

HILARY M. STISHAN,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05- 33

OPINION

In this appeal, Appellant challenged the decision of the Howard County Board of Education to reassign 9th and 10th grade students residing in the communities of Terra Maria and Fairways in the "Polygon 157" district from Centennial High School to Marriott's Ridge High School (MRHS) beginning with the 2005-2006 school year. This reassignment was part of an overall redesign of Howard County school boundaries, affecting elementary, middle, and high schools, which was prompted by enrollment growth, pupil migration patterns, and the opening of Marriott's Ridge High School in August 2005.

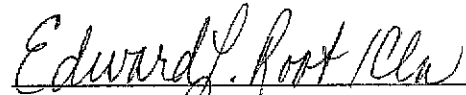
The matter was transferred to the State Office of Administrative Hearings for review. A hearing took place on April 14 and April 25, 2005. On July 11, 2005, the administrative law judge (ALJ) issued a proposed decision, a copy of which is attached as Exhibit 1. Hillary M. Stishan, on her own behalf, and the Howard County Board attorney presented final oral argument to the State Board on August 30, 2005.

Having reviewed the record in this matter and considered the arguments of the parties, we adopt the Findings of Fact and Conclusions of Law of the administrative law judge. The ALJ found that the redistricting plan was neither arbitrary, unreasonable, nor illegal, explaining that the local board's decision regarding Polygon 157 was based on the need to relieve overcrowding at Howard High School, the need to utilize the new MRHS, and the improved feed from Bonnie Branch Middle School to its receiving schools, including a 9.9% feed to MRHS by 2007. *See* ALJ Proposed Decision at p. 6-7. The ALJ specifically rejected Appellant's arguments that the local board's decision was unreasonable due to the separation of the affected students from school friends, neighbors, and siblings at different high schools; the distance and length of the bus ride to the MRHS and potential overcrowding at MRHS from future development. *See* ALJ Proposed Decision at pp. 10 – 16. The ALJ also determined that the local board followed proper procedures and acted consistently with local board Policy 1675 on boundary line adjustments, including holding public hearings and/or public work sessions. *See* ALJ Proposed Decision at pp. 17 – 19.

Finally, the ALJ found that the Committee and local board gave significant consideration to the concerns of the affected communities, noting that board member Kaufman read over 1000 e-mails and personally drove throughout the community before deciding on the reassignment.

The ALJ also found that the election to include Fairways in the reassignment was “without exception, made only after a great deal of deliberation and attention to the input from the community.” See Proposed Decision and Order, at pp. 14-17.

Therefore, we adopt the administrative law judge’s proposed decision as final and thereby affirm the school redistricting decision of the Howard County Board of Education.



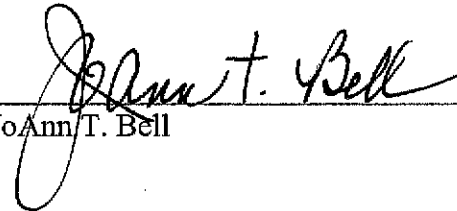
Edward L. Root
President



Dunbar Brooks
Vice President



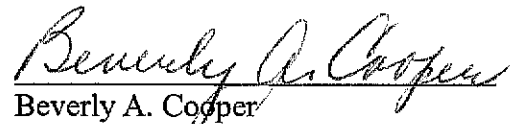
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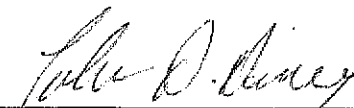
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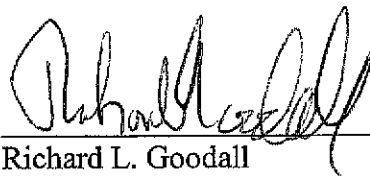
J. Henry Butta



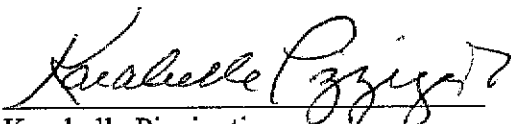
Beverly A. Cooper



Calvin D. Disney



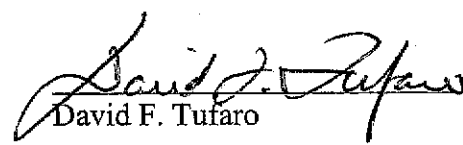
Richard L. Goodall



Karabelle Pizzigati

ABSENT

Maria C. Torres-Queral



David F. Tufaro

September 27, 2005

HILLARY M. STISHAN
v.
BOARD OF EDUCATION
OF HOWARD COUNTY

* BEFORE CATHY A. BARCHI,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: MSDE-BE-09-05-09046

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 23, 2004, the Board of Education of Howard County (the "BOE" or "Board") issued a decision in which it decided to consolidate and reconfigure school districts, contingent upon the construction of a new high school. On December 22, 2004, Hilary Stishan filed an appeal of that decision with the Maryland State Board of Education ("State Board"). On January 5, 2005, the State Board transmitted these appeals to the Office of Administrative Hearings ("OAH"), to conduct a contested case hearing with respect to the Appellant's appeal.

