

MELISSA FOWLER, ET AL.,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-08

OPINION

INTRODUCTION

Appellants appeal the decision of the Baltimore City Board of School Commissioners (“local board”) to close Steuart Hill Academic Academy (“Steuart Hill”). Steuart Hill is a Baltimore City Public Schools’ (“BCPS”) school serving students from pre-kindergarten through grade 5.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (“OAH”) for review by an Administrative Law Judge (“ALJ”). On November 16, 2022, the ALJ issued a Proposed Decision on Respondent’s Motion for Summary Decision recommending that the State Board uphold the local board’s closure of Steuart Hill. The ALJ determined that a hearing was not necessary because Appellants failed to offer any evidence to assert a genuine dispute of material fact demonstrating that the local board’s decision was arbitrary, unreasonable or illegal, noting that Appellants’ arguments were nothing more than a difference of opinion regarding the school closure. The ALJ found that the local board considered the school closure factors set forth in COMAR 13A.02.09.01B and complied with all laws, regulations, and polices applicable to school closings. (Proposed Decision at 22-23).

Appellants filed exceptions to the ALJ’s Proposed Decision and the local board responded. The State Board heard oral argument on the exceptions on March 28, 2023.

FACTUAL BACKGROUND

On January 25, 2022, the local board voted to close Steuart Hill at the end of the 2022-2023 school year and rezone all students to Franklin Square Elementary/Middle School (“Franklin Square”) or Frederick Elementary School (“Frederick”). Various considerations were the basis for the closure decision. Steuart Hill is a small school with a capacity of 311 students but declining enrollment since the 2017-2018 school year.

<u>School Year</u>	<u>Enrollment</u>
2017-18	275 students
2018-19	248 students

2019-20	250 students
2020-21	187 students
2021-22	193 students

(Motion, Ex. 5 at 21). In addition, due to the school’s small size, which impacts funding, it has been less able to offer robust and varied academic programming for students. The school building is in poor condition with problems that include foundation ground water issues stemming from a stream that runs under the building and that periodically floods into the school spaces. The facility is also in need of various repairs, including a roof replacement, window, and chimney replacements. Less than one mile from Steuart Hill are both Franklin Square and Frederick which are housed in buildings in better condition and serve the same or similar grade bands as Steuart Hill.¹ (Motion, Ex. 1(Alvarez Affidavit 1)).The full factual background in this case is set forth in the ALJ’s Proposed Decision on Respondent’s Motion for Summary Decision, Findings of Fact, pp. 5-10, which we incorporate herein.

STANDARD OF REVIEW

This appeal involves a school closing decision of the local board. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.06B. The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

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

LEGAL ANALYSIS

The Appellants have set forth three exceptions to the ALJ’ s Proposed Decision which we address in turn below.

¹ Ultimately, it was decided that the students from Steuart Hill will be enrolled at Franklin Square, unless they request Fredrick as part of the public charter school’s Geographic Attendance area. (Local Bd. Motion at 15; Motion, Ex. 1 (Alvarez Affidavit 1)).

EXCEPTION 1:

Appellants maintain that the ALJ failed to consider the evidence of arbitrary decision-making by the local board in contravention of its policies and its decision to develop a targeted portfolio strategy for its Annual Review of Schools.

Local Board's Vote on Portfolio Strategy

Appellants argue that the local board's January 25, 2022 vote to "pause" school closures and develop a targeted portfolio strategy for its Annual Review of Schools strips legitimacy from its vote at the same meeting to close Stuart Hill. Appellants refer here to the local board's discussion and vote to have BCPS staff develop a targeted portfolio strategy for its Annual Review of Schools that addresses, but is not limited to, school enrollment and utilization; school community rezoning; time and projected impacts on communities; age or condition of facilities; and financial considerations, as well as the composition of the district's portfolio of schools. The board asked that staff develop a targeted strategy prior to presenting any additional portfolio recommendations to the board. Appellants maintain that this vote renders the vote to close Stuart Hill arbitrary because it recognizes that the school closure process needed revision.

We have reviewed the relevant portions of the transcript of the January 25, 2022 local board meeting. At the January 25 meeting, the local board discussed and voted to request an updated portfolio strategy from BCPS staff for future Annual Reviews. (Motion, Ex. 24). The Annual Review process is not limited to school closures. Rather, the purpose of the Annual Review process is to provide a set of recommendations to the local board regarding the creation of new traditional schools, school relocations, grade re-configurations, charter school contract renewals, amendment of the 21st Century School Buildings Program, facility surplus, and school closures. (Local Bd. Motion, Ex. 1(Alvarez Affidavit 1)). The local board requested staff to provide it with a developed long-range strategic plan regarding the Annual Review process in order to obtain an overview picture of the school system's portfolio of educational programs for assessment of future planning.² The vote on development of a portfolio strategy was not a referendum on the school closure process or information that the board utilized for the Stuart Hill decision. The vote on the Stuart Hill closure was intentional and based on the information before the board at that time.

Policy FCA – Closing of Schools – Steering Committee

Appellants maintain that the local board violated the provisions of Policy FCA – Closing of Schools related to the School Steering Committee. Policy FCA.IV.C. states as follows:

1. Schools proposed for closure will form a Steering Committee that includes school leadership, parent, and central office representatives.
2. The Steering Committee will have the following responsibilities:
 - a. Provide written feedback to the CEO on the proposed school closure;

² The local board received the updated portfolio strategy during the 2023 Comprehensive Educational Facilities Master Plan ("CEFMP") presentation on May 17, 2022.

- b. Assist in an orderly transition if the Board decides to close the school.

Appellants argue that BCPS failed to convene a Steering Committee with specified non-staff representatives, which in turn failed to provide feedback or assistance with an orderly school closure.

The local board maintains that Appellants misunderstand the local board's interpretation of its own policy and manner in which a school steering committee is composed and functions. The local board does not interpret Policy FCA and Administrative Regulation FCA-RA as allowing membership to be selected by each of the specified groups, as suggested by Appellants. The local board interprets the policy as simply requiring representatives from each of the designated groups to be present at the steering committee meetings. The State Board has long held that a local board's interpretation of its own policy or regulation is given due deference on appeal. *Sullivan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-10 (2001). We give that deference here.

The record establishes that BCPS invited stakeholders from each of the membership groups specified in Policy FCA to participate in the school steering committee meetings. Membership for the steering committee was open to any member of the community that had an interest or wanted to participate. Three such meetings occurred on December 2, 2021, December 13, 2021, and January 6, 2022. Individuals representing all three membership groups were present, but there was low community turnout. Feedback and comments from the meetings were provided to the CEO and local board. (Local Bd. Motion, Exs. 17, 18, and 19; Local Bd. Reply to Resp., Ex. 31 (Alvarez Affidavit 2)). BCPS also formed a Joint Transition Committee in December 2022, which joins the school communities to provide support and feedback on the merger of the school programs as the Steuart Hill closure proceeds. (Local Bd. Reply to Resp. at 9-10, Ex. 31, Alvarez Affidavit 2). Accordingly, we do not find that there was a policy violation here.

