CALVERT NEIGHBORS FOR SENSIBLE REDISTRICTING,	BEFORE THE
	MARYLAND
Appellant	
v.	STATE BOARD
CALVERT COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 10-27

OPINION

The Appellants filed this appeal challenging the March 13, 2008 redistricting decision of the Calvert County Board of Education (local board) to accommodate the opening of Barstow Elementary School in the fall of 2008.

The State Board initially forwarded the case to the Office of Administrative Hearings (OAH) for review by an Administrative Law Judge (ALJ) pursuant to COMAR 13A.01.05.07(A)(1). The ALJ remanded the matter back to the State Board as unripe for adjudication because several Appellants filed complaints with the State Ethics Commission against the Calvert County School Superintendent, local board members, and certain individuals employed by the local board. The State Board stayed the case pending the resolution of the ethics complaints. On January 29, 2009, the State Ethics Commission dismissed the ethics complaints as to all parties.

Thereafter, the State Board lifted its stay of the appeal and forwarded the matter back to OAH. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellants opposed the Motion. The ALJ issued a Recommended Order on the Calvert County Board of Education's Motion for Summary Decision recommending that the State Board affirm the local board's redistricting decision. The Appellants did not file any exceptions to the ALJ's Recommended Order.

FACTUAL BACKGROUND

The factual background in this case is set forth in the May 13, 2010 Administrative Law Judge's Recommended Order, Stipulated Facts, pp.9 – 12.

STANDARD OF REVIEW

This appeal involves a redistricting decision of a local board of education. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board shall be 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.

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. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

CONCLUSION

Based on our review of the record, we concur with the ALJ's conclusion that "the Appellants have not provided a factual or legal basis for finding that the Local Board's decision was arbitrary, unreasonable, or illegal." ALJ's Recommended Order at 28. We therefore adopt the ALJ's Recommended Order and affirm the local board's redistricting decision.

James H. DeGraffenreidt, Jr.
President

Charlene M. Dukes
Vice President

Mary Kay Finan

S. James Gates, Jr.

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Guffrie M. Smith, Jr.

Donna Hill Staton

Ivan C.A. Walks

Kate Walsh

July 20, 2010

CALVERT NEIGHBORS FOR	* BEFORE STUART G. BRESLOW,
SENSIBLE REDISTRICTING	* AN ADMINISTRATIVE LAW JUDGE
	* OF THE MARYLAND OFFICE
v.	* OF ADMINISTRATIVE HEARINGS
CALVERT COUNTY	* CASE NO.: MSDE-BE-09-09-45958
BOARD OF EDUCATION	

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

RECOMMENDED ORDER ON THE CALVERT COUNTY BOARD OF EDUCATION'S MOTION FOR SUMMARY DECISION

STATEMENT OF THE CASE
ISSUE
STIPULATED FACTS
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER
NOTICE OF RIGHT TO FILE EXCEPTIONS

STATEMENT OF THE CASE

On March 13, 2008, the Calvert County Board of Education (Local Board) adopted new school attendance boundaries for five existing and one new elementary school effective with the start of the 2008 through 2009 school year. Calvert Neighbors for Sensible Redistricting, a group of fifty-eight residents located in Calvert County (Appellants), filed an appeal on April 14, 2008. By letter of July 30, 2008, the Maryland State Department of Education (MSDE) forwarded the appeal to the Office of Administrative Hearings (OAH) for a hearing. OAH assigned case number MSDE-BE-09-08-29018 to this case (case 29018). At issue in case 29018 was whether the Local Board's redistricting decision for Barstow Elementary School (Barstow) was arbitrary, unreasonable, or illegal.

The Local Board filed a Motion for Summary Affirmance[1] on July 31, 2008. The Appellants filed their response on August 26, 2008. On August 26, 2008, the Local Board filed a Motion to Dismiss, alleging certain requests for relief were not within the jurisdiction of the Maryland State Board of Education (State Board) and hence, was not properly before the OAH. The Administrative Law Judge (ALJ) in case 29018, on October 9, 2008, ruled that the only issue properly before OAH was whether the redistricting that resulted from building Barstow was arbitrary, unreasonable, or illegal. The ALJ also denied the Motion for Summary Affirmance stating that there were material issues of fact. Case 29018 was scheduled for a hearing on the merits for December 9 through 11, 2008 and December 16 through 18, 2008.

During the pendency of case 29018, a number of Appellants filed ethics complaints against the Superintendant of the Calvert County Public School System (CCPS), several Local Board members and other individuals employed by the CCPS. These complaints were filed on May 14, 2008, June 6, 2008 and November 7, 2008. On December 1, 2008, the Appellants and the Local Board requested a joint postponement of the scheduled hearing on the merits and each party provided support for their joint request. The request to delay the hearing was due to the pending investigation of the ethics complaints. The request to postpone the hearing on the merits was denied by the presiding ALJ. The parties requested that the ALJ reconsider her decision because the parties contended that the case could not proceed until the ethics complaints were resolved. The presiding ALJ determined that because the ethics complaints, at the time,

[1] The Board filed a Motion for Summary Affirmance pursuant to Code of Maryland Regulations (COMAR) 13A.01.01.03K. That regulation, however, was amended, effective July 19, 2005. (31:14 Md. R. 1079). MSDE's regulations no longer contain a provision for summary affirmance of a local board's decision. Because the MSDE delegated its hearing authority to the OAH, and there is no specific MSDE regulation on point, the correct regulation to apply here is OAH's provision for summary decision. There is no substantive difference, however, between a summary affirmance and a summary decision.

remained unresolved, she concluded that the appeal was not ripe for adjudication and remanded the case to the MSDE. The case was stayed on appeal by the MSDE on December 16, 2008.

The ethics complaints, which were the subject of the request for stay, were dismissed on January 29, 2009 as to all parties. On August 19, 2009, one of the Appellants, Craig Brogan, requested that the MSDE lift its stay.

On December 22, 2009, after lifting its stay, the MSDE forwarded this matter back to the OAH for a hearing in accordance with the Code of Maryland Regulations (COMAR) 13A.01.05.07A(1). OAH assigned a new case number to this matter, MSDE-BE-09-09-45958 (case 45958). Of the original fifty-eight Appellants in this case, sixteen elected to proceed in case 45958.

On February 9, 2010, the Board filed a Motion for Summary Decision. A pre-hearing conference was scheduled for February 25, 2010. I informed the parties that in addition to the pre-hearing conference, I would also hear arguments on the Local Board's Motion for Summary Decision.

