

KAREN MULLIN, ET AL.¹,

Appellant

v.

FREDERICK COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-34

OPINION

INTRODUCTION

The Appellants filed this appeal challenging the August 26, 2009 redistricting decision of the Frederick County Board of Education (local board). The redistricting decision established boundaries for the new Oakdale High School and surrounding schools, and affected the community in which the Appellants reside.

We referred this case to the Office of Administrative Hearings (OAH) as required by COMAR 13A.01.05.07A(1). The local board filed a Motion for Summary Affirmance. The Appellants opposed the Motion.

On April 29, 2010, the Administrative Law Judge issued a Proposed Order on Motion for Summary Affirmance recommending that the State Board affirm the local board's redistricting decision. The Appellants did not file any exceptions to the ALJ's Proposed Order.

FACTUAL BACKGROUND

The factual background in this case is set forth in the Administrative Law Judge's Proposed Order, Findings of Fact, pp.4 – 8.

STANDARD OF REVIEW

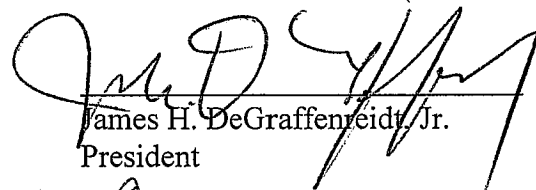
This appeal involves a redistricting decision of a local board of education. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board shall be considered prima facie correct. The State Board may not substitute its judgment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

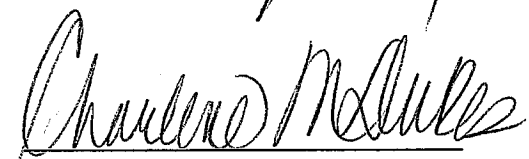
¹ This case was formerly captioned as Stacey Pisarski, *et al.* The case caption has changed because all of the Appellants have withdrawn from the appeal except for Karen Mullin and Kim Trishman.


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).

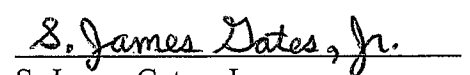
CONCLUSION


Based on our review of the record, we concur with the ALJ that the local board's decision is not arbitrary, unreasonable or illegal. We therefore adopt the ALJ's Proposed Order and affirm the local board's redistricting decision.



James H. DeGraffenheidt, Jr.
President

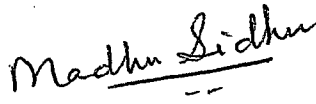

Charlene M. Dukes
Vice President

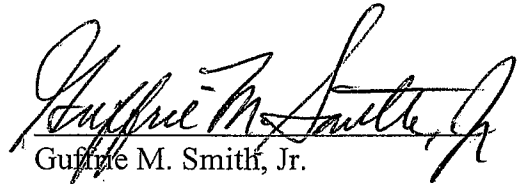

Mary Kay Finan

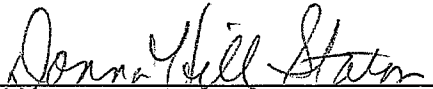

S. James Gates, Jr.

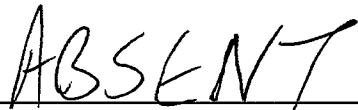

Luisa Montero-Diaz



Sayed M. Naved


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton


Ivan C.A. Walks


Kate Walsh

August 24, 2010

KAREN MULLIN; *et. al*¹

APPELLANTS

v.

