

TIFFANY NEAL, ET AL.,

Appellant

v.

ANNE ARUNDEL COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-23

## OPINION

### INTRODUCTION

This case is an appeal of a redistricting decision made by the Anne Arundel County Board of Education (local board) on April 23, 2014. It arises as a result of a remand order from this Board. Specifically, in MSBE Opinion No. 13-66, the State Board held that the local board made a procedural error regarding the challenged portion of the redistricting decision. The local board's redistricting regulation, Regulation JAA-RA(D)(2)(d), required the local board to hold an additional public hearing on a revision to the redistricting proposal, if the revision was made before the final decision of the local board. The State Board found that the local board violated this provision when it eliminated a word from the Superintendent's proposal, thereby revising the redistricting proposal, without holding an additional public hearing on the revised proposal before adopting it. The State Board remanded the case to the local board so that it could conduct a public hearing in accordance with Regulation JAA-RA(D)(2)(d).

On remand, the local board publicized a reworded redistricting proposal and conducted a public hearing. On April 23, 2014, the local board adopted the proposal redistricting certain students from Central Elementary School (Central) to Mayo Elementary School (Mayo). On May 19, 2014, Appellants filed this appeal to the State Board challenging the April 23, 2014 decision.

We referred the case to the Office of Administrative Hearings (OAH), as required by COMAR 13A.01.05.07A(1), for review by an Administrative Law Judge (ALJ). The ALJ conducted a two day hearing in which he heard testimony and received evidence. On December 29, 2014, the ALJ issued a Proposed Decision recommending that the State Board uphold the redistricting because the Appellants had failed to demonstrate that the local board's redistricting decision was arbitrary, unreasonable or illegal. The ALJ found that the redistricting decision did not result from unlawful procedure, was reasonable and rationally based, and that the Appellants had failed to demonstrate that the decision was motivated by racial discrimination.

The Appellants filed exceptions to the ALJ's decision and the local board responded. Thereafter, various filings from the parties ensued, including a request from the Appellants to provide additional evidence and a motion to strike that evidence from the local board. The State Board received the last filing from the parties on April 27, 2015. Oral argument on the exceptions was held before the State Board on June 23, 2015.

## FATUAL BACKGROUND

This case is about a redistricting plan that affects students on Muddy Creek Road. Before redistricting, all students on Muddy Creek Road attended Central Elementary School. Under the redistricting plan, students living on the east side of Muddy Creek Road and those living on Fiddlers Hill Road, which is off of the west side of Muddy Creek Road, would go to Mayo Elementary School. Students on the west side of Muddy Creek Road would remain at Central. One of the Appellants lives on the east side of Muddy Creek and the other lives on the west side. Thus, their children go to different schools.

The full factual background in this case is set forth in the ALJ's Proposed Decision, Findings of Fact, pp. 4-30. We incorporate those facts herein. Additional clarification of the events that transpired is set forth below.

Following the State Board's remand of this case to the local board to correct the failure to hold a hearing on the revised redistricting plan, the Interim Superintendent, Mamie J. Perkins, sent a "backpack letter" home with students at the affected schools advising parents that the local board would be conducting an additional public hearing and vote on the redistricting plan with respect to the Central and Mayo communities. The letter stated, in part:

On April 2, 2014, I will recommend to the Board that it essentially take the same redistricting plan – with respect to Central and Mayo elementaries – that it approved in 2012 to public hearing. Specifically, I will recommend that the Board:

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

To be clear, on April 2 the Board will only vote on which proposal(s) to take to public hearing. That hearing will be held on April 23, and the Board will vote to adopt a plan later that evening. Should the Board reaffirm the plan it adopted in 2012, there will be no change to current attendance boundaries and no children will be impacted. (emphasis added).

The local board also sent out emails and used other forms of communication to notify members of the community of this information. (Finding of Fact ("FOF"), #26).

This language was different from the language that was previously used to describe the redistricting plan and at issue in the prior appeal. Unlike the prior notice, this one made clear that students on the east side of Muddy Creek Road would go to Mayo.

The local board addressed the redistricting plan at a public meeting on April 2, 2014, during which Appellant Neal voiced her concerns about the redistricting plan. In addition, the local board conducted a public hearing on April 22, 2014, during which Appellant Mims presented her concerns about the redistricting. (FOF #26, #28). At its public meeting on April 23, 2014, the local board discussed and approved the proposed redistricting plan. (FOF #30).

This appeal followed.

### STANDARD OF REVIEW

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

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

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

### LEGAL ANALYSIS

The Appellants have filed exceptions to the ALJ’s Proposed Decision. We address the exceptions in turn.

#### *Republication and Rehearing of Redistricting Proposal*

The Appellants argue that the local board’s decision was illegal because, after the State Board remanded the case for rehearing in MSBE Op. No. 13-66, the local board re-publicized and conducted a new hearing on only a portion of the redistricting proposal and not the entire redistricting plan that the local board had approved in 2012.

The State Board’s decision identified the issue in the prior redistricting case as being only a challenge to “that portion of the redistricting plan that requires certain students who had been attending Central to attend Mayo.” *Id.* As the ALJ explained:

A careful review of [the State Board decision] shows that the State Board remanded the case to the Local Board based only on a revision in the language describing the attendance area for the Central to Mayo portion of the redistricting plan. The State Board decision did not address or invalidate any other parts of the redistricting plan, which involved Davidsonville, the grandfather clause, or the planned residential subdivision located in Crofton. Because the State Board decision did not address any other aspects of the redistricting plan, and it limited the remand only to the change in language describing the Central to Mayo geographical attendance area, there was no requirement for the Local Board to present any other portion of the redistricting plan at the new public hearing in April 2014. (Citations omitted).

(ALJ Proposed Decision at 49-50). We concur. This Board's prior decision was limited by its facts to only that portion of the redistricting plan that the Appellants challenged – the redistricting of students from Central to Mayo. The local board did not err by focusing only on the Central to Mayo portion of the plan.

Appellants also maintain generally that the local board failed to adequately notify the public of the meetings concerning the redistricting after the State Board's remand. The meetings were publicized in various ways. Parents of students attending the affected schools were notified by "backpack letter" of the redistricting proposal and the April 2<sup>nd</sup> and 23<sup>rd</sup> public meetings to discuss the proposal. The meetings, including the April 22<sup>nd</sup> public hearing, were also publicized by other means. Both Appellants in this case had the opportunity to communicate their concerns about the redistricting to the local board at one of these public meetings. They have not presented evidence that the local board failed to adequately notify the public.

#### *Reasonableness of Decision*

In their exceptions, the Appellants maintain that the local board's decision was unreasonable for a variety of reasons.

First, Appellants contend that the "Chief Operating Officer testified that he did not know why the children of Muddy Creek Road were divided."<sup>1</sup> They then argue that the redistricting could not have been a reasonable plan if the Chief Operating Officer ("COO") could provide no reason for it. Despite Appellants' claim, the COO, Mr. Szachnowicz, testified that transportation safety was a major concern in the redistricting decision. (T.208). Both he and Mr. Wandres, the Transportation Specialist, testified about the overriding need to have safe side service on a high speed road such as Muddy Creek Road so that children enter and exit a bus from the same side without having to cross a high speed roadway. (T. 217-219). Mr. Wandres also testified that one of the main reasons for the east side west side split on Muddy Creek Road was to reduce the number of unsafe left-hand turns made by the buses. (T.75-76).

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<sup>1</sup> Appellant did not provide a transcript citation.

Second, Appellants allege that the decision is unreasonable because the “Director of Transportation testified that he did not know why three black children were the only children out of 2,000 students that had a different bus route in the evening prolonging their school day.” We presume Appellants are referring to Mr. Wandres, the Transportation Specialist. Mr. Wandres did not testify to the statement attributed to him by Appellants. Rather, he stated that for some children who live along Muddy Creek Road and attend Central, the morning route for bus 314 is different than the afternoon route which is split between bus 314 and bus 87. (T. 71-72). He explained that bus 314 was not originally supposed to have the entire morning route along Muddy Creek Road, but bus 87 does not have time in the morning to pick up the students on Muddy Creek that ride it in the afternoon because it would run out of time and make the students late for school due to traffic and congestion. (T.155-156).

Third, Appellants claim that the plan is unreasonable because it buses children onto a peninsula to attend school when there is a non-peninsula school closer to their homes. They maintain that attending school on a peninsula when you do not live there leads to problems transporting the children home from school in the event that the single access road is blocked due to flooding, accidents, or other reasons.

The peninsula issue was addressed at the OAH hearing. Mr. Szachnowicz testified that Anne Arundel County is replete with peninsulas due to its geography and topology, and that Anne Arundel County Public Schools (AACPS) assigns students that do not reside on peninsulas to peninsula schools all across the county. (T.235). Part of the reason for this, he explained, is to have contiguous boundary and attendance areas to allow for efficient transport of students. (T.236). Contrary to Appellant’s assertion, Mr. Szachnowicz stated that there is a contingency plan in place for all peninsula schools in the event that the access road is not passable. In such situations, the school system houses the students at the school until school officials are notified that the road is safe to deliver the students home. (T.233-234). In our view, it is not unreasonable to bus the children residing on the east side of Muddy Creek Road to a peninsula school.

Finally, the Appellants state that Mr. Wandres “testified that Muddy Creek Road is one of the most dangerous roads in Anne Arundel County, and that’s why the children of Muddy Creek Road go to Mayo. (Exceptions).<sup>2</sup> A review of Mr. Wandres testimony does not reveal such a statement. It discloses instead that the Appellants questioned Mr. Wandres about whether Route 214 (Central Avenue) was more dangerous traveling east or west of Muddy Creek Road. He responded that each direction has “different inherent problems.” (T.154-155). Moreover, the record is replete with testimony regarding the important role that transportation safety played in ensuring that there were safe bus stops and routes in developing the redistricting plan. This included consideration of issues such as traffic patterns, speed, sight lines, safe side service, and reducing dangerous left turns, while also maintaining contiguous attendance areas and efficient utilization of buses to achieve the goal of reducing overcrowding at Central. All of these issues were taken into consideration. Mr. Wandres explained it well when he compared the transportation issues to putting puzzle pieces together. He stated that “we have this . . . puzzle

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<sup>2</sup> Appellants further state that “the children of Muddy Creek Road also go to Central, and the buses for both schools drive the exact same route.” (Exceptions). It is unclear what Appellants mean by this statement. It is obviously not the case that the buses drive the same routes.

that we have to get together to make sure every bus – every kid gets a ride as efficiently as we can figure it and as safely as we can figure it out.” (T.66). We find that the local board’s decision was reasonable because there were legitimate rationales for the redistricting decision.

### *Discrimination Allegations*

Appellants argue that the redistricting decision was motivated by racial discrimination because it resulted in a historically African-American community along Muddy Creek Road being divided such that most students living on or adjacent to the west side of Muddy Creek remained assigned to Central while students living on or adjacent to the east side of Muddy Creek Road were redistricted from Central to Mayo. In our view, there is nothing inherently discriminatory about splitting the attendance area down the middle of Muddy Creek Road. Particularly when both African American and white students were redistricted from Central to Mayo, a Blue Ribbon school, and both schools have a minority African American population. We presume, therefore, that the Appellants are arguing that predominantly white communities were not split up the way that the Muddy Creek Road community was split. Although there is no reliable racial composition data about any particular community in the record, Appellants questioned the witnesses about the community of Selby which remained slated for Central even though it is closer in proximity to Mayo. Mr. Wandres testified that safety considerations led to the assignment of the Selby residents to Central in order to eliminate the dangerous sharp left-hand turn onto Central Avenue. (T. 149-152). The community of Lochhaven was also slated for Central to avoid dangerous left-hand turns. (T.161-162).

Appellants presented no evidence that the redistricting committee, the Superintendent or the local board considered race as an issue in the redistricting decision. In fact, the testimony showed that the redistricting committee had no household race data before it in reaching its decision. In addition, Muddy Creek Road was not the only major road that was divided. Another major roadway, Central Avenue, was divided between the two schools. All of the testimony supports the fact that transportation safety considerations were the primary issue in this case. As the ALJ stated, “[t]he evidence in this record supports the conclusion that the redistricting plan and the accompanying bus routes were established in a race-neutral manner.” (Proposed Decision at 54).

In arguing that the decision was discriminatory, the Appellants also repeat the same reasons they used to argue that the decision was unreasonable, *i.e.*, that the Muddy Creek Road community was divided; that students are being bused to a peninsula; that the only children with two different bus routes and a longer bus ride are African American. We explained above that the record contains legitimate and reasonable rationales for these decisions. Appellants have failed to present evidence of racial discrimination.