As stated by the ALJ:

The [local board's] basis for adoption of the CEO Annual Review may be controversial, and opposed by the Appellants, but it was neither arbitrary, unreasonable, nor illegal. The [local board] followed its own guidelines and State mandated procedure to collect and analyze relevant data, consider options, publish notice, provide numerous opportunities for community input, and reach a reasoned decision. Difficult decisions must be made, and the [local board] went to great lengths to review the research and render a reasonable decision that took into account all of the regulatory factors that were required in acting to close Steuart Hill.

(Proposed Decision at 22-23).

Board Policy KCA – Family and Community Engagement and Board Policy ADA – Equity

Appellants allege that the local board’s approach to community engagement for the school closure decision did not align with local board Policy KCA (Family and Community Engagement) or Policy ADA (Equity). (*See* Exceptions, Exs. 16 and 32 (Policies)). Appellants argue that there was no community engagement or communication and that the CEO had dictated a closure plan to the school principal before receiving community input. To support this argument, Appellants point to the purpose of Policy KCA which is, in part, to engage in “[e]ffective school-family community collaboration” to assure that “stakeholders have the opportunity to effectively work together and participate in making decisions at all levels in support of improved academic performance for all students.” They also cite to the purpose of Policy KCA that states, in part, that BCPS “must move to disrupt and dismantle inequities in every area of our work” and that BCPS “will work to aggressively and efficiently eliminate inequitable practices, systems, and structures that create advantages for some students and families while disadvantaging others.”

First, it appears that the Appellants may be confused about the obligations of the CEO and BCPS staff concerning communication during the closure process. BCPS staff conduct the Annual Review process over many months and it includes extensive data and information collection and review. Staff share the results of this collection and review process with the CEO for analysis. Following consultation and review, the CEO makes recommendations, which are shared with the local board and the community at large. The process leading up to the CEO’s recommendation for closure of a school is not part of the community engagement process. Community engagement becomes part of the school closure process once the CEO makes a recommendation, in accordance with Policy FCA and Administrative Regulation FCA-RA, which BCPS staff and the local board followed.

Second, the ALJ recognized that local board Policy FCA and Administrative Regulation FCA-RA governed the school closing process. The local board complied with requirements for community engagement set forth in FCA and FCA-RA and provided the necessary engagement opportunities to the community and stakeholders. As the ALJ stated:

The record is very clear that the [local board] complied with the Education Article, Maryland State Department of Education regulations pertaining to school closings, and its own internal regulations and policies in the manner and method in which it decided to close Stuart Hill. The CEO, Dr. Santelises, communicated with the City of Baltimore and elected officials who represent the City of Baltimore when she made her recommendation to close Stuart Hill. The [local board] released a report with its recommendations on the BCPS website as well as the Stuart Hill website. Then staff and school-based meetings were held, and a [local board] hearing along with three steering committee meetings were conducted relating to the closing. The [local board’s] public hearings were properly published, notices of upcoming meetings and hearings were provided to parents by email and sent home with students, robocalls were made to the parents. Parents and

community residents were given an opportunity to be heard and many were heard, following which [local board] conducted a vote to close Steuart Hill. The results of the [local board's] decision were properly published.

(Proposed Decision at 22).

We do not find that Policies KCA and ADA impose additional community engagement responsibilities on the school system beyond those specified in the school closure policy. To the extent that Appellants are alleging other violations of Policy ADA, they have not demonstrated any such violations. We note, however, that one of the goals of the closing was to provide students more access to resources to support a “rich, robust and varied educational programs.” (Local Bd. Motion, Ex. 2 at 35, Ex. 5 at 17-18). Accordingly, we do find that the local board violated Policy KCA or Policy ADA in making the school closure decision.

EXCEPTION 2:

Appellants maintain that the ALJ failed to consider their presentation of what they believe is sufficient and adequate evidence to create a genuine dispute of material fact. Appellants specifically refer here to the data that they introduced to rebut the local board's evidence supporting the closure, such as the data regarding alleged inaccuracies in the enrollment projections, state rated capacity, and facilities assessment.

The arguments raised by the Appellants concerning the data that factored into the decision to close Steuart Hill were fully addressed by the local board in its motion for summary decision and reply, with data to support the closure decision. Some of the arguments put forth by Appellants regarding the data are incorrect. Other arguments amount to a difference of opinion or a dispute over how much weight the local board should have accorded to various concerns. The data relied upon by the local board demonstrates that there was a continual decline in student enrollment at Steuart Hill and that the Steuart Hill facility was in poor condition. None of the contentions made by Appellants are supported by evidence that would demonstrate that the information relied upon by the local board was arbitrary or unreasonable.

The evidence supports the finding that the local board considered the eight school closing factors set forth in COMAR 13A.02.09.01B and local board Policy FCA. As explained by the ALJ, each factor need not be given equal weight in the school closure decision and the local board's decision should prevail so long as at least one criterion is supported. (Proposed Decision at 21). The local board has supported its decision with evidence. While Appellants may not agree, such disagreement does not render the local board's decision arbitrary, unreasonable, or illegal.

EXCEPTION 3:

Appellants argue that the ALJ improperly disregarded the evidence submitted by Appellants in contravention of the ALJ's instructions to the parties regarding the submission of evidence. As an example of how the ALJ improperly excluded evidence, Appellants refer to their dispute over the existence of groundwater issues resulting in flooding of the Steuart Hill building. Appellants claim that the water damage was a result of a plumbing malfunction due to lack of maintenance and not from groundwater flooding. (*See* Exceptions at 9). Appellants

argue that the local board did not establish that the water damage was a result of groundwater flooding because one document in the record – the 2019 Facility Condition Assessment – did not document the flooding problems. They also claim that they were precluded from commissioning their own facility assessment. *Id.* The Appellants attempted reliance on one document in the record and a document that does not even exist – the facilities assessment they would have liked conducted – ignores the evidence in the record that the building flooded on a regular basis. The Appellants’ example in the exceptions does not support their argument that the ALJ improperly excluded evidence.

