

BEFORE THE MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS

HARRISON W., ET AL

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Appellants

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v.

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

BOARD OF EDUCATION OF

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CARROLL COUNTY

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RESPONSE TO MOTION FOR SUMMARY AFFIRMANCE

Donald J. Walsh, Offit Kurman, P.A., and Dawn A. Nee, Law Office of Dawn A. Nee, L.L.C., on behalf of the Appellants, file this Response to CCPS' Motion for Summary Affirmance. Appellants do not disagree with CCPS' assessment that deciding to close schools is not a popular decision and one which cannot and should not be taken lightly. The students who are impacted by this decision clearly feel the same, if not more, pain and angst over this decision. It is precisely because of this shared appreciation for the impacts of a school closure decision that the Maryland State Board of Education (MSBE) has established a process for local school boards to undertake. Because CCPS has demonstrated and admitted to poor past decisions in building a school despite declining enrollment numbers, the assurance of careful and calculated deliberation process at this time is even more compelling.

At this stage of the proceedings, CCPS' Motion can be denied if it can be shown that there is a dispute of fact that its decision complies with state law. As CCPS agrees, paramount among that law is that it follow the closure regulations identified in COMAR 13A.02.09.01.D.1 as well as those in its own regulations found in its Master Facilities Plan which echo those factors. Included in this Response are numerous arguments and citations to cases and documents demonstrating that CCPS embarked on a flawed and contrived process in reaching the decision to close North Carroll. Compelling demonstrations are provided of the manner in which CCPS

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

The internal documentation of CCPS and the Boundary Adjustment Committee (BAC) 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 Superintendent released his recommendations on November 15, 2015, CCPS Board member Jennifer Seidel wrote to the Superintendent and the other members of the closure committee 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.

See attached Exhibit 1. The Superintendent responded by noting "I just wanted everyone to know that the regs do exist."

The BAC's internal notes provide similar evidence demonstrating its ignorance of the state required review based on its own financial considerations.

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 used. 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.

See Exhibit 2 (emphasis supplied). 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 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.

A decision of the local Board will not be deemed arbitrary, unreasonable, or illegal as long as the general public, especially those affected by the Board’s proposal, has ample opportunity to provide input and the Board complies with its own rules, regulations, and bylaws. Maryland case law has firmly established that an agency must follow the rules and regulations that it has adopted. The evidence in this case established that the Board did not follow its own rules during the redistricting process, failed to inform relevant parties about the existence of applicable rules which had been ignored as a result of the Board’s silence. As a result its decision must be found illegal under COMAR 13A.01.01.03E.(1)(c).

*Id.*¹

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 or its own regulations requiring that its decision and this Appeal must pursue a full fact finding hearing in support of the Appeal.

Discovery has revealed other disturbing revelations of the true intentions of CCPS in creating its closure decision. Rather than a careful analysis of various factors, the decision was

¹ 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. *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 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.”)

structured to support a hidden public agenda for the schools' properties.² In an email exchange on November 13, 2015 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"³ and Superintendent Guthrie 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." See attached Exhibit 3. This is a direct affront to CCPS' MFP requirement that the school "is not essential to the system-wide provision of educational opportunity."

Beyond these compelling admissions, numerous simple and undeniable facts demonstrate that CCPS has ignored its obligations in its rush to decision. First, CCPS cannot escape acknowledging the errors of its past enrollment projections which led to Manchester Valley being built. CCPS admits in its Motion that it was seeing a "historic decrease in enrollment since 2005." Memorandum in Support at 3 and 6 ("County Board has expressed concerns about declining enrollment trends for nearly ten years"). Notwithstanding this admission, CCPS ignores the fact that it built and opened Manchester Valley High School in 2009. Building that school five years before the decision on Appeal here was clearly based on grossly inaccurate enrollment figures. As is shown below, the current projections of CCPS rely on similar faulty or manipulated data. Even CCPS concedes that its own consultants projected different enrollment figures and advised against merging the two schools only two years ago.

² This is also confirmed in the latest proposed budget of CCPS provided to Commissioners 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.

³ This "vindication" is presumably based on previous oppositions by Messrs. Rothschild and Guthrie to Manchester Valley being built.

Further, compounding these errors in enrollment figures is the fact that the CCPS has readily admitted that the closure of North Carroll 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 now 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.⁴ 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 piecemeal [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].

See notes from Board Members attached as Exhibit 4. 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. Again, CCPS' own documents demonstrate its

⁴ This Motion also represents little more than CCPS' 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 slighted by simply pointing fingers at actions which took place before the current board undertook their oaths of office and some petty effort at "vindication" over previous opposition to those decisions.

ignorance of its responsibility to consider the impact to the schools' communities. Jonathan O'Neil, Assistant Superintendent of Administration of CCPS explained to a concerned citizen "[t]here are many emails being received about the impact on business in Hampstead and Manchester. I have no way to assess the economic impact scientifically. All I can say is that prior to 2009 for decades there was only one high school that served both areas and there is no measurable impact on business before and after." See Exhibit 5.

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. Manchester Valley does not even have an auditorium into which the entire proposed student body can fit.

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 which believes that better student achievement and success, especially at the high school level, is obtained through smaller classrooms and environments. With no regard to their success, addition of no new facilities and no new allocated funds, CCPS' has decided to cram over 1400 students into an over capacity school with no concern to the students or staff.

Further demonstrating its lack of consideration and forethought to the surrounding community,⁵ CCPS proudly speculates in its Motion that the North Carroll Recreation Council (NCRC) will actually enjoy greater strength and vitality once the school is closed because the facilities it uses will be free of competing school use. Memorandum in Support at 30-31. This is a blatant misrepresentation by CCPS. NCRC has already “been instructed not to accept UOF [use of facilities’ permits] past June 16, 2016” for North Carroll High School by CCPS. See Exhibit 7.

The Appeal and this Response to CCPS’ Motion presents numerous examples of how CCPS failed to fulfill its obligations of reviewing each of the factors required by law. 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 distract this tribunal from such an examination by focusing solely on the incredible task which it had before it based 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 must now suffer the consequences of the poor planning of CCPS.

School Closure Process

The MSBE requires that any final decision by a local school board regarding closing a school “shall include the rationale for the school closing and address the impact of the proposed closing on the factors set forth” above. COMAR 13A.02.09.01.D.1. Even CCPS’ own Master

⁵ CCPS alludes in its Motion to a Community Advisory Committee. Memo at 7. It does not explain, however, that this committee stopped meeting in September, 2015, was filled with personnel appointed by CCPS, made no examination of North Carroll or Manchester Valley and provided no input into the final decision of CCPS. The formation documentation and minutes for this committee are attached as Exhibit 6.

Facilities Plan imposes a high burden on it before it permits a school closure. “The closing of a public school should not be considered unless the building is not essential to the system-wide provision of educational opportunity.” See Carroll County Public School 2015-2024 Educational Facilities Master Plan, Section 3 - Goals, Standards, and Guidelines attached as Exhibit 8.

If questioned, the decision of the local school board may be appealed to the MSBE to ensure that it is made in accordance with State law. The MSBE is tasked with ensuring the local board’s decision is not arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05.

- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
 - (1) It is contrary to sound educational policy; or
 - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

- C. 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.

Standards for Motion for Summary Affirmance

COMAR 28.02.01.16C(1) states that a party to an administrative hearing before the Office of Administrative Hearings “may move for summary decision on any substantive issue in the case.” An order for summary decision is appropriate under COMAR if a judge finds that there is no genuine dispute as to any material fact and that the moving party is entitled to prevail as a matter of law. In *Karen Mullin, et al. v. Frederick County Board of Education*, MSBE Op. No. 10-34 (2010), it was explained that the OAH’s rules, the Rules for the MSBE and the Maryland Rules of Civil Procedure were all substantively the same.

A motion for summary decision (or affirmance) is the equivalent of a motion for summary judgment. As in a motion for summary decision, in a motion for summary affirmance the moving party must demonstrate that no genuine issues

exist as to any material fact. COMAR 28.02.01.12(D). The moving party must also demonstrate that it is entitled to prevail as a matter of law. Because Md. Rule 2-501 and Federal Rule of Civil Procedure 56 set nearly identical standards for summary judgment, the requirements of those rules, as analyzed by appellate courts, are particularly instructive in analyzing the standards for summary decision or affirmance in administrative proceedings.

