

CHERON COOPER,

Appellant

v.

PRINCE GEORGE'S COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-33

## OPINION

### INTRODUCTION

The Appellants filed this appeal challenging the January 7, 2010 redistricting decision of the Prince George's County Board of Education (local board). The redistricting resulted in the reassignment of certain students from Whitehall Elementary School to Kenilworth Elementary School.

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 May 13, 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 because the decision is not arbitrary, unreasonable or illegal. The ALJ noted that the Appellants failed to demonstrate that the redistricting violated sound educational policy, and that they failed to show a genuine dispute of material fact regarding the reliability of the elementary school State Rated Capacity ("SRC") data used by the local board in its 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 – 10.

### STANDARD OF REVIEW

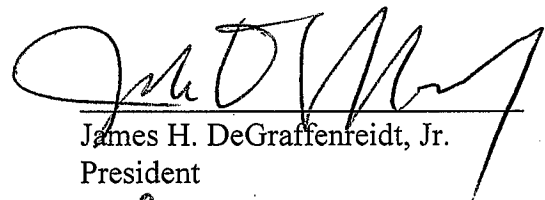
This appeal involves a redistricting decision of a local board of education. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board shall be considered prima facie correct. The State Board may not substitute its judgment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

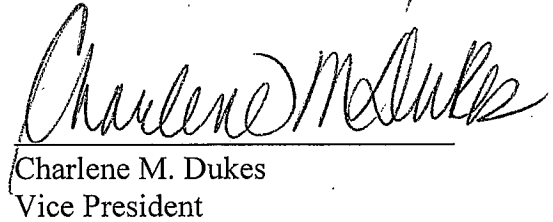
illegal. See COMAR 13A.01.05.05A.

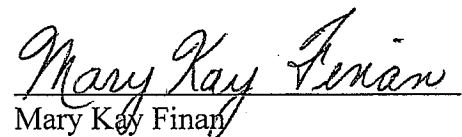
The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, 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).

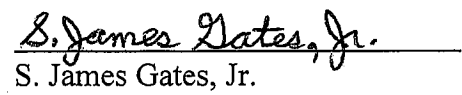
CONCLUSION

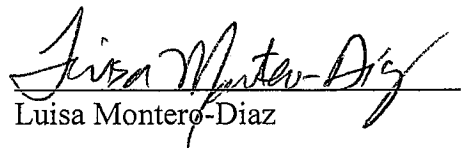
Based on our review of the record, we concur with the ALJ that the Appellants have failed to satisfy their burden of showing that the local board's decision is arbitrary, unreasonable or illegal. We therefore adopt the ALJ's Proposed Order and affirm the local board's redistricting decision.

  
James H. DeGraffenreidt, Jr.  
President

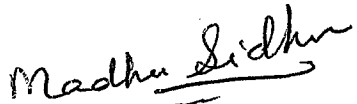
  
Charlene M. Dukes  
Vice President

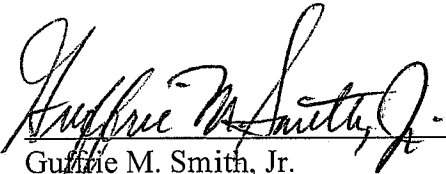
  
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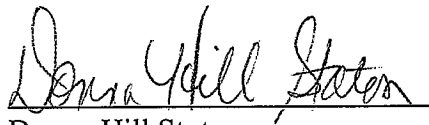
  
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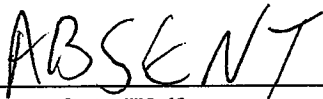
  
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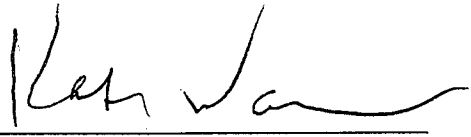
  
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Ivan C.A. Walks

  
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Kate Walsh

August 24, 2010

CHERON COOPER and NANCY  
ADAMSON, et. al.,  
APPELLANTS  
v.  
BOARD OF EDUCATION  
OF PRINCE GEORGE'S COUNTY,  
RESPONDENT

