MICHELLE FERRANTE, et al. (#29)

Appellant,

v.

HOWARD COUNTY BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-24

OPINION

Appellants filed an appeal of the November 21, 2019 decision of the Howard County Board of Education ("local board") approving the Attendance Area Adjustment Plan for School Year 2020-2021. Appellants maintained that the redistricting decision is arbitrary, unreasonable or illegal because students with Individualized Education Plans ("IEPs") or 504 Plans as of the date of the decision were provided an automatic exemption from school reassignment while students without an IEP or 504 plan at that time were not provided an automatic exemption.

On January 16, 2020, we transferred the case pursuant to COMAR 13A.01.05.07A(1) to the Office of Administrative Hearings for review by an Administrative Law Judge ("ALJ"). The ALJ conducted a virtual hearing on July 14, 15, and 16, 2020.

On September 30, 2020, the ALJ issued a Proposed Decision concluding that the Appellants failed to show, by a preponderance of the evidence, that the local board's redistricting decision was arbitrary, unreasonable or illegal. With regard to Appellants' primary arguments, the ALJ explained that the exemption and the cut-off date were a function of Local Board Policy 9000 (*Student Residency, Eligibility, Enrollment and Assignment*) not part of the redistricting decision, and were a valid exercise of the authority of the Superintendent. The ALJ also found that the Appellants failed to provide any evidence that the redistricting decision discriminated against disabled students. The ALJ recommended that we dismiss the appeal.

Appellants did not file exceptions to the ALJ's Proposed Decision.

Based on our review of the record, we concur with the ALJ's Proposed Decision and adopt it with one modification. The ALJ found that the Appellants did not meet their burden of proof in the case and, therefore, recommended dismissal of the appeal. Because the Appellants failed to demonstrate that the local board's decision was arbitrary, unreasonable or illegal, we decline to dismiss the appeal and instead affirm the decision of the local board.

Signatures on File:

_____

Clarence C. Crawford
President

_____
Jean C. Halle
Vice-President

_____
Shawn D. Bartley

_____
Gail H. Bates

_____
Charles R. Dashiell, Jr.

_____
Susan J. Getty

_____
Vermelle Greene

_____
Rose Maria Li

_____
Rachel McCusker

_____
Joan Mele-McCarthy

_____
Lori Morrow

_____
Warner I. Sumpter

Absent:
Holly C. Wilcox

April 27, 2021

MICHELLE FERRANTE, ET AL.,[1]	*	**BEFORE JOY L. PHILLIPS,**
APPELLANTS	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
HOWARD COUNTY	*	**ADMINISTRATIVE HEARINGS**
BOARD OF EDUCATION	*	**OAH No.: MSDE-BE-09-20-01744 (File #29)**

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACTS
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CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On November 21, 2019, the Howard County Board of Education (Local Board or Board) passed the Attendance Area Adjustment Plan for School Year 2020-2021 (Redistricting Plan). On December 23, 2019, the Appellants appealed to challenge how the Redistricting Plan impacted students who did not have an established Individualized Education Program (IEP) or 504 plan at the time the Redistricting Plan was finalized (Appeal).[2]

By letter dated January 16, 2020, the Maryland State Board of Education (State Board) transmitted the Appeal to the Office of Administrative Hearings (OAH) for a contested case

[1] This Appeal was filed on behalf of three Appellants: Michelle Ferrante (Polygon 129), Susan Levine (Polygon 1064), and Stacie Kyritsopoulos (Polygon 148). In Howard County, the term polygon refers to small units within an attendance area that are so designated only for redistricting purposes. Polygons are used to quickly provide the Local Board with enrollment and other data for a school based on a suggested boundary change during redistricting deliberations.

[2] This was one of thirty-six appeals challenging the Redistricting Plan.

hearing and to issue a proposed decision containing findings of facts, conclusions of law, and recommendations.[3] Code of Maryland Regulations (COMAR) 13A.01.05.07A(1)(a), E.

On February 20, 2020, I held an in-person prehearing conference on the appeals at the OAH in Hunt Valley, Maryland. Claude de Vastey Jones, Esquire, and Judith S. Bresler, Esquire, represented the Local Board. The Appellants were represented by Lorraine Lawrence-Whittaker, Esquire, and Mary R. Poteat, Esquire.[4] A motions schedule was agreed upon and later extended at the request of the parties.