Several decisions of the State Board of Education have also referred to *Richman v. FWB Bank*, 122 Md. App. 110, 146, 712 A. 2d 41, 58 (1998), *aff'd*, *FWB Bank v. Richman*, 354 Md. 472, 731 A.2d 916 (1999), as being an accurate parallel of the standards used here for consideration of motions for summary affirmance or summary disposition.

Maryland Rule 2-501, which governs summary judgment, contemplates a two-level inquiry. It requires that, in order to grant summary judgment, the trial court must determine that no genuine dispute exists as to any material fact, and that one party is entitled to judgment as a 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 nonmovant. 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.

Richman, 122 Md. App at 146 (citations omitted); *see also Grimes v. Kennedy Krieger Inst., Inc.*, 366 Md. 29, 72 – 73, 782 A.2d 807, 833 – 34 (2001).

[T]he 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. ***Thus, once the moving party has provided the court with sufficient grounds for summary judgment,*** the nonmoving party must produce sufficient evidence to the trial court that a genuine dispute to a material fact exists.

Grimes, 366 Md. at 73, 782 A.2d at 834 (citations omitted; emphasis supplied); *see also Goodwich*, 343 Md. at 205-06, 680 A.2d at 1077; *Coffey v. Derby Steel Co.*, 291 Md. 241, 247, 434 A.2d 564, 567-68 (1981); *Berkey v. Delia*, 287 Md. 302, 304, 413 A.2d 170, 171 (1980).

This restates the commitment of this tribunal to ensure that a party must first establish facts which give right to summary judgment. Mere assertions that a party is entitled to judgment is

insufficient; a party must demonstrate sufficient factual evidence which leads to the conclusion that judgment as a matter of law is appropriate.

Furthermore, when construing a motion of this nature, the Administrative Law Judge is required to examine the evidence in the light most favorable to the non-moving party. Opponents to such motions are “aided by the principle that all inferences that can be drawn from the pleadings, affidavits, and admissions on the question of whether there is a dispute as to a material fact must be resolved against the moving party.” *Calvert Neighbors for Sensible Redistricting v. Calvert County Board of Education*, MSBE Op. No. 10-27 (2010) (citing *Honacker v. W.C. & A.N. Miller Development Co.*, 285 Md. 216, 231 (1979)); *General Mtrs. Corp. v. Lahocki*, 286 Md. 714 (1980); *Sharrow v. State Farm Mutual Insurance Company*, 306 Md. 754 (1986).

Argument

Consideration of CCPS’ Motion seeking affirmance of its decision involves a three step process. First, the ALJ must determine if the Motion is appropriately supported by facts such that it can form the basis of a Motion for Affirmance. Second, the ALJ must assess whether CCPS has appropriately carried out its task of considering at least the eight factors noted in COMAR 13A.02.09.01 and in its own policies prior to closing schools. CCPS

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.

Finally, the consideration given by CCPS of these minimal factors as well as its final decision are measured to see if they are “contrary to sound educational policy,” or no “reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached,” or the decision “misconstrues the law,” “results from an unlawful procedure” or “is affected by any other error of law.” Although the State does not identify the weight to be given to each of the eight factors, it clearly does not excuse CCPS from considering each of them thoroughly. Similarly, a thorough consideration undertaken by a “reasoning mind” means that CCPS does more than simply find one positive attribute about its decision impacting each factor. It must perform a complete examination of the “good, bad and ugly” impact of its decision.

Important for this Appeal, the State and CCPS policy require that these factors be considered separately for each school sought to be closed. The regulations specifically refers to the evaluation of the factors for the “*school* closing.” CCPS seems to recognize this need for individualized review in its Memorandum in Support of its Motion, Memo at 5, n.18, but it offers no defense to the fact that it did not perform such an analysis for each of the closings it announced and chose to merely lump together a group of schools hoping to escape an analysis of each of the factors as they impact the individual schools.

Among other problems, combining the review of three proposed school closures irrationally ignores the diverse issues impacting each school. North Carroll is a high school which has extremely different educational needs and community impacts than those presented by a proposed closure of middle and elementary schools. In addition to the needs of college bound young men and women, there are important and established extra-curricular activities and transportation needs which are distinct from middle and elementary schools. Despite being required to evaluate each factor for each school, CCPS’ decision to close North Carroll does not

address transportation impacts, impacts to educational programs, and the impact of student relocation of over 700 teenagers nor does it make any effort to meaningfully address the impact to either community based on the closing of North Carroll and relocating over 700 teenagers to Manchester Valley.⁶

In the present action, there is little doubt that CCPS failed to consider these factors for each school in any meaningful way and certainly did not reach reasonable and rational conclusions consistent with educational policy.

I. The Motion for Summary Affirmance is not adequately supported.

A. CCPS offers only conclusions.

The party moving for summary judgment is always required to support its contentions by placing before the court facts that would be admissible in evidence or otherwise detailing the absence of evidence in the record to support a cause of action. *Washington Mut. Bank v. Homan*, 186 Md. App. 372, 974 A.2d 376 (2009).

The moving party is always required “to support his [or her] various contentions by placing before the court facts that would be admissible in evidence or otherwise detailing the absence of evidence in the record to support a cause of action.” *Bond v. Nibco, Inc.*, 96 Md. App. 127, 134, 623 A.2d 731 (1993) (citing *Washington Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 716, 382 A.2d 555 (1978)). A moving party need not support its motion by affidavit unless it is filed before the day on which the adverse party’s initial pleading or motion is filed, or unless the motion is “based on facts not contained in the record or papers on file in the proceeding.” *Id.* at 134–35, 623 A.2d 731; *see also* Md. Rule 2–311(d) (providing that a motion based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based).

⁶ The fact that CCPS’ decision made no substantive changes to defend or support its closure decision even after hearing public comments clearly demonstrates that it performed no substantive analysis of the impact of its decision on the communities affected. Further support for this assertion is even found in CCPS’ careful explanation that it “*heard* comments from citizens during the citizen participation portion” of public meetings. Memo at 10-11. This quite accurately explains the limited nature of what CCPS did and how it failed to “consider” the impacts to North Carroll and Manchester Valley’s communities.

Washington Mut. Bank, 186 Md. App. at 390.

In this instance, there is no effort by CCPS to actually support its Motion in any substantive fashion. CCPS chooses instead throughout its Motion to simply rely on the decision it published. Despite Appellants' clear argument that CCPS failed to faithfully review each of the eight factors, CCPS has not offered any evidentiary support that it actually undertook any meaningful examination of each of the eight factors. CCPS offers only summary conclusions and demonstrates no efforts at review undertaken prior to the decision to close North Carroll which were relied upon by CCPS in reaching the conclusion. Such conclusory efforts have long been rejected by Maryland Courts.

This affidavit does not in and of itself augment the allegations made in appellee's complaint. It simply makes the conclusory assertion that the appellant is indebted to appellee for a specified principal sum. However, the affidavit is devoid of facts which would substantiate such a conclusion. Nor do the exhibits referenced in the affidavit remedy this deficiency. . . .

It is anticipated that an affidavit which accompanies a motion for summary judgment will augment the allegations made in the complaint by setting forth with particularity and by a person competent to testify "such facts as would be admissible in evidence" which show prima facie that the moving party is entitled to recover as a matter of law. The affidavit submitted by appellee fails to accomplish this purpose and is substantively deficient. It does not establish the exact nature or extent of the contractual relationship between appellant and appellee. The appellee's general allegation of an indebtedness due, without precise facts to support it, establishes no foundation upon which a summary judgment can rest and we, therefore, reverse the judgment entered by the trial court.

Champion v. United Virginia Bank, 87 Md. App. 439, 442-44, 589 A.2d 1328, 1329-30 (1991) (citations omitted).

In *Wyand v. Patterson Agency, Inc.*, 266 Md. 456, 295 A.2d 773 (1972), the Court rejected the effectiveness of an affidavit in support of summary judgment consisting of a "bald assertion amounting to a naked legal conclusion." It held that a "general allegation of a legal

conclusion without detailed and precise facts to support it erects no foundation upon which a summary judgment can rest.” *Wyand*, 266 Md. at 461, 295 A.2d at 776; *see also Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 308, 936 A.2d 343, 359 (2007) (Cross Country’s asserted entitlement to summary judgment rests on such an unsupported legal conclusion regarding the interpretation and/or legal effect of the absent underwriting agreement with Stewart).

