

BEFORE THE ACADEMIC FACILITIES REVIEW BOARD

State Board of Education  
#4 Capitol Mall  
Little Rock, AR 72201

August 8, 2013

HEARINGS ON APPEALS OF DETERMINATION  
OF THE  
STATE OF ARKANSAS  
DIVISION OF PUBLIC SCHOOL ACADEMIC  
FACILITIES AND TRANSPORTATION

APPEARANCES:

MR. BRAD HAMMOND	Chairman
MR. TONY PARDEW	Board Member
MR. CODY BEENE	Board Member
MR. WAYNE GIBSON	Board Member

LEGAL COUNSEL FOR THE BOARD:

MR. JEREMY LASITER, General Counsel, ADE  
MS. LORI FRENO, Deputy General Counsel, ADE  
MS. VALERIE BAILEY, Attorney Specialist, ADE

Sharon Hill Court Reporting  
(501) 847-0510

**COPY**

I N D E X

	Page
Exhibits Index. . . . .	3
Attendance and Quorum . . . . .	6
Summary Meeting Minutes . . . . .	6
Genoa Central School District . . . . .	9, 33, 100
Cabot Public Schools. . . . .	12
North Little Rock School District . . . . .	42
Forrest City School District. . . . .	77
Marion School District. . . . .	112
Hoxie School District . . . . .	122
Rogers Public Schools . . . . .	136
Court Reporter's Certificate. . . . .	164



1 CHAIRMAN HAMMOND: So you vote for the motion?

2 MR. PARDEW: Yes.

3 CHAIRMAN HAMMOND: All right. Mr. Beene?

4 MR. BEENE: I vote no on the motion and I vote  
5 to concur with the Division on denying the request.

6 MR. GIBSON: I vote for the motion.

7 CHAIRMAN HAMMOND: I have two votes for the  
8 motion and one vote against the motion. So the  
9 motion passes. But just to clarify, the motion was  
10 to reject the decision of the Division.

11 **NORTH LITTLE ROCK SCHOOL DISTRICT**

12 MR. LASITER: We now move on to the next item on  
13 the agenda, the appeal of the North Little Rock  
14 School District. We'll begin with an opening  
15 statement from the North Little Rock School District.

16 MR. WALTER: Good morning, Members of the --  
17 sorry, I didn't mean to blast you out there. Good  
18 morning, Members of the Academic Facilities Review  
19 Board, Ms. Freno, Mr. Lasiter, Dr. Stein, Ms. Bailey  
20 and Division and Department Staff. My name is Tripp  
21 Walter and I'm the attorney with the Arkansas Public  
22 School Resource Center and I'm here today proudly  
23 representing the North Little Rock School District in  
24 its facility appeal concerning the inclusion of space  
25 at its Pike View campus in the Division's suitability

1 CHAIRMAN HAMMOND: So you vote for the motion?

2 MR. PARDEW: Yes.

3 CHAIRMAN HAMMOND: All right. Mr. Beene?

4 MR. BEENE: I vote no on the motion and I vote  
5 to concur with the Division on denying the request.

6 MR. GIBSON: I vote for the motion.

7 CHAIRMAN HAMMOND: I have two votes for the  
8 motion and one vote against the motion. So the  
9 motion passes. But just to clarify, the motion was  
10 to reject the decision of the Division.

11 **NORTH LITTLE ROCK SCHOOL DISTRICT**

12 MR. LASITER: We now move on to the next item on  
13 the agenda, the appeal of the North Little Rock  
14 School District. We'll begin with an opening  
15 statement from the North Little Rock School District.

16 MR. WALTER: Good morning, Members of the --  
17 sorry, I didn't mean to blast you out there. Good  
18 morning, Members of the Academic Facilities Review  
19 Board, Ms. Freno, Mr. Lasiter, Dr. Stein, Ms. Bailey  
20 and Division and Department Staff. My name is Tripp  
21 Walter and I'm the attorney with the Arkansas Public  
22 School Resource Center and I'm here today proudly  
23 representing the North Little Rock School District in  
24 its facility appeal concerning the inclusion of space  
25 at its Pike View campus in the Division's suitability

1 analysis for its construction of five new elementary  
2 schools and the project numbers that have been listed  
3 on your sheet. I would also like to take this  
4 opportunity, if I may, to on behalf of the District  
5 extend our thanks for the services and the actions of  
6 the Facilities Division and the Department's legal  
7 team. Those of you who are not familiar with who I  
8 am, I was formerly an attorney with the ADE for  
9 several years and worked closely obviously within the  
10 attorney's office and worked closely with the  
11 Facilities Division. And the District comes here  
12 today with the utmost respect for both of those  
13 offices and all they have done for the District, both  
14 with this project and in general. What I would like  
15 to do at this time, if I may, I have some exhibits to  
16 pass out to the Board, if I may do that, Mr. Chair,  
17 at this time? Excuse me -- if I may approach? I'll  
18 give one to the court reporter and then distribute  
19 those to the board members.

20 (WHEREUPON, NLR Exhibit One (1) was marked for  
21 identification and entered into evidence.)

22 MR. WALTER: At this time, Mr. Chairman, Members  
23 of the Board, I would like to introduce the  
24 individuals representing the District besides myself  
25 who will be here today. I will be making the

1 District's presentation, but I'd like to introduce  
2 immediately to my right former superintendent Ken  
3 Kirspel; to his right, current superintendent Kelly  
4 Rodgers; seated next to them are members of the APSRC  
5 staff, Ms. Jennifer Dedmon, Mr. Josh Smith; and  
6 directly behind Mr. Kirspel and Mr. Rogers is Mr.  
7 Fred Cashaw, who's the facilities consultant for the  
8 Division -- I mean, for the District rather.

