

COLDSTREAM
HOMESTEAD
MONTEBELLO
COMMUNITY
CORPORATION, et al.,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 18-23

OPINION

INTRODUCTION

The Appellants challenge the decision of the Baltimore City Board of School Commissioners (local board) to close Coldstream Park Elementary/Middle School (“Coldstream”).

We transferred the case, pursuant to COMAR 13A.01.05.07 (A) (1), to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ). At OAH, the local board filed a Motion for Summary Affirmance maintaining that there was no dispute of material fact and that the local board’s decision to close the school should be upheld because it was not arbitrary, unreasonable or illegal. The Appellants argued that the local board’s motion should be denied, but did not provide a substantive response to the motion. On June 1, 2018, the ALJ issued a proposed decision on the local board’s Motion for Summary Affirmance finding that the Appellants had not demonstrated a dispute of material fact and that the local board’s decision was not arbitrary, unreasonable or illegal. He recommended, therefore, that the State Board grant the local board’s motion and affirm the decision to close the school.

The Appellants did not file exceptions to the ALJ’s proposed decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ’s proposed decision, Findings of Fact, pp. 3-5.

STANDARD OF REVIEW

This appeal involves a school closure decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of

the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A. *See also Bushey Drive Elementary Sch. Parents v. Board of Educ. of Montgomery County*, 1 Op. MSBE 441 (1976) (State Board will not overrule a school closing decision unless it finds it to be arbitrary, unreasonable or illegal).

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

LEGAL ANALYSIS

The ALJ found sufficient evidence in the record demonstrating that the local board's decision complied with the State regulations pertaining to school closings,¹ as well as the school system's own internal regulations and policies. As the ALJ stated:

The [local board] made its decision based on extensive analysis and examination, the testimony given at public hearings and the contents of the official record. . . .The evidence overwhelmingly established that the decision to close Coldstream was well thought out, investigated and evaluated. All eight factors contained in BCPS policy and COMAR 13A.02.09.01B(1)—(8) were considered and it was determined after extensive consideration that Coldstream's low academic performance, low student attendance and enrollment and the fact that Coldstream required supplemental funding to sustain programming provided a solid basis for closing the school.

(Proposed Decision at 13). The ALJ found that the Appellants did not satisfy their burden of showing that the local board's decision was arbitrary, unreasonable or illegal, or that the decision was contrary to sound educational policy. We agree with the ALJ's assessment that the record in this case supports the local board's decision to close Coldstream.

CONCLUSION

We adopt the ALJ's Proposed Decision in its entirety, grant the local board's Motion for Summary Affirmance, and affirm the local board's decision to close the school. We have attached the ALJ's proposed decision to this Opinion.

¹ In reaching a decision on a school closing, COMAR 13A.02.09.01 requires a local board to consider the following factors: (1) student enrollment trends; (2) age or condition of school buildings; (3) transportation; (4) educational programs; (5) racial composition of the student body; (6) financial considerations; (7) student relocation; (8) impact on community in geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

July 24, 2018

| | | |
|--------------------------------|---|------------------------------------|
| COLDSTREAM HOMESTEAD | * | BEFORE MICHAEL J. WALLACE, |
| MONTEBELLO COMMUNITY | * | AN ADMINISTRATIVE LAW JUDGE |
| CORPORATION, ET AL., | * | OF THE MARYLAND OFFICE |
| APPELLANTS | * | OF ADMINISTRATIVE HEARINGS |
| v. | * | OAH No: MSDE-BE-16-18-04990 |
| BALTIMORE CITY BOARD OF | * | |
| SCHOOL COMMISSIONERS, | * | |
| RESPONDENT | * | |

* * * * *

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

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 January 18, 2018, Mark Washington, *pro se* on behalf of the Appellants filed an appeal of the decision of the Baltimore City Board of School Commissioners (Respondent or BCBSC) to close Coldstream Park Elementary/Middle School (Coldstream). On February 12, 2018, the Maryland State Board of Education (State Board) transmitted the appeal to the Office of Administrative Hearings (OAH) for a hearing before an administrative law judge (ALJ). Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