CCPS here has demonstrated very few facts and has done no extrapolation of the process and considerations which led to the decision to close. Although it spends many pages of its Motion discussing the tedious pains CCPS endured as it struggled with this issue and it claims it reached a conclusion on each of the eight factors, there is no factual recitation of the efforts or the items examined to reach those conclusions to ensure that CCPS rationally considered each of the eight factors. Not only does the evidence demonstrate it did not consider all factors, CCPS offers only its conclusions intending that no one peek behind the proverbial curtain looking for the substance examined. Such efforts are insufficient to support a Motion for Summary Affirmance.

Previous decisions of the MSBE and Maryland Board of Contract Appeals have rejected similar efforts at cursory support. For instance, in *Community United for Responsible Educ. v. Bd. of Educ. of Allegany County*, 6 MSBE 85 (1991), the MSBE reversed a local board’s decision because it concluded that the record did not support the County Board’s rationale for its decision to swap schools. Other state agency boards have similarly found against agency decisions when the agency offers little support demonstrating that it actually undertook the analysis it claimed to have taken.

[T]he procurement file is completely devoid of any document whatsoever pertaining to the conduct of a cost-benefit analysis. This creates a valid prima

facie claim by appellant that financial considerations were not fully and properly evaluated. The burden of proof therefore shifts onto the State to show that cost was fairly and fully considered. . . .

So the obligation of demonstrating that financial considerations were afforded equivalent weight as technical factors fell to the procurement officer. But even after multiple inquiries intended to adduce that evidence during oral examination at the hearing, the procurement officer was unable to assert that any meaningful, genuine, or thorough cost-benefit analysis occurred. *State agencies must be held responsible for being able to defend procurement decisions by specific reference to compliance with all aspects of the evaluation criteria established by the RFP, including specific justification for selecting a more costly option, and not just by vague if not meaningless reliance on the assertion that they considered “everything.”*

L-1 Secure Credentialing, Inc., MSBCA 2793 (2012) (emphasis added).

CCPS’ reliance here on similar bald and conclusory arguments and support does not satisfy its burdens to fulfill this process. Through its absence of factual support for its review of these factors, it is quite easy to conclude that CCPS utterly failed to review these factors making its analysis flawed, unconstitutional and illegal. Absent CCPS crossing this minimal threshold, its Motion must be denied.

B. CCPS relies on manipulated and flawed data which offer no rational support.

Even more important than the lack of any substantive demonstration of an analysis, it is quickly apparent that CCPS has sought to defend its errant conclusions here based on incomplete and incorrect data, by failing to consider material facts and impacts, and worse, by attempting to shield its intentions from public scrutiny. For instance, despite CCPS’ representations of budget savings achievable only through the closures of these schools, CCPS hid from the public that it was driven by political influences and misdirection of its intentions.

Few better examples exist of this misdirection than in the carefully drafted comments of CCPS in its closure recommendation which stated “[t]his final recommendation will generate

\$5,119,463 in operation budget savings prior to any offsets, which will be addressed below. These savings represent the combined core staffing and building costs associated with running each of the three schools proposed for closure.” See Exhibit 9 at 6. A look at the charts attached and referenced in to the recommendation provided little detail. CCPS reiterated that these closures would result in a “total capital cost avoidance of \$20,631,000” as the buildings were not updated in future years and CCPS would have “cost avoidance for the systemic renovations at the three schools.” Id.

Despite these statements, a close examination of documents produced by CCPS demonstrates that there are no capital avoidance costs at all. The projected savings are strictly based on cuts in an already bloated personnel pool. There are, in fact, no savings projected for saved “building costs” or “capital cost avoidance” by closing North Carroll. See attached Exhibit 10. This absence of actual savings in building costs is directly attributable to the Superintendent’s hidden intentions for the property.⁷

In an email exchange on November 13, 2015 between CCPS’ Superintendent Guthrie and County Commissioner Richard Rothschild, after a recommendation to close schools had been made, Messrs. Guthrie and Rothschild noted their “vindication”⁸ and the Superintendent 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.” See attached Exhibit 3. Of course

⁷ This is also confirmed in the latest proposed budget of CCPS provided to Commissioners which claims savings solely through personnel cuts at the closed schools. See excerpt attached as Exhibit 11. Not surprisingly, no savings are shown for any other facility or building operation costs.

⁸ This “vindication” is presumably based on previous oppositions to Manchester Valley being built.

there are no capital avoidance costs as stated by CCPS because the buildings will continue to be used and the staff necessary for the building will continue to be needed.

There is no doubt that CCPS manipulated other data to achieve its results as well. Most importantly, CCPS manipulated its enrollment data. This is easily shown through a casual review of the fluidity of these figures in CCPS' historical reporting of these figures, see Exhibit 12, culminating in blatant errors in the charts presented in CCPS' closure decision (Exhibit 9) at Appendix C, pages 40 and 44. The MSBE has previously found that the use of inaccurate enrollment figures results in a bad decision and one which is subject to reversal. *Hall v. Somerset Co. Bd. Of Educ.*, 4 Op. MSBE 628 (1986).

Attached as part of Exhibit 12 is a report prepared and published by CCPS on June 18, 2012 which claimed very different enrollment figures than those most recently used. "Carroll County Public Schools enrollment projections indicate that the student population may decline to approximately 25,000 students by 2018 and then stabilize before growing again." This is consistent with the enrollment projections provided to and analyzed by CCPS' paid consultant, MGT, in December, 2013. MGT noted "[t]he district's long term projections estimate a slightly declining enrollment until the 2019-20 school year, and then a slightly increasing enrollment for the last three years of the projection horizon." See Exhibit 13 at 12. MGT predicted that with this projected growth, by the 2022-2023 school year, CCPS' high schools would have 8,016 students.⁹ This identical belief view of a leveling of the decline in enrollment and then increases was shared by Superintendent Guthrie in a meeting with Commissioner Rothschild in 2012. See Exhibit 14.

⁹ MGT noted that the State's predictions were higher than those of CCPS. Exhibit 13 at 12.

A month after MGT presented its findings to CCPS, internal correspondence shows that CCPS projected that high school enrollment would be 7,893 for the same period used by MGT, a difference of only 123 students. See Exhibit 15.¹⁰ These figures provide a wide disparity from those previously used by CCPS and those presented in CCPS' closure decision. With no offered explanation of its departure from its previous projections or those of MGT, in CCPS' closure decision, page 40 shows that CCPS' total high school enrollment projected through 2024 decreases from 8,380 students in 2014 to 7,368 in 2024. Adjusted to the period projected by MGT. There is a 438 student difference from MGT and 315 student discrepancy from CCPS' figures presented in the prior year. On page 44 of the same Appendix in CCPS' closure decision, which shows the amended projected high school enrollment numbers based on the closure decision, the high school enrollment for the same period goes from 8,371 in 2014 to 7,258 students in 2024. No explanation is provided for this loss in students, the significant difference from MGT's projections or the now "missing" high school students.

Not surprisingly, these artificially downwardly adjusted numbers were used by CCPS to support the capacity percentages in its conclusion for closing North Carroll. According to CCPS' adjusted numbers, after accepting its decision to close North Carroll, CCPS proudly claimed the capacity of Manchester Valley by 2024 would be below 100%.¹¹ Once the corrected enrollment numbers are used as noted on page 40 of CCPS' decision, it becomes obvious that

¹⁰ Careful review of the chart created by CCPS in this email shows that it clearly mislabeled the projections of CCPS and MGT. The numbers in the CCPS column were actually those of MGT. Compare Exhibit 13 at 12 with Exhibit 15.

¹¹ Ironically, Manchester Valley was built to accommodate future growth and retain capacity. Again demonstrating its situational decision-making, this excess capacity that CCPS now believes is a disadvantage and should be filled by closing North Carroll.

Manchester Valley will never be below 100% capacity. The adjusted and corrected figures and calculations for Manchester Valley’s enrollment are shown below:

Capacity Spec Ed Total	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
1267 30 1297	1447	1416	1370	1349	1336	1349	1310	1338	1307	1282	1259
Corrected	1511	1488	1460	1447	1438	1451	1411	1445	1420	1419	1398
Over (Under) State Rated Capac	150	119	73	52	39	52	13	41	10	(15)	(38)
Corrected	214	41	44	77	89	115	62	135	82	112	116
Percent of STATE Capacity	112%	109%	106%	104%	103%	104%	101%	103%	101%	99%	97%
Corrected	116%	115%	113%	112%	111%	112%	109%	111%	109%	109%	108%

Based on CCPS’ own labels as listed in its MFP, throughout this entire period, Manchester Valley is either “inadequate” when it exceeds 110% capacity or “approaching inadequate” when it dips below 110%. See Exhibit 8 at 3-21. This confirms that the Hampstead/Manchester community went from years of above capacity schools at North Carroll before Manchester Valley was built, through a brief respite, and will now return to a tradition of an overcapacity high school once North Carroll is closed. Not only is this another example of CCPS using incorrect data and providing ad hoc solutions to problems which require long term solutions, but it demonstrates quite clearly that CCPS desires to irrationally and inequitably overburden one geographic area of the County detracting from the educational needs of students in that area.

