

JULIA MAGGITTI,

Appellant

v.

WASHINGTON COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-28

OPINION

The Appellant filed this appeal challenging the February 2, 2010 decision of the Washington County Board of Education (local board) to approve a redistricting proposal known as Boundary Realignment Description V.1. The local board's redistricting decision enlarges the Pleasant Valley Elementary School attendance zone and results in the assignment of approximately 28 Boonsboro Elementary School students to Pleasant Valley Elementary School for the 2010-2011 school year.

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 or, in the alternative, a Motion to Dismiss. The Appellant failed to respond to the local board's motions and failed to challenge any of the evidence or affidavits submitted by the local board.

On May 25, 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 Appellant did not file any exceptions to the ALJ's Proposed Order.

FACTUAL BACKGROUND

The factual background in this case is set forth in the May 25, 2010 Administrative Law Judge's Proposed Order, Findings of Fact, pp.5 – 16.

STANDARD OF REVIEW

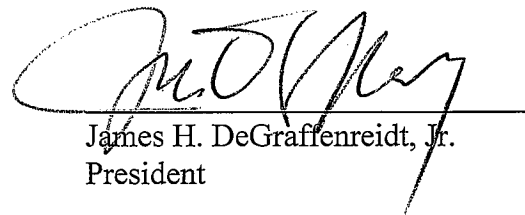
This appeal involves a redistricting decision of a local board of education. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board shall be considered prima facie correct. The State Board may not substitute its judgment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

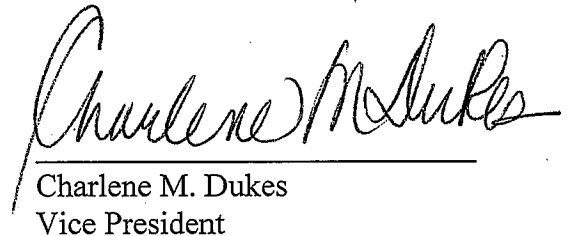
The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the

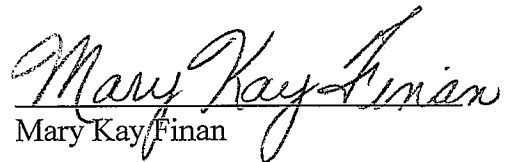
ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. See Md. Code Ann., State Gov't § 10-216. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's 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).

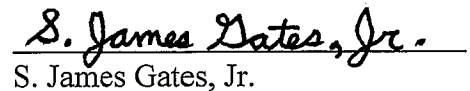
CONCLUSION

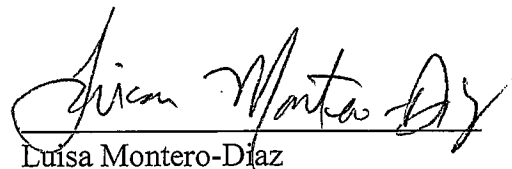
Based on our review of the record, we concur with the ALJ that the Appellant has failed to satisfy her burden of proof to show that the local board's decision is arbitrary, unreasonable or illegal. We therefore adopt the ALJ's Proposed Order and affirm the local board's redistricting decision.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President

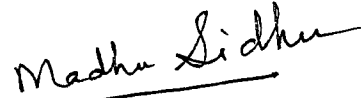

Mary Kay Finan


S. James Gates, Jr.

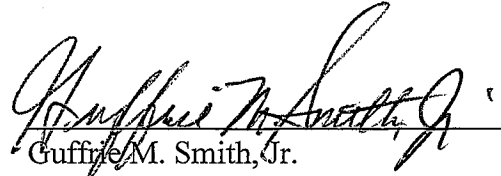

Luisa Montero-Diaz



Sayed M. Naved



Madhu Sidhu



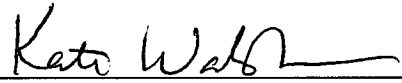
Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

July 20, 2010

JULIA MAGGITTI,¹

APPELLANT

v.

WASHINGTON COUNTY

BOARD OF EDUCATION,

RESPONDENT

* BEFORE KATHLEEN A. CHAPMAN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH CASE No.: MSDE-BE-09-10-08176

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* * * * *

PROPOSED ORDER ON MOTION FOR SUMMARY AFFIRMANCE

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On January 19, 2010, the Washington County Board of Education (BOE) voted to approve twenty of twenty-three proposed boundary realignments, each of which was identified by a letter and a number, based on a recommendation provided to it by the Superintendent of Washington County Public Schools (WCPS). In addition, the BOE issued a final decision on February 2, 2010 approving proposed boundary realignment V.1.

On February 24, 2010, the Appellant filed an appeal with the Maryland State Board of Education (State Board) alleging that the BOE's decision to approve proposed

¹ The case was formerly captioned Mark and Laura Thomas, *et. al* as the identified Appellants, however, five of the six Appellants, specifically Mark and Laura Thomas, Jennifer Ashbaugh, Dottie Gruhler, Linda Downs-Webb, and Kevin Yungmann, withdrew their appeals on April 20, 2010, April 27, 2010, April 27, 2010, April 30, 2010, and May 18, 2010, respectively.

boundary realignment V.1 was arbitrary and unreasonable. The State Board transmitted the appeal to the Office of Administrative Hearings (OAH) on March 10, 2010 to conduct a contested case hearing. Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

On March 29, 2010, I held a telephone prehearing conference (Conference) in the above-referenced matter at the OAH in Hunt Valley, Maryland. Anthony J. Trotta, Esquire, participated on behalf of the BOE. Julia Maggitti represented herself. The BOE filed its prehearing statement on March 23, 2010. The Appellant failed to file her prehearing statement in advance of the Conference. I gave her an extension, until April 5, 2010, to file her statement. The Appellant filed her prehearing statement one day after the prescribed deadline.

