

AARON AND NICOLE
JACKSON,

Appellants,

v.

FREDERICK COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 20-24

OPINION

INTRODUCTION

The Appellants filed multiple appeals of the October 16, 2019 redistricting decision of the Frederick County Board of Education (“local board”) aimed at balancing student enrollment at Linganore, Oakdale, and Urbana high schools. The appeals specifically concern that part of the redistricting decision reassigning the Landsdale community from Urbana High School to Linganore High School.

We transferred the case pursuant to COMAR 13A.01.05.07(A)(1)(a) to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ). The local board filed a Motion for Summary Decision requesting the ALJ to recommend affirmance of its decision. On March 13, 2020, the ALJ issued a Recommended Ruling on the Respondent’s Motion for Summary Decision recommending that the State Board uphold the local board’s decision to move the school attendance boundary for the Landsdale community.

The Appellants did not file any exceptions to the ALJ’s Proposed Decision.

FACTUAL BACKGROUND

The undisputed facts in this case are set forth in the ALJ’s recommended ruling at pages 3-5.

STANDARD OF REVIEW

This appeal involves a school redistricting decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06(A).

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ’s proposed decision. The State Board’s final decision, however, must identify

and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216.

LEGAL ANALYSIS

The ALJ determined that the redistricting decision was not arbitrary, unreasonable or illegal. Among other things, the ALJ found that the local board followed its policies and procedures and the local board's decision was consistent with sound educational policy in that the approved plan sought to balance the student populations in the three high schools based on the growing population in that portion of the County. In addition, the ALJ found that the Appellants failed to present sufficient evidence to support their arguments. (*See* ALJ's Recommended Ruling at pp. 8-15). We have reviewed the record and concur with the conclusions of the ALJ.

CONCLUSION

We agree with the ALJ's assessment that the record in this case supports the local board's redistricting decision. We, therefore, adopt the ALJ's Recommended Ruling and affirm the local board.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Michael Phillips

David Steiner

June 23, 2020

AARON JACKSON and NICOLE

JACKSON,

APPELLANTS

v.

FREDERICK COUNTY

BOARD OF EDUCATION,

RESPONDENT

*** BEFORE ALECIA FRISBY TROUT**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE OF**

*** ADMINISTRATIVE HEARINGS**

*** OAH CASE NO.: MSDE-BE-09-19-36952**

*** * * * ***

**RECOMMENDED RULING ON THE RESPONDENT'S
MOTION FOR SUMMARY DECISION**

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
UNDISPUTED FACTS
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

On or about October 16, 2019, the Frederick County Board of Education (Local Board) approved a school redistricting plan (Redistricting Plan) that aimed at balancing the enrollments at three public high schools: Oakdale, Urbana and Linganore. One of the approved boundary realignments results in a change for the students living in the Landsdale community. As a result, for the 2020-2021 school year, the three children of Aaron Jackson (Mr. Jackson) and Nicole Jackson (Ms. Jackson, and collectively the Appellants) will be districted to attend Linganore High School rather than Urbana High School where they are currently districted. On October 22, 2019, Mr. Jackson filed an appeal challenging the Redistricting Plan, and on October 25, 2019, Ms. Jackson filed two appeals challenging the Redistricting Plan. By letter dated November 25, 2019, the Maryland State Board of Education (State Board) consolidated the three appeals into

the instant case and transmitted this matter to the Office of Administrative Hearings (OAH) to hold a contested case hearing and issue a proposed decision. Code of Maryland Regulations (COMAR) 13A.01.05.07A(1), E.

On January 16, 2020, I held a prehearing conference (Conference) at the OAH for the purpose of scheduling the matter for hearing, and determining other procedural matters including the filing of a motion for summary decision and responses thereto. On February 6, 2020, the Local Board filed a Motion for Summary Decision (Motion) with an attached Memorandum, affidavit, and exhibits. On February 14, 2020, the Appellants filed a Response to the Motion (Response). On February 18, 2020, the Local Board filed a Reply to the Appellant's Response (Reply-Board). And on February 19, 2020, the Appellants filed a Reply to the Local Board's February 18, 2020 Reply-Board (Reply-Appellants).

ISSUE

Is the Local Board entitled to judgment as a matter of law because there is no genuine dispute as to any material fact?

