

ERIN SIPES, et al.,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-30

OPINION

INTRODUCTION

This case, *Sipes, et al.*, is one of five consolidated cases in an appeal challenging the December 9, 2015 decision of the Carroll County Board of Education (“local board”) to close three public schools, Charles Carroll Elementary School, New Windsor Middle School, and North Carroll High School. The Appellants in this case challenge the closure of Charles Carroll Elementary School.¹ In accordance with COMAR 13A.01.05.07(A)(1), we transferred the matter to the Office of Administrative Hearings (“OAH”).

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

FACTUAL BACKGROUND

Before we review the facts of this case, we wish to acknowledge the concerns of the Appellants about certain text messages between board members and communication between board members and County Commissioners about the closure process and result. These communications, and the Appellants’ belief that their views were not fairly considered, lead us to question the full transparency of the board and the administration in conducting the closure process. If board members and the administration are viewed as working secretly behind the scenes, distrust arises in the community about the decisions being made.

We have reviewed especially the text messages sent between September 3, 2015 and November 9, 2015. Over that time, the Vice President of the board texted, at one time or another, all other members of the board commenting, among other things, on the various closure plans, what was wrong with them, how one or another would rip “this county totally apart” including

¹ Appellants are parents of children who attended or were slated to attend Charles Carroll.

² The appellants in the other cases challenge the closure of New Windsor Middle School and North Carroll High School. They also filed exceptions to the ALJ’s proposed rulings. We have addressed those exceptions in separate memoranda.

her own neighborhood. The board members texted back their own views of the various closure plans and options under consideration. They texted enrollment data, sometimes inaccurately. All of this took place outside of the public view on a matter of extraordinary public concern. Given the abbreviated methods of texting, the texts are often cryptic and difficult to put in context. When exposed to public view, as they have been in this case, they can be interpreted as part of a secret decision making plan.

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

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

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

We now turn to the facts of this case.

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

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

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

Charles Carroll has a capacity of 320 students, which is almost half of the local board's determination of the optimum size for an elementary school. The actual enrollment of Charles Carroll in 2014 was 271. Enrollment is expected to decline and stabilize at 250 for the foreseeable future.

Charles Carroll was originally built in 1929; the school also has portions built in the 1950's and 1970's. Charles Carroll has a variety of physical deficiencies, including a failed roof, a failed heating system, non-compliance with fire safety standards, limited electrical outlets and computer data drops, an end-of-life cycle plumbing systems, and a non-compliant septic system. Charles Carroll also is not accessible as required under the Americans with Disabilities Act ("ADA").

The local board has long expressed a concern regarding Charles Carroll's capacity to operate as a viable school. In February 2012, the local board engaged the firm of Hord, Coplan, and Macht ('HCM') to conduct a feasibility study of Charles Carroll and produce a Feasibility Study Report (FSR). The FSR included several options for addressing Charles Carroll's problems, including an option for closure. The HCM study was presented to the local board at its February 22, 2012 meeting and was also presented at a community meeting held at Charles Carroll on February 23, 2012.

The local board conducted another meeting on March 14, 2012, in which Stephen Guthrie, School Superintendent, reviewed the HCM study and proposed recommendations. He recommended that the local board consider designating the Charles Carroll roof and heating plant as systemic projects to be prioritized in the local board's approved Capital Improvement Budget ("CIP") for fiscal year 2013, not proceed with the modernization or replacement of the building, and collaborate with the County Commissioners to reach an agreement to prioritize crucial needs in the CIP and develop a joint plan for long term funding.

At the April 25, 2012 meeting, the local board considered the HCM study and agreed on the need for a comprehensive facility study to examine all of the school system's building and use of educational space. It gave ample opportunity for the public to participate and share feedback on any recommendations to consolidate schools. This agreement resulted in the Superintendent's preparation of the Comprehensive Facility Utilization Study ("CFUS").

On October 10, 2012, Superintendent made a presentation to the local board on the CFUS. The Superintendent explained that the purpose of the CFUS was to explore the most efficient use of school facilities in light of maintenance of effort funding, and with a goal of increasing pay for employees of the school system. The Superintendent created assignments to complete the study and to research, analyze, and present viable options in order to achieve the most effective and efficient use of capital resources. The Superintendent also recommended hiring a third party to conduct a further study and recommend options regarding possible school closures.

At the local board's October 24, 2012 meeting, it approved the recommended independent study. MGT of American Consultants (MGT) was engaged to conduct the independent study. At the local board's March 27, 2013 meeting, it also approved a joint county and school system staff committee to study the proper utilization of schools.

MGT presented its Facility Utilization Study Final Report (MGT Report) at the Local Board's December 11, 2013 meeting. The MGT Report identified Charles Carroll as having facility condition issues, as well as noting issues with other Carroll County schools. MGT proposed replacing Charles Carroll and William Winchester Elementary School ("William Winchester") with a new K-8 facility, among other extensive recommendations.

On January 8, 2014, the local board held a joint meeting with the Board of Commissioners of Carroll County (County Commissioners), at which the Superintendent presented the MGT Report. On January 29, 2014, the local board held a meeting in which Facilities Planner Bill Caine presented the 2014-2015 through 2023-2024 Enrollment Projections Analysis Report ("EPA Report"). The EPA Report noted a decline in enrollment of 1,917 students over the next seven years, driven by declining annual birth rates and migration of families from Carroll County.

On February 12, 2014, the local board approved the Superintendent's recommendation for facilities utilization. The Superintendent's recommendations included (1) placing in the 2014-2023 Education Facilities Master Plan a plan to close Charles Carroll, William Winchester and East Middle School (East Middle) and replace the schools with a new facility, as well as items regarding adjustments of boundaries of other elementary, middle, and high schools. The local board approved the formation of a committee to investigate the feasibility of the Superintendent's recommendation and to study school boundaries.

On April 2, 2014, the local board and the County Commissioners held a joint meeting to discuss the MGT Report and its recommendation to close schools. The group approved a joint site search committee to develop a plan to build a consolidated K-8 school to replace Charles Carroll, William Winchester, and East Middle.

The Local Board met on April 30, 2014, and considered the ramifications of the EPA Report, now termed the Education Facilities Master Plan for 2014-2023 ("Master Plan"). The Master Plan provided for the modernization of Charles Carroll Elementary, rather than closing. The local board announced a public hearing on the Master Plan would be held on May 29, 2014, and that the local board would vote on the Master Plan on June 11, 2014.

On June 11, 2014, the local board met and voted to approve the Master Plan. The local board noted, however, that a competing project had been presented at its December 11, 2013 meeting that proposed to consolidate Charles Carroll, William Winchester, and East Middle.

The local board met on September 10, 2014, and heard the report of the committee formed by the Superintendent to study school boundaries. Because of the various plans regarding the modernization or replacement of Charles Carroll, the local board delayed the feasibility study pursuant to the MGT Report on boundaries.

The local board met on December 10, 2014, at which time the Superintendent informed it that the Public School Construction Program of the Maryland State Department of Education ("MSDE") rejected planning approval for the proposed K-8 school, that the County Commissioners' CIP did not include the K-8 school, and that the Charles Carroll renovations were on hold.

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

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

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

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

At the September 9, 2015 meeting of the local board, the BAC presented its final report. The report contained two options for school closures and redistricting, and contained a timeline

for feedback, the public hearing process, and a final decision, and provided contact information for offering feedback, as well as additional information. Option 1 recommended the closure of Charles Carroll Elementary School and balancing enrollments across the remaining schools. The BAC determined that Option 1 was insufficient to address the decline in enrollment or to adequately reduce expenses. Option 2 recommended the closure of North Carroll High School, New Windsor Middle School, Charles Carroll Elementary School, Sandymount Elementary School and Mt. Airy Elementary School and balancing enrollments across the remaining schools. The BAC recommended this option.

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

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

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

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

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

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

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

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

- Consolidate Manchester Valley High School and North Carroll High School boundaries and combine the student population at Manchester Valley High School;

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

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

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

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

On December 3, 2015, Governor Larry Hogan wrote to Warren I. Sumpter, President of the Maryland Association of Boards of Education, and Dr. Theresa Alban, President of the Public School Superintendents Association of Maryland, informing them that he intended to

include new funding in the FY-17 budget “to assist local jurisdictions that have been facing the challenge of maintaining adequate funding during the same time that their student enrollments have declined.” The Governor’s letter noted Carroll County’s 7% decrease in enrollment, as well as greater levels of decreased enrollment in other counties. The Governor proposed a stop-gap funding of \$4 million for Carroll County Public Schools and expressed an interest in deferring school closings to create more time to create a more comprehensive plan.

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

The Final Plan was an updated version of the November 11 Plan. It was substantially identical to the November 11 Plan with various additions resulting from information obtained since the November 11 Plan was published. The additional material consisted of information on the issue of reimbursement of State bond debt, indicating a total maximum outstanding State debt on the three schools of \$653,347; updated utilization and enrollment analysis using the 2015 enrollment figures as the baseline; and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen minute shift to the school schedule.