9 Briefly, as to the exhibits, numbers One (1) and  
10 Two (2) are the same attachments that you have for  
11 our appeal brief. Numbers Three (3) through Six (6)  
12 are affidavits from individuals who are schools  
13 facilities professionals endorsing the District's  
14 reading and application of the rules in this case.  
15 And Exhibit Seven (7) consists of the slides and the  
16 map that I'll be referring to at the beginning of the  
17 presentation of the District's case here in a little  
18 while. So what I'd like to do now is just briefly go  
19 over some facts with you, if I may, kind of  
20 previewing our case. As we described in our brief,  
21 the District on March 12th -- March 1st, rather, of  
22 last year submitted a Master Plan and request for  
23 facilities assistance to the Division which was a  
24 comprehensive unique school-wide plan which would  
25 take its current 21 campuses of many aging,

1 deteriorating facilities to 13 new or renovated  
2 campuses. The reasoning behind this in general was  
3 to help the District meet both facility adequacy  
4 standards and it also would help the District operate  
5 its facilities at a much lower cost, both in terms of  
6 actual dollars both on the state and local side, and  
7 a personnel standpoint. This plan was submitted and  
8 is intended to be carried out by the District in  
9 furtherance of all Partnership laws and rules which  
10 were provided to create equitable and adequate  
11 facilities for the children of Arkansas.

12 As to the elementary schools, specifically what  
13 the plan does is it indicates that the District plans  
14 to close several elementary schools, construct five  
15 new elementary schools, close its only solely pre-K  
16 campus which is Redwood, and reconfigure Pike View,  
17 the campus we're talking about today primarily, from  
18 a K through 5 campus to a pre-K campus. The plan  
19 indicates that the District will close Redwood, a 50-  
20 year old facility which currently serves as a  
21 district pre-K which is no longer going to be  
22 suitable to house students as it has a facilities  
23 condition index of .92. The students from Redwood  
24 would then have the ability to go to Pike View, which  
25 is going to be reconfigured by the District into the

1 new district-wide pre-K. What will happen then is  
2 the students from Pike View will be going to the  
3 Lakewood and Crestwood elementary schools, which are  
4 part of the District's master plan and request for  
5 Partnership assistance which the Division and the  
6 Commission have approved. This creates a replacement  
7 for Pike View's space with the space additions and  
8 creations of these two elementary schools.

9 So in today's hearing -- I'd just like to make  
10 one other comment -- you're going to hear me refer to  
11 some legal terms concerning our burden and the  
12 Division's actions. And, again, I would like for you  
13 to keep in mind what I said earlier. Please  
14 understand that I don't utilize these terms to show  
15 disrespect for the Division; it's just what we have  
16 to do to make our case here before you today  
17 according to the appeals rules.

18 We believe that the Division's actions were  
19 arbitrary and capricious here, which means that they  
20 acted against the face of the clear evidence in this  
21 case as to how the rules should work concerning Pike  
22 View. The Division, as I mentioned, approved the  
23 Crestwood and Lakewood portions of this plan and  
24 counted Pike View as suitable space and withheld  
25 funding for its full square footage. We'd also like

1 to remind you that Pike View has an FCI of above .65,  
2 at .66. Also, to clarify at the outset, the District  
3 is requesting no financial assistance from the State  
4 concerning this reconfiguration of Pike View. It  
5 will be done solely at district expense.

6 What we will show today as part of this large  
7 system-wide plan is that the Division's decision as  
8 to Pike View destroyed the logical progression of  
9 space replacement and student redistribution in the  
10 overall plan. We'll explain in our case-in-chief  
11 that Pike View should not be counted as suitable  
12 space for two reasons. Number one, because its final  
13 grade configuration pursuant to the Partnership rules  
14 is as a pre-K; and secondly, because its FCI is above  
15 .65 and we will show you how that impacts the  
16 situation during our case-in-chief. We will also  
17 show you that the most prudent and resourceful use of  
18 the Division's and the District's funds is the  
19 completion of the Master Plan as submitted by the  
20 District to include the reconfiguration of Pike View  
21 to a K-5 and not counting its space as suitable space  
22 against the calculation in Partnership assistance for  
23 the elementary schools. Why was Pike View being  
24 reconfigured? Was it done, as the Division alleges,  
25 to somehow get money improperly for a pre-K or to

1 game the system? Absolutely not. I've already  
2 previewed already that there was a specific need that  
3 could be met by the reconfiguration and that was  
4 done. There was a specific plan in place for the  
5 Pike View students to go into better suitable  
6 educational facilities as part of the plan. Pike  
7 View's attempt, if you will, or allegation that it  
8 gamed the system or is somehow improperly trying to  
9 seek Partnership funding for an improper use really  
10 fails. It is being replaced as the rules consider  
11 and actually state and it is being reconfigured  
12 properly to non-academic space. The District has  
13 been completely transparent in this entire process  
14 with the Division, keeping the Division fully aware  
15 of these proceedings and its intents and what the  
16 Master Plan says and the Partnership rules say at all  
17 times. We will show that the Division exceeded its  
18 authority and acted against the substantial evidence  
19 in this case, which are burdens we must meet under  
20 the appeals rules as suitable space and that their  
21 actions were arbitrary and capricious and they  
22 occurred in the face of the clear and convincing  
23 evidence of what the rules say as we have presented  
24 them to you. We will show that the District has  
25 followed the rules and the law, that the Pike View

1 reconfiguration is supposed by the rules throughout  
2 the process, and that it plans to use district  
3 resources for any reconfigurations of Pike View and  
4 will not attempt to request or use any Partnership  
5 funds to that end.

