

MICHAEL GRUBER, ET AL.

Appellants

v.

BALTIMORE COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

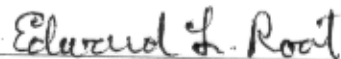
Opinion No. 06-36

OPINION

On May 9, 2005, the Appellants filed this appeal from the local board's decision to adjust attendance boundaries of four adjacent schools. This Board referred the case to the Office of Administrative Hearings which conducted an eight day hearing on the matter during the Spring of 2006.

On August 30, 2006, the Administrative Law Judge (ALJ) issued a 58 page Proposed Decision recommending that the local board's boundary decisions, also known as the Woodholme redistricting plan, be affirmed. All parties were given notice that any exceptions to the ALJ's decision were to be filed within 15 days of receipt of the decision. No exceptions were filed.

We have reviewed the ALJ's decision on the redistricting plan. It is comprehensive, well-reasoned, and his recommendation to affirm the local board is supported by the facts and the law. Accordingly, we adopt the Administrative Law Judge's Proposed Decision as the opinion of this Board and affirm the local board's redistricting decision.¹



Edward L. Root
President

¹The ALJ also issued a Proposed Decision on the local board's Motion to Dismiss in which the ALJ found that all of the Appellants except Appellant Moffe had standing to appeal the redistricting decision to the State Board. Because we find that Appellants Olin, Lee, and Weissman clearly had standing to appeal, we need not consider nor do we adopt the ALJ's Proposed Decision on the issue of standing of the other Appellants. We adopt the ALJ's Proposed Decision on the Motion to Dismiss on these grounds only.

Dunbar Brooks

Dunbar Brooks
Vice President

Lelia T. Allen

Lelia T. Allen

J. Henry Butta

J. Henry Butta

Beverly A. Cooper

Beverly A. Cooper

Calvin D. Disney

Calvin D. Disney

Richard L. Goodall

Richard L. Goodall

Tonya Miles

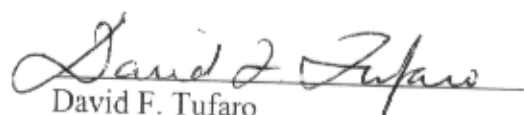
Tonya Miles

Karabelle Pizzigati

Karabelle Pizzigati



Maria C. Torres-Queral



David F. Tufaro

December 12, 2006

MICHAEL GRUBER, ET AL.,

APPELLANTS

v.

BOARD OF EDUCATION OF

BALTIMORE COUNTY

* BEFORE DOUGLAS E. KOTEEN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. MSDE-BE-09-05-24010

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

Michael Gruber, et al. ("Appellants"),¹ filed an appeal on May 9, 2005 to the Maryland State Board of Education ("State Board") from an April 12, 2005 decision by the Board of Education of Baltimore County ("Board") to create an attendance boundary for the newly-constructed Woodholme Elementary School ("Woodholme") by adjusting the existing attendance boundaries of four adjacent elementary schools.

On June 6, 2005, the Board, through counsel, filed its Answer and Motion to Dismiss the Appellant's appeal. The Appellants submitted a Response to the Motion to Dismiss on June 17, 2005. The Board withdrew its initial Motion to Dismiss on or about July 14, 2005. On November 14, 2005, the Board submitted a Motion to Renew Motion to Dismiss for Lack of Standing. The Appellants submitted a Response on November 28, 2005. The Board filed a Reply on December

¹ The Appellants include Michael Gruber; Alan P. Zukerberg; Nancy Olin and her children, Jonathan Olin and Lena Olin; Larry Weissman and his daughter, Beth J. Weissman; Min Sook Lee and her daughters, Young Jin Lee and Jun Ho Lee; The Long Meadow Association, Inc.; Dumbarton-Stevenson Civic and Improvement Association, Inc.; Fields of Stevenson Home Owners Association, Inc.; and Pikesville Communities Corporation.

16, 2005, and the Appellants submitted a Supplemental Memorandum of Law in Opposition on January 3, 2006.

A motions hearing was conducted on January 4, 2006, before Douglas E. Koteen, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings ("OAH") in Hunt Valley, Maryland. On February 3, 2006, the Board's Motion to Dismiss for lack of standing was denied.²

On February 24, March 1, 20, 21, 22, and April 3, 4, and 27, 2006, ALJ Koteen conducted a hearing on the merits of this matter at OAH in Hunt Valley, Maryland. The Board was represented by Leslie R. Stellman, Esquire, and Edmund J. O'Meally, Esquire, of Hodes, Ulman, Pessin & Katz, P.A. Michael Marshall, Esquire, of Schlachman, Belsky & Weiner, P.A., represented the Appellants, with the exception of Alan Zukerberg, who appeared *pro se*.

The parties requested the opportunity to file post-hearing briefs, which request was granted. The Appellants filed a written Closing Argument on May 11, 2006. The Board filed a Post-Hearing Memorandum on May 25, 2006. The Appellants filed a Reply Memorandum on June 1, 2006. Upon receipt of the post-hearing briefs, the record in this matter closed on June 1, 2006.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2005); COMAR 13A.01.05.07; 28.02.01.

ISSUE

The issue on appeal is whether the actions of the Baltimore County Board of Education to create a new attendance boundary for Woodholme Elementary School and redistrict the attendance

² I determined that each of the Appellants established standing to bring this appeal, with the exception of Howard Moffett. I concluded that Moffett failed to establish his basis for standing and, therefore, he was dismissed from the appeal.

boundaries of four adjacent elementary schools within Baltimore County as part of that process were arbitrary, unreasonable or illegal.

SUMMARY OF THE EVIDENCE

A. Exhibits

The Appellants offered the following exhibits which were admitted into evidence, unless indicated otherwise:

- App. Ex. 1 - Agenda for Public Forum - Introduction of Process and Board Policy;
- App. Ex. 2 - Facilitator's Summary Sheet, undated;
- App. Ex. 3 - Woodholme Planning Meeting Agenda and Minutes, dated 10/25/04, 11/8/04, 11/22/04, 12/13/04, 1/10/04 [sic], 2/7/05, with attached maps of school boundaries scenarios A, B, and C;
- App. Ex. 4 - Facilitator's Summary Sheet, with attached copies of Evaluation of Community Forums, undated;
- App. Ex. 5 - Woodholme Boundary Study - Individual Questionnaire, dated 01/31/05;
- App. Ex. 6 - Woodholme Community Forum - Boundary Options Packet, dated 01/31/05;
- App. Ex. 7 - Not admitted
- App. Ex. 8 - Not admitted
- App. Ex. 9 - Woodholme Boundary Recommendation, undated
- App. Ex. 10 - Policy 1280, Boundary Changes, dated August 10, 2004;
- App. Ex. 11 - Two page excerpt from Woodholme Boundary Study, dated 2/16/05
- App. Ex. 12 - Policy 1250: Community Relations - Community Involvement, dated 2/10/77
- App. Ex. 13 - School Boundary Study - Training Session, dated December 2, 1999
- App. Ex. 14 - Color map - Wellwood boundaries
- App. Ex. 15 - Color map - Ft. Garrison boundaries prior to Scenario C
- App. Ex. 16 - Color map - Ft. Garrison boundaries post Scenario C
- App. Ex. 17 - Map showing intersections
- App. Ex. 18 - Not admitted
- App. Ex. 19 - Not admitted
- App. Ex. 20 - Not admitted
- App. Ex. 21 - E-mail to Alan from Ngone Seye, dated 01/06/04
- App. Ex. 22 - Letter to Joy Shillman from Pikesville Communities Corp. ("PCC"), dated 01/29/04
- App. Ex. 23 - Letter to Alan Zukerberg from Joy Shillman, dated 02/09/04
- App. Ex. 24 - Printout from the Baltimore Co. Public Schools web site - The System
- App. Ex. 25 - Policy 1100: Community Relations - Communications with the Public, dated June 9, 1997;
- App. Ex. 26 - Policy 1230: Community Relations: Community Involvement, dated November 6, 2001;
- App. Ex. 27 - Policy 1270: Community Relations: Parent/Guardian and Family Involvement, dated July 13, 2004;
- App. Ex. 28 - Memorandum to Board from Dr. Joe A. Hairston, dated 03/08/05
- App. Ex. 29 - Woodholme Boundary Study Committee Minutes, dated 02/16/05
- App. Ex. 30 - Marked for ID only
- App. Ex. 31 - Marked for ID only

- App. Ex. 32 - E-Mail to Alan Zukerberg from Barbara Walker, dated 09/20/04
- App. Ex. 34 - Letter to James T. Smith, Joe Harriston and Joy Shillman from PCC, dated 01/20/04
- App. Ex. 35 - Letter to Alan Zukerberg from Donald Krempel, dated 03/09/04
- App. Ex. 36 - Letter to Alan Zukerberg from Fred Homan, dated 02/19/04, with 11 page attachment
- App. Ex. 37 - Not Admitted
- App. Ex. 38 - Research on Developments Recently Proposed for Redistricting to Ft. Garrison, dated 08/29/02
- App. Ex. 39 - Letter to Ghassan Shah from PCC, dated 02/10/05
- App. Ex. 40 - Letter to Alan Zukerberg from Ghassan Shah, dated 02/03/05
- App. Ex. 41 - PCC - Minutes of meeting of the Board of Directors, dated February 19, 2004
- App. Ex. 42 - Not Admitted;
- App. Ex. 43 - Not admitted;
- App. Ex. 44 - Not admitted;
- App. Ex. 45 - Letter to Joy Shillman from Paula Hollinger, dated April 5, 2005;
- App. Ex. 46 - Letter to Paula Hollinger from Dr. Joe A. Hairston, dated June 17, 2005;
- App. Ex. 47 - Not admitted;
- App. Ex. 48 - Letter to Risa Schuster from Min Sook Lee, dated July 23, 2001;
- App. Ex. 49 - E-mail to Alan Zukerberg from Joy Shillman, dated 09/14/04, with attached e-mail dated 09/17/04
- App. Ex. 50 - Letter to Dr. Scott Gehring from PCC, dated 09/17/04
- App. Ex. 51 - E-mail to Joy from Alan Zukerberg, dated 03/08/05
- App. Ex. 52 - Letter to Abby Beytin from Alan Zukerberg, dated 10/04/04, with attached resume of Michael Gruber
- App. Ex. 53 - Letter to Michael Gruber from Joe Hairston, dated 12/22/04
- App. Ex. 54 - Curriculum Vitae of Alan Zukerberg
- App. Ex. 55 - Photocopy of page 29 ADC Baltimore County Map book
- App. Ex. 56 - Woodholme Boundary Study - Community Forum sign-in sheet, stipulation to 2/05/05 date
- App. Ex. 57 - Not admitted
- App. Ex. 58 - Not admitted
- App. Ex. 59 - Not admitted
- App. Ex. 60 - Greensping-East Pikesville Community Action Plan
- App. Ex. 61 - Three maps with areas outlined in red.

The Board offered the following exhibits which were admitted into evidence, unless indicated otherwise:

- Bd. Ex. 1 - Not admitted;
- Bd. Ex. 2 - Board Rule 5140 - Students: Enrollment and Attendance
- Bd. Ex. 3 - Board Policy 6130 - Instruction
- Bd. Ex. 4 - Board Rule 6130 - Instruction: Magnet Schools and Programs
- Bd. Ex. 5 - IAC/PSCP Forms re: Justification for Woodholme
- Bd. Ex. 6 - 2004-2005 Northwest Area Summary re: Portable Classrooms
- Bd. Ex. 7 - Capital Projects Summary
- Bd. Ex. 8 - Northwest Area Concerns
- Bd. Ex. 9 - Wellwood International Elementary School ("Wellwood") actual 09/30/04 enrollment
- Bd. Ex. 10 - Wellwood actual 09/30/05 enrollment

- Bd. Ex. 11 - Woodholme Planning Minutes, dated 09/23/04
- Bd. Ex. 12 - Not admitted
- Bd. Ex. 13 - Not admitted
- Bd. Ex. 14 - Woodholme Boundary Study Committee Agenda and Minutes, dated 09/23/04
- Bd. Ex. 15 - Not admitted
- Bd. Ex. 16 - Not admitted
- Bd. Ex. 17 - News Releases, Media Alerts, and flyers re: Woodholme Boundary Community Forum
- Bd. Ex. 18 - Woodholme Community Forum on Boundary Options Agenda, dated 02/07/05
- Bd. Ex. 19 - Marked for ID only
- Bd. Ex. 20 - Not admitted
- Bd. Ex. 21 - Executive Leadership Team Meeting Agenda, dated 02/28/05
- Bd. Ex. 22 - Boundary Committee's Recommendations for Woodholme Boundary to Executive Leadership Team, dated 02/28/05
- Bd. Ex. 23 - Board Minutes for 03/08/05 with attached Exhibit F re: Boundary for Woodholme
- Bd. Ex. 24 - Media Advisory re: Public Hearing, dated 03/18/05
- Bd. Ex. 25 - Board minutes for 03/22/05
- Bd. Ex. 26 - Public Hearing Speaker Sign-In Sheet, dated 03/23/05
- Bd. Ex. 27 - Not admitted
- Bd. Ex. 28 - Not admitted
- Bd. Ex. 29 - Board Minutes for 04/12/05 with attached Exhibit B re: Boundary for Woodholme
- Bd. Ex. 30 - Not admitted
- Bd. Ex. 31 - Not admitted
- Bd. Ex. 32 - Not admitted
- Bd. Ex. 33 - Not admitted
- Bd. Ex. 34 - Resume of Carolyn Staskiewicz, REFP
- Bd. Ex. 35 - Not admitted
- Bd. Ex. 36 - Letter to James Sasiadek from Alan Zukerberg, dated March 16, 2005, with 7 page attachment;
- Bd. Ex. 37 - Letter to Brenda Stiffler from PCC, dated March 29, 2005, with two page attachment.

B. Testimony

The following witnesses presented testimony on behalf of the Appellants:

1. T. Russell Hopewell, Community Representative, Boundary Study Committee ("BSC");
2. Joy Shillman, Member, Baltimore County Board of Education;
3. Patricia J. Roulhack, Community Representative, BSC;
4. Ghassan Shah, Planning Administrator, Baltimore County Office of Strategic Planning ("OSP");
5. Dr. H. Scott Gehring, Assistant Superintendent, Northwest Area, Baltimore County Public Schools ("BCPS") (accepted as expert in education, educational policy, and educational leadership);
6. Barbara Walker, Co-chair, BSC; Assistant to Executive Director of Schools, Northwest Area, BCPS;
7. Pamela Carter, Specialist, OSP;
8. Michael Gruber, Appellant; President, Dumbarton and Stevenson Civic and Improvement Association ("Dumbarton");
9. Nancy Olin, Appellant; Secretary, Fields of Stevenson Association ("Fields");

10. Alan Zukerberg, Appellant; President, Long Meadow Association (Long Meadow”); President, PCC;

The Board presented the following witnesses:

1. Alex Weinberg, Resident, Long Meadow;
2. William Burke, Principal, Wellwood;
3. Dr. H. Scott Gehring*³
4. Carolyn Staskiewicz, Project Director, DeJong (accepted as an expert in educational facilities planning).
5. Denise Madden, PTA Vice President and Co-Chair, Woodholme BSC;
6. Pamela Carter, Boundary Specialist, OSP, Member, Woodholme BSC*

FINDINGS OF FACT

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

Background

1. Baltimore County Board of Education Policy 1280 (“Policy 1280”) dictates the procedure the Board follows to determine the attendance boundary for a newly-constructed school.

