

**BEFORE THE MARYLAND STATE BOARD OF EDUCATION**

**HARRISON W., ET AL**

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**Appellants**

\*

**v.**

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**OAH CASE NO.: MSDE-BE-16-16-02815**

**BOARD OF EDUCATION OF**

\*

**CARROLL COUNTY**

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**MOTION FOR STAY  
AND/OR PRELIMINARY INJUNCTION**

Donald J. Walsh, Offit Kurman, P.A., and Dawn A. Nee, Law Office of Dawn A. Nee, L.L.C., on behalf of Appellants move to have this Court grant a stay and/or preliminary injunction against defendant, Carroll County Board of Education (CCPS), and in support of their Motion allege that:

1. As demonstrated, an appeal and review of CCPS School Closure Decision is currently under review by the Maryland State Board of Education (“MSBE”). This Closure Decision cannot be considered a final decision under Maryland’s Administrative Procedures Act since it is not subject to final judiciary review. As such, MSBE has full authority over the matter and the CCPS’ decision cannot be implemented until the final review and approval of CCPS’ decision has been conducted by MSBE.

2. The Office of Administrative Hearings (“OAH”) issued a Proposed Ruling on Motion for Summary Affirmance on May 5, 2016, recommending summary affirmance in favor of CCPS. On May 18, 2016, Appellants filed Exceptions to Summary Affirmance arguing that the Administrative Law Judge (“ALJ”) ignored blatant factual disputes and clear inferences demonstrating that CCPS undertook a cursory effort in deciding to close North Carroll High

School, contrary to the law and CCPS' established minimum process for such decisions. A decision on these exceptions could be as late as July, 2016.

3. CCPS continues to press forward with its closure during the pendency of the review of its decision by MSBE. Unless this Board enters a stay and/or injunction, immediate, substantial, and irreparable harm will result and continue to result to Appellants before full review and resolution by MSBE.

4. The unilateral and unauthorized actions of CCPS as set forth in the Exceptions and the Response to the Motion for Summary Affirmance and Exhibits were improper, illegal, calculating, and taken in bad faith, with the intention of rendering the Appeal moot before CCPS' decision could be reviewed and reversed. The Exceptions, Response, Appeal and all exhibits attached thereto are incorporated by reference.

5. CCPS' actions were taken at a particularly sensitive time for Appellants who are adolescents and wrestling with the emotional concept that the school which they attend, which has been in place for 40 years, will be closing at the end of this year. Students have been told that they may not drive to school next year, have no idea what schedules or curriculum will be available to them should the decision be reversed, have no idea what athletics will be available to them in the Fall and have been attempting to find ways of graduating early if necessary to avoid relocation to another school. Notwithstanding the pendency of the Appeal and review of the decision by the MSBE, CCPS has been accelerating the closure of North Carroll which will have a tremendous impact on Appellants if CCPS' closure decision is properly reversed.

6. Contrary to the harm to Appellants and those similarly situated, CCPS will not be damaged if restrained as prayed until a full adversary hearing can be held and a final decision can be issued by the MSBE, which is ripe for review.

7. Appellants have no adequate, comprehensive remedy at law, and, even with the issuance of the injunction as prayed, will not be able to completely repair the damage wrought by CCPS' rush to close North Carroll.

8. When considering the granting of preliminary injunctive relief, if, as here, the balancing of hardships as between the parties is in Appellants' favor, issuance of the relief is warranted where Judge Jerome Frank's famous formulation is met, "[i]t will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and more deliberate investigation." *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md. App. 290, 304 (1997).

