CONCERNED CITIZENS OF
SEVEN OAKS

Appellant

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-32

OPINION

INTRODUCTION

Several members of the Seven Oaks Community filed this appeal challenging the local board's decision to change the boundary attendance area for children living in the Appellants' residential area. Specifically, Appellants challenged the portion of the local board's redistricting decision that made Seven Oaks Elementary School part of the Meade feeder system. Thus, the affected students would feed into and attend Meade Heights Middle School and Meade High School, instead of Seven Oaks Middle School and Arundel High School. This Board referred the case to the Office of Administrative Hearings for an evidentiary hearing as required by COMAR 13A.01.05.07(A)(1).

On January 28, 2008, the Administrative Law Judge (ALJ) issued his Proposed Decision finding the Appellants lacked standing to challenge the local board's decision and, alternatively, affirming the local board's decision. All parties were given notice that any exceptions to the ALJ's Proposed Decision were to be filed within 15 days of receipt of the decision. No exceptions were filed.

THE ALJ's DECISION

The ALJ first considered whether the Appellants had standing to appeal the local board's decision to make Seven Oaks Elementary School part of the Meade feeder system. The ALJ found that one of the Appellants did not live within the affected attendance area. He found that the other Appellants were unaffected by the redistricting because their children were slated to attend Arundel High School under the grandfathering provisions adopted by the local board. He also found that the Appellants failed to provide sufficient evidence that their property values would be adversely affected by the decision. Based on these facts, the ALJ concluded the Appellants failed to establish a "direct interest" or "injury in fact" sufficient to establish standing to appeal to the State Board. He recommended dismissal of the case on this basis.

The ALJ went on to consider the merits of the appeal for purposes of judicial efficiency. The ALJ found that the local board's decision was not precluded by the State Board's ruling in *Concerned Citizens of Seven Oaks and Mary Rose Gore, et al. v. Bd. of Educ. of Anne Arundel County*, MSBE Opinion No. 97-21, in which the State Board reversed a portion of the 1995 redistricting plan adopted by the local board that redistricted students from Arundel High School to Meade High School. The State Board reversed the local board's 1995 redistricting decision in part because it did not serve the stated purpose of alleviating overcrowding in the schools in Anne Arundel County. *Id.* at 2-3.

The ALJ also found that the local board's decision in this instance was not arbitrary, unreasonable or illegal. Among other things, the ALJ highlighted the fact that the local board chose a feeder option that created a more equitable distribution of students to reduce the overcrowding at Arundel High School and the under-capacity at Meade High School. He stated that "it makes no sense to send a potential of 344 students to a school which is already over-capacity, as would be the case if the Seven Oaks students were to remain in the Arundel Feeder System." (ALJ Proposed Decision at 32). Because the ALJ concluded that Appellants failed to present evidence sufficient to meet their burden of proof, he recommended that the State Board affirm the redistricting plan.

CONCLUSION

We have reviewed the record and agree with the ALJ. Accordingly, we adopt the ALJ's proposed decision as a final decision in this matter.

Dunbar Brooks
Dunbar Brooks
President

Beverly A. Cooper
Beverly A. Cooper
Vice President

Lelia T. Allen
Lelia T. Allen

absent
J. Henry Butta

absent
Charlene M. Dukes

Mary Kay Finan
Mary Kay Finan

Blair G. Ewing
Blair G. Ewing

Rosa M. Garcia
Rosa M. Garcia

Richard L. Goodall
Richard L. Goodall

Karabelle Pizzigati
Karabelle Pizzigati

David F. Tufaro
David F. Tufaro

June 25, 2008

CONCERNED CITIZENS	*	BEFORE T. AUSTIN MURPHY,
OF SEVEN OAKS	*	AN ADMINISTRATIVE LAW JUDGE
APPELLANTS	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
ANNE ARUNDEL COUNTY	*	
BOARD OF EDUCATION	*	OAH CASE NO.: MSDE-BE-09-07-21804

* * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE

This case arises from a decision by the Anne Arundel County Board of Education (County Board), after a recommendation by the Superintendent of the Anne Arundel County Public Schools (AACPS), to change boundary attendance areas for certain students, including the children residing in an area with the Appellants. The County Board established the geographical attendance area for Arundel (Arundel) and Meade (Meade) High Schools beginning August 2007. The process began one year earlier when the County Board authorized a Boundary Advisory Committee - West County Boundaries Committee (WCBC) to study boundary options. In making its decision, the County Board adopted the recommendation of the Superintendent with some changes, and it is this recommendation that the Appellants challenge in their appeal. Specifically, the Appellants

chalienge that part of the Superintendent's recommendation that assigns the children from Seven Oaks Elementary School (Seven Oaks) as a feeder elementary to Meade instead of to Arundel.

On October 9 through 12, 16, 19, 22, 30 and 31, 2007, 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. David A. Tibitts, Esquire, represented the Appellants. P. Tyson Bennett, Esquire, and Laurie I. Pritchard, Esquire, represented the County Board.

ISSUE

Is the April 24, 2007 decision of the CountyBoard redistricting the Seven Oaks students from the Arundel feeder system to the Meade feeder system appropriate and according to the laws and regulations?

SUMMARY OF THE EVIDENCE

Exhibits

The parties jointly submitted documents which were admitted into evidence as follows:

Joint Ex. 1	A copy of the Strategic Facilities Utilization Master Plan
Joint Ex. 2	Maryland Base Realignment and Closure (BRAC) Report
Joint Ex. 3	An Original of the Strategic Facilities Utilization Master Plan
Joint Ex. 4	A Map of Anne Arundel County indicating the High Schools Boundaries

The Appellants submitted the following exhibits which were admitted into evidence as follows unless otherwise noted:

Appellants 1-	Proposed Testimony of William Carroll at the County Board's meeting[1]
Appellants 2-	July 2006 AACPS Educational Facilities Master Plan
Appellants 3-	Facilities/Enrollment Comparisons for Meade and Arundel
Appellants 4-	1997 Anne Arundel County General Development Plan
Appellants 5-	2001 Crofton Small Area Plan
Appellants 6-	July 2002 Severn Small Area Plan
Appellants 7-	September 2003 Odenton Small Area Plan
Appellants 8-	November 2003 Odenton Town Center Master Plan
Appellants 9-	February 2004 Jessup/Maryland City Small Area Plan
Appellants 10-	A map showing Odenton Boundary Plan
Appellants 11-	2005 Report of Development Activity Impact on School Facilities
Appellants 12-	2006 Report of Development Activity Impact on School Facilities
Appellants 13-	October 4, 2007 School Waiting List
Appellants 14-	Bill Number 43-03 (Adequacy of Public Facilities for Schools)
Appellants 15-	September 10, 2004 letter from Joseph Rutter to Charles Yokum
Appellants 16-	June 29, 2005 letter from Joseph Rutter to Charles Yokum
Appellants 17-	August 25, 2006 letter from Joseph Rutter to Charles Yokum
Appellants 18-	Modified Chart for Odenton Development Projects

[1] The objection to the admission of Appellants Exhibit 1 was sustained.

