

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

*

CARROLL COUNTY

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RESPONSE TO MOTION TO DISMISS¹

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 Mayor Ryan Warner, Mayor Chris Nevin, the North Carroll Recreation Council, Belisimo’s and Illiano’s J&P Restaurant, file this Response to the Motion to Dismiss which seeks to jettison the claims and concerns of these Appellants on the issue of standing.² As CCPS must concede based on the public outcry at public sessions, the decision to close schools, including North Carroll, impacted far more than just the students who currently attend and will be relocated. As was eloquently explained by one concerned citizen of Hampstead and repeated by many more who wrote and spoke publicly against the decision,

Schools make up the moral fabric of our towns, provide stability in a seemingly unstable world, and allow lifelong social bonds to develop from childhood into early adulthood. These experiences are as critical to their development as are the academic lessons. To think about school utilization as only a budget puzzle obscures the most fundamental value that a public education affords. Keeping schools small and decentralized, while less efficient, is the most valuable investment a government and community can make.

¹ This Response is only as to the standing issues raised by CCPS. Issues raised in the Motion for Summary Affirmance are addressed in a Response directed to those issues which is incorporated herein by reference.

² The attack on standing in this case is also curious given the fact that CCPS concedes that other appellants in this Appeal may continue to pursue the same arguments and issues. Even reaching a conclusion that these appellants have no standing does nothing to prevent them from testifying in support of the Appeal.

Terrance MacGregor, Hampstead resident.

These very real concerns which were echoed by so many students, business owners and taxpayers were ignored in CCPS' examination of the rigid State and CCPS standards required for closing schools. Rather than admit its failures in considering the gravity and impact of its decision on these communities, CCPS has attacked the standing of these groups of citizens hoping that its ignorance of these impacts is not brought to light. After careful consideration of the previous decisions of the Maryland State Board of Education and Maryland law, there is no doubt that each of these groups and individuals has standing.

Argument

The attack on the standing of various Appellants is only one more example of CCPS' refusal to understand the legal requirements through which its analysis must flow and appreciate the consequences of its decision. Common to all of the Appellants in this Appeal is the fact that the Maryland State Board of Education and CCPS set forth several standards which must be considered by local school boards before closing a school. Among those factors, COMAR 13A.02.09.01 expressly notes that the CCPS must consider the "[i]mpact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating." CCPS' Master Facility Plan echoes a review of this factor before CCPS can close a school. See Excerpt from Master Facility Plan, Section 3, attached as Exhibit 1.

Based on the State's and CCPS' recognition of the direct and immediate impact on groups and individuals in these communities, it is pure folly for CCPS to now argue that the specific Appellants challenged do not have standing to challenge this decision. Each of these parties has a distinct injury which is not generally suffered by others in Carroll County and is felt

only because they live, work and serve a “community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.” CCPS challenges to the standing of several of the Appellants – the Mayors of Hampstead and Manchester who speak on behalf of their Towns and constituents, the North Carroll Recreation Council (NCRC) and two businesses, Illiano’s and Belisimo’s is simply incorrect as a matter of fact and law.

In appeals before the State Board of Education, the general rule on standing is that an individual or entity “must show some direct interest or ‘injury in fact, economic or otherwise.’” *Spiegel v. Frederick County Board of Education*, MSBE No. OP11-13(2011); *Sartucci v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 10-31 (2010); *Stone v. Carroll County Bd. of Education*, MSBE Op. No. OP09-04 (2009); *Taylor v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-32 (2007); (quoting *Adams, et al. v. Montgomery County Bd. Of Educ.*, 3 Op. MSBE 143, 149 (1983)); *Regan v. Washington County Bd. Of Educ.*, MSBE Op. No. 03-13 (2003). As was explained in *Sartucci v. Montgomery County Bd. of Education* MSBE Op. No. 10-31 (August, 2010), for a person to maintain an action for review of an administrative decision, the person “must be a ‘party’ to the administrative proceedings and be ‘aggrieved’ by the final decision.” *Sugarloaf Citizens Association v. Department of Environment*, 344 Md. 271, 287 (1996).