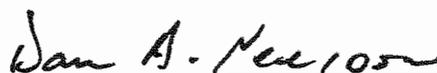
WHEREFORE, Appellants pray that this Court:

- (a) Grant the Motion for a Stay and Preliminary Injunction;
- (b) Temporarily restrain CCPS, until a full resolution by MSBE, from taking steps to close the schools as noted in its December 9 closure decision;
- (c) Order CCPS to restore and preserve the status quo as it existed on December 10, 2015; and
- (d) Enter such other and further temporary equitable relief as justice may require.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of May, 2016, a copy of the foregoing Motion to Stay and Memoranda was emailed and sent by first-class mail, postage prepaid to:

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**MEMORANDUM IN SUPPORT  
OF MOTION FOR STAY AND/OR PRELIMINARY INJUNCTION**

Donald J. Walsh, Offit Kurman, P.A., and Dawn A. Nee, Law Office of Dawn A. Nee, L.L.C., on behalf of Appellants, submit this Memorandum in support of their Motion for a Stay and/or preliminary injunction against defendant, Carroll County Board of Education (“CCPS”). As explained below, the balance of hardships in this case are extreme and easily tip in favor of granting the injunction pending the outcome of the final decision by the Maryland State Board of Education (“MSBE”) which is reviewing CCPS’ decision to close several schools in Carroll County.

**PROCEDURAL HISTORY**

This case was transferred to the Office of Administrative Hearings (“OAH”) for fact finding on Appellants’ appeal of the decision of CCPS to close North Carroll High School (“NCHS”). CCPS filed a Motion to Dismiss certain appellants and a Motion for Summary Affirmance and Appellants filed a timely response. On May 5, 2016 the Administrative Law Judge’s (“ALJ”) issued her Proposed Ruling on the Motions, finding no standing for certain appellants and that there were no factual disputes and that CCPS was entitled to judgment.

Appellants filed exceptions to the Proposed Ruling on Motion for Summary Affirmance arguing that the ALJ misinterpreted the established minimum process for closing schools and

presumptively found in favor of CCPS, ignoring blatant disputes of facts and evidence that CCPS failed to follow the required minimum process in determining to close schools and instead based its decision on flawed and limited information and irrational conclusions. Appellants argue that the ALJ incorrectly found that no genuine dispute existed whether CCPS had faithfully carried out its duties.

These exceptions are currently pending before the MSBE, who alone has the final decision making authority whether the closures are legal and correct. Given that the MSBE meets only once a month, a final decision could be as late as July 2016. If an injunction is not issued and the status quo preserved pending the outcome of the MSBE final decision, Appellants, as well as CCPS, will suffer severe hardships which may be irreversible.

### **BACKGROUND**

As fully detailed in Appellant's Exceptions and Responses to CCPS' Motions,<sup>1</sup> on December 9, 2015, CCPS issued a decision to close three schools in its jurisdiction among them North Carroll High School. These closures were the first phase of closures which CCPS is considering as it wrestles with budget issues and a declining enrollment in the County. Unquestionably, deciding to close schools is not a popular decision and one which cannot and should not be taken lightly. However, MSBE and CCPS has set forth minimum standards and processes that must be undertaken before making a decision to close schools.

Appellants raised serious charges that CCPS embarked on a flawed and contrived process in reaching the decision to close North Carroll, and have presented arguments and documents supporting a compelling demonstration of the manner in which CCPS manipulated data or used

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<sup>1</sup> Appellants incorporate by reference herein their Exceptions, the Responses to CCPS' Motions and all exhibits thereto as if fully set forth herein.

flawed data, hid its agendas and failed to adhere to its own educational policies as well as those of the MSBE.

### CCPS' FLAWED DECISION MAKING PROCESS

The internal documentation of CCPS and the Boundary Adjustment Committee (BAC), which was evaluating the closure issue on behalf of CCPS, provides compelling examples that a fair consideration of the State's and CCPS' factors was never undertaken when reviewing the proposed closures. One week before the CCPS Superintendent released his recommendations on November 15, CCPS Board member Jennifer Seidel wrote to the CCPS Superintendent and other members of the CCPS Board an email titled "Permanently closing a school regs."

I think what concerns me about the way we've done it is adopted in a blanket fashion with the Ed Fac Master Plan. Because we've never had to worry about this in the past, that may have been ok. But in light of potential future closings, we may want to pull it out at some pt [sic] for review and discussion, as we do with other regs/policies.

The CCPS Superintendent responded by noting "I just wanted everyone to know that the regs do exist." The BAC's internal notes provide similar evidence demonstrating an ignorance of the MSBE required review since financial considerations trumped all review.