On February 25, 2010, I held the pre-hearing conference in case 45958. Notice was sent to all sixteen remaining Appellants. Only four of the sixteen remaining Appellants appeared at the pre-hearing conference. Following the Local Board's Motion for Default Judgment, I granted a Proposed Default Judgment on March 8, 2010, against the twelve Appellants who failed to appear at the February 25, 2010 pre-hearing conference. At the pre-hearing conference, the four remaining Appellants, Maria Hill, Craig Brogan, Nick Myers and Gary Smith, all appeared without counsel. The Local Board was represented by Dario J. Agnolutto, Esquire. At the pre-hearing conference, the Local Board withdrew its Motion for Summary Decision. The

Local Board re-filed a new Motion for Summary Decision (Motion) on March 11, 2010. On March 26, 2010, the remaining four Appellants filed their response in opposition to the Motion.

On April 14, 2010, I held a hearing at the Local Board's office in Prince Frederick, Maryland, on the Local Board's Motion. COMAR 28.02.01.16D.[2] The four Appellants appeared without counsel. Dario J. Angolluto, Esquire, appeared on behalf of the Local Board.

The contested-case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); MSDE Regulations for Appeals to the State Board of Education, COMAR 13A.01.05; and the Rules of Procedure, COMAR 28.02.01, govern procedure in this hearing.

ISSUE

Should the Local Board's Motion for Summary Decision be granted?

SUMMARY OF THE EVIDENCE

Exhibits

The following exhibits were attached to the Board's Motion for Summary Decision and were considered for this Recommended Order:

Exhibit Number		Memo Page Numbers
Bd. Ex. 1 -	Chronology of Redistricting for period Aug. 2007 through April 24, 208	1
Bd. Ex. 2 -	Affidavit of Kim Roof, dated July 25, 2008 with 14 page attachment	24, 27, 30, 35, 36, 39
Bd. Ex. 3 -	Affidavit of George Leah, dated July 25, 2008, with 6 page attachment	3-7, 23-26, 29-30, 42-43
Bd. Ex. 4 -	Affidavit of Gregory Bowen, dated July 29, 2008, with one-page attachment	3-4, 6-7, 23-26, 43

[2] Effective March 22, 2010, the OAH rules governing Motions for Summary Decision were changed and can now be found in COMAR 28.02.01.12D. Since the Board's Motion for Summary Decision was filed prior to the Rule change, the prior rules governing Motions for Summary Decision will apply in this case.

Bd. Ex. 7 -	Affidavit of Kim Roof, dated March 10, 2010, with six page attachment	7, 17, 41
Bd. Ex. 8 -	Affidavit of Monica Mower dated March. 10, 2010	16, 18, 24, 27, 35-36
Bd. Ex. 9 -	CCPSC Policy #1012 (revised Dec. 7, 2006)	29
Bd. Ex. 10 -	CCPS Administrative Procedures for Policy #1012, (revised Feb. 4, 2008	29
Bd. Ex. 11 -	Affidavit of Kimberly Roof dated September 4, 2008	18, 35, 36
Bd. Ex. 12 -	Affidavit of Kevin Hook, dated September 4, 2008	18, 35
Bd. Ex. 13 -	Affidavit of Leon Langley, dated September, 2008	18
Bd. Ex. 14 -	CCPS - Policy Statement #1740,)..... (revised December 6, 2007	14
Bd. Ex. 15 -	CCPS- Policy Procedures #1740.2 for policy statement # 1740, (revised February 19, 2008	14
Bd. Ex. 16 -	Order of Dismissal of Calvert County Board of Ethics Panel (CCBOE) in re: ethic complaint filed by Nick Myers, Craig Brogan, Stacy Zahringer, Laura Waddell, Carolyn Moore, Gary Smith and Michael Buck, dated January, 29, 2009	11-12, 14, 16, 33-34
Bd. Ex. 17 -	Order of Dismissal of CCBOE Ethics Panel in re: ethics complaint filed by Craig Brogan, Carolyn Moore, Julie Stephens, dated January 29, 2009	11, 13-14, 16, 34-35
Bd. Ex. 18 -	Affidavit of George Leah dated February 8, 2010	4, 15-16, 30, 37-40
Bd. Ex. 19 -	Recap of January 30, 2008 Public meeting	36
Bd. Ex. 20 -	Recap of February 11, 2008 Public meeting	36
Bd. Ex. 21 -	CCPS Policy Statement #3925, (rev. Nov. 8, 2007	Oral Argument
Bd. Ex. 22 -	CCPS Admin Procedures for Policy #3925, (revised January 29, 2008	Oral Argument
Bd. Ex. 23 -	Affidavit of George Leah dated March 11, 2010	3-6, 24-26, 29-30
Bd. Ex. 24 -	Affidavit of William Chambers, dated April 5, 2010	Oral Argument

Bd. Ex. 25 - Affidavit of Tracy McGuire, dated April 2, 2010	Oral Argument
Bd. Ex. 26 - Affidavit of Rose Crunkleton, dated April 2, 2010	Oral Argument

Local Board Extract Exhibits for
Memorandum In Support of Motion For Summary Decision
(Exhibit Numbers Correspond to County Board Record Number)[3]

Exhibit Number	Memo Page Numbers
CBR Ex. 16 - Transcript of January 10, 2008 Local Board. Work Session	1, 2, 25, 29, 30
CBR Ex. 25 - Video of January 30, 2008 Local Board. Public Hearing	1,2, 30, 36
CBR Ex. 28 - Video of February11, 2008 Local Board Public Hearing	1, 2, 30, 36
CBR Ex. 34 - Transcript of February 28, 2008 Local Board. Meeting	1, 2, 25, 29, 31, 36
CBR Ex. 39 - Transcript of March 6, 2008 Local Board Work Session	1, 2, 5, 23, 25, 26, 28, 29, 30, 31, 36
CBR Ex. 43 - Transcript of March 13, 2008 Local Board. Meeting	1, 2, 23, 25, 26, 28, 29, 30, 31, 36
CBR Ex. 2 - CCPS Administrative Procedures for Policy #4400, dated April 18, 2007	2, 30, 36
CBR Ex. 3 - August, 2007 – Proposed Elementary Redistricting Timeline	2
CBR Ex. 35 - Barstow Frequently Asked Questions (FAQ's) of February 29, 2008	6, 31, 36
CBR Ex.31 - Redistricting FAQ's, dated February 14, 2008	26, 31, 36
CBR Ex. 29 - Sign In Sheets for speakers at February11, 2008 Public Hearing	30, 36
CBR Ex. 36 - Barstow Redistricting FAQ's (rev. Mar. 3, 2008)	31

[3] These exhibits will be referred to as CBR exhibits as that is how the Local Board labeled them.