On March 4, 2020, the Appellants filed a Motion for Default on the basis that the Local Board failed to file a response to the Appeal within twenty days. The Motion for Default was later amended. On March 5, 2020, the Local Board filed a Response to Appeal. On March 26, 2020, I issued a Ruling denying the Amended Motion for Default.

On May 4, 2020, the Local Board filed a Motion for Summary Decision. On June 10, 2020, I heard oral argument on the Motion for Summary Decision.[5] On June 22, 2020, I convened a prehearing conference. The hearing on the Appeal was scheduled for July 14-16, 2020. On June 24, 2020, I issued a Ruling denying the Local Board's Motion for Summary Decision.

On July 14, 2020, I convened a contested case hearing via videoconferencing. The hearing continued to July 15, 2020 and concluded on July 16, 2020. The record was kept open through July 20, 2020, at the Appellants' request. Nothing was received by July 20, 2020 and the record closed.[6]

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[3] The letter transmitting the appeals to the OAH requested the hearings be expedited, but the parties did not file any such motion, as was permitted pursuant to Code of Maryland Regulations 28.02.01.06. Nevertheless, I scheduled the matter as soon as practical, as per the regulation.

[4] These representatives appeared for their clients at all proceedings.

[5] After the initial in-person prehearing conference, all proceedings were conducted remotely because of closures due to the COVID-19 pandemic.

[6] At a telephone conference with counsel on July 21, 2020 regarding an unrelated matter, I asked counsel for the Appellants if they intended to submit anything further and they confirmed they did not.

The contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure for the OAH govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

Was the Redistricting Plan adopted by the Local Board on November 21, 2019 arbitrary, unreasonable, or illegal because students with established IEPs or 504 plans as of November 21, 2019 were given an automatic exemption from reassignment while students without an IEP or 504 plan were not given an automatic exemption?

SUMMARY OF THE EVIDENCE

Exhibits

A list of exhibits is attached to this Proposed Decision as an Appendix.

Testimony

The Appellants presented the testimony of the following witnesses:

- Susan Levine, Parent/Appellant
- Stacie Kyritsopoulos, Parent/Appellant
- Michelle Ferrante, Parent/Appellant
- Caroline Walker, PhD, Executive Director, Program Innovation and Student Well-Being, Howard County Public School System (HCPSS)
- Kristine Woodson, Specialist for Residency and Reassignment, HCPSS

The Local Board presented the testimony of the following witness:

- Dr. Caroline Walker

FINDINGS OF FACTS

I find the following facts by a preponderance of the evidence:

1. On January 24, 2019, the Local Board initiated a system-wide school boundary review.

2. On November 21, 2019, during the final vote on Redistricting Plan, the Local Board voted that certain students would be automatically exempted from school reassignments if they made a timely election. These students included rising fifth, eighth, eleventh, and twelfth graders. The automatic exemptions also included some students in the JumpStart program.

3. HCPSS Policy 9000 was amended in 2018 to create an exemption following a school boundary change for students with an IEP or 504 plan, as well as children of certain military families. During the final vote on the Redistricting Plan, the Local Board did not discuss or vote on this exemption because it already existed in Policy 9000.

4. In implementing the Redistricting Plan, the Superintendent and his transition team established a cut-off date for claiming an automatic exemption for students with an established IEP or 504 plan as of the date of the final vote, November 21, 2019. To secure their exemption, such students were to notify the HCPSS of their election by December 13, 2019 via the online program.

5. A cut-off date to claim the automatic exemption was announced by the Superintendent in a memorandum dated December 6, 2019.

6. A cut-off date was used because the information identifying which students had existing IEPs or 504 plans was already contained in Synergy, the computerized system used by HCPSS to compile information about students. By establishing a cut-off date for automatic exemptions, the Superintendent's transition team could, within a matter of weeks, begin planning for school attendance changes that would go into effect in the fall of 2020.

7. The Superintendent's transition team trained school staff to reach out to families with students who qualified for an exemption to ensure they had a stake in choosing which school the student would attend.