On April 15, 2010, the BOE filed a Motion for Summary Affirmance or, in the alternative, Motion to Dismiss (Motion) in which it sought to have the appeal dismissed, pursuant to COMAR 13A.01.05.03D and COMAR 28.02.01.12(D), respectively. A copy of the Motion was mailed to the Appellant. Pursuant to COMAR 28.02.01.12B(3)(a), the Appellant had fifteen days (i.e., on or before April 30, 2010) to submit a response, but failed to do so.²

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the OAH, and the COMAR regulations governing appeals to State Board. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009); COMAR 13A.01.05; COMAR 28.02.01.

ISSUES

(1) Does the appeal raise a genuine dispute of material fact about whether

² Both Mr. Trotta's office and my secretary attempted to reach the Appellant on several occasions, without success, to ascertain her intentions with regard to the appeal when she failed to submit a response. The Appellant, however, never responded to any of the telephone calls.

proposed boundary realignment V.1 is arbitrary or unreasonable?

(2) Is the BOE entitled to judgment as a matter of law?

SUMMARY OF THE EVIDENCE

The BOE attached the following documents to its Motion, all of which I considered in rendering this Proposed Decision:

- BOE Ex. 1. Affidavit of Boyd J. Michael, III, April 14, 2010
 - a. Letter from Mr. Michael to George G. B. Griffin, Chairman, PenMar Development Corporation, March 20, 2007
 - b. Letter from Mr. Griffin to Mr. Michael, November 25, 2008
- BOE Ex. 2. Affidavit of Robert H. Rollins, III, April 14, 2010
 - a. Full Time Equivalent Student Enrollment Projections 2009-2014, May 1, 2009
 - b. Elementary School Enrollments vs. SRC³/LRC⁴ with and without ALL proposed Attendance Zone Realignments
 - c. Elementary School Enrollments vs. SRC/LRC reflective of all APPROVED Attendance Zone Realignments
- BOE Ex. 3. Establishment of School Attendance Areas; Establishment of School Attendance Areas (Policy adopted: December 17, 1974. Amended: February 4, 2003. Revised: October 3, 2006)
- BOE Ex. 4. Washington County Board of Education Charge to the Facilities and Enrollment Advisory Committee (FEAC), Issued by the Washington County Board of Education, January 22, 2009
- BOE Ex. 5. Affidavit of Richard R. Wright, II, April 14, 2010
 - a. Newspaper announcement regarding the September 10, 2009, September 17, 2009, and September 24, 2009 public forums (posted from August 31, 2009 to September 6, 2009)
 - b. Announcement to Citizens of Washington County regarding the September 10, 2009, September 17, 2009, and September 24, 2009 public forums (mailed to approximately 65,000 county households and sent home to approximately 10,000 student in back-packs)
 - c. 2009 FEAC Meeting Dates schedule for the public work sessions
 - d. Public Notice to Citizens of Washington County regarding the WPCS Redistricting Update and Schedule (mailed to approximately 65,000 county households on December 10, 2009)
 - e. Newspaper announcement regarding the January 5, 2010 public hearing (posted on December 20, 2009; December 27, 2009; January 3, 2010; January 4, 2010; and January 5, 2010)
 - f. Public Notice to Citizens of Washington County regarding the WPCS Redistricting Update and Schedule (mailed to approximately 65,000

³ State-rated capacity.

⁴ Local-rated capacity.

- county households and sent home to approximately 10,000 student in back-packs)
- g. Announcement of Superintendent's School Boundary Realignment Recommendations for 2010-2011, dated December 21, 2009 (distributed to students via back-packs)
 - h. Newspaper notice regarding the results of the boundary realignment (redistricting) voting on January 19, 2010 (posted January 29-31, 2010)
 - i. Newspaper notice regarding the February 2, 2010 voting results of boundary realignment recommendation V.1 (posted February 6, 2010, February 7, 2010 and February 8, 2010)
 - j. Public Notice to Boonsboro Elementary Parents & Guardians regarding the WCPS Redistricting Update (distributed on or about January 25, 2010)
- BOE Ex. 6. FEAC Agenda for March 10, 2009 meeting
- BOE Ex. 7. WCPS Superintendent's Proposed School Boundary Realignment Recommendations for 2010 & 2011, issued on December 8, 2009
- BOE Ex. 8. Volume 1 – FEAC meeting summaries and recommendations, enrollment data and boundary maps
- BOE Ex. 9. Volume 2 – Public Forum information, newspaper articles, and Stakeholder feedback
- BOE Ex. 10. Volume 3 – Appeals to the BOE, Minutes of BOE Actions, WCPS Superintendent's Report, Public Hearing Information, newspaper articles, and Stakeholder feedback⁵
- BOE Ex. 11. Letter from Shulamit Finkelstein, Executive Director for Strategic Planning & Board & Community Relations, WCPS, to Mr. and Mrs. Mark Thomas, February 4, 2010; Letter from Mr. Finkelstein, WCPS, to Mr. and Mrs. David Gilroy, February 4, 2010; Decision and Order (regarding boundary realignment G2; appeal number 01-10-G2), February 2, 2010
- BOE Ex. 12. Letter from Mr. Finkelstein, WCPS, to Mr. and Mrs. Christian Pizzaro, February 4, 2010; Decision and Order (regarding boundary realignment G2; appeal number 02-10-G2), February 3, 2010
- BOE Ex. 13. Affidavit of Cheryl A. Steiner, April 14, 2010
- BOE Ex. 14. Affidavit of Debra Cechovic, April 8, 2010
- a. Minutes of the November 17, 2009 BOE public business meeting
 - b. Minutes of the December 8, 2009 BOE public business meeting
 - c. Minutes of the December 15, 2009 BOE public work session
 - d. Minutes of the January 19, 2010 BOE public business meeting
 - e. Minutes of the February 2, 2010 BOE public business meeting
 - f. Transcript of January 19, 2010 BOE public business meeting
- BOE Ex. 15. Affidavit of Barbara J. Scotto, April 14, 2010
- a. BOE Administrative Regulation EEA-R
 - b. Transportation Summary of Attendance Zone Realignment V.1
- BOE Ex. 16. Affidavit of Michael D. Markoe, April 13, 2010
- a. Enrollment Summary of Pleasant Valley Elementary School if Realignment Proposal V.1 is Approved