Appellants 19- July 2007 Educational Facilities Master Plan

Appellants 20- July 2005 Educational Facilities Master Plan

Appellants 21- March 2007 BRAC Environmental Impact Statement

Appellants 22- October 15, 2005 Summary of Current and Future Project Requests

Appellants 23- October 5, 2005 Summary of Current and Future Project Requests

Appellants 24- October 1, 2006 Summary of Current and Future Project Requests

Appellants 25- Maps of boundaries proposed to the Superintendent

Appellants 26- October 9, 2006 Agenda of the West County Boundaries Committee (WCBC) Meeting

Appellants 27- October 9, 2006 Minutes of the WCBC Meeting

Appellants 28- October 16, 2007 Minutes of the WCBC Meeting

Appellants 29- October 23, 2006 Minutes of the WCBC Meeting

Appellants 30- 2007-2008 School Year Redistricting Recommendations by the County Board

Appellants 31- Announcement of County Board Meetings on February 26 and March 5, 2007

Appellants 32- April 24, 2007 Redistricting Plan of the County Board

Appellants 33- Superintendent's Recommendation on Redistricting

Appellants 34- Map of Meade Heights-Van Brokkelen-Harman-Jessup

Appellants 35- Map of Van Brokkelen District

Appellants 36- Map of Seven Oaks Boundary

Appellants 37- Map of Meade Heights Boundary after redistricting

Appellants 38- Map of Meade Heights Boundary before redistricting

Appellants 39- Map of Jessup Elementary Boundary after redistricting

Appellants 40-	Map of Jessup Elementary Boundary before redistricting
Appellants 41-	Map of Harman Elementary Boundary after redistricting
Appellants 42-	Map of Harman Elementary Boundary before redistricting
Appellants 43- Elementary	Map of Jessup Elementary Communities closest to Meade Heights
Appellants 44-	July 21, 2003 School Waiting List
Appellants 45-	February 2007 Summary of Impact of BRAC on AACPS
Appellants 46-	Calculation of BRAC-Related Household Count
Appellants 47-	July 11 to September 28, 2007 Subdivision Activity Report
Appellants 48-	2005-2006 School Year Calculations for Enrollment Projections
Appellants 49-	2006-2007 School Year Calculations for Enrollment Projections
Appellants 50-	2007-2008 School Year Calculations for Enrollment Projections
Appellants 51-	2007 Arundel Record of Out-of-Area Transfers
Appellants 52-	2007-2008 School Year Arundel Course Offerings
Appellants 53-	2007-2008 School Year Arundel Honors Course Offerings
Appellants 54-	2007-2008 School Year Arundel AP Course Offerings
Appellants 55-	First Semester Arundel Matrix of Course Schedule
Appellants 56-	Arundel staff data regarding qualifications
Appellants 57-	Bypass Back Pack Emails
Appellants 58- Meetings	Agenda and minutes of Parent Teacher Student Organization
Appellants 59- Committee	January 3, 2007 Minutes of Arundel Citizen's Advisory

Appellants 60-	Curriculum Vitae of Stephen Donnelly
Appellants 61-	March 5, 2007 Stephen Donnelly Report on Redistricting Proposal
Appellants 62-	Public School Construction Program Administrative Procedure Guide
Appellants 63-	September 2007 Enrollment Projections of Maryland Department of Planning
Appellants 64-	January 21, 2007 State Rated Capacity Sheets with Floor Plans
Appellants 65-	Minutes of April 24, 2007 Board Meeting
Appellants 66-	AACPS Web Page description of Proposed Redistricting Plan
Appellants 67-	AACPS County Board Policy 900
Appellants 68-	AACPS County Board Policy 900A
Appellants 69-	AACPS Web Page description of Policy and Administrative Regulation
Appellants 70-	County Council of Anne Arundel County Resolution No. 27-07
Appellants 71-	Breakdown of transfers to and from Meade
Appellants 72-	List of Honors Courses Offered at Meade
Appellants 73-	List of Courses Offered at Meade First Semester
Appellants 74-	List of Courses Offered at Meade Second Semester
Appellants 75-	2007-2008 AACPS Program of Studies
Appellants 76-	August 18, 2004 Memorandum of Understanding
Appellants 77-	2007 Adequate Yearly Progress (AYP)Status for AACPS
Appellants 78-	Listing of Grade Point Average (GPA)of high schools in AACPS
Appellants 79-	AACPS Advanced Placement (AP)Exam Results
Appellants 80-	AACPS listing of High School Assessment results

Appellants 81-(PSAT)results	AACPS listing of Preliminary Scholastic Aptitude Test
Appellants 82-	PSAT results by ethnicity
Appellants 83-Marking Period	AACPS listing of percentage of ineligible student in the Second
Appellants 84-	List of qualified teachers at Meade
Appellants 85-	2006 Meade Bus Routes
Appellants 86-	2004 Arundel Bus Routes
Appellants 87-	2007-2008 Meade Bus Routes
Appellants 88-	2007-2008 Arundel Bus Routes
Appellants 89-	2006-2007 Arundel Bus Routes
Appellants 90-Guide	Public School Construction Program Administrative Procedures
Appellants 91-Program Renovation	November 2005 Educational Specifications for Arundel Science
Appellants 92-	March 16, 2006 List of Maryland State Department of Education (MSDE)'s concerns for Arundel Science Project
Appellants 93-Project	August 16, 2006 List of MSDE's concerns for Arundel Science
Appellants 94-	October 6, 2006 List of AACPS projects
Appellants 95-	AACPS Capitol Improvement Project summary
Appellants 96-	September 30, 2006 Request for Approval of Planning
Appellants 97-Approved	September 30, 2006 Request for Approval of Planning-Funding
Appellants 98-	December 8, 2006 letter from MSDE to the Superintendent

Appellants 99-	January 2, 2007 letter from Mr. Szachnowicz to Board of Public Works
Appellants 100-	January 3, 2007 letter from Public School Construction Program
Appellants 101-	February 5, 2007 letter from the State Superintendent
Appellants 102-	May 23, 2007 Summary of Projects Requested
Appellants 103-	September 18, 2007 Board Approval of FY 2009 Capitol Budget
Appellants 104-	Gambrills-Odenton Recreation Council Inc. By-Laws
Appellants 105-	October 3, 2007 Oath by Robert Brandenburger
Appellants 106-	Anne Arundel County Recreation and Parks Guidelines and Reference Manual
Appellants 107-	2006-2007 School Year Facility Use Applications
Appellants 108-	2005-2006 School Year Facility Use Applications
Appellants 109-	2004-2005 School Year Facility Use Applications
Appellants 110-	Blank Youth Player Contract and Release
Appellants 111-	AACPS List of Extended Suspensions and Expulsions for 2005-2006 and 2006-2007 School Years
Appellants 112-	AACPS 2006-2007 SAT Average Scores[2]
Appellants 113-	Community Crime Statistics for Meade and Arundel[3]
Appellants 114-	Mediated Agreement between AACPS and the NAACP
Appellants 115-	September 7, 2007 Progress and Challenges in Meeting the Goals of the Office of Civil Rights Memorandum of Agreement
Appellants 116-	School Improvement Plan-High School Senior College Placement Tests

[2] The objection to the admission of pages 2 through 6 of Appellants Exhibit 112 was sustained.

[3] The objection to the admission of Appellants Exhibit 113 was sustained.

