

TIFFANY NEAL, ET AL.,

Appellants

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-66

OPINION

INTRODUCTION

Appellants filed this appeal challenging the April 18, 2012 redistricting decision of the Anne Arundel County Board of Education (local board). The redistricting moved certain students from Central Elementary School (Central) to Davidsonville Elementary School (Davidsonville) and Mayo Elementary School (Mayo) in order to relieve overcrowding at Central. The redistricting was implemented at the start of the 2012-2013 school year. Appellants object to that portion of the redistricting plan that requires certain students who had been attending Central to attend Mayo.

We referred the case to the Office of Administrative Hearings (OAH), as required by COMAR 13A.01.05.07A(1), for review by an Administrative Law Judge (ALJ). The ALJ conducted a two day hearing in which she heard testimony and received. The ALJ issued a Proposed Decision recommending that the State Board uphold the redistricting because the Appellants had failed to demonstrate that the local board's redistricting decision was arbitrary, unreasonable or illegal. The ALJ found that the redistricting decision was rationally based, that there was no procedural error rendering it illegal, and that Appellants had failed to demonstrate that the decision was motivated by racial bias.

The Appellants filed exceptions to the ALJ's decision. The local board responded and Appellants replied.¹ The State Board heard oral argument on October 30, 2013.

FATUAL BACKGROUND

The factual background in this case is set forth in the ALJ's Proposed Decision, Findings of Fact, pp. 6-17. We incorporate those facts herein, except for Findings of Fact (FOF) #66--#68.² We have provided additional clarification of the events that transpired below.

¹ The 2012-2013 school year was nearly concluded by the time the filing process was completed.

² Finding of Fact #66 states that the removal of "all" from the redistricting language in the local board's April 18, 2012 agenda was not an amendment of the proposed redistricting; FOF #67 states that the redistricting was not motivated or affected by racial considerations; and FOF #68 states that the redistricting decision was reasonable. (Proposed Decision 3/5/13 at pp.16--17).

The Superintendent formed a Redistricting Committee to advise him on options to alleviate overcrowding at Central due to continued enrollment growth. During the fall of 2011, the Committee studied the redistricting issue. It held multiple public meetings, heard public comment and input, deliberated on the various issues, and ultimately presented a redistricting recommendation to the Superintendent to go into effect at the beginning of the 2012-2013 school year. (R.205, Bd. Exs. J & K).

The Superintendent accepted the Committee's recommendation and, in turn, presented it to the local board at the local board's December 7, 2011 meeting. The Superintendent's recommendation stated as follows, in pertinent part:

The Superintendent recommends redistricting from Central Elementary to Mayo Elementary **all students living along Muddy Creek Road** down to and including Wolfe's Reserve and those students living on Fiddlers Hill Road, as well as those students living east of Muddy Creek Road and south of Central Avenue as it extends to the current boundary with Mayo Elementary, including those living in River Club Estates and along Camp Letts Road. (See Central Elem to May Elem Map).

(R.209, Bd. Ex. K)(Emphasis added). The highlighted language above is the same language that appeared in the recommended option in all of the redistricting documents disseminated and reviewed during the Redistricting Committee process.

At its January 4, 2012 board meeting, the local board voted to move the Superintendent's recommendation to public hearing. (R.215-216, Bd. Ex. L). A redistricting briefing and a redistricting public meeting were held. (ALJ Proposed Decision at pp.12—13). The language in the redistricting documents was the same as that set forth above. *Id.*

At the local board's meeting on April 18, 2012, the redistricting plan appeared on the agenda for local board approval. The agenda item read as follows:

Redistricting from Central Elementary to Mayo Elementary **students living along Muddy Creek Road** down to and including Wolfe's Reserve and those students living on Fiddlers Hill Road, as well as those students living east of Muddy Creek Road and south of Central Avenue as it extends to the current boundary with Mayo Elementary, including those living in River Club Estates and along Camp Letts Road.