FREDERICK COUNTY

BOARD OF EDUCATION

RESPONDENT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH CASE No.: MSDE-BE-09-09-43882
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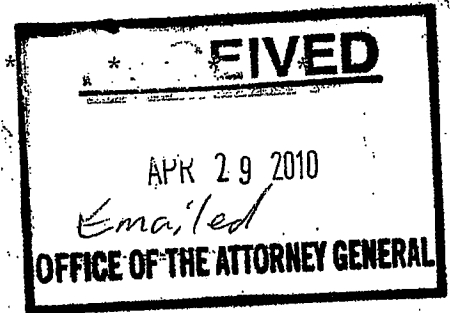
PROPOSED ORDER ON MOTION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
ARGUMENTS OF THE PARTIES
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On August 26, 2009, the Frederick County Board of Education (the Board) adopted a school redistricting plan that affected Spring Ridge, the community in which the Appellants reside. The Board issued a written decision (the Decision) that established boundaries for the new Oakdale High School and surrounding schools. The Appellants appealed this decision and their appeals were consolidated and transmitted to the OAH on November 23, 2009.

At the Prehearing conference, counsel for the Board (Andrew W. Nussbaum,



¹ The case was formerly captioned Stacey Pisarski *et al.* as the identified Appellants in the consolidated appeal. Appellants Stacey Pisarski, Joy Schaefer and Karen Ritter submitted written correspondence on April 1, 2010 withdrawing their appeal. Kim Trishman was referenced in the correspondence but did not sign the letter thus she is included with Karen Mullin as the only remaining Appellants.

Esquire) indicated that he would file a Motion for Summary Affirmance. In accordance with the Prehearing Order, dated February 26, 2010, Mr. Nussbaum filed a Motion for Summary Affirmance or in the Alternative, Motion for Summary Decision (the Motion), along with supporting exhibits, with the OAH. On March 26, 2010, Karen Mullin filed a response to the Motion. Neither party requested oral argument on the Motion.

ISSUE

The issue is whether the Board's written Decision of August 26, 2009 should be affirmed without a hearing.

SUMMARY OF THE EVIDENCE

I have considered the following documents in reaching my decision on the Motion.

For the Board:

Board's Motion and Memorandum of Law in Support of Motion; The Board also attached exhibits in support of its motion, as follows:

The Board Exhibits, which contained the following:

- Ex. #1- Affidavit of Raymond V. Barnes, Executive Director of Facility Services w School Attendance Areas and Redistricting
- Ex. #2 - Planning Agenda, dated March 25, 2009
- Ex. #3 - Planning Session, dated March 25, 2009
- Ex. #4 - Planning Agenda, dated April 22, 2009
- Ex. #5 - Planning Agenda Minutes, dated April 22, 2009
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- Ex. #7 - Public Hearing Agenda Minutes, dated May 20, 2009
- Ex. #8 - Planning Session Agenda, dated May 27, 2009
- Ex. #9 - Board of Education Policy Review, dated May 27, 2009
- Ex. #10 - Agenda Items, dated June 10, 2010
- Ex. #11 - Planning Agenda Minutes, dated June 10, 2009
- Ex. #12 - Oakdale High School (HS) Redistricting Study, dated July 8, 2009
- Ex. #13 - Agenda Items, dated July 8, 2009
- Ex. #14 - Board of Education Meeting Minutes, dated July 8, 2009
- Ex. #15 - Agenda Items, dated August 12, 2009
- Ex. #16 - Board of Education Meeting Minutes, dated August 26, 2009
- Ex. #17 - Special Meeting Agenda, dated August 19, 2009

- Ex. #18 - Special Meeting Minutes, dated August 19, 2009
- Ex. #19 - Regular Meeting Items, dated August 26, 2009
- Ex. # 20 - Planning Session Meeting Minutes, dated August 26, 2009

For the Appellants:

Appellants' Response to Respondent's Motion to Dismiss or for Summary Judgment and
Appellants' Pre-hearing Conference Report

ARGUMENTS OF THE PARTIES

The Board

The Board contends that it is entitled to have the appeal dismissed or the Decision affirmed for essentially the following two reasons:

1. There is no genuine dispute as to any material fact; the Appellants merely disagree with the decision; and
2. The Appellants did not present probative evidence to rebut the Board's evidence or generate a genuine dispute that the Decision violated COMAR, or any other law, rule or regulation or that its August 26, 2009 written decision was arbitrary, unreasonable or illegal as defined by State Board and court decisions.