2. Dr. Scott Gehring (“Dr. Gehring”), Assistant Superintendent, Northwest Area, BCPS, was responsible for considering the boundary scenario recommended by the Woodholme BSC and making a recommendation to the BCPS Superintendent. The BCPS Superintendent was then responsible for recommending a boundary scenario to the Board. Ultimately, the Board has the authority to determine the attendance boundaries for all public schools within the County.

3. Under Policy 1280, the Area Assistant Superintendent must form a Boundary Study Committee that reviews information prepared by the OSP, gathers input from the community, and develops several boundary change options. The BSC recommends the best boundary change option to the Assistant Superintendent.

4. The OSP was charged with drafting preliminary boundaries for the Woodholme attendance area. The OSP traditionally establishes the boundary for a newly-constructed school attendance area by drawing a circle with a one-mile radius around the new school. The one-mile radius reflects an estimate of the reasonable walking distance for school children. The OSP used the one-mile radius to begin the Woodholme boundary process, and also used it for previous boundary studies.

5. Ghassan Shah, Planning Administrator for OSP, manages the OSP office that includes Pam Carter, Boundary Specialist, and Chris Brocato, Planning Analyst. Shah oversees the development of educational facility master plans, creates enrollment projections, and addresses faculty needs regarding capacity enrollment.

6. Shah attended all BSC and community meetings regarding the construction of

³ Denotes witnesses who were also presented by the Appellants.

Woodholme and the development of its attendance boundary.

New Town Overcrowding

1. The Board had contemplated for about fifteen years building a new elementary school in the northwest part of Baltimore County, within the area where Woodholme was ultimately constructed. This construction was contemplated to support the growing population in the northwest part of the County and overcrowding at some area schools. (Bd. Ex. 5; TR 1761-1766). Wellwood was never identified as justification for construction of a new school in the northwest part of Baltimore County. (Bd. Ex. 5; TR 1766).

2. The construction of Woodholme became necessary due to substantial overcapacity at New Town Elementary School ("New Town") when it opened in 2001. Although the school was projected to have 650 students, the school opened with 900 students. New Town was overcrowded as soon as it opened because some private school students returned to public school to attend New Town, many students moved into the area to attend the new school, special permission transfer students returned to New Town to attend their home school, and the New Town attendance boundary was quite large in light of the unanticipated factors that led to the school's increased enrollment. (TR 1558).

3. The overcapacity at New Town was initially handled by employing relocatable classrooms, temporarily annexing portions of the New Town attendance area to other area schools, and capping the total enrollment at New Town at 900 students. (TR 1396, 1400). Due to the overcrowding at New Town, however, student lunch periods were forced to begin at 10:00 a.m., and there were problems with parking and adequate meeting space.

4. Five elementary schools were selected to handle the overflow enrollment at New Town once it reached 900 students. The five elementary schools annexed to handle the New Town overflow included Reisterstown, Franklin, Glyndon, Summit Park, and Ft. Garrison. These schools were selected because they close to New Town, were under capacity, and did not yet have full-day kindergarten. Wellwood was not selected for annexation of New Town students because its enrollment was overcapacity when the decision to annex was made, it had full-day kindergarten, and it was a magnet school so it already had out-of-boundary students. (TR 587, 1400-1402).

5. Construction of a new school is a last resort after other solutions to address over capacity are exhausted. The Board used relocatable classrooms, capped the enrollment at New Town, and annexed students to other area schools, before it built the new Woodholme to address the overcrowding at New Town. (TR 1396, 1400, 1779, 1781-1783).

6. Even after annexation, New Town remained overcapacity by at least 200 students in the fall of 2004 when the Woodholme boundary process began.

7. DeJong is an Ohio-based educational planning consulting company. DeJong trained BCPS in 1999 with regard to the attendance boundary process. (TR 1631). DeJong was consulted to assist BCPS in developing a plan to relieve the overcrowding at New Town. (TR 1656-1657).

8. DeJong made several recommendations to BCPS to address overcrowding at New Town. These included building a new school, using a year-round school, adding additional relocatable classrooms, and annexing students to the surrounding schools. (TR 1656; Bd. Ex. 22).

Wellwood Enrollment and Programs

1. Wellwood is a magnet school with a French immersion magnet program. Students must apply to the magnet program and are selected through a lottery system. Any student who resides in Baltimore County is eligible to apply for the magnet program. Wellwood accepts twenty-six students each year in the kindergarten class for the magnet program. Any student who resides in the Wellwood attendance area is eligible to attend the school but, to participate in the Wellwood magnet program, the student must apply and be selected, regardless of where they live. (TR 1349-1350).

2. Wellwood is a culturally diverse school with students from many countries who speak different languages. (TR 1352). Wellwood's enrollment was over State-rated capacity by 88 students as of September 30, 2004. (App. Ex. 7; TR 647-648).

3. Wellwood principal, William Burke, has reduced the Wellwood enrollment by eliminating all special permission transfers to the school. (TR 1352-1353, 1368, 1371, 1786, 649). The school currently employs three trailers, or "relocatable classrooms," which provide additional classrooms for about seventy-five students. With the use of the three relocatable classrooms, Wellwood's class sizes are below the County standard, despite its designation as being over capacity. (TR 14141-1416). The only exception to the under capacity class sizes at Wellwood are the kindergarten and first grade French language classes within the magnet program. The magnet program classes are larger by design to account for the natural attrition that generally occurs as students progress in the magnet program up through fifth grade. (TR 1373-1374). Some teachers at Wellwood prefer the classroom trailers because they are air-conditioned, while the remainder of the school is not. (TR 1375).

4. Wellwood offers a full-day kindergarten program. (TR 1360). Full-day kindergarten, relocatable classrooms, and special education class sizes all impact on a school's State-rated capacity. (TR 1404).

5. Wellwood receives about thirty-five to fifty annual requests for special permission transfers. Factors that lead to the requests for special permission transfers include the diversity of the student body, favorable test scores, experienced faculty, and the ESOL program. (TR 1371, 1375-1376, 1406). The ESOL students at Wellwood make annual yearly progress ("AYP"), as that term is measured by BCPS.

6. Overcapacity can be addressed in various ways other than through boundary changes. These include the use of relocatable classrooms, elimination of special permission transfers, and a reduction in the number of students accepted into a magnet program. (TR 1617-1618, 1352-1353). A boundary change is the most radical method to reduce enrollment, and should be used as a last resort. (TR 1754, 1786).

7. The number of students who reside within Wellwood's attendance boundary are below State-rated capacity. Wellwood is considered over capacity due to the number of out-of-boundary students that attend its magnet program. (TR 1754). If a school's over capacity is caused

by the enrollment of out-of-boundary students, the Board will generally not redistrict the school's attendance boundary. Instead, the Board will consider reducing enrollment by limiting the number of out-of-boundary students who attend the school. (TR 690).

8. Wellwood functions very well with relocatable classrooms and adequate infrastructure, and does not currently require a boundary change. The moderate overcapacity has not caused a negative impact on its program of instruction, the cafeteria, transportation, or safety at the school. (TR 1617-1618). Students eat lunch at Wellwood during normal lunch hours, between 11:00 a.m. and 1:00 p.m. (TR 1417). Like all County schools, Wellwood has a gymnasium, outdoor fields, and an auditorium. (TR 1417-1418).

9. Based on growth in the Northwest area, BCPS will annually monitor whether future boundary or other school changes are necessary in the Northwest area. (TR 1418-1420). There is additional residential construction planned in the area of Wellwood, Summit Park Elementary ("Summit Park"), and Ft. Garrison Elementary ("Ft. Garrison"), and full-day kindergarten will be coming to Summit Park and Ft. Garrison in 2007. Therefore, the Board will have to consider whether it will be necessary to make future boundary or other changes to the schools in that area of northwest Baltimore County to address these issues. (Bd. Ex. 56; TR 9-11).

10. Ft. Garrison is currently below State-rated capacity. In September 2004, it was under capacity by 75 students. (App. Ex. 7; TR 1424-1425). When it converts to full-day kindergarten in 2007, its student enrollment and State-rated capacity will increase with more students from public and private schools expected to attend Ft. Garrison's full-day kindergarten program. (TR 1423). Ft. Garrison is also being considered for a special education cluster program which would also increase its capacity. (TR 1426).

11. Wellwood, Reisterstown Elementary ("Reisterstown"), and Summit Park were overcapacity elementary schools in the fall of 2004. Based on their proximity to Woodholme, neither Wellwood, Summit Park, nor Reisterstown were considered for boundary changes as part of the Woodholme boundary process.

12. Wellwood was not considered for boundary changes during the Woodholme boundary process based on its proximity to Woodholme and other factors. Wellwood was outside the one-mile radius drawn around Woodholme that was established by the OSP. (TR 1753-1754, 1810). No students were annexed from New Town to Wellwood because Wellwood was over capacity when those annexation decisions were made. (TR 1464-1465, 1524, 1809-1810). Wellwood was also never identified by the Board over the years as one of the schools that justified the construction of Woodholme ES. (TR 659; Bd. Ex. 5). Consequently, BCPS did not include any staff, teachers, administrators, or PTA representatives from Wellwood on the Woodholme BSC.

Previous Boundary Changes

1. Dr. Gehring is the BCPS Assistant Superintendent for the Northwest Area. He was appointed to that position in 2001, when the job title was Executive Director rather than Assistant Superintendent. In the position, Dr. Gehring oversees twenty elementary schools, six high schools, and five middle schools in the Northwest Area. (TR 1381, 1389).

2. Dr. Gehring has overseen or participated in three boundary changes, involving three new schools, New Town, New Town High School ("HS"), and Woodholme. He has participated in

more boundary changes than the other Assistant Superintendents who supervise the other geographical areas in Baltimore County. New Town opened in 2001, New Town HS opened in 2003, and Woodholme opened on July 1, 2005. (TR 1397-1398).

3. When the New Town boundary process began, Dr. Gehring was the BCPS Director for the Northwest Area elementary schools. The then-Executive Director for the Northwest Area, Donna Flynn, appointed Dr. Gehring to be a co-chair of the New Town BSC, along with Michael Franklin, then-PTA president of Deer Park ES. (TR 1441). As an administrator, Dr. Gehring was a non-voting member of the New Town BSC. Representatives from the community who served on the New Town BSC included Emily Wolfson, an advocate for children from Randallstown, and Harold Reid, a community liaison to the County Executive. (TR 1441-1443).

4. When the OSP began to develop an attendance boundary for New Town ES, it started with a proposed boundary that was close to a one-mile radius around the school that encompassed a boundary for students who would walk to school. (TR 1441, 1757). The New Town boundary was somewhat unusual because the proposed site for New Town fell within a polygon-shaped satellite area that had been temporarily districted to Hernwood ES. Additionally, the New Town attendance area was surrounded by several overcrowded schools that were previously designated as justification for building New Town. (TR 1756-1757).

5. After becoming Assistant Superintendent, Dr. Gehring oversaw the New Town HS boundary process. He selected Barbara Walker, from the OSP, and Arvis Tucker, a parent from New Town as co-chairs of the New Town HS BSC. (TR 1445).

Woodholme Boundary Study Committee

1. The charge of the Woodholme BSC was to relieve overcrowding at New Town by developing an appropriate attendance boundary for the newly-constructed Woodholme. (TR 1464). Based on its proximity to Woodholme and other factors, Wellwood was never part of that mission.

2. The Board uses a one-mile radius to begin the boundary process for a new school because students who live within one mile of a school are generally considered able to walk to school, and will be included in the new school's attendance boundary. (TR 1446-1448, 1587-1589, 1755-1756, 1810). Once the OSP identifies the number of students who live within the school's one mile radius, this helps the BSC develop an attendance boundary for the new school. (TR 1446-1447). A one-mile radius is a reasonable starting point for developing an attendance boundary for a new school. The OSP has used the one-mile radius in several boundary studies, including those for New Town, New Town HS, and Woodholme. (TR 1448, 1466, 1755-1756, 1810).

3. The following elementary schools had a portion of their attendance boundaries fall within the one-mile radius around Woodholme: Ft. Garrison, Owings Mills, New Town, Millbrook, and Winand. (TR 576, 642).

4. Each school identified within Woodholme's one-mile radius had the potential for changes being made to their boundaries during the Woodholme boundary process. (TR 1784). Policy 1280 provides for all of the affected schools to have representation on the BSC, including teachers, parents, administrators, and PTA members. Once the OSP identified the schools that fell within any portion of Woodholme's one-mile radius, the Board included representatives from those

schools and communities to participate on the BSC. (TR 545, 620-621, 1449). The schools and PTA's selected the teacher, staff, parents, and PTA representatives for the BSC, and the Assistant Superintendent selected the BSC co-chairs and representatives from the community. If changes are made to the boundaries of a school that was not included initially in the boundary study process and was not initially considered for a change, this might prevent constituents from that school from participating in the process and having an opportunity to express their viewpoint concerning a change to the attendance boundary of that school. (TR 1793-1796).

5. Since the Woodholme site was located within the Millbrook district, Millbrook Elementary ("Millbrook") was an affected school because a portion of the Millbrook district would have to become part of the new Woodholme boundary. To relieve overcrowding at New Town, it was also necessary for a portion of the New Town district to become part of the Woodholme boundary. (TR 549, 551, 664, 1456).

6. The boundary of Winand Elementary School ("Winand") was not changed during the Woodholme boundary process because Winand's enrollment had been reduced when New Town opened. When the Woodholme boundary process began, Winand was still under capacity and no students from New Town had been annexed to Winand. (TR 1784). Therefore, the BSC concluded that there was no need to change the Winand boundary.

7. Dr. Gehring sought representatives from the community to serve on the BSC who were objective, did not have their own children at stake, and had knowledge of the Northwest area and its schools. He did not seek representatives from community associations because Policy 1280 did not require such participants. (TR 1450-1451, 1521). He sought individuals from the community who had a concern for public education, and were willing to volunteer. (TR 1609-1611). He also sought individuals who lived in the area who were familiar with local businesses, retail areas, and religious institutions, and their effect on traffic patterns around the schools. (TR 611-617, 1622-1623). Dr. Gehring did not review the resumes of community members he selected for the Woodholme BSC because Policy 1280 does not require it. (TR 1543-1544; App. Ex. 10). He relied on his own knowledge and recommendations from others. In considering candidates suggested for BSC membership, he asked them whether they had the time to serve, could act objectively, and could proceed in the best interests of the children. (TR 1612).

