DON GARMER, ERIN SIPES, et al.,
HARRISON W., et al., and
ELIZABETH GALAIDA, et al.

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-28

OPINION

In this consolidated appeal, five groups of Appellants challenge the December 9, 2015 decision of the Carroll County Board of Education ("local board") to close three public schools in the county, Charles Carroll Elementary School, New Windsor Middle School, and North Carroll High School. In accordance with COMAR 13A.01.05.07(A)(1), we transferred the matter to the Office of Administrative Hearings ("OAH").

The local board filed Motions to Dismiss various Appellants from the cases on the grounds that they lack standing to pursue an appeal. The administrative law judge ("ALJ"), Harriet C. Helfand, conducted hearings on the motions and issued separate proposed rulings for each recommending that the State Board dismiss several of the Appellants for lack of standing.[1] Appellants in each of these cases, *Don Garmer, Erin Sipes, et al*, and *Harrison W., et al.,* filed exceptions to the ALJ's ruling on the standing issue.

Oral argument was held on June 28, 2016.

ANALYSIS

The local board maintains that the following individuals lack standing to bring this appeal: Don Garmer, Kelley McIver, Ryan Warner in his capacity as Mayor of Manchester, Christopher Nevin in his capacity as Mayor of Hamstead, the North Carroll Recreation Council, Belisimo's, and Illiano's J&P Restaurant. We point out that even if these Appellants are dismissed from the case for lack of standing, their voices in opposition to the closure will be heard through the remaining Appellants.

Standard to Establish Standing

As the Court of Appeals has explained, for a person to maintain an action for review of an administrative decision, the person "must be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision." *Sugarloaf Citizen's Assoc. v. Department of the*

[1] The State Board may grant a motion to dismiss if an appellant lacks standing to bring an appeal. *See* COMAR 13A.01.05.03C. The State Board referred this case to OAH for review and a proposed decision by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216(b).

Environment, 344 Md. 271, 287 (1996). In order to be an aggrieved party, "a person ordinarily must have an interest 'such that he is personally and specifically affected [by the agency's final decision] in a way different from . . . the general public.'" *Id.* at 288.

The State Board has used that same reasoning in a long line of cases considering the issue of standing. We have established that an Appellant before this Board must demonstrate some injury or harm different from a generalized interest in the subject matter of the case. The Board has said:

> [T]he general rule on standing is that "for an individual to have standing . . . he must show some direct interest or 'injury in fact, economic or otherwise'." *See Schwalm v. Montgomery County Board of Education*, MSBE Opinion No. 00-10 (February 23, 2000); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996); *Way v. Howard County Board of Education,* 5 Op. MSBE 349 (1989). This showing of a direct interest or injury in fact requires that the individual be personally and specifically affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency. *See Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 144 (1967).

Sartucci v. Montgomery County Bd. of Educ., MSBE Op. No. 10-31 (2010).

Contrary to the various claims of the above-named Appellants that the ALJ applied an erroneous legal standard to establish standing to appeal a local board decision to the State Board, the ALJ correctly set forth the standard in her proposed rulings.

In determining whether a person has standing in a school closure case, we look to find a "direct interest" that is based on educational impact (such as the direct interest of a parent or guardian of a student attending a school proposed to be closed) rather than economic impact or generalized community-based interests. That determination is grounded in how school systems consider the impact on the community in school closure cases. This Board has ruled that even that consideration must only be based on education factors. *See Marsh v. Allegany County Bd. of Educ.,* MSBE Op. No. 05-99 (2005)(stating that "[t]he BOE's only responsibility under the regulatory scheme is to assess the education-related impact a school closing has on the community. It is not required to assess the impact a school closing has on civic groups, nor is it required to assess the loss of the school building as a place of shelter.").

Standing as to Don Garmer

Mr. Garmer maintains that he has standing to appeal the school closure because his kindergarten-aged children are districted to go to Charles Carroll Elementary, which is one of the schools proposed to be closed. Mr. Garmer's children do not attend Charles Carroll, however, because he enrolled them in a school in Westminster on an out-of-district waiver due to concern about the probability that his children would later be redistricted to a school much further away. (*Garmer* Exceptions at 1). Mr. Garmer also asserts standing based on his strong connection to the community.

The ALJ properly analyzed the issue of standing with regard to Mr. Garmer based on the well settled principle explained above that an appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a local board decision.

The ALJ stated "it remains clear that [Mr. Garmer's] children do not attend any affected school. Nor has [Mr. Garmer] posited that he would send his children to any other school other than the one he has chosen for them to attend." (*Garmer* Proposed Ruling at 11). Given this, the ALJ found that there was no "direct interest" or "injury in fact" and held that Mr. Garmer lacked standing. *Id.* The ALJ also recognized Mr. Garmer's "strong feelings and loyalty to the schools and their attendant communities, as well as his efforts to oppose the plan." (*Garmer* Proposed Ruling at 11-12). The ALJ properly found that Mr. Garmer lacks standing to appeal because a generalized interest in the subject matter as a member of the community is insufficient to confer standing. *See Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-15 (2012); *Marshall v. Baltimore City Bd. of Sch. Commr's*, MSBE Op. No. 03-38 (2003). We concur.

Standing as to Kelley McIver

Appellants in *Erin Sipes, et al.* maintain that the ALJ erred in dismissing Kelley McIver from the case. Specifically, they argue that the ALJ ignored the sworn testimony of Angela Kaplan that Ms. McIver has a "significant personal stake" in the outcome of the appeal as godparent to the Kaplan children, who attend Charles Carroll, and because she provides assistance to the family while they deal with a serious illness. (*Sipes* Exceptions at 5). The ALJ did not ignore the testimony, but rather concluded that Ms. McIver's status as a godparent and her close relationship with the Kaplan family did not confer standing on her to participate in the appeal. We agree. In Maryland, parents are generally vested with the right to direct and control the upbringing of their children. *See Koshko v. Haining*, 398 Md. 404, 422-423 (2007). A godparent, unless appointed as a legal guardian, is not vested with such rights. Although Ms. McIver has a close relationship with the children and is helping out the family, she has no "direct interest" or "injury in fact" of the type necessary to establish standing.

Appellants also claim that changes to the Charles Carroll Recreation Council ("CCRC") as a result of the closure of Charles Carroll will affect Ms. McIver because she takes yoga classes at Charles Carroll and "plans are affected right now as to how those classes will or will not continue at the [Charles Carroll] venue." (*Sipes* Exceptions at 7). They also argue that Ms. McIver's son's participation in the CCRC soccer program is somehow affected by the school closing. *Id.* at 7. Appellants also contend that Ms. McIver has standing because she lives 4.7 miles from Charles Carroll and the property value of her family home will be affected by the school's closure because there is no other school within the same 5 mile radius. (*Sipes* Exceptions at 7).

Those interests are not education-based and do not confer standing.

Appellants further claim that Ms. McIver's son, who attends East Middle School, will likely be affected by the school closure decision because his school may be a part of a more comprehensive plan to close additional schools at some point in the future. (*Sipes* Exceptions at 9). Such speculation is not sufficient to establish standing.

Standing as to Mayors of Hampstead and Manchester

Appellants in *Harrison W. et al.* maintain that the Mayors of Hampstead and Manchester have standing to appeal the school closing decision on behalf of the towns of Hampstead and Manchester because they represent towns where children attend or will attend the affected schools; where recreation programs take place at the affected schools; where traffic flows to and from the schools; and where the schools, students, employees and families patronize and work at local businesses. They assert that they are obligated to ensure the general welfare of their constituents, making sure they are safe, that their needs are being met, and that the towns grow socially and economically. They also claim that Hampstead will lose revenue earned through the schools' use of water provided by the town, that Manchester will be burdened to deal with increased traffic, and the infrastructure of the town of Manchester will be burdened, all of which will result in economic harm. (*Harrison* Resp. to Mtn. to Dismiss at 6).

Those interests are not education-based and do not confer standing here.

Standing as to North Carroll Recreation Council

Appellants in *Harrison W. et al.* also claim that North Carroll Recreation Council (NCRC) has standing to appeal because they believe that the closure of North Carroll will result in the loss of the facility as a venue for its activities, thereby forcing it to cut programs that benefit the community. NCRC acknowledges that the extent of the harm is unknown, but it believes there will be a negative impact on the organization. For the reasons stated herein, this type of interest does not confer standing.

Standing as to Belisimos and Illiano's J&PRestaurant

The Appellants claim that the Restaurants that are adjacent to North Carroll have standing to appeal based on economic harm because the closure of North Carroll will deprive them of a student labor force, and will cause them to lose revenue previously earned by catering school and team functions. This claim does not confer standing in a school closure case.

Standing - Conclusion

For the reasons stated above, we concur with the ALJ's determinations regarding standing. Accordingly, we adopt the ALJ's Proposed Rulings on Motions to Dismiss in the *Garmer*; *Sipes, et al.*; *Harrison W., et al.* and *Elizabeth Galadia, et al.* cases and dismiss the following Appellants from the appeal: Don Garmer, Kelley McIver, Mayors of Hampstead and Manchester, NCRC and Belisimos and Illiano's J&PRestaurant.

Guffrie M. Smith, Jr. /ds
Guffrie M. Smith, Jr.
President

S. James Gates, Jr. /ds
S. James Gates, Jr.
Vice-President

Absent
James H. DeGraffenreidt, Jr.

Linda Eberhart /ds
Linda Eberhart

Chester E. Finn /ds
Chester E. Finn, Jr.

Laurie Halverson /ds
Laurie Halverson

Stephanie R. Iszard /ds
Stephanie R. Iszard

Laura Weeldreyer /ds
Laura Weeldreyer

Dissent:

Michelle Jenkins Guyton /ds
Michele Jenkins Guyton

Madhu Sidhu /ds
Madhu Sidhu

Andrew R. Smarick /ds
Andrew R. Smarick

June 30, 2016

DON GARMER,	*	**BEFORE HARRIET C. HELFAND,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
BOARD OF EDUCATION OF	*	**OF ADMINISTRATIVE HEARINGS**
CARROLL COUNTY,	*	**OAH No: MSDE-BE-16-16-02660**
RESPONDENT	*	
	*	

* * * * * * * * * * * * * *

PROPOSED RULING ON MOTION TO DISMISS

BACKGROUND
ISSUE
ASSERTIONS OF THE PARTIES
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER
RIGHT TO FILE EXCEPTIONS

BACKGROUND

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

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

[1] The Local Board is referred to in different ways in various documents, including "Carroll County Board of Education," and "Carroll County Public Schools." The correct nomenclature is the "Board of Education of Carroll County." All variations in the record refer to the same entity.

