

TREMAYNE PRITCHETT
AND FLORENCE
MONTGOMERY
PRITCHETT (#2)

SHALINI GUPTA AND
RAJIV MAHAJAN (#7)

THONG NGUYEN (#8)

SUSAN HULL (#18)

CAROL C. CANNON (#21)

JESSICA AND PATRICK
HEAVIN (#24)

Appellants,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 21-19

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 (“Redistricting Plan”). As is required by COMAR 13A.01.05.07(A)(1)(a), this Board referred the case to the Office of Administrative Hearings for review by an Administrative Law Judge (“ALJ”).

The local board filed a motion to dismiss the Appellants from the case based on the failure of Appellants to state a claim upon which relief can be granted because they did not raise issues concerning whether the Redistricting Plan was arbitrary, unreasonable or illegal. Rather, the Appellants were all seeking a waiver from the redistricting or reassignment based on individual circumstances. Such claims follow a process separate and apart from an appeal of the redistricting. On March 20, 2020, the ALJ issued a Proposed Ruling on Motion to Dismiss recommending that the State Board grant the local board’s motion and dismiss the Appellants for failure to raise any issue that may proceed in an appeal of the Redistricting Plan. In response to an argument raised by some of the Appellants, the ALJ also found no defect in the local board’s motion based on lack of an original signature.

None of the Appellants filed exceptions to the Proposed Ruling.

We have reviewed the ALJ's decision and concur with the recommendation. Accordingly, we adopt the ALJ's Proposed Ruling on Motion to Dismiss as the Opinion of this Board and dismiss the Appellants from the redistricting appeal.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

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

Abstain:
Shawn D. Bartley

Absent:
Holly C. Wilcox

April 27, 2021

TREMAYNE & FLORENCE
MONTGOMERY-PRITCHETT
(File #02),

* BEFORE JOY L. PHILLIPS,
* AN ADMINISTRATIVE LAW JUDGE

SHALINI GUPTA &
RAJIV MAHAJAN
(File #07),

* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

THONG NGUYEN
(File #08),

*

*

SUSAN HULL
(File #18),

* OAH No: MSDE-BE-09-20-01427 (#02)

CAROL C. CANNON
(File #21),

*

MSDE-BE-09-20-01481 (#07)

*

MSDE-BE-09-20-01497 (#08)

and

*

MSDE-BE-09-20-01605 (#18)

JESSICA & PATRICK HEAVIN
(File #24),

*

MSDE-BE-09-20-01622 (#21)

APPELLANTS

*

MSDE-BE-09-20-01629 (#24)

v.

*

HOWARD COUNTY
BOARD OF EDUCATION,

*

*

RESPONDENT

*

* * * * *

PROPOSED RULING ON MOTION TO DISMISS

BACKGROUND
ISSUE
DISCUSSION
CONCLUSION OF LAW
PROPOSED ORDER

BACKGROUND

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, including the Appellants listed above.

By letter dated January 13, 2020, the Maryland State Board of Education (State Board) transmitted the appeals to the Office of Administrative Hearings (OAH) with the request to hold a consolidated contested case hearing and 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 14, 2020, the Local Board filed a Motion to Dismiss (Motion) the appeals listed above because the relief the Appellants sought—reassignment of their children to a different school than the one assigned to them under the Redistricting Plan—was not available in this appeal and their appeals were not ripe for consideration.¹ COMAR 13A.01.05.03B(1)(a) (The local board has not made a final decision) and (d) (The State Board has no jurisdiction over the appeal). Instead, the Local Board argued, the Appellants must file a request for reassignment of their children with the Local Board under the reassignment procedure. Md. Code Ann., § Educ. 4-205(c) (2018).

