JAMES M. AND ARCHANA
V. NEIDERMYER (#9)

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-28

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 argued that the redistricting decision was illegal because the local board violated the Open Meetings Act ("OMA").

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"). On June 24, 2020, the ALJ issued a Recommended Order to grant, in part, the local board's motion for summary decision.

The ALJ conducted virtual hearings on July 23, 24, and 29, 2020, and August 11, 2020. On October 14, 2020, the ALJ issued a Proposed Decision concluding that the Appellants failed to show, by a preponderance of the evidence, that the local board's redistricting decision was illegal based on the OMA violation. The ALJ recommended dismissal of the appeal.

Appellants did not file exceptions to the ALJ's Recommended Order or Proposed Decision.

Based on our review of the record, we concur with the ALJ's Recommended Order on the local board's motion for summary decision and the ALJ's Proposed Decision and adopt them with one modification. In the Proposed Decision, the ALJ found that the Appellants did not meet their burden of proof in the case and, therefore, recommended dismissal of the appeal. Because the Appellants failed to demonstrate that the local board's decision was 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

_____
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

Dissent of Shawn D. Bartley:

The persuasive techniques of the board members should be thoroughly examined via direct examination when considering the curious vote change of the affected board member; especially taking into consideration the questionable data that was changed on the day of the decisive vote, without thorough contemplation and evaluation of the same.

April 27, 2021

JAMES M. NEIDERMYER AND	*	**BEFORE JOY L. PHILLIPS,**
ARCHANA V. NEIDERMYER	*	**AN ADMINISTRATIVE LAW JUDGE**
APPELLANTS	*	**OF THE MARYLAND OFFICE OF**
v.	*	**ADMINISTRATIVE HEARINGS**
HOWARD COUNTY	*	**OAH No.: MSDE-BE-09-20-01502 (File #09)**
BOARD OF EDUCATION	*	

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF 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 or Board) passed the Attendance Area Adjustment Plan for School Year 2020-2021 (Redistricting Plan). On December 16, 2019, the Appellants filed an appeal challenging the Redistricting Plan on numerous grounds (Appeal).[1] They asked that the decision regarding Polygon 3047 as it moved students from Hammond High School (HS) to Reservoir HS, be reversed.[2]

By letter dated January 16, 2020, the Maryland State Board of Education (State Board or MSDE) transmitted the appeal to the Office of Administrative Hearings (OAH) for a contested

[1] This was one of thirty-six appeals challenging the Redistricting Plan.
[2] The term polygon is defined later in this Proposed Decision.

case hearing and to issue a proposed decision containing findings of facts, conclusions of law, and recommendations.[3] Code of Maryland Regulations (COMAR) 13A.01.05.07A(1), E.

On February 20, 2020, I held an in-person prehearing conference on the appeal at the OAH in Hunt Valley, Maryland. Claude de Vastey Jones, Esquire, and Judith S. Bresler, Esquire, represented the Local Board at all proceedings. The Appellants represented themselves at all proceedings. A motions schedule was agreed upon and later extended at the request of the parties.[4]

The Local Board filed motions to dismiss in twelve cases on or about February 29, 2020. My rulings were issued on March 20 and 25, 2020. On March 5, 2020, the Local Board filed a Response to Appeal, accompanied by twenty-five exhibits, in each case in which no motion to dismiss had been filed.[5]

On May 4, 2020, the Local Board filed a Motion for Summary Decision.[6] On June 22, 2020, I convened a prehearing conference via videoconferencing.[7] The prehearing conference was continued to July 6, 2020. On June 24, 2020, I issued a ruling on the Motion for Summary Decision.[8] At the July 6, 2020 prehearing conference, the remaining issue was scheduled for hearing.

On July 23, 24, and 29, 2020, and August 11, 2020, I convened a contested case hearing via videoconferencing to address the impact of an Open Meetings Act violation on the

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[3] The letter transmitting the appeals to the OAH requested the hearings be expedited, but the parties did not file any such motion, as was permitted pursuant to Code of Maryland Regulations 28.02.01.06. Nevertheless, I scheduled the matter as soon as practical, as per the regulation.

[4] I frequently extended deadlines in the appeals for filing motions and responses due to the constraints imposed by the COVID-19 pandemic.

[5] One copy of those exhibits will be forwarded to the State Board with the files for all appeals.

[6] Numerous other motions were filed and ruled on in the other appeals prior to the Motion for Summary Decision.

[7] This matter was conducted remotely because of closures due to the COVID-19 pandemic.

[8] I recommended the Motion for Summary Decision be granted on the issues of whether the Local Board failed to provide adequate notice to the Appellants and whether the Local Board failed to consider community stability and the separation of students in the Redistricting Plan.

Redistricting Plan. The Appeal was consolidated with seven other appeals for hearing on this issue.[9]

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); the procedural regulations for appeals to the State Board of Education, COMAR 13A.01.05; and the Rules of Procedure for the OAH, COMAR 28.02.01, govern the procedure in this case.

ISSUE

Was the Redistricting Plan adopted by the Local Board on November 21, 2019, illegal as a result of a violation of the Open Meetings Act?

SUMMARY OF THE EVIDENCE

Exhibits

A list of the parties' exhibits is attached to this Proposed Decision as an Appendix.

Testimony

The Appellants presented the testimony of the following witnesses:

- Renee Kamen, Howard County Public School System (HCPSS) Former Manager of School Planning,[10] who was recognized as an expert in school planning
- Timothy J. and Stephanie K. Mummert (File #15) (Appellants in MSDE-BE-09-20-01599)
- Jim and Archana Neidermyer (Appellants)
- Dr. Jill Tayter (File #32) (Appellant in MSDE-BE-09-20-01781)

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[9] A. I consolidated the following appeals for hearing: Neidermyer (File #09), MSDE-BE-09-20-01502; Mummert (File #15), MSDE-BE-09-20-01599; Dimitrov (File #27), MSDE-BE-09-20-01684; Dewani (File #31), MSDE-BE-09-20-01773; MacCormack and Tayter (File #32), MSDE-BE-09-20-01781; Xue, et al., (File #33), MSDE-BE-09-20-01821; and Tucker (File #34), MSDE-BE-09-20-01834.
B. As the consolidated hearing, I accepted on behalf of all of the Appellants all exhibits introduced by any of the Appellants and I considered on behalf of all of the Appellants all of the arguments and objections made by any of the Appellants.

[10] At a hearing on September 3, 2020, Ms. Kamen announced that she had resigned from HCPSS.

- Local Board Member Kirsten Coombs

The Local Board presented no witnesses on this issue.

FINDINGS OF FACTS

I find the following facts by a preponderance of the evidence:

1. On January 24, 2019, the Local Board initiated a county-wide school boundary review that potentially impacted every school and neighborhood in Howard County, Maryland. The resulting school area adjustment would take effect during the 2020-2021 school year.

2. There are forty-two elementary schools, twenty middle schools, and twelve high schools in Howard County, for a total of seventy-four schools.

3. The impetus for the boundary review was the number of schools in Howard County that were or would soon be overcapacity. "Capacity" is the number of student seats in a school.

4. HCPSS Policy 6010 sets a range of 90% to 110% as the capacity utilization goal for each school. "Capacity utilization" is how many students attend a school in relation to official capacity.

5. The HCPSS Office of School Planning annually produces a Feasibility Study for the Local Board that covers the needs of the school system, projections for coming years, infrastructure needs, planned capital improvements, and when necessary, suggests a boundary review to address projected needs.

6. On June 13, 2019, the annual Feasibility Study, prepared by the Office of School Planning, was presented to the Local Board and the boundary review process was officially started.

7. The Office of School Planning provides ten-year projections of enrollment to the HCPSS in order to plan for future capital project and staffing needs. Enrollment projections not

only include cohort survival rates, that is, the number of students moving up from grade to grade, school to school, and level to level, but also housing projections, taking into account housing resales, apartment turnover, and development. These projections also incorporate Pre-K enrollment and birth-to-five years of age survival rates. Projections are developed for attendance areas.