### *Credibility of Witness Testimony*

Appellants generally question the credibility of the school system representatives involved in the case claiming that school officials “are given the benefit of the doubt when they present ‘facts’ to the board members or testify [before] the ALJ,” and that they “are less than truthful and will say anything to continue to uphold their agenda.” (Exceptions). As to witness

credibility, it is well established that determinations concerning witness credibility are within the province of the trier of fact. *See, e.g., Bd. of Trustees v. Novik*, 87 Md. App. 308, 312 (1991) *aff'd*, 326 Md. 450 (1992) (“It is within the Examiner’s province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences.”); *see also Board of Education v. Paynter*, 303 Md. 22, 36 (1985) (Not only is it the province of the trier of fact to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the trier of fact to draw the inferences.). Appellants have not provided any basis to overturn any witness credibility decisions made by the ALJ.

#### *Additional Evidence*

Appellants have asked the State Board to accept additional evidence regarding left-hand turns made by AACPS buses on their routes. One document is a March 17, 2015 email from Richard Wandres to Appellant Neal explaining that the left-hand turn made by one of the busses from Muddy Creek Road to Collins Road is part of the bus route and is not dangerous because of the sight distance. The other document is a February 20, 2015 police report concerning an accident involving a school bus carrying students from Mayo that struck a vehicle as the bus was turning left from Central Avenue onto Camp Letts Road. The bus did not turn wide enough and struck the vehicle that was waiting at the stop sign on Camp Letts Road. (Motor Vehicle Crash Report). Appellants argue that this evidence undercuts the testimony of Mr. Wandres and Mr. Szachnowicz, who both testified that the redistricting decision was based on bus safety, one aspect of which is eliminating dangerous left-hand turns. Appellants believe the evidence supports their position that the safety rationale was a sham.

The State Board may accept additional evidence on the issues in an appeal if it is shown that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04C. Neither piece of evidence was available to the Appellants at either the time of the redistricting vote or during the OAH hearing. Thus, the issue is whether it is material to the case.

We believe that the Appellants have misconstrued testimony from the OAH hearing regarding left-hand turns. Mr. Wandres testified that the transportation department tries to eliminate as many left-hand turns as possible when developing bus routes because it is more dangerous for the buses to make left-hand turns rather than right-hand turns. (FOF #44). He did not testify that no bus route contains a left-hand turn or that all left-hand turns are equally dangerous. Mr. Wandres’ statement in the email is an example of a situation in which the left-hand turn was not considered to be dangerous because of the sight lines. As for the bus striking the stopped vehicle waiting at a stop sign, the incident is not evidence that all left-hand turns on bus routes are dangerous. The fact that a bus route includes a left-hand turn is not indicative that transportation safety was not a consideration. For these reasons, we do not consider the additional evidence presented by the Appellants to be material to the case and decline to admit it.

#### CONCLUSION

For the reasons stated herein, we adopt the Proposed Decision of the ALJ and affirm the redistricting decision.

*Mary Kay Finan*  
Mary Kay Finan  
President

*James H. DeGraffenreidt, Jr.*  
James H. DeGraffenreidt, Jr.

*Linda Eberhart*  
Linda Eberhart

*Absent*  
Chester E. Finn, Jr.

*S. James Gates, Jr.*  
S. James Gates, Jr.

*Larry Giammo*  
Larry Giammo

*Luisa Montero-Diaz*  
Luisa Montero-Diaz  
*Absent*

Sayed M. Naved  
*Madhu Sidhu*

Madhu Sidhu

*Andrew R. Smarick*  
Andrew R. Smarick

*Guthrie M. Smith, Jr.*  
Guthrie M. Smith, Jr.

June 23, 2015

TIFFANY NEAL and TYRA MIMS,

APPELLANTS

v.

BOARD OF EDUCATION OF

ANNE ARUNDEL COUNTY

\* BEFORE DOUGLAS E. KOTEEN,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH No. MSDE-BE-09-14-23080

\* \* \* \* \*

**PROPOSED DECISION**

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

**STATEMENT OF THE CASE**

On April 18, 2012, the Anne Arundel County Board of Education (Local Board) approved the recommendation of the Superintendent of the Anne Arundel County Public Schools (AACPS) for a redistricting plan involving Central Elementary School (Central), Mayo Elementary School (Mayo), and Davidsonville Elementary School (Davidsonville). Pertinent to this appeal, the plan redistricted certain students residing in Anne Arundel County in the Muddy Creek Road area from attending Central to attending Mayo for the 2012-2013 school year and beyond.

On May 16, 2012, Tiffany Neal (Appellant Neal), Tyra Mims (Appellant Mims), and five other individuals<sup>1</sup> filed an appeal with the Maryland State Board of Education (State Board). On June 27, 2012, the State Board transmitted the appeal to the Office of Administrative Hearings

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<sup>1</sup> Only Tiffany Neal and Tyra Mims are the Appellants in the current proceeding.

(OAH) to conduct a contested case hearing and issue a proposed decision. Code of Maryland Regulations (COMAR) 13A.01.05.07A(1). In the meantime, the redistricting plan was implemented in August 2012 at the beginning of the 2012-2013 school year.

On December 6 and 7, 2012, Administrative Law Judge (ALJ) Una M. Perez conducted a hearing. On March 5, 2013, ALJ Perez issued a proposed decision in which she found that the redistricting plan of the Local Board adopted on April 18, 2012 as it pertained to Central and Mayo was not unreasonable, arbitrary, or illegal under the relevant statute, regulations, and case law. On December 16, 2013, the State Board issued a decision remanding the case to the Local Board on procedural grounds directing it to conduct a new public hearing in accordance with the requirements of Local Board Regulation JAA-RA(D)(2)(d).

On or about April 2 and 22, 2014, after providing notice to the public, the Local Board conducted a new meeting and public hearing regarding the redistricting plan. On April 23, 2014, the Local Board adopted the recommendation of the Interim Superintendent of AACPS for a redistricting plan that redistricted certain students from Central to Mayo. On May 19, 2014, Appellant Neal and Appellant Mims (Appellants) filed an appeal with the State Board.<sup>2</sup> On June 27, 2014, the State Board transmitted the appeal to the OAH to conduct a contested case hearing and issue a proposed decision. COMAR 13A.01.05.07A(1).

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<sup>2</sup> Regarding the original May 2012 appeal, the ALJ and State Board addressed issues of standing in their respective decisions. The State Board found that both Appellants Neal and Mims had standing to pursue their appeal. The State Board found that Appellant Neal had standing due to her "direct interest" or "injury in fact" as a result of the Local Board's redistricting decision and that Appellant Mims had standing because her daughter attended one of the affected schools. (Jt. Ex. 1). No issue of standing has been raised by any party regarding the Appellants' May 2014 appeal. Therefore, both Appellants are proper parties to this proceeding. In their May 2014 appeal, the Appellants do not challenge any substantive aspects of the redistricting plan that redistricted certain students from Central to Davidsonville, aside from a narrow procedural issue addressed below.

On October 6 and 7, 2014, I conducted a contested case hearing at the AACPS, 2644 Riva Road, Annapolis, Maryland 21401. COMAR 13A.01.05.07A(1). Appellants Neal and Mims were present and represented themselves.<sup>3</sup> P. Tyson Bennett, Esquire, represented the Local Board.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); the procedural regulations for appeals to the State Board of Education, COMAR 13A.01.05; and the Rules of Procedure for the OAH, COMAR 28.02.01, govern the procedure in this case.

### ISSUE

Was the Local Board's decision, adopted on April 23, 2014, which redistricted certain students who had been assigned to attend Central Elementary School to attend Mayo Elementary School, arbitrary, unreasonable or illegal?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following Joint Exhibit on behalf of the parties:

Jt. Ex. 1. Memorandum from State Board to Mamie J. Perkins; P. Tyson Bennett, Esquire; and Appellant Neal, dated December 16, 2013, with attached State Board Opinion, No. 13-66, *Tiffany Neal, et al. v. Anne Arundel County Board of Education*, dated December 16, 2013.

I admitted the following exhibits on behalf of the Appellants:

App. Ex. 1. Central Elementary School Bus Routes, dated September 18, 2014;  
App. Ex. 2. Mayo Elementary School Bus Routes, dated September 18, 2014; and  
App. Ex. 3. AACPS Press Release, dated April 19, 2012.

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<sup>3</sup> Appellant Mims did not appear at the second day of hearing on October 7, 2014, due to a work conflict. At the hearing on October 6, 2014, she requested permission to waive her appearance for October 7, 2014. No other party objected to her request and I approved Appellant Mims' waiver request for the second day of hearing. COMAR 28.02.01.20D. Appellant Mims also represented that she would adopt as her own Appellant Neal's closing argument, which was presented on October 7, 2014.

I admitted the following exhibits on behalf of the Local Board:

- L.Bd. Ex. 1. Local Board Policy JAA, Redistricting and Attendance Areas, adopted on April 20, 2011; with attached AACPS Regulation JAA-RA, Redistricting and Attendance Areas, issued April 20, 2011; and
- L.Bd. Ex. 2. Letter from Mamie J. Perkins, Interim Superintendent of Schools, AACPS, to Parents and Guardians, dated March 27, 2014; with attached Agenda Item for the Board of Education, dated April 2, 2014; and Reaffirmation of Redistricting Plan Adopted by Anne Arundel County Board of Education on April 18, 2012, and Map.

Testimony

Appellants Neal and Mims each testified on their own behalf. The Appellants presented additional testimony from the following witnesses:

- 1. Daniel Waz, resident of Wolfe’s Reserve; and
- 2. Richard Wandres, Transportation Specialist, AACPS.

The Local Board presented the following witnesses:

- 1. Richard Wandres, Transportation Specialist, AACPS; and
- 2. Aleksy L. Szachnowicz, Chief Operating Officer, AACPS.

**FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

Background

- 1. Appellant Neal lives on Collins Road in Edgewater, Maryland, which is on the east side of Muddy Creek Road. Her residence is across Muddy Creek Road from Fiddlers Hill Road. (Jt. Ex. 1; TR 125, 288-289).
- 2. Appellant Neal’s son, E.S., began attending Mayo in kindergarten at the start of the 2012-2013 school year and is presently in the second grade at Mayo. (Jt. Ex. 1; TR 125). Prior to the Local Board’s implementation of the redistricting plan in August 2012, E.S. would have attended Central.

3. Appellant Mims is the sister of Appellant Neal. Appellant Mims lives on the west side of Muddy Creek Road, south of Fiddlers Hill Road. (TR 290-291). Her daughter, M.M., attended Central, both before and after the redistricting plan was implemented in August 2012. (Jt. Ex. 1). Currently, M.M. is in the third grade at Central. Appellant Mims' son, B.M., also attends Central and is currently in kindergarten. (TR 90-91, 98-100).

4. In 2011, AACPS, the State Department of Planning, and the Anne Arundel County Department of Planning and Zoning all determined that Central was overcapacity and was projected to continue to gain enrollment, so that the overcapacity at Central was expected to worsen. (TR 196-198). The State Department of Planning also determined that both Mayo and Davidsonville were under capacity and were projected to remain so in the future. Therefore, it was determined that both Mayo and Davidsonville had available spaces that could help relieve the overcrowding at Central. (TR 196-198).

5. All three elementary schools are located on Central Avenue (Maryland Route 214), with Davidsonville located farthest to the west, Mayo located farthest to the east, and with Central in between. (TR 197-198).

6. In about August 2011, the Superintendent of AACPS (Superintendent) determined that it was necessary to redistrict the attendance areas for Central, Mayo, and Davidsonville to relieve the overcrowding of students at Central and the under enrollment of students at Mayo and Davidsonville. (TR 34, 42).

#### Redistricting Process

7. In accordance with Local Board Policy JAA, Redistricting and Attendance Areas, and the Education Article of the Maryland Annotated Code, the Local Board determines the attendance area for each school upon the advice of the Superintendent. (L.Bd. Ex. 1).

8. Under Local Board Regulation JAA-RA, Redistricting and Attendance Areas, the Local Board recognizes that enrollment patterns are dynamic and may require the adjustment of student attendance areas over time. The Regulation provides for the Superintendent to appoint a Redistricting Committee to advise and make redistricting recommendations to the Superintendent. The Redistricting Committee is required to present its recommendation for a redistricting plan to the Superintendent, and the Superintendent must present a recommendation to the Local Board. (L.Bd. Ex. 1).

9. The Local Board must publicly announce its intention to consider redistricting and must conduct a public hearing. The Local Board shall provide opportunities for public input through its hearing process. The Local Board must make and announce its decision regarding a redistricting plan in a public session. (L.Bd. Ex. 1).

