

ANDREW SEFF,

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 26-28

OPINION

INTRODUCTION

Andrew Seff (“Appellant”) appeals the decision of the Montgomery County Board of Education (“local board”) denying his Complaint From the Public (“CFP”) challenging the temporary relocation of a portion of Montgomery County Public School System’s (“MCPS”) alternative education program to a MCPS owned facility located next to Appellant’s residence. The local board filed a response. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellant resides in a residential area adjacent to the North Lake facility (“North Lake”) and challenges MCPS’s decision to temporarily move a portion of the Blair G. Ewing alternative education program (“Ewing Program”) into North Lake effective August 2025 until a permanent location is selected through the formal local board mandated process. The central issue is whether the local board decision affirming MCPS’s decision selecting North Lake for a temporary relocation complies with the requirements of local board Regulation FAA-RA, *Educational Facilities Planning* and local board policies FAA, *Educational Facilities Planning*; DNA, *Management of Board of Education Property*; and ABA, *Community Engagement*.

Local Board Regulation and Policies

MCPS Regulation FAA-RA, *Educational Facilities Planning*, (R. 441-463), requires local board action on the superintendent’s recommendations and requires the superintendent to publish recommendations for an annual capital budget and a six-year capital improvements program (“CIP”) or amendments to the previously adopted CIP in the fall of each year (or February for any deferred planning issues or amendments). (Section VII, R. 449-450). FAA-RA provides that the local board may request that the superintendent develop alternative recommendations for site selection, school boundaries, geographic student choice assignment plans, or school closures or consolidations. (Section XI.A(1), R. 458). FAA-RA requires one or more work sessions to review the superintendent’s recommendations; annual public hearings following the publication of the superintendent’s CIP recommendations; and local board requested alternatives prior to final board action. (Section XI.A & B., R. 458-459). FAA-RA requires stakeholder input for the following: a) site selection for new schools; b) school

boundaries; c) geographic student choice assignment plans; d) school closures and/or consolidations; e) facility design; and f) other facility-related issues as identified by the superintendent of schools. (Section XI.A(1), R. 459).

Local board policy FAA, *Educational Facilities Planning*, (R. 431-440), sets forth the process to “promote public understanding of MCPS educational facilities planning processes and provide opportunities for stakeholders to engage in, inform, and respond to those processes.” (Section A, *Purpose*, R. 431). FAA provides that, as permitted by overall district facility and capacity requirements, holding facilities may be designated for the purpose of temporarily relocating student populations to facilitate major capital projects. (Section D(4), R. 435). FAA directs the superintendent to secure stakeholder input for a specific class of projects including: (1) selecting sites for new schools; (2) changing school boundaries; (3) establishing geographic student choice assignment plans; (4) closing or consolidating schools; and (5) such other facility related issues as identified by the superintendent of schools. (Section E(1), R. 435). FAA provides that the annual publication of the master plan will constitute the official reporting of facility planning processes and actions taken during the year by the local board and the Montgomery County Council. (Section I(1), R. 439). FAA also provides that the educational facilities master plan (“Master Plan”) is prepared by the superintendent each June and includes all decisions by the Montgomery County Council on requests submitted in the CIP. (Section D(2)(b), R. 434).

Local board Policy DNA, *Management of Board of Education Property*, (R. 472-475), provides that the local board is responsible for managing its real property to ensure adequate schools and support facilities are available to serve future enrollment levels. (Section A, R. 472). DNA grants the superintendent authority to determine conditions for the interim use of real properties within the local board’s inventory through the processes that result in school sites being included in the county and city master plans as they are drafted. *Id.* DNA also authorizes the superintendent to negotiate fees and determine conditions consistent with the policy for the interim use of real properties within the local board’s inventory. (Section B(1), R. 473).