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

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

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

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

STANDARD OF REVIEW

This appeal involves a school closure decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05A. *See also* *Bushey Drive Elementary School Parents v. Bd. of Educ. of Montgomery County*, 1 Op. MSBE 441 (1976) (State Board will not overrule a school closing decision unless it finds it to be arbitrary, unreasonable or illegal.).

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

RELEVANT LAW

State Regulations Governing School Closings – COMAR 13A.02.09.01

- A. Each local board of education shall establish procedures to be used in making decisions on school closings.
- B. The procedures shall ensure, at a minimum, that consideration is given to the impact of the proposed closing on the following factors:
 - (1) Student enrollment trends;
 - (2) Age or condition of school buildings;
 - (3) Transportation;
 - (4) Educational programs;
 - (5) Racial composition of student body;
 - (6) Financial considerations;
 - (7) Student relocation;
 - (8) Impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.
- C. The procedures shall provide, at a minimum, for the following requirements:
 - (1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following;

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

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

Local Board's Administrative Procedures for Public School Closures

I. Facilities Master Plan

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

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

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

II. State Mandates

- A. Factors to be Considered: Consideration shall be given, at a minimum, to the impact of the proposed closing in the following:
 - Student enrollment trends;
 - Age or condition of school building;
 - Transportation;
 - Education Programs;
 - Racial compositions of student body;
 - Financial considerations;
 - Student relocation;
 - Impact on community in geographic attendance area for school or schools, to which students will be relocating.

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

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

III. Local Assumptions

- A. Decisions about utilization of public education should concentrate on equitable delivery of educational services and/or safety. Minimal disruption to all established educational programs should be sought.

- B. In addition to public education program considerations, the percentage of utilization of a public school building should be considered.

- C. The closing of a public school should not be considered unless the building is not essential to the system-wide provision of educational opportunity.

- D. Expenditures related to support services and to the equitable delivery of education program should be kept in balance.

- E. Except in cases of emergency all school closing[s] should be scheduled to occur on July 31 of any year.

IV. Implementation

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

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

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

- C. Notification of the public hearing date, deadline for submission of written testimony, and the procedures to be followed by the [local board] in

making the final decision shall be given through school newsletter and shall be advertised in at least (2) two newspapers having general circulation in the geographic area for the school proposed to be closed and the school or schools in which students will be relocating. The notification shall appear at least two (2) weeks in advance of the public hearing.

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

LEGAL ANALYSIS

Weight of School Closing Factors

These Appellants argue that the analysis of some school closing factors do not support closure of Charles Carroll Elementary School. Although COMAR requires a local board to consider each of the school closing factors, the State Board has previously determined that a school closing decision need not be supported by every school closing factor in order to be upheld. *See Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000). In addition, it is up to the local board to determine the weight to be accorded each factor in its decision making process. *Kensington Elementary Sch. PTA v. Montgomery County Bd. of Educ.*, 2 MSBE 671 (1982). As stated in *Kensington*,

[O]ne cannot test arbitrariness and unreasonableness by a mathematical count of the Board's solution criteria. Circumstances vary from school to school as to the degree of weight to which each criterion is entitled. So long as there is adequate reason, supported by at least one criterion, the local board's decision in a school closing case should prevail.

Id. at (ALJ) 51. Thus, as long as there is adequate reason, one criterion alone can outweigh the others such that a local board's decision should prevail

In this case, not every criterion may support the decision to close a particular school. What matters is that the local board considered all the factors and made a rational decision.

COMAR Factors

Appellants challenge the local board's analysis of the school closing factors, maintaining that the closure decision is arbitrary, unreasonable, or illegal. They argue that the local board either did not fully consider a factor or that the analysis of the factor was legally flawed. The ALJ found, however, that the local board reasonably considered each factor and reached a

rational conclusion to adopt the Final Plan. (Proposed Ruling at 42). We address each factor below.

Student Enrollment Trends

Appellants contend that the local board relied on inaccurate enrollment data and provided “no explanation for the vast difference in the numbers” between the local board’s projections and the MGT study. (Exceptions at 16). They also point out the difference in the enrollment figures between the 2015-2024 and the 2016-2025 Educational Facilities Master Plans. (*Id.* at 16, 46). The school closure analysis in this case spanned several years, during which time enrollment numbers changed as each additional year of enrollment data became available. The change in enrollment numbers affects projections for future years. There is no dispute, however, that each set of projections shows that the student enrollments decline significantly and that the declines persist into the foreseeable future. As the ALJ stated that the “Local Board extensively explored and placed great emphasis on student enrollment trends, recognizing substantial decline in student enrollment and its crucial impact on the economic viability of the school system and affected students.” (Proposed Ruling at 43).

Appellants argue in favor of smaller community schools, (Exceptions at 20-21), but the local board’s decision to choose a different approach based on enrollment and school utilization is legally appropriate. In *Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-09 (2009), the appellants made similar arguments about community schools, supporting their position with expert opinions that it was against sound educational policy not to build a smaller high school. The ALJ rejected their argument finding that “even if there were merit to some of the arguments expounded by the Appellant, the BOE is free to choose another course of action if it deems that circumstances warrant it.” *Id.* ALJ Decision at 25. The State Board agreed with the ALJ stating as follows:

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

Id. at 5. The same holds true in this case.

Age or Condition of School Buildings

Appellants disagree with the local board’s analysis of this factor. They argue that Charles Carroll Elementary has been neglected for funding for capital projects, but despite the local board’s failure to modernize there have been small upgrades and repairs from the operating

budget resulting in the school being “in much better shape than the Local Board would have everyone believe.” (Exceptions at 21-22). Appellants also argue that the ALJ ignored the evidence the Appellants submitted to counter the local board’s claims that the school had a variety of physical deficiencies.

Appellant argument fails to recognize the HCM study which as far back as 2012 sets forth Charles Carroll’s serious building and site deficiencies. (Appeal, Ex. 18). The deficiencies included a failed roof, failed heating system, non-compliance with fire safety standards, limited electrical outlets and computer data drops, an end-of-life plumbing system, a non-compliant septic system, and non-compliance with the ADA. *Id.* Then in 2012, when MSDE’s Public School Construction Program rejected planning approval for the proposed K-8 school, the Superintendent informed the local board that the Charles Carroll renovations were on hold. In addition, the school was originally built in 1929 and had additions in the 1950’s and 1970’s. (Proposed Ruling at 10). The ALJ found that the local board “properly analyzed the age and condition of the affected schools, and recognized that Charles Carroll, in particular, required extensive and costly renovation due to its deficient facility and age.” (*Id.* at 43-44).

Transportation

Appellants argue that the closure will result in “ridiculously long” bus ride times, particularly for some of the students who will now be attending Ebb Valley Elementary School. (Exceptions at 44). The Final Plan states that “bus routes will be created so that Charles Carroll students will not have a ride time outside of the existing CCPS range.” (Final Plan at 4). There is no indication that the ride time will be “ridiculously long” as claimed by Appellants. As the ALJ concluded, the Appellants have “offered no supporting evidence to demonstrate these contentions.” (Proposed Ruling at 44). Moreover, an increase in travel time and distance to get to and from school as a result of a school closing does not make the closing decision unreasonable, especially if other advantages outweigh the concern. *See Marsh v. Allegany Cnty. Bd. of Educ.*, MSBE Op. No. 05-09 (2003).

Educational Programs

The Appellants argue that the local board failed to consider the impact of the closure of Charles Carroll on educational programs because no mention is made of how the closure will affect the forty-six students at Charles Carroll with individualized education plans receiving special education services and the sixteen students at Charles Carroll who have 504 plans. (Exceptions at 32). As a result of the closure, these students will be spread across Ebb Valley, Runnymede, and William Winchester Elementary Schools. The Final Plan states that the composition of the student body was examined per school with regard to special education and 504 plan students and no area increased or decreased more than 1% from the minimum or maximum percentage after the closure. (Final Plan at 18). Indeed, the percentages remained the same at all three schools in terms of students with 504 plans, and only William Winchester increased with regard to the percentage of special education students. (Final Plan, Appendix H at 58).

In addition, as the ALJ noted, the local board considered instructional deficiencies at Charles Carroll as set forth in the HCM Report. (Proposed Ruling at 45). These deficiencies include an open plan arrangement of kindergarten classrooms that had to be accessed through the cafeteria, multiple undersized or unavailable spaces for enrichment and resource programming, and an undersized media center. (*Id.* at 45; Appeal Ex. 18).

Financial Considerations

The ALJ stated that the “Local Board scrutinized the data regarding the potential costs and cost avoidance associated with each of the various options studied, and came to the conclusion that the Final Plan encompassed the most reasonable approach to solving the financial predicament of the Carroll County school system.” (Proposed Ruling at 45-46).