On February 18, 2005, Administrative Law Judge ("ALJ"), Judith Jacobson, conducted a pre-hearing conference regarding the appeal of Rosarita Coleman and Hilary Stishan which had been consolidated under OAH Case No. MSDE-BE-09-05-00878. Judge Jacobson determined that the appeal should be divided into two cases and the hearings conducted separately.

Therefore, on April 14, 2005, I conducted a hearing on the merits of the appeal of Hilary Stishan at the offices of the Board of Education of Howard County located at 10910 Route 108, Ellicott City, Maryland. The hearing required a second day and concluded on April 25, 2005.

The Appellant, Hilary Stishan, was present and represented herself. Mark C. Blum, Esquire, General Counsel, represented the BOE.

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

ISSUE

Whether the decision of the BOE on November 23, 2004, regarding the redistricting of public schools within the Howard County School System was arbitrary, unreasonable, or illegal.

SUMMARY OF THE EVIDENCE

I. Exhibits.

Appellant's Exhibit # 1 consisted of a series of documents including the following:

- Statement of Appeal from Hillary M. Stishan
- Letter to whom this concerns
- Letter to Dr. Sydney Cousin from Ms. Stishan, dated October 1, 2004
- E-mail to Ms. Stishan from Mary C. Cochran, dated October 13, 2004
- Letter to Ms. Watson from Ms. Stishan, dated October 18, 2004
- Letter to Dr. Cousin from Mark Spence, undated
- Letter to the Howard County BOE from Centennial West, The Fairways and Pine Orchard Meadows, dated November 2, 2004
- Letter to Dr. Cousin from Tony Powell, dated November 18, 2004
- Letter to the BOE from Mr. Spence
- E-mail to the BOE and Ms. Stishan from Deveron Mathews, dated November 22, 2004
- E-mail to Ms. Stishan from Courtney C. Watson, dated November 23, 2004
- List of students from the Fairways going to Marriott's Ridge High School
- Observations
- Marriott's Ridge High Recommendation
- Centennial High Recommendation

App. Ex. 2 Video Tape of Board Public hearing on November 23, 2004

App. Ex. 3 Map of Howard County School District

App. Ex. 4 Planning Assumptions and Desired Outcomes

- App. Ex. 5 Redistricting Petition
- App. Ex. 6 Letter to Howard County BOE from Stephen J. Gaeng, Ph.D., dated November 8, 2004
- App. Ex. 7 Statement from Carl W. Korn, dated November 2, 2005
- App. Ex. 8 Statement from Nancy Berg, dated April 24, 2005
- App. Ex. 9 Burleigh Manor Middle School Student Directory 2004-2005
- App. Ex. 10 Centennial High School Student Directory 2004-2005
- App. Ex. 11 Numbers compiled from Burleigh Manor Middle School
- App. Ex. 12 Capacity Utilization for Centennial High School

Board's Exhibit # 1 consisted of the following sections:

1. Summary to the BOE from Sydney L. Cousin, dated October 28, 2004
 2. Redistricting Plans to the BOE from Dr. Cousin, dated October 28, 2004
 3. Minutes of the BOE of Howard County, dated October 28, 2004
 4. Work Sheet III Boundary Line Work Session, November 23, 2004
 5. Worthington Community Redistricting Proposal, dated October 23, 2004
 6. Boundary Lines Effective School Year 1005-2006
 7. 2005-2006 School Year Redistricting Plan Strategy & Rationale
 8. Minutes of the BOE of Howard County, dated May 27, 2004
 9. Boundary Line Adjustments, adopted April 15, 2004
- Bd. Ex. 2 Staff Recommendations of Boundary Line Adjustments, dated October 28, 2004
 - Bd. Ex. 3 Agenda, dated June 2, 2004
 - Bd. Ex. 4 Committee Plan A for High School Redistricting Effect on School Year 2007-2008
 - Bd. Ex. 5 Questions & Answers 2004-2005 School Redistricting Process
 - Bd. Ex. 6 Map of Howard County School District¹

¹ This map was originally marked as Joint Exhibit # 1, but Ms. Stishan disagreed with the way the boundaries were drawn and asked that it be remarked as a Board Exhibit. I initially marked it as Board Exhibit # 7 but it should have been marked as Board Exhibit # 6. Only 6 Board exhibits were admitted into evidence.