CBR Ex. 1 -	CCPS Policy #4400	36, 37, 42
CBR Ex. 26 -	Sign In Sheets for speakers at January 30, 2008 Public Hearing	36
CBR Ex, 30 -	February 12, 2009 Racial Balance/Enrollment figures (included in FAQs of February 14, 2008)	36
CBR Ex.70 -	Documents submitted by Lt. Stephen's pertaining to Wilson Road	Oral Argument
CBR Ex..75 -	Documents submitted by Mr. White and Ms. Hodges relating to Wilson Road	Oral Argument

The Appellants submitted the following exhibits which were considered for this Recommended Order:

Ethics Complaints

Exhibit Numbers[4]:

CNSR Ex. 4 -	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008	1-12
	Exhibit H4: Letter to Ethics Panel, dated Dec. 13, 2008	10-13
CNSR Ex. 5 -	Exhibit H6: Barstow Redistricting FAQs, dated Feb. 29, 2008	1-43
	Exhibit H13: Memo to Ethics Commission, dated June 11, 2008	1-11
CNSR Ex. 6 -	Exhibit F1: Calvert Co. Real Property Search, fax date, June 7, 2008	1
	Exhibit F4: Adequate Public Facilities Ordinances	3-6; 15-19
	Exhibit F14: Kaine Homes information	1
	Exhibit F10: Article 7 - Subdivision Regulations	3
	Exhibit H1: Oct. 20, 2005 Bd. of Ed. minutes	3, para. 4; 4, para. 3
	Exhibit H6: Barstow Redistricting FAQs	1-43
	Exhibit H7: Taxpayers Services Division - info. for Early Adventures, LLC	1
CNSR Ex. 7	Exhibit L: Rebutttal to Opposition to Motion For Summary Decision	labeled #19

[4] The lettered exhibits identified herein are references to the particular sections in binders submitted by the Appellants.

	Exhibit H5: January 29, 2009 Order of Dismissal		1
	Exhibit H16: Garvey Ethics Dismissal Order [Not in Binder]		1
CNSR Ex. 9	Exhibit H5: January 29, 2009 Order of Dismissal		1
			1
CNSR Ex.11	H16: Garvey Ethics Dismissal Order [Not in binder]		1
CNSR Ex.12	Exhibit H3: Letter to Ethics Panel, dated Dec. 10, 2008		1-12
	Exhibit H4: Letter to Ethics Panel, dated Dec. 13, 2008		12 pg., 10-13
CNSR Ex.13	Exhibit H5: Jan. 29, 2009 Order of Dismissal		footnote pg. 3
CSNR Ex.14	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		1-12
	Exhibit H4: Letter to Ethics Panel, dated December 13, 2008		1-3
	Exhibit H5: January. 29, 2009 Order of Dismissal		3
CNSR Ex. 15	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		pg 4 para 3
CNSR Ex. 16	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		pg 4 para 3
CNSR Ex. 19	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		pg 4 para 3
	H15 Purpose & Role of Ethics Commission		1-7
CNSR Ex. 20	Exhibit L1	Rebuttal to Opposition to Motion For Summary Affirmance labeled	5, para. #19
CNSR Ex. 23	Exhibit H1	October 20, 2005 Local Board. minutes	4
	Exhibit H13	June 11, 2998 Memo to Ethics Commission	1-11
	Exhibit H14	November 7, 2008 Memo to Ethics Commission	1-7
CNSR Ex. 26	Exhibit I2	May 21, 2009 Letter re: open meetings compliance Inquiry April 13, 2009	10-13
	Exhibit H3	Letter to Ethics Panel, dated December 10, 2008	2 para 2.
CNSR Ex. 29	Exhibit H5	January 29, 2009 Order of Dismissal	1-8
CNSR Ex. 37	Exhibit I2	May 21, 2009 Letter re: open meetings compliance Inquiry April 13, 2009	10-13
CNSR Ex. 43	Exhibit H3	Letter to Ethics Panel, dated December 10, 2008	1-12
	Exhibit H4	Letter to Ethics Panel, dated December 13, 2008	1-3

	Exhibit H5	January 29, 2009 Order of Dismissal	1-8
CNSR Ex. 44	Exhibit H3	Letter to Ethics Panel, dated December 10, 2008	1-12
	Exhibit H4	Letter to Ethics Panel, dated December 13, 2008	1-3
CNSR Ex. 49	Exhibit H5	January 29, 2009 Order of Dismissal	1-8
CNSR Ex. 55	Exhibit L1	Rebuttal to Opposition to Motion For Summary Affirmance	5, paragraph labeled #19
CNSR Ex. 60	Exhibit J2	April 28, 2009 E-mail to Wendy from Monica Mower	responsibility

Stipulated Facts

At the pre-hearing conference in Case 45958, the parties agreed to the following stipulated facts which are also included in this Motion:

1. In August of 2007, the Superintendent of CCPS began the redistricting process to accommodate the opening of Barstow in the fall of 2008.
2. The policy governing redistricting is CCPS Policy Number 4400.
3. The procedure pertaining to redistricting is CCPS Procedure Number 4400.1.
4. On September 6, 2007, the Superintendent sent letters to the Barstow Redistricting Committee members (the Committee) advising them of their appointment to the Committee.
5. The Committee was comprised of five Parent Teacher Association representatives, one from each of the five affected elementary schools, one member of the CCPS Citizen Advisory Committee (CAC), one principal from one of the affected schools, two members of the Calvert County Department of Planning & Zoning to provide background information as needed, two school system staff members from CCPS to provide

administrative support as needed to the Committee, and the CCPS Director of Student Services and Construction to chair the Committee and facilitate the meetings.

6. The Committee as a whole met three times over the months of October 2007 through January 2008.
7. In addition to the Committee meetings, the Committee was broken up into two sub-committees, each having three citizen members.
8. The sub-committees met to develop redistricting options independently for consideration by the Committee as a whole.
9. CCPS staff members answered questions and provided administrative support for the sub-committee meetings.
10. From the sub-committee recommendations, the Committee developed two redistricting plans (Plan 1 and 2) for consideration by the Local Board.
11. On January 10, 2008, the Committee plans were presented to the Local Board and notice of the public hearings to be held on January 30 and February 11, 2008, were sent home to all students in all affected schools, in addition to a press release being issued and the notice being placed on the CCPS website.
12. On January 30, 2008, the Board heard public testimony on the proposed plans.
13. On February 11, 2008, the second of the public hearings was held.
14. February 19, 2008 was the final deadline for public comment to be submitted on the two proposed plans.
15. There were fifty-four speakers at the January 30, 2008 public hearing and seventy-five speakers at the February 11, 2008 public hearing.

16. There were approximately 152 submissions of written correspondence submitted to the Local Board for consideration.

17. There was testimony for and against each plan.

18. The Local Board held a work session on February 28, 2008 and staff presented information, which included responses to certain questions by the public.

19. On March 13, 2008, the Local Board met to make a final decision on the Barstow redistricting.

20. Some members of the Local Board noted that there were no changes to either plan that could be made without compromising the viability of the individual Plans.

