

ROBERT D. JONES, ET AL.

Appellants

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-38

### OPINION

#### INTRODUCTION

This is an appeal of the local board's redistricting decision which changed the boundary attendance areas for certain students in Montgomery County in order to populate Clarksburg High School (Clarksburg). Specifically, Appellants challenge that part of the redistricting decision that assigns the Fox Chapel Elementary School attendance area to Clarksburg rather than assigning the area in which they live, known as the R1 district of the Dr. Sally K. Ride Elementary School (Ride), to Clarksburg. The students in the Ride attendance area, including the R1 district, are assigned to attend Seneca Valley High School (Seneca). Appellants maintain that the boundaries effectively create an island comprised of the Sally K. Ride Elementary School, including the R1 area, because students to the north, south, east, and west of R1 are assigned to attend Clarksburg.

Because this case involves a school redistricting, the matter was transferred to the Office of Administrative Hearings for review by an Administrative Law Judge (ALJ). See COMAR 13A.01.05.07A(1). In her proposed decision, the ALJ held that the decision of the local board to establish geographic attendance areas in which students at Ride attend Seneca and students at Fox Chapel attend Clarksburg is not arbitrary, unreasonable or illegal. Accordingly, the ALJ recommends that the State Board affirm the local board's decision. Appellants have submitted exceptions to the ALJ's proposed decision.

#### FACTUAL BACKGROUND

In November 2004, the local board authorized a boundary study to establish boundaries for the new Clarksburg High School which opened in August 2006. Clarksburg was built to relieve severe overcrowding at three adjacent high schools, Damascus High School, Seneca Valley High School, and Watkins Mill High School. (Findings of Fact (FOF) ¶1).

The local board established a Boundary Advisory Committee (BAC) comprised of representatives from all 25 Damascus, Seneca and Watkins Mill cluster schools, including also one high school student from each of the three affected high schools. The role of the BAC was

to represent the issues and concerns of the respective schools, develop criteria to be used by MCPS staff to develop boundary options, evaluate the boundary options presented by MCPS staff, and to serve as community liaisons. (FOF ¶¶ 2 – 3).

After conducting various meetings, on June 10, 2005 the BAC issued its report describing four possible boundary options that were developed by the Montgomery County Public Schools (MCPS) Department of Planning and Capital Programming staff. (FOF ¶¶ 4 – 5). The BAC had recommended the reassignment of one or more elementary schools from each of the affected high schools to Clarksburg in order to address the overutilization at Damascus, Seneca, and Watkins Mill. Options 1, 2, and 3 removed the R1 part of Ride from the Seneca attendance area and assigned those students to Clarksburg. Option 4 left Ride intact in the Seneca attendance area and reassigned Fox Chapel to Clarksburg. (FOF ¶¶ 7 – 8). The BAC report was sent to the local Superintendent for his review and subsequent recommendation to the local board. (FOF ¶ 5).

Among other factors considered, the BAC utilized calculations from comparison tables in its development of boundary options. These calculations included projections of the racial and ethnic composition of Clarksburg under each of the four options presented. It was discovered that there was an error in the racial and ethnic projections that misrepresented the percentage of African-American students at Clarksburg under each option. The error had not been corrected when the Superintendent recommended Option 4 to the local board on October 14, 2005. The comparison table attached to the Superintendent's recommendation reflected an African American population of 35.5%, when the correct figure was 26.2%. (FOF ¶¶ 9 – 12).

On October 18, 2005, approximately one month prior to action by the local board on the Superintendent's recommendation, the Superintendent advised local board members of the calculation error and provided corrections to the original comparison table. The correction reflected an African-American population at Clarksburg of 26.2%, not 35.5% as originally stated. The corrected comparison table was posted on the MCPS web site and was sent to principals, cluster coordinators, PTA presidents, and the BAC. (FOF ¶13).