\* BEFORE GEORGIA BRADY,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* CASE NO.: MSDE-BE-09-10-08874  
\*  
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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 7, 2010, the Prince George's County Board of Education (BOE) issued a decision to change boundaries and reassign certain students from Whitehall Elementary School (Whitehall) to Kenilworth Elementary School (Kenilworth) in Bowie, Maryland (BOE Plan), based upon a recommendation provided to it by the Superintendent of Prince George's County Public Schools (PGCPS). On February 4, 2010, Nancy Adamson and Cheron Cooper (Appellants), individually, and as

spokespersons<sup>1</sup> for a group of other persons they identified as appellants, submitted a request to the Maryland State Board of Education (State Board) for a hearing on the BOE Plan, alleging that it was arbitrary and unreasonable. On March 15, 2010, the State Board transmitted this appeal to the Office of Administrative Hearings (OAH) to conduct a contested case hearing with respect to the appeal. Code of Maryland Regulations (COMAR) 13A.01.05.07A(1).

On April 14, 2010, the BOE, through Roger C. Thomas, Esquire, filed a Motion for Summary Affirmance (Motion) in which it sought to have the appeal dismissed, pursuant to COMAR 13A.01.05.03D. On April 19, 2010, the Appellants filed a Motion to Quash the Appellee's Motion for Summary Affirmance (Response).

On May 5, 2010, I convened an in-person Prehearing Conference (Conference) at the OAH in Hunt Valley, Maryland, pursuant to COMAR 28.02.01.17. Mr. Thomas, appeared on behalf of the BOE. The Appellants appeared on behalf of themselves. The Appellants stated at the hearing that they were challenging the BOE Plan only on the ground that it was arbitrary and capricious and not on the ground that it was illegal. The Appellants also clarified that their "Motion to Quash the Appellee's Motion for Summary Affirmance" was their Response in opposition to the BOE's Motion. I informed the parties at the Conference that I would rule on the Motion on or before May 20, 2010; a date for the hearing was set in the event that the BOE's Motion was denied.

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<sup>1</sup> By letter dated May 6, 2010, I informed the named Appellants that Maryland law prohibited them, as non-attorneys, from representing any person other than themselves in this proceeding. I further stated that unless I received written notification from other persons named in the appeal that such person intended to either represent him/herself in this matter or be represented by an attorney, I would consider only the BOE and the named Appellants as active parties in this case. On May 12, 2010, I received notice that Kimberly Douglas intended to represent her interests in this matter; Ms. Douglas was then added to the list of persons receiving a copy of this Recommended Decision. Because I am recommending that the appeal be dismissed, based upon the arguments contained in the Motion and the only Response to it, I need not decide whether the other persons named in the appeal have party status.

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 the BOE Plan 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:

- Bd. Ex. 1 - BOE Policy No. 0113, entitled "School Boundaries – Attendance Areas," adopted March 20, 1974, amended and renumbered March 13, 2003
- Bd. Ex. 2 - PGCPs Administrative Procedure No. 8391, entitled "Boundary Changes," dated September 1998
- Bd. Ex. 3 - BOE "Resolution: Review of School Boundaries," First Reader: September 11, 2008, Second Reader: September 16, 2008
- Bd. Ex. 4 - 2008-2009 Educational Facilities Master Plan
- Bd. Ex. 5 - "PGCPs Phase II – Revised Boundary Proposal (Top 5) Estimated Effect of Proposed Changes"
- Bd. Ex. 6 - Map showing existing boundaries of Whitehall attendance zone
- Bd. Ex. 7 - Map showing proposed boundaries of Whitehall attendance zone
- Bd. Ex. 8 - Summary of Issues discussed at Phase II - Community Forums
- Bd. Ex. 9 - Affidavit of Johndel F. Jones-Brown, Director of Pupil Accounting and School Boundaries, PGCPs, dated April 13, 2010

