SCHOOL CLOSINGS

IN

MONTGOMERY COUNTY,

MARYLAND

-A report of the Maryland Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This statement will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the recommendations in this statement should not be attributed to the Commission, but only to the Maryland Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information regarding discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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ATTRIBUTION

The material contained in this statement is that of the Maryland Advisory Committee to the United States Commission on Civil Rights and, as such, is not attributable to the Commission. This statement has been prepared by the Maryland Advisory Committee for submission to the Commission and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE

Prior to the publication of a report, the State Advisory Committees afford to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

Maryland Advisory Committee
to the U.S. Commission on
Civil Rights

November 1982

MEMBERS OF THE COMMISSION

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John Hope, III, Acting Staff Director

Dear Commissioners:

The acting chairperson and members of the Maryland Advisory Committee are pleased to transmit for your consideration the report, School Closings in Montgomery County, Maryland.

In January 1982, the Maryland Advisory Committee conducted a forum in order to hear from community representatives, members of the Montgomery County School Board, and other local officials about the impact of local school board decisions to close selected schools in the countywide school district. The forum was undertaken by the Advisory Committee when county residents complained that the school closings and redistricting ordered by the county school board in late 1981 violated racial balance policies and would lead to increased racial isolation in the schools. This report summarizes the information that emerged from the forum and makes informal recommendations.

While the Advisory Committee recognizes the need for school closings due to dwindling enrollments, we found that the decisionmaking process utilized by the local school board did not adequately consider either the racial makeup of the county's schools or the special needs of the county's various minority communities. We also found that the school board's insensitivity to minority community concerns added racial tension and polarization to the controversy.

Finally, we found that the school board deviated from its own racial balance policies and that the board's actions would result in increased minority concentrations in schools in certain areas of the county.

The Committee hopes that our findings will aid Montgomery County officials in dealing more equitably with future school closings and redistricting decisions, and that it will also assist other communities to make school closing decisions in a way that helps, rather than hinders, integration efforts. In light of the increasing frequency of school closing situations, the Committee believes that investigation by the U.S. Commission on Civil Rights of this issue as a national phenomenon is fully warranted.

Respectfully,

PATSY BAKER BLACKSHEAR
Acting Chairperson
Maryland Advisory Committee

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Introduction

During the last half of 1981, members of the Maryland Advisory Committee became concerned about school-closing decisions made by the Montgomery County Board of Education. The board faced a continuing decline in school enrollments and thus a need for fewer schools to accommodate the county's pupils. Particularly in light of today's pressures for fiscal austerity on the part of public entities, the Montgomery County Public Schools system (MCPS) evaluated its existing facilities, analyzed their utilization, and ultimately decided which schools would be closed and how the county's pupils would be assigned to the remaining open schools during the next several years.

Once the recommendations of the staff and superintendent of schools, as well as the decisions of the board of education, became publicly known, many residents in the county charged that the board's decisions would harm desegregation progress in the county's schools. According to some, the apparent impact of the board's decisions would be to resegregate minorities in certain pockets of the county. Others, in defense of the board, contended that school closings, by their very nature and no matter which schools were chosen, would generate controversy and opposition from those in the county dismayed at the impending loss of their neighborhood school.

At a regular meeting of the Maryland Advisory Committee held December 1, 1981, in Frederick, Maryland, three parents from schools in a high-minority area of Montgomery County addressed the Advisory Committee on the issues surrounding the school closing decisions. It was their contention that if the board's fall 1981 school closing and reassignment decisions were carried out, the civil rights of the minority students and the overall desegregation of the schools would suffer.

Based on its own monitoring and on the presentation made by the Montgomery County parents December 1, the Maryland Advisory Committee decided to hold its next meeting in Montgomery County and to invite the superintendent of schools, the members of the board of education, and a variety of community organizations to provide information on the civil rights impact of the school closing decisions. The committee wanted to hear directly from the decisionmakers and those who would be affected by the decisions in order to make its own assessment of the apparent civil rights effects that will result from the changes in the county's use of its school facilities. The public meeting was held January 27, 1982, in Silver Spring and was attended by approximately 125 Montgomery County residents.

On the basis of the information gathered in preparation for, at, and following the meeting, the committee decided to send this summary of its findings to its parent Commission as a part of its continuing responsibility to advise the Commission of civil rights developments in the State of Maryland.

Background

The "Fifteen Year Comprehensive Master Plan for Educational Facilities" was originally formulated by the superintendent of schools as a massive set of recommendations to the board of education.[1] A lengthy, four-volume preliminary and two-volume final set of proposals, it analyzes the school system's facilities and enrollment, it recommends which schools should be closed, and proposes how the county's school enrollment should be distributed among the remaining schools after the 1981-82 school year. The recommendations were compiled at the behest of the board of education as stated in its March 11, 1981, policy statement on "Long Range Educational Facilities Planning." The school board based its closure decisions in the last months of 1981, in part, upon this 15-year recommended plan.

Approximately 575,000 people live in Montgomery County. During the 1981-82 school year, 95,587 pupils were enrolled in the countywide school system, down from some 125,000 ten years ago. Of these 95,000 pupils, 22,749, or 23.8 percent, are minorities (American Indian, black, Asian, or Hispanic); 12,175, or 12.7 percent, are black; 6,291, or 6.6 percent, are Asian; 4,122, or 4.3 percent, are Hispanic.[2] Countywide enrollments are projected to continue to drop over the next decade or more.[3] According to Superintendent Edward Andrews, the school system "is projected ultimately to have 80,000 students."[4]

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[1]Montgomery County Public Schools, Preliminary 15-Year Comprehensive Master Plan for Educational Facilities (May 1981) and 15-Year Comprehensive Master Plan for Educational Facilities: Superintendent's Final Recommendations to the Board of Education (August 1981), by Edward Andrews, Superintendent of Schools (hereinafter cited as "15-Year Plan").

[2]Eleanor D. Zappone, President, Montgomery County Board of Education, letter to Martha E. Church, January 27, 1982, "Minority Group Membership of Pupils as of September 30, 1981", Attachment #1 to that letter.

[3]Edward Andrews, Superintendent of Schools, Montgomery County, statement to the Maryland Advisory Committee, January 27, 1982, p. 1.

[4]Ibid.

January 27, 1982, Forum

At the Advisory Committee's meeting, superintendent Edward Andrews underscored that the purpose of the 15-year plan was not desegregation of the schools; rather its purpose was to manage the use of the county facilities most efficiently, given a declining student enrollment that is projected to continue to drop over the next decade or more.[5]

According to the superintendent, the board of education did not adopt some 25 percent of the recommendations on school closures contained in the 15-year plan. However, the superintendent told the Advisory Committee that he did not believe the board's actions were segregative.[6] He cited one controversial example, that of Rosemary Hills Elementary School, to support his contention that in some instances the board's action resulted in better racial balance than would have been the case had his original recommendation in the 15-year plan been followed. Yet he pointed out that this improved racial balance was not without cost; the price will be one-way busing.[7] In other words, the improved racial balance in the remaining schools in that area of the county would have been primarily the result of busing minority children.

Superintendent Andrews explained to the Advisory Committee how the racial composition of each school was considered in formulating the 15-year recommendations. In the first analysis, a set of four screening criteria were applied to all of the county's schools. The screening criteria did not include the question of present or future racial balance or imbalance. The four screening criteria were:

1. Minimum enrollment;

2. Utilization, in terms of a percentage of capacity;

3. Need for modernization or addition; and

4. Attendance patterns, with a goal of eliminating, or at least balancing, split feeder patterns.[8]

This application of screening criteria determined which schools were to be flagged for further study and which were to be essentially left alone. Failure of any of the

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[5]Ibid.

[6]Ibid.

[7]Ibid.

[8]15-Year Plan, pp. F-1 and -2.

screening criteria meant that the secondary analysis, or "solution criteria", would then be applied.[9] Only at that stage of analysis was racial balance considered as one of six "solution criteria." In addition to compliance with the Montgomery County Board of Education policy on "Quality Education/Racial Balance" that sets certain standards for the system's balancing of student enrollments, the other solution criteria were: desirable rather than minimal enrollments, minimum operating and capital costs, greatest number of students able to walk to school, best accommodations for educational programs (e.g., gymnasiums, auditoriums, facilities for handicapped students, etc.), and best potential for alternate use of facilities.[10] Application of these criteria then determined which schools were recommended for closure by staff to the board.

Board member Marian Greenblatt provided the assessment that the primary determinants for closure were low enrollment, low utilization rate of a school's capacity, and poor building condition.[11]

According to board member Blair Ewing, however, the superintendent had originally proposed racial imbalance as a criterion for the first screening of schools. This was removed by the board at the time of the finalization of the policy statement that guided the staff in formulating the recommendations for closure.[12]

Information provided to the Advisory Committee at the forum from members of the school board varied considerably as to the foreseen impact of the school closings on the racial makeup of the schools and the communities. The stance taken by each of the board members was consistent with the public positions each had taken in other arenas. They ranged from absolute denial of any adverse impact of the closings on blacks and other minorities[13] to severe

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[9]Ibid.

[10]Ibid.