The Appellants argue, however, that the exact cost savings of the closures remain unknown. The Final Plan indicates a core staffing and building cost savings of \$988,763 in the operation budget for Charles Carroll Elementary. (Final Plan at 6, 62 (Appendix I), 65 (Appendix J). *Id.* It also indicates a total capital cost avoidance of \$3,250,000 for Charles Carroll attributable to the need to replace the school’s heat plant and roof. (Final Plan at 7). The local board also considered offsets to financial savings in terms of reimbursement for State Bond Debt, relocation of the middle school autism program to Shiloh Middle School and student transportation. (*Sipes Proposed Ruling at 8-9*). While Appellant disagrees with the local board’s financial analysis, it does not render the local board’s decision unreasonable. *See Bushey Drive Elementary Sch. Parents v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 76-1 at 442 (1976) (stating that “while there may be some dispute over precisely how much money is saved by any one school consolidation, there is no doubt that consolidations effect some savings”).

Student Relocation

Appellants argue that there was “no true consideration for the impact of student relocation” because the closure of Charles Carroll required the reassignment of 549 elementary school students and does not significantly increase the overall utilization rate. (Exceptions at 19). The Final Plan explains that it does not balance enrollments so it does not look to address the over-utilization at William Winchester which will likely be addressed in future school closures. (Final Plan at 21). In addition, the Final Plan acknowledges that the closure of Charles Carroll makes the elementary to middle feeder pattern more fragmented explaining that there are currently seven elementary schools whose students will be split to attend more than one middle school. That number increases to eight with the addition of students from Charles Carroll to Ebb Valley Elementary because Ebb Valley students will now split into two middle schools instead of one. (Final Plan at 21, 27-28). The local board clearly determined, however, that the other benefits of the Final Plan outweighed these concerns.

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

The Appellants argue that the local board failed to take into consideration the impact of the school closing on the communities in the geographic attendance area for the school proposed to be closed or the schools to which students will be relocating. (Exceptions at 20, 26). The ALJ found, however, that the local board appropriately addressed this factor.³ (Proposed Ruling at 47). He stated that the local board “acknowledged that the purpose included maximizing the utilization of the receiving elementary schools” and that the closure “minimized the likelihood

³ We note that consideration of impact on the community is limited to the educational impact. *See Marsh v. Allegany County Bd. of Educ.*, MSBE Op. No. 05-99 at ALJ 50-51(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.”).

that the same student would be redistricted again in the future, thus minimizing instability in the communities.” *Id.* We concur.

Other Issues

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

Appellants maintain that the local board failed to send adequate notice as required by COMAR and the local board’s Administrative Procedures for School Closings. Both require that a local board provide notice of the school closure by any regular means of notification used by the local school system, as well as by advertising in at least two newspapers having general circulation in the geographic attendance area for the schools proposed to be closed and the schools to which students will be relocating. The local board provided the following notices:

Date of Notice	Type of Notice	Event	Date of Event	Stated Issue for Consideration
8/26/15	Press release	Local board meeting	9/9/15	BAC recommendations
9/4/15	Newsletter	Local board meeting	9/9/15	BAC recommendations
9/10/15	Press release	Local board public work session	9/28/15	BAC recommendations
9/11/15	Newsletter	Local board public work session	9/28/15	BAC recommendations
9/18/15	Newsletter	Local board public work session	9/28/15	BAC recommendations
9/18/15	Press release	Local board meeting	10/14/15	
9/25/15	Newsletter	Local board public work session	9/28/15	BAC recommendations
9/25/15	Newsletter	Local board meeting	10/14/15	
10/6/15	Press release	Local board meeting	10/14/15	Additional BAC options
10/9/15	Newsletter	Local board meeting	10/14/15	Additional BAC options
10/16/15	Newsletter	Local board public work session	10/26/15	BAC recommendations
10/23/15	Newsletter	Local board public work session	10/26/15	BAC recommendations
10/27/15	Press release	Local board meeting	11/11/15	Superintendent’s recommendations on school closures
11/6/15	Newsletter	Local board meeting	11/11/15	Superintendent’s recommendations on school closures
11/12/15	Press release	Public hearings	12/1, 12/2, 12/3	On Proposed School Closings
		Special board meeting	12/9/15	Vote on School Closing Recommendation
11/17/15	Notices in Baltimore Sun and Carroll County Times	Public hearings	12/1/15 12/2/15 12/3/15	On Proposed School Closings – Gave Information on Nov. 11 Plan
		Special board meeting	12/9/15	On School Closure
11/24/15	Newsletter	Public hearings on school closings	12/1, 12/2, 12/3	
		Special board meeting	12/9/15	School closures
11/24/15	Press release	Special board meeting	12/9/15	To address Nov. 11 Plan
11/13/15, 11/25/15, 12/2/15, 12/3/15	Blackboard contact message center	Public hearings	12/1, 12/2, 12/3	School closures

Date of Notice	Type of Notice	Event	Date of Event	Stated Issue for Consideration
12/4/15	Newsletter	Special board meeting	12/9/15	Vote on School Closing Recommendation
		Regular board meeting	12/9/15	

The ALJ found that the local board posted timely notices in a variety of newspapers as required by the regulations, as well as by publishing press releases and school system newsletters. (Proposed Ruling at 47). Although Appellants argue that the local board should have sent out electronic newsletters rather than hard copy ones, they have not established that the local board failed to provide notice by regular means of notification of the school system.

Appellants have presented a litany of issues that they believe the local board should have considered in its analysis of the impact of the school closure on the COMAR factors. They assert that the local board’s failure to consider all of these issues renders the school closing decision arbitrary or unreasonable. A local board is not required to discern and analyze every possible issue that relates to each of the COMAR factors. Rather, as explained above, the local board is simply required to consider the impact of the closure on the factor in making its decision. We reiterate that COMAR does not require a local board to explain how much weight it has placed on each factor. *Langston Hughes Community Action Assn v. Baltimore City Bd. of Sch. Commr’s*, MSBE Op. No. 15-34 (2015). So long as there is adequate reason, supported by at least one criterion that outweighs the other factors, a local board’s decision in a school closing should prevail. *Kensington Elementary Sch. PTA v. Montgomery County Bd. of Educ.*, 2 MSBE 671 (1982),

As summed up by the ALJ:

Clearly, the Appellants are heavily invested in their loyalty to Charles Carroll, a small school that has long served a close and caring community. The Local Board, however, must take a comprehensive view, and objectively make decisions based on the financial, demographic and other relevant data in order to serve the entire system. The Local Board has demonstrated that its decision was premised on a broad spectrum of considerations. . . . Thus, its decision was not arbitrary and unreasonable and was consistent with a conclusion that could have reasonably been reached by a reasoning mind. Neither were the actions of the Local Board illegal.

(Proposed Ruling at 49).

CONCLUSION

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

Guffrie Smith Em K
Guffrie M. Smith, Jr.
President

James Gates Em K
S. James Gates, Jr.
Vice-President

Absent
James H. DeGraffenreidt, Jr.

Linda Eberhart Em K
Linda Eberhart

Chester Finn Em K
Chester E. Finn, Jr.

Laurie Halverson Em K
Laurie Halverson

Stephanie Iszard Em K
Stephanie R. Iszard

Laura Weeldreyer Em K
Laura Weeldreyer

Dissent:

Michele Jenkins Guyton Em K
Michele Jenkins Guyton

Madhu Sidhu Em K
Madhu Sidhu

Andrew R. Smarick Em K
Andrew R. Smarick

June 30, 2016

ERIN SIPES,
and
TARA BATTAGLIA,
APPELLANTS
v.
BOARD OF EDUCATION OF
CARROLL COUNTY,
RESPONDENT

* BEFORE HARRIET C. HELFAND,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: MSDE-BE-16-16-03180
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**PROPOSED RULING ON
MOTION FOR SUMMARY AFFIRMANCE**

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

BACKGROUND

On January 6, 2016, the Appellants¹ 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 initial appeal were: Erin Sipes, Kelley McIver, Union Mills/Silver Run Community Members, and Tara Battaglia, Board Member—Friends of Save Carroll County Elementary School. A ruling is being issued in the instant case granting the Local Board's Motion to Dismiss as to Kelley McIver's, Union Mills/Silver Run Community Members', and Friends of Save Carroll County Elementary School's lack of standing to pursue the appeal. Only Erin Sipes and Tara Battaglia, individually, remain as appellants in this matter.

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 Dismiss⁵ or in the Alternative for Summary Affirmance⁶ (Motion) of its decision to close Charles Carroll, asserting, among other issues, that there are no genuine issues of material fact and that the Local Board is entitled to affirmance as a matter of law.

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

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. OAH consolidated the cases for the purpose of the proceeding. Separate rulings are being issued in all cases.

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

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

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

On March 9, 2016, the Appellants filed a Memorandum in Opposition to Appellee's [Local Board] Motion to Dismiss and on March 18, 2016, the Appellants filed a Memorandum in Opposition to Appellee's Motion for Summary Affirmance (Opposition). On March 21, 2016, the Local Board filed a Memorandum Reply to Opposition to Motion to Dismiss and on March 25, 2016, the Local Board filed a Memorandum in Reply to Opposition to Motion for Summary Affirmance (Reply).

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 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 for Summary Affirmance be granted?