There are many factors to consider when selecting schools for possible closure. These include student enrollment trends, age/condition, transportation, education programs, racial composition, student relocation, and impact to communities. ***However, this analysis will only consider four factors due to the fact that CCPS is considering school closures mainly for financial reasons.*** One of the most obvious factors, low utilization, is not being sued. The reason for this is that closing schools will raise the utilization of the remaining schools, including those with low utilization. Transportation was also not considered for this analysis due to the fact that the impact of school closure on ride times is dependent on future BOE decisions.

Discovery revealed other disturbing revelation including the possibility that the decision was structured to support a hidden public agenda for one of the closed schools' property.<sup>2</sup> In an email exchange between CCPS' Superintendent Guthrie and County Commissioner Richard Rothschild, after the recommendation to close schools had been made public, Messrs. Guthrie and Rothschild noted their "vindication" since they were initially against Manchester Valley being built and they were now closing North Carroll and consolidating the students into Manchester Valley. Superintendent Guthrie further explained, "Not for release, but out [sic] plan is to move Central office to New Windsor. We take over a building at [sic] you get the Winchester building."

In her recommended ruling, the ALJ was dismissive of this evidence and misconstrued the arguments made by Appellants as "conspiratorial" when they were presented to justifiably challenge the credibility of the information presented by CCPS once private motives were uncovered for the closure of North Carroll. When CCPS' Superintendent blatantly discussed his vindication for the construction of Manchester Valley in closing North Carroll, this Board and the ALJ are compelled to take a closer look at the decision to close schools in Carroll County.

More importantly, this exchange directly supported the fact that rather than performing a rational comparison of all schools in Carroll County and deciding whether any one school was more unique than the others and needed to be closed, CCPS sought only to support a decision to close North Carroll High School. This lack of detailed analysis is made more suspect because CCPS has argued that this type of a comparative approach is required by MSBE. In correspondence it sent to this Board on January 14, 2016, CCPS complained about a visit by one

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<sup>2</sup> This is also confirmed in the latest proposed budget of CCPS provided to Commissioners of Carroll County, which claims savings solely through personnel cuts at the closed schools. Not surprisingly, no savings are shown for any other facility or building operation costs.

Board member to North Carroll. CCPS stated that “[w]e also question what knowledge could be gained from visiting a single school in our district without visiting all high schools to make comparisons.” Despite its vocalization of this posit, CCPS utterly failed to undertake such a review.

Beyond these compelling admissions, other facts ignored by the ALJ necessitated the close review of the closure decisions here and to avoid the rush to decision and closure pushed by CCPS. Compounding errors in enrollment figures which were called into question by the Maryland Department of Planning, is the fact that the CCPS has readily admitted that the closure of these schools is only the first step in a process which it will undertake over the next year before closing other schools to further meet budgetary needs. Rather than develop a vision which realigns CCPS’ resources, as was suggested to CCPS in 2013 by the private consultant it retained, CCPS is continuing to undertake an ad hoc review of its problems and assessments of corrections which need to be made. Not only may this approach result in some of the students being crammed into Manchester Valley being sent to a third high school, each change taken by CCPS is done with no forethought to the possible chaos it will create to a system already beleaguered by dissatisfied parents and students.<sup>3</sup> This lack of long term vision and approach were the basis for one CCPS’ Board Member’s dissent to the decision here:

I have concerns about this peacemeal [sic] approach to solving a comprehensive problem. Without seeing the entire plan for comprehensive school closures and redistricting, I am concerned that our hands become tied in addressing other facility concerns in the near future. It is for this reason that I am voting no to the [Superintendent’s Recommendation].

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<sup>3</sup> This Motion also represents little more than the Board’s effort to refuse to respond to specific failures in its process, blaming budgetary issues, previous superintendents and ignoring its obligations under the law. The onerous task faced by CCPS cannot be slightly by simply pointing fingers at actions which took place before the Board undertook their oaths of office and some petty effort at “vindication” over previous opposition to those decisions.

CCPS' efforts here are little more than a repeat of the same haphazard decision making which created this mess.