6 CHAIRMAN HAMMOND: Thank you. Do we have an  
7 opening statement from the Division?

8 MS. FRENO: Good morning again. My name is Lori  
9 Freno. I'm with the Division and I'm representing  
10 the Division today. First, just for the record I  
11 want to make clear that I don't think what they are  
12 talking -- I haven't had time to read all these  
13 affidavits; they were not submitted with their appeal  
14 -- and I do not recognize the names of any of the  
15 people who had submitted the affidavits as being here  
16 today. So there might be things in the affidavits  
17 that should not -- I mean, that are not even properly  
18 before this board because the appeal rules  
19 specifically state that the school district is to  
20 present clear and concise -- in a clear and concise  
21 manner what their arguments are in their appeal  
22 document. But getting to the meat of the case, the  
23 North Little Rock School District, as Mr. Walter  
24 suggested, submitted a system-wide plan. They  
25 submitted many, many projects for Partnership funding

1 and in fact the Division awarded them approximately  
2 \$25.5 million for several of those projects. The one  
3 thing to keep in mind is that this case only has to  
4 do with one building, that's all, Pike View  
5 Elementary School and this school through this school  
6 year served K-5 students. And the North Little Rock  
7 School District's argument is that even though it was  
8 serving K-5 students, and even though it could  
9 continue to serve K-5 students, that space should not  
10 be included in the suitability analysis in  
11 determining suitability, space availability. And  
12 that is just inconsistent with -- that's inconsistent  
13 with the law and that is inconsistent with the rules.  
14 The Division did not act outside of its legal  
15 authority in including this space in the suitability  
16 analysis. The bottom line is that the space -- I  
17 mean, from a logical perspective the space was  
18 available, the space was being used, what, two months  
19 ago for K-5 students, so that space is available; it  
20 is available. And the fact that the school district  
21 has decided to convert it to another purpose, to a  
22 nonacademic facility, doesn't change the fact that  
23 that space still is available under the Partnership  
24 rules. And the Division was -- you know -- Mr.  
25 Walter, you know, said that the school district was

1 open and frank with the Division at all times and I  
2 believe that's true. But also the Division was fully  
3 frank in notifying the school district even before  
4 they filed their application for this project that  
5 they were going to count that space at Pike View if  
6 the Division decided to put pre-K kids in there  
7 because pre-K kids, that makes it a nonacademic  
8 facility. And a school district under the rules just  
9 can't convert -- in order to get new buildings they  
10 just can't convert buildings that they have existing.  
11 If they want to get rid of that space somehow, it  
12 just can't convert that space to nonacademic  
13 facilities and then expect that that not be counted.  
14 That would completely circumvent the suitability  
15 process that's set forth in the rules.

16 Regarding the FCI, the thing that's important to  
17 remember about that is all that the FCI -- it doesn't  
18 mean a building has to be demolished; it doesn't mean  
19 a building is inadequate. I mean, the building must  
20 be pretty adequate because they have children in it  
21 now and they're going to have children in it again.  
22 But what that means is if someone comes to the  
23 Division seeking to renovate a building the FCI is  
24 just one indicator of, well, maybe it's a good -- it  
25 would be a good idea to replace the building

1 completely, rather than renovate it. Maybe that  
2 would be a prudent use of resources. But in this  
3 case the FCI doesn't matter at all because the school  
4 district made absolutely no requests to demolish that  
5 building.

6 Also, with regard to the FCI of 65 -- above 65%  
7 it's important to recognize that there are hundreds  
8 of buildings, school academic facilities, in the  
9 state that have an FCI of over 65. So that doesn't  
10 mean that they're inadequate for housing students and  
11 it doesn't mean that they need to be -- that it's a  
12 given that they need to just be torn down today.  
13 Because the rules and law require that the Pike View  
14 elementary space be counted in the suitability  
15 analysis, the Division respectfully requests that  
16 this board uphold the Division's determination  
17 including that space. Thank you.

18 CHAIRMAN HAMMOND: Thank you. Do we have a  
19 presentation of the case by the District? I do want  
20 to remind everybody of the suggested time constraints  
21 in the rules.

22 MR. WALTER: I guess, Mr. Chairman, the Division  
23 does -- the District rather does have a presentation  
24 and I will try and adhere to those time limits, sir.  
25 I appreciate that. If I may just address something

1 before -- a procedural matter, if I will, before I  
2 start my presentation -- to address Ms. Freno's  
3 comment, please don't misunderstand; bringing these  
4 exhibits to you today wasn't an attempt to get  
5 something in that shouldn't be or ambush anyone. As  
6 you know, the amount of pages that we could submit  
7 initially was 10 and I read that to mean 10 in total,  
8 including all exhibits. With that limitation and  
9 unavailability of witnesses to testify here today,  
10 that is the reason for the affidavits and I hope that  
11 the Board understands that and appreciates the intent  
12 and reasoning behind it. If I may have an additional  
13 moment just to make sure the PowerPoint is set up and  
14 also that -- what I'll be showing you on the  
15 PowerPoint is contained in your Exhibits Six (6) and  
16 Seven (7) in hardcopy.

