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Maryland State Board of Education  
c/o Jackie C. La Fiandra, Assistant Attorney General  
Office of the Attorney General, Maryland State Department of Education  
200 St. Paul Place, 19th Floor  
Baltimore, Maryland 21202

Re: Concerned Citizens (Appellants) v  
Prince George's County Board of Education  
(Respondents)

Dear Ms. LaFiandra:

Appellants request that Respondents' Motion to Dismiss, or in the Alternative, Motion for Summary Affirmance be denied for the following:

**STATE BOARD OF EDUCATION HAS JURISDICTION UNDER TITLE 13A.01.05.05 STANDARD OF REVIEW.**

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**TITLE 13A.01.05.05**, which authority is vested in Education Article §§2-205, 4-205, 6-202, and 23-406 of State law, is clear in setting the conditions under which the State Board has jurisdiction in substituting its judgment over a local Board:

*13A.01.05.05A: General 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.*

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

*13A.01.05.05C: A decision may be illegal if it is one or more of the following (1) unconstitutional; (2) Exceeds the statutory authority or jurisdiction of the local board; (3) Misconstrues the law; (4) Results from an unlawful procedure; (5) Is an abuse of discretionary powers; or (6) Is affected by an any other error of law*

**RESPONDENTS' DECISION WAS ARBITRARY AND UNREASONABLE.**

An arbitrary action can be defined as one that is subjective, uninformed and illogical. While comments of the local Board support this Item was added to the Consent Agenda within the timeframe required by Board policies, the Board Action Summary and December 2, 2013 letter were not made available to local Board members until the night of the meeting. The discussion between the school Administration and local Board members demonstrates both were uninformed and ill-informed of the content and intent of §4-115 of the Education Act and the local Board's role as outlined under §4-115 of the Education Act in declaring property as

surplus. Thus the local Board's decision to move forward with this action was illogical being they had no quantitative or supporting data to clearly determine if other than reopening the school that other educational options exist for using the building nor did anyone that participated in the discussion that evening possessed an accurate understanding of the law.

The local Board's decision to move forward fully aware they did not possess this understanding were arbitrary and unreasonable because they are contrary to sound board policy as demonstrated in the Board of Education Handbook (Exhibit 1) and Board Policy 0108 – Code of Conduct, paragraphs 8, 9 and 10 (Exhibit 2). A summary of the discussion between the local board members and the Administration is outlined below. Additionally, Exhibit 6 of Respondents' response further evidences the decision was arbitrary being that three board members questioned absent a full presentation or analyses; how could they determine if the recommendation before them represented the best option for the school system.

1. **Board member Edward Burroughs** - Mr. Burroughs asked the Administration to "walk him through the process of the evolution of this item on the agenda prior to today. What was the process your administration followed to get us here today." "This is the first time that we're seeing this," Burroughs said, referring to the Dec. 2 county letter about the building that was sent to Maxwell. "I have no problem with this being a training facility for MGM, but I represent this community, and I think we should have some regard for the people there."<sup>1</sup> Mr. Burroughs emphasized the importance of the board being notified in advance of such request in the future and even asked the item be moved to a First Reader to give the public an opportunity to participate in the process. In his final comments Mr. Burroughs stated "*I wanted the administration to take the time to review all the proposals*" referring the proposals he had received from community groups and a private school. Additionally, Mr. Burroughs had mentioned that the previous administration was moving in the direction to entering into a lease with the school organization that had given commitments to the school district whereby our student could benefit. Thus a reasoning mind could not have reasonably reached the conclusion that the local Board would chose training adults to work at a casino over improving the services offered to children in primary and secondary schools.
2. **Board member Dr. Beverly Anderson** – gave no sound policy or reasoning to move forward with this decision other than she was "excited" this building could possibly be used for training adults, who may not even represent graduates of PGCPS being trained for employment. Dr. Anderson stated she thought about how the building could be used, but it is illogical to believe that she could consider other options with only being given one options with no supporting information other than a request from the local county government.
3. **Board member Verjeana Jacobs** - Ms. Jacobs, an attorney, found the Administration's interpretation of the §4-115 was "*an interesting analysis especially considering whether private schools or not I think I heard what Mr. Burroughs said is that we did not hear what the analysis was in terms of ultimately making the decision that we had no educational purpose for it.*"
4. **Board member Carolyn Boston** – Ms. Boston asked a basic question – what would the cost be to renovate the building? Ms. Monica Goldson replied "I definitely do not have an exact amount, but it would definitely be in the millions". It's illogical to

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<sup>1</sup> Washington Post, January 24, 2014

expect Ms. Boston to value the use of the property by MGM with potential education needs without quantitative data make a sound decision.