[2] The basis of the Appellant's appeal is the Local Board's adoption of the December 9, 2015 Superintendent's Final School Closure and Boundary Adjustment Plan (Final Plan). The Final Plan recommended the closure of three Carroll County schools, Charles Carroll, New Windsor Middle School (New Windsor), and North Carroll. The instant appeal only addresses the closure of Charles Carroll and North Carroll.

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

On February 11, 2016, the Local Board filed a Motion to Dismiss (Motion) in the instant appeal. In its Motion, the Local Board asserts that the Appellant lacks standing to bring the instant appeal. On February 29, 2016, the Appellant filed a Response to the Local Board's Motion (Response).

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

On March 14, 2016, the Local Board filed a Memorandum in Reply to the Appellant's Response (Reply). On March 18, 2016, the Appellant filed an addendum and clarification of his Response to the Local Board's Motion (Supplemental Response), and on March 25, 2016, the Local Board filed a Memorandum in Reply to the Appellant's Supplemental Response (Supplemental Reply).[4]

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[3] The other appeals filed with the State Board (and respective schools) and transmitted to the OAH are: Harrison W., *et al.* v. BECC; Case No.: MSDE-BE-16-16-02815 (North Carroll); Lori Wolf v. BECC; Case No.: MSDE-BE-16-16-02597 (North Carroll); Elizabeth Galaida, *et al.* v. BECC; Case No: MSDE-BE-16-16-02833 (New Windsor); and Erin Sipes, *et al.* v. BECC; Case No.: MSDE-BE-16-16-03180. All OAH proceedings consolidated the cases for the purpose of the proceeding. Separate rulings are being issued in all cases.

[4] A footnote in the Supplemental Reply states "[s]hould the OAH ultimately determine that [the Appellant] has standing to appeal, the [Local Board] incorporates by reference the arguments raised in support of the Motions for Summary Affirmance and any Reply Memoranda it filed in the consolidated appeal herein." On April 11, 2016 (the date of the motions hearing), the Appellant, along with the Appellants in the Sipes appeal, filed a "Joint Memorandum in Support of Motions for Sanctions Against Appellee for Failure to Abide by ALJ Helfand's Scheduling Order" (Joint Memorandum). In this document, the Appellants requested that I disallow the inclusion of the Appellant in the Local Board's Motions for Summary Affirmance filed in the other appeals. The Appellant bases this argument on the failure of the Local Board to follow the dates outlined in my March 14, 2016 PCR, and an assertion that a late notice of this motion by the Local Board prejudiced the Appellant in any opportunity to otherwise respond or offer oral argument in opposition to the motion at the motions hearing. On April 22, 2016, the Local Board filed an Opposition to Joint Motions for Sanctions. Per COMAR 28.02.01.11B(4), an administrative law judge "has the power to regulate the course of the hearing and the conduct of the parties and authorize representatives, including the power to ...[c]onsider and rule upon motions in accordance with this chapter." The Local Board's Supplemental Reply was filed on March 25, 2016, and gave the Appellant an opportunity to consider any response he might have wished to offer to the initial Motion, filed on February 11, 2016, and sent to all of the appellants in the consolidated appeals, including the Appellant. Additionally, at the April 11, 2016 hearing, the Appellant was given an opportunity to offer argument on the issues in his appeal in response to the Local Board's Motion for Summary Affirmance and chose to defer to the arguments presented by the Sipes Appellants at that time. Accordingly, I am not imposing any sanctions, as requested in the Joint Memorandum.

On April 11, 2016, I conducted a motions hearing during which the Local Board and the Appellant were given an opportunity to offer arguments on the Motion and Responses and Replies.[5] The Appellant represented himself. Edmund J. O'Meally, Esquire, and Adam Konstas, Esquire, represented the Local Board.[6]

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

ISSUE

Should the Local Board's Motion to Dismiss be granted?

ASSERTIONS OF THE PARTIES

Neither the Appellant nor the Local Board included affidavits or statements of fact in their respective pleadings.

The Appellant

In his initial appeal, the Appellant stated "[m]y family and I will not be affected by these closures as they are laid out. I am from Hampstead currently live near the Charles Carroll community, and can understand why New Windsor Middle is important to their community."[8]

[5] As the April 11, 2016 motions hearing was consolidated with the other appeals, I also heard arguments from the other respective appellants regarding their respective appeals.
[6] Counsel for the Local Board was accompanied by Stephen H. Guthrie, Superintendent of Schools, Local Board, and Jonathan D. O'Neal, Assistant Superintendent for Administration, Local Board.
[7] In an appeal of a school closing, the ALJ shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the proposed written decision to the parties. COMAR 13A.01.05.07E.
[8] In his pleadings, the Appellant refers to his concerns as a current or former member of the general community regarding the closing of North Carroll, and, tangentially, New Windsor.

In his February 29, 2016 Response,[9] the Appellant wrote:

> Although I did not write this in my appeal, my kindergarten children are districted to go to one of the closing schools. I did not list this in my appeal as I did not know that this is a detail that would be needed. Furthermore, this was not something that I wanted to talk about as my family believes that the school system has acted in unlawful ways as outlined in my appeal. My family wished to send my children to Charles Carroll Elementary. We even took the time to tour the school prior to enrolling them. The fear of the probability that our children would be redistricted to a school much further away prompted us to enroll then on an out of district waiver to a school in Westminster. If we had sent them to Charles Carroll this would have happened that they would have been moved to this further school. This change would have been catastrophic to our jobs and our ability to get to work on time. Essentially, one of us would have to quit our jobs. Since this waiver is renewed year to year my wife and I were greatly fearing during the last month that our kids would be denied this waiver as retribution for filing this appeal. Thankfully, they were not, but we still fear this for the future … Finally, my standing was confirmed by the school system as my family was included in a mailing that only went to families that were to be impacted. This was the mailing of the superintendent's decision.

The Appellant further asserts that he has standing to appeal based on the decision of the State Board in *Palmer v. Wicomico County Board of Education*, MSBE Op. No. 99-37 (July 28, 1999), a case which will be discussed further in this Ruling.

The Local Board

In its February 11, 2016 Motion, the Local Board argued that in his appeal, the Appellant freely asserted that he and his family would not be affected by the Local Board's school closure decision, and therefore, lacked standing to appeal. Following the Appellant's February 29, 2016 Response, the Local Board asserted that even if, as alluded to by the Appellant, his children could have attended Charles Carroll, by choice, they do not, and therefore, the Appellant remains unaffected, and without direct interest in the decision of the Local Board. The Local Board's March 25, 2016 Supplemental Reply addressed the Appellant's reliance on the *Palmer* decision and distinguished the Appellant's status from those of the parents in *Palmer*.

[9] The Appellant's March 18, 2016 Supplemental Response essentially repeated these statements.

DISCUSSION

The State Board's regulations provide for a Motion to Dismiss in COMAR 13A.01.05.03C, as follows:

> **.03 Response to Appeals.**
>
> ...
> C. Motion to Dismiss.
>
> (1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:
>
> (a) The county board has not made a final decision;
> (b) The appeal has become moot;
> (c) The appellant lacks standing to bring the appeal;
> (d) The State Board has no jurisdiction over the appeal; or
> (e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.
>
> (2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in § C(1) of this regulation.

OAH's Rules of Procedure similarly provide for consideration of a motion to dismiss under COMAR 28.02.01.12C, which provides as follows:

> C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person." The "initial pleading" in this case is the appeal filed by the Appellant on January 6, 2016.

COMAR 28.02.01.12C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule is helpful in analyzing a similar motion under the procedural regulations of the OAH. In a motion to dismiss, the moving

party must establish that it is entitled to relief. *See Lubore v. RPM Assocs., Inc.,* 109 Md. App. 312 (1996); *Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997). Furthermore, when construing a motion of this nature, the ALJ is required to examine the evidence in the light most favorable to the non-moving party. Case law establishes several relevant rules. First, the properly pleaded allegations contained in a complaint are accepted as true. Second, reasonable inferences favorable to the complainant are drawn from the properly pleaded facts. Third, any ambiguity or uncertainty in the allegations is construed against the complainant. *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 344-45 (2000).

In the instant matter, the Local Board requests dismissal of the Appellant's case on the basis that he lacks standing to pursue the case. Numerous cases have addressed what is required before a party has standing. *Flast v. Cohen*, 392 U.S. 83, 99 (1968) addressed the concept of standing, in general. Acknowledging the amorphous or fluid nature of the jurisdictional concept, the Court explained that the

> fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *(citations omitted).*

Although constitutional questions are not at issue in this case, the explanation of standing in *Flast* is instructive. The key is whether the party has a sufficient personal stake in the outcome of a case to establish the right to be a party to the proceeding.

The Supreme Court clarified its position on standing before a federal court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In that case, the Court announced that standing requires a showing of three elements, including: (1) injury in fact;[10] (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood "that the injury will be

[10] This injury is defined as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent." *Id.* at 560 *(citations omitted).*

'redressed by a favorable decision.'" *Id.* at 560-561. The Court determined that environmental groups did not have standing to challenge a regulation of the Secretary of the Interior that required other agencies to confer only with him regarding federally funded projects in the United States and on the high seas. In each of these cases, the issue was whether a party had standing to pursue an action in federal court.

The Maryland Court of Appeals addressed the issue of standing in administrative proceedings in *Sugarloaf Citizens' Ass'n, et al. v. Dept. of Environment*, 344 Md. 271 (1996). This case involved the issuance of construction permits by the Department of Environment for an incinerator that was to be located adjacent to property owned by association members. The Court explained that, unlike the requirements to establish standing for judicial review, the standard to establish standing in an administrative hearing is substantially lower. The Court:

> recognize[d] a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision.

