

SARAH WALTON (#4)

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-32

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 alleged a myriad of concerns about the redistricting including that the redistricting impacts her child’s daycare arrangements, her child will miss out on musical opportunities, and she did not feel she had the opportunity to be heard throughout the redistricting 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 Appellant 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 Appellant did not submit any evidence to support her contentions and did not raise any genuine dispute of material fact. The ALJ determined that, although Appellant disagreed with the local board’s decision, a reasoning mind could have reached the same decision using local board Policy 6010 and the data contained in the board’s exhibits. The ALJ refused to consider issues that Appellant had failed to properly amend to her original appeal and did not consider Appellant’s request to postpone the redistricting to the fall of 2021. The ALJ recommended that we grant the Motion for Summary Decision and dismiss the appeal.

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 recommended dismissal of 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:

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

SARAH E. WALTON,

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-09-20-01433 (File #04)

* * * * *

**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 Appellant filed a written waiver of her appearance and was not represented by counsel. 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 file a response to the Motion but did file a "Response to County Board's Memorandum in Response to Appeal" on May 4, 2020, with eight attachments.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, and documentary exhibits. The Appellant attached eight exhibits to her filing. 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

¹ I have discussed the relevancy of the attachments to the Motion in the Discussion.

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 Appellant lives in Polygon 76.

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 and 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 Ed. of Montgomery Cty.*, 311 Md. 303, 309-10 (1987).

Appeal and Response

The Appellant appealed the Redistricting Plan on the basis that she felt disrespected and devalued by the changes made. The boundary change for her son will impact his daycare arrangements with a trusted provider. Her son will miss out on his musical opportunities by having to change schools. She argued that families who are not participants in the Free and Reduced Meals (FARM) program were not considered in the redistricting process. She was caught off guard by the final vote on November 21, 2019 and did not believe she was given an opportunity to be heard. She complained that the boundary changes interrupted the progress being made for many elementary school children. She requested a waiver be granted for her son.

In the response the Appellant filed on May 4, 2020, which responded to the Local Board's Response to Appeal, not to the Motion, the Appellant stated the Redistricting Plan was arbitrary and illegal. She wrote that many of the moves were unreasonable. She asserted the decisions were based on race based on comments made by two members of the Local Board who mentioned diversity and "racial and socio-economic concerns." These statements were attached to her response. She argued that her Polygon is left with a very small feed, contrary to the goals of Policy 6010. She wrote that her Polygon was not in play until late in the process, so she never went to a work session or public meeting to voice her objections. She wrote she "never received notice that community input was an option." She wrote many members of her community never knew about options for contributing their opinions. Finally, she asked that, in light of the coronavirus pandemic, the Redistricting Plan be postponed to the Fall of 2021.

Local Board's Motion for Summary Decision

The Local Board moved for summary decision based on evidence showing significant news and internet coverage of the redistricting process through 2019. (Motion, Ex. 2). As set forth above, there were many public hearings that were televised, streamed, and available to the public. All residents were provided an opportunity to submit input.

The Local Board argued that the Redistricting Plan took into consideration the factors set forth in Policy 6010 by balancing, among other things, utilization and FARM rates. As a result, the elementary school the Appellant's son attends moved from a FARM rate of less than 5% to 9%, with other boundary changes resulting in a decrease of the FARM rate. (Motion, Ex. 5). It noted the moves were part of an overall design based on the continued growth of the county and the need to balance FARM rates.

Analysis

The Appellant is obviously a dedicated mother and caring member of her community. She has raised numerous weaknesses in the Redistricting Plan as she sees them. She wrote that she is also a teacher, giving her a unique perspective. Nevertheless, in comparison to the breadth of the Local Board's evidence submitted in support of the Motion, the Appellant has not raised any genuine dispute of material fact. Instead, she has merely raised personal complaints as they apply to her, her son, and community.

The Local Board noted that the boundary changes that affected the Appellant's Polygon were part of a series of moves designed to improve capacity utilization and FARM rates at four elementary schools. (Motion, p. 12). The moves were required due to the continued growth of the county and the need to balance FARM rates. Although the Appellant disagreed with the result, a reasoning mind could have reached the Board's decisions using Policy 6010 and the data contained in the Board's exhibits. *Bernstein*, 245 Md. at 479.

The Appellant has also attempted to add issues to her original appeal by asserting in her response to the Local Board's Response to Appeal that the boundary changes were racially motivated based on two statements of Board members. In support of her assertion, she attached an email from member Taj and a campaign website of member Mallo. I will not address issues not raised in the original appeal unless that appeal has been formally amended. Furthermore, as stated in *Williams v. McCardell*, 198 Md. 320, 330 (1951), 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. 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, is not to be deemed the opinion of the Board or as affecting the validity of its action. *Bernstein*, 245 Md. at 477.

The other documents attached to the Appellant's filing relate to her desire to postpone implementing the Redistricting Plan to the Fall of 2021 and are not relevant to the Motion. They do not raise a dispute over a material fact at issue in the appeal. The OAH was given authority only to hear the appeal and issue a proposed decision to the State Board. The OAH has no authority to address the timeframe for implementing the Redistricting Plan.

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. 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 31A.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
#186089

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:

Sarah E. Walton


Claude de Vastey Jones, Esquire
Judith S. Bresler, Esquire
Carney, Kelehan, Bresler, Bennett & Scherr, LLP
10715 Charter Drive, Suite 200
Columbia, MD 21044