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JUN 5 2018
OFFICE OF THE ATTORNEY GENERAL

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); 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.¹

On March 7, 2018, the Respondent filed a Motion for Summary Affirmance² (Motion) of its decision to close Coldstream, asserting therein that there are no genuine issues of material fact and that the Respondent is entitled to affirmance as a matter of law. On May 9, 2018, the Appellants filed a Response to the Motion (Response).³ The Appellant's Response did not address the substance or arguments in the Motion, but rather simply asserted that the Motion should be denied because there is sufficient cause for the appeal to move forward.⁴

¹ 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.

² Under COMAR 13A.01.05.03D, a motion for summary affirmance may be filed if there are no issues of material fact and the respondent is entitled to judgment as a matter of law. Such motions must include, among other things, any supporting documents, exhibits, and affidavits. COMAR 13A.01.05.03D(2)(e). Under the OAH Rules of Procedure, a party may file a Motion for Summary Decision on all or any part of an action, asserting therein that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. COMAR 28.02.01.12D(1). Motions for summary decision shall be supported by affidavits. *Id.* Affidavits in support of or in opposition to a Motion for Summary Decision shall be made upon personal knowledge, set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated in the affidavit. COMAR 28.01.02.12D(1) and (3). I will apply the same standards for a decision on the Motion for Summary Affirmance as I would to a Motion for Summary Decision, because the Maryland State Department of Education COMAR provision and the OAH COMAR provision regarding such motions are essentially identical.

³ On April 24, 2018, the parties appeared for a pre-hearing conference and Motions hearing to address the pending Motion. At that time, the Appellants identified their representatives and stated that Mark Washington, who filed the appeal on behalf of the Appellants, was in fact not the Appellants' representative. The new representatives were advised that they had fifteen days to respond to the Motion and that after a five day rebuttal period, the record would close and that I would render a decision on the Motion after considering their respective submissions.

⁴ Under COMAR 28.02.01.12D(2), a response to a motion for summary decision shall identify the material facts that are disputed. Under COMAR 13A.01.05.03D, an opposition to a motion for summary affirmance must contain a statement of the issue presented for review, a statement of the facts, an argument that includes reference to relevant legal principles and State Board decisions, if any, a short conclusion stating the relief sought, and any supporting exhibits, documents and affidavits.

On May 14, 2018, I closed the record after receiving the submission of Amanda L. Costley, Associate Counsel for the BCBSC, and Tanya Lassiter and Nicole Osbourne, representatives for the Appellants.

ISSUE

This issue is whether the Respondent's Motion for Summary Affirmance should be granted.

SUMMARY OF THE EVIDENCE

In support of the Motion the Respondent submitted the following Attachments:

- Respondent Ex. 1. Policy of the BCBSC, Closing of Schools, FCA⁵, adopted November 9, 2010
- Respondent Ex. 2. Administrative Regulation, FCA-RA Baltimore City Public Schools (BCPS), Closing of Schools, adopted November 9, 2010
- Respondent Ex. 3. BCPS, School Closures, Building Surplusing and School Relocations, approved December 19, 2017, issued February 8, 2018
- Respondent Ex. 4. Letter from BCPS to Coldstream Families, dated November 14, 2017
- Respondent Ex. 5. Letter from BCPS to Coldstream Families, dated December 20, 2017

The Appellants did not submit any documents in support of their Response.

FINDINGS OF FACT

Having considered the evidence presented, I find the following facts by a preponderance of the evidence:

1. Coldstream is a small school located in northeast Baltimore with a program serving students from pre-kindergarten (Pre-K) through grade 8.
2. Coldstream has had significantly below district average academic performance in Math and Reading in school years 2014-15, 2015-16, and 2016-17.