21. Four of the five Local Board members stated that their reason for voting for Plan 2 was because of their desire to provide a better balance of student populations in the affected schools.

22. The dissenting member agreed to go along with the decision of the rest of the Local Board, and the Local Board then unanimously voted to adopt Plan 2.

23. CCPS Procedure for Redistricting 4400.1 (Ex. 9) provides:

D. Principles of Redistricting:

> In considering possible redistricting plans, the committee will, to the best of their ability:
> 1. Establish boundaries that follow natural or major man-made landmarks,
> 2. Minimize the number of students and families that may be affected by redistricting,
> 3. Develop boundaries that support safe and reasonable school bus transportation patterns,
> 4. Provide for racial balance at each facility, and
> 5. Provide for anticipated growth at each affected school.

24. Huntingtown Elementary School and Plum Point Elementary School border the northern third of Calvert County.

25. Calvert Elementary School and Barstow are the only schools affected by the redistricting that would potentially qualify as "town center" schools under the Smart Growth initiative.

DISCUSSION

Legal Framework

Motion for Summary Decision

COMAR 28.02.01.016D describes the criteria for motions for summary decision.

> D. Motion for Summary Decision
>
> (1) A party may move for summary decision on any appropriate issue in the case.
> (2) A judge may grant a proposed or final summary decision if the judge finds that:
> (a) There is no genuine issue of material fact; and
> (b) A party is entitled to prevail as a matter of law.

Maryland appellate cases on motions for summary decision under the Maryland Rules of Civil Procedure (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 goes beyond the initial pleadings, asserting that no genuine issue exists as to any material fact and that the party filing the motion is entitled to prevail as a matter of law. *Compare* COMAR 28.02.01.16D *and* Maryland Rule 2-501(a); *see Davis v. DiPino*, 337 Md. 642, 648 (1995).

A party may move for summary decision "on any appropriate issue in the case" or as to the case as a whole. COMAR 28.02.01.16D(1). The principal purpose of summary determination, whether it be 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 Board 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 judgment, the opposing party may defeat the motion by producing affidavits, or other admissible documents, which establish that material facts are in dispute. *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737-738 (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 Development Co.*, 285 Md. 216, 231 (1979).

Standard of Review

The Standard of Review can be found in COMAR 13A.01.05.05A.

> 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.01.05.05B 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 the superintendant reached.

COMAR 13A.01.05.05C 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.

The Appellants have the burden of proof in this matter by a preponderance of the evidence. COMAR 13A.01.05D.

Analysis

Rulings in case 29018

On October 9, 2008, the ALJ dismissed three of the Appellants' requests for relief. They were to direct the Local Board to revise its transfer policies to remove clauses in all of its policies allowing it to temporarily suspend some or all of the policies' provisions by majority vote and revise policies and procedures governing public input into Local Board decision-making. These three requests for relief were not addressed in the Motion for Summary Decision and the Opposition to the Motion for Summary Decision filed by the parties in case 45958; therefore, they will not be addressed in this Recommended Order on Motion for Summary Decision.

The only issue before me in case 45958 is whether the Local Board is entitled to a Summary Decision on the Local Board's March 13, 2008 redistricting decision involving

Barstow. The ALJ in case 29018 ruled that there were material issues of fact that caused her to deny the Board's Motion for Summary Affirmance and the case was set for a hearing beginning December 9, 2008. On December 1, 2008, the parties filed a Joint Motion to Postpone (Joint Motion) the hearing because of pending ethics complaints that were before the Ethics Panel (Panel). The Local Board, and the fifty-eight Appellants, who were each represented by counsel, provided their reasons for the request to the ALJ. The Appellants stated in the Joint Motion that "Issues Raised by Appellants *were inextricably intertwined* with charges made in the Ethics Complaints." (emphasis added) (Joint Motion at pg 2). The Appellants further argued that they "could not possibly prove its case with any persuasive particularity without discussing the issues raised in the various ethics complaints which are now pending before the [Local Board's] Ethics Panel." The Local Board argued, in part, that "any [Local Board] response to the allegations of ethical improprieties prior to completion of the statutorily created process for resolution of the ethics complaints could compromise the fair and impartial adjudication of any final action in the ethics matters coming before the [Local Board] and raise issues of fairness by the parties to the proceedings before the Ethics Panel." As a result of the Joint Motion, the ALJ determined that case 29018 was not ripe for adjudication and remanded the case back to the MSDE. Case 29018 was stayed by MSDE and the stay was subsequently lifted. Case 45958 was sent to OAH many months after the Panel made its determination. As a result of new information, including the decisions of the Panel, the Local Board filed a new Motion for Summary Decision on March 11, 2010 and the Appellants filed their Opposition to the Motion on March 26, 2010. This Motion for Summary Decision will be evaluated in light of the new information and the evidence submitted by the parties in support of their respective positions as well as the arguments presented at the hearing on the Motion for Summary Decision held on April 14, 2010.

Ethics Complaints and Subject Matter Jurisdiction

The Maryland Public Ethics Law (Law) is codified at Title 15 of the State Government Article. Md. Code Ann., State Gov't (SG) §§ 15-101 through 15-1001 (2009). The Maryland General Assembly has charged the State Ethics Commission (Commission) with "administering and implementing" the provisions of that Law "*in all matters*" not involving either the General Assembly or the State judiciary. SG §§ 15-104(3) and15-205(a) (emphasis added). The Commission's responsibilities include promulgating model ethics regulations for local governments throughout the State, SG § 15-205(b), which must enact "similar" codes of ethics. SG § 15-803 through 15-806.[5] Local governments then enforce their own codes of ethics within their respective jurisdictions. COMAR 19A.04.02.07.

Other statutory provisions allow local boards of education to adopt separate, but again similar sets of ethics regulations. SG §§ 15-812 through 15-814. If such regulations have been drafted, they are subject to review and approval by the Commission. SG § 15-815; COMAR 19A.05.01.03. Thereafter, the local boards of education also enforce their own codes of ethics. COMAR 19A.05.02.06.

Local jurisdictions may expressly grant a right to judicial review for parties who are dissatisfied with ethical determinations at the local level. *See, e.g., Dvorak v. Anne Arundel County Ethics Comm'n*, 400 Md. 446, 452 (2007). Even in the absence of such provisions, however, the courts retain "an undeniable constitutionally-inherent power to review, within limits, the decisions of . . . administrative agencies." *Anne Arundel County v. Halle Development, Inc.*, 408 Md. 539, 556 (2009), quoting *Dep't of Nat. Res. v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 223 (1975). Whether by virtue of an express grant to a right of

[5] *See* COMAR 19A.04.01.

judicial review or through the exercise of their inherent powers, the State's circuit courts alone appear to possess the jurisdiction necessary to review ethical determinations by those charged with making such determinations at the local level, including the Local Board's Panel.