The Superintendent's recommendation to the local board relied heavily on the reassignment option that created a higher Free and Reduced Meal (FARM) student population at Clarksburg. This factor, more than race or ethnicity, created greater socio-economic diversity in the Clarksburg student population. Reassigning students from Fox Chapel to Clarksburg increased Clarksburg's FARM student population while reducing the percentage FARM population at Seneca. Reassigning the R1 Ride population to Clarksburg would have increased

the percentage of FARM student population at Seneca. (Superintendent's Recommendation, p.4).<sup>1</sup>

#### ALJ's PROPOSED DECISION

After reviewing the entire record and hearing arguments from the parties, the ALJ concluded that the local board's decision was not arbitrary, unreasonable or illegal. The ALJ rejected Appellants' position that the local board's decision should be reversed because the redistricting process was exposed to racial composition figures containing a calculation error. The ALJ explained that four days after issuing his recommendation to the local board, the Superintendent disclosed the calculation error to all concerned parties. The local board then made its decision taking the corrected information into account. (Proposed Decision, pp. 13-14). The ALJ further explained that the local board considered student enrollment trends, school building capacities, capacity utilization rates, transportation, mobility, and diversity as factors in making its redistricting decision. She stated that the "testimony and documentary evidence support that those factors and the criteria set forth by the BAC were carefully calculated and considered irrespective of the flaw in the race/ethnic cell of the Comparison Tables, which were corrected prior to the issuance of the final decision." (Proposed Decision, p. 12).

The ALJ also rejected Appellants' argument that the local board's consideration of split articulation was overemphasized. In response, the ALJ stated that "[p]rofessionals in the education field clearly consider the assignment of entire school areas preferable to disassembling a school area to accommodate the wishes of a few students or parents." (Proposed Decision, p. 12). Thus, the ALJ concluded that the local board presented a reasonable basis for assigning the R1 attendance area to Seneca with the rest of the Ride population even though the R1 district is closer to Clarksburg and further away from Seneca than is Fox Chapel. (Proposed Decision, p. 13).

#### STANDARD OF REVIEW

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

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<sup>1</sup>The last two sentences of FOF ¶15 on p. 6 of the ALJ's Proposed Decision mistakenly refer to Seneca instead of Clarksburg. We revise those sentences to read as follows:

Reassigning students from Fox Chapel to Clarksburg reduced Seneca Valley's FARM student population. Reassigning students from Ride to Clarksburg increased the percentage of students receiving FARMs at Seneca.

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. (See Md. Code Ann., State Gov't § 10-216). In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong reasons present that support rejecting such assessments. (See *Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994)).

#### EXCEPTIONS TO THE ALJ'S PROPOSED DECISION

Appellants' exceptions to the ALJ's proposed decision focus primarily on the flawed racial data. Appellants argue that although the erroneous information in the Superintendent's recommended alternative was eventually corrected, the racial information associated with other boundary alternatives was never corrected so that decision makers and the community could make a meaningful comparison between the proffered alternatives. Appellants maintain that this error rendered the BAC's work meaningless. Appellants further argue that the ALJ failed to fully address the effects of the error on the outcome of the Clarksburg boundary determination process.

In response, the local board concedes that there was a mathematical error in the data considered by the BAC which was not discovered until after the Superintendent made his boundary recommendation to the local board. This error was corrected and the correction was highly disseminated within four days of release of the recommendation and approximately one month before the local board's decision.

The local board asserts that the ALJ specifically addressed the effect of the error on the outcome of the redistricting process and determined that the effect was inconsequential. The ALJ stated as follows:

The Superintendent immediately corrected the error, in writing, one month prior to the County Board's decision on the matter. Moreover, in his written recommendation, Superintendent Weast emphasized the importance of promoting demographic diversity at the new Clarksburg HS. While the Superintendent acknowledged that the R1 portion of the Ride service area was closer to Clarksburg HS than to Seneca Valley HS, the reassignment of Fox Chapel ES to Clarksburg HS, instead of the reassignment of the R1 portion of Ride, would provide greater demographic diversity at Clarksburg HS. The promotion of demographic diversity in the school setting is a sound educational policy.

(Proposed Decision, p.10). The local board further asserts that the Superintendent was concerned

about demographics that would lead to greater socioeconomic diversity rather than greater racial/ethnic diversity at Clarksburg.

