

SHARAD BHARGAVA, et
al. (#28)

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 21-22

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 raised various concerns regarding the redistricting as it related to Polygon 1171 and maintained that the decision was arbitrary and unreasonable.

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 local board filed a Motion for Summary Decision maintaining that its decision was not arbitrary, unreasonable or illegal, and that the Appellants had failed to demonstrate any material dispute of fact regarding the appeal.

On June 8, 2020, the ALJ issued a Recommended Ruling on the Local Board’s Motion for Summary Decision finding that the Appellants did not submit any evidence to support their contentions and did not raise any genuine dispute of material fact. In response to Appellants’ claim that many residents of Polygon 1171 speak English as a second language making them feel left out of redistricting discussions and unaware that their polygon was being moved, the ALJ noted that the local board provided interpreters upon request, but no request for interpreters other than Mandarin Chinese was submitted. (Recommended Ruling at 10). The ALJ also found that Appellants failed to explain the issue they were raising with regard to faulty data as it related to Polygon 1171, and failed to show a dispute of fact regarding the student population of their polygon. Although Appellants maintained that they did not get the opportunity to offer testimony because Polygon 1171 came into the discussion late in the process, the ALJ found that the evidence showed that Polygon 1171 was included in the original Superintendent’s Plan offered in August 2019, and that the redistricting process was well publicized throughout the County. The ALJ recommended that we grant the local board’s Motion for Summary Decision.

Appellants did not file exceptions to the ALJ’s Recommended Ruling.

Based on our review of the record, we concur with the ALJ’s Recommended Ruling and adopt it as our own Opinion with one modification. The ALJ found that the local board was entitled to prevail as a matter of law and dismissed the appeal. Because the Appellants failed to

satisfy their burden of demonstrating 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

SHARAD BHARGAVA, ET AL.,

APPELLANTS

v.

HOWARD COUNTY

BOARD OF EDUCATION

* BEFORE JOY L. PHILLIPS

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH No.: MSDE-BE-09-20-01705 (File #28)

* * * * *

**RECOMMENDED RULING ON THE LOCAL BOARD'S
MOTION FOR SUMMARY DECISION**

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

STATEMENT OF THE CASE

On or about November 21, 2019, the Howard County Board of Education (Local Board) passed the Attendance Area Adjustment Plan for School Year 2020-2021 (Redistricting Plan). Multiple appeals were filed by parents and concerned citizens to challenge the Redistricting Plan. The Appellant filed an appeal on December 26, 2019 on behalf of himself and twenty-four residents of the Westmount Community.

By letter dated January 16, 2020, the Maryland State Board of Education (State Board) transmitted the appeals to the Office of Administrative Hearings (OAH) for a contested case hearing and to issue a proposed decision containing findings of facts, conclusions of law, and recommendations. Code of Maryland Regulations (COMAR) 13A.01.05.07A(1), 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 represented themselves. Three

point-persons were designated by the group to file and receive pleadings for the group. A motions schedule was agreed upon and later modified at the request of the Local Board and some of the appellants.

On May 4, 2020, the Local Board filed a Motion and Memorandum in Support of County Board's Motion for Summary Decision (Motion) with twenty-five exhibits. The Appellants did not respond to the Motion. No one requested oral argument.

ISSUE

Should the Local Board's Motion for Summary Decision be granted because there is no genuine dispute as to any material fact and it is entitled to judgment as a matter of law?

SUMMARY OF THE EVIDENCE

Exhibits

In support of its Motion, the Local Board relied upon affidavits, archived video footage, and documentary exhibits. A complete list of exhibits is attached to this Recommended Ruling as an Appendix.

UNDISPUTED FACTS

The following facts are undisputed:

1. Local Board Policy 6010 defines the conditions and processes by which school attendance area adjustments will be developed and adopted in Howard County. (Motion, Ex. 1).
2. On January 24, 2019, the Local Board initiated a system wide school boundary review.
3. As part of her duties in the Office of School Planning and the boundary review and redistricting planning process, Renee Kamen, Manager of School Planning for the Local Board, produced a Feasibility Study with other school system staff. (Motion, Ex. 2).