[11]Marion Greenblatt, member, Montgomery County Board of Education, statement to the Montgomery County Board of Education, November 30, 1981, p. 3.

[12]Blair Ewing, member, Montgomery County Board of Education, "Where the Board of Education is Heading on Racial Balance Issues and What the People of the County Need to do about it" (statement to the Montgomery County Board of Education), April 2, 1981, p. 3.

[13]Greenblatt statement to the Maryland Advisory Committee, January 27, 1982.

condemnation of the board's deliberate "resegregation" of the community.[14]

The president of the school board, Eleanor D. Zappone, told committee members that over a period of several years the board has attempted voluntarily to improve racial balance in the county's schools through the use of magnet schools, pairings, and cluster programs, "though not required by law to do so."[15] The county's schools have been integrated since 1960, she said.[16] In discussing the board's history with respect to the integration of the student enrollment, the president of the board noted that the county had never been found in violation of Title VI of the Civil Rights Act of 1964 by that act's enforcement agency, the Office of Civil Rights, though several complaints against the Montgomery County School Board had been filed with and processed by that agency during the past several years.[17]

Basic data about the enrollments of each of the county's schools, including minority statistics for blacks, Asians, and Hispanics, were provided by the president of the school board.[18] When asked about the expected effects of the school closing and redistricting decisions on the racial and ethnic make-up of the schools and on transportation patterns, the school board president replied:

> We estimate that, as a result of the 27 school closing decisions made in November 1981, approximately 3,400 additional students will require transportation to and from schools. We have not been able, and do not expect to be able in the near future, to precisely determine the effect of school closures and consolidations on each racial or ethnic group, but our expectation is that it will be proportionate to current percentages of minorities in the affected areas.[19]

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[14]Ewing statement to the Maryland Advisory Committee, January 27, 1982.

[15]Eleanor D.Zappone, statement to the Maryland Advisory Committee, January 27, 1982, p. 3, p. 12.

[16]Zappone condensed statement to the Maryland Advisory Committee, January 27, 1982, p. 2.

[17]Zappone statement to the Maryland Advisory Committee, January 27, 1982, pp. 2-3.

[18]Zappone letter to Church, January 27, 1982, Attachment #1.

[19]Zappone letter to Church, January 27, 1982, p. 2.

And, in another context she asserted:

> Overall, closure decisions have not placed an inequitable or disproportionate busing burden on minority students.[20]

She pointed out, as had the superintendent before her, that the point of the school closings was not desegregation per se:

> This board has been involved with a facilities plan, not a desegregation plan. However, minority enrollment was both a policy principle and an important solution criteria used by the superintendent and staff to make recommendations, and used by the board in its decisionmaking about facilities problems.[21]

Yet when asked for specific reasons for the closures of each of the 27 (now 28) closed schools, the president responded:

> Although a majority vote of the board was achieved for each school closing decision, each member voting to close a school may have had different reasons for his or her decision . . . . [T]he local board operates in a legislative mode and within this mode is not required as a collective body to indicate reasons for actions taken.[22]

Similarly the school board president could not provide specific reasons for the board's divergence from the superintendent's recommendations, saying basically that each board member had his or her own set of reasons and priorities that dictated each vote.[23] She also cited the fact that the board diverged in "only six" closings that had not been recommended by the superintendent, out of an eventual 27 (28 to date), as evidence of how responsive the board had been to voluminous community input.[24]

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[20]Zappone statement to the Maryland Advisory Committee, January 27, 1982, p. 12.

[21]Zappone letter to Church, January 27, 1982, p. 2.

[22]Zappone letter to Church, January 27, 1982, p. 1, and Attachment #3, "Summary of School Closure Actions."

[23]Zappone response to question posed by Church at the forum, January 27, 1982.

[24]Zappone statement to the Maryland Advisory Committee, January 27, 1982, pp. 12-13.

The basic position of the school board president, that no adverse impact will be felt by the county's minority students as a result of the closures, was reiterated by most of the other board members. Interestingly, one board member, Joseph R. Barse, praised the new plan and repeatedly termed it a "new integration plan," underscoring the positive effects he believes it will bring to one cluster of schools in the county.[25] (This cluster, Rosemary Hills, is the same group of schools cited by the superintendent as an example of better balance achieved at the cost of "one-way" busing of minority children.)

Another board member, Marian Greenblatt, denying any intent to segregate, told the Advisory Committee that the existing high minority enrollment schools in certain parts of the county are not the board's creation; "these occurred because of natural housing patterns." (emphasis added)[26] Her contention, looking at the school system countywide, is that the effects of the closures and redistricting are not disparate by race or ethnic origin but rather are equitably distributed among the student population. She said:

> Although we are closing schools because of underenrollment, not integration, we still had these favorable results:
>
> * Eight closed schools have minority enrollments over 40 percent; six are lower than the countywide average (23.8 percent); thirteen are in between.
>
> * The number of schools with over 40 percent minority declined from 30 to 22.
>
> * In the 15 (high school) districts with closures, the black population is 15 percent. Of the students affected by closures, 16 percent are black. Hardly a pattern of singling out black students!
>
> * In these 15 districts: 21 percent of the elementaries with less than 30 percent minority were closed; 23 percent with over 40 percent

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[25]Joseph R. Barse, member, Montgomery County Board of Education, statement to the Montgomery County Board of Education, December 8, 1981; exerpts presented at the Maryland Advisory Committee forum, January 27, 1982.

[26]Marion Greenblatt, statement to the Maryland Advisory Committee, January 27, 1982, p. 3.

minority were closed; 30 percent with 30-40 percent minority were closed. Again, no pattern.[27]

Her assertion is that "board actions have produced greater integration."[28] This same board member criticized those who raised questions about the civil rights impact of the closings as perpetrating "a new phenomenon in this county--a form of 'race-baiting'" by a "desperate group of citizens, many of whom are unhappy that their local school was closed."[29]

In contrast to the positions taken by most of the board members, one board member, Blair Ewing, stated unequivocally that he and others in the community have no doubt that resegregation along race and ethnic lines will result from the school closure decisions and other decisions made by the board during the past year.[30] Focusing specifically on the southeastern part of the county, where most of the county's minority population is concentrated, this board member contended that the board's divergence from the superintendent's recommendations was equivalent to their turning down the opportunity to reduce racial concentrations in the schools in that area. Instead, he believes the impact will be to isolate this high minority area, leaving it with an underutilized high school (Montgomery Blair) and overcrowded junior highs (Eastern and Sligo). This, he contends, will occur while the board sends nonminority students from adjacent areas on much longer bus trips to other, predominantly "majority" high schools rather than to the "high minority" high school in this southeastern part of the county.[31]

This board member also pointed out to the Advisory Committee that on a countywide basis, the board was often faced with choosing to close one of two schools in a given geographic area and to consolidate the students from both schools into the one left open. These pairings frequently were of one high-minority and one lower-minority school. Where this was the case, according to him:

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[27]Ibid.

[28]Ibid., p. 4.

[29]Ibid., p. 1.

[30]Blair Ewing, comments to Maryland Advisory Committee, January 27, 1982, and "What the Montgomery County Board of Education Has Done" (statement to the Montgomery County Board of Education), November 30, 1981.

[31]Ewing statement, "What the Montgomery County Board of Education Has Done," p. 5.

> [O]n a countywide basis, the board chose to close the high minority school, when that issue was squarely presented to it, in almost all cases.[32]

In the case of the cluster of schools mentioned earlier by board member Barse and by the superintendent as an example of improved balance, board member Ewing emphasized that the price to be paid for the improved balance in the remaining schools--namely the busing that will be required--was the burden of the high-minority Rosemary Hills community alone.[33]

Finally, this same board member submitted to the Advisory Committee a series of statements he had made during 1981 about the anti-minority pattern he saw emerging from board actions during 1981. This pattern created a context from which intent of the board could be inferred, he contended.[34] Even before the board had acted on final school closure decisions in late 1981, this board member had claimed that board actions would result:

> . . . in loss of Federal funds for support of integration, in a failure to meet the legitimate aspirations of black and other minority parents for their children, in a failure to meet the educational needs of minority children, in a failure to sustain the immense and sincere efforts of white and minority citizens of good will to bring about successful integration of down-county schools, in damage to the ability of many down-county communities to survive as viable examples of successful integration, not only in the schools, but in the communities themselves; and, in the end, the strong likelihood that Montgomery County, to its shame, will be labeled as a school system that has not merely failed to integrate successfully, but rather one that started down that path, and then abandoned it deliberately.[35]

In another statement, he charged:

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[32]Ibid., pp. 2-4.

[33]Ibid., p. 4.

[34]Ibid., pp. 7-8.

[35]Ewing statement, "Where the Board of Education is Heading on Racial Balance Issues and What the People of the County Need to do about it" (statement to the Montgomery County Board of Education), April 2, 1981, p. 1, and Ewing letter to David W. Hornbeck, State Superintendent of Schools, August 17, 1981, pp. 1-2 with slight variation.