The Appellants attached the following documents to their Response, all of which I considered when ruling on this Motion:

- App. Ex. 1 - COMAR 13A.01.05.05
- App. Ex. 2 - Prince George's County-wide Boundary Review, dated January 9, 2009
- App. Ex. 3 - Whitehall Architectural Plans
- App. Ex. 4 - Summary of Issues discussed at Phase II - Community Forums (Duplicate of Bd. Ex. 8)
- App. Ex. 5 - "Phase Two Comprehensive Boundary Review," printed April 18, 2010
- App. Ex. 6 - Maryland Department of Planning Chart listing information related to State Rated Capacity (SRC)
- App. Ex. 7 - "Status of State Rated Capacity Review, A joint effort by the Maryland Department of Planning and Prince George's County Public Schools," dated March 25, 2010
- App. Ex. 8 - COMAR 23.03.02.04
- App. Ex. 9 - "Projections for School Year 2009 – 2015: By School With Capacity Analysis"
- App. Ex. 10 - Google Maps showing location of schools
- App. Ex. 11 - PGCPs statistics regarding performance of Whitehall students
- App. Ex. 12 - "Phase II Boundary Proposal"
- App. Ex. 13 - Letter from Erin Chilcote, President, Whitehall PTA, dated April 18, 2010

#### **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. In accordance with the BOE Policy and Administrative Procedures, the BOE evaluates school enrollment and school building capacities on an annual basis to identify issues of underutilization or overcrowding of buildings, and, when, required, to

accommodate new school construction and educational program placement. Bd. Ex. 1, 2, 9.

2. The BOE Policy provides that "school boundaries will be developed as to best utilize available school facilities in support of educational objectives by full consideration of school capabilities, capacities, transportation, and student assignment stability." Bd. Ex. 1, 9.

3. The BOE Policy provides the following guidelines for identifying the desirability of boundary changes:

a. Each school should operate within its established capacity in keeping with the five-year educational facility master plan.

b. Available classroom space at nearby schools should be used to relieve overcrowding.

c. Such usage is predicated on reasonable transportation distance and time.

d. Contiguous areas should be established, as first priority. Appropriate space within each school may be scheduled for board of education approved programs from outside the immediate contiguous attendance area.

e. School attendance areas should include as many walking students as can be accommodated.

f. Communities or areas reassigned to other schools should expect some stability and not be subject to yearly reassignment.



g. Tentative attendance areas for any new schools should be presented at the time the project is conceived. Such factors as mobility of population and new residential development will affect the final proposed attendance area.

Bd. Ex. 1, 9.

4. The PGCPS Administrative Procedure recommends consideration of the following factors as part of a boundary change:

- a. School Enrollment Trends
- b. School Building Capacities
- c. Capacity Utilization Rates (a measure of school enrollment to school capacity)
- d. Transportation
- e. Educational Programs
- f. Racial Composition of the Student Body
- g. Financial Considerations
- h. Community Impact.

Bd. Ex. 2, 9.

5. On September 16, 2008, the BOE directed the PGCPS Superintendent to conduct a comprehensive review of school boundaries and to make recommendations for desirable adjustments to those boundaries that would contribute to the school system's educational objectives. The PGCPS Superintendent was charged with evaluating boundaries to determine whether they are as equitable as practicable and as financially efficient as they can be in light of (a) historical inequity, (b) overutilization of each facility and (c) underutilization of each facility. Bd. Ex. 3, 9.

6. Because of the size of Prince George's County, the number of schools involved and the time required to provide adequate opportunity for public input, review and recommendations on boundary changes were conducted in phases focusing on specific geographic areas and education levels. The boundary review process impacting Whitehall occurred as part of Phase II of the boundary review process. Bd. Ex. 9; *see also* Bd. Ex. 5, 8.