⁵ The BOE filed Volumes 1-3, also referred to as Binders 1-3, to the OAH on March 23, 2010, in conjunction with its prehearing statement.

BOE Ex. 17. Letter from Parents of 21 Sharpsburg Elementary School students to Ms. Ruth Anne Callaham, Member, BOE, January 14, 2010

The Appellant did not file a response to the Motion.

FINDINGS OF FACT

Based on the information of record, I find the following to be material facts about which there is no genuine dispute:

1. The WCPS System has forty-five schools and a student enrollment of approximately 22,000 students. (BOE Exs. 1 and 15.)
2. Twenty-six of the forty-five schools are elementary schools. (BOE Ex. 2.)
3. The BOE is responsible for determining the geographical attendance area of each public school in the county. (BOE Exs. 3 and 4.)
4. Pursuant to Policies and Administrative Regulations, the BOE is permitted to establish various advisory committees, including the Facilities and Enrollment Advisory Committee (FEAC), to provide guidance in the establishment of school attendance areas. (BOE Exs. 4 and 8; *see also* BOE Ex. 3.)
5. The purpose of the FEAC is "to review enrollment data and facilities usage information and to offer recommendations to the [BOE] on the most efficient and educationally effective use of school facilities (*see* Administrative Regulation BDF-E(6), Appendix A)." (BOE Exs. 4 and 8.)
6. The FEAC is comprised of representative parents, businesspersons, and community leaders. (BOE Ex. 3.)
7. Enrollment for WCPS has increased nine years in a row. (BOE Exs. 1 and 7.)
8. Student enrollment is projected to increase over the next four years based

on actual population figures for school years 2007, 2008 and 2009. (BOE Ex. 2a.)

9. Despite the expansion and construction of new schools, fifteen out of twenty three elementary schools currently meet or exceed the local-rated capacity (LRC).⁶ (BOE Ex. 2; *see also* BOE Ex. 4.)

10. LRC is defined as 90% of the state-rated capacity (SRC). (BOE Ex. 2a.)

11. In light of the anticipated completion date of Eastern as well as projected enrollment numbers, the BOE, on January 22, 2009, issued a "Charge" to the FEAC to examine "the existing Eastern Elementary School attendance area and all adjacent elementary attendance areas" and "[a]dditionally, ...to examine schools that are, or are projected to become, substantially over-enrolled or under-enrolled by school year 2012-2013, and offer recommendations that will bring those facilities' populations in balance with established ... LRC calculations." (BOE Exs. 4, 7 and 8.)

12. The BOE further requested "the FEAC to conduct a county-wide review of all current school attendance zones and recommend changes to such zones based upon current enrollment projections through the 2012-2013 school year." (BOE Exs. 4, 7 and 8.)

13. In formulating its recommendations, the BOE asked the FEAC to consider the following factors:

- ▶ The impact of the proposed attendance area adjustments on the feeder patterns for elementary, middle, and high schools;

⁶ In 2008, the BOE completed expansion projects on two of its existing elementary schools (Pangborn and Maugansville). (BOE Ex. 2.) The expansion at these two elementary schools increased enrollment capacity from 481 to 745 student at Pangborn and 318 to 735 at Maugansville, for an additional 681 students. *Id.* In addition, the construction of Rockland Woods in 2008 created capacity for an additional 745 students. *Id.* Eastern is expected to open for school year 2011-2012 and it is designed to accommodate 695 students in grades pre-kindergarten to second. *Id.*

- ▶ The goal of assigning elementary students to no more than two feeder middle schools and any middle school students to no more than two feeder high schools, if possible;
- ▶ The goal of assigning students to schools so that the LRC of each school is not exceeded. LRC for schools is defined as:
 - 90% of [SRC] for elementary schools
 - 100% of [SRC] for middle schools
 - 100% of [SRC] for high schools
- ▶ The projected enrollment through the 2012-2013 school year;
- ▶ The goal of providing a reserve capacity, if possible, for future growth;
- ▶ The factors set forth in Board Policy JCA, as follows:
 - the educational opportunity afforded to students in each school involved;
 - the long-range enrollment projections including consideration of anticipated future residential development/construction;
 - the [SRC and LRC] of affected schools;
 - the geographic location of each school in relationship to the surrounding population areas;
 - the current and projected student travel time;
 - the continuing of the feeder school patterns;
 - the opening of a new school or the necessity to close a school;
 - the need to maintain racial balance in a school and/or the school system;
 - the socio-economic composition of affected schools; and
 - the cost associated with the various options.

(BOE Exs. 3, 4 and 7.)