Appellants 117-	Bias Motivated Incident Reports
Appellants 118- Pamphlet	AACPS Advancement Via Individual Determination (AVID)
Appellants 119- Mathematics (STEM)	Informational flyer for Science Technology Engineering
Appellants 120-	Informational flyer for International Baccalaureate Program
Appellants 121- Newsletter	August 2007 AACPS Equity Assurance & Human Relations
Appellants 122- of Civil Rights	Copy of slides presented at the Fall 2007 presentation of the Office
Appellants 123- October 2007	Listing of incidents reported at Meade from October 2005 to
Appellants 124-	Meade Incident Reports from January 2006 to October 2007
Appellants 125- October 2007	Listing of incidents reported at Arundel from October 2005 to
Appellants 126-	Meade Incident Reports from January 2006 to October 2007
Appellants 127- Plan	Redacted July 2007 School Crisis and Emergency Management
Appellants 128- Management Plan[4]	Redactions from July 2007 School Crisis and Emergency
Appellants 129-	Redacted Meade Crisis and Emergency Management Plan
Appellants 130-	Redactions from Meade Crisis and Emergency Management Plan[5]
Appellants 131-	Redacted Arundel Crisis and Emergency Management Plan

[4] The objection to the admission of Appellants Exhibit 128 was sustained.

[5] The objection to the admission of Appellants Exhibit 130 was sustained.

Appellants 132-Plan[6]	Redactions from Arundel Crisis and Emergency Management
Appellants 133-	Fort George G. Meade Operation Plan OPLAN[7]
Appellants 134-List[8]	Anne Arundel County Police Department Incident Classification
Appellants 135-Meade and Arundel[9]	Anne Arundel County Police Department Reports of Incidents at
Appellants 136-Arundel[10]	AA County Police Department Incidents with reports at Meade and
Appellants 137-citees[11]	AA County Police Department demography of arrestees and
Appellants 138-	Subpoena *Duces Tecum* to Peter Christensen[12]
Appellants 139-	November 1, 2007 article from the West County Gazette[13]
Appellants 140-	November 1, 2006 article from the Capitol Gazette[14]
Appellants 141-	December 1, 2006 article from the Capitol Gazette[15]
Appellants 142-	Website material from various County agencies[16]
Appellants 143-a and b[17]	Office of Budget Anne Arundel County Capitol budget pages 273

[6] The objection to the admission of Appellants Exhibit 132 was sustained.
[7] The objection to the admission of Appellants Exhibit 133 was sustained.
[8] The objection to the admission of Appellants Exhibit 134 was sustained.
[9] The objection to the admission of Appellants Exhibit 135 was sustained.
[10] The objection to the admission of Appellants Exhibit 136 was sustained
[11] The objection to the admission of Appellants Exhibit 137 was sustained
[12] The objection to the admission of Appellants Exhibit 138 was sustained
[13] The objection to the admission of Appellants Exhibit 139 was sustained
[14] The objection to the admission of Appellants Exhibit 140 was sustained
[15] The objection to the admission of Appellants Exhibit 141 was sustained
[16] The objection to the admission of Appellants Exhibit 142 was sustained
[17] The objection to the admission of Appellants Exhibit 143 was sustained

Appellants 144- Emails from and to Robin Allen

The County Board submitted the following exhibits which were admitted into evidence as follows:

Board Ex. 1 27th Edition of ADC Anne Arundel County Street Map

Board Ex. 2 Constitution of AA County NAACP Branch

Testimony

The Appellants presented testimony from the following:

- Daria Outlaw, 1915 Artillery Lane, Odenton, Maryland
- LaTonya McKellery, 2620 Rainey Spring Court, Odenton, Maryland
- Rose Garner Gaskins, 317 Timberbrook Court, Odenton, Maryland
- Kirk Gaskins, 317 Timberbrook Court, Odenton, Maryland
- William Carroll, 205 Cannon Place, Odenton, Maryland
- Deborah Jones, 132 Hidden Hill Circle, Odenton, Maryland
- Lavell Jones, 132 Hidden Hill Circle, Odenton, Maryland
- Michael W. Fox, the Senior Planner for Anne Arundel County in the Office of Planning and Zoning
- Carole Sanner, Assistant Planning and Zoning Officer in the Office of Planning and Zoning
- Charles Yocum, Specialist in Student Demographic Training for AACPS, accepted as an expert in the field of student demographic planning
- Sharon Stratton, Principal, Arundel

- Stephen Donnelly, Planning and Development Consultant, with a specialty in school planning, who was accepted as an expert in the field of zoning, planning and demography
- David Whitaker, Deputy Director of Infrastructure Planning at the Maryland Department of Planning
- Daryl Kennedy, Principal, Meade
- George Arlotto, Chief of School Performance Officer for AACPS, accepted as an expert in the field of educational performance evaluation
- Zoe Draughon, 2108 Brinks Court, Odenton, Maryland
- Florence Bozzela, Director of Human Resources, AACPS
- Wanda McIntyre, Specialist in Transportation, AACPS, who was accepted as an expert in the field of student transportation
- Aleksy Szachnowicz, Chief Facilities Officer, who was accepted as an expert in the field of school facilities
- Marisa Surdick, President, Gambrills/Odenton Recreation Council
- Robert Brandenburger, Administrative Manager for Department of Recreation and Parks for Anne Arundel County
- Martha Pogonowski, Director of Continuing School Improvement
- Leon Washington, Director of Safe and Orderly Schools in AACPS
- Janice Forbes, 1902 Bragg Way, South, Odenton, Maryland
- James L. Morris, Apartment 608, 930 Astern Way, Annapolis, Maryland

- Carlesa Finney, Director of Equity Assurance and Community Relations for AACPS, accepted as an expert in the field of racial demography
- Robert A. Yatsuk, Acting Supervisor of Security for AACPS
- Peter Christensen, Records Manager for Anne Arundel County Police Department
- Robin Allen, Director of Facilities Planning for Baltimore City Public Schools[18]

The County Board of Education presented testimony from the following:[19]

- Charles Yocum, Specialist in Student Demographic Training for AACPS, accepted as an expert in the field of student demographic planning
- Aleksy Szachnowicz, Chief Facilities Officer, accepted as an expert in the field of school facilities

FINDINGS OF FACT

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

1. Schools in Anne Arundel County are organized into twelve feeder systems, each of which is named after a single high school at the head of the feeder system.

2. In each feeder system, the student population funnel toward a specific high school from designated middle schools, and the students attending those middle schools are funneled to the middle school from designated elementary schools.

3. A student is assigned to attend a specific school based upon his or her residence; a school draws its pupils from the attendance area assigned to that school.

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[18] Ms. Allen was questioned about her role with The Maryland Department of Planning in 2006-2007.

[19] Many of the witnesses called by the Appellants were employees of AACPS, who were questioned extensively

4. Seven Oaks Elementary School was newly constructed and opened for the beginning of the 2007-2008 school year.

5. In October 2006, the County Board authorized a boundary study to establish boundaries for the new Seven Oaks Elementary School and determine the middle and high school assignment for those students.

6. The boundary study included the neighborhood of Seven Oaks, located west of Fort Meade and Maryland Route 175 and north of Odenton and Maryland Route 32.