10. AACPS believes it is important and reasonable to have a citizen-led committee consisting of parents and guardians from the affected schools to serve on a redistricting committee, and to invite citizen participation in multiple meetings. It also believes that citizens should have a voice in the decision-making process. (TR 240-241).

11. Due to the overcrowding at Central, the Superintendent created a citizen-led redistricting committee, consisting of two parents from each school that would be impacted by the redistricting plan, to develop a redistricting proposal to address the issue of overcrowding. (TR 188-189).

12. Principals at the affected schools solicited volunteers and worked with their communities to identify two individuals from each affected school who were willing to serve on the redistricting committee. (TR 264). The committee included a total of ten participants, two each from Central, Mayo, Davidsonville, Central Middle School (CMS), and South River High

School (SRHS). Representatives from the middle school and high school were also included on the redistricting committee because the three elementary schools are feeder schools for CMS and SRHS. (TR 264-265).

13. Richard Wandres (Wandres), transportation specialist for AACPS, has responsibility for bus routes in the southern third of Anne Arundel County, which includes the Muddy Creek Road area. (TR 77, 140). He has worked in student transportation for twenty-four years and has participated in multiple school redistricting plans in Fredrick County and Anne Arundel County. (TR 138-139).

14. Wandres was involved in transportation planning for the redistricting plan in 2012. He attended every meeting of the redistricting committee and answered questions for the committee during the development of the redistricting plan in 2011-2012. (TR 88, 162-163). He discussed the safety aspects of transportation planning regarding the proposal to redistrict students from Central to Mayo along Muddy Creek Road and elsewhere. (TR 165-166).

15. AACPS staff provided the redistricting committee with information, including maps, demographics, test scores, class size, staff composition, and data regarding staff competency and qualifications. The committee held approximately five meetings in 2011 in which the committee members considered the information provided. (TR 189-194).

16. The meetings were announced in advance so members of the public could attend and ask questions regarding issues related to redistricting. Minutes were prepared and distributed at subsequent meetings. The committee considered multiple options and scenarios. After several months, the committee developed a recommendation for a redistricting plan that was submitted to the Superintendent in late 2011. (TR 190-191, 198-199, 203-204).

17. The Superintendent reviewed the recommended plan and supporting information considered by the committee. The Superintendent can accept or reject, in whole or in part, the recommendations of the redistricting committee when submitting a recommendation to the Local Board. (TR 191-192). In this case, the Superintendent accepted the recommendation of the redistricting committee and submitted its recommendation to the Local Board, without changes, in or about December 2011. (TR 204). There was opportunity for public input before the Superintendent submitted her recommendation to the Local Board, and before the Local Board submitted its recommendation for the public briefing and public hearing process. (TR 204-205).

18. The Local Board voted in a public meeting on which proposal it wanted to bring forward to a public briefing and public hearing. A public briefing was held, with no testimony taken, to inform the public of which redistricting proposal is under consideration by the Local Board. The Local Board then conducted public hearings, in the affected area or at Local Board headquarters, to obtain input from the public. (TR 192-194). The Local Board then voted in public session on the redistricting option that it intended to implement in the next school year. This process occurred during 2011 and 2012. (TR 194, 203-205).

19. The Local Board conducted two public hearings in or about March 2012 with testimony provided regarding the proposed redistricting plan. (TR 205). In addition to testimony that was submitted, the Local Board also considered letters and other electronic communication that was received. One public hearing was conducted at SRHS.

20. The Local Board voted on April 18, 2012 at a Local Board meeting to approve the Superintendent's recommendation for the plan to redistrict students from Central to Mayo. (TR 206). That redistricting plan was implemented in August 2012 at the beginning of the 2012-2013 school year. (App. Ex. 3; Local Bd. Ex. 2; TR 58-59).

21. The Appellants and five other individuals filed an appeal with the State Board on May 16, 2012 challenging the redistricting plan that redistricted certain students and geographical areas from Central to Mayo. On March 5, 2013, after a contested case hearing on December 6 and 7, 2012, ALJ Perez issued a proposed decision upholding the Local Board's redistricting plan, finding that it was not arbitrary, unreasonable, or illegal.

22. On December 16, 2013, the State Board issued a decision, in Opinion No. 13-66, remanding the case to the Local Board, based on a procedural error, so it could conduct a new public hearing in accordance with the Local Board's redistricting policy and regulations. The State Board rejected the majority of the ALJ's proposed decision, but adopted the ALJ's Findings of Fact in her proposed decision, except for Findings of Fact Nos. 66-68. (Jt. Ex. 1).

23. On March 27, 2014, Interim Superintendent Mamie J. Perkins sent a backpack flyer in the form of a letter to parents and guardians of students at the affected schools advising of the State Board's decision sending the case back before the Local Board to conduct an additional public hearing and to vote on a redistricting plan for Central and Mayo. She advised in her letter that she was essentially recommending to the Local Board the same redistricting plan for Central and Mayo that was previously approved and she described the attendance area in the letter. (L.Bd. Ex. 2). The 2014 language recommended by the Superintendent describing the redistricted attendance area for Central to Mayo was different from the language used in 2012. (L.Bd. Ex. 2; App. Ex. 3).

24. The Superintendent's letter also notified parents and guardians of the redistricting process, in pertinent part, as follows:

Pursuant to Board Policy JAA and Administrative Regulation JAA-RA, the Board must vote on a plan no later than the end of April. Prior to that vote the Board must decide, in public, what option(s) to take to a public hearing.

On April 2, 2014 I will recommend to the Board that it essentially take the same redistricting plan – with respect to Central and Mayo elementaries – that it approved in 2012 to public hearing. Specifically, I will recommend that the Board:

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

To be clear, on April 2, the Board will only vote on which proposal(s) to take to public hearing. That hearing will be held on April 23, and the Board will vote to adopt a plan later that evening. **Should the Board reaffirm the plan it adopted in 2012, there will be no change to current attendance boundaries and no children will be impacted.**

Documents that will be presented to the Board on April 2 are attached to this letter. If you wish to have a copy of the state Board of Education's decision, please contact the Public Information office at [telephone number].

(L.Bd. Ex. 2) (emphasis in original).

25. The redistricting plan that had been approved at the April 18, 2012 Local Board meeting provided as follows:

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

26. In accordance with the State Board decision, the Local Board held a meeting or public briefing on April 2, 2014 and a public hearing on or about April 22, 2014 to address the proposed redistricting plan. In addition to the backpack flyer, the Local Board sent out emails and other means of communication to notify members of the community concerning the scheduling of the public briefing and public hearings. (TR 111-112; L.Bd. Ex. 2).

27. The Local Board took testimony from members of the public at the Local Board meeting and public hearing in April 2014 regarding the redistricting plan before it took a vote on whether to approve the plan. (TR 221, 266-267). The Local Board holds two meetings per month. The public hearing was held in between the local Board meetings. (TR 221).

28. Appellant Neal testified and presented her concerns about the redistricting plan at the April 2, 2014 Local Board meeting. On or about April 22, 2014, Appellant Mims testified at the Local Board public hearing and presented her concerns about the redistricting plan. (TR 111-112).

29. On April 23, 2014, the Local Board voted to approve the redistricting plan requiring certain students who were previously assigned to attend Central to be redistricted to attend Mayo to relieve overcrowding at Central and increase enrollment at Mayo. (TR 112, 266-267; L.Bd. Ex. 2). Although the language describing the redistricted area was revised in 2014 to make the description of the attendance area clearer and more accurate than the language used in 2012, the Local Board's vote on April 23, 2014 did not alter the geographic attendance area for the redistricting plan that was originally implemented in August 2012 at the beginning of the 2012-2013 school year.

30. The redistricting plan that was discussed and considered at the Local Board meeting and public hearing in April 2014, and which was approved by the Local Board in its vote on April 23, 2014, provides as follows:

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

(L.Bd. Ex. 2). This was the same language that was disseminated to the public through the Superintendent's March 27, 2014 letter and which was discussed at the Local Board meeting and public hearing in April 2014. (L.Bd. Ex. 2).

31. The reason for redistricting students on Muddy Creek Road from Central to Mayo was the same as the reason for all of the redistricting actions – to better balance the utilization of school facilities to relieve the overcrowding conditions at Central and better utilize the facilities at Mayo. (TR 248-249).

32. The Superintendent notified members of the community of the December 16, 2013 State Board decision and gave them an opportunity to request a copy of the decision in her March 27, 2014 letter. (L.Bd. Ex. 2).

33. Local Board meetings are televised on cable television and minutes of Local Board meetings are published on the AACPS website. AACPS published the minutes of the April 23, 2014 Local Board meeting on the AACPS website. Appellant Neal has not watched Local Board meetings on television, but has regularly reviewed the minutes of Local Board meetings on the AACPS website. (TR 112, 115, 117-120).

34. The vote by the Local Board approving the redistricting plan occurred in a public forum, was televised on a public cable channel, and the recommendations and supporting documents were available on the publicly-accessible AACPS website. (TR 258-260).

35. Aleksy Szachnowicz (Szachnowicz), Chief Operating Officer (COO) for AACPS, has been employed in school administration for nineteen years and has worked with AACPS for thirteen years. He oversees all administrative and support units of the school district, including transportation, budget and finance, facilities, and information technology. Szachnowicz has

extensive involvement in school redistricting and transportation issues, and was involved with both the 2012 and 2014 school redistricting plan for Central and Mayo. (TR 186-188).

36. Szachnowicz and other staff members participated in the redistricting process, which was open to the public. Szachnowicz attended community meetings, public hearings, and Local Board meetings in 2012 and 2014 regarding issues related to the proposed redistricting plan for Central, Mayo, and Davidsonville. (TR 188, 194-195, 206-207, 209). He presented information regarding the proposed redistricting plan at a public meeting of the Local Board, and attended a public hearing on the matter, and was present at the Local Board meeting in April 2014 when the Local Board voted to approve the redistricting plan. (TR 209-211). More than forty residents attended some of the meetings. All of the information considered, including the report, minutes, and exhibits, was made available to the public, AACPS staff, the Superintendent, and the Local Board throughout the process. Participants and interested parties had equal access to all information considered by the redistricting committee in its deliberative process. (TR 241-242).

37. Szachnowicz worked with staff in the facilities department and the public information office in 2014 to provide public notification of the public hearing process for the redistricting plan, through press announcements, emails, personalized letters, flyers, an automated "robo-call system", the AACPS website, and the public television station. (TR 211-213).

38. In 2014, after the State Board remanded the case to the Local Board to conduct a new public hearing, the Local Board addressed only that part of the redistricting plan that dealt with the redistricting of students from Central to Mayo, but not with parts of the plan involving Davidsonville and other issues. The original appeal and the State Board decision addressed only

the redistricting of students from Central to Mayo, and did not address any issues related to other parts of the redistricting plan, including Davidsonville and the western part of the County. (TR 213-214, 226-232).

### Transportation Safety

39. AACPS takes into consideration transportation and safety concerns when developing bus routes and drawing geographical school boundaries. Transportation issues were considered when the redistricting plan was being developed, recommended, and voted upon by the Local Board. (TR 207-208).

40. Muddy Creek Road and Central Avenue are major roadways in the Central and Mayo attendance areas. Both Muddy Creek Road and Central Avenue are considered to be high speed roads. The speed limit on Muddy Creek Road varies from forty to fifty miles per hour. The speed limit on Central Avenue varies from thirty to forty-five miles per hour. Some motorists on Muddy Creek Road exceed the fifty-mile-per-hour speed limit. The transportation department considers the existence of speeders in developing safe bus routes and bus stops. (TR 142-145).

41. The transportation department establishes bus stops with door-side service on higher speed roads to ensure the safety of the student riders. (TR 146). The concept of same-side or door-side service was considered by the committee, the Superintendent, and the Local Board in developing a redistricting plan. The plan was developed to ensure that door-side service was provided to students on high speed or heavily trafficked roads, and roads with poor sight lines, to promote safety. (TR 62, 208-209). In smaller communities with lower speed limits, the transportation department permits students to cross the road and provides both-side service at bus stops. (TR 146).

42. AACPS provides door-side bus service for students who live along busy high speed roads like Muddy Creek Road and Central Avenue so that students are not required to cross these busy roads to board or exit school buses. (TR 63-64, 67, 208-209). The entry door for the school buses is located in the forward position on the right side of the vehicle. (TR 208).

43. Door-side service is a particularly important safety consideration on Muddy Creek Road because of the high speed limit and numerous hills, bends, and turns, which impede the sight lines. Bus routes have been drawn so that students are not required to cross Muddy Creek Road to access their school bus due to its high speed, high traffic volume, and poor sight lines. (TR 217-219). The bus stops along Muddy Creek Road are located at driveways and at the entrance to communities. (TR 145, 219).