Id. at 285-86. *See also Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 628 (2003) (holding that "[m]ere presence at an administrative proceeding, without active participation, is sufficient to establish oneself as a party to the proceeding"); *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423 (1976); *Mid-Atlantic Power Supply Ass'n v. Public Service Comm'n of Maryland*, 361 Md. 196, 213 (2000). The Court in *Sugarloaf* continued:

> The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily.

Id. at 286 (internal citations omitted).

Similarly, in *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137 (1967), the Court of Appeals found that appellants had standing to challenge the granting of a zoning ordinance exception because the property at issue was adjacent to the appellants' property and thus, they were "persons aggrieved" by the issuance of the permit. Consistent with reasoning of *Sugarloaf* and *Morris*, the Court relied on the State Zoning laws that required a person to be "aggrieved" to appeal both *to* the Board of Appeals and to appeal *from* a Board of Appeals decision to court.

The Court has established through these cases that, absent a statute or regulation requiring some additional basis for standing, an administrative hearing before an agency requires only the more lenient requirement that a person have participated in some fashion before the agency to establish that the person has standing to challenge an agency decision.

In the instant case, the statutes and regulations regarding a local board's decision to close schools place no restriction on who may appeal the local board's decision to the State Board. With regard to the establishment of public schools, the Education Article provides:

> (a) County board may establish schools.- Subject to approval by the State Superintendent and in accordance with the applicable bylaws, rules, and regulations of the State Board, a county board may establish a public school if, in its judgment, it is advisable.
> . . .
> (c) With the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.

Md. Code Ann., Educ. § 4-109(a) (2014).

COMAR 13A.02.09.03 addresses appeals of local board school closure decisions:

> A. An appeal to the State Board of Education may be submitted in writing within 30 days after the decision of a local 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.

COMAR 13A.01.05.01 addresses the definitions of "Appellant" and "Party."[11] COMAR13A.01.05.02 discusses the contents of an appeal. The standard of review in these cases, that the local board's decision was arbitrary, unreasonable, or illegal, is considered in COMAR 13A.01.05.05. That regulation also places the burden of proof on the appellant by a preponderance of the evidence. COMAR 13A.01.05.05D. The hearing procedures are addressed in COMAR 13A.01.05.07.

The applicable Education statute and regulations do not address the standing of a party to bring an administrative appeal of a local board's school closings decision. Unlike the zoning statute or regulations in *Bryniarski*, the Education statute and regulations do not require an appellant to be "aggrieved" to appeal the decision of a local board to close schools to the State Board of Education. Absent such a regulation, one might infer that the rather lenient standard announced in *Sugarloaf* controls, and so long as the Appellants participated in some manner before the local board or asserted an interest in the outcome, they shall have standing to challenge the local board's decision at the administrative level.

However, the fact that there is no regulation or statute does not simply close the discussion on this issue. Notwithstanding the absence of a statute or a regulation regarding standing, the State Board has consistently held that an Appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board.[12] Pursuant to section 10-214(b) of the State Government Article of the Annotated Code of Maryland, I am required to follow "any agency regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the agency is or would have been bound if it were hearing the case." Through its decisions, the State Board has established a long-standing policy

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[11] "'Appellant' means the individual or entity appealing a final decision of a local board." COMAR 13A.01.05.01B(1). "'Party' means either an appellant, respondent, or any person or entity allowed to intervene or participate as a party." COMAR 13A.01.05.01B(8).

[12] *See Marshall v. Baltimore City Board of School Commissioners,* MSBE Opinion No. 03-38 (2003); *Regan v. Washington County Board of Education*, MSBE Opinion No. 03-13 (2003); *Bellotte v. Anne Arundel County Board of Education*, MSBE Opinion No. 03-08 (2003); *Stratford Woods Homeowners' Association, Inc., v. Montgomery County Board of Education,* 6 Op. MSBE 238 (1992).

that an Appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board. By statute, I am obligated to follow the State Board's preexisting policy to determine the standing of a party to appeal the decision of the Local Board. Therefore, the question becomes whether the Appellant in this case has asserted a direct interest or injury in fact to bring this appeal.

The Appellant cites *Palmer v. Wicomico County Board of Education*, MSBE Op. No. 99-37 (July 28, 1999) in support of his assertion that he has standing to bring the instant appeal. In *Palmer,* the State Board found that the Appellants challenged "a redistricting plan that encompasses virtually all of the public schools in Wicomico County." However, "[the Appellant] was unable to specify how either child would be harmed by the plan, and he proffered no evidence to show that his family was aggrieved by it." In *Palmer*, the ALJ who heard the case on behalf of the State Board determined that although the Appellants were unable to explain how they would suffer a direct injury, they nevertheless had standing to object to the redistricting because "the Appellants do have children in an affected Wicomico County school." All of the cases cited in *Palmer* share this determinative factor, or common denominator - all those seeking standing actually had a child *in an affected school.*

The Local Board asserts that the ruling in *Palmer* is inapplicable, since the Appellant's children do not attend an affected school. The Local Board further contends that any fear the Appellant may have regarding any future undefined actions of the Local Board, including redistricting, is merely speculative.

As no affidavits have been filed attesting to any relevant facts, I can only infer from the documents submitted that the Appellant is a resident of Carroll County and that he has kindergarten-age children who may have been "districted" to Charles Carroll. It is possible that the Appellant received the Local Board's mailing of the Final Plan because he resides in that

district. However, the Appellant has chosen to obtain an "out-of-district" waiver from the Local Board to enroll his children in another school that is closer to his place of employment; this waiver is currently in effect and has been renewed for the next school year. The Appellant's argument regarding his status as a parent of children who may be eligible to attend Charles Carroll is that, in the event he would be denied the waiver, and Charles Carroll is closed, and his children are assigned to a school farther from his place of employment, it would be "catastrophic to our jobs and our ability to get to work on time." Presumably, the Appellant's primary reason for applying for the waiver was because the chosen school was more conveniently located near his work. Despite the ambiguity of the Appellant's appeal, it remains clear that the Appellant's children do not attend any affected school. Nor has the Appellant posited that he would send his children to any other school than the one he has chosen for them to attend. Each year, the Appellant has applied for and received a waiver for his children to attend the non-affected school. Despite the Appellant's stated fear that the waiver might be discontinued due to his participation in the instant matter, no such action has occurred.

While I acknowledge the Appellant's concerns, both personally, and on behalf of his community, I cannot find that he has standing to pursue the instant appeal. The appeal is unclear as to the actual districting status of the Appellant's children; he has, however, chosen to obtain a waiver for them to attend a school more convenient to their parents' work, and the Appellant fears that should the Final Plan be upheld, circumstances might adversely affect his or his wife's employment. Case law has held, however, that "economic interests are merely a byproduct of the redistricting decision and economic interests in themselves do not confer standing." *Dorchester Neighborhood Ass'n, Inc., et al. v. Charles County Bd. of Educ.*, MSBE Op. No. 99-10 (1999).

Similarly, the Appellant is precluded from pursing an appeal of the Final Plan regarding New Windsor or North Carroll. Although the Appellant extensively described his strong feelings

and loyalty to the schools and their attendant communities, and, as noted in his Supplemental Response, has spent many hours laboring to oppose the plan, he possesses no legal standing to bring this action, for all of the above-stated reasons. Accordingly, I will propose that the Local Board's Motion be granted.

CONCLUSION OF LAW

I conclude, as a matter of law, that the Appellant lacks standing to pursue an appeal of the Local Board's adoption of the December 9, 2015 Superintendent's Final School Closure and Boundary Adjustment Plan. COMAR 13A.01.05.03C; COMAR 28.02.01.12C; *Palmer v. Wicomico County Bd. of Educ.*, MSBE Op. No. 99-37 (July 28, 1999).

PROPOSED ORDER

I **PROPOSE** that the Board of Education of Carroll County's Motion to Dismiss be **GRANTED.**

May 5, 2016
Date Order Mailed

Harriet C. Helfand
Administrative Law Judge

HCH/dlm
#161827

RIGHT TO FILE EXCEPTIONS

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

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ERIN SIPES,	*	**BEFORE HARRIET C. HELFAND,**
KELLEY MCIVER,	*	**AN ADMINISTRATIVE LAW JUDGE**
and	*	**OF THE MARYLAND OFFICE**
TARA BATTAGLIA,	*	**OF ADMINISTRATIVE HEARINGS**
APPELLANTS	*	**OAH No: MSDE-BE-16-16-03180**
v.	*	
BOARD OF EDUCATION OF	*	
CARROLL COUNTY,	*	
RESPONDENT	*	

* * * * * * * * * * * * * *

PROPOSED RULING ON MOTION TO DISMISS

BACKGROUND
ISSUE
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER
RIGHT TO FILE EXCEPTIONS

BACKGROUND

On January 6, 2016, the Appellants[1] filed an appeal with the Maryland State Board of Education (State Board) of the decision of the Board of Education of Carroll County (Local

[1] The Appellants named in the January 6, 2016 appeals included the above-captioned Appellants as well as "Union Mills/Silver Run Community Members" (Union) and "Friends of Save Charles County Elementary School Association" (FSCC). As both Union and FSCC failed to appear by representation at the April 11, 2016 motions hearing, I issued a default order proposing that their participation in the case be terminated.

Board or BECC)[2] to close Charles Carroll Elementary School (Charles Carroll) as of the 2016-2017 school year.[3]

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

On February 11, 2016, the Local Board filed a Motion to Dismiss[5] or in the Alternative for Summary Affirmance (Motion) of its decision to close Charles Carroll. In its Motion, the Local Board asserts that Appellants Kelley McIver, Tara Battaglia, in the capacity as Board Member of FSCC, and Union Members lack standing to bring the instant appeal.[6]

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

On March 9, 2016, the Appellants filed an Opposition to the Local Board's Motion to Dismiss (Opposition). On March 21, 2016, the Local Board filed a Memorandum in Reply to Opposition to Motion to Dismiss (Reply) in response to the Appellants' Opposition.

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

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

[4] The other appeals filed with the State Board (and respective schools) and transmitted to the OAH are: Don Garmer v. BECC; Case No.: MSDE-BE-16-16-02660 (Charles Carroll and North Carroll); Lori Wolf v. BECC; Case No.: MSDE-BE-16-16-02597 (North Carroll); Elizabeth Galaida, *et al* v. BECC; Case No: MSDE-BE-16-16-02833 (New Windsor); and Harrison W., *et al.*, v. BECC; Case No.: MSDE-BE-16-16-02815. All five cases were consolidated for the purpose of the OAH proceedings. Separate rulings are being issued in all cases.