7. In its deliberation of boundary changes for Whitehall, the BOE heavily considered the first, second and fourth criteria for boundary changes under the BOE Policy 0113, namely, (a) that each school should operate within its established capacity in keeping with the five-year Education Facility Master Plan; (b) available classroom space at nearby schools should be used to relieve overcrowding; and (c) continuous attendance areas should be established, as first priority. Bd. Ex. 4, 9.

8. In the case of Whitehall and Kenilworth, the "established capacity" is the SRC, a figure which is updated annually in June of each year by the Maryland Department of Planning. Bd. Ex. 9; *see* Bd. Ex. 4.

9. As of September 16, 2008, when the BOE directed the PGCPS Superintendent to perform a comprehensive review of school boundaries, and as of January 7, 2010 when the BOE made its decision to approve the Plan, the SRC for Whitehall was 365. Bd. Ex. 5, 9; App. Ex. 6 at 3.

10. The State Department of Planning calculated the SRC for Whitehall Elementary on March 9, 2009 to be 365; the State Department of Planning had not recalculated this figure as of the date of the BOE's decision to approve the Plan. App. Ex. 6. at 3.

11. The enrollment of students at Whitehall for the 2009-2010 school year was 433, giving the school an overutilization rate of 119%. Bd. Ex. 5.

12. An overutilization rate of 119% established that Whitehall was overcrowded.

13. For the 2009-2010 school year, the size of the Whitehall student population required that Whitehall use a special purpose room as a regular classroom and that it also use two portable classrooms to meet the educational needs of its students. Bd. Ex. 9.

14. The BOE considered these factors, in addition to the overutilization figure, as signs that Whitehall was overcrowded. Bd. Ex. 9.

15. Based upon the BOE's determination that Whitehall was overcrowded, a decision was reached that the overcrowding situation would be abated by requiring a certain number of students then attending Whitehall to attend Kenilworth. Bd. Ex. 9.

16. The reassignment of students resulted in a decrease in the overutilization rate at Whitehall and took the student population below the SRC. See Bd. Ex. 9; App. Ex. 6 at 3.

17. There was a review by the Maryland Department of Planning underway for Whitehall at the time of the BOE's decision to approve the BOE Plan. This review may have updated the SRC for that school; but the review was not completed as of the time of the decision to approve the BOE Plan. Bd. Ex. 9.

18. The BOE considered the boundary lines for Whitehall and concluded that it contained two reasonably separable areas. See Bd. Ex. 9; compare Bd. Ex. 6 with Bd. Ex. 7.

19. The PGCPS held community forums as part of the Phase II Boundary Review Process on three dates at three different PGCPS high schools. Bd. Ex. 9.

20. At these forums, members of the public were invited to contribute their ideas and share concerns with the PGCPS representatives on boundary change proposals, and the PGCPS representatives shared criteria that would be considered in determining whether there was a need for a boundary change at a particular school, including Whitehall. Those criteria included the following:

- a. School utilization rates below 80% or above 105%;
- b. Non-contiguous boundaries which were illogical or ill-formed;
- c. Adjacent schools overcrowded or under-utilized;
- d. Whether sufficient empty seats existed in a cluster of schools that would allow an identified school to potentially be used as a specialty/choice program or taken off-line for refurbishing;
- e. Whether a school had a sufficient number of empty seats with a dedicated gym that created the potential for use of the facility for a PreK-8 school or a 6-7-8 school configuration; and
- f. Transportation provisions and walking distances for students.

Bd. Ex. 8, 9; App. Ex. 4.

21. The BOE determined that, due to the overcrowding it found at Whitehall, the Whitehall boundaries and the Kenilworth boundaries should be redrawn to permit a certain number of students attending Whitehall during the 2009-2010 school year to attend Kenilworth. Bd. Ex. 9.

22. At the time of the BOE's decision to redraw these boundary lines, the Maryland Department of Planning considered that Kenilworth had an SRC of 569 but a school population of only 395, yielding a utilization rate of only 69%.

23. At the time of the BOE's decision to redraw these boundary lines, the BOE concluded that Kenilworth was underutilized based on the information produced at that time by the Maryland Department of Planning

24. As of the time of the BOE's decision to redraw these boundary lines, the SRC for Kenilworth had been most recently updated on September 30, 2009.