8. Dr. Gehring did not require representatives from the community to canvass other community members or associations because Policy 1280 does not require it. (TR 1606-1608). He anticipated that PTA representatives appointed to the BSC would keep their PTA's and school constituencies apprised of the boundary process. (TR 1610).

9. Dr. Gehring selected Russell Hopewell to serve on the Woodholme BSC as a representative from the Pikesville area. Hopewell resides in the Villages of Woodholme community, which is a short distance from Woodholme. Hopewell worked for BCPS for thirty-three years, including seventeen years as a teacher and sixteen years as an elementary school principal. Hopewell knew the schools and students in the area, had tremendous resources as an educator, and had no children within the BCPS system. (TR 1455). Dr. Gehring considered Hopewell to be objective with regard to Woodholme boundary issues. (TR 1541).

10. Hopewell participates in community events and activities including holiday parties, community meetings, activities for seniors, and participates in the Alliance of Black School Educators and Omega Psi Phi Fraternity, which provides mentoring and outreach for less

fortunate individuals. Hopewell also serves on the safety and security committee of his neighborhood association. (TR 68).

11. Hopewell retired from BCPS about ten years ago. In the fall of 2005, he was appointed by the BCPS Personnel Director to serve temporarily as a substitute administrator at Millbrook to help the assistant principal while the principal was on extended medical leave. Hopewell was appointed to the Millbrook position after the Woodholme boundary process was completed. (TR 1452-1454).

12. Initially, Hopewell and some of his neighbors were concerned that Woodholme was being built so close to his neighborhood. Hopewell had no preconceived preference concerning the outcome of the Woodholme boundary. (TR 1454-1456).

13. Dr. Gehring has been friends with Hopewell for twenty years since both were first selected as BCPS principals, and they played cards together. Dr. Gehring had no conversations with Hopewell, and made no attempts to influence his views, regarding the outcome of the Woodholme boundary after he selected Hopewell to serve on the BSC. Hopewell attended all of the BSC meetings and served as a facilitator at the community forum.

14. Dr. Gehring also selected Patricia Roulhack to serve on the BSC based on a recommendation from Board Member Joy Shillman. Shillman recommended Roulhack as a community representative from the Pikesville area because she lived in the Avalon community near Woodholme, and was a former educator. Roulhack served as an elementary school teacher in both public and private schools in Baltimore County for thirty years. Roulhack taught one of Shillman's daughters in public school years earlier. Roulhack has engaged in community activities involving education through private tutoring and providing books to school children. She also serves on the landscape committee of her neighborhood association. (TR 115-118, 1257).

15. Dr. Gehring selected Roulhack to serve on the BSC because she lived close to Woodholme, had a strong educational background, and was recommended by Shillman as bright, objective, and with time to serve on the BSC. (TR 1456-1458, 1543).

16. After Roulhack was selected for the BSC, Shillman had no conversations with her regarding the Woodholme boundary. No official with BCPS solicited Roulhack to choose a particular scenario while she served on the BSC.

17. Dr. Gehring also selected Emily Wolfson and Cordell Richardson as representatives from the community to serve on the Woodholme BSC. Wolfson lived in the Randallstown area, had knowledge, interest, and experience in education and boundary issues, and was available to serve. Richardson was recommended to Dr. Gehring by his assistant, Barbara Walker. Richardson was active in the community in the Randallstown area and had demonstrated an interest in the local schools through his volunteer work. (TR 1545).

18. Many students affected by the New Town overcrowding and the construction of Woodholme were African-American, so Dr. Gehring desired to select several African-American members for the Woodholme BSC to provide the Committee with diverse membership. This was one factor that led to his selection of Hopewell and Richardson for the BSC because both are African-American males. (TR 1460-1461).

19. The New Town BSC had two representatives from the community, the BSC for New Town HS had three community representatives, and the Woodholme BSC had four. Policy 1280 does not require a specific number of representatives from the community to serve on the BSC. (TR 1459; App. Ex. 10).

20. In 2003, Zukerberg met with Board Member Shillman to inform her of the existence of the PCC and advise her that the PCC supported education in the area. On September 17, 2004, Zukerberg sent a letter to Dr. Gehring requesting that the PCC be represented on the BSC and the NWAC.

21. Zukerberg contacted Dr. Gehring's assistant, Barbara Walker, regarding his concerns about the Wellwood school district. Walker informed him in September 2004 that Wellwood would not be considered by the BSC as part of the Woodholme boundary process.

22. Dr. Gehring did not select a PCC member to serve on the Woodholme BSC. Based on Zukerberg's prior communications, Dr. Gehring knew that the PCC sought to redistrict several neighborhoods from Wellwood to Ft. Garrison. Dr. Gehring chose not to select participants to the BSC who had a preconceived view before the process began of how the Woodholme boundary should be drawn. He also considered the boundary change sought by the PCC to be outside the scope and purpose of the Woodholme boundary process because it focused on Wellwood. (TR 1462-1464; App. Ex. 32).

23. Pamela Carter, OSP Boundary Specialist, has been involved in every BCPS boundary study since 1989, which is at least twenty. (TR 1744). In the late 1990's, the boundary development process was changed to give PTA's, communities, and affected schools representation on the BSC. (TR 1746). Carter has been involved with five boundary studies since this policy change. (TR 1749). Carter personally drove around the area of the Woodholme site and nearby schools before the Woodholme boundary scenarios were developed. She also considered the capacities of the schools involved in the boundary process. (TR 541, 1803-1807).

24. The BSC training tape was shown to BSC members at the first BSC meeting. (TR 1811). The training tape supplemented Policy 1280 and is not part of the Policy itself. (TR 1609). The OSP did not provide boundary scenarios to BSC members at the first meeting. (TR 1810-1811). The OSP provided the BSC members with maps of the existing school boundaries, a one mile radius map, kindergarten and school enrollments, birth rates, enrollment projections, and other background data so the Committee could develop reasonable boundary lines for Woodholme. (TR 540-541, 1437-1439, 1526, 1801-1802; Bd. Ex. 6, 11).

25. In the process of developing the Woodholme attendance boundary, the BSC considered travel time, overcrowding at New Town and Owings Mills, future development in Owings Mills and near Owings Mills Mall, cultural and socio-economic diversity, special education programs, and free and reduced meals. The BSC members discussed student capacity and overcrowding of affected schools at the BSC meetings. The BSC members were given information regarding which schools were overcrowded and the extent of their overcapacity. (TR 1721). Members of the BSC discussed the various scenarios in the meetings. (TR 1730).

26. The Board desires that students attend the school closest to their home. That goal cannot always be achieved due to several factors, including man-made and natural physical barriers,

school capacity, population density, diversity issues, and school feeder patterns. (TR 1613-1615, 1775).

27. If an area within a one-mile radius has no sidewalks, the Board provides transportation for students in that area until sidewalks are built. Once the sidewalks are built, then students are required to walk to school if the area falls within a reasonable walking distance of the school and is deemed safe. (TR 1807).

28. The Board disseminated materials to the public which identified the members of the BSC. The Board provided additional information at public meetings identifying the BSC members and acknowledging Patricia Roulhack and Russell Hopewell as representatives of the community from the Pikesville area, and Emily Wolfson and Cordell Richardson as representatives of the community from the Randallstown area. (TR 1251-1252; App. Ex. 1, 6).

29. Dr. Gehring directed the BSC to review and follow Policy 1280 during the Woodholme boundary process. (TR 1440). Policy 1280 was followed in the development of the three school attendance boundaries that Dr. Gehring participated in or oversaw. (TR 1440).

30. The boundary study process is advisory until the Board makes a final determination. Only the Board is charged with the responsibility for making a school boundary determination. (TR 1776; App. Ex. 10). Board Policy provides for the BSC members to develop the initial boundary scenarios. Then the process opens up to the larger community, and allows for oral and written input at the community forum and Board meetings from a variety of representatives from the community who have an interest in public education. (TR 672-673, 676).

31. Members of the Woodholme BSC discussed and considered proposed changes to the Owings Mills Elementary ("Owings Mills") boundary related to current and anticipated future overcrowding at Owings Mills. These discussions led the BSC to include in Scenario C proposed changes to the Owings Mills/Ft. Garrison boundary to prevent overcrowding at Owings Mills. (TR 1469-1470, 1574). The changes to the Owings Mills/Ft. Garrison boundary were developed through discussions among BSC members during the boundary process, and did not arise from a predetermined outcome by members of the BSC. (TR 1615-1616).

32. The Owings Mills/Ft. Garrison discussions ensued because BSC members sought to move a portion of the Owings Mills attendance boundary to another school district to prevent overcrowding at Owings Mills, which was already slightly above capacity. Owings Mills was going to lose some students to Woodholme, but the BSC was also contemplating having Owings Mills receive some students back from New Town. The BSC considered plans for future development of apartments and townhouses in the Owings Mills district that could place further strain on the Owings Mills enrollment. After discussion, and to prevent further overcrowding at Owings Mills, the BSC decided to redistrict a small portion of the Owings Mills district to Ft. Garrison because Ft. Garrison was the only school bordering the Owings Mills district that was under capacity. (TR 557-560, 1771-1774; Bd. Ex. 6).

33. The BSC contemplated that any schools in which a portion of their attendance boundary fell within the one-mile radius of Woodholme, including Owings Mills and Ft. Garrison, might have changes made to any part of their boundary. Therefore, those schools were afforded appropriate representation on the Woodholme BSC in accordance with the requirements of Policy 1280. (TR 659). The area of the Owings Mills attendance boundary that was redistricted to Ft.

Garrison was outside the one-mile radius of Woodholme. (TR 1814-1815). The northwest area of the Wellwood attendance boundary is much closer to Ft. Garrison than the portion of the Owings Mills attendance boundary that was moved into the Ft. Garrison district. (TR 1815-1816). However, the changes made to the Owings Mills/Ft. Garrison boundary were motivated by legitimate concerns of capacity, overcrowding, and future residential construction.

34. The OSP developed three attendance scenarios for the Woodholme boundary. The BSC eliminated one and presented two scenarios, Scenarios A and C, at the community forum.

35. Scenario C that was adopted by the Board placed the Owings Mills Mall ("Mall") area into the new Woodholme district to divert the proposed residential development at the Mall away from New Town. This adjustment was designed to avoid future overcrowding at New Town. (Bd. Ex. 22; TR 1498, 1772-1773).

36. Upon completion of the Woodholme boundary process, Woodholme, New Town, Owings Mills, and Ft. Garrison were all under capacity. (TR 1790).

37. Summit Park was outside the one-mile radius identified by the OSP for the Woodholme boundary process. As a result, the BSC never considered changes to Summit Park's boundary. Because many students were annexed to other schools due to New Town overcrowding, the Board invited parents of annexed students to participate on the BSC. One of the "annexed parents" on the BSC was from Summit Park. (TR 1559-1561).

BSC Co-Chairs

1. Dr. Gehring selected Denise Madden to serve as co-chair of the Woodholme BSC. (TR 1703). She has been on the Executive Board of the Deer Park Elementary ("Deer Park") PTA for the past six years, and is vice-president of the Executive Board. She is also area vice-president for the PTA Council of Baltimore County for the Northwest area, southern cluster. (TR 1696-1697).

2. Madden was selected to serve as BSC co-chair because she was on the PTA Council in the Northwest area, and because she was affiliated with a school, Deer Park, that was not affected by the Woodholme boundary process. (TR 1703).

3. During the New Town boundary process, Madden attended and participated in the New Town community forum. (TR 1704). She also attended and spoke at Board meetings regarding the New Town boundary process.

4. Madden served on the publicity subcommittee for the Woodholme BSC. This subcommittee was responsible for preparing fliers for the community forum and ensuring that schools received information about the forum. The subcommittee also prepared press releases, contacted the media, and distributed fliers in the area around the school. (TR 1713-1714).

5. Dr. Gehring also selected Barbara Walker, his assistant at BCPS, to serve as co-chair of the Woodholme BSC.

Community Forum

1. A community forum ("forum") was scheduled to inform the public of the proposed scenarios for the new attendance boundary for Woodholme. The forum was initially scheduled for January 31, 2005, but was rescheduled to February 7, 2005 due to bad weather. (TR 1160). The forum was held at Pikesville High School. (TR 1574).

2. Appellant Zukerberg resides in the Long Meadow community and is president of PCC and the Long Meadow Association. (TR 1127-1128). Zukerberg attended the February 7, 2005 forum. Appellant Michael Gruber is president of the Dumbarton Association and a member of the Northwest Educational Advisory Council ("NWAC"). He was unable to attend due to family illness, but another member from the Dumbarton Association board attended. A member of the PCC education committee also attended the community forum. Each of these individuals participated fully in the forum. (TR 782).

3. Members of the community, BSC members, teachers, administrators, parents, and other interested individuals signed in at the forum. (App. Ex. 8). 103 persons signed the sign-in sheet, including BCPS personnel who were assisting with the forum. Forum participants included individuals from the Wellwood district and individuals from other schools and communities. (TR 1576-1577; App. Ex. 8). Some of the Appellants participated in the forum by discussing issues at the small group tables, providing written comments, and voting on the proposed scenarios.

4. Forum participants were provided with a packet concerning the Woodholme boundary process upon their arrival at the forum. The packet included the two proposed Woodholme attendance scenarios and boundary maps. (TR 1129; App. Ex. 6). Participants were permitted to take their packets home with them after the forum concluded. (TR 1164-1165). Zukerberg gave his packet to Gruber for his review. (TR 1166).

5. Zukerberg requested a copy of the Woodholme boundary materials from the OSP prior to the forum. Ghassan Shah, OSP Planning Administrator, declined to provide Zukerberg with an advanced copy of the materials. (TR 1129). OSP did not provide any member of the public with advanced copies of the Woodholme boundary materials prior to the forum. (App. Ex. 39).

6. In response to Zukerberg's request for materials, Shah provided him with a copy of Policy 1280 and explained, in a February 3, 2005 letter to him, regarding the boundary study process and the relevant time line for decision-making on the Woodholme boundary. (App. Ex. 40).

7. Barbara Walker, Dr. Gehring's assistant, presented welcoming remarks and an overview at the beginning of the forum. OSP Specialist Carter then made a presentation on a large screen in which she described the proposed boundary scenarios, A and C. She presented the information in the Woodholme boundary packet, used maps in her presentation, and explained the factors that went into creating the scenarios. (TR 548, 1131-1133, 1801; App. Ex. 6). Carter's presentation lasted about fifteen to twenty minutes.