44. It is more difficult and dangerous for school buses to make left-hand turns rather than right-hand turns, so the transportation department tries to eliminate as many left-hand turns as possible when developing bus routes. (TR 148-150, 157). The Local Board split the east and west sides of Muddy Creek Road between the Central and Mayo attendance areas for safety reasons. The AACPS transportation department draws bus routes to attempt to minimize the number of left-hand turns that buses are required to make on their routes, particularly across major roads. (TR 75-76, 87). It is not possible to eliminate all left-hand turns in developing bus routes. (TR 159-160). Some buses must make left turns at traffic lights, such as from Central Avenue onto Muddy Creek Road. (TR 76).

45. The transportation department also considers the speed limits and sight lines of roadways in developing safe bus routes and bus stops. Consideration of sight lines is more critical on higher speed roads. (TR 141).

46. Morning and afternoon bus routes may vary because the transportation department must account for difficult turns, left-hand turns, and time considerations. The afternoon bus routes are sometimes different and longer than the morning routes so the transportation department can create more right-hand turns and ensure door-side service. (TR 149). In addition, some students are assigned to ride different buses in the morning and afternoon to ensure that students arrive at school on time. (TR 155-156).

47. Central Avenue is more congested east of Muddy Creek Road, but has a higher speed limit west of Muddy Creek Road. Therefore, the transportation department must consider several different traffic safety problems when drawing bus routes on Central Avenue. (TR 153-155).

48. Selby is a large residential community with tight roads and on-street parking, which makes it difficult for buses to maneuver. The community is large enough to require more than two full busloads to transport students to school. When exiting the Selby community, it is necessary to turn left onto Central Avenue to travel to Mayo. Traveling to Central from Selby requires the buses to turn right on Central Avenue when exiting Selby. Although Selby is closer to Mayo than to Central, students living in Selby have been assigned to Central primarily so that the bus routes include fewer left-hand turns to increase student safety. (TR 149-150).

49. The roads leading out of Selby are angled more towards Central than towards Mayo. In addition to the danger that would arise in turning left on Central Avenue to travel to Mayo from the Selby community, the buses would also have to make sharp left-hand turns onto a major roadway, which is very difficult and dangerous for buses. These safety considerations led the AACPS to assign the residents of Selby to attend Central rather than Mayo. (TR 150-152).

50. The bus route that serves the students in the Lochhaven community, which is districted for attendance at Central, has also been designed to avoid dangerous left-hand turns. (TR 161-162).

### Peninsulas

51. There are numerous peninsulas in Anne Arundel County due to the presence of many rivers, the Chesapeake Bay, and other bodies of water. (TR 117, 147-148).

52. Students in the Mayo attendance area are treated like all other students throughout the County with regard to attendance at schools on peninsulas. Students living outside peninsulas are assigned to peninsula schools throughout the County. (TR 235).

53. There is one major road, Central Avenue, that provides access to Mayo because the Mayo community is on a peninsula surrounded by water. If an emergency, such as a road closure, were to interfere with access to the school, such as an accident or flood, then the transportation department would either hold onto the students, or not pick them up at all, until the situation was resolved. (TR 68-69, 113-114).

54. If there was an incident that cut off access to a peninsula, students would remain housed in the school until AACPS was notified by public officials that the road was safe and passable. AACPS remains in constant communication with public safety entities, County and State road officials, and police and fire departments, with regard to the access on the public roads. (TR 233-234). AACPS also notifies parents and the media regarding any issues involving access on the public roads. (TR 234).

### Considerations of Race

55. African-American students are in the minority at both Central and Mayo. (TR 90).

56. The Muddy Creek Road area is historically an African-American neighborhood. (TR 112). The Appellants, and their children, are African-American. Many students who live along Muddy Creek Road in the redistricted area are African-American. (TR 91-92). Muddy Creek Road is about twelve miles long and ends in another peninsula. (TR 112, 121-122).

57. The Local Board did not consider any racial element with regard to the transfers that occurred from the redistricting plans for Central and Mayo in 2012 and 2014. (TR 216). Szachnowicz is not aware of the demographics of Muddy Creek Road on a dwelling-by-dwelling or resident-by-resident basis. (TR 232-233).

58. Students living along Muddy Creek Road, including some African-American students, are assigned to Mayo in a contiguous geographic attendance area where buses are able to efficiently pick up students heading northbound on Muddy Creek Road. (TR 236).

59. Students were redistricted from Central to Mayo based on space, capacity, and transportation concerns. All students within a geographic attendance zone who are eligible for transportation are picked up and transported to school, with no differentiation made by AACPS on the basis of race. (TR 236-237).

#### Miscellaneous

60. Students who live in Fiddlers Hill, a small community on the west side of Muddy Creek Road, are assigned to attend Mayo under the redistricting plan. Fiddlers Hill is contiguous with the rest of the Mayo attendance zone on the east side of Muddy Creek Road. (TR 256-257).

61. The redistricting committee determined that all other students residing on the west side of Muddy Creek Road are assigned to attend Central. (TR 81-86).

62. Appellant Mims lives about 400 yards from the Fiddlers Hill bus stop. (TR 91). Although she lives about five minutes by car from Central, the bus ride can take up to forty-five minutes for transportation to Central based on the number of students on the bus. (TR 93).

63. As a result of the redistricting plan, five kindergarten students who ride the bus were assigned to Mayo instead of Central. (TR 92-93).

64. Daniel Waz (Waz) lives in Wolfe's Reserve, a small community off of the east side of Muddy Creek Road. (TR 32). The redistricting plan implemented in August 2012 would have resulted in his daughter being redistricted from Central to Mayo. However, Waz's daughter has continued to attend Central after implementation of the redistricting plan in August 2012 because the Local Board approved Waz's request for an administrative waiver allowing his daughter to remain as a student at Central. (TR 49-53). Waz and his daughter are Caucasian.

65. The school day begins earlier at Mayo than at Central for reasons primarily related to rush-hour traffic. (TR 116).

66. Mayo is a national "blue ribbon" school, which reflects that the students' test scores at Mayo are very good. (TR 123-124). Central and Mayo are both highly functional schools that rank in the top 100 of all Maryland schools. (TR 127). The redistricting committee considered Mayo's status as a national blue ribbon school, and that all of its teachers are "highly qualified" under federal law, during the process of developing a redistricting plan. (TR 214-215).

67. No student who lives within the walking zone for Mayo has been districted to attend Central. (TR 249-250).

68. The blue dots on the map in Local Board Exhibit 2 reflect households with children that attend Mayo. The green dots on that map reflect households with children that

attend Central. The dividing line between the Central and Mayo attendance areas is where the blue dots end and the green dots begin in the Mayo peninsula on the colored map in Local Board Exhibit 2. (TR 268-269; L. Bd. Ex. 2).

69. It is not typical for the AACPS to issue a press release after a Local Board vote. (TR 274-275). Although a press release was issued in April 2012 after the Local Board voted to uphold the 2012 redistricting plan, no press release was issued after the April 23, 2014 vote by the Local Board adopting the 2014 redistricting plan.

The State Board, by its decision of December 16, 2013, Opinion No. 13-66, adopted all of the Findings of Fact in ALJ Perez's proposed decision of March 5, 2013, with the exception of Findings of Fact Nos. 66, 67, and 68. In accordance with the instructions of the State Board, I hereby incorporate Findings of Fact Nos. 1-65 and 69-74, as found by ALJ Perez, by a preponderance of the evidence in her proposed decision, as follows:<sup>4</sup>

1. Appellant Tiffany Neal lives on Collins Road in Edgewater Maryland, east of Muddy Creek Road (MCR). Her son, Ethan, started kindergarten at Mayo Elementary School (MES) in the 2012-2013 school year.
2. Tyra Mims is Appellant Neal's sister. Ms. Mims lives on the west side of Muddy Creek Road. Her daughter, Morgan, attends Central Elementary School (CES).
3. Proceeding north on MCR toward Central Avenue (Maryland Route 214), the east side of MCR is on the right and the west side of MCR is on the left.

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<sup>4</sup> In closing argument, counsel for the Local Board argued that the State Board had already adopted the Findings of Fact made by ALJ Perez, other than Nos. 66-68, and that the adopted findings remain relevant to this appeal. (Jt. Ex. 1). The Appellants did not respond to the Local Board's argument. In accordance with the State Board Opinion, I am incorporating into this record verbatim those Findings of Fact made by ALJ Perez that were adopted by the State Board. I have retained the Finding of Fact numbers used by ALJ Perez in her March 5, 2013 Proposed Decision.

4. In or about August 2011, because CES was over capacity, the Superintendent of AACPS (Superintendent) determined that it was appropriate to consider redistricting the attendance areas of CES, MES, and Davidsonville-Elementary School (DES).

5. On behalf of the Superintendent, Charles (Chuck) Yocum, the Specialist in Student Demographic Planning, requested the principals of each of the three affected elementary schools to designate two parents to serve as members of a Redistricting Committee (Committee). Bd. Ex. A.<sup>5</sup> The principals did so.

6. Mr. Yocum was the AACPS employee responsible for the operational details of the redistricting process, including scheduling meetings, preparing and distributing materials, and serving as the contact person throughout.

7. Board Policy JAA and Board Administrative Regulation JAA-RA set forth Board policy and procedures governing the formation and adjustment of school attendance areas, i.e., the geographic areas from which a school's students are drawn. Bd. Ex. B at 6-9. There is a specific timeline for the redistricting process. *Id.* at 10.

8. An organizational meeting of the Committee was scheduled for September 27, 2011, at CES.

9. A "backpack flyer" announcing the meeting was sent home with students at all three elementary schools. Bd. Ex. B at 2.

10. At the meeting on September 27, 2011, Mr. Yocum explained the Superintendent's redistricting request via a power point presentation, which was provided to the Committee electronically the next day, September 28, 2011. Bd. Ex. B.

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<sup>5</sup> In her Findings of Fact, ALJ Perez cited the exhibits that were admitted into evidence in the hearing she held in December 2012. These exhibits were not offered into evidence at the hearing held on October 6 and 7, 2014.

11. The Superintendent's Charge to the Committee was: "Due to continued growth at [CES], the Superintendent is charging the Committee to examine and present to him redistricting option(s) to alleviate, to the extent possible, overcrowding at [CES]." Bd. Ex. B at 12.

12. The capacity of CES is 665 students. The capacity of DES is 727 students. The capacity of MES is 352 students. As of September 16, 2011, the enrollment at CES was 795 students; the enrollment at DES was 591 students; and the enrollment at MES was 293 students. Bd. Ex. B at 13. CES was over capacity while DES and MES were both under capacity. *Id.*

13. Based on five-year projections provided by the Maryland Department of Planning, CES would be 27% over capacity by 2016, while DES and MES would be operating at 72% and 82% of capacity, respectively. Bd. Ex. B at 13; *see also* Bd. Ex. C at 52.

14. After the first meeting, the Committee requested and received information from the AACPS database reflecting, on a neighborhood-by-neighborhood basis, the number of students who could potentially be affected by the redistricting. The information was provided on maps and in numerical form, by grade level. The maps showed the number of students potentially affected in each area. Bd. Ex. B-1.

15. Map 2 depicted schematically the "East Side Muddy Creek Road," Fiddlers<sup>6</sup> Hill Road, Wolfe's Reserve, and other roads and areas. Bd. Ex. B-1 at 37, 41. Map 3 depicted schematically "River Club Estates-Camp Letts Road-Oak Lane-South Side of Central Ave. to Mayo Elementary Boundary from Muddy Creek Road." Bd. Ex. B-1 at 38, 42.

16. The Committee's next meeting took place on October 4, 2011 at DES. A backpack flyer advised parents at all three schools of the date and location of the meeting. Bd. Ex. C. Members of the public attended this meeting and had the opportunity to express their views and to ask questions.

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<sup>6</sup> In some documents in the record, this word is spelled "Fiddler's." I have rendered as it appears.

17. At the October 4, 2011, meeting, the Committee and the attendees reviewed the enrollment and capacity data concerning the three schools, as well as the maps depicting the various roads, areas and communities that were being considered. The Committee also reviewed information concerning subdivisions in the South River High School Feeder System. Bd. Ex. C at 61-64, Bd. Ex. D at 65.

18. The Committee prepared Minutes of the October 4, 2011 meeting, including brief renditions of comments and questions from members of the audience, and Mr. Yocum's and/or the Committee members' responses. Bd. Ex. D.

19. The Committee's next meeting took place on October 11, 2011 at MES. A backpack flyer advised parents at all three schools of the date and location of the meeting. Bd. Ex. E. Members of the public attended this meeting and had the opportunity to express their views and to ask questions.

20. At the October 11, 2011 meeting, the Committee considered additional data it had requested, particularly the staffing allocation and class size ratios at the three elementary schools. Bd. Ex. E at 72.