In the Proposed Decision, the ALJ states: “I performed a cursory review of the referenced exhibits in an attempt to adequately comprehend the Appellant’s Response; however, the exhibits can be given no weight, as much as they are excerpts and incomplete documents, which would be inadmissible at a hearing.” (Proposed Decision at 5, n.7). Appellants maintain that this statement is contrary to the directions given by the ALJ at the pre-hearing conferences. They claim that the ALJ advised the parties that “she preferred excerpts if the source documents were large” and that “previously submitted evidence did not have to be submitted again, and that it would be kept on file.” (Exceptions, Ex. 8 (Sanders-Criner Affidavit)). Appellants have submitted an affidavit asserting their understanding of the ALJ’s instructions. *Id.*

We have listened to the recordings of the ALJ’s directions to the parties during the pre-hearing conferences on July 19, 2022 and September 19, 2022. It is apparent to us that the Appellants misunderstood the ALJ’s instructions. Nevertheless, we have reviewed the documents and excerpts cited by the Appellants in their response to the local board’s motion.³ Most of the referenced documents are already included in the exhibits attached to the local board’s motion and reply, upon which the ALJ relied in making her decision. (*See Proposed Decision, Summary of Evidence at 3-5*). We reviewed the few documents that were not included and they have no impact on our analysis. We agree with the ALJ that Appellants have simply failed to produce any evidence that creates a material factual dispute in this case.

CONCLUSION

We agree with the ALJ’s assessment that the record in this case supports the local board’s school closing decision and that Appellants have not presented any evidence of a genuine dispute of material fact. We, therefore, adopt the ALJ’s Proposed Decision on Respondent’s Motion for Summary Decision and affirm the local board’s school closure decision.

The State Board is concerned about student safety for students walking to schools from the Steuart Hill area. We urge the local board to direct BCPS staff and, to the extent appropriate, work with Baltimore City agencies to address walking route safety concerns raised by Appellants, and communicate to the Steuart Hill community how BCPS will address these concerns.

³ To the extent that Appellants suggest that the State Board should comb through documents that Appellants failed to cite in their response to the local board’s motion, the State Board is not required to sift through the record to make the Appellants’ argument on appeal. *See Gardner v. Baltimore City Bd. of Sch. Commr’s*, MSBE Order No. OR15-02 (2015) and cases cited therein.



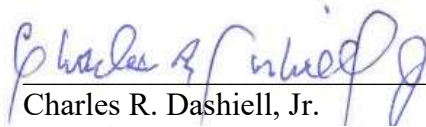
Clarence C. Crawford
President



Susan J. Getty
Vice-President



Gail H. Bates



Charles R. Dashiell, Jr.



Vermelle D. Greene



Jean Halle



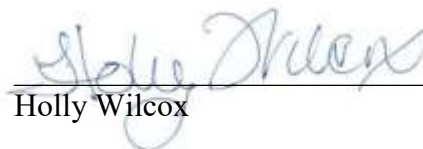
Rachel McCusker



Lori Morrow



Warner I. Sumpter



Holly Wilcox

Absent:

Chuen-Chin Bianca Chang

Joan Mele-McCarthy

Concur, in Part, and Dissent, in Part:
Shawn D. Bartley

I concur.

The process was followed by Baltimore City Board of School Commissioners and the procedure was correct. The ALJ process, reasoning, and decision are apt.

I dissent.

I do not believe that the closure of any school in the State of Maryland that has not received the full financial support and interest of the Local Education Agency (such as the Baltimore City Board of School Commissioners) is in alignment with the BluePrint For Maryland's Future (the promise and opportunity for every Maryland Child).

I am against the closure of another Baltimore City school that seeks to be an alternative and provide a choice for a different educational outcome than what has been the norm for Baltimore City school children, Maryland's children.

The State School Board is impotent to assert any direct meaningful change in Baltimore City schools and for Maryland's children as long as the legal procedure is followed by Baltimore City Board of School Commissioners. The silence of unanimity of the State Board in most legal decisions suggests that all the board members are fine with Baltimore City school closures as long as the legal procedural method is followed accurately. I am not fine with it.

The closure of any school in Baltimore City that serves Maryland children has negative ramifications upon Maryland's children and the community it serves. Baltimore City Board of School Commissioners appear to have an issue with schools that are not in the traditional model. I am not aware of the number of traditional schools that have been closed in Baltimore City due to a school's failure to meet a rubric of metric thresholds. However, it appears that other similarly situated traditional schools that fail to meet the metric rubric are not scheduled for legal procedural closure at the same rate of non-traditional schools.

During my tenure on this State School Board it appears to me that the schools primarily slated for termination are non traditional schools. The non traditional schools are often shown to not have met the threshold metrics with little to no support from Baltimore City Board of School Commissioners other than the money required to make the school an existing reality. Were the non traditional schools in Baltimore City doomed from the start due to the lack of support from the powers that be? If so, why?

I believe that the closure trend of Baltimore City non traditional schools needs to be addressed and it will only be addressed if the State Board of Education refuses to go along with the legal procedure status quo. The State Board of Education is not bound by limits of a normal court when it comes to matters such as these.

It is clear from the record that Baltimore City Board of School Commissioners failed to repair the school and failed to proactively address the decline in enrollment. This is ameliorative nonaction. And that ameliorative nonaction resulted in facts that Baltimore City Board of School Commissioners then could use to justify closure of the school. Instead of finding a way to keep

the school open Baltimore City Board of School Commissioners found a way to close it. Instead of looking at the numbers (such as student to teacher ratio) in a positive light Baltimore City Board of School Commissioners chose to look at the numbers in a negative light. This does not sit well with me. If the Baltimore City Board of School Commissioners took effort to maintain the school and the school failed to perform I may not have an issue. But this is not the case.

March 28, 2023

MELISSA FOWLER, <i>ET AL.</i> ,	*	BEFORE JOCELYN L. WILLIAMS,
APPELLANTS	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
BALTIMORE CITY BOARD OF	*	OF ADMINISTRATIVE HEARINGS
SCHOOL COMMISSIONERS,	*	OAH No: MSDE-BE-16-22-09965
RESPONDENT	*	

* * * * *

**PROPOSED DECISION ON RESPONDENT'S
MOTION FOR SUMMARY DECISION**

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER
RIGHT TO FILE EXCEPTIONS

STATEMENT OF THE CASE

On or about March 25, 2022, Elizabeth Weber, Program Director of the Southwest Partnership, *pro se*, on behalf of a coalition of parents and guardians of students (Appellants)¹ filed an appeal of the decision of the Baltimore City Board of School Commissioners (BCBSC, Board, or Respondent) to close Steuart Hill Academic Academy (Steuart Hill).

¹ The coalition of Appellants consisted of thirteen named Appellants: Melissa Fowler, Nzingha Evenly, Deva Dunnock, Te'Auna Sanders, Latrese Williams, Tia Taylor, Christina Foster, Lauren Thompson, Krissy Herbert, Denise Dorta, Dunia Menjibar, Angela Hancock, and Lucia Elizabeth Lopez.

On April 29, 2022, the Maryland State Board of Education (State Board or MSDE) transmitted the appeal to the Office of Administrative Hearings (OAH) for a hearing before an administrative law judge (ALJ).² Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

On September 19, 2022, the Respondent filed its BCBSC Motion and Memorandum of Law in Support of Summary Decision (BCBSC Motion) to close Steuart Hill, asserting therein that there are no genuine issues of material fact and that the BCBSC is entitled to summary decision as a matter of law. On September 30, 2022, the Appellants filed a Response to the BCBSC Motion (Response).

