

SARA LYNN
SCHEANWALD THOMAS
and LONG CHEN (#35)

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 21-29

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 concerns regarding the reliability of the FARM data, concerns about the violation of the Open Meetings Act (“OMA”), that the decision failed to fulfill the goals of Policy 6010, and that they had no notice that schools serving their polygons might be included in the boundary changes and thus no opportunity to provide input into the process.

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. The Appellants 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 Appellants did not submit any evidence to support their contentions and did not raise any genuine dispute of material fact. The local board, on the other hand, supported its Motion with the affidavit of Renee Kamen, Manager of School Planning, who addressed the data issue. Appellants did not refute the evidence. The ALJ also found that Appellants failed to raise a genuine issue of material fact regarding the impact of the OMA violation on the redistricting decision, and failed to raise one with regard to the local board’s considerations of utilization and FARM participation rates under Policy 6010. In addition, the ALJ noted the tremendous public outreach in Howard County regarding the redistricting process and the fact that there were individuals who participated in the process on behalf of Appellants’ polygons. 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

SARA LYNN SCHEANWALD THOMAS * **BEFORE JOY L. PHILLIPS**
AND LONG CHEN, * **AN ADMINISTRATIVE LAW JUDGE**
APPELLANTS * **OF THE MARYLAND OFFICE OF**
v. * **ADMINISTRATIVE HEARINGS**
HOWARD COUNTY * **OAH No.: MSDE-BE-09-20-01873**
BOARD OF EDUCATION * **(File #35)**

* * * * *

**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.

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 were represented by Tae H. Kim, Esquire.

A motions schedule was agreed upon and later extended 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 deadline for filing a response was May 20, 2020. The Appellants did not respond to the Motion.¹ 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 of meetings, 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.

¹ At the Prehearing Conference, the parties agreed to serve filings to each other via email and the Local Board's Certificate of Service shows the Motion for Summary Decision was served on Mr. Kim using email. Additionally, on May 22, 2020, I emailed the representatives of all parties with a list of what the Office of Administrative Hearings had received related to motions for summary decision and asking the representatives to confirm what they had filed. Mr. Kim did not respond to the email.

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. 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 Appellants live in Polygons 132 and 1132.

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 their 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).

Sometimes the opinion of a board or testimony of one of its members may show that its action was arbitrary or unlawful, but ordinarily courts review the action of the board, not its opinion. *Williams v. McCardell*, 198 Md. 320, 330 (1951). In the *Bernstein* case, the remark to one member of the Board during the proceeding, repudiated on behalf of the Board at the end of the hearing, and, in any event, not applicable to the majority of the children affected by the

Board's action, was not deemed to be the opinion of the Board or to affect the validity of its action. *Bernstein*, 245 Md. at 477.

Local Board's Motion for Summary Decision

The Local Board addressed each of the following issues raised by the Appellants in their appeal.

FARM Data

The Local Board moved for summary decision on the Appellants' contention that the FARM² data used by the Local Board was unreliable and inaccurate. In support of its Motion, the Local Board referred to the affidavits sworn to by Renee Kamen, Manager of School Planning. In the first affidavit (Motion, Ex. 2), Ms. Kamen wrote,

42. The data points used by the Office of School Planning to calculate the projected enrollment and FARM enrollment were based on the official September 30, 2018 enrollment date and the October 30, 2019 official FARM reporting date.

43. Two methodologies were utilized during the boundary review process in the calculation of the FARM data. It was discovered in work session 7 that the methodology in use inadvertently led to a variation on the FARM rate calculation. Once discovered, steps were taken to more closely align the data with the method previously used and those adjustments were made in time for the board's straw votes and final boundary review in work sessions 8 and 9. The methodology revision did not affect the overall attendance area adjustment plans.

In the second affidavit (Motion, Ex. 24), Ms. Kamen wrote,

21. The FARM rates change between November 18, 2019; and November 21, 2019, were a result of Board moves, removal of PreK and mobility from the data set and the change in process. A comparison of FARM rates shown in reports for the straw vote versus the final vote show three schools with a difference in reported rate of greater than 5%. There were 56 out of 74 schools with variations of 1% or less between the two reports. The review that yielded these revisions was requested by Board members.

The Local Board argued that "variances in the data can be attributed to the date the data is captured, the grades used, the geographical area or attendance, changes requested by Board

² Free and Reduced Meals

members during work sessions and change in methodology. . . . Even with those changes, the variance in the data was not significant.” (Motion, p. 11).

The Appellants have offered no evidence to cast doubt on the information sworn to by Ms. Kamen or raise a genuine dispute of material fact regarding the Board’s use of FARM data. Thus, I accept Ms. Kamen’s statement that the revisions did not affect the overall attendance area adjustment plans.