21. In addition, the Committee and Mr. Yocum discussed four proposed redistricting plans. *See* Bd. Ex. E at 75-96 and 100-109. Each plan consisted of three bulleted elements. Only the first bullet specifically concerned the redistricting of students from CES to MES.<sup>7</sup>

22. The first bullet in each plan read as follows:

[The plan] proposes to move: From Central Elem. to Mayo Elem.: All students living along Muddy Creek Road down to and including Wolfe's Reserve and Fiddler's Hill Road as well as those students living east of Muddy Creek Road

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<sup>7</sup> The second bullet in each plan concerned the redistricting of students from CES to DES, which the Appellants do not challenge.

and South of Central Avenue including those living in River Club Estates and along Camp Letts Road.

Bd. Ex. E at 78, 83, 88, and 93.

23. Each plan contained a third bullet, stating “[The plan] includes grandfathering of rising 5<sup>th</sup> graders (current 4<sup>th</sup> graders).” Bd. Ex. E at 78, 83, 88, and 93. This meant that 4<sup>th</sup> graders would have the option of remaining at their current school or changing schools.

24. Mr. Yocum explained the scope of each proposal to the Committee and persons in attendance, using a laser pointer and maps.

25. The maps are not “cartographer’s maps” or drawn to scale, but are schematic representations of the areas involved. Households with school children in each attendance area are shown by colored dots—red for DES, yellow for CES, and blue for MES.

26. The boundary lines for areas contemplated for redistricting are shown in red on the various maps.

27. Each proposal was accompanied by a data sheet showing how the proposal would affect the utilization percentages for each of the three schools. Bd. Ex. E at 81, 86, 91, and 96.

28. With particular reference to the first bullet in each proposal, Mr. Yocum explained that the redistricting from CES to MES involved students living on the east side of MCR, with the exception of students living on Fiddlers Hill Road, which is to the west of MCR. The southernmost community involved was Wolfe’s Reserve.

29. The Committee prepared Minutes of the October 11, 2011 meeting. The Minutes document the review of all four proposals, public testimony and questions, and Mr. Yocum’s answers. Bd. Ex. F. The Committee indicated it would vote on a proposal at the next meeting.

*Id.* at 114.

30. The Committee's third and final meeting took place on October 18, 2011 at CES. A backpack flyer advised parents at all three schools of the date and location of the meeting. Bd. Ex. G. Members of the public attended this meeting and had the opportunity to express their views and to ask questions.

31. The Committee prepared Minutes of the October 18, 2011 meeting. Bd. Ex. H. The Committee discussed proposals I and III in executive session, and eliminated those proposals. The Committee also accepted additional testimony and correspondence for inclusion in the record. *Id.* at 142.

32. At the October 18, 2011 meeting, the Committee voted to recommend only Proposal IV to the Superintendent for his consideration. Bd. Ex. H at 145. As reflected on the face of the power point presentation, the language of the first bullet in Proposal IV was exactly the same as when it was presented on October 11, 2011. Bd. Ex. G at 136; Bd. Ex. E at 93.

33. The Committee presented its Recommendation and Report to the Superintendent on October 26, 2011. The Committee's Report included a narrative describing its process, the four proposals, a petition pertaining to the CES-DES redistricting, minutes of the three October meetings, and additional e-mails and correspondence from concerned parents. Bd. Ex. I.

34. The maps that pertained to the first bullet in Proposal IV did not change at any time during the Committee's deliberations.

35. The Superintendent accepted the Committee's recommendation and submitted it as an Information Item for the December 7, 2011 meeting of the Local Board. Bd. Ex. J.

36. The Superintendent recommended redistricting from CES to MES:

[A]ll students living along Muddy Creek Road down to and including Wolfe's Reserve and those students living on Fiddlers Hill Road, as well as those students living east of Muddy Creek Road and south of Central Avenue as it extends to the

current boundary with Mayo Elementary, including those living in River Club Estates and along Camp Letts Road.

Bd. Ex. K at 209. This recommendation expressly referred to the “Central Elem. to Mayo Elem Map.” *Id.*; *see* Bd. Ex. K at 212.

37. The Superintendent’s Recommendation was an Action Item on the agenda for the Local Board’s January 4, 2012 meeting. Bd. Ex. K at 215. At the January 4, 2012 meeting, the Local Board voted to take the Superintendent’s redistricting proposals to public hearing. Bd. Ex. L at 216. In accordance with the Redistricting Timeline, a public briefing was required to take place before the public hearing. *See* Bd. Ex. B at 10.

38. On February 6, 2012, Mr. Yocum conducted a Redistricting Briefing at CES to afford interested persons the opportunity to ask questions and seek clarification. No public testimony was taken at the Briefing.

39. As with the Committee meetings, a backpack flyer was sent home with students to provide notice of the Briefing. The flyer contained the Superintendent’s recommendation as to the CES-MES redistricting verbatim. Bd. Ex. L at 216, item 1.

40. At the Briefing, the proposed redistricting of CES students to MES was presented in a power point slide as follows:

From Central Elem. to Mayo Elem.: All students living along Muddy Creek Road down to and including Wolfe’s Reserve and Fiddler’s Hill Road as well as those students living east of Muddy Creek Road and South of Central Avenue including those living in River Club Estates and along Camp Letts Road.

Bd. Ex. L at 222. It was accompanied by a map showing the affected area as a shaded area. *Id.* at 223.

41. On March 20, 2012, the Local Board conducted a Redistricting Hearing at South River High School. The purpose of the Hearing was to give the community the opportunity to provide testimony to the Local Board concerning the proposed redistricting, Bd. Ex. M at 230.

42. A backpack flyer was sent home with students to provide notice of the Hearing. The flyer again contained the Superintendent's recommendation as to the CES-MES redistricting verbatim. Bd. Ex. M at 230, item 1.

43. The proposed redistricting was an "action item" on the agenda for the April 18, 2012 meeting of the Local Board. Bd. Ex. N.

44. As pertinent to the CES-MES redistricting, the agenda item read:

The following redistricting options are before the Board for its decision:

1. Redistricting from Central Elementary to Mayo Elementary students living along Muddy Creek Road down to and including Wolfe's Reserve and those students living on Fiddlers Hill Road, as well as those students living east of Muddy Creek Road and south of Central Avenue as it extends to the current boundary with Mayo Elementary, including those living in River Club Estates and along Camp Letts Road.
2. . . .
3. Optional grandfathering of rising 5<sup>th</sup> graders (current 4<sup>th</sup> graders) at Central Elementary.

Bd. Ex. N.

45. With respect to enrollment, the Superintendent's proposed redistricting had the effect of lowering the CES percentage utilization rate in 2016 to 107%, and increasing the rates to 87% at DES and 91% at MES, respectively. Bd. Ex. O at 237.

46. The Local Board voted 7-0 to approve the agenda action item on April 18, 2012.

47. On April 19, 2012, the AACPS Public Information Office issued a Press Release. As pertinent to the CES-MES redistricting, the Press release contained the language of the agenda action item verbatim. App. Ex. 1.

48. On May 16, 2012, Appellant Tiffany Neal filed this appeal.

49. On May 17, 2012, the Superintendent sent a memorandum to the principals of seven AACPS elementary schools, attaching a summary of the redistricting actions that were adopted by the Local Board on April 18, 2012. Bd. Ex. O at 246.

50. With respect to the CES-MES redistricting, the summary stated that the plan redistricted:

[A]ll students living along Muddy Creek Road down to and including Wolfe's Reserve and those students living on Fiddlers Hill Road, as well as those students living east of Muddy Creek Road and south of Central Avenue as it extends to the current boundary with Mayo Elementary, including those living in River Club Estates and along Camp Letts Road. Optional grandfathering of rising 5<sup>th</sup> graders (current 4<sup>th</sup> graders) with transportation provided.

Bd. Ex. O at 247.

51. Upon reviewing the appeal, Mr. Yocum undertook research to determine which, if any, of the named appellants had children in the AACPS who would or could be affected by the redistricting.

52. Mr. Yocum did this research in the course of his official duties as Specialist in Student Demographic Planning.

53. Mr. Yocum learned that Mr. and Ms. Mims lived on the west side of MCR and had a child who attended CES.

54. Based on his personal participation in the process and his understanding of the intent of the Committee, the Superintendent, and the Local Board, Mr. Yocum concluded that Ms. Mims's daughter Morgan would not be affected by the redistricting because she lived on the west side of MCR and would remain at CES.

55. Mr. Yocum contacted CES and learned that the administrators there believed that Morgan was to attend MES in the upcoming school year. Mr. Yocum instructed Assistant Principal

Barry Gruber to write the parents a letter, explaining that Morgan was not affected by the redistricting and would remain at CES.

56. Mr. Gruber sent Morgan's parents the letter on June 25, 2012. App. Ex. 4.

57. Ms. Mims wanted Morgan to remain at CES.

58. MES is a federally and state-designated "blue ribbon school." All the teachers at MES are "highly qualified" for purposes of the federal statute known as "No Child Left Behind" and its state equivalents.

59. Not all the teachers at CES are "highly qualified."

60. Appellant Neal and Ms. Mims, and their children, are African-American. Many of the families living on either side of or adjacent to MCR between Central Avenue on the north and Wolfe's Reserve on the south are also African-American.

61. The students from Fiddlers Hill Road who were redistricted to MES are not African-American.

62. Throughout the process, the Committee, the Superintendent and the Local Board understood that, except for Fiddlers Hill Road, the only portion of MCR that was to be affected by the redistricting was the east side, as well as the land mass east of MCR extending all the way to the water.<sup>8</sup>

63. The use of the adjective "all" to modify the phrase "students living along Muddy Creek Road" was an error in the four proposals considered at the October 11 and 18, 2011 Committee meetings and transmitted to the Superintendent; in the Superintendent's Recommendation to the Local Board; in the backpack flyer for the Redistricting Briefing; in the power point presentation

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<sup>8</sup> The body of water is not labeled on the maps but is clearly depicted in blue. I infer that it is the South River.

at the Redistricting Briefing; in the backpack flyer for the Redistricting Hearing; and in the summary transmitted to principals on May 17, 2012.

64. Vice Principal Gruber of CES and Mr. Wandres, a Transportation Specialist, initially believed that the redistricting as adopted by the Board encompassed both sides of MCR.

65. The language of the proposed CES-MES redistricting was correct when it appeared as an action item on the agenda for the Board's April 18, 2012 meeting. The adjective "all" no longer modified the phrase "students living along Muddy Creek Road." The Local Board voted on and approved this action item.

\*\*\* (Findings of Fact Nos. 66-68 from ALJ Perez decision were excluded pursuant to State Board Opinion No. 13-66).

69. Throughout the process, the Committee and the Superintendent had the benefit of input from transportation professionals within the AACPS, who are responsible for designing or modifying bus routes if redistricting makes new or changed routes necessary.

70. The entry and exit doors of school buses are on the right-hand side of the vehicle.

71. For student safety reasons, AACPS transportation professionals try to implement "same side service," meaning that students traveling by school bus are picked up and dropped off on the right side of the road, to the extent possible.

72. Students living on Fiddlers Hill Road can be picked up and dropped off on the right side of the road.

73. In addition to the backpack flyers, AACPS used other means to publicize the redistricting process, including the AACPS website and local print and electronic media.

74. Mr. Yocum did not change the language of the Local Board's redistricting decision to appease Ms. Mims or to defeat this appeal.

## DISCUSSION

### Substantive Law

The Appellants have the burden to prove, by a preponderance of the evidence, that the decision of the Local Board, which redistricted certain students from Central to Mayo, was arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A, D. COMAR 13A.01.05.05A provides:

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

COMAR 13A.01.05.05B defines “arbitrary or unreasonable” as follows:

A decision may be arbitrary or unreasonable if it is one or more of the following:

- (1) It is contrary to sound educational policy; or
- (2) A reasoning mind could not have reasonably reached the conclusion the local board or the superintendent reached.

COMAR 13A.01.05.05C defines “illegal” as follows:

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.

The Maryland State Department of Education (MSDE) regulations are applicable in proceedings which involve, among other issues, the appeal of a decision by a local board of education regarding the redistricting of schools. The regulations at COMAR 13A.01.05.07A provide, in pertinent part, as follows:

- A. The State Board shall transfer an appeal to the Office of Administrative Hearings for review by an administrative law judge under the following circumstances:

- (1) An appeal of a school consolidation, school redistricting, or school closing pursuant to COMAR 13A.02.09[.]