> This board made decisions about school closings which ignored the issue of racial balance in the schools in most of the county, and in the Rosemary Hills and Blair areas, took steps which will . . . resegregate the public schools.[36]

The nonvoting, student member of the board told the Advisory Committee that his assessment was that the board was not intentionally resegregating the community, but rather "that some members of th[e] board are scared, unnecessarily, of affirmative action in the direction of racial integration."[37] He pointed out that some of the board's closing decisions were, in his view, "dangerous," because of the way in which they have been carried out--conveying to the community, and especially to the school children, a message of "fear and prejudice."[38] The high-minority areas of the county particularly will "be taught [this] very dangerous lesson," regardless of intentions.[39]

Advisory Committee members also heard from three other county officials at the January 27 forum. These were the chairman of the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission, a representative of the county executive, and a representative of the president of the county council.

The planning board chairman told the Advisory Committee that pursuant to State-approved guidelines for preparation of the long range (15-year) School Facilities Plan, the school system staff made use of county planning board demographic projections as a basis for predicting future school enrollments.[40] However, he cautioned that "analysis of minority enrollment or racial balance . . . has not been in our work program. Nor do we routinely keep data on minority enrollments, nor conduct indepth analysis of racial

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[36]Ewing memo to Eleanor D. Zappone, President, Board of Education, "Subject: Board Priorities for 1982", January 6, 1982, p. 3.

[37]Jonathan Lipson, former member, Montgomery County Board of Education, statement to the Maryland Advisory Committee, January 27, 1982, p. 1.

[38]Ibid., p. 2.

[39]Ibid.

[40]Norman Christeller, statement to the Maryland Advisory Committee, January 27, 1982, p. 1.

demography."[41] Thus the planning board had not been involved in an analysis of the racial or ethnic impact of the school closures.

However, at the request of the county executive, the planning board was at the time of the forum about to embark upon an analysis of "the community impact of the possible future decision to close Montgomery Blair High School."[42] This school is the one high school in the southeastern part of the county that currently has a significantly higher minority enrollment (58.5 percent) than any other high school in the county.[43]

The representative of the county executive was himself a past school board member and president. He told the Advisory Committee that the county executive did not believe that the school board had made decisions "that deliberately adversely affect the needs and interests of minority groups."[44] However, by not giving the same weight to "minority concerns" that was given by earlier school boards, "relations between minority groups and the board seem to have deteriorated."[45] In particular, the county executive predicted possible negative effects in the high-minority southeastern part of the county (the Silver Spring-Takoma Park community) as a result of the school closures.[46] By departing from the superintendent's recommendations for schools in that part of the county without providing "comparable explanations of justification," questions about the board's motives were raised in late November 1981 by the county council, but not answered as of the date of the Advisory Committee's forum.[47]

With respect to "whether or not [the board's]--recent decisions concerning school closures, redefinition of attendance areas, and alteration of transportation and school feeder patterns have had an adverse effect on

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[41]Ibid., p. 2.

[42]Ibid., p. 3.

[43]Steven M. Frankel, affidavit submitted to the Maryland State Board of Education, February 25, 1982, attachment, "1981-82 Enrollments for Total Minority, and Black Groups by School, with D and S Indices."

[44]Daryl Shaw, statement to the Maryland Advisory Committee, January 27, 1982, p. 5.

[45]Ibid.

[46]Ibid.

[47]Ibid., pp. 5-6.

minority enrollment and other civil rights issues," the executive's representative reported that he had seen no comprehensive analysis by the board of these consequences.[48]

The president of the county council was represented by the council's staff director at the Advisory Committee's forum. He told the committee that "on November 24, 1981, before the board of education was scheduled to take final action, the council expressed its concern about the impact that the school closure decisions were having on communities, particularly those with high minority populations or economic problems."[49] A letter requesting "full explanation" by the board, especially "where those decisions have departed from the recommendations of the superintendent," was sent by the council to the board in late November.[50] As of the date of the Advisory Committee's forum, the council still had "not received any information from the board on the impact of the board's decisions on the desegregation of the schools."[51] [This request was apparently not addressed by the board until February 3, 1982, when the president of the county board replied to the president of the county council. She wrote, in part:

> Because of the sheer bulk of the numerous proposals we considered, the complex, interrelated factors in most of the decisions, and different voting patterns on nearly every decision, I believe it is impossible for the Board of Education to 'provide the Council and the public a full explanation of the decisions made' as requested . . . it is impossible to provide a justification for each decision the Board made.[52]]

After hearing from these various county officials, the Advisory Committee received information from representatives of a number of community organizations. These included the county chapter of NAACP, the Montgomery County Hispanic Coalition, the Montgomery County Council of Parent-Teacher Associations, the Montgomery County Education Association, the county Human Relations Commission, the Governor's

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[48]Ibid., p. 7.

[49]Robert McDonell, Staff Director, Montgomery County Council, statement to the Maryland Advisory Committee, January 27, 1982, p. 2.

[50]Ibid.

[51]Ibid.

[52]Eleanor D. Zappone, letter to Neal Potter, Council President, February 3, 1982.

Commission on Hispanic Affairs, the school board's Minority Affairs Monitoring Committee, the local Citizen's Minority Relations Monitoring Committee, Northwood Community Solidarity, Blair High School PTSA, the Sligo-Branview Community Association, the county ACLU, the county Taxpayers Association, the Takoma Park community, the Rosemary Hills community, the Coalition for Excellence and Equality in Education, and the county Federation of Teachers.

Of these organizations, only the county Taxpayers Association, the county Federation of Teachers, and to some extent, the Sligo-Branview Community Association (which also represented the Longbranch Community Association) were supportive of the actions taken by the board of education. Illustrative of the feeling of these supporters were the comments of Carlton C. Robinson, Vice Chairman, Montgomery County Taxpayers League, Inc., who told the Advisory Committee:

> The Taxpayers League has reviewed the process which the school board established. Policies were developed, facts were gathered, public hearings were held, and then, finally, hard decisions were made by majority vote of duly elected officials. We don't know that every decision was correct, and we do not take a position on any of the individual school closings.
>
> But the collective decision was, in our judgment, a necessary and responsible one from which all citizens will profit. We hope your committee will join us in recognizing the fiscal responsibility and prudent management which the school board has exhibited throughout this difficult but necessary process.[53]

Joseph Monte, President of the Montgomery County Federation of Teachers, presented an open letter he had sent to board member Carol Wallace in December 1981 that said in part:

> . . . you selflessly faced the school closing issue. Weighing the various factors to be considered in the closing of twenty-eight schools is a thankless task and we commiserate with you on the sad necessity that forced you to the effort.
>
> Although, had we sat in your chairs, we might have preferred a different configuration of boundaries, we recognize the difficulty of the decisions to be made. We recognize that you and your colleagues, as well as the various school communities, have

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[53]Carlton C. Robinson, statement to the Maryland Advisory Committee, January 27, 1982, p. 2.

> undergone a great deal of pain in this effort to balance the distribution of facilities and to improve educational opportunities for students.[54]

However, most of the organizational representatives attending the meeting were highly critical of the board's closure and redistricting actions on the basis of procedures used and foreseen impact on minority communities.

The head of the county NAACP, Roscoe R. Nix, alleged that the board's intent and consistent policy of racial bias could be inferred from the context of board actions over the past several years. He saw the school closings as the culmination of a pattern of "anti-minority" actions. This pattern includes:

* the dismantling of a required course for staff on black history and culture ("HR 18");
* the raising of the ceiling of permissible proportion of minority enrollment in any individual school;
* the "betrayal" of good-faith dealings with the Minority Relations Monitoring Committee over the issue of disproportionate rates of disciplinary actions taken against minority students by the sending of a secret letter to President Reagan objecting to the inquiries of the Office of Civil Rights on the same issue;
* the firing of that same Minority Relations Monitoring Committee for not being "obsequious enough";
* the misrepresentation of actual resources devoted to the needs of minority students.[55]

Many of these same issues were repeatedly raised by other community organizations as reasons why community distrust of and objection to the school closure decisions have arisen. A commissioner from the Montgomery County Human Relations Commission, James Cronin, told the Advisory Committee:

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[54]Joseph Monte, letter to Carol Wallace, December 7, 1981.

[55]Roscoe R. Nix, statement to the Maryland Advisory Committee, January 27, 1982, pp. 1-3. However, the president of the school board later replied that "the alleged pattern of anti-minority actions . . . is misleading to say the least." See 6/2/82 letter from Eleanor Zappone to Martha E. Church, appended. Yet board member Ewing corroborated Nix's assertions; see 6/1/82 letter from Blair Ewing to Martha E. Church, appended.

> . . . this school board has not acted with sensitivity to the racial implications of its actions and has greatly complicated the situation in the down-county area [where minorities are particularly concentrated]. It has definitely not taken a leadership role in reversing the minority trend in certain parts of the county and, in some ways, directly contributed to such isolation.[56]

He also asserted that it is the "down-county" (southeastern part of the county--Silver Spring and Takoma Park) area "that has been most adversely affected by the recent school closures and has been severely impacted by other closures in the past 6 years."[57]

This speaker also told the Advisory Committee of the fact that in 1981, MCPS had been denied Federal funds under the Emergency School Aid Act (ESAA)[58] because of transfers of minority students affecting racial balance in 7 critical schools; "failure to eliminate, reduce or prevent minority group isolation in four elementary schools"; and the "assignment of teachers by race in such a manner as to identify certain schools as intended for students of a particular race."[59] Despite this initial denial of Federal ESAA funds, the superintendent was able to secure a waiver through the Office of Education. Yet "the perception of growing racial isolation was further reinforced by [this] Federal action" according to the county human relations commissioner.[60]

This same speaker linked the changes in the schools with housing patterns and with the recent "dramatic rise of hate-violence incidents we have observed this year" in Montgomery County.[61] In his view the school board decisions have demonstrated "racial insensitivity" on the part of the board majority.