Testimony.

The Appellant testified in her own behalf and presented the testimony of Aixa Ribeiro.

The following witnesses testified for the BOE:

1. David Drown, Coordinator of Geographic Information Systems and Manager of School Planning for Howard County Public Schools
2. Joshua Kaufman, member of the Howard County Board of Education

FINDINGS OF FACT

After considering all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. In 2004, the Board began the process of revamping Howard County Public School (“HCPS”) boundaries, affecting elementary schools, middle schools, and high schools. This redistricting process was necessitated by the growth of enrollment in HCPS. The redistricting plan for high schools was also the result of the opening of a new high school, Marriott’s Ridge High School (“MRHS”), in August 2005. MRHS is scheduled to open with only freshman and sophomore high school students.
2. The Board established a School Boundary Line Committee (“SBLC”), to assist with the redistricting process. The SBLC consisted of seventeen members representing each of the HCPS planning regions and one student member. The SBLC held fifteen meetings from June 2004 through November 2004. The meetings were open to the public and the minutes of the meeting were available on the HCPS website. The SBLC accepted and considered public comments as part of the development process.
3. The role of the SBLC was to develop, evaluate and adjust boundary line plans and present them to the Board for its consideration. David Drown, the Manager of School Planning and the Coordinator of Geographic Systems for HCPS was the staff facilitator for the SBLC.

4. The boundary line plans developed by the SBLC divided the county into geographic regions called polygons. Polygon 157 includes the Terra Maria and Fairways communities. The high school students in Polygon 157 currently attend Centennial High School ("CHS"). The Appellant and her family reside in Polygon 157 in the Fairways community.
5. The SBLC considered ten plans with fifteen permutations of each plan. In every plan the freshman and sophomore high school students (students that will be in the 9th and 10th grades for the school year 2005-2006) from the Fairways community would be reassigned from CHS to MRHS.
6. The SBLC developed several boundary line adjustment plans. The SBLC presented its plans to the HCPS Superintendent.
7. The Superintendent prepared recommendations on boundary line adjustments, and presented them to the Board. The Superintendent's plan recommended the reassignment of freshman and sophomores residing in Polygon 157, which included the Fairways, from CHS to MHRHS.
8. The Board held public hearings and public sessions to discuss the proposals, on November 4, November 9, November 16, and November 18, 2004.
9. The Appellant had notice of the public meetings prior to the hearings and sessions. The Appellant participated in the public process and attended the meetings.
10. At these public meetings, residents made many comments on aspects of the various proposals, including the provisions affecting the Fairways and CHS.
11. On November 23, 2004, the Board met again in a public meeting and voted to adopt a plan which changed the boundaries of many schools, effective School Year 2005-2006. In the final plan, Polygon 157 was reassigned to MRHS from CHS.

12. None of the plans considered by the Board proposed leaving Polygon 157 at CHS. Plans submitted by the Fairways community that would leave those students at CHS were considered by the Board and rejected.
13. The Board considered a number of factors when it determined that it was necessary to reassign Polygon 157 to MRHS. The Board examined the overcrowding at Howard High School ("Howard"), the population at CHS, the population at MRHS, and the need to utilize the new facility at MRHS. In order to relieve the overcrowding at Howard, Polygon 157 needed to be removed from CHS to allow CHS to accept students from Howard, which is the county's oldest and most overpopulated facility. In addition, the last redistricting plan affecting the Fairways community was in 1994.
14. The Board decision also resulted in an improved feed from Burleigh Manor Middle School ("BMMS") to its receiving high schools, including a 9.9% feed to MRHS by 2007. If Polygon 157 was allowed to remain at CHS the feed from BMMS to MRHS would be 2.2%.
15. As a result of the Board's decision the students in the affected Polygon 157 would have to travel 6.5 miles to school each day to attend MRHS, rather than approximately 1.6 miles to CHS. The Appellant's two sons would now be enrolled in different high schools, the younger son would begin high school at MRHS for the 2005-2006 school year, and her older son would remain at CHS.
16. Board Policy ("BP") 1675 defines maximum target enrollment for a school facility as 110% of capacity. Minimum target enrollment is defined as 90% of the program capacity of a school facility.
17. Current enrollment at CHS is 111.6% of capacity. Without a redistricting plan, projected enrollment at CHS would be 127% of capacity for the 2007-2008 school year.