The Education Article of the Maryland Annotated Code provides, in pertinent part, as follows:

- (c) Geographical attendance areas. – With 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) (2014). This authority of the Local Board to determine the geographical attendance areas for schools is also set forth in Local Board Policy JAA and Regulation JAA-RA concerning Redistricting and Attendance Areas. JAA(C)(2); JAA-RA(D)(1). (L.Bd. Ex. 1).

In *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967), the Court held that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school. *Bernstein*, 245 Md. at 472. In *Bernstein*, the Appellants sought an injunction to prevent implementation of a school redistricting plan. The primary purpose of this plan was to alleviate overcrowding in the schools, but a secondary purpose was to achieve racial balancing. The Court of Appeals upheld the trial court's finding that the purpose of the plan was to alleviate overcrowding and that the incidental purpose to achieve racial balancing was permissible. *Id.*, 245 Md. at 478-479. The Court stated that "if the Board's action was taken in the reasonable exercise of its discretion, in an effort to relieve overcrowded conditions, it is immaterial that an incidental effect of that action was to adjust a racial imbalance." *Id.*, 245 Md. at 477. The Maryland courts will not ordinarily substitute their judgment for the expertise of school boards, acting within the limits of the discretion entrusted to them. *Id.* at 476. The Appellants have the burden of showing that a board's action was "illegal or an abuse of discretion." *Id.*

The State Board has applied these principles consistently. In 1974, the State Board adopted this premise: “It is not enough for [appellants] to show that their Plan is better, they must show that the Board’s Plan is so totally lacking in merit as to have been adopted without any rational basis.”

*Concerned Parents of Overlea, et al. v. Bd. of Educ. of Baltimore Cnty.*, Opinions of the MSBE,

June 1964 through January 1978 (1979), No. 74-13, December 18, 1974, at 339. In 1992, the State

Board upheld a redistricting decision where the evidence showed:

- a systematic approach to developing, evaluating and rejecting various plans;
- the establishment of a committee and the number of times it met;
- the committee fairly debated the alternatives, and fully and adequately documented their deliberations and the process; and
- the committee meetings were advertised and open to the public, community input was “welcomed and invited,” and the public had an opportunity to speak.

*Green Valley Cmty. Comm. on Redistricting v. Frederick Cnty. Bd. of Educ.*, 6 Opinions of the MSBE 313 (February 26, 1992).

For the reasons addressed below, I conclude that the school redistricting plan approved by the Local Board in 2014 was not arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

#### Positions of the Parties

The Appellants argue that the redistricting plan, resulting in some students who had been attending Central to be redistricted for attendance at Mayo, was arbitrary, unreasonable, and illegal. The Appellants argue that it was unreasonable for residents on the west side of Muddy Creek Road to be excluded from being redistricted to Mayo, aside from the residents of Fiddlers Hill, while residents on the east side of Muddy Creek Road were redistricted to Mayo. The Appellants also argue that it was unreasonable for the plan to require residents not living on a peninsula to be redistricted to a school located on a peninsula because in the event of emergency road closures on the peninsula, the Appellants would be unable to gain access to their children. They also argue that redistricting any residents of the Muddy Creek Road area from Central to Mayo was unreasonable

because such a small number of students on Muddy Creek Road were affected the plan would not help to alleviate overcrowding at Central.

The Appellants also argue that the plan was illegal because it discriminated against the African-American residents of the Muddy Creek Road area because their community was split so that residents of the area were assigned to two different schools. Additionally, the Appellants argue that after the State Board remanded the case to the Local Board to conduct a new public hearing, the Local Board illegally presented only a part of the plan – the portion involving the Central to Mayo redistricted attendance area – at the public hearing, and failed to present the remainder of the original redistricting plan involving Davidsonville and other provisions. The Appellants argue further that after the Local Board voted to adopt the Central/Mayo redistricting plan on April 23, 2014, the Local Board failed to notify the affected residents of the results of that vote. They also argue that the plan was illegal, as the State Board determined, because there was a discrepancy between the language of the plan presented at public hearings in 2012, and the language subsequently voted on by the Local Board in April 2012, which created confusion for the affected residents. Finally, the Appellants argue that despite citizen participation and attendance at redistricting committee meetings and public hearings, the Appellants were denied meaningful input into the process.

The Local Board argues that the plan was not arbitrary, unreasonable or illegal. It contends that the plan was properly motivated by overcrowding at Central and under enrollment at Mayo and Davidsonville. It contends that the redistricting plan was developed and bus routes were drawn to more efficiently utilize resources at the schools and to promote student safety on bus routes and bus stops. The Local Board argues further that it complied with the State Board remand and Local Board procedures when it clearly and accurately described the attendance area for certain residents

being redistricted from Central to Mayo, notified the public and conducted new public hearings for the redistricting plan, and voted to approve the plan at a public session of the Local Board. It points out that the Appellants attended Local Board meetings and a new public hearing. It contends that the evidence fails to show the redistricting plan was unlawfully motivated by racial considerations. It also contends that the AACPS safely transports and redistricts students to and from numerous peninsulas throughout the County, including in the Mayo area. It asserts that students redistricted from Central to Mayo were assigned to an excellent academic school because, unlike Central, Mayo has been designated as a national blue ribbon school with highly qualified teachers.<sup>9</sup>

#### Arbitrary or Unreasonable

The Appellants argue that the redistricting plan is arbitrary and unreasonable because it redistricted students on the east side of Muddy Creek Road to attend Mayo and allowed students on the west side of Muddy Creek Road, with the exception of Fiddlers Hill Road, to remain at Central. It also contends that the Local Board failed to explain why the Fiddlers Hill residents were redistricted from Central to Mayo, unlike all other residents on the west side of Muddy Creek Road.

The Local Board presented testimony from COO Szachnowicz to establish that the redistricting plan was motivated by overcrowding at Central and under capacity enrollment at both Mayo and Davidsonville and that the capacity issues at all three schools were projected to worsen over time if no changes were made. (TR 196-198). When the plan to redistrict was first formulated in 2011, Central was overcapacity by 130 students, or 19%, and was projected to be 27% overcapacity by 2016 if no changes were made. On the other hand, Mayo was under capacity by 59

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<sup>9</sup> The Local Board argued that the hearing in this matter should be limited to the issue of whether it conducted a new public hearing in accordance with the instructions of the State Board remand in its December 16, 2013 decision. (Jt. Ex. 1). The Appellants argued that the hearing should not be so limited. I determined that the parties should address all of the issues in this proceeding regarding whether the redistricting plan approved by the Local Board in 2014 was arbitrary, unreasonable, or illegal because the State Board has never decided those issues, aside from its limited ruling that the revision in the original redistricting plan required the Local Board to conduct a new public hearing.

students, or 16%, and was projected to be under capacity by 18% by 2016 with no changes. (Findings of Fact Nos. 12-13, Perez decision). The redistricting plan proposed by the Superintendent had the effect of improving the capacity issues by lowering the projections for overcapacity at Central to 7% by 2016, and under enrollment at Mayo to 9% by 2016. (Finding of Fact No. 45, Perez decision).

The Appellants did not dispute the evidence that overcrowding at Central was the driving force for this redistricting plan. The Appellants' own witness, Daniel Waz, a resident of the Wolfe's Reserve area that was redistricted from Central to Mayo, confirmed that it was discussed at Local Board meetings that overcrowding at Central and under enrollment at Mayo were the primary reasons for the redistricting plan. He acknowledged that AACPS staff discussed at meetings that overcrowding and long lunch lines at Central had caused some students to have only ten minutes for lunch after waiting in long lines. (TR 34, 41-42). Overcrowding is a common and reasonable basis for developing a school redistricting plan and constitutes an appropriate justification for the Central to Mayo redistricting plan at issue in this proceeding.

Waz also testified that he developed a redistricting scenario that would reduce busing costs by assigning students to schools that are closer to their residences, and that would also address his view that "more African Americans [were] being negatively moved from Central to Mayo and there was [sic] also lower income people being moved from Central to Mayo." (TR 39-40). However, Waz testified in a conclusory manner and neither Waz nor the Appellants provided any maps, financial information, or other specific evidence to support his claim for reducing costs, and provided no statistical evidence to support his contention that African-Americans and lower income residents were adversely affected by the redistricting plan. Furthermore, there is no evidence that Waz's claim took into account issues of transportation safety that are paramount in developing

redistricting plans and designing bus routes, and the Appellants presented no evidence that Waz's purported plan would relieve the overcrowding problems that motivated the redistricting plan. As the State Board has held in prior redistricting matters, "It is not enough for [appellants] to show that their Plan is better, they must show that the Board's Plan is so totally lacking in merit as to have been adopted without any rational basis." *Concerned Parents of Overlea, et al. v. Bd. of Educ. of Baltimore Cnty.*, Opinions of the MSBE, June 1964 through January 1978 (1979), No. 74-13, December 18, 1974, at 339.

The Local Board explained that when developing redistricting plans and drawing bus routes, the transportation department considers student safety as a primary objective. Transportation Specialist Wandres and COO Szachnowicz testified that they participated in the redistricting process, provided assistance, and presented information at committee meetings, Local Board meetings, and public hearings. Wandres explained that he has been employed in student transportation for twenty-four years and is responsible for bus routes in the southern portion of Anne Arundel County, which includes the Muddy Creek Road area. Wandres noted his past experience participating in the development of numerous redistricting plans, both in Frederick and Anne Arundel Counties.

Both Wandres and Szachnowicz testified extensively regarding the safety issues that are considered in developing redistricting plans and drawing bus routes. Wandres stated that his first priority is to protect the students on the school bus. He explained that bus routes are designed to promote safety by limiting the number of left-hand turns that buses must make across high speed and dangerous roads and placing bus stops in safe locations with adequate sight lines. As a result, students are provided with right-side, door-side service on higher speed congested roadways, such as Muddy Creek Road and Central Avenue, so they are not required to cross these major roadways

when boarding or exiting school buses. He explained that these safety considerations influence the transportation department's development of redistricting plans and the designing of bus routes.

Szachnowicz has been employed in school administration for nineteen years and with AACPS for thirteen years. As COO, he oversees all of the administrative and support units of the school district including transportation, budget and finance, facilities, and information technology. Szachnowicz explained that he has extensive involvement in school redistricting and transportation issues, and was involved with both the 2012 and 2014 school redistricting plans for Central and Mayo. (TR 186-188). He attended public meetings and Local Board meetings in 2012 and 2014 and redistricting committee meetings in 2012 regarding the redistricting plan. (TR 188, 195, 206).

Szachnowicz explained that transportation safety considerations were discussed and considered by the redistricting committee, the Superintendent, and the Local Board when the redistricting plan was developed. I do not find Waz's claim reliable that such issues were not discussed because it is contradicted by Szachnowicz's detailed testimony regarding his involvement in the redistricting process. Szachnowicz explained that transportation safety considerations contributed to the decision to redistrict residents living on the east and west sides of Muddy Creek Road, a high speed and dangerous roadway, to attend different schools. He explained that the Local Board considered the importance of same-side bus service when developing the plan, and establishing safe bus routes and bus stops so that students would not be required to cross high speed, heavily trafficked roads, with poor sight lines. (TR 208-209). Szachnowicz explained that due to the high speed limit, hills and turns, and poor sight lines, Muddy Creek Road was the classic example of a road that required door-side service so that students would not have to cross the road to enter or exit the bus. (TR 217-218). He indicated further that with the inherent dangers on Muddy Creek Road and the need for door-side service and safe transportation, the Local Board's

redistricting plan resulted in students on the east and west sides of Muddy Creek Road attending different schools. He stated that the redistricting plan that was developed was reasonable based on space and capacity issues, better use of school facilities at Mayo to relieve Central overcrowding, and transportation safety concerns to address the high speed and dangerous nature of a major road like Muddy Creek Road. (TR 218-219, 236-237, 248-249, 257-258). The committee considered multiple scenarios, projections for future growth from State and County planning departments, and the best numerical composition of students, to develop a plan to relieve the overcrowded conditions at Central. (TR 251-253).

The Appellants argue that the plan was unreasonable because residents in the Selby community who live closer to Mayo are districted to attend Central. Wandres explained why the Selby community that is closer to Mayo is included within the geographical attendance area for Central. Wandres explained that the Selby residents are transported to Central so that when buses are leaving the Selby community they do not have to make dangerous and sharp left-hand turns across Central Avenue, a major congested higher-speed roadway, which would be necessary if those students were assigned to Mayo. (TR 148-152, 157). Instead, the buses make safer right-hand turns onto Central Avenue when transporting the Selby students to Central. This is consistent with the transportation department's technique for limiting the number of left-hand turns and developing safer bus routes to protect the student riders. Contrary to the Appellants' claim, Szachnowicz explained that no students who live within Mayo's walking zone are transported by bus to Central. (TR 249-250). The Local Board has demonstrated that safety considerations played an important role in designing safe bus routes and bus stops and developing the redistricting plan.

