

IN THE MATTER OF  
COMAR 13A.02.01.01 AND  
EDUCATION ARTICLE  
§3-2B-09

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
  
Opinion No. 20-08

OPINION

INTRODUCTION

The Board of Education of Baltimore County (“local board”) has petitioned the State Board to issue a Declaratory Ruling “explaining the true intent and meaning” of COMAR 13A.02.01.01, the regulation addressing the number of votes required by the local board to pass a motion or resolution, and Education Article §3-2B-09, the statute requiring the local board to elect a chair and vice chair each year.

FACTUAL BACKGROUND

The local board consists of a total of 12 members – seven elected, four appointed, and one student member. Educ. Art. §3-2B-01. One of the appointed members of the local board died on October 24, 2019. The Governor has not yet appointed a successor to fill the position. As a result, there are eleven sitting board members and one vacancy on the board. Due to the vacancy, the local board seeks an explanation of COMAR 13A.02.01.01 from the State Board regarding the number of votes that are required to pass a motion or resolution. The board asks whether the number required is a concurrence of a majority of the board members currently serving or a concurrence of a majority of the whole board as constituted by statute. In addition, the local board seeks to ascertain if the chair and vice chair remain in their positions as holdovers until the board is able to garner the necessary votes to elect new officers given that Education Article §3-2B-09 requires the local board to elect a chair and vice chair each year at the board’s first meeting in December.

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06(E).

LEGAL ANALYSIS

*Declaratory Ruling or Advisory Opinion*

We first address the procedural posture of the request before us. The local board seeks a declaratory ruling. The State Board may issue a declaratory ruling “on the interpretation of public school law or regulation of the State Board that is material to an existing case or

controversy.” COMAR 13A.01.05.05(A). As we explained in *In the Matter of Education Article §4-201*, MSBE Op. No. 18-41 (2018), a “case or controversy” exists when at least two parties are in a dispute over a matter. When only one party is before us, there is no “case or controversy” and the State Board cannot exercise jurisdiction within the declaratory ruling context. *Id.* The law directs the State Board, however, “to explain the true intent and meaning” of the education laws and regulations even when no case or controversy exists. *Id.* Because the local board is the only party in this matter, as the State Board has done previously, we will issue an Advisory Opinion that adjudicates nothing but advises on the legal rule on a particular matter. *See Id.*

*True Intent and Meaning of COMAR 13A.02.01.01 and Education Article §3-2B-09*

The State Board adopts the bylaws, rules, and regulations for the administration of the public schools. Education Article §2-205(c)(1). One of those regulations, COMAR 13A.02.01.01, states as follows:

The rules generally adopted by deliberative bodies for their government shall be observed by the local board of education. A motion or resolution may not be declared adopted without the concurrence of *a majority of the whole board*; namely: three members when the board consists of five, four members when the board consists of six or seven, and five members when the board consists of eight or nine.

(emphasis added). This provision is applicable to all local boards unless State law provides a different majority vote requirement. An example of this is Baltimore City where “[a]ny action by the board shall require: (1) A quorum of a majority of the voting members then serving; and (2) The affirmative vote of a majority of the voting members then serving.” Educ. Art. §3-108.1. The Baltimore County Board of Education, however, has no such majority vote requirement. Thus, in our view, because the local board has 12 members as established by statute, the local board cannot adopt a motion or resolution without seven votes. It is irrelevant to the voting requirement in COMAR 13A.02.01.01 that a vacancy in board membership exists.

The local board also seeks to understand what happens when the board is unable to elect a new chair or vice chair pursuant to Education Article §3-2B-09 in circumstances when it is unable to garner the votes required under COMAR 13A.02.01.01. Section 3-2B-09 requires the local board to “elect a chair and vice chair from among the members” at “the first meeting of the county board in December of each year.” The local board asks if the chair and vice chair remain in their positions as holdovers until such time that the local board is able to attain the necessary votes to elect new officers.

Maryland follows the holdover doctrine which states that “in the absence of an intention manifested to the contrary, all officers continue to hold their offices” until their successor qualifies. *Benson v. Miller*, 152 Md. 481, 486-87 (1927). *See also Reed v. President and Com’rs of Northeast*, 226 Md. 229 (1961)(“an elected or appointed officer may remain in office at the expiration of his term and is entitled to exercise the powers of the office until his successor qualifies, whether or not the statute creating the office so provides”); *Grooms v. Lavale Zoning Bd.*, 27 Md. App. 266, 274 (1975). It is our view, therefore, that the chair and vice chair remain in their positions until their successors qualify even though Education Article §3-2B-09 is silent on the issue.

CONCLUSION

It is our view, as set forth in this Advisory Opinion, that the Baltimore County Board of Education cannot adopt a motion or resolution without seven votes based on the board's membership as currently constituted by statute. It is also our view that the chair and vice chair of the board remain in their positions as holdovers until their successors qualify by attaining the required number of votes.

Signatures on File:

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Warner I. Sumpter  
President

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Jean C. Halle  
Vice-President

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February 25, 2020