SUMMARY OF THE EVIDENCE

Exhibits

In support of its Motion, the Local Board relied upon an affidavit and several documentary exhibits, which are identified as:

1. Affidavit of Paul Lebo, Chief Operating Officer, Frederick County Public Schools, February 5, 2020
2. Frederick County Public Schools Linganore-Oakdale-Urbana Area Redistricting Study Background Report, January 30, 2019
3. Frederick County Public Schools Linganore-Oakdale-Urbana Area Redistricting Study Superintendent's Recommendation, September 11, 2019

4. Frederick County Public Schools, MD Linganore-Oakdale-Urbana Area Redistricting Study High School Attendance Boundaries 2018-19, January 2019
5. Frederick County Public Schools, MD Linganore-Oakdale-Urbana Area Redistricting Study Superintendent's High School Recommendation, August 2019

The Appellants did not provide any exhibits in support of either their Response or Reply.

UNDISPUTED FACTS

The following facts are undisputed:

1. In January 2019, the Local Board commenced the Linganore-Oakdale-Urbana area redistricting study (Study). One purpose of the Study was to balance enrollments at three high schools, Linganore, Oakdale and Urbana, based on current and projected overcrowding.
2. As of the 2018 – 2019 school year, Linganore's enrollment was eighty-four percent of its State-Rated Capacity; Oakdale's was eighty-two percent; and Urbana's was ninety-eight percent.
3. Without affecting any changes to the boundaries, it was projected that by 2028, Linganore would be at 88% of its State-Rated Capacity while Oakdale would be at 110%, and Urbana would be at 122%.
4. The building that Urbana is housed in is the oldest of the three high schools.
5. As a result of the Redistricting Plan, 199 students will be moved from Urbana to Linganore.
6. The Redistricting Plan allows grandfathering for rising eighth, tenth, eleventh and twelfth graders such that those students may opt to remain at their current school.

7. As a consequence of the changes, it is projected that by 2028, Linganore would be at 102% of its State-Rated Capacity; Oakdale would be at 109%; and Urbana would be at 106%.
8. The Study was completed with guidance from the Board's Policy 200 *School Attendance Area and Redistricting* (Policy 200), and Frederick County Public School's Regulation 100-2 *Redistricting*. The Local Board's goals for the study were outlined in their Strategic Plan.
9. Policy 200 lists the factors to be considered by the Local Board in developing school attendance area boundaries. The factors are not ranked or listed in any sort of priority order. The eleven factors to be considered are:
 - A. Educational welfare of students
 - B. Frequency of redistricting, with every attempt being made to limit individual student redistricting to not more than once every five years
 - C. Proximity to schools, in order to maximize walkers and minimize distance or time of bus runs
 - D. Student demographics
 - E. Student academic performance
 - F. Operating and capital costs
 - G. Established feeder patterns
 - H. Impact on neighborhoods and communities
 - I. Impact on specialized school programs or a change to school capacity
 - J. Instructional and operational capacity of involved schools
 - K. Any other factor that is unique or pertinent to the proposed redistricting

10. During the Study, the Local Board published the proposed attendance area maps on their webpage and held public informational sessions on January 29 and 31, March 18, 19 and 21, and June 4, 5 and 6, 2019.
11. The Appellants and their three children live in the Landsdale community. One of their children currently attends Urbana High School. The other two children attend Frederick County public middle and elementary schools in the fifth and seventh grades. The Appellants' middle-schooler is autistic and has an Individualized Education Program (IEP).
12. The Landsdale community in Frederick County is a new development that currently has 623 homes and is projected to have 1100 homes once completed. Currently, part of the Landsdale community is assigned to Linganore High School, while the remainder is assigned to Urbana High School.
13. The Redistricting Plan changed the attendance boundaries to include all of the Landsdale community in the Linganore High School district.
14. The Redistricting Plan changed the Appellants' home high school from Urbana to Linganore.

DISCUSSION

Legal Framework

Motion for Summary Decision

COMAR 28.02.01.12D governs motions for summary decision. It provides as follows:

D. Motion for Summary Decision

- (1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.

(2) A motion for summary decision shall be supported by one or more of the following:

- (a) An affidavit;
- (b) Testimony given under oath;
- (c) A self-authenticating document; or
- (d) A document authenticated by affidavit.