In order to be an aggrieved party, “a person ordinarily must have an interest ‘such that he is personally and specifically affected [by the agency’s final decision] in a way different from...the general public.’” *Id.* at 288. “This showing of a direct interest or injury in fact requires that the individual be personally and specifically affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency.”

Clarksburg Civic Association v. Montgomery County Bd. Of Educ., MSBE Op. No. 07-34 (August 29, 2007) (quoting *Bryniarski v. Montgomery County Bd. Of Appeals*, 247 Md. 137, 144 (1967)).

Contrary to CCPS' argument that organizations and the representatives of those organizations have no standing, the State Board of Education has adopted a very liberal stance in finding standing for groups and the representatives of those groups such as the Mayors and NCRC. Obviously, the municipalities directly impacted by school closures and relocations have standing based on the direct reference to those communities in COMAR. Not only does COMAR require CCPS to review the impacts to these communities which by its very definition recognizes the direct impact on them, precedent decisions in the Board of Education explained that they had standing. *Adams v. Montgomery County Bd. Of Educ.*, 3 Op. MSBE 143 (1983), explained that in future appeals concerning school closings and consolidations, "municipalities, committees, and other unincorporated associations" may have standing if they have a direct impact and/or interest. *Rock Creek Hills Association, et al. v. Montgomery County Board of Education*, MSBE Op No. 12-49 (2012), more clearly articulated that "the State Board eliminated the requirement that homeowner associations and civic organizations are required to show a direct interest of their own which is separate and distinct from that of their individual members." See also *Clarksburg Civic Assn. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 07-34 (2007); *Dorchester Neighborhood Assn, Inc., v. Charles County Bd. Of Educ.*, MSBE Op. No. 99-10 (1999); *Stratford Woods Home Owners' Assn, Inc. v. Montgomery County Bd. Of Educ.*, 6 Op. MSBE 238 (1992). Such organizations and their representatives can establish standing by demonstrating a direct interest or injury in fact in their own right or on behalf of their members. *Id.*

Consistent with this liberal interpretation of standing, in *Edward J. Palmer, Jr., et al. v. Wicomico County Board of Education*, MSBE Op. No. 99-37 (1999), the State Board of Education found standing because the Appellants had children in an affected Wicomico County school.

They may not have suffered a direct injury but they certainly meet the low threshold for administrative standing enunciated with regard to administrative hearings generally in *Sugarloaf, supra*, and enunciated with regard to a redistricting plan in *Dorchester Neighborhood Association, Inc. v. Charles County Board of Education, supra*.

For these reasons, I find that the Appellants have standing to object to the redistricting plan because they live in Wicomico County and they have children who attend an affected school.

Similarly, in *ADC Baltimore v. Baltimore County Board of Education*, MSBE Op. No. 05-01 (2005), the State Board of Education found standing in an appellant who was president of the American Arab Anti-Discrimination Committee Baltimore Chapter (“ADC Baltimore”) who appeared on behalf of ADC Baltimore, challenging the Baltimore County Public Schools’ 2005-2006 school calendar as approved by the local board which did not recognize any Muslim holiday as an official school holiday.

The appeal was filed by Dr. Pharoan on behalf of ADC Baltimore. While Mr. Pharoan has not set forth any evidence that ADC Baltimore members are Baltimore County residents or have children attending Baltimore County public schools, we note that Mr. Pharoan was a member of the 2005-2006 Baltimore County School System calendar committee. Further, a review of the minutes of CCPS meeting of May 25, 2004 discloses that a number of Muslim Americans testified concerning the proposed calendar for 2005-2006. We therefore find under these circumstances that Appellant does have standing to file this appeal.

The Towns of Hampstead and Manchester

In the present case, the towns of Hampstead and Manchester and the NCRC are all directly impacted by CCPS’ decision uniquely from the rest of Carroll County and the public at large. Their children attend or will attend these high schools, their recreation programs take place at these schools, community events are focused around and at the schools, they drive in the

traffic which flows to and from and around these schools, and these schools, students, employees and families patronize and work at their local businesses. Hampstead will directly lose revenue earned through the school's use of water provided by the town; Manchester will now be taxed to handle new traffic, an increased number of students and an overburdened infrastructure necessary to support a high school population twice its current size. The Mayors and the head of the NCRC, John Woodley, also all provided public comment to the CCPS against the closures. See Affidavits of Chris Nevin, Ryan Warner and John Woodley attached as Exhibit 2, 3 and 4, respectively.