The Appellants argue that so few students live in the Muddy Creek Road area that the redistricting of Muddy Creek Road students to Mayo has failed to significantly reduce the

overcrowding at Central. Although this argument would be true if any small community included in a redistricting plan were viewed in isolation, Szachnowicz explained that the redistricting plan was developed to create a contiguous attendance area to correct the over capacity at Central without moving too many students so as to place too much stress on Mayo, the under enrolled school. (TR 253-255). It is necessary to consider the goal of the redistricting plan – to relieve overcrowding – and to review the entire redistricted attendance area to determine whether the plan is reasonable in attempting to achieve that goal. I find based on the evidence in this record that it is reasonable.

Szachnowicz explained that all school attendance zones must have boundaries so that every school attendance area will have students who live on the border between the attendance areas for two different schools and may be separated from other students who live nearby. (TR 238). It is notable that Muddy Creek Road is not the only major roadway in the Central to Mayo redistricted attendance area which divides residents on either side of the major roadway between two different schools. A careful review of the map of the Central to Mayo redistricted attendance area shows that Central Avenue, another major road, was divided in a manner similar to that of Muddy Creek Road. The map shows that along a substantial portion of Central Avenue, students living on the northern side of Central Avenue were assigned to attend Central, while students who reside on the southern side of Central Avenue were redistricted to attend Mayo. (L.Bd. Ex. 2).

Although neither Wandres nor Szachnowicz could identify the specific reason that the redistricting committee included Fiddlers Hill Road, which is on the west side of Muddy Creek Road, with the remainder of the redistricted attendance area on the east side of Muddy Creek Road, Szachnowicz noted that Fiddlers Hill was contiguous with the rest of the Central to Mayo redistricted attendance area. (TR 255-257). Szachnowicz explained that he viewed the attendance area which redistricted students from Central to Mayo as reasonable because it was a contiguous

area that allowed buses to efficiently pick up students heading northbound along Muddy Creek Road and continuing eastbound on Central Avenue to Mayo. He indicated that bus stops in neighborhoods on small side streets do not have the same safety limitations because those bus stops are located on safer side streets rather than on major high-speed roadways.

The Appellants also argued that it was unsafe and unreasonable for the Local Board to require students who do not live on a peninsula to be redistricted to a school located on a peninsula because in the event of an emergency or road closure, parents would be unable to gain access to their children. Szachnowicz explained that Anne Arundel County is replete with about one dozen peninsulas throughout the County due to its geography. He explained that the AACPS assigns and transports students to and from schools on and off peninsulas throughout the County on a regular basis. He asserted that it was entirely safe and reasonable for students who live elsewhere to be transported to peninsula schools. He explained that AACPS coordinates with safety officials throughout the County and State to monitor road closures on and off peninsulas, and that students would be held safely at a school until the road was reopened and it was safe to resume transporting students. (TR 233-236). The Appellants failed to establish that it was unsafe or unreasonable to redistrict students to a peninsula school in Anne Arundel County.

Szachnowicz also stated that he viewed it as reasonable and proper for redistricting plans to be developed by citizen-led committees with multiple meetings and citizen input because AACPS believes that citizens should have an active voice in the decision-making process. (TR 240-241). Staff members participated, the process was open to the public, and the meetings were attended by numerous residents.

The redistricting plan was also consistent with sound educational policy. It was designed to relieve overcrowding at Central and to address under enrollment at Mayo and Davidsonville. The

problem was projected to become worse if the redistricting plan were not implemented. After the plan to redistrict students from Central to Mayo was developed, the planning department projected that implementation of this plan would significantly improve the overcrowding at Central and the under enrollment at Mayo. Relief of overcrowding is an important educational goal and is consistent with sound educational policy. In addition, both Central and Mayo were highly functioning schools that are ranked within the top 100 of all Maryland schools. Furthermore, the redistricting of students from Central to Mayo would have the effect of assigning students to a superior school in some respects because Mayo was designated as a national blue ribbon school based on very good test scores for the Mayo students. In addition, the teachers at Mayo were all designated as highly qualified under federal law. Central did not have those similar designations.

For the foregoing reasons, I conclude that the Appellants have failed to prove that the Local Board's April 23, 2014 approval of a plan to redistrict certain Anne Arundel County residents from Central to Mayo was arbitrary or unreasonable. COMAR 13A.01.05.05A. The Plan had a rational basis, was consistent with sound educational policy, and a reasoning mind could have reasonably reached the conclusion reached by the Local Board. COMAR 13A.01.05.05B.

### Illegal

The Appellants argue that the redistricting plan was illegal, in part, because the State Board remanded the case to the Local Board for a new public hearing when the Local Board revised the language describing the redistricting plan after the public hearing was conducted, thereby creating confusion among residents as to the proper description of the affected attendance area. While this revision led to the State Board's December 16, 2013 decision to remand the case for a new public hearing, the evidence demonstrates that the Local Board corrected this error and it no longer provides a basis to conclude that the redistricting plan was illegal or the process contrary to Local

Board procedures. The evidence demonstrates that the Local Board corrected the error when it notified the public, conducted a new public hearing, solicited input from residents of the affected schools; and voted to approve the plan which was described in public documents, and at public sessions and Local Board meetings, in a consistent, clear, and more accurate manner. As discussed below, the Superintendent and Local Board complied with the procedures for developing and approving a redistricting plan to alleviate overcrowding at Central by assigning some residents who had attended Central to attend Mayo, which was under capacity.

COO Szachnowicz testified that the Superintendent created a redistricting committee consistent with Local Board Policy and Regulations, consisting of two volunteers from each of the affected schools, who were solicited by the school principals. (TR 188-189, 264-265). The AACPS staff provided the committee with information, including maps, demographics, test scores, class size, staff composition, and staff competency. The committee held approximately five meetings in 2011, notified the public, and invited members of the public to attend and ask questions. After considering multiple options and scenarios, the committee developed a recommended redistricting plan and submitted it to the Superintendent. The Superintendent reviewed the recommended plan and supporting information and submitted a recommended plan to the Local Board, without changes. The Superintendent and Local Board considered public input before submitting a recommended plan for a public briefing and the public hearing process during the 2011-2012 time period. (TR 189-191, 198-199, 203-205).

The actions by the redistricting committee, Superintendent, and the Local Board in soliciting public input, developing a redistricting plan, and recommending a plan for further consideration complied with the requirements of Local Board Policy and Regulations. (TR 189-192, 198-199, 203-205, 264-265); (*See also* Findings of Fact Nos. 5-40, Perez decision).

The State Board remanded the case to the Local Board to conduct a new public hearing because it concluded that a change in the language describing the Central to Mayo redistricting plan, as set forth at the April 18, 2012 Local Board meeting, constituted a revision of the plan, which required the Local Board to hold a new public hearing under the Regulations. JAA-RA(D)(2)(d). (Jt. Ex. 1). While the State Board remanded the case for the Local Board to conduct a new public hearing, this remand was limited to the narrow procedural error caused by a revision in language describing the Central to Mayo redistricted attendance area. In its remand, the State Board did not instruct the Local Board to create a new redistricting committee or develop new redistricting scenarios to address the overcrowding at Central and under enrollment at Mayo. Further support for the view that the remand should be narrowly construed is based on the State Board's decision to adopt 71 of the 74 Findings of Fact made by ALJ Perez in her proposed decision. Therefore, I conclude that despite the limited procedural error, the evidence nevertheless demonstrates that the Local Board complied with the requirements of Local Board Policy JAA and Regulations JAA-RA in creating a redistricting committee, developing and recommending a redistricting plan, soliciting public participation, and considering public input in the process.

The Local Board also presented evidence at the hearing to demonstrate that it complied with the State Board remand when the Superintendent recommended a redistricting plan to the Local Board in April 2014, which included a revised description of the geographical attendance area of the plan to redistrict certain students from Central to Mayo. The revised description was clearer and more accurate than the previous language. The revised description of the attendance area was set forth in the Superintendent's March 27, 2014 informational letter, and in attachments to that letter,

including the Agenda Item for the Local Board's April 2, 2014 meeting. The description of the redistricted attendance area was stated as follows:

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

(L.Bd. Ex. 2).

The Superintendent sent the March 27, 2014 letter to parents and guardians from the affected schools as a backpack flyer. The letter described the Superintendent's recommended redistricting plan and explained the process to be followed, which included holding a Local Board meeting to vote on which plan would be sent to public hearing, conducting a subsequent public hearing to consider the plan, and then having the Local Board vote on whether to approve the redistricting plan. (L.Bd. Ex. 2). The Local Board held the first meeting on April 2, 2014 and voted to send the Superintendent's recommended plan to a public hearing. The Local Board then conducted a public hearing on or about April 22, 2014 and considered the recommended plan to redistrict students from Central to Mayo. Szachnowicz worked with staff in the facilities department and public information office to notify the public through multiple forms of communication regarding the public hearing process. (TR 211-213). The Local Board meeting and public hearing were open to the public and the Appellants testified at the Local Board meeting and public hearing in April 2014. (TR 111-112). The Local Board subsequently voted on April 23, 2014 to approve the revised redistricting plan which assigned certain students who had previously attended Central to attend Mayo. (L.Bd. Ex. 2; TR 210-211, 266-267).

Although the language was revised in 2014 to more clearly and accurately describe the affected attendance area, the actual geographical attendance area of the redistricting plan was not

altered by the Local Board's April 23, 2014 vote of approval. (TR 112, 263-267; L.Bd. Ex. 2). The redistricted attendance area that was implemented in August 2012 remained the same after the April 2014 vote. (L.Bd. Ex. 2). COO Szachnowicz testified that the plan that was approved in 2014 was the same as the plan that was approved in 2012. (TR 263). Although Szachnowicz testified incorrectly at one point that the language of the 2012 and 2014 plans was identical, he acknowledged in other testimony that the language of the 2012 plan and the language of the 2014 plan were not the same. (TR 224-226, 263). In fact, a comparison of the 2012 redistricting language set forth in the April 19, 2012 press release and the 2014 language as set forth in the March 27, 2014 letter and attachments demonstrates that the 2014 language was revised to more clearly and accurately describe the Central to Mayo redistricted geographical attendance area. (App. Ex. 3; L.Bd. Ex. 2). Furthermore, in contrast with the circumstances in 2012 that led the State Board to remand the case back to the Local Board for a new public hearing, the description of the redistricted attendance area in 2014 for assigning certain students from Central to Mayo was consistent and did not change throughout the 2014 redistricting process. (L.Bd. Ex. 2).

The evidence demonstrates that the Local Board complied with Regulation JAA-RA for Redistricting and Attendance Areas. The Local Board publicly announced its intention to consider redistricting and conducted a public hearing. Reg. JAA-RA(D)(2)(c). (L.Bd. Ex. 1, 2; TR 210-213). Furthermore, at a Local Board meeting subsequent to the public hearing, the Local Board voted and announced its redistricting decision in a public session. Reg. JAA-RA(D)(2)(d). (L.Bd. Ex. 1; TR 210-213, 266-267, 273-277).

The Appellants claim that the redistricting committee unfairly failed to include any citizens from the Muddy Creek Road community where they lived. The Regulations provide that "[t]he Superintendent may form a Redistricting Committee for the purpose of advising the Superintendent

during the planning phase of the redistricting process.” Reg. JAA-RA(D)(3)(a). (L.Bd. Ex. 1). The Regulations also provide that a redistricting committee “is comprised of community members and staff appointed by the Superintendent to advise and make redistricting recommendations to the Superintendent.” Reg. JAA-RA(C)(1). The Regulations also provide that the “Redistricting Committee shall take public input in the form of testimony, review, and comments,” and permit the Superintendent to modify the plan based on public input. Reg. JAA-RA(D)(3)(a) (1). (L.Bd. Ex. 1).

The evidence demonstrates that the Superintendent complied with the Regulations when he formed a redistricting committee comprised of two volunteers from each affected school who were solicited by the school principals. (TR 264-265). There is no requirement and it would be impractical for the redistricting committee to guarantee inclusion for residents of any particular neighborhood. However, residents throughout the affected areas had the opportunity for meaningful input by attending meetings and public hearings, asking questions, and providing comments or testimony. The Appellants presented no evidence that the Superintendent or Local Board violated any provisions of the Local Board Regulations with regard to the formation or operation of the redistricting committee. Nor did the Appellants present any evidence that they attempted to join the redistricting committee and were rebuffed, or that they recommended other citizens for admission on the committee who were refused participation. Moreover, the evidence demonstrates that the redistricting committee held numerous meetings where public input was permitted and was provided.