CCPS’ own Motion for Summary Affirmance provides the evidence demonstrating the schizophrenic and unsupportable basis of the decision to close North Carroll. On page 14 of its Motion, CCPS argues that it opted to close New Windsor Middle instead of East Middle School because it would “result in an overall middle school utilization rate of 98%, which was too high for the effective operation of the school and would not allow for any flexibility for unanticipated enrollment changes.” CCPS provides no defense as to why these same operational efficiencies and unanticipated enrollment changes do not exist at a High School level. The irrationality of this decision only grows.

The closure of North Carroll and its consolidation with Manchester Valley create an unfair and unequal capacity issue for high schools across the County. Not only will Manchester Valley be well above 100% capacity for the next 10 years under CCPS' analysis but it will be distinctly higher than the other high schools in the County during this same period which will average from 83% in 2016 to 73% in 2024. See Appendix C to Closure recommendation. The inequity of this delivery of education services violates CCPS' policies, is irrational, against sound educational policy, and has been held improper by the MSBE in the past. *See Kaiser v. Montgomery County Bd. Of Ed.*, 2 Op. MSBE 582 (1982) (State found such inequitable division and overburdening of particular schools is contrary to sound educational policies.)

Most importantly, this overutilization of Manchester Valley and this community which previously suffered through similar overcapacity issues at North Carroll is inconsistent with CCPS' Facilities Management Plan. The FMP requires that “[d]ecisions about utilization of public educational facilities should concentrate on equitable delivery of educational services and/or safety” and that “[e]xpenditures related to support services and to the equitable delivery of educational program should be kept in balance.” The stark contrast in utilization levels post the closure decision are a far cry from achieving any sort of equitable balance. This violation of state and local regulations rendered CCPS' 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 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.”

Similar to this type of data manipulation to make a decision, CCPS has now conjured evidence to support its decision suggesting that the extracurricular activities and class options

offered at North Carroll and Manchester Valley suffer because of the smaller size of the school. The reality is that CCPS only made this conclusion to justify its decision to close North Carroll. Only after the appeals were filed, did CCPS' Assistant Superintendent of Instruction, Steve Johnson, attempt to create evidence to support this conclusion which appears in his Affidavit attached to CCPS' Motion.

Attached as Exhibit 16 is email correspondence prepared by CCPS administration after the decision to close North Carroll was appealed. It shows the first occasions on which CCPS actually made any effort to look at the educational and extracurricular aspects of North Carroll and Manchester Valley. Although Mr. Johnson attached an affidavit to CCPS' Motion for Summary Affirmance suggesting the information had been reviewed, he hid from this tribunal that the timing of his review of these materials was long after the decision to close North Carroll was made and after the Appeal was filed. Mr. Johnson made clear in his email that he would "need this [chart] by the first weeks of February." This demonstrates unequivocally that this material was not considered and collected until long after the decision was made to close North Carroll, was prepared solely to defend the Appeal and must be rejected.

This is precisely the type of post hoc analysis which has been routinely rejected and cannot be condoned in any fashion by this Board. Such "backfilling" undermines the public trust imposed in these individuals, demonstrates poorly conceived decisions which were not based on a complete review of facts and prove that the decisions CCPS reached were done in an illegal and irrational manner.

II. CCPS has not and cannot demonstrate that it reviewed the factors required rendering its decision arbitrary, unreasonable and/or illegal.

As demonstrated in its Motion and supporting documents, CCPS' decision was so solely dedicated to financial concerns that it displays a complete ignorance of sound educational policy

which was formulated, in part, by CCPS. In its zeal to support its effort to close schools, CCPS offers only fiscal explanations and provides no demonstration of its faithfulness to its own educational policies and professed beliefs. Among CCPS' professed core beliefs shaping its educational policy are the belief that it shall

- Work to ensure that every child succeeds
- Place priority on the educational needs of students
- Motivate students to learn
- Recognize the unique learning styles of each student
- Ensure learning by providing instruction that meets each student's individual needs
- Support student success

The CCPS' Master Plan supplements these principles noting that "decisions about utilization of public educational facilities should concentrate on equitable delivery of educational services and/or safety. *Minimal disruption to all established educational programs should be sought.*" See Exhibit 8. These beliefs are further reinforced and emphasized by CCPS' expressed commitment to *The Key Work of School Boards* developed by the National School Boards Association. CCPS Board Handbook attached as Exhibit 17. Among the goals shaping the County's educational policy are

- Establishing a clear **VISION** of student achievement as the top priority of the school board, staff, and community.
- Establishing a strong **ACCOUNTABILITY** process.
- **ALIGNMENT** of resources to focus on students meeting the standards.
- Creating a positive **CLIMATE** for student success.
- Building **COLLABORATIVE RELATIONSHIPS** with political and business leaders, with a focus on developing a consensus for student success as a top community priority.

In addition to CCPS' decision failing to demonstrate any adherence to these precepts or remain true to these stated educational policies, it manipulated its alleged review of data presented. The flawed and unreasonable analysis demonstrated by CCPS' decision can be seen in its evaluation of the first State factor of "student enrollment trends" as was explained above.

With no thought given to CCPS' already proven inability to accurately forecast enrollment trends which led to Manchester Valley being built during a period of "historically

decreasing enrollment,” as shown above, CCPS’ decision simply erases hundreds of high school students in reaching its capacity charts. Even after acknowledging a high school capacity exceeding 100% while others in the County were below 80%, CCPS offered no explanation for how this was acceptable or fair. Given CCPS’ concession that middle schools could not operate at even a 98% capacity level, it is impossible to rationalize this capacity for a high school.

CCPS’ decision also took extreme liberties in downplaying and skewing enrollment trends to justify the decision to consolidate North Carroll and Manchester Valley. For instance, CCPS’ decision notes that “both northern high schools are just above 60% utilization today and projected to be in the 50% range by the end of the projection window.” Despite these statements, CCPS’ decision showed that the projected ten year utilizations, which did not account for “unanticipated enrollment” as it did with middle schools, changed very little and were to be 59% for North Carroll and 55% for Manchester Valley at the end of the period. This flawed enrollment analysis also counted students based on where they live and not the actual school they attended. Not only were out of district students not counted but CCPS’ decision ignored the impact to the autism students who were served through North Carroll’s program even though they lived elsewhere.¹²

Even more dramatically demonstrating the unreasonable and illogical reliance on the enrollment picture painted in CCPS’ decision was the fact that it made no allowance for new housing development served by North Carroll and Manchester Valley.¹³ CCPS’ Motion explains that it took into consideration birth rates and migration rates in Carroll County as a whole,

¹² Nowhere in CCPS’ projections of savings does it make any effort to calculate the costs associated with moving the autism program from North Carroll. Similarly absent, is any consideration of the impact to these special needs’ students who will now have impacts beyond transportation as they are forced to leave their high school friends.

¹³ See note 3, *supra*.

Motion at 3, yet CCPS failed to evaluate County planning documents and evidence compiled from local realtors and the Towns of Hampstead and Manchester demonstrating that future development between Manchester and Hampstead totaling more than 600 homes easily and directly skews the projected enrollment numbers at the schools they serve. Given the presentation in CCPS' decision noting that CCPS was only evaluating State and Countywide enrollment numbers and not specific impacts to the area actually served by North Carroll and Manchester Valley, it is painfully obvious to see that CCPS' decision is arbitrary and illogical.

Making the ignorance of this data even more of a mystery and further suggesting a contrived decision is the fact that this land development information was available to CCPS through the County's Buildable Land Inventory and was actually provided to it by one concerned taxpayer. See Exhibit 18. The stated purpose for Carroll County's Buildable Land Inventory is identified by the County on its website.