17 What we're doing here is we're providing a  
18 summary of our argument in these slides. Pike View  
19 was intended to be reconfigured into a pre-K facility  
20 in its final grade configuration as is allowed and  
21 it's at the District's discretion and determination,  
22 according to Rule 3.08. Pre-K facilities do not  
23 count as -- do count as nonacademic facilities,  
24 according to Section 3.01.3 and therefore must be  
25 excluded from the suitability analysis. When you

1 look at the suitability analysis the Division  
2 performed here under 3.3.2 it mandates that projects  
3 or campuses affected by the grade configurations,  
4 which Pike View was here, are looked at as their  
5 final grade configuration which is for Pike View a  
6 pre-K nonacademic facility. Therefore, it is our  
7 belief that the Division acted outside its authority  
8 in counting the pre-K facility and also through  
9 interfering with the reconfiguration of the building  
10 by counting that space.

11 The FCI here is relevant because when it exceeds  
12 .65 the District was afforded options according to  
13 Rule point-403. In other words -- and Ms. Freno  
14 talked about a couple of them -- the District has  
15 options, potentially looking at sale, demolition,  
16 renovation, or replacement. As you've seen in the  
17 rules, renovation/replacement is specifically  
18 mentioned. And as Ms. Freno indicated and as the  
19 District understands the Division's position to be,  
20 renovation of a building above .65 is not really  
21 going to be considered prudent use of funds and  
22 probably not qualify for state financial assistance.  
23 So we're left with demolition or replacement.  
24 Obviously, the North Little Rock School District  
25 chose replacement in this case. Again, the FCI

1 exceeds .65. And if you'll look closely at that last  
2 bullet point, because this is an important point we  
3 want to make, one, replacement is clearly allowed;  
4 two, it does not have to occur on the same space  
5 where the building in question was. In other words,  
6 as illustrated, as it applies to Pike View, there's  
7 nothing in the rules that prohibits what the District  
8 has done, and that is to replace the Pike View k-5  
9 space with new or expanded facilities at Lakewood and  
10 Crestwood.

11 These are the most prudent and resourceful use  
12 of funds in the District's opinion and the only good  
13 use of the facility. We've talked before that the  
14 Division and the Commission explicitly approved the  
15 Lakewood and Crestwood portion of the plans and  
16 therefore, the Division acted contrary to the  
17 substantial evidence in denying the Pike View  
18 portion.

19 What I would like to do at this time -- and you  
20 may have a clearer representation in the exhibit in  
21 your packet -- is to illustrate further why this  
22 decision was made as to Pike View. If you will look  
23 up near the middle of the diagram in the encircled PV  
24 that is the location of the Pike View campus. You  
25 will notice immediately next to it, as you look at

1 the photo to the right and upper right, there are  
2 three elementary schools listed and circled: IH, CW  
3 and LW. Those stand for Indian Hills, Crestwood and  
4 Lakewood. None of those elementary school campuses  
5 also contain a pre-K. Also, I would encourage you to  
6 look at the student concentrations which are  
7 represented by those individual dots surrounding  
8 those four campuses. Also, almost -- well, slightly,  
9 I guess, southeast from PV down to the bottom of the  
10 screen you'll see in a gray encircled area RW, which  
11 is Redwood, the current district pre-K facility. You  
12 will also note the lack of student population around  
13 Redwood. So what are we looking at here? Redwood  
14 with a high FCI, a population shift away from the  
15 Redwood area, and the Lakewood, Crestwood and Indian  
16 Hills schools near Pike View not having their own  
17 pre-K's.

18 I would like to take a moment to clarify a  
19 couple of things too that were said by Ms. Freno in  
20 the opening. The District isn't getting a new  
21 building. Okay? I want to make that very clear.  
22 They're taking a current building, which has a high  
23 FCI, and they're reconfiguring it, as the rules  
24 allow, for pre-K space. They're not getting a new  
25 building.

1           I will talk briefly about some other points just  
2           to make sure I have them in front of you when --  
3           again, to be respectful of your time. The final  
4           grade reconfiguration -- this is a key part of our  
5           case. As the Division -- as Ms. Freno has stated, we  
6           understand the Division's position is that the space  
7           is currently -- the Pike View space is currently used  
8           as K-5 so therefore, it should be counted against the  
9           District, said very simply. We disagree. The rule  
10          is very clear. If you look at Section 3.08, it talks  
11          about reconfiguration or configuration --  
12          reconfiguration is what's occurring here -- is done  
13          by the District. The District made a decision, as  
14          part of this comprehensive plan to try and address  
15          all of its system-wide facility issues at once, to  
16          convert to reconfigure Pike View as a pre-K. So when  
17          you look at 3.1.3 which uses the definition of "used  
18          as a pre-K" that I believe the Division is relying on  
19          to deny or include Pike View's suitability, those two  
20          must be linked together. The pre-K must be used in  
21          its final reconfiguration as a pre-K, which is  
22          exactly what is happening here, which is exactly what  
23          has been discussed with the Division, which is  
24          exactly what's represented in the materials that have  
25          been submitted to the Division in this case. When

1           you look at 3.3.2 and 3.3.2.1 the two options the  
2           Division has in determining the suitability analysis  
3           -- what do they talk about? Considering space in  
4           projects for campuses that are affected by the  
5           projects, which is exactly what we have here in the  
6           final grade configuration. So I think that begs the  
7           point on behalf of the Division -- they said, "Okay.  
8           Well, you used the space last year; it's currently K-  
9           5." How do you get around that? You look at the  
10          final grade configuration. The Master Plan and the  
11          Partnership submissions are, by their nature,  
12          forward-looking. Okay? They deal with projects in  
13          the future. That's the whole process. The Master  
14          Plan is a planning tool and we request Partnership  
15          assistance; it's not for something in the past; it's  
16          not for something currently. It's in the future and  
17          this is the way this plan was submitted and it has to  
18          be looked at in the final grade configuration.