8. A school "attendance area" is a large geographical area from which students are assigned to a school.

9. On August 22, 2019, the Superintendent presented his Proposed Attendance Area Adjustment Plan (Superintendent's Plan) to the Local Board. Under this plan, almost 7,400 students would be redistricted to a different school.[11]

10. Polygons are smaller units within an attendance area that are so designated only for redistricting purposes. Polygons are used to quickly provide the numbers needed for the Local Board to determine enrollment and other data for a school based on a suggested boundary change during redistricting deliberations.

11. Feeds refer to how students move up through the system. A feed at a middle school is the portion of students it receives from a particular elementary school, for example.

12. From September 17, 2019 to October 15, 2019, the Local Board held seven sessions at which the public could speak regarding the proposed boundary changes.

13. From October 17, 2019 to November 18, 2019, the Local Board held nine work sessions to develop new attendance areas.

14. At the work sessions, the Local Board considered numerous factors set forth in Policy 6010 in evaluating the merits of each suggested boundary change. Factors included

[11] This might mean that a rising ninth grader would attend a different high school than they would have attended had no redistricting taken place, or a rising third grader would attend a different elementary school for fourth grade, for instance.

capacity utilization, equity, Free and Reduced Meals (FARM) participation rates at each school, walkers becoming bus riders, whether communities would be divided as a result of a boundary change, feeds to schools, transportation costs, and planned housing development.

15. At the November 14, 2019 work session, Board members Jennifer Mallo and Dr. Chao Wu presented alternative plans from the Superintendent's Plan. The Local Board voted to use Ms. Mallo's plan as a base and work from it (Consolidated Plan).

16. In the Consolidated Plan, the students in polygons known as "the 32s" (132, 1132, 2132) were moved from Clemens Crossing Elementary School (ES) to Bryant Woods ES, a school much farther away from the neighborhoods comprising the 32s. The Board had lengthy discussions about this move, in addition to discussing several nearby elementary schools in the region known as Columbia West that were overcapacity. Several times Ms. Coombs questioned whether it was necessary to move the 32s and she made suggestions for avoiding the move. The 32s were in play during discussion, but ultimately the move to Bryant Woods ES was incorporated into the Consolidated Plan.

17. On November 18, 2019, the Board continued to address the elementary schools. Ms. Coombs expressed her view that she did not want to move the 32s. Finally, the Board took a straw vote on the Consolidated Plan, which had been revised during the work sessions. In the straw vote, Ms. Coombs voted in favor of the Consolidated Plan.

18. On November 21, 2019, during the final vote on the 32s, Ms. Coombs voted against the move, along with three other Board members, and the motion on that move failed. Ms. Mallo quickly moved for a recess and the Board recessed. More than four of the members, including Ms. Coombs, entered the Board meeting room, adjacent to the Board hearing room; thus, a quorum was present. The members discussed that the failed vote on the 32s would cause the entire Plan to "fall apart." The members were highly upset and emotional, with Ms. Coombs

crying. Some decried Ms. Coombs' vote and others cautioned against bullying her. Ms. Coombs mentioned she felt bullied by both sides, referring to public pressure. Ms. Coombs again wondered whether Clemens Crossing ES could accommodate the additional students. Ms. Coombs realized hers was the swing vote and she said she would move to reconsider the vote.

19. When the members reentered the meeting room after a four-minute recess and the meeting resumed, Ms. Coombs moved to reconsider the last vote and a new vote was taken. She said she was voting in favor of the move because otherwise, the entire Plan would fall apart. She was tearful and emotional at the time. Ms. Coombs voted in favor of moving the 32s to Bryant Woods ES and the votes on the Redistricting Plan continued without further delay.

20. On December 17, 2019, Ms. Coombs moved and voted with three other Board members to ratify the vote on the 32s.

21. On February 14, 2020, the Open Meetings Compliance Board issued a written decision finding that the Local Board had violated the Open Meetings Act when a quorum met in the meeting room on November 21, 2019 and discussed Board business outside of the public eye.

22. On March 26, 2020, the Open Meetings Compliance Board cautioned the Local Board against texting each other privately during public meetings, as two had done on November 18, 2019.

DISCUSSION

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). As the Appellants acknowledged several times, they face an uphill battle to have the Redistricting Plan overturned.

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.* 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 constitutes sound educational policy 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).

The 2019 Redistricting Process and Policy 6010

Policy 6010 is the governing policy for redistricting actions taken by the Local Board. (App. Ex. 6). It provides, in pertinent part:

> IV.B. The Board, Superintendent/designee and the AAC will consider the impact of the following factors in the review or development of any school attendance area adjustment plan. While each of these factors will be considered, it may not be feasible to reconcile each and every school attendance area adjustment with each and every factor.
>
> 1. Facility Utilization. Where reasonable, school attendance area utilization should stay within the target utilization for as long a period of time as possible through the consideration of:
>
> a. Efficient use of available space. For example, maintain a building's program capacity utilization between 90% and 100%.
>
> b. Long-range enrollment, capital plans and capacity needs of school infrastructures (e.g., cafeterias, restrooms and other shared core facilities).
>
> c. Fiscal responsibility by minimizing capital and operating costs.
>
> d. The number of students that walk or receive bus service and the distance and time bused students travel.
>
> e. Location of regional programs, maintaining an equitable distribution of programs across the county.
>
> 2. Community Stability. Where reasonable, school attendance areas should promote a sense of community in both the geographic place (e.g., neighborhood or place in which a student lives) and the promotion of a student from each school level through the consideration of:
>
> a. Feeds that encourage keeping students together from one school to the next. For example, avoiding feeds of less than 15% at the receiving school.
>
> b. Areas that are made up of contiguous communities or neighborhoods.
>
> c. Frequency with which any one student is reassigned, making every attempt to not move a student more than once at any school level or the same student more frequently than once every five years.

3. Demographic Characteristics of Student Population. Where reasonable, school attendance areas should promote the creation of a diverse and inclusive student body at both the sending and receiving schools through the consideration of:

a. The racial/ethnic composition of the student population.
b. The socioeconomic composition of the school population as measured by participation in the federal FARMS program.
c. Academic performance of students in both the sending and receiving schools as measured by current standardized testing results.
d. The level of English learners as measured by enrollment in the English for Speakers of Other Languages (ESOL) program.
e. Number of students moved, taking into account the correlation between the number of students moved, the outcomes of other standards achieved in Section IV.B. and the length of time those results are expected to be maintained.
f. Other reliable demographic and diversity indicators, where feasible.

Policy 6010 sets forth three main factors to be considered when developing an attendance area adjustment plan and notes that it "may not be feasible to reconcile each and every school attendance area with each and every factor." *Id.* The factors are: Facility Utilization, Community Stability, and Demographic Characteristics of Student Population. *Id.* The factors apply to developing "attendance areas," defined as the geographic area from which a school's students are drawn. *Id.*, § III.R. Attendance areas are made up of contiguous communities or neighborhoods. *Id.*, § IV.B.2.b. Polygons, smaller units within an attendance area that are used only for redistricting purposes to quickly provide the numbers needed for the Local Board to assess the results of school reassignments, are not mentioned in Policy 6010.

The 2019 redistricting process was the most comprehensive in the history of Howard County. The Local Board noted throughout its meetings in 2019 that the driving force behind the redistricting process was schools that were overcapacity. Thus, capacity utilization was the primary focus of the Board. Dr. Wu noted at the October 17, 2019 work session that 1,000 new students arrive in Howard County Public Schools every year, although according to the Feasibility Study, that number is closer to 770. (App. Ex. 21, pp. 7-8). Few school buildings are

being constructed, with the exception of a new high school slated to open for the 2023-2024 school year and a new elementary school expected to open for the 2024-2025 school year.

The Local Board was tasked with redistricting some school boundaries to best use existing facilities, while keeping enrollment in each school between the target utilization rate of 90% to 110%. (App. Ex. 6, § III.S and § IV.B.1). Reaching that utilization rate often took precedence over the stability that comes from keeping a neighborhood assigned to a particular school.

Another primary focus throughout the redistricting process was equity. The Local Board mentioned numerous times its intention to address inequities between schools based on the socioeconomic circumstances of the students. This is in accord with Policy 6010 § IV.B.3, which provides that "where reasonable, school attendance areas should promote the creation of a diverse and inclusive student body at both the sending and receiving schools." The indicator used by the Local Board for this consideration was the FARM rate at each school.