⁷ Also, on April 11, 2016, the Appellants, along with Don Garmer, an appellant in one of the consolidated cases, filed a Joint Motion for Sanctions against Appellee for Failure to Abide by ALJ Helfand's Scheduling Order. On April 22, 2016, the Local Board filed an Opposition to the Joint Motion for Sanctions. See OAH Case No.: MSDE-BE-16-16-02660 for my explanation and denial of the Appellant's April 11, 2016 motion.

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.

SUPPORTING DOCUMENTATION

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

1. Enrollment Projections Analysis Report, 2014-15 to 2023-24, dated January 22, 2014
2. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated December 9, 2015
3. Board Minutes, Special Board Meeting, December 9, 2015¹⁰
4. Board Minutes, dated February 22, 2012
5. Board Minutes, dated March 14, 2012
6. Board Minutes, dated April 25, 2012
7. Board Minutes, dated October 10, 2012
8. Board Minutes, dated October 24, 2012
9. Board Minutes, dated March 27, 2013
10. Board Minutes, dated December 11, 2013
11. Carroll County Public Schools (CCPS) Facility Utilization Study Final Report, dated December 11, 2013
12. Joint Meeting (Board and Board of Commissioners of Carroll County (BCCC)) Minutes, dated January 8, 2014
13. Board Minutes, dated January 29, 2014
14. Board Minutes, dated February 12, 2014
15. Joint Meeting (Board and BCCC) Minutes, dated April 4, 2014
16. Board Minutes, dated April 30, 2014
17. Board Minutes, dated June 11, 2014
18. Board Minutes, dated September 10, 2014

¹⁰ "Board" is the Local Board.

19. Board Minutes, dated December 10, 2014
20. Board Minutes, dated February 11, 2015
21. Board Minutes, dated April 29, 2015
22. Press Release, dated September 9, 2015
23. Affidavit of Brenda L. Bowers, dated February 8, 2016
24. Affidavit of W. Carey Gaddis, dated February 8, 2016
25. "What's Happening in Carroll County Public Schools" (Newsletter), dated September 4, 2015
26. Board Minutes, dated September 9, 2015
27. Report of the Superintendent's Boundary Adjustment Committee, dated September 9, 2015
28. News Release, dated September 10, 2015
29. Newsletter, dated September 11, 2015
30. Newsletter, dated September 18, 2015
31. Newsletter, September 25, 2015
32. News Release, dated September 18, 2015
33. Newsletter, dated October 9, 2015
34. News Release, dated October 6, 2015
35. Board Minutes, dated December 10, 2015
36. Report of Boundary Adjustment Committee (Power Point), dated October 14, 2015
37. Newsletter, dated October 16, 2015
38. Newsletter, dated October 23, 2015
39. News Release, dated October 27, 2015
40. Newsletter, dated November 6, 2015

41. Board Minutes, dated November 11, 2015
42. The Superintendent's Final School Closure and Boundary Adjustment Recommended Plan, dated November 11, 2015
43. News Release, dated November 12, 2015
44. Newsletter, dated November 24, 2015
45. Notice, Baltimore Sun, dated November 11, 2015; Notice, Baltimore Sun, published November 17, 2015; Notice, Northern News, published November 19, 2015; Notice, Advocate of Westminster and Finksburg (Advocate), page 5, published November 25, 2015; Notice, Advocate, page 8, published November 25, 2015; Notice, Advocate, page 9, published November 25, 2015
46. Postings on blackboard.com, dated November 13, 2015
47. Posting on blackboard.com, dated November 25, 2015
48. Posting on blackboard.com, dated November 30, 2015
49. Posting on blackboard.com, dated December 2, 2015
50. Posting on blackboard.com, dated December 3, 2015
51. News Release, dated November 24, 2015
52. Newsletter, dated December 4, 2015
53. Memorandum from Stephen H. Guthrie, Superintendent, to Parents, Guardians, and Community Members, dated December 10, 2015
54. Posting on blackboard.com, dated December 10, 2015
55. Email from W. Carey Gaddis to Thomas Clowes, *et al.*, dated December 10, 2015
56. Educational Facilities Master Plan, 2015-2024, dated June 10, 2015
57. Affidavit of Stephen H. Guthrie, dated February 10, 2016

The Local Board submitted the following Attachments with its Opposition:

1. Educational Facilities Master Plan, 2015-2024, dated June 10, 2015
2. Feasibility Study Report (Power Point), dated February 22, 2012

3. Community Advisory Council Meeting Minutes, dated September 16, 2015
4. DVD of Keiffer Mitchell Clips 1 and 2¹¹
5. Board Agenda Item: Ratification of Carroll County Education Association (CCEA) Bargaining Agreement—Assignment of Displaced Employees Memorandum of Understanding, dated January 13, 2016

The Appellants included the following attachments in support of the Opposition:¹²

- A. Carroll County Times article: “Community questions school system enrollment projections,” dated October 6, 2015
- B. Boundary Adjustment Committee Recommendations Frequently Asked Questions, revised December 22, 2015
- C. Carroll County Public Schools Facility Utilization Study Final Report (cover and page 34), dated December 11, 2013
- D. Educational Facilities Master Plan 2015-24 (cover and page 6-22), dated May 13, 2015
- E. Printouts of text messages: Jim Doolan, Stephen Guthrie, Jennifer Seidel, Devon Rothschild, Bob Lord, and Virginia Harrison
- F. Carroll County Times article: “Manchester Valley: Root of school system’s funding issues,” dated October 31, 2015
- G. Emails between Christopher Hartlove and Stephen Guthrie, dated February 2, 2016
- H. Emails between Jonathan O’Neal and Jimmie Saylor, dated December 14, 2015; email between Christopher Hartlove and Stephen Guthrie, with attachment, dated December 9, 2015
- I. Transportation Services Department FY’17 Budget Increases; Comprehensive Facilities Utilization Study Transportation Cost Analysis: School Closings, Discussion Draft
- J. Emails between Jonathan O’Neal and Deborah Effingham, dated October 29, 2015; email between Ted Zaleski and Deborah Effingham, dated October 29, 2015
- K. Letter from Larry Hogan, Governor, to Warner I. Sumpter and Dr. Theresa R. Alban, dated December 3, 2015

¹¹ The DVD is included with the exhibits in OAH Case No.: MSDE-BE-16-16-02815.

¹² The Appellant’s attachments are first lettered, then numbered.

- L. Email from Stephen Guthrie to James Doolan, *et al.*, dated November 18, 2015
 - M. Article, www.myeasternshore.com, "County funding to save schools," undated
 - N. Email from Cindy Foley to BAC Report, dated November 11, 2015
 - O. Letter, Carroll County Times, from Barbara Shreeve, published November 21, 2015
 - P. Article, www.educationworld.com, "Are Smaller Schools Better Schools?"
 - Q. Capital Improvements Authorized by the General Assembly 1999 through 2014, State of Maryland, Department of Budget & Management, July 2014
 - R. Emails between Stephen Guthrie and Erin Sipes, dated December 15, 2015
 - S. Email from Susan Krebs to Stephen Guthrie, *et al.*, dated November 5, 2015; email from David Lever to Susan Krebs, dated November 5, 2015
 - T. Email from Jonathan O'Neal to William Caine, with attachment, dated December 1, 2015
 - U. Email from Jonathan O'Neal to Anita Stubenrauch, *et al.*, dated October 19, 2015
 - V. Letter from James L. Doolan to Guffrie M. Smith, Jr., dated January 14, 2016
 - W. Boundary Adjustment Committee Work Session Meeting Minutes, dated September 28, 2015
 - X. Emails between Jonathan O'Neal and Julie Kingsley, dated October 25 and 26, 2015; emails between Devon Rothschild to Julie Kingsley, dated October 24 and 25, 2015
 - Y. Administrative Procedures for Public School Closings (pages 3-25 and 3-26), unsourced
 - Z. Emails between Erin Sipes and Stephen Guthrie, dated November 29, 2015
1. Printout of travel distances, unsourced
 2. Presentation of the Superintendent's Final Plan, dated December 9, 2015
 3. Chart, affected IEP and 504 students Charles Carroll, New Windsor, and North Carroll, undated
 4. Email from Patricia Burns to Stephen Guthrie, *et al.*, dated December 18, 2015

5. Letter from Richard Rothschild to Jennifer Seidel and Stephen Guthrie, dated April 4, 2012
6. Work order costs/reports, Charles Carroll; Summary Recommended Bid Award, dated May 23, 2012; Public School Construction Program Fiscal Year 2014 Security Initiative Approved Projects Report as of May 16, 2014, page 3; Overview of Public Schools [Community Investment Plan] CIP; Charts: Charles Carroll Roof Replacement and Charles Carroll Modernization; Department of Legislative Services, Fiscal and Policy Note, Senate Bill 663, 2015 Session
7. Board Minutes, dated May 13, 2015
8. Letter to Parents from Local Board, undated
9. Charles Carroll Relocation Option Analysis, dated February 13, 2012
10. Educational Facilities Master Plan, 2015-2024, (pages 6-4 through 6-6), dated May 13, 2015
11. Charts: Under Populated/Open/Closed Schools for Out-of-District Students for 2016-2017 School Year; Elementary, Middle, and High Schools
12. Board Agenda Item, dated June 10, 2015

UNDISPUTED FACTS

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

1. Between 1993 and 2004, Carroll County experienced a historic increase in school enrollment.
2. Since 2005, the school population of Carroll County has steadily declined; this decline is expected to continue for the foreseeable future. Since 2007, the Local Board has expressed concern about the decline, and since 2010, has contemplated ways to adapt its facility usage to address the decline.
3. State aid to local schools is based on a per-pupil funding formula and relative wealth allocation. Due to the decline in enrollment, the Local Board has lost revenue, and

has had to eliminate school programs and positions. Loss of revenue has also impacted the Local Board's capacity to pay school employees competitive salaries, which currently rank near the bottom of similarly-situated employees in the State.