19                 The substantial evidence at hand here is that  
20                 Pike View being included as excess suitability  
21                 contradicted the plan's overall design and  
22                 consequently ruled against the substantial evidence  
23                 before it. It should have been considered part of  
24                 the larger piece of this project in 3.3.2 and 3.3.1.  
25                 To not do so by the Division contradicts the

1 substantial evidence and helps -- and makes the case  
2 for the District that its burden has been met due to  
3 this clear violation of those two portions of the  
4 suitability analysis statute. It is important to  
5 understand how not only the rules link together but  
6 the projects link together. It is clear from the  
7 plan and clear from the District's conversations with  
8 the Division that what would happen with Pike View is  
9 that those students would go, once Pike View was  
10 taken out of service, as the Master Plan indicates,  
11 as a K-5 and going through the conversion or  
12 reconfiguration process to pre-K, that they would go  
13 to Lakewood and Crestwood. Again, understand that  
14 projects for those two facilities were approved. To  
15 not include or not to view the Pike View matter the  
16 way the District does destroys the logic and  
17 fundamental nature of that plan.

18 I want to talk a little bit about what I will  
19 call the "gaming the system" argument. The argument  
20 by the Division is, "Okay. Well, what if a district  
21 just decided to make all of its spaces -- or tried to  
22 reconfigure all of its spaces as pre-K or some other  
23 kind of nonacademic use to increase Partnership  
24 participation? What if they tried to get around  
25 that? What would that do to not only this situation

1 with the District but the whole process that the  
2 Division oversees?" Here's my response: from a  
3 practical standpoint could any district the size of  
4 the North Little Rock School District realistically  
5 do that? Could they make those kind of wholesale  
6 changes to academic facilities just in some kind of  
7 ill-advised attempt to get more money somehow out of  
8 the Division? No. And as to North Little Rock  
9 itself, you only need look to what's in front of you  
10 and what it has done in its part of this Master Plan  
11 and Partnership Program. Okay? If you will look at  
12 Exhibit Two (2), you will see that Meadow Park and  
13 Boone Park, two elementary schools that are going to  
14 be closed as part of the Master Plan and the  
15 Partnership submission, have low FCI's, before 65.  
16 And the District is going to close those schools and  
17 they're counted in the suitability analysis against  
18 the District, just as Pike View is doing. But  
19 they're going ahead and biting the bullet and doing  
20 that because they feel from an efficiency standpoint  
21 it's the right thing to do. If they were attempting  
22 to game the system, would they take the hit on two  
23 low FCI schools? Is this a district that's out to  
24 game the system and somehow glean more money from the  
25 Division and the State that it's entitled to?

1           Absolutely not. You need to realize that what's  
2           happening with Pike View is a consequence of this  
3           entire district-wide plan. The consequence is that  
4           it becomes a nonacademic facility which should not be  
5           counted. It's not some type of devious way to try  
6           and game the system to get more money.

7                        Again, you need to realize that the  
8           reconfiguration of Pike View to a pre-K is occurring  
9           on the District's dime, if you will. There's no  
10          state money involved and the cost of the  
11          reconfiguration, as I understand it and the plan  
12          indicates, is about \$4 million. What about the FCI  
13          issue as an alternative point? And here we also have  
14          a fundamental disagreement with the Division. What  
15          happens -- and the points that are important for you  
16          to realize is when that facility, according to the  
17          Division's own rules, gets above .65 then the  
18          District is placed -- the District has options. As  
19          4.03 clearly indicates, one of those options, the one  
20          chosen here, is replacement. That is exactly what  
21          has happened here. Again, there is no requirement in  
22          the rules that replacement must take place at the  
23          same campus. What has happened here is the Pike View  
24          space was replaced by the expansions and the new  
25          construction at Lakewood and Crestwood. FCI,

1           contrary to what the Division says, is very relevant  
2           here. If it wasn't -- if you'll look at Exhibit Two  
3           (2) -- why is it part of their suitability analysis?  
4           Why do you have the FCI's listed? Why do you have a  
5           column that indicates, "Is replacement or demolition  
6           justified?" If that was irrelevant, that wouldn't be  
7           here. One final thing on that note as to emphasis on  
8           the final grade reconfiguration, if you'll also look  
9           at that document you'll notice that the Ridge Road  
10          school is included in the suitability analysis and  
11          counted as excess -- as suitable space held against  
12          the District in the funding calculations. You'll  
13          also notice that the current use of Ridge Road middle  
14          -- of Ridge Road school is a middle school. Its  
15          final grade configuration will be an elementary  
16          school, which is how the Division chose to view it  
17          and utilize it.

18                 Finally, prudent resourceful use of funds --  
19                 again, realize this is part of a whole district-wide  
20                 program whose intent is to try and take care of all  
21                 of its -- or as many of its facilities issues at once  
22                 as it possibly could. And it's my understanding this  
23                 is something that the Division has encouraged this  
24                 district to do for quite sometime. As you may  
25                 recall, the District's voters passed a millage last

1 year in support of this plan in its entirety, one of  
2 the largest millage increases in the state, for the  
3 purpose of getting all of its students into better,  
4 higher quality academic facilities and especially  
5 sold on the premise that the elementary school  
6 students of the District would be in new or renovated  
7 higher quality facilities than they're in now. This  
8 is a prudent and resourceful use of Division and  
9 local funds, both now and going forward. What the  
10 burden was here on the District was to show with an  
11 FCI of .65 not that the Division -- not that the  
12 District could have or should have continued use of  
13 the space as the Division would argue, but that it  
14 had the option to do something else -- and it did.  
15 As fully indicated under the rules, it replaced the  
16 space. It reconfigured for a purpose -- not to game  
17 the system, but to improve educational opportunities  
18 for children. And I can see -- I'm sorry, Mr. Chair,  
19 on the time. Thank you very much. And I will return  
20 again for closing.