8. During the second segment of the forum, participants sat at small group tables in the cafeteria where they had an opportunity to discuss the boundary scenarios, submit written comments, and vote on the scenarios. Participants also had the opportunity to complete a questionnaire addressing the factors to be considered, and their priorities, in developing school attendance boundaries. (TR 1799-1802). Fifty-eight persons voted on the proposed scenarios.

9. The public was afforded the opportunity at the forum and thereafter to critique the proposed scenarios and offer changes. (TR 1799). The public had the opportunity to make comments concerning the proposed scenarios at the community forum and at subsequent public hearings and meetings before the Board. (TR 1799-1800).

10. BCPS contracted with DeJong to tabulate the results of the questionnaire, comments, and Facilitator Summary Sheets used by the BSC at the forum. The OSP collected the data from the community forum and submitted it to DeJong for tabulation. (TR 1503). DeJong summarized the results to indicate that 58 forum participants voted on the scenarios; 25 forum participants supported Scenario C, 19 participants supported Scenario A, and 14 participants had "no preference." Some of the participants listed as having "no preference" actually disagreed with both scenarios.

11. The community forum was advertised in PTA newsletters at the affected schools, and in the Baltimore Sun, local newspapers, and in signs placed in local stores. No one who came to the forum was turned away, regardless of their address or interest. (TR 1471-1472, 1499; Bd. Ex. 17). After the forum was rescheduled from January 31, 2005 to February 7, 2005, amended notices were placed in newspapers and PTA newsletters to advise of the schedule change. (TR 1472-1473).

12. Appellant Zukerberg spoke to Dr. Gehring at the forum and expressed his dissatisfaction with the exclusion of the Wellwood neighborhoods from the proposed boundary changes. Dr. Gehring explained to Zukerberg that Wellwood was not part of this process, but that he anticipated there would be further review of boundaries in the Northwest area in the future, and that would be the appropriate time to consider issues at Wellwood. (TR 1475-1476). Louis Kaplan, a member of the Long Meadow community, also spoke with Dr. Gehring at the forum and asked him about the change to the Ft. Garrison attendance boundary. (TR 1134-1135).

13. To ensure that enough administrators were available to assist at the forum, the Board selected some elementary school administrators from the Northwest area to assist, including administrators from schools that were outside the one-mile radius and not affected by the Woodholme boundary process. (TR 1598-1599). Principal Burke from Wellwood was one of the school administrators who participated in the community forum as a facilitator.

14. Representatives from the community had an opportunity to provide input concerning the Woodholme boundary process at the community forum and at subsequent Board meetings. (TR 1521-1522).

Subsequent Meetings in Woodholme Boundary Process

1. The BSC considered the results of the forum. At the final BSC meeting on February 16, 2005, the BSC members who were present voted unanimously in favor of Scenario C and recommended Scenario C to Dr. Gehring. One or two BSC members were not present for that vote. (TR 1476-1477).

2. Dr. Gehring recommended Scenario C to Dr. Hairston and the Executive Leadership Team, consistent with the BSC recommendation. Dr. Hairston concurred with the support for Scenario C, and recommended that Scenario to the Board. (TR 1477; Bd. Ex. 21-22).

3. The Executive Leadership Team inquired about how the recommended Scenario would affect overcrowding at New Town, and whether Woodholme would be overcrowded when it opened. Dr. Gehring assured the Team that the BSC had addressed overcrowding at New Town with Scenario C, and that the Woodholme boundaries created by Scenario C were limited to allow for further growth at Woodholme. (TR 1479-1480).

4. On March 8, 2005, the Board held a meeting. Dr. Gehring made a presentation to the Board regarding the Woodholme attendance boundary. (TR 1495). He advised the Board that those BSC members present at the final BSC meeting voted unanimously to support Scenario C, and he also recommended that the Board adopt Scenario C as the new Woodholme attendance boundary. (TR 1504; App. Ex. 58, TR 6).

5. At the March 8, 2005 Board meeting, Dr. Gehring explained that although 119 individuals attended the forum, many of these were school system employees and that only 58 participated in the small group discussion. Dr. Gehring further advised that of these 58 participants, 25 selected Scenario C, 19 selected Scenario A, and 14 had no preference. Dr. Gehring also explained that two tables reached a consensus for Scenario C, three tables reached a consensus for Scenario A, and five tables reached no consensus. (App. Ex. 58, TR 5). Dr. Gehring told the Board that both Scenarios A and C were acceptable to the BSC or they would not have been presented at the forum. (App. Ex. 58, TR 6).

6. Dr. Gehring explained the differences between Scenarios A and C, and advised that Scenario C reduced overcrowding at New Town and enabled Woodholme to be under capacity when it opened in August 2005. (App. Ex. 58, TR 8-10). He explained further that the vast majority of students newly districted to Woodholme under Scenario C were living within the current New Town boundary. (App. Ex. 58, TR 15-16). He also explained that the students annexed to other schools from New Town to temporarily relieve that school's overcrowding, were free to stay at the schools to which they had been annexed, or to return to their home school. (App. Ex. 58, TR 7-8, 19-21).

7. Dr. Gehring advised the Board that other schools in the Northwest area remain over capacity, including Cedarmere Elementary ("Cedarmere") and Wellwood. He further explained that the construction of Woodholme was not designed to address overcrowding at all Northwest area schools, and that the Woodholme boundary process was not intended to be the final answer for overcrowding in the Northwest. It was designed to relieve overcrowding at New Town through the creation of a new attendance boundary for Woodholme. He explained that the Woodholme boundary process achieved its purpose because proposed Scenario C will transform New Town into an under capacity school and will enable Woodholme to be undercapacity upon its opening. (App. Ex. 58, TR 12-14). The Woodholme boundary process enabled New Town to become under capacity for the first time. (TR 1522-1523).

8. Zukerberg also attended the March 8, 2005 Board meeting and made comments there regarding the concerns of the PCC and other residents and community associations who desired to have their neighborhoods redistricted from Wellwood to Ft. Garrison as part of the Woodholme boundary process. (TR 1172-1173). Appellant Gruber and Louis Kaplan, a neighbor and PCC member, also presented testimony to the Board at the March 8, 2005 meeting and expressed their opinions regarding the Woodholme boundary process.

9. On or about March 16, 2005, Zukerberg sent a cover letter and packet of materials to the Board addressing his concerns that the Fields, Long Meadow, and Dumbarton communities be redistricted from Wellwood to Ft. Garrison. The packet included points for inclusion, maps, an email from Abby Beytin, NWAC chair, comments from forum participants, and a summary of forum votes. (TR 1168-1170; Bd. Ex. 36). The Board had an opportunity to review these materials before it voted on the Woodholme attendance boundary. (TR 1180-1181).

10. Zukerberg testified again before the Board at a public meeting on March 23, 2005 at Pikesville High School. At that meeting, Zukerberg addressed the materials that he had previously delivered to the Board. (TR 1184-1185). Gruber and Nancy Olin, a Fields resident, also spoke at this public hearing before the Board. (TR 782-785).

11. By letter dated March 29, 2005, Zukerberg submitted to the Board a proposed amendment to Scenario C that addressed the Appellants' desire to redistrict the communities of the Fields of Stevenson, Long Meadow, and Dumbarton Heights from Wellwood to Ft. Garrison. (Bd. Ex. 37; TR 1185-1203).

12. In his oral and written presentations to the Board in March 2005, Zukerberg addressed the selection of community representatives to the BSC, the absence of an NWAC member on the BSC, the results of the vote by forum participants concerning the proposed scenarios, and the issue of consensus. (TR 1258-1262; Bd. Ex. 36). He also addressed issues of safety, travel distances, student capacity, and other proposed changes to the Ft. Garrison district, in materials he submitted to the Board in March 2005. (Bd. Ex. 36).

13. Zukerberg also spoke with Board Members, Luis Borunda and Fran Harris regarding the materials he sent the Board about the Woodholme boundary process. Zukerberg met with Borunda twice before the Board's final vote. (TR 1293, 1306-1315). Zukerberg spoke briefly with Board Member Ramona Johnson in an attempt to discuss the Woodholme boundary matter. (TR 1300-1306).

14. Barbara Walker and Pamela Carter made presentations to the Board on April 12, 2005 because Dr. Gehring was unable to attend due to his wife's medical condition. OSP provided the Board with a slide presentation at that meeting. (TR 1497; App. Ex. 56, TR 2). Gruber also attended the Board's April 12, 2005 meeting. (TR 785).

15. Walker explained that the affected elementary schools in the Woodholme boundary process were those that fell within a one-mile boundary of the Woodholme site, including Owings Mills, Fort Garrison, Millbrook, New Town, and Winands. Walker reiterated that the Woodholme boundary study was not designed to address all issues and overcrowding in the Northwest area, but that it achieved its purpose. (App. Ex. 56, TR 3).

16. Carter explained that faculty, administrators, parents, and PTA representatives from the specific schools identified as being part of the Woodholme boundary process were included in the BSC. Carter explained that if changes were made to the Wellwood district at this late stage in the process at the April 12, 2005 meeting, such changes would be made without all of the parties from Wellwood being represented on the BSC throughout the process as the Policy requires. (App. Ex. 6, TR 5-7, 11).

17. At the April 12, 2005 Board meeting, the Board members discussed the PCC's desire that the Wellwood district be changed to redistrict the Appellants' communities to Ft. Garrison. The Board also discussed that members of the NWAC were not included on the BSC. Walker noted that while NWAC members may be included in the boundary process, Board policy does not require their inclusion. Walker noted that she was in contact with Abby Beytin, NWAC chairperson, regarding the boundary process. Board members noted that the NWAC and other interested parties had the opportunity to participate and express their views concerning the Woodholme boundary at various public meetings and through other interaction throughout the process. (App. Ex. 56, TR 12-21).

18. At the April 12, 2005 meeting, the Board voted unanimously by voice vote, eleven to zero, with one abstention, to adopt Scenario C as the new Woodholme attendance boundary. (TR 1526). One Board member abstained from the vote due to his concern that the NWAC was not included on the BSC. (App. Ex. 56; TR 21).

19. The adoption of Scenario C was consistent with sound educational policy because it was designed to relieve overcrowding at New Town and allow Woodholme to be under capacity upon opening. It achieved its purpose. (TR 1525).

NWAC Participation on BSC

1. Gruber requested to be placed on the NWAC in the fall of 2004. Abby Beytin, NWAC chairperson, recommended that Gruber be placed on the NWAC. After reviewing Gruber's resume, Dr. Gehring forwarded the request to the Board. By letter dated December 22, 2004, Dr. Hairston selected Gruber to serve on the NWAC. (TR 1215, 1513; App. Ex. 52, 53).

2. The NWAC is independent of the Board. The Board helps to facilitate meetings, speakers, and data collection, but the Council sets its own agenda. (TR 1514-1515).

3. No member of the NWAC was appointed to the Woodholme BSC. Dr. Gehring did not appoint a member from the NWAC to the Woodholme BSC because he perceived the NWAC to have declining enrollment and little interest in the Woodholme boundary process. The NWAC had demonstrated declining attendance at Board meetings. (TR 1510). Dr. Gehring received no inquiries from Beytin or other members of the NWAC with regard to the Woodholme boundary process, even though he speaks with Beytin regularly about NWAC and other matters. (TR 1510-1519, 1619-1620). Woodholme boundary issues were not discussed at any NWAC meetings that Gruber attended during the course of the boundary process. (TR 763-764). Walker had some contact with Beytin regarding boundary matters. (App. Ex. 56, TR 13).

4. Beytin requested assistance from Dr. Gehring to recruit new members for the NWAC. Dr. Gehring helped to facilitate membership recruitment for the NWAC by placing information in school newsletters and addressing at principals' meetings that the NWAC was seeking new members. Such recruitment efforts occurred before, during, and after the Woodholme boundary process. (TR 1578-1579).

5. Members of the NWAC served on previous BSC's involving New Town and New Town HS. The NWAC members appointed to previous boundary committees were selected primarily based on their PTA membership at the affected schools. (TR 1517-1518).

6. Neither Policy 1280, regarding Boundary Changes, nor Policy 1230, regarding Educational Advisory Councils, require that Advisory Council members be appointed to a boundary study committee. (TR 1520, 1751, 1777; App. Ex. 10, 26).

Safety Issues

1. When developing school attendance boundaries, the Board uses logical natural or man-made boundaries such as major roads and interstates, water bodies, railroad tracks, City or County jurisdictional lines, community borders, and dead-end streets. The Board does not think that students should have to walk across the Beltway. (TR 590, 626-627).

2. The distance from Old Post Road in the Dumbarton Community to Wellwood is about 1.7 miles. Travel from that location to Wellwood includes four intersections controlled with traffic lights. The distance from the same point to Ft. Garrison is 1.3 miles. Travel from that point to Ft. Garrison includes one intersection controlled with a traffic light. (TR 727-728, 773-775).

3. Travel to Wellwood from other locations in the Appellants' communities may pass through five intersections controlled by traffic lights. Travel to Ft. Garrison from other locations in the Appellants' communities may pass through two intersections controlled by traffic lights.

4. There are two other schools located in close proximity to Wellwood. These include Pikesville High School and Pikesville Middle School. There are no other schools located in close proximity to Ft. Garrison. (TR 727-728, 773-775). The other schools located near Wellwood have staggered starting and ending times to ease traffic flow. (TR 1358).

DISCUSSION

In a redistricting case, the burden of proof is on the Appellants to prove, by a preponderance of the evidence, that the decision of the Baltimore County Board is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A, D.

The statute at Md. Code Ann., Educ. § 4-109(c) (2004) provides, "with the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section." The statute further provides, at Md. Code. Ann., Educ. § 4-101(b) (2004), that the county board shall "promote the interests of the schools under its jurisdiction."

In establishing the standard of review of decisions of the Baltimore County Board involving local policy, COMAR 13A.01.05.05A provides that the decision of the Baltimore County Board is considered to be *prima facie* correct, and defines arbitrary, unreasonable or illegal, as follows:

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

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

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

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

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the county 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 seminal case which defines the scope of local discretion in school redistricting cases is *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 226 A.2d 243 (1967). In *Bernstein*, the Maryland Court of Appeals held: "Absent a claim of deprivation of equal educational opportunity or constitutional discrimination because of race or religion, there is no right or privilege to attend a particular school." The court reasoned, "the test is not even that there may have been other plans that would have worked equally well, or may, in the opinion of some, have been better, the test is whether the action which was taken was arbitrary, capricious or illegal." See also, *Elprin v. Howard County Board of Education*, 57 Md. App. 458, *cert. denied*, 300 Md. 88 (1984). Pursuant to the Education statute, the local Board of Education has the sole authority to determine the geographical attendance areas for public schools located within the county. Md., Code Ann., Educ. §§ 4-109(c), 4-101(b) (2004).