[5] The portion of the Motion concerning the Local Board's motion for summary affirmance is addressed in a separate Ruling. This Ruling only addresses the portion of the Motion requesting the dismissal of some of the Appellants based on lack of standing.

[6] Appellant Erin Sipes' standing to pursue the appeal was not questioned. As she meets the criteria for standing, Ms. Sipes remains an Appellant in this case.

On April 11, 2016, I conducted a motions hearing. Appellants Erin Sipes, Kelley McIver, and Tara Battaglia appeared and offered argument.[7] Edmund J. O'Meally, Esquire, and Adam Konstas, Esquire, appeared and offered argument on behalf of the Local Board.[8]

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.01.05; COMAR 28.02.01. Any dispositive decision by the Administrative Law Judge (ALJ) will be a recommendation in the form of a proposed decision to the State Board. COMAR 13A.01.05.07E.[9]

ISSUE

Should the Local Board's Motion be granted?

DISCUSSION

In its Motion, the Local Board moved that Appellants Kelley McIver and Tara Battaglia, in her stated capacity as Board Member of FSCC, lack standing to appeal the Final Plan and therefore, are not proper parties to the instant case.

The State Board's regulations provide for a Motion to Dismiss in COMAR 13A.01.05.03C, as follows:

.03 Response to Appeals.

...

[7] On April 11, 2016, the Appellants filed a Joint Motion for Sanctions with Don Garmer, the appellant in another of the consolidated cases. On April 22, 2016, the Local Board filed an Opposition to Joint Motion for Sanctions. The motion was based on Mr. Garmer's case, not that of the instant Appellants, and is addressed in the Ruling on the Motion to Dismiss in Mr. Garmer's case. See OAH Case No.: MSBE-BE-16-16-02660.

[8] Counsel for the Local Board was accompanied by Stephen H. Guthrie, Superintendent of Schools, Local Board, and Jonathan D. O'Neal, Assistant Superintendent for Administration, Local Board.

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

C. Motion to Dismiss.

(1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:

(a) The county board has not made a final decision;
(b) The appeal has become moot;
(c) The appellant lacks standing to bring the appeal;
(d) The State Board has no jurisdiction over the appeal; or
(e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.

(2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in § C(1) of this regulation.

The OAH's Rules of Procedure similarly provide for consideration of a motion to dismiss under COMAR 28.02.01.12C, which provides as follows:

C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an ALJ may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person." The "initial pleading" in this case is the appeal filed by the Appellants on January 6, 2016.

COMAR 28.02.01.12C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule is helpful in analyzing a similar motion under the procedural regulations of the OAH. In a motion to dismiss, the moving party must establish that it is entitled to relief. *See Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312 (1996); *Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997). Furthermore, when construing a motion of this nature, the ALJ is required to examine the evidence in the light most favorable to the non-moving party. Case law establishes several relevant rules. First, the properly pleaded allegations contained in a complaint are accepted as true. Second, reasonable inferences favorable to the complainant are drawn from the properly pleaded facts. Third, any ambiguity or

uncertainty in the allegations is construed against the complainant. *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 344-45 (2000).

In the instant matter, the Local Board requests dismissal of the case as to Kelley McIver and Tara Battaglia, on the basis that each lacks standing to pursue the case. Numerous cases have addressed what is required before a party has standing. *Flast v. Cohen*, 392 U.S. 83, 99 (1968) addressed the concept of standing, in general. Acknowledging the amorphous or fluid nature of the jurisdictional concept, the Court explained that the

> fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *(citations omitted).*

Although constitutional questions are not at issue in this case, the explanation of standing in *Flast* is instructive. The key is whether the party has a sufficient personal stake in the outcome of a case to establish the right to be a party to the proceeding.

The Supreme Court clarified its position on standing before a federal court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In that case, the Court announced that standing requires a showing of three elements, including: (1) injury in fact;[10] (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood "that the injury will be 'redressed by a favorable decision." *Id.* at 560-61. The Court determined that environmental groups did not have standing to challenge a regulation of the Secretary of the Interior that required other agencies to confer only with him regarding federally funded projects in the United States and on the high seas. In each of these cases, the issue was whether a party had standing to pursue an action in federal court.

[10] This injury is defined as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent." *Id.* at 560 *(citations omitted).*

The Maryland Court of Appeals addressed the issue of standing in administrative proceedings in *Sugarloaf Citizens' Ass'n, et al. v. Dept. of Environment*, 344 Md. 271 (1996). This case involved the issuance of construction permits by the Department of Environment for an incinerator that was to be located adjacent to property owned by association members. The Court explained that, unlike the requirements to establish standing for judicial review, the standard to establish standing in an administrative hearing is substantially lower. The Court:

> recognize[d] a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision.

Id. at 285-86. *See also Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 628 (2003) (holding that "[m]ere presence at an administrative proceeding, without active participation, is sufficient to establish oneself as a party to the proceeding"); *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423 (1976); *Mid-Atlantic Power Supply Ass'n v. Public Service Comm'n of Maryland*, 361 Md. 196, 213 (2000). The Court in *Sugarloaf* continued:

> The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily.

Id. at 286 (internal citations omitted).

Similarly, in *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137 (1967), the Court of Appeals found that appellants had standing to challenge the granting of a zoning ordinance exception because the property at issue was adjacent to the appellants' property and thus, they were "persons aggrieved" by the issuance of the permit. Consistent with the reasoning of *Sugarloaf* and *Morris*, the Court relied on the State zoning laws that required a person to be "aggrieved" to appeal both *to* the Board of Appeals and to appeal *from* a Board of Appeals

decision to court. The Court has established through these cases that, absent a statute or regulation requiring some additional basis for standing, an administrative hearing before an agency requires only the more lenient requirement that a person or entity have participated in some fashion before the agency to establish that the person has standing to challenge an agency decision. In the instant case, the statutes and regulations regarding a local board's decision to close schools place no restriction on who may appeal the local board's decision to the State Board. With regard to the establishment of public schools, the Education Article provides:

> (a) County board may establish schools.- Subject to approval by the State Superintendent and in accordance with the applicable bylaws, rules, and regulations of the State Board, a county board may establish a public school if, in its judgment, it is advisable.
>
> . . .
>
> (c) With the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.

Md. Code Ann., Educ. § 4-109(a) (2014).

COMAR 13A.02.09.03 addresses appeals of local board school closure decisions:

> A. An appeal to the State Board of Education may be submitted in writing within 30 days after the decision of a local 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.

COMAR 13A.01.05.01 addresses the definitions of "Appellant" and "Party."[11] COMAR13A.01.05.02 discusses the contents of an appeal. The standard of review in these cases, that the local board's decision was arbitrary, unreasonable, or illegal, is considered in COMAR 13A.01.05.05. That regulation also places the burden of proof on the appellant by a preponderance of the evidence. COMAR 13A.01.05.05D. The hearing procedures are addressed in COMAR 13A.01.05.07.

[11] "'Appellant' means the individual or entity appealing a final decision of a local board." COMAR 13A.01.05.01B(1). "'Party' means either an appellant, respondent, or any person or entity allowed to intervene or participate as a party. "COMAR 13A.01.05.01B(8).

The applicable Education statute and regulations do not address the standing of a party to bring an administrative appeal of a local board's school closings decision. Unlike the zoning statute or regulations in *Bryniarski*, the Education statute and regulations do not require an appellant to be "aggrieved" to appeal the decision of a local board to close schools to the State Board of Education. Absent such a regulation, one might infer that the rather lenient standard announced in *Sugarloaf* controls, and so long as the Appellants participated in some manner before the local board or asserted an interest in the outcome, they shall have standing to challenge the Local Board's decision at the administrative level. However, the fact that there is no controlling regulation or statute does not simply close the discussion on this issue. Notwithstanding the absence of a statute or a regulation regarding standing, the State Board has consistently held that an Appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board.[12] Pursuant to section 10-214(b) of the State Government Article of the Annotated Code of Maryland, I am required to follow "any agency regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the agency is or would have been bound if it were hearing the case." Through its decisions, the State Board has established a long-standing policy that an appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board. By statute, I am obligated to follow the State Board's preexisting policy to determine the standing of a party to appeal the decision of the Local Board. Therefore, the question becomes whether the Appellants named in the Local Board's Motion have asserted a direct interest or injury in fact to bring this appeal.

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[12] *See Marshall v. Baltimore City Board of School Commissioners,* MSBE Opinion No. 03-38 (2003); *Regan v. Washington County Board of Education*, MSBE Opinion No. 03-13 (2003); *Bellotte v. Anne Arundel County Board of Education*, MSBE Opinion No. 03-08 (2003); *Stratford Woods Homeowners' Association, Inc., v. Montgomery County Board of Education,* 6 Op. MSBE 238 (1992).

A series of cases in which the State Board has established and refined this policy are instructive in demonstrating the characteristics which determine whether or not a party has standing to pursue an appeal of this nature.

Essentially, the State Board has limited standing to appeal a local board's decision to a definable group of parents whose children will be directly affected by the decision, that is, parents whose children who attend the specific schools or programs so affected. *See Clarksburg Civic Association v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-34; *Joan & Michael Taylor, et al. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-32; *Palmer v. Wicomico County Bd. of Educ.*, MSBE Op. No. 99-37.

Kelley McIver

At the hearing, Ms. McIver identified herself as an alumna and the parent of a child who had previously attended Charles Carroll. In the community, Ms. McIver has been instrumental as a fervent advocate for Charles Carroll and clearly possesses a strong loyalty and affection for the school. The issue in this matter, however, is not whether Ms. McIver has a deep connection to Charles Carroll, for no one could question her support. The issue is whether Ms. McIver possesses the requisite standing to pursue the appeal.

In her Response, Ms. McIver contends that she possesses standing based on 1) her status as a godmother of a child who plans to enroll at Charles Carroll, and her closeness to the family of that child; 2) her affiliation with FSCC; 3) the potential effect an unselected school closure and redistricting option would have on her son; 4) her participation in the Local Board's public hearings and meetings; and 5) the effect on any changes to the Charles Carroll Recreation Council (CCRC) on her son. None of these reasons supports a finding of Ms. McIver's standing to participate in the instant case.