The evidence in this case supports the notion that the error did not affect the Superintendent's recommendation because the Superintendent's recommendation focused on the impact of the various options on the FARMs populations at the affected schools and not on the impact on the percentage of African-American students. He chose the option that created a higher FARM student population at Clarksburg because this factor would create greater socio-economic diversity in the Clarksburg student population. (Superintendent's Recommendation, p.4). His recommendation noted that while "the Clarksburg area will become more diverse in terms of racial and ethnic composition as it builds out", "diversity in socio-economic composition is less likely, especially given the escalating costs of new homes in the area." (Superintendent's Recommendation, p.2).

The local board also notes that the ALJ determined that the error had no impact on the other main advantage of the Superintendent's recommendation which was the assignment of an entire elementary attendance area to Clarksburg rather than splitting an attendance area between schools. The ALJ stated the following on the split articulation issue:

The Appellants argue that the consideration of the split articulation of the Elementary Schools at the Middle School level was both overemphasized and erroneous. They state that split articulation at the Elementary School level, while not desirable, is a minor issue compared to the question of which school the students will attend. This assertion was offered without any basis other than the Appellants' desire to have their children attend the newly constructed Clarksburg HS. Professionals in the education field clearly consider the reassignment of entire school areas preferable to disassembling a school area to accommodate the wishes of a few students or parents. In fact, the PTA position papers overwhelmingly cited articulation as a central concern in the redistricting process. This consideration was also clearly and concisely articulated by the Superintendent in his October 14, 2005 recommendation for boundary changes. (Citations omitted).

(Proposed Decision, p. 12). The Superintendent stated in his recommendation that the reassignment of the R1 district of Ride would split the elementary school between two high schools and require additional boundary changes to avoid the articulation of Ride's students to three middle schools, whereas the reassignment of the whole Fox Chapel service area would enable a whole school service area to be reassigned at both the high school and middle school levels. (Superintendent's Recommendation, p. 4). Again, we find substantial evidence to support the ALJ's conclusion on this issue.

CONCLUSION

As counsel for the local board stated:

It is regrettable that the process was not perfect. But the entire decision making process was not tainted, as Appellant alleges. The error was discovered; it was corrected and the correction widely disseminated; and, in the end, it was not of such consequence as to lead a reasoning mind to the conclusion that the County Board decision was arbitrary and unreasonable or illegal.

(Local Board's Reply to Exceptions). Based on our review of this case, we concur. The local board's decision was supported by several considerations which seem unaffected by the error in the percentage of African-American students projected to be enrolled at Clarksburg. Accordingly, we adopt the ALJ's decision as final with minor modifications as set forth in footnote 1 herein and, thus, affirm the decision of the local board redistricting the Fox Chapel Elementary School attendance area to Clarksburg High School.



Edward L. Root  
President



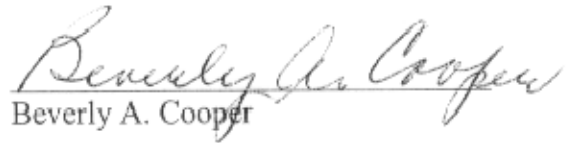
Dunbar Brooks  
Vice President

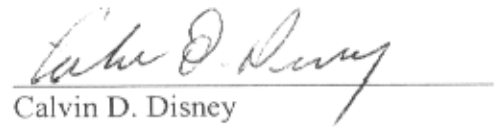


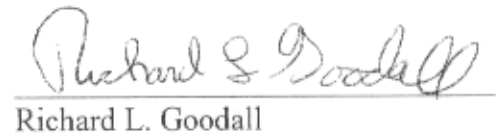
Lelia T. Allen



J. Henry Butta

  
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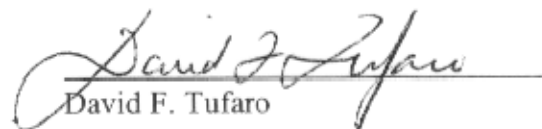
  
Calvin D. Disney

  
Richard L. Goodall

  
Tonya Miles

  
Karabelle Pizzigati

  
Maria C. Torres-Queral

  
David F. Tufaro

December 12, 2006

ROBERT D. JONES, *et al*,

APPELLANTS

v.