This fact is of crucial importance because the OAH does not posses inherent subject matter jurisdiction. Its authority to hear a type of contested case or a particular case must be delegated to the OAH by a board, commission or agency head. State Gov't, § 10-205(a)(1)-(3) (2009). Of course, a board, commission, or agency cannot delegate what it does not possess. In *Maryland Bd. of Physicians v. Elliott*, 170 Md. App. 369 (2006), after citing a number of previous cases involving appeals of challenges to administrative proceedings, the Court of Special Appeals observed:

> In not one of these cases was there the faintest suggestion that, once the administrative agency delegated the adjudication to the OAH, the ALJ was not authorized to adjudicate, in plenary fashion, *everything that the agency itself would have been empowered to adjudicate.*

170 Md. App. at 400 (emphasis added).

Case 45958 was delegated to the OAH by the MSDE, which was entitled to transfer some or all of its own decision-making authority in the process—but no more. To adjudicate claims of unethical actions previously rejected by the Panel would have exceeded the MSDE's authority, and the agency did not purport to do so: its letter of transmittal merely states that "the Administrative Law Judge shall submit proposed written Findings of Fact, Conclusions of Law and Recommendations to the Maryland State Board of Education." Adjudicating ethical claims is beyond the authority transmitted to the OAH, and beyond my jurisdiction. I, thus, shall treat the dismissal of the ethics complaints by the Ethics Panel as proven facts in my Recommended Order to the MSDE.

The Local Board elected to adopt its own ethics regulations, the most recent of which was adopted on September 6, 2007. The Maryland State Ethics Commission approved the Local Board's Ethics Policy and Procedure. According to the Ethics Policy, 1740.2, a Role of the Ethics Panel is to "accept, initiate, investigate and/or hear complaints of suspected violations. Ethics Policy 1740.2 VII e. It is pursuant to that authority that the Panel reviewed the complaints filed by several of the Appellants. While not every one of the Appellants remaining in case 45958 were members of the group that filed the ethics complaints, each of the Appellants endorsed postponing case 29018, claiming that the redistricting decision for Barstow was arbitrary, illegal or unreasonable were "inextricably intertwined" with the ethics complaints. Clearly, if the ethics complaints were not "inextricably intertwined" with the ultimate issues in this case, the Appellants would have refused to join in the Motion to Postpone and would have argued to proceed with a hearing on the merits that was scheduled to begin a week after the Joint Motion to Postpone was filed. One of the arguments that the Appellants have raised during the hearing on the Motion for Summary Decision is that the entire process has taken too long to resolve. If the Appellants believed that they could proceed to a hearing without a decision from the Panel, it is likely they would have done so. Based on the hearing schedule for case 45958, the Appellants would have avoided an eighteen-month delay had they not waited for a decision from the Panel and proceeded to have case 29018 heard as scheduled.

On January 29, 2009, the Panel found no violations and dismissed all of the ethics complaints filed in this matter. (CBR Ex.17). Therefore, on that date, all of the ethics issues raised by the Appellants or that could have been raised as it relates to the question of redistricting due to the construction of Barstow have been resolved. As previously discussed, the State Board did not, nor could not, delegate its authority to the OAH to hear ethics complaints.

Finally, the Local Board argued that the doctrines of *Res Judicata* and *Collateral Estoppel* apply in this case. It is not necessary to discuss these principles of law as it applies to this case because of the dismissal of all of the ethics complaints. Without an affirmative finding that a violation had occurred by the Panel and a causal connection between such a finding and the redistricting decision of the Local Board, the Appellants are unable to bring ethics matters before me for consideration. There is no need to address the doctrines cited above as neither applies in these particular circumstances of this case as ethics issues could not be either litigated or re-litigated by the parties before the OAH under any circumstance. In its Opposition to the Board's Motion for Summary Decision, the Appellants included sixty-five paragraphs and referenced numerous exhibits relating to the ethics complaints. Inasmuch as I have determined that the OAH has no jurisdiction to address ethics issues, these paragraphs and documents were given no weight in my review of the evidence whether the Local Board was arbitrary, unreasonable, or illegal in the Barstow redistricting matter.

Reason for Redistricting

The Local Board is required, pursuant to its Policy 4400.1, to redistrict when a new school is built. In this case, there is no dispute that the reason for redistricting is a result of Barstow being built. The determination of the need for a new school, and which schools would be involved in the redistricting, occurred several years in advance of and independent of the subject redistricting process. (CBR Ex. 18). The need for a new school was based on State Rated Capacity (SRC) which is a determination made by the MSDE. COMAR 23.03.02.04. The Local Board, in redrawing the boundaries of the identified schools and the new school (Barstow), is required to take into consideration anticipated future growth within the boundaries. Future student enrollment, under evaluation by the Local Board in its redistricting review, assumes that

all children would attend the school within the school boundaries to which they were assigned. This means that students who attend private schools outside their boundaries as well as transfer students to other schools outside their home school boundary would be included in the total population for that particular school boundary. (CBR Ex. 18).

Transfer Policy

The Local Board has a transfer policy (3925.1) that allows students to transfer from their home boundary school to another school under certain defined circumstances contained in the policy. (CBR Ex. 22). The transfer policy was not used in the redistricting for Barstow. (CBR Exs. 2,8,18, 25 26 27). The Local Board's procedures for student transfers state that when a school reaches ninety percent of functional capacity, it will be closed to transfers. The Local Board uses functional capacity to determine whether certain out-of-district students may transfer into one school or another. Since the Local Board did not use functional capacity, but rather SRC to determine redistricting, the issue of overcapacity due to transfers is not at issue in this case. From a practical matter, however, there is no question that the transfer policy adopted by the Local Board affects the population of the schools involved in the redistricting of Barstow. The Appellants' arguments on this issue are extensive. However, the Appellants have not provided credible evidence that the transfer policy was used in formulating the two Plans that were considered for the redistricting. On the contrary, the Local Board has provided numerous affidavits confirming that the transfer policy was not used in any of the two proposed redistricting plans. (CBR Exs. 2,8,18, 25, 26 and 27). The propriety of the transfer policy is not at issue before me. Since it was not used in the redistricting for Barstow, it is not relevant to these proceedings. Therefore, any and all issues relating to the transfer policy, no matter how egregious they may be, are not before me for consideration. The transfer policy is promulgated

by the Local Board. It can be eliminated or changed at any time by the Local Board. The Appellants, both in their pleadings and during the hearing on its Motion for Summary Decision, clearly expressed their dissatisfaction with the transfer policy and its affect on school populations. In essence, due to the large number of transfers in and out-of-district, the redistricting decisions relied upon by the Local Board in adopting Plan II on March 13, 2008, may not resemble what it may have anticipated when each of the Plans was developed. This is not the fault of the redistricting plans that were considered by the Local Board, but may likely be the fault of the transfer policy and its application. While I fully understand the Appellants' arguments and concern in this regard, the OAH has no authority to abrogate the transfer policy. The ALJ, in case 29018, has already ruled that the OAH had no jurisdiction to require the Local Board to revise its transfer policies and re-open the Barstow redistricting process for Barstow, paying particular attention to its new transfer policies. I find no persuasive authority, or any evidence offered by the Appellants, that would cause me to change either of the previous ALJ's proposed rulings.

