the public notice. COMAR was primarily concerned with the date for the public hearing, so the public

¹⁰Although the notice did not list any West Virginia or Washington County schools as potential receiving schools, the regulations only require that the notice identify all schools under consideration for *closing*. COMAR 13A.02.09.01C(2). None of the out-of-County schools were being considered for closing. Additionally, there was no express requirement that non-County schools be listed, and as all of the affected sending schools were listed, parents were properly placed on notice in advice of the public hearing of the potential relocation of students from their home schools.

would be afforded a meaningful opportunity to present input into the closing and consolidation decisions. The public hearing date was listed correctly and was followed. At the time of publication of the notice, April 13, 2000 was the correct scheduled date for the final decision regarding consolidation. Moreover, the language in the notice contemplated that the date for the final decision might change, and placed the public on notice of this contingency. The notice stated that the “final decision of the Board ... shall be announced at a special public session *currently* scheduled for April 13, 2000....” (Jt. Ex. 3)(emphasis supplied).

That date changed only after the Board requested a legal opinion from the Attorney General’s office regarding the conditions attached to the Governor’s million dollar grant. Moreover, the existence of that grant did not even come to the Board’s attention until after the notice was published. (Jt. Ex. 2, March 31, 2000 Minutes). The Board decided at a public meeting on April 11, 2000 that it would delay the final decision on consolidation until promptly after the legal opinion was received.¹¹ (Jt. Ex. 2, April 11, 2000 Minutes, pp. 2-3). The Board received that opinion on April 13, 2000, and promptly announced on April 14, 2000 that the Board meeting to consider the Attorney General’s opinion had been scheduled for April 24, 2000. (Jt. Ex. 1). Although that notice did not identify the April 24, 2000 meeting as the date for consideration of the final decision on consolidation, the agenda for consideration of consolidation was properly changed during the April 24, 2000 Board meeting, in accordance with the Board’s internal agenda policy. (Jt. Ex. 8; Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2). Moreover, although the final decision date was not announced in advance, the final decision on closing and

¹¹Although the Board voted to accept the \$1 million grant on March 31, 2000, which would have delayed consolidation for one year, it also voted to continue on a parallel track in the event the grant was ultimately rejected and consolidation went forward for the 2000-2001 school year.

consolidation was made after the public hearing was conducted, was announced in a public session, and was supported by a written rationale, as required by the regulations. COMAR 13A.02.09.01D.

Furthermore, the Appellants have failed to show that any interested party was prejudiced by the notice of public hearing. The most important part of the process for interested persons was the public hearing at which constituents were permitted the opportunity to present their views regarding consolidation and closing. Public participation in the process was properly safeguarded through the information provided in the notice regarding the public hearing. The hearing occurred as scheduled, lasting nearly eight (8) hours with up to seventy (70) persons making presentations. The change in the date for the final decision did not prevent any interested parties from presenting their views on closing and consolidation. Additionally, there was no evidence presented that any interested party was prejudiced by the publication or contents of the notice. The evidence failed to demonstrate that any interested party was denied access to the scenarios, or was prevented from participating in the public hearing and presenting his or her views regarding the proposed closings and consolidation. For all the foregoing reasons, the Appellants have failed to establish a procedural violation resulting from the contents of the notice of public hearing, or the change in the date of the final decision.

Final Decision Regarding Student Relocation and Transportation.

The Appellants have argued that the Board's decision regarding the closing and consolidation of schools was defective because it failed to include a final decision regarding the reassignment of students and the development of a transportation plan. I conclude for the reasons discussed below that the absence of a final decision by April 24, 2000 concerning student

reassignment and transportation issues did not violate State Board of Education law, was not illegal, and does not warrant reversal of the Board's decision regarding closing and consolidation.

The Board discussed the reassignment of students during its April 24, 2000 meeting, but ultimately voted at that meeting that the placement of students would be an administrative decision to be decided later by the Superintendent and his staff. (Jt. Ex. 2, April 24, 2000 Minutes). After the Superintendent and staff had an opportunity to study the Board's decision regarding closing and consolidation, and consider the impact of the transportation plan that was also being developed, the Superintendent finalized the student reassignment plan, and the Board confirmed that plan at a Board meeting on June 14, 2000.

The State Board decided in *Bernstein v. Montgomery County Bd. of Educ.*, 4 MSBE 409 (1986), that changes to a plan to close schools that involve the details of implementation of that plan can properly be made after the April 30th deadline and do not invalidate the underlying plan to close schools. In *Bernstein*, a local board of education announced a plan well before the April 30th deadline to close a high school and to gradually send the affected students to another high school over the course of two years. After the April 30th deadline, the local board modified the closing plan by eliminating the decision to stagger the closing over a two-year period. Instead, the local board decided that closing would be accelerated and completed within one year. In that case, the State Board concluded,

The decision to close the Woodward High School at the end of the 1986-1987 school year was made by the County Board on December 2, 1985. The actions of the County Board on May 15th did not modify the decision to close Woodward, but only the details of the manner of implementing that decision, by providing that the total consolidation of the student body will take place in 1987 and not in 1988. Thus, the split

campus that had been planned for the student bodies of these two schools for the 1987-1988 school year has been eliminated.

The modification of the implementation of the closing of Woodward High School does not change the undisputed fact that the County Board made the decision to close Woodward High School on December 2, 1985. Therefore, we conclude that the actions of the County Board on May 15th are not contrary to either Local Policy or the provisions of COMAR 13A.02.09.02.

Bernstein, 4 MSBE at 412.

Similarly, in the instant case, the decision to close and consolidate the Allegany County School System was made on April 24, 2000 and complied with the requirements of COMAR. The details of implementation of the decision to close and consolidate were completed after April 30, 2000, with regard to the issues of student reassignment and transportation, but this is permissible under State Board case law and does not invalidate the basic closing and consolidation plan. Additionally, under *Bernstein*, the delay in completion of the plans for student relocation and transportation does not violate the April 30th deadline for announcing the basic plan to close and consolidate schools. COMAR 13A.02.09.01; 13A.02.09.02.¹²

Additional factors provide further support for the Board's decision to defer as an administrative decision the finalizations of plans regarding student reassignment and transportation routes. Transportation Supervisor Robert King testified persuasively that the plans regarding the transportation routes could not be completed or developed in a meaningful way until the final decision to close and consolidate had been made. He explained that there were too many scenarios under consideration for the transportation staff to develop workable routes until

¹²Although the State Board in *Bernstein v. Montgomery County Bd. of Educ.* ordered the local board to issue a written rationale to support its decision to close the high school, there was no indication in *Bernstein*, unlike the instant case, that the local board had previously supported its decision with a written rationale.

the decision as to which schools would be closed and consolidated had been completed. It was also noted that the decisions regarding student relocation were somewhat dependent upon the transportation routes and could only be completed in conjunction with the development of the transportation routes. King testified that he had reviewed the scenarios, and had begun to develop the routes in earnest as soon as the April 24, 2000 decision was made with regard to consolidation and closing. King also testified that the Board would comply with the one-hour limitation on the transportation of students on school buses by adding buses, reconfiguring routes, and adjusting school starting times.

With regard to student reassignment, the decision to defer the final plan for student relocation did not, as a practical matter, leave parents and students in the dark as to where the students would be attending school. The scenarios developed by the Superintendent were very detailed with regard to the reassignment of students following the closure and consolidation. In fact, the scenarios not only identified which schools the relocated students would be attending, but also listed the exact number of students that would attend the reassigned school based on each particular scenario. (Jt. Ex. 19). Although the scenarios were not adopted on April 24, 2000 when the closing and consolidation plan was made, Board member Woodring testified that the final decisions regarding student reassignment were consistent with the proposals set forth in the scenarios and the only changes were based on requests that were made by parents after April 24, 2000. The precision of these scenarios and general knowledge regarding school reassignments was further evidenced by testimony at the hearing. Although witnesses stated that they had not received formal notice from the Board regarding the schools to which students would be reassigned, most of these same witnesses knew which schools the reassigned students would be

attending based on information provided in the scenarios, in the media, and through course selections and school visitations for the reassigned schools, offered by the original schools, after the consolidation decision was made.