BOARD OF EDUCATION OF

MONTGOMERY COUNTY

\* BEFORE M. TERESA GARLAND,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-BE-09-06-07216

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE

ISSUE

SUMMARY OF THE EVIDENCE

FINDINGS OF FACT

DECISION ON PRE-TRIAL MOTION

DISCUSSION

CONCLUSIONS OF LAW

PROPOSED ORDER

**STATEMENT OF THE CASE**

This case arises from a decision by the Montgomery County Board of Education (County Board), after recommendation by the Superintendent of the Montgomery County Public Schools (MCPS), to change boundary attendance areas for certain students, including the Appellants' children. The County Board established the geographical attendance area for Clarksburg High School (Clarksburg HS) which is scheduled to open in August 2006. That decision also caused the realignment of middle school assignments, a process that began one year earlier when the County Board authorized a Boundary Advisory Committee (BAC) to study boundary options. In making its decision, the County Board adopted the recommendation of Superintendent Jerry D. Weast and it is that recommendation that the Appellants challenge in their appeal. Specifically, the Appellants challenge that part of the Superintendent's recommendation that assigns the Fox Chapel Elementary School (Fox Chapel) attendance area to Clarksburg HS instead of the Dr. Sally K. Ride Elementary



School (Ride) attendance area, or the assignment of that portion of the Ride area in which Appellants reside<sup>1</sup>. The students in the Ride attendance area, including the R1 district, are assigned to attend Seneca High School (Seneca HS) and not the new Clarksburg HS.

On May 8, 2006, I conducted a hearing at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland, pursuant to Code of Maryland Regulations (COMAR) 13A.01.05.07. Judith Bressler, Esquire, represented the MCPS. Robert D. Jones, Esquire, (also an appellant) represented the Appellants.

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 govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2005); COMAR 13A.01.05.07; COMAR 28.02.01.

### **ISSUE**

Was the County Board's decision to assign students in the R1 district to Seneca HS and not Clarksburg HS arbitrary, unreasonable or illegal?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The Appellant and the MCPS submitted the following Joint exhibits which were admitted into evidence:

1. June 10, 2005, Report of the Clarksburg Area High School Boundary Advisory Committee, with Appendices A-E.
2. April 14, 2005, Superintendent's Recommendation for Clarksburg High School Boundaries and Boundary Changes for Martin Luther King, Jr. and Neelsville Middle Schools.
3. October 18, 2005, Memorandum from Superintendent to Board of Education.

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<sup>1</sup> This area is designated the R1 area.

4. November 2, 2005 Minutes of Board of Education Work session (for Board-proposed alternatives)
5. November 9, 2005 Testimony from Public Hearings on the Recommended Capital Improvements Program (CIP)
6. November 10, 2005, Testimony from Public Hearings on the Recommended CIP
7. November 17, 2005 Memorandum from Superintendent to Board of Education Regarding Clarksburg High School Boundaries.
8. November 17, 2005, Minutes of Board of Education Meeting- Clarksburg Boundary Decision.
9. Long-Range Educational Facilities Planning - Interim Regulations (FAA-RA).
10. Public Information – Regulation (KBA-RA)
11. Policy on Public Information (KBA)
12. Release of Data - Policy
13. March 11, 2003, Board of Education Mission (Revised)
14. 2003 – 2004 School Year Data – Schools at a Glance 2004-2005 (Damascus, Watkins Mill and Seneca Valley high schools).

#### Testimony

Bruce Crispell, Director of the Division of Long Term Planning for MCPS, testified on behalf of the County Board. Robert Jones, Appellant and legal representative of the Appellants, testified on behalf of the Appellants.

#### **FINDINGS OF FACT**

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

1. In November 2004, the County Board authorized a boundary study to establish boundaries for the new Clarksburg HS scheduled to open in August 2006. Clarksburg HS was built to relieve the overutilization of Damascus, Seneca Valley and Watkins Mill high schools.

The boundary study included Damascus, Seneca Valley and Watkins Mill areas as well as surrounding middle school articulation patterns.

2. The County Board established a Boundary Advisory Committee (BAC) to assist with the redistricting process. The BAC was a citizen advisory committee comprised of one member from all twenty-five Damascus, Seneca Valley and Watkins Mill cluster schools. One high school student from each of the three high schools was also invited to serve on the BAC.