On October 17, 2022, the Respondent filed its BCBSC Reply to Appellant's Response to Motion and Memorandum of Law in Support of Summary Decision (Reply). On October 17, 2022, I closed the record after receiving the pleadings from Claude de Vastey Jones, Esquire and Joshua Civin, Esquire, Counsel for the BCBSC, and Krissy Herbert, on behalf of the Appellants.

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.01.05; COMAR 28.02.01. Any dispositive decision by the ALJ will be a recommendation in the form of a proposed decision to the State Board. COMAR 13A.01.05.07E.³

² The appeal was transmitted as a consolidated appeal. In appeal one (MSDE-BE-16-22-09965) the coalition of Appellants consisted of eleven Appellants, and did not include Dunia Menjibar and Lucia Elizabeth Lopez. Appeal two was filed by Bif Browning, President Union Square Association, Inc. (MSDE-BE-16-22-09968). On July 19, 2022, at a pre-hearing conference, Mr. Browning withdrew appeal two, indicating that he never intended to file a separate appeal, but intended to join appeal one as a party. I accepted Mr. Browning's withdrawal of appeal and granted his request to join the Coalition of Appellants in this matter, bringing the total number of named Appellants in this matter to thirteen.

³ In an appeal of a school closing, the ALJ shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the proposed written decision to the parties. COMAR 13A.01.05.07E.

ISSUE

Whether the BCBSC Motion should be granted?

SUMMARY OF THE EVIDENCE

In support of the BCBSC Motion the Respondent submitted the following attachments:⁴

- Resp. Ex. 1 Affidavit of Angela Alvarez, September 18, 2022
- Resp. Ex. 2 Baltimore City Public Schools (BCPS) Annual Review of Schools Recommendation Report 2021-22, presented November 9, 2021
https://drive.google.com/file/d/1d75GZ_xLXs4SLPQv7N9URw4GW9Tcm5AC/view
- Resp. Ex. 3 BCBSC Policy FCA,⁵ Closing of Schools, adopted November 9, 2010
[https://go.boarddocs.com/mabe/bcps/Board.nsf/files/B8G2G579BE52/\\$file/FCA%20-%20Closing%20of%20Schools%20FINAL%20-%20202.pdf](https://go.boarddocs.com/mabe/bcps/Board.nsf/files/B8G2G579BE52/$file/FCA%20-%20Closing%20of%20Schools%20FINAL%20-%20202.pdf)
- Resp. Ex. 4 Administrative Regulation FCA-RA, Closing of Schools (“Administrative Regulation FCA-RA”), adopted November 9, 2010
[https://go.boarddocs.com/mabe/bcps/Board.nsf/files/8B8THG776991/\\$file/FCA+-+RA+-+Closing+of+Schools+FINAL.pdf](https://go.boarddocs.com/mabe/bcps/Board.nsf/files/8B8THG776991/$file/FCA+-+RA+-+Closing+of+Schools+FINAL.pdf)
- Resp. Ex. 5 Addendum to School Closures, Building Surplus, and School Relocations, approved January 25, 2022 and Decision (“Board Decision”), February 22, 2022
<https://www.baltimorecityschools.org/sites/default/files/2022-02/Final-ReportAddendum.pdf>
- Resp. Ex. 6 Annual Review Recommendations, Community Letter, November 9, 2021
- Resp. Ex. 7 Call Center Recording for Annual Review Recommendations and Annual Review Recommendation Robocalls, November 9, 2021
- Resp. Ex. 8 Annual Review of Schools Potential 2021-22 Recommendations, November 9, 2021 Presentation to the Board
- Resp. Ex. 9 Annual Review Recommendations, Staff Letter, November 9, 2021
- Resp. Ex. 10 Annual Review of Schools: Potential 2021-22 Recommendations Steuart Hill Staff, November 15, 2021
- Resp. Ex. 11 Annual Review of Schools: Potential 2021-22 Recommendations Steuart Hill Community, November 17, 2021

⁴ The attachments were pre-marked as Respondent’s exhibits, with the designation “Resp. Ex. _.”

⁵ The Respondent did not define FCA or FCA-RA.

- Resp. Ex. 12 Annual Review of Schools Presentation, Community Sign-in sheets, November 17, 2021
- Resp. Ex. 13 Annual Review of Schools COMAR Hearing Testimony List, December 2, 2021
- Resp. Ex. 14 Annual Review of Schools Board Special Work Session Testimony List, December 15, 2021
- Resp. Ex. 15 Robocall script reminder for December 2, 2021 Board Hearing, undated
- Resp. Ex. 16 Robocall script reminder for December 15, 2021 Board Work Session, undated
- Resp. Ex. 17 Steering Committee Notes, Steuart Hill, December 2, 2021
- Resp. Ex. 18 Steering Committee sign-in sheets, Steuart Hill, December 2, 2021
- Resp. Ex. 19 Steering Committee sign-in sheets, Steuart Hill, December 16, 2021
- Resp. Ex. 20 Steering Committee sign-in sheets, Steuart Hill, January 6, 2022
- Resp. Ex. 21 Portfolio recommendation robocalls to schools about the Board decision and postponement, sent January 14, 2022
- Resp. Ex. 22 Call Center recordings about January 11, 2022 Board decision, undated
- Resp. Ex. 23 Letter to school community about Board decision to postpone vote, January 14, 2022
- Resp. Ex. 24 Transcript of January 25, 2022 Board Meeting
[https://go.boarddocs.com/mabe/bcpss/Board.nsf/files/CBF2FK01FB36/\\$file/Baltimore%20City%20Public%20School%20Board%20Meeting%20-%20012522%20\(Condensed\).pdf](https://go.boarddocs.com/mabe/bcpss/Board.nsf/files/CBF2FK01FB36/$file/Baltimore%20City%20Public%20School%20Board%20Meeting%20-%20012522%20(Condensed).pdf)
- Resp. Ex. 25 Notice of Board Decision regarding school closures, school relocations and building Surplus, undated
- Resp. Ex. 26 Robocall script to impacted school regarding February 24, 2022 Board final decision, undated
- Resp. Ex. 27 District Call Center calls message about final decision, undated
- Resp. Ex. 28 Final Letter regarding closure to families, February 24, 2022
- Resp. Ex. 29 Facility Condition Assessment, July 21, 2019
<https://drive.google.com/file/d/1qzjL9EI96E3KAcp5rc2Lhyf9pSGZjqKZ/view>

Resp. Ex. 30 Comprehensive Educational Facilities Master Plan (CEFMP) 2018, revised October 12, 20218
<https://www.baltimorecityschools.org/sites/default/files/2019-01/CEFMP-2018.pdf>

In support of the BCBSC Reply, the Respondent submitted the following attachments:⁶

Resp. Ex. 31 Affidavit of Angela Alvarez, October 17, 2022

Resp. Ex. 32 CEFMP 2021, undated

Resp. Ex. 33 Steuart Hill Transition Community Meeting, March 28, 2022

Resp. Ex. 34 Memorandum of Understanding, September 16, 2013

The Appellants did not attach any exhibits in support of the Response but referenced exhibits previously filed with their Pre-Hearing Conference (PHC) Statement. The exhibits were not reviewed or considered at the PHC and appear to be excerpts from the BCPS documents that may or may not have been attached to the BCBSC Motion or Reply.⁷

FINDINGS OF FACT

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

1. Steuart Hill is a small public school of the BCPS located in west Baltimore, with a program serving students from pre-kindergarten (Pre-K) through grade 5.
2. Steuart Hill is housed in a school building built in 1969. The building is fifty-three years old and sits on approximately 2.43 acres. (Resp. Ex. 29, p. 1).⁸
3. The Appellants are parents of Steuart Hill students and community members.