The Appellants contend that the Board failed to comply with Policy 1280 governing Boundary Changes. (App. Ex. 10). Consequently, the Appellants request that their communities be redistricted as requested from Wellwood to Ft. Garrison. In the alternative, the Appellants contend that because Policy 1280 was violated, the entire Woodholme boundary decision must be invalidated and “reinstated from the beginning of the process.” The Appellants rely on the *Accardi* doctrine for the proposition that agencies are required to follow their own procedures and, the failure to do so, renders the entire process illegal. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The *Accardi* doctrine was recently adopted in Maryland. *Massey v. Sec’y, Dept. of Public Safety & Correctional Serv.*, 389 Md. 496, 518, 886 A.2d 585 (2005).

For the reasons set forth below, I conclude that the Board complied with Policy 1280. Therefore, the *Accardi* doctrine is not applicable here because the Board followed its own procedures in adopting the Woodholme redistricting plan. Even if the Board had violated its procedures as set forth in Policy 1280, I would still conclude that the *Accardi* doctrine was inapplicable because Policy 1280 does not confer any important procedural benefits on the Appellants, as that doctrine requires. *Bd. of Educ. Of Anne Arundel County v. Barbano*, 45 Md. App. 27, 39-44 (1980); *Massey v. Sec’y, supra.*; Md. Code Ann., Educ. §4-109(c).

Regardless of the applicability of the *Accardi* doctrine to this case, the regulations governing this matter provide that a local board decision is illegal if, among other items, it results from an unlawful procedure, constitutes an abuse of discretionary powers, or is affected by any other error of law. COMAR 13A.01.05.05C. For the reasons set forth below, I do not find that the Board engaged in an unlawful procedure, abused its discretion, or committed any other error of law. As addressed below, I conclude that the Appellants have failed to show that the Board’s actions in adopting the new Woodholme boundary were arbitrary, unreasonable, or illegal.

Membership on Boundary Study Committee

Policy 1280 of the Baltimore County Public Schools ("BCPS") governs the process for establishing boundary changes for BCPS public schools. (App. Ex. 10). That Policy provides, in pertinent part, as follows:

2. After presentation to the Executive Leadership Team, the Executive Director of Schools responsible for any school(s) being considered for boundary changes will appoint a Boundary Study Committee composed of parents, teachers, administrators, and other representatives from the schools and communities involved. The Boundary Study Committee will review information prepared by the Office of Strategic Planning, gather input from the community, and develop several boundary change options.

The Appellants contend that the language of Policy 1280 required the Board to place on the BSC a member of a civic or community association. Moreover, the Appellants contend that Policy 1280 requires community representatives to represent the interests of their communities, not just to speak for themselves. The Appellants contend that the language of Policy 1280 compels this result because it uses the language "community representatives" not "community members." Consequently, the Appellants contend that Dr. Gehring's selection of the community representatives on the Woodholme BSC was illegal because they were not members of neighborhood or civic associations.

The Board disputes the Appellants' interpretation of Policy 1280. It contends that the Policy does not require BSC participants to be members of community associations and further contends that representatives from the communities involved include individuals who reside in the communities that would be affected by the boundary changes. Accordingly, the Board argues that Dr. Gehring's selection of community representatives was appropriate and consistent with the requirements of Policy 1280.

The evidence established that Dr. Gehring asked Board Member Shillman to recommend someone to serve on the BSC for the new Woodholme Elementary School because he knew she lived in the Pikesville area which was near the site of the Woodholme. Shillman was originally considered a Pikesville representative to the Board, but was subsequently reclassified as an At-

Large Member, despite her continued residence in the Pikesville area. Shillman recommended that Dr. Gehring consider Patricia Roulhack to serve on the Woodholme BSC. Shillman selected Roulhack for consideration because she taught in both public and private elementary schools in Baltimore County for nearly thirty years, including teaching Shillman's daughter years earlier, she lived in a community in the Pikesville area that was in close proximity to the Woodholme site, and was familiar with the surrounding communities. Shillman considered Roulhack to be fair, qualified, and able to devote sufficient time to the process. (TR 115-116, 124). Dr. Gehring selected Roulhack to serve on the Woodholme BSC based on Shillman's recommendation. (TR 115). Despite their friendship, both Roulhack and Shillman confirmed that Shillman made no attempt to influence Roulhack's duties or decision-making on the Woodholme BSC. (TR 118, 144). Roulhack testified that she was familiar with the needs of the community, understood the educational experience for children in northwest Baltimore County, and that she served on the landscape committee of her neighborhood association at Avalon. (TR 146).

Dr. Gehring also selected Russell Hopewell to serve on the BSC based on his knowledge of Hopewell's longstanding commitment to education as a teacher and administrator with BCPS, as well as Hopewell's residence in a community in the Pikesville area, also in close proximity to Woodholme. Hopewell testified that he served on the security committee of his neighborhood association, was a member of other civic and fraternal groups, was a long-time Baltimore County resident and educator, and cared about the needs of students. (TR 68, 96-98). Hopewell explained that the BSC acted with integrity and in the best interests of the children involved in developing the Woodholme boundary. (TR 103-104). Despite their friendship, the evidence established that Dr. Gehring exerted no influence over Hopewell with regard to his duties or decision-making while serving on the BSC. (TR 100, 1455-1456). In fact, Dr. Gehring asserted that he never attempted to influence the decision of any member of the Woodholme BSC with regard to the development of the Woodholme attendance boundary. (TR 1455-1456).

The Appellants contend that Policy 1280 required the Board to include participants on the BSC who were members of civic or neighborhood associations, and that the Board's failure to do so violated Policy 1280. The Appellants relied on the language in Policy 1280 that provided for the appointment of a BSC "composed of parents, teachers, administrators, and other representatives from the schools and communities involved." (App. Ex. 10). They insisted that the Policy required community representatives on the BSC to speak on behalf of other community residents through the vehicle of a neighborhood association and to actively solicit the views of other community members. The Appellants assert that the failure of the Board to place an active member from a community association in the Pikesville area on the BSC violated the requirements of Policy 1280. In support of this position, the Appellants note that neither Hopewell nor Roulhack were active members of community associations, nor did they canvass their neighborhood associations or other community residents while serving on the BSC. They contend these critical omissions violate Policy 1280 because they are inconsistent with the duties and obligations of a community representative.

Various witnesses testified regarding the meaning of the terms "community representatives." Some insisted that the terms required the person to be on the board of a community association or to actively canvass other members of the community. Others claimed that such community representatives need only live in the community, have knowledge of the area, and a concern for educational matters. The language of the Policy and the evidence adduced at the hearing demonstrate that an active member of a neighborhood association *could* be selected to serve on the BSC. However, contrary to the Appellants' position, Policy 1280 does not *require* such participation. The language of Policy 1280 does not mandate that BSC participants be members of civic, neighborhood, or community associations, and does not require that BSC members solicit the views of association members or community residents. This is one method that could be used during the BSC process, but the terms of the Policy do not compel such action. The entire boundary

study process provides for input from the community, through the community forum and public meetings before the Board. Even Appellant Zukerberg acknowledge on cross-examination that members of the BSC did not have to be “a community association or coalition representative,” or an officer of a community association, but rather just someone who knew what was going on in the communities. (TR 1105, 1250). As career educators, residents of the communities affected by the Woodholme redistricting, and participants in their own neighborhood associations and other groups, the evidence establishes that Hopewell and Roulhack were aware of what was happening in their communities and were adequate representatives of the communities involved. The evidence does not support the Appellant’s contention that the Board failed to select appropriate representatives of the communities involved to serve on the BSC in violation of Policy 1280.

The Appellants argue further that additional evidence in the record supports their view that Policy 1280 should be interpreted to require that BSC participants be active members of neighborhood or civic associations. They rely in this regard on testimony from Ghassan Shah, OSP Planning Administrator, Carolyn Staskiewicz, Dejong consultant, and several documents. The testimony of Shah and Staskiewicz suggests that representatives from community association *may* serve on a BSC, but their testimony does not indicate that such service is mandatory. While DeJong training materials from 1999 contain a suggestion that BSC participants include members from civic associations, this training document did not bind the Board, and is distinguishable from the language of Policy 1280. (App. Ex. 13). Staskiewicz asserted that the training material was “a boilerplate committee recommendation that we provide the school districts,” and only a “suggestion.” (TR 1663, 1674). This training recommendation from seven years ago did not bind the Board. The Board’s policy regarding BSC membership is set forth in Policy 1280 and that policy does not require that BSC participants be members of civic or neighborhood associations.

Additionally, a training tape prepared by the OSP reflected that neighborhood and civic associations were among groups that had a stake in the process. Stakeholders can provide input into

the process in a variety of ways, including through public meetings. With regard to membership on a “steering committee” or BSC, however, the training tape listed only “parents, school staff, and community members” as participants. (App. Ex. 33, TR. 3-4). Contrary to the Appellants’ contention in written closing argument, the training tape does not “identify[y] community associations as a group from whom representatives should be taken to form boundary study committees.” Regardless, the training tape also does not bind the Board. The language of Policy 1280 is controlling, not other training materials prepared by DeJong or the OSP to assist in educating school systems and participants regarding the boundary development process. The only document that controlled the membership of the Woodholme BSC was the language of Policy 1280 which did not require that representatives from community associations be placed on the BSC, and did not mandate that community representatives canvass their constituents. (App. Ex. 10).

Furthermore, Staskiewicz testified that the language of Policy 1280, and the actual membership of the Woodholme BSC, which included community representatives, teachers, administrators, and PTA representatives, was consistent with DeJong recommendations for BSC membership. (TR 1670-1671). She also stated that community representatives on the BSC could be persons living within the community or persons who otherwise represent the community in some way. She noted that participants must have time to commit to the process and want to be involved. (TR 1672-1673). She refused to conclude that someone would not be a good representative of the community merely because they were not in a civic association. (TR 1676-1677).

Additionally, the evidence did not establish that the Board’s selection of community members to serve on the BSC was arbitrary or unreasonable. The regulations provide that a decision may be arbitrary or unreasonable if it is “contrary to sound educational policy” or “a reasoning mind could not have reasonably reached the conclusion” reached by the Board. COMAR 13A.01.05.05B. I conclude that Board Member Shillman’s recommendation for Roulhack to serve on the Woodholme BSC was neither arbitrary nor unreasonable. The selection for membership on

the BSC of Roulhack, a long-time educator who lived near the new school, who was fair, had knowledge of the area, was committed to children, could commit her time to the process, and who participated in other neighborhood, community and educational activities, was consistent with sound educational policy and was a selection that other reasoning minds could have made. Although Dr. Gehring did not review a resume for Roulhack, it was reasonable for him to rely on Board Member Shillman's recommendation because she also lived in the community, and was knowledgeable about Roulhack's longstanding career in education and her residence in an affected community. The Policy did not require the Assistant Superintendent to review the resume of potential BSC members, and did not require BSC members to be actively involved in community associations, nor actively solicit views from other association members. Consequently, these factors do not render the selection of Roulhack as arbitrary or unreasonable. Moreover, Shillman's friendship with Roulhack is irrelevant because there is no evidence that Shillman influenced her decisions while she was serving on the Woodholme BSC. Rather, Shillman's friendship with Roulhack facilitated her knowledge of Roulhack's educational background and commitment to education.

Similarly, Dr. Gehring's selection of Russell Hopewell to serve on the BSC was not arbitrary or unreasonable. Hopewell had an extensive background in education through his years as a teacher and school principal, and was retired from BCPS at the time of his selection to the BSC.⁴ Hopewell also lived in the affected community close to the location of the new Woodholme school, served on the security committee of his neighborhood association, and was involved in other community groups. Consequently, Hopewell's selection for membership on the BSC was consistent with sound educational policy. The Appellants' concern for whether Hopewell lived closer to Pikesville or Randallstown is irrelevant because those areas have no strict geographical

⁴ Although Hopewell was working temporarily as an administrator at Millbrook ES at the time of the hearing, this unanticipated appointment arose long after he completed his work on the Woodholme BSC. (TR 1452-1454).

boundaries, and Hopewell lived in the Pikesville area near the Woodholme site. The Appellants' reliance on Hopewell's friendship with Dr. Gehring as evidence of impropriety is wholly misplaced because there is no evidence that Dr. Gehring influenced Hopewell's work on the BSC in any way. The evidence established that Hopewell's selection to the BSC as a representative from the Pikesville area was reasonable, not arbitrary, and was consistent with sound educational policy and the conclusions of a reasoning mind.⁵

Dr. Gehring testified that he sought to include members on the BSC who were objective, had no particular result in mind, and had no axe to grind. (TR 1450, 1462-1463). He chose not to select a member from the PCC or other neighborhood association with a pre-set agenda to serve on the BSC. This decision did not violate any provision of Policy 1280 and was reasonable and consistent with sound educational policy. Dr. Gehring perceived that at least some of the Appellants were more concerned with property values than with the impact of the Woodholme boundary decisions on school children. That Dr. Gehring sought individuals who were objective rather than with a predetermined agenda, was within the Board's sound discretion because the Policy was silent on such considerations. Merely because the Appellants disagree with the Board's view of how persons should be considered and selected to serve on the BSC does not establish that the Board's actions were unreasonable or illegal. Further evidence that the Board's actions were not arbitrary or unreasonable is demonstrated by the decision of the Superintendent to select Appellant Gruber, a member of several community associations and with a distinguished professional career, to serve on the NWAC, which was an independent educational advisory group.

The Appellants argued further that Dr. Gehring's desire to maintain objectivity on the BSC was disingenuous because they claimed that Hopewell, Dr. Gehring's choice for the BSC, also had a

⁵ Although not challenged directly, Dr. Gehring's selection of Emily Wolfson and Cordell Richardson as community representatives from the Randallstown area was also reasonable and lawful because they lived in the affected area and had knowledge, interest, and/or backgrounds in educational matters. Furthermore, the selection of Hopewell

pre-set agenda. The evidence fails to support this contention. Although Hopewell expressed his initial displeasure with the construction of a new school so close to his residence, once the school was built, there was no evidence that Hopewell had any predetermined agenda for how the Woodholme attendance boundary should be drawn.

Dr. Gehring provided reasonable justification for the absence of an NWAC member on the BSC. He perceived that the Council had not demonstrated a particular interest in the Woodholme boundary, had a declining enrollment, and that other BSC participants adequately represented the northwest area of Baltimore County. (TR 1517-1520). Moreover, the evidence demonstrated that the presence of NWAC members on past BSC's was primarily due to their serving dual roles as parents or PTA members from affected schools. There is no requirement in Policy 1280, or Policy 1230, addressing Educational Advisory Councils, that NWAC members be selected to serve on a BSC. (App. Ex. 10, 26). Moreover, Appellant Zukerberg raised his concern with the Board regarding an absence of an NWAC member on the Woodholme BSC. The Board members fully considered that issue at their April 12, 2005 meeting, and still voted unanimously, with one abstention, to support Scenario C. (App. Ex. 56).