3. The role of the BAC was to represent the issues and concerns of their schools, develop committee criteria to be used by MCPS staff to develop boundary options and evaluate those boundary options using the BAC's criteria. The committee members also served as community liaisons, informing their respective communities of the progress and boundary options as they developed. Committee members reported their community's input to the committee.

4. The BAC held four meetings from March 16, 2005 through June 8, 2005 to evaluate boundary options. Additionally, the BAC held a public information meeting on March 7, 2005 to explain the BAC process and again on June 2, 2005 to review the options developed throughout the process. MCPS Department of Planning and Capital Programming staff (Staff), specifically Bruce Crispell, facilitated the meetings, prepared options based on community criteria and responded to BAC requests for information. The BAC accepted and considered public comments as part of the development process. (Jt. Ex. 1, appendix E).

5. On June 10, 2005 the BAC issued its report describing four possible boundary options (Jt. Ex. 1, p.3) which were developed by the Staff. (Appendix C). This report was sent to the Superintendent for his review and subsequent recommendation to the County Board.

6. The County Board conducted work sessions, solicited public input and position papers, and held public hearings based on the Superintendent's recommendation before issuing its final boundary change decision. (Jt. Ex. #5 & 6).

7. The recommendations of the BAC addressed the overutilization at Damascus HS, Seneca Valley HS and Watkins Mill HS. As a result of this overutilization, one or more elementary schools would have to be reassigned from each of these high schools to the new Clarksburg HS.

8. Three of the options (Options 1, 2 and 3) removed the R1 part of Ride from the Seneca Valley HS attendance area and assigned those students to the new Clarksburg HS. Option 4 left Ride intact (in the Seneca Valley HS attendance area) and reassigned Fox Chapel to the Clarksburg HS. (Jt. Ex. 1. appendix C, p. 1).

9. The BAC's development of boundary options utilized, among other factors, calculations encompassed in Comparison Tables. (Jt. Ex. #1, Appendix A). These calculations, developed by Bruce Crispell, Director of the Division of Long Range Planning at MCPS, included projections of the racial and ethnic composition of the new Clarksburg HS under each of the options presented.

10. The calculation of the percentages of the race/ethnic composition projected for Clarksburg HS for each of the four options in the Comparison Table, when added together, exceeded 100%.

11. The total percentage of the population groups for each of the options developed as reflected on the Comparison Table were:

- Option 1: 106.9%
- Option 2: 106.6%
- Option 3: 106.2%

- Option 4: 108.2%

12. The error was caused by the miscalculation of the percentage of African-American students at Clarksburg HS under each option. This error was not corrected when the Superintendent recommended Option 4 to the County Board on October 14, 2005. (Jt. Ex. #2).

13. On October 18, 2005, one month prior to the County Board acting on the Superintendent's recommendation, the Superintendent sent a memo to the members of the Board of Education informing them of the calculation error and correcting the Comparison Table to reflect an African-American population of 26.2%, not 35.5% as stated in the original Comparison Table<sup>2</sup>. (Jt. Ex. #3). The corrected Comparison Table was posted on the MCPS Web site and sent to principals, cluster coordinators, PTA presidents and the BAC.

14. The error in the Calculation Table did not impact the Superintendent's recommendation or the County Board's decision to adopt Option 4.

15. The Superintendent's recommendation to the County Board relied heavily on the reassignment option that created a higher Free and Reduced Meal (FARM) student population. This factor, more than race or ethnicity, created greater socio-economic diversity in the Seneca Valley HS student population. Reassigning students from Fox Chapel to Seneca Valley reduced Seneca Valley's FARM student population. Reassigning students from Ride to Seneca Valley increased the percentage of students receiving FARMs.

#### **DECISION ON PRE-TRIAL MOTION**

The County Board filed a written Motion for Summary Decision (which I held sub-curia) pursuant to COMAR 28.02.01.16D. COMAR 28.02.01.16C(1) states that a party to an administrative hearing before the OAH "may move for summary decision on any substantive

issue in the case.” An order for summary decision is appropriate under COMAR 28.02.02.16C(2) if “[a] judge finds that there is no genuine dispute as to any material fact and that the moving party is entitled to prevail as a matter of law.” On a motion for summary decision, which is essentially the same as a motion for summary judgment under Maryland Rule 2-501, I must consider the facts and construe all inferences reasonably drawn from those facts in the light most favorable to the non-moving party (in this case, the Appellants). To defeat a motion for summary decision, the Appellant must establish that a genuine dispute exists as to a material fact. A material fact is one that will somehow affect the outcome of the case. If a dispute exists as to a fact that is not material to the outcome of the case, summary decision is not foreclosed.