Policy 6010 provides that the Board should encourage keeping students together as they move from level to level by avoiding feeds of less than 15%. (App. Ex. 6, § IV.B.2). Some Board members opined during the process that moving entire neighborhoods to a different school and creating a new feeder system promoted community stability by keeping friends together, albeit at different schools. Others did not want to change existing feeds, arguing it was more important to create larger, secure feeds that families could count on for future years. Some of the boundary changes made by the Local Board strengthened existing feeds and some weakened them. The Board was not successful in reaching the 15% goal for each school. Capacity utilization often took precedence over maintaining strong feeds. Nevertheless, the Board consistently considered feeds when reviewing potential boundary changes.

Other factors considered by Board members included allowing existing walkers to remain walkers, although they were not always successful in doing so. They looked at the costs of transportation. They discussed proposed housing development and where the greatest influx of new students would come from. They looked at the age of existing school buildings, the number of portable classrooms in use, and the frequency with which students from a given school would be reassigned within a five-year period. (Policy 6010 sets the goal at not moving a student more than once at any school level. (App. Ex. 6, § IV.B.2.c)).

I reviewed all of the Board's work sessions online and found that Board members attempted to hew closely to the directives of Policy 6010. Dr. Wu, realizing the constraints of Policy 6010, suggested making changes to the policy in the future to prevent some of the difficulties the Board faced during this process. For example, he suggested expanding the target utilization above 110% so that boundary changes would not have to be made so frequently. Some Board members cared more about feeds than utilization, while others focused on equity more than keeping students in a walkable zone. Each member was able to voice their positions and arguments. Each member was able to suggest changes or introduce plans. Many members cautioned that there would be no perfect plan and that the community should be prepared for change. An issue was raised, but not resolved, whether it was better to move more students now so that they would not have to be moved again in a few years, or fewer students now to preserve community stability.

The Board began the process using the Superintendent's Plan, introduced on August 22, 2019, which contained alternative scenarios.[12] Seven public hearings were held to permit the public to speak before the Board and public comment via email was solicited. From October 17,

[12] A timeline of the entire redistricting process is included in Renee Kamen's affidavit submitted with the Board's Response to Appeals as Board's Exhibit 2.

2019 to November 18, 2019, the Board held nine public work sessions. The Board worked on the high schools and middle schools first. On November 14, 2019, the Board voted to use a plan submitted by Ms. Mallo as a base. (App. Ex. 23, Video at 1:41). Ms. Mallo's plan, called the Consolidated Plan by the Board, moved fewer students than the Superintendent's Plan, but more than a plan proposed by Dr. Wu. The final Redistricting Plan, adopted on November 21, 2019, moved approximately 5,400 students to different schools.

The Appellants argued that the Local Board took fifty-five individual votes in passing the Redistricting Plan and that each vote should be justified under the factors of Policy 6010. The Local Board responded that the votes were parts of the whole and that defining the geographical areas by taking multiple votes simply breaks down the larger Plan into manageable parts. The Local Board noted that Policy 6010 does not require the Local Board to justify its actions at the level of each polygon, but only as to the attendance areas, which are much larger and comprise numerous polygons. The Board is correct that Policy 6010 addresses attendance areas, not polygons. Polygons were created by HCPSS as a tool to quickly obtain statistics during the redistricting process based on the student population of a given smaller area. While they are an important tool and one used throughout the redistricting process, it is the impact of boundary changes on attendance areas that matters under Policy 6010, not the impact on individual polygons.

Policy 6010 does not impose on the Local Board the burden of justifying the move of every polygon under every factor listed. It does not even require the Board to address every factor listed or achieve every goal. The language of Policy 6010 is aspirational. It sets parameters for decisions, using words such as "will consider," "where reasonable," and "should promote." It does not set mandates.

The Board members made clear at the work sessions their frustration with having to serve all the students of Howard County while not having the resources or schools to do so. The booming population of Howard County drove this redistricting process, with the Board having to make changes to overpopulated elementary schools knowing there was not a new school that would open for four more years. As a result of the moves, families found their children attending different schools, communities were uprooted and sent several miles away to a different school, and before and after school care plans were disrupted.

The process was contentious and frustrating for all involved, as evidenced by the comments of the Board members to the public during the work sessions. Beginning from the first work session, Board members reminded the public to be civil during and outside of the meetings. Board members mentioned protests, emails, phone calls, and social media postings. Families showed up at the work sessions wearing tee shirts from their respective polygon and carrying signs. Board members met with communities outside of work hours.

Given the comprehensive nature of this redistricting, combined with the lack of capacity to adequately accommodate all Howard County students and the time constraints for conducting the redistricting work, it was, no doubt, a difficult, frustrating process that left many families unhappy.

Open Meetings Act

Background

On April 28, 2020, I issued a Ruling permitting the parties to raise whether a violation of the Open Meetings Act may be a basis for showing the acts of the Local Board in passing the Redistricting Plan were illegal, as that term is contemplated in COMAR 13A.01.05.06C. Md. Code Ann., Gen. Provisions, Title 3 (2019). In my Ruling, I acknowledged that the State Board has historically declined to consider violations of the Open Meetings Act. *Kurth v. Montgomery*

Cty. Bd. of Educ., MSBE Op. No. 12-23 (2012); *Harper v. Frederick Cty. Board of Educ.*, MSBE Op. No. 02-15 (2002). However, I found that a final decision of the Open Meetings Compliance Board was relevant to whether the violation impacted the process so as to render it illegal. My position accords with *Beverly G. Kelley v. Queen Anne's County Board of* Education, MSBE Op. No. 18-24, p. 5 (2018), in which the State Board found that although it has "declined to make independent findings about Open Meetings Act violations," it has "accepted final decisions of the Open Meetings Compliance Board as evidence in other cases."

The Appellants argued that the State legislature found it so critical that HCPSS be directed to comply with the Open Meetings Act that it was one of only a handful of jurisdictions that are specifically required to conduct open meetings and abide by the Act. For this reason, they said, a violation of the Act *is* a proper issue for the State Board to address. Education Article section 3-704, applying to Howard County, provides:

> (b) Except for those actions authorized by subsection (c) of this section, all actions of the county board shall be taken at a public meeting and a record of the meeting and all actions shall be made public.
> (c) The county board may take actions in closed session in accordance with § 3-305 of the General Provisions Article, including action to close a meeting.

Without a doubt, the Local Board must comply with the Open Meetings Act and conduct public meetings. It does not argue otherwise. As found by the Open Meetings Compliance Board on February 14, 2020, the Local Board failed to abide by that mandate on November 21, 2019. (App. Ex. 1). For these reasons, the Appellants were permitted to present evidence regarding Act violations and the impact, if any, on the votes taken on the Redistricting Plan. The Appellants noted this language from page 17 of that decision:

> Calling a recess to aid in the "crystallization of opinion" may be a routine and acceptable practice for "societies" that are not subject to the Act. Public bodies, however, should proceed with caution. The Maryland Court of Appeals has repeatedly made clear that the purpose of the Act is "to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance." *New Carrollton v. Rogers*, 287 Md. 56, 72 (1980) (quoting and

adopting the language of the Supreme Court of Florida in *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (1974)) (emphasis added; quotation marks omitted).

The Court of Appeals in *New Carrollton* reversed a lower court's ruling that a city council had violated the Open Meetings Act during an annexation process, holding that the public was sufficiently notified of the council's actions and the meetings were sufficiently open. As I discuss below, the facts underlying the violation in the instant appeal do not come close to constituting a "crystallization of secret decisions to a point just short of ceremonial acceptance."

The evidence regarding the Open Meetings Act violation centered on the events of the Board meeting of November 21, 2019, at which the final vote on the Redistricting Plan was taken. The Detailed Agenda and a thumb drive containing the recording of that meeting were admitted into evidence. (App. Exs. 2 and 9, respectively). The Board recessed for approximately four minutes after a failed vote on the polygons known as the 32s. Up to six Board members filtered out of the Board room into an adjoining meeting room. The gathering was not recorded and was conducted outside of the public eye. When the Board members returned to the Board room, Ms. Coombs, who had voted against the proposed boundary change, moved to reconsider the vote and the vote on the 32s passed. On December 17, 2019, Ms. Coombs voted in favor of ratifying the vote on the 32s.