Arbitrary or Unreasonable

The Local Board's decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or a reasoning mind could not have reasonably reached the conclusion the Local Board reached.

A. Sound Educational Policy

The Local Board, in selecting Plan 2 over Plan 1 in its March 13, 2008 decision, took into consideration information provided by members of the community at public hearings, the staff, the Committee and subcommittees which all provided input to the Local Board. The principles guiding the discussions and the decision of the Local Board were as follows: 1) Establish

boundaries that follow natural or major manmade landmarks; 2) Minimize the number of students and families that may be affected by redistricting; 3) Develop boundaries that support safe and reasonable school bus transportation patterns; 4) Provide for racial balance at each facility; and 5) Provide for anticipated growth at each affected school. (Bd. Ex. 2). The Local Board also considered student population forecasts and trending. (CBR Ex. 23). After a thorough review, the Local Board decided that Plan 2 was preferable to Plan 1 because Plan 2 would better balance school populations and better accommodate growth in the future. It also provided a better racial balance. Plan 1 moved less children than Plan 2, but the Local Board members unanimously selected Plan 2 over Plan 1. The Local Board asked the Committee to determine whether a third option would be viable; however, the Committee was unable to develop another plan. Many of the community members argued in favor of Plan 2 over Plan 1. There were also community members who favored Plan I. Given the consideration given by the Board, the input from all of the committees and the community, the Local Board argues that either Plan 1 or 2 would not be contrary to sound educational policy. I agree. While the Appellants may not agree with the Local Board's decision, there is ample evidence in the record that the Board took into consideration all of the factors that the Appellants are now disputing, including transportation issues involving Wilson Road. (CBR Ex. 31, page 5). The Appellants in their Opposition to the Local Board's Motion for Summary Decision have not raised any material facts or arguments that Plan 2 is contrary to sound educational policy. It is clear that the Local Board engaged in appropriate consideration of the criteria set forth by the Committee and their decision was not contrary to sound educational policy. COMAR 13A.01.05.05B(1).

B. Reasonableness

The Appellants also failed to provide any evidence to prove that a reasoning mind could not have reasonably reached the conclusion the Local Board did in approving Plan 2. The Local Board shall determine the geographical attendance area for each school, with the advice of the Superintendent. Md. Code. Ann., Educ. § 4-109(c) (2008). When there is substantial evidence to support a board of education's decision and a reviewer (an administrative law judge, the State Board or the courts) disagrees with that decision, the reviewer must, nonetheless uphold the board of education's decision, despite his reaching a different conclusion. *Montgomery County Education Association, Inc., v. Board of Education for Montgomery County*, 311 Md. 303 (1987). Therefore, there is no need to determine which plan is superior to the other. If both plans are reasonable, then it does not matter which of the two plans were ultimately selected.

In this case, the Appellants were dissatisfied with Plan 2. As mentioned above, the evidence is clear that the Board reviewed both plans and approved Plan 2 only after considering the information provided to the Board and after holding extensive public hearings. The fact that the Appellants disagree with Plan 2 does not cause it to be unreasonable. It is important to note that the Local Board's decision in its selection of Plan 2 is quasi-legislative in nature and not judicial or quasi-judicial. *Elprin v. Howard County Bd. of Ed.* 57 Md. App. 458, 465 (1984). In *Elprin*, the Court of Special Appeals held that a resident of a school district possesses no liberty or property interest in a school in his district remaining "as is," without changes resulting from closure or consolidation. Therefore, the redistricting decision is quasi-legislative and the rights to be afforded to interested citizens are limited. As the Court of Appeals stated in *Bernstein, et. al. v. Board of Education of Prince George's County*, 245 Md. 464, 479 (1967), when considering several competing plans, "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."

The Local Board presented a very reasonable explanation for its decision on the redistricting plan. (See *Stishan v. Howard County Board of Education*, MSBE Opinion No. 05-33, September 27, 2005 (2005) and *Coleman v. Howard County Board of Education*, MSBE Opinion No. 05-32, September 27, 2005 (2005)). Although the Appellants are undoubtedly disappointed with the Local Board's decision, there is no evidence that the Local Board failed to take into consideration the factors presented to them during the redistricting process by the staff, committees and the public.

The public process provided substantial input from the community, and the Local Board considered and thoroughly discussed all of the issues raised by the Appellants. The Local Board considered the alternative submitted and ultimately decided on Plan 2. There was nothing arbitrary or unreasonable in the Local Board's decision. For those reasons, I find the Appellants have not met their burden to show that a reasoning mind could not have reasonably reached the conclusion the Local Board reached. COMAR 13A.01.05.05B(2).

C. Illegal

In order for the Appellants to prevail by claiming that the Local Board's decision was illegal, the Appellants would have to provide evidence that the decision to adopt Plan 2 was unconstitutional; exceeds the authority or jurisdiction of the Local Board; misconstrues the law; results from an unlawful procedure; is an abuse of discretionary powers; or is affected by any other error of law. COMAR 13A.01.05.05C. The Appellants have not asserted that any of the actions of the Local Board were either unconstitutional, beyond the authority of the Local Board or misconstrued the law. The Appellants have alleged in paragraph 161 of its Opposition to the

Local Board's Motion for Summary Decision that although the Attorney General would not rule on meetings associated with the redistricting, it was certain the Local Board violated the Open Meetings Act during the time frame. This could arguably be construed as an unlawful procedure within the meaning of COMAR 13A.01.05.05C(4), however, in support of its allegations, the Appellants referred to 6 Official Opinions of the Compliance Board 171 (2009) (CNSR Ex. I1). In that document, the Compliance Board did not resolve the complaint because it had an inadequate record to address the matters. The Appellants have provided no further support of a procedural violation other than the blanket statement that they are certain the Board violated the Open Meetings Act. They are suggesting that I rely solely on their assertions and assume they are correct. Absent any evidence, including affidavits, in support of their allegations, I cannot consider this statement as a material fact in dispute. The State Board has been consistent in holding "[u]nsupported statements or conclusions are insufficient to create genuine dispute of material fact." *Elsie Coleman v. Howard County Board of Education*, MSBE Opinion No. 01-40, at page 3 (December 5, 2001), citing *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818, 820 (1995).