Ryan Warner, as the Mayor of Manchester, has direct standing since he has children who attend Manchester Valley.³ The Mayors' standing also arises from their coordination and use of North Carroll and their positions as the elected spokesmen for the constituents of Manchester and Hampstead who are distinctly impacted by CCPS' decision. Among other obligations, both Mayors are tasked with ensuring that their constituents are safe, that their needs are being met, that they are being reasonably taxed for the services provided, that the towns continue to successfully grow socially and economically and that the Local School Board legally follows its process in considering closure and/or consolidation before it rips North Carroll High School, its students and its history from its community and puts them in Manchester Valley.

Consistent with the concerns noted above for the students and their parents based on CCPS' decision, neither Mr. Nevin nor Mr. Warner were consulted about the possibility of incorporating the whole of North Carroll's student body into Manchester Valley. Based on the

³ Mayor Nevin's children have graduated from North Carroll but he continues to coach and support rec programs at the school.

numbers projected by CCPS, not only will Manchester Valley be over capacity⁴ for the duration of the school's current projections which causes safety and fire concerns, jeopardizes the use of the school's facilities and sewer and water usage, creates the possible obligation to hire additional police, and impacts new housing developed in the area where there will be no high school enrollment available, there has been zero consideration given to the impact of this relocation to development in the town or to traffic which Manchester and its residents will now have to suffer through during the school year.⁵

Despite an obligation to review transportation issues and community impacts, CCPS undertook no analysis of the increased traffic at Manchester Valley as over 700 new high schoolers would now be sent there. What makes this absence of review so egregious is the fact that CCPS undertook a different approach under its previous leadership and had the foresight to undertake a review of traffic patterns prior to building Manchester Valley. Before issuing a decision to close North Carroll and send over 700 teenagers who were or would become new drivers, CCPS did no review of any traffic studies or impacts to the commutes and experiences of students on busses and drivers before, during or after school hours.

⁴ Further demonstrating the irrationality of CCPS' decision making process, it attempts to refute arguments about the size of Manchester Valley by reference to a MDE Sewage Construction Permit which approved building a system large enough to accommodate over 1800 people. Memo at 40-41, n. 140. Conspicuously, CCPS does not explain whether this size system was actually constructed. More importantly, CCPS has already acknowledged that Manchester Valley is a smaller facility than North Carroll. See attached Exhibit 5. This is one more example of CCPS failing to perform any reasonable analysis and going to extreme lengths to support an ill-conceived decision.

⁵ Similar to other unsupported assertions, CCPS claims it "expressly considered the impact on transportation" in deciding to close North Carroll, Memo at 38, yet there exists no evidence of any consideration of the new traffic nightmares it is creating in this decision.

In addition to the increase in capacity at the school having an immediate impact on traffic, parking and the need for increased traffic police presence,⁶ it has a direct impact on the approval of new development in and around Manchester. Per the Town's code, the capacity ratings which CCPS' decision identified for Manchester Valley may prevent the Planning and Zoning Commissioners from approving developers seeking to build new homes and developments. This directly impacts the town and its tax base and deprives the School system of needed student population growth. Manchester currently has developments of 140 homes in different stages of planning and development which will directly impact infrastructure needs as well as the enrollment numbers of Manchester Valley as well. Mayor Warner has spoken against this consolidation.

Mr. Nevin has spoken out against the direct impact that the closing of North Carroll will have on Hampstead which is currently undergoing a \$20 million revitalization plan. CCPS' decision has profound effects on students, parents, neighborhoods, communities, and personnel. It will negatively impact routines, relationships, traditions, and lives in Hampstead. North Carroll High School was originally established in 1956 by joining Hampstead and Manchester High Schools. During the 1975-1976 school year, a new building was completed in Hampstead on Maryland Route 482, where the school currently resides. Hampstead schools, anchored by North Carroll, have been a source of pride for the community and offered realtors a unique selling point in a town designated as "Best Place to Raise Kids in Maryland" (Bloomberg Businessweek, 2012).