(R.231, Bd. Ex. N) (Emphasis added). Absent from the language was the term "all" in reference to the students living along Muddy Creek Road. The language appearing on the agenda item is what the local board approved and what it intended to approve.³ (*Id.*; ALJ Proposed Decision at 16).

³ We note that the language including the term "all" was included in the Superintendent's May 17, 2012

It later came to light that only students residing on the East side of Muddy Creek Road were affected by the redistricting and would now attend Mayo. The redistricting did not change anything for students residing on the West side of Muddy Creek Road who remained assigned to Central.

Appellants appealed the redistricting decision to the State Board. They argued that the local board's decision was racially biased because it had the effect of moving African American students to Mayo while keeping white students at Central. They also claimed that the local board violated Anne Arundel County Public School (AACPS) Regulation JAA-RA, entitled Redistricting and Attendance Areas, which sets forth the redistricting process, because the local board failed to hold an additional public hearing before its final vote. JAA-RA states as follows, in pertinent part:

- c. The Board shall publically announce its intention to consider redistricting and shall conduct a public hearing(s).

- d. At a meeting of the Board subsequent to the public hearing, but not later than April 30 of any school year, the Board shall make and announce its decision in public session. The Board reserves the right to utilize all information received during the redistricting process to formulate a final decision on redistricting, which may differ from the recommendations or proposals that the Board initially moved to public hearing. **If a revision of the recommendations or proposals occurs, then the Board shall hold an additional public hearing on the revision prior to a final decision.**

(JAA-RA(D)(2))(Emphasis added).

Because the case concerned a redistricting, we transferred the matter to OAH for handling. The local board filed a Motion to Dismiss the appeal for lack of standing. The ALJ examined information about the Appellants in order to reach a decision on the issue.⁴ The named Appellants included Tiffany Neal, Tyra and Tommie Mims, Edward Sheffey, Helen Crowner, Cynthia Neal and Robert Neal, Sr. Tiffany Neal and Mr. Sheffey have a son E.S., who began attending kindergarten at Mayo at the start of the 2012-2013 school year. Tiffany Neal lives on Collins Road in Edgewater, Maryland, east of Muddy Creek Road with E.S. and her parents Cynthia and Robert Neal, Sr. Tyra Mims is Ms. Neal's sister. She lives on the west side of Muddy Creek Road and is married to Tommie Mims. After the redistricting, their daughter attends Central, which is where Ms. Mims wanted her daughter to attend school. (3/5/13 ALJ Proposed Decision at 15).

memorandum to the principals of the schools affected by the redistricting advising them of the local board's April 18 decision. (R.246-247).

⁴ For various reasons, the ALJ considered the issue of standing on three separate occasions. (See Proposed Order and Decisions 7/31/12, 9/7/12, 3/5/13).

The appeal to the State Board was signed only by Tiffany Neal as “Official Representative of the Appellants.” (See Proposed Decisions 7/31/12, 9/7/12, 3/5/13). Ultimately, the ALJ concluded that all of the named Appellants had standing to appeal the redistricting except for Tommie Mims and Ms. Crowner. *Id.* The ALJ advised Tiffany Neal, however, that she could not represent the other parties in the case at OAH because she is not an attorney. (Proposed Decision, 3/5/13). During the hearing on the case, Tiffany Neal, Cynthia Neal, and Tyra Mims were present, but the ALJ stated that Cynthia Neal and Tyra Mims did not participate as parties. Although none of the other originally named Appellants were present at the hearing and did not have an attorney representing them, the ALJ did not issue a default order because it was not requested by the local board. (3/3/13 Proposed Decision at 3, fn. 2).

The ALJ found that the redistricting decision was rationally based; that the local board did not violate the Regulation JAA-RA in reaching its decision; and that Appellants had failed to demonstrate that the decision was motivated by racial bias. (3/3/13 Proposed Decision).

STANDARD OF REVIEW

This appeal involves a redistricting decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05A.