The Appellants also claim that they were precluded from meaningful participation at redistricting committee meetings or other Local Board meetings, or that their input was not considered. The evidence established that numerous redistricting committee meetings were held at which public attendance and participation were permitted and occurred. (TR 190-191, 198-199, 203-204, 240-242; Findings of Fact Nos. 4-46, Perez Decision). The Local Board also held

meetings and a public hearing in April 2014 at which the Appellants and other members of the public were permitted to attend, ask questions, or provide testimony, and the meeting in which the Local Board voted on the redistricting plan. (L.Bd. Ex. 2; TR 111-112, 221, 266-267). The Appellants attended and presented their concerns about the redistricting plan at the Local Board meeting and public hearing in April 2014. (TR 111-112). The Appellants failed to present transcripts of meetings or any other specific evidence to demonstrate that they or other citizens were prevented from participating in the process, or that input from the Appellants or other citizens was not considered.

The Appellants also claim that the Local Board failed to properly notify affected residents of the results of the Local Board's vote on April 23, 2014 to approve the redistricting plan. They claim that the AACPS failed to provide public notification in the form of a backpack flyer or press release after the April 23, 2014 vote. They claim, in contrast, that after the April 2012 Local Board vote to approve the prior redistricting plan, AACPS sent home backpack flyers and issued a press release. The Local Board Regulation provides at JAA-RA(D)(2)(d) as follows: "At a meeting of the Board subsequent to the public hearing, but not later than April 30 of any school year, the Board shall make and announce its decision in public session." (L.Bd. Ex. 1). The Local Board complied with this provision when it voted to approve the redistricting plan on April 23, 2014 in a public meeting of the Local Board. The Regulation does not require any particular method for dissemination of the results of the vote other than to require that the decision is made and announced *in public session*.

Furthermore, the evidence demonstrates that Local Board meetings are televised on cable television. In addition, the meeting at which the vote was taken was open to the public and to members of the media. Moreover, the minutes of Local Board meetings are published on the AACPS website after their approval at the next meeting. (TR 117-121, 260, 276). Szachnowicz

explained that it is not typical for the AACPS to issue a press release for each of the hundreds or thousands of Local Board votes that are taken. Therefore, the absence of a press release concerning the April 23, 2014 vote was not unusual, even though the AACPS issued a press release after the Local Board vote in April 2012. (TR 274-277). Moreover, there is no evidence that the Appellants were prejudiced by the manner in which the result of the Local Board vote was disseminated to the public, through cable television and publication of the minutes of the meeting on the AACPS website. The Appellants had actual knowledge of the results of the Local Board's April 23, 2014 vote and they filed a timely appeal of that decision. Whether other affected residents obtained actual knowledge of the vote is not relevant to the Appellants' appeal in this matter, particularly where the Appellants have failed to show that the Local Board violated any procedure in disseminating information regarding the outcome of the Local Board's vote on the redistricting plan. Accordingly, the Appellants failed to prove that the Local Board violated the redistricting procedures when it did not disseminate the results of the April 2014 vote in a manner that the Appellants desired.

The Appellants also argue that the Local Board acted illegally when, after the State Board remand, it presented only that portion of the redistricting plan concerning the Central to Mayo attendance area at public hearing, but presented no information regarding other parts of the original plan, which involved Davidsonville and other matters. (App. Ex. 3). The evidence demonstrates that the Local Board did present for public hearing only that portion of the redistricting plan that involved the Central to Mayo attendance area. (L.Bd. Ex. 2). However, this did not violate the redistricting procedures or the State Board's December 16, 2013 decision. A careful review of that decision shows that the State Board remanded the case to the Local Board based only on a revision in the language describing the attendance area for the Central to Mayo portion of the redistricting plan. (Jt. Ex. 1). The State Board decision did not address or invalidate any other parts of the

redistricting plan, which involved Davidsonville, the grandfather clause, or the planned residential subdivision located in Crofton. (App. Ex. 3). Because the State Board decision did not address any other aspects of the redistricting plan, and it limited the remand only to the change in language describing the Central to Mayo geographical attendance area, there was no requirement for the Local Board to present any other portion of the redistricting plan at the new public hearing in April 2014.

Szachnowicz testified that he reviewed the State Board decision and discussed it with other AACPS officials and with counsel and they concluded that the State Board decision was limited only to the Central to Mayo portion of the redistricting plan. (TR 213-214, 226-232). Moreover, the State Board's remand decision was available to and was considered by the Local Board in 2014 when it considered and voted upon the redistricting plan. (TR 231). Furthermore, the Appellant's appeal did not challenge any other aspect of the redistricting plan aside from the geographical attendance area for the redistricting of students from Central to Mayo. Therefore, the Local Board acted lawfully when it considered at public hearing and voted on only that portion of the redistricting plan involving the Central to Mayo attendance area.

The Appellants also contend that the redistricting plan discriminated against African-American residents who reside in the Muddy Creek Road area by dividing the community so that some African-American students in that area were allowed to remain at Central while other African-American residents in the same general area were redistricted to Mayo.

Appellant Neal testified that the Muddy Creek Road area is a historically African-American neighborhood and that the population of Muddy Creek Road is over ninety percent African-American. Although Neal claimed that she was referring to a three-to-four mile stretch of Muddy Creek Road, she did not specify the precise geographical boundaries of the African-American

community she was referring to or indicate whether her area of concern involved only those residents who actually reside on Muddy Creek Road, or whether she was also considering residents who reside near but not on Muddy Creek Road. She acknowledged that Muddy Creek Road is about twelve miles long in its entirety, so that substantial portions of the Road were not included in the redistricting plan. (TR 90, 112, 121-122).

The Appellants did not provide sufficient evidence at the contested case hearing to demonstrate the impact of the redistricting plan on the racial composition of each school. The Appellants did not identify the racial composition of the student population at Central or Mayo, either before or after the redistricting plan was implemented. The only evidence in this record concerning that issue is that African-American students are in the minority at both schools. (TR 90). In addition, the Appellants did not identify the racial statistics of all students who were redistricted from Central to Mayo as a result of the redistricting plan. When the parties asked questions that assumed certain facts, but they did not testify to those facts during their own testimony, I did not consider those alleged facts to be in evidence in this record. Therefore, in the absence of sufficient evidence in this record, I am unable to determine the impact of the redistricting plan on the racial composition of the affected schools, of particular classrooms, or of particular bus routes.

The evidence supports the conclusion that African-American, Caucasian, and other non-African-American students were all included in the group of students who were redistricted from Central to Mayo. Although Appellant Mims made reference to the racial composition of the redistricted students, her testimony was unclear and did not specify the racial composition of all students who were redistricted from Central to Mayo as a result of the redistricting plan. (TR 90-92). She did, however, confirm that both African-American and Caucasian students were

redistricted from Central to Mayo. (TR 91-92). In addition, Waz, who is Caucasian, testified that his community of Wolfe's Reserve, a small residential community off of the east side of Muddy Creek Road, was within the geographical attendance area of residents who were redistricted from Central to Mayo. While Waz's daughter has remained as a student at Central, this was only because Waz requested and was granted an administrative waiver for his daughter shortly before the redistricting plan was implemented in August 2012. (TR 49-53). Had he not done so, his daughter, as a resident of Wolfe's Reserve, would have been redistricted from Central to Mayo. Appellant Neal's son, who is African-American, was also redistricted from the Central attendance area to Mayo and still attends Mayo. There is no evidence in this record that Neal requested a similar administrative waiver so that her son could attend Central.<sup>10</sup> Furthermore, the record indicates that students who reside on Fiddlers Hill Road, who were also redistricted from Central to Mayo, are not African-American. (Finding of Fact No. 61, Perez Decision). Therefore, the evidence in this record demonstrates that the redistricting plan resulted in both African-American and non-African-American students being redistricted from Central to Mayo.

The Appellants also argue that the redistricting plan is racially discriminatory because it resulted in a historically African-American community along Muddy Creek Road being divided by the redistricting plan so that most students living on or adjacent to the *west* side of Muddy Creek Road were permitted to remain at Central, while students living on or adjacent to the *east* side of Muddy Creek Road were redistricted from Central to Mayo. The Appellants did not present any evidence to demonstrate that race was considered by the redistricting committee, the Superintendent, AACPS, or the Local Board when it developed, considered and implemented the redistricting plan that resulted in some students being redistricted from Central to Mayo. Szachnowicz testified that

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<sup>10</sup> Appellant Neal's son was starting kindergarten in August 2012 when the redistricting plan was implemented, so he did not attend either school before the plan went into effect.

there was no racial element to the transfers that occurred as a result of the redistricting plan. (TR 216). He also explained that he was not aware of the demographics of the Muddy Creek Road area on a dwelling-by-dwelling or resident-by-resident basis. (TR 232-233). Szachnowicz also testified that the redistricted attendance area for Mayo under the plan was developed so there would be a contiguous boundary and attendance area, and so the buses could efficiently pick up students heading northbound on Muddy Creek Road and continuing eastbound on Central Avenue (Route 214). He explained further that the redistricting plan was based on space, capacity, and transportation safety concerns and that the plan and resulting bus routes were not differentiated on the basis of race. (TR 236-237). Although Szachnowicz could not explain why Fiddlers Hill Road, on the west side of Muddy Creek Road, was also included in the attendance area that was redistricted to Mayo, neither Appellant lived in that community, the evidence in the record indicates that the students from Fiddlers Hill Road were not African-American, and Fiddlers Hill Road was contiguous with the rest of the attendance area that was redistricted from Central to Mayo. Consequently, the inclusion of Fiddlers Hill Road in the redistricted attendance area provides further evidence that the plan to redistrict some students from Central to Mayo was not based on unlawful considerations of race.

The Local Board also presented evidence to show that transportation safety issues were of critical concern to the AACPS and the Local Board in developing a redistricting plan and drawing bus routes. The evidence indicated that Muddy Creek Road was a high speed, highly trafficked road and was more dangerous than other roads in the Central and Mayo attendance areas. The evidence supports that the decision to divide the attendance areas for Central and Mayo between the east and west sides of Muddy Creek Road was based on the transportation department's desire to reduce the number of dangerous left-hand turns, ensure that all students living on higher speed dangerous roads were provided with door-side service, and to ensure that the overcapacity at Central

and the under enrollment at Mayo was corrected. The Local Board developed contiguous and safe attendance areas for Central and Mayo. It approved the plan to redistrict students from Central to Mayo to relieve the overcrowding at Central and fill available space at Mayo, and to accomplish this goal in the safest and most efficient manner. Moreover, the evidence shows that another major roadway, Central Avenue, was also divided between the two schools, with those residents living on the northern side of a substantial portion of the roadway being districted to Central, and those residents on the southern side of a substantial portion of Central Avenue being redistricted to Mayo. (L.Bd. Ex. 2).

The evidence also demonstrates that Mayo was a national blue ribbon school and that all of its teachers were highly qualified under federal law. (TR 123-124, 127, 214-215). This was not true at Central. However, both schools were highly functioning schools that were rated in the top 100 of Maryland schools. (TR 127). Therefore, the evidence does not establish that students who were redistricted to Mayo were assigned to an inferior school. In fact, the evidence suggests that the students redistricted to Mayo from Central were assigned to a superior school in some respects.

The Appellants have failed to prove based on the evidence in this record that the redistricting committee, Superintendent, or Local Board discriminated on the basis of race when it developed a redistricting plan or designed bus routes. In fact, the Appellants have failed to show that race was considered at all. The evidence in this record supports the conclusion that the redistricting plan and the accompanying bus routes were established in a race-neutral manner.

For the foregoing reasons, I conclude that the Appellants have failed to prove that the Local Board's April 23, 2014 decision to approve the redistricting plan, redistricting certain students from Central to Mayo, was illegal. COMAR 13A.01.05.05A, C. The Appellants failed to prove that the

decision was discriminatory on the basis of race, resulted from an unlawful procedure, or was otherwise unlawful. COMAR 13A.01.05.05C.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude that the Appellants have failed to prove that the redistricting plan of the Anne Arundel County Board of Education, adopted on April 23, 2014, as it pertains to the redistricting of certain students from Central Elementary School to Mayo Elementary School is arbitrary, unreasonable, or illegal. Md. Code Ann., Educ. § 4-109(c) (2014); *Bernstein v. Bd. of Educ. of Prince George's Cnty.*, 245 Md. 464 (1967); COMAR 13A.01.05.05.

### PROPOSED ORDER

I **RECOMMEND** that the April 23, 2014 redistricting plan of the Board of Education of Anne Arundel County, as it relates to the redistricting of certain students from Central Elementary School to Mayo Elementary School, be **AFFIRMED**.

December 29, 2014  
Date Decision Mailed

DEK/da  
# 153314



Douglas E. Koteen  
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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