On February 20, 2020, I conducted an In-Person Prehearing Conference (Conference), at which time I scheduled dates for the filing of motions. On February 26, 2020, I issued a Prehearing Conference Report outlining the discussion at the Conference. The Appellants were directed to respond to the Motion no later than February 29, 2020. Appellants Montgomery-Pritchett and Appellant Nguyen did not file a Response. Appellants Gupta and Mahajan's Response was served on the Local Board electronically on February 29, 2020 and received at the

¹ Appellant Andrea Bussler (File #03), MSDE-BE-09-20-01431, was included in the Motion to Dismiss (Motion) but withdrew her appeal on March 2, 2020. Appellants Nancy and Eric Kusmaul (File #11), MSDE-BE-09-20-01537, were included in the Motion but withdrew their appeal on March 2, 2020. Appellants Christopher and Jordan Monaghan (File #14), MSDE-BE-09-20-01431, were included in the Motion but withdrew their request on February 18, 2020. Additional appellants were included in the Motion, but I have issued a separate Ruling in those cases.

OAH on March 9, 2020. I consider it timely filed. Appellant Hull's Response, Appellant Canon's Response, and Appellants Heavin's Response were received at the OAH on the next business day, March 2, 2020. The Local Board was given until March 10, 2020 to reply to the Appellants' responses. No reply was filed.

I will rule on the Motion without a hearing as no one requested oral argument.

Procedure is governed by the Administrative Procedure Act, the regulations of the State Board, and the OAH Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.01.05; COMAR 28.02.01. Any dispositive decision by me will be a proposed decision to the State Board. COMAR 13A.01.05.07E.²

ISSUE

Should the Appellants' appeals be dismissed because the Local Board has not made a final decision or because the State Board does not have jurisdiction to hear the issue?

DISCUSSION

The State Board's regulations provide for a motion to dismiss in response to an appeal in COMAR 13A.01.05.03B, as follows:

- (1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:
 - (a) The county board has not made a final decision;
 - (b) The appeal has become moot;
 - (c) The appellant lacks standing to bring the appeal;
 - (d) The State Board has no jurisdiction over the appeal; or
 - (e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.

- (2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in § B(1) of this regulation.

² In an appeal of a school redistricting, the Administrative Law Judge shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the proposed written decision to the parties. COMAR 13A.01.05.07E.

OAH's Rules of Procedure similarly provide for consideration of a motion to dismiss under COMAR 28.02.01.12, which provides as follows:

- C. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person." The initial pleading in these cases is the appeal filed by the Appellants with the State Board.

COMAR 28.02.01.12C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule is helpful in analyzing a similar motion under the procedural regulations of the OAH. In a motion to dismiss, the moving party must establish that it is entitled to relief. *See Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312 (1996); *Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997). Furthermore, when construing a motion of this nature, the ALJ is required to examine the evidence in the light most favorable to the non-moving party. Case law establishes several relevant rules. First, the properly pleaded allegations contained in a complaint are accepted as true. Second, reasonable inferences favorable to the complainant are drawn from the properly pleaded facts. Third, any ambiguity or uncertainty in the allegations is construed against the complainant. *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 344-45 (2000).

The Local Board argues that each of the Appellants named in the Motion is, through this appeal, asking that the State Board grant a waiver of the new assignment or approve a transfer to a school other than that to which their children are now assigned under the Redistricting Plan. But waivers are not addressed through appeals of the entire Redistricting Plan, but rather on a separate track, as discussed below. Waivers must first be addressed by the Local Board and

then, if denied, appealed to the State Board. This procedure was not followed in these appeals, the Local Board argues. As a result, the Local Board has not made a final decision and the State Board has no jurisdiction over the appeal. COMAR 13A.01.05.03B(1)(a) and (d).

Further, the Local Board notes that in the appeals filed by these Appellants, they did not allege facts that would demonstrate that the Redistricting Plan was arbitrary, unreasonable, or illegal, as required by COMAR 13A.01.05.06A. Because they only requested reassignment of their children, these Appellants must use the process set forth in County Board Policy 9000-IP.

County Board Policy 9000-IP creates procedures parents must follow to initiate a student reassignment. Using these procedures, parents submit a Student Reassignment Request form, with appropriate supporting documentation, to the Superintendent/Designee for review. The Superintendent/Designee then reviews the request based on Board policy and makes a formal decision approving or denying the requested reassignment. If denied, parents may appeal to the County Board and then to the State Board.³ Md. Code Ann., Educ. Sec 4-205(c) (2018).