The major issue regarding student reassignment that remained to be decided after the Board's April 24, 2000 decision was whether certain students in the Oldtown and Flintstone school districts would attend school in West Virginia and Washington County, respectively, or would remain in Allegany County at a reassigned school. The Superintendent ultimately decided that all County students would remain in-County because it could be accomplished while still ensuring compliance with the one hour busing law, and sending students out-of-County was an additional cost factor that would further strain the budget.

Another matter decided after the Board's April 24, 2000 decision was the plan to relocate the Agricultural Education Program to Ft. Hill High School, in addition to the announced plan to transfer the Program to the Career Center, so that it would be available to more students in the County, would include more extensive facilities at Ft. Hill High School, and would be available to students in grades 9-12 at Ft. Hill, rather than just students in grades 11 and 12 at the Career Center. This subsequent decision was clearly designed to at least maintain educational opportunities for Flintstone students, and to increase educational opportunities for other students throughout the County. Although this important decision regarding educational opportunity was decided after the Board's April 24, 2000 decision, it was also permissible under the holding of *Bernstein v. Montgomery County Bd. of Educ.* because it involved a mere modification of a detail of implementation of the closing and consolidation plan; it was not illegal, and does not warrant

reversal of the Board's decision. COMAR 13A.01.01.03E(1).¹³

Preparation, Issuance, and Adequacy of Written Rationale.

The Appellants allege several procedural violations regarding the preparation, issuance, and adequacy of the written rationale. The Appellants argue that the Board violated the regulations when it voted and announced its decision to close and consolidate schools on April 24, 2000, but did not issue its written rationale in support of that decision until April 25, 2000. It also contends that the Board violated the regulations when it permitted the Superintendent and administrative staff to draft the written rationale, rather than having the Board members themselves prepare that written document. I find that the Appellants have failed to demonstrate any procedural violations regarding the preparation, issuance, and adequacy of the written rationale for the reasons addressed below.

The applicable regulations provide that, “[t]he final decision of the local board of education to close a school shall be announced at a public session and shall be in writing.” COMAR 13A.02.09.01D. The Appellants argue that the regulations require that the decision to close a school must be placed or issued in writing at the same public session in which the decision is announced. Based on the Appellants’ interpretation of the regulations, they contend the Board announced its intention to violate the regulations when it stated in the notice of public hearing that it would announce its final decision to close and consolidate schools at a special public session

¹³The evidence established that, as of the conclusion of the hearing, no formal notification had been sent to the interested parties from the School Board regarding the final plans for student reassignment and transportation. Accordingly, the propriety of those final plans is not the subject of this appeal. As discussed above, however, the absence of a final plan, as of April 24, 2000, with regard to student relocation and transportation, was not illegal, and does not mandate reversal of the closing and consolidation plan, for the reasons discussed above. *Bernstein v. Montgomery County Bd. of Educ.*, 4 MSBE 409, 412 (1986).

and, thereafter, said decision would be placed in writing. I conclude that the Appellants' interpretation of the regulations is not supported by its actual language, and exalts form over substance. The regulations are actually silent on whether the written rationale must be issued at the same public session in which the decision is announced, or whether it may be issued thereafter. COMAR 13A.02.09.01D.

The minutes from the Board meeting of March 22, 2000 establish that it was the Board's intention to announce its final decision regarding closing and consolidation at a public session, to then take a recess to draft the written rationale, and then reconvene the meeting for the purpose of approving the written rationale. (Jt. Ex. 2, March 22, 2000 Minutes). The plans were changed only because the decision was announced at a public session on April 24, 2000, which was Easter Monday, a public holiday for the Allegany County Public Schools. As a result of the holiday, the Board's administrative offices were closed on April 24, 2000 and the staff was not at work. The Board agreed to delay until the next morning the drafting of the written rationale when the Board's administrative staff would be present so the staff could assist in preparation of the document. I find no meaningful distinction, or prejudice, based on whether the written rationale was prepared at the same meeting in which the decision was announced, or the following day. Consequently, I find no procedural violation based on the Board's preparation of the written rationale on April 25, 2000, after announcing its final decision on April 24, 2000.

I also find merit to the Board's claim that the sunshine law impacted its decision to prepare a written rationale after the consolidation decision was made. The COMAR regulations only require that a decision on closing be *announced* in a public session. The Board contends that the sunshine law requires that the actual deliberations and vote also occur in public session.

Consequently, the Board claims that it could not draft a written rationale in support of its decision until after the vote was taken and the final decision made. The Board's view of its obligation to conduct meetings, address issues, and take formal action in public session is not unreasonable, and supports its action here to prepare the written rationale after the vote was concluded. Furthermore, I do not find that preparation of the written rationale the day after the decision was announced demonstrates that the decision was unsupported by reasons or rationale. The entire record in this case demonstrates that the opposite is true.

Additionally, I do not find any violation of law, regulation, or policy based on the drafting of the written rationale by administrative staff and Board counsel. The evidence demonstrates that the written rationale was drafted by the Superintendent of Schools, who is also the Secretary-Treasurer of the Board, the Assistant Superintendent for Instruction and Staff Development, and by counsel to the Board. Subsequently, the Board reviewed the draft of the written rationale line-by-line and made some changes. After reviewing it and making changes, the Board voted to accept the written rationale with the changes made.

State education law provides that the county superintendent is the executive officer, secretary, and treasurer of the county Board. Md. Code Ann., Educ. § 4-102(a)(1) (1999). The law also provides that the county superintendent or his designee shall attend Board meetings, and the county superintendent may advise the Board on any question under consideration, but may not vote. Md. Code Ann., Educ. § 4-102(b), (c) (1999). The Board is also authorized to retain counsel. Md. Code Ann., Educ. § 4-104(a)(1). I conclude that the drafting of the written rationale by the Superintendent, administrative staff, and counsel, who were authorized to advise the Board and were involved throughout the process in development of the closing and

consolidation plan, was lawful and reasonable. The Board fulfilled its obligations when it reviewed and discussed the draft rationale in detail, and then voted to accept the document. COMAR 13A.02.09.01.

With regard to its adequacy, the written rationale could have been drafted in more detail, and could have included more information that evidence in the record demonstrates was actually considered, including information contained in the meeting minutes and other documents. I find ultimately, however, that the written rationale was sufficient to satisfy the requirements of COMAR. The regulations require that the rationale be in writing, that it include the rationale for the school closings, and that it address the impact of the closings on the eight (8) COMAR factors. COMAR 13A.02.09.01D. The Board issued a written rationale on April 25, 2000 setting forth the basis for its decision to close, consolidate, and reconfigure the public schools in Allegany County, and addressed the COMAR factors, albeit some more than others. The written rationale did not address every reason that other parts of the record demonstrate were considered by the Board in reaching its decision. However, I do not find this to be legally defective because the parties placed into evidence, as joint exhibits, numerous additional documents, including the minutes of all of the Board's meetings during the critical period between November 2, 1999 and April 25, 2000, and certain relevant transcripts were submitted as well. (Jt. Ex. 2; Oldtown Ex. 2). Reliance on rationale set forth in those additional documents, particularly the meeting minutes and transcript of April 24, 2000 when the vote was taken, is properly considered along with the written rationale document itself to determine the factors and reasons that were considered. (Jt. Ex. 2; 4; Oldtown Ex. 2). To ignore these additional documents, many of which were admitted as joint exhibits, which address relevant issues and factors that support the Board's closing and

consolidation decision, would improperly exalt form over substance. *Alta Vista Elementary School PTA*, 1 MSBE at 528.¹⁴

Although the rationale did not address every school individually under each factor, the Appellants have not demonstrated that the law required that each school be addressed individually with regard to each factor. I find that the schools were addressed adequately, through the rationale and minutes, and that the schools that were actually closed were addressed individually. Furthermore, the Board was justified in considering the system-wide impact of its decision, in addition to the individual impact, because the Board made a system-wide decision to close, consolidate, and reconfigure nine (9) schools and/or programs that was based on system-wide financial considerations due to the budget crisis, and system-wide inequities in the availability of educational opportunities. In some respects the Board addressed the K-12 schools as a group because the issues regarding educational programs, student enrollment, and utilization capacity were similar for the K-12 schools. (Jt. Ex. 4; BOE 2, 8, 12).