4. The Feasibility Study was presented to the Local Board on June 13, 2019. The Attendance Area Committee reviewed the Feasibility Study and provided feedback to the superintendent through a series of meetings held on June 18, 2019, June 25, 2019, July 2, 2019, and July 9, 2019. (Motion, Ex. 3).

5. Four community meetings were conducted in July 2019. Input was solicited via an online form and survey collected between June 14, 2019 and August 1, 2019. (Motion, Ex. 2).

6. The superintendent's recommended plan was presented at a public board meeting on August 22, 2019. (Motion, Exs. 2 and 4).

7. Seven regional public hearings and nine public work sessions were held to consider the proposed boundary adjustments between September 17, 2019 and November 21, 2019, when the final vote was taken. (Motion, Ex. 2).

8. Prior to the final vote on November 21, 2019, the Local Board developed its own Redistricting Plan. (Motion, Ex. 22).

9. The Appellants live in Polygon 1171.

DISCUSSION

Legal Framework

Motion for Summary Decision

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

- (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 judgment under the 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 may submit evidence that goes beyond the initial pleadings, asserts that no genuine dispute exists as to any material fact, and shows that they are 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 all or part of an action.” 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). A material fact is defined as one that will somehow affect the outcome of the case. *King v. Bankerd*, 303 Md. 98, 111 (1985); *Washington Homes, Inc. v. Interstate Land Dev. Co.*, 281 Md. 712, 717 (1978). If a dispute does not relate to a material fact, as defined above, then any such controversy will not preclude the entry of summary judgment or decision. *Salisbury Beauty Sch. v. State Bd. of Cosmetologists*, 268 Md. 32, 40 (1973). Only where the material facts are conceded, are not disputed, or are uncontroverted and the inferences to be drawn from those facts

are plain, definite, and undisputed does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

When a party has demonstrated grounds for summary disposition, the opposing party may defeat the motion by producing affidavits, or other admissible documents or evidence, which establish that material facts are in dispute. *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737-38 (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. *See Richman v. FWB Bank*, 122 Md. App. 110, 146 (1998). *Richman* held in pertinent part that:

[T]he trial court must determine that no genuine dispute exists as to any material fact, and that one party is entitled to judgment as matter of law. In its review of the motion, the court must consider the facts in the light most favorable to the non-moving party. It must also construe all inferences reasonably drawn from those facts in favor of the non-movant.

To defeat a motion for summary judgment, the non-moving party must establish that a genuine dispute exists as to a material fact. A material fact is one that will somehow affect the outcome of the case. If a dispute exists as to a fact that is not material to the outcome of the case, the entry of summary judgment is not foreclosed.

Id.; *see also Bankerd*, 303 Md. at 110-11.

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. *See Eng'g Mgmt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 228-29 (2003). Additionally, “the purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be

tried.” *Jones v. Mid-Atlantic Funding Co.*, 362 Md. 661, 676 (2001) (citing *Goodwich v. Sinai Hosp., Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980)).

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, an appellant 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). 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.

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 sound educational policy is 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). Promoting demographic diversity in a school setting has been approved as sound educational policy. *Jones, et al. v. Montgomery Cty. Bd. of Educ.*, MSBE Op. No. 06-38 (2006).

There is no right to a school attendance area remaining “as is.” In *Stishan v. Howard County Board of Education*, MSBE Op. No. 05-33 (2005), a family opposed the county board’s redistricting decision, which resulted in the family’s children being reassigned to a different high school. The redistricting plan was upheld by the State Board, which found there is no liberty or property interest in a school in one’s district remaining “as is,” without changes resulting from closure or consolidation. The decision to close or consolidate schools is a quasi-legislative matter and the rights to be afforded to interested citizens are limited.

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).

Local Board’s Motion for Summary Decision

Policy 6010

The Appellants asserted in their appeal that the Redistricting Plan is arbitrary and unreasonable because it violates Policy 6010 by creating an “island” and failing to provide community stability, and that it was based, in part, on the testimony of persons who do not reside in Polygon 1171. They complained they did not get a fair chance to offer testimony because Polygon 1171 was brought into the discussion at such a late date.