5. **Board member Peggy Higgins** - “In this process *Board Action is required* so for this to come in as a Consent Agenda Item certainly says consent agenda there are no discussions so for me personally of having to add questions instead of it being a discussion item... She further states, *I look on it and I see we are giving a surplus building to the casinos. I don’t know what we are getting in return for that. I think our students have tremendous needs as identified in the budget so to turn a school over and I hear there are also community needs that could be addressed so if this is the best plan I think it would be better for us to talk together and have the full information as supposed to putting it on consent agenda item and then board members having to pull it off and raise issues and it sounds like there’s dissention when there is a lack of ability to come together...* Last, she stated, *I have a problem without any kind of understanding as to what MGN casino will be providing the school system back for the use of that property and I have not heard that anything about that...* Even in reading the Board Action Summary, Ms. Higgins demonstrated she did not fully understand the action being taken as it was her assumption property was being given directly to a casino. This further supports that the local Board members were uninformed to proceed. Ms. Higgins’ questions demonstrated she was concerned with making a decision that was more aligned to the goals of the school system in educating currently enrolled students over training adults to work in a casino that may not represent former students or citizens of Prince George’s County.
6. **Board member Segun Eubanks** – asked questions in an attempt to understand §4-115 of the Education Act. This further demonstrates that prior to the board meeting even the local Board Chair possessed no knowledge of the law and failed to understand the local Board was required to first obtain approval from the State Superintendent.
7. **Board member Curtis Valentine** states that his comments come from the prospective of the board member that lives closest to the building. His comments are therefore subjective and contrary to sound board policy which commits to the public that the actions of the school board are guided policies that ensure decisions of the local Board reflect what is best for children and the school system. Mr. Valentine also asked the question, “what would you do with the building.” As stated by board members Burroughs and Jacobs, the local Board had no analyses used to ultimately determine the property could no longer be used for educational purposes. Seeing Mr. Valentine’s passion to make good use of the building suggests it would be unreasonable to believe Mr. Valentine would have supported the transfer of the property for a casino to use to train adults knowing there were other options that would have allowed the system to keep the property and use it for educational purposes that benefit currently enrolled students. Thus also making his decision arbitrary based on the definitions stated in Title 13A.01.05.05B.

**RESPONDENTS’ DECISION WAS ILLEGAL BECAUSE IT EXCEEDED THE STATUTORY AUTHORITY OR JURISDICTION OF THE LOCAL BOARD, MISCONSTRUED THE LAW AND RESULTED FROM UNLAWFUL PROCEDURES.**

Appellants have met the burden of proof that the Respondents’ decision was illegal because it exceeded the statutory authority or jurisdiction of the local Board; it misconstrues the law and

which resulted in the local Board following an unlawful procedure. The noted violations support Appellants' position that we have met the burden of proof by a preponderance of the evidence.

***Alleged Violation 1: §4-115 Education Article: Except as provided in this paragraph, if, with the approval of the State Superintendent, a county board finds that any land, school site, or building no longer is needed for school purposes, it shall be transferred by the county board to the county commissioners or county council and may be used, sold, leased, or otherwise disposed of, except by gift, by the county commissioners or county council.***