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[56]James Cronin, statement to the Maryland Advisory Committee, January 27, 1982, p. 1.

[57]Ibid., p. 2.

[58]Emergency School Aid Act, 20 U.S.C.A. sec. 3191-3207 (1978).

[59]Cronin statement, p. 5.

[60]Ibid.

[61]Cronin statement, p. 3.

He pointed out that "minority schools suffered the brunt of the closings,"[62] that closures and consolidations in the southeastern part of the county will aggravate racial concentration in the remaining schools in that area,[63] that majority students in closed schools in the vicinity will be bused farther and at greater cost in order to send them to a lower minority school,[64] and that not sending these students to the "minority" high school (Blair) will result in underutilization of that school, thus "making it a candidate for closure by 1986."[65]

In addition, he explained that extra busing of students who previously walked to school in the "down-county" heavily minority area "severely impacts upon minority students, effectively removing them from extra curricular and peer tutoring activities."[66] Language minorities will be particularly adversely effected as the ESOL (English for Speakers of Other Languages) programs are to be relocated across the county.[67] In sum, according to the HRC, "the closure patterns . . . have had an unconscionable impact upon minority students."[68]

The author of the ACLU-commissioned study, Diana Pearce, appeared before the Advisory Committee along with the chairman of the county chapter of the ACLU. They described the findings of their study:

> 1. that the school board did not consider racial balance as a primary screening factor when making initial determinations on school closings or other changes,

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[62]Cronin statement, p. 7; see also Diana Pearce, The Impact of the Proposed School Closings and Related Changes on the Level of Segregation in Montgomery County, Maryland, December 1981, commissioned by the Montgomery County Chapter of ACLU (hereinafter referred to as "Pearce Report").

[63]Ibid.

[64]Cronin statement, p. 8.

[65]Ibid.

[66]Ibid.

[67]Cronin statement, p. 9.

[68]Ibid.

2. that the school closings fall disproportionately upon minorities,

3. that the board's actions increase racial isolation and create new problems of racial imbalance in the Blair group [in the southeastern part of the county], and

4. that the board's actions will increase racial isolation in the county.[69]

By the conclusion of the forum, it was clear that the vast majority of the speakers, excluding most of the school board members, foresee detrimental effects on the schools and on the community at large in terms of racial concentration as a result of the school closings and related recent board actions.

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[69]Pearce Report, pp. 6-8, 12, 15, 22, 25, 30, and 41.

Information Received After the Forum

Subsequent to the forum, a number of people provided additional information for the committee's consideration. Except for voluminous additional data and statements provided by school system staff, the focus of these supplemental written statements was, again, very critical of the board's actions, predicting significant negative impact in the high-minority, southeastern part of the county. Some material focused on the board's perceived neglect of some of the needs of the higher-minority schools, despite community complaints.[70]

Some of the material was in the form of replies to assertions made by school board members at the forum. In response to the board members who contended that the closings had no negative impact on minorities and even promoted integration, representatives of groups critical of the board charged that statistics had been manipulated to show no apparent disproportionate impact.

For example, in reply to the assertion that schools were closed equitably because 8 high minority and 6 low minority schools were closed, it was pointed out that this really represents some 36 percent of the high minority schools but only 7 percent of the low minority schools.[71] While prior to the closings 14 percent of the schools (22 of 160) were considered "high-minority", 29 percent (8 of 28) of the high-minority schools were closed, or about twice the rate of their incidence.[72] Only 6 of 80 low minority schools are to be closed.[73] Other information submitted to the Advisory Committee pointed out ways in which the board's decisions violate its own policies; e.g., with respect to split feeder patterns and with respect to racial balance.

After the forum, the committee also received documents prepared in connection with a number of appeals filed by school communities with the State Board of Education in protest of the county board's fall 1981 closing decisions. County superintendent Andrews sent a large volume of such documents, including in particular a staff study of "the impact of recent school consolidations/closing decisions and

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[70]Barbara Cantor, letter to Martha Church and members of the Maryland Advisory Committee, February 2, 1982, and attachments.

[71]Tony Hausner, Scott Rutherford, Vicki Rafel, letter to Charles W. Gilchrist, January 23, 1982, and handwritten additional comments from Barbara Cantor.

[72]Ibid.

[73]Ibid.

boundary changes, with particular emphasis on the racial balance implications of these decisions."[74] This study, based on MCPS projections for 1982-83 school year enrollments, includes a number of sophisticated analyses of integration and racial balance in the schools. It is, in part, a staff response to the ACLU-commissioned study.[75] As did the ACLU-commissioned study, the staff study uses "Taeuber's D", which "measures the degree to which majority and minority or black students are similarly distributed across all schools in MCPS or a cluster"[76] as well as "Coleman's Index of Interracial Contact", which "is used to assess the proportion of white students to which the average minority or black student is exposed."[77] The study also analyzes the number and percent of racially imbalanced schools countywide, as well as the number and percent of minority students in racially imbalanced schools countywide. The highlighted conclusion of the study is that "[a]fter performing all of these tests, it is clear that the board's closing decisions have not adversely impacted minority students in general, or black students in particular."[78]

Critics of the staff study point out that its analysis dilutes the actual impact of the school closings on minority areas of the county by using a countywide approach, even though supplemental charts show that minority concentrations will rise significantly in the Silver Spring-Takoma Park area.[79]

For example, in the case of the Takoma Park Magnet Cluster of Seven elementary schools, the data charts show that minority enrollment in 1981-82 is 53.2 percent.[80] The charts project that next year the six remaining schools will be 57.7 percent minority. In the Blair High School feeder attendance area, currently consisting of 18 feeder elementary and junior high schools and Montgomery Blair Senior High School, minority enrollment in 1981-82 is 56.9 percent. In 1982-83, the remaining 12 schools will be 59.9

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[74]Steven M. Frankel, Joy A. Frechtling, John C. Larson, "Analysis of Impact of FY 83 Closings and Boundary Changes," February 24, 1982, (hereinafter cited as "Frankel Study").

[75]Montgomery Journal, April 13, 1982, p. A-6.

[76]Frankel study, p. 2.

[77]Frankel study, p. 4.

[78]Frankel study, p. 9.

[79]Barbara Cantor, letter to the editor, Washington Post, March 25, 1982.

[80]Frankel study, computer printed appendices.

percent minority.[81] Seven of these twelve schools show an expected rise in minority percentage, ranging from 0.5 to 12.0 percentage points; one school is projected to remain steady at 79.9 percent minority; and four are expecting a decline in minority enrollment ranging from 0.7 to 16.6 percentage points.[82] Thus, while countywide averages may appear to support the equitable impact assertion, the narrative fails to consider more focused analyses.

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[81] Ibid.

[82] Ibid.

Events Since the Forum

[Sources for this segment include news accounts from The Montgomery County Sentinel, The Montgomery Journal, The Washington Post, (July - September 1982), and discussions with board member Blair Ewing and board Ombudsman/Staff Assistant Thomas Fess.]

This past winter and early spring a number of schools appealed the county board's decisions to the State Board of Education. The State board appointed a hearing examiner to receive testimony and documentation about the county board's decision and to make recommendations to the State board. The State board had never overturned a local board closing decision[83] and may only do so if it finds the local board has acted in an arbitrary or unlawful manner.[84] In the first round of hearings, six schools, mainly in the Takoma Park-Silver Spring area but also including Rosemary Hills, joined together to "charg[e] the Montgomery County Board of Education with racial discrimination in its recent school closing and boundary decisions."[85] Their case rested on allegations that "the school board's decisions are unconstitutional" because "the decisions had a disparate impact on minorities", "the discrimination was purposeful", and "the challenged decisions, therefore, violate equal protection."[86] In addition, they charged that "the county board's decisions substantially deviate from its own rules, policies, and guidelines" and that "the county board's closure and consolidation decisions violate Maryland law."[87]

On April 22, 1982, the hearing examiner recommended to the State Board of Education that it overrule the county board's decisions in the Rosemary Hills and Blair areas, on the basis that the county board acted in violation of its own policies, particularly with respect to questions of racial balance.[88] The hearing examiner recommended that Rosemary

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[83]Montgomery Journal, April 23, 1982, p. A-1.

[84]Mitchell J. Cooper, "Findings and Conclusions of Hearing Examiner in the matter of Abbott et al v. Montgomery County Board of Education," April 21, 1982, p. 39.

[85]Susan Silber, letter to Yvonne Schumacher, April 21, 1982.

[86]Abbott et al. v. Montgomery County Board of Education, Brief for Appellants before the State Board appointed Hearing Examiner, April 1, 1982.