As to the final two elements that would satisfy the definition of illegality, in reviewing all of the paragraphs in the Appellants' Opposition to the Local Board's Motion for Summary Decision that have not previously been addressed as either relating to ethics issues or the transfer policy, I find no support that the Local Board committed an abuse of discretionary power; or its redistricting procedure was affected by any other error of law.

Accordingly, I find that the Appellants have not shown that the Local Board's decision was an illegal decision, even after drawing all inferences in favor of the Appellants COMAR 13A.01.05.05C.

A matter involving the redistricting of schools is often an emotion charged event. Invariably, there will be members of the community who are dissatisfied with the decision of the local board regardless of the decision. Some students will be moved to different schools and others will remain at their current school. In each case, some parents of students who are either moved or remain at their current school will take issue with the decision of the local board. This is to be expected.

What is also expected, and required by law, is for the decision of the local board to not be arbitrary, unreasonable, or illegal. In this case, the Appellants included two hundred paragraphs in its Opposition to the Local Board's Motion for Summary Decision. Most of these paragraphs have been disposed of as a result of the rulings of the Panel and the previous ALJ on the transfer policy. I have determined that the OAH has no jurisdiction to hear matters involving either issue. What remained in the Opposition to the Motion were unsupported statements involving alleged violations of the Open Meetings Act, actions of new Local Board members well after the redistricting decision was made by the Local Board, and disputes as to whether the Local Board correctly determined projected growth. There is no allegation that projected growth was ignored by the Local Board, only that it was wrong. The Board exercised its quasi-legislative function to determine that its calculations had a sound basis and used those figures in the development of the plans. A reasoning mind could have reached the same conclusion as the Local Board. Most importantly, the Local Board considered both Plan alternatives and even requested that a third alternative be crafted. A third plan was not developed because neither the Local Board nor the Committee could develop a viable plan.

Accordingly, the Appellants have not provided a factual or legal basis for finding that the Local Board's decision was arbitrary, unreasonable, or illegal.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Local Board's Motion for Summary Decision must be granted because there is no genuine dispute as to any material fact and the Local Board is entitled to prevail as a matter of law. COMAR 28.02.02.16C(2); COMAR 13A.01.05.05A.

RECOMMENDED ORDER

I **RECOMMEND** that the Motion for Summary Decision filed by the Calvert County Board of Education be **GRANTED** by the Maryland State Department of Education, Maryland State Board of Education, and that the contested-case hearing scheduled to begin on May 25, 2010 be **CANCELLED**; and I further,

RECOMMEND that the redistricting decision of the Calvert County Board of Education, dated March 13, 2008, be **UPHELD** by the Maryland State Department of Education, Maryland State Board of Education.

May 13, 2010
Date

Stuart G. Breslow
Administrative Law Judge

#113357
SGB/kkc

NOTICE OF RIGHT TO FILE EXCEPTIONS

A party objecting to this proposed decision may file exceptions with the Maryland State Board of Education, c/o Twanda P. Santiago, Assistant Attorney General, Maryland State Board of Education, 200 St. Paul Place, 19th Floor, Baltimore, Maryland 21202, within 15 days of receipt of this decision. A party may respond to the exceptions within 15 days of receipt of the exceptions. If exceptions are filed, all parties shall have an opportunity for oral argument before the Maryland State Board of Education before a final decision is rendered. Oral argument before the State Board shall be limited to 15 minutes per side. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

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CALVERT NEIGHBORS FOR	* BEFORE STUART G. BRESLOW,
SENSIBLE REDISTRICTING	* AN ADMINISTRATIVE LAW JUDGE
	* OF THE MARYLAND OFFICE
v.	* OF ADMINISTRATIVE HEARINGS
CALVERT COUNTY	* CASE NO.: MSDE-BE-09-09-45958
BOARD OF EDUCATION	

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

FILE EXHIBIT LIST

Exhibits

The following exhibits were attached to the Board's Motion for Summary Decision and were considered for this Recommended Order:

Exhibit Number		Memo Page Numbers
Bd. Ex. 1 -	Chronology of Redistricting for period Aug. 2007 through April 24, 208	1
Bd. Ex. 2 -	Affidavit of Kim Roof, dated July 25, 2008 with 14 page attachment	24, 27, 30, 35, 36, 39
Bd. Ex. 3 -	Affidavit of George Leah, dated July 25, 2008, with 6 page attachment	3-7, 23-26, 29-30, 42-43
Bd. Ex. 4 -	Affidavit of Gregory Bowen, dated July 29, 2008, with one-page attachment	3-4, 6-7, 23-26, 43
Bd. Ex. 7 -	Affidavit of Kim Roof, dated March 10, 2010, with six page attachment	7, 17, 41
Bd. Ex. 8 -	Affidavit of Monica Mower dated March. 10, 2010	16, 18, 24; 27, 35-36
Bd. Ex. 9 -	CCPSC Policy #1012 (revised Dec. 7, 2006)	29
Bd. Ex. 10 -	CCPS Administrative Procedures for Policy #1012, (revised Feb. 4, 2008	29

Bd. Ex. 11 -	Affidavit of Kimberly Roof dated September 4, 2008	18, 35, 36
Bd. Ex. 12 -	Affidavit of Kevin Hook, dated September 4, 2008	18, 35
Bd. Ex. 13 -	Affidavit of Leon Langley, dated September, 2008	18
Bd. Ex. 14 -	CCPS - Policy Statement #1740,)..... (revised December 6, 2007	14
Bd. Ex. 15 -	CCPS- Policy Procedures #1740.2 for policy statement # 1740, (revised February 19, 2008	14
Bd. Ex. 16 -	Order of Dismissal of Calvert County Board of Ethics Panel (CCBOE) in re: ethic complaint filed by Nick Myers, Craig Brogan, Stacy Zahringer, Laura Waddell, Carolyn Moore, Gary Smith and Michael Buck, dated January, 29, 2009	11-12, 14, 16, 33-34
Bd. Ex. 17 -	Order of Dismissal of CCBOE Ethics Panel in re: ethics complaint filed by Craig Brogan, Carolyn Moore, Julie Stephens, dated January 29, 2009	11, 13-14, 16, 34-35
Bd. Ex. 18 -	Affidavit of George Leah dated February 8, 2010	4, 15-16, 30, 37-40
Bd. Ex. 19 -	Recap of January 30, 2008 Public meeting	36
Bd. Ex. 20 -	Recap of February 11, 2008 Public meeting	36
Bd. Ex. 21 -	CCPS Policy Statement #3925, (rev. Nov. 8, 2007	Oral Argument
Bd. Ex. 22 -	CCPS Admin Procedures for Policy #3925, (revised January 29, 2008	Oral Argument
Bd. Ex. 23 -	Affidavit of George Leah dated March 11, 2010	3-6, 24-26, 29-30
Bd. Ex. 24 -	Affidavit of William Chambers, dated April 5, 2010	Oral Argument
Bd. Ex. 25 -	Affidavit of Tracy McGuire, dated April 2, 2010	Oral Argument
Bd. Ex. 26 -	Affidavit of Rose Crunkleton, dated April 2, 2010	Oral Argument