The buildable land inventory (BLI) is an inventory of residential land that is still buildable or able to be developed. It uses available Geographic Information System (GIS) data to analyze and estimate where and how much additional development could occur, not necessarily what will occur. The number of residential lots that could be created, or single-family units constructed, is estimated based on the jurisdiction's current zoning and/or proposed future zoning (called "land use designation"). While the GIS model does not include commercial or industrial development potential, the report does contain information on land zoned and designated for these uses.

A BLI is a planning tool for making decisions related to the effectiveness of previously-adopted comprehensive plans and measures that could be taken to implement desired changes. The results of a BLI could influence decisions on such issues as watershed management, zoning and subdivision regulations, public facilities, and preservation measures. A BLI will not address the capacity of the natural systems or infrastructure because it is based on zoning that may or may not have been put in place with these considerations in mind. It also does not address the timing of potential development. It is important to reiterate that the BLI is a planning tool. It is not meant, nor even able, to be exact. *The BLI does, however, provide Carroll County with a mechanism to analyze residential development capacity throughout the county.*

See <http://ccgovernance.carr.org/ccg/compplanning/BLI/>, portions of which are attached as Exhibit 18 (emphasis supplied).

For Hampstead and Manchester, this report identified an overwhelming amount of land available for development. Accepting the County's stated purpose for this document, it is absolutely irrational that CCPS would not consider this data which is directly relevant on the decision to close North Carroll and consolidate it with Manchester Valley. Had it been reviewed, it would have swayed CCPS from the decision to consolidate the high schools serving that area in an already predicted overcapacity state.

Further examples of the irrationality and arbitrariness of CCPS' decision and failure to perform a review which create disputes of fact necessary to be resolved through a hearing is found in its own records and files. In 2013, CCPS commissioned external consultants to review the effective use of facilities furthering its Comprehensive Facility Utilization Study to identify, justify and recommend actions for the most effective and efficient use of capital resources while containing expenses. CCPS' Superintendent was openly dissatisfied with the composition and abilities of the board appointed Boundary Adjustment Committee and in May of 2013, CCPS contracted with MGT of America, Inc. (MGT) to conduct a Comprehensive Facility Utilization Study. The results were presented in what is known as the MGT Report issued in 2013. See Exhibit 13.

MGT made specific presentations and recommendations for Manchester Valley and North Carroll High Schools after concluding that both schools were underutilized. In its presentation MGT noted several possibilities for the schools but in its final presentation, MGT rejected the notion of closing either school and recommended keeping the schools intact and redistricting to ensure "a positive effect on programs." Although CCPS acknowledges in its

Motion that these recommendations were viable, Motion at 9, nowhere in CCPS' current iterations of its efforts or support for its decision has it explained why it rejected the expert advice for which it paid. At a minimum, any rational decision should have defended taking action contrary to that recommended by CCPS' hired experts.

Consistent with its failure to consider enrollment trends, property development in Hampstead and Manchester and its own experts, CCPS gave no consideration to any educational needs or experiences of students who would now be crammed into an overcrowded school. Despite issuing two reports, each over 70 pages, and maintaining a core value of ensuring positive educational experiences, CCPS' recommendation devoted only two paragraphs to the educational needs of the students; only one brief passage was devoted to the educational needs of North Carroll students.

Despite these vague conclusions, no effort was made to identify any specifics relative to these comments. Conspicuously absent from the public opinion and presentations was any student or teacher testimony identifying any unmet curriculum needs, unoffered classes or missing extra-curriculum programs. There was no identification of any staffing challenges presented at North Carroll or of any limited learning opportunities. In fact, North Carroll boasted considerable success in its Honors and AP classes, with its services for special needs students, its AP test takers as well as its college placement numbers.

Further, despite the conclusory and contrived statements in the CCPS' decision, it failed to explain how this representation was inaccurate for North Carroll which had achieved status as a Green Ribbon School after recommendation by the Superintendent who lauded the school's programs and efforts. See Exhibit 19. There was also no identification made of the lost learning opportunities, of unoffered classes or of the costs of the transportation of shuttling students

between North Carroll and Manchester Valley. Similarly no evidence was shown for the same impacts to students at Manchester Valley or how their educational or other opportunities were diminished in any fashion based on school size where there was a willing and qualified faculty member. More importantly, CCPS' analysis of these two schools did not make any real comparison of the curriculums, sports and extra-curricular activities offered at other Carroll County schools to see if these opportunities were available in all schools in its jurisdiction. Even accepting the post hac analysis of CCPS attached to its Motion, it is easy to see that the activities available or allegedly missing were not unique to North Carroll or Manchester Valley.

For example, CCPS' analysis demonstrates that only two high schools out of the current eight offer Latin and three do not offer German. No indication is presented if any of these schools have refused to offer Japanese, Italian or Russian as exists in Baltimore County and represent shortcomings in the offerings to the students meriting their consolidation. Similarly, the CCPS' analysis of AP Sections, demonstrates that North Carroll and Manchester Valley each have 2% of their populations taking AP courses similar to Winters Mill where it is only 3% at the remaining high schools in Carroll County.

As noted above, CCPS made no effort to review this evidence until after this Appeal was filed and then, sought evidence solely which would support its decision. CCPS made no effort to actually examine whether the smaller classes improve the overall educational experience in the schools and increase student success and the percentage of students participating in extra-curricular activities. Certainly the students who were part of those curriculums felt that their successes and achievements were attributable to the school's size. See Exhibit 20.

In its Motion, CCPS also presents other arguments to defend its decision which prey upon ignorance of its operations and are little more than misdirection. CCPS cites a

disadvantage in that students at North Carroll and Manchester Valley are transported between the schools to take certain classes. In the current year, however, CCPS has over 300 students enrolled in courses at other high schools in the county. See Exhibit 21. CCPS' records show that there are only 11 students from North Carroll taking classes and Manchester Valley and only 10 from Manchester Valley taking classes at North Carroll. Id. It is patently unreasonable to suggest that accommodating these 21 students out of 1511 is justification for consolidating the schools.

More importantly, CCPS regularly transports high school students countywide to attend classes at different schools. Students enrolled in the Carroll County Career and Technology Center are also enrolled in their home schools where supporting course work and extracurricular activities are provided. Transportation to the Career and Technology Center is provided on a round-trip basis from the home school. See Exhibit 22, CCPS 2016-2017 High School Program of Studies and Career Pathways Planning Guide. Oddly, this other transportation is not viewed by CCPS as a reason to consolidate or close schools.

Similarly, CCPS implies that the sports programs at North Carroll and Manchester Valley suffer and Mr. Johnson's post hac analysis takes great lengths to identify several programs which do not exist at these schools. Not only does CCPS ignore the schools' clubs and extracurricular activities which will no longer be funded at Manchester Valley but he also ignores the successes of the schools' athletic programs which boast numerous championships -- North Carroll's teams have won several State Championships in the past three years alone (Boys' Soccer 2013 and 2015, Boys' Track team 4x 800 meter state champions, Field Hockey 2013 and 2014 and Robotics Team earned a spot in state championships both years) and Manchester Valley's teams have won just as many (Girls' Basketball 2016, Girls' Soccer 2011 and 2012, Girls' Softball

2015, Girls' Lacrosse 2014 and 2015, Girls' Track and Field 2014), CCPS intentionally omits reference to the fact that there is a variety of sports and extracurricular activities which do not exist at all of the high schools in Carroll County.

For example, CCPS notes that there has been no Freshman Football at North Carroll or Manchester Valley, no Freshman Girls' basketball or winter cheerleading. It does not explain, however, that Francis Scott Key High School also has no freshman football program, no cheerleading program at all and no girls' JV softball team. CCPS also does not explain that only Century High School had a girls' varsity cheerleading program, only three other schools having a JV cheerleading program, and only Westminster High has a JV softball team. Century also apparently has a bocce club unique to that school and its facilities. None of these deficiencies are identified as justification for closing or consolidating these schools.

Furthermore, although CCPS argued that there was a need for the consolidation of the high schools to enhance sports and extracurricular activities for the students at these schools, conspicuously there is no indication of what specific changes will be made. New classrooms are not being added and no new spending has been allocated to Manchester Valley which would offset decreases achieved by closing North Carroll. In fact, CCPS' worksheets actually demonstrate that the new student body at Manchester Valley would have no funds for which it could pursue the increased opportunities CCPS claims they will have. See Exhibit 23. In addition to showing a cut of \$185,521.71¹⁴ in dollars spent on athletic transportation, coaches and activities, CCPS identified the elimination of over 16 teachers, guidance counselors, career mentors and instructional staff from North Carroll. Manchester Valley is receiving no funds for

¹⁴ These numbers are only estimates based on CCPS' averaging of costs over a three year period. See Exhibit 23.

additional educational opportunities or extra-curricular activities. The following chart identifies the positions eliminated.