7. The Seven Oaks community is a racially diverse neighborhood in the Odenton section of West Anne Arundel County.

8. As a result of the study, the County Board decided that the children attending Seven Oaks Elementary School would feed into and attend Meade High School. The County Board further ordered that any child attending Arundel would be grandfathered so that that child would continue to attend Arundel. Additionally, the Board ordered that a sibling of a grandfathered Arundel High School student would also be grandfathered and allowed to attend Arundel.

9. Daria Outlaw is an appellant who lives in Seven Oaks at 1915 Artillery Lane, Odenton, Maryland. Ms. Outlaw has a daughter who is in the eleventh grade attending Arundel. Ms. Outlaw's daughter will graduate from Arundel because she was grandfathered as an exemption to allow all students attending Arundel to finish at Arundel.

10. LaTonya McKellery is an appellant who lives in Seven Oaks at 2620 Rainey Spring Court, Odenton, Maryland. Ms. McKellery has a daughter who is in the tenth grade attending

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by the Board and, therefore, were not recalled during the Board's case-in-chief.

Arundel. Ms. McKellery's daughter will graduate from Arundel because she was grandfathered as an exemption to allow all students attending Arundel to finish at Arundel.

11. Rose Garner Gaskins is an appellant who lives in Seven Oaks at 317 Timberbrook Court, Odenton, Maryland. Ms. Garner Gaskins has a granddaughter who is in the tenth grade attending Arundel. Ms. Garner Gaskins' granddaughter will graduate from Arundel because she was grandfathered as an exemption to allow all students attending Arundel to finish at Arundel. She also has another granddaughter who is attending Arundel Middle School who is grandfathered to attend Arundel.

12. Kirk Gaskins is an appellant who is the husband of Rose Garner Gaskins and lives in Seven Oaks at 317 Timberbrook Court, Odenton, Maryland.

13. William Carroll, who is not an appellant, lives in Seven Oaks at 205 Cannon Place, Odenton, Maryland. Mr. Carroll has two children attending Arundel and a son who is in the seventh grade at MacArthur Middle School and is grandfathered to attend Arundel High School. Mr. Carroll was appointed the chairman of the committee to study and recommend boundaries to the County Board of Education.

14. Deborah Jones is an appellant who lives in Seven Oaks at 132 Hidden Hill Circle, Odenton, Maryland. Ms. Jones has a daughter who attended Arundel at the beginning of the 2007-2008 school year, but as of the hearing attends a private school in Baltimore.

15. Lavell Jones is an appellant who lives in Seven Oaks at 132 Hidden Hill Circle, Odenton, Maryland. Mr. Jones is Deborah Jones' husband.

16. Zoe Draughon is an appellant who lives in Seven Oaks at 2108 Brinks Court, Odenton, Maryland. Ms. Draughon has a granddaughter who would have attended Seven Oaks

Elementary School during the 2007-2008 school year but prior to the school year, moved out of the newly created Seven Oaks boundary.

17. The County Board attempted to redistrict members of the Seven Oaks community on April 19, 1995.

18. The County Board's charge to the committee appointed in September 1994 was to develop a clear and decisive plan to cope with overcrowding for at least the next five years.

19. The plan arrived at by the County Board on April 19, 1995 redistricted students from Arundel to Meade. The result of the plan left Arundel overcrowded and created overcrowding at Meade.

20. After an appeal of the County Board's April 19, 1995 Decision, the State Board reversed the portion of the decision which related to the Seven Oaks community.

21. During the 2006-2007 school year, Arundel's student population was 2,000 students and its state-rated capacity was 1,770 students. To accommodate the over-capacity students, there are nine portable classrooms on the campus. Additionally, there are seventeen floating teachers who do not have a classroom assigned to them because of the lack of space. (Testimony of Sharon Stratton)

22. As of July 1, 2007, construction of a new science facility commenced at Arundel. The science facility is scheduled to be completed in December 2008.

23. Arundel met adequate yearly progress under the No Child Left Behind criteria since the 2003-2004 school year. (Testimony of Ms. Pogonowski)

24. During the 2006-2007 school year, Meade's student population was 1,950 students and its state-rated capacity is 2,208 students. (Testimony of Daryl Kennedy)

25. Meade met adequate yearly progress under the No Child Left Behind criteria since the 2003-2004 school year. (Testimony of Ms. Pogonowski)

26. The racial composition of Meade with Seven Oaks students would change from 56 to 59 percent African-American students.

27. The racial composition of Arundel without Seven Oaks students would change from 33 to 25 percent African American students.

28. The North County High School feeder system, Old Mill High School feeder system and Arundel feeder system are adjacent to the Meade feeder system.

29. The Meade feeder system, Old Mill High School feeder system and South River High School feeder system are adjacent to the Arundel feeder system.

30. In August 2006, North County High School was under capacity with an enrollment of 1,860 students and a capacity of 2,246 students. (Joint Exhibit 3)

31. In August 2006, Old Mill High School was over capacity with an enrollment of 2,417 students and a capacity of 2,376 students. (Joint Exhibit 3)

32. In August 2006, South River High School was under capacity with an enrollment of 1,807 students and a capacity of 2,133 students. (Joint Exhibit 3)

33. The County Board established the WCBC to assist with the development of the boundaries for the newly constructed Seven Oaks Elementary School and the assignment to a feeder system. (Testimony of Mr. Yocum)

34. The WCBC met on October 9, 16 and 23, 2007. At the October 23, 2006 meeting the WCBC proposed that the students attending Seven Oaks Elementary School be assigned to

MacArthur Middle School then to Arundel. The vote for the proposal was five to four with four abstaining. (Testimony of Mr. Yocum)

35. The WCBC's October 23, 2006 proposal was submitted to the Superintendent who, in January 2007, recommended to the County Board that the students from Seven Oaks Elementary be assigned to Meade but the rising seniors will be grandfathered and will remain at Arundel. (Testimony of Mr. Yocum)

36. The County Board conducted work sessions, solicited public input and position papers, and held public hearings to discuss the Superintendent's recommendation before issuing its final boundary decision. Public hearings were conducted to discuss the Superintendent's recommendation before the County Board on February 26 and March 5, 2007. (Testimony of Mr. Yocum)

37. The County Board conducted a public meeting on April 24, 2007. (Appellants 65)

38. At the April 24, 2007 meeting, the County Board considered the racial composition of Meade and Arundel with and without the students from Seven Oaks, the capacity of Meade and Arundel and the effect on the capacity with and without the students from Seven Oaks. (Appellants 65)

39. The County Board altered the Superintendent's recommendation and proposed a second proposal to that which was presented to the public in January 2007. The County Board decided that the students from Seven Oaks Elementary School be assigned to Meade, grandfathering rising sophomores, juniors and seniors only to remain at Arundel and siblings of rising sophomores, juniors and seniors who are in attendance at MacArthur Middle School will have the option of attending Arundel. (Testimony of Mr. Yocum)

40. The proposal of the County Board was voted upon by the members and was carried by a vote of seven to one in favor of students from Seven Oaks Elementary School being assigned to Meade, grandfathering rising sophomores, juniors and seniors only to remain at Arundel and siblings of rising sophomores, juniors and seniors who are in attendance at MacArthur Middle School having the option of attending Arundel. (Appellants 65)

41. The one anti vote was by Board Member Peterson who expressed concern about transportation issues arising from the boundary question for a new Gambrills Elementary School. (Appellants 65)

42. The County Board's development of boundary options utilized, among other factors, calculations of the schools' capacity, present enrollment and projected enrollment and racial composition.