14. The Charge issued to the FEAC did not limit the establishment of boundaries to roads. (BOE Ex. 4.)

15. The BOE also required the FEAC to inform members of the public about its work and recommendations, including the use of community forums to seek and share information and/or public work sessions. (BOE Exs. 3 and 4.)

16. Consistent with the Charge, the FEAC advertised its public work sessions

and/or forums by utilizing the following media sources: WCPS website; written information to be placed in students' backpacks; the school system's Alert Now robo call system; Channel 99, radio and television announcements; and news articles. (BOE Exs. 4, 5, 5a-j, and 7.)

17. Specifically, the BOE announced or advertised the public forum meetings in the local newspaper (BOE Ex. 5a), mailed a public notice to 65,000 county households and sent the same notice home with approximately 10,000 students via their back-packs (BOE Ex. 5b), and issued four system-wide Alert Now robo call messages to WCPS households (BOE Ex. 5).

18. The BOE also created a special e-mail address and dedicated phone line to address questions, concerns and gather ideas from the community; aired podcasts with staff experts, and posted files on www.antpod.com, a local site for downloadable news and school system highlights. (BOE Ex. 5.)

19. In addition, WCPS personnel were featured on a local AM radio show, WJEJ's "Lunchtime Live," for the purpose of announcing upcoming boundary realignment forums. (BOE Ex. 5.)

20. The FEAC conducted twenty public work sessions regarding the Charge. (BOE Exs. 1 and 2.) Specifically, the public work sessions were held on: January 20, 2009; February 10, 2009; February 24, 2009; March 10, 2009; March 24, 2009; April 7, 2009; April 14, 2009; April 28, 2009; May 12, 2009; May 26, 2009; June 9, 2009; June 23, 2009; July 7, 2009; July 21, 2009; August 11, 2009; August 25, 2009; September 29, 2009; October 13, 2009; October 27, 2009;⁷ and November 3, 2009. (BOE Exs. 5c and 8.)

⁷ This meeting date was rescheduled from October 20, 2009 to October 27, 2009.

21. The FEAC also held public forums regarding the Charge on September 10, 2009, September 17, 2009 and September 24, 2009. (BOE Exs. 5 and 9.)

22. Minutes were taken at each of the public work sessions and public forums. Public comments were also recorded and published. (BOE Exs. 9 and 13.)

23. The FEAC made recommendations for the modification of several elementary school attendance zones, affecting approximately 1300 students, attending the following schools: Boonsboro, Cascade, Conococheague, Eastern, Fountain Rock, Fountaindale, Funkstown, Greenbrier, Lincolnshire, Maugansville, Old Forge, Pangborn, Paramount, Potomac Heights, Rockland Woods, Salem Avenue, Sharpsburg, Williamsport, and Winter Street. (BOE Exs. 5b, 7 and 8.)

24. Proposed boundary realignment V.1 contained the following recommendation:

Enlarge the existing Pleasant Valley attendance zone as defined by Marble Quarry Road, the Windsor Farm subdivision and Reno Monument Road to the north; the Frederick County boundary to the east, the existing Pleasant Valley Elementary attendance zone to the south and the Sharpsburg Elementary attendance zone to the west.

(BOE Exs. 7 and 8.)

25. Proposed boundary realignment V.1 results in the redistricting of 28 Boonsboro students to Pleasant Valley. (BOE Exs. 7 and 8.)

26. The FEAC discussed Pleasant Valley and/or proposed boundary realignment V.1 at the following meetings: April 28, 2009; May 12, 2009; June 9, 2009; July 21, 2009; September 29, 2009; October 13, 2009; and October 27, 2009. (BOE Exs. 1 and 8.)

27. The FEAC formally voted and unanimously approved recommending

boundary realignment V.1 on October 27, 2009. (BOE Exs. 1 and 8.)

28. The FEAC conducted its last meeting regarding the Charge on November 3, 2009. (BOE Ex. 1.)

29. Upon completion of the Charge, the FEAC was required to submit a proposed plan to the BOE for its consideration by December 2009. (BOE Exs. 3 and 4.)

30. The FEAC provided its Report and Recommendations to the BOE at its public business meeting on November 17, 2009. (BOE Exs. 1 and 10.)

31. Thereafter, the FEAC's Report and Recommendation was made available to the public on the WCPS website and copies were sent to every school. (BOE Ex. 5.)

32. The BOE is required to forward the proposed plan to the WCPS Superintendent. (BOE Exs. 3.)

33. On December 8, 2009, the WCPS Superintendent provided her recommendation to the BOE at its public business meeting. (BOE Exs. 1 and 7.)

34. On the same date, the BOE made the 1800-page FEAC report, contained in two volumes, available for viewing at every WCPS school and the Central Office. (BOE Exs. 5d and 5f.) The FEAC report also contained all documentation related to each of the public work session meetings. *Id.*

35. The BOE is required to "hold a public hearing to receive comments from parents and residents and reactions to the [WCPS] Superintendent's recommendation." (BOE Ex. 3.)

36. On December 15, 2009, the BOE conducted a public work session on the proposed boundary realignments. (BOE Ex. 1.) The meeting was open to the public and was also televised. (BOE Exs. 1, 5d and 5f.)

37. On January 5, 2010, the BOE conducted a public hearing. (BOE Exs. 1 and 5d.) The public was invited to provide comments regarding the proposed boundary realignments at this meeting. (BOE Ex. 1.)

38. On January 19, 2010, the BOE conducted another public hearing. (BOE Exs. 1, 5d, and 5f.) The public was again invited to provide comments regarding the proposed boundary realignments at this meeting. (BOE Ex. 1.)