25. The Maryland Department of Planning had updated the SRC for all of the PGPCS elementary schools closest to Whitehall, except for Northview Elementary School (Northview), within a few months prior to the BOE's decision. At the time of the BOE's decision, the SRC and school population data for these schools was as follows:

School	SRC Update	SRC	Population	Utilization Rate
Heather Hills	10/21/09	347	336	96.82%
High Bridge	7/20/09	443	427	96.39%
Kenilworth	9/30/09	619	395	63.81%
Northview	Update pending	742	870	117.25%
Rockledge	03/09/09	456	527	115.57%
Tulip Grove	7/20/09	411	292	71.05%
Whitehall	3/9/09	365	433	118.63%
Yorktown	7/20/09	457	305	66.74%

*Compare Bd. Ex. 6 with App. Ex. 5, 6.*

## DISCUSSION

### *Standards for Ruling on the Motion*

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).

The Appellants attached a number of documents to their Response, but these did not include an affidavit or any other sworn document which challenged sworn assertions of fact set forth in the Affidavit of Mr. Johndel F. Brown-Jones, Director of Pupil Accounting and School Boundaries. The Appellants also failed to describe, with particularity, which of the facts set forth in the Motion or in Mr. Brown-Jones' affidavit were in genuine dispute; nor did the Appellants cite any legal authority for their position, with the exception of attaching relevant provisions of COMAR. In contrast, there is no dispute that Mr. Brown-Jones had personal knowledge of the facts in his Affidavit, and that he had the professional capacity to assert them based on his position as Director of Pupil Accounting and School Boundaries. Because the Appellants failed to submit an affidavit establishing any genuine dispute with the statements contained in Mr. Brown-Jones' affidavit, I have, for the most part, accepted the provisions of that Affidavit as true.



Nevertheless, the Appellants presented a wealth of detailed information in their Response, much of which was supported by exhibits that appeared to have been culled from the relevant and technical records created by the Respondent. Accordingly, while I cannot find that the Appellants have established a dispute about any of the *facts* set forth in Mr. Brown-Jones' Affidavit, I have still considered all of the Appellants' exhibits as they appear to be relevant documents either created by the Respondent or the PGCPS, or documents reflecting an undisputed matter of public record, such as Appellants' Exhibit 10, which is a print-out from the widely accepted "google maps" website.

*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.

The Appellants contend that the BOE's January 7, 2010 decision to approve the BOE Plan was arbitrary or unreasonable. The Respondent disagrees and argues that the Appellants have failed to establish any material fact which would support this claim.

In ruling upon the BOE's Motion, I must determine if there are material facts that would establish that the BOE's January 7, 2010 decision was either (1) contrary to sound educational policy or (2) could not have been reasonably reached by a reasoning mind. If I determine that such material facts exist and that there is a genuine dispute about them, then I must deny the BOE's Motion. If I determine that there is no genuine dispute about the material facts, and that these material facts do not support a finding that the BOE's January 7, 2010 decision was arbitrary or unreasonable, I must grant the BOE's Motion and dismiss the Appellant's appeal.

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 nor the State Board, the agency which has delegated to me its authority to issue this Proposed Order, and whose policy I am obligated to follow,<sup>2</sup> 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,

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

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<sup>2</sup> See Md. Code Ann., State Gov't § 10-214(b) (2009).

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. Moreover, judging from the fierce ongoing debate over this term at the local, state and national level, fueled by lay persons and experts in every variety of academic discipline, I do not foresee an agreed-upon definition on the horizon; nor was there a definition in existence at the time of the BOE’s January 7, 2010 decision. If any definition of “sound educational policy” were to be disseminated, I would expect it to be the result of opinions from multiple experts in the education field woven together after a complex analysis of a wide variety of factors. I would not expect that any single factor would be determinative of “sound educational policy,” given the multiplicity of issues in the educational field that would need to be addressed by a local board of education.