18. After implementation of the Board's decision, projected enrollment at CHS for the 2007-2008 school year will be 105.8% of capacity. Projected enrollment for the same year at MRHS will reach 93.4% of capacity.
19. If the Fairways community was allowed to remain at CHS, the projected enrollment at CHS for 2007-2008 would be approximately 111% and projected enrollment for MRHS would be 88%.

DISCUSSION

Applicable Law

Section 4-120 of the Maryland Education Article states the following:

- (a) If a county board considers it practicable, it shall consolidate schools.
- (b) Each county board shall arrange for the transportation of students to and from consolidated schools.

Md. Code Ann., Educ. § 4-120 (2004).

The Maryland Department of Education has amplified this statutory section through the promulgation of regulations. COMAR 13A.01.05.05, establishes the standard of review of decisions of county Boards of Education that involve local policy. The burden of proof is on the Appellant 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.

COMAR 13A.01.05.05A further provides, as follows:

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 local 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.

In addition, the Howard County Board of Education is guided by Board Policy 1675 (“BP 1675”) which governs boundary line adjustments. BP 1675 directs the Board to consider the following factors when developing any boundary line adjustment plan:

1. Educational welfare of the impacted students in both the sending and receiving schools.
2. Frequency with which particular students are redistricted.
3. Impact on the number of students bused and the distance bused students travel.
4. Cost.
5. The demographic makeup and the academic performance of students in both the sending and receiving schools.
6. Number of students to be redistricted .
7. Maintenance of feeder patterns.
8. Changes in a school’s program capacity.
9. Impact on specialized or regional programs (e.g., special education, career and technology education, ESOL).
10. Functional and operational capacity of school infrastructures (e.g. cafeterias, restrooms and other shared core facilities).

Moreover, BP 1675 defines a maximum target enrollment of 110% of the program capacity of a school facility and a minimum target enrollment of 90%.

Board’s Motion for Judgment

At the close of the Appellant’s evidence, the Board moved for judgment in its favor, pursuant to COMAR 28.02.01.16E(1). I deferred ruling on the motion. COMAR 28.02.01.16E(2)(b). The County Board renewed the motion after the completion of all evidence. COMAR 28.02.01.16E(3). While the Appellant may have shown that the Board had the opportunity to select a plan that would have allowed the Fairways students to continue attending

CHS, she nonetheless has not demonstrated that its ultimate decision concerning redistricting of communities was arbitrary, capricious or illegal. However, I will review the case on the merits rather than grant a Motion for Judgment, thereby considering all of the evidence presented by both parties at the hearing.

The Decision of the Board

On November 23, 2004, the Board voted to adopt a plan which changed the boundaries of many schools, effective School Year 2005-2006. One of the provisions of the plan was to reassign the freshman and sophomore high school students from Polygon 157 to MRHS rather than CHS. The Appellant argued that this decision was arbitrary and unreasonable, and that the Board neglected to consider the factors enumerated in BP 1675.

Arbitrary and Unreasonable

Under COMAR 13A.01.05.05B, the Board's decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably reached the conclusion the Board reached.

1. Sound Educational Policy

In *Elprin v. Howard County Bd. of Ed.*, 57 Md. App. 458, 465, 470 A.2d 833, 836 (1984), the Court of Special Appeals held that a resident of a school district possesses no liberty or property interest in a school in his district remaining "as is," without changes resulting from closure or consolidation. Accordingly, the decision to close or consolidate schools is a quasi-legislative matter and the rights to be afforded to interested citizens are limited. Therefore, even if there were merit to some of the arguments expounded by the Appellant, the BOE is free to choose another course of action if it deems that circumstances warrant it.

The Appellant did not present evidence from anyone qualified as an expert in the field of educational policy and she did not explain how the Board's decision to send the Fairways

students to MRHS was against sound educational policy. The Appellant asserted that the decision was simply “wrong” because the Board considered only numbers rather than the emotional impact on the families that would be affected by the decision. Although I understand the Appellant’s argument, I was not persuaded that the Board ignored the emotional issues as the Appellant contends. The Board presented detailed evidence on the reasons for its ultimate decision. Yet, the Appellant merely argued that the Board’s decision was not consistent with a redistricting plan that she believed was more reasonable. That does not amount to evidence that the Board’s redistricting plan was not based on sound educational policy. COMAR 13A.01.05.05B(1).