⁵ The School Board did not define FCA or FCA-RA

3. Student attendance at Coldstream has been below the district average since 2014.
4. Coldstream has had low and declining enrollment since 2013 despite having space to grow in its current facility.
5. Due to its low enrollment, Coldstream has required supplemental funding to sustain programming.
6. Total student enrollment at Coldstream for the past five years has been as follows:

| School Year | Pre-K | K-5 | Total |
|-------------|-------|-----|-------|
| 2013-2014 | 29 | 386 | 415 |
| 2014-2015 | 42 | 379 | 421 |
| 2015-2016 | 36 | 322 | 358 |
| 2016-2017 | 24 | 248 | 272 |
| 2017-2018 | 29 | 237 | 266 |

7. Coldstream is forty-seven years old, and sits on approximately 11.85 acres. It has a capacity of 469 students.
8. Coldstream elementary students will transfer to Abbottston Elementary School.
9. Coldstream middle school students will be enrolled at the Stadium School in its new location in the Coldstream Park building unless parents and families choose to participate in the middle school choice process.
10. Coldstream has a student body that is approximately 95.2% African-American. Racial composition at Abbottston is 89.8% African-American. Racial composition at the Stadium School is 97.6% African-American. Overall there are no significant racial or ethnic differences between Coldstream and Abbottston/the Stadium School.

11. On November 14, 2017, BCPS CEO Dr. Sonja Brookins Santelises wrote a letter to the families of Coldstream students advising of her intention to close Coldstream. She further advised that the families had the opportunity to provide feedback at public meetings on November 20, 2017, November 28, 2017 and December 12, 2017.⁶

12. On December 20, 2017 the BCBSC voted unanimously to accept the CEO's recommendation to close Coldstream in the summer of 2018.

13. On February 8, 2018, the BCBSC issued a written opinion wherein it stated its decision to close Coldstream.

14. Factors considered by the Respondent to close Coldstream included total student enrollment trends at Coldstream, academic performance and programs available to students at other schools compared to academic performance and programs available to students at Coldstream, and racial composition of Coldstream and Abbottston/the Stadium School

DISCUSSION

Positions of the Parties

The Respondent asserted in its Motion that:

- 1) The Respondent is uniquely qualified to make the decision whether to close Coldstream and its decision to do so must be upheld unless the decision was arbitrary and unreasonable or illegal;
- 2) There is no material issue of fact regarding whether the Respondent's decision to close Coldstream was arbitrary and unreasonable or illegal because it complied with all statutes, regulations and policies relating to school closings. Specifically, the

⁶ 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 Coldstream community be provided an opportunity for input.

Respondent considered Coldstream enrollment, its size, the academic performance of Coldstream and the schools to which current Coldstream students will be transferred, student distribution across grades, transportation options, financial stability, and various options for Coldstream student reassignment;

- 3) Officials of the BCPS met over the course of several months in 2017 to discuss schools throughout Baltimore and to consider accelerating the closure of some schools, which resulted in a recommendation by the CEO of the BCPS to the BCBSC that Coldstream be closed in the summer of 2018;
- 4) The CEO presented his recommendations at a public hearing before the Respondent;
- 5) That the Respondent conducted public hearings, and considered the results of several other steering committee and community meetings prior to voting on the CEO's recommendation; and,
- 6) The Respondent properly voted to close Coldstream.

The Appellants asserted in their written Response that BCPS did not provide three years of support to Coldstream and that the reason for the school's decline was due to poor administration. Specifically, they asserted that the declining enrollment at Coldstream was a result of parents' decisions not to enroll their children at Coldstream because of this administration. Accordingly, the Appellants appeared to assert that the decision to close Coldstream was arbitrary and illegal.⁷

⁷ Under COMAR 13A.01.05.03D, an opposition to a motion for summary affirmance must contain a statement of the issue presented for review, a statement of the facts, an argument that includes reference to relevant legal principles and State Board decisions, if any, a short conclusion stating the relief sought, and any supporting exhibits, documents and affidavits. The Appellants did not submit any supporting affidavits, exhibits, or documents to contradict those submitted as evidence by the Respondent, or cite any State Board decisions.