The role of a godparent has not been recognized under either Maryland or federal law as a role commensurate of that of a parent, who is generally vested with the fundamental right to direct and control the upbringing of their children. *See Koshko v. Haining*, 398 Md. 404, 422-23 (2007). Non-parent third parties, such as grandparents, do not enjoy similar constitutional protections. *Id.* The relationship of a godparent to a godchild is that of a non-parent private third party, and is not equal to the relationship between a fit parent and a child. *See McDermott v. Dougherty*, 385 Md. 320, 353 (2005). A godparent, as a private third party, "has no fundamental constitutional right to raise the children of others." *Id.* Even if Ms. McIver maintains a close relationship with her godchild, this connection does not place her in the legal role of a parent. Ms. McIver has not alleged that she has been granted legal custody of the child or has an established right to make decisions regarding the child's education. Her deep interest, alone, does not grant her standing to appeal, as she is not the parent or legal guardian of a child who would be affected by the adoption of the Final Plan.

Additionally, Ms. McIver's assertion that her son might have been affected by an alternative plan that never came to fruition does not grant her standing to pursue the instant appeal. She has admitted that the Final Plan does not affect her son, and no other plan, even if considered, but not adopted, is the subject of this appeal. Ms. McIver's contention that her son would be affected by any changes to the CCRC is similarly unavailing. The CCRC is not operated by or part of the Local Board. While closing Charles Carroll may have some effect on CCRC operations, or scheduling, such events are merely speculative, and have no educational bearing. Any actions by Ms. McIver to protest possible CCRC changes would reside in another forum, and are not the proper subject to be appealed in this matter. COMAR 13A.01.05.07A(1).

As previously noted, Ms. McIver's participation in Local Board meetings or other community outlets designed to oppose the Final Plan do not confer standing on her to appeal the

Local Board's actions. State Board cases require that an "aggrieved" individual must "demonstrate some injury or harm different from a generalized interest" in a case. *Kurth, et al., v. Montgomery County Bd. of Educ.*, MSDE Op. No. 11-38. Ms. McIver's interests, while heartfelt, do not rise to the level of that of a parent whose child attends the specific schools or programs so affected. As such, Ms. McIver lacks standing to appeal the final decision of the Local Board.

Tara Battaglia

The Local Board avers that Ms. Battaglia lacks standing to appeal based on her filing of the appeal as a "Board Member of FSCC." As I have previously found the organization in default because it was not properly represented in the motions hearing, that argument is essentially moot. Ms. Battaglia, as a non-attorney, was not permitted to represent the interests of FSCC in the hearing; therefore, as an entity, irrespective of any potential standing issues, the organization's participation in the case was terminated.

As to Ms. Battaglia's standing to appeal the Local Board's decision in her own right, the Local Board contends that even though Ms. Battaglia is the parent of children who attend Charles Carroll, 1) she did not file the appeal as an individual, but in her capacity as a board member of an organization, and never filed a timely appeal in her capacity as an individual; and 2) that her children attend Charles Carroll by virtue of an out-of-district request, as she resides outside of the Charles Carroll attendance area, and that her children are actually districted for another school.

As to the Local Board's first contention, I find that Ms. Battaglia's participation and designation in the appeal are somewhat equivocal. Although she is captioned as a "board member," other documentation in the appeal describes her role as an active Charles Carroll parent. In the motions hearing, Ms. Battaglia acknowledged that although she was not legally

permitted to represent FSCC, she maintained an interest in her own right, as the parent of two children who attend Charles Carroll and who have done so since kindergarten. Despite what may have been a misunderstanding of process on the part of Ms. Battaglia, who assisted in producing the appeal and attendant documentation, *pro se*, I find that her participation in the appeal has been of a dual nature, and that her status as a parent of an child attending an affected school confers standing for her to pursue the appeal as an individual.

I also find the Local Board's argument unavailing that Ms. Battaglia, who does not reside in the Charles Carroll district, but whose children attend the school on an out-of-district waiver, is precluded from participating in the case. Although *Bernstein v. Board of Education*, 245 Md. 464, 472 (1967), holds that there is no right to attend a particular school, I note that the Local Board's argument in another of the consolidated cases was based on an argument that a parent whose children were districted for an affected school, but who attended a non-affected school, would not have standing to appeal, on the basis of lack of school *attendance*, rather than geographical designation.[13] As I found that argument persuasive and agreed with the Local Board in that case, it would be inconsistent to come to essentially the opposite conclusion in the instant matter. If, as the Local Board previously argued, standing is based on whether a child *attends* an affected school, then Ms. Battaglia meets the criteria for standing.

CONCLUSIONS OF LAW

I conclude, as a matter of law, that Kelley McIver does not have standing to pursue an appeal of the Local Board's adoption of the December 9, 2015 Superintendent's Final School Closure and Boundary Adjustment Plan. I further conclude that Tara Battaglia does have standing to pursue an appeal of the Local Board's adoption of the Superintendent's Final School Closure and Boundary Adjustment Plan. COMAR 13A.01.05.03C; COMAR 28.02.01.12C;

[13] *See* Don Garmer v. BECC, OAH Case No.: MSDE-BE-16-16-02660; Ruling on Motion to Dismiss.

Clarksburg Civic Association v. Montgomery County Bd. Of Educ., MSBE Op. No. 07-34; *Joan & Michael Taylor, et al. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-32; *Palmer v. Wicomico County Bd. Of Educ.*, MSDE Op. No. 99-37.

PROPOSED ORDER

I **PROPOSE** that the Board of Education of Carroll County's Motion to Dismiss as to Kelley McIver be **GRANTED**. I further **PROPOSE** that the Board of Education of Carroll County's Motion to Dismiss as to Tara Battaglia be **DENIED.**

May 5, 2016
Date Order Mailed

Harriet C. Helfand
Administrative Law Judge

HCH/emh
#161831

RIGHT TO FILE EXCEPTIONS

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

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HARRISON W.,	*	**BEFORE HARRIET C. HELFAND,**
LAUREN B.,	*	**AN ADMINISTRATIVE LAW JUDGE**
RYAN WARNER, MAYOR OF MANCHESTER,	*	**OF THE MARYLAND OFFICE**
	*	**OF ADMINISTRATIVE HEARINGS**
CHRISTOPHER NEVINS, MAYOR OF HAMPSTEAD,	*	**OAH No: MSDE-BE-16-16-02815**
NORTH CARROLL RECREATION COUNCIL,	*	
	*	
BELISIMO'S,	*	
and	*	
ILLIANO'S J&P RESTAURANT,	*	
APPELLANTS	*	
v.	*	
BOARD OF EDUCATION OF CARROLL COUNTY,	*	
RESPONDENT	*	

* * * * * * * * * * * * * *

PROPOSED RULING ON MOTION TO DISMISS

BACKGROUND
ISSUE
ASSERTIONS OF THE PARTIES
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER
RIGHT TO FILE EXCEPTIONS

BACKGROUND

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

Board, BECC, or Respondent)[1] to close North Carroll High School (North Carroll) as of the 2016-2017 school year.[2]

On January 20, 2016, the State Board transmitted the appeal to the Office of Administrative Hearings (OAH) to conduct hearings before an Administrative Law Judge (ALJ) on this appeal and four other appeals filed pursuant to the Local Board's decision.[3] Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

On February 11, 2016, the Local Board filed a Motion to Dismiss[4] or in the Alternative for Summary Affirmance (Motion) of its decision to close North Carroll. In its Motion, the Local Board asserts that Appellants Mayor Ryan Warner; Mayor Christopher Nevin; North Carroll Recreation Council (NCRC); Belisimo's; and Illiano's J&P Restaurant lack standing to bring the instant appeal.

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

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[1] The Local Board is referred to in different ways in various documents, including "Carroll County Board of Education," and "Carroll County Public Schools." The correct nomenclature is the "Board of Education of Carroll County." All variations in the record refer to the same entity.

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

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

[4] The portion of the Motion concerning the Local Board's motion for summary affirmance is addressed in a separate Ruling. This Ruling only addresses the portion of the Motion requesting the dismissal of some of the Appellants based on lack of standing.

On March 18, 2016, the Appellants filed a Response to the Local Board's Motion (Response),[5] and on March 25, 2016, the Local Board filed a Memorandum in Reply to the Appellant's Response. On April 8, 2016, the Appellants filed a Supplement to the Response (Supplement).[6]

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

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

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[5] The Appellants attached the following to the Response: Ex. 1—Philosophy of Education/Mission, School Improvement Beliefs, and Goals: Carroll County Public Schools: Building the Future; Ex. 2—Affidavit of the Honorable Chris Nevin, dated March 17, 2016; Billing Statements; Email from Kip Barkler to James Doolan, *et al.*, dated December 7, 2015; Ex. 3—Affidavit of the Honorable Ryan Warner, dated March 18, 2016; Ex. 4—Affidavit of John Woodley, dated March 17, 2016; Email from J. Woodley to Virginia Harrison, *et al.* , dated November 3, 2015; NCRC "The Impact of Carroll Public School Closures on Recreation Councils; Email from J. Woodley to James Doolan, dated November 4, 2015; Carroll County Public" Schools Administrative Regulations Board Policy KGF: Community Use of School Facilities, updated August 24, 2011; Ex. 5—Educational Facilities Master Plan, 2015-2024, dated June 10, 2015, Section 4, Existing School Facilities Charts; Class Size Report, 2013-2014, dated November 11, 2013; Ex. 6—Email from William Caine to Lauren Loricchio, dated November 17, 2015; Ex. 7—Lisa R. Householder to Penny Rockwood, *et al.*, dated January 26, 2016; Ex. 10—Affidavit on Augusto Illiano, dated March 17, 2016.

[6] On April 4, 2016, the Local Board filed a Motion to Compel and/or for Sanctions in this matter. The Local Board withdrew the motion at the April 11, 2016 hearing.

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

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

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

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

ISSUE

Should the Local Board's Motion to Dismiss be granted?

DISCUSSION

In its Motion, the Local Board argued that the following parties lack standing to appeal the Final Plan: Mayor Ryan Warner; Mayor Christopher Nevins; the NCRC; Belisimo's; and Illiano's J&P Restaurant, and therefore, are not proper parties to the instant case.

