

GEORGE P. HOWELL,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-07

OPINION

In this case, Appellant challenges the local board's decision to adjust the boundaries for Bowie High School and DuVal High School in Prince George's County.¹ Appellant has made various allegations regarding the decision, including improper public notice. The local board has submitted a motion for summary affirmance maintaining that in reaching its decision the local board strictly followed its boundary change policy and procedure and that its decision is based on sound educational policy.

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 his proposed decision, the ALJ recommends that the State Board grant the local board's motion for summary affirmance thereby upholding the local board's decision. A copy of the proposed decision is attached as Exhibit 1.

Appellant has not filed exceptions to the ALJ's decision. Under the regulations for appeals to the State Board of Education, if no party files exceptions, there is no entitlement to oral argument before the State Board. *See* COMAR 13A.01.05.07F(3). The State Board therefore reviewed this appeal on the record.

FACTUAL BACKGROUND

As early as December 2001, Prince George's County Public Schools had anticipated the future overcrowding of all of its high schools based on student enrollment projections. Demographic projections revealed that the projected enrollment for Bowie High School was expected to be 3019 seats which is 1085 seats over state-rated capacity as of September 2004, while enrollment at nearby DuVal High School was expected to be 1325 seats, 329 seats under state-rated capacity.² Based on these projections, it was determined that there was a need to

¹Appellant is the father of an eighth grade student who was affected by the local board's decision.

²The actual enrollment on July 7, 2004, following the annual enrollment rollover and including the approved boundary change, was Bowie at 2868 seats and DuVal at 1409 seats.

change boundaries for some Bowie students and require their enrollment at DuVal. *See* Affidavit of William Greene, Jr., Director for Pupil Accounting and School Boundaries.

After a lengthy process which included various public hearings and extended study and review of the situation, on May 13, 2004, the local board accepted the boundary change recommendation of the Chief Executive Officer, Andre' J. Hornsby, that changed the boundary attendance area for certain students residing in the communities of Marleigh, Holmhurst, Silverbrook, Lake View, and Turf Farm from Bowie High School to DuVal High School. The full boundary change is scheduled to be implemented over a phase-in of three years with only entering ninth-grade students being impacted for the 2004-2005 school year (approximately 66 students). *See* Affidavit of William Greene, Jr.

In his proposed decision, the ALJ sets forth the material facts that are not in dispute, elaborating on the events preceding the local board's redistricting decision. These material facts include information on such things as the local board's boundary change policy and procedure, notice of the public forums, dates and times of the public forums, use of professional demographers to assess potential overcrowding, recommendations of the Boundary and Attendance Area Peer Committee, and recommendations of the CEO. *See* Proposed Decision at 4-7.

ANALYSIS

Preliminary Issue

As a preliminary issue, we note that the ALJ erroneously states in footnote one of his decision that the State Board's recently amended regulations no longer contain a provision for summary affirmance of a local board's decision. Proposed Decision at 2. Consequently, the ALJ applied the Office of Administrative Hearing's provision for summary decision. *See* COMAR 28.02.01.16D. However, a review of the State Board's appeal regulations at COMAR 13A.01.05.03D(1) discloses that the regulations continue to provide that a motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law. *See also* COMAR 13A.01.05.03D(2). This notwithstanding, we find that the ALJ's notation in footnote one is harmless error given that there is no substantive difference between a summary affirmance under State Board regulation and a summary decision under the Office of Administrative Hearing's provisions.

Substance of Appeal

In his proposed decision, the ALJ finds nothing arbitrary, unreasonable, or illegal about the local board's decision and recommends affirmance of the local board's redistricting decision at issue in this case. In his proposed decision, the ALJ states as follows:

The record indicates that the BOE followed its own procedures and addressed the required criteria in making its decision. The BOE considered student enrollment trends, school building capacities, capacity utilization rates, transportation, educational programs, racial composition of the student body, financial considerations, and community impact. Eventually, the BOE determined that transferring some students from Bowie to nearby DuVal would lessen the overcrowding of Bowie. The BOE obviously did not make this decision summarily; it studied the overall student population and overcrowding of the county's schools. When the community protested the boundary change for the 2003-2004 school year, the BOE listened and conducted further review, including a demographic study. The BOE held further public forums in 2004 to get the public's input. In summary, the BOE followed its procedures, considered information from various sources, and reached a reasonable, rational decision concerning the use of the county's educational resources. A reasoning mind could reasonably have reached the same decision as the BOE.