Despite having an obligation to do so, CCPS has undeniably undertaken no reasonable effort to study the differences in facilities of the two impacted high schools and has utterly failed to provide any consideration of the impact of the consolidation to the surrounding communities of both North Carroll and Manchester Valley. Consistent with its arrogance in not examining the impacts on these communities as required by law, CCPS never examined the current and proposed housing development in either community or even the communities' respective traffic patterns and it failed to take into basic consideration the size of the school into which it was consolidating students. Manchester Valley has less room, is a smaller facility than North Carroll, has limited parking, has the same number of classrooms as North Carroll which must now accommodate twice the student population and does not even have an auditorium into which the entire proposed student body can fit.

Despite MSBE requirements and CCPS' requirements, CCPS did not even review any traffic studies or impacts to the facilities, commutes and experiences of students and drivers before, during or after school hours.<sup>4</sup> Recognizing its obligations to exam the impact when it built Manchester Valley, CCPS projected the traffic conditions through 2009 but made no effort to repeat that exercise before electing to close North Carroll and consolidate it with Manchester Valley. That report plainly explained its projections which are based on a much smaller school. "When completed, the new Manchester High school will be able to accommodate approximately

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<sup>4</sup> CCPS does mention that the two schools are four miles apart, but never explains that Westminster and Winters Mill High Schools are only 4 miles apart as well and South Carroll, Liberty and Century also share similar mileage separations. Yet, none of these schools were considered for closing and overcrowding based on their proximity.

1,200 students in a 217,000 square foot building.” Not only did that study show difficulties in the traffic dynamics, CCPS did not perform any analysis for a school having well over 1400 students as will occur based on CCPS’ closure and consolidation of the schools.

Of equal importance, CCPS’ admission that the school will be well above capacity for years to come ignores CCPS’ educational policies as well as those adopted by and presented to MSBE. MSBE and CCPS believe that better student achievement and success, especially, at the high school level, is obtained through smaller classrooms and environments. With no regard or even mention of the impact on student success or staff effectiveness, the addition of no new facilities and no new allocated funds, CCPS’ has decided to cram over 1400 students into an over capacity school.

Rather than detail how it took comprehensive and exacting consideration of each of the factors required by law and faithfully served the very population it was formed to serve—the students of Carroll County— CCPS seeks to excuse its review based solely on the budgetary shortfalls it was facing. Just as this tribunal cannot permit CCPS to so easily escape its difficult task, it cannot impose the consequences of this decision on students who played no part in creating this problem but who now suffer the consequences of the poor planning of CCPS.

**MSBE HAS AUTHORITY TO STAY  
SINCE THE CLOSURE DECISION IS NOT YET FINAL**

Based on General Assembly’s creation and organization of the School Board structure, it is clear that the decision of CCPS is not final and is subject to review by MSBE. To be sure, the General Assembly specifically distinguished between the decision of a local and State boards when granting powers to each. Md. Code Ann., Education (“ED”) § 4-205 (c)(3), granting powers to the local board states:

A **decision** of a county superintendent may be appealed to the county board if taken in writing within 30 days after the **decision** of the county superintendent. The **decision** may be further appealed to the State Board if taken in writing within 30 days after the **decision** of the county board.

Ed. § 4-205(c)(3). *See also Kim v. Comptroller of Treasury*, 350 Md. 527, 534 (1998)

(“Ordinarily an agency order is not final when it is contemplated that there is more for the agency to do”). To the contrary, Ed. § 2-205 makes clear that the “decision of the [State] Board *is final.*”

Maryland vested the MSBE with “*ultimate supervisory authority* for determining educational policy in Maryland and administering the public school system” *Chesapeake Charter, Inc. v. Anne Arundel Cty. Bd. of Educ.*, 358 Md. 129, 137 (2000). This authority has been described as “a visitatorial power of the most comprehensive character,” one that is “in its nature, summary and exclusive.” *Id.* at 137-38. The MSBE is “the last word on any matter concerning educational policy or the administration of the system of public education.” *Wilson v. Bd. of Ed. of Montgomery Cty.*, 234 Md. 561, 565 (1964).<sup>5</sup> Conversely, local county school boards are granted only limited authority to “control educational matters that affect the county.” *Chesapeake Charter*, 358 Md. at 135-36 (ED § 4-101). Although the county board does have power to “decide all controversies and disputes that involve (i) The rules and regulations of the