In support of its position, the Respondent relied upon various documents, COMAR 13A.01.05.03D, State Board opinions, other case law and numerous documents relative to Board's decision-making process. The Board, by way of its Motion and exhibits, systematically addressed all issues pertinent to an appeal of this nature. The Board maintained that the complaints raised by the Appellant are mere disagreements with the decision and that the Appellant did not show that there are any genuine issues of material fact in dispute that might demonstrate that the Board violated any of the requirements of COMAR 13A.01.05A, D and thus, did not show that the decision was arbitrary, unreasonable or illegal.

The Appellants

In the response, as in its appeal, the Appellants claims that the Decision was improper because the Decision was based upon fallacious enrollment projections, improper promises and erroneous consideration of the number of students receiving Free and Reduced Meals (FARM). Each of these alleged violations, in the Appellants' view, demonstrates that that the Decision was arbitrary.

MATERIAL FACTS

I find that the following material facts are not genuinely disputed:

1. In April 2008, the Board began the process to establish attendance area boundaries and feeder patterns for the new Oakdale HS which will open in August 2010.
2. During the 2010-2011 school year, Oakdale HS will operate as a high school with its own attendance area.
3. The Oakdale HS redistricting study was done to create attendance area boundaries and feeder patterns for Oakdale HS. The policy for the study was governed by Policy 200 of the County Board and Superintendent Regulation 100-2.
4. The Oakdale HS redistricting study included the areas encompassing Linganore, Governor Thomas Johnson, Urbana and Walkersville High Schools and their feeder Middle and Elementary Schools.
5. The Board directed school system staff to establish the attendance area boundary and feeder pattern for the new Oakdale HS along with associated adjustments to the surrounding high school feeders in accordance with County Board Policy 200.
6. Throughout the process, the citizens of Frederick County were informed of the progress of the study through a link established on the school system's website. The link included

- a section for citizens to submit comments which were reviewed by Board members.
7. School system staff facilitated a process to establish attendance area boundaries and feeder patterns for the new Oakdale HS. Staff prepared recommendations for the Superintendent.
 8. After the Superintendent reviewed staff recommendations, she presented her recommendations to the Board in a document entitled, Oakdale HS Redistricting Study: Superintendent's Recommendation, dated March 2009.
 9. The Report was presented at a County Board Meeting on March 25, 2009. Feeder patterns at the middle schools were discussed. The Board determined that an additional meeting was necessary to discuss additional feeder options.
 10. An extended planning session was held on April 22, 2009 to discuss the options for redistricting. The Board's policy regarding reduction of present and future school overcrowding was discussed as well as the necessity for identification of projection enrollments for 2011-2012 school year. A May 20, 2009 public hearing was scheduled to review public comments on the options for redistricting.
 11. The May 20, 2009 public hearing lasted approximately three hours with at least eighty speakers participating, including three of the original Appellants.
 12. The Board received petitions including one from the Spring Ridge neighborhood requesting that their children attend Spring Ridge and Oakdale ES, Oakdale MS and Oakdale HS. Further discussions were planned for May 27, 2009.
 13. At the May 27, 2009 meeting, the Board discussed the redistricting and further adjustments to the options were discussed. A vote was taken to approve option B2. It was voted to phase in Oakdale HS with grades 9 and 10. County staff were directed to

prepare maps and enrollment projections based on the option B2, to be presented at the June 10, 2009 meeting.

14. At the meeting on June 10, 2009, County staff presented the Board with a written summary of the changes in attendance areas, along with phasing plan. The chart showing "Projected Enrollment at Initial Implementation and Full Implementation" indicated the following:

- Thomas Johnson MS which had a current enrollment of 66% of its State Rated Capacity, would drop to 60% and 58% respectively in 2010 and 2012, while Oakdale MS capacity would move from 97% to 87% and 85%;
- New Market MS would move from 92% to 93% and 102%;
- Urbana MS would move from 110% to 111% and 122%;
- Walkersville MS would move from 76% to 71%;
- Windsor Knolls MS would move from 65% to 80% and 71%.