The State Board's regulations provide for a Motion to Dismiss in COMAR 13A.01.05.03C, as follows:

> **.03 Response to Appeals.**
>
> ...
> C. Motion to Dismiss.
>
> (1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:
>
> (a) The county board has not made a final decision;
> (b) The appeal has become moot;
> (c) The appellant lacks standing to bring the appeal;
> (d) The State Board has no jurisdiction over the appeal; or
> (e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.
>
> (2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in § C(1) of this regulation.

OAH's Rules of Procedure similarly provide for consideration of a motion to dismiss under COMAR 28.02.01.12C, which provides as follows:

> C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as "a notice of agency action, an

appeal of an agency action, or any other request for a hearing by a person." The "initial pleading" in this case is the appeal filed by the Appellants on January 6, 2016.

COMAR 28.02.01.12C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule is helpful in analyzing a similar motion under the procedural regulations of the OAH. In a motion to dismiss, the moving party must establish that it is entitled to relief. *See Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312 (1996); *Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997). Furthermore, when construing a motion of this nature, the ALJ is required to examine the evidence in the light most favorable to the non-moving party. Case law establishes several relevant rules. First, the properly pleaded allegations contained in a complaint are accepted as true. Second, reasonable inferences favorable to the complainant are drawn from the properly pleaded facts. Third, any ambiguity or uncertainty in the allegations is construed against the complainant. *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 344-45 (2000).

In the instant matter, the Local Board requests dismissal of the case as to the mayors, NCRC, and restaurants, on the basis that each lacks standing to pursue the case. Numerous cases have addressed what is required before a party has standing. *Flast v. Cohen*, 392 U.S. 83, 99 (1968) addressed the concept of standing, in general. Acknowledging the amorphous or fluid nature of the jurisdictional concept, the Court explained that the

> fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' (*citations omitted).*

Although constitutional questions are not at issue in this case, the explanation of standing in *Flast* is instructive. The key is whether the party has a sufficient personal stake in the outcome of a case to establish the right to be a party to the proceeding.

The Supreme Court clarified its position on standing before a federal court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In that case, the Court announced that standing requires a showing of three elements, including: (1) injury in fact;[11] (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood "that the injury will be 'redressed by a favorable decision.'" *Id.* at 560-61. The Court determined that environmental groups did not have standing to challenge a regulation of the Secretary of the Interior that required other agencies to confer only with him regarding federally funded projects in the United States and on the high seas. In each of these cases, the issue was whether a party had standing to pursue an action in federal court.

The Maryland Court of Appeals addressed the issue of standing in administrative proceedings in *Sugarloaf Citizens' Ass'n, et al. v. Dept. of Environment*, 344 Md. 271 (1996). This case involved the issuance of construction permits by the Department of Environment for an incinerator that was to be located adjacent to property owned by association members. The Court explained that, unlike the requirements to establish standing for judicial review, the standard to establish standing in an administrative hearing is substantially lower. The Court:

> recognize[d] a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision.

[11] This injury is defined as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent." *Id.* at 560 *(citations omitted).*

Id. at 285-86. *See also Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 628 (2003) (holding that "[m]ere presence at an administrative proceeding, without active participation, is sufficient to establish oneself as a party to the proceeding"); *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423 (1976); *Mid-Atlantic Power Supply Ass'n v. Public Service Comm'n of Maryland*, 361 Md. 196, 213 (2000). The Court in *Sugarloaf* continued:

> The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily.

Id. at 286 (internal citations omitted).

Similarly, in *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137 (1967), the Court of Appeals found that appellants had standing to challenge the granting of a zoning ordinance exception because the property at issue was adjacent to the appellants' property and thus, they were "persons aggrieved" by the issuance of the permit. Consistent with reasoning of *Sugarloaf* and *Morris*, the Court relied on the State Zoning laws that required a person to be "aggrieved" to appeal both *to* the Board of Appeals and to appeal *from* a Board of Appeals decision to court.

The Court has established through these cases that, absent a statute or regulation requiring some additional basis for standing, an administrative hearing before an agency requires only the more lenient requirement that a person or entity have participated in some fashion before the agency to establish that the person has standing to challenge an agency decision. In the instant case, the statutes and regulations regarding a local board's decision to close schools place no restriction on who may appeal the local board's decision to the State Board. With regard to the establishment of public schools, the Education Article provides:

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

. . .

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

Md. Code Ann., Educ. § 4-109(a) (2014).

COMAR 13A.02.09.03 addresses appeals of local board school closure decisions:

A. An appeal to the State Board of Education may be submitted in writing within 30 days after the decision of a local 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.

COMAR 13A.01.05.01 addresses the definitions of "Appellant" and "Party."[12] COMAR 13A.01.05.02 discusses the contents of an appeal. The standard of review in these cases, that the local board's decision was arbitrary, unreasonable, or illegal, is considered in COMAR 13A.01.05.05. That regulation also places the burden of proof on the appellant by a preponderance of the evidence. COMAR 13A.01.05.05D. The hearing procedures are addressed in COMAR 13A.01.05.07.

The applicable Education statute and regulations do not address the standing of a party to bring an administrative appeal of a local board's school closings decision. Unlike the zoning statute or regulations in *Bryniarski*, the Education statute and regulations do not require an appellant to be "aggrieved" to appeal the decision of a local board to close schools to the State Board of Education. Absent such a regulation, one might infer that the rather lenient standard announced in *Sugarloaf* controls, and so long as the Appellants participated in some manner

[12] "'Appellant' means the individual or entity appealing a final decision of a local board." COMAR 13A.01.05.01B(1). "'Party' means either an appellant, respondent, or any person or entity allowed to intervene or participate as a party." COMAR 13A.01.05.01B(8).

before the local board or asserted an interest in the outcome, they shall have standing to challenge the local board's decision at the administrative level.

However, the fact that there is no regulation or statute does not simply close the discussion on this issue. Notwithstanding the absence of a statute or a regulation regarding standing, the State Board has consistently held that an Appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board.[13] Pursuant to section 10-214(b) of the State Government Article of the Annotated Code of Maryland, I am required to follow "any agency regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the agency is or would have been bound if it were hearing the case." Through its decisions, the State Board has established a long-standing policy that an appellant must assert a "direct interest" or "injury in fact" to have standing to challenge a decision of the local board. By statute, I am obligated to follow the State Board's preexisting policy to determine the standing of a party to appeal the decision of the Local Board. Therefore, the question becomes whether the Appellants named in the Local Board's Motion have asserted a direct interest or injury in fact to bring this appeal.

A series of cases in which the State Board has established and refined this policy are instructive in demonstrating the characteristics which determine whether or not a party has standing to pursue an appeal of this nature. Essentially, the State Board has limited standing to appeal a local board's decision to a definable group of parents whose children will be directly affected by the decision, that is, parents whose children who attend the specific schools or programs so affected. *See Clarksburg Civic Association v. Montgomery County Bd. Of Educ.*,

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[13] *See Marshall v. Baltimore City Board of School Commissioners,* MSBE Opinion No. 03-38 (2003); *Regan v. Washington County Board of Education,* MSBE Opinion No. 03-13 (2003); *Bellotte v. Anne Arundel County Board of Education,* MSBE Opinion No. 03-08 (2003); *Stratford Woods Homeowners' Association, Inc., v. Montgomery County Board of Education,* 6 Op. MSBE 238 (1992).

MSBE Op. No. 07-34; *Joan & Michael Taylor, et al. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-32; *Palmer v. Wicomico County Bd. of Educ.*, MSBE Op. No. 99-37.

Ryan Warner, Mayor of Manchester and Christopher Nevin, Mayor of Hampstead[14]

The Local Board asserts that Mayors Warner and Nevin (Mayors), in their capacity as Mayors of Manchester and Hampstead, respectively, lack standing to pursue the instant case. The Local Board contends that despite statements that they have a generalized duty to represent their constituents, this obligation does not confer standing on the Mayors (or mayors, in general) to appeal a decision that affects only a specific portion of their town's populations. In support of its argument, the Local Board cites *Clarksburg Civic Association* that requires that an association represent members of a "clearly definable group of students affected by the local board's decision." It further cites *Adams v. Montgomery County Board of Education*, 3 Op. 143, 149, in which the State Board stated that "municipalities, committees, and other unincorporated associations will have the burden of showing that they have a direct interest of their own—separate and distinct from that of their individual members." Even in a liberal interpretation of standing, the State Board, in *Stratford Woods Home Owner's Association, Inc. v, Montgomery County Board of Education*, 6 Op. MSBE 238 (1992), held that a homeowners' association had standing since it specifically represented the interest of parents, all of whom had children who were or would be students affected by the action of the local board.

The Appellant Mayors assert that the Final Plan affects numerous aspects of their municipalities, including water and sewer capacity, sufficiency of police force staffing, traffic, businesses, homeownership, and community activities. They contend that the State Board's more liberal interpretations of standing permit their participation based on the economic harm that can cause direct injuries in fact. The Mayors are particularly disturbed by their belief that

[14] Although each mayor is an appellant in his own right, the arguments on standing for both are identical.

although the Final Plan profoundly affects their communities, the Local Board did not adequately involve them in the process.

I acknowledge the Mayors' position that, as guardians of their respective municipalities, they owe a duty to their citizens to protect what they consider to be a danger to the cohesiveness and stability of the community. This sentiment, however, is insufficient to confer standing to appeal the actions of the Local Board in this matter. The Mayors purport to represent too generalized a population, one that includes many individuals who likely outnumber those actually affected by the Final Plan. Moreover, there is no specific authority for the Mayors to "represent" their constituents in this proceeding. As to standing on the basis of their respective offices and interests, the Mayors fail to reach the specificity and exclusivity required for standing before the State Board. Unlike the situation in an earlier, more liberal case such as *Stratford Woods*, they do not possess an explicit or singular function to protest the actions of the Local Board, nor do they solely represent the interests of parents of children who attend the affected schools. The totality of the interests of the Mayors, and the community they seek to represent, are simply too broad to meet the standing requirements to appeal the Local Board's adoption of the Final Plan.