The evidence also demonstrates that the BSC membership included parents, teachers, administrators, and PTA representatives from the schools involved, which included the schools identified within the one-mile radius of the Woodholme site, as well as representatives from the annexed schools. For all the foregoing reasons, I conclude that the Appellants failed to show that the Board's selection of membership for the Woodholme BSC was arbitrary, unreasonable, or illegal.

Safety Considerations

and Richardson, who are African-American males, was consistent with Board's desire for cultural diversity on the BSC to correspond with diversity among the affected student population.

The Appellants argued that safety considerations support their request that certain specified neighborhoods be redistricted from Wellwood to Ft. Garrison. The Appellants contend that safety concerns mandate redistricting the communities of the Fields of Stevenson, Long Meadow, and Dumbarton-Stevenson because those neighborhoods are closer to Ft. Garrison than to Wellwood, and there are more intersections controlled by traffic lights on the travel route to Wellwood than to Ft. Garrison. They contend that these factors render it more dangerous for the Appellants' communities to be districted to Wellwood than to Ft. Garrison.

The evidence reflects that from various points in the subject communities, Ft. Garrison is approximately three-tenths to five-tenths of a mile closer to those communities than is Wellwood. This distance is merely an average that, of course, does not indicate the actual distance from each residence to the two schools. The difference in the comparative distances to the two schools is *de minimis* and does not warrant redistricting the subject communities from Wellwood to Ft. Garrison merely based on travel distance to the two schools. Moreover, Board witnesses explained that, while the Board generally seeks to district students to their closest school, this result cannot always be achieved. Certain factors that may prevent students from being districted to their closest schools include natural and man-made physical barriers, school capacity, population density, diversity issues, and school feeder patterns. (TR 590, 626-627, 1613-1615, 1775). In the case of the Appellants' communities, one factor that led to these neighborhoods being districted to Wellwood rather than Ft. Garrison is that the Baltimore Beltway separates the subject communities from the Ft. Garrison district, and the Board did not want students crossing the Beltway, even using a bridge.

The evidence further establishes that there are approximately four or five traffic light-controlled intersections on the route from the communities to Wellwood, and approximately one or two traffic light-controlled intersections on the route from the communities to Ft. Garrison. These numbers vary depending on the actual travel route. The Appellants contend that this difference in traffic lights demonstrates that the travel route to Ft. Garrison is safer than the travel route to

Wellwood. The Appellants contend generally that intersections controlled by traffic lights are more dangerous than other intersections. However, the Appellants offered no expert testimony or documents to support that view other than mere speculation and lay opinion testimony.⁶ They did not identify any traffic accidents along the travel route that might tend to support their view. (TR 775-776, 1120-1121). Gruber opined on this point but was not aware of any particular traffic accidents in the lighted intersections. Nor did the Appellants communicate with the BCPS transportation department regarding bus transportation and safety. (TR 1124-1125).

In contrast, Board witness Alex Weinberg, a resident of the Long Meadow community, whose daughter attends kindergarten in the language immersion magnet program at Wellwood, testified that he believes that traffic light-controlled intersections are actually safer than other intersections that are uncontrolled or have stop signs. (TR 1040). It is reasonable to consider that a traffic light provides an intersection with a measure of control that might be lacking at those intersections that are not protected by traffic lights. The presence of several more traffic lights on the route to Wellwood versus the route to Ft. Garrison, where the total travel distance between the two schools is similar and less than two miles, and there is no evidence of traffic accidents in the lighted intersections, fails to establish that the commute to Wellwood is unsafe, or that safety considerations support the redistricting of the Appellants' communities from Wellwood to Ft. Garrison.

Gruber also asserted that the presence of two other schools near Wellwood created a condition of traffic congestion near Wellwood that was not present at Ft. Garrison. However, Gruber admitted that he was not aware that Wellwood and the nearby schools have staggered start

⁶ Although the Appellants attempted to submit a traffic study at the hearing, that document was rejected because it was offered in violation of my ruling that March 1, 2006 was the deadline for the parties' submission of final written exhibit lists. The written exhibit lists submitted by the parties on March 1, 2006 did not include the traffic study. When the Appellants attempted to submit the traffic study on a later date in violation of the ruling on exhibits, the Board objected and the document was rejected because the Appellants failed to offer a valid reason for the late identification and submission of that document.

and end times to reduce congestion. (TR 777-778). There was no evidence presented that the Wellwood area experienced unsafe traffic congestion.

Accordingly, I conclude that the Appellants have failed to establish that safety considerations render the Board's decision not to include the Appellants' requested boundary change in its Woodholme redistricting plan as arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

Participation in Community Forum and Board Meetings

Policy 1280 affords the public the opportunity to participate in a community forum and several Board meetings to provide input into the boundary development process. While the Board did not select individuals from one of the Appellant neighborhood associations to serve on the BSC, the evidence educed at the hearing demonstrates that the Appellants were afforded the opportunity to participate in the Woodholme boundary process in other ways. Several Appellants, including individuals and officers from Appellant neighborhood associations, attended the community forum and several Board meetings. The evidence established that Zukerberg, PCC member Louis Kaplan, and other members of Appellant associations attended and participated in the community forum on February 7, 2005. Zukerberg also attended Board meetings on March 8 and 23, and on April 12, 2005. Gruber and Appellant Olin also attended and spoke at the March 23, 2005 Board meeting, and Gruber attended the Board's final meeting on April 12, 2005, when the Board voted on the recommended boundary scenario. At the community forum, participants were permitted to present their views in small group sessions, and to submit written comments and identify their priorities in questionnaires. Moreover, forum participants were permitted to take their packet of forum materials home. This afforded the public the opportunity to study the boundary materials for several weeks before the next scheduled public meetings were held before the Board. The public was invited to Board meetings on March 8 and 23, 2005 to present their views to the Board, and to the final Board meeting on April 12, 2005 when the Board voted on the proposed Woodholme boundary scenario.

Zuckerberg, other Appellants, and Appellant association members, spoke at Board meetings on March 8 and 23, 2005.

Although Zukerberg was not provided with advanced copies of the boundary materials prior to the community forum, he was treated the same as other interested members of the public. No one from the public was provided advanced copies of the Woodholme boundary materials prior to the community forum. Policy 1280 did not require the Board to disseminate advance copies of the boundary materials. In fact, Policy 1280 did not require the Board to create or disseminate any written boundary materials. However, to assist the public in understanding the boundary process and the proposed scenarios, the BSC did provide the public with a packet of written materials to review and take home. Shah believed that disseminating materials in advance of the community forum would violate the terms of Policy 1280 by affording certain members of the public with an advantage not given to others. (App. Ex. 40). Had the OSP provided the boundary materials to one group in advance of the forum, and to all other members of the public at the forum, this could have raised an issue that all members of the public were not treated equally. The Board's decision to distribute the materials simultaneously to all interested members of the public at the community forum was logical, reasonable, and advisable.

Furthermore, because Zukerberg and other participants were permitted to take home copies of the boundary packet distributed at the forum, they had about one month to study the materials before the next meeting where the public was invited to present their views concerning the boundary process. The evidence demonstrates that Zukerberg and other Appellants did, in fact, study the Board's boundary materials and develop their own materials. Zukerberg took advantage of this time by giving Gruber a copy of the materials he obtained from the forum so Gruber could study and respond to the information.

Zukerberg submitted two packets of materials to the Board prior to the Board's final vote concerning the Woodholme attendance boundary. Zukerberg submitted a written packet of

materials to the Board on March 16, 2005 in which he addressed many of the same issues the Appellants have raised in this appeal. He addressed his concern that the BSC membership did not include appropriate representatives from the community, or from the NWAC, safety issues, neighborhood proximity to schools, overcrowding issues, consensus issues, and concern that other changes were made to the Ft. Garrison attendance boundary. (Bd. Ex. 36). This packet included written discussion, maps, emails, questionnaires disseminated at the community forum, and a summary of forum votes and comments tabulated by DeJong. On March 29, 2005, Zukerberg submitted another written packet to the Board. In this submission, he outlined a proposed amendment to Scenario C that included a request that all of the communities represented in this appeal be redistricted from Wellwood to Ft. Garrison. This information was available to the Board before it voted on April 12, 2005 to adopt Scenario C as the new Woodholme attendance boundary. Furthermore, Zukerberg and other Appellants spoke at Board meetings on March 8, and March 23, 2005, regarding the concerns of the Appellant communities, the alleged deficiencies in the process, and the desire of the Appellant neighborhoods to be redistricted from Wellwood to Ft. Garrison.

This evidence demonstrates that Zukerberg and the other Appellants were afforded the opportunity to participate fully in the community forum and make their views known to the BSC regarding the Woodholme attendance boundary. Furthermore the concerns of Zukerberg and other Appellants were presented to the Board in writing and through oral presentations and were fully considered by the Board at several Board meetings before the Board took a final vote on the proposed attendance boundary for the newly-constructed Woodholme school. In fact, at the final Board meeting on April 12, 2005, the Board discussed the Appellants' request for an amendment to Scenario C that would have moved the Appellant communities from the Wellwood district to Ft. Garrison. After fully considering the Appellant's issues, the Board voted to approve Scenario C as the attendance boundary for the newly constructed Woodholme school. The Board fully considered

the Appellants' desire to have their neighborhoods redistricted from Wellwood to Ft. Garrison, but chose not to adopt that requested change.

A discussion ensued at the April 12, 2005 Board meeting prior to the Board's final vote. At that meeting, a Board member inquired as to whether the Board had the authority to amend the proposed Woodholme attendance boundary scenario (Scenario C) that it was considering. As a result of the discussion, the Board concluded that it did have the authority to adopt an amendment to Scenario C at that stage of the boundary process. (App. Ex. 56, TR 14). Further discussion ensued at the April 12, 2005 meeting with regard to the proposed amendment to Scenario C that had been requested by Appellant Zukerberg in his written submission to the Board on March 29, 2005 that would have redistricted the Appellants' communities from Wellwood to Ft. Garrison. The Board considered Zukerberg's proposed amendment during the meeting.

During the discussion, OSP Boundary Specialist Pamela Carter, who was a member of the Woodholme BSC as a System (BCPS) representative, expressed her opinion that an amendment to the Wellwood district at that late stage in the boundary process would be inconsistent with Policy 1280. She explained that the basis for her opinion was that Wellwood was never identified as a school that was being considered for a boundary change during the Woodholme boundary process. She pointed out that because Wellwood was not considered to be involved in this boundary change process, Wellwood had no principals, PTA representatives, faculty representatives, or parents involved in the planning process on the Woodholme BSC. Moreover, other members of the public had not been informed during the public meeting portion of the boundary process that Wellwood was a school that was being considered for a boundary change, or that the Appellants' communities had been considered for redistricting. (App. Ex. 56, TR 4-7). For these reasons, Carter expressed her opinion that an amendment to Scenario C to change the Wellwood boundary at that late stage of the process would be inconsistent with Policy 1280, and possibly a violation of the Board's policy. Carter was only expressing her opinion at the Board's meeting with regard to that issue. However, I

conclude that her analysis of this issue set forth a reasonable interpretation of Policy 1280. Carter did not hold herself out as an attorney. If the Board wanted to solicit a legal opinion on this issue it could have consulted Board counsel. Based on the transcript excerpt of the April 12, 2005 Board meeting that was included in the record, it does not appear that the Board chose to consult counsel at that time concerning this issue. (App. Ex. 56). Carter expressed her opinion and provided a reasonable explanation for her opinion. For these reasons, I also ude that this discussion and Carter's opinion was not unreasonable, arbitrary, or illegal.

Accuracy of Submissions to Board

The Appellants argue further that the BCPS submitted materials to the Board that were misleading regarding the results of the community forum and the BSC process. Although minor discrepancies existed in the materials prepared by DeJong and the materials that BCPS presented to the Board, most were corrected by Dr. Gehring's oral and written presentation to the Board. Moreover, Appellant Zukerberg testified at Board meetings and submitted written materials to the Board that addressed the Appellants' concerns. The Appellants and other members of the public were afforded the opportunity to participate throughout the various stages of the Woodholme boundary process. Furthermore, Appellant Zukerberg submitted written materials and testified at several Board meetings concerning the changes the Appellants sought to the Wellwood/Ft. Garrison boundary, regarding his concerns about inaccurate submissions from BCPS to the Board, and also concerning his position that the Appellant associations were unfairly excluded from the Woodholme boundary process. Accordingly, the Board received and considered a wide range of input from the Appellants and other members of the public during the process. Additionally, the Board heard and considered, during the course of the Woodholme boundary process, many of the same arguments raised by the Appellants in this appeal. Upon consideration of this extensive input from the Appellants and other members of the public, the Board voted unanimously, with one abstention, to adopt Scenario C as the new attendance boundary for Woodholme ES.

The Appellants argued that BCPS misled the Board when Dr. Gehring stated that the BSC voted unanimously to recommend Scenario C to the Board. Contrary to the Appellants' contention, however, Dr. Gehring accurately told the Board at the March 8, 2005 Board meeting that all BSC members present at the last BSC meeting voted unanimously to recommend that the full Board adopt Scenario C. Although one or two BSC members did not attend the final BSC meeting on February 16, 2005, those who did attend that last BSC meeting voted unanimously to support Scenario C. Dr. Gehring specifically pointed out to the Board that not all BSC members were present at the last BSC meeting on February 16, 2005, but that all those who were present voted in favor of Scenario C. (App. Ex. 56, TR 6; App. Ex. 9).

The Appellants argued further that BCPS misrepresented the results of the votes cast by the public at the community forum. The Appellants claimed that Dr. Gehring erroneously represented to the Board that 120 individuals participated in the community forum when only 58 participated in the process, and erroneously claimed that almost 25% indicated that they had no preference, when they actually indicated that they preferred neither option. The Appellants also argued that the Board was led to believe that a consensus had been reached at the community forum, even though less than 50% voted for Scenario C.

Contrary to the Appellants' assertion, the evidence established that Dr. Gehring accurately informed the Board at the March 8, 2005 Board meeting that 119 persons attended the forum, but that many of these individuals were school system employees, and that only 58 participants took part in the small group sessions and cast their vote concerning the proposed scenarios. (App. Ex. 58, TR 5-6; App. Ex. 9). Gehring accurately informed the Board in his oral presentation and written materials at the March 8, 2005 Board meeting that the individual surveys favored Scenario C. He also accurately reported the information contained in the DeJong tabulation that 25 persons favored Scenario C, and that 19 persons favored Scenario A. He also reported, consistent with the DeJong tabulation, that 14 persons had no preference. (App. Ex. 9; App. Ex. 58, TR 5-6; App. Ex. 11). A

review of the Facilitator's Summary Sheets contained in the record actually showed some different results than that contained in the DeJong tabulation. The Facilitator's Summary Sheets indicated that 28 persons selected Scenario C, 19 persons selected Scenario A, 6 persons selected "neither," and 5 persons selected "another scenario." (App. Ex. 4). The results on the Facilitator's Summary Sheets indicates that an even greater percentage of voters than reported on the DeJong tabulation supported Scenario A (48.28%), and a lesser percentage of voters agreed with neither scenario (20.69 %). The Appellants are correct that there is a difference between "no preference" as reported by DeJong and Dr. Gehring, and "neither" or "another scenario" as reported on the Facilitator's Summary Sheets.