The Chart also showed that the projected level of poverty measured by the number of students receiving FARM would increase at Thomas Jefferson MS from 28% to 36%.

15. At the June 10, 2009 meeting, the Board unanimously voted to reconvene July 8, 2009 to discuss additional options, after noting that projections done by County staff after incorporating full implementation data caused some of the enrollment numbers to increase.

16. At the July 8, 2009 meeting, the Board reviewed redistricting options presented by County staff. The options were presented as "Oakdale HS Redistricting Study- Revised Options" dated July 8, 2009. That study presented two new options. Following discussion, Board members requested that several additional new options be provided and

requested adjustments to Options 1 and 2. A public hearing was scheduled for August 12, 2009 to address the matter.

17. On August 12, 2009, the Board convened the redistricting public hearing. Several options were presented. Mr. Barnes presented background on the redistricting process and reviewed the eight options developed by staff. The options had been available on the school system website. The hearing included public comments from 58 individuals, including residents of the Spring Ridge community and lasted from 7:00 p.m. to 9:40 p.m.
18. On August 19, 2009, the Board held a special planning session as a follow-up to the August 12, 2009 public hearing. At the meeting, the Board continued discussion of the options previously discussed. The Superintendent explained to the Board members that there was no one option that could address all of the concerns from the various affected communities. The Superintendent provided information regarding the two options most favored by the community, 1A and 2B.
19. The Superintendent discussed the options as they pertained to school enrollment, space, overcapacity, students eligible for FARM, geographical impacts, and feeder patterns.
20. On August 26, 2009, the Board conducted a regular board meeting to finalize the redistricting plan. In response to the August 19, 2009 meeting, the Superintendent distributed a map which contained information that listed the number of students at each level coming from the various geographical areas. Although there was one opposing vote from Board Member Daryl Boffman, the Board approved the following plan:
 - Oakdale HS will open with 9th and 10th grades only in August 2010. The 11th grade will be added in August 2011 and 12th grade in August 2012. Students

entering the 11th and 12th grade in August 2010 and residing in the new Oakdale HS attendance area will remain at their "home" school. Bus transfer to the home school will be provided through the 2011-2012 school year;

- Linganore HS and all other high schools in the study area will open with four grade levels beginning in August 2010;
- Elementary students currently located in the Centreville ES attendance area along Mussetter and Ijamsville Roads south of I-70 will shift to Oakdale ES only upon completion of an addition to Oakdale ES, currently under design. The delay in the shift at the elementary school level does not apply at the middle school and high school levels. In 2010 this area will shift from Urbana MS and Urbana HS to Oakdale MS and Oakdale HS;
- In accordance with Regulation 400-78, Oakdale HS will be closed to out-of-district transfers for the 2010-2011 school year;
- Incoming 8th graders who are affected by this redistricting in August 2010 will have the option to remain at their home school. The middle school siblings of students whose parents select this option will also be allowed to remain at the same school with their older brother or sister for one year only. This option would be permitted only if parents provide transportation.

DISCUSSION

Under certain circumstances, an appeal of a local board decision may be resolved without a hearing. COMAR 13A.01.05.03 provides:

D. Motion for Summary Affirmance.

- (1) A motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law.

(2) A memorandum in support of or in opposition to a motion for summary affirmance shall contain the following:

- (a) A statement of the issues presented for review;
- (b) A statement of the facts;
- (c) An argument which includes reference to relevant legal principles and State Board decisions, if any;
- (d) A short conclusion stating the relief sought; and
- (e) Any supporting documents, exhibits, and affidavits.

Likewise, OAH's Rules of Procedure have similar provisions. COMAR 28.02.01.12 states, in pertinent part:

D. Motion for Summary Decision.

- (1) Any party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Motions for summary decision shall be supported by affidavits.
- (2) The response to a motion for summary decision shall identify the material facts that are disputed.
- (3) An affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.
- (4) The judge 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.