43. The County Board's proposal relied heavily on the reassignment option that created a more equitable distribution of the children to reduce the overcrowding at Arundel and the under capacity enrollment at Meade. (Appellants 65)

DISCUSSION

Standing

The issue to be decided is whether the Appellants have standing to appeal the County Board's decision to include their community in the Seven Oaks Elementary School which will feed into Meade when it established the school district boundary for the newly-constructed Seven Oaks Elementary School.

Numerous cases have addressed what is required before a party has standing. *Flast v. Cohen*, 392 U.S. 83, 99 (1968) addressed the concept of standing, in general. Acknowledging

the amorphous nature of the jurisdictional concept, the Court explained that the

> fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *(citations omitted).*

Although constitutional questions are not at issue in this case, the explanation of standing in *Flast* is instructive. The key is whether the party has a sufficient personal stake in the outcome of a case to establish the right to be a party to the proceeding.

The Supreme Court clarified its position on standing before a federal court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In that case, the Court announced that standing requires a showing of three elements, including: (1) injury in fact;[20] (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood "that the injury will be 'redressed by a favorable decision.'" *Id.* at 560-561. The Court determined that environmental groups did not have standing to challenge a regulation of the Secretary of the Interior that required other agencies to confer only with him regarding federally funded projects in the United States and on the high seas. In each of these cases, the issue was whether a party had standing to pursue an action in federal court.

The Maryland Court of Appeals addressed the issue of standing in administrative proceedings in *Sugarloaf Citizens' Ass'n, et al. v. Dept. of Environment*, 344 Md. 271, 686 A.2d 605 (1996). This case involved the issuance of construction permits by the Department of Environment for an incinerator that was to be located adjacent to property owned by association

[20] This injury is defined as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent." *Id.* at 560 *(citations omitted).*

members. The Court explained that, unlike the requirements to establish standing for judicial review, the standard to establish standing in an administrative hearing is substantially lower. The Court:

> recognize[d] a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision.

Id. at 285-86, 686 A.2d at 613. *See also*, *Handley v. Ocean Downs, LLC*, 151 Md.App. 615, 628, 827 A.2d 961, 969 (2003) (holding that "[m]ere presence at an administrative proceeding, without active participation, is sufficient to establish oneself as a party to the proceeding"); *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423, 365 A.2d 34, 37 (1976); *Mid-Atlantic Power Supply Ass'n v. Public Service Com'n of Maryland*, 361 Md. 196, 213, 760 A.2d 1087, 1096 (2000). The Court in *Sugarloaf* continued,

> The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily. In holding that a particular individual was properly a party at an administrative hearing, Judge J. Dudley Digges for the Court in *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423, 365 A.2d 34, 37 (1976), explained as follows:
>
> > 'He was present at the hearing before the Board, testified as a witness and made statements or arguments as to why the amendments to the zoning regulations should not be approved. This is far greater participation than that previously determined sufficient to establish one as a party before an administrative agency. . . . Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the matter being considered by that agency, thereby becomes a party to the proceedings.'

Id. at 286-287, 686 A.2d at 613 (internal citations omitted).[21]

Similarly, in *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 230 A.2d 289 (1967), the Court of Appeals found that appellants had standing to challenge the granting of a zoning ordinance exception because the property at issue was adjacent to the appellants' property and thus, they were "persons aggrieved" by the issuance of the permit. Consistent with reasoning of *Sugarloaf* and *Morris*, the Court relied on the State Zoning laws that required a person to be "aggrieved" to appeal both *to* the Board of Appeals and to appeal *from* a Board of Appeals decision to court.

The Court has established through these cases that, absent a statute or regulation requiring some additional basis for standing, an administrative hearing before an agency requires only the more lenient requirement that a person have participated in some fashion before the agency to establish that the person has standing to challenge an agency decision.

In the instant case, the statutes and regulations regarding a local board's decision to redistrict or consolidate schools places no restriction on who may appeal the local board's decision to the State Board. The Education statute provides, at Md. Code Ann., Educ. § 4-109(c) (2006 Repl. Vol.), as follows, with regard to the districting of schools:

> With the advice of the county superintendent, the county board shall determine the geographical attendance area for each school established under this section.

COMAR 13A.02.09.03 addresses appeals of local board redistricting decisions:

> A. An appeal to the State Board of Education may be submitted in writing within 30 days after the decision of a local board of education.

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[21] This language from *Sugarloaf* regarding participation in the hearing process before an agency has been interpreted to apply to the more informal public hearing process before a dispute becomes a contested case hearing.

B. The State Board of Education will uphold the decision of the local board of education to close and consolidate a school unless the facts presented indicate its decision was arbitrary and unreasonable or illegal.

COMAR 13A.01.05.01 addresses the definitions of "Appellant" and "Party." COMAR 13A.01.05.02 discusses the contents of an appeal. The standard of review in these cases, that the local board's decision was arbitrary, unreasonable, or illegal, is considered in COMAR 13A.01.05.05. That regulation also places the burden of proof on the appellant by a preponderance of the evidence. COMAR 13A.01.05.05D. The hearing procedures are addressed in COMAR 13A.01.05.07.

The applicable Education statute and regulations do not address the standing of a party to bring an administrative appeal of a local board's school redistricting decision. Unlike the zoning statute or regulations in *Bryniarski*, the Education statute and regulations do not require an appellant to be "aggrieved" to appeal the redistricting decision of a local board to the State Board of Education. Absent such a regulation, logic dictates that the rather lenient standard announced in *Sugarloaf* controls, and so long as the Appellants participated in some manner before the local board or asserted an interest in the outcome, they shall have standing to challenge the local board's decision at the administrative level.[22]

The fact that there is no regulation or statute does not simply close the discussion on this issue. Notwithstanding the absence of statute or regulation regarding standing, the State Board has consistently held that an Appellant must assert a "direct interest" or "injury in fact" in order

[22] I note that *Sugarloaf* and *Bryniarski* acknowledge a difference between standing before an administrative agency and standing for judicial review. Unlike the relatively lenient standard for establishing standing for an administrative hearing, the Court recognized that, in order to establish standing for judicial review, a person must have been a party to the administrative hearing and must show that he or she was "aggrieved" by the decision of the agency. *Sugarloaf*, 344 Md. at 287-288, 686 A.2d at 613-614; Md. Code Ann., State Gov't § 10-222(a)(1) (Supp. 2007).

to have standing to challenge a decision of the local board. *See, Marshall v. Baltimore City Board of School Commissioners*, MSBE Opinion No. 03-38 (2003); *Regan v. Washington County Board of Education*, MSBE Opinion No. 03-13 (2003); *Bellotte v. Anne Arundel County Board of Education*, MSBE Opinion No. 03-08 (2003); *Stratford Woods Homeowners' Association, Inc., v. Montgomery County Board of Education*, 6 Op. MSBE 238 (1992). Pursuant to section 10-214 of the State Government Article of the Annotated Code of Maryland, I am required to follow "any agency regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the agency is or would have been bound if it were hearing the case." Through its decisions, the Board has established a long-standing policy that an Appellant must assert a "direct interest" or "injury in fact" in order to have standing to challenge a decision of the local board. Therefore, the question becomes whether the Appellants in this case have asserted a direct interest or injury in fact to bring this appeal.