Reassignment waivers are not a remedy afforded in an appeal of a redistricting plan. Instead, such plans are considered *prima facie* correct and to challenge such a plan, appellants must show that the entire plan is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. If all that is requested is reassignment based on individual circumstances, the procedure to be used is separate from a redistricting appeal. In that case, dismissal is required. COMAR 13A.01.05.03B. I have reviewed the appeals of the Appellants to see if they raised issues beyond a request for reassignment.

³ According to some of the Responses filed by the Appellants, some have now filed the Reassignment Request form and are waiting for a response or have received a denial from the Local Board. If they received a denial, they would still need to pursue an appeal to the State Board and that decision would be addressed separately from the appeal on redistricting.

Appellants Montgomery-Pritchett (File #02)

In their appeal, Appellants Montgomery-Pritchett requested that their daughter be allowed to remain at Oakland Mills High School. They raised no issue regarding whether the Redistricting Plan is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Local Board argued that the remedy requested—no reassignment—is not available in this appeal because the Local Board and the State Board have not yet decided on the no reassignment request. Reassignment issues are resolved separately from redistricting appeals, using a separate procedure, as discussed above. Accordingly, Appellants Montgomery-Pritchett’s appeal is not ripe for consideration and must be dismissed.

Appellants Gupta and Mahajan (File #07)

In their appeal, Appellants Gupta and Mahajan wrote that the Redistricting Plan impacted their son’s enrollment in the JumpStart Program and caused their children to attend different schools. They said this “would have a major physical, financial, emotional, and logistical impact on our family and kids.” They asked that their son be allowed to stay at his high school. They raised no issue regarding whether the Redistricting Plan is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Local Board argued that the remedy requested—no reassignment—is not available in this appeal because the Local Board and the State Board have not yet decided on the reassignment request. Reassignment issues are resolved separately from redistricting appeals, as discussed above. Accordingly, Appellants Gupta and Mahajan’s appeal is not ripe for consideration and must be dismissed.

Appellants Gupta and Mahajan also argued the Motion should fail because the Local Board’s attorneys did not “provide proper signatures in accordance with COMAR 28.02.01.10(2).” I believe they are referring to COMAR 28.02.01.10C(2), which provides, “The certificate of service shall be signed ...” This provision refers to the Certificate of Service which

accompanies filings to certify that the filing has been served on the other party. It does not refer to the filing itself. There is no requirement under the OAH Rules of Procedure that filings must contain an original signature. COMAR 28.02.01.02B(7). Pursuant to my authority under COMAR 28.02.01.11B(11), I find that an original signature on the Motion is not necessary to validate it and further, that denying the Motion on that basis would be contrary to concepts of fairness granted to all parties appearing before the OAH. COMAR 28.02.01.01B.

Appellant Nguyen (File #08)

In his appeal, Appellant Nguyen requested that his daughter, a rising ninth grader, be allowed to attend the same high school as her two brothers. He raised no issue regarding whether the Redistricting Plan is arbitrary, unreasonable, or illegal. The Local Board argued that the remedy requested—reassignment—is not available in this appeal because the Local Board and the State Board have not yet decided on the reassignment request. Reassignment issues are resolved separately from redistricting appeals, using a separate procedure, as discussed above. Accordingly, Appellant Nguyen’s appeal is not ripe for consideration and must be dismissed.

Appellant Hull (File #18)

In her appeal, Appellant Hull wrote that the Redistricting Plan interrupts her son’s plans to participate in the JumpStart Program. She asked that her son be allowed to stay at his high school. She raised no issue regarding whether the Redistricting Plan is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Local Board argued that the remedy requested—no reassignment—is not available in this appeal because the Local Board and the State Board have not yet decided on the reassignment request. Reassignment issues are resolved separately from redistricting appeals, as discussed above. Accordingly, Appellant Hull’s appeal is not ripe for consideration and must be dismissed.

Appellant Cannon (File #21)

In her appeal, Appellant Cannon wrote that the Redistricting Plan prevents her children from participating in the JumpStart Program based on the timeframe for enrolling and the schools in which the JumpStart Program is offered. She asked that her children be allowed to stay at their high school and receive transportation services under an exemption.