Proposed Decision at 10. We concur.

With regard to Appellant's allegations that the local board's decision was contrary to sound educational policy, the ALJ noted that the procedures do not prohibit boundary changes that might result in some students attending an academically inferior school. The record demonstrates that the local board considered the academic performance at both DuVal and Bowie and exercised sound educational policy by relieving overcrowding at Bowie by sending some students to an underutilized DuVal. As the ALJ reasoned, "The BOE's policy on school boundaries implicitly recognizes that students can receive a better education in a less crowded school environment." Proposed Decision at 9.

Additionally, with regard to Appellant's allegations of illegality in the local board's decision, the ALJ found that these allegations lacked merit, including Appellant's arguments that the local board failed to follow proper procedure and that the local board has "in essence subtly placed segregation of schools back in force in the Bowie/Greenbelt area" by increasing the African American population at DuVal.

CONCLUSION

For all of these reasons, we adopt the Findings of Fact and Conclusions of Law made by the administrative law judge. We thereby affirm the boundary adjustment decision made by the

Prince George's County Board of Education.

Edward L. Root

President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

February 23, 2005

EXHIBIT 1

GEORGE P. HOWELL,

APPELLANT

v.

PRINCE GEORGE’S COUNTY

BOARD OF EDUCATION

* BEFORE ROBERT F. BARRY,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* CASE NO.: MSDE-BE-09-04-36745

* * * * *

**PROPOSED ORDER ON THE BOARD OF EDUCATION’S
MOTION FOR SUMMARY DECISION**

STATEMENT OF THE CASE
ISSUE
MATERIAL FACTS NOT IN DISPUTE
DISCUSSION
CONCLUSIONS OF LAW
NOTICE OF RIGHT TO FILE EXCEPTIONS
PROPOSED ORDER

STATEMENT OF THE CASE

On May 13, 2004, the Prince George’s County Board of Education (“BOE”) approved the recommendation of André J. Hornsby, Ed.D., Chief Executive Officer (“CEO”), Prince George’s County Public Schools (“PGCPS”), to adjust the boundaries for Bowie High School (“Bowie”) and DuVal High School (“DuVal”). Students residing in the communities of Marleigh, Holmhurst, Silverbrook, Lake View, and Turf Farm, previously assigned to Bowie were now assigned to DuVal. On June 10, 2004, George P. Howell (“Appellant”), the father of an eighth-grade student affected by the BOE’s decision, filed an appeal with the Maryland State Department of Education (“MSDE”). On July 19, 2004, the MSDE transmitted the appeal to the Office of Administrative Hearings (“OAH”) to conduct a contested-case hearing.

On July 14, 2004, the BOE, through counsel, filed a Motion for Summary Decision.³ On August 19, 2004, I directed the Appellant to respond to the BOE's motion by September 10, 2004. I also directed both parties to be prepared to argue the motion at the Telephone Preliminary Hearing Conference ("TPHC") set on September 17, 2004. The Appellant did not respond to the BOE's motion.

On September 17, 2004, I conducted a TPHC and Motions Hearing. COMAR 28.02.01.13 and 28.02.01.16. The Appellant represented himself. Attorney Roger C. Thomas, Knight, Manzi, Nussbaum & LaPlaca, represented the BOE. Both parties presented argument concerning the BOE's Motion for Summary Decision. The contested-case hearing is set on November 10, 2004.

The contested-case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2004); Regulations for Appeals to the State Board of Education, COMAR 13A.01.05; and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01, govern procedure.

ISSUE

The issue is whether the BOE's Motion for Summary Decision should be granted because the Appellant failed to raise any genuine dispute concerning any material fact, and the BOE is entitled to prevail as a matter of law.