COMAR 28.02.01.12C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule applies equally to OAH Rule 12C. In a preliminary motion to dismiss, the moving party must establish that it is entitled to relief. *See* Lubore v. RPM Assocs., Inc. 109 Md. App. 312 (1996); Rossaki v. NUS Corp.,

116 Md. App. 11 (1997). Furthermore, when construing a motion of this nature, the Administrative Law Judge is required to examine the evidence in the light most favorable to the non-moving party. Also, the non-moving party is entitled to all favorable inferences fairly construed from the evidence. General Mtrs. Corp. v. Lahocki, 286 Md. 714 (1980); Sharrow v. State Farm Mutual Insurance Company, 306 Md. 754 (1986).

Under COMAR 28.02.01.01, in any case referred to the OAH, OAH's Rules of procedure apply. Md. State Code Ann., State Gov't § 10-206(a) (2009). In any event, the Board's rules pertaining to the Motion and the OAH's Rules are substantively the same. Thus, I will refer only to the OAH's rules in my discussion.

A motion for summary decision (or affirmance) is the equivalent of a motion for summary judgment. As in a motion for summary decision, in a motion for summary affirmance the moving party must demonstrate that no genuine issues exist as to any material fact. COMAR 28.02.01.12(D). The moving party must also demonstrate that it is entitled to prevail as a matter of law. Because Md. Rule 2-501 and Federal Rule of Civil Procedure 56 set nearly identical standards for summary judgment, the requirements of those rules, as analyzed by appellate courts, are particularly instructive in analyzing the standards for summary decision or affirmance in administrative proceedings.

In Washington Homes, Inc. v. Interstate Land Development Co., 281 Md. 712 (1978), the Court of Appeals summarized the standards for summary judgment set forth in numerous other Maryland cases:

The summary judgment procedure is not a substitute for a trial, but a means by which the trial court may determine, summarily, whether a trial is necessary.... [I]f there is a genuine dispute as to any material fact, summary judgment would not properly be granted. Brown v. Suburban Cadillac, Inc., 260 Md. 251, 255 (1971). "(E)ven where the underlying facts are undisputed, if those facts are susceptible of more than one permissible inference, the choice between those

inferences should not be made as a matter of law, but should be submitted to the trier of fact.” Fenwick Motor Co. v. Fenwick, 258 Md. 134, 138, 1970), and cases therein cited. The function of the trial judge is much the same as that which he performs at the close of all the evidence in a jury trial when motions for directed verdict or requests for peremptory instructions require him to determine whether an issue requires resolution by a jury or is to be decided by the court as a matter of law. Lynx, Inc. v. Ordnance Products, 273 Md. 1, 8 (1974); Salisbury Beauty Schools v. St. Bd., 268 Md. 32, 41 (1973).

A court cannot rule summarily as a matter of law until the parties have supported their respective contentions by placing before the court facts which would be admissible in evidence. Rooney v. Statewide Plumbing, 265 Md. 559, 563-564 (1972); Shatzer v. Kenilworth Warehouses, 261 Md. 88, 95 (1971).

“(W)hen the moving party has set forth sufficient grounds for summary judgment, the party opposing the motion must show with some precision that there is a genuine dispute as to a material fact.” Shatzer, 261 Md. at 95, 274 A.2d at 44 (quoting Brown, 260 Md. at 255, 272 A.2d 42). “A bare allegation in a general way that there is a dispute as to material facts is never sufficient to defeat a motion for summary judgment. . . . General allegations which do not show facts in detail and with precision are insufficient to prevent the entry of summary judgment.” Lynx, Inc., 273 Md. at 7-8, 327 A.2d at 509. A material fact is one “the resolution of which will somehow affect the outcome of the case.” Rooney, 265 Md. at 564, 290 A.2d at 499.