4. Because of the lower enrollment, some of Carroll County's schools are underutilized.

Overall, school utilization is expected to decline over the next ten years.

5. The Appellants are parents of students who attend or are slated to attend Charles Carroll.
6. Charles Carroll has a capacity of 320 students, which is almost half of the Local Board's determination of the optimum size for an elementary school. The actual enrollment of Charles Carroll in 2014 was 271, and enrollment is expected to decline and stabilize at 250 for the foreseeable future.
7. Charles Carroll was originally built in 1929; the school also has portions built in the 1950s and 1970s. Charles Carroll has a variety of physical deficiencies, including a failed roof, a failed heating system, non-compliance with fire safety standards, limited electrical outlets and computer data drops, an end-of-life cycle plumbing system, and a non-compliant septic system. Charles Carroll also does not provide accessibility as provided in the Americans with Disabilities Act.
8. The Local Board has long expressed a concern regarding Charles Carroll's capacity to operate as a viable school. In February 2012, the Local Board engaged the firm of Hord, Coplan, and Macht (HCM) to conduct a feasibility study of Charles Carroll and produce a Feasibility Study Report (FSR). The FSR included several options for addressing Charles Carroll's problems, including an option for closure. The HCM

study was presented to the Local Board at its February 22, 2012 meeting and was also presented at a community meeting held at Charles Carroll on February 23, 2012.

9. The Local Board conducted a meeting on March 14, 2012, in which Stephen Guthrie, School Superintendent, reviewed the HCM study and proposed recommendations. The Superintendent recommended that the Local Board consider designating the Charles Carroll roof and heating plant as systemic projects to be prioritized in the Local Board's approved Capital Improvement Budget (CIP) for fiscal year 2013, not proceed with the modernization or replacement of the building, and collaborate with the County Commissioners to reach an agreement to prioritize crucial needs in the CIP and develop a joint plan for long term funding.
10. At the April 25, 2012 meeting, the Local Board considered the HCM study and agreed on the need for a comprehensive facility study to examine all of the school system's buildings and use of educational space, and gave ample opportunity for the public to participate and share feedback on any recommendations to consolidate schools. This agreement resulted in the Superintendent's preparation of the Comprehensive Facility Utilization Study (CFUS).
11. The Local Board met on October 10, 2012, at which time the Superintendent made a presentation on the CFUS commissioned at the April 25, 2012 meeting. The Superintendent explained that the purpose of the CFUS was to explore the most efficient use of school facilities in light of maintenance of effort funding, the need for maintenance repairs and improvements, declining student enrollment, and with a goal of increasing pay for employees of the school system. The Superintendent created assignments to complete the study and to research, analyze, and present viable

options in order to achieve the most effective and efficient use of capital resources.

The Superintendent also recommended hiring a third party to conduct a further study and recommend options regarding possible school closures.

12. At the Local Board's October 24, 2012 meeting, it approved the recommended independent study. MGT of America Consultants (MGT) was engaged to conduct the independent study.
13. At the Local Board's March 27, 2013 meeting, it also approved a joint county and school system staff committee to study the proper utilization of schools.
14. MGT presented its Facility Utilization Study Final Report (MGT Report) at the Local Board's December 11, 2013 meeting. The MGT Report identified Charles Carroll as having facility condition issues, as well as noting issues with other Carroll County schools. The recommendations in the MGT Report included replacing Charles Carroll and William Winchester Elementary School (WW) with a new facility between the two current schools, among other extensive recommendations.
15. On January 8, 2014, the Local Board held a joint meeting with the Board of Commissioners of Carroll County (County Commissioners), at which the Superintendent presented the MGT Report.
16. On January 29, 2014, the Local Board held a meeting in which Facilities Planner Bill Caine presented the 2014-2015 through 2023-2024 Enrollment Projections Analysis Report (EPA Report). The EPA Report noted a decline in enrollment of 1,917 students over the next seven years, driven by declining annual birth rates and migration of families from Carroll County.

17. On February 12, 2014, the Local Board approved the Superintendent's recommendations for facilities utilization. The Superintendent's recommendations included 1) placing in the 2014-2023 Educational Facilities Master Plan a plan to close Charles Carroll, WW, and East Middle School (East Middle) and replace the schools with a new facility, as well as items regarding adjustment of boundaries of other elementary, middle and high schools. The Local Board approved the formation of a committee to investigate the feasibility of the Superintendent's recommendation and to study school boundaries.
18. On April 2, 2014, the Local Board and the County Commissioners held a joint meeting to discuss the MGT Report and its recommendation to close schools. The joint group approved a joint site search committee to develop a plan to build a consolidated K-8 school to replace Charles Carroll, WW, and East Middle.
19. The Local Board met on April 30, 2014, and considered the ramifications of the EPA Report, now termed the Educational Facilities Master Plan for 2014-2023 (Master Plan). The Master Plan provided for the modernization of Charles Carroll, rather than closing. The Local Board announced a public hearing on the Master Plan would be held on May 29, 2014, and that the Local Board would vote on the Master Plan on June 11, 2014.
20. On June 11, 2014, the Local Board met and voted to approve the Master Plan. However, the Local Board noted that a competing project had been presented at its December 11, 2013 meeting at which it was proposed to consolidate Charles Carroll, WW, and East Middle.

21. The Local Board met on September 10, 2014, and heard the report of the committee formed by the Superintendent to study school boundaries. Because of the various plans regarding the modernization or replacement of Charles Carroll, the Local Board delayed the feasibility study pursuant to the MGT Report on boundaries.
22. The Local Board met on December 10, 2014, at which time the Superintendent informed the Local Board that the Public School Construction Program of the Maryland State Department of Education rejected planning approval for the proposed K-8 school, that the County Commissioners' CIP did not include the K-8 school, and that the Charles Carroll renovations were on hold.
23. The Local Board has established administrative procedures for public school closings that contain the following procedures and timelines:

PROCEDURE

I. Facilities Master Plan

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

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

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

II. State Mandates

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

Student enrollment trends;

Age or condition of school buildings;

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

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

III. Local Assumptions

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

IV. Implementation

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

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

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

(Local Board #41)

- 24. At its February 11, 2015 meeting, the Local Board approved the Superintendent's recommendation to appoint a Boundary Adjustment Committee (BAC) to address the decline in student enrollment and the effective and efficient use of school facilities, including the possibility of school closures. The BAC was given a charge to produce a report by September 2015.
- 25. In May 2015, the Superintendent submitted his annual, proposed Educational Facilities Master Plan (EFMP) to the Local Board. The EFMP recommended that the

Local Board begin the process to close Charles Carroll, one of the elementary schools noted in the MGT recommendation, for the 2016-2017 school year. The Local Board adopted the EFMP at its June 10, 2015 meeting.

26. On August 26, 2015, the Local Board issued a press release announcing that the Local Board would meet on September 9, 2015. The press release noted that the agenda items of the meeting would include the presentation of the BAC recommendations and noted “[t]here will be time for citizen participation at this meeting. The public is encouraged to attend.” The September 9, 2015 meeting was also announced in the September 4, 2015 newsletter of the Office of Community and Media Relations (OCMR).¹³ The OCMR newsletter also stated that the agenda items of the meeting would include the presentation of the BAC recommendations and noted “[t]here will be time for citizen participation at this meeting. The public is encouraged to attend.” (Local Board #10)
27. At the September 9, 2015 meeting of the Local Board, the BAC presented its final report. The report contained two options for school closures and redistricting, and contained a timeline for feedback, the public hearing process, and a final decision. It also provided contact information for offering feedback, as well as additional information.
28. Option 1 included the closing of Charles Carroll and balancing enrollments across the remaining schools. The BAC determined that Option 1 was insufficient to address the decline in enrollment or adequately reduce expenses.

¹³ The OCMR is part of the Local Board and publishes a weekly newsletter called “What’s Happening in Carroll County Public Schools.”