Category with Subtotal Detail	North Carroll High	
	FTE	Dollars
Instructional Salaries and Wages	8.10	\$ 723,329
Academic Facilitator	1.00	85,000
Athletic Coaches		143,829
Cooperative Work Exp / Career Connections	1.00	85,000
Extra Duty Pay		
Extended Enrichment Program Teacher		
Facilitator of Student Support	1.00	85,000
Instructional Assistant	2.50	97,500
Math Resource Teacher		
Media Specialist	1.00	85,000
Reading/ILA Specialist	1.00	85,000
School Counselor	0.60	57,000
Student Transportation Services	-	83,375
Athletic Transportation		83,375
Increased Route Costs (TBD)		

Similar to the mystery to the rushed, poorly conceived and unsupported decision, CCPS' decision fails to present a complete and accurate picture of the financial impact of closing North Carroll. Examination of the identified costs claimed to be saved demonstrates that some costs would be eliminated by the closure of North Carroll but many of the identified core costs would only be shifted to Manchester Valley. The core staff costs used by the Superintendent included custodial expenses, building maintenance costs, costs associated with the Office of Principal (staff and supplies), cafeteria support and other administrative functions. Common sense dictates that these costs will not be eliminated once the student population doubles at Manchester Valley. More students means more cleaning, more use and maintenance, more meals to be served, more specialized educational and support staff and clearly more administrative support. In addition to these increases in the core costs, the increased use by a school above capacity will also require

accelerated capital maintenance and improvement costs. It is disingenuous and illogical for the Superintendent to believe these savings would actually be achieved.

More egregious than CCPS' effort to fabricate supporting information in support of its decision is its ignorance of the State's educational findings and policies. The Maryland State Board of Education has just concluded a study and publication of results of student success as reflected through the size of schools. The MSBE recently tasked its consultants with reporting on the findings from the literature review on the impacts of smaller schools on student achievement, efficiency, and school climate. These reported findings included the following:

A meta-analysis of studies of small schools (Rochford, 2005) found that size functions primarily as an enabler of improved student outcomes. Small schools that moved the needle forward on student outcomes decreased enrollment as part of a suite of related reform efforts. Early implementers and proponents of small schools conjectured that, with fewer students, school staff would be able to form deeper and more supportive relationships with learners. Indeed, this hypothesis was proven to be true—but only in the schools that also changed their approaches to community engagement, instruction, and school structure.

First and foremost, small schools benefited from leadership that both 1) set a tone that encouraged personalization and 2) distributed responsibility for the reform effort among multiple staff and the community at large. Successful small schools focused on improving the quality of instruction, often implementing new curricula or approaches to teaching. Teachers and leaders participated in professional development to learn new content delivery and relationship-building skills, and participated in follow-up meetings to discuss implementation of these new skills. Smaller schools succeeded when district leaders, Boards of Education, and community members bought into the work. In short, a school's staff, leaders, and surrounding community must work collaboratively to make the small school learning environment successful (Howley, 2002). . . .

Researchers have identified several characteristics of smaller schools that may explain their positive effects on student performance. Key among these characteristics is the presence of a supportive school climate. Some smaller schools are found to be more successful at developing personal and informal relationships among school staff, students, and parents than larger schools serving similar student populations. Such relationships lead to improved student engagement and student social behavior, broader participation in extracurricular activities, heightened teacher satisfaction and collaboration, and increased parent involvement (Lee & Loeb, 2000). These positive effects are even more

pronounced for low-income and minority students, who tend to have higher attendance rates and lower dropout rates in smaller schools (Carruthers, 1993). A study in North Carolina specifically identified the positive impact of smaller schools on school climate, leading to recommendations for much smaller school sizes to prioritize school climate, and larger school sizes to prioritize operating efficiency (North Carolina Department of Public Instruction, 1998). . . .

Smaller schools tend to have fewer incidences of negative social behavior than large schools, resulting in greater student engagement and satisfaction, higher attendance rates, and lower dropout rates. . . .

The research related to extracurricular participation (EP) in high school focuses on the correlation between EP and socioeconomic status, academic achievement, self-esteem, and school size. The school size research compares participation at smaller high schools (defined as having enrollments under 800) to participation at larger high schools (defined as having enrollments greater than 1,600). Enrollment size is often associated with other community characteristics that contribute to EP. For example, smaller schools are often located in rural areas, where the high school is the hub of community attention.

Research suggests that students in rural areas feel a greater sense of opportunity, even responsibility, to participate in activities like sports or plays. This results in students participating in multiple activities over the course of the school year. Students at large, urban high schools have EP readily available outside of school through other venues, such as park and recreation programs, or competitive youth sports that allow student athletes to specialize in specific sports or other activities, resulting in participation in a narrower range of activities within the high school setting. . . .

Surveys of school staff show that smaller schools tend to cultivate better attitudes towards work among school administrators and teachers, leading to greater staff collaboration and more successful school improvement efforts (Cotton, 1996; Klonsky, 2006). The likely causes of this effect include the more favorable school climates and deeper personal relationships found in smaller schools (Cotton, 1996). Still, it is difficult to attribute improved teacher satisfaction solely to enrollment size. Often, smaller schools employ other strategies that may also improve educator satisfaction. For example, small schools may use a distributed leadership model and may enjoy greater support from the district office. Both of these factors have been found to have positive impacts on teacher satisfaction and motivation (Rochford, 2005).

See Preliminary Report attached as Exhibit 24. Although more extensive and supported, this echoed CCPS' own recognition in its policies that

[r]esearch indicates that smaller schools (1200 or less) provide more personal educational experiences for students. Students in smaller high schools tend to participate in more school activities and are better known by their teachers.

Lower student participation in school activities results in a higher percentage of detached students who are less invested in their school. This alienation also has a negative effect on academic achievement and attendance thus directly affecting the number of potentially unsuccessful students.

See Exhibit 8.

There can be no doubt that the decision of the CCPS to close North Carroll and to relocate its student body to the smaller school at Manchester Valley which will double its enrollment is a direct affront to the sound educational policies of this State and CCPS. Under no reasonable thinking can this departure from these express beliefs and findings seeking budgetary savings by eliminating people and a land grab be considered sound.

Manchester Valley is smaller than North Carroll,¹⁵ has fewer facilities, and maintains the same number of staff as North Carroll which will be overwhelmed by the increase in students. Even CCPS' decision suggests that the plan inequitably overcrowds Manchester Valley above capacity with only a "probable" reduction over time. No guarantees for reduction in student overcrowding are offered should the assumptions and projections prove to be inaccurate and there is no effort made to address the educational impact of this overcrowding and capacity increase. The ignorance of this new situation is irrational and demonstrates conclusively that there has been no consideration given to educational policy or the students served by CCPS.

What makes the decision even more irrational is that CCPS admits in its own projections that this decision will leave the new school overcrowded for years to come disregarding the

¹⁵ Appendix I to the Superintendent's Decision notes the smaller physical size of Manchester Valley and its fewer classrooms. Unlike Manchester Valley, North Carroll also has two gyms, more fields and parking and a larger auditorium.

positive educational needs of almost a decade of children.¹⁶ These projections ignore the real estate development in Hampstead and Manchester which CCPS did not examine. Manchester Valley remains well above 100% capacity through all of CCPS' projections while the remaining County high schools averaged capacity at only 77%. No defense was provided or could be considered reasonable for why this school, its community and its student base must inequitably remain well beyond capacity. Even more alarming is that CCPS' relies on these projections notwithstanding its admission that the past projections which led to the construction of Manchester Valley were blatantly wrong. CCPS is sadly unable to learn from its own history.

Further demonstrating the lack of careful consideration of the decision to close North Carroll, CCPS noted that this "remedy" of closing the school may be considered temporary and other action would be needed in the future. Although it provided no deadlines for relief, CCPS' decision did hope that this inequity is only temporary until additional redistricting takes place. "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." See Exhibit 9.