The Appellants in this case are all members of the Concerned Citizens of Seven Oaks. None of them have a child who would attend Meade under the approved plan. Daria Outlaw is an appellant who lives in Seven Oaks at 1915 Artillery Lane, Odenton, Maryland. Ms. Outlaw has a daughter who is in the eleventh grade attending Arundel. Ms. Outlaw's daughter will graduate from Arundel because she was grandfathered as an exemption to allow all students attending Arundel to finish at Arundel. LaTonya McKellery is an appellant who lives in Seven Oaks at 2620 Rainey Spring Court, Odenton, Maryland. Ms. McKellery has a daughter who is in the tenth grade attending Arundel. Ms. McKellery's daughter will graduate from Arundel because she was grandfathered as an exemption to allow all students attending Arundel to finish at Arundel. Rose Garner Gaskins is an appellant who lives in Seven Oaks at 317 Timberbrook Court, Odenton,

Maryland. Ms. Garner Gaskins has a granddaughter who is in the tenth grade attending Arundel. Ms. Garner Gaskins' granddaughter will graduate from Arundel because she was grandfathered as an exemption to allow all students attending Arundel to finish at Arundel. She also has another granddaughter who is attending Arundel Middle School who is grandfathered to attend Arundel. Kirk Gaskins is an appellant who is the husband of Rose Garner Gaskins and lives in Seven Oaks at 317 Timberbrook Court, Odenton, Maryland. William Carroll, who is not an Appellant, lives in Seven Oaks at 205 Cannon Place, Odenton, Maryland. Mr. Carroll has two children attending Arundel and a son who is in the seventh grade at MacArthur Middle School and is grandfathered to attend Arundel. Deborah Jones is an appellant who lives in Seven Oaks at 132 Hidden Hill Circle, Odenton, Maryland. Ms. Jones has a daughter who attended Arundel at the beginning of the 2007-2008 school year, but as of the hearing attends a private school in Baltimore. Lavell Jones is an appellant who is Deborah Jones' husband. Zoe Draughon is an appellant who lives in Seven Oaks at 2108 Brinks Court, Odenton, Maryland. Ms. Draughon has a granddaughter who would have attended Seven Oaks Elementary School during the 2007-2008 school year, but prior to the school year moved out of Seven Oaks boundary.

The Appellants submitted a rebuttal to the County Board's post-hearing brief, attached to which were affidavits by Zoe Draughon, Rosemary Varner-Gaskins, Lavell Jones and Deborah Litsinger-Jones. The affidavits all assert that the affiant would suffer an economic injury in a reduction in the value of their property. The affidavits are not considered as evidence for two reasons. First, each of the affiants testified during the hearing. But none of them addressed the issue of property value except to say that the property values would be affected. To submit an affidavit after the hearing is not fair to the County Board because it denies the County Board an

opportunity to cross-examine the affiant on the subject of the affidavit. Secondly, there was scant substantial evidence offered regarding property values. To say that property values would be adversely affected is pure speculation.

Under the above stated criteria, the Appellants have failed to establish standing. A direct interest would be that the appellant's child would attend Meade. However, the County Board has allowed any child attending Arundel before the redistricting to continue at Arundel until they graduate from high school. Additionally, the County Board provided that a sibling would also attend Arundel. For these reasons, I recommend that the Appellants' Appeal of the Board's action be dismissed because the Appellants have no standing to appeal this particular action of the Board.

This matter was heard before me on twelve days beginning October 9, 2007 and ending on November 13, 2007. One hundred fifty exhibits were received and thirty witnesses testified. Over 2,100 pages of transcripts were produced. In spite of the fact that I am recommending dismissal because the Appellants do not have standing, in the interest of judicial economy, I find that it would be prudent to issue a decision on the merits. For that reason, my decision on the merits follows.

I. The Doctrines of Res Judicata and Collateral Estoppel Do Not Bar the County Board's Decision

It is a fundamental principle of jurisprudence that adjudicative bodies must avoid the re-litigation of cases or issues which have already been conclusively decided by another tribunal. In Maryland, courts apply the principles of *res judicata* and *collateral estoppel* to avoid re-litigation of issues. The Maryland Court of Appeals succinctly delineated the distinctions

between these two issue preclusion doctrines in *Mackall v. Zayre Corp.*, 293 Md. 221, 227, 443 A.2d 98, 102 (1982):

> [If] a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding... If a proceeding between parties does not involve the same cause of action as a previous action between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous proceeding are conclusive in the subsequent proceeding (citations omitted).

The Court of Appeals has also made clear that the doctrines of issue preclusion are applicable to administrative proceedings.

> [Thus], res judicata and collateral estoppel...reduce unnecessary litigation and reliance on adjudication...

Allen v. McCurry, 101 S.Ct. 411, 415 (1980).

These principles fully implicate the findings and determination of administrative agencies while acting in adjudicative role. (See also *Exxon Corp. v. Fisher*, 807 F.2d 842, 845-846 (9th Cir. 1987).)

In the instant case, the Appellants contend that *res judicata* requires a reversal of the County Board's action. I disagree. Under Maryland law, the requirements for claim preclusion under *res judicata* are: 1) that the parties in the present litigation are the same or in privity to the earlier dispute, 2) that the claim presented in the current action is identical to the one determined in the prior adjudication and 3) that there was a valid final judgment on the merits. In the instant case, the Appellants have clearly established that there was a final decision in the earlier appeal. However, I cannot conclude that the parties are the same and that the claim presented in this matter is "identical" to the claim presented in the 1996 Appeal. That appeal was brought by the Concerned Citizens of Seven Oaks, which happens to be the same name styled by the collective

appellants in the 1996 appeal. The Concerned Citizens of Seven Oaks is not an incorporated, or even a chartered entity. The only appellant who was involved in both appeals is Zoe Draughon, who does not have a child currently attending Seven Oaks Elementary School, the affected school. Certainly, the Appellants have a shared interest, but a shared interest does not create privity.

The issue in the 1996 Appeal was, as it is in the appeal under consideration, whether the plan of the County Board was arbitrary, unreasonable or illegal. However, the County Board's charge to the committee in 1995 was to develop a plan to alleviate overcrowding at the schools in Anne Arundel County. The charge to the committee in September 2006 was to establish boundaries for the newly constructed Seven Oaks Elementary School. At the time of the 1996 appeal, Seven Oaks Elementary School did not exist. Therefore, the claim presented in the current action is different from the one determined in the prior adjudication.

Thus, I cannot conclude that *res judicata* warrants a reversal of the County Board's decision.

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.

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 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 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.

II. Aribtrary 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 Appellants' argument that the redistricting decision in this case was arbitrary or unreasonable is premised partly on the fact that the Seven Oaks children are a predominately African-American population and the County Board's decision would alter the balance of African-American students at each high school negatively. It is true that the racial composition of African-American students at Meade will increase and the composition at Arundel will decrease as a result of the County Board's decision. However, the County Board considered this when they deliberated. Not one vote was voiced because of racial imbalance.

Another contention of the Appellants was that the recreational opportunities of the children in Seven Oaks were compromised because the enrollment in the Greater Odenton Recreation Council (GORC) would be limited to those children in the Arundel Feeder System.