I conclude that this discrepancy was not significant, however, and did not prejudice the Appellants for several reasons. Dr. Gehring accurately communicated to the Board that Scenario C received the most number of votes at the community forum. His report also accurately reflected that Scenario A received a significant number of votes. His report further informed the Board that some of the persons present at the forum did not actually cast their vote for Scenario A or for Scenario C. Additionally, contrary to the Appellants' contention, Dr. Gehring did not give the Board the impression that a consensus was reached at the forum for Scenario C. Dr. Gehring accurately reported to the Board, consistent with the DeJong tabulation, that the community forum did not produce a consensus across the board for Scenario C, despite the fact that Scenario C did receive the most number of votes cast at the forum. Dr. Gehring informed the Board that two groups reached a consensus for Scenario C, three groups reached a consensus for Scenario A, and that five groups did not reach a consensus. (App. Ex. 58, TR 5-6; App. Ex. 9, 11).

Policy 1280 did not require that the community forum reach a consensus for any one scenario. The Policy stated that the purpose of the forum was to permit the BSC "to receive input and assistance concerning the several boundary change options" from members of the public. The Policy provided that the BSC was to consider the "information and suggestions" received at the

forum and then to submit “the best boundary change option” to the Assistant Superintendent. The Policy also directed the BSC to “recognize that there is not a single scenario that will please everybody.” (App. Ex. 10). It is clear that persons attending the forum had differing views concerning the scenarios and that this was contemplated by the language and procedures of Policy 1280. The BSC considered the information provided by the public at the forum, as required, and used that information in developing their recommendation to adopt Scenario C. Since the most number of votes cast at the forum supported Scenario C, it was reasonable for the BSC to propose Scenario C as their final recommendation, even though a number of participants did not support Scenario C. There is no evidence in this record to support the Appellants’ contention that Dr. Gehring misrepresented to the Board as to whether a consensus was reached at the forum.

Furthermore, although Dr. Gehring’s report and comments may not have fully reflected that some persons were opposed to both Scenario A and C, this position was clarified during the next phase of the boundary process when Appellant Zukerberg submitted oral and written information to the Board during several public Board meetings in March and April 2005. Other Appellants and members of the public also testified before the Board in these public meetings. The evidence reflects that Appellant Zukerberg submitted two sets of materials to the Board in March 2005, on PCC letterhead, in which he advised the Board that several communities desired to amend Scenario C so their neighborhoods could be redistricted from Wellwood to Ft. Garrison. These materials made it clear to the Board that there were members of the public who did not favor either scenario (Scenario A or Scenario C) that was presented to the public at the community forum. Zukerberg also explained in his written and oral submissions to the Board why these communities desired that the Wellwood boundary be changed. Additionally, Zukerberg’s presentations raised many of the Appellants’ same concerns with the Woodholme boundary process that are the subject of this appeal, including the process for selection of membership on the BSC, the results of the voting at the community forum, the absence of a choice for neither preference at the forum, the absence of a

consensus at the forum, capacity issues at Wellwood and Ft. Garrison, safety and travel distances to the two schools, and other changes made to the Ft. Garrison boundary during the Woodholme boundary study.

The evidence demonstrates that the Appellants had ample opportunity to express their concerns to the Board before it took a final vote on the Woodholme boundary on April 12, 2005. The evidence establishes that Dr. Gehring's representations to the Board regarding the results of the community forum were substantially accurate. Any minor discrepancies identified by the Appellants were addressed and clarified by Zukerberg and other Appellants in their subsequent submissions and presentations to the Board. The Appellants failed to show that any presentations made by BCPS to the Board rendered the Board's action as arbitrary, unreasonable, or illegal.

The evidence established that the Woodholme boundary process was conducted in accordance with Policy 1280, and included extensive community input at the community forum and at three separate Board meetings. I conclude that the process was not arbitrary, unreasonable or illegal. As contemplated by the Policy, there was ample opportunity for community input into the process.

Property Values

The Appellants also contend that the Board's redistricting decision was arbitrary and unreasonable because it failed to consider the Appellants' valid concerns regarding the impact of redistricting on their property values in the communities at issue. Several witnesses speculated that if the Appellants' communities were redistricted from Wellwood to Ft. Garrison, this would increase their property values and make their communities more desirable to prospective buyers. The Appellants presented no evidence from any expert in the field of real estate, and presented no documentation regarding the impact that the Board's redistricting decision had or might have on housing prices.

It is clear that this contention is based on speculation and personal preference. Although the Appellants contend that the request to redistrict their communities to Ft. Garrison will make their communities more desirable to prospective buyers and enhance their real estate values, this view is apparently not held universally by residents of the Appellants' communities. A resident of Long Meadow, Alex Weinberg, testified regarding his daughter's attendance at Wellwood in the magnet language immersion program, and his complete satisfaction with Wellwood and the magnet program. This evidence suggests that residents of the Appellants' communities have differing views as to the relative benefits of the two schools, Wellwood and Ft. Garrison.

There is no evidence in this record that the Board's decision adopting a new attendance boundary for Woodholme would have any impact on property values. There is not even any evidence that the Board was required to take into consideration the property values of surrounding communities when it developed a new attendance boundary for Wellwood. The Appellants have failed to establish that the Board's decision was arbitrary, unreasonable, or illegal with regard to the perceived property values of the Appellants' communities.

Wellwood Was Properly Excluded from Woodholme Boundary Study

The Appellants contend that the decision by BCPS to exclude Wellwood from the Woodholme boundary study process was arbitrary, unreasonable, and illegal. For the reasons addressed below, I conclude that the Board presented logical and reasonable explanations for why Wellwood was not identified as one of the affected schools in the Woodholme boundary study.

Woodholme was constructed to relieve severe overcrowding at New Town. Therefore, the charge of the Woodholme boundary study was to develop a new attendance boundary for Woodholme that would relieve overcrowding at New Town and would enable Woodholme to open with an enrollment that was under capacity.

The OSP used a one-mile radius to determine which schools would be directly affected by the development of an attendance boundary for the newly-constructed Woodholme school. The

evidence established that the one-mile radius used by the OSP in the Woodholme boundary process was also used by the OSP in previous boundary studies involving New Town and New Town HS to determine the schools which would potentially have their attendance areas redrawn to create an attendance area for a newly-constructed school. (TR 1466-1810). In the Woodholme boundary process, the one-mile radius identified New Town, Ft. Garrison, Owings Mills, Winand, and Millbrook as the schools that would potentially have their attendance boundaries changed in the process of creating a new boundary for Woodholme. These schools were identified because when the one-mile radius was drawn around the Woodholme site, it intersected a portion of the attendance boundary of each of those elementary schools.

OSP Boundary Specialist Pamela Carter explained that the one-mile radius was used because the Board considered that to be a reasonable distance for students to walk to school. Therefore, absent certain exceptions, students who lived within one mile of a school would generally walk to school and would generally fall within that school's attendance boundary. The exceptions included the absence of sidewalks, or the presence of physical barriers such as highways, water bodies, or other factors that might render the one-mile radius unsafe.

The Appellants argued that the one-mile radius itself was arbitrary. I disagree. The Board explained the significance of the one-mile radius as it reflected a reasonable distance for students to walk to school and was an area that was likely to become part of the new school's attendance boundary. Moreover, the one-mile radius was not an arbitrary distance that was created only for this boundary study. In fact, it had been used by the Board on several prior occasions when creating boundaries for other newly-constructed schools. The OSP had to begin somewhere when developing a new attendance boundary for a newly-constructed school. It provided a reasonable and logical explanation for why it used a one-mile radius.

Appellant Zukerberg admitted that a one-mile radius was also used by the Board when it developed a new attendance boundary for New Town when that school was constructed several

years earlier in northwest Baltimore County (TR 1098-1099), and acknowledged that the one-mile radius was also used by the Board in several other Baltimore County redistricting cases. (TR 1334).

Carter explained that the OSP also looked at several other factors in considering those schools that might be impacted by the Woodholme boundary study. To relieve overcrowding at New Town, the Board capped the enrollment at New Town and annexed some of the New Town students to other schools in the area. The elementary schools that were selected for annexation of New Town students included Reisterstown, Franklin, Glyndon, Summit Park, and Ft. Garrison. These schools were selected for annexation because they were close to New Town, were under capacity, and did not yet have full-day kindergarten. Wellwood was not selected for annexation of New Town students because it was over capacity when the annexation decision was made, it already had full-day kindergarten, and it had out-of-boundary students attending its magnet program.

The Board had considered building a new elementary school in the northwest part of Baltimore County for nearly fifteen years to support the growing population in the northwest part of the County and to relieve overcrowding at some of the area schools. This project was considered for years and reports were prepared periodically by BCPS to keep this project viable. Wellwood was never identified as a justification for this new school project. (Bd. Ex. 5).

Consequently, the evidence established that the Board never identified Wellwood as a school that would be impacted by the construction of Woodholme or the creation of new attendance boundary for that school. Contrary to the assertion of the Appellants, there was nothing arbitrary or sinister in the exclusion of Wellwood from the schools that would be affected by the Woodholme boundary process. Instead, the exclusion of Wellwood from the Woodholme boundary process was based on logical, reasonable, and educationally sound considerations for identifying the schools that the Board anticipated would be impacted by the new Woodholme boundary.

The identification of the affected schools in the Woodholme boundary process was not merely an arbitrary determination with no practical significance. In fact, the evidence demonstrated that the identification of the affected schools determined certain practical considerations for how the boundary study would proceed. Once the impacted schools were identified, this enabled BCPS and the OSP to determine which schools would be represented on the Woodholme BSC. BCPS acted in accordance with the requirements of Policy 1280 when it placed principals, teachers, PTA representatives, and parents from the affected schools on the Woodholme BSC. The representatives from those five schools identified by the one-mile radius were placed on the BSC because those schools were on notice that their boundaries might be changed based on their close proximity to the new Woodholme school. Additionally, BCPS placed two parents on the BSC who were representatives from the schools that had received annexed students from New Town. Although the Board did not contemplate that the boundaries of the annexed schools would be changed, some of the annexed students were likely to have their home schools changed. Those students were given the option of either staying at their annexed school or returning to their home school. Additionally, because overcrowding at New Town was the underlying reason for construction of Woodholme, the creation of the new Woodholme boundary would likely result in some of the annexed students returning to New Town and others being redistricted to Woodholme. For these reasons, the BCPS also logically placed some parents on the BSC to represent the annexed schools.

No representatives from Wellwood were placed on the Woodholme BSC because Wellwood was not identified as an affected school in the Woodholme boundary process based on any of the factors that the BCPS considered in identifying those schools that were anticipated to be impacted by the Woodholme boundary study. This meant that it was never contemplated by BCPS that Wellwood might have its boundaries changed by the Woodholme boundary study. In contrast, all of the schools that were within the one mile radius and were represented on the Woodholme BSC were on notice that their schools might have their attendance boundaries altered during the

Woodholme boundary process. In fact, four of the five schools identified did have their boundaries changed as a result of the creation of the new Woodholme boundary. These schools included New Town, Owings Mills, Fort Garrison, and Millbrook. The fifth school, Winand, did not have its boundaries changed by creation of the Woodholme district. Its enrollment had been reduced when New Town opened, and no students from New Town were annexed to Winand. It remained under capacity when the Woodholme boundary process began, so no changes were made to Winand.

The Appellants contend that the decision to exclude Wellwood from the Woodholme boundary process was arbitrary and unreasonable. However, the Board has set forth reasonable and compelling explanations for why Wellwood was excluded from this boundary process. The reasons set forth are consistent with sound educational policy and are reasons that a reasoning mind could reasonably have reached.

The Board has acknowledge that there are factors for which Wellwood and other schools in the Northwest area might be considered for future enrollment changes, which include the prospect for future residential construction in the Northwest area, the out-of-boundary students that attend Wellwood's magnet program, and the introduction of full-day kindergarten in 2007 to some of the schools surrounding Wellwood. Not every school which is overcapacity or has the prospect for future residential construction in its area is a prime candidate for a boundary change. A number of other schools in the Northwest area that are over capacity, in addition to Wellwood, were also not considered for change during the Woodholme boundary study. The Board may properly limit the schools for which boundary changes will be considered during any particular boundary study. If the Board did not place a reasonable limit on the schools that might be affected, then every school in Baltimore County would be a potential candidate for a boundary change every time a new school was constructed or a boundary change was contemplated for any school in the County. This would be a burdensome and unworkable system. The Board placed limits on the Woodholme boundary study. I conclude that those limits that resulted in the exclusion of Wellwood and many other

schools from consideration for boundary changes during the Wellwood boundary study were not unreasonable, arbitrary, or illegal.

The Appellants lose sight of the fact that Woodholme was constructed and the Woodholme boundary process initiated for the purpose of relieving overcrowding at New Town. The need to relieve overcrowding at New Town and in that area of Baltimore County was a separate and distinct issue from the Appellants' desire to change their boundaries from Wellwood to Ft. Garrison based on personal preference. Hence, the Board's decision to exclude the Wellwood district from the Woodholme boundary process was reasonable, was based on a multitude of logical and rational reasons, and was supported by the critical issues of overcrowding that led to the rapid construction of Woodholme in the first place. The Appellants' underlying basis for their contention that Wellwood should have been part of the Woodholme boundary study appears to be that they desired to have their communities redistricted for personal preference and the Woodholme boundary study was the only one available at the time. That is clearly an insufficient basis for invalidating the Board's action.

Capacity

The Appellants contend that Wellwood is over capacity and that Ft. Garrison is under capacity according to documents and testimony presented at the hearing. Therefore, they contend that the Board's refusal to redistrict their communities from Wellwood to Ft. Garrison was also unreasonable and contrary to sound educational policy because it perpetuated the capacity conditions at Wellwood and Ft. Garrison.

The Board contends that its decision regarding the attendance boundaries for Woodholme was reasonable, and that the decision not to make the changes requested by the Appellants to their neighborhoods was not arbitrary or unreasonable, despite the capacity situation existing at both schools. Although Wellwood is considered over capacity according to State capacity guidelines, that does not mean there are more students using the school building than the building can

accommodate, or that the educational needs of the students attending that school are being shortchanged. Dr. Gehring explained that capacity issues can be addressed in several ways other than through boundary changes. He explained that Wellwood, like many schools in the County and the State, use temporary trailers or "relocatable classrooms." This affords the school additional classroom space, and enables the school to accommodate additional students without increasing the size of other classes, or adversely affecting the students' education. In fact, both Wellwood Principal William Burke and Dr. Gehring testified that Wellwood's average class size is below State capacity due to the use of relocatable classrooms and adequate teaching staff assignments based on student enrollment. (TR 1414-1416). Wellwood has not experienced undue stress on the facility with regard to lunch periods, custodial work, and other factors. In fact, students are afforded normal lunch period at Wellwood between 11:00 a.m. and 1:00 p.m. Burke testified that Wellwood functions well and provides appropriate education to its students.