The Board need not demonstrate that its decision to close, consolidate, and reconfigure nine (9) separate schools and/or programs is supported by every relevant factor. State Board case law has recognized that even a decision to close one school may not be supported by every factor under consideration. That does not, however, render the decision arbitrary, unreasonable, or illegal. In *Kensington Elementary School PTA v. Montgomery County Bd. of Educ.*, 2 MSBE

¹⁴Although the State Board in *Bernstein v. Montgomery County Bd. of Educ.* frowned upon a review of Board minutes and transcripts, that was a case where the local board had failed to issue any written rationale, the State Board acknowledged that the circumstances may be different where the local board's decision was not unanimous, and in the instant case a review of minutes and transcripts was relevant to a number of procedural issues and the minutes were submitted as joint exhibits. Moreover, the case relied upon by the State Board to support its view is distinguishable. *Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 477, 226 A.2d 243 (1967).

671 (1982), the State Board adopted the decision of a State Hearing Examiner upholding the decision to close one elementary school rather than another one under consideration. The decision stated,

Where a County Board abides by its own regulations and guidelines, I am of the view that one cannot test arbitrariness and unreasonableness by a mathematical count of the Board's solution criteria. Circumstances vary from school to school as to the degree of weight to which each criterion is entitled. So long as there is adequate reason, supported by at least one criterion, the local board's decision in a school closing case should prevail. In this case the Board honored its procedures and guidelines, and had sufficient justification for its decision to warrant its being upheld.

Kensington, 2 MSBE at 681. Similarly, in the instant case, not every criterion may support the decision to close, consolidate and reconfigure the nine (9) schools and/or programs that were carried out in Allegany County. However, the evidence demonstrates that at least several of the factors did support the Board's decision, including financial considerations, educational programs, and student enrollment, and the reasons were adequately addressed in the written rationale, and minutes. Accordingly, I conclude that the absence of a discussion of each individual school with regard to every relevant factor was not required and does not warrant reversal.

The record expressly identified certain critical factors regarding the two schools that were closed in their entirety, Barton and Oldtown, such as underutilized capacity, cost savings resulting from the closure of under-capacity facilities, and condition of the buildings, and also addressed certain factors that were unique to the K-12 schools, which included Oldtown, Flintstone, and Mt. Savage, such as the limited educational course offerings, and the Board's desire to achieve a traditional organizational pattern, and the reduction of the number of high schools from seven to four. (Jt. Ex. 4). I do not find the Board's rationale so inadequate that it was illegal and warrants reversal of the closing and consolidation plan. Additionally, the minutes from April 24, 2000

Board meeting demonstrated that before voting to close Barton School, the Board considered the declining student population in the area of Barton School, and considered that Barton, among other schools, was only half full.¹⁵ Although there was some evidence in the record that the Barton enrollment was projected to increase over the next several years, the actual enrollment at Barton for the 1999-2000 school year was actually more than 5% below the projected levels. Additionally, the Barton enrollment projections topped out after several years and then showed a steady decline. (BOE Ex. 8, 9).¹⁶ The April 24, 2000 minutes also demonstrated that the Board expressly considered the academic programs and positive academic achievement at Barton Elementary, but concluded that financial considerations warranted closing Barton despite the positive academic factors. The April 24, 2000 minutes also demonstrated that the Board considered the Chamber of Commerce Report before voting to close Barton, which Report supported a similar closing and consolidation plan, including the closing of Barton Elementary and Oldtown School.¹⁷ The minutes also demonstrated that the Board considered that, as a result of reconfiguration of Flintstone School, the Agricultural Program should be maintained elsewhere,

¹⁵Although one Board member erroneously stated at the April 24, 2000 Board meeting that student enrollment at Barton was less than half capacity, it was later stated at the same meeting that a number of schools were only half full. The enrollment capacity at Barton was actually 55% (Jt. Ex. 19, Scenario 7; BOE Ex. 12). I do not find this minor misstatement to be so egregious as to warrant reversal of the plan. Moreover, the later statement substantially corrected the initial error. (Jt. Ex. 2, April 24, 2000 Minutes).

¹⁶Although the student enrollment figures at Barton did not include the Head Start children, Head Start is a preschool program sponsored by the Department of Human Resources, and is not a Board program. Moreover, the evidence failed to establish how the Head Start program came to Barton, whether it would remain, or the geographical area from which the Head Start children were drawn.

¹⁷The Chamber of Commerce Report actually recommended a more aggressive consolidation plan than the plan adopted by the Board. The Chamber of Commerce Report recommended closing three (3) buildings, including Barton Elementary, Oldtown School, and Westmar Middle School, whereas the Board plan only closed two (2) buildings. (BOE Ex. 18; Jt. Ex. 4).

and that this would be accomplished by transferring it to the Career Center. The Board also considered that removal of the 10th grade students from the Career Center would afford a cost saving measure. (Jt. Ex. 2, April 24, 2000 Minutes). The Board also considered that a reduction of the number of high schools to four, including a closing of Oldtown, would enable the School System to more effectively absorb a reduction in teachers and an increase in the student/teacher ratio, and provide a more equitable curriculum for students in grades 9-12. (Oldtown Ex. 2).

The written rationale also delineated precisely the nine (9) separate actions that were part of the Board's final decision to close, consolidate, and reconfigure the School System. The rationale also explained that the decision was motivated, at least in part, by the Board's desire to seek equity in the educational opportunities for the County's students, and its commitment to an organizational pattern for the public schools in Allegany County of K-5, 6-8, and 9-12. (Jt. Ex. 4). The actions taken by the Board in reducing the number of high schools and elementary schools, increasing educational opportunities, and achieving the desired organizational pattern, demonstrate that the Board's actions actually achieved this stated purpose. (Jt. Ex. 4). The written rationale also made clear that budgetary considerations were driving the Board's closing and consolidation plan.

The written rationale addressed each of the COMAR factors, although some were more detailed than others. In addressing the COMAR factors, the Board noted that student enrollment in the Allegany County Public Schools had declined by more than 20% since 1980, that projections called for a continuing decline in student population, and with most school buildings operating under capacity. Other documents in the record supported these conclusions. (BOE Ex. 11, 12). The rationale noted that the adjustments to Mt. Savage School would take advantage of

its recent renovation. This is borne out by the fact that, although the high school portion of Mt. Savage School is being closed, the middle school portion will be expanded and the enrollment for the entire building at Mt. Savage will actually be increased substantially, by 36%, as a result of the consolidation plan. (Jt. Ex. 4; 19, Scenario 5). Additionally, the rationale noted that the two schools selected for closing, Oldtown and Barton, were among the most underutilized buildings in the County, had not recently undergone major renovations, and were more than twenty (20) years old. The scenarios and Facilities Inventory confirmed that Barton was operating at 55% capacity with Oldtown at 49% capacity, which were the lowest utilization rates in the County for elementary schools and high schools, respectively. (BOE Ex. 12; Jt. Ex. 19). The written rationale also emphasized the great discrepancies in educational opportunities among the Allegany County schools, particularly at the K-12 schools, caused by small enrollment, inadequate staffing, and scheduling conflicts. This is supported by other documentation. (BOE Ex. 14, 37). It also noted that budget restrictions could lead to further staff reductions, and that a consolidation among secondary schools, including the reduction from seven to four high schools, would allow for a more efficient use of limited educational resources. The rationale also noted that the consolidation plan would not adversely affect the racial composition of the student body because of the small number of minority students in the School System.