Local board Policy ABA, *Community Engagement*, (R. 464-471), states that the local board “may seek community engagement to inform its decision-making processes and provide opportunities to hear and consider community concerns, comments, and recommendations regarding the development of [local board] policies, as set forth in Board Policy BFA, *Policysetting*, and other decisions, using the best interest of students as a guiding principle.” (Section D(2), R. 466). ABA also provides although the local board will consider community input, the final responsibility for local board-designated decisions rests with the local board. *Id.*

Ewing Program and Relocation to North Lake

The portion of the Ewing Program at issue in this appeal serves students in Grades 6-12 who have not succeeded in traditional schools due to behavioral, attendance, or disciplinary challenges including serious disciplinary infractions. The program provides personalized instruction alongside intensive social, emotional, and behavioral supports. North Lake is adjacent to Appellant’s residence in the midst of a highly populated residential area with many students including Appellant’s children walking to other MCPS schools in the area. (R. 48 – 53).

Prior to the relocation to North Lake, MCPS housed the secondary portion of the Ewing Program at a privately leased site at 12120 Plum Orchard Drive, Silver Spring. The lease entered into in 2018 expired on June 30, 2025, prompting the temporary transition to North Lake. In the late winter of 2024, staff from the Offices of Operations and Facilities Management, along with district leadership decided to temporarily move a portion of the Ewing Program to North Lake. MCPS characterizes this decision as an operational decision “through the district’s standard internal process” at the district leadership level and explains “[b]ecause the move involved shifting an existing program from a leased site into an MCPS-owned facility, it did not require action through a formal or [local board]-mandated process.” (R. 477).

In the Superintendent’s Recommended FY 2027 Capital Budget and the FY 2027-2032 CIP issued in October 2025, MCPS announced its long-term plans – the intent to move the Ewing Program out of North Lake to the Fairland Center by the end of the 2026-2027 school year. (R. 144). MCPS has stated that the community will have the opportunity to respond to MCPS’s long-term plans for the Ewing Program at the appropriate time as part of the upcoming six-year CIP for FY 2027-2032 to develop a more permanent location for the Ewing Program. (R. 236)

Notice to Community

Following the winter 2024 decision, four months later in June 2025, MCPS notified the North Lake community of the decision to temporarily relocate the Ewing Program to North Lake. There is no explanation in the record for the approximate four-month delay. MCPS notified the community through multiple methods, including a public notification sign at North Lake, mailed flyers, a virtual community meeting in June 2025, and an in-person community meeting in July 2025 hosted by district leadership. (R. 50). The virtual community meeting was held on June 11, 2025, followed by written correspondence about the Ewing Program, along with frequently asked questions and responses sent on behalf of Mr. Adnan Mamoon, Chief of District Operations. A follow-up in-person community meeting was held on July 10, 2025, hosted by Mr. Mamoon and Dr. Peter Moran, Chief of Schools, to provide more information about the Ewing Program and the long-term plan for North Lake. (R. 236).

In a letter dated December 3, 2025, in response to Appellant’s Maryland Public Information Act Request, Mr. Cram, Deputy Chief, Division of Communications, opined on the notice provided stating, “[w]e have acknowledged that communication about this transition occurred later than it should have. While we did convene both in-person and virtual meetings to share information and answer questions, we recognize that more could have been done in advance to communicate this change clearly and proactively. As a result, MCPS is reviewing and improving its internal communication procedures to ensure earlier and more comprehensive outreach when future operational changes affect schools and families.” (R. 476-477).

Local Level Administrative Appeals

On June 24, 2025, Appellant filed a CFP alleging that MCPS failed to follow their stated procedures in deciding to move a portion of the Ewing Program to North Lake, which he alleges is listed in the Master Plans as an elementary school holding facility and arguing the decision violated local, state, and federal laws. (R. 76). He requested that MCPS cancel the plan to use

North Lake for the 2025-2026 school year to allow for ample time for public comment and a high-quality feasibility study and, in the alternative, to not allow students who have broken school rules or other laws relating to violence, bullying, weapons, drugs, or sexual misconduct to attend at North Lake. *Id.*

By written decision dated June 25, 2025, Ms. Julie Morris, then Director, Division of Design and Construction, denied the Level One complaint, concluding that MCPS had followed the relevant local board policies. She reasoned that the move of the Ewing Program was a temporary move and not a permanent move and fell mainly outside the scope of the process described in policy FAA. She concluded that the stakeholder input requirements under Policy FAA are not applicable to the temporary move of the Ewing Program to North Lake because the temporary move is not a site selection, boundary change, geographic student choice assignment plan, or a school closing. (R. 77).