The evidence produced by the Local Board in support of its Motion shows that the Board engaged in an eleven-month process of gathering information, hearing from the public, and deliberating before making its final decision. Polygon 1171 was included in the original Superintendent's Plan offered to the Local Board in August 2019. (Motion, Ex. 4, p. 11). The exhibits submitted by the Local Board show the redistricting process was publicized beginning in January 2019 and throughout the year. All residents were invited to provide oral or written comment. Written statements were given equal weight to public testimony, as stated by Chair Ellis at the beginning of every public work session.

Policy 6010 provides for several considerations in redistricting, including that boundary changes should promote community stability, keep feeds together, and recognize contiguous neighborhoods. (Motion, Ex. 1, pp. 3-4). This would encourage the avoidance of "islands," as argued by the Appellants. However, the Local Board is not required to achieve every goal of Policy 6010, and there is no guarantee a neighborhood will not be separated from nearby neighborhoods. The State Board has previously upheld such separations. *Debbie Mohabir, et al., and Tanya Spann Roche v. Howard Cty. Bd. of Educ.*, MSDE Op. 14-57 (2014).

Language Barrier

The Appellants complained that most residents of Polygon 1171 are minorities with several residents speaking English as a second language. (Appeal, p. 3). The business of the Local Board is conducted in English, they asserted, leaving many residents unaware their polygon was being moved. As a result, the Appellants felt left out of the discussions and the redistricting process.

The Local Board moved for summary decision on this issue because it makes interpreters available upon request. However, according to the affidavit of Renee Kamen, Manager of School Planning, no request for interpreters beyond Mandarin Chinese was submitted for any of

the proceedings and those interpreters were provided as requested. (Motion, Ex. 2, p. 6). The Appellants offered no evidence to refute Ms. Kamen's sworn statement. I am mindful of the obstacles a parent for whom English is not a first language might face in participating in the redistricting process. Based on Ms. Kamen's affidavit, it is clear that the Local Board attempted to address and lessen those obstacles by providing interpreters upon request. Although providing interpreters may not have completely alleviated all the obstacles a non-English speaking parent may have encountered in the process, there is nothing before me that any requests were denied, or a requested interpreter not provided.

Faulty Data

The Appellants asserted in their appeal at page two that:

[f]aulty data was used to arrive at decisions regarding polygon 1171 and . . . the community was not provided a fair chance to repudiate the faulty data. The faulty data was provided through testimonies from other polygons. Board members supplemented school projections with testimonies from other polygons and utilized inflated projections to decide attendance areas of polygon 1171.

Although the Appellants attached some exhibits to their appeal, they failed to explain what data was faulty. The Local Board moved for summary decision on this issue based on the assumption that the Appellants were appealing because they believed the FARM¹ data used by the Board was faulty. The issue regarding the FARM data is an issue raised by other appellants but is not specifically raised in this appeal. Indeed, this appeal suggests the data the Appellants disputed related to the student population of Polygon 1171, not the FARM data. The Appellants failed to explain what issue they were raising in their appeal and failed to produce any evidence to show a dispute over facts regarding the student population of their polygon.

¹ Free and Reduced Meals

Summary

The Appellants did not respond to the Motion or submit any evidence to refute the Board's evidence or raise a genuine dispute of material fact. Merely raising complaints will not preclude the entry of summary judgment or decision. *Salisbury*, 268 Md. at 40; *Fenwick Motor Co.*, 258 Md. at 139. Construing all inferences in the Appellants' favor, I find the Board is entitled to prevail as a matter of law. *Beatty*, 330 Md. at 737-38.

CONCLUSION OF LAW

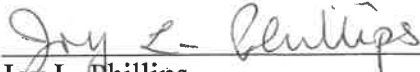
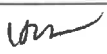
Based on the foregoing Undisputed Facts and Discussion, I conclude as a matter of law that the Local Board's Motion for Summary Decision should be granted because there is no genuine dispute as to any material fact and the Local Board has shown that it is entitled to prevail as a matter of law. COMAR 28.02.02.12D(5); COMAR 13A.01.05.06.

RECOMMENDED ORDER

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

As I have recommended the Motion for Summary Decision be granted, the Appellants' case is dismissed. The Appellants' Prehearing Conference scheduled for June 22, 2020 is hereby **CANCELLED**.

June 8, 2020
Date Decision Issued


Joy L. Phillips
Administrative Law Judge 

JLP/dlm
#186068

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Recommended Ruling 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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