8. As of November 21, 2019, the Appellants' children did not have established IEPs or 504 plans.

9. Students who were approved for an IEP or 504 plan after November 21, 2019 could seek reassignment to a school that could fulfil the mandates of a student's individual IEP or 504 plan. Those reassignments were not guaranteed. To be reassigned, those students would have to show that attending their newly assigned school under the Redistricting Plan would create a unique hardship, pursuant to Policy 9000 Section IV.K.5.

10. Many parents, knowing reassignment might be an option if their child were approved for an IEP or 504 plan, contacted HCPSS after the cut-off date was announced to find out how to obtain an IEP or 504 plan for their child.

11. Four students who were approved for an IEP or 504 plan after the cut-off date have since been granted reassignment on the basis of unique hardship. One additional request for reassignment was under consideration at the time of the hearing. Approximately two other requests have been denied, including one for Appellant Levine's child.

12. On September 10, 2019, Appellant Levine requested her child be evaluated for an IEP. An IEP team meeting was convened on October 3, 2019 at which HCPSS declined to conduct evaluations because there was no suspicion of a disability. Appellant Levine requested a second IEP meeting, which was held on November 15, 2019. Appellant Levine consented to assessments. On January 24, 2020, the assessments were reviewed, and her child did not qualify for an IEP. The team discussed scheduling a 504 meeting, which was held on January 31, 2020. Appellant Levine's child was approved for a 504 plan on that day.

13. On February 9, 2020, Appellant Levine filed a request for reassignment, asking that her child be automatically exempted from reassignment now that he had been approved for a 504 plan.

14. On March 12, 2020, Appellant Levine's request for reassignment was denied because the child did not have a 504 plan as of November 21, 2019 and did not show unique hardship. Appellant Levine appealed that decision to the Local Board.

15. The Local Board reviewed the request for reassignment on May 12, 2020. Three members of the Local Board recused themselves, leaving four to make the decision. The vote was split two to two; thus, the decision to deny the reassignment was upheld on June 9, 2020.

16. Appellant Kyritsopoulos' child applied for a 504 plan on December 9, 2019 and was approved on January 13, 2020. Appellant Kyritsopoulos did not know until about one week before the contested case hearing that she could apply for reassignment. As of the hearing, she planned to request reassignment.

17. Appellant Ferrante's rising tenth grader was in the process of obtaining a 504 plan as of the date of the hearing.

DISCUSSION

Legal Framework

Standard of Review

The standard of review applicable to school redistricting is set forth in COMAR 13A.01.05.06A, as follows:

> 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.01.05.06B defines "arbitrary or unreasonable" as follows:

> 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.

COMAR 13A.01.05.06C defines "illegal" as satisfying one or more of the following six criteria:

> (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 any other error of law.

A redistricting decision is subject to a presumption of correctness. COMAR 13A.01.05.06A. To prevail, the Appellants must show, by a preponderance of the evidence, that the challenged redistricting decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A and D. To prove an assertion by a preponderance means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Review of Redistricting Plans

County boards determine the geographical attendance area for each school. Md. Code Ann., Educ. § 4-109(c) (2018). In *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967), the court held that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school. *Id.* at 472. The courts of Maryland will not ordinarily

substitute their judgment for the expertise of school boards acting within the limits of the discretion entrusted to them. *Id.* at 476. The court in *Bernstein* wrote:

> The point is whether the move was reasonable and within the discretion of the Board. The test is not even that there may have been other plans that would have worked equally well, or may, in the opinion of some, have been better; the test is whether the action which was taken was arbitrary, capricious or illegal.

Id. at 479.

The Court further noted that it "is a thankless job that the Board of Education has when it finds it necessary to move students from one school to another," but in "a rapidly growing county, however, that is sometimes necessary. The paramount consideration is the proper education of the students." *Id.* at 479. In 1974, the State Board noted that it "is not enough for [the appellants] to show that their [p]lan is better, they must show that the Board's Plan is so totally lacking in merit as to have been adopted without any rational basis." *Concerned Parents of Overlea v. Bd. of Educ. of Baltimore Cty.*, MSBE Op. No. 74-13 (1974).