⁶ The attachments were pre-marked as Respondent's exhibits, with the designation "Resp. Ex. _."

⁷ I performed a cursory review of the referenced exhibits in an attempt to adequately comprehend the Appellant's Response; however, the exhibits can be given no weight, as much as they are excerpts and incomplete documents, which would be inadmissible at a hearing.

⁸ There appears to be a typo on page 1, which notes the year of construction as 1967. However, the Pre-Survey Questionnaire, upon which the Facility Condition Assessment notes the year of construction as 1969.

4. The Facility Condition Assessment, rated the school building to be in poor condition, including the need for significant facility improvements, including the need for replacements of the roof, windows, and chimney including the need for masonry work. It noted existing leaks in the auditorium and a basement that needed repairs. (Resp. Ex. 29).

5. The Facility Condition Assessment also noted additional immediate repairs, which totaled \$179,183.00. (Resp. Ex. 29).

6. Steuart Hill has had low and declining enrollment since 2017, despite having space to grow in its current facility.

7. Steuart Hill has a capacity of 311 students. (Resp. Ex. 2, p. 40).

8. Total student enrollment at Steuart Hill for the past five years has been as follows:
(Resp. Ex. 5, p. 21).

<u>Grade</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2019-21</u>	<u>2021-22</u>
Pre-K	28	40	39	15	28
K	43	30	42	35	29
1	37	47	29	32	31
2	48	39	45	19	28
3	43	25	32	34	21
4	37	33	25	28	25
5	39	34	38	24	31
Total	275	248	250	187	193

9. Steuart Hill has a current building utilization rate of approximately 60%.

10. Steuart Hill's low and declining enrollment impacts its ability to offer strong programming. (Resp. Ex. 5, p. 18).
11. Steuart Hill students will transfer to Franklin Square Elementary/Middle School (Franklin Square) or Frederick Elementary School (Frederick).
12. Steuart Hill has a student body that is approximately 87% African American, 7% White, $\leq 5\%$ Hispanic, $\leq 5\%$ Asian/ Pacific Islander, $\leq 5\%$ American Indian, and $\leq 5\%$ Non-Hispanic Multiracial. (Resp. Ex. 2, p. 38).
13. Racial composition at Franklin Square is 94% African American, $\leq 5\%$ White, $\leq 5\%$ Hispanic, $\leq 5\%$ Asian/ Pacific Islander, $\leq 5\%$ American Indian, and $\leq 5\%$ Non-Hispanic Multiracial. *Id.*
14. Racial composition at Frederick is 84% African American, 6% White, $\leq 5\%$ Hispanic, $\leq 5\%$ Asian/ Pacific Islander, $\leq 5\%$ American Indian, and $\leq 5\%$ Non-Hispanic Multiracial. *Id.*
15. Overall, there are no significant racial or ethnic differences between Steuart Hill, and Franklin Square or Frederick.
16. For students enrolled at Steuart Hill, Franklin Square is an average walking distance of .46 miles.
17. For students enrolled at Steuart Hill, Frederick is an average walking distance of .86 miles.
18. Most Steuart Hill students will be able to walk to Franklin Square or Frederick. BCPS provides yellow bus services for elementary school students who live more than one mile from their neighborhood school.

19. The BCBSC has established administrative procedures for public school closings including procedures, timelines and eight factors to be considered pursuant to COMAR 13A.02.09.01.

20. On or about October 18, 2021, BCPS Chief Executive Officer (CEO) Dr. Sonja Brookins Santelises and her staff informed Mayor Brandon Scott and members of the Maryland General Assembly and the Baltimore City Council of her recommendation to close schools, including Steuart Hill. (Resp. Ex. 1).

21. On October 25, 2021, Dr. Santelises, through her staff, shared her recommendation to close Steuart Hill with the school's principal and the principal's supervisor, at which time directions regarding the process and requirement to assist with sharing notifications to the school community and partners were shared. The principal and principal's supervisor were also informed of the need to set up a Steering Committee. (Resp. Ex. 1).

22. On November 9, 2021, Dr. Santelises recommended the closure of Steuart Hill during her presentation of the Annual Review of School Recommendations Report 2021-22 (CEO Annual Review) to the BCBSC.

23. Dr. Santelises recommended the closure of Steuart Hill at the end of the 2021-22 school year.

24. On November 9, 2021, Dr. Santelises wrote a letter to the families of Steuart Hill students advising of her intention to close Steuart Hill. She further advised that the families had the opportunity to provide feedback at a meeting at Steuart Hill on November 17, 2021 at 2:45

p.m., at a public hearing on December 2, 2021, at 7:30 p.m., and at a special work session on December 15, 2021, at 6:30 p.m.⁹ (Resp. Ex. 6).

25. On November 9, 2021, Dr. Santelises wrote a letter to the staff of Steuart Hill advising of her intention to close Steuart Hill. She further advised that the staff members had the opportunity to provide feedback at a staff meeting on November 15, 2021, at 2:45 p.m., a meeting with families at Steuart Hill on November 17, 2021, at 2:45 p.m., at a public hearing on December 2, 2021, at 7:30 p.m., and at a special work session on December 15, 2021, at 6:30 p.m.¹⁰ (Resp. Ex. 9).

26. On November 9, 2021 at 5:00 p.m., parents of Steuart Hill students received a robocall from the BCPS which relayed the recommendation to close Steuart Hill and provided the dates of the upcoming public meetings referenced in the letter from Dr. Santelises. (Resp. Ex. 7).

27. A Steering Committee comprised of school leadership, parents, and central office staff was convened and held meetings on December 2, 2021, December 16, 2021, and January 6, 2022.

28. On January 14, 2022, the parents of Steuart Hill students received a robocall from the BCPS informing them that the BCBSC meeting to vote on the closure of Steuart Hill was postponed to January 25, 2022. (Rep. Ex. 21).

29. On January 25, 2022, the BCBSC held a public hearing, at which members of the Steuart Hill community were provided an opportunity to speak. (Resp. Ex. 24).