1. The Board Action Summary states: **An Outline of the Chief Executive Officer's Recommendation to the Board of Education**, therefore demonstrating the local administration undertook this action in violation of §4-115 of the Education Article, which makes no provision for this action to be carried out by the local superintendent or Chief Executive Officer of schools.
2. Mr. George Margolies incorrectly interpreted the law by stating the local Board has the option of rejecting or accepting the CEO's recommendation under §4-115 of the Education Act to declare a property as surplus. There is no such language under this section of the law that gives authority to a CEO or local Superintendent of Schools to determine that local school property is surplus at the administrative level with local board approval. The State Superintendent approves the local school board's recommendation ***"if, with the approval of the State Superintendent."*** Thus the local Board's vote to approve the transfer of Thomas Addison exceeded their statutory authority or jurisdiction since they moved forward without the approval of the State Superintendent.
3. Ms. Goldson response of "correct," when asked by local Board member Jacobs if the decision to declare the property surplus was done at the administrative level is further confirmation that the Administration's action misconstrued the law and therefore resulted in the local Board following an unlawful procedure in voting to declare the property as surplus. Even Ms. Goldson's responses to clear and specific questions from Board members demonstrated she was uninformed, ill-informed, unprepared. She had no notes or written information during the discussion, and therefore could not provide quantitative data that the local Board members could use to reach a reasonable conclusion on whether the property had any use for educational purposes now or on the future.
4. Dr. Maxwell incorrectly interpreted the law in stating ***"the law says if the county has a need for the building and we don't we convey it back to the county - that's our role and responsibility."*** §4-115 clearly identifies the local Board and State Superintendent as the parties involved when transferring property to a local government. It also clearly states the local Board action for final approval must include the approval of the State Superintendent. Therefore, Dr. Maxwell is the third individual of his administration to confirm the Administration misconstrued the law; resulting in the local Board to act unlawfully in the transfer of Thomas Addison.
5. Dr. Maxwell asserts ***"we got a request in December from the county"*** referring to the December 2, 2013 letter from the local government requesting Thomas Addison to be declared surplus. Again, §4-115 makes no provisions for an exception to allow a request to the local superintendent from the local government to supersede the role and process to be followed by the local Board and State Superintendent. This initial

initial action put in motion the actions resulting in the Administration and local school board to follow an unlawful procedure.

***Alleged Violation 2: Md. EDUCATION Code Ann. § 4-204 (b) General duties. -- As the executive officer of the county board, the county superintendent shall see that the following are carried out: (1) The laws relating to the schools; (2) The applicable enacted and published bylaws of the State Board; (3) The policies of the State Board; (4) The rules and regulations of the county board; and (5) The policies of the county board.***

1. As emphasized by Mr. Burroughs during the local Board discussion, Board bylaw 9360 states a consent agenda items must meet a certain criterion. This item as also noted by Ms. Higgins, failed to meet that condition. The placement of the item on the Consent Agenda makes that action illegal as it results from an unlawful procedure. Board Bylaw 9360 Consent Agenda reads:

*In addition to the regular Agenda for a Board meeting, there shall be a Consent Agenda, upon which the Chief Executive Officer may place items which are ministerial and administrative in nature, or which have previously been presented to the Board for review and discussion at a prior Board meeting and require Board action, pursuant to law.*

2. The local school board's decision to move forward with an action during this meeting was in violation of Board Bylaw 9360 that addresses First Readers, Second Reader, Emergencies.

*Decisions of the Board of Education will follow the First Reader and Second Reader process unless adopted by a two-thirds (2/3) vote as an Emergency, in which event the matter does not require a Second Reader. If an item is on the Meeting Agenda as an Emergency, adoption of the Agenda by at least a two-thirds (2/3) vote of the Board is sufficient to treat the matter as an Emergency. If an item is not listed on the Meeting Agenda as an Emergency, the Board may, by at least a two-thirds (2/3) vote, decide to treat the item as an Emergency.*

*An item appearing on the published Agenda for the first time constitutes a First Reader for public notice of intended action.*

Respondents mention dates of public meetings in 2008 and 2009 where information regarding Thomas Addison was provided in relations to the Capital Improvement Program. Mr. Burroughs, District 8 board member, provided evidence of local community and private school interest in the building subsequent to these public notices. While private schools may not have priority to use the building under state law, Mr. Burroughs had indicated the private school offered services that would be beneficial to Prince George's County students and thus demonstrated the building could be used for educational purposes. Appellants assert that had the full presentation to include all options been provided to the local Board that a reasoning mind could not have reasonably reached the conclusion of the local Board to choose remanding the school back the county for the use of training adults to work at a casino over entering into an agreement with a local community group or private school with the commitment of receiving services that would improve the services provided to the students currently enrolled in the Prince George's County school system.