Washington Homes, Inc., 281 Md. at 716-18 (1978). See also Dietz v. Moore, 277 Md. 1, 5 (1976); King v. Bankerd, 303 Md. 98, 111 (1985); Hurl v. Howard County Board of Education, 107 Md. App. 286, (1995) (involuntary transfer of a teacher).

Accordingly, to contest the truth of a fact attested to or documented in support of a motion for summary decision and render it disputed, the party against whom the motion is directed must respond with specific disputed facts, supported by attestation or documentation. The Board submitted detailed documentation in support of every aspect of the Motion. The Appellants offered no documentary evidence and no controlling law in opposition to the Motion. In fact, it appears that Appellants merely disagree with the Board’s decision and analysis of the voluminous information that it considered in reaching its decision.

As pointed out by the Board, the case that defines the scope of appeals of redistricting matters is Bernstein v. Board of Education of Prince George's County, 245 Md. 464, 226 A.2d. 243 (1967). In Bernstein, the Court held that the test is not whether there were other plans that would have worked as well or even better than the plan adopted by the local board, but whether the action taken was arbitrary, capricious or illegal. That standard is codified at COMAR 13A.01.05.05A, B, C, D.

.05 Standard of Review.

- A. General. 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.

- B. 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.

- C. A decision may be illegal if it is one or more of the following:
 - (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.

- D. The appellants shall have the burden of proof by a preponderance of the evidence.

Was the Board's Decision Arbitrary or Unreasonable?

The Appellants argued that the Board abused its discretion by unreasonably and arbitrarily applying some criteria to some communities while failing to apply them to others.

The Appellants also alleged that the Board failed to conduct due diligence when considering cost factors and savings. Lastly, the Appellants argue that the Board President overstepped the boundaries of her office and ignored her responsibilities to the student population when making promises to one of the communities involved and that the rules of order, norms and procedures were not followed at the meeting on August 26, 2009, as stated in the Board of Education Members Handbook.

As noted above, the 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 County Board reached. I agree with the Board that when local boards make decisions concerning the attendance boundaries of newly constructed schools, such decisions by necessity impact a large number of schools, communities and neighborhoods. No plan can satisfy everyone. In examining the plan accepted by the Board, the analysis must be whether the Board's actions were contrary to sound educational policy or were unreasonable.

Was the Board's decision contrary to sound educational policy or unreasonable?

The Board adopted Board Policy 200 which sets forth the process to be used in establishing attendance areas or boundaries and it provides factors which must be considered in making those decisions. County Board Policy 200.2 provides that at a minimum the Board will consider the following factors in priority order:

- Reduce present and avoid future school overcrowding to minimize the need for future redistricting;
- Reduce the number of individual schools and feeder patterns with high percentages of students eligible for free and reduced price school meals;
- Provide fairness concerning the number of years students attend schools that are

low performing or are a high priority for renovation;

- Maximize walkers and minimize length of bus runs;
- Establish boundaries that do not split neighborhoods and communities; and
- Establish feeder patterns that are not split at the middle and high school.

It is clear from a review of the written record, including the Meeting Minutes from the various meetings, that the Board's actions were consistent with sound educational policy and were reasonable when one considers that the Board contemplated the factors cited above and listed the specific data it gathered when making its decision regarding the factors assessed above.

A reasoning mind could have reasonably reached the same decision as the Board when assessing all of the data gathered and analyzed in this case. The record indicates that the Board followed its own procedures and addressed the required criteria in making its decision. The Board considered student enrollment trends, school building capacities, transportation, financial considerations, students eligible for FARM and community impact.

Rules of Order, Norms and Procedure

The Parties acknowledge that the Board follows Roberts Rules of Order with regard to regulating the conduct at its meetings. The Appellants contend that at its May 27, 2009 meeting to approve one of the options, the action taken by the Board to approve the option discussed was not properly rescinded. A review of the Meeting Minutes and Agenda for all of the meetings does not substantiate the Appellants' claim. In fact at the June 10, 2009 meeting, the Board unanimously voted to "go back to the drawing board and come back with options." In essence, the Board agreed that it would start anew thus rescinding any action it had previously taken on May 27, 2009.