Schools should take other steps to address overcapacity issues before resorting to the most extreme method of instituting a boundary change. Dr. Gehring, OSP Boundary Specialist, Pam Carter, and Wellwood principal, William Burke, explained that the overcapacity at Wellwood is primarily due to Wellwood's magnet program for language immersion so that, like all magnet schools, it accepts out-of-boundary students into the program. Burke explained that Wellwood has reduced its enrollment by eliminating all special request transfers. Wellwood might also consider reducing the number of out-of-boundary students that it accepts into its magnet program in future years. Policy 1280 provides that changes to school attendance areas should be used as a last resort if other methods are not available. The Policy states, "Reassign school attendance areas only when other reasonable and educationally sound choices are not immediately available." (App. Ex. 10).

Dr. Gehring and Carter explained that although Ft. Garrison is currently rated as under capacity, when it begins to offer full-day kindergarten in the fall of 2007, this will increase the

capacity at Ft. Garrison.⁷ The capacity of a school is increased by the commencement of a full-day kindergarten program because it results in more students being present in the school during the entire school day, and generally attracts additional students whose parents favor a full-day kindergarten program. Therefore, the Board did not want to make significant adjustments to student capacity at Ft. Garrison before the full-day kindergarten was implemented. Moreover, the Board made an adjustment to capacity at Ft. Garrison and Owings Mills when it redistricted a small portion of the Owings Mills district into the northwest corner of the Ft. Garrison district, to reduce Owings Mills enrollment and increase Ft. Garrison enrollment. Although this change affected only a handful of students when implemented, it was undertaken to avoid future overcrowding in the Owings Mills district based on plans for new residential construction in the area. Accordingly, this change was reasonable and consistent with sound educational policy.

The Appellants argued further that it was arbitrary and unreasonable for the Board to make adjustments to the Owings Mills/Ft. Garrison boundary, while refusing to make similar adjustments to the Wellwood/Ft. Garrison boundary. They argued that the neighborhoods the Appellants sought to include in the Ft. Garrison district were located approximately 1.4 miles from Ft. Garrison, whereas the changes made to the northwest corner of the Ft. Garrison district were approximately eight to twelve miles away from Ft. Garrison. Dr. Gehring and Pam Carter explained that these changes were made by members of the BSC after meetings and discussions were held among BSC members. There was no evidence to demonstrate that this change was based on a predetermined agenda by any individual or group, rather than through the normal course of the BSC process and based on enrollment and capacity considerations and future residential growth. Moreover, because both Owings Mills and Ft. Garrison fell within the Woodholme one-mile radius, changes to any part

⁷ Ms. Carter explained that full-day kindergarten is being phased in at all Baltimore County elementary schools. To limit the disruption, this process is being introduced at several schools during each school year. Ft. Garrison is scheduled to begin the full-day kindergarten program in the fall of 2007, along with several other Baltimore County elementary schools that are also scheduled to begin the full-day kindergarten program at the same time.

of those schools' attendance boundaries were always among those changes that were contemplated within the context of the Woodholme boundary process. In contrast, Wellwood was outside the one-mile radius based on its proximity to Woodholme so that changes to the Wellwood district were not contemplated by the Board during consideration of the Woodholme boundary process. Therefore, it is irrelevant that the actual modification of the Owings Mills/Ft. Garrison boundary occurred outside the one-mile radius, or that this boundary change was further away from the Ft. Garrison school than the location of the Appellants' communities. The Owings Mills/Ft. Garrison boundary change was reasonable because it was designed to reduce then-current over capacity at Owings Mills and relieve future overcrowding at Owings Mills, and was carried out among two schools that had always been considered for possible changes during the Woodholme boundary process. The Board explained that it was not only the designation of the particular schools that were affected by the Woodholme boundary study. It was also the other procedures that flowed from that designation. Once a school was designated as affected, it then received full representation on the BSC and was also held out to the public throughout the boundary process as a school that was being contemplated for a boundary change during the course of the Woodholme boundary study.

Even if the boundary changes that the Appellants desire were implemented, such change would have little impact on the capacity at Wellwood or Ft. Garrison because it would involve only a handful of students. (TR 1421).

Sound Educational Policy

The Board contends that its decision to adopt Scenario C as the new attendance boundary for Woodholme was consistent with sound educational policy. The evidence established that Scenario C relieved the overcrowding at New Town, allowed New Town to be under capacity, and created a new attendance boundary for Woodholme that enabled Woodholme to open under capacity. The Board presented expert testimony from Dr. Gehring who was accepted as an expert in education, educational policy, and educational leadership. He stated that he believed that the

Woodholme boundary process complied with Board policy and was consistent with sound educational policy because it allowed for community input, had a reasonable educational goal, and was successful in achieving its goal of relieving the overcrowding at New Town and allowing Woodholme to open under capacity. The Appellants presented no expert testimony to dispute the Board's evidence. Therefore, they have failed to establish that the Board's decision was contrary to sound educational policy. COMAR 13A.01.05.05B(1); *Stishan v. Howard County Bd. of Educ.*, MSBE Op. 05-33 (2005); *Coleman v. Howard County Bd. of Educ.*, MSBE Op. No. 05-32 (2005).

CONCLUSIONS OF LAW

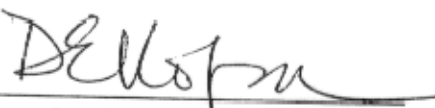
Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellants have failed to establish that the Woodholme redistricting plan adopted by the Baltimore County Board of Education on April 12, 2005 is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05; Md. Code Ann., Educ. §§ 4-109(c), 4-101(b) (2004).

PROPOSED ORDER

I **RECOMMEND** that the Woodholme redistricting plan adopted by the Baltimore County Board of Education on April 12, 2005, be **AFFIRMED**.

August 30, 2006
Date

DEK/cf
83057



Douglas E. Koteen
Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within fifteen (15) days of receipt of the decision; parties may file written responses to the objections within fifteen (15) days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, 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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MICHAEL GRUBER, ET AL.,

APPELLANTS

v.

BOARD OF EDUCATION OF

BALTIMORE COUNTY

* BEFORE DOUGLAS E. KOTEEN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH NO.: MSDE-BE-09-05-24010

* * * * *

FILE EXHIBIT LIST

The Appellants offered the following exhibits which were admitted into evidence, unless indicated otherwise:

- App. Ex. 1 - Agenda for Public Forum - Introduction of Process and Board Policy;
- App. Ex. 2 - Facilitator's Summary Sheet, undated;
- App. Ex. 3 - Woodholme Planning Meeting Agenda and Minutes, dated 10/25/04, 11/8/04, 11/22/04, 12/13/04, 1/10/04 [sic], 2/7/05, with attached maps of school boundaries scenarios A, B, and C;
- App. Ex. 4 - Facilitator's Summary Sheet, with attached copies of Evaluation of Community Forums, undated;
- App. Ex. 5 - Woodholme Boundary Study - Individual Questionnaire, dated 01/31/05;
- App. Ex. 6 - Woodholme Community Forum - Boundary Options Packet, dated 01/31/05;
- App. Ex. 7 - Not admitted
- App. Ex. 8 - Not admitted
- App. Ex. 9 - Woodholme Boundary Recommendation, undated
- App. Ex. 10 - Policy 1280, Boundary Changes, dated August 10, 2004;
- App. Ex. 11 - Two page excerpt from Woodholme Boundary Study, dated 2/16/05
- App. Ex. 12 - Policy 1250: Community Relations - Community Involvement, dated 2/10/77
- App. Ex. 13 - School Boundary Study - Training Session, dated December 2, 1999
- App. Ex. 14 - Color map - Wellwood boundaries
- App. Ex. 15 - Color map - Ft. Garrison boundaries prior to Scenario C
- App. Ex. 16 - Color map - Ft. Garrison boundaries post Scenario C
- App. Ex. 17 - Map showing intersections
- App. Ex. 18 - Not admitted
- App. Ex. 19 - Not admitted
- App. Ex. 20 - Not admitted
- App. Ex. 21 - E-mail to Alan from Ngone Seye, dated 01/06/04
- App. Ex. 22 - Letter to Joy Shillman from Pikesville Communities Corp. ("PCC"), dated 01/29/04
- App. Ex. 23 - Letter to Alan Zukerberg from Joy Shillman, dated 02/09/04
- App. Ex. 24 - Printout from the Baltimore Co. Public Schools web site - The System

- App. Ex. 25 - Policy 1100: Community Relations - Communications with the Public, dated June 9, 1997;
- App. Ex. 26 - Policy 1230: Community Relations: Community Involvement, dated November 6, 2001;
- App. Ex. 27 - Policy 1270: Community Relations: Parent/Guardian and Family Involvement, dated July 13, 2004;
- App. Ex. 28 - Memorandum to Board from Dr. Joe A. Hairston, dated 03/08/05
- App. Ex. 29 - Woodholme Boundary Study Committee Minutes, dated 02/16/05
- App. Ex. 30 - Marked for ID only
- App. Ex. 31 - Marked for ID only
- App. Ex. 32 - E-Mail to Alan Zukerberg from Barbara Walker, dated 09/20/04
- App. Ex. 34 - Letter to James T. Smith, Joe Harriston and Joy Shillman from PCC, dated 01/20/04
- App. Ex. 35 - Letter to Alan Zukerberg from Donald Krempel, dated 03/09/04
- App. Ex. 36 - Letter to Alan Zukerberg from Fred Homan, dated 02/19/04, with 11 page attachment
- App. Ex. 37 - Not Admitted
- App. Ex. 38 - Research on Developments Recently Proposed for Redistricting to Ft. Garrison, dated 08/29/02
- App. Ex. 39 - Letter to Ghassan Shah from PCC, dated 02/10/05
- App. Ex. 40 - Letter to Alan Zukerberg from Ghassan Shah, dated 02/03/05
- App. Ex. 41 - PCC - Minutes of meeting of the Board of Directors, dated February 19, 2004
- App. Ex. 42 - Not Admitted;
- App. Ex. 43 - Not admitted;
- App. Ex. 44 - Not admitted;
- App. Ex. 45 - Letter to Joy Shillman from Paula Hollinger, dated April 5, 2005;
- App. Ex. 46 - Letter to Paula Hollinger from Dr. Joe A. Hairston, dated June 17, 2005;
- App. Ex. 47 - Not admitted;
- App. Ex. 48 - Letter to Risa Schuster from Min Sook Lee, dated July 23, 2001;
- App. Ex. 49 - E-mail to Alan Zukerberg from Joy Shillman, dated 09/14/04, with attached e-mail dated 09/17/04
- App. Ex. 50 - Letter to Dr. Scott Gehring from PCC, dated 09/17/04
- App. Ex. 51 - E-mail to Joy from Alan Zukerberg, dated 03/08/05
- App. Ex. 52 - Letter to Abby Beytin from Alan Zukerberg, dated 10/04/04, with attached resume of Michael Gruber
- App. Ex. 53 - Letter to Michael Gruber from Joe Hairston, dated 12/22/04
- App. Ex. 54 - Curriculum Vitae of Alan Zukerberg
- App. Ex. 55 - Photocopy of page 29 ADC Baltimore County Map book
- App. Ex. 56 - Woodholme Boundary Study - Community Forum sign-in sheet, stipulation to 2/05/05 date
- App. Ex. 57 - Not admitted
- App. Ex. 58 - Not admitted
- App. Ex. 59 - Not admitted
- App. Ex. 60 - Greensping-East Pikesville Community Action Plan
- App. Ex. 61 - Three maps with areas outlined in red.

The Board offered the following exhibits which were admitted into evidence, unless indicated otherwise:

- Bd. Ex. 1 - Not admitted;
- Bd. Ex. 2 - Board Rule 5140 - Students: Enrollment and Attendance
- Bd. Ex. 3 - Board Policy 6130 - Instruction
- Bd. Ex. 4 - Board Rule 6130 - Instruction: Magnet Schools and Programs
- Bd. Ex. 5 - IAC/PSCP Forms re: Justification for Woodholme
- Bd. Ex. 6 - 2004-2005 Northwest Area Summary re: Portable Classrooms
- Bd. Ex. 7 - Capital Projects Summary
- Bd. Ex. 8 - Northwest Area Concerns
- Bd. Ex. 9 - Wellwood International Elementary School ("Wellwood") actual 09/30/04 enrollment
- Bd. Ex. 10 - Wellwood actual 09/30/05 enrollment
- Bd. Ex. 11 - Woodholme Planning Minutes, dated 09/23/04
- Bd. Ex. 12 - Not admitted
- Bd. Ex. 13 - Not admitted
- Bd. Ex. 14 - Woodholme Boundary Study Committee Agenda and Minutes, dated 09/23/04
- Bd. Ex. 15 - Not admitted
- Bd. Ex. 16 - Not admitted
- Bd. Ex. 17 - News Releases, Media Alerts, and flyers re: Woodholme Boundary Community Forum
- Bd. Ex. 18 - Woodholme Community Forum on Boundary Options Agenda, dated 02/07/05
- Bd. Ex. 19 - Marked for ID only
- Bd. Ex. 20 - Not admitted
- Bd. Ex. 21 - Executive Leadership Team Meeting Agenda, dated 02/28/05
- Bd. Ex. 22 - Boundary Committee's Recommendations for Woodholme Boundary to Executive Leadership Team, dated 02/28/05
- Bd. Ex. 23 - Board Minutes for 03/08/05 with attached Exhibit F re: Boundary for Woodholme
- Bd. Ex. 24 - Media Advisory re: Public Hearing, dated 03/18/05
- Bd. Ex. 25 - Board minutes for 03/22/05
- Bd. Ex. 26 - Public Hearing Speaker Sign-In Sheet, dated 03/23/05
- Bd. Ex. 27 - Not admitted
- Bd. Ex. 28 - Not admitted
- Bd. Ex. 29 - Board Minutes for 04/12/05 with attached Exhibit B re: Boundary for Woodholme
- Bd. Ex. 30 - Not admitted
- Bd. Ex. 31 - Not admitted
- Bd. Ex. 32 - Not admitted
- Bd. Ex. 33 - Not admitted
- Bd. Ex. 34 - Resume of Carolyn Staskiewicz, REFP
- Bd. Ex. 35 - Not admitted
- Bd. Ex. 36 - Letter to James Sasiadek from Alan Zukerberg, dated March 16, 2005, with 7 page attachment;
- Bd. Ex. 37 - Letter to Brenda Stiffler from PCC, dated March 29, 2005, with two page attachment.