3. Board Bylaw 9360 states that an item can be removed from the Consent Agenda and discussed separately; however, that items remains as part of the Consent Agenda. Thus the vote to pass the item requires an affirmative vote of all board members

present to pass. There was one abstention and therefore the motion failed. Therefore the local Board's action to present this item to the public as a final decision of the board is illegal as the results from an unlawful procedure. Board Bylaw 9360 Consent Agenda states the following:

*Prior to the adoption of the Consent Agenda, any item on the Consent Agenda may be automatically removed from the Consent Agenda by a Board Member for discussion. Any item pulled from the Consent Agenda shall be placed on the Non-Consent Agenda and discussed and voted upon separately. All items that remain on the Consent Agenda shall be voted on as a group and shall require an affirmative vote of the entire Board present at the meeting to approve Consent Agenda items.*

Appellants further assert Dunloy Townhome Condominium, Inc., et al. v Baltimore County Board of Education, (MSBE Opinion No. 12-58) supports Appellants claim that the Respondents decision should be remanded back to the local Board to all for sufficient public participation because the decision of the local Board was arbitrary, unreasonable and illegal.

### **APPELLANTS HAVE A STANDING TO PURSUE THIS APPEAL.**

Appellants' appeal arises from actions that were undertaken by the Chief Executive Officer for Prince George's County Schools and his administration due to their misunderstanding and misinterpretation of the Annotated Code of Maryland, Education Article §4-115(c)(1)(i), which ultimately led the local Board to following an unlawful procedures in declaring property owned by our local school system as surplus and transferred to the local county government.

Board Policy 0107A, paragraphs 1 and 2 set the precedence for Appellants' interest and rights to file this appeal:

#### *BASIC COMMITMENTS*

##### *Ethics Regulations*

##### *A. Statement of Purpose*

- 1. The Board of Education of Prince George's County, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.*
- 2. It is evident that this confidence and trust is eroded when the conduct of public business is subject to improper influence and even the appearance of improper influence. a misinterpretation of state law by the which led to the local board following under illegal procedures by the local school board in a public meeting.*

Student enrollment for full-time primary and secondary schools has declined in Prince George's County. One reason for the decline is families leaving the county due to the quality of the schools. Therefore, the impact and interest of the Appellants who support the school system as taxpayers, parents, grandparents and businesses in evident in budget shortfalls, higher property taxes and other areas of the economy connected to our school system. Ensuring the local Board's action promotes the public's trust in our local school system and not erode it by acting illegally even if the illegal actions are a result of being uninformed or ill-informed of governing state laws and local Board policies is the responsibility of every citizen and the focus of our state government and ensuring that all business of the public is transacted in the public, allows for

participation by the public and is done in accordance with state and local laws, policies and procedures.

### **CONCLUSION**

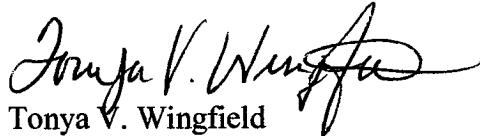
The Appellants believe we have proven by a preponderance of the evidence that the local Board decision on January 23, 2014 to declare Thomas Addison Elementary School surplus was arbitrary, unreasonable and illegal and therefore gives the State Board to reverse the local Board's decision.

Additionally, Appellants would like to note for the record that we believe a conflict of interest exists in the Respondents retaining the Thatcher Law Firm, LLC as their counsel in responding to this appeal. The local Board Chair is seen in the video asking "Abbey" for guidance during the board meeting. Being that Ms. Hairston was counsel to the board that evening, we believe it makes her party to the appeal as a Respondent. Further being that the Appellants' grounds for the appeal are based on the local Board and school administration acting arbitrary, unreasonable and illegal due to their misunderstanding and misinterpretation of state laws and board procedures and policies. To affirm that the Respondents' did such could create a liability for the Thatcher Law Firm, LLC as they are the legal counsel to the local Board. Thus it is the position of the Appellants that Ms. Hairston should have recused herself from this process to avoid the appearance that the Response could be perceived as being subjective and biased.