Local boards determine what constitutes sound educational policy for their county. It is defined by the public through their elected Board of Education members. They are elected specifically to formulate educational policy for the county using their own judgment. While many people may disagree with the resulting conclusions, decisions made through the proper process are the result of the community speaking through the democratic process. *Shah v. Howard Cty. Bd. of Educ.*, MSBE Op. No. 02-30 (2002).

The reviewer of the Local Board's decision may not substitute their judgment for that of the Local Board. If substantial evidence exists to support the decision, even if the reviewer disagrees with it, the decision must be upheld. *Montgomery Cty. Educ. Assoc., Inc. v. Bd. of Educ. of Montgomery Cty.*, 311 Md. 303, 309-10 (1987).

For the following reasons, I conclude the Appellants have failed to show the Redistricting Plan, as it impacted students who had not been approved for an IEP or 504 plan as of November 21, 2019, was arbitrary, unreasonable, or illegal. I recommend the Appeal be dismissed.

Appeal and Appellants' Arguments

The Appellants appealed the Redistricting Plan on the basis that the Local Board arbitrarily and unconstitutionally excluded students who were in the process of applying for an IEP or 504 plan, as opposed to students with an established IEP or 504 plan, from obtaining a guaranteed exemption from a boundary change. This unlawful exclusion violated Section 504 of the Americans with Disabilities Act (ADA), 29 U.S.C. § 794 (2018), and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq. (2017), they asserted.

In their Appeal at page 6, the Appellants wrote:

> Section 504 of the Americans with Disabilities Act guarantees that a child with a disability has equal ACCESS to an education and that it is comparable to an education provided to those who do not have a disability. Section 504 states: *No otherwise qualified individual with a disability in the United States...shall, solely by reason of...disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.* 29 U.S.C. 794.

In their Appeal at pages 7 and 8, the Appellants wrote:

> [The Appellants' children], and all similarly situated students, entitled to 504 and/or IEP Plans not yet in place, have had their civil rights to be afforded their [free appropriate public education] violated by [the Local Board] when [the Local Board] failed to make reasonable accommodations to extend the exemption for these children. It is inexcusable that [the Local Board] has made no provision whatsoever for children in the process of obtaining their federally mandated accommodations or educational plans for critical exemptions that mean the difference between their ability to make significant and appropriate academic progress and not. [The Local Board] has violated these children's federally mandated rights by failing to extend exemption periods for children in this process. It must be overturned.

At the hearing, the Appellants focused on HCPSS Policy 9000, relating to Student Residency, Eligibility, Enrollment and Assignment. (App. Ex. 4). They argued Policy 9000 does not impose a timeframe for requesting an exemption and that the deadline imposed by the

Local Board therefore violated Policy 9000. They argued that all students who have an IEP or 504 plan approved at any time during the school year should be awarded the same exemption given to students who had an existing plan at the time of the final vote on the Redistricting Plan. They argued the Local Board violated its own policy by arbitrarily selecting the cut-off date of November 21, 2019 and that Policy 9000 does not authorize the Board to impose a cut-off date.

As a remedy, in the Appeal, the Appellants requested that the entire Redistricting Plan be voided or, in the alternative, that portions of the Redistricting Plan deemed illegal or arbitrary be voided. (Appeal, p. 8). At the hearing, the Appellants requested as a remedy either that all Howard County students who have or are approved for an IEP or 504 plan at any time until the first day of school, September 8, 2020, be given an automatic exemption from reassignment, or, in the alternative, that the entire Redistricting Plan be overturned.

Analysis

Policy 9000

Section IV of HCPSS Policy 9000, (App. Ex. 4), provides, in relevant part:

> K. Subject to the conditions outlined in Standard L., a resident student may be reassigned from the student's designated school when:
>
> . . . .
>
> 3. A resident student has an [IEP], 504 plan, or at least one parent who is currently active duty military personnel is reassigned for the purposes of redistricting may request reassignment to remain at their current school until the completion of that school level. The process outlined in Section V. of the Policy 9000 Implementation Procedures will be used for the reassignment request.

Section K.3 was added to Policy 9000 in 2018 after a smaller redistricting took place in Howard County. It created an automatic exemption for certain students, namely, those students with an IEP or 504 plan and those with one parent who was active duty military who were reassigned after a redistricting took place. It is written in the present tense — *has* an IEP or 504 plan, not is approved for during the school year. To take advantage of the automatic exemption,

students must submit a reassignment request form that is used by anyone seeking a reassignment. So long as the claim to the exemption is true, the automatic exemption will be granted.