³The BOE filed a Motion for Summary Affirmance pursuant to Code of Maryland Regulations ("COMAR") 13A.01.01.03K. That regulation, however, was amended, effective July 19, 2004. (31:14 Md. R. 1079). MSDE's regulations no longer contain a provision for summary affirmance of a local board's decision. Because the MSDE delegated its hearing authority to the OAH, and there is no specific MSDE regulation on point, the correct regulation to apply here is OAH's provision for summary decision. There is no substantive difference, however, between a summary affirmance and a summary decision.

SUMMARY OF THE EVIDENCE

Exhibits

The 13 exhibits that the BOE submitted with its Motion for Summary Decision were considered for this Ruling:

1. Board of Education Policy No. 0113
2. Administrative Procedure No. 8391, Boundary Changes
3. Form Letter, Notice of Public Hearings
4. Map of Boundary Changes from Bowie to DuVal
5. Briefing, January 8, 2004 Board Work Session
6. Minutes, February 12, 2004 Board Work Session
7. Minutes, April 14, 2004 Board Work Session
8. Form Letter, April 20, 2004, from Kathleen Kurtz, Region IV Executive Director
9. Minutes, April 29, 2004 Board Meeting
10. Minutes, May 5, 2004 Board Meeting
11. Final Report to the Chief Executive Officer, April 2004
12. Reading and Math Proficiency for School Years 2003 and 2004
13. Initiatives for Prince George's County High Schools

Materials that the Appellant submitted with his appeal were also considered for this

Ruling:

1. Sampling of e-mails and responses to May 13, 2004 Board Meeting
2. Petition signed by 254 residents of area affected by boundary change
3. Maryland School Assessment Results, DuVal High School 2002-2003

4. Maryland's Report Card, DuVal and Bowie High Schools, 2003
5. Boundary and Attendance Area Peer Committee Public Forum
6. Bowie High School: Impact of Changes

MATERIAL FACTS THAT ARE NOT IN DISPUTE

Based on the information of record, I find that there is no genuine dispute concerning the following material facts:

1. Pursuant to BOE Policy Number 0113, the PGCPs annually evaluates its student enrollment and building capacities to accommodate new school construction and to assess building capacity, overcrowding, and educational program placement.

2. BOE Administrative Procedure Number 8391, Boundary Changes, sets forth the procedures used by the BOE for changing school boundaries.

3. The boundary change procedures are meant to fulfill the PGCPs's philosophy of making the most economical and practical use of its physical resources in the implementation of its educational programs.

4. The boundary change procedures shall ensure, at a minimum, that the following factors are considered:

- A. Student Enrollment Trends.
- B. School Building Capacities.
- C. Capacity Utilization Rates (a measure of school enrollment to school capacity).
- D. Transportation.
- E. Educational Programs.

F. Racial Composition of the Student Body.

G. Financial Considerations.

H. Community Impact.

5. In December 2001, based upon student enrollment projections, the PGCPS anticipated overcrowding of all its high schools, with an expected peak in school years 2006-2007 and 2007-2008. The PGCPS determined that it would use temporary buildings and implement boundary adjustments to accommodate increased student enrollment within its limited building capacity.

6. During the winter, spring, and summer of 2002, the PGCPS collaborated with other State and County offices to review options for responding to increased student enrollment in light of PGCPS's funding.

7. By Fall 2002, based upon September 30, 2002 student enrollment data, Iris T. Metts, Ed.D., then PGCPS's Superintendent, disseminated and promoted a High School Solutions Options Plan.

8. One portion of the plan contained a proposed boundary change requiring some students currently attending Bowie to attend DuVal.

9. On October 25, 2002, the PGCPS issued a letter indicating that public hearings on the proposed changes were set for November 11, 12, and 13, 2002. The letter explained that members of the public, including parents, guardians, and students, could speak at the hearings.

10. The letter was sent to students in grades 8 through 11, who were or who would be attending Bowie, and who would be affected by the boundary change and reassigned to DuVal.

11. The three public hearings, including one at DuVal on November 12, 2002, were held as scheduled.

12. The BOE did not approve boundary changes for Bowie and DuVal for the 2003-2004 school year. The BOE ordered further study, review, and public input.