(3) A response to a motion for summary decision:

- (a) Shall identify the material facts that are disputed; and
- (b) May be supported by an affidavit

(4) An affidavit supporting or opposing a motion for summary decision shall:

- (a) Conform to Regulation .02 of this chapter;
- (b) Set forth facts that would be admissible in evidence; and
- (c) Show affirmatively that the affiant is competent to testify to the matters stated.

(5) The ALJ may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Maryland appellate cases on motions for summary decision under the Maryland Rules of Civil Procedure (Maryland Rules) are instructive regarding similar motions under the procedural regulations of the OAH. In a motion for summary judgment or a motion for summary decision, a party goes beyond the initial pleadings, asserting that no genuine issue exists as to any material fact and that the party filing the motion is entitled to prevail as a matter of law. *Compare*

COMAR 28.02.01.12D and Maryland Rule 2-501(a); see *Davis v. DiPino*, 337 Md. 642, 648 (1995).

A party may move for summary decision “on any appropriate issue in the case” or as to the case as a whole. COMAR 28.02.01.12D(1). The principal purpose of summary disposition, whether it is for summary decision or summary judgment, is to isolate and dispose of litigation that lacks merit. Only a genuine dispute as to a material fact is relevant in opposition to a motion for summary judgment or summary decision. *Seaboard Sur. Co. v. Kline, Inc.*, 91 Md. App. 236, 242 (1992).

When a party has demonstrated grounds for summary judgment, the opposing party may defeat the motion by producing affidavits, or other admissible documents, which establish that material facts are in dispute. *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737-738 (1993). In such an effort, an opposing party is aided by the principle that all inferences that can be drawn from the pleadings, affidavits, and admissions on the question of whether there is a dispute as to a material fact must be resolved against the moving party. *Honacker v. W.C. & A.N. Miller Dev. Co.*, 285 Md. 216, 231 (1979).

Even where there is no dispute as to material facts, the moving party must demonstrate that it is entitled to judgment as a matter of law.

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 the 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. To prevail, an appellant must show, by a preponderance of the evidence, that a challenged redistricting decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06D. 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). If this matter goes to a full merits hearing, the Appellants have the burden of proof. However, as noted earlier, the Local Board, as the moving party in the Motion, has the burden to establish it is entitled to a summary decision.

Analysis

In its Motion, the Local Board relies on several attached exhibits and an Affidavit of Paul Lebo, the Chief Operating Officer for Frederick County Public Schools. The Local Board recites a number of alleged facts, and supports those statements with the attached Memorandum, Affidavit and attachments. In their Response and Reply, the Appellants raise a number of arguments, but do not present any facts or exhibits supporting those positions. The Appellants

largely agree with the facts as outlined by the Local Board, specifically that the study took place, in part, to balance enrollments at Linganore, Oakdale and Urbana high schools; the Local Board considered eleven equally weighted factors in making their determination; and one of the end results was a shift to the attendance boundary for the Landsdale community such that, beginning with the 2020-2021 school year, the entire community will be slated to attend Linganore High School. The Appellants also agree that Linganore High School is approximately eight miles away from the Landsdale community while Urbana High School is approximately four miles from the community. The Appellants largely argue that the resulting Redistricting Plan failed to consider racial and socio-economic demographics, distances and safety in relation to travel between the Landsdale community and Linganore High School, and the negative impact the move would have on the Appellants' son who has autism. They also raised a concern that the redistricting was unfair as students who attend Urbana High School from outside of the district will be able to continue to attend Urbana. In all, the Appellants' argue that the Redistricting Plan will adversely affect all of the students in the Linganore, Oakdale, Urbana communities. After considering the undisputed facts and the applicable law, I conclude that there are no genuine disputes as to any material fact and that the Local Board is entitled to a summary decision as a matter of law. COMAR 28.02.01.012D.

As a whole, the Appellants argue a number of valid points addressing their analysis of the Redistricting Plan's equity and the Local Board's analysis of various factors, but the fact that another alternative exists, even if that alternative is rationally better, does not raise a sufficient challenge to the Local Board's ultimate decision. As noted in *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464(1967), a challenge that there "may have been other plans that would have worked equally well, or may, in the opinion of some, have been better," is not sufficient to establish that "the action which was taken was arbitrary, capricious, or illegal." *Id.*

at 478. 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 [appellants] to show that their plan 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. Board of Education of Baltimore County*, Op. MSBE 74-13 (1974).