Policy 9000, Section VI, authorizes the Superintendent to develop procedures to implement this policy. Implementation guidance is provided in Local Policy 9000-Implementation Procedures (IP). (App. Ex. 5). The Superintendent's authority to advise the Local Board is embedded in the Education Article, at section 4-109(c). It is the job of the Superintendent to make the changes dictated by the Redistricting Plan in a timely fashion.

"Administrative agencies possess an 'expertise' and, thus, have a greater ability to evaluate and determine the matters and issues that regularly arise, or can be expected to be presented, in the field in which they operate or in connection with the statute that they administer." *Adventist Health Care Inc. v. Maryland Health Care Comm'n*, 392 Md. 103, 118–19 (2006). The Court of Appeals has also stated, "[A] 'court's task in review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency.' . . . [T]he expertise of the agency in its own field should be respected." *Bd. of Phys. Quality Assur. v. Banks*, 354 Md. 59, 68–69 (1999). I place great weight on the expertise of the Superintendent's office.

The Appellants argued that the Local Board is not authorized to impose a cut-off[7] date for the automatic exemption. The evidence plainly shows it was not the Local Board that created the cut-off date of November 21, 2019, however. The Local Board did not even vote on the exemption; such a vote was unnecessary because it was already incorporated in Policy 9000 Section IV.K.3. Instead, as authorized by Policy 9000 Section VI, the Superintendent and his team established the cut-off date because there were hundreds of students who fell in the category of having an IEP or 504 plan and that information was already known to HCPSS by

[7] Dr. Caroline Walker took issue with the term "cut-off date," (T. 7/14/2020, p. 161), but I have adopted it in this Proposed Decision as it was the term used by parties throughout the hearing.

way of the Synergy program. As Dr. Walker explained in her testimony, it would have created needlessly excessive work for the staff to process reassignment requests individually when the exemption already existed in Policy 9000 and the students were known to HCPSS.

At the December 5, 2019 Board meeting, a clip of which was played into the record at the hearing, Dr. Walker discussed the planning team's work and announced the November 21, 2019 cut-off for automatic exemptions for students with IEPs or 504 plans. (App. Ex. 8; T. 7/24/2020 pp. 94, ff.). The Board accepted that cut-off date as the proper exercise of the Superintendent's authority. No one questioned it. It created two groups of students, those with existing IEPs or 504 plans, and those without. The cut-off date helped the staff plan for the upcoming school year. HCPSS knew who had IEPs or 504 plans and only needed the student to elect whether to stay in their current school or move to the newly districted school. It was an executive decision made for planning purposes and simply implemented the existing exemption language of Policy 9000.

There was much discussion at the hearing about the reassignment procedure. Policy 9000-IP, Section V, is the general reassignment section applying to all reassignment requests initiated by parents. It requires the parents to submit the request form, with appropriate supporting documentation, to the superintendent or his designee. Currently, the designee is Kristine Woodson. I have set forth Section V here in pertinent part:

> Student Reassignment Initiated by Parents
>
> A. Parents requesting reassignment of students will submit the Student Reassignment Request form, with appropriate supporting documentation, to the Superintendent/Designee for Residency and Reassignment.
> B. The Superintendent/Designee will approve or deny the request based on the provisions of this policy . . .
> C. While the application is pending, the student will remain in attendance in the student's assigned/designated school.

Ms. Woodson explained there are basic categories for requesting reassignment. Students who have achieved Junior Status (defined as having received a certain number of credits after the Sophomore year and completed English 9 and 10), students of HCPSS employees, and students whose families can demonstrate a purchase, lease, or intent to build in a certain polygon (Buy/Lease/Build) are automatically reassigned, so long as their status is adequately documented.