13. The PGCPS retained the services of professional demographers to assess potential overcrowding in high schools, conducted further community forums throughout Fall 2003, and appointed a Boundary and Attendance Area Peer Committee ("Committee") to evaluate all boundary change proposals (including those for Bowie and DuVal) and to gain further community input.

14. At a February 12, 2004 work session, the BOE considered: "Demographic Study: Addressing the Increase in High School Enrollment", conducted by the Grier Partnership.

15. The Committee held three public forums on March 22, 24, and 25, 2004. The March 25, 2004 forum was held at DuVal, and the Committee heard from 14 speakers.

16. The Committee submitted its Final Report to the CEO in April 2004.

17. The Committee recommended boundary changes that would transfer 412 students from Bowie to DuVal. With these and other boundary changes, the percentage of seat utilization at DuVal would increase from 76.7% to 108.3%, and the percentage of seat utilization at Bowie would decrease from 142.6% to 115.7%.

18. On April 14, 2004, the CEO presented the recommended boundary changes, including those for Bowie to DuVal, to the BOE. The CEO recommended to the BOE that the boundary changes for the school year 2004-2005 apply only to incoming ninth graders and newly enrolled students.

19. On April 20, 2004, Kathleen Kurtz, Region IV Executive Director, PGCPs, sent a letter to the parent or guardian of fifty-eight eighth graders (including the Appellant) affected by the Bowie to DuVal boundary change. The letter indicated that Ms. Kurtz and Dr. Bruce Katz, Region II Executive Director, PGCPs, would be holding a meeting on April 27, 2004 at DuVal to discuss the CEO's recommendations for boundary changes from Bowie to DuVal.

20. At its April 29, 2004 meeting, the BOE considered the Short and Long Term Boundary Adjustments to Accommodate Enrollment Changes and Implementation of Systemic Initiatives. Four individuals, including the Appellant, as well as the Vice President of the Silverbrook Homeowners Association Community Affairs, attended the meeting and addressed the BOE.

21. At its May 13, 2004 meeting, the BOE considered the CEO's Recommendations on School Boundary Changes. Fourteen individuals, as well as the Secretary of the Lakeview Homeowners Association, attended the meeting and addressed the BOE.

21. The CEO gave the BOE a presentation on the recommended boundary changes. He also responded to the community's concerns by noting that opportunities for public participation had been provided at the April 29, 2004 BOE Meeting, the April 14, 2004 BOE Work Session, and the public forums held on March 22, 24, and 25, 2004.

22. The BOE approved the school boundary changes proposed by the CEO, including the boundary change of Bowie to DuVal.

DISCUSSION

Motion for Summary Decision

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 (the Appellant). 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.

The standard of review for the substantive issue in this appeal is set forth in COMAR 13A.01.05.05,⁴ which, in pertinent part, provides as follows:

.05 Standard of Review.

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

⁴ In its motion, the BOE referred to COMAR 13A.01.01.03E as providing the standard of review. That COMAR section was amended, effective July 19, 2004. (31:14 Md. R. 1079). The MSDE, in its transmittal letter, dated July 16, 2004, cited the new and correct regulation, COMAR 13A.01.05.05. I have used the current COMAR citation for this ruling; however, I note that no substantive changes were made to the COMAR concerning the standard of review. The changes appear to be limited to renumbering the regulation and substituting “local” for “county”.

- (1) It is contrary to sound educational policy; or
- (2) A reasoning mind could not have reasonably reached the conclusion the local board or local 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 local board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

D. The appellant shall have the burden of proof by a preponderance of the evidence.

Was the BOE's Decision Arbitrary or Unreasonable?

Was the BOE's decision contrary to sound educational policy?