⁶ The traffic issues would also spill into parking issues since Manchester Valley's parking lot is significantly smaller than North Carroll's, see Exhibit 6, and because it is currently fully occupied by only the students and faculty at Manchester Valley.

Like Mayor Warner's concerns, Mayor Nevin has explained that there is a direct impact to the enticement for new homebuyers and new developers to Hampstead if CCPS' decision is upheld since Hampstead will no longer boast a high school in its jurisdiction. Among these local developments in the North Carroll school district were:⁷

- Oakmont Overlook has 23 new homes planned for immediate construction, some already sold, with a model home built and open by Ryan Homes.
- Northside Estates is planning 17 homes between Evergreen and Fairmont on land behind Main Street, Hampstead. It has received primary approval from the Planning and Zoning Commission. Hampstead officials expected final approval for construction to be in spring 2016.
- There is a 27 single family home development by Castle Drive and Houcksville Road in the approval process.
- Florida Rock owns in excess of 100 acres which could support development of 252 homes between the bypass and Houcksville that is undergoing consideration to be rezoned residential because it is unsuitable for industrial traffic.
- The Powers Brothers are in the planning process for a 275 single family home development that will be located between Upper Beckleysville and Lower Beckleysville which is expected to begin building houses within two years.

In addition to these planned developments, CCPS had the ability to review the County's Buildable Land Inventory which outlined development possibilities throughout Hampstead and Manchester. See Exhibit 7. This County document, which is expressly prepared for planning purposes, identified an overwhelming amount of land available for development in these areas all of which may now be built since the building moratoriums imposed on the Towns by the County for the past six years have been lifted.

⁷ None of these developments were considered by CCPS in making its decision. In fact, CCPS made no examination of the development in Hampstead and Manchester. After its decision was made and in an effort to provide post hoc support for its decision and its Motion, CCPS refers to a Hampstead development plan, Memo 40, n. 140, which is over 6 years old and identified none of this growth. Had CCPS examined the Carroll County Buildable Land Inventory available to it in the County Planning office, see attached Exhibit 7, it would have identified numerous growth areas in both Manchester and Hampstead.

The North Carroll Recreation Council

Similar to the interests of the towns of Hampstead and Manchester, NCRC is in a unique position because it primarily services thousands of participants that eventually attend North Carroll. Most recreation councils in Carroll County already operate from a position of inadequacy in consideration of facility and field space and public schools play a significant role providing facility and field space in communities around Carroll County. By utilizing public school facilities, the recreation council offers a variety of programs, hosts events to build social connections and provides a hub for many facets of community life. The loss of the public space and social connections provided by the school's closure present a significant deterrent to families staying in the community or moving to it.

The closing of North Carroll is a crushing blow to NCRC's ability to offer recreational access and services to the community. For many years the NCRC has leveraged the NCHS fields and facilities, with its two gyms, to provide recreational services to the Carroll County community for youth and adults, spanning 27 programs and camps. Attached to Mr. Woodley's Affidavit is CCPS' commitment to NCRC and the use of facilities. Of the 73,000 plus hours of volunteerism sponsored by the NCRC during the last reporting cycle (2014 - 2015), 89% of its participants and 78% of its programs will be directly and negatively impacted by the closure of the North Carroll.

Contrary to the arguments of CCPS here, even Superintendent Guthrie recognized the impact to organizations such as NCRC in 2012 when he spoke with County Commissioner Doug Howard. Attached as Exhibit 8 is the letter of invitation to Commissioner Howard to discuss issues related to school closures as well as the Superintendent's notes where he clearly identifies that the recreation councils will be impacted. The Maryland State Board of Education has

already identified that the impact to these recreational activities must be considered in school closing decisions and, as such, it confers standing on such organizations. In *Concerned Citizens of Seven Oaks, and Mary Rose Gore, et al. V. Board of Education of Anne Arundel County*, MSBE Op. 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 standard of living and is a valid consideration relating to the impact on the community.*

Further demonstrating CCPS' lack of consideration and forethought to the surrounding communities impacted by its decision, CCPS proudly speculates in its Motion that 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. Motion 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 attached Exhibit 9.