The Appellants called Renee Kamen and Kirsten Coombs as witnesses.[13] The Appellants Mummert, Neidermyer, and Tayter also testified. I admitted the written statements of three Board members: Vicky Cutroneo, Jennifer Mallo, and Kirsten Coombs. (App. Exs. 3, 7, and 8, respectively). Those statements documented what occurred during the recess from the

[13] The Appellants sought to present the testimony of four additional Local Board members on this issue: Vicky Cutroneo, Christina Delmont-Small, Mavis Ellis, and Jennifer Mallo. I granted the Local Board's motion to exclude the testimony of these four witnesses on the basis that they would not be capable of testifying to the motivations of the member who changed her vote following the recess that formed the basis of the Open Meetings Act violation, that is, Kirsten Coombs. The Appellants reserved the right to call those Board members in rebuttal to the Local Board's evidence. The Local Board put on no evidence in this portion of the hearing and therefore, these witnesses did not testify on this issue. I denied the Appellants' motion to call them in rebuttal to Ms. Coombs' testimony.

perspective of the writer. I also admitted a decision from the Open Meetings Act Compliance Board, issued on February 14, 2020. (App. Ex. 1).

The Appellants also raised the issue of two Board members texting each other during a meeting.[14] (App. Ex. 4). I admitted a decision from the Open Meetings Compliance Board, issued on March 26, 2020, finding the issue to be one of first impression. (App. Ex. 5). Additional facts are discussed below.

Testimony

Appellant Timothy Mummert testified that his family moved to Howard County so that their daughter could attend the public schools there. She is now a rising third grader. In 2012, their polygon, number 1018, was assigned to Hammond ES. He said it was not in play during the 2019 redistricting process until the night of the straw vote, on November 18, 2019. His child was given the option of remaining at Hammond ES, which the Mummerts decided to take because it allows her to continue with karate day care, something critical to her development.[15] But this decision meant she was separated from her friends and the family will have to provide transportation for her. The way the Board handled the vote on the 32s had an impact not only on his daughter, he said, but on him, as well. He is politically active but decided against running for the Local Board because of the Open Meetings Act violation. He said he was too upset about the process and did not want to participate on a board where decisions were made in back rooms. He decried as bullying how some Board members talked to Ms. Coombs during the recess and pointed out that discussions took place outside of the public eye, violating the law.

[14] I overruled the Board's objection to the admission of evidence regarding these texts because even though it was not raised in any appeal, the Appellants Mummert disclosed the evidence in their prehearing conference statement filed February 14, 2020, explaining it only came to their attention after they filed their appeal. As the texts were addressed without objection in the motion for summary decision filed by the Board, I allowed evidence of them to be admitted at the hearing.

[15] This option was given to students with an Individualized Education Program or 504 Plan.

Appellant Stephanie Mummert testified that she participated in the public sessions of the redistricting process and believed her polygon would be safe from a boundary change because many other polygons were on the edges of attendance areas and therefore, more likely to be considered for a change. Her daughter's exemption will last only until the end of elementary school, at which time she will be moved to Patuxent Valley Middle School (MS). This will occur even though Hammond ES is on the same grounds as Hammond MS. Ms. Mummert wanted to pursue the appeal to speak up about keeping public bodies honest and accountable, she said. The redistricting process moved so quickly that Board members were rushed and made mistakes, despite their good motives, she noted. She was disappointed that Ms. Coombs changed her vote and would have liked to have seen how the Board would have responded had she not changed it.

Appellant Archana Neidermyer testified that her family has lived in Howard County for twenty-four years and has two children in public school there. The older is a rising eleventh grader who attends Hammond HS. The younger is a rising eighth grader who attends Patuxent Valley MS and will attend Reservoir HS for her freshman year, 2021-2022. Because of the Redistricting Plan, the younger child will have to attend a different high school than her older sibling during their overlapping year. Ms. Neidermyer testified they were shocked when their polygon was sent to a different high school. Such a move did not come up until very late in the process and no one was prepared for it. Their entire family is devastated and disappointed. Ms. Neidermyer emailed Board members and the Superintendent but received no response. She said the peculiarities with the vote on the 32s caused her to lose her confidence in all of the decisions the Local Board and the school system made. She felt the final decisions were random and not communicated well. The changes tore their lives apart.

Appellant Jim Neidermyer testified to the importance of school stability in the foster care system, where he works as an attorney. He complained that the change impacting their family came so late in the process that many residents did not know about it until they registered their children for school. The private meeting on November 21, 2019, culminating in Ms. Coombs' changing her vote, illustrated how Board members must follow the party line, he said. That flawed vote cast doubt on all of the votes coming afterward; the exact impact on subsequent votes is unknowable, he testified. He said as an attorney, he has respect for legislative and judicial bodies, but this process disgusted him and made him lose faith in the Board's direction.

Appellant Dr. Jill Tayter testified that she has two children with the HCPSS, a rising sixth grader and a rising first grader. Her family lives on Jerry Drive, a street located in one of the 32s. As a direct result of the 32s being redistricted, she said, every family on Jerry Drive except one is moving out of the area. What was an extremely close, friendly, family-oriented neighborhood that was a model of the Columbia planned community has been completely decimated, she said. Because her street had always attended Clemens Crossing ES, where the children could bike or walk to school, she never anticipated it would be redistricted to another school. The move caused her to lose faith in the Local Board and she no longer trusts HCPSS to teach her children or make decisions in their best interests.

Dr. Tayter pointed to a suspicious move that caused three other polygons to be moved into Clemens Crossing ES while the 32s, which are close to the school and have always gone to that school, were moved to Bryant Woods ES on the opposite side of Merriweather Post Pavilion and the Columbia Mall. She believes the decision was self-serving and benefited a Board member. As a result of everything that happened, Dr. Tayter's family is moving to Michigan, she said.

Ms. Coombs testified that she has been on the Local Board since December 2016. There was an election in 2020, after the vote on the Redistricting Plan, and districts were redrawn. As a result, she ran in the District 4 primary and lost to Ms. Mallo in 2020. She said she received training on the Open Meetings Act when she first became a Board member, but several times noted that she is not an expert on it.

Ms. Coombs said there were many considerations in deciding whether to change the boundaries of Clemens Crossing ES, Swansfield ES, and Bryant Woods ES and recalled discussion on splitting up the Simpson Mill polygon as part of these moves. She said it was difficult for her to recall them in detail, but she did recall that she initially voted to put the 32s at Clemens Crossing ES. She said the 32s were at Bryant Woods ES in what she referred to as the Base Plan but is referred in this Proposed Decision as the Consolidated Plan.

Ms. Coombs said that when she walked into the side meeting room during the recess on November 21, 2019, she was not thinking about the Open Meetings Act. She did not know whether it was an open session, a closed session, or an administrative session, although because they did not vote to have a closed session, she did not think it qualified as such. During the recess, she said she was thinking about the impact of her vote on the 32s, the other schools, the Route 29 corridor, and how coming development would strain schools' capacity. She was stressed, frustrated, and tired, she said. She was not keeping track of the number of people in the meeting room. She heard people talking but said she did not know to whom the comments were directed. It became clear to her, she said, that she needed to change her vote impacting the 32s. She said she would move to reconsider the vote. No new information was provided to the Board during the recess, she said.

Ms. Coombs agreed that she was tearing up and crying, although she did not characterize it as tears flowing down her cheeks, despite counsel's attempts to get her to concede that. She

said she cried at other times during her tenure as a Board member, at both happy events and stressful events. She wears her heart on her sleeve. She denied that anything said during the recess caused her to cry or to change her vote. Any pressure she felt came from the community, not other Board members.

Throughout the redistricting process, Ms. Coombs felt bullied by the community. As examples of the community pressure, she pointed to a protest march that took place at the Columbia Mall followed by some citizens marching on her street, which is near the Mall, emails that were sent to Board members, general acrimony from the public, and threats to go to Board members' homes. She recalled Christina Delmont-Small saying during the recess to stop bullying her but testified she did not know to whom that comment was directed. Many people were talking, she said, and she does not know who said what to whom. She did not recall anyone "pleading" with her to change her vote, as described by Ms. Mallo in her written statement.