⁹ The Appellants did not assert that the Respondent failed to comply with any applicable public notice requirement, or failed to comply with any requirement that residents of the affected Steuart Hill community be provided an opportunity for input.

¹⁰ The Appellants did not assert that the Respondent failed to comply with any applicable public notice requirement, or failed to comply with any requirement that staff of the affected Steuart Hill community be provided an opportunity for input.

30. On January 25, 2022, the BCBSC voted eight in favor, one opposed to accept the recommendation of CEO's Annual Review to close Steuart Hill and modified the closure dates to the end of the 2022-2023 school year. (Resp. Ex. 5, pp. 6-7).

31. On February 24, 2022, the BCBSC issued its written decision wherein it explained its rationale to close Steuart Hill. (Resp. Ex. 5).

32. The BCBSC considered all eight factors under COMAR 13A.02.09.01B in its decision to close Steuart Hill. These factors included total student enrollment trends, age or condition of the school building, transportation needs of the students, financial consideration, educational programs, student relocation, racial composition, and impact on the community.

DISCUSSION

LAW APPLICABLE TO A MOTION FOR SUMMARY DECISION

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

- D. Motion for Summary Decision.
- (1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.
 - (2) A motion for summary decision shall be supported by one or more of the following:
 - (a) An affidavit;
 - (b) Testimony given under oath;
 - (c) A self-authenticating document; or
 - (d) A document authenticated by affidavit.
 - (3) A response to a motion for summary decision:
 - (a) Shall identify the material facts that are disputed; and
 - (b) May be supported by an affidavit.
 - (4) An affidavit supporting or opposing a motion for summary decision shall:
 - (a) Conform to Regulation .02 of this chapter;
 - (b) Set forth facts that would be admissible in evidence; and
 - (c) Show affirmatively that the affiant is competent to testify to the matters stated.

(5) The ALJ may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

The moving party supported its Motion and Reply with affidavits. COMAR 28.02.01.12D(2). Accordingly, the motion is properly treated as one for summary decision. *See Davis v. DiPino*, 337 Md. 642, 648 (1995) (noting distinctions between a motion to dismiss and a motion for summary judgment including that under the Maryland Rules a motion to dismiss is converted into a motion for summary judgment “when a trial court considers matters outside the pleadings in reaching its decision”).

The requirements for summary decision under the OAH Rules of Procedure are similar to those for summary judgment under Maryland Rule 2-501. *Assateague Coastkeeper v. Md. Dep’t of Env’t*, 200 Md. App. 665, 698-99 (2011). Accordingly, I may look to the Maryland Rules and Maryland case law interpreting those rules to analyze a motion for summary decision.

On a motion for summary decision, the moving party bears the initial burden. COMAR 28.02.01.21K(3). I may grant a motion for summary decision and dismiss the hearing request in this case only if I find that there is “no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” COMAR 28.02.01.12D(5); *see also Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980). Only a genuine dispute as to a material fact is relevant in opposition to a motion for summary decision. *Seaboard Sur. Co. v. Kline, Inc.*, 91 Md. App. 236, 242 (1992). A material fact is defined as one that will “somehow affect the outcome of the case.” *King v. Bankerd*, 303 Md. 98, 111 (1985) (quoting *Wash. Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 717 (1978)).

To prevail on a motion for summary decision, the moving party must identify the relevant legal cause of action or legal defense and then set forth sufficient, undisputed facts to satisfy the elements of the claim or defense, or detail the absence of evidence in the record to support an opponent's claim. See *Bond v. NIBCO, Inc.*, 96 Md. App. 127, 134-36 (1993). If the moving party meets this initial burden, the opposing party must come forward with admissible evidence that establishes a genuine dispute of material fact, after all reasonable inferences are drawn in the opposing party's favor. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737-39 (1993); see also *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (stating that a judge must "draw all justifiable inferences in favor of the nonmoving party").

The OAH procedural regulations do not require a party to support an answer to a motion for summary decision with an affidavit, but they do require a response to identify the material facts that are disputed. COMAR 28.02.02.12D(3). A general denial is not sufficient to establish a genuine dispute of material fact to defeat a motion for summary decision. *Alamo Trailer Sales, Inc. v. Howard Cnty. Metro. Comm'n*, 243 Md. 666, 671 (1966). Only where the material facts are "conceded, undisputed, or uncontroverted" and the inferences to be drawn from those facts are "plain, definite, and undisputed" does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. See *Eng'g Mgt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 226 (2003). Additionally, the purpose of the summary decision procedure is not to try the case or to decide the factual disputes, but to

decide whether there is an issue of fact, which is sufficiently material to be tried. See *Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co., Inc.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). As the Supreme Court observed, with respect to genuine disputes of *material* fact, “[T]his standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original).

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

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

. . . The trial court, in accordance with Maryland Rule 2-501(e), shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. Thus, once the moving party has provided the court with sufficient grounds for summary judgment, “[i]t is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this *by producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit Bald, unsupported statements or conclusions of law are insufficient.”

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

REGULATIONS RELATING TO APPEALS TO THE STATE BOARD

Decisions of a local board¹¹ involving a local policy shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, capricious, or illegal. COMAR 13A.01.05.06A. The State Board will uphold the decision of the local board of education to close and consolidate a school unless the facts presented indicate its decision was arbitrary and unreasonable or illegal. COMAR 13A.02.09.03B.

Under COMAR 13A.01.05.06B, a decision may be arbitrary or unreasonable if it is: 1) contrary to sound educational policy; or, 2) a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. The word "arbitrary" means a denial subject to individual judgment or discretion, *Webster's II New Riverside University Dictionary* 121 (1984) and made without adequate determination of principle. *Black's Law Dictionary*, 55 (Abridged 5th ed. 1983); *see also Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628 (2002).

Under COMAR 13A.01.05.06C, a decision may be illegal if it is one or more of the following: 1) unconstitutional; 2) exceeds the statutory authority or jurisdiction of the local board; 3) misconstrues the law; 4) results from an unlawful procedure; 5) is an abuse of discretionary powers; or 6) is affected by any other error of law.

Under COMAR 13A.01.05.06D, the Appellants have the burden of proof, by a preponderance of the evidence, at a hearing on the merits. As this is a motion for summary decision, the burden of proof is on the Respondent as the moving party. Generally, a party asserting the affirmative of an issue bears the burden of proof in a proceeding before an

¹¹ Under COMAR 13A.01.05.01B(9), the Respondent is the "local board."

administrative body. *See Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting, *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)) (“the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body”).

The ALJ shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations. COMAR 13A.01.05.07E. The State Board shall make a final decision in all appeals. COMAR 13A.01.05.09A. An order granting a motion for summary decision would have the effect of terminating the appeal, and thus a recommendation that the Motion be granted is appropriate as the State Board, and not the ALJ, has the final decision-making authority. An order denying the Motion would not have the effect of terminating the appeal, and thus the ALJ would have the authority to deny the Motion without referring the decision to deny the Motion to the State Board. *See also* COMAR 28.02.01.25C; the OAH Rules of Procedure, which provides that “[e]xcept as otherwise provided by law, when the judge is the final decision maker, the decision is the final decision for purposes of judicial review.”