Violation of Open Meetings Act

The Appellants complained that the Local Board violated the Open Meetings Act, Md. Code Ann., Gen. Provisions, Title 3 (2019), during a vote on their polygons on November 21, 2019. The Local Board has conceded that the violation occurred. Furthermore, the Open Meetings Act Compliance Board has addressed it and found that a violation occurred. (Motion, Ex. 25). As a result of the documented violation, the Appellants requested in their appeal that the entire Redistricting Plan be voided.

The Local Board moved for summary decision on this issue, positing several arguments. It argued the violation was inadvertent; that it is “not within this body’s power to legislate the decision made by the Board while acting in a quasi-legislative capacity” (Motion, p. 12); that the vote was ratified on December 18, 2019, thereby remedying the violation; and that the violation does not necessarily render the entire procedure illegal.

I have viewed the recordings of the Board’s work sessions, including the one on November 21, 2019.³ The Open Meetings Act violation is obvious and has been conceded. The Appellants could have raised a dispute over the impact the violation had on the Redistricting Plan, but they have chosen not to respond to the Board’s arguments. Construing all inferences in favor

³ The video/audio recordings of the Board of Education meetings are the official record of the meetings, per the meeting summaries submitted as Motion Exhibits 6 through 22.

of the Appellants as the non-moving party, I conclude there is no genuine dispute of material fact and the Board is entitled to judgment as a matter of law.⁴ *Beatty*, 330 Md. at 737-38.

Policy 6010

The Local Board addressed the Appellants' contention that the Board failed to fulfill the goals of Policy 6010. The Board argued that in making the moves that affected the Appellants' polygons, it focused on two main considerations: utilization and FARM participation rates. It noted the FARM participation rate at Bryant Woods Elementary School decreased from 50% to 43%. (Motion, p. 13 and Ex. 5, p. 6). According to the Redistricting Plan, capacity decreased at that school from 125% to 112%. (Motion, Ex. 5, p. 6). It wrote that Board members are elected by the public to establish educational policy for the entire county and that even though the Appellants might be unhappy with how their children were impacted, that does not make the Plan arbitrary or unreasonable.

The Appellants have produced no evidence showing the Local Board is required to fulfill every goal of Policy 6010 in every boundary change. Indeed, the Policy itself provides, "[I]t may not be feasible to reconcile each and every school attendance area adjustment with each and every factor." (Motion, Ex. 1, p. 3). The Appellants have failed to raise any genuine dispute that the Board's considerations of utilization and FARM participation rates in changing the boundaries of the schools in the Appellants' polygons violated the Policy.

Notice

The Appellants complained in their appeal that their polygons were not in play until late in the process, they received no notice that the schools serving their polygons might be included in the boundary changes, and they were given no opportunity to provide input into the process.

⁴ My conclusion that the Motion should be granted on this issue is based on the Appellants' failure to raise a genuine dispute of material fact regarding the impact of the violation of the Open Meetings Act. Thus, my ruling on this issue in some of the other appeals may differ from my ruling here.

They wrote in their appeal that only parents and students from polygons identified early on as possible targets of a boundary change had the opportunity to provide feedback to the Board.

The Local Board moved for summary decision on this issue arguing that everyone in Howard County received notification of the redistricting process, that a timeline of events was provided in June 2019, communications were provided on the Board's website, and emails were sent to parents advising how to provide input. Public hearings were televised, streamed, and available to the public. (Motion, p. 14; Ex. 2). Chair Ellis announced at the beginning of each work session that written testimony would be accepted, reviewed, and treated with the same weight as oral testimony. The recordings of work sessions reveal many members in the audience showing up on behalf of Polygons 132 and 1132 and reveal Board members relating communications from residents of those polygons. Ms. Kamen's affidavit sets forth the efforts the Board made to notify the public of the redistricting process. (Motion, Ex. 2). The Appellants have not refuted Ms. Kamen's affidavit or offered any of their own evidence to raise a dispute of fact on this issue.

Summary

The Appellants did not respond to the Motion or submit any evidence to support the contentions they raised in their appeal. They have 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 Appellants' favor, I find the Board is entitled to prevail as a matter of law. *Beatty*, 330 Md. at 737-38.

CONCLUSION OF LAW

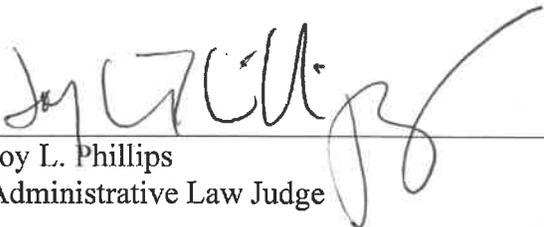
Based on the foregoing Undisputed Facts and Discussion, I conclude as a matter of law that the Local Board's Motion for Summary Decision should be granted because there is no genuine dispute as to any material fact and the Local Board has shown that it is entitled to prevail as a matter of law. COMAR 28.02.02.12D(5); COMAR 13A01.05.06.

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 **CANCELLED**.

June 10, 2020
Date Decision Issued


Joy L. Phillips
Administrative Law Judge

JLP/cmj
#186137

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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