On July 2, 2025, Appellant filed a Level Two complaint with Mr. Mamoon reiterating his allegations and expanding his requested remedies to include an investigation and the publication of corrective actions with regular safety reports. (R. 56 – 66). In his appeal he argued that the placement of the Ewing Program at North Lake is unreasonable because of safety concerns and lack of proximity to public transportation. (R. 58). He noted that the local board previously rejected plans to relocate the Ewing Program to other locations due to community opposition and other undisclosed reasons. (R. 61). He also argued that the MCPS's plan for Ewing is unreasonable because MCPS still has no permanent relocation plan after eleven years.

By letter dated July 16, 2025, Mr. Mamoon denied Appellant's Level Two appeal. (R. 236). He concluded that North Lake is a local board-owned property and there are no local zoning restrictions limiting its use to only an elementary school. He concluded that MCPS followed local policies in its decision to relocate the Ewing Program to North Lake as a temporary move. He concluded that the June 11, 2025 community meeting following the mailing of community engagement postcards, followed by written correspondence about the program, with frequently asked questions and responses sent on behalf of Mr. Mamoon, and a follow-up meeting held on July 10, 2025 was consistent with policy ABA to inform the public about the short and long-term plans for North Lake. He stated that DNA addresses the use of real property not currently needed for a school, support facility, or other appropriate educational purposes and that move of the Ewing Program to North Lake serves an educational purpose for students currently enrolled in MCPS and was consistent with policy DNA. He stated MCPS considers the relocation to be a temporary move and that as part of the upcoming six-year CIP for FY 2027-2032, MCPS staff will consider and include a request for funding to identify and develop a more permanent location for the Ewing Program. (R. 236).

On July 27, 2025, Appellant pursued a Level Three appeal with the Department of Student Conduct and Appeals. In his appeal, he argued that Mr. Mamoon's decision was not supported by the factual record or by local, state and federal law. He argued that it was a violation of local policy for MCPS to relocate the Ewing Program to North Lake without first engaging the public and only participating in community meetings later under pressure from elected officials. (R. 49). Appellant alleged that MCPS intentionally delayed notification to avoid community opposition and that no similar alternative education program has previously been in a residential neighborhood. He also expanded his requested relief to include bus transportation for

all MCPS students in the surrounding community who walk to their schools, to require Ewing Program students with serious disciplinary issues to take the bus to and from school, and to provide notice to the community notice if any Ewing Program student with a serious disciplinary history is unaccounted for during the school day. (R. 48 - 49).

Hearing Officer Fernando Maturana (“Hearing Officer”) was appointed to investigate the complaint. As part of the investigation, the Hearing Officer spoke with Appellant, Ms. Morris, and Mr. Damien Ingram, Principal, Alternative Education Programs at Blair G. Ewing Center. Appellant stated that the decision to relocate was made without local board approval, facilities review, or stakeholder input. He also noted that the community was not notified until June 2025 after the CIP deadline despite the decision being made in February 2025. (R. 49).

On September 24, 2025, the Hearing Officer met with Mr. Ingram and toured North Lake while the Ewing Program was in session. The principal confirmed that students are not permitted to drive to the facility. Students arrive by school bus, parent drop-off, or public transportation, and once at school, they are supervised throughout the day with a low student-to-staff ratio. The program’s capacity is 105 students. In addition, all exterior doors are equipped with alarms to alert staff if opened. (R. 48 – 53).

In a written decision dated October 1, 2010 (R. 48 – 51), the Hearing Officer recommended denial of the Appellant’s CFP because he concluded that MCPS did not violate any mandate in a local board policy or regulation when it temporarily relocated a portion of the alternative education program. He noted that alternative education programs have previously coexisted in residential neighborhoods. He made the following findings:

- The temporary relocation did not require stakeholder input under Policy FAA or Regulation FAA-RA as it is not a site for a new school, a change in school boundary, the establishment of geographical student choice plans or the closing or consolidating of schools.
- The use of the North Lake holding facility was consistent with Policy FAA.
- There was no violation of Policy ABA as the temporary location does not constitute a policy-setting decision in which the local board may seek community engagement.
- Per Regulation FAA-RA public hearings are conducted annually and community members will be able to provide input in the superintendent’s CIP through written correspondence, public comments, public testimony, and participate in public hearings at the appointed time on the program’s permanent location through the CIP process.
- Relocating the Ewing Program to North Lake constitutes an appropriate interim use of local board property pursuant to policy DNA.