PROCEDURES GOVERNING SCHOOL CLOSINGS

A local board of education¹² shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01A. COMAR 13A.02.09.01B-D sets forth the following guidelines for those procedures:

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

- (1) Student enrollment trends;
- (2) Age or condition of school buildings;
- (3) Transportation;

¹² Under COMAR 13A.01.05.01B(6), the Respondent is a “local board.”

- (4) Educational programs;
- (5) Racial composition of [the] student body;
- (6) Financial considerations;
- (7) Student relocation; [and]
- (8) Impact on [the] community in [the] geographic attendance area for [the] school proposed to be closed and [the] school, or schools, to which students will be relocating.

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

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

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

- (1) The final decision shall include the rationale for the school closing and address the impact of the proposed closing on the factors set forth in Regulation .01B;

(2) There shall be notification of the final decision of the local board of education to the community in the geographical attendance area of the school proposed to be closed and school or schools to which students will be relocating.

(3) The final decision shall include notification of the right to appeal to the State Board of Education as set forth in Regulation .03.

The procedures established by the Respondent essentially mirror those set forth in COMAR 13A.02.09.01; *see also* BCPS Policy FCA III.B.1 (Resp. Ex. 3). For the reasons articulated below, I grant the Motion.

ANALYSIS

It is abundantly clear that the Appellants, as well as community area residents, parents, and teachers, strongly desire for Steuart Hill to remain open, and have the BCBSC acceptance of the recommendations of the CEO's Annual Review delayed, if not reversed. The present issue, however, is whether the Appellants have raised genuine issues of material fact that would result in a finding that the BCBSC is not entitled to summary decision as a matter of law.

As stated above, COMAR 13A.01.05.06A provides that the decision of a local board involving local policy be considered *prima facie* correct, and that the State Board may not substitute its judgment unless the decision is arbitrary, unreasonable, or illegal. In the instance of school closings or consolidations, the State Board will uphold the decision of a local board under similar standards, that is, unless the facts presented indicate that the decision was arbitrary and unreasonable or illegal. COMAR 13A.02.09.03B, C.

In this matter, the Appellants have not offered any genuine issues of material fact in dispute to demonstrate that the BCBSC acted unreasonably. The Appellants' Response disputes some of the conclusions reached by the BCBSC and questions the choices made by the BCBSC.

However, the arguments offered by the Appellants reflect a difference of opinion, but offer no creditable or substantive evidence to assert a genuine dispute of the material facts upon which the BCBSC's Motion and Reply are based, facts that support the BCBSC's reasonable and legal actions in voting to accept the recommendation of Dr. Santelises to close Steuart Hill.

In their Response, the Appellants allege that the BCBSC failed to consider all of the factors required in COMAR 13A.02.09.01B. The BCBSC counters the Appellants' argument, and sets forth, in their Motion, supplemental Reply and exhibits, its analysis of the eight factors in regard to Steuart Hill, and how that analysis led it to conclude that closing Steuart Hill was reasonable. The BCBSC delineated the factors and outlined its consideration of each in the exhibits attached to their Motion and Reply.

The BCBSC recognized that *student enrollment trends* indicated that Steuart Hill has a capacity to enroll 311 students. However, the enrollment history shows that there has been a decline in enrollment from 2017, with a current enrollment in 2022 of 193 students. The Appellants argue that the BCBSC relied on inaccurate and unrealistic enrollment projection numbers, and that it was unreasonable and arbitrary to base its decision to close Steuart Hill based on pandemic enrollment numbers.

The BCBSC considered the *age and condition* of the school, which was detailed in the Facility Condition Assessment conducted July 21, 2019. The BCBSC calculated that closing Steuart Hill, would avoid immediate capital costs of \$179,183.00 and even greater additional costs associated with more expensive capital costs for replacement of the roof, windows, and chimney including masonry work. The BCBSC determined that the receiving schools, Franklin Square and Frederick are in better condition due to recent renovations.

The Appellants argue that Steuart Hill was not being considered for closure according to the 2018 CEFMP, and the 2021 CEFMP does not include Steuart Hill on the list of Potential Buildings for Future Surplus. The Appellants note a discrepancy regarding foundation groundwater issues stemming from a stream that runs under the building, which periodically floods into school spaces.

The BCBSC analyzed the *transportation* required to rezone the students from Steuart Hill and noted that Franklin Square and Frederick are less than one mile from Steuart Hill. The BCPS provides yellow bus service for elementary school students who reside more than one mile from their neighborhood school. Students with disabilities will receive transportation services if dictated by their IEP.¹³ The Appellants did not address transportation in their Response.

The BCBSC took a more global view of *educational* programs and concluded that closing Steuart Hill and rezoning the students to Franklin Square and Frederick would optimize student enrollment at Franklin Square and Frederick, allowing families and students to benefit from programming better able to offer rich, robust, and varied educational funding due to an increase in per-student funding. The BCBSC also investigated the impact of closing Steuart Hill on students with IEPs or on Section 504 plans. They identified twenty-two students with disabilities at Steuart Hill and noted that greater than or equal to ninety-five percent of students receive eighty percent or more of their education inside the general education classrooms.

The BCBSC also concluded that the *racial composition* of Steuart Hill is not significantly different from Franklin Square or Frederick, noting that Frederick is more similar in diversity makeup. The Appellants did not address racial composition in their Response.

¹³ Individualized Education Program.

The BCBSC considered *financial considerations* in its decision to close Steuart Hill. The school building requires both immediate and more significant repairs and upgrades. Closure of the school and surplus of the building would alleviate the need for capital expenditures to make the repairs and upgrades. Additionally, as previously stated above, the rezoning of students would lead to an increase of per-student funding for Franklin Square and Frederick, thus allowing each school to offer richer, more robust and varied educational programming to all its students.

When the BCBSC considered *student relocation*, it took into account the fact that students rezoned to Franklin Square and Frederick would be attending schools less than one mile from Steuart Hill. Finally, the BCBSC was to consider the *impact on community* in the geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating. The BCBSC considered concerns about walking routes and the growing population of English Learners. Franklin Square, the primary receiving school is an average walking distance of .46 miles. Students requiring English Learner supports will be provided those services at the school they choose to attend.

The BCBSC held several public meetings, accepted written comments, and formed a steering committee which allowed parents and community members an opportunity to voice their opinions regarding the recommended closure of Steuart Hill.

The Appellants argue that the BCBSC's community engagement process was insufficient and inadequate. They allege that the timeline was designed to limit community input, as the recommendation to close Steuart Hill was made relatively close to the Thanksgiving holiday and the decision scheduled to be made on January 11, 2022. They claim inadequate notice and inconvenient meeting times.