39. The BOE advertised the public hearing dates by issuing press releases, updating its website, notifying Channel 99, mailing a public announcement to 65,000 county households, making media contacts and generating automated phone calls. (BOE Exs. 5 and 5d.)

40. The WCPS Superintendent "may accept the proposed plan or offer comments with respect to the recommendations of the [FEAC] or may develop other recommendations after consideration of staff advice, the [FEAC] report, and input from other organizations and individuals who provided comments." (BOE Ex. 3.)

41. On January 19, 2010, the BOE voted to approve twenty of twenty-three proposed boundary realignments. (BOE Ex. 1.)

42. At the January 19, 2010 business meeting, the BOE tabled consideration of proposed boundary realignment V.1 in order "to receive information from staff regarding the length of bus routes and verification of student numbers" affected. (BOE Ex. 9.) The BOE approved the postponement of the vote until its next business meeting scheduled on February 2, 2010. (BOE Exs. 1 and 9.)

43. Afterwards, the BOE informed members of the public regarding the results of the January 19, 2010 public hearing. (BOE Exs. 5 and 5h.)

44. The BOE also informed members of the public regarding the February 2, 2010 meeting by issuing a press release, updating its website, notifying Channel 99, and mailing a public announcement to families affected by the proposed boundary realignment V.1. (BOE Exs. 5 and 5j.)

45. The BOE prepared a document entitled "Transportation Summary of Attendance Zone Realignment V.1." (BOE Ex. 15b.) The document provided bus stop locations, current and proposed bus ride times, and the difference in ride times for students to Pleasant Valley who reside in the proposed V.1 area. (BOE Exs. 15 and 15b.) Members of the BOE and the public⁸ were given access to this document prior to the February 2, 2010 public business meeting. (BOE Exs. 14, 14e and 15.)

46. On February 2, 2010, the BOE conducted a public business meeting to discuss proposed boundary realignment V.1. (BOE Exs. 1, 14 and 14e.) The BOE approved V.1 after considering public comment, two separate alternative boundary realignment proposals submitted by citizens, bus transportation times, and class size at Pleasant Valley. (BOE Exs. 1, 14, 14e, 15 and 15b.)

47. The Appellant was present at this meeting and provided comments regarding proposed boundary realignment V.1 before the BOE approved the plan. (BOE Ex. 14 and 14e.)

48. Afterwards, the BOE informed members of the public concerning the boundary realignment vote by advertising in the local newspaper. (BOE Ex. 5i.)

49. Minutes were taken and maintained during the normal course of business at each of the BOE's public business meetings and work sessions. (BOE Exs. 14 and 14a-e.) A court reporter was also present at the January 5, 2010 public business meeting

⁸ A copy was placed on the BOE's website for the public's review.

and prepared a transcript of the proceedings. (BOE Exs. 14 and 14f.)

50. The BOE video-recorded each of the BOE's proceedings and copies of the DVDs were made available for viewing. (BOE Ex. 14.)

51. The BOE is required to vote and announce its decision at least ninety days prior to the effective date of implementation, but not later than April 30th of the year preceding the proposed change. (BOE Ex. 3.)

52. The proposed boundary realignments are expected to take effect during the 2010-2011 school year or later. (BOE Ex. 10.) The effective date of implementation boundary realignment V.1 is school year 2010-2011. *Id.*

53. The BOE votes regarding the proposed boundary realignments were held on January 19, 2010 and February 5, 2010.

54. Prior to issuing its decision to redistrict the boundaries, the BOE considered the following information:⁹

School ¹⁰	SRC	LRC	Projected student population (2012)	Utilization Rate SRC w/o realignment	Utilization Rate LRC w/o realignment
Bester	511	460	464	90.8%	100.9%
Boonsboro	514	463	672	130.7%	145.1%
Cascade	274	247	125	45.6%	50.6%
Clear Spring*	410	369	434	105.9%	117.6%
Conococheague	249	224	347	139.4%	154.9%
Eastern	567	510	522	92.1%	102.4%

⁹ The Maryland Department of Planning requires all local school boards to generate ten-year enrollment projections and to assess these projections on a yearly basis. (BOE Ex. 2.) The BOE's ten-year enrollment projections are prepared by Public Pathways, Inc. *Id.* The BOE's enrollment projections for the past five years have been approved by the Maryland Department of Planning. *Id.*

¹⁰ The asterisks denote schools that are not subject to the attendance zone realignment process.

Emma K. Doub*	299	269	254	84.9%	94.4%
Fountain Rock	298	268	190	63.8%	70.9%
Fountaindale	399	359	415	104.0%	115.6%
Funkstown	200	180	184	92.0%	102.2%
Greenbrier	252	227	340	134.9%	149.8%
Hancock*	298	268	244	81.9%	91.0%
Hickory*	272	245	255	93.8%	104.1%
Lincolnshire	584	526	447	76.5%	85.0%
Maugansville	735	662	762	103.7%	115.1%
Old Forge	377	339	400	106.1%	118.0%
Pangborn	745	671	708	95.0%	105.5%
Paramount	409	368	324	79.2%	88.0%
Pleasant Valley	229	206	220	96.1%	106.8%
Potomac Heights	274	247	340	124.1%	137.7%
Rockland Woods	745	671	660	88.6%	98.4%
Salem Avenue	736	662	779	105.8%	117.7%
Sharpsburg	252	227	310	123.0%	136.6%
Smithsburg*	419	377	437	104.3%	115.9%
Williamsport	570	513	492	86.3%	95.9%
Winter Street	305	275	300	98.4%	109.1%

(See BOE. Exs. 2a-b.)