The Board addressed the critical factor of financial considerations by noting that Allegany County was experiencing considerable budgetary stress, including increases in special education, salary, and health insurance costs, and decreases in funding sources. This was borne out by other budgetary documents that demonstrated substantial increases in special education and health insurance costs, salary increment costs, and a Statewide desire to raise teachers' salaries. (BOE

Ex. 26-33). The evidence demonstrated that Allegany County has the lowest teachers' salaries in the State. (BOE Ex. 25). It was noted that the closure of Oldtown and Barton Schools would result in anticipated savings from decreased operating expenses, utilities, and maintenance costs, and that eight of the nine actions would result in significant cost savings in staffing. This was borne out through evidence that demonstrated that fifty (50) staff positions have been eliminated, including teachers, cafeteria workers, maintenance persons, and custodians. (TR 1307-1311). The rationale also noted the difficulties the County has in raising additional tax revenues. At the April 24, 2000 meeting, the minutes demonstrate that the Board estimated savings of \$1.8 million from the consolidation plan, and that the Superintendent explained how the personnel savings, which constituted 83% of the budget, could vary. (Jt. Ex. 2, April 24, 2000 Minutes).

While the rationale provided limited information with regard to the community impact of the consolidation plan, the Board did address that factor and acknowledged that it would cause concern and stress for the affected communities. The Board also considered at the April 24, 2000 meeting that the community school concept was desirable, but concluded that it had become a victim of the budget crisis. (Jt. Ex. 2, April 24, 2000 Minutes). The Board only addressed the factors of student relocation and transportation in a limited way in the written rationale. However, the limited treatment of these issues is explained by the fact that the Board intentionally did not complete its work with regard to student relocation and transportation issues, which involved the details of implementing the closing and consolidation plan. It expressly deferred the student reassignment decisions to the Superintendent and his staff as an administrative decision to be determined later. This deferral was undertaken during the April 24, 2000 Board meeting at the time the Board voted on its closing and consolidation plan. The Transportation Director also

explained that the transportation plan could only be developed in any meaningful way after the specific decisions regarding closing and consolidation had been made. In the case of *Bernstein v. Montgomery County Bd. of Educ.*, 4 MSBE 409 (1986), as discussed above, the Board concluded that matters which involved the details of implementing a closing plan could be modified or completed after the plan was announced, and that such subsequent action did not invalidate a school closing plan that was properly announced in a timely manner. Accordingly, the absence of extensive discussion of the student relocation and transportation issues in the written rationale does not render the rationale inadequate or illegal.

It should also be noted that while the student relocation issue was only minimally addressed in the rationale, the proposed scenarios that were widely distributed by the Board and administrative staff included precise detail regarding where the displaced students would be reassigned. (Jt. Ex. 19). The transportation issue was also addressed only minimally in the written rationale for the reasons discussed above. However, it should be noted that the Board did explain that additional staff and equipment would be required to accommodate the consolidation plan. Moreover, the Board explained that it would limit the amount of time that students would spend in route to school through the realignment of bus assignments, the relocation of bus stops, and the redirection of bus routes. The Board also acknowledged that the public had raised safety issues regarding the bus routes, but did not find them to be sufficient to undermine the consolidation plan, and concluded that all routes would be accessible. (Jt. Ex. 4). The Transportation Supervisor addressed these issues in more detail at the hearing, and confirmed the Board's ability to comply with the busing law and provide safe transit to the schools. The Board also acknowledged in its written rationale that transportation costs would increase, but that those costs

would be absorbed through the other cost savings that were addressed. (Jt. Ex 4).

Additionally, the evidence does not establish that the written rationale constituted an after-the-fact justification for its decision to close and consolidate schools. To the contrary, the entire record supported the Board's decision. For all the foregoing reasons, I conclude that while the written rationale could have been more complete, it was adequate to address the basis for the Board's decision to close, consolidate, and reconfigure schools, was not illegal, and does not warrant reversal of the Board's decision.

Consideration of COMAR Factors.

The Appellants also contend that the Board members failed to deliberate concerning the COMAR factors on the date of the final decision, or in advance, in violation of the regulations. The applicable COMAR regulations require "that consideration is given to the impact of the proposed closing on the" eight (8) COMAR factors. COMAR 13A.02.09.01B. The regulations also provide that "the final decision shall include the rationale for the school closing and address the impact of the proposed closing on the [eight COMAR] factors...." COMAR 13A.02.09.01D(1). The regulations require the Board to consider the eight (8) factors and address the impact of the closing on those factors. For the reasons set forth above, I have already concluded that the Board announced its final decision at a public session, and properly issued a written decision that addressed the rationale for its decision and the impact of the closing and consolidation plan on the COMAR factors. The regulations are silent concerning the manner in which the Board members shall consider the relevant factors on the date of the final decision, or in advance, other than to require the Board to conduct a public hearing to permit concerned citizens to submit their views orally or in writing. COMAR 13A.02.09.01C(1).

Notwithstanding the testimony of several witnesses at the hearing, it is clear that the Board members considered a number of COMAR factors during the April 24, 2000 meeting when the final decision was made, when they discussed issues related to student enrollment, financial considerations, student relocation, condition of buildings, educational programs, and community impact. (Jt. Ex. 2, April 24, 2000 Minutes). Additionally, the Board considered the COMAR factors when the members participated in a public hearing on April 11, 2000, that lasted up to eight (8) hours and included presentations from up to seventy (70) participants concerning their views on the closing and consolidation plan. The purpose of the public hearing was to elicit comments from concerned citizens regarding their views on the impact of the closing and consolidation plan on the relevant COMAR factors, to assist the Board in considering these issues and making a final decision. COMAR 13A.02.09.01; (Jt. Ex. 3). The Board also directed its staff to coordinate the creation of the school community committees, directed those committees to consider the eight COMAR factors, directed the committees to submit their reports to the Board, and to present oral presentations at the public hearing. (BOE Ex. 35). The Board also received extensive community committee reports from virtually every school in the County addressing the impact of the various scenarios on the COMAR factors. (Jt. Ex. 17). The Board also considered the numerous scenarios prepared by the Superintendent and his staff, and those submitted by citizens, which addressed many of the COMAR factors. (Jt. Ex. 19).

Furthermore, the Board held numerous Board meetings between November 2, 1999 and April 25, 2000 at which the issues of consolidation were repeatedly discussed, and in which concerned citizens frequently participated in Board meetings and also addressed many of the factors. (Jt. Ex. 2). While the Appellants rejected the Board's contention that consideration of the

consolidation decision was a process that lasted for many months, and in which the factors were considered in numerous ways through oral discussions, presentations, Board meetings, public hearing, and through consideration of extensive documentation, the evidence in this record supports the Board's contention.¹⁸

The Appellants have failed to establish that COMAR requires the kind of deliberations that they contend are lacking here. In *Marsh v. Allegany County Bd. of Educ.*, 7 MSBE 106 (1995), the State Board concluded that there was no legal authority to require that Board members orally articulate the reasons for their decisions. COMAR only requires that the COMAR factors be considered, that a public hearing be held, after proper notification is issued, in which the public is afforded the opportunity to articulate its views regarding school closings, and that the Board issue a written rationale to explain its final decision to close schools. The evidence established that the Board considered the COMAR factors during months of consideration of a closing and consolidation plan, and that the Board complied with the COMAR requirements governing school closings. The Appellants have failed to establish that the Board did not consider the COMAR factors, have failed to establish that the Board acted illegally, and have not demonstrated that a reversal of the Board's decision is warranted.