The Appellant, in arguments titled "Last Year's Promise", "School Report Cards", and "Boundary Change Criteria", essentially challenged the wisdom of the BOE's decision to transfer students to DuVal. According to data presented by the Appellant, DuVal is academically inferior to Bowie. At the motions hearing, the BOE agreed to assume the validity of the data presented by the Appellant. The BOE, however, argued that the data did not invalidate the BOE's decision. The BOE's procedures required the BOE to consider the effects that boundary changes would have on educational programs. The procedures do not prohibit the BOE from changing school boundaries because some students will have to go to an academically inferior school. The record is clear that the BOE considered the academic programs and performance at Bowie and DuVal in making its decision. At the May 13, 2004 BOE meeting, Board Member Dean Sirjue specifically noted the concerns with academic performance at DuVal. The BOE, in fact, was already addressing the academic performance of the students at DuVal before approving the boundary

changes. I agree with the BOE that the academic performance of the students at DuVal is not a genuine issue in this case. The real issue is whether the BOE exercised sound educational policy by relieving overcrowding at Bowie by assigning students to the underutilized DuVal. The BOE's policy on school boundaries implicitly recognizes that students can receive a better education in a less crowded school environment. The BOE's boundary changes for Bowie and DuVal are consistent with that educational reality. The Appellant also invoked No Child Left Behind, but he did not cite to any provision of that law that would countermand the BOE's discretion to establish and change the boundaries of the schools within its jurisdiction.

Could a reasoning mind not have reasonably reached the same decision as the BOE?

The peculiar phrasing of this regulation simply confirms that the BOE has broad discretion in changing the boundaries of the public schools in Prince George's County. The BOE, "with the advice of the county superintendent . . . shall determine the geographical attendance area for each school under this section." Md. Code. Ann., Educ. § 4-109(c) (2004); *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 226 A.2d 243 (1967). The BOE, faced with overcrowding of the county high schools and limited finances, followed its own policy for implementing boundary changes. The record indicates that the BOE followed its own procedures and addressed the required criteria in making its decision. The BOE considered student enrollment trends, school building capacities, capacity utilization rates, transportation, educational programs, racial composition of the student body, financial considerations, and community impact. Eventually, the BOE determined that transferring some students from Bowie to nearby DuVal would lessen the overcrowding of Bowie. The BOE obviously did not make this decision summarily; it studied the overall student population and overcrowding of the county's schools. When the community protested the boundary change for the 2003-2004 school year, the

BOE listened and conducted further review, including a demographic study. The BOE held further public forums in 2004 to get the public's input. In summary, the BOE followed its procedures, considered information from various sources, and reached a reasonable, rational decision concerning the use of the county's educational resources. A reasoning mind could reasonably have reached the same decision as the BOE.

Was the BOE's Decision Illegal?

The Appellant did not identify anything that the BOE did in reaching its decision that was unconstitutional, exceeded its authority, misconstrued the law, abused its discretionary powers; or was affected by any other error of law. In his appeal, the Appellant primarily alleged that the BOE failed to follow required procedures because the residents of the affected "communities were poorly advised of the public forums leading" to the BOE's decision. He agreed that on October 25, 2002, the PGCPS sent a letter home with students who potentially would be affected by the boundary change from Bowie to DuVal. The Appellant further acknowledged that members of the affected community were actively involved with the BOE concerning the 2003-2004 school year and, according to the Appellant, actually got the BOE to agree not to impose boundary changes until further study had been done. The Appellant complained of inadequate notice of public forums held in 2004 by the Committee. He wrote that he is "not aware of any involvement of community groups" with the Committee. The Appellant, as the father of an eighth-grade student affected by the boundary change, received notice of the informational meeting on April 27, 2004.

The boundary change procedures do not mandate any specific method for notifying the affected students or communities. In any event, the affected students and communities had actual notice as of October 25, 2002 that the BOE was considering boundary changes for Bowie. The

parents and community groups had ample opportunity (more than a year) to present their concerns to the BOE.

The Appellant raised other issues that are not easily categorized. None of these issues, however, raise any genuine dispute of any material fact. In “Boundary Change Criteria”, the Appellant described the March 25, 2004 community meeting with the Committee. He complains about the format of the meeting, that members of the public could ask questions and present testimony only after the Committee had made its presentation. The boundary change procedures do not require any specific format for public meetings.