The State Board has never defined the term “sound educational policy.” What sound education policy is for a particular local school system is defined by the public through their elected Board of Education members. They are elected specifically to formulate educational policy for the county. They use their independent judgment to consider factors delineated in the policy and while many people may disagree with their resulting conclusions, decisions made through the proper process are the result of the community speaking through the democratic process.

The Appellants contend that that Local Board’s decision to move the attendance boundaries within Frederick County such that all of the Landsdale community will be assigned to attend Linganore High School was arbitrary or unreasonable. In support of this position the Appellants raise a number of concerns.

First, the Appellants argue that the Local Board’s decision failed to consider racial and socio-economic demographics and, as a result, created a plan that creates segregated classrooms and amounts as “redlining.” The Appellants argued that the Local Board should have considered racial and socio-economic demographics as a weighted factor. The Appellants are concerned about the racial and socio-economic diversity of the totality of schools in Frederick County and argue that such diversity is beneficial to all of Frederick County’s students. They are also

concerned about the difficulty that students from minority backgrounds will have transferring into a school environment where their racial and socio-economic identity is less represented in the student body. The Appellants specifically argue that the culture at Linganore High School is less tolerant or accepting of racial minorities, perhaps because the school has traditionally had a rather homogeneous population. Transferring students out of a more inclusive environment into a less inclusive environment, the Appellant's argue, is harmful. The Appellants believe that balancing racial and socio-economic diversity by weighting those categories in the criteria for redistricting, results in a better outcome for everyone.

I agree with the Appellants on many of these points. I agree that racial and socio-economic diversity in a student body is beneficial for all students, and that being transferred into a student-body that is less reflective of one's personal identity would potentially be very difficult. I empathize for students placed in that position and do not discount the impact of moving from what is a more urban school to one that services a traditionally more rural community. Additionally, the Appellants argue that the Redistricting Plan creates segregated classrooms but did not provide any proof or evidence to support that allegation. To the contrary, the Local Board's reports reflect an estimation that the Redistricting Plan will result in a slight increase to the racial composition of African American students at Linganore. Regardless, balancing diversity in the county schools was not the Local Board's goal, and the Local Board was not required to consider racial and socio-economic demographics as a weighted factor. The Local Board's goal was balancing the distribution of students in the three high schools over the next ten years such that the existing school buildings can best service the increasing population. In *Bernstein*, the Court noted "if the Board's action was taken in the reasonable exercise of its discretion, in an effort to relieve overcrowded conditions, it is immaterial that an incidental effect of that action was to adjust a racial imbalance." *Bernstein*, 245 Md. at 477.

The undisputed facts indicate that the Local Board sought to balance student populations based on a growing population in that portion of the County, and that is consistent with sound educational policy. COMAR 13A.01.05.06B (1).

Second, the Appellants argue that the results of the Study are arbitrary because students who currently reside in the Urbana attendance district are required to move to a new high school, while students who attend Urbana from out-of-district are able to remain. In their argument, the Appellants specifically reference Policy 200 and specifically, 200.1(A) which states, in part: “If the Superintendent of schools determines that the number of out-of-district students attending *child care centers* is a significant factor in causing enrollment pressures within a specific school attendance area, the Superintendent shall reassign those out-of-district students before moving students whose permanent residence is within the attendance area.” (emphasis added). The Appellants argue that out-of-district students should have been required to leave Urbana prior to moving students living in the current district and because that was not done, the result is arbitrary.

I agree that on its face, the Appellants’ approach appears equitable. However, the Redistricting Plan addressed out-of-district students attending special programs, such as the International Baccalaureate program that the Appellants’ daughter attends, and the magnet program at Urbana, and concluded that, as a goal, any plan should not negatively impact the number of students who are able to access these special programs. Therefore, the Local Board’s decision to leave attendance in Urbana’s magnet program unaffected by the Redistricting Plan was not arbitrary, but carefully reasoned and consistent with sound educational policy. COMAR 13A.01.05.06B (1).