NCRC

The Local Board contends that the NCRC lacks standing to appeal the action of the Local Board because it has not demonstrated that it will be aggrieved by the adoption of the Final Plan and that it would suffer some "injury in fact, economic or otherwise," the standard cited in *Adams*. The Local Board further asserts that the NCRC's assertion that it would somehow suffer due to the closing of North Carroll rests on speculation, and has no demonstrable basis. In fact,

the Local Board posits (just as speculatively, though) that the NCRC may well benefit from the closure of North Carroll, due to the increased availability of the facility to the NCRC.

NCRC counters that the closure of North Carroll would cause it to lose valuable access to a facility, and that although the extent of that harm is unknown, it will surely have an impact on the organization. NCRC believes that the adoption of the Final Plan would force it to cut programs that benefit the community.

The alleged injury to NCRC, and any negative impact resulting from the Local Board's actions are simply too conjectural to confer standing to bring the instant appeal. While any change can have a ripple effect, and can cause concern for local interests, NCRC's apprehension over the adoption of the Final Plan is without specificity or foundation. Absent an "injury in fact," NCRC lacks standing to pursue the appeal.

Belisimo's and Illiano's J&P Restaurant

The Local Board argues that Belisimo's and Illiano's J&P Restaurant (collectively Restaurants) lack standing to appeal the Local Board's decision because they have not alleged a direct interest or specific effect beyond the concern of the general population of the adoption of the Final Plan. Citing *Sartucci v. Montgomery County Board of Education*, MSBE Op. No. 10-31 (2010); *Gruber v. Baltimore County Board of Education*, MSBE Op. No. 06-36 (2006), the Local Board asserts that without the demonstration of a "direct injury in fact, economic or otherwise" beyond general interest, the Restaurants are precluded from the appeal, and that speculative allegations, without specific evidence, fail to establish standing.

The Restaurants allege that the closure of North Carroll would deprive them of a student labor force, as well as cause a loss of revenue due to income previously earned by catering school and team functions. They believe that the Local Board has been dismissive towards their

concerns and that they would have a direct economic consequence due to their student workers not being able to get to work on time, as well as a potential loss of revenue.

The economic effect of the Final Plan on the Restaurants, however, remains entirely speculative. As noted by the Local Board, the distance between North Carroll and its designated replacement, Manchester Valley, is less than five miles, hardly an onerous distance. Moreover, the Restaurants have offered no specific analysis or proof of their feared economic impact, and have simply expressed concern that the Final Plan might have an impact on their businesses. The ties between the Restaurants and the Final Plan are simply too tenuous to meet the criteria required for standing, which include direct and verifiable harm, or an "injury in fact." As a result, the Restaurants lack standing to pursue the instant appeal.

Summary

While all of the concerned individuals or entities subject to the Local Board's Motion have expressed sincere concerns over the adoption and implementation of the Final Plan, none has demonstrated any confirmable injury or direct connection to actions by the Local Board. The closing of a school stirs up great emotion in the heart of a community; however, not everyone in the community has standing to appeal such a decision. The State Board has set parameters to define affected parties on whom standing may be conferred, and without these logical limitations, virtually anyone or any entity who believes itself aggrieved, to any degree, could bring an action. At present, the law does not support such an all-inclusive right to appeal, and therefore, absent meeting those established standards, the named Appellants in the Motion lack standing to appeal.

CONCLUSION OF LAW

I conclude, as a matter of law, that Ryan Warner, Mayor of Manchester; Christopher Nevin, Mayor of Hampstead; the North Carroll Recreation Council; Belisimo's; and Illiano's J&P Restaurant do not have standing to pursue an appeal of the Local Board's adoption of the December 9, 2015 Superintendent's Final School Closure and Boundary Adjustment Plan. COMAR 13A.01.05.03C; COMAR 28.02.01.12C; *Clarksburg Civic Association v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-34; *Sartucci v. Montgomery County Bd, of Educ.*, MSBE Op. No. 10-31.

PROPOSED ORDER

I **PROPOSE** that the Board of Education of Carroll County's Motion to Dismiss, as to Ryan Warner, Mayor of Manchester; Christopher Nevin, Mayor of Hampstead; the North Carroll Recreation Council; Belisimo's; and Illiano's J&P Restaurant, be **GRANTED**.

May 5, 2016
Date Order Mailed

Harriet C. Helfand, DOS
Harriet C. Helfand
Administrative Law Judge

HCH/sw
#161830

RIGHT TO FILE EXCEPTIONS

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

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ELIZABETH GALAIDA,	*	**BEFORE HARRIET C. HELFAND,**
GREGORY GALAIDA,		
TERRENCE MAHONEY,	*	**AN ADMINISTRATIVE LAW JUDGE**
MARY MAHONEY,		
HEATHER MCKENZIE,	*	**OF THE MARYLAND OFFICE**
JOHN LEANNARDA,		
LESLIE DEERING,	*	**OF ADMINISTRATIVE HEARINGS**
CHERYL CASE,		
ELA WISWAKARMA,	*	**OAH No: MSDE-BE-16-16-02833**
and		
BAGUS WISWAKARMA,	*	
APPELLANTS	*	
v.	*	
BOARD OF EDUCATION OF	*	
CARROLL COUNTY,	*	
RESPONDENT	*	

* * * * * * * * * * * * * *

PROPOSED RULING ON MOTION TO DISMISS

BACKGROUND
ISSUE
EVIDENCE
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER
RIGHT TO FILE EXCEPTIONS

BACKGROUND

On January 8, 2016, the Appellants[1] filed an appeal with the Maryland State Board of Education (State Board) of the decision of the Board of Education of Carroll County (Local

[1] A number of Appellants who initiated the appeal withdrew their appearance prior to the April 11, 2016 motions hearing. The withdrawn Appellants include: Deborah Schneider; Rick Schneider; Lisa Kraft; Carolee Kinloch; Matthew Kinloch; Rima Allport; Jennifer Griffin; Wyatt Griffin; Barry Grimes; Melissa Grimes; Jerry Griffin; Dinah Griffin; and Tracy Sutkaytis. Additionally, other Appellants, namely Liza Hawkins; Sandy Brothers; Jennifer Johns; Kristy Harris; Jennifer Porter-Drake; Phil Drake; Edward Mahoney; Keri Pressimore; Rebecca Brightful; Rosemary Kitzinger; Stacey Greene Hudson; Stacey French; Marsha Jackson Reed; Jeff Reed; Patina Casazza-Schumacher; Shannon Roberman; Sergey Roberman; Mark Truax; Krisha Davis; Cindy Casper; Nicole Wilson; Roxanne Welsh; Elizabeth Welsh; Jared Welsh; Kristy Dennsteadt; Rachel Boone; Brenda Barber; Rick Barber; Linda Johnson; David Johnson; and Evets Morgan, failed to appear at the April 11, 2016 motions hearing,

Board, BECC, or Respondent)[2] to close New Windsor Middle School (New Windsor) as of the 2016-2017 school year.[3]

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

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

On March 9, 2016, I conducted an In-Person Prehearing Conference (Conference), at which time I scheduled dates for the filing of responsive motions, discovery, a motions hearing, and a hearing on the merits, if needed. On March 14, 2016, I issued a Prehearing Conference Report (PCR) outlining the discussion at the Conference. The PCR included the scheduling of a motions hearing for April 11, 2016, at 10:00 a.m. at the OAH in Hunt Valley, Maryland.

On March 18, 2016, William N. Sinclair, Esquire, and Kathleen Sinclair, Esquire, entered their appearance as counsel for the following Appellants: Cheryl Case; John Leannarda; Leslie Deering; Mary Mahoney; Terrence Mahoney; Heather McKenzie; Bagus Wiswakarma; and Ela Wiswakarma, and filed Appellants' Opposition to Appellee's Motion to Dismiss or in the

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either in proper person or represented by counsel. On April 21, 2016, I issued a default order proposing that their participation in the case be terminated.

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

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

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

Alternative for Summary Affirmance (Opposition).[5] On March 25, 2016, the Local Board filed a Memorandum in Reply to Opposition to Motion to Dismiss or in the Alternative for Summary Affirmance (Reply).

On April 11, 2016, I conducted a motions hearing during which the Local Board and the Appellants offered arguments on the Motion and Opposition.[6] William J. Sinclair, Esquire, represented Appellants Elizabeth and Gregory Galaida; Cheryl Case; John Leannarda; Leslie Deering; Mary Mahoney; Terrence Mahoney; Heather McKenzie; Bagus Wiswakarma; and Ela Wiswakarma.[7] Edmund J. O'Meally, Esquire, and Adam Konstas, Esquire, represented the Local Board.[8]

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.01.05; COMAR 28.02.01. Any dispositive decision by the ALJ will be a recommendation in the form of a proposed decision to the State Board. COMAR 13A.01.05.07E.[9]

ISSUE

Should the Local Board's Motion to Dismiss be granted?

DISCUSSION

In its Motion, the Local Board initially moved that all of the Appellants, with the exception of Elizabeth Galaida, lacked standing to appeal the Final Plan. The Local Board's rationale for this position was that originally, Ms. Galaida initiated the appeal on behalf of, or as

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

[6] As the April 11, 2016 motions hearing was consolidated with the other appeals, I also heard arguments from the other respective appellants regarding their respective appeals.

[7] Mr. and Mrs. Galaida, as well as Leslie Deering, were also present.

[8] Counsel for the Local Board was accompanied by Stephen H. Guthrie, Superintendent of Schools, Local Board, and Jonathan D. O'Neal, Assistant Superintendent for Administration, Local Board.

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

the representative of, all of the other named Appellants. The Local Board based its assertion on the fact that Ms. Galaida was not an attorney licensed to practice law in the State of Maryland and therefore, could not legally represent other individuals in the instant matter. Since the filing of the initial appeal, Ms. Galaida, along with Appellants Gregory Galaida; Cheryl Case; John Leannarda; Leslie Deering; Mary Mahoney; Terrence Mahoney; Heather McKenzie; Bagus Wiswakarma; and Ela Wiswakarma retained the services of Mr. and Ms. Sinclair to represent them in the appeal. At the motions hearing, the Local Board essentially abandoned its opposition to the participation of the now-represented Appellants, with the exception of Bagus and Ela Wiswakarma.[10] The Local Board's objection to the Wiswakarmas' standing to appeal in the instant matter was the status of the Wiswakarmas' child, who, while physically a student a New Windsor, attends the school based on an Individualized Education Plan (IEP), under the Individuals with Disabilities Education Act (IDEA),[11] which provides the placement of a student based on a program of services, rather than a geographically-based assignment. Because of this distinction, the Local Board moved to dismiss Mr. and Mrs. Wiswakarma on the basis of lack of standing to pursue the instant case.