The final category is Other, which includes all other reassignment requests, none of which is automatic. Requests for reassignment made by students with IEPs or 504 plans that were not automatically exempted after a redistricting fall under this category, although neither Policy 9000 nor the reassignment request form make that clear. The category Other was created by the reassignment office to address any situation that was not automatically exempted. Ms. Woodson investigates those requests to determine whether the student has a unique hardship justifying a reassignment, pursuant to Policy 9000 Section IV.K.5. That section provides:

> In rare circumstances, the Superintendent/Designee, in consultation with school-based administrators, may grant parent requests for individual exceptions to the student reassignment standards based on documented unique hardship situations.
> . . . .

(App. Ex. 4).

Dr. Walker and Ms. Woodson explained at the hearing that the automatic exemption for students with existing IEPs or 504 plans as of the cut-off date took into account the unique hardships of being a student with a disability. For example, as Dr. Walker testified, the cut-off date recognized the special relationships forged between students with disabilities and teachers during that first semester of the school year. Reassigning students who would otherwise be able to maintain those special relationships in the following year represented a unique hardship. By

contrast, students who were not approved for an IEP or 504 plan until later in the school year would not have established those relationships, she said.

Policy 9000 does not guarantee anyone an automatic exemption to redistricting. The policy specifically says *may* be reassigned and *may* seek reassignment. But HCPSS school personnel treat it as automatic and they provided a rational basis for their decision. The exemption recognizes the inherent hardships encountered by students with IEPs and 504 plans, just as there are inherent hardships for students of military families. By creating a deadline to claim these exemptions and giving parents an easy way to indicate their election of the exemption via the Synergy program, the staff was able to quickly determine where hundreds of students would be enrolled, allowing them to concentrate their personalized efforts on the families they knew of who were entitled to an exemption, but did not make an online election. The cut-off date for the automatic exemption allowed the transition team to begin planning for transportation needs, accommodations for children with 504 plans, and staffing needs, such as speech and language therapists. This is a reasonable exercise of the Superintendent's authority and discretion. An automatic exemption given to students who had not yet obtained an IEP or 504 plan would not have assisted the team in planning because the number and identity of those students were unknown. As the reassignment process remained open to students who were approved after the cut-off date, those students were not excluded from the possibility of a reassignment; it just was not automatic. Indeed, Dr. Walker testified four students were approved for a 504 plan after November 21, 2019 and have been granted an exemption from redistricting.

The deadlines for making an election to accept an exemption or move to a different school were not announced during the final vote on the Redistricting Plan on November 21, 2019. (App. Ex. 9). The Local Board noted in each exemption vote (for certain rising grades)

that such deadlines would be announced. The Local Board did not announce those deadlines because that responsibility falls within the purview of the Superintendent and his transition team. The cut-off date was set as part of the Superintendent's duty to implement the Redistricting Plan. The Superintendent announced the deadline in a memorandum dated December 6, 2019. (Board Ex. 1).

In fact, the Appellants' complaint is not so much with the Redistricting Plan itself—which did not even address students with IEPs or 504 plans—but with the Superintendent and how his staff implemented the Redistricting Plan. The Local Board did not address students with IEPs or 504 plans other than to acknowledge at one point that there would be an exemption for students with an IEP or 504 plan. The cut-off date was established by the Superintendent who has the responsibility for making the Local Board's Redistricting Plan operational. It was made for the convenience of his staff, who was charged with implementing the Redistricting Plan on a compressed schedule.

The reasons provided by Dr. Walker establish a reasonable basis for creating a cut-off date for implementing an automatic exemption and they support a conclusion that such a date constitutes sound educational policy. COMAR 13A.01.05.06B(1) and (2).

The Appellants also argued the cut-off date of November 21, 2019 was arbitrary. At the hearing, they requested as alternative relief a new cut-off date of September 8, 2020. But students whose requests were in the pipeline for many months and then granted on September 9, 2020, might make the same complaints as the Appellants in this case. Dr. Walker explained that a cut-off was necessary to implement the Redistricting Plan in the most efficient way possible. Delaying the cut-off date to the first day of the new school year would not help HCPSS efficiently plan for the new year.

In sum, the Appellants failed to show that the cut-off date for an automatic exemption for students with established IEPs or 504 plans violated any HCPSS policy or was arbitrary or unreasonable. The Appellants failed to show that the cut-off date for an automatic exemption established a basis for rendering the Redistricting Plan void. It was a valid exercise of executive authority by the Superintendent and was in accord with Policy 9000 and Policy 9000-IP. As substantial evidence exists to support the decision, the decision must be upheld. *Montgomery Cty.*, 311 Md. at 309-10.