55. At the time of the BOE's decision to redraw these boundary lines, Pleasant Valley was underutilized based on the information produced at that time by the Maryland Department of Planning. (See BOE. Exs. 2a-c.)

56. The immediate benefit of proposed boundary realignment V.1 is that it

reduces enrollment at Boonsboro from 121% of SRC in 2008 (*see* BOE Ex. 2b) to an estimated 117% of SRC in 2012 in conjunction with proposed boundary realignment G.2 (*see* BOE Exs. 2c and 7). (*See also* BOE Exs. 2a-c)

57. If no action is taken with regard to proposed boundary realignment V.1, enrollment at Boonsboro is projected to increase to 130% of SRC by 2012. (BOE Ex. 2b.)

58. Proposed boundary realignment V.1 assigns additional students from Boonsboro to Pleasant Valley to better utilize Boonsboro's facility and core spaces (cafeteria, gym and library) since it alleviates Boonsboro's over-crowding issue. (BOE Ex. 16.)

59. Proposed boundary realignment V.1 does not require additional staff and would better utilize the resources available at Pleasant Valley. (BOE Exs. 16 and 16a.)

60. Reducing class-size at Boonsboro is advantageous for student learning and the educational environment. (BOE Ex. 16.)

61. Proposed boundary realignment V.1 does not require a bus to travel any new road or make any new stops, unless a new student moves in along the route. (BOE Ex. 15.)

62. WCPS is one of only four school systems in the State of Maryland to make Adequate Yearly Progress (AYP) in all elementary, middle and high schools. (BOE Ex. 1.)

63. AYP is the federal standard under No Child Left Behind that all school systems must meet in order to demonstrate annual progress toward 100% proficiency by 2014. (BOE Ex. 1.)

64. The WCPS has a high school graduation rate of 91.53% and a dropout rate of 1.56%. (BOE Ex. #1.) Both percentages are better than the state average. *Id.*

DISCUSSION

I. Summary of the arguments

The Appellant contends that the BOE's February 2, 2010 decision to approve the proposed boundary realignment V.1 plan was arbitrary or unreasonable. She argued, in her appeal, that the BOE abused its discretion by: (1) rushing to make a decision with regard to proposed boundary realignment V.1 plan; (2) applying certain criteria to some communities while failing to apply them to others; (3) failing to provide adequate notice to the public to submit comments on the proposed boundary realignment V.1 plan; (4) accepting a transportation report, without additional public comment, before voting on the proposed boundary realignment V.1 plan; (5) failing to make a fair and accurate review of the transportation report; and, (6) ignoring the safety risk to elementary schools assigned to the proposed boundary realignment V.1 plan.

The BOE disagrees and argues that the Appellant failed to establish any material fact which would support her claim.

II. Motion for Summary Affirmance or Motion to Dismiss

State Board regulations permit the filing of a Motion for Summary Affirmance if there are no genuine issues of material fact and if the respondent is entitled to affirmance of its decision as a matter of law. COMAR 13A.01.05.03D(1). This rule requires that a memorandum supporting or in opposition to such a motion contain: "(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.” COMAR 13A.01.05.03D(2).

The OAH Rules of Procedure at COMAR 28.02.01.12D(1) have a similar standard and requirements for a motion for summary decision. That rule states that a 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.” A party responding to a motion for summary decision is obligated to identify the material facts that are disputed. COMAR 28.02.01.12D(2). A motion for summary decision is to be supported by an affidavit. COMAR 28.02.01.12D(1). A judge is entitled to issue a proposed 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 28.02.01.12D(4).

The OAH’s rule regarding summary decision is largely based upon Maryland Rule 2-501 which uses the same standard to govern motions for summary judgment in circuit court; namely that if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law, the motion must be granted. Because of the similarities between these three rules, I have relied upon appellate decisions interpreting Maryland Rule 2-501 for guidance in applying the State Board’s rule governing summary affirmance.

A judge ruling upon a motion for summary judgment is concerned with whether a dispute of material fact exists. *Tri-Towns Shopping Ctr., Inc. v. First Fed. Sav. Bank of W. Md.*, 114 Md. App. 63, 65 (1997). Maryland courts have provided the following

guidance about what constitutes a “material fact,” about the method of proving such facts, and about how a judge ruling upon such a motion should weigh the information presented:

“A material fact is a fact the resolution of which will somehow affect the outcome of the case.” A dispute as to a fact “relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment.” We have further opined that in order for there to be disputed facts sufficient to render summary judgment inappropriate “there must be evidence on which the jury could find for the plaintiff.”

The trial court in accordance with Maryland Rule 2-501(e) shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. Thus, once the moving party has provided the court with sufficient grounds for summary judgment, it is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this by producing *factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit[.]

Id. at 65-66 (citations omitted) (emphasis in original).

If a party opposing a motion for summary decision fails to offer sufficient proof to dispute a rational and legal reason for an alleged wrongful action, an award of summary judgment to the moving party is proper. See *Williams v. Maryland Dept. of Human Res.*, 136 Md. App. 153, 166 (2000). Moreover, when a motion for summary judgment is supported by an affidavit and exhibits and no opposing affidavit is filed, the non-moving party is considered to have admitted, for the purposes of summary judgment, all statements of fact in the moving party’s affidavit. *Alamo Trailer Sales, Inc. v. Howard County Metropolitan Comm’n*, 243 Md. 666, 668 (1966); see also COMAR 28.02.01.12D(1).