The purpose of a summary decision is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried. Thus, once the moving party has provided sufficient grounds for summary decision, the nonmoving party must produce sufficient evidence to prove that a genuine dispute to a material fact exists.

In this case, the Appellants allege that the County Board relied upon incorrect race/ethnic data in making its decision resulted in a tainted decision making process. When taken in a light most favorable to the Appellants, they have established the existence of a genuine dispute of material fact, and therefore the Motion for Summary decision is denied.

#### **DISCUSSION**

The Appellants have the burden to prove, by a preponderance of the evidence, that the decision of the County Board is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05D.

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<sup>2</sup> The correction also pre-dated the November 2, 2005 County Board work session and the November 9 and 10, 2005 public hearings.

COMAR 13A.01.05.05A provides:

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.

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

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

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

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

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

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the 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.

#### I. ARBITRARY OR UNREASONABLE

As noted above, the County Board’s decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or a reasoning mind could not have reasonably reached the conclusion the County Board reached.

##### A. Sound Educational Policy

The Appellant’s argument that the redistricting decision in this case was arbitrary or unreasonable is premised almost exclusively on an error in the racial information provided in each option presented to the Superintendent. The County Board presented the testimony of Bruce Crispell, Director of the Division of Long Range Planning for the MCPS. Mr. Crispell holds a Bachelor of Arts degree in Communications and a Master of Science degree in Urban and

Regional Planning. In his capacity as a planner with the MCPS, Mr. Crispell is responsible for guiding the process for developing school boundary options. The starting point in the process is with the work of the BAC in identifying criteria to be used by Mr. Crispell in his planning. (Jt. Ex. # 1, p.2) The BAC developed the following criteria, in no order of priority:

- a.) Provide demographic balance for schools including:
  - Race/ethnic
  - Free and Reduced-price meals (FARMS)
  - English for Speakers of Other Languages (ESOL)
  - Mobility levels
- b.) Minimize split articulations from elementary schools to middle schools and from middle schools to high schools.
- c.) Keep schools within their capacities and leave room in Clarksburg HS for enrollment growth.
- d.) Minimize distance to school assignments for students transported in buses and for students and parents traveling in cars.
- e.) Minimize travel time for students transported in buses and for students and parents traveling in cars.
- f.) Minimize the number of school boundary changes in the future.
- g.) Don't split communities between two school assignments (sic).
- h.) Minimize fluctuation in enrollment at schools.
- i.) Minimize the number of students reassigned.
- j.) Equally disperse changes across clusters.



Mr. Crispell took the criteria developed by the BAC and projected statistics, maps and data based on those criteria. Mr. Crispell used this data to develop redistricting options for consideration by the County Board and the Superintendent. As noted previously, the statistics related to the racial and ethnic makeup of Clarksburg HS under each option were overstated. This overstatement was the result of an inaccurate figure in the calculation cell projecting the African American population at Clarksburg HS. The comparison table in each option reflecting the African American population indicated 35.5%, when the correct figure was 26.2%. It was this miscalculation (or mathematical error) which caused the total race/ethnic composition under each option to exceed 100%. This error went unnoticed throughout the entire process of BAC work sessions as well as public hearings on the redistricting. Only after the Superintendent issued his recommendation to the County Board was the error recognized. The Superintendent immediately corrected the error, in writing, one month prior to the County Board's decision on the matter. Moreover, in his written recommendation, Superintendent Weast emphasized the importance of promoting demographic diversity at the new Clarksburg HS. While the Superintendent acknowledged that the R1 portion of the Ride service area was closer to Clarksburg HS than to Seneca Valley HS, the reassignment of Fox Chapel ES to Clarksburg HS, instead of the reassignment of the R1 portion of Ride, would provide greater demographic diversity at Clarksburg HS. The promotion of demographic diversity in the school setting is a sound educational policy.