ADA and IDEA

The Appellants argued the Redistricting Plan is unconstitutional because it discriminated against disabled students or students with learning differences, in violation of the ADA and IDEA and all civil rights statutes, federal and state. Section 504 protects disabled persons from being discriminated against solely by reason of their disability under any program or activity receiving federal financial assistance. There is no evidence that occurred in this case. Students without 504 plans as of the cut-off date maintained a path to obtaining an exemption from reassignment and were not treated differently *solely by reason of their disability*. Nor have the Appellants shown that any student who received an IEP after the cut-off date was denied a free, appropriate public education guaranteed by the IDEA. These arguments are not supported by the record and provide the Appellants no relief.

In the Appeal, the Appellants asserted the Local Board has "made no provision whatsoever" for students who did not have an established IEP or 504 plan as of the cut-off date, but, in fact, there is a process by which students who were approved for such a plan after the cut-off date could be exempted from the reassignment. That the process is not automatic or that the Appellants do not like the process does not render the process illegal or unconstitutional.

Additional Issues

The Appellants claimed to speak on behalf of all students in Howard County who were impacted by the November 21, 2019 cut-off date, not just the three named Appellants. They argued this is permitted by the rules, where a procedural regulation allows one person to represent similarly situated individuals.

I believe the Appellants were referring to COMAR 13A.01.05.04D(3), which provides:

> In cases with multiple parties, the State Board may request the parties to select one or more lead appellants to file responses and documents on behalf of all appellants and to receive responses and documents on behalf of all appellants.

This rule is designed to streamline hearings on appeals where many people are raising similar issues. In this case, the State Board did not request the parties select a lead appellant to file responses and documents on behalf of all Appellants. The three named Appellants in this Appeal are the only persons who raised an issue regarding IEPs and 504 plans in a challenge to the Redistricting Plan. They filed one appeal as a group. They do not represent all other similarly situated persons and are not "lead" Appellants for anyone else.

Furthermore, the children of the three named Appellants have or are in the process of obtaining 504 plans, not IEPs. At the hearing, the Local Board argued that IEPs should not even have been raised in this hearing. Although I agree with that argument, in an effort to address all of the issues raised by the Appellants, I have included IEPs in my Discussion.

The Appellants also complained that they did not know they could request reassignment for their children after the cut-off date, arguing that the lack of notice treated them unfairly. Dr. Walker and Ms. Woodson testified that HCPSS instructed schools to personally notify anyone who was eligible for an exemption but had not made an election. Regarding parents of children who were not eligible for an exemption because they did not have an established IEP or 504 plan, Dr. Walker and Ms. Woodson referred only to the website and the usual reassignment

procedure. They could not point to anything specific to the Appellants' circumstances on the website.

Appellant Levine testified she thoroughly researched Policy 9000 and is quite familiar with it. She is also an attorney. She felt blindsided when she learned about the cut-off date because she had carefully watched the Board meetings on November 21, 2019 and December 5, 2019 and heard nothing discussed about a cut-off date. Only through her persistence in researching, emailing Dr. Walker, and calling Ms. Woodson did she learn of the reassignment procedure.

The other two Appellants are not legally trained. Appellant Kyritsopoulos has a rising fourth grader who was in the process of being approved for a 504 plan at the time the Redistricting Plan was voted on. His plan was approved effective January 13, 2020. She learned a week before the hearing that she could apply for reassignment and felt frustrated that she had never been notified this was an option. Appellant Ferrante was still in the process of having a 504 plan approved for her child as of the date of the hearing.

At the Board meeting on December 5, 2019, Dr. Walker told the Local Board that the transition team was working diligently to develop a strategic plan for implementing the Redistricting Plan. They updated it constantly, based on information received from various stakeholders. They developed a Frequently Asked Questions (FAQ) page on the website that was updated regularly, based on questions they and the schools were receiving from parents. The FAQ page contained information about the cut-off date, Dr. Walker testified. They also developed a list of persons who could provide interpretation into various languages in order to reach out and communicate with families.