The Appellant also asks, apparently non-rhetorically: Why was DuVal the only high school operating under capacity? Why DuVal was underutilized while the other nearby high schools were operating above capacity is not relevant to the question of how to best utilize the school system’s resources. Under the boundary change procedures, the BOE was required to consider the capacity utilization rate for the schools being considered. The record contains detailed documentation indicating that the BOE thoroughly considered each school’s current state-rated capacity, base enrollment, available seats, and percentage of utilization, as well as its projected enrollment, available seats, and percentage of utilization after the boundary changes.

In “Capacity and Space”, the Appellant criticizes the Committee for not suggesting alternatives to the over-utilization of Bowie, such as adding a floor to Bowie, or waiting to transfer Bowie students to Bladensburg High School, which according to the Appellant, will be completed in time for the 2005-2006 school year. The Appellant has suggested alternatives, but he has not addressed the realities faced by the BOE. There is no evidence that funds would be available to add a floor to Bowie. These questions, essentially attempting to micro-manage the

BOE, are inconsistent with the BOE's broad discretion in school boundary matters, and are not at issue in this case.

The Appellant argues in "Ethnic Diversity" that the boundary changes to Bowie and DuVal have "in essence subtly placed segregation of schools back in force in the Bowie/Greenbelt Area." The Appellant presented data (that the BOE does not contest for purposes of this decision) that DuVal's student body before boundary changes, was approximately 91% African-American and 3% White while Bowie's student body was approximately 49% African-American and 45% White. On its face, it would seem that transferring students from Bowie to DuVal would improve the racial diversity of DuVal. According to the Appellant, however, the area impacted by the boundary change is "46.4 to 95.4% African American." The Appellant apparently believes that these last numbers indicate that DuVal would have even a higher percentage of African-American students after the boundary changes. Even a very simple (and by no means definitive) consideration of the numbers disproves the Appellant's argument. The percentage of African American students at DuVal would increase only if more than 91% of the students transferring from Bowie are African American, which is statistically very unlikely if the range of African Americans in the affected area is, as indicated by the Appellant, 46.4 to 95.4%. There simply is no evidence that the racial diversity of Bowie or DuVal would change substantially because of the boundary changes. It is not surprising therefore that the record does not contain much discussion by the BOE of the racial composition criteria.

In "Change of Scope", the Appellant criticizes the CEO's decision to apply the boundary change to Bowie only to current eighth-grade students and new students. The Appellant correctly asserts that this modification will substantially reduce the immediate benefits to capacity

utilization. The Appellant fails to appreciate, however, that the CEO's decision fulfills another one of the criteria because it will lessen the impact on the community. Those students already enrolled at Bowie can stay there, presumably through graduation. The BOE's adoption of the CEO's modification to the boundary change is consistent with the boundary change procedures.

In summary, the Appellant has not generated a genuine dispute of any material fact that would suggest that the BOE's decision was illegal.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the BOE's Motion for Summary Decision must be granted because there is no genuine dispute as to any material fact and the BOE is entitled to prevail as a matter of law. COMAR 28.02.02.16C(2); COMAR 13A.01.01.03E.

PROPOSED ORDER

I **PROPOSE** that the Motion for Summary Decision filed by the Prince George's County Board of Education be **GRANTED** by the Maryland State Department of Education, Maryland State Board of Education, and that the contested-case hearing scheduled for November 10, 2004 be **CANCELLED**; and I further,

PROPOSE that the decision of the Prince George's County Board of Education, dated May 13, 2004, be **UPHELD** by the Maryland State Department of Education, Maryland State Board of Education.

October 26, 2004

Robert F. Barry
Administrative Law Judge

NOTICE OF RIGHT TO FILE EXCEPTIONS

A party objecting to this proposed decision may file exceptions with the Maryland State Board of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, within 15 days of receipt of this decision. A party may respond to the exceptions within 15 days of receipt of the exceptions. If exceptions are filed, all parties shall have an opportunity for oral argument before the Maryland State Board of Education before a final decision is rendered. Oral argument before the State Board shall be limited to 15 minutes per side. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

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APPELLANT

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* AN ADMINISTRATIVE LAW JUDGE

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FILE EXHIBIT LIST

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