III. Standard of Review under COMAR 13A.01.05.05

Maryland law requires that, “[w]ith the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.” Md. Code Ann., Educ. § 4-109(c) (2008). The BOE’s redistricting decision is prima facie correct, and the Appellant must prove by a preponderance of the evidence that it was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A, D. “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 superintendent reached.” COMAR 13A.01.05.05B.

IV. The “reasoning mind” standard

The “reasoning mind” standard set forth in COMAR 13A.01.05.05B is a broad standard giving great deference to the decisions made by local boards of education in determining school boundaries and student assignments. *Bernstein v. Bd. of Educ. of Prince George’s County*, 245 Md. 464 (1967). According to the Maryland Court of Appeals, a challenge that “[t]here may have been other plans that would have worked equally well, or may, in the opinion of some, have been better” is not sufficient to establish that “the action which was taken was arbitrary, capricious or illegal.” *Id.* at 478.

In contrast, neither the courts, State Board, nor the agency which has delegated to me its authority to issue this Proposed Order, and whose policy I am obligated to follow,¹¹ has specifically defined the term “sound educational policy.” Nevertheless, in considering how to apply this standard, the State Board has upheld the following description written by Administrative Law Judge James T. Murray,

¹¹ See Md. Code Ann., State Gov’t § 10-214(b) (2009).

The State Board has never defined the term "sound educational policy." Nor do I believe that it could. Sound educational policy is a value laden amorphous concept that is impacted by many competing considerations In Howard County, sound educational policy is determined through the representative democracy process. Members of the BOE of Education are elected by the public: they are chosen by the electorate to formulate educational policy for the county. By the exercise of their independent judgment and in considering the factors delineated in [their redistricting policy], they apply educational policy to the county as a whole. It is up to the BOE to establish sound educational policy.

Shah v. Howard County Bd. of Educ., MSBE Op. No. 03-20 (Jul. 10, 2002).

I cannot define "sound educational policy" any better than Judge Murray did in the *Shah* decision; and, there has been no case law on this issue since.

V. Analysis

Here, the Appellant failed to file a response to the Motion, or submit any affidavit or sworn documents with her appeal. As such, the Appellant failed to challenge the sworn assertions of fact set forth in the Affidavit of Boyd J. Michael, III, Deputy Superintendent; Affidavit of Robert H. Rollins, III, Executive Director for School Operations; Affidavit of Richard R. Wright, II, Communications Officer; Affidavit of Cheryl A. Steiner, Assistant to the Deputy Superintendent; Affidavit of Debra Cechovic, Secretary to the BOE; Affidavit of Barbara J. Scotto, Supervisor of Transportation; and Affidavit of Michael D. Markoe, Assistant Superintendent for Elementary Education. (BOE Exs. 1, 2, 5, 13, 14, 15 and 16.) In addition, the BOE submitted a significant number of supporting documents to corroborate the statements made by the Affiants. (BOE Exs. 1a-b, 2a-c, 3, 4, 5a-j, 6, 7, 8, 9, 10, 11, 14a-f, 15a-b, and 16a.) The Appellant, on the other hand, failed to describe, with particularity, which of the facts set forth in the motion, affidavits, or documents that were in genuine dispute; nor did the Appellant cite any legal authority for her position. In contrast, there is no dispute that Mr. Michael, Mr.

Rollins, Mr. Wright, Ms. Steiner, Ms. Cechovic, Ms. Scotto and Mr. Markoe had personal knowledge of the facts listed in their affidavits and that they had the professional capacity to assert these facts based on their positions with the WCPS or BOE. Because the Appellant failed to file any response to the Motion or submit an affidavit establishing any genuine dispute, I have accepted the information contained in the aforementioned Affidavits, filed on behalf of the BOE, as true.

Under the law, the test is not whether “there may have been other plans that would have worked equally as well, or may, in the opinion of some, have been better.” The test is whether a reasoning mind could not have reasonably reached the same decision the BOE made on January 7, 2010. *Bernstein*, 245 Md. at 478. The undisputed material facts, as detailed in the Findings of Fact, demonstrate that the BOE is entitled to dismissal of the appeal as a matter of law.

CONCLUSIONS OF LAW

Based upon the foregoing Discussion and for the reasons stated therein, I conclude as a matter of law that the Respondent’s Motion for Summary Affirmance or, in the alternative, Motion to Dismiss should be granted and that the BOE’s February 2, 2010 decision to approve the proposed boundary realignment V.1 should be affirmed. COMAR 28.02.01.12D, COMAR 13A.01.05.03D, *Bernstein v. Bd. of Educ. of Prince George’s County*, 245 Md. 464 (1967).

PROPOSED ORDER

I ORDER that the telephone pre-hearing conference scheduled for **May 27, 2010** is **CANCELLED**; further,

I ORDER that the hearing scheduled for **June 2-4, 2010** and **June 7-11, 2010** is

CANCELLED; further,

I **RECOMMEND** that the Maryland State Department of Education **GRANT** the Washington County Board of Education's Motion for Summary Affirmance or, in the alternative, Motion to Dismiss and **AFFIRM** the Washington County Board of Education's February 2, 2010 decision to approve the BOE's proposed boundary realignment V.1.

May 25, 2010

Date

KAC/ch
#114030

Kathleen A. Chapman
Administrative Law Judge

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.

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JULIA MAGGITI,

APPELLANT

v.