Amendment of Internal Board Policy.

The Board began to consider the closing and reconfiguration of the County schools in September 1999. On November 2, 1999, the Board began to consider establishing new internal

¹⁸In *Community United for Responsible Educ. v. Bd. of Educ. of Allegany County*, 6 MSBE 85 (1991), the State Board reversed a local board's decision because it concluded that the record did not support the board's rationale for its decision to swap schools. In the instant case, the record amply supports the Board's consolidation decision.

procedures for school closings and consolidations. The internal procedures of the BOEAC in effect at that time had been adopted on June 15, 1993. At a Board meeting on December 14, 1999, the Board voted unanimously to accept the proposed revisions to the Board's internal rules regarding closing and consolidation as a first reading. On January 11, 2000, the Board adopted the new internal procedures for the closing and consolidation of schools that eliminated certain procedures and time frames set forth in the old internal procedures. The new procedures are in compliance with the COMAR requirements for school closings and consolidations.

The Appellants argue that the Board was prohibited from changing its procedures relating to the closing or consolidation of schools once the process had begun. They further claim that the Board failed to follow the 1993 procedures which were in effect when the consolidation process was initiated and also failed to follow the new procedures when they were subsequently adopted. According to the Appellants, the Board's failure to follow its own procedures is a violation of the *Accardi* doctrine and requires reversal of the Board's action. For the reasons set forth below, I find the Appellant's contentions to be without merit.

The Appellants offer no viable legal authority for their claim that the Board was not permitted to amend its own procedure. As will be discussed in more detail below, the cases cited by the Appellants do not address this point and are factually distinguishable. The Appellants concede that the Board followed proper procedures for amending the rules and I find the Board committed no error in this respect.

I also find that the Appellant's reliance on the *Accardi* doctrine is misplaced in the present case. "It is well established that rules and regulations promulgated by an administrative agency cannot be waived, suspended or disregarded in a particular case as long as such rules and

regulations remain in force.” *Hopkins v. Maryland Inmate Grievance Commission*, 40 Md.App. 329, 391 A.2d 1213 (1978)(recognizing the *Accardi* doctrine as announced in *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499 (1954)). However, the application of the *Accardi* doctrine is limited. “In determining whether an agency rule has sufficient force and effect to trigger an application of the *Accardi* doctrine, Maryland courts generally look to see whether it ‘affects individual rights and obligations’. . . or whether it confers ‘important procedural benefits upon individuals.” *Anastasi v. Montgomery County*, 123 Md.App. 472, 491, 719 A.2d 980 (1998)(citing *Board of School Com’rs of Baltimore City v. James*, 96 Md. App. 401, 421, 625 A.2d 361 (1993) and *Board of Education of Anne Arundel County v. Barbano*, 45 Md.App. 27, 41, 411 A.2d 124 (1980)).

As discussed earlier in this decision, the procedures at issue do not affect individual rights because a resident of a school district possesses no liberty or property interest in having a school in his district remain “as is,” without changes occasioned by closure or consolidation. *Elprin v. Howard County Board of Ed.*, 57 Md.App. 458, 465, 470 A.2d 833 (1984). There is also no procedural due process right to have a State or County Board hear from all interested citizens who wish to be heard before a school is closed or converted. *Id.* at 465. (citing *Welch v. Board of Education of Baltimore County*, 477 F. Supp. 959 (1979)). Accordingly, the *Accardi* doctrine does not apply to the instant case.

The Appellants cited several cases to support their position which I find are not persuasive for the following reasons. *Board of Education of Baltimore City v. Ballard*, 67 Md.App. 235 (1986) involved the termination of a school librarian. The fact that the Board had not followed its own personnel policy violated a substantial individual right of the librarian which rendered the

termination invalid. As already discussed, the present case does not involve any procedures which give substantial individual rights to the Appellants.

In *Voelker v. Allegany County Board of Education*, 4 MSBE 228 (1985), the Board closed a school and did not follow its own guidelines or those required by COMAR. In particular, notice and public hearing requirements were violated. The purpose of those rules was to give the public the opportunity to express their views and learn the reasons at issue behind the proposal. In *Voelker*, the Board ordered the closing in June, ignoring the April 30 deadline for such decisions mandated in COMAR. The present case is factually distinguishable because, as previously discussed, notice and public hearing requirements were met and the closing plan was announced prior to the April 30 deadline.

The Appellants also cite *Davis v. Bd. of Educ. of Anne Arundel County*, Revised Op. No. 94-3 (1995) in support of their position that the Board failed to follow its internal procedures and unlawfully changed the procedures in midstream. *Davis* does not address the issue of whether a local board has changed its procedures in midstream. Moreover, *Davis* is distinguishable on the facts because the defect in *Davis* that led to the State Board's reversal of the county board's decision was the county board's adoption of a plan that was never proposed in advance, so the public was denied an opportunity to comment on that plan at the public hearing. No such error has been alleged or shown in the instant case. The Board made its proposed scenarios available to the public in advance of the public hearing through extensive discussion at public Board meetings and by providing the scenarios to the school community committees for their review and consideration. The Board subsequently conducted the public hearing to afford the public an opportunity to comment on the proposed scenarios. Ultimately, the Board adopted a

consolidation plan that was consistent with the scenarios that had been proposed and disseminated in advance of the public hearing. Accordingly, *Davis* is distinguishable and does not mandate reversal here.

Further, an examination of the differences between the 1993 procedures and the amended version illustrates that the Appellants were not disadvantaged by the changes in the provisions. There are basically three differences which were raised by the Appellants as being significant. First, the 1993 procedures required the coordinating council to annually review the enrollments and identify schools to be considered for closing or consolidation. The evidence in this case shows that the coordinating council had not met for several years and did not meet in 1999. In fact, the last report filed by the coordinating council was in 1993. Yet, the Superintendent and staff annually review enrollments, and they identified schools to be considered for closing and consolidation. The Board had every right to amend procedures that were no longer practicable and update them to conform to current practice.

Secondly, the Appellants claim that the Board was required, under the 1993 regulations, to consider more factors than those required by COMAR. The factors in the 1993 procedures include: demographic patterns, transportation, physical facilities, health and safety, operational cost, staffing, racial composition, student capacity, political reality, construction cost, educational program, impact on community, and economic conditions. These factors are essentially the same as those required by the amended procedures and COMAR. As discussed earlier in this decision, the evidence demonstrates that the 1993 factors were considered by the Board and I find no disadvantage or prejudice to the Appellants from the minor changes made to the listed considerations.

Lastly, the Appellants claim that the 1993 procedures contained time frames for the closing and consolidation process which were omitted from the amended version. These related to the meetings and reports of the school committees, recommendations by the Superintendent, and public hearings. The record shows that all of these meetings, reports, and hearings did, in fact, take place and that they conformed with the COMAR requirements. Therefore, I conclude that the Appellants were not prejudiced by amendment of the procedures.

II. Substantive Issues.

Having failed to establish that the Board's decision was illegal, the Appellants must establish that the local Board's decision was arbitrary or unreasonable. The regulations define this standard to mean that the decision was contrary to sound educational policy or that a reasoning mind could not have reasonably reached the conclusion reached by the county board of education. COMAR 13A.01.01.03E(b). The regulations and case law provide that the decision of the local board of education is considered *prima facie* correct, and the State Board, or an ALJ, may not substitute his or her judgment for that of the county board of education.