29. Option 2 recommended the closure of North Carroll, New Windsor, Charles Carroll, Sandymount Elementary School (Sandymount) and Mt. Airy Elementary School (Mt. Airy) and balancing enrollments across the remaining schools. The BAC recommended this option.
30. At the September 9, 2015 meeting, in which five members of the public offered comment, the Local Board directed the Superintendent and the BAC to develop other options for consideration that would impact fewer students than Option 2.
31. On September 10, 2015, the Local Board issued a press release announcing a Local Board public work session meeting on September 28, 2015. The Local Board also announced the work session through the OCMR's September 11, and 18, 2015 newsletters.
32. On September 18, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for October 14, 2015. The press release noted that there would be time for citizen participation at the meeting and that the public is encouraged to attend. The September 25, 2015 OCMR newsletter also announced the September 28, 2015 BAC work session, noting that although there would be no citizen participation, the public is encouraged to attend. Notice of the October 14, 2015 meeting was also published in the September 25, 2015 OCMR newsletter, which noted that at that meeting, there would be time for citizen participation and the public is encouraged to attend.
33. In response to the Local Board's direction, the BAC produced a draft of Option 3 at the public work session on September 28, 2015.

34. Option 3 recommended the closure of the same three elementary schools as Option 2, as well as New Windsor and North Carroll. The difference between Options 2 and 3 involved setting different boundaries.
35. At the September 28, 2015 work session, the Local Board asked the BAC to consider another option, which resulted in a draft of Option 4. Option 4 recommended the closing of East Middle School only and related relocation of students.
36. On October 6, 2015, the Local Board issued another press release announcing the October 14, 2015 meeting. The press release stated that there would be time for citizen participation at the meeting and that the public is encouraged to attend.
37. On October 9, 2015, the OCMR newsletter also announced the October 14, 2015 meeting, and that its agenda would include hearing additional options from the BAC. The newsletter included the following: "Citizen participation is included in this meeting. However, the time for citizen participation will be limited as the Board has a full agenda. The Board of Education wishes to remind the public that when it provides specific direction to staff regarding boundary line adjustments and potential school closures, four hearings in different parts of the county will be set up to receive citizen input. The Board of Education will consider all public input prior to taking any action on boundary line adjustments or school closures." (Local Board #33)
38. The BAC presented the final version of Option 3 and a draft of Option 4 at the October 14, 2015 public meeting of the Local Board. At the meeting the Superintendent presented an historical timeline of the demographic and budgetary issues involved in arriving at the various options. Twenty-five citizens, including Appellant Tara Battaglia, addressed the Local Board at the meeting.

39. The OCMR published an announcement of the Local Board's public work session to be held on October 26, 2015, regarding the BAC recommendations in its October 16, and 23, 2015 newsletters.¹⁴
40. At the October 26, 2015 public work session, the Superintendent determined Option 4 lacked clarity and viability. The BAC never produced a final version of Option 4.
41. Also at the October 26, 2015 public work session, the Superintendent informed the Local Board that he had met with the BAC and asked it to produce another option, one that would close Charles Carroll, New Windsor, and North Carroll and limit redistricting as much as possible, and that, in the future, the Local Board could consider other closures or boundary adjustments, if needed.
42. On October 27, 2015, the Local Board issued a press release announcing a Local Board meeting scheduled for November 11, 2015. The press release stated that the Superintendent would present his recommendation for potential school closures, and that citizen participation would be included in the meeting. The Local Board also announced the November 11, 2015 meeting in the OCMR's November 6, 2015 newsletter. The newsletter also stated that citizen participation was to be included in the meeting.
43. On November 11, 2015, the Superintendent presented a Superintendent's Final School Closure and Boundary Adjustment Recommended Plan (November 11

¹⁴ The October 16, 2015 OCMR newsletter also announced a town meeting to be hosted by Board President James Doolan and Superintendent Guthrie to be held on October 20, 2015. Members of the community were invited to attend the meeting and address their concerns or ask questions.

Plan).¹⁵ The November 11 Plan recommended the following for the 2016-2017 school year:

- Consolidate Manchester Valley and North Carroll boundaries and combine the student populations at Manchester Valley;
- Adjust New Windsor, Mt. Airy, and Northwest Middle School (Northwest) boundaries and redistrict the New Windsor students to Mt. Airy and Northwest;
- Adjust Charles Carroll, Ebb Valley Elementary School (Ebb Valley), Runnymede Elementary School (Runnymede), and William Winchester Elementary School (WW) and redistrict Charles Carroll students to Ebb Valley, Runnymede, and WW;
- Limit other redistricting to Runnymede; Taneytown Elementary School (Taneytown); Elmer A. Wolfe Elementary School (Elmer Wolf); Westminster Elementary School (Westminster); WW; Ebb Valley; and Manchester Elementary School (Manchester);
- Students whose schools remain open and are affected by boundary line adjustments have an option to remain at their current school under certain conditions, if the parent provides transportation;¹⁶
- Form a Joint Committee with Carroll County government to determine whether any closed school buildings or grounds are needed for any other school system purpose. If not, the buildings and properties would be transferred back to Carroll County as surplus, and the Carroll County Commissioners would determine the final disposition of the buildings and property.

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

¹⁵ In addition to the Superintendent's presentation and other agenda items, twenty citizens, including the Appellants, addressed the Local Board regarding school closures and redistricting.

¹⁶ The conditions include students entering into the highest grade at the affected school; students who have siblings who would be enrolled in a different school; and students who currently have an approved out-of-district request to attend an underpopulated school.

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

Charles Carroll

The Superintendent concurs with the BAC recommendation to close Charles Carroll Elementary. The school remains the most critical priority in the system. The past several years have made clear that the County will not invest any capital improvements, whether a modernization or system renovations. The County has also rejected the North Westminster K-8 project that would have served as a replacement school for Charles Carroll students. From either a facilities condition or educational condition perspective, we cannot allow students to attend Charles Carroll into the future without capital improvements.

Charles Carroll is a small elementary school with a slightly declining population. The school's capacity of 320 is almost half of the Board's optimum size for an elementary school. Current actual enrollment (2014) was 271 and enrollment is projected to decline and stabilize at 250 during the projection period. Even if the school was approved for capital modernization, it would not be a prudent investment of \$20 million for a new school of this size when the enrollment can be accommodated at all surrounding elementary schools. Bus routes will be created so that Charles Carroll students will not have a ride time outside of the existing CCPS range.

46. The November 11 Plan listed and analyzed the following: Organizational Efficiencies, Operational Savings, and Capital Cost Avoidance;¹⁷ One-Time and On-Going Offsets to Savings; Reimbursement of State Bond Debt; On-Going Offsets to Savings: Student Transportation; Impact of Declining Enrollment on the School

¹⁷ The November 11 Plan described "capital cost avoidance" as an assumption that projects have been or will be approved by Carroll County, but recognized that none of the cited projects for the schools recommended for closure have been funded by Carroll County. The November 11 Plan noted, however, that "in recent years, the County capital plan has focused on systems renovations for our schools, such as roof and HVAC replacements, as funds are available. It is therefore, more reasonable to assume that the County may eventually fund systems renovations as funds are available than it is to assume that they will fund a modernization." The system replacements listed for North Carroll in the November 11 Plan are: HVAC system: FY 18: \$3,781,000; Science Classroom Renovations: FY 18: \$1,740,000; and Fire Alarm Replacement: FY 19: \$385,000. These equal a total "cost avoidance" of \$5,906,000.

analysis of available revenue sources; school utilization rates; and anticipated growth and yield.¹⁸

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

1. Student Enrollment Trends:

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

At the high school level:

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

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

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

¹⁸ The November 11 Plan also included boundary maps, graphs of feeder patterns, graphs of comparative school populations, the following Appendices: Appendix A: Births by Jurisdiction 2003-2013; Appendix B: Migration Charts; Appendix C: Enrollment and Utilization Charts; Appendix D: Color Coded Utilization Charts; Appendix E: Student Relocation Counts; Appendix F: Student Ride Times; Appendix G: Student Distances to School; Appendix H: Student Demographic Analysis; Appendix I: Facilities Utilization and Study Financial Index; Appendix J: Building and Core Staff Costs; Appendix K: In and Out Charts (re: students restricted to and restricted from schools); and a bibliography of references used to compile and analyze the data used to produce the plan.

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

2. Age or Condition of Facilities:

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

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

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

3. Transportation:

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

System Advantages—It is anticipated that some additional buses may be necessary to address longer travel distances for some students. However,

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

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

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

4. Education Programs:

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

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

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

5. Racial Composition of Student Body:

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

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

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

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

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

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

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

6. Financial Considerations:

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

There will also be an overall operational savings of \$5,119,463 based on the eliminated core staff and core building costs for the three school closures (See

Appendix J). The amount of savings excludes any offsets that may be required for school closure, such as increased transportation costs.