2. Reasonableness of Board’s Decision

The question of “whether a reasoning mind could not have reasonably reached the conclusion the county board reached,” is somewhat less nebulous than the question of what is against sound educational policy. When there is substantial evidence to support a board of education’s decision a reviewer (an administrative law judge, the State Board or the courts) must uphold the board of education’s decision, even if the reviewer disagrees with the board’s decision. *Board of Education of Montgomery County v. Montgomery County Educ. Ass’n, Inc.* 66 Md. App. 729, 740, 505 A.2d 905, 911 (1986), *aff’d Montgomery County Education Association, Inc. v. Board of Educ. of Montgomery County*, 311 Md. 303, 534 A.2d 980 (1987).

The Appellant’s evidence showed that the Board’s decision was part of an overall redesign of Howard County school boundaries, affecting elementary schools, middle schools, and high schools. The redesign was made necessary by the growth of enrollment in HCPS, and the opening of a new high school in August 2005.

The Appellant raised several objections to the Board’s decision. She argued that the decision would separate her two sons who will now be forced to attend different high schools

and will be unable to share their high school experience. The Appellant also argued that only five families in the community would have siblings that were separated and that it would not be unreasonable to grant those families an exception to the Board's redistricting plan.

At the public meeting which took place on November 23, 2004, the Board considered and discussed the fact that siblings would be separated as the result of their final plan. The Board considered measures to prevent the separation of siblings but rejected a proposal of "open enrollment" which would allow siblings throughout the county to remain at the same high school. The Board reasoned that the entire redistricting plan could be affected by the shift in student enrollment that would result from allowing all separated siblings in the county to remain together. (App. # 2).

Thus, the Board rejected a proposal to keep siblings together except in exceptional circumstances, *i.e.*, where a family had been redistricted more than once in the past few years. It was evident from the Board's discussion at the public meeting that siblings would be separated throughout the county. However, the Board needed to develop a way to utilize its facilities that would alleviate overcrowding and populate the new high school. The mere fact that the Board's redistricting plan would have the effect of sending siblings to different high schools, including the Appellant's children, did not render the decision unreasonable.

The Appellant continually argued that the Board's decision was arbitrary and unreasonable. She stressed that there were alternatives to moving the Fairways students to MRHS, but the Board's election not to adopt an alternative plan presented by the community is not, in and of itself, unreasonable. As David Drown pointed out in his testimony, the county needed to utilize CHS to alleviate overcrowding at Howard. Additionally, leaving the Fairways students at CHS would cause the same overcrowding problem at CHS in the near future.

Another reason put forth by the Appellant to demonstrate that the Board's decision was unreasonable, was the geographic location of the Fairways in relation to MRHS. CHS is about 1.6 miles from the Fairways community and it is a straight walk down essentially one main road allowing some students to walk to school. Since MRHS is about 6.5 miles from the Fairways, the students must wait for the bus and will no longer have an opportunity to walk to school. The Appellant said the students will have to get up earlier to get the school bus and the distance will make it difficult for her when her sons want to participate in extracurricular activities at separate high schools. The Appellant said that people move to a particular community because of the schools that service that community. Under the Board's new plan, the Appellant will be forced to travel out of the community that has become a part of her family's life when her younger son attends a different school.

The Appellant also stressed the small number of students that would be coming from the Fairways to MRHS. The Appellant used current student directories and argued that only 35 students would come from the Fairways to MRHS in the 2005-2006 school year. According to the Board's projections, the number of students from the Fairways for the 2007-2008 school year would be 70 students. However, the Appellant determined that it would only be 64 students from the Fairways to MRHS in the 2007-2008 school year.

In response to the issues raised by the Appellant, the Board presented the testimony of David Drown and Board member, Joshua Kaufman. Mr. Drown worked with the SBLC to develop several different redistricting plans. However, none of the plans developed by the SBLC would keep the Fairways at CHS. The plan that was eventually recommended to the Board by the Superintendent had freshman and sophomores from the Fairways going to MRHS, as did the final plan adopted by the Board on November 23, 2004.

Mr. Drown explained that he acted as the SBLC staff facilitator and as an advisor to the Superintendent. Mr. Drown said that it was necessary to review enrollment projections for all the elementary, middle, and high schools in the county in determining an appropriate redistricting plan. However, Mr. Drown stressed that there was substantial community input before a final plan was developed. The SBLC and the Board considered public comments, e-mails, petitions, and letters. The problem of Polygon 157, which includes the Fairways, received a great deal of attention by the SBLC and the Board.