Law Applicable to a Motion for Summary Affirmance

As noted above, the law applicable to this matter is the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the OAH, and the COMAR regulations governing appeals to the State Board. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 28.02.01; COMAR 13A.01.01.03; and, COMAR 13A.01.05.02 through 13A.01.05.09. Relevant case law and State Board decisions are also applicable, if relevant.

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

D. Motion for Summary Decision.

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

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

The *Richman* court held in pertinent part that:

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

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

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

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

In reviewing a motion for summary decision, an administrative law judge may be guided by case law that explains the nature of a summary judgment in court proceedings, such as the following: summary judgment is appropriate if there is no “*genuine issue of material fact.*” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion. *Anderson*, 477 U.S. at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

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

disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried.” *Jones v. Mid-Atlantic Funding Co.*, 362 Md. 661, 675 (2001); *see also Goodwich v. Sinai Hosp. of Baltimore, Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). Only where the material facts are conceded, undisputed, or uncontroverted and the inferences to be drawn from those facts are plain, definite and undisputed does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

Regulations Relating to Appeals to the State Board

Decisions of a local board⁸ 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.01.05.05A. The State Board will uphold the decision of the local board of education to close and consolidate a school unless the facts presented indicate its decision was arbitrary and unreasonable or illegal. COMAR 13A.02.09.03B.

Under COMAR 13A.01.05.05B, a decision may be arbitrary or unreasonable if it is: 1) contrary to sound educational policy; or, 2) if a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. 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).

⁸ Under COMAR 13A.01.05.01B(6), the Respondent is a “local board.”

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

Under COMAR 13A.01.05.05D, the Appellants have the burden of proof, by a preponderance of the evidence, at a hearing on the merits. As this is a Motion for Summary Affirmance, the burden of proof is on the Respondent as the moving party. Generally a party asserting the affirmative of an issue bears the burden of proof in a proceeding before an administrative body. *See Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (*quoting, Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)) (“the burden of proof is generally on the party asserting the affirmative of an issue before an administrative body”).

The 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 Affirmance 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 education shall establish procedures to be used in making decisions on school closings. COMAR 13A.02.09.01. These procedures shall ensure, at a minimum that consideration is given to the impact of the proposed closing on:

- 1) Student enrollment trends;
- 2) Age or condition of school buildings;
- 3) Transportation;
- 4) Educational programs;
- 5) Racial composition of student body;
- 6) Financial considerations;
- 7) Student relocation; and
- 8) Impact on community in the geographic attendance area for school proposed to be closed and school, or schools, to which students will be relocating.

COMAR 13A.02.09.01B(1)-(8); *see also* City Schools Policy FCA III.B.1.

Analysis

There is no dispute that many Coldstream community area residents, parents, and teachers do not want Coldstream to be closed. In their appeal, the Appellants assert:

1. BCPS did not provide three years of support to Coldstream and that the reason for the school's decline was due to poor administration.
2. The declining enrollment at Coldstream was a result of parents' decisions not to enroll their children at Coldstream because of this administration.

However, the arguments advanced by the Appellants do not address the issue on appeal, which is whether the Respondent acted arbitrarily and unreasonably, or illegally, in its decision to close Coldstream. Neither do their arguments address the issue in the Motion – whether there is any material fact in dispute relating to the issue whether the Respondent acted arbitrarily and unreasonably, or illegally, in its decision-making process.

As referenced above, the Respondent's decision to close Coldstream 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.01.05.05A. The State Board will uphold the decision of the BCBSC to close Coldstream unless the facts presented indicate its decision was arbitrary and unreasonable or illegal. COMAR 13A.02.09.03B.

Under COMAR 13A.01.05.05B, the decision to close Coldstream may be arbitrary or unreasonable if it is: 1) contrary to sound educational policy; or, 2) if a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

The facts are undisputed. The portfolio review of Coldstream revealed that the enrollment and academic performance was low and, due to enrollment, supplemental funding has been needed to sustain programming.