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

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

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

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

7. Student Relocation:

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

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

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

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

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

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

This plan places North Carroll High students into two adjacent high schools, Manchester Valley High and Westminster High. As a result, Manchester Valley and Westminster will have 2014 utilizations of 112% and 87% respectively. Although this plan leaves Manchester Valley above 100%, a change to the State Rated Capacity of the building will improve this utilization

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

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

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

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

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

51. On November 24, 2015, the OCMR newsletter announced the December 1, 2, and 3 public hearings and a regular Local Board meeting on December 9, 2015, and a special Local Board meeting regarding school closures and boundary adjustments on December 9, 2015. The newsletters also included information regarding public comment/written testimony/data to be offered at the December 1, 2, and 3, 2015 meetings and at the December 9, 2015 special meeting.
52. On November 24, 2015, the Local Board issued a press release announcing the December 9, 2015 special Local Board meeting. The press release also stated that the meeting would address the November 11 Plan and that members of the public would be permitted two minutes per person to speak or present written testimony of data.
53. On December 3, 2015, Governor Larry Hogan wrote to Warren I. Sumpter, President of the Maryland Association of Boards of Education, and Dr. Theresa Alban, Public School Superintendents Association of Maryland, informing them that he intended to include new funding in the FY-17¹⁹ budget to “assist local jurisdictions that have been facing the challenge of maintaining adequate funding during the same time that their student enrollments have declined.” The Governor’s letter noted Carroll

¹⁹ Fiscal Year 2017.

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

54. The December 4, 2015 OCMR newsletter announced the December 9, 2015 regular and special Local Board meetings, and included information regarding citizen participation.
55. The Local Board also posted messages to all of the school system parents via the Blackboard Contact Message Center (Blackboard)²⁰ on November 13, 25, and 30 and December 2 and 3, 2015, providing notice of the public hearings on school closures and boundaries to be held on December 1, 2, and 3, 2015, and of the special Local Board meeting to be held on December 9, 2015.
56. The Local Board held a special board meeting on December 9, 2015. At the beginning of the meeting, eighteen citizens offered comments regarding school closures and redistricting.
57. Following the citizen's comments, the Superintendent reviewed the Final Plan. The Final Plan presented at the December 9, 2015 meeting was an updated version of the November 11 Plan. The Final Plan was substantially identical to the November 11 Plan, with some additions that resulted from information obtained since the November 11 Plan was published. The additional material consisted of information regarding the issue of reimbursement of State bond debt, indicating a total maximum outstanding State debt on the three schools of \$653,347; updated utilization and

²⁰ Blackboard is an internet-based information system in which educational institutions can post messages accessible to participants.

enrollment analysis using the 2015 enrollment figures as the baseline;²¹ and information indicating that several other third transportation tier schools impacted by the recommendation would require a fifteen-minute shift to the school schedule.

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

²¹ This change resulted in the following language on p. 16 of the Final Plan compared to p. 15 in the November 11 Plan (at the fourth bullet point under "At the high school level" and below that section): "Currently there are no high schools with utilization above 100% for any portion of the projection period. Based on current, approved State Rated Capacities, the State Rated Capacity of Manchester Valley would increase to 1,383. After this change, the school would only have a utilization above 100% based on 2015 State-certified enrollments. During the time period of the BAC process until the November 11, 2015 Board meeting, the most recent State-Certified enrollment were the September 30, 2015. Accordingly, the BAC Report, the options prepared for the Board, and the Superintendent's November 11, 2015 Recommended Plan used the 2014 enrollment figures as the initial numbers. Subsequent to the [Appendices] C and D have been updated in this version of the Superintendent's final Recommended Plan to apply the 2015 enrollment figures as the baseline."

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

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

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

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

DISCUSSION

Legal Framework

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

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

D. Motion for Summary Decision.

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

whose favor judgment is entered is entitled to judgment as a matter of law.

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

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

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

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

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

In reviewing a motion for summary decision, an administrative law judge may be guided by case law that explains the nature of a summary judgment in court proceedings. The Supreme Court has noted, regarding the standard for summary judgment, “[b]y its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is

that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion. *Anderson*, 477 U.S. at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

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

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

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

[T]he trial court, in accordance with Maryland Rule 2-501(e), shall render summary judgment forthwith if the motion and response show that there is no

genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. . . . Thus, once the moving party has provided the court with sufficient grounds for summary judgment, [i]t is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this by *producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit. . . . “Bald, unsupported statements or conclusions of law are insufficient.”

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

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

Regulations Relating to Appeals to the State Board

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

Under COMAR 13A.01.05B, a decision may be arbitrary or unreasonable if it is: 1) contrary to sound educational policy; or, 2) if a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. “Arbitrary” (and “capricious,” its usual companion) is best understood as a reasonableness standard, and so long as an administrative decision is reasonable or rationally motivated, it will not be struck down as arbitrary or capricious. *Harvey v. Marshall*, 389 Md. 243, 296-97 (2005). Some examples of decisions that are arbitrary or capricious include situations where an agency acts in a way contrary to or inconsistent with an enabling statute’s language or policy goals, if an agency acts irrationally inconsistent with previous agency decisions, or if the agency treats similarly situated individuals differently without a rational basis for the deviation. *Harvey*, 389 Md. at 303-04; *Montgomery County v. Anastasi*, 77 Md. App. 126, 138-39 (1988). Arbitrary and capricious review must be performed on a case-by-case basis, as the outcome necessarily depends on the specific facts of each case. The test is whether a reasoning mind could have reached the factual conclusion the agency reached, consistent with the proper application of controlling legal principles. *Travers v. Baltimore Police Dep’t*, 115 Md. App. 395, 420 (1997). Moreover, in such a case, great deference must be accorded to the agency. *Id.* See also *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628 (2002).

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

Under COMAR 13A.01.05.05D, the Appellants have the burden of proof, by a preponderance of the evidence, at a hearing on the merits. As this is a Motion for Summary

Affirmance, the burden of proof is on the Local Board as the moving party. Generally a party asserting the affirmative of an issue bears the burden of proof in a proceeding before an administrative body. *See Comm’r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm’n*, 221 Md. 221, 231 (1959)) (“the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body”).

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

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

Procedures Governing School Closings

A local board of education²² shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01A. COMAR 13A.02.09.01B-D sets forth the following guidelines for those procedures:

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

- (1) Student enrollment trends;
- (2) Age or condition of school buildings;
- (3) Transportation;
- (4) Educational programs;
- (5) Racial composition of [the] student body;
- (6) Financial considerations;
- (7) Student relocation; [and]

²² Under COMAR 13A.01.05.01B(6), the Respondent is a “local board.”

(8) Impact on [the] community in [the] geographic attendance area for [the] school proposed to be closed and [the] school, or schools, to which students will be relocating.

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

- (1) A public hearing to permit concerned citizens an opportunity to submit their views orally or to submit written testimony or data on a proposed school closing. This includes the following:
 - (a) The public hearing shall take place before any final decision by a local board of education to close a school;
 - (b) Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the public meeting.

(2) Adequate notice to parents and guardians of students in attendance at all schools that are being considered for closure by the local board of education. The following apply:

- (a) In addition to any regular means of notification used by a local school system, written notification of all schools that are under consideration for closing shall be advertised in at least two newspapers having general circulation in the geographic attendance area for the school or schools proposed to be closed, and the school or schools to which students will be relocating;
- (b) The newspaper notification shall include the procedures that will be followed by the local board of education in making its final decision;
- (c) The newspaper notification shall appear at least 2 weeks in advance of any public hearings held by the local school system on a proposed school closing.

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

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

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

Analysis

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

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

In this matter, the Appellants have not offered any genuine issues of material fact in dispute to demonstrate that the Local Board acted unreasonably. The Appellants' Response disputes some of the conclusions reached by the Local Board and questions the choices made by the Local Board. However, the arguments offered by the Appellants reflect a difference of opinion, but offer no creditable or substantive evidence to assert a genuine dispute of the material facts upon which the Local Board's Motion is based, facts that support the Local Board's reasonable and legal actions in adopting the Final Plan.

In their Response, the Appellants dwell on what they believe the Local Board has not considered in its analysis and decision, suggesting that the information sought and obtained by

the Local Board was either flawed or skewed. What they have not offered, however, is substantive evidence showing material facts in dispute. The Appellants argue that the Local Board did not fully consider the eight required regulatory factors; however, they have provided no evidence to support that claim. The evidence demonstrates that each factor was given full consideration. For example, the Appellants claim that the Local Board neglected Charles Carroll for years and “targeted” the school, all without foundation. They further assert that they “do not agree” with the Local Board’s enrollment projections, yet offer no substantive evidence in light of the substantiated studies conducted by the Local Board.

To the contrary of what the Appellants allege, the Local Board considered all eight factors required in COMAR 13A.02.09.01. The Appellants argue that the Local Board did not fully consider the eight required regulatory factors; however, they have provided no evidence to support that claim or to indicate that the Local Board failed to explore aspects regarding any of the factors. The State Board has not mandated an equal allocation of significance or scrutiny for all eight factors. To the contrary, the State Board has held that “as long as there is adequate reason, supported by at least one criterion, the local board’s decision in a school closing case should prevail.” *See Slider v. Allegany County Bd. of Educ.*, MSBE Op. No. 00-35 (2000) at 53 (citing *Kensington Elementary School PTS v. Montgomery County Bd. of Educ.*, MSBE Op. 82-31 (1982) at 681).

The regulations do not mandate that each factor must be identically weighted, simply that each be given consideration. In this case, while the Local Board may have placed more significance on some factors over others (such as student enrollment trends and financial considerations over racial composition), it is clear that the Local Board reasonably considered each factor, as required by law, and reached a rational conclusion to adopt the Final Plan.