In her Response to the Motion, she argued that “providing [the JumpStart Program] at one school and not at the transferred school is illegal” under COMAR 13A.04.02.04B. That section reads:

Each local school system and community college shall further assure that career and technology education programs are readily available to students from all geographic sections of the local school system and community college area. This section requires career and technology education program be readily available to

students regardless of where they live. It does not require the JumpStart Program to be offered in every high school. Further, Appellant Cannon’s appeal, which constitutes the initial pleading, does not indicate whether the Redistricting Plan illegally altered the availability of career and technology education programs, making them unavailable to students. Her appeal raised no issue regarding whether the Redistricting Plan is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

The Local Board argued that the remedy requested—reassignment—is not available in this appeal because the Local Board and the State Board have not yet decided on the reassignment request. Reassignment issues are resolved separately from redistricting appeals, as discussed above. Accordingly, Appellant Cannon’s appeal is not ripe for consideration and must be dismissed.

Appellant Cannon also argued the Motion should fail because the Local Board’s attorneys did not “provide proper signatures in accordance with COMAR 28.02.01.10(2).” I believe she is referring to COMAR 28.02.01.10C(2), which provides, “The certificate of service shall be signed

...” This provision refers to the Certificate of Service which accompanies filings to certify that the filing has been served on the other party. It does not refer to the filing itself. There is no requirement under the OAH Rules of Procedure that filings must contain an original signature. COMAR 28.02.01.02B(7). Pursuant to my authority under COMAR 28.02.01.11B(11), I find that an original signature on the Motion is not necessary to validate it and further, that denying the Motion on that basis would be contrary to concepts of fairness granted to all parties appearing before the OAH. COMAR 28.02.01.01B.

Appellants Heavin (File #24)

In their appeal, Appellants Heavin requested that their daughter be allowed to remain at her elementary school because they live within walking distance and moved her there for the 2019-2020 school year. She will be moved to a different school in the coming year and may be moved again based on the family’s housing plans. Appellants Heavin raised no issue regarding whether the Redistricting Plan is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Local Board argued that the remedy requested—reassignment—is not available in this appeal because the Local Board and the State Board have not yet decided on the reassignment request. Reassignment issues are resolved separately from redistricting appeals, using a separate procedure, as discussed above. Accordingly, Appellants Heavin’s appeal is not ripe for consideration and must be dismissed.⁴

CONCLUSION OF LAW

I conclude, as a matter of law, that the Local Board’s Motion to Dismiss should be granted because the Appellants’ appeals do not raise any issue that may proceed in an appeal of the Redistricting Plan. COMAR 13A.01.05.06A; COMAR 28.02.01.01B, .02B., .11B(11). The

⁴ In their Response to Motion, Appellants Heavin raised new issues, including the safety of children in their polygon and whether their polygon should have been “grouped” with others. As those issues were not raised in the initial pleading, their appeal would need to be amended with leave of the State Board or the consent of the Local Board. COMAR 13A.01.05.04A(2).

Local Board has not made a final decision and the State Board does not have jurisdiction.

COMAR 13A.01.05.03B(1)(a) and (d).

PROPOSED ORDER

I **PROPOSE** that the Howard County Board of Education's Motion to Dismiss be **GRANTED** as to Appellants Montgomery-Pritchett (File #02), Appellants Gupta and Mahajan (File #07), Appellant Nguyen (File #08), Appellant Hull (File #18), Appellant Cannon (File #21), and Appellants Heavin (File #24).

March 20, 2020
Date Order Mailed


Joy L. Phillips
Administrative Law Judge

JLP/cmj
#184997

RIGHT TO FILE EXCEPTIONS

A party objecting to the administrative law judge's proposed decision may file exceptions with the State Board within 15 days of receipt of the findings. A party may respond to exceptions within 15 days of receipt of the exceptions. As appropriate, each party shall append to the party's exceptions or response to exceptions filings copies of the pages of the transcript that support the argument set forth in the party's exceptions or response to exceptions. If exceptions are filed, all parties shall have an opportunity for oral argument before the State Board before a final decision is rendered. Oral argument before the State Board shall be limited to 10 minutes per side. COMAR 13A.01.05.07.

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