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<sup>5</sup> *See also Bd. of Educ. of Talbot Cty. v. Heister*, 392 Md. 140, 152 (2006) (“the State Board has very broad statutory authority over the administration of the public school system in this State”); *City Neighbors Charter Sch. v. Baltimore City Bd. of Sch. Comm'rs*, 169 Md. App. 609, 623, *aff'd*, 400 Md. 324 (2007) (“the State Board's “paramount role . . . in interpreting the public education law” is one that “sets it apart from most administrative agencies.”) (quoting *Bd. of Educ. for Dorchester County v. Hubbard*, 305 Md. 774, 791 (1986)); *Hurl v. Bd. of Educ. of Howard Cty.*, 107 Md. App. 286, 298 (1995) (“as a result of a combination of legislation and longstanding case law, the State Board has the “last word” on controversies or disputes involving the proper administration of the public school system”).

county board; and (ii) The proper administration of the county public school system,” the county board’s decisions remain subject to review by the MSBE. ED § 4-205(c)(3).

CCPS’ decision to close NCHS is subject to review by the MSBE under ED § 4-205 and because the decision is pending before MSBE, there is “more for the agency to do” and therefore, the decision of CCPS is not final. MSBE retains complete authority over all matters relating to State public schools, which places in its power the ability to prevent, or stay, CCPS from taking steps to effectuate the closing of NCHS.<sup>6</sup>

### **STANDARDS FOR STAY/INJUNCTIVE RELIEF**

Past decisions of MSBE demonstrate that the standards for a Stay of the decisions of local boards follow the standards which generally exist for injunctive relief. A stay may be granted if it appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction. Such temporary injunctive relief is “issued to maintain the status quo pending a decision as to a justiciable controversy.” *Harford County Educ. Ass’n v. Board of Educ.*, 281 Md. 574, 585 (1977).

The factors reviewed in determining whether a temporary restraining order or preliminary injunction should be granted are “(1) the likelihood that the plaintiff will succeed on the merits; (2) the ‘balance of convenience’ determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff

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<sup>6</sup> CCPS has incorrectly argued that MSBE’s power to stay is limited to 60 days, however, MSBE has full and final authority over all matters and it is not limited. The 60 day limitation set forth in COMAR 13A.01.02.01B is applicable only to the State Superintendent which even this Board can override.

will suffer irreparable injury unless the injunction is granted; and (4) the public interest.”

*Fritzsche v. Md. State Bd. of Elections*, 397 Md. 331, 340 (2007); *see also State Comm’n on Human Rels. v. Talbot County Det. Ctr.*, 370 Md. 115, 136 (2002); *Maryland Comm’n on Human Rels. v. Downey Communs.*, 110 Md. App. 493, 515 (1996).

Of the four factors, “the balance of hardships is the most important.” *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md. App. 290, 304 (1997).

The balance of convenience factor, also referred to as the balance of hardships factor, is “determined by whether greater injury would be done to the defendant by granting the injunction than would by its refusal.” *Schade*, 401 Md. at 36. This Court has stated that “of the four factors to be considered by the trial court, the balance of hardships is the most important.” *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md. App. 290, 304, cert. denied, 347 Md. 681 (1997). If the balance of hardship weighs in favor of the plaintiff, the likelihood of success factor becomes less important. *Eastside Vend Distributors, Inc.*, 396 Md. at 242; *see also Antwerpen Dodge, Ltd.*, 117 Md. App. at 304.