The Appellants' unsupported contention, that the BCBSC did not consider all eight factors, is refuted by the evidence. The State Board has not mandated an equal allocation of significance or scrutiny for all eight factors. To the contrary, the State Board has held that "as long as there is adequate reason, supported by at least one criterion, the local board's decision in a school closing case should prevail." See *Slider v. Allegany Cnty. Bd. of Educ.*, MSBE Op. No. 00-35 (2000) at 53 (citing *Kensington Elementary Sch. PTS v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. 82-31 (1982) at 681).

The regulations do not mandate that each factor must be identically weighted, simply that each be given consideration. In this case, while the BCBSC may have placed more significance on some factors over others (such as student enrollment trends, age or condition of school building, financial considerations, and racial composition), it is clear that the BCBSC reasonably considered each factor, as required by law, and reached a rational conclusion to accept the recommendations of the CEO Annual Review. The BCBSC fulfilled its obligation to consider each of the eight factors and properly described its actions and rationale for each in its final decision, and the attachments to its Motion. The determination of these factors, based on analysis and reasoning, supported the BCBSC's decision. While the Appellants may not agree with the BCBSC's conclusions, that alone does not render the BCBSC's decision arbitrary or unreasonable.

The BCBSC has demonstrated that there is no material fact in issue as to whether its decision to adopt the CEO Annual Review was legal. Its decision was not unconstitutional; did not exceed the statutory authority or jurisdiction of the BCBSC; did not misconstrue the law; did not result from an unlawful procedure; was not an abuse of discretionary powers; and was not affected by any other error of law.

In short, the BCBSC's adoption of the CEO Annual Review was not illegal. COMAR 13A.01.05.06C. The BCBSC followed the process set forth in its own policy documents, as well as that provided in COMAR 13A.02.09.01. Authorized to engage in school closings, the BCBSC conducted numerous public meetings, distributed information, allowed public comment, published its findings in communication outlets of record, and, in total, engaged in all of the actions it was mandated to do by law. The Appellants' allegations of illegality are unavailing.

The record is very clear that the BCBSC complied with the Education Article, Maryland State Department of Education regulations pertaining to school closings, and its own internal regulations and policies in the manner and method in which it decided to close Steuart Hill. The CEO, Dr. Santelises, communicated with the City of Baltimore and elected officials who represent the City of Baltimore when she made her recommendation to close Steuart Hill. The BCBSC released a report with its recommendations on the BCPS website as well as the Steuart Hill website. Then staff and school-based meetings were held, and a BCBSC hearing along with three steering committee meetings were conducted relating to the closing. The BCBSC's public hearings were properly published, notices of upcoming meetings and hearings were provided to parents by email and sent home with students, robocalls were made to the parents. Parents and community residents were given an opportunity to be heard and many were heard, following which the BCBSC conducted a vote to close Steuart Hill. The results of the BCBSC's decision were properly published.

The BCBSC's basis for adoption of the CEO Annual Review may be controversial, and opposed by the Appellants, but it was neither arbitrary, unreasonable, nor illegal. The BCBSC followed its own guidelines and State mandated procedure to collect and analyze relevant data, consider options, publish notice, provide numerous opportunities for community input, and reach

a reasoned decision. Difficult decisions must be made, and the BCBSC went to great lengths to review the research and render a reasonable decision that took into account all of the regulatory factors that were required in acting to close Steuart Hill.

Clearly, the Appellants care a great deal about Steuart Hill. The BCBSC, however, must take a comprehensive view, and objectively make decisions based on financial, demographic, and other relevant data in order to serve the entire BCPS system, and is required to maximize the benefit of its budget for all students throughout the BCPS system. Thus, I find the Respondent's decision to close Steuart Hill is not contrary to sound educational policy.

The evidence overwhelmingly established that the decision to close Steuart Hill was well thought out, investigated, and evaluated. All eight factors contained in BCPS policy and COMAR 13A.02.09.01B(1)-(8) were considered. The BCBSC has demonstrated that its decision was premised on a broad spectrum of considerations, as detailed above. Thus, its decision was not arbitrary and unreasonable and was consistent with a conclusion that could have reasonably been reached by a reasoning mind. Neither were the actions of the BCBSC illegal. The undisputed material facts demonstrate that the BCBSC's decision was reasonable under the standards set forth in COMAR 13A.01.05.06, and the Appellants have failed to show any genuine dispute of material fact to contradict the BCBSC's adherence to those standards.

I find there is no material issue of fact, and the Respondent is entitled to summary decision as a matter of law. COMAR 28.02.01.12D; *Richman*, 122 Md. at 146. There is no genuine issue of material fact that will affect the outcome of the case. *Anderson*, 477 U.S. at 248; *Goodwich*, 343 Md. at 205-06. The inference to be drawn from the facts presented are plain, definite, and undisputed, rendering summary decision appropriate. *Fenwick Motor Co.*, 258 Md. at 139.

As such, a hearing on the merits in this matter is no longer required and therefore, the Pre-Hearing-Conference scheduled for November 21, 2022, at 9:30 a.m., is cancelled.

CONCLUSION OF LAW

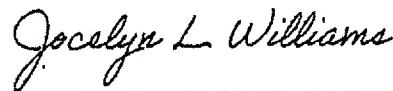
I conclude, as a matter of law, that there are no material facts in dispute as to whether the BCBCS acted arbitrarily and unreasonably or illegally in its decision to close Steuart Hill and that BCBCS is, therefore, entitled to summary decision. COMAR 13A.02.09.03B, C; COMAR 28.02.01.12D.

PROPOSED ORDER

I **PROPOSE** that the Baltimore City Board of School Commissioners Motion and Memorandum of Law in Support of Summary Decision to close Steuart Hill Academic Academy at the end of the 2022-2023 school year be **GRANTED**.

November 16, 2022
Date Order Mailed

JLW/sh
#201272



Jocelyn L. Williams
Administrative Law Judge

RIGHT TO FILE EXCEPTIONS

A party objecting to the administrative law judge's proposed decision may file exceptions with the State Board within 15 days of receipt of the findings. A party may respond to exceptions within 15 days of receipt of the exceptions. As appropriate, each party shall append to the party's exceptions or response to exceptions filings copies of the pages of the transcript that support the argument set forth in the party's exceptions or response to exceptions. If exceptions are filed, all parties shall have an opportunity for oral argument before the State Board before a final decision is rendered. Oral argument before the State Board shall be limited to 10 minutes per side. The State Board at its sole discretion may shorten or lengthen the time period for oral argument. COMAR 13A.01.05.07F.

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Melissa Fowler

[REDACTED]

Angela Hancock

[REDACTED]

Krissy Herbert

[REDACTED]

Tia Taylor

[REDACTED]

Lauren Thompson

[REDACTED]

Lateres Williams

[REDACTED]