In his testimony, Mr. Drown also discussed the factors enumerated in BP 1675. Mr. Drown noted that under the new plan adopted by the Board the feed from Burleigh Manor Middle School ("BMMS") to MRHS would be approximately 9.9% close to the 10% target. However, if Polygon 157 remained at CHS, the feed from BMMS would only be 2.2%. Mr. Drown also noted that there was a need to relieve the overcrowding at CHS. Mr. Drown stated that if there was no redistricting plan, in 2007 enrollment at CHS would exceed 127%. However, if the Fairways community is moved to MRHS then CHS would have a projected enrollment of only 105.8%.

Mr. Drown said the plan contained ways to deal with overcrowding at Mt. Hebron and Howard and moving the Fairways to MRHS allows CHS to provide relief to Howard. Another important consideration was geographic boundaries. Mr. Drown noted that although CHS is closer to Polygon 157, it is not necessary to go through another school district to get to MRHS from Polygon 157. Moreover, Mr. Drown stated that if all students attended the high school closest to their home, then Hammond High School would have 2000 students and MRHS would have 400 students overall.

Mr. Drown explained that all the factors in BP 1675 were considered in developing a final redistricting plan. The educational welfare of the students is protected by relieving

overcrowding and keeping the schools from exceeding program capacity. The plan also took into consideration the last time the students had been redistricted and the core capacity of CHS versus MRHS.

Another issue raised by the Appellant was a possible new development at Turf Valley that would increase the enrollment of MRHS in the next few years. Mr. Drown explained that the Turf Valley development was considered and that the projections for future enrollment at MRHS reflected the potential enrollment of students at that school from the Turf Valley development. Mr. Drown also questioned the accuracy of the figures presented by the Appellant since she did not take into consideration all of Polygon 157 which includes the Fairways and Terra Maria communities.

Furthermore, Mr. Drown explained that the Board Plan considered the feeds from BMMS which would be 9.9% from all of Polygon 157. He noted that the plan was also designed to reassign the fewest number of students overall. Mr. Drown stressed that the SBLC could not reach a consensus on any plan that would keep the Fairways community at CHS. One of the problems was that, if the Fairways was not reassigned to MRHS, then CHS could not provide relief to Howard.

Howard County School Board member Joshua Kaufman also testified and provided additional support for Mr. Drown's contentions that the Board's plan is reasonable. Mr. Kaufman discussed the factors in BP 1675 and noted that some of the factors were at odds with one another. However, he insisted that the final plan was the best and most equitable solution to the issues confronting the Board. Mr. Kaufman noted that he received thousand of e-mails from the community and that, in the case of Polygon 157, he drove the neighborhoods twice himself and measured distances between the neighborhoods and their newly redistricted schools. Mr. Kaufman noted that any plan that would not send all of Polygon 157 to MRHS would effect the

Board's ability to relieve the overcrowding at Howard, the county's oldest and most crowded high school. Mr. Kaufman explained that if the Board kept Polygon 157 at CHS there would be no relief for Howard because CHS would not have the capacity to accept students from Howard. He noted that the plan submitted by the Fairways community left too many students at CHS. Moreover, Mr. Kaufman asserted, that MRHS, a new county high school, should be utilized as a way of relieving the overcrowding in the older county high schools.

Mr. Kaufman reiterated that a substantial amount of time was devoted to the issue of the Fairways community and noted that, should the Fairways students remain at CHS, CHS would be over capacity for more than three years. The Board's plan relieves the overcrowding in the older schools and sets in motion a projected plan to utilize the new facilities at MRHS. Mr. Kaufman noted that the last time students in the Fairways were redistricted was 1994. Mr. Kaufman stated that the decision of the Board was not politically motivated but rather data driven. He noted that Polygon 157 is contiguous with other polygons that will be attending MRHS. Mr. Kaufman testified that the enrollment projections prepared by Mr. Drown also took into consideration the new Turf Valley development.

Mr. Kaufman also talked about the feed from BMMS to MRHS at 9.9% and although it was not actually the desired 10%, the Board was satisfied with the figure. Mr. Kaufman said that the Board looked at the impact on all neighborhoods and it considered four factors when it elected to reassign Polygon 157 to MRHS. The Board looked at the population of Howard, the population at CHS, the population at MRHS, and the utilization of the new facility at MRHS. Mr. Kaufman noted that overcrowding of facilities affects the educational atmosphere and the entire academic curriculum.