Despite grilling from counsel, Ms. Coombs remained adamant that she did not change her vote on the 32s because of pressure from fellow Board members. She thought about whether Clemens Crossing ES could handle the additional students but realized it could not. She realized the impact the failed vote would have on the rest of the Plan and knew that for the Plan to pass, she would have to be the one to change her vote. She offered to move for reconsideration of the vote, which she did when the Board returned to the Board room.

Written Statements

A typed statement from Ms. Coombs regarding what occurred during the recess was admitted on behalf of the Appellants. (App. Ex. 8). She wrote that Ms. Mallo was angry with the failed vote, slammed her files down on the table in the meeting room, and said, "Now what?" Ms. Mallo was staring at her. Other Board members walked in, including Sabina Taj, who asked her what she was doing. Ms. Mallo and Ms. Taj continued to talk about the impact of the vote,

saying it ruins West Columbia and that "without this, the plan fails." Ms. Coombs wrote she may have, but was not sure if she had, said something about Clemens Crossing ES being able to handle it (that is, the increased student numbers). She wrote she was teary and that she agreed to move to reconsider it. She heard Ms. Delmont-Small say "Stop bullying her." Ms. Coombs wrote that she said, "I've been bullied the entire time by both sides as everyone knows I'm the swing vote." She was teary as they returned to the Board room.

A handwritten statement written on November 21 and 22, 2019 by Ms. Cutroneo was admitted on behalf of the Appellants. (App. Ex. 3). Ms. Cutroneo noted there was a quorum in the meeting room. She wrote that Ms. Mallo (referred to by her initials) was "screaming" at Ms. Coombs: "What are we going to do," "The whole plan falls apart," and "West Columbia plan falls apart." She wrote that Ms. Coombs asked about capacity at Clemens Crossing ES. She wrote that Ms. Taj joined Ms. Mallo in yelling at Ms. Coombs and Ms. Delmont-Small said to "Stop bullying her, don't let them bully you." She noted Ms. Coombs offered to move to reconsider and told others coming into the room she was going to change her mind.

A typewritten statement written on November 21 and 22, 2019 by Ms. Mallo was admitted on behalf of the Appellants. (App. Ex. 7). Ms. Mallo described the recess as one akin to other recesses the Board had taken to consider information, in this case, the impact of the failed vote on the 32s. When she entered the meeting room, Ms. Taj and Ms. Coombs were already in the room discussing the impact of the vote. Ms. Mallo was at one end of the room, she wrote. She wrote that Ms. Taj "pleaded with Ms. Coombs to reconsider the vote." Ms. Coombs responded that "she was being bullied by the left and the right because she was the swing vote (referring, I believe, to the political spectrum)." She wrote that the Board returned to the Board room after less than four minutes, and that Chair Mavis Ellis referred to the meeting as

an administrative session and later corrected the record to indicate it was not an administrative session.

Video recordings of Board meeting

I watched the video recordings of the Board meetings on October 17, 2019, November 14, 2019, November 18, 2019, November 21, 2019, and December 17, 2019.[16] At the first work session, on October 17, 2019, following numerous public sessions, Chair Ellis addressed the factors of Policy 6010, reminding the audience that each Board member could prioritize whatever factor they felt was important, but that overall, the Board was going to focus on capacity and equity. Ms. Coombs made a statement to the audience, chiding them about the ugly comments that had been made toward the Board and certain minority groups. She said capacity was the driving force of the redistricting effort and that the Board must optimize the use of the existing buildings. She expressed concern about the high concentration of FARM rates in certain schools. She requested civility throughout the process.

Dr. Wu thanked the public for their input during the public sessions but denounced the anonymous letters that were sent, spewing hatred and racism. He also requested civility during the process and spoke about his priorities. Ms. Mallo presented statistics regarding overcrowded schools and opined it was an unconscionable situation. Ms. Delmont-Small reminded them that the needs of the school system outweighed their budget.

On November 14, 2019, the Board voted to use a plan proposed by Ms. Mallo as a base from which to work. (App. Ex. 23, Video at 1:41). It incorporated changes proposed by Dr. Wu. Ms. Coombs voted in favor of adopting the Consolidated Plan as the base from which to work. The Board spent several hours discussing elementary school moves, including those affecting the

[16] October 17, 2019 (App. Ex. 25), November 14, 2019 (App. Ex. 23), November 18, 2019 (App. Ex. 18), November 21, 2019 (App. Ex. 9), and December 17, 2019 (App. Ex. 10).

32s. In the Consolidated Plan, the 32s had been redistricted to attend Bryant Woods ES from Clemens Crossing ES. There was specific discussion regarding whether Clemens Crossing ES could handle the student population if the 32s were not moved. Ms. Coombs opined that she thought Clemens Crossing ES could handle it and favored keeping the 32s there. Ms. Cutroneo mentioned that Bryant Woods ES was overcapacity and had a small, old building. Different philosophies were discussed regarding whether it was better to keep communities together by moving them all to a different school or move fewer students by moving only those neighborhoods that absolutely had to be moved to address capacity issues. There was some confusion during the discussions as to which neighborhoods were headed to which school under the Consolidated Plan, but the Board members always got it straightened out.

On November 18, 2019, the Local Board continued to work on the Consolidated Plan. (App. Ex. 18). Ms. Coombs revisited the issue of keeping the 32s at Clemens Crossing ES, but acknowledged capacity there was high. A discussion ensued, with various factors considered, such as which building was larger, older, or more crowded. The Board acknowledged that keeping the 32s at Clemens Crossing ES would increase capacity to 128%. When the 32s were raised, Chair Ellis noted that the Board could not continue to revisit every vote, saying it was not easy, but they would have to stop at some point. The motion to keep the 32s at Clemens Crossing ES failed, with Ms. Coombs voting for the motion.

Hours after that vote, Ms. Coombs stated at the same Board meeting that she agreed with Chair Ellis that they could not continue to flip back and forth on the moves. She said many schools would be overcapacity and the Board would just have to prepare staff and the community. She said there is no perfect balance for this system. (App. Ex. 18, Video at 10:44). Dr. Wu agreed that the Board had to compromise. Ms. Coombs voted in favor of casting a straw vote on the Plan the Board had created. In the three votes constituting the straw vote, the Board

voted to accept the working plan as to the high schools, the middle schools, and the elementary schools. Knowing the 32s would be redistricted to Bryant Woods ES under the straw vote, Ms. Coombs herself moved to proceed on the elementary school straw vote and voted in favor of it.

Between the November 18, 2019 straw vote and the final meeting on November 21, 2019, the Office of School Planning drafted individual motions for each boundary change, reflecting the streets providing egress from each neighborhood. There were fifty-five different votes on the boundary changes prepared. (App. Ex. 2). Those motions were presented on November 21, 2019 for a final vote. (App. Ex. 9, Video beginning at 4:06). Ms. Mallo and Ms. Coombs read each of the motions. The fourth vote involved moving the 32s to Bryant Woods ES. Ms. Mallo read the motion and Chair Ellis seconded it. Four members voted against it: Ms. Delmont-Small, who voted against all of the boundary changes; Ms. Cutroneo, who voted against all of the elementary school motions, all but one of the middle school motions, and one of the high school motions; Dr. Wu, who cast five nay votes total and abstained in several votes; and Ms. Coombs, who did not vote against any other motion. Ms. Coombs cast a nay vote on the motion regarding the 32s, then moved to reconsider that vote when the Board returned from its recess. She was tearful when she returned to the hearing room. Nevertheless, she moved to reconsider the vote, which was seconded by Ms. Mallo. Chair Ellis then read the motion regarding the 32s again and the motion passed, with Ms. Cutroneo, Ms. Delmont-Small, and Dr. Wu voting nay. When Ms. Coombs voted in favor of the motion, she noted that otherwise, the whole plan would fall apart. Her voice caught as she said this, and she was tearful. The motions continued thereafter without interruption, read by Ms. Coombs and Ms. Mallo.