Ms. Surdick and Mr. Brandenburger both testified that recreational activity was open to the Seven Oaks children regardless of their school attendance.

The Appellants also raised an objection to the County Board's decision because it ignored the fact that although Arundel was over capacity in 2006, with the construction of the new science center, Arundel's capacity will increase alleviating the over-capacity status that it was in prior to the decision. The testimony clearly established that the science center will not alleviate the overcrowding issue. Although the science center will create space for twelve additional classrooms, all of that space will not be dedicated to classes. As Ms. Stratton testified, besides the nine portable classrooms on the campus there are seventeen teachers who are floating from one classroom to another because there is no room available to them at this time.

The fact that the Appellants' witnesses each indicated that they attended the hearings in the fall established that the sessions allowed the citizens an opportunity to present their concerns to the committee. They were also allowed to provide input into the Superintendent's proposal. There were two public hearings-one in February and another in March 2007.

The County Board presented the testimony of Aleksy Szachnowicz, who is the Chief Facility Officer of AACPS, who testified that the County Board must look at the adjacent schools to consider the possibility of one plan over another. The only other high school within a reasonable distance of the Seven Oaks community would be Old Mill which was over capacity by 205 students. In response to the Appellants' suggestion that another high school be constructed in the area, Mr. Szachnowicz indicated that because of the combined student population throughout the County (a net under capacity), the County could not justify the need for an additional high school.

Charles Yocum testified that he organized the meeting of the parents and school personnel appointed by the principals of the affected schools. In his capacity as a planner with the AACPS, Mr. Yocum is responsible for guiding the process for developing school boundary options. Mr. Yocum testified that he facilitated the weekly meetings of the interested parties during the months of October and November 2006. He testified that there were over 100 participants at the meetings.

The Appellants indicated that they had submitted another plan which was not accepted by the County Board. Their alternate plan would have placed the Seven Oaks children in the Arundel Feeder System. The Appellants' concerns fall 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 and made it clear that the County Board engaged in appropriate consideration of the criteria set forth by the committee 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 Superintendent's proposed boundary changes. In contemplating the AACPS's ten-year future as studied by MGT of America (Joint Exhibit 3), 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 future housing construction provided by the County Permit and Planning Departments. Based on these factors, a decision is made to construct new schools or redistrict school areas. The testimony and documentary evidence support that those factors and the criteria set forth by the County Board were carefully calculated and considered prior to the issuance of the final decision.

The County 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 (2005), and *Coleman v. Howard County Board of Education*, MSBE Opinion No. 05-32, 09/27/05 (2005).) Although the Appellants' disappointment with the County Board's decision to send their children into the Meade Feeder System 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. The decision to reduce the stress of overcrowding at Arundel and increase the population at Meade, which will still be under capacity, is a reasonable solution to the problem which a reasonable person would reach. Conversely, it makes no sense to send a potential of 344 students to a school which is already over-capacity, as would be the case if the Seven Oaks students were to remain in the Arundel Feeder System.

In *Bernstein v. Board of Ed. of Prince George's County*, 245 Md. 464, 479 226 A. 2d 243, 252 (1967), the Court of Appeals Stated:

> '(T)he point is whether the move was reasonable and within the discretion of the Board. The test is not even that there may have been other plans that would have worked equally well, or may, in the opinion of some, have been better; the test is whether the action which was taken was arbitrary, capricious or illegal. I conclude that it was not and that if any of the other alternatives had been taken there would very probably be people complaining about that. It is a thankless job that the Board of Education has when it finds it necessary to move students from one

> school to another, particularly during the school year. In a rapidly growing county, however, that is sometimes necessary. The paramount consideration is the proper education of the students, and I conclude that the action of the Board did not run counter to that primary consideration and was not improper under the circumstances...'

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 the alternative submitted and ultimately determined that the Seven Oaks neighborhood would have to be assigned the Meade Feeder System and that that is a reasonable exercise of its discretion and it was the best solution to alleviate overcrowding at the Arundel while at the same time adding students to Meade, an under-utilized facility. 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 13A.01.05.05B(2).

C. Illegal

Implicit in the Appellants' presentation is the fact that by reducing the racial balance of African-American students at Arundel and increasing the balance at Meade, the County Board is engaging in a discriminatory practice. According to Appellants' Exhibit 65, the County Board was presented with figures that indicated with the Seven Oaks students, Arundel's African-American population would be six percent more than without those students. According to Appellants' Exhibit 65, the County Board also saw that Meade High School's African-American population would increase by three percent. However, the purpose of the County Board's decision was not to alter or even affect the African-American population. The purpose, as charged by the County Board, was to establish boundaries for the newly constructed elementary

school. Considering the minor three percent difference between the two schools' African-American racial percentage, the result reached by the County Board of lessening overcrowding at Arundel High School and utilizing the additional otherwise unused space at Meade High School outweighs any consideration that the decision was illegal.

In addition, there was no persuasive evidence that the County Board's decision was contrary to any law or policy. The Appellants attempted to establish that the County Board did not follow Anne Arundel County Public School Policy Code (Policy) 900 by failing to look at the racial composition of the student body. Firstly, as I pointed out above, the County Board did consider racial composition as established by looking at the Minutes of the County Board's April 24, 2007 meeting. Secondly, Policy 900 applies to school closing. Policy 900A applies to redistricting and attendance areas. Nowhere in Policy 900A is the County Board explicitly required to consider racial composition. Accordingly, I find that the Appellants have not shown that the County Board's decision was an illegal decision. COMAR 13A.01.05.05C.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the April 24, 2007 decision of the County Board redistricting the Seven Oaks students from the Arundel feeder system to the Meade feeder system is appropriate and according to the laws and regulations. COMAR 13A.01.05.05C.

PROPOSED ORDER

I **RECOMMEND** that the redistricting plan of the Anne Arundel County Board of Education be **AFFIRMED**.

January 28, 2008
Date Order mailed

T. Austin Murphy
Administrative Law Judge

TAM/
Doc # 92356

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, 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.

Copies mailed to

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CONCERNED CITIZENS	*	BEFORE T. AUSTIN MURPHY,
OF SEVEN OAKS	*	AN ADMINISTRATIVE LAW JUDGE
APPELLANTS	*	OF THE MARYLAND OFFICE OF
V.	*	ADMINISTRATIVE HEARINGS
ANNE ARUNDEL COUNTY	*	
BOARD OF EDUCATION	*	OAH CASE NO.: MSDE-BE-09-07-21804

* * * * * * * * * * * * *

EXHIBITS

The parties jointly submitted documents which were admitted into evidence as follows:

Joint Ex. 1	A copy of the Strategic Facilities Utilization Master Plan
Joint Ex. 2	Maryland BRAC Report
Joint Ex. 3	An Original of the Strategic Facilities Utilization Master Plan
Joint Ex. 4	A Map of Anne Arundel County indicating the High Schools Boundaries

The Appellants submitted the following exhibits which were admitted into evidence as follows:

Appellants 1-	Proposed Testimony of William Carroll at the Board's meeting[23]
Appellants 2-	July 2006 AACPS Educational Facilities Master Plan
Appellants 3- Schools	Facilities/Enrollment Comparisons for Meade and Arundel High
Appellants 4-	1997 Anne Arundel county General Development Plan

[23] The objection to the admission of Appellants Exhibit 1 was sustained.