Mr. Kaufman conceded that CHS was much closer to the Fairways than MRHS and he was aware that siblings would be split as a result of the redistricting plan. Mr. Kaufman

nevertheless echoed the Board's determination at the November 23, 2004 meeting, that granting an exception would seriously distort the impact of the redistricting plan.

The Board presented a very reasonable explanation for its decision on the redistricting plan. Although I understand the impact and the difficulties of having children in separate high schools, there is no evidence to suggest that the Board did not take all of the factors outlined by the Appellant into consideration. Additionally, the public process provided substantial input from the community and the Board considered and thoroughly discussed all of the issues raised by the Appellant. The Board also considered alternatives to the submitted plan. Ultimately, the Board determined that moving Polygon 157 to MRHS was a reasonable exercise of its discretion and it was the best solution to assist Howard, relieve the overcrowding at CHS and populate MRHS. I find that the final plan was developed in conjunction with the requirements of BP 1675 and that there was nothing arbitrary or unreasonable in the Board's decision..

The Appellant attempted to counter some of the Board's arguments in her rebuttal. She prepared figures to dispute the feed from BMMS to MRHS calculated by the Board utilizing the directory from BMMS. I was not entirely clear as to how she arrived at her figures but she argued that it would be a 7.7% feed rather than 9.9% as projected by Mr. Drown. Her projections for students coming from the Fairways community showed 35 students in the upcoming school year (2005-2006) and 64 students from the Fairways to MRHS in the 2007-2008 school year rather than the 70 projected by the Board.²

Even assuming that everything the Appellant said is true, I still cannot find anything in the Board's decision that would render it arbitrary or against sound educational policy. I was impressed by the significant consideration the Board afforded to the concerns of the communities.

² Polygon 157 contains the Fairways and the Terra Maria communities. The Appellant requested only that the Fairways be permitted to stay at CHS, not Terra Maria.

Mr. Kaufman noted that he read about 1000 e-mails, many of them regarding the Fairways. He even drove the community on several occasions before electing to vote in favor of the plan that would reassign Polygon 157 to MRHS. Thus, the decision to reassign Polygon 157 to MRHS and the election to include the Fairways in the reassignment, without exception, was made only after a great deal of deliberation and attention to the input from the community.

Accordingly, the Appellant has not shown, by a preponderance of the evidence, that a reasoning mind could not have reached the same conclusion as the Board. She has not demonstrated that the Board's decision was arbitrary or unreasonable. COMAR 13A.01.05.05B(2).

Illegal Decision

The Appellant argued that the Board's process resulting in the decision affecting Polygon 157, was unfair to residents of the Fairways. Specifically, the Appellant asserted that the Board failed to comply with its policy on school boundary line adjustments, BP 1675. This policy requires that a SBLC be established, and specifies the composition of the committee. BP 1675, § C (1)(a). The Appellant did not dispute that the SBLC was established, nor did she challenge the composition of the committee.

BP 1675 requires that the SBLC develop a boundary line adjustment plan or plans, to present to the public during two community meetings. BP 1675 also requires the plan to be presented to the Superintendent. BP 1675, § C (1)(b), (c). The SBLC met weekly in open meetings from June 2, 2004 through October 2004, developed plans and held community meetings. The SBLC plans were presented to the Superintendent.

BP 1675 requires that the Superintendent forward the SBLC recommendation, along with recommended modifications and/or alternative recommendations, to the Board. The SBLC is given the opportunity to comment on the Superintendent's recommendations. Policy 1675 § C(2)(a). The plan submitted by the Superintendent to the Board proposed to have freshman and

sophomores from Polygon 157 attend MRHS rather than CHS.

BP 1675 requires that the Board hold one or more public hearings on the plan or plans submitted by the Superintendent. BP 1675 § C(2)(b). Public hearings or work sessions were held by the Board on October 28, November 4, November 9, November 18, and November 23, 2004. (Board # 1, section 3, App. # 2).

BP 1675 states that the Board is to take final action on boundary line adjustment plans at a public meeting. BP 1675 § C(2)(d). The Board took final action on the boundary line adjustments at the public meeting held on November 23, 2004.

Finally, BP 1675 states, at § C(2)(d), "As elected representatives of the community, the Board reserves the right to adopt or to modify any alternatives and/or recommendations presented to it by the Superintendent of the citizens of Howard County proposed previously or during the Board's deliberations and vote."