Thirdly, the Appellants argue that the Local Board's decision is unlawful because it results in a safety concern for the Landsdale students who will have to travel eight, rather than four miles to school. They specifically point to the fact that the Landsdale community is separated from Linganore by Interstate 70. They also argue that while a child who misses the bus can ride his or her bicycle the four miles to Urbana, that option is not available if the students need to travel eight miles to Linganore. While Linganore may be farther away than Urbana, the travel distance is simply one factor for the Local Board to consider. The Local Board did include bus routes and the goal of not splitting a community as factors considered in their decision. A number of students who live in Landsdale are already attending Linganore and there is no evidence in the record to suggest that those students are experiencing any unreasonable challenges travelling to and from school. The Redistricting Plan will satisfy the Local Board's goal of unity by bringing the Landsdale community together in one attendance zone rather than dividing it between two schools. The Appellants have not shown that the addition of four miles to the bus routes is contrary to sound educational policy. COMAR 13A.01.05.06B(1).

Additionally, the Appellants argue that the Local Board's decision is unlawful because it does not take into consideration the impact the move would have on their son who currently attends seventh grade at a Frederick County middle school and has an IEP. The Appellants do not support that argument with any specific facts or evidence of what the specific negative impact would be for their son. While a change in schools is likely difficult for any child, I understand the Appellants' concern that such a change could cause greater concerns for a child with special needs. The Redistricting Plan does not require that the Appellants' son change schools any more than he would have been required to do without the Plan. The Local Board added a clause to the Redistricting Plan that allows rising eighth graders to remain at their current schools for the 2020-2021 school year. The result will allow the Appellants' son, who is

currently in the seventh grade, to remain at his current school for eighth grade and move to Linganore for ninth grade. The move from middle school to high school would be required regardless of which school he was districted to attend. The clause will likewise allow the Appellants' high school student to remain at Urbana for the duration of high school. Regardless, the Board cannot possibly base its decision on the potential impacts to a specific child within the school district. And, to address those concerns, there are other remedies available for students who may require special placement.

Finally, the Appellants argue that the community disagrees with the Redistricting Plan and that it was made without adherence to current educational norms. The Appellants did not provide any specific evidence or facts to support these assertions. The weight of the evidence shows that the Local Board followed the policies as outlined in Board's Policy 200, and Frederick County Public School's Regulation 100-2 *Redistricting*. The Study had four phases: data collection; data assimilation; background report development, and data analysis and options development. There were eight public information sessions throughout the process and the Local Board took the public's comments into consideration in reaching their decision. As noted in *Bernstein*, a challenge that there "may have been other plans that would have worked equally well, or may, in the opinion of some, have been better," is not sufficient to establish that "the action which was taken was arbitrary, capricious, or illegal." *Bernstein*, 245 Md. at 478. The Appellants agree that the Board followed the guidelines set out in Policy 200, but disagree that the approach was the right one. Despite the Appellants' disapproval of the outcome, I find the Appellants' argument on this point unpersuasive as there is nothing in the record before me to suggest that the Local Board did anything contrary to the law in drawing its ultimate conclusion.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Local Board’s Motion for Summary Decision should be granted because, based upon the undisputed facts, there is no genuine dispute as to any material fact and it has shown that it is entitled to prevail as a matter of law. COMAR 28.02.02.12D(4).

Based on the undisputed facts, I conclude as a matter of law, that the Local Board’s decision to move the attendance boundary for the Landsdale community was not arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

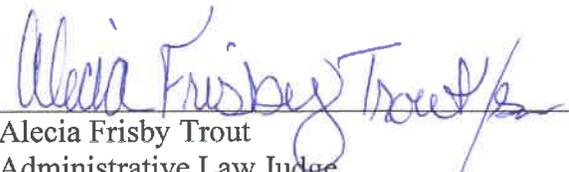
RECOMMENDED ORDER

I RECOMMEND that the Motion for Summary Decision filed by the Frederick County Board of Education is **GRANTED**.

I FURTHER RECOMMEND that the Frederick County Board of Education’s decision to move the attendance boundary for the Landsdale community be **AFFIRMED**.

March 13, 2020
Date Decision Issued

AFT/sw
#184957


Alecia Frisby Trout
Administrative Law Judge

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 receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. 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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**AARON JACKSON and NICOLE
JACKSON,**

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**FREDERICK COUNTY
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*** BEFORE ALECIA FRISBY TROUT
* AN ADMINISTRATIVE LAW JUDGE
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* OAH CASE NO.: MSDE-BE-09-19-36952**

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FILE EXHIBIT LIST

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1. Affidavit of Paul Lebo, Chief Operating Officer, Frederick County Public Schools, February 5, 2020
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