

MICHELE HAGEN (#36)

Appellant,

v.

HOWARD COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-25

### OPINION

Appellant 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. Appellant maintained that she did not feel heard during the redistricting process, that she questioned the integrity of the facts relied upon for the decision, and that the redistricting should have been put on hold until the new high school is built and open.

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 Appellant had failed to demonstrate any material dispute of fact regarding the appeal. The Appellant did not appear at the pre-hearing conference and did not respond to the Motion.

On June 8, 2020, the ALJ issued a Recommended Ruling on the Local Board’s Motion for Summary Decision finding that the Appellant did not submit any evidence to support her contentions and did not raise any genuine dispute of material fact. The local board, on the other hand, had supported its Motion with affidavits and other evidence. The ALJ recommended that we grant the local board’s Motion for Summary Decision.

Appellant 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 Appellant failed to satisfy her 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:

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Clarence C. Crawford  
President

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Jean C. Halle  
Vice-President

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Shawn D. Bartley

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Gail H. Bates

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Charles R. Dashiell, Jr.

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Susan J. Getty

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Vermelle Greene

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Rose Maria Li

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Rachel McCusker

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Joan Mele-McCarthy

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Lori Morrow

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Warner I. Sumpter

Absent:  
Holly C. Wilcox

April 27, 2021

MICHELE HAGEN,

APPELLANT

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-09-20-01897 (File #36)

\* \* \* \* \*

**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.

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 Appellant did not appear at the Conference. 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 Appellant 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, links to archived video footage, and documentary exhibits. A complete list is attached to this Recommended Decision 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, 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. Between September 17, 2019 and November 21, 2019, when the final vote was taken, seven regional public hearings and nine public work sessions were held to consider the proposed boundary adjustments. (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 Appellant resides in Polygon 86.

## 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 the party 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 all or part of an action.” COMAR 28.02.01.12D(1). The principal purpose of summary disposition, whether it is a 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 Appellant has 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

The Appellant wrote in her appeal that the Redistricting Plan should be put on hold until the new high school is built and open. She said that until then, all the high schools will remain overcrowded despite the attempts of the Board to ease overcrowding by reducing enrollment. She never received a response to her written input and thus, felt she was not heard during the redistricting process. She questioned the “truthfulness and integrity of the facts that were being relied on at the very last minute for the Board’s decision.” (Appeal and written statement). She was unhappy that one of her children would be reassigned to a different high school.

The Local Board moved for summary decision, asserting the Appellant failed to support her complaints with any evidence and raised no genuine dispute of material fact. It submitted affidavits from the Manager of School Planning, Renee Kamen, who was an integral part of the

redistricting process, and provided links to archived video footage of every public work session and Board meeting where the boundary changes were discussed. The Motion referred to the lengthy review process that began in January 2019 and the numerous public hearings and work sessions held by the Board to establish that the Board did, in fact, consider community input. It argued that Policy 6010 “permits the Board to adjust and reconsider the recommendations presented on attendance area adjustment proposals.” (Motion, Ex. 1, pp. 5-6).

The Local Board noted that the Redistricting Plan brought some relief to the overcrowded conditions of Howard High School and Long Reach High School. (Motion, p. 13). It also acknowledged that the Plan was not perfect and did not satisfy everyone, but argued it represented sound educational policy and fulfilled Policy 6010 goals.

The Appellant did not respond to the Motion or submit any evidence to support her contentions. She has neither refuted the Board’s evidence nor raised any genuine dispute of material fact. 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*, 268 Md. at 40; *Fenwick Motor Co.*, 258 Md. at 139. Construing all inferences in the Appellant’s 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 Appellant's case is dismissed. The Appellant's Prehearing Conference scheduled for June 22, 2020 is hereby

**CANCELLED.**

June 8, 2020  
Date Decision Issued

  
Joy L. Phillips  
Administrative Law Judge

JLP/dlm  
#186060

**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.

**Copies Mailed To:**

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