Analysis

The Appellants argued that the only reason Ms. Coombs would have changed her vote on the 32s was in response to the bullying and screaming that took place during the recess by other

Board members. They noted she had, throughout the discussions, been opposed to moving the 32s out of Clemens Crossing ES. They argued passionately that the closed-door session was illegal as violating the Open Meetings Act and that it constituted a dangerous threat to democracy. They said it tainted all the other votes that followed that evening, as no one else would have bucked the Board after what occurred in the meeting room. The Board's behavior took a personal toll on their families and their lives. It violated a sacred trust the Board has with the public of Howard County, they said. They urged me to void the Redistricting Plan as the ultimate sanction, as anything less than that would encourage the Board to continue to violate the Act. At a minimum, they asked that I overturn the vote regarding the 32s.

In analyzing those arguments to determine the impact the violation had on the vote, I looked at the larger context of Ms. Coombs' changed vote and not just the four-minute recess. Although Ms. Coombs wanted to keep the 32s at Clemens Crossing ES, once it was clear to her that the move was required in order to reduce capacity in other nearby elementary schools along the 29 corridor, she reluctantly accepted the fact that the 32s had to change schools. She signaled this by voting to move forward with the straw vote on November 18, 2019 and stating her agreement with Chair Ellis that at some point, they would have to stop making changes to the plan they were working from. That same night, she advocated against adding work sessions. On November 21, 2019, she, along with Ms. Mallo, presented the motions for all the boundary changes. It is obvious she knew going into the final vote that the 32s would be redistricted to Bryant Woods ES, despite her desire to make a different choice.

In her testimony, she did not explain why she initially voted against the motion regarding the 32s on November 21, 2019. Since she wanted to move forward with the plan as it was adopted by the Board on November 18, 2019, it seems she would have voted in favor of that motion. Instead, she apparently voted with her initial opinion that the 32s should not be moved.

Had Dr. Wu not also voted against the motion, the motion would have passed. As it was, the motion failed. Ms. Coombs immediately realized that for the motion to pass and the entire plan to move forward, she would have to change her vote, as she also realized the other members would not. During the recess, she repeated her earlier question about whether Clemens Crossing ES could handle the additional students but realized immediately it could not. She offered to move to reconsider the vote.

Based on the evidence before me, I find Ms. Coombs was not threatened by other Board members to change her vote. No one forced her to do it. She came to that realization on her own. She was crying or tearful because, she testified, she was tired, stressed, and frustrated. Those were descriptions also used by other Board members during the final meetings. Those emotions came to a head for her over the failed vote on the 32s. The tears do not, as argued by the Appellants, mean Ms. Coombs was bullied into changing her vote.

Ms. Coombs is an elected official. She displayed a forceful personality during the meetings and was an active participant in the discussions. She was aware of the proposed moves going into the vote on November 21, 2019 and was prepared to vote in favor of the Plan. Under those circumstances, I disagree with the Appellants' assessment that the only reason she changed her vote was due to bullying by Ms. Mallo or Ms. Taj. In her testimony, Ms. Coombs outright denied any bullying took place, other than, as she described it, the pressure put on Board members by the public throughout the redistricting process. Additionally, I take the description provided by Ms. Cutroneo that Ms. Mallo was "screaming" with a grain of salt, given that Ms. Cutroneo was in the opposite camp regarding the elementary schools, voting against every one of those motions, and that neither Ms. Coombs, Chair Ellis, nor Ms. Mallo described the conversation using that term. The Appellants asked me to find Ms. Coombs' testimony not to be credible based on the differences of her description of what occurred during the recess, arguing

she was too emotional to know what was going on, but her testimony did not differ remarkedly from her statement. She wrote Ms. Mallo "walks quickly and angrily off the dais" and "slams her stuff down" and testified to that. (App. Ex. 8). She was confused about who said what to whom because she was thinking about the failed vote and its ramifications, just as she wrote in the statement. She disagreed with Ms. Mallo's description about Ms. Taj "pleading" with her to change her vote, testifying that it was a matter of perception. Several times she testified that she changed her vote because of the impact it would have on the surrounding schools, not because she felt forced to do so by other Board members.

I do not discount Ms. Coombs' testimony or her own perceptions about what she was thinking and feeling that night just because she was crying. The Appellants argued that it was clear Ms. Coombs was highly emotional and, therefore, her perspective of what occurred during the recess was the least reliable account. I find it somewhat offensive to posit that because someone is crying, their will is necessarily overborne by another's or that a person cannot be emotional and rational at the same time. Even taking the descriptions in the other written statements as true, as requested by the Appellants, I do not find that the Board members bullied Ms. Coombs into changing her vote. Rather, her own reasoning led her to the conclusion she had already reached prior to when the final vote took place: she had to vote in favor of moving the 32s to a different school in order to make the other moves impacting other elementary schools work.

The Appellants argued Ms. Coombs downplayed her response to the other Board members that night because she is a politician and would not want to come across as looking weak to her constituents. However, at the time she testified at the hearing, the primary had already taken place and Ms. Mallo received more votes than Ms. Coombs. This result is somewhat ironic given the Appellants' arguments since it was in Ms. Mallo's plan that the 32s

were moved to a different school. In other words, more of the public in District 4 approved of Ms. Mallo's plan regarding the moves. Under those circumstances, one could hardly conclude that Ms. Coombs did not want to appear weak by voting with Ms. Mallo on this motion.

The Appellants attempted to discredit Ms. Coombs during her testimony by implying she had no reason to feel she had been bullied by the public during the process because the public never actually picketed her home or sent her a personal threat. I note, however, that at the beginning of the first work session, on October 17, 2019, Ms. Coombs made a public statement chiding the public about the ugly comments that had been made. She asked them to proceed with civility, as did Dr. Wu. I also heard Chair Ellis and other Board members frequently tell the public during the meetings to be civil in their discourse. Even the Board Administrator, who kept track of the motions and votes, had to tell the audience to be quiet and respectful because the process was so difficult. Clearly there was tremendous pressure put on the Board members, and it was not always civil. I found Ms. Coombs' explanation for why she felt pressured and stressed, even at the late date of November 21, 2019, to be understandable under those circumstances.

Ms. Coombs testified about the complexity of the changes that affected the 32s. Several other schools were impacted by adjoining moves. A large percentage of the student body at Clemens Crossing ES and Bryant Woods ES was changed as a result of the Redistricting Plan. There were many factors to consider. She was abundantly aware on the night of the final vote of the many competing values and issues. The stress and frustration she displayed that night do not reflect weakness, but a natural response to what the Board had been experiencing for several months. Her strength is shown in her willingness to change her vote to make the Plan happen and her ability to continue with the motions and the votes on the night of November 21, 2019.

Nor was there any indication that any other Board member felt pressured to vote with either side on subsequent motions after Ms. Coombs changed her vote, as argued by the Appellants. The Board members voted in line with their votes on the moves that comprised the straw vote. Ms. Cutroneo and Dr. Wu voted different ways on different motions. It is pure speculation to conclude all of the subsequent votes were tainted because of Ms. Coombs' experience.

In the interest of thoroughness, I will address some additional arguments made by the parties. The Local Board argued that regardless of the finding of the Open Meetings Compliance Board that there was a violation of the Open Meetings Act on November 21, 2019, to void the vote, the Appellants must show the violation was willful and there cannot be any other remedy that is adequate. *Frazier v. McCarron*, 466 Md. 436 (2019). Also citing the *Frazier* case, the Appellants argued that no violation of the Act is ever harmless and the only remedy for the egregious violation is voiding the entire Redistricting Plan. In *Frazier*, a lawsuit was filed in Circuit Court against a city council for violating the Act. In discussing the importance of public meetings and the Act, the Court of Appeals held at 449-50:

> Violations of those mandates are not "technical" in nature; nor are they ever harmless. A violation may not cause specific demonstrable injury to individual members of the public, but it does necessarily clash with and detract from the public policy that the Legislature declared in § 3-102 is "essential to the maintenance of a democratic society," that "ensures the accountability of government to the citizens of the State," and that "enhances the effectiveness of the public in fulfilling its role in a democratic society." Conduct that has that demeaning effect can be contagious and cannot be considered harmless. It strikes at the core of our democracy – the right and power of the citizens to control their government – even if its harm is not immediately perceptible.
>
> That does not mean that an axe must fall upon every, or any particular, violation. The Legislature wisely provided a range of remedial and punitive options in §§ 3-401 and 3-402, established conditions on imposing the more serious of them, and, subject to those conditions, left the choice largely to the discretion of the court. It is within that discretionary framework that the sanction, if any, can be made to fit the offense, and that framework goes beyond the remedies set forth in those

> sections. Section 3-401(a)(3) expressly provides that the section does not affect or prevent the use of "any other available remedies."
>
> Most of the debate in this appeal centers on the meaning of "willful" or "willfully." In that regard, it first is important to note that, of the various remedies listed in §§ 3-401 and 3-402, only two are conditioned on the violation being willful – voiding final actions by the public body and the imposition of civil penalties. The authority to void final actions is subject to the further condition that no other remedy is adequate. Issuance of an injunction, the assessment of counsel fees and litigation costs, the posting of a bond, and the granting of other appropriate relief do not require a finding of willfulness.

