

IN THE MATTER OF  
COMAR 13A.01.05.08B

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 20-44

OPINION

INTRODUCTION

The Howard County Board of Education (“local board”) asks this Board to issue a declaratory ruling interpreting the true intent and meaning of COMAR 13A.01.05.08B which concerns payment of the cost of the hearing transcript for State Board appeals in which there has been a hearing before an administrative law judge (“ALJ”) at the Office of Administrative Hearings (“OAH”). The parties to an appeal are responsible for filing a transcript of such a hearing with the State Board. COMAR 13A.01.05.08D. COMAR 13A.01.05.08B states that “[t]he proceedings before the [ALJ] shall be transcribed at the expense of the parties.”

FACTUAL BACKGROUND

The issue in this case arises out of the appeals of the November 21, 2019 Howard County Board of Education redistricting decision that included a series of boundary adjustments impacting the majority of schools in the Howard County Public School System (“HCPSS”). Subsequent to the local board’s decision, the State Board received 36 appeals, some filed by multiple appellants.

The State Board forwarded the appeals to OAH pursuant to COMAR 13A.01.05.07, and OAH assigned the appeals to ALJ Joy Phillips for handling. The appeals were numbered one through 36. Ten appeals were withdrawn by appellants. The ALJ dismissed 16 appeals on preliminary motions. The ALJ grouped the remaining 10 appeals according to the issues raised and conducted hearings on each issue. Some of the issues involved multiple appellants.

One of the remaining 10 appeals, Appeal #29, filed on behalf of three named Appellants, was the first hearing that took place. It addressed application of a provision of local board Policy 9000 regarding redistricting students who had an Individualized Educational Program (“IEP”) or a 504 Plan. The hearing took place on July 14, 15, and 16, 2020. On July 23, 2020, legal counsel for the local board, Ms. Bresler, emailed the attorneys representing the three Appellants who filed Appeal #29 regarding apportionment of the cost of the transcript of the OAH hearing. Ms. Bresler suggested sharing the cost according to the number of pages attributable to each party. (Petition, Attach. B). That same day, Ms. Lawrence-Whitaker, attorney for the Appellants, suggested that the cost of the entire transcript be shared 50-50, meaning that 50 percent would be paid by the local board and the other 50 percent would be paid by the three Appellants.

On August 3, 2020, Ms. Bresler indicated that the local board would be willing to share the cost of transcript preparation equally among all parties. Thus, in Appeal #29, each of the parties (the three Appellants and the local board) would bear one fourth of the total transcription cost. (Petition, Attach. C).

On August 7, 2020, Ms. Lawrence-Whitaker suggested that the local board should bear 70 percent of the cost because the local board consists of seven individual members, and the three Appellants should bear 30 percent of the cost. (Petition, Attach. D). Ms. Bresler declined to accept the proposal explaining that the local board participates in appeals as a single entity and not as seven individual board members. (Petition, Attach. E). In the Petition, Ms. Bresler indicates that Ms. Lawrence-Whitaker then reverted to the 50-50 proposal that she initially suggested on July 23.

The last hearing on the 10 appeals was held on September 4, 2020. The ALJ has issued her proposed decisions on each of the issues in the cases. The parties to the appeals are responsible for filing a transcript of the OAH hearing with the State Board, but the issue of how the expense is to be apportioned remains unresolved. The local board seeks a declaration that the cost of the transcription of the OAH hearing must be shared equally among each named appellant that participates in the hearing and the local board, and not apportioned 50-50 as suggested by Ms. Lawrence-Whitaker's proposal.<sup>1</sup>

#### STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.06E.

#### LEGAL ANALYSIS

The issue before the State Board is to explain the true intent and meaning of the requirement in COMAR 13A.01.05.08B that “[t]he “proceedings before the [ALJ] shall be transcribed at the expense of the parties.”

The local board maintains that this means that the entire cost of the transcript should be shared equally among the parties. The local board argues that had the State Board intended for local boards to pay 50 percent of the cost of preparing a transcript in all appeals, regardless of the number of named parties on the opposing side, it could have stated so in the regulation.

We agree with the local board. Had this Board intended a specific apportionment of expenses other than that the expenses be shared equally among all parties to the appeal, this Board would have specifically stated so in the regulation. Thus, it is our view that the regulation requires the total expense of transcription to be shared equally among all the parties to the

---

<sup>1</sup> Although provided the opportunity to do so, none of the appellants in any of the multiple appellant redistricting hearings at OAH responded to the Petition.

appeal, even when there are multiple individually named appellants in a case.<sup>2</sup> Apportionment in this manner is reasonable and administratively easy to manage.

CONCLUSION

For the reasons stated above, we declare that the true intent and meaning of COMAR 13A.01.05.08B is for each party participating in the appeal to share equally in the cost of transcribing the proceedings before the ALJ at OAH. By each party we mean the local board and each of the named appellants, except for individuals who are married to one other and who we count as a single appellant for the purpose of apportioning the cost.

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 D. Greene

\_\_\_\_\_  
Rose Maria Li

\_\_\_\_\_  
Rachel McCusker

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
<sup>2</sup> Individual appellants who are married to one another, however, shall be counted as a single appellant for the purpose of apportioning the transcript cost.

---

Lori Morrow

---

Warner I. Sumpter

---

Holly C. Wilcox

December 8, 2020