MEI HAN, et al. (#22)	BEFORE THE
Appellant,	MARYLAND
v.	STATE BOARD
HOWARD COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee.	Opinion No. 21-26

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 maintained that the local board relied on inaccurate data regarding the feed from Clarksville Middle School to Atholton High School, that the Redistricting Plan violated Policy 6010's goal of community stability because it separated polygons from others that have been linked together for many years, and that Appellants were not provided an opportunity to be heard.

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 responded to the Motion and the local board replied.

On June 10, 2020, the ALJ issued a Recommended Ruling on the Local Board's Motion for Summary Decision finding that the Appellants did not raise any genuine dispute of material fact and that the local board was entitled to prevail as a matter of law. The ALJ found the local board's reliance on projected data is an acceptable method of making redistricting decisions and that the decision relating to Clarksville Middle School is consistent with Policy 6010. In addition, the ALJ noted the redistricting decision was well publicized throughout Howard County giving all who were interested the opportunity to be heard, and that the local board's involvement of the community was consistent with Policy 6010. 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

MEI HAN, ET AL.,	*	**BEFORE JOY L. PHILLIPS**
APPELLANTS	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
HOWARD COUNTY	*	**ADMINISTRATIVE HEARINGS**
BOARD OF EDUCATION	*	**OAH No.: MSDE-BE-09-20-01625 (File #22)**

* * * * * * * * * * * * * * *

RECOMMENDED RULING ON THE LOCAL BOARD'S MOTION FOR SUMMARY DECISION

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 behalf of twenty-six parents in Polygons 296 and 1296.

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 represented themselves, with three "point

persons" designated to file and receive pleadings on behalf of the group. 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 to the Motion was May 20, 2020. The Appellants responded to the Motion on June 1, 2020 (Response); nevertheless, I accepted it and have considered it. I extended the Local Board's time for replying to June 8, 2020. The Local Board replied on June 8, 2020 (Reply). 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. 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 Appellants reside in Polygons 296 and 1296.

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 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

Faulty Data

In their appeal, the Appellants asserted that the Local Board relied on inaccurate data regarding the feed from Clarksville Middle School to Atholton High School. They based this

argument on a survey taken of their neighbors. They contended the numbers used by the Board were inflated.

In the Local Board's Motion, it referred to incorrect schools and data. The Appellants pointed out the error in their Response. (Response, pp. 1-2). In its Reply, the Board acknowledged the error and addressed data applicable to the correct schools. My discussion reflects the corrected information contained in the Response and Reply.

The Local Board moved for summary decision on the issue of whether it relied on inaccurate data. The Redistricting Plan did not change the boundaries of Polygons 296 and 1296. Those polygons are assigned to Clarksville Middle School which feeds into Atholton High School. The boundary changes of surrounding polygons resulted in reducing the feed from Clarksville Middle School to Atholton High School to 15%. (Motion, Ex. 5, p. 7). While stronger feeds are encouraged, so long as a feed does not dip below 15%, it is not considered a small feed, the Board argued. Accordingly, the decision relating to Clarksville Middle School is in accord with Policy 6010 IV.B.2.a. (Motion, Ex. 1, p. 4).

The Appellants argued the Local Board overestimated the number of high school students in Polygons 296 and 1296 who will attend Atholton High School. The Board distinguished between the neighborhood survey, which would have reflected current numbers, and the numbers used by the Local Board in making its decisions, which were based on projections made on September 30, 2018. Student enrollment projections are contemplated by Policy 6010 III.P. (Motion, Ex. 1, p. 3). Such projections will not be an exact count and their use does not make the numbers inaccurate, the Board argued. (Reply, p. 2). I agree that use of projected numbers does not make the data faulty, but is an acceptable method of making redistricting decisions.

Policy 6010

The Appellants asserted in their appeal the Redistricting Plan violated Policy 6010's goal of community stability because it separated their polygons from others that have been linked together for many years. Certainly, community stability is a worthwhile goal. However, not every factor considered by Policy 6010 can be given equal weight when such an extensive boundary change is under review, as recognized by the Policy itself in Section IV.B. (Motion, Ex. 1, p. 3). Separation of students and communities is inherent in the redistricting process.