Cost Considerations

The Board's policy provided a list of factors that the Board was to consider in making decisions regarding establishing school boundaries. Cost considerations are not listed as one of the factors set out in the policy. Nevertheless I agree with the Board that it indirectly considered cost as it contemplated school overcrowding which could impact future school construction. This analysis further indicates the thoroughness of the Board's deliberative process and final decision.

Was the Board's Decision Illegal?

In the appeal, the Appellants alleged that the Board President overstepped her boundaries and made promises that were not kept. Specifically, the Board President is alleged to have made comments that she promised the parents of some students that their school would not be affected by the change. However, a thorough review of the record does not indicate anything the Board President or the Board said or did in reaching its decision that was unconstitutional, exceeded its authority, misconstrued the law, abused its discretionary powers; or was affected by any other error of law.

I have thoroughly reviewed the Appellants' comments regarding the FARM statistics and Projected Enrollments in the Response to the Motion. A thorough review of the entire record indicates the Appellants disagree with the analysis of the FARM statistics and other data gathered by the Board regarding projected enrollments, overcrowding and capacity. However, the Appellants have failed to establish a disputed fact that is material to determining whether the Board's August 26, 2009 redistricting decision was arbitrary, unreasonable or illegal. Simply offering opinion, conjecture and speculation regarding the numbers used, is not sufficient.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Board's Motion for Summary Affirmance must be granted because there is no genuine dispute as to any material fact and the Board is entitled to prevail as a matter of law. COMAR 28.02.01.12(D).

PROPOSED ORDER

I **PROPOSE** that the Motion for Summary Affirmance filed by the Frederick 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 for May 11, 12, and 17, 2010 be **CANCELLED**; and I further,

PROPOSE that the decision of the Frederick County Board of Education, dated August 26, 2009, be **UPHELD** by the Maryland State Department of Education, Maryland State Board of Education.

April 29, 2010
Date Decision Mailed

Jerome Woods, II
Administrative Law Judge

JW/rbs
#113392

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 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.

Copies Mailed To:

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KAREN MULLIN, et. al
APPELLANTS
v.
FREDERICK COUNTY
BOARD OF EDUCATION
RESPONDENT

*** BEFORE JEROME WOODS, II,**
*** AN ADMINISTRATIVE LAW JUDGE**
*** OF THE MARYLAND OFFICE OF**
*** ADMINISTRATIVE HEARINGS**
*** OAH CASE No.: MSDE-BE-09-09-43882**

* * * * *

FILE EXHIBIT LIST

Board's Motion and Memorandum of Law in Support of Motion; The Board also attached exhibits in support of its motion, as follows:

The Board Exhibits, which contained the following:

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- Ex. #8 - Planning Session Agenda, dated May 27, 2009
- Ex. #9 - Board Of Education Policy Review, dated May 27, 2009
- Ex. #10 - Agenda Items, dated June 10, 2010
- Ex. #11 - Planning Agenda Minutes, dated June 10, 2009
- Ex. #12 - Oakdale HS Redistricting Study, dated July 8, 2009
- Ex. #13 - Agenda Items, dated July 8, 2009
- Ex. #14 - Board of Education Meeting Minutes, dated July 8, 2009
- Ex. #15 - Agenda Items, dated August 12, 2009
- Ex. #16 - Board of Education Meeting Minutes, dated August 26, 2009
- Ex. #17 - Special Meeting Agenda, dated August 19, 2009
- Ex. #18 - Special Meeting Minutes, dated August 19, 2009
- Ex. #19 - Regular Meeting Items, dated August 26, 2009
- Ex. # 20 - Planning Session Meeting Minutes, dated August 26, 2009

Appellants' Response to Respondent's Motion to Dismiss or for Summary Judgment and

Appellants' Pre-hearing Conference Report