A decision is considered arbitrary or unreasonable if it is “contrary to sound educational policy or if a reasoning mind could not have reasonably reached” the decision. COMAR 13A.01.05.05B(1) and (2). A decision is illegal if it is unconstitutional; exceeds statutory or jurisdictional boundaries; misconstrued the law; results from unlawful procedures; is an abuse of discretion or is affected by errors of law. COMAR 13A.01.05.05C.

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ’s proposed decision. The State Board’s final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. See Md. Code Ann., State Gov’t §10-216.

LEGAL ANALYSIS

Preliminary Issues

1. Standing

As a preliminary matter, we address whether any of the originally named Appellants continue to be parties to this case. Only Tiffany Neal, Cynthia Neal, and Tyra Mims were present at the OAH proceedings. None of the other Appellants appeared and no attorney appeared on their behalf. There is no explanation in the record why the missing Appellants

failed to personally appear or participate in the hearing in any way. For this reason, we dismiss them as parties to the case.

With regard to Cynthia Neal, the ALJ stated that she did not participate as a party in the appeal even though the ALJ ruled that she had standing. (3/5/13 Proposed Decision at 3, fn.2). If she did not participate as a party in the case, she is not a party.

As to the remaining Appellants, Tyra Mims and Tiffany Neal, we wish to clarify the issue of standing. The State Board has consistently held that in order to have standing an appellant must be “aggrieved by the final decision of the administrative agency” and demonstrate some “direct interest” or “injury in fact” such that the individual is personally and specifically affected in a way different from the public generally. *See Clarksburg Civic Ass’n v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 07-34 (2007); *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 10-31 (2010).

Although the ALJ found that Ms. Mims had standing based, in part, on the notion that she and Tiffany Neal are sisters and prefer that their children attend the same elementary school (3/5/13 Proposed Decision at 19-20), we find that Ms. Mims has standing to appeal because her daughter attends one of the affected schools, thereby giving her a “direct interest” in the redistricting decision.⁵

Tiffany Neal’s son, E.S., was redistricted from Central to Mayo and Tiffany Neal wants him to attend school at Central. Accordingly, she has a “direct interest” or “injury in fact” as a result of the local board’s redistricting decision.

2. *Superintendent’s Failure to Appear*

Appellants argue that the ALJ erred because she did not hold the local Superintendent, Kevin Maxwell, in contempt for failing to appear at the hearing at OAH pursuant to a subpoena, and instead proceeded with the hearing without Mr. Maxwell’s presence. An ALJ does not have enforcement powers over a subpoena. Rather, enforcement of a subpoena in a contested case lies with the circuit court. Section 10-222.1 of the State Government Article, Annotated Code of Maryland, states that “[a] party may file an action for civil enforcement of an administrative order by filing a petition for civil enforcement in the circuit court.” Although Appellants would have liked the ALJ to postpone the hearing for a time when Mr. Maxwell could be present, it was up to the Appellants to seek enforcement of the subpoena to compel him to appear. We note, however, that the ALJ allowed Alex Szachnowicz, Chief Operating Officer (CEO), to testify in Mr. Maxwell’s place. Appellants have not proffered what testimony they would have attempted to elicit from Mr. Maxwell that is not already in the record if he had been available to testify.

⁵Although the ALJ stated that Ms. Mims did not participate as a party in the appeal (3/5/13 Proposed Decision at 3, fn.2), we believe this was a result of the ALJ’s prior determination in his July 31, 2012 Proposed Decision that she lacked standing to appeal.

3. *Credibility of Witness Testimony*

In their exceptions, Appellants question the credibility of some of the school system employees who testified in the case. Appellants called five witnesses who are employees of the local board, including, Alex Szachnowicz, the CEO, Barry Gruber, the Assistant Principal of Central, Richard Wandres, a Transportation Specialist, Christopher Carter, the Supervisor of Transportation, and Charles Yocum, a Specialist in Student Demographic Planning. As to their credibility, it is well established that determinations concerning witness credibility are within the province of the trier of fact. *See, e.g., Bd. of Trustees v. Novik*, 87 Md. App. 308, 312 (1991) *aff'd*, 326 Md. 450 (1992) (“It is within the Examiner’s province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences.”); *see also Board of Education v. Paynter*, 303 Md. 22, 36 (1985) (Not only is it the province of the trier of fact to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the trier of fact to draw the inferences.). We do not find any basis to overturn the witness credibility decisions made by the ALJ.