The Appellants did not present evidence or testimony of any qualified expert in the field of educational policy. Instead, they argued that the County Board failed to correct data that was crucial to the boundary decision. However, there was no evidence that the boundary decision making process overemphasized any single criteria developed by the BAC. In fact, the BAC

noted in its report that the criteria were not listed in order of priority. The Appellants did not challenge the County Board's decision on the basis that it was contrary to sound educational policy. Instead, they cross-examined the County Board's expert on the calculation error of the African-American population, reflected in the comparison tables. The construction of Clarksburg HS and the resulting proposed boundary changes were intended to relieve overcrowding in the affected high schools. While there is no evidence of an adverse impact on racial diversity with the County Board's decision, *Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 226 A.2d 243 (1967), stated that "if the Board's action was taken in the reasonable exercise of its discretion, in an effort to relieve overcrowded conditions, it is immaterial that an incidental effect of the action was to adjust a racial imbalance." *Id* at 477. In the present appeal, whatever flaw existed with respect to racial diversity data when the County Board announced its decision would not render the Board's decision arbitrary or illegal. Despite the testimony of Mr. Crispell, as well as the exhibits submitted attesting that demographic diversity was a more significant factor to consider than racial composition in this redistricting, the Appellants argued that the flawed information presented to the County Board tainted the process; thus, rendering the information insufficient for the County Board to make a decision based on sound educational policy. But such a position falls short of the Appellants' burden to prove by a preponderance of the evidence that the County Board's decision was contrary to sound educational policy.

The County Board, on the other hand, presented significant and compelling evidence that the County Board's decision was not contrary to sound educational policy. It is clear that the County Board engaged in appropriate consideration of the criteria set forth by the BAC and their decision was not contrary to sound educational policy. COMAR 13A.01.05.05B(1).

## B. Reasonableness

The Appellants also failed to meet their burden to prove that a reasoning mind could not have reasonably reached the conclusion the County Board did in approving the Administration's proposed boundary changes. The MCPS educates 140,000 students and engages 14,000 employees over an expanse of 500 square miles. In contemplating the MCPS's six year CIP, including the construction of new schools and redistricting existing schools, the County Board considers the following data: student enrollment trends, school building capacities, capacity utilization rates, transportation, mobility (turnover in school population) and diversity. Based on these factors, a decision is made to construct new schools, redistrict school areas, or both as in this case. The testimony and documentary evidence support that those factors and the criteria set forth by the BAC were carefully calculated and considered irrespective of the flaw in the race/ethnic cell of the Comparison Tables, which were corrected prior to the issuance of the final decision.

The Appellants argue that the consideration of the split articulation of the Elementary Schools at the Middle School level was both overemphasized and erroneous. They state that split articulation at the Elementary School level, while not desirable, is a minor issue compared to the question of which school the students will attend. This assertion was offered without any basis other than the Appellants' desire to have their children attend the newly constructed Clarksburg HS. Professionals in the education field clearly consider the reassignment of entire school areas preferable to disassembling a school area to accommodate the wishes of a few students or parents. In fact, the PTA position papers overwhelmingly cited articulation as a central concern in the redistricting process. (Jt Ex. #1E) This consideration was also clearly and concisely articulated by the Superintendent in his October 14, 2005 recommendation for

boundary changes.

The Appellants also challenge the decision of the County Board on the basis that the R1 area is closer to the new Clarksburg HS and further away from Seneca Valley HS than Fox Chapel. The Board presented a very reasonable explanation for its decision on the redistricting plan. (See *Stishan v. Howard County Board of Education*, MSBE Opinion No. 05-33, 09/27/05, and *Coleman v. Howard County Board of Education*, MSBE Opinion No. 05-32, 09/27/05.) Although the Appellants' disappointment with the County Board's decision to send their children to Seneca Valley HS is palpable, there is no evidence to suggest that the County Board did not take all of the factors outlined by the Appellants into consideration. It is a well established legal principle that, "...absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school." *Bernstein*, 245 Md. at 472. Moreover, the public process provided substantial input from the community, and the County Board considered and thoroughly discussed all of the issues raised by the Appellants. The County Board considered all alternatives submitted and ultimately determined that moving the Ride area as a whole to Seneca Valley HS was a reasonable exercise of its discretion and it was the best solution to populate Clarksburg HS and alleviate overcrowding at the other schools. There was nothing arbitrary or unreasonable in the County Board's decision. For those reasons, I find the Appellants have not met their burden to show that a reasoning mind could not have reasonably reached the conclusion the County Board reached. COMAR 3A.01.05.05B(2).