[87]Ibid.

[88]Mitchell J. Cooper, "Findings and Conclusions of Hearing Examiner," April 21, 1982.

Hills remain open, and that the county board's decision to send nonminority students from closed schools adjacent to Blair to other, non-minority high and junior high schools be reversed.[89]

In late June, the Maryland State Board of Education unanimously agreed with the hearing examiner, and in an unprecedented action, overturned the closing of Rosemary Hills Elementary School and disapproved the boundary changes set by the county board for Blair High School and Eastern Junior High. In doing so the State board found the county board's decision to close Rosemary Hills was ". . . as a matter of sound educational policy . . . arbitrary and unreasonable."[90] The State board also found the County board's decision altering the attendance zones for Montgomery Blair ". . . an unreasonable and arbitrary deviation from their [Montgomery County School Board] racial and educational policies and guidelines."[91] The County board's decision altering the attendance zones for Eastern Junior High School was similarly found to be ". . . arbitrary and unreasonable as a matter of educational policy . . . and inconsistent with the Quality Education/Racial Balance Policy."[92] With regard to the county board's decision to close Rosemary Hills Elementary School, the State Board further stated:

> . . . In addition to the onus placed on minority students in what we believe is fairly characterized as "one-way busing", a review of undisputed facts in the record indicate that in contrast to the student assignments of these children from a minority neighborhood, the children in seven predominantly white neighborhoods were assigned to their neighborhood schools with little if any busing . . .
>
> It appears obvious that the burden of addressing the disproportionate minority enrollment in the cluster was placed on the minority students . . .[93]

The State board affirmed the decision of the local board with regard to East Silver Spring and Piney Branch Elementary Schools but expressed concern that the minority

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[89]Ibid.

[90]Maryland State Board of Education, Opinion No. 82-28, p. 9, June 30, 1982.

[91]Ibid., p. 3.

[92]Ibid., pp. 7-8.

[93]Ibid., p. 11

enrollment at both of these schools will bring both schools to ". . . approximately the second threshold (60 percent minority) of the Quality Education/Racial Balance Policy . . ."[94] In the case of Takoma Park Junior High School, the State board adopted the recommendation of the Hearing Examiner that "the school system was to retain Takoma Park facility for pre-school, after-school, and general community usage."[95] Concern was expressed, however, about the closing of a school that obviously "'works' both as an educational program for the children it serves as well as a focal point for community activities."[96] It should be noted that the Takoma Park Junior High School is located in a well-integrated neighborhood. The State board did not argue with the County board's decision "in the absence of a factual record which would indicate its decision was arbitrary, unreasonable, or illegal."[97]

Neither the hearing examiner nor the State board addressed the Constitutional issues put to them.

However, in mid-July, the county board, over the objections of the superintendent, voted to appeal the ruling of the State board in the county's Circuit Court. The majority of the county board was reportedly motivated by a desire to retain local autonomy over school closing and redistricting decisions, and to clarify the scope of authority of the State board. In early September the county court dismissed the appeal, holding that the State board acted properly.[98]

Meanwhile, pending the court hearing, the county system faced the opening of the schools in September. Decisions on school assignments had to be made immediately for implementation this fall. In the interim, the local board decided in late July to keep open Rosemary Hills Elementary School, to close two other elementary schools in that cluster, and to postpone any decisions about the boundaries for the Blair area until after the school board elections this fall (1982).

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[94]Ibid., p. 15.

[95]Ibid., note 3, p. 13.

[96]Ibid., p. 14.

[97]Ibid.

[98]Board of Education of Montgomery County v. Maryland State Board of Education, No. 61509 (Cir. Ct. Mont. Co., Md., September 8, 1982).

These interim decisions were also appealed to the State board on the grounds that they were not in keeping with the State board decisions issued earlier in the summer. After another stormy round of hearings, the State board decided in late August to let stand, with concern, those interim decisions of the local board for the commencement of the school year in September. The State board is retaining jurisdiction over the entire matter, however, and will review the situation again next winter.

Subsequent to the initial Montgomery County school closing hearings, the Maryland State Board of Education adopted a bylaw pertaining statewide to school closings (See Appendix 3). The bylaw requires each local school system to establish procedures to be used in making decisions on school closings. It further requires that, at a minimum, the procedures ensure 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 building.
3. Transportation.
4. Educational programs.
5. Racial composition of student body.
6. Financial considerations.
7. Student relocation.
8. Impact on community in geographic attendance area for school proposed to be closed and school(s) to which students will be relocating.[99]

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[99]Maryland State Board of Education, Subtitle 02, Local School Administration, Chapter 09, Closing of Schools.

Summary Conclusions

On the basis of the information submitted to the Advisory Committee, we conclude that the county board's actions ostensibly designed to achieve needed school closures were not made in a way that adequately considered the needs of all of the county's school children, particularly the children of the county's racial and ethnic minority families. The record before us shows that some of the board's actions were insensitive to the needs of the minority students in the county and that these actions created an atmosphere of controversy which tainted the closure decisionmaking process.

We do not minimize the need for school closings based on a declining overall enrollment, or the difficulties entailed in the process of selecting particular schools for closure. However, we find that the process should have provided greater weight earlier in the decisionmaking than is evident for variables pertaining to the racial make-up of the county's schools and the special needs of the county's various minority communities. Although the local board majority contends the 15-year facilities utilization plan and the board's closure decisions were not, per se, focused on the desegregation needs of the county, those needs could have and should have been taken into account to a greater extent than they were.

Most compelling to us, however, is the plethora of information we received during and after the forum on the extent to which the school closing decisionmaking process has polarized the various communities in Montgomery County. We note the assessment made by then-student board member Jonathon Lipson that the school closing and pupil reassignment decisions "could have been dealt with in a much more judicious, wise, and sensitive manner. By using a chainsaw, rather than the scalpel that was needed, [the Montgomery County Board of Education has] enflamed and further divided an already polarized community."[100] We fear that the resulting damage to community relations in Montgomery County may be felt for a long time to come.

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[100]Lipson, statement to Maryland Advisory Committee, January 27, 1982.

Finding

Based on statements by board members and others, we find that insufficient analysis of the specific impact of the board's decisions and options on the minority communities and racial makeup of particular schools took place before the decisions on school closures and pupil reassignments were made, and that insufficient weight was given to the concerns voiced by those communities in the decisionmaking of the county board.

Recommendation

Future decisionmaking about school closures and boundary revisions should include analysis from the earliest screening phases, through the consideration of solution options, of racial and ethnic makeup of the schools. Where a school is well integrated and well utilized, the school should be given credit for this fact along with its rating of physical condition and other characteristics. Schools with extremely high majority enrollment should also be viewed as "racially imbalanced," along with those with high minority concentrations. Where a school's enrollment is already out of compliance or nearly out of compliance with the system's racial balance policies, this factor should be taken into account from the inception of the decisionmaking. "Facilities utilization" analysis dealing with declining enrollment overall should also entail grappling with rising proportions of minority enrollment in some sections of the county. The latter is no less important than the former.

Finding

Based on the information submitted to us during and after our forum, we agree with the State-board appointed hearing examiner and the members of the State board in their findings that the county board set aside its own guidelines on racial balance in the case of its consideration of the Blair-area schools. We find that the solutions originally envisioned by the board for the Blair area schools, before the intercession of the State board, would have exacerbated the racial balance problems of some of the schools in that region of the county, rather than lessening the concentration of racial and ethnic minorities in the schools in the south and southeastern parts of the county.

Recommendation

The decisionmaking concerning pupil assignments in the Blair area and adjacent areas should include detailed analysis of the current and projected racial make-up of the schools in that area, and final solutions for the drawing of school boundaries should assure to the greatest extent possible compliance with racial balance policies. This fall's rethinking of the pupil assignments in the Blair area

provides an opportunity to address directly the compliance of those schools with the system's racial balance policies.

Finding

Despite assertions that closure decisions would not place a "disproportionate busing burden on minority students," we note the statement of the superintendent to the contrary in the case of the original board decision to close Rosemary Hills Elementary School. Again, we agree with the State-board appointed hearing examiner and the members of the State board in their findings that such one-way busing, imposed on the minority children to a far greater extent than on majority children, is inequitable and improper.

Recommendation

The board's policy against one-way busing should be retained, and future closing and pupil reassignment decisions should assure compliance with that policy and with the basic principle that any resulting "burden" as a result of reassignments should be borne relatively equally by predominantly majority and predominantly minority communities.

Final Recommendation

Based upon its investigation of school closings in Montgomery County, Maryland, the Maryland Advisory Committee urges the U.S. Commission on Civil Rights to conduct a national assessment of school closures which have been necessitated by declining enrollments. It is the hope of the Maryland Advisory Committee that such an undertaking might enable the Commission to suggest a model approach to the process of school closures that will be most successful in minimizing the negative impact of school closings on minority communities and on school desegregation efforts.

APPENDIX I

[The footnotes added are not those of the writer but are the comments of the Maryland Advisory Committee and the U.S. Commission on Civil Rights/Mid-Atlantic Regional Office staff. The original signed letter is on file in the Commission's Mid-Atlantic Regional Office.]