The impact of this qualifier cannot be understated. Because CCPS has not developed a comprehensive plan yet, some students will be transferred from a high school which has existed for over 50 years to an overcrowded high school and may then be transferred to a third high

¹⁶ The Superintendent attempts to assuage some of the concerns of overcapacity by simply reassessing the capacity of Manchester Valley. Although this sterile number provides CCPS comfort, I am certain that the students and teachers crammed into the overcrowded school and large class sizes will derive no real benefit from this reassessment of a number.

school before graduating. The complete ignorance by CCPS to the impact that this will have on students is only overcome by the arrogance with which CCPS explains this will happen. The irrationality of such a decision simply cannot be defended. CCPS' express intent "to ensure that every child succeeds," that there is a "priority on the educational needs of students," which permits the school to service "the unique learning styles of each student" or "[e]nsure learning by providing instruction that meets each student's individual needs" is little more than political propaganda. The expressed desire to "[s]upport student success" has been cast aside with little forethought, an overwhelming emphasis on providing teacher salary increases and in clear contradiction to sound educational policy.

Under this plan, the number of teachers at Manchester Valley will not increase given the fact that there is no corresponding increase in classrooms at the school. Class size will obviously be impacted and increase. The undeniable educational benefits of smaller classes, including a more personal and focused teaching experience, will be lost. Teachers will be overwhelmed and overworked by the surge of new students. This will have a direct impact on the school's Honors and AP offerings and any special needs classes where smaller classes are necessary and mandatory (according to Individualized Education Plans). Consistent with the State's research, there is little doubt that the impact of this lack of extra-curricular activities will impact student participation, morale, motivation and college opportunities. It will also reaffirm CCPS' belief that "[l]ower student participation in school activities results in a higher percentage of detached students who are less invested in their school. This alienation also has a negative effect on academic achievement and attendance thus directly affecting the number of potentially unsuccessful students."

CCPS' decision also ignored the impact of closure on the school staff such as guidance counselors¹⁷ who will now be inundated with twice as many students and will no longer be able to provide the valuable personal counseling experience and commitment to each of the students under their tutelage.¹⁸ These aspects of CCPS' core values and sound educational policy were not considered and were ignored by CCPS in reaching a decision. Instead, CCPS' decision's sole focus is budgetary concerns with no consideration to these undeniably valuable aspects of a sound educational experience. This ignorance renders CCPS' decision clearly arbitrary and unreasonable.

CCPS' decision also utterly failed to address the negative impact to extracurricular activities which past decisions of the MSBE have indicated must be considered. In *Concerned Citizens of Seven Oaks, and Mary Rose Gore, et al. v. Board of Education of Anne Arundel County*, MSBE 654 (1997), the Board explained:

A third reason why the decision to move Seven Oaks children to the Meade feeder system is contrary to education policy is that it would effectively bar the students from participating in many extracurricular activities. According to testimony presented at the hearing, non-military children are not permitted to join the recreational sports leagues affiliated with Fort Meade. Similarly, children are not permitted to participate in the Odenton Recreational Council unless they attend school in the Arundel feeder system. Consequently, the children of Seven Oaks whose families are non-military would not be entitled to engage in activities available to other children in the county. *Although not directly related to school, the inability to participate in such activities after school impacts the children's*

¹⁷ This is not to ignore the impact of the loss of core school staff who will be out of a job. The Superintendent's Decision also did not account for any costs associated with obligations to the union workforce and ignored the negative impact to the County by the unemployment of the core staff as well as the loss of capital projects at the school. A report commissioned by CCPS recently noted that every dollar spent at its schools resulted in a \$1.44 being spent in the County. See *The Economic Value of the Carroll County, Maryland, Public School System: Dollars & Cents and Beyond*, March 2015 attached as Exhibit K.

¹⁸ Given the Superintendent's personal history as a guidance counselor, it would be expected that he would have appreciated the dilution of the services a counselor could provide with twice the workload.

standard of living and is a valid consideration relating to the impact on the community.

The NCRC services thousands of participants that eventually attend North Carroll. See Exhibits to Response to Motion to Dismiss which are incorporated by reference. By utilizing North Carroll High School, the NCRC offers a variety of programs, host events which build social connections and provide a hub for many facets of community life. The closing of North Carroll represents a crushing blow to NCRC's ability to offer recreational access and services to the community. 89% of its participants and 78% of its programs will be directly and negatively impacted by the closure of the North Carroll facility.¹⁹ The MSBE has clearly indicated that such impacts are to be considered in these situations and CCPS' ignorance of the impact of its decision on this program are inexcusable and render it unenforceable.

As demonstrated, CCPS ignored its legal obligation to consider and evaluate the "[i]mpact on community in geographic attendance area for school proposed to be closed."²⁰ Failing to address the infusion of 600 new homes directly serviced by North Carroll is fairly significant. The effect on other local businesses in the community was equally ignored in CCPS' decision. Evidence was presented at the public hearings explaining that approximately 96% of small business owners surveyed in Hampstead estimated they could lose between 10 to 20 percent of business as a result of the closure, which would be debilitating to independently owned businesses operating on thinner margins of profitability. Several of the establishments

¹⁹ As noted in footnote 8 at the Appeal, the economic impact to Carroll County and these communities as recreational services go elsewhere could be profound.

²⁰ In an email reply to a concerned citizen, Bill Caine, a member of the BAC, wrote that he (and presumably the committee for whom he was responding) was "unaware of any substantial planned growth in Manchester and Hampstead."

surveyed indicated they would consider closing their operations in Hampstead as a result and relocate or focus on Westminster and Hereford instead.

Local business owners within 1.5 miles of North Carroll such as Belisimo's and Illiano's J&P Restaurant also identified a direct impact by the closing of North Carroll. Both establishments rely upon the school to supplement their labor force with qualified students. More importantly, both establishments are directly impacted by the loss of the revenue which comes from the school as they cater events, banquets and team functions.²¹ The loss of North Carroll is expected to have a direct impact as these businesses are no longer in a position to derive revenue from the events, are not asked to sell to participants for school events and no longer have the traffic emerging from events after school.

Even the Mayor of Hampstead in which North Carroll is located was ignored in his arguments against its closure because of the devastating impact to his community which is currently undergoing a \$20 million revitalization plan. Mayor Christopher Nevin identified the negative impact that this closure will have on routines, relationships, traditions, businesses and lives in Hampstead. North Carroll has been a fixture in the town for over 40 years and has a history of legacy partnerships built up over generations, and a traditional economic/social interplay with local businesses. It has been a focal point for many in the community and is used by many for community meetings and events. The school also provides a labor force to local businesses in close proximity to the school and a major source of revenue for some of those businesses as well. There is a direct impact to the enticement of new developers and families to

²¹ Again, although this is consistent with CCPS' study of the economic impact of schools for local businesses, the impact of these losses appear to have been lost on CCPS and the County Commissioners.

Hampstead if CCPS' decision goes through since the town will no longer boast of a high school in its jurisdiction and students will require an even longer commute to and from school.

More mystifying is the fact that CCPS' decision acted in blind ignorance of the community into which the displaced North Carroll students were relocating. This is an undeniable factor to be examined by State law. CCPS' only consideration of the impact on this community was singularly based on Manchester Valley's capacity. No consideration was given to revised commute times, traffic difficulties, parking at the school for the new influx of over 700 teenagers, of the water and sewer demands of the school, of whether the gym or auditorium could accommodate over 1000 students, or of Manchester Valley's surrounding community. CCPS attempted to justify its refusal to review this factor based on the fact that it did not see any impact before 2009 when there was only one high school in the area. The irrational explanation deserves little attention.

Even though one of the identified factors to be considered under COMAR is "transportation," conspicuously absent from CCPS' decision was any effort to address this factor. As we now know, CCPS expressly elected to not consider this factor. "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." See Exhibit 2. Not even the bus projections provided by CCPS were complete. Despite taking the time to document the current commutes of students and the distances to their current schools, CCPS intentionally omitted any demonstration of the increase in these commuting times for relocated students in its Decision. See Exhibit 9, Appendices F & G. This absence is glaring and is especially noticeable given the increased public focus and recommendations for later start times for high school students. Under

CCPS' decision, many students will have to begin their days even earlier jeopardizing their success in school, extracurricular activities and after school jobs.

In its haste to push forward its hidden agenda, there was no effort by CCPS to perform any simple traffic studies to determine what the impact would be of the new influx of busses and teenager drivers would have on the school or the town of Manchester. Unlike North Carroll High School which sits on the Hampstead bypass, no such traffic control system or means is in place to handle the new onslaught of cars and busses coming from the areas currently served by North Carroll High School. The transportation factor noted in COMAR is not limited to the costs of new buses but includes a review of the safety and suitability of the new routes travelled by students. *Marsh v. Alleghany County Bd. Of Educ.*, MSBE Op. 05-09 (2003). The MSBE clearly expects the Local School district to undertake a study of such impacts and has reversed Local School Decisions in the past when they failed to do so.