*Wish Properties, LLC v. Stone*, 2015 WL 5968462 (Md. App. 2015)

Possibly the most critical step in interlocutory injunction analysis is to balance the likelihood of harm to the Appellants if the injunction is not issued against the likelihood of harm to the defendant if the injunction is issued. *Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc.*, 396 Md. 219 (2006). If a decided imbalance in hardship appears in plaintiff’s favor, the requirement to show likely success on the merits is displaced, and it will ordinarily be enough if the plaintiff has raised questions on the merits that are so serious and substantial as to make them fair ground for litigation and more deliberate investigation. *Id.* As explained in *Eastside Vend Distributors*, while quoting guiding Fourth Circuit precedents:

the first step [in a trial court’s determination as to whether to grant or deny a preliminary injunction] is for the court to balance the ‘likelihood’ of irreparable harm to the plaintiff against the ‘likelihood’ of harm to the defendant; and if a decided imbalance of hardship should appear in the plaintiff’s favor, then the likelihood-of-success test is displaced by Judge Jerome Frank’s famous formulation:

[I]t will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation.

*Eastside Vend*, 396 Md. at 242 (quoting *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189, 195 (4th Cir. 1977)).

Irreparable harm is a “pliant term adaptable to the unique circumstances which an individual case might present.” *State Comm’n on Human Rel’s. v. Talbot County Det. Ctr.*, 370 Md. 115, 140 (2002). As explained by the Maryland Court of Appeals:

[A]n injury is irreparable, within the law of injunctions, where it is of such a character that a fair and reasonable redress may not be had in a court of law, *so that to refuse the injunction would be a denial of justice*--in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily, adequately, and completely compensated for with money.

*Id.* (emphasis in original). Indeed, it is well settled that “irreparable injury is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate.” *El Bay v. Moorish Temple*, 362 Md. 339, 355 (2001) (quoting *Maryland-Nat’l Capital Park and Planning Comm’n v. Washington Nat’l Arena*, 282 Md. 588, 615 (1978) and *Dudley v. Hurst*, 67 Md. 44, 52 (1887) (“injury [is] irreparable when it cannot be measured by any known pecuniary standard”)). So long as the seeker of injunctive relief establishes that there exists some reasonable basis for its belief that an injunction is necessary to prevent irreparable harm, the statutory injunction should be granted. *Id.*, at 141.

Nevertheless, “in litigation between governmental and private parties, or in cases in which injunctive relief directly impacts governmental interests, ‘the court is not bound by the strict requirements of traditional equity as developed in private litigation.’” *Fogle*, 337 Md. at 456, 654 A.2d 449 (quoting *State Dep’t of Health & Mental Hygiene*, 281 Md. at 555, 383 A.2d 51); see *Maryland Comm’n on Human Relations v. Downey Communications, Inc.*, 110 Md. App. 493, 517, 678 A.2d 55 (1996). Rather, “[c]ourts of equity may, and frequently do, go much

farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.’ “ *Fogle*, 337 Md. at 456, 654 A.2d 449 (quoting *Space Aero Products Co., Inc. v. R.E. Darling Co., Inc.*, 238 Md. 93, 127, 208 A.2d 74, *cert. denied*, 382 U.S. 843, 86 S.Ct. 77, 15 L.Ed.2d 83 (1965)).

*Maloof v. State, Dep't of Env't*, 136 Md. App. 682, 693-94 (2001).<sup>7</sup>

## ARGUMENT

### I. Likelihood of Success on the Merits

Appellants presented substantial evidence to support the fact that CCPS failed to follow their regulations, the COMAR required considerations when deciding to close a school, had a hidden agenda and impermissible purpose in reviewing the decision and created a contrived decision which is not rational, reasonable, or supported upon a complete inspection. *See* Factual Background, *supra*, and Response to Motion for Summary Affirmance detailing the mounting evidence showing that CCPS is entitled to little deference in its decision-making and that it failed to consider all necessary factors. The ALJ failed to consider this evidence in making her Proposed Findings, which issue is subject of Appellant’s exceptions. Despite the fact that the ALJ ignored this evidence, Appellants have set forth sufficient evidence to show that CCPS failed to follow COMAR in making its decision. As explained above, there are numerous examples of CCPS’ failures in the decision making process. In light of this evidence and CCPS’ disregard for the COMAR required considerations, the likelihood of success favors Appellants.