## II. ILLEGAL DECISION

The Appellants vehemently contend that the County Board's decision was unconstitutional, was an abuse of the County Board's discretion and was a result of unlawful

procedures. Specifically, they allege that the County Board knowingly relied upon inaccurate race/ethnic calculations when making its final decision. The Appellants assert in their appeal that the corrected data regarding the race/ethnic composition was disclosed “well after the Superintendent’s recommendation was published.” (Appellant’s Brief at p. 10) This is simply untrue. The Superintendent issued his recommendation to the County Board on October 14, 2005. A scant four days later, immediately upon discovering the error, he openly disclosed the calculation error to all concerned parties. Moreover, the Appellants aver that the County Board’s failure to provide “accurate and honest data crucial to the school boundary decision” (Appellants Brief at p. 11) amounted to a violation of the County Board’s Core Values. Hence, the Appellant’s argue, the decision of the County Board was the result of an unlawful procedure and was, therefore, illegal. This argument fails on the most basic of levels. The premise upon which the assertion is made is inaccurate. The flaw in the foundation upon which the Appellants stack theirs conclusion causes it to fail. Even if the premise were proven, a “violation” of a core value in the redistricting process does not *ipso facto* amount to an illegal proceeding. For this reason, I find that the Appellants have failed to meet their burden to prove that the County Board’s decision was illegal.

Accordingly, I find that the Appellant has not shown that the Board’s decision was an illegal decision. COMAR 13A.01.05.05C.

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the decision of the Montgomery County Board of Education, to establish boundary attendance areas for students at Dr. Sally K. Ride Elementary School to attend Seneca Valley High was not arbitrary,

unreasonable or illegal. COMAR 13A.01.05.05B, COMAR 13A.01.05.05C, COMAR 13A.01.05.05D.

**PROPOSED ORDER**

I **RECOMMEND** that the decision of the Montgomery County Board of Education, to change boundary attendance areas for students attending Dr. Sally K. Ride Elementary School to attend Seneca Valley High School be **AFFIRMED**.

August 7, 2006

Date

  
M. Teresa Garland  
Administrative Law Judge

MTG  
# 82335

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**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.

ROBERT D. JONES, *et al*,

APPELLANTS

v.

BOARD OF EDUCATION OF

MONTGOMERY COUNTY

\* BEFORE M. TERESA GARLAND,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-BE-09-06-07216

\* \* \* \* \*

**FILE EXHIBIT LIST**

Exhibits

The Appellant and the MCPS submitted the following Joint exhibits which were admitted into evidence:

1. June 10, 2005, Report of the Clarksburg Area High School Boundary Advisory Committee, with Appendices A-E.
2. April 14, 2005, Superintendent's Recommendation for Clarksburg High School Boundaries and Boundary Changes for Martin Luther King, Jr. and Neelsville Middle Schools.
3. October 18, 2005, Memorandum from Superintendent to Board of Education.
4. November 2, 2005 Minutes of Board of Education Work session (for Board-proposed alternatives)
5. November 9, 2005 Testimony from Public Hearings on the Recommended Capital Improvements Program (CIP)
6. November 10, 2005, Testimony from Public Hearings on the Recommended CIP
7. November 17, 2005 Memorandum from Superintendent to Board of Education Regarding Clarksburg High School Boundaries.
8. November 17, 2005, Minutes of Board of Education Meeting- Clarksburg Boundary Decision.
9. Long-Range Educational Facilities Planning - Interim Regulations (FAA-RA).
10. Public Information – Regulation (KBA-RA)

11. Policy on Public Information (KBA)
12. Release of Data - Policy
13. March 11, 2003, Board of Education Mission (Revised)
14. 2003 – 2004 School Year Data – Schools at a Glance 2004-2005 (Damascus, Watkins Mill and Seneca Valley high schools).