21 CHAIRMAN HAMMOND: Thank you. Do we have a case  
22 from the Division?

23 DR. STEIN: Thank you. I would mention, I  
24 guess, that the Division worked with the District  
25 there numerous times as far as the meetings. They

1 have presented the overall plan -- we liked that --  
2 and the overall process of setting the goals there  
3 was good. So we have partnered with them really as  
4 far as this plan. As mentioned, we haven't viewed  
5 this project as in some way gaming the system; we  
6 never said that, never mentioned that. What I would  
7 say though is we did have several meetings with them.  
8 You know, some of those meetings were prior to the  
9 submission and during those meetings we laid out the  
10 overall plan of all schools. And so we looked at the  
11 process we would use as far as seeing all those  
12 projects. During those meetings we have uniformly  
13 always said the space here, that if you would move  
14 this space -- now you're actually using it as a K-5  
15 school and use that as the pre-K space, then you  
16 wouldn't lose the space there as far as the analysis.  
17 They actually passed out Exhibit Two (2) that  
18 provides really the overall summary there of the  
19 process that we used as far as looking at these  
20 projects. They plan on tearing down a number of  
21 schools there to provide new schools, so the process  
22 was -- we said, "Okay, the new schools, you've used  
23 up so much new space." And so then we examined the  
24 existing schools they have as far as their use of  
25 still being suitable as far as providing the kids

1 space. Mr. Walter mentioned as far as Exhibit Two  
2 (2), the FCI's, part of the process was the  
3 inspection of the schools that they had planned on  
4 tearing down. So we examined those schools and  
5 verified the condition there because those were re-  
6 examined with the school district and the FCI was  
7 more than 65. We agreed on those as far as being  
8 demo'd. Those less than 65 we said, "No, we're not  
9 agreeing." So, as Mr. Walter noticed, then they were  
10 penalized there as far as those spaces. Those  
11 spaces, the FCI was pertinent to see if we believed  
12 those spaces were still usable. If you will look at  
13 Partnership Program rules though 4.03, they reference  
14 the FCI value being pertinent as far as the Pike View  
15 school. If you read 4.03, in line 3, that part of  
16 the rule is the part about demo. Now I know it just  
17 says replacement/renovation but on down 4.03 says if  
18 somebody is tearing down a building, well, then you  
19 examine the building there, the FCI, and you see if  
20 it is prudent to apply 4.03 to Pike View school.  
21 Where there's no demo, the plan is not again  
22 relevant. Now I know on the slides and the  
23 statements they say the FCI they're relevant using  
24 this section of the rule pertaining to demo, but it's  
25 really not.

1           The other part of the case where the school  
2           district, they may reconfigure schools and they may  
3           use them for any use that they want, and certainly  
4           that is true. But commonsense would tell you if  
5           somebody says, "The schools we have -- we have three  
6           schools now, we have one K-6 school and a middle  
7           school and a high school now," the example now is not  
8           exactly the same. But if somebody says, "We believe  
9           we actually need a new school," you know, in those  
10          examples -- so, "We will reconfigure the existing  
11          three schools we have, those schools, and make all  
12          those schools pre-K; so, therefore, based on the  
13          rules you may not assess the space" -- now that  
14          example is one, of course, no one would do. But the  
15          point is though of saying you don't count pre-K  
16          spaces though as far as this program. That portion  
17          there means that the pre-K spaces may not receive  
18          money and not that of somebody renaming the  
19          school and those spaces were not actually penalized,  
20          then they are right. But the process and the rules  
21          we used as far as reviewing the overall suitability  
22          need was Section 3.32.2. We use that part of the  
23          rule to assess the spaces there in the District that  
24          they have available as far as providing those spaces  
25          as far as the K-5 students. The Pike View school has

1 space available as far as the k-5 and for pre-K the  
2 space is still available. So we did actually  
3 consider that space there and we used that. And so  
4 we said there were zero kids there, so they have --  
5 it's their school building with zero kids there, so  
6 they have -- the amount of space there is space they  
7 actually may use.

8 What I would mention is this is not actually  
9 unique as far as this project. We had one more  
10 project at this same cycle where somebody was doing  
11 the same process and they renamed an existing space  
12 they had. They said the space now was pre-K, the  
13 same way -- we're using the exact same process there  
14 again, penalizing them as far as the space since the  
15 space there is usable space. In that same way during  
16 the previous, you know, cycle somebody else did this  
17 and so they were penalized there too. So the process  
18 we use we believe was very consistent as far as the  
19 rules and also used the precedent there we have done  
20 previously.

21 CHAIRMAN HAMMOND: Thank you, Dr. Stein. Do we  
22 have any more from the Division before we go to  
23 closing statements?

24 MS. FRENO: No, sir.

25 CHAIRMAN HAMMOND: Do we have a closing

1 statement from the District?