(Respondent Ex. 3) A review of the racial composition of the student body, impact on community, transportation, building condition and student relocation all supported a recommendation that closing the school was in the district's best interest. On November 14, 2017, the portfolio detailing the BCBSC's findings was made public and the families of Coldstream students were advised by the CEO of BCBSC of the recommendations contained in the portfolio to close Coldstream. The community was provided with the opportunity to provide

feedback on November 20, 2017 at a school meeting and on November 28, 2017 and December 12, 2017 at the BCPS district office. After this process was completed, the BCBSC voted to accept the CEO's recommendations and to close Coldstream.

BCBSC conducted a thorough review and evaluation of data pertaining to Coldstream and followed its internal regulations, Policy FCA and Regulation FCA-RA governing school closures.

The Appellants failed to argue that the BCBSC did not follow the law or BCPS Policy in making its determination to close Coldstream or that this decision was made arbitrarily or illegally. The BCBSC made its decision based on extensive analysis and examination, the testimony given at public hearings and the contents of the official record pursuant to Regulation FCA-RA and Policy FCA. The evidence overwhelmingly established that the decision to close Coldstream was well thought out, investigated and evaluated. All eight factors contained in BCPS policy and COMAR 13A.02.09.01B(1)-(8) were considered and it was determined after extensive consideration that Coldstream's low academic performance, low student attendance and enrollment and the fact that Coldstream required supplemental funding to sustain programming provided a solid basis for closing the school..

The Respondent 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 Coldstream is not contrary to sound educational policy.

The Respondent has demonstrated that its decision was premised on a broad spectrum of considerations, as detailed above. Thus, its decision was not arbitrary or unreasonable and was consistent with the conclusion that could have reasonably been reached by a reasoning mind.

Under COMAR 13A.01.05.05C, the decision to close Coldstream 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. The Respondent has demonstrated that there is no material fact in issue as to whether its decision to close Coldstream was illegal. There are no facts upon which to premise a conclusion that the decision was unconstitutional, it exceeded the authority of the BCBSC, the BCBSC misconstrued the law, the decision resulted from an unlawful procedure, any abuse of discretion was involved, or its decision was affected by an error of law.

The record is very clear that the Respondent 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 Coldstream. The CEO communicated with the City of Baltimore and elected officials who represent the City of Baltimore when she made her recommendation to close Coldstream. The BCBSC released a report with its recommendations on the BCPS website as well as the Coldstream website and then a school based meeting and two BCBSC hearings along with steering committee meetings were conducted relating to the closing. The Respondent's public hearings were properly published, notices of upcoming meetings and hearings were sent home with students and community residents were given an opportunity to be heard and many were heard, following which the Respondent conducted a vote to close Coldstream. The results of the Respondent's decision were properly published.

I find there is no material issue of fact and the Respondent is entitled to summary affirmance as a matter of law. COMAR 13A.01.05.03D and 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 affirmance appropriate. *Fenwick Motor Co.*, 258 Md. at 139.

All criteria enumerated in COMAR 13A.02.09.01B(1)-(8) were considered. The Appellants did not submit any evidence to challenge the Respondent's evidence on this point.

Thus, I find there is no material fact in dispute whether the Respondent acted arbitrarily and unreasonably, or illegally, in its decision to close Coldstream, and thus the Respondent is entitled to summary affirmance of its decision to close Coldstream.

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 Coldstream and that BCBCS is, therefore, entitled to Summary Affirmance of its decision. COMAR 13A.01.05.03D.

PROPOSED ORDER

I **PROPOSE** that the Motion for Summary Affirmance of the decision of the Baltimore City Board of School Commissioners to close Coldstream in 2018 be **GRANTED**.

June 1, 2018
Date Order Mailed

MJW/sw
#172928


Michael J. Wallace
Administrative Law Judge

RIGHT TO FILE EXCEPTIONS

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

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