Local Board Extract Exhibits for
Memorandum In Support of Motion For Summary Decision
(Exhibit Numbers Correspond to County Board Record Number)[6]

Exhibit Number	Memo Page Numbers
CBR Ex. 16 - Transcript of January 10, 2008 Local Board. Work Session	1, 2, 25, 29, 30
CBR Ex. 25 - Video of January 30, 2008 Local Board. Public Hearing	1,2, 30, 36
CBR Ex. 28 - Video of February11, 2008 Local Board Public Hearing	1, 2, 30, 36
CBR Ex. 34 - Transcript of February 28, 2008 Local Board. Meeting	1, 2, 25, 29, 31, 36
CBR Ex. 39 - Transcript of March 6, 2008 Local Board Work Session	1, 2, 5, 23, 25, 26, 28, 29, 30, 31, 36
CBR Ex. 43 - Transcript of March 13, 2008 Local Board. Meeting	1, 2, 23, 25, 26, 28, 29, 30, 31, 36
CBR Ex. 2 - CCPS Administrative Procedures for Policy #4400, dated April 18, 2007	2, 30, 36
CBR Ex. 3 - August, 2007 – Proposed Elementary Redistricting Timeline	2
CBR Ex. 35 - Barstow Frequently Asked Questions (FAQ's) of February 29, 2008	6, 31, 36
CBR Ex.31 - Redistricting FAQ's, dated February 14, 2008	26, 31, 36
CBR Ex. 29 - Sign In Sheets for speakers at February11, 2008 Public Hearing	30, 36
CBR Ex. 36 - Barstow Redistricting FAQ's (rev. Mar. 3, 2008)	31
CBR Ex. 1 - CCPS Policy #4400	36, 37, 42
CBR Ex. 26 - Sign In Sheets for speakers at January 30, 2008 Public Hearing	36

[6] These exhibits will be referred to as CBR exhibits as that is how the Local Board labeled them.

CBR Ex, 30 -	February 12, 2009 Racial Balance/Enrollment figures (included in FAQs of February 14, 2008)	36
CBR Ex.70 -	Documents submitted by Lt. Stephen's pertaining to Wilson Road	Oral Argument
CBR Ex. 75 -	Documents submitted by Mr. White and Ms. Hodges relating to Wilson Road	Oral Argument

The Appellants submitted the following exhibits which were considered for this Recommended Order:

Ethics Complaints

Exhibit Numbers[7]:

CNSR Ex. 4 -	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008	1-12
	Exhibit H4: Letter to Ethics Panel, dated Dec. 13, 2008	10-13
CNSR Ex. 5 -	Exhibit H6: Barstow Redistricting FAQs, dated Feb. 29, 2008	1-43
	Exhibit H13: Memo to Ethics Commission, dated June 11, 2008	1-11
CNSR Ex. 6 -	Exhibit F1: Calvert Co. Real Property Search, fax date, June 7, 2008	1
	Exhibit F4: Adequate Public Facilities Ordinances	3-6; 15-19
	Exhibit F14: Kaine Homes information	1
	Exhibit F10: Article 7 - Subdivision Regulations	3
	Exhibit H1: Oct. 20, 2005 Bd. of Ed. minutes	3, para. 4; 4, para. 3
	Exhibit H6: Barstow Redistricting FAQs	1-43
	Exhibit H7: Taxpayers Services Division - info. for Early Adventures, LLC	1
CNSR Ex. 7	Exhibit L1 (vice L2): Rebutttal to Opposition to Motion For Summary Decision	labeled #19
	Exhibit H5: January 29, 2009 Order of Dismissal	1
	Exhibit H16: Garvey Ethics Dismissal Order [Not in Binder]	1

[7] The lettered exhibits identified herein are references to the particular sections in binders submitted by the Appellants.

CNSR Ex.11	H16: Garvey Ethics Dismissal Order [Not in binder]		1
CNSR Ex.12	Exhibit H3: Letter to Ethics Panel, dated Dec. 10, 2008		1-12
	Exhibit H4: Letter to Ethics Panel, dated Dec. 13, 2008		12 pg., 10-13
CNSR Ex.13	Exhibit H5: Jan. 29, 2009 Order of Dismissal		footnote pg. 3
CSNR Ex.14	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		1-12
	Exhibit H4: Letter to Ethics Panel, dated December 13, 2008		1-3
	Exhibit H5: January. 29, 2009 Order of Dismissal		3
CNSR Ex. 15	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		pg 4 para 3
CNSR Ex. 16	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		pg 4 para 3
CNSR Ex. 19	Exhibit H3: Letter to Ethics Panel, dated December 10, 2008		pg 4 para 3
	H15 Purpose & Role of Ethics Commission		1-7
CNSR Ex. 20	Exhibit L1	Rebuttal to Opposition to Motion For Summary Affirmance labeled	5, para. #19
CNSR Ex. 23	Exhibit H1	October 20, 2005 Local Board. minutes	4
	Exhibit H13	June 11, 2998 Memo to Ethics Commission	1-11
	Exhibit H14	November 7, 2008 Memo to Ethics Commission	1-7
CNSR Ex. 26	Exhibit I2	May 21, 2009 Letter re: open meetings compliance Inquiry April 13, 2009	10-13
	Exhibit H3	Letter to Ethics Panel, dated December 10, 2008	2 para 2.
CNSR Ex. 29	Exhibit H5	January 29, 2009 Order of Dismissal	1-8
CNSR Ex. 37	Exhibit I2	May 21, 2009 Letter re: open meetings compliance Inquiry April 13, 2009	10-13
CNSR Ex. 43	Exhibit H3	Letter to Ethics Panel, dated December 10, 2008	1-12
	Exhibit H4	Letter to Ethics Panel, dated December 13, 2008	1-3
	Exhibit H5	January 29, 2009 Order of Dismissal	1-8
CNSR Ex. 44	Exhibit H3	Letter to Ethics Panel, dated December 10, 2008	1-12
	Exhibit H4	Letter to Ethics Panel, dated December 13, 2008	1-3
CNSR Ex. 49	Exhibit H5	January 29, 2009 Order of Dismissal	1-8

CNSR Ex. 55 Exhibit L1	Rebuttal to Opposition to Motion For Summary Affirmance	5, paragraph labeled #19
CNSR Ex. 60 Exhibit J2	April 28, 2009 E-mail to Wendy from Monica Mower	responsibility