2 MR. WALTER: Yes, Mr. Chair. Thank you. At the  
3 outset let me thank the board members for your  
4 patience and time and diligence here today in  
5 listening to everything we've had to present before  
6 you. The District greatly appreciates it. I'd like  
7 to clear up just a couple of points that were made by  
8 the Division before I move on to closing arguments,  
9 if I may. I won't attempt to speak for either Mr.  
10 Kirspel, who was the superintendent at the time, or  
11 Ms. Cashaw. They're obviously both here and  
12 available to be heard from the Board, if they wish.  
13 But when the District received the Division's  
14 response in this case, mentioning that October 2011  
15 meeting at which it supposedly told the District that  
16 Pike View wasn't going to be counted, I did get with  
17 former superintendent, and at-the-time Superintendent  
18 Kirspel and Mr. Cashaw and my understanding was they  
19 had no recollection that that meeting occurred and  
20 that that was -- that information was told to the  
21 District.

22 MS. FRENO: Mr. Chair, I'm sorry. I just don't  
23 procedurally know how to deal with this at this  
24 point. We have evidence that would substantiate that  
25 that meeting was held. There was drawings on the

1 board; there was a picture taken with a cell phone;  
2 it still includes the date. And if this is going to  
3 become an issue, you know, before Mr. Walter makes  
4 his closing statement I just wanted to bring up that  
5 we do have this evidence and perhaps we should put  
6 that on very quickly so that he doesn't make his  
7 closing statement and then not have any opportunity  
8 to rebut it.

9 CHAIRMAN HAMMOND: Well, you can address that in  
10 the closing statement also. There may be some  
11 questions in the questions phase about that.

12 MS. FRENO: Thank you.

13 MR. WALTER: The second thing I wanted to  
14 address as well is when Dr. Stein just talked about  
15 the second part of rule -- about rule 4.03 and that  
16 it only applied to demolition, he was referring I  
17 believe to what I call the first part or first half  
18 of that rule -- okay? -- which starts out saying,  
19 "Except for districts that have an FCI of above .65."  
20 What the District has presented to you and as relied  
21 upon today in his presentation to you is the second  
22 part of 4.03 which specifically addresses those  
23 districts that have facilities above .65, which is  
24 the case with Pike View. So there is not a  
25 requirement of demolition in that section of 4.03, so

1 I wanted to make that clear. I also want to  
2 reiterate the point I just made a few minutes ago  
3 about Ridge Road, about that being shown in its final  
4 grade configuration for suitability purposes. The  
5 Division acted inconsistently in this manner when it  
6 would include another campus in its final grade  
7 configuration but would not show -- utilize the same  
8 analysis for Pike View.

9 One other thing I wanted to mention too as far  
10 as what was said before is -- and I think that Dr.  
11 Thurman from Cabot brought this up as well -- the  
12 Division pointed out the amount of money that the  
13 District has already received under the Partnership  
14 Program. And on behalf of the District we would  
15 publicly acknowledge and thank the Division for that,  
16 but I would hope that's not going to be a determining  
17 factor in your decision here today as to how much or  
18 how little money has already been received.

19 As to the October 2011 meeting, as Ms. Freno is  
20 going to present some information -- that's fine --  
21 at the end of the day any prior conversations or any  
22 statements that may have been held between the  
23 Division and the District are really irrelevant  
24 because it was the Division's decision that is the  
25 final action and that's what the District is

1 appealing here today. The only thing in the end  
2 that's important is whether the Division's decision  
3 was supported by the rules and substantial evidence;  
4 it was not. Please reconsider the way we presented  
5 the rules to you, how they all work together.  
6 Regardless of what the Division has done or not done  
7 in the past, regardless of how it may have handled a  
8 similar project this cycle, the rules work clearly  
9 the way they show that we've indicated that the work.  
10 And for them not to utilize them in that way is proof  
11 that we have sustained our burden to show that either  
12 the Division acted outside the substantial evidence  
13 before making its decision and/or that it acted  
14 outside their vested authority. With that having  
15 been said, again, I appreciate your patience and  
16 diligence today and we respectfully urge this board  
17 to overturn the Division's decision as to Pike View's  
18 suitability and grant the Division -- the District's  
19 appeal. Thank you very much.

20 CHAIRMAN HAMMOND: Thank you. Closing statement  
21 from the District -- the Division? Sorry.

22 MS. FRENO: Yes. Mr. Chair, I agree that it's  
23 not a point that this case is going to turn upon,  
24 whether or not this meeting occurred. So I'd just  
25 like to very quickly ask Dr. Stein, and just so that

1 we don't prolong this hearing --

2 REDIRECT EXAMINATION OF DR. STEIN

3 BY MS. FRENO:

4 Q Dr. Stein, was there a meeting held with the North Little  
5 Rock School District in October 2011?

6 A Yes, ma'am.

7 Q Do you have any documentation of that?

8 A Yes, ma'am.

9 Q Who from the North Little Rock School District attended?

10 A Fred Cashaw and Brad Kiehl.

11 Q Okay. And one of your employees, Mr. Murray --

12 A Murray Britton.

13 Q -- Murray Britton, who's here in this room today -- right?

14 A Yes.

15 Q He took a picture of the board showing all the  
16 calculations and everything that you told them how the space  
17 would be considered?

18 A Yes, that's right.

19 MS. FRENO: And certainly if you would like to  
20 see the documentation, or the District, we would be  
21 happy to present that.

22 And the issue isn't whether the school  
23 district's master -- that their plan was a good one,  
24 whether it was a prudent one. It's whether the  
25 Division properly under the law and under the rules

1 considered the use of that space, this space being  
2 used as a k-5 in the North Little Rock School  
3 District, whether the Division properly considered  
4 that in the suitability analysis when considering the  
5 new elementary schools. Yes, definitely, they can --  
6 the school district has the absolute right to  
7 reconfigure. That's the school district's decision.  
8 But if they reconfigure in such a way that takes an  
9 available space, an available space that's eligible  
10 for Partnership funding, they remove it from that  
11 eligibility by re-designating it by putting in a k-12  
12 -- or by putting in the pre-K students. And that's  
13 not having the -- not being eligible for funding  
14 anymore. That still doesn't mean that that space is  
15 not available to the District to be used for that  
16 purpose and shouldn't be counted in the suitability  
17 analysis, that being used as a k-5.