As such, Appellants request the following relief:

1. The Respondents' March 31, 2014 Response be declared invalid citing the conflict of interest and declare that the Respondents have failed to respond under the regulations governing appeals to the State Board.
2. The Decision to declare Thomas Addison as surplus and the transferred to the local county government be vacated and remanded to the local school board for further consideration of the merits and for effective involvement of the local communities and approval from the State Superintendent.

Sincerely,



Tonya V. Wingfield  
Executive Director  
12138 Central Avenue, #234  
Mitchellville, MD 20721  
240-755-2107

April 15, 2014



## **RESOLUTION ADOPTING HANDBOOK**

**WHEREAS**, a clear understanding of the roles, responsibilities and duties of the Board of Education is critical to a well functioning school system; and

**WHEREAS**, each Board Member is responsible for understanding and properly executing the duties of the office consistent with the Board's Mission and Core Beliefs; and

**WHEREAS**, an informed and well functioning Board is essential to effective school district governance, consistency, continuous student achievement, and closing the achievement gap; and

**WHEREAS**, the Board is accountable to the public, must operate in a transparent manner and must hold itself accountable; and

**WHEREAS**, an effective Board requires a common and well understood framework for operations; now therefore be it

**RESOLVED**, that the Board of Education approves the attached *Handbook for the Board of Education of Prince George's County*; and be it

**FURTHER RESOLVED**, that Board staff is directed to post online and publish the Handbook in a convenient format to be made readily available, as soon as feasible, to Board Members, PGCPs staff, Board candidates, and the community-at-large; and be it


**FINALLY RESOLVED**, that staff for the Board will, in a timely manner, update provisions of the Handbook as appropriate and publish such updates on the Board's website at [www.PGCPS.org](http://www.PGCPS.org).



Board of Education Handbook

**Exhibit 1**






In addition to the Board's Code of Ethics and related policies, which govern actions of its Members, school officials, and employees, the Board has also adopted the following Code of Ethics, as recommended by the National School Boards Association:

"As a member of my local Board of Education I will strive to improve public education and, to that end, I will—

- Attend all regularly scheduled Board meetings insofar as possible and become informed concerning the issues to be considered at those meetings;
- Recognize that I should endeavor to make policy decisions only after full discussion at publicly held Board meetings;
- Render all decisions based on the available facts and my independent judgment, and refuse to surrender that judgment to individuals or special interest groups;
- Encourage the free expression of opinion by all Board Members, and seek systematic communications between the Board and students, staff, and all elements of the community;
- Work with other Board Members to establish effective Board policies and to delegate authority for the administration of the schools to the Superintendent of Schools;
- Communicate to other Board Members and the Superintendent of Schools expressions of public reaction to Board policies and school programs;
- Inform myself about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by my state, national school boards associations, and local Board sanctioned activities;
- Support the employment of those persons best qualified to serve as school staff, and insist on a regular and impartial evaluation of all staff;
- Avoid being placed in a position of conflict of interest, and refrain from using my Board position for personal or partisan gain;



Board of Education Handbook<sup>9</sup>

**Exhibit 1**



- Safeguard and be held accountable for all school system issued equipment, complying with the proper use of such equipment as required by all school system personnel pursuant to board policies and administrative procedures;
- Take no action using my position as a Board Member to circumvent established policies and procedures for securing the use of school system resources or facilities for my own, or for another individual or groups benefit;
- Take no private action that will compromise the Board or administration, and respect the confidentiality of information that is privileged under applicable law, and
- Remember always that my first and greatest concern must be the educational welfare of the students attending the public schools; and,
- Be bound by PGCPs policies and procedures.