June 2, 1982

Dr. Martha E. Church, Chairperson
Maryland Advisory Committee
U.S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D.C. 20037

Re: School Closing Decisions of Montgomery County Board of Education

Dear Dr. Church:

Thank you for sharing with us the draft statement of the Maryland Advisory Committee to the U.S. Commission on Civil Rights. The draft statement appears to summarize what was said by the various people who made oral and written submissions to the Maryland Advisory Committee, although, we have not received copies of the testimony presented at the hearing as promised.[1] However, we wish to make a number of comments directed to the accuracy and completeness of what was submitted as reflected in the draft statement.

It must be noted that our response is the best we could do under the time constraints given and that this response represents the views of the Board of Education as a body but not necessarily those of every individual member.[2]

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[1]Copies of the written statements presented at the January 27, 1982, forum have since been provided to the school board staff.

[2]The only other reply to the draft statement that was received by the advisory committee was that of board member Blair Ewing, also appended.

1. With respect to the screening and solution criteria in the 15-year plan, there were sound reasons for not including the Board of Education's Quality Education/ Racial Balance Policy among the screening criteria. First, use of the minority percentage as a screening criterion was likely to have a disproportionate, negative impact on high minority schools. That is, using minority enrollment as a screening criterion would have the reverse impact on what was intended. It would have flagged higher minority schools as closure candidates because they were high minority schools when they might not have been identified as closure candidates otherwise based on condition and use of facilities.[3] Consequently, the omission of this criterion from the screening process could reasonably have been anticipated to relieve a disproportionate burden on high minority student population. This point was expressly made by representatives of the high minority feeder area and Rosemary Hills area communities in written testimony submitted to the Board of Education in connection with hearings on the Superintendent's draft of the Long-Range Facilities Plan on February 11, 1981, before the Board's final action. The Blair Advisory Council raised the following objection, inter alia, to the draft facilities policy in public testimony on February 18 and 19, 1981:

> "Nearly all of our schools have high minority enrollment and aging facilities. Thus, they already meet the two criteria for closure. What, we ask, does high minority enrollment have to do with the need to abandon a facility? Do you mean to imply that too many minority students make a building unsuitable for providing education in this county? We find such an idea to be repugnant and see no reason why minority enrollment should have any place as a criterion for school closings." Bd. Exh. 19. (emphasis supplied)

The Rosemary Hills Cluster Coordinating Committee expressed the same point.

> "2. There should be a distinction between criteria appropriate for identifying schools for closure, and criteria appropriate for identifying schools for changes other than closure. The problem is not solved by requiring

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[3]Racial balance could have been taken into consideration without detrimental impact on high minority schools. For example, those schools with the best mix of students could have been given "credit" for that fact; schools with high majority enrollments could have been flagged as racially imbalanced under screening criteria.

> two criteria for closure, as the policy now states. High minority enrollment and faulty attendance patterns are concerns that should be addressed in the Fifteen Year Plan, but should not be factors contributing to the closure of schools."
>
> * * * *
>
> "Similarly, using high minority enrollment as a criterion for closure means that communities with high minority enrollments will have a disproportionate share of school closings made necessary by declining enrollments. It would also penalize schools which have made positive efforts to integrate their student bodies, and would most certainly deter other schools with high majority enrollments from participating in any future integration efforts." Id.

Second, the Long-Range Educational Facilities Planning Policy was adopted to address comprehensive facilities planning in response to declining enrollment. The remaining four screening criteria, namely, minimum enrollment, utilization, need for modernization, and attendance patterns, address this need while minority enrollment does not.[4]

Third, the Quality Education/Racial Balance Policy is both an underlying principle of the Long-Range Educational Facilities Planning Policy and a solution criterion. Long-Range Educational Facilities Planning Policy, Paragraphs II (A)(2)(f) and II (B)(1)(e)(3).

Fourth, the Quality Education/Racial Balance Policy remained as a standing Board Policy binding on the Superintendent in developing his recommendations, and he did take that policy into account and has so testified.[5]

2. On Page 6 of the draft statement, the "solution criteria" analysis is incorrectly stated as follows: "Failure of any of the screening criteria meant that the secondary analysis, or 'solution criteria,' would then be applied to that particular school." (emphasis

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[4]Coping with declining enrollment overall should also entail grappling with rising proportions of minority students, in our view.

[5]However, the board does not appear to have been bound by that policy in its initial decisionmaking of late 1981.

supplied)[6] The Long-Range Educational Facilities Planning Policy clearly states that application of the "solution criteria" is not limited to particular schools which fail the screening criteria but shall include every school in seeking solutions to the problems of changing enrollment. The following statement is made in Paragraph II (B)(1)(c):

> "Every school will be included in the process of seeking solutions to the problems of changing enrollment regardless of whether or not the school has been identified by the initial screening criteria. The final version of the plan will include some recommendation or recommendations about each school."

3. In the draft statement there are references which suggest that the significant improvement in racial balance in the Bethesda/Chevy Chase Quality Integrated Education Cluster Elementary Schools resulting from the Board of Education's closure decisions will be achieved at the price of one-way busing. E.g., Page 5. The Board of Education's decisions in the Bethesda/Chevy Chase Quality Integrated Education Cluster involved the closure of Lynnbrook, a high majority school, as well as the closure of Rosemary Hills, a high minority school. Further, students from the predominantly majority, former Larchmont attendance area and from the predominantly majority, former Chevy Chase attendance area east of Brookeville Road will be reassigned and transported to Rollingwood and to North Chevy Chase. Consequently, the burdens of closure and of transportation will be shared by both majority and minority students, and it is not accurate to characterize the Board of Education's actions as one-way busing, apart from the obvious fact that whenever a school is closed or students are reassigned, those students may be transported to their new schools. The Board of Education's actions do not involve one-way desegregation, which is the broader term used in the Quality Education/Racial Balance Policy.

   Further, the Board of Education took additional action to continue and expand the Quality Integrated Education Cluster in this area. The Board of Education has demonstrated its commitment to education by providing supplemental resources devoted to disadvantaged children in the cluster, and these efforts will continue. The transportation involved for students who are being

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[6]This language has been deleted in our final statement in order to reflect the distinction made here. Nevertheless, racial balance questions were not considered until rather late in the evaluation process.

reassigned to other schools within the cluster as a result of the Board's closure, consolidation, and boundary decisions is not great; it involves distances of four miles or less which is well within existing standards of the Montgomery County Public Schools; some of the receiving schools are closer than the receiving schools for Rosemary Hills grades 3-6 students under the existing cluster arrangement; and the resulting racial balance within cluster schools is substantially improved and within Board guidelines. The Board of Education's actions have achieved a greater degree of racial balance among elementary schools within this cluster than even the Superintendent's recommendation, while also achieving other educational objectives set forth in the Long-Range Educational Facilities Planning Policy, such as a grade K-6 organizational pattern for elementary schools and better utilization of schools generally within the cluster.[7]

4. The alleged pattern of anti-minority actions listed on Page 24 of the draft statement is misleading to say the least.[8] The facts demonstrate a concern for minority relations. First, all new teaching personnel are required, and have been required since 1979, to take a Human Relations Course (HR-17) aimed at increasing understanding of the history and culture of minority groups. Further, all Montgomery County Public School employees are required to attend annually a one and one-half day in-service program consisting of mini-courses and other human relations activities. These personnel programs replaced HR-18 which was discontinued in 1979, and they demonstrate a continuing commitment of the Montgomery County Public Schools and the Board of Education to a comprehensive effort to increase understanding and improve minority relations.

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[7]The point about one-way busing is that for the most part minorities were to have been bused to majority areas but not vice versa. Majority students were to have been bused, yes, but generally to majority schools, not minority areas. Therefore this was to have placed the burden of integration (not just transportation) on the minority community alone in that part of the county. Whites were not generally to go to "black areas." This has now been changed by virtue of the decisions made by the State Board of Education during summer 1982. (See "Events Since the Forum.")

[8]See our newly-added footnote, p. 15. The alleged pattern of anti-minority action was one that we heard repeatedly. Many in the community feel that the current board is less sensitive to minority concerns than previous boards were and than it should be.

Second, the action of the Board of Education in abolishing the Minority Relations Monitoring Committee and in establishing the Minority Affairs Advisory Committee is evidence of the Board of Education's commitment to Quality Integrated Education rather than of an anti-minority pattern. The Minority Relations Monitoring Committee had concentrated exclusively on issues relating to black minority students, and not on issues relating to all minority students. Its focus therefore was one dimensional. The Board of Education, as part of its resolution abolishing the Minority Relations Monitoring Committee, created the Minority Affairs Advisory Committee with the express mandate to address issues relating to all minority students, and not just to black minority students. The Minority Relations Monitoring Committee had used disruptive tactics; its relationship with the Board was stormy and not conducive to a positive and constructive working relationship; and the Committee walked out in the midst of delivering its annual report to the Board. The stormy relationship had existed with prior Boards as well as with the present Board. Therefore, the Board of Education's action in replacing the Minority Relations Monitoring Committee with the Minority Affairs Advisory Committee was a positive action to promote a more constructive working relationship to address broader issues of minority relations. We are enclosing a copy of the Board's resolution which establishes this transition for your convenience and review.