The Appellants did not specifically frame an argument that the BOE’s decision violated sound educational policy. Instead, they argued the alleged overcrowding at Whitehall had not been adversely affecting the students there as evidenced by the fact that test scores had been rising there over the previous few years. This could be construed as an argument that moving the Whitehall students violated “sound educational policy” but the Appellants failed to present an affidavit from an educational expert to

support such a conclusion. Moreover, I cannot find that this solitary, although important factor of improving test scores, establishes, on its own, "sound educational policy." I conclude that the Appellants have either not advanced an argument that the BOE Plan violated sound educational policy or, that if they intended to do so, they have failed to establish any material facts sufficient to support their argument. Nothing in the Appellant's appeal, Response, or in the exhibits supporting the Response approaches a conclusion that "sound educational policy" was violated in this case. Accordingly, the only standard remaining by which to measure the parties' Motion and Response thereto is whether a reasoning mind could have reasonably reached the decision to approve the BOE Plan.

*Are there material fact(s) in genuine dispute which show that a reasoning mind could not have reasonably reached the decision to change the boundaries of Whitehall, as approved by the BOE on January 7, 2010?*

The Appellants' central argument is that the BOE's decision to approve the BOE Plan was unreasonable because the BOE Plan was based on "inconsistencies in guidelines as it relates to outdated and updated State Rated Capacity (SRC) data." Response at 1. The Appellants contend that the SRC data was outdated, was known to be in flux, and did not, at the time of the decision, accurately reflect the current conditions at Whitehall. The Appellants also challenge the decision to move children only out of Whitehall, when, under the Appellants' calculation of SRC data, other schools were at least as overcrowded, if not more, than Whitehall.

The exhibits attached to the Motion and to the Response establish that the SRC data for all the elementary schools in Whitehall's area, except for Northview, had been

updated by the agency responsible for doing so within less than twelve months prior to the date of the BOE's decision. The Appellants have not produced a sworn statement, other reliable evidence, or even a proffer to show that a change in Northview's SRC would have affected a decision to change Whitehall boundaries. Nor have the Appellants produced a sworn statement from someone with the requisite credentials and personal knowledge to establish that the March 2009 SRC data for Whitehall had become unreliable only nine months after it was developed. The Appellants' assertions on this point are not sufficient to demonstrate that this data – reliable in March 2009 – had become unreliable nine months later. Accordingly, I find no genuine dispute of material fact that, at the time of the BOE's decision, the SRC data for all relevant elementary schools was current and reliable, because it had been updated within approximately nine months of the decision.

The Appellants asserted that there had been a change in how space was used at Whitehall from its original construction to the current time, and further asserted that these changes would increase SRC at Whitehall. Nevertheless, the Appellants failed to produce a sworn statement from a reliable source with personal knowledge, or other reliable evidence, to establish that such changes had occurred, the date they had occurred, and that the changes would have a significant affect upon Whitehall's SRC. In the absence of such reliable evidence, I cannot conclude that any changes were made, or that if they were, that the changes made the data used by the BOE unreliable. Again, I find no genuine dispute of material fact that the SRC data used by the BOE was unreliable or that it was unreasonable for the BOE to have relied upon it in approving the BOE Plan.

The Appellants assert and the BOE's affidavit confirms that "there was a review by the Maryland Department of Planning underway for Whitehall Elementary School for the purpose of *potentially* updated SRC for the school" at the time of the BOE's decision. Bd. Ex. 9 at ¶ 11 (emphasis added). Both parties agree that this potential update had not been completed as of the time of the BOE's decision. Neither party has produced any evidence to establish the details of that review, the date of its expected completion, nor how likely it was that any results from that review would have changed a conclusion that Whitehall was overcrowded. For example, the Appellants did not attach an affidavit from Whitehall's principal establishing that there had been a dramatic reduction in the school's population or a dramatic increase in the building's capacity between the time of the March 2009 review and whenever the current review was due to be completed. The existence of a "potential update" of the Whitehall SRC data does not establish a genuine dispute about the reliability of the SRC data used in the BOE Plan.