While it should not require a law degree to understand the process involved in having a student reassigned, it is not difficult to ask someone in the school system for guidance or seek

answers on the HCPSS website. Furthermore, the Appellants failed to show they have a right to be personally notified of the reassignment procedure by HCPSS personnel or personally guided through it. At the time HCPSS was implementing and planning for the new boundary changes to take place in the fall of 2020, it was focused on students who were entitled to automatic exemptions. It was not focused on notifying all parents of the usual reassignment process for students who had not yet been approved for—or even applied for—an IEP or 504 plan.

The Appellants also argued that Policy 9000 requires the implementation procedures to be published annually, (App. Ex. 4, at § V.B.), because "everyone has the right to know the rules of engagement." (T. 7/16/2020, p. 478, 480). By failing to publicize the automatic exemption for students with established IEPs or 504 plans well in advance so that parents knew what to expect, they argued, the Local Board violated its own Policy. Policy 9000 is a broad policy regarding Student Residency, Eligibility, Enrollment and Assignment. It authorizes the Superintendent to implement its provisions in accordance with Policy 9000-IP. As I noted in ruling on the Local Board's Motion for Summary Decision, the language regarding how students without established IEPs or 504 plans at the time of redistricting are considered for reassignment could be clearer. However, as reassignments are all couched in discretionary terms—*may* be reassigned—the Appellants have failed to show they had a right to something they were denied. Again, no student has a right to attend a particular school, even when another class of students was given an automatic exemption from redistricting. *Bernstein*, 245 Md. at 472.

In a final issue, Appellant Levine argued that in denying her child's request for reassignment once he had been granted a 504 plan, HCPSS illegally accessed the 504 plan to learn confidential information about her child. She argued HCPSS engaged in a general violation of privacy rights. She did not cite any specific law that was violated, although she

referred once to Ms. Woodson's actions violating FERPA.[8] (T. 7/16/2020, pp. 499-500). She asserted that Ms. Woodson illegally based the denial of the reassignment on the "motivations" of the parents, who expressed dissatisfaction with their child's newly districted school on social media posts that Ms. Woodson read in investigating their request for reassignment. (T. 7/16/2020, pp. 486-87). The Local Board responded that confidential student information held by HCPSS may, in fact, be used in making reassignment decisions and anything seen on social media is not confidential but is accessible generally to the public. Thus, Ms. Woodson violated no law in using the information she did.

The Local Board has already rendered a decision on Appellant Levine's request for reassignment. (App. Exs. 6 and 7). Further complaints about the reassignment process as applied to Appellant Levine and whether HCPSS illegally accessed confidential information are beyond the scope of this contested case hearing and my jurisdiction. They do not relate to the redistricting process and do not provide the Appellants with a basis for relief in this matter.

CONCLUSION OF LAW

I conclude as a matter of law that the Appellants have not shown, by a preponderance of the evidence, that the Redistricting Plan adopted by the Howard County Board of Education on November 21, 2019 was arbitrary, unreasonable, or illegal. 29 U.S.C. § 794 (2018); 20 U.S.C. §§ 1400 et seq. (2017); Md. Code Ann., Educ. § 4-109(c) (2018); *Bernstein v. Bd. of Educ. of Prince George's Cty.*, 245 Md. 464 (1967); *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125, n.16 (2002); *Adventist Health Care Inc. v. Maryland Health Care Comm'n*, 392 Md. 103, 118–19 (2006); COMAR 13A.01.05.06A and D; HCPSS Policy 9000 and Policy 9000-IP.

[8] Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2017); 34 CFR Part 99 (2019).

RECOMMENDED ORDER

I RECOMMEND that the Appellants' December 23, 2019 Appeal be **DISMISSED**.

September 30, 2020
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/dlm
#186722

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of the date of the Proposed Decision; parties may file written responses to the exceptions within fifteen days of the date exceptions were filed. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F.

The Office of Administrative Hearings is not a party to any review process.

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*In addition to mailing the Proposed Decisions, I emailed copies of the Proposed Decisions to each Appellant or their attorney because of the recent slow-down of mail delivery. The attorneys had opted throughout this appeal process to communicate via email. Emailing the Proposed Decisions was appropriate given the short time for filing exceptions with the State Board.