Third, the amendment of the fixed, fifty percent racial balance threshold seeking feasible measures to decrease the proportion of minority students which was contained in the Quality Education/Racial Balance Policy to a floating of 38.7 percent above the countywide minority average is a product of the increasing percentage of minority students in the Montgomery County Public Schools. Please note that the concept of an upper floating guideline is and has been used for the past 15 years by the federal government. The countywide percentage of minority students has risen from 11.3 percent in school year 1974-75, the latest figure available at the time the original Quality Education/ Racial Balance Policy was adopted in September, 1975, to 23.8 percent in the current 1981-82 school year. As a result of this increase in the percentage of minority students, the original 18.7 percent spread between the 20 percent policy threshold and the upper threshold which existed when the policy was adopted has been decreased to 6.4 percent, and the significance of the difference in the thresholds has been correspondingly diminished and is anticipated to diminish further in future years. Unless the upper threshold was altered,

students in high minority schools might be faced with an unnecessary pressure for bearing the reassignment burden of schools closures.[9]

The Supplementary Statement on Quality Education/Racial Balance adopted in 1975, in explaining Paragraph 4 states:

> "The 50 percent figure is not a legal mandate, nor is it a quota, nor has it anything to do with present or proposed applications for Federal funds. The figure is a product of compromise within the Board and represents a planning guideline for the Board to identify those schools in which racial imbalance is an immediate concern."

The adoption of a floating 38.7 percent above the countywide minority average threshold was also a compromise within the Board. The logical basis for this compromise was that this was the differential which existed when the original, and widely favored, policy was adopted. Such action in response to changing circumstances, in recognition of planning needs, and reflecting a compromise with a logical basis is a positive statement. In adopting this amendment the Board of Education specifically reaffirmed the Quality Education/Racial Balance Policy.

Fourth, the Board of Education has demonstrated its commitment to quality education for all students by devoting substantial additional resources to address the special educational needs of its students. In fiscal 1982 the present Board of Education budgeted $14,913,339 in Federal, State, and local funds to support programs to aid minority students, economically disadvantaged students, and educationally disadvantaged students. Additional financial support will be continued in fiscal 1983. The Montgomery County Public Schools provides substantial additional educational programs and staff support within its Quality Integrated Education Cluster schools.

Reference was made on Pages 25 and 26 of the Commission's report to the denial of ESAA funds. The questions raised related to decisions made by the school system administration, not by any Board action, dealing with student assignment and staff assignment patterns.

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[9]This would only be so if the level of minority enrollment were used as a criterion for closures. It is also possible to reduce minority concentrations by assigning in majority students.

This portion of the report which you sent to us for review appears to convey a tone negative to the Board of Education.

5. With reference to Blair High School, the draft statement refers to testimony that the Board's actions will result in underutilization of Blair High School, thus making it a candidate for closure in 1986. E.g., Page 27. With the closure of Northwood High School, Blair High School is not in danger of closure in the foreseeable future. There is no basis in fact for the suggestion that Blair High School might be a candidate for closure in 1986. Further, the student population of approximately 1,400 students who will attend Blair as the result of the Board of Education's actions will place it at about the median for high schools in the County and well within the desired enrollment levels for high school programs. In other words, the student population will be more than sufficient to support an excellent educational program. The action of the Board of Education fulfills standards of the Long-Range Educational Facilities Planning Policy. Blair High School's enrollment will be substantially above the minimum enrollment of 1,000 students set forth in the Long-Range Educational Facilities Planning Policy for high schools (Paragraph II (B)(c)(1) and well within the desired enrollment of 1,200 to 1,600 students. (Paragraph II (B)(e)(2)).

   On Page 34 there is an error in your draft. The students spoken to were never in the Blair High School attendance area.[10]

   The Board of Education's fiscal 1983 budget, which has received Montgomery County Council approval, provides for $330,000 of additional operating funds for Blair to upgrade its program in specific response to needs identified by the Blair High School administration. The Board is committed to upgrading the educational program at Blair High School consistent with its boundary change decisions. For your information, a copy of the Board resolution on this subject is enclosed.

6. With reference to the findings of the ACLU Commission Study by Diana Pearce which are referenced on Page 28 of the draft statement, the analysis by Dr. Steven M. Frankel of the Impact of Fiscal 1983 Closings and Boundary Changes on Minority Students which is referenced in footnote 64 provides a substantial answer

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[10]The draft sentence read "The hearing examiner recommended . . . . that the county board's decision to send nonminority students in the Blair area to other, nonminority high and junior high schools be reversed." This has been rewritten slightly for clarity; see p. 21-2.

in that it demonstrates both on a countywide basis and on an area basis that the Board of Education's closure and consolidation decisions have not adversely impacted minority students in general, or black students in particular. Dr. Frankel's analysis was based on actual enrollment figures, while the ACLU Commission Study was based in part, upon projections from historical data. Nevertheless, it is abundantly clear, even from Dr. Pearce's study, that the actions of the Board of Education in the Bethesda/Chevy Chase Quality Integrated Education Cluster, substantially improved racial balance in cluster schools, and improved it to a significantly greater degree than would have resulted from the Superintendent's recommendation which would have left Rosemary Hills Primary School above the 20 percent racial balance guideline.[11] See Pearce Study, Page 50, Table 5. With respect to the Blair area elementary schools, the study of Dr. Pearce of the segregation index and of the exposure index does not show a negative effect on the degree of integration in the area.[12]

In conclusion, the Board's facilities planning decisions were taken following an extensive process where a multitude of educational factors and community input were taken into account. The solutions were complicated because of the increasing minority enrollment in the Montgomery County Public Schools and because residential patterns have caused high concentrations of minority students to be located in certain geographical areas of the County. The Board has addressed these highly emotional and difficult decisions in good faith, and it believes that it has acted in a positive manner for the benefit of all the students of Montgomery County. We thank you for the opportunity to make these additional comments, and we would be pleased to provide additional information and clarification on any concerns you may wish to raise.

Sincerely,

/s/

Eleanor D. Zappone
President

EDZ:gr/Enclosures

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[11]However, see footnote #7 above and the Superintendent's comments noted on p. 4 concerning the price of the integration effort being one-way busing of minorities.

[12]See p. 19-20 for additional data on Blair feeder schools. The Board has not yet taken final action on Blair-area boundaries.

APPENDIX II

[The original signed letter is on file in the Commission's Mid-Atlantic Regional Office.]

4 Park Valley Road
Silver Spring, Maryland
20910

June 1, 1982

Martha E. Church, Ph.D.
Chairperson
Maryland Advisory Committee
U.S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W., Room 510
Washington, D.C. 20037

Dear Dr. Church:

Thank you for the opportunity to comment on the draft report of the Advisory Committee on the civil rights impact of the school closing decisions in Montgomery County. I look forward to your final report.

In general, I believe your description of the hearing you held and the data you received is fair and accurate. I have comments on the draft which are mostly in the nature of elaboration of points made and some further emphasis and explanation. In addition, I am enclosing two papers I wrote in March, one entitled "The Misuse of Test Scores in Closing Rosemary Hills," and the other "Analysis of Impact of FY 83 Closings and Boundary Changes." The second is an analysis of Dr. Frankel's paper and is highly critical of it. Finally, I am enclosing my comments on the Board's position on the draft, which is being conveyed to you separately. As you will see, I do not agree with the Board's position.

Comments on the Civil Rights Commission Advisory Committee Draft.

1. Anti-Minority Pattern of Action. It is only possible to understand the civil rights impact of the Board's actions if one understands fully the pattern of actions which preceded closures and consolidations and boundary changes. The Board has repeatedly over the past three and one-half years made it clear that it does not believe black leadership when it says it speaks for the black community, that it does not take seriously its concerns, that it does not listen to black leaders or organizations, and that instead

it has taken one action after another which has angered and humiliated the black community. There is no black leader in the county who believes this Board means well by the black community. Put more strongly, every black leader in the county and every informed black citizen believes this Board is at best indifferent and at worst hostile to black concerns. The record, offered you by me and by Roscoe Nix on January 27, speaks for itself. When the Board then acted to close Rosemary Hills, which has been a symbol of past integration efforts; and to change the Blair High School boundaries in such a way as to isolate the Blair community, there was no question in the minds of blacks, other minorities and whites of good will what the Board intended. It intended to ignore again and to neglect again the concerns of black and minority parents and those in the southeastern part of the county who want to maintain real integration there. You have evidence of concern along these lines from the Chairman of the Planning Board, the County Executive, the County Council and so many community organizations that it is not necessary to repeat them here. These are not "desperate citizens" engaged in "race-baiting," as a member of the Montgomery County Board of Education charged at your forum. They are responsible public officials and responsible leaders of community organizations.

There is throughout the county deep suspicion and immense antagonism toward this Board as a result of these closing decisions, which stems not so much from disappointment over the loss of one's school as from the arbitrary and unreasonable way in which the Board made some of its decisions. This antagonism is deeper than at any time since 1954 among black citizens, deep enough to be genuinely alarming, coming as it does at a time when there have never been such a large number of racial incidents involving violence and the threat of violence as over the last two years.