Whether the violation of the Open Meetings Act was willful or what penalty should be imposed is a matter for the courts to decide. It is beyond the scope of this appeal. I permitted it to be raised only as it may have caused the redistricting process to be illegal. For the reasons stated, I do not find that it did.

Texts

The Appellants also argued that certain texts exchanged between two members of the Board during public sessions on November 18, 2019 violated the Open Meetings Act and should void the Redistricting Plan as illegal. (App. Ex. 4). The texts were between Ms. Taj and another, unnamed Board member. They discuss various moves, how they could vote, who might live in a certain district, and reducing capacity at one school. A complaint was filed with the Open Meetings Compliance Board, which found, in a case of first impression, that the Act:

> does not explicitly prohibit two members of a public body, when two is less than a quorum, from having side conversations with each other that the public cannot hear or read…However, the Act does impose on public bodies the duty to meet openly, and each member, as part of the collective whole, shares in the public body's duty to avoid interfering with the ability of the public to observe the members' conduct of public business during a public meeting…[A]ll substantive communications among members, during a public meeting of a quorum, regarding the topic then under discussion, are subject to the Act regardless of whether a quorum is actually involved in the particular communication.

(App. Ex. 5, p. 31).

Without more, I cannot conclude the texts offered establish an illegal impact on the redistricting process. While they may have violated the Open Meetings Act, even the Open Meetings Compliance Board recognized this is a new wrinkle in the Act's coverage and the members were probably not aware they were violating the Act. Furthermore, there is no evidence linking the texts to a particular vote in the process that was rendered illegal as a result.

Appellants' Motion for Judgment

The Appellants moved for Judgment after the Board did not put on evidence regarding the Open Meetings Act violations. COMAR 28.01.02.12E. I took the motion under advisement and will address it here. The Appellants argued Ms. Kamen proved the Redistricting Plan was integrated and therefore, an illegal vote on one motion invalidates the entire Plan. They called the motions a "house of cards," meaning each motion depended on every other motion. They referred to the "backroom dealing" that took place during the recess. Given that the Local Board violated the Act and it presented no evidence to rebut that, they said, they are entitled to judgment on this issue.

The Local Board responded that Ms. Coombs testified she did not change her vote due to pressure from fellow Board members during the meeting and that only she can speak to her intent. The vote on the 32s was part of a larger plan, it noted, and the individual motions of November 21, 2019 were based on the straw vote passed on November 18, 2019. The Local Board said it routinely takes recesses and that there was not a "secret cabal" at which the Board made secret decisions, pointing out that Dr. Wu did not even enter the meeting room. The Board noted that Ms. Coombs was the Appellants' own witness and her credibility was not successfully challenged. The Board argued that even were I to believe that Ms. Coombs was unduly influenced by other Board members, the Board ratified the vote on December 17, 2019, thereby curing any illegality. (App. Ex. 10).

In an earlier hearing, I informed the parties that I would not consider the December 17, 2019 ratification when determining the legality of the Open Meetings Act violation, either to show that process was illegal or to show the ratification cured the violation. It is relevant, however, as it regards Ms. Coombs' intention. I note that it was Ms. Coombs who made the motion "to ratify the vote taken with respect to Clemens Crossing" ES on December 17, 2019. There was discussion about why the ratification was necessary and a statement was read by Chair Ellis that related to what occurred during the recess on November 21, 2019. Three Board members took issue with that statement. Nevertheless, the Board voted, four to three, in favor of Ms. Coombs' motion to ratify the vote. In other words, almost one month later, out of the heat of the moment, Ms. Coombs remained persuaded of the wisdom – or at least, the necessity – of moving the 32s out of Clemens Crossing ES.

The Local Board conceded that the Open Meetings Compliance Board did find a violation of the Open Meetings Act had occurred when the Board recessed on November 21, 2019. (App. Ex. 1). As I have made clear, however, it is not the violation alone that matters, but the impact on the process. I have outlined why I find Ms. Coombs to be credible and why I do not conclude that Ms. Coombs was bullied into changing her vote as a result of the illegal meeting. She reconsidered her vote, made that motion, and changed her vote in order to make the Plan work.

Furthermore, there was no "backroom deal." There were backroom discussions that took place while a quorum of the Board was present, and the Board has admitted error in doing that.[17] The Appellants overdramatize what occurred by characterizing it as a backroom deal. It was a recess, like many other recesses the Local Board took, that became a closed meeting when a

[17] The Appellants argued that the Local Board should have provided an explanation and an admission that it violated the law, why it was violated, and why there was no impact. I understand why the Appellants seek an admission and explanation, but as evidenced from the Discussion here, the Board did admit error and explained the circumstances of the violation, and I have found there was no impact such as would render the process illegal.

quorum appeared in the meeting room to hash out the previous vote. It should not have happened, and I do not defend it, but the fact that it happened does not automatically entitle the Appellants to judgment. I deny the Appellants' Motion for Judgment on this issue.

In sum, although the Appellants made excellent arguments for why the Local Board should comply with the letter—and the spirit—of the Open Meetings Act, the evidence does not show that the violation of the Act impacted the redistricting process to the extent that the process was rendered illegal pursuant to COMAR 13A.01.05.06. As set forth above, the State Board may only substitute its judgment if the decision of a Local Board is arbitrary, illegal, or unreasonable. In this case, the decision is the Redistricting Plan. To be illegal under COMAR 13A.01.05.06C, the decision must satisfy 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.

As I have discussed, I do not conclude the Redistricting Plan satisfies any of the criteria, even though there were violations of the Open Meetings Act during the November 18, 2019 and November 21, 2019 meetings.

CONCLUSION OF LAW

I conclude that the Appellants failed to prove, by a preponderance of the evidence, that the Redistricting Plan adopted by the Howard County Board of Education on November 21, 2019 was illegal as a result of a violation of the Open Meetings Act. *Bernstein v. Bd. of Educ. of Prince George's Cty.*, 245 Md. 464 (1967); *New Carrollton v. Rogers*, 287 Md. 56 (1980); *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); Md. Code Ann., Gen. Provisions, Title 3 (2019); COMAR 13A.01.05.06A and D.

RECOMMENDED ORDER

I RECOMMEND that the Appeal filed December 16, 2019 by the Appellants be

DISMISSED.

October 14, 2020
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/dlm
#187670

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of the date of the Proposed Decision; parties may file written responses to the exceptions within fifteen days of the date exceptions were filed. 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 and Emailed* To:

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*In addition to mailing the Proposed Decisions, I emailed copies of the Proposed Decisions to the Appellants because of the recent slow-down of mail delivery. The parties had opted throughout this appeal process to communicate via email. Emailing the Proposed Decisions was appropriate given the short time for filing exceptions with the State Board.

JAMES M. NEIDERMYER, ET UX.,	*	**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-09-20-01502 (File #09)**

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

RULING ON THE LOCAL BOARD'S MOTION FOR SUMMARY DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
UNDISPUTED FACTS
DISCUSSION
CONCLUSIONS OF LAW
ORDER
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, including the Appellants, and concerned citizens to challenge the Redistricting Plan (Appeal).