Board Members adhere to the following principles, which reflect their commitment to work together as a Board in the best interest of the school system:

- Respecting individual differences and opinions and being open-minded
- Being prepared to do the work of the Board
- Supporting decisions of the Board and not working against those decisions
- Reassessing the way the Board does business
- Disagreeing on issues without making it personal
- Keeping confidential issues and executive session items within the confines of the Board
- Being candid in expressing opinions
- Improving communications among all Board Members
- Maintaining professional decorum during Board meetings
- Ensuring all information is shared equitably among Board members.

Members shall maintain the confidentiality appropriate to sensitive issues and information that otherwise may tend to compromise the integrity or legal positions of the Board or the school system, especially those matters discussed in Executive Session.





- c. Review of future Board meetings. The Superintendent of Schools or designee and Board Officers review a calendar of future Board meetings (regular and special), executive sessions, public hearings, and work sessions.
2. After the agenda-setting meeting, copies of materials agreed upon are sent to Board Members and executive staff, and posted to the Board's website via BoardDocs. Board Members are encouraged to share their interest regarding scheduled items and submit questions in advance of staff presentations.
3. Prior to a Board meeting, with as much advance notice as possible, Board Members who need information or desire staff members to be available to answer questions at the table about an issue should alert Board staff to request that the Superintendent of Schools answer those questions and/or provide the information needed.
4. After Board meetings and public hearings, the Board and Superintendent's staff discuss items raised during the Board meeting, assign responsibilities for follow-up items, and review draft agendas and calendars for future Board meetings.

#### **Preparation of Meeting Materials**

Before every business meeting, packets of Board agenda materials are prepared for Board Members and identified staff. Board packet materials are not released to the public until after Board Members have received them. Board meeting packets are normally available online on the Friday prior to regular Board meetings in BoardDocs. Complex items, which require extensive study, should be distributed to Board Members in advance of the regular distribution of Board materials to allow sufficient time for review and Board consideration.



PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS  
Board of Education  
Upper Marlboro, Maryland

0108  
Policy No.

BOARD OF EDUCATION POLICY

BASIC COMMITMENTS

Code of Conduct

The Board of Education desires that a harmonious relationship exist between Board members themselves, and also between Board members and staff members. To this end, the Board has adopted the following Code of Conduct:

Each member of the Board of Education will strive to:

1. Function as a part of a policy-making and control board rather than as part of an administrative board.
2. Work through the properly appointed administrative officers according to the organization of the school system.
3. Recognize that his responsibility is not to run the schools, but to see that they are well run.
4. Familiarize himself or herself in a broad and non-technical manner with the problems of the school system.
5. Refer, as far as possible, all complaints and requests to the appropriate administrative officer.
6. Try to interpret to the staff of the school system the attitudes, wishes, and needs of the people of the County and try to interpret to the people the needs, problems, and accomplishments of the school system.
7. Voice opinions responsibly in Board meetings and vote for what seems best for the children and youth of the school system.
8. Recognize fully that the appropriate administrative officer is responsible for carrying out specific policies in accordance with State laws, bylaws, and local school board policy.
9. Frame policies and plans by giving consideration to recommendations of the Superintendent and reviewing his or her reasons for making the recommendations.

**Exhibit 2**

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10. Require oral and written reports from the staff and administration for the purpose of keeping the Board properly informed on school system matters.
11. Give all school officials authority commensurate with their responsibilities.
12. Maintain harmonious relations with other Board members.
13. Visit schools to gain clearer understandings of school operations without interfering in the day-to-day administration of the school system.
14. Assist in the establishment of criteria to evaluate the efficiency of the administrative officers.
15. Present personal criticisms of school employees only to the appropriate administrative officer.
16. Support school officials in the performance of their duties.
17. Give friendly advice and counsel to the Superintendent.
18. Refuse to use Board membership for political, personal or business advancement.
19. Avoid the formation of cliques to control Board action.
20. Hold confidential information as a trust.

Policy Adopted as 8251  
9/25/75

Policy Amended  
5/16/03

Policy Reviewed: No Revisions Required  
1/14/05

Policy Reviewed – No Revisions Required  
10/26/05

Policy Amended  
4/29/10

Policy Amended and renumbered 0108  
8/25/11

**Exhibit 2**

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