The Local Board demonstrated that its choice to keep the Appellants' polygons in Clarksville Middle School, feeding into Atholton High School, followed the dictates of Policy 6010 by taking into account utilization and FARM[1] participation. (Reply, p. 2). It noted:

> At Atholton High School[,] FARM rates were balanced from 10% to 19%, River Hill High School target utilization is improved from 98% to 102%, and [at] Oakland Mills High School, the FARM participation rates were improved from 45% to 43%. At the elementary school level, Pointers Run Elementary School saw a reduction in target utilization from 124% to 101% and Swansfield Elementary School saw balancing in target utilization from 79% to 87%. In addition, they saw a reduction in FARM participation rates from 61% to 40%. (See, Board Approved Boundary Changes, Exhibit 5, p. 5-6).

These data show the Local Board implemented the goals of Policy 6010 in making decisions that impacted the Appellants' polygons. The Appellants have not raised a genuine issue of material fact regarding whether the Board followed Policy 6010 overall in developing the Redistricting Plan.

Opportunity to be Heard

The Appellants also appealed on the basis that they were not provided an opportunity to be heard. For much of the redistricting process, they understood their neighborhood would remain in the feed in which it had been for twenty years. Toward the end of the redistricting

[1] Free and Reduced Meals

process, the Local Board changed the boundaries for neighboring areas. By that point, the Appellants complained, they were not able to have their voices heard. In their Response, the Appellants asserted they were given only one public meeting in which to voice their objections and they were unable to register to speak due to high demand. (Response, p. 2). They were not convinced their emailed comments were read or considered by Board members.

The Board moved for summary decision on the basis that the redistricting process was lengthy and well publicized and all interested persons had ample opportunity to be heard over a number of months. The redistricting process was first announced in January 2019 and numerous public meetings were scheduled to permit input from the community, it argued. One affidavit submitted as part of the Motion sets forth the extent of the publicity and community involvement in the process. (Motion, Ex. 2). The Local Board argued, "Everyone was aware that the redistricting in Howard County potentially could affect every school in the county. The fact that some interested parties only became concerned in the redistricting once their polygon was potentially affected does not make the notice requirement less effective." (Motion, p. 12).

The Appellants are correct that their polygons were not in play until late in the process. Nevertheless, they were invited, as were all members of the Howard County community, to provide their input at every stage of the deliberations. As announced by Chair Ellis at the beginning of every public meeting and work session, written statements were given equal weight to oral testimony. It might have been preferable for all affected families to have an opportunity to speak with Board members after their polygons were put into play, but it is not required by Policy 6010. Without question the Redistricting Plan was bound to upset some families. That does not mean community input was not considered by the Board.

Alternate Plan

The Appellants wrote that they were satisfied with the Superintendent's Plan which was rejected by the Local Board. The Board argued that "it is not enough that the Appellants believe that a different plan should have been used." (Reply, p. 4). The Board is charged with developing and implementing sound educational policy for the community, using the factors set forth in Policy 6010. The Redistricting Plan impacted thousands of students throughout Howard County. Without a doubt, some families liked one plan over another plan, depending upon their unique needs and how the boundary changes impacted them individually. Nevertheless, the Board is correct that mere dissatisfaction with the final plan does not equate with a showing that the plan was arbitrary, unreasonable, or illegal. Nor does the Appellants' dissatisfaction raise a genuine dispute of material fact on this issue.

Summary

The Appellants' assertions in their Response do not raise any genuine dispute of material fact. The complaints they made, taken as true, are insufficient to show the Redistricting Plan was arbitrary, unreasonable, or illegal. 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, and *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 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 Appellants' case is dismissed. The Appellants' Prehearing Conference scheduled for June 22, 2020 is hereby **CANCELLED**.

June 10, 2020
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/dlm/cmg
#186056

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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