We recognize that any regrading and redistricting plan will require busing in Somerset County. Somerset County is a rural community, and in order to effectuate the educational goals of the County Board certain students will have to be bused a great distance – perhaps as far as 18 or 20 miles. That in and of itself does not make the plan arbitrary or unreasonable. Our present concern, however, is that at the time the County Board made its decision, it did not have the correct calculations in regard to student enrollments, school utilization, and busing mileage. As the Hearing Examiner points out, on cross-examination counsel for Appellants pursued the discrepancies and inquired of Dr. Lynch whether accurate data would not have given the Board second thoughts about its decision. Dr. Lynch replied, “I really can’t speak for the Board.” We also do not want to make a decision for the County Board. We believe is [sic] should have the benefit of correct figures before a final decision is made on a redistricting plan that will affect the entire school system.

Samuel W. Hall, et al. v. Somerset County Board of Education, MSBE 628 (1986).

CCPS did not review any traffic studies or impacts to the facilities, commutes and experiences of students and drivers before, during or after school hours.²² The only traffic studies which were ever completed were done in 2006 in anticipation of Manchester Valley being constructed and only projected the traffic conditions through 2009 which was the period when Manchester Valley was supposed to be opened. More importantly, that report plainly explained its projections which are based on the number of students and square footage of the building. "When completed, the new Manchester High school will be able to accommodate approximately 1,200 students in a 217,000 square foot building." See Exhibit 25 at 12. It did not perform any analysis for a school having well over 1400 students. More importantly, it noted that

A meeting with the director of transportation for Carroll County Public Schools (CCPS) provided information on future trip distribution for the new high school. The new Manchester High School shall serve the northern area of the school district. . . .

For purposes of this report, CCPS agreed that an estimated 90% of the proposed high school traffic would be coming from and going to the north (along MD 30), 5% from/to the east (along Maple Grove Road), and the remaining 5% from/to the South (along MD 30).

Given the closure of North Carroll which is south of Manchester Valley, this traffic study is worthless. It also demonstrates that notwithstanding CCPS ability to investigate and become involved in traffic studies, it chose to do none before deciding to close North Carroll and ship all students to Manchester Valley. There is simply no explanation for the blind eye adopted to this review by CCPS at this time, however, it clearly demonstrates an irrational and arbitrary decision by CCPS.

²² 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.

Further, Ryan Warner, the Mayor of Manchester, is the elected spokesperson for the constituents of Manchester and is tasked with ensuring that his constituents are safe, that their needs are being met, that they are being reasonably taxed for the services provided by the town and that the town continues to grow socially and economically. See Affidavits attached to Motion to Dismiss which are incorporated by reference. Remarkably, CCPS never consulted Mayor Warner about the possibility of Manchester Valley incorporating the whole of North Carroll's student body.

Based on the numbers projected, Mr. Warner believes not only will the school be over its effective capacity jeopardizing the use of the school's sewer and water usage but he may be required to hire additional police officers per Town Ordinance. The increased capacity at the school also has an immediate impact on the approval of new developments in and around Manchester. The student population which CCPS' decision identified for Manchester Valley impact the ability to approve new development which will dissuade developers from building new homes. This directly impacts the town and its tax base and was not considered by CCPS' decision.

In addition to failing to perform a careful analysis of these State factors, the rush of CCPS' decision and its demonstrated lack of full consideration of its impact and other available options easily leads to the conclusion that CCPS' decision cannot withstand scrutiny.²³ The simple fact that the ultimate plan for closure was presented and approved in a quick and rash method demonstrates that it was not well thought-out and that it was not considered consistent

²³ Appellants also incorporate by reference the arguments of the Appellants seeking to stop the closures of other schools under CCPS's decision. Those appeals demonstrated that many of the changes in support of CCPS's decision were already in the works long before the recommendations were even published in November, 2015.

with the factors required by law to be considered. In addition, whether it is the speed from when the first proposals were suggested to the November decision, the faulty and rushed public notices or the ignored public comments, CCPS' decision does not hide the fact that it is incomplete and further changes would still need to be made. Given its express reservations that it is only a first step, CCPS' decision fails to propose a long term sustainable solution that considers the educational value and experience of all Carroll County students. Kicking the can down the road on comprehensive boundary realignment and optimal education operations is not an acceptable option for the community or County.

CCPS' decision attempts to find justification in the financial impact of declining enrollment on State Education Funding. CCPS does not mention that this measurement of funding is currently being rewritten. CCPS also makes no excuse for the fact that the County Commissioners obviously became involved in its budget discussions and told it to close schools. See Appeal and its Exhibits incorporated by reference. More importantly, CCPS makes no mention in its Motion or its decision to close schools of the Governor's offer of \$4 million in additional educational grant funds nor does it explain the basis for its rejection of the offer. At the public hearing and before CCPS' decision was reached, CCPS was made aware that Governor Hogan had pledged a total of \$4 million to CCPS. These funds significantly close the gap to savings CCPS' decision claimed would be saved by its unsupported closures which would require further review and adjustments in the future. Id.

Prior to CCPS' final decision being issued which mirrored the decision published in November, 2015, CCPS was made aware that Governor Hogan and the State had a similar interest in assisting jurisdictions with declining enrollments which impacted the loss of State educational funding. While the State was statutorily undertaking a review of how educational

funds are calculated and dispersed to the various jurisdictions, CCPS was made aware that Governor Hogan's administration supports assisting those jurisdictions which have a demonstrated track record of declining enrollments, including Carroll County. To assist the County, Governor Hogan pledged \$4,000,000 in grants to the County and recognized that the County's Geographical Fund Index would be fully funded in the budget which would guaranty the County \$1.2 million.²⁴ See attached Exhibit 26.

For reasons which remain unclear, CCPS' decision was not amended since its November iteration to acknowledge this continuation of funding. Instead CCPS' decision mistakenly (or intentionally) noted that the funds would not be available.

The best possibility for immediate relief from the annual declines in state aid is some form of "hold-harmless" provision to the formula. CCPS has advocated for several years for a hold-harmless provision, similar to those received by other systems, but that effort has been unsuccessful. This remains CCPS' primary legislative priority. However, even if successful, the most likely scenario for a hold-harmless provision would be for a 50% reduction to state loss. This would amount to approximately \$1 million of reduced loss per year, which would be a minor mitigation to CCPS' overall funding challenge.

Unlike the \$5.2 million which CCPS claims it would save through the closures which were made with no assessment of all State required factors, the Governor's and State's offer would easily permit CCPS to fully consider all options while it defers the tremendous negative impact of its decision and avoids a drastic departure from sound educational policy.

Given the failure to reasonably offer any substantive demonstration that CCPS actually considered the State required factors prior to closing North Carroll, the decision was illegal and must be reversed. Even if the factors are considered, however, it is clear that a conclusion to

²⁴ This "hold harmless" provision would guaranty educational jurisdictions at least 50% of the previous years budgeted funds when they are negatively impacted by declining revenues.

close North Carroll and relocate the students to an overcrowded Manchester Valley is arbitrary, unreasonable and clearly violates sound educational policy.

Conclusion

Little doubt exists that CCPS' rushed decision to close schools was not the result of a thoughtful consideration of educational policy or the factors required under State law. It ignored basic impacts to communities and student needs, was arbitrary, unreasonable and illegal. The final rushed decision to close North Carroll only compounds the mistakes CCPS has made in the past and provides no concerted effort to solving the problems facing CCPS opting instead to perform ad hoc decision making.

Upon proper consideration, the decision to close North Carroll High School cannot withstand legal scrutiny and must be reversed. For the reasons noted herein and those which will be presented at trial and hearing, the Motion for Summary Affirmance by CCPS must be denied.²⁵



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²⁵ Appellants also incorporate by reference all facts and arguments raised by other Appellants seeking to stop the closures of schools as announced by CCPS in December, 2015.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 2016, a copy of the Response to Motion for Summary Affirmance was sent by first-class mail, postage prepaid to:

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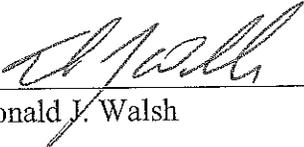
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