The Appellants have also failed to produce material facts to show that it was unreasonable for the BOE to approve the BOE Plan while that review was ongoing. The review which generated the Superintendent's recommendation, a recommendation ultimately approved by the BOE in January 2010, had been in the making since September 2008. A decision maker considering a recommendation based on data that conceivably has been in flux for fifteen months may reasonably decide to make his/her/its decision based upon the reliable information he/she/it has in hand. To withhold making a decision that is based upon a study that has taken over a year to complete, because some

different figures may be produced because of continuously changing student population figures or reconfigurations of school buildings, would place that decision maker in paralysis. Statistics can *always* change. Based upon the material facts presented to me, I cannot find that a reasoning mind could not have reasonably reached the BOE's decision to act on the PGCPs Superintendent's recommendation presented to it in January 2010, even if some sort of review was pending about Whitehall at that time. The BOE concluded that Whitehall was overcrowded and the material facts, not in genuine dispute, establish that the BOE had good cause to believe this was true in January 2010 and, further, that it needed to act upon that conclusion by approving the BOE Plan.

The Appellants also argue that Whitehall's SRC, as they calculate it, shows that Whitehall is only a little over capacity at this time or that it may not be at certain points between now and 2015. The question presented to me, though, is whether, at the time the BOE made its decision, a reasoning mind could have concluded that Whitehall was overcrowded, *not* whether subsequent events or subsequent recalculations either now or in the future disagree with that conclusion. Accordingly, I cannot find that the Appellants' current calculation of SRC data – even if I could consider those calculations reliable<sup>3</sup> – constitute material facts.

Finally, the Appellants challenge that a reasoning mind could not have reasonably reached a decision about overcrowding in the Whitehall area that only resulted in a move of children from Whitehall. The undisputed SRC data shows that Whitehall was not the only school with overcrowding. Nevertheless, while the Appellants and other Whitehall

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<sup>3</sup> The Appellants did not fully explain how they made their calculations; nor did they present an affidavit from anyone qualified to establish the reliability of their calculations.

parents are clearly unhappy with the decision to change the school their children will attend, they have failed to establish how a change only at their school is a decision that could not have been reasonably reached by a reasoning mind. The evidence presented in the BOE Plan in January 2010 sufficiently established that the Whitehall facility was over-utilized and that the nearby Kenilworth facility was underutilized. While other schools in the general area may also have been over-utilized, fixing the problem one school at a time is not unreasonable.

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 Appellants, while making a valiant and heartfelt effort that produced a mound of data within a short period of time, have not established, or shown that they could establish at the hearing, sufficient proof to carry their burden to prove that the BOE Plan was unreasonable or arbitrary. As the only basis for the Appellants' appeal is that the BOE's decision was arbitrary and unreasonable, and as the undisputed material facts demonstrate that the BOE's decision *was* reasonable under the standards set forth at COMAR 13A.01.05.05B, 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



should be granted and that the BOE's January 7, 2010 decision to approve the BOE Plan 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**

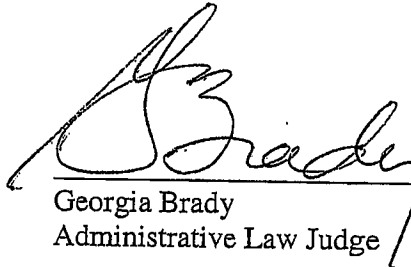
**I ORDER** that the hearing scheduled for June 22 – 23, 2010 is **CANCELLED**; further,

**I RECOMMEND** that the Maryland State Department of Education **GRANT** the Prince George's County Board of Education's Motion for Summary Affirmance and **AFFIRM** the Prince George's County Board of Education's January 7, 2010 decision to approve the BOE Plan.

May 13, 2010

Date

GB/ab  
#113758

  
Georgia Brady  
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.