The issues raised in this appeal have understandably aroused strong emotions among the parents, students, and concerned citizens of Allegany County. Moreover, it is apparent that the closing and consolidation of schools in Allegany County could have been achieved through changes to different schools, or could have been put off for another time. However, it is not the role of an ALJ to substitute his or her judgment for that of the local board of education. The issue, instead, is whether the Board has articulated actual reasons to support its decision, whether the reasons are reasonable, and whether they are contrary to sound educational policy. COMAR 13A.01.01.03E(1)(a), (b). I conclude for the reasons set forth below that the Appellants have

failed to prove that the decision to close, consolidate, and reconfigure the Allegany County Public Schools was arbitrary or unreasonable. Therefore, the decision shall be upheld.

Finances.

The evidence established that the overriding considerations for the Board's decision were the need to respond to a severe budget crisis in Allegany County, a desire to increase the educational opportunities for students equitably across the County, and a desire to achieve a K-5, 6-8, and 9-12 organizational pattern for the Allegany County Public Schools. The Appellants have argued, in effect, that the Board's attempts to quantify the budget crisis and demonstrate savings in the consolidation plan are unsupported by a sound financial foundation. The evidence clearly supports that the Board was facing a genuine budget crisis, that its decision to consolidate schools was primarily motivated by that crisis, and that the closing and consolidation plan would save a substantial amount of money. The Appellants were skeptical of the continued increased projections regarding the size of the budget deficit and the projected savings from the consolidation plan. The Board acknowledged that its projections regarding the budget deficit and savings from the consolidation plan were not an exact science. With regard to the budget deficit, the Board and its staff continued to receive updated figures regarding substantial reductions in State aid related to declining enrollments, increased costs for health insurance, special education private placements, salary increments, and Statewide proposed pay increases for teachers.¹⁹ These variables also affected the projections for cost savings from the consolidation plan. The Board and its staff admitted that the projected savings from the consolidation plan would vary based on the exact number of layoffs that resulted, the number of employees who opted for early

¹⁹The starting salaries for Allegany County teachers is the lowest in the State. (BOE Ex. 25).

retirement, and the seniority level of those employees who were actually laid off after more senior employees exercised their bumping rights. However, the absence of an exact projection for the cost savings does not render the plan arbitrary or unreasonable. At the time the Board made its final decision to close and consolidate schools, it relied on a projected savings of between \$1.4 and \$1.8 million. (Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2). Its final estimated savings was about \$1.9 million.

The Appellants doubted every budgetary figure, financial projection, and cost savings factor that led to the Board's action. However, the Board was itself concerned about its dire budget projections and sought independent confirmation of its projected deficit. The Board sought the assistance of MSDE in hiring an independent accountant, outside the State system, to conduct a financial audit to review the Board's budgetary assumptions. The respected private firm of Price Waterhouse Coopers was hired, and after a thorough review of the Board's budget assumptions was conducted, they concluded that the assumptions used by the Board in projecting its budget deficit were reasonable and supported by factual data. (BOE Ex. 32; Oldtown Ex. 5). These same assumptions were used by the Board and staff in projecting the cost savings associated with the consolidation plan. While the exact cost savings from consolidation could not be projected precisely prior to implementation, the evidence establishes that the Board's conclusion that consolidation was necessitated by the budget crisis, that the consolidation plan would result in substantial cost savings, and that the savings would be significantly larger than one million dollars was not arbitrary or unreasonable based on the evidence in this record.²⁰

²⁰The Appellants challenged the administrative staff's determination of the costs per pupil at the various schools in Allegany County. The Appellants claimed that the criteria used by the Board, in concluding that the pupil costs at Barton were the highest in the County, were flawed. The testimony

Furthermore, the budget crisis and its impact on consolidation, and the cost savings projected from consolidation were addressed repeatedly by the Board throughout the process, were discussed during the meeting in which the final decision was made, and were addressed in the written rationale.

The State Board has recognized that cost savings effected by school consolidations and closings are a reasonable response to declining student enrollments and partially empty schools. In *Bushey Drive Elementary School Parents v. Bd. of Educ. of Montgomery County*, 1 MSBE 441 (1976), a local board of education chose to close a school and consolidate school operations where declining student enrollments in the county had resulted in surplus classrooms and partially empty schools. The State Board upheld that closing where it was not shown that the decision to close that school was arbitrary, unreasonable, or illegal, and acknowledged that precise projections are not always possible. The State Board concluded:

While neighborhoods quite understandably become attached to their schools and want to see them kept open even if they are only partially used, it can readily be understood that local boards prefer to consolidate school operations. While there may be some dispute over precisely how much money is saved by any one school consolidation, there is no doubt that consolidations effect some savings. There is also no doubt that our education systems continue to need funds for high-priority needs: the funding of negotiated agreements, programs for handicapped children, for the gifted and talented, and a good many others. We can hardly quarrel with the decision of a local school system to consolidate schools to effect savings which could allow the transfer of available funds to high-priority programs.

Bushey Drive, 1 MSBE at 442.

from the Board's witness was that he selected his own criteria for how to determine pupil costs, but applied that criteria consistently for all County schools. (BOE Ex. 21). While the parties can argue over which criteria should be used to determine the per pupil costs at each school, the Appellants have failed to show that Board's calculations were arbitrary or unreasonable as they were applied consistently for all schools. Moreover, it is not unreasonable that Barton's costs would be high where the School is operating at only 55% capacity, among the lowest in the County, and its student to computer ratio was among the best in the County.

The Allegany County school system was experiencing a substantial decline in student enrollment, and the Board demonstrated that the consolidation plan was also motivated by this decline. (Jt. Ex. 4). Enrollment had declined more than 20% in Allegany County since 1980, and more than 5.6% since 1996. (BOE Ex. 8, 11). Projections also called for a continuing decline in student enrollment in the County of nearly 7% through the 2004-2005 school year. (BOE 8, 11). Declining student enrollment led directly to a loss of State aid for education, and resulted in partially empty schools, the inefficient use of critical educational resources, including personnel, materials, and buildings, and contributed to the unequal distribution of educational opportunities. Under these circumstances, the closing and consolidation plan was reasonable. The schools that were closed and reconfigured under the Board's plan were the smallest high schools and the smallest elementary school in the County. (BOE Ex. 8).

The Appellants also contend that the Board's decision was arbitrary and unreasonable because the Board rejected a \$1 million grant from the Governor, provided through the State Legislature, that would have delayed consolidation, closed the budget deficit, and afforded the Board an opportunity to obtain a performance audit to provide recommendations towards a future consolidation plan.²¹ The Board countered that it chose to reject the grant because it contained language requiring geographical balance and excluded critical language concerning educational equity, and contained other language objectionable to the Board; the grant would have applied a band aid for only one year; the grant was insufficient to fund the entire deficit; and the

²¹The Appellants have also appealed the Board's decision to reject the \$1 million grant as a separate appealable issue. I conclude that the issue regarding the grant is merely a factor to be considered under the COMAR category of financial considerations. COMAR 13A.02.09.01B(6). Consequently, I have addressed it here as an aspect of the financial considerations surrounding the Board's closing and consolidation plan. For the reasons set forth below, I will grant the Board's motion to dismiss the issue of the \$1 million grant because it has not been considered or addressed as a separate appealable issue.

performance audit could still be used as an effective tool to improve the quality and efficiency of the School System even after consolidation was implemented. The Board also claimed, in contrast to the one-time grant, that the consolidation plan would have afforded continued annual savings once it was implemented. The Board was also concerned that acceptance of the grant, which required that consolidation be put off until the following year, would prevent the Board from increasing educational opportunities and course offerings for another year for the high school students who attend the County's smaller high schools. The Board asserted that if the grant were rejected and consolidation were allowed to proceed for the 2000-2001 school year, then consolidation of the smaller high schools would vastly improve the course offerings and other educational opportunities for the County's high school students.