18 In their appeal the school district noted that  
19 the Division acted outside of its legal authority in  
20 including that space and including the Pike View  
21 space in the suitability analysis. And they have not  
22 met that burden because the Division did in fact act  
23 in accordance with the law and the rules in including  
24 that space. Thank you. And if there are any  
25 questions for Dr. Stein, he'll be more than happy to

1 answer them -- or me.

2 CHAIRMAN HAMMOND: Thank you.

3 MS. FRENO: Thank you.

4 CHAIRMAN HAMMOND: Does the Board have any  
5 questions?

6 MR. PARDEW: I guess I would like to ask on this  
7 FCI, I notice that it needed to be above 65 to even  
8 be considered. Is that one of the precursors to  
9 consideration, demolition?

10 DR. STEIN: We actually used that, I guess, as  
11 the standard. We actually see if the numbers there.  
12 Because you will notice, I guess, on the list, the  
13 Exhibit Two (2) list we said yes on some demo's and  
14 less (unintelligible). So again that is the rough  
15 tool, I guess, and a guide.

16 MR. PARDEW: Well, I guess seeing that they are  
17 is that -- was that at the discretion or was that in  
18 discussions with the North Little Rock School  
19 District as to the anticipated -- we're really going  
20 to have to know whether or not you're going to be  
21 able to demolish these facilities to make the overall  
22 plan work. Correct?

23 DR. STEIN: Yes, sir. That's right. So the  
24 process there was we partnered there as far as -- and  
25 so we looked at all those and looked at all of the

1 systems there; we looked at the roofs, plumbing, and  
2 so-on. So we looked at all those buildings, we  
3 looked at all the systems, and then we settled on the  
4 systems we believed needed replacing and so then we  
5 looked at the numbers. The reason some of those  
6 buildings we agreed is not -- to replace some of  
7 those buildings was there -- was some where they had  
8 spent millions of dollars during the past several  
9 years there as far as new systems, new roofs and all  
10 that. So that was why some of those were turned  
11 down. Most of those we agreed though and we agreed  
12 they needed tearing down.

13 MR. PARDEW: Well, my point being there  
14 obviously is a communication dialogue in meetings to  
15 develop this plan prior to it being submitted?

16 DR. STEIN: Yes, sir.

17 MR. PARDEW: And, I mean, y'all obviously  
18 considered we can do the demolition. Where does this  
19 get off-track then if there is dialogue? And I  
20 understand there were meetings as to why this plan  
21 that they submitted -- I mean, is there something  
22 different from this submission than what was  
23 approved?

24 DR. STEIN: I can't address why they moved ahead  
25 and used the plan there as far as Pike View school

1           once we explained we'd penalize them as far as this  
2           space. Like I mentioned, they still had a number of  
3           months there still as far as doing the submission.  
4           And so the opportunity was there to do another plan,  
5           you know, so I don't --

6           MR. PARDEW: That's all. Thank you.

7           MR. GIBSON: Again, the cost for this project --  
8           and I believe I wrote it down -- is it \$4 million?

9           DR. STEIN: Sir?

10          MR. GIBSON: The cost for this project, \$4  
11          million? I'm writing in the margins here. I think I  
12          --

13          DR. STEIN: As far as the space, now looking at  
14          that as far as penalizing them as far as this space,  
15          it's about \$6.7 million, the overall space, and the  
16          State portion there of \$2.9 million.

17          CHAIRMAN HAMMOND: Any further questions from  
18          the Board? Hearing none, do I have a motion?

19          MR. LASITER: Mr. Chair, just before you proceed  
20          -- we'll have to address this with regard to Genoa  
21          Central later, but whatever your motion is -- I  
22          should've mentioned this to you earlier because there  
23          are four here -- you have to have three to pass it.  
24          So whether it's to reject or accept or do anything  
25          else you have to have -- you need three of you to

1 agree on any motion. So I'll just mention that  
2 before you make your motion.

3 CHAIRMAN HAMMOND: Thank you for the  
4 clarification.

5 MR. BEENE: I move that we uphold the Division's  
6 decision and deny the appeal.

7 CHAIRMAN HAMMOND: We have a motion to accept  
8 the Division's decision. Do we have a second?

9 MR. PARDEW: I'll second.

10 CHAIRMAN HAMMOND: We have a second. Do we have  
11 any discussion? Hearing none, all in favor say aye.

12 (UNANIMOUS CHORUS OF AYES)

13 CHAIRMAN HAMMOND: All opposed? The motion  
14 carries. The decision of the Division is accepted.  
15 I want to thank everybody for coming.

16 MR. WALTER: Thank you, Members of the Board.

17 CHAIRMAN HAMMOND: If we may, we'd like to take  
18 a short 10-minute break and reconvene at 10:00.

19 (BREAK: 9:50-10:03 A.M.)

20 FORREST CITY SCHOOL DISTRICT

21 CHAIRMAN HAMMOND: Okay. Mr. Lasiter?

22 MR. LASITER: Thank you, sir. The next item on  
23 the agenda is an appeal by the Forrest City School  
24 District. So if the Board is ready we'll turn it  
25 over to representatives of the Forrest City School