(R. 50-51).

On October 1, 2025, Nyah Hamlet, Chief of Equity & Organizational Development, acting as the superintendent's designee, issued a decision letter and adopted the Hearing Officer's findings and recommendations and denied the CFP appeal. (R. 47).

On November 9, 2025, Appellant appealed the decision to the local board. (R. 14 - 45). Appellant requested the following relief: (i) ensure that the Ewing Program is moved to another location in a timely manner; (ii) ensure that the program move is fully funded and on schedule; (iii) limit future use of North Lake; (iv) inform North Lake area residents if any enrolled students have committed violations involving violence, weapons, drugs, or sexual misconduct; (v) provide a minimum of three security assistants at all times; (vi) contract with an auditing body to investigate MCPS's planning and communications failures; and (vii) issue a public report and adopt corrective procedures. On December 17, 2025, the superintendent filed a response to the appeal. (R. 8-13). On January 1, 2026, Appellant filed a response. (R. 2-7). On January 8, 2026, the local board considered the matter in closed session and adjudicated it based on the written record and issued a Decision and Order on January 22, 2026 affirming the denial of the CFP. (R. 131-139).

The local board's Decision and Order affirmed the superintendent's designee and concluded that the designee's denial of the Appellant's CFP was not illegal, arbitrary or unreasonable. (R. 131-139). The local board found that MCPS complied with applicable policies in treating the relocation as a temporary use of a holding facility and that community engagement occurred consistently with the nature of the action. The local board affirmed the superintendent's conclusion that the temporary relocation of the alternative education program to the North Lake facility is consistent with local board regulation and policies on facilities planning and community engagement, that appropriate school security personnel are assigned to the facility, and that MCPS cannot release protected student information involving weapons, drugs, or sexual misconduct under the Family Educational Rights and Privacy Act ("FERPA") and MCPS regulation JOA-RA, *Student Records*.

Appellant timely appealed the local board's decision to the State Board. In his appeal to the State Board, the Appellant requests the relief he sought from the local board but also included a request for additional relief from the State Board to prohibit any students with Level 3 disciplinary infractions from attending North Lake for the 2026-2027 school year and to ensure that the move to Fairland Center is fully funded and on schedule. (R. 151).

In the State Board appeal, Appellant submitted approximately 125 pages of news articles, memoranda and other documents concerning the challenges faced by the local board and the community regarding the selection process for the permanent location of the Ewing Program prior to the North Lake relocation. (R. 266 – 394). The local board objects to the introduction of the new evidence because the documents were not included in Appellant's appeal to the local board and because Appellant offers no good reason as to why these documents were not included in his local board appeal.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State

Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

Additional Evidence

Under COMAR 13A.01.05.04C, the State Board may receive additional evidence only if it is material and there were good reasons for the failure to offer it in the proceedings before the local board. *See London S. v. Baltimore Cnty. Bd. of Educ.*, MSBE Op. No. 19-40 (2019). The local board filed a response arguing that the additional evidence about the previous searches for a permanent location of the Ewing Program found at R. 266 - 394 should not be admitted under our regulation as the evidence is not material to the decision made in 2025 regarding a temporary relocation; was not presented to the local board; and the Appellant has not offered any reason for his failure to include this evidence in his local board appeal. *See* Response at pp. 11-12.

We have closely reviewed the additional evidence and do not find that the historical or lease information is material to this appeal as the documents pertain to a search for a permanent or leased location of the Ewing Program by the local board and not a temporary relocation made at the leadership level which is at issue in this appeal. Moreover, Appellant has failed to explain why he did not include this additional evidence in his appeal to the local board. *See, e.g. Towle v. Carroll Cnty. Bd. of Educ.*, MSBE Op. No. 17-31 (2017); *see also Brenda F. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 24-16 (2024).