2. The Race-Baiting Charge. Perhaps the most outrageous thing said to your Committee was a Montgomery County Board member's charge that the opposition to some of the school closings was a form of race-baiting. Race-baiting, as you know, has typically involved efforts to appeal to racist or latent racist feelings on the part of non-black citizens. The Montgomery County Board member is suggesting that it involves stirring up the black community against the Board. It is outrageous beyond belief to suggest that the black community needs to be stirred up. It is angry at what it sees the Board doing, and if anything its anger is controlled, not stirred, by its leadership. As for race-baiting, what is one to call the member of the Montgomery County Board of Education's motion before the Board of Education to ask the County Council to prohibit use of any abandoned school sites for low and moderate cost housing, because it might not fit with the rest of the community?

The implication, clear enough to anyone who can read, is that the Montgomery County Board member wants to try to guarantee that the poor and black will not be allowed in the community. That is surely an appeal to latent or not-so-latent antagonisms toward the poor and the black.

3. Rosemary Hills and Its Alleged Failure. You will no doubt have seen allegations by a member of the Montgomery County Board that Rosemary Hills failed as an educational institution. Please see my paper, dated March 24, 1982, on this subject. It did not fail. The Montgomery County Board member put together a specious set of arguments that it did. My paper makes clear that the Montgomery County Board member misused test scores in arguing for Rosemary Hills' closure.

4. The Frankel Analysis. You note the Frankel analysis in response to the Pierce paper. I have enclosed a paper, dated March 29, 1982, responding to the Frankel analysis. I make three points in the first two pages as follows:

> 1. The analysis assumes that the racial composition of the schools will remain constant in the fall of 1982, but in fact the average annual increase in the minority percentage in the county schools in the six-year period from 1975 to 1981 was 1.86 percent, according to Dr. Frankel.
>
> 2. The analysis does not take account of the closing of Northwood High School or the truncating of the Blair High School boundaries, thus failing to take account of that impact on students in the Blair feeder area.
>
> 3. The conclusion that the Frankel paper draws, which says that "it is clear that the Board's closing decisions have not adversely impacted minority students in general, or black students in particular," is not based on enough data about the impact of school closings to warrant such a sweeping generalization, nor does the conclusion take account of factors not even measured by the data Frankel and his co-author consider.

In short, the Frankel paper looks to the past and the present, takes pride in not projecting, but in doing so, vitiates its conclusion about no harm, since the harm to be done is all prospective and the prospective look is something Frankel does not take at all. It is thus at best a useless analysis, at worst a misleading one, since it would suggest to the reader that everything done will do no harm. And that is not correct.

5. The State Board Hearing Examiner's Recommendations. You have those decisions and you have appellant's briefs. I am sure you will want to re-read those decisions or recommendations by the Hearing Examiner once again before you draw your own conclusions and recommendations. Mr. Cooper did not make those recommendations lightly. It is unprecedented what he has done. The State Board is hearing oral arguments on these cases on June 10. It is to decide these cases if it can before school is out, or at least before the fiscal year is over on June 30. You ought to keep very close tabs on both the oral arguments and the decisions.

6. Leland. You need to obtain and read a copy of the Hearing Examiner's decision on the Leland case. Again, the examiner has recommended overturning the Board's decision on Leland. Again, the Board was held to be arbitrary and unreasonable and to have violated its own policy, including its quality education/racial balance policy.

7. One Way Busing and One Way Desegregation. The Board will deny again and again that its decision with respect to Rosemary Hills leads to one-way busing. The simple fact is that the Rosemary Hills community is without a neighborhood school if that school is closed and its children will have to attend, for all six grades, schools in four other neighborhoods. No other community in the county in this set of decisions is placed in that situation. For the Rosemary Hills community, the burden of integration is on it or preponderantly on it. That is the simple truth. No amount of rhetoric will make it otherwise. The Board has a policy which says it will work very hard to avoid that kind of outcome. The superintendent proposed a solution which avoided that. The Board rejected that solution and adopted another of its own making.

8. The Board's Alleged Concern for Minority Interests. The Board will assert that all its actions have demonstrated a concern for minority relations. That assertion is flatly untrue. The Board majority is composed of people who campaigned against what they called "forced busing," and against "social engineering" and against a role for a Board in doing anything about "natural" housing patterns. They have not tried to hide their antipathy for minority interests until there began to run a tide against them, in community opinion, in hearing examiner decisions, in editorial comment. No one who lives in the county is fooled by any of it. The present human relations course requirement is a watered-down requirement. The in-service programs on human relations have not been highly successful. They do not constitute a comprehensive effort to increase understanding and improve minority relations, and indeed relationships with the minority communities have never been worse. With regard to the abolition of the Minority Relations Monitoring Committee, the Board now says that was evidence of

commitment to quality integrated education. Nothing could be further from the truth. That committee was established to attend to black concerns. It contained many black leaders. No black leader applied for or was appointed to the present committee, and that committee is a do-nothing committee, with which the Board has met once and only once for a short time on a social occasion. The Minority Relations Monitoring Committee was not disruptive, as the Board will claim; it was the Board itself which was disruptive, when it secretly sent a letter asking that a Federal investigation of the system be called off, and that the issue was a false issue. It neglected to tell its own committee about that, and did not even tell all Board members, and then proceeded to talk with the committee as if it was taking the committee's concerns over this very issue seriously. That is provocative. Let me say to you that the black community and its leadership has nothing but contempt for the present committee--not for its members, who are well-meaning people, but for its inactivity and passivity.

As for the claim that the Board is supporting special educational needs of its students, I sent you a paper on that claimed $14 million earlier. It is not $14 million and never was, but there had been a larger sum for a number of the programs involved in earlier budgets, and this Board reduced the budgeted figures for many of the programs.

9. Blair High School and Potential Closing. The Board may claim that there is not now and never was any danger that Blair High School may close because of the Board's actions. One member of the Montgomery County Board, however, tells community groups that the issue is not settled and that it will be settled after the election, but that closing is a good option. Another member of the Montgomery County Board has often suggested closure. Those two control a majority of votes on the Board. My view is that they are waiting until after the election and will then probably move to close if their forces win the election.

I believe, in summary, that the Commission's Advisory Committee has before it ample evidence that there is a very major civil rights impact of these decisions, and that this impact is highly negative and disruptive of good minority relations in Montgomery County, something which is highly dangerous at the moment, given the high number of racial incidents occurring in the county. I hope the Committee will make some strong recommendations to the U.S. Commission on Civil Rights which are directed toward first finding

violations of good human relations, violations of due process and fair play (which the hearing examiner has already found), and violations of the civil rights of minority citizens.

Thank you for the opportunity to comment.

Sincerely yours,

/s/

BLAIR G. EWING, Member
Board of Education of Montgomery County, Maryland

APPENDIX III

TITLE 13A

STATE BOARD OF EDUCATION

Subtitle 02 LOCAL SCHOOL ADMINISTRATION

Chapter 09 CLOSING OF SCHOOLS

Authority: Education Article, Title 2, sec. 2-205 and Title 4, sec. 4-101, 4-119 and 4-205 of the Annotated Code of Maryland.

.01 Adoption of Procedures to Govern School Closings

A. Each local school system shall establish procedures to be used in making decisions on school closings.

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 building

(3) Transportation

(4) Educational programs

(5) Racial composition of student body

(6) Financial considerations

(7) Student relocation

(8) Impact on community in geographic attendance area for school proposed to be closed and school(s) to which students will be relocating.

C. The procedures shall provide for a public hearing to permit concerned citizens an opportunity to submit views orally and to submit written testimony or data prior to any final decision by a County Board to close a school. Time limits for the submission of oral or written testimony and data shall be clearly defined.

D. The procedures shall include means to provide notification of the final decision of the County Board to the community in the geographic attendance area of the school proposed to be closed and school(s) to which students will be relocating. Notification shall include the right to appeal the final decision of a County Board to the State Board as set forth in 13A.02.09.03.

.02 Date of Decision

Except in emergency circumstances, the decision to close a school shall be announced at least 90-days prior to the date the school is scheduled to be closed but not later than April 30 of any school year. An emergency circumstance is one where the decision to close a school because of unforeseen circumstances cannot be announced at least 90-days prior to the date a school is scheduled to close or before April 30 of any school year.

.03 Appeal to State Board

A. Except in the emergency circumstances referenced in 13A.02.09.02 above, the decision of the county board and Board of School Commissioners of Baltimore City shall be final except that the State Board may grant a request for an appeal if that request contains sufficiently specific factual allegations which, if proven, would show one of the following:

(1) A local school system substantially deviated from its procedural rules, bylaws, or guidelines governing the closing of schools;

(2) A local school system violated a public school law or a State Board regulation; or

(3) The local school system discriminated against students on the basis of race.

B. The decision to close a school under the emergency provision of 13A.02.09.02 may be appealed to the State Board of Education and is not subject to the provisions of 13A.02.09.03A above.

C. An appeal to the State Board shall be submitted in writing within 30-days after the decision of the local school system.