WASHINGTON COUNTY

BOARD OF EDUCATION,

RESPONDENT

*** BEFORE KATHLEEN A. CHAPMAN,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE OF**

*** ADMINISTRATIVE HEARINGS**

*** OAH CASE No.: MSDE-BE-09-10-08176**

* * * * *

FILE EXHIBIT LIST

BOE Exhibits:

- BOE Ex. 1. Affidavit of Boyd J. Michael, III, April 14, 2010
- a. Letter from Mr. Michael to George G. B. Griffin, Chairman, PenMar Development Corporation, March 20, 2007
 - b. Letter from Mr. Griffin to Mr. Michael, November 25, 2008
- BOE Ex. 2. Affidavit of Robert H. Rollins, III, April 14, 2010
- a. Full Time Equivalent Student Enrollment Projections 2009-2014, May 1, 2009
 - b. Elementary School Enrollments vs. SRC¹²/LRC¹³ with and without ALL proposed Attendance Zone Realignments
 - c. Elementary School Enrollments vs. SRC/LRC reflective of all APPROVED Attendance Zone Realignments
- BOE Ex. 3. Establishment of School Attendance Areas; Establishment of School Attendance Areas (Policy adopted: December 17, 1974. Amended: February 4, 2003. Revised: October 3, 2006)
- BOE Ex. 4. Washington County Board of Education Charge to the Facilities and Enrollment Advisory Committee (FEAC), Issued by the Washington County Board of Education, January 22, 2009
- BOE Ex. 5. Affidavit of Richard R. Wright, II, April 14, 2010
- a. Newspaper announcement regarding the September 10, 2009, September 17, 2009, and September 24, 2009 public forums (posted from August 31, 2009 to September 6, 2009)
 - b. Announcement to Citizens of Washington County regarding the September 10, 2009, September 17, 2009; and September 24, 2009 public forums (mailed to approximately 65,000 county households and sent home to approximately 10,000 student in back-packs)
 - c. 2009 FEAC Meeting Dates schedule for the public work sessions

¹² State-rated capacity.

¹³ Local-rated capacity.

- d. Public Notice to Citizens of Washington County regarding the WPCS Redistricting Update and Schedule (mailed to approximately 65,000 county households on December 10, 2009)
- e. Newspaper announcement regarding the January 5, 2010 public hearing (posted on December 20, 2009; December 27, 2009; January 3, 2010; January 4, 2010; and January 5, 2010)
- f. Public Notice to Citizens of Washington County regarding the WPCS Redistricting Update and Schedule (mailed to approximately 65,000 county households and sent home to approximately 10,000 student in back-packs)
- g. Announcement of Superintendent's School Boundary Realignment Recommendations for 2010-2011, dated December 21, 2009 (distributed to students via back-packs).
- h. Newspaper notice regarding the results of the boundary realignment (redistricting) voting on January 19, 2010 (posted January 29-31, 2010)
- i. Newspaper notice regarding the February 2, 2010 voting results of boundary realignment recommendation V.1 (posted February 6, 2010, February 7, 2010 and February 8, 2010)
- j. Public Notice to Boonsboro Elementary Parents & Guardians regarding the WCPS Redistricting Update (distributed on or about January 25, 2010)
- BOE Ex. 6. FEAC Agenda for March 10, 2009 meeting
- BOE Ex. 7. WCPS Superintendent's Proposed School Boundary Realignment Recommendations for 2010 & 2011, issued on December 8, 2009
- BOE Ex. 8. Volume 1 – FEAC meeting summaries and recommendations, enrollment data and boundary maps
- BOE Ex. 9. Volume 2 – Public Forum information, newspaper articles, and Stakeholder feedback
- BOE Ex. 10. Volume 3 – Appeals to the BOE, Minutes of BOE Actions, WCPS Superintendent's Report, Public Hearing Information, newspaper articles, and Stakeholder feedback¹⁴
- BOE Ex. 11. Letter from Shulamit Finkelstein, Executive Director for Strategic Planning & Board & Community Relations, WCPS, to Mr. and Mrs. Mark Thomas, February 4, 2010; Letter from Mr. Finkelstein, WCPS, to Mr. and Mrs. David Gilroy, February 4, 2010; Decision and Order (regarding boundary realignment G2; appeal number 01-10-G2), February 2, 2010
- BOE Ex. 12. Letter from Mr. Finkelstein, WCPS, to Mr. and Mrs. Christian Pizzaro, February 4, 2010; Decision and Order (regarding boundary realignment G2; appeal number 02-10-G2), February 3, 2010
- BOE Ex. 13. Affidavit of Cheryl A. Steiner, April 14, 2010
- BOE Ex. 14. Affidavit of Debra Cechovic, April 8, 2010
 - a. Minutes of the November 17, 2009 BOE public business meeting
 - b. Minutes of the December 8, 2009 BOE public business meeting
 - c. Minutes of the December 15, 2009 BOE public work session
 - d. Minutes of the January 19, 2010 BOE public business meeting

¹⁴ The BOE filed Volumes 1-3, also referred to as Binders.1-3, to the OAH on March 23, 2010, in conjunction with its prehearing statement.

- e. Minutes of the February 2, 2010 BOE public business meeting
- f. Transcript of January 19, 2010 BOE public business meeting
- BOE Ex. 15. Affidavit of Barbara J. Scotto, April 14, 2010
 - a. BOE Administrative Regulation EEA-R
 - b. Transportation Summary of Attendance Zone Realignment V.1
- BOE Ex. 16. Affidavit of Michael D. Markoe, April 13, 2010
 - a. Enrollment Summary of Pleasant Valley Elementary School if Realignment Proposal V.1 is Approved
- BOE Ex. 17. Letter from Parents of 21 Sharpsburg Elementary School students to Ms. Ruth Anne Callaham, Member, BOE, January 14, 2010

Appellant Exhibits:

None.