The parties presented vastly different views on the propriety of rejecting the \$1 million grant and proceeding with the consolidation plan for the 2000-2001 school year. The Board has, however, articulated rational reasons for its decision to reject the grant. The evidence in the record demonstrates that the grant was unlikely to close the entire budget deficit, that educational opportunities could not be significantly increased at the smaller high schools if consolidation was delayed, and that the Board reasonably believed the language concerning geographical balance might restrict its future plans for consolidation for actual or political reasons. Moreover, while the grant was a one-time fix only, the consolidation plan would continue to provide substantial annual savings. Although the evidence demonstrated that the primary purpose in seeking a performance audit was to address issues regarding consolidation, the decision to proceed with consolidation without that audit was not unreasonable. The Board had received input from numerous sources, including among others, the Chamber of Commerce, the school community

committees, the Stakeholders Budget Advisory Commission, an independent accounting firm, the County Commissioners, the public hearing, numerous public Board meetings, and its own finance, curriculum, maintenance, and transportation offices. Moreover, a performance audit conducted after consolidation could still be used to further improve quality, efficiency, and budgetary matters for the County schools. The Board members who voted to reject the grant and also voted to reject the consolidation plan, offered no independent plan to balance the School Board's budget. The Board has articulated a reasonable basis for its actions. The Appellants have failed to establish that the Board's decision to reject the \$1 million grant and proceed with the consolidation plan before a performance audit was conducted was arbitrary or unreasonable.

The closing of Barton was projected to save the Board \$258,000, while the closing of Oldtown and the reconfiguration of Flintstone to a K-5 school, was projected to save the Board more than \$1 million. The reconfiguration of Mt. Savage to a K-5 and 6-8 school, and Beall High School to a 9-12 school, was projected to save the Board \$218,000. (Jt. Ex. 19, Scenarios 4, 5, 7). While these projections were subject to certain variables as discussed above, the evidence demonstrated that these actions would provide the Board with substantial cost savings, including the savings in operating expenses, utilities, and maintenance, from the closure of buildings at Barton and Oldtown, and the savings in personnel costs at the other schools. Although the Appellants argued that the savings would be severely reduced by the increased transportation costs caused by the reassignment of students, the Board considered those transportation costs in making its projections. Although the transportation costs could not be finally determined while the transportation routes were still being developed, the evidence nonetheless demonstrated that the increased transportation costs were projected to be far less than the overall savings from the

consolidation plan. Furthermore, the \$5.7 million renovation that had just been completed at Mt. Savage School did not render the consolidation plan unreasonable. Although the plan called for closure of the high school portion of Mt. Savage, the consolidation would result in a much larger middle school at Mt. Savage and would actually increase overall enrollment at Mt. Savage by 36%. (Jt. Ex. 19, Scenario 5). Although the renovation had improved the science labs at Mt. Savage, which were originally planned for use by the high school students, Board testimony demonstrated that the labs would be used by middle school and elementary schools students. Additionally, the minor renovations anticipated for Mt. Savage to increase the number of classrooms to accommodate the increased enrollment, were not shown to significantly reduce the overall cost savings from consolidation. The Appellants have not shown that these factors render the decision to consolidate unreasonable or arbitrary.

Barton.

The closure of Barton Elementary was motivated by the fact that Barton was one of the most underutilized schools in Allegany County, operating at 55% capacity, and was the smallest elementary school and smallest school, in the County. (BOE Ex. 8, 12; Jt. Ex. 4). The student population in the Barton area was generally declining, and although there were projections for slight increases in enrollment at Barton for the next several years, the actual enrollment at Barton for the 1999-2000 school year was already shown to be substantially below the projections. (BOE Ex. 8, 9; Jt. Ex. 2, April 24, 2000 Minutes). Moreover, after the initial increases, the enrollment projections for Barton showed a steady decline in subsequent years. (BOE Ex. 9). Barton was also close to two other elementary schools that could accommodate the Barton students, resulting in only minimal increases in transportation costs due to reassignment, and only minimal

reconfiguration of transportation routes for Barton students, according to testimony from the Transportation Supervisor. (Jt. Ex. 19, Scenario 7).

Although the Barton students have scored quite well on the MSPAP tests in recent years, and the school was the only elementary school in Allegany County operating under the Accelerated Reform Model, these factors did not render the decision to close that school as arbitrary or unreasonable. As the Board addressed in its deliberations on April 24, 2000 regarding the final decision to consolidate schools, had there not been a budget crisis in the County, and had the Board not been under intense pressure to consider costs and save money, the Board would never have decided to close a school like Barton that had demonstrated significant academic progress. (Jt. Ex. 2, April 24, 2000 Minutes; Oldtown Ex. 2). But as was considered at the April 24th meeting, the budget crisis in the School System created a different environment that caused the Board to make a difficult decision to close the smallest and most underutilized elementary school in the County, despite that school's admirable academic record. The Accelerated Reform Model could also be developed at another school in the future, even though it would require substantial effort. Additionally, Dr. AuMiller, who is in charge of curriculum for the Board, testified that many of the educational concepts of the Accelerated School Model are already used throughout the County schools through the effective schools model. The loss of grant money did not render the decision unreasonable because the savings still exceeded the grants, and the Accelerated Model grant was due to expire after the next school year. Barton also had the highest cost per student among the County schools.

Not all of the relevant criteria will necessarily support a decision to close a school, and the degree of weight to be afforded each criterion will depend upon the school and the circumstances.

The State Board has held that so long as there is adequate reason that is supported by at least one criterion, the decision to close a school will be upheld. *Kensington Elementary School v. Montgomery County Bd. of Educ.*, 2 MSBE 671, 681 (1982). In the instant case, there was more than one criterion that supported the Board's decision to close Barton, including financial considerations, student enrollment, and transportation, among others. Although the factor of educational programs did not support closing the school, I do not find that the closure of Barton was contrary to sound educational policy where other factors did support closure.

In *Bushey Drive Elementary School Parents v. Bd. of Educ. of Montgomery County*, 1 MSBE 441 (1976), the State Board upheld the closing of an "extraordinarily well-run school" with a unique non-graded open classroom philosophy and an "exceptionally effective" special education program. The State Board concluded that the closing was not arbitrary, unreasonable or illegal where it was motivated by declining student enrollment that had resulted in a half-empty school and where the closing would effect significant savings. The *Bushey Drive* case clearly supports the closing of Barton, which shares many similarities with the elementary school in *Bushey Drive*. The closure of Barton would also permit scarce educational resources to be distributed among the remaining elementary schools, and with substantial effort and determination the Accelerated Reform Model could be recaptured at another school and could ultimately be made available to benefit even more Allegany County students. While the closure of Barton Elementary was unfortunate, the Appellants have failed to demonstrate that it was arbitrary or unreasonable under State Board law.

Educational Opportunities and Organizational Pattern.

The Board contends that the closing and consolidation plan was also motivated by its

desire to increase the educational opportunities for students throughout the County schools, and particularly at the smallest high schools. The Board also contends that it was committed to establishing an organizational pattern of K-5, 6-8, and 9-12 throughout the County schools to coincide with the traditional pattern used throughout the rest of the State. The evidence demonstrates that the three K-12 schools in Allegany County, Flintstone, Oldtown, and Mt. Savage, are the smallest high schools in the State and the only K-12 schools in Maryland. (BOE Ex. 8, 2). Because the high schools are so small, and the schools can support only a limited number of teachers, the County is unable to provide a full complement of courses to the high school students at these schools. The Board was concerned that these students were being short-changed because of the limited course offerings and extracurricular activities available at these schools. The evidence established that Oldtown, Flintstone, and Mt. Savage Schools offered the fewest number of courses of all the high schools in the County. (BOE Ex. 37). The evidence further demonstrated that Oldtown offered only 17.4% of the approved high school courses, Flintstone offered only 34.2%, and Mt. Savage only 37% of the approved high school courses in the just-completed school year. In contrast, Ft. Hill High School, where the high school students from Oldtown and Flintstone were scheduled for reassignment, offered 79.2% of the approved high school courses. Additionally, Beall High School, where the Mt. Savage high school students were slated for reassignment, offered 58.9% of the approved high school courses. (BOE Ex. 14).