Accordingly, we do not admit and will not consider the additional evidence in the record found at R. 266 – 394.

The Merits

Appellant asserts that MCPS failed to (1) engage stakeholders, (2) provide meaningful and timely notice of the North Lake facility's new use, (3) adhere to the CIP mandated process, and (4) maintain transparency with the surrounding community in violation of local board Regulation FAA-RA and Policies FAA, ABA, and DNA. He also argues that these failures denied residents and property owners notice and an opportunity to comment on a decision affecting their property and liberty interests, in violation of Maryland law and the Maryland and United States Constitutions. (R. 48-49). In addition, he argues that educating secondary students in an alternative education program for an interim period diminishes the safety of his immediate neighborhood and causes he and his family emotional distress.

The local board responds that because the relocation of the Ewing Program involved shifting a portion of an existing program from a leased site into a MCPS-owned facility on a temporary basis, it did not require action through a formal or local board mandated process as the local board regulation and policies do not require meaningful notice and opportunity for actionable public comment, on all facility decisions made by MCPS professionals, or require a local board vote on a temporary relocation of an educational program exiting an extended lease and awaiting relocation to a permanent setting within MCPS.

Local Board Regulation and Policy Requirements

Under the governing standard of review, Appellant bears the burden to demonstrate that the local board's decision was arbitrary, unreasonable, or illegal in violation of local board regulation and policies. The record reflects that MCPS characterized the relocation as a temporary operational move from a leased facility to an MCPS-owned holding facility for the 2025–2026 school year until a permanent location is selected through the more formal local board mandated process. This determination was made in late winter of 2024 through the district's standard internal process, which included a decision-making process through discussion among staff from the Offices of Operations and Facilities Management, along with district leadership. The local board concluded that such a relocation fits within Policy FAA's recognition of holding facilities for temporary relocations and within Policy DNA's framework for interim use of local board properties under the superintendent's authority. The record also reflects that the community will have an opportunity to voice their feedback through the local board's formal processes as the Ewing Program's permanent location planning is included in the Superintendent's FY 2027 Capital Budget and the FY 2027-2032 CIP. *See* R. 144.

We agree with the local board and conclude that the temporary relocation of the Ewing Program from Plum Orchard to the North Lake facility constitutes an appropriate interim use of local board property within the superintendent's discretionary powers granted under policy DNA. Policy DNA grants superintendent authority to determine conditions for the interim use of properties within the local board's real property inventory, without the full apparatus of Policy FAA or local board action.

Appellant also argues that FAA-RA and FAA should have required pre-decisional stakeholder engagement and input prior to the relocation of the Ewing Program to North Lake. Regulation FAA-RA and Policy FAA directs the superintendent to secure stakeholder input for a specific class of projects: (1) selecting sites for new schools; (2) changing school boundaries; (3) establishing geographic student choice assignment plans; (4) closing or consolidating schools; and (5) such other facility related issues as identified by the superintendent of schools. The local board, however, determined that the relocation did not trigger the specific FAA processes reserved for significant capital planning actions as articulated such as site selection, boundary changes, school closures, or superintendent-identified facility issues for which formal options and engagement are directed.

Appellant also argues that because the temporary move was sufficiently unusual and controversial, the non-traditional use provisions in Policy FAA should have been followed. However, FAA specifically invokes the nontraditional facility site utilizations requirements only for longer-term planning defined as beyond the six-year CIP interval. *See* Section F(3), R. 435.

The local board explains that its regulations and policies allow for differential approaches for different types of facility use projects across the school system, and that it is permitted to apply a less rigorous approach to temporary site evaluations and selections as the multi-month study cycles outlined in FAA-RA and FAA for every evaluation of a temporary site would paralyze a school system with more than 210 schools. *See* Reply at 7-8. It argues that the superintendent has broad discretion to locate programs in existing surplus spaces or collocated facilities without the full FAA process, provided it does not change school boundaries. *Id.* It also

argues that FAA also does not typically govern the temporary placement of a specific program unless that placement requires building a new facility or changing the attendance of other schools, which triggers FAA. *Id.*

On this record, a reasoning mind could conclude as the local board did that the formal stakeholder engagement requirements and enumerated capital planning local board actions required by FAA-RA and FAA were not triggered by the temporary move. We conclude Appellant has failed to carry his burden to establish any violations of FAA or FAA-RA.