The MSBE has long held that violation of state regulations rendered a decision illegal and unenforceable. *Concerned Citizens of Seven Oaks v. Bd. Of Educ. Of Anne Arundel Co.*, 7 Op. MSBE 654, n.8 (1997). “Although these cases talked of compliance with rules in terms of

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<sup>7</sup> CCPS will argue that the standard of review is different when a private individual is appealing a decision of a governmental entity. This is improper and is unsupported in the case law. The standard is in fact the same. Regardless, since the decision is not final until concluded by this Board, MSBE has complete authority to stay the decision.

meeting the arbitrary and unreasonable standard, failure to comply with rules, regulations or policies is now identified in the State Board regulations as a basis for finding of illegality.” *Id.* Likewise, MSBE has held that a local school board’s violation of its own policies renders its decision illegal and reversible by the MSBE.<sup>8</sup>

Following these precedents here, the failure of CCPS to follow its own rules and procedures renders the decision illegal and unable to be pursued. Construing all inferences in favor of Appellants, these admissions are conclusive that CCPS has not done its review correctly and consistent with State law requiring that its decision and this Appeal must pursue a full fact finding hearing in support of the Appeal.

CCPS believes that because deference is granted to the local school board, the likelihood of success factor automatically is in favor of CCPS and, consequently, the remaining preliminary injunction factors are moot. CCPS argues that in cases where a government agency decision is at issue, the likelihood of success is the most important factor and outweighs the remaining factors. However, CCPS can cite no authority that creates the blanket style rule. While courts note that government agencies are granted deference in decisions that are subject of the agency’s authority, that deference is far from absolute. *Concerned Citizens of Seven Oaks v. Bd. Of Educ. Of Anne Arundel Co.*, 7 Op. MSBE 654, n.8 (1997). In fact, the entire appeal process and the fact that any decision of the local board is subject to review by MSBE before being final is proof of the limits of this deference. The deference is clearly not granted when the decision of the agency

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<sup>8</sup> Although there were past decisions of MSBE which suggested that demonstration of consideration of at least one factor meant the decision was not considered arbitrary or unreasonable, the MSBE now considers the failure to consider the other factors an illegal decision. *See Concerned Citizens of Seven Oaks* 7 Op. MSBE 654, n.8.

is illegal or in violation of the agency's own regulations. *Id.* More importantly, deference is a far cry from likelihood of success on the merits.

## **II. Irreparable Harm and Balance of the Conveniences**

If the status quo is not preserved and MSBE finds that the decision of the CCPS was improper, there is no way to reverse the closing of North Carroll. Students will be forced into a new school which CCPS admits will be overcrowded and beyond its current capacity; students will have fewer and limited opportunities because of fewer resources per pupil and fewer opportunities to be filled by a larger student population; sports schedules and other extracurricular activities will need to be adjusted to allow teams to be merged or formed, practice and compete in new and separate state divisions; teachers and classroom facilities and supplies will have to be redistributed and organized; bus schedules and commutes will need to be adjusted; parents will inevitably be forced to modify and change schedules to accommodate their children's new lives; teachers will not be settled in classrooms, in curriculums or in teaching rhythms; and teachers, administrators and other core personnel who were let go based on the consolidation will have to be replaced or hired.

Further, if the decision of CCPS is reversed, the unwinding of damage will result in further chaos. Not only will students and teachers have spent a year at Manchester Valley, but CCPS, who made an initially incompetent decision will have to create and implement a plan to take action in accordance with this Court's ruling. Putting aside the emotional roller coaster to a peer group which should be celebrating their teen years before launching into adulthood, school schedules cannot be easily redone, teachers and staff cannot be easily rehired, sports teams cannot be reformed, practice and be ready for their seasons and the recreation counsel cannot simply resume its use of fields and facilities. If for example, this Court overturns the decision of

CCPS, and determines that North Carroll should have remained open, then what happens when CCPS attempts to reopen North Carroll? The damage will have already resulted and can never be reversed, particularly for high school seniors. For the remaining students, their high school experience will be fractured and likely cause social ramifications.