The State Board's regulations provide for a Motion to Dismiss in COMAR 13A.01.05.03C, as follows:

> **.03 Response to Appeals.**
>
> ...
> C. Motion to Dismiss.
>
> (1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:
> (a) The county board has not made a final decision;
> (b) The appeal has become moot;

[10] At the motions hearing, the Local Board obliquely argued that, outside of Ms. Galaida, none of the other Appellants initially appealed in their own right, prior to the Sinclairs' representation, and thus were not proper parties to the appeal. This argument was unavailing; although, in the beginning, Ms. Galaida purported to "represent" the other Appellants, each signed the appeal, and clearly conveyed an intent to participate as Appellants. Moreover, as the remaining Appellants were all identified as parents of children who attend affected schools, I consider them to have standing as proper parties in this matter.

[11] *See* 20 U.S.C.A. §§ 1400-1487 (2010).

(c) The appellant lacks standing to bring the appeal;
(d) The State Board has no jurisdiction over the appeal; or
(e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.

(2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in § C(1) of this regulation.

OAH's Rules of Procedure similarly provide for consideration of a motion to dismiss under COMAR 28.02.01.12C, which provides as follows:

C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person." The "initial pleading" in this case is the appeal filed by the Appellants on January 8, 2016.

COMAR 28.02.01.12C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule is helpful in analyzing a similar motion under the procedural regulations of the OAH. In a motion to dismiss, the moving party must establish that it is entitled to relief. *See Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997); *Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312 (1996). Furthermore, when construing a motion of this nature, the ALJ is required to examine the evidence in the light most favorable to the non-moving party. Case law establishes several relevant rules. First, the properly pleaded allegations contained in a complaint are accepted as true. Second, reasonable inferences favorable to the complainant are drawn from the properly pleaded facts. Third, any ambiguity or uncertainty in the allegations is construed against the complainant. *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 344-45 (2000).

In the instant matter, the Local Board requests dismissal of the case as to the Wiswakarmas, on the basis that they lack standing to pursue the case. Numerous cases have addressed what is required before a party has standing. *Flast v. Cohen*, 392 U.S. 83 (1968) addressed the concept of standing, in general. Acknowledging the amorphous or fluid nature of the jurisdictional concept, the Court explained that the:

> fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'

Id. at 99 (citations omitted). Although constitutional questions are not at issue in this case, the explanation of standing in *Flast* is instructive. The key is whether the party has a sufficient personal stake in the outcome of a case to establish the right to be a party to the proceeding.

The Supreme Court clarified its position on standing before a federal court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In that case, the Court announced that standing requires a showing of three elements, including: (1) injury in fact;[12] (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood "that the injury will be 'redressed by a favorable decision.'" *Id.* at 560-61. The Court determined that environmental groups did not have standing to challenge a regulation of the Secretary of the Interior that required other agencies to confer only with him regarding federally funded projects in the United States and on the high seas. In each of these cases, the issue was whether a party had standing to pursue an action in federal court.

The Maryland Court of Appeals addressed the issue of standing in administrative proceedings in *Sugarloaf Citizens' Ass'n, et al. v. Dept. of Environment*, 344 Md. 271 (1996).

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[12] This injury is defined as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent." *Id.* at 560 *(citations omitted)*.

This case involved the issuance of construction permits by the Department of Environment for an incinerator that was to be located adjacent to property owned by association members. The Court explained that, unlike the requirements to establish standing for judicial review, the standard to establish standing in an administrative hearing is substantially lower. The Court:

> recognize[d] a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision.

Id. at 285-86. *See also Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 628 (2003) (holding that "[m]ere presence at an administrative proceeding, without active participation, is sufficient to establish oneself as a party to the proceeding"); *Mid-Atlantic Power Supply Ass'n v. Public Service Comm'n of Maryland*, 361 Md. 196, 213 (2000); *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423 (1976). The Court in *Sugarloaf* continued:

> The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily.

Id. at 286 (internal citations omitted). Similarly, in *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137 (1967), the Court of Appeals found that appellants had standing to challenge the granting of a zoning ordinance exception because the property at issue was adjacent to the appellants' property and thus, they were "persons aggrieved" by the issuance of the permit. Consistent with reasoning of *Sugarloaf* and *Morris*, the Court relied on the State Zoning laws that required a person to be "aggrieved" to appeal both *to* the Board of Appeals and to appeal *from* a Board of Appeals decision to court. The Court has established through these cases that, absent a statute or regulation requiring some additional basis for standing, an administrative hearing before an agency requires only the more lenient requirement that a person

or entity have participated in some fashion before the agency to establish that the person has standing to challenge an agency decision. In the instant case, the statutes and regulations regarding a local board's decision to close schools place no restriction on who may appeal the local board's decision to the State Board. With regard to the establishment of public schools, the Education Article provides:

> (a) County board may establish schools.- Subject to approval by the State Superintendent and in accordance with the applicable bylaws, rules, and regulations of the State Board, a county board may establish a public school if, in its judgment, it is advisable.
> . . .
> (c) With the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.

Md. Code Ann., Educ. § 4-109(a) (2014).

COMAR 13A.02.09.03 addresses appeals of local board school closure decisions:

> A. An appeal to the State Board of Education may be submitted in writing within 30 days after the decision of a local 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.

COMAR 13A.01.05.01 addresses the definitions of "Appellant" and "Party."[13] COMAR13A.01.05.02 discusses the contents of an appeal. The standard of review in these cases, that the local board's decision was arbitrary, unreasonable, or illegal, is considered in COMAR 13A.01.05.05. That regulation also places the burden of proof on the appellant by a preponderance of the evidence. COMAR 13A.01.05.05D. The hearing procedures are addressed in COMAR 13A.01.05.07.

The applicable Education statute and regulations do not address the standing of a party to bring an administrative appeal of a local board's school closings decision. Unlike the zoning statute or regulations in *Bryniarski*, the Education statute and regulations do not require an

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[13] "'Appellant' means the individual or entity appealing a final decision of a local board." COMAR 13A.01.05.01B(1). "'Party' means either an appellant, respondent, or any person or entity allowed to intervene or participate as a party." COMAR 13A.01.05.01B(8).

appellant to be "aggrieved" to appeal the decision of a local board to close schools to the State Board of Education. Absent such a regulation, one might infer that the rather lenient standard announced in *Sugarloaf* controls, and so long as the Appellants participated in some manner before the local board or asserted an interest in the outcome, they shall have standing to challenge the Local Board's decision at the administrative level. However, the fact that there is no regulation or statute does not simply close the discussion on this issue. Notwithstanding the absence of a statute or a regulation regarding standing, the State Board has consistently held that an Appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board.[14] Pursuant to section 10-214(b) of the State Government Article of the Annotated Code of Maryland, I am required to follow "any agency regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the agency is or would have been bound if it were hearing the case." Through its decisions, the State Board has established a long-standing policy that an appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board. By statute, I am obligated to follow the State Board's preexisting policy to determine the standing of a party to appeal the decision of the Local Board. Therefore, the question becomes whether the Wiswakarmas have asserted a direct interest or injury in fact to bring this appeal.

A series of cases in which the State Board has established and refined this policy are instructive in demonstrating the characteristics which determine whether or not a party has standing to pursue an appeal of this nature. Essentially, the State Board has limited standing to appeal a local board's decision to a definable group of parents whose children will be directly affected by the decision, that is, parents whose children who attend the specific schools or

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[14] *See Marshall v. Baltimore City Board of School Commissioners,* MSBE Opinion No. 03-38 (2003); *Regan v. Washington County Board of Education,* MSBE Opinion No. 03-13 (2003); *Bellotte v. Anne Arundel County Board of Education,* MSBE Opinion No. 03-08 (2003); *Stratford Woods Homeowners' Association, Inc., v. Montgomery County Board of Education,* 6 Op. MSBE 238 (1992).

programs so affected. *See Clarksburg Civic Ass'n v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-34; *Joan & Michael Taylor, et al. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-32; *Palmer v. Wicomico County Bd. of Educ.*, MSBE Op. No. 99-37.

Neither party disputes the Wiswakarmas' child's physical presence at New Windsor, where, per acknowledgement by the parties, she participates as a student in the Autism Spectrum Disorders Program (ASDP). While the Wiswakarmas' child's placement in this program is based on her IEP, her current attendance at New Windsor is irrefutable. Should the Final Plan be upheld, the ASDP would no longer remain at New Windsor, and the relocation of the program would necessarily affect the students who are participants in that program.

While the relevant case law limits standing to appeal a local board's decision to parents and students who *attend* affected schools or programs, this designation has not been narrowed to restrict participation via the mechanism by which a student attends a school or program. Simply put, the Wiswakarmas' child attends New Windsor, and absent the Final Plan, would likely continue to do so.[15] For this reason, I find the Local Board's argument that the Wiswakarmas lack standing unavailing, and will recommend that the State Board deny the Local Board's Motion as to this particular issue, and to the remaining represented Appellants in this case.

CONCLUSION OF LAW

I conclude, as a matter of law, that the Wiswakarmas have standing to pursue an appeal of the Local Board's adoption of the December 9, 2015 Superintendent's Final School Closure and Boundary Adjustment Plan. COMAR 13A.01.05.03C; COMAR 28.02.01.12C; *Clarksburg Civic Ass'n v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-34; *Joan & Michael Taylor, et al. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-32; *Palmer v. Wicomico County Bd. Of Educ.*, MSDE Op. No. 99-37.

[15] While there are no guarantees that the Wiswakarmas' child's IEP would necessarily continue her current placement, or that the ASDP would remain at New Windsor should the Final Plan not be upheld, the Wiswakarmas have established standing at this time.

PROPOSED ORDER

I **PROPOSE** that the Board of Education of Carroll County's Motion to Dismiss be **DENIED.**

May 5, 2016
Date Order Mailed

Harriet C. Helfand
Administrative Law Judge

HCH/sm
#161832

RIGHT TO FILE EXCEPTIONS

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

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