Appellant also argues that MCPS' communication about the temporary relocation violates Policy ABA because it was untimely, unreasonably narrow, and not meaningful. The record reflects that MCPS undertook community communications, including signage, mailers, and both virtual and in-person meetings in June and July 2025, although MCPS acknowledged the timing was later than optimal.

Policy ABA states that the Board may seek community engagement to inform its decision-making processes and provide opportunities to hear and consider community concerns, comments, and recommendations regarding the development of local board policies, as set forth in Policy BFA, and other decisions, using the best interest of students as a guiding principle. The local board did not elect to seek community engagement opportunities prior to the temporary phase of the decision-making process but has stated, "MCPS is reviewing and improving its internal communication procedures to ensure earlier and more comprehensive outreach when future operational changes affect schools and families." *See* R. 467-477. The appeal process is not the proper avenue to implement changes of local board policy. *See Sherilinda S. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 19-33 (2019)(quasi-judicial appeals process is not the proper avenue for systemic change.).

The local board's interpretation of how its policies interrelate—treating this as an interim property use under DNA, with FAA/FAA-RA's formal engagement mechanisms reserved for specified capital planning actions and its community engagement obligations—warrants deference and we conclude that Appellant has not satisfied his burden to demonstrate any regulatory or policy violations. *See Sullivan v. Montgomery Cnty Bd. of Educ.*, MSBE Op. No. 10-10 (2010).

Additional Claims Raised by Appellant

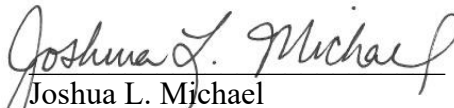
Appellant also raised safety concerns and sought remedies including mandated staffing levels and disclosure of student disciplinary information to community members. The local board's decision notes that appropriate security personnel are assigned in accordance with State law and local board policy and that disclosure of student-specific misconduct information without consent would violate FERPA and MCPS Regulation JOA-RA, *Student Records*. The record supports the local board's determinations on these points.

Finally, we conclude that the Appellant has failed to provide any evidence or legal authority supporting his claims of emotional distress; allegations of a violation of due process affecting his unspecified property and liberty interests, in violation of Maryland law and the Maryland and United States Constitutions; and his requested remedies for future funding

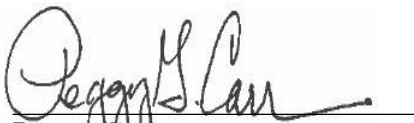
commitments and planning decisions the local board will be making through the formal process as to the Ewing Program. We conclude Appellant has failed to properly establish any factual or legal basis for these claims and requested relief.

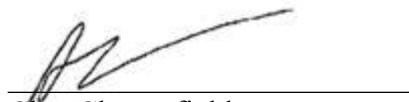
CONCLUSION

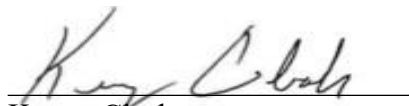
For the reasons stated above, we find that the local board's decision was not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision.

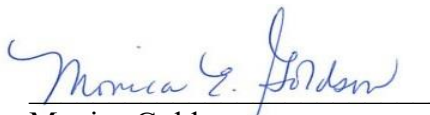

Joshua L. Michael
President

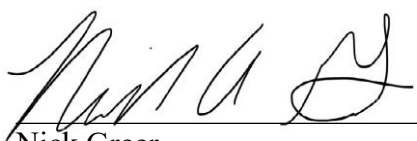

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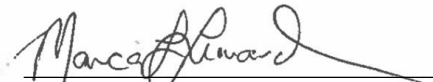

Chet Chesterfield


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Monica Goldson


Nick Greer


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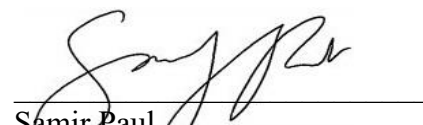
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