Although it is not difficult to imagine the absolute chaos which will occur should the status quo not be maintained until the final decision is rendered by the MSBE, the intangible pain and harm to students learning opportunities, high school experiences and education are far more serious. There is no reset button or means of extending the high school further into the future to accommodate those students whose experiences suffered from the disarray which an ill-conceived and rushed decision created. Based on the admitted reality that Manchester Valley will be overcrowded, parents of high schoolers or those approaching high school will begin to look for other educational opportunities and/or to move to avoid placing their sons and daughters in overcrowded schools. Teachers are looking at early retirements or the possibility of transferring to other schools in other counties where they may bump another teacher who has less seniority in the union system. As a result of the announced decision, home sale inventories will increase causing a corresponding drop in values, High School Seniors will be applying for colleges, taking SAT's and/or ACT's and looking for grades to supply to colleges. These students should not negatively impacted by CCPS' rush to make a poor decision, which is then compounded by its rush to implement that decision before MSBE has had a chance to fully review it and ensure that it complies with the law.

Although the harm to the students and school body could be tremendous if the decision is successfully overturned, there is little to no harm to CCPS should the decision be stayed. All efforts to plan for a transition may be wasted but, if its decision is affirmed on review, it will still

be a place that it can implement the decision at the close of the next school year. Any financial costs or impacts will also be offset by the offer of funds which was made by Governor Hogan in his letter presented to the Board. Unlike CCPS, other school systems facing declining enrolments have accepted funds from the State to keep schools open either to simply offset the financial burden or until a final determination can be made in accordance with COMAR.

CCPS claims that the budget will not balance if the stay is granted. This issue is a red herring. Any budget deficits have nothing to do with the closing of these schools nor do these school closings reverse that budget planning process. CCPS received money from the State government, not previously provided, which covers the alleged savings from closing these schools. Further, the \$5 million dollar savings CCPS touts will occur when the schools are closed is not accurate because CCPS intends to use some of the closed school facilities for its own purposes and CCPS never expected to achieve all of the savings projected.

Conversely, if the stay is granted and CCPS is successful, CCPS will suffer *no* harm, particularly, in light of the fact that the State gave CCPS \$5 million dollars, eliminating the deficit CCPS claimed it would have by keeping the schools open. Should the decision be affirmed, CCPS is free to then close the schools as planned. Under no circumstances can CCPS claim to be harmed if a stay is granted.

For all of these reasons, there is little doubt that irreparable harm will occur if the status quo is not preserved until the MSBE finalizes its review of the CCPS' decision. The balance of hardships clearly tilts in favor of entering an injunction preventing CCPS from implementing its decision until after MSBE concludes its review and issues its written decision.

### **III. Public Interest**

Of similar import, the public interest will not be harmed or jeopardized in any fashion should the schools remain open pending the outcome of the final appeal and decision by MSBE. The public interest involved in this case are unique in light of the fact that the public has a strong interest in ensuring that there is a valid and well-reasoned decision to close the schools. Given the fact that CCPS has indicated this is the first phase of additional redistricting and closures, there is a distinct interest in ensuring that CCPS has performed its evaluation of all required factors before it embarks on an additional phase of closures or changes.

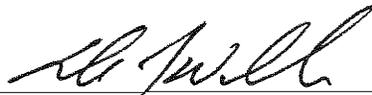
Similarly, the public interest exists in ensuring that the decisions that its elected officials make are valid, legal, done for appropriate reasons and are performed solely with motivations to providing an equitable distribution of services and experiences to the entire County student population.<sup>9</sup> Under the decision of CCPS here, the students in the area of the County served by Manchester Valley are unfairly and unreasonably bearing the burden of CCPS' decision to overcrowd their school while other high schools have remarkably lower capacities. It is fairly obvious at this juncture that CCPS never even undertook a complete review of all of the State required factors rendering the decision unlikely to be supportable.

### **CONCLUSION**

For all of these reasons, a stay or injunction should be issued preventing CCPS from implementing its decision to close the schools until MSBE concludes its review.

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<sup>9</sup> CCPS would have the MSBE believe that this appeal is about a student's choice of school. CCPS is patently wrong. This appeal was brought to highlight the fact that CCPS completely disregarded the COMAR requirements and rushed into a decision to close NCHS. CCPS must be required to follow the standards set forth in COMAR and in its own procedures.



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