Although there was considerable testimony questioning whether certain courses had been offered at a particular school during a specific school year, the evidence clearly demonstrated that the closing and consolidation of the smallest high schools at Oldtown, Flintstone, and Mt. Savage into the larger high schools would substantially increase the course offerings and educational

opportunities for the high school students of Allegany County.²² The isolated exceptions to the general result of increased educational opportunity were insufficient to undermine the consolidation plan and render the Board's decision arbitrary or unreasonable.

Considerable time was spent at the hearing in comparing the advanced placement ("AP") courses offered at the larger high schools to the Distance Learning Labs ("DLL") available at some of the smaller high schools, and addressing where these programs were available. Although the DLL provided students with an opportunity to obtain coursework with college credit, the DLL also provided students at some of the smaller high schools with core curriculum rather than college credit courses because of limited course offerings at the smaller high schools. Moreover, unlike AP courses, the DLL afforded only remote access, could not provide the students with a live teacher in an actual classroom at their school, and was staffed only by teaching assistants. The DLL was provided to afford students a substitute at those schools where AP courses were not available, they were not as desirable as an actual live AP class, and the Board's action in making AP classes available to more County students was reasonable and consistent with its plan to increase educational opportunities.

The consolidation plan was also shown to increase the availability of extracurricular activities, including athletic and academic teams, clubs, and the like, which afforded more options at the larger schools. While there were isolated examples of activities that might not be available at a larger school, this did not override the general increase in extracurricular activities resulting

²²It is noted that the record showed that Flintstone and Oldtown had 105 and 45 students, respectively, in their entire high schools. Ft. Hill High School, where the Flintstone and Oldtown high school students were scheduled to be reassigned, had 856 students before consolidation. Similarly, Mt. Savage had 150 students in its high school, and Beall High School, where the Mt. Savage students were scheduled for reassignment, had 459 students before consolidation. (BOE Ex. 8). These statistics further support the Board's motivation to increase educational opportunities under the closing/consolidation plan.

from the consolidation plan, and the reduction in high schools from seven to four. The Appellants argued that the consolidation plan would make it more difficult for students who were facing a long bus commute after consolidation to participate in extracurricular activities, have time to complete homework, obtain rides home after school, and have their parents remain involved in the children's education. It is undoubted that the long commutes created by the consolidation plan would inconvenience students and parents alike. However, it was not unreasonable for the Board to conclude that the need to consolidate schools to address the budget crisis, and to increase course offerings and other activities at the smaller high schools, outweighed the obvious inconvenience caused by the longer bus commutes. Moreover, parents who were dissatisfied with the results of consolidation still had the option to consider out-of-district permits, home schooling, and nonpublic options. Additionally, parental involvement may be achieved in ways other than through actual presence at the school, such as through involvement in homework and other school matters. Study halls, carpools, and reading or listening to educational tapes during long bus rides, may also assist students in rendering the longer bus commutes less onerous.

While there are certainly advantages to smaller schools, and the K-12 configuration, such as smaller classes, more personal attention, and having older students in the school who can act as role models to the younger students, provide tutoring, child care, and the like, these are luxuries that simply are not available when a School Board must address a severe budget crisis and educational inequities. Moreover, the Board's shift to the K-5, 6-8, and 9-12 organizational pattern, brings the Allegany County schools into conformity with the rest of the State's public schools, increases educational opportunities, and enables the County to utilize more standardized elementary, middle school, and high school curricula and programs. Moreover, as was addressed

by the Board at the final meeting when consolidation was adopted, the community school concept is desirable but was a luxury that could no longer be afforded at the smaller high schools in view of the budget crisis.

The closing, consolidation, and reconfiguration of the smallest high schools in the State, and the only K-12 schools in Maryland, to address a critical budget deficit, increase educational opportunities, and achieve a standardized K-5, 6-8, and 9-12 organizational pattern has not been shown to be arbitrary, unreasonable, or contrary to sound educational policy.

Transportation.

I have addressed above the legal and practical reasons why the Board's failure to complete the transportation plan did not invalidate the school closing plan. *Bernstein v. Montgomery County Bd. of Educ.*, 4 MSBE 409 (1986). The Appellants argue that the Board will be unable to comply with the State statute governing bus transportation in the Allegany County schools which prohibits the transport of students on buses for more than one hour or more than forty-five miles, whichever takes less time. Md. Code Ann., Educ. § 7-801(c) (1999). The Transportation Supervisor testified persuasively that he began planning the transportation routes in earnest after the Board announced its final decision on consolidation on April 24, 2000. He explained that the routes could not be developed meaningfully before the final decision because there were too many scenarios to address. King explained that the routing would be accomplished in compliance with the busing law by increasing the number of buses and drivers, reconfiguring routes, and adjusting school start times.

The Appellants also raised issues concerning the safety of some of the routes that will be utilized under the consolidation plans. The Appellants expressed concern about windy, narrow

roads, with narrow shoulders, narrow tunnels, low guardrails, and steep drop-offs. Concern was also expressed about extreme weather conditions including snowstorms, ice, and flooding. Board witnesses established that although there would be an increased number of buses on the roads in some areas, and buses would be traveling in opposite directions in some areas, many of the roads in question were already being utilized before the consolidation plan was adopted. Additionally, the evidence demonstrated that Board was cognizant of safety issues as it had previously banned the use of a dangerous road (BOE Ex. 20), had closed schools or shut down particular routes in bad weather, and was taking the Allegany County geography into consideration in developing new bus routes. One bus driver testified that when he drove in areas that were more difficult, he slowed down, proceeded with caution, and believed that his colleagues did the same. Parents were concerned about the distances and road conditions that students might traverse in walking to bus stops. With the Board's intent to provide additional buses, drivers, and routes, and comply with safety policies, it was not shown that students would have to walk significantly further, or encounter conditions significantly different than those experienced before consolidation. Transportation witnesses also acknowledged that the Board would comply with rules governing the maximum distances that students may be required to walk to bus stops.

During the course of the hearing, the transportation routes had not been entirely completed so the Board would be able to benefit from both public input at the public hearing, and in the administrative hearing, in planning safe, effective, and timely bus routes to transport the students of Allegany County to the consolidated schools. The Appellants have failed to demonstrate that the Board has acted in an unreasonable or arbitrary manner in planning the transportation routes. As the record did not demonstrate that the Board had issued notice to

parents regarding a final transportation plan, such final plan is not the subject of this appeal.

III. Rejection of \$1 Million Grant.

It is concluded that the rejection of the \$1 million grant is not a separate appealable issue but is, instead, merely a matter to be considered under the COMAR factor of financial considerations with regard to the issue of whether the closing, consolidation, and reconfiguration plan was arbitrary, unreasonable, or illegal. COMAR 13A.02.09.01B(6). Consequently, the Board's motion to dismiss the issue of rejection of the \$1 million grant as a separate appealable issue is granted. The motion is granted, however, not because the issue has been found to be moot, as raised by the Board, but because it has already been addressed above as part of the consideration of whether the consolidation plan was arbitrary, unreasonable, or illegal.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellants have failed to prove, by a preponderance of the evidence, that the decision of the Board of Education of Allegany County of April 24, 2000, which was supported by the written rationale of April 25, 2000, to close, consolidate, and reconfigure nine (9) separate schools and/or programs, was arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E; 13A.02.09.03B.

PROPOSED ORDER

It is proposed that the decision of the Board of Education of Allegany County to close, consolidate, and reconfigure nine (9) separate public schools and/or programs, based on the decision of April 24, 2000, and the written rationale of April 25, 2000, be UPHELD.

Date: July 17, 2000

Douglas E. Koteen
Administrative Law Judge