Alleged Violation of Regulation JAA-RA

Appellants contend that the local board violated the redistricting regulation when it eliminated the word “all” from the Superintendent’s recommendation and voted to redistrict “students living along Muddy Creek Road” without holding an additional public hearing before its final vote on April 18, 2012. Specifically, JAA-RA(D)(2)(d) requires the local board to hold an additional public hearing “if a revision” of the recommendation or proposal occurs in the final decision. Appellants maintain, therefore, that this procedural violation renders the local board’s decision illegal.

We agree that the local board violated Regulation JAA-RA(D)(2)(d) when it eliminated the word “all” from the redistricting proposal, thereby revising the Superintendent’s recommendation, and voted to accept the proposal without holding an additional public hearing on the “revision.” We reject, therefore, the ALJ’s conclusion that there was no revision triggering the provision for an additional public hearing based on the fact that the Redistricting Committee, the Superintendent, and the local board understood at all times that the redistricting affected only the students living on the east side of Muddy Creek Road. In our view, the issue is whether the general public understood that to be the case, not just the Committee, the Superintendent, and the local board. The purpose of the public hearing provision is to inform the public of the issue that is before the local board for its consideration and to ensure that citizens will have an opportunity for meaningful participation in the redistricting process.

Even though we find that the local board violated the regulation, the analysis of the issue does not end here. The *Accardi* doctrine requires that “[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established.” *U.S. ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This doctrine applies to regulations that are intended to “affect individual rights and obligations” or to “confer important procedural benefits upon an individual.” *Pollack v. Patuxent Institution Bd. of Rev.*, 274 Md. 463, 503 (2003). Where the *Accardi* doctrine is applicable, a complainant must show that prejudice to him or her

resulted from the agency's violation in order for the agency decision to be struck down. *Id.* at 504.

Appellants must show that they were prejudiced by the local board's failure to hold the additional public hearing in order to have the local board's decision struck down. We believe that they have done so. They had no notice of the change in the redistricting language. They had no opportunity after the change to raise additional arguments against the redistricting before the local board rendered a final decision. Notice and an opportunity to be heard are the basic legal requirements for public participation. Failure to provide notice and the opportunity to be heard constitute the prejudice required by the *Accardi* doctrine.

CONCLUSION

For the reasons stated herein, we remand the case to the local board so that it can conduct a hearing in accordance with JAA-RA(D)(2)(d).⁶ In doing so, we reject the majority of the March 5, 2013 Proposed Decision of the ALJ, and adopt only the Findings of Fact contained therein, with the exception of Findings of Fact #66 – #68. In addition, we dismiss all Appellants from the case except for Tiffany Neal and Tyra Mims.


Charlene M. Dukes

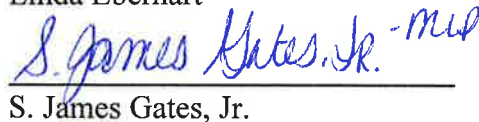
President

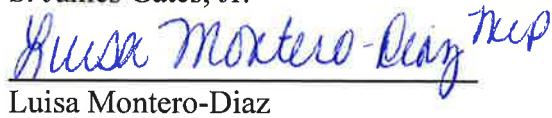

Mary Kay Finan

Vice President


James H. DeGraffenreidt, Jr.


Linda Eberhart


S. James Gates, Jr.


Luisa Montero-Diaz


Sayed M. Naved

⁶ In their appeal, Appellants maintain that the redistricting decision was racially biased. Because we are remanding this case to the local board for a hearing, we decline to rule on the issue of racial bias at this time.

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

December 16, 2013