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. 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. On May 20, 2020, the Appellants filed a Response to the Motion (Response). On June 1, 2020, the Local Board filed a Reply to the Appellants' Response. On June 4, 2020, the Local Board filed an Amended Reply to the Appellants' Response (Amended Reply).[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. The Appellants submitted no exhibits with their Motion. A complete list of the Local Board's exhibits is attached to this Ruling 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] The Amended Reply restated the Local Board's discussion, on page 3, of *Armstrong v. Mayor and City Council of Baltimore*, 976 A.2d 349, 360 (2009).

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. 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 live in Polygon 3047.

10. During the vote affecting Polygons 132, 1132, and 2132 on November 21, 2019, the Local Board violated the Open Meetings Act.[2] (Motion, Ex. 25).

[2] Md. Code Ann., Gen. Provisions, Title 3 (2019).

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, 675 (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).

Local Board's Motion for Summary Decision

The Local Board moved for summary decision on each of the three issues raised by the Appellants in their appeal.

Notice and Opportunity to Be Heard

The Appellants asserted in their appeal that their polygon, 3047, was put into play so late in the process that they were not given an opportunity to speak at a public meeting and they do not know whether their written statements were considered. (Appeal, pp. 3-4). The Local Board moved for summary decision on this issue, arguing that there was "expansive coverage in the news" regarding the countywide redistricting and that "[e]veryone was aware that the redistricting in Howard County potentially could affect every school in the county." (Motion, p. 11). On page 11, the Board wrote,

> The [A]ppellants essentially request that after each Board proposed move that there be additional public hearings, which would make redistricting impossible, let alone is not the law.

In their Response, the Appellants argued there was no evidence any board members actually read their "written pleas to leave its polygon and those within its neighborhood alone." (Response, p. 7). They wrote that allowing for public comment after each proposed move would make the redistricting process fair, and that requiring residents to sign up for a speaking slot during a public meeting when moving their polygon's school was not yet under consideration would be "absurd" and "impossible." (Response, p. 8).

Local Policy 6010, at section IV.C, provides that:

> 4. The Board, in accordance with Policy 2040 Public Participation in Meetings of the Board, will hold a public hearing(s) regarding the school attendance area adjustment plan(s) submitted by the Superintendent. In addition, and as necessary,

> work sessions(s) will be scheduled to consider public hearing testimony. The Board may schedule additional hearings and/or work sessions at its discretion.

(Motion, Ex. 1, p. 4).

Policy 6010 requires the Local Board to hold public hearings on redistricting plans only after the Superintendent has submitted their plan. Although it would be preferable to hear from all affected residents each time the plan was altered in order to fully appreciate the impact of a revised plan, it is neither practicable nor required by the Policy. The Board heard from many constituents at the public hearings over several months and received thousands of pages of comments. (Motion, Ex. 2). Chair Ellis told the audience at every work session that written statements were being given the same weight as oral testimony.

The Appellants have speculated that no Board member read their written statements, but they have not provided any evidence to support that conclusion. Granted, their polygon was not considered for a boundary change until late in the process. That does not mean, however, the Local Board did not consider the input of the residents, even at that late date. "[A]dministrative agencies must have the discretion reasonably to regulate the length of time afforded parties to present their evidence." *Bernstein*, 245 Md. at 475 (discussing the practicality of group representation by a specified spokesmen). As argued by the Local Board, "[t]he 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. 11). I do not find the Appellants' arguments alone raise a genuine dispute of material fact on this issue.

Separation was Arbitrary and Unreasonable

The Appellants complained in their appeal that three of the four polygons in the Bowling Brooks Farm community in which they live were redistricted so that the students in those three polygons will attend a different high school than the students living in the fourth polygon. This means their younger daughter will have to attend a different high school than their older daughter.

The Local Board moved for summary decision, arguing that some separation of students is inevitable in redistricting school boundaries, but that the separations that occurred in this case were in accord with sound educational policy and were reasonable because the Board followed the dictates of Policy 6010 as best it could. (Motion, p. 12).

The Appellants responded that they "take specific umbrage with the notion that it is not unreasonable to separate affected students from school friends, neighbors and siblings." (Response, p. 8). Without pointing to any evidence, they conclude "that the record is clear that no such deliberation occurred and, as stated before, that the Local Board acted in an arbitrary and capricious manner." (Response, p. 9).

There is no evidence the Local Board failed to take into consideration the factors set forth in Policy 6010 in moving the boundary affecting the Appellants' polygon. In its discussions, which I viewed via the archived video footage linked in the Board's exhibits, the Local Board repeatedly referred to issues of utilization, FARM participation rates, feeds, and future growth. In other words, the Board considered numerous factors, not just separation. Simply because separation occurs does not mean the decision to separate was arbitrary or unreasonable. Construing all inferences in favor of the Appellants as the non-moving party, I find no genuine dispute of material fact on this issue. *Beatty*, 330 Md. at 737-38.

Open Meetings Act

The Local Board moved for summary decision on the Appellants' complaint that it violated the Open Meetings Act on November 21, 2019 and therefore, the entire Redistricting Plan was rendered void. In their appeal, the Appellants wrote, "Moreover, without knowing what was said during the recess that caused a board member to change her vote, it is impossible to determine if the Local Board's discussion during that break affected any other votes later in the meeting including the vote on Polygon 3047." (Appeal, p. 5). In its Motion, the Board argued

that there was "no willful irregularity of procedure" and the "alleged violation does not prove that the Board acted illegally by making the attendance area adjustments." (Motion, p. 13).

In their response, the Appellants asserted that the Open Meetings Act violation affected the "subsequent specific vote for which the Local Board adjourned to illegally address" and "it also tainted all the subsequent votes thereafter for the rest of the night." (Response, p. 9).

In its Amended Reply, the Local Board argued that the fact the violation occurred does not mean the Board acted illegally and that, in any event, it subsequently ratified the vote on December 17, 2019. (Amended Reply, p. 4). It noted that the State Board has declined to consider violations of the Open Meetings Act in appeals of the actions of local boards. It wrote the State Board "will exercise that jurisdiction in a quasi-legislative matter only to decide whether the local board's decision violated State education law, regulation or a statewide education policy." (Amended Reply, p. 5).

I have previously issued a decision in this matter permitting the parties to raise the issue of a violation of the Open Meetings Act in this appeal, as it may form the basis for proving the Redistricting Plan was the result of illegal procedure. I rendered this decision knowing the State Board has historically declined to consider appeals based on a violation of the Open Meetings Act.

The Appellants have argued the violation tainted all the votes for the rest of the night. Although they pointed to no specific evidence of how the violation impacted the other votes the Local Board took on the night of November 21, 2019, that a violation of the Open Meetings Act occurred and has been confirmed by the Open Meetings Compliance Board is sufficient to raise a dispute of fact regarding its impact on the votes. At a hearing on the merits, there may be insufficient evidence that the violation had any impact on the vote that affected the Appellants' polygon. At this point in the proceedings, however, there is a genuine dispute over this fact and

therefore, the Board is not entitled to judgment. Construing all inferences in the Appellants' favor, I find the Board is not entitled to judgment on this issue. *Beatty*, 330 Md. at 737-38.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Local Board's Motion for Summary decision on the issue of the impact of the Open Meetings Act violation on the Redistricting Plan should be denied because there is a genuine dispute as to a material fact and the Local Board has not shown that it is entitled to prevail as a matter of law. COMAR 28.02.02.12D(5); COMAR 13A.01.05.06A.

I further conclude as a matter of law that the Local Board's Motion for Summary Decision on the issues of notice and opportunity to be heard and separation of students 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.01.05.06A.

ORDER

I ORDER that the Motion for Summary Decision filed by the Howard County Board of Education on the issue of the impact of a violation of the Open Meetings Act be **DENIED**.

RECOMMENDED ORDER

I RECOMMEND that the Motion for Summary Decision filed by the Howard County Board of Education on the issues of notice and opportunity to be heard and separation of students be **GRANTED**.[3]

June 24, 2020
Date Decision Issued

Joy L. Phillips
Administrative Law Judge

JLP/cmg
#186195

[3] This Recommended Ruling will be transmitted to the State Board when I issue a Recommended Decision after a hearing on the merits. The parties retain their rights to file exceptions at that time. Those rights are:

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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