I find that the Board complied with the requirements of BP 1675 and, as discussed in the previous section, it reviewed and considered all of the factors contained in BP 1675 before arriving at its decision.

Accordingly, I find that the Appellant has not shown that the Board's decision resulted from an unlawful procedure. COMAR 13A.01.05.05C(4).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the decision of the Howard County Board of Education, to reassign freshman and sophomore students living in Polygon 157, from Centennial High School to Marriott's Ridge High School, effective school year 2005-2006, 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 Howard County Board of Education, to reassign freshman and sophomore students living in Polygon 157, from Centennial High School to Marriott's Ridge High School, effective for the school year 2005-2006 be **AFFIRMED**.

July 11, 2005

Date

Cathy A. Barchi
Administrative Law Judge

CAB/cf
#67896

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file objections with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, within fifteen (15) days of receipt of the Proposed Decision. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

cc: Hilary Stishan
10226 Glove Dr.
Ellicott City, MD 21042

Mark C. Blum, Esquire
The Howard County Public School System
10910 Route 108
Ellicott City, MD 21042-6198

Joyce Smith, MD State Board of Education (w/file)

HILLARY M. STISHAN
v.
BOARD OF EDUCATION
OF HOWARD COUNTY

* BEFORE CATHY A. BARCHI,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: MSDE-BE-09-05-09046

* * * * *

FILE EXHIBIT LIST

Appellant's Exhibits:

Appellant's Exhibit # 1 consisted of a series of documents including the following:

- Statement of Appeal from Hillary M. Stishan
 - Letter to whom this concerns
 - Letter to Dr. Sydney Cousin from Ms. Stishan, dated October 1, 2004
 - E-mail to Ms. Stishan from Mary C. Cochran, dated October 13, 2004
 - Letter to Ms. Watson from Ms. Stishan, dated October 18, 2004
 - Letter to Dr. Cousins from Mark Spence, undated
 - Letter to the Howard County BOE from Centennial West, The Fairways and Pine Orchard Meadows, dated November 2, 2004
 - Letter to Dr. Cousin from Tony Powell, dated November 18, 2004
 - Letter to the BOE from Mr. Spence
 - E-mail to the BOE and Ms. Stishan from Deveron Mathews, dated November 22, 2004
 - E-mail to Ms. Stishan from Courtney C. Watson, dated November 23, 2004
 - List of Students from the Fairways going to Marriott's Ridge High School
 - Observations
 - Marriott's Ridge High Recommendation
 - Centennial High Recommendation
2. Video Tape of Board Public hearing
 2. Map of Howard County School District
 3. Planning Assumptions and Desired Outcomes
 4. Redistricting Petition
 5. Letter to Howard County BOE from Stephen J. Gaeng, Ph.D., dated November 8, 2004
 6. Statement from Carl W. Korn, dated November 2, 2005

7. Statement from Nancy Berg, dated April 24, 2005
8. Burleigh Manor Middle School Student Directory 2004-2005
9. Centennial High School Student Directory 2004-2005
10. Numbers compiled from Burleigh Manor Middle School
11. Capacity Utilization for Centennial High School

Board Exhibits:

Board's Exhibit # 1 consisted of a series of documents including the following sections:

1. Summary to the BOE from Sydney L. Cousin, dated October 28, 2004
 2. Redistricting Plans to the BOE from Dr. Cousin, dated October 28, 2004
 3. Minutes of the BOE of Howard County, dated October 28, 2004
 4. Work Sheet III Boundary Line Work Session, November 23, 2004
 5. Worthington Community Redistricting Proposal, dated October 23, 2004
 6. Boundary Lines Effective School Year 1005-2006
 7. 2005-2006 School Year Redistricting Plan Strategy & Rationale
 8. Minutes of the BOE of Howard County, dated May 27, 2004
 9. Boundary Line Adjustments, adopted April 15, 2004
2. Staff Recommendations of Boundary Line Adjustments, dated October 28, 2004
 3. Agenda, dated June 2, 2004
 4. Committee Plan A for High School Redistricting Effect on School Year 2007-2008
 5. Questions & Answers 2004-2005 School Redistricting Process
 6. Map of Howard County School District³

³ This map was originally marked as Joint Exhibit # 1, but Ms. Stishan disagreed with the way the boundaries were drawn and asked that it be remarked as a Board Exhibit. I initially marked it as Board Exhibit # 7 but it should have been marked as Board Exhibit # 6. Only 6 Board exhibits were admitted into evidence.