The Local Board fulfilled its obligation to consider each of the eight factors and properly described its actions and rationale for each in the Final Plan. The determination of these factors, based on analysis and reasoning, supported the Local Board's decision. While the Appellants may not agree with the Local Board's conclusions, that alone does not render the Local Board's decision arbitrary, unreasonable, or illegal.

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

The Local Board extensively explored and placed pronounced emphasis on student enrollment trends, recognizing the substantial decline in student enrollment and its crucial impact on the economic viability of the school system and the affected schools. The Local Board properly analyzed the age and condition of the affected schools, and recognized that Charles

Carroll, in particular, required extensive and costly renovation due to its deficient facility and age. The Local Board considered the issues of transportation as to all of the three types of schools, including the redesign of bus routes, “transportation tier” times, distance, and noted that only one elementary school, Ebb Valley would be required to change from a first tier transportation school to a third tier transportation school, which is the tier currently assigned to Charles Carroll and most of the other continuous elementary schools. This alignment lessened the potential need for additional bus services. Although the Appellants contend that the bus times for their children will be “ridiculously long,” or that the bus rides will affect students’ extra-curricular activities, they have offered no supporting evidence to demonstrate these contentions.

As to education programs, in ruling upon the Local Board’s Motion, I must determine whether there are material facts that would establish that the Local Board’s decision was either (1) contrary to sound education policy or (2) could not have been reasonably reached by a reasoning mind. COMAR 13A.01.05.05B. Section 2-205 of the Education Article gives the State Board the power and duty to determine the elementary and secondary educational policies of the State. Section 4-108(3) provides that each county board shall “[s]ubject to this article and to the applicable bylaws, rules, and regulations of the State Board determine, with the advice of the county superintendent, the educational policies of the county school system.” Neither the courts nor the State Board, the agency which has delegated to me the authority to issue this Proposed Order, and whose policy I am obligated to follow,²³ has specifically defined the term “sound educational policy.” The “reasoning mind” standard set forth in COMAR 13A.01.05.05B(2) is a broad standard giving great deference to the decisions made by local boards of education in determining school boundaries and the assignment of students.

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

In adopting the Final Plan, the Local Board appears to have placed greater emphasis on the educational aspects of the plan in relation to middle and high school programming. The Final Plan does not place great emphasis on any education plans at the elementary school level. While this may or may not be an indication of the Local Board's exploration of the educational aspects of its determinations re: Charles Carroll and elementary school education, I note that, as stated above, the State Board has not mandated an equal allocation of significance or scrutiny for all eight factors, and has held that "as long as there is adequate reason, supported by at least one criterion, the local board's decision in a school closing case should prevail." *See Slider*, MSBE Op. No. 00-35 (2000) at 53. I do note, however, that the February 2012 FSR set forth a number of instructional deficiencies, including an open plan arrangement of kindergarten classrooms that had to be accessed through the cafeteria, multiple undersized or unavailable spaces for enrichment and resource programming, and an undersized media center. Even if the Local Board placed greater emphasis on Charles Carroll's physical deficits in the Final Plan, little comment may not necessarily reflect the Local Board's consideration of this area of concentration. Given the State Board's prior rulings, I do not find that the paucity of information in this category causes the Final Plan to fail.

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

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

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

The Appellants dispute the Local Board's emphasis on the financial crisis facing the school system. Their claim, however, falls short. For example, the Appellants assert that the Local Board's concern over funding has been essentially cured by the offer of the Governor to add an additional \$4 million in educational grant funds, and that the Final Plan should not go forward in light of increased resources. What the Appellants fail to note is that this addition, not earmarked for any specific use, based on declining enrollment and reductions in State formula funding, would be a one-time, stop-gap occurrence, with no guarantee of repetition. The letter offered by the Appellants²⁴ indicates that the Governor hoped that the addition would "allow local leaders to defer school closings being considered for next year." However, the Governor, in his magnanimity, did not make the funding contingent on a rejection of the Final Plan, a function reserved to the Local Board. Although a temporary infusion of funds would be a welcome gift to any school system, it would be imprudent for a school system to base planning and operations solely on a grant that may never be repeated. However beneficial, a possible single infusion of funds does not negate the reasonableness of the Local Board's consideration of financial concerns as a factor in adopting the Final Plan.

The Local Board recognized the issues associated with student relocation, and analyzed the data to reach a plan to achieve the goal of reducing operational costs in a manner that would only affect 7% of the entire county student population. The Local Board recognized that the

²⁴ Appellants' Ex. 26.

plan increased the fragmentation of the elementary to middle feeder pattern, and increased the number of elementary schools that would ultimately split to attend multiple high schools.

However, the Local Board reasoned that, despite these changes, the Final Plan achieved the operational costs of having too much capacity system wide. Again, the broad standard is one of reasonableness, and although the impact of relocation may seem burdensome to Charles Carroll families, the Local Board made a rational decision, in light of other challenges facing Charles Carroll.

As to the impact on community in the geographic attendance area, the Local Board again acknowledged that the purpose included maximizing the utilization of the receiving elementary schools. It also recognized that the relocation minimized the likelihood that the same students would be redistricted again in the future, thus minimizing instability. It is clear that the Local Board considered this factor, and balanced it with others in reaching its Final Plan.

Furthermore, the Appellants have not shown that any of the efforts or practices engaged in by the Local Board in either the formulation or publication of the Final Plan was illegal. One of the Appellants' contentions is that the Local Board failed to distribute "physical newsletters as notification of a potential school closing." The Appellants, however, have not shown that the Local Board failed to comply with the regulatory notice requirements or its own internal policies and procedures. The evidence clearly demonstrates that the Local Board timely posted notices in a variety of public outlets, including the Baltimore Sun, Carroll County Times, The Advocate of Westminster and Finksburg, The Advocate of Hampstead and Manchester, and the Advocate of Eldersburg and Sykesville, as well as publishing multiple press releases and newsletters.

The Appellants further assert the illegality of the Local Board's actions by claiming that the BAC was comprised "using solely central office staff at the [Local Board]. Even if the

formation of the BAC was not suspect, the methodology is, by closing three schools in one year without choosing the schools to be closed for the following year and the possibility of redistricting students more than once.” The Appellants contend that these actions exceed the authority of the Superintendent and are an abuse of discretion.

The Appellants offer little support for these contentions other than fragments from certain emails, the context of which has not been established. The Appellants claim that the that the Final Plan was but a first step in a two-part plan of redistricting, and that it would be impractical, as well as unfair, to implement the Final Plan when a more comprehensive plan is forthcoming. This assertion, however, is speculative. Although the Local Board appears to have left a possibility open regarding future plans, there is no evidence of the development of future, more extensive closings or relocations.

The Appellants also appear to have gone over all of the Local Board’s documents with a fine-toothed comb, searching out typographical errors and differences in wording. Any slight discrepancy does not constitute an illegal act, but is merely an error that had no substantive impact on the actions of the Local Board.

The Appellants also suggest that the Local Board’s decision was “preordained.” The evidence amply supports the opposite conclusion—that the Local Board spent many years, engaged consultants and planning processes, obtained and analyzed reams of data, tried to devise option after option, and ultimately arrived at a plan that it considered best to meet its challenges and achieve its goals. There is no evidence that the Local Board engaged in all of this activity simply to mask a predetermined result.

The Local Board has demonstrated that there is no material fact in issue as to whether its decision to adopt the Final Plan was legal. Its decision was not unconstitutional; it did not

exceed the statutory authority or jurisdiction of the Local Board; did not misconstrue the law; did not result from an unlawful procedure; was not an abuse of discretionary powers; and was not affected by any other error of law.

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

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

Clearly, the Appellants are heavily invested in their loyalty to Charles Carroll, a small school that has long served a close and caring community. The Local Board, however, must take a comprehensive view, and objectively make decisions based on financial, demographic and other relevant data in order to serve the entire system. The Local Board has demonstrated that its decision was premised on a broad spectrum of considerations, as detailed above. Thus, its decision was not arbitrary and unreasonable and was consistent with a conclusion that could have reasonably been reached by a reasoning mind. Neither were the actions of the Local Board illegal. The undisputed material facts demonstrate that the Local Board's decision was reasonable under the standards set forth in COMAR 13A.01.05.05, and the Appellants have

failed to show any genuine dispute of material fact to contradict the Local Board's adherence to those standards. Accordingly, I find that the Local Board is entitled to summary affirmance as a matter of law. COMAR 13A.01.05.03D; COMAR 28.02.01.12D. As such, a hearing on the merits in this matter is no longer required and, therefore, the merits hearing scheduled for May 31, June 1-3, 7-10, and 13-17, 2016 is cancelled.

CONCLUSION OF LAW

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

PROPOSED ORDER

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

May 5, 2016

Date Order Mailed

HCH/emh
#161836

Harriet C. Helfand

Administrative Law Judge

RIGHT TO FILE EXCEPTIONS

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

Copies Mailed to:

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