In addition, the NCRC has been using North Carroll since it opened in 1976. Originally, it signed a Joint Use Agreement with the school. Since that time, NCRC has invested hundreds of thousands of dollars funding numerous projects over these years at North Carroll. The projects have included everything from building the current dugouts used by the North Carroll Baseball and Softball programs, enhancing the North Carroll wrestling room and providing the wrestling mats, cultivating/creating and maintaining fields, along with many other items. The NCRC made these investments for the North Carroll School and Community for the purpose of

community enrichment. If the school is closed, NCRC will not obtain any return of those significant NCRC investments made in partnership with CCPS. A more direct impact necessary to find standing is difficult to imagine.

Hampstead Supportive Businesses

As presented through numerous public meetings, North Carroll has been a focal point for many in the community and used for community meetings and events. The school also provides a labor force to local businesses in close proximity to the School and is a major source of revenue for some of those businesses as well. Local food establishments currently rely on school events and functions as a major source of revenue. Belisimo's and Illiano's J&P Restaurant are businesses which are in Hampstead, within 1.5 miles from North Carroll and are directly impacted by the closing of North Carroll.⁸ Both establishments rely upon the school to supplement their labor force with qualified students and both establishments are directly impacted by the loss of the revenue which comes from the school since they cater events, banquets and team functions. See Affidavit of Augusto Illiano attached as Exhibit 10. The loss of North Carroll will have a direct impact as these businesses no longer 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. The direct and immediate impact to these establishments is explained by Augusto Illiano.

The loss of the school deprives the economic community of the source of student employees and student customers. Hundreds of North Carroll's pupils have served as J&P waiters, having grown up as customers brought there by their parents for their first pizza. Currently twelve of our wait staff would be displaced students. Because of the overcrowding predicted at Manchester, the school board is

⁸ CCPS' efforts in its Motion to minimize the totality of its decision to these businesses is incorrect and not a useful means of measuring standing which does not undertake such a quantitative analysis.

preventing Junior's from bringing cars to campus, thus preventing these students from continuing their jobs at J&P.

The same employment loss has been expressed among my tenants who rely on part time student employees. The closing adversely affects the students that depend on after school employment to supplement their incomes as well as the businesses that no longer have a pool of employees. Part of a young person's education is teaching them financial responsibility. It is what I learned as a dishwasher when I was sixteen.

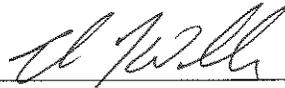
Then there is the loss to business itself. Take just one item, Pizza, which is a student's staple of life. It's what they eat after school, after attending a sporting event, before going to the high school show or marching in the band or attending a Rec Council Event. No High school means no use of the Gym or athletic fields for other activities. There are at least 150 of these activities per year at an average attendance of 300 people per activity (students, parents and extended families), the School brings an estimated 45,000 visits. If 20% of those people eat pizza, then there is a loss of 9,000 customers at an average guest check of \$10 or \$90,000 loss in Pizza sales. This is the projected loss at my business but multiply this loss to the local Karate Studio, burgers at McDonalds or Coffee's at Snickerdoodles and it can be seen that some of these businesses will not just do poorly, they will not survive.

When businesses do not survive, then the tax base shrinks and with the shrinking tax base the savings in closing North Carroll does not become a money saver but a contributor to the degradation of the Counties financial base. While we may be the immediate losers, the lack of infrastructure in Manchester will not directly replace what is destroyed in Hampstead.

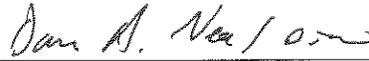
CONCLUSION

Under any analysis, it is undeniable that these appellants have standing in this case and can continue to stand with the other appellants in seeking to reverse CCPS' decision. All have clearly and unarguable direct impacts by the closure of North Carroll and the impact on each was never considered by CCPS prior to making the decision to close North Carroll.

For the reasons noted above, the Motion of CCPS to dismiss several appellants as having no standing must be denied.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2016, a copy of the Response to Motion to Dismiss was sent by first-class mail, postage prepaid to:

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