Appellants 5-	2001 Crofton Small Area Plan
Appellants 6-	July 2002 Severn Small Area Plan
Appellants 7-	September 2003 Odenton Small Area Plan
Appellants 8-	November 2003 Odenton Town Center Master Plan
Appellants 9-	February 2004 Jessup/Maryland City Small Area Plan
Appellants 10-	A map showing Odenton Boundary Plan
Appellants 11-	2005 Report of Development Activity Impact on School Facilities
Appellants 12-	2006 Report of Development Activity Impact on School Facilities
Appellants 13-	October 4, 2007 School Waiting List
Appellants 14-	Bill Number 43-03 (Adequacy of Public Facilities for Schools)
Appellants 15-	September 10, 2004 letter from Joseph Rutter to Charles Yokum
Appellants 16-	June 29, 2005 letter from Joseph Rutter to Charles Yokum
Appellants 17-	August 25, 2006 letter from Joseph Rutter to Charles Yokum
Appellants 18-	Modified Chart for Odenton Development Projects
Appellants 19-	July 2007 Educational Facilities Master Plan
Appellants 20-	July 2005 Educational Facilities Master Plan
Appellants 21-	March 2007 BRAC Environmental Impact Statement
Appellants 22-	October 15, 2005 Summary of Current and Future Project Requests
Appellants 23-	October 5, 2005 Summary of Current and Future Project Requests
Appellants 24-	October 1, 2006 Summary of Current and Future Project Requests
Appellants 25-	Maps of boundaries proposed to the Superintendent

Appellants 26-Committee Meeting	October 9, 2006 Agenda of the West County Boundaries
Appellants 27-Committee Meeting	October 9, 2006 Minutes of the West County Boundaries
Appellants 28-Committee Meeting	October 16, 2007 Minutes of the West County Boundaries
Appellants 29-Committee Meeting	October 23, 2006 Minutes of the West County Boundaries
Appellants 30-County Board	2007-2008 School Year Redistricting Recommendations by the
Appellants 31-March 5, 2007	Announcement of County Board Meetings on February 26 and
Appellants 32-	April 24, 2007 Redistricting Plan of the County Board
Appellants 33-	Superintendent's Recommendation on Redistricting
Appellants 34-	Map of Meade Heights-Van Brokkelen-Harman-Jessup
Appellants 35-	Map of Van Brokkelen District
Appellants 36-	Map of Seven Oaks Boundary
Appellants 37-	Map of Meade Heights Boundary after Redistricting
Appellants 38-	Map of Meade Heights Boundary before Redistricting
Appellants 39-	Map of Jessup Elementary Boundary after redistricting
Appellants 40-	Map of Jessup Elementary Boundary before redistricting
Appellants 41-	Map of Harman Elementary Boundary after redistricting
Appellants 42-	Map of Harman Elementary Boundary before redistricting
Appellants 43-Elementary	Map of Jessup Elementary Communities closest to Meade Heights
Appellants 44-	July 21, 2003 School Waiting List

Appellants 5-	2001 Crofton Small Area Plan
Appellants 6-	July 2002 Severn Small Area Plan
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Appellants 42-	Map of Harman Elementary Boundary before redistricting
Appellants 43-Elementary	Map of Jessup Elementary Communities closest to Meade Heights
Appellants 44-	July 21, 2003 School Waiting List

Appellants 45-	February 2007 Summary of Impact of BRAC on AACPS
Appellants 46-	Calculation of BRAC-Related Household Count
Appellants 47-	July 11 to September 28, 2007 Subdivision Activity Report
Appellants 48-	2005-2006 School Year Calculations for Enrollment Projections
Appellants 49-	2006-2007 School Year Calculations for Enrollment Projections
Appellants 50-	2007-2008 School Year Calculations for Enrollment Projections
Appellants 51-	2007 Arundel Record of Out-of-Area Transfers
Appellants 52-	2007-2008 School Year Arundel Course Offerings
Appellants 53-	2007-2008 School Year Arundel Honors Course Offerings
Appellants 54-	2007-2008 School Year Arundel AP Course Offerings
Appellants 55-	First Semester Arundel Matrix of Course Schedule
Appellants 56-	Arundel staff data regarding Qualifications
Appellants 57-	Bypass Back Pack Emails
Appellants 58-	Agenda and minutes of PTSO Meetings
Appellants 59- Committee	January 3, 2007 Minutes of Arundel Citizen's Advisory
Appellants 60-	Curriculum Vitae of Stephen Donnelly
Appellants 61-	March 5, 2007 Stephen Donnelly Report on Redistricting Proposal
Appellants 62- Guide	Public School Construction Program Administrative Procedure
Appellants 63- September	2007 Enrollment Projections of Maryland Department of Planning
Appellants 64-	January 21, 2007 State Rated Capacity Sheets with Floor Plans

Appellants 65-	Minutes of April 24, 2007 County Board Meeting
Appellants 66-	AACPS Web Page description of Proposed Redistricting Plan
Appellants 67-	AACPS County Board Policy 900
Appellants 68-	AACPS County Board Policy 900A
Appellants 69- Regulation	AACPS Web Page description of Policy and Administrative
Appellants 70-	County Council of Anne Arundel County Resolution No. 27-07
Appellants 71-	Breakdown of transfers to and from Meade
Appellants 72-	List of Honors Courses Offered at Meade
Appellants 73-	List of Courses Offered at Meade First Semester
Appellants 74-	List of Courses Offered at Meade Second Semester
Appellants 75-	2007-2008 AACPS Program of Studies
Appellants 76-	August 18, 2004 Memorandum of Understanding
Appellants 77-	2007 AYP Status for AACPS
Appellants 78-	Listing of GPA of high schools in AACPS
Appellants 79-	AACPS AP Exam Results
Appellants 80-	AACPS listing of High School Assessment results
Appellants 81-	AACPS listing of PSAT results
Appellants 82-	PSAT results by ethnicity
Appellants 83- Marking Period	AACPS listing of percentage of ineligible student in the Second
Appellants 84-	List of Qualified teachers at Meade
Appellants 85-	2006 Meade Bus Routes

Appellants 86-	2004 Arundel Bus Routes
Appellants 87-	2007-2008 Meade Bus Routes
Appellants 88-	2007-2008 Arundel Bus Routes
Appellants 89-	2006-2007 Arundel Bus Routes
Appellants 90-Guide	Public School Construction Program Administrative Procedures
Appellants 91-Program Renovation	November 2005 Educational Specifications for Arundel Science
Appellants 92-Project	March 16, 2006 List of MSDE's concerns for Arundel Science
Appellants 93-Project	August 16, 2006 List of MSDE's concerns for Arundel Science
Appellants 94-	October 6, 2006 List of AACPS projects
Appellants 95-	AACPS Capitol Improvement Project summary
Appellants 96-	September 30, 2006 Request for Approval of Planning
Appellants 97-Approved	September 30, 2006 Request for Approval of Planning-Funding
Appellants 98-	December 8, 2006 letter from MSDE to the Superintendent
Appellants 99-Works	January 2, 2007 letter from Mr. Szachnowicz to Board of Public
Appellants 100-	January 3, 2007 letter from Public School Construction Program
Appellants 101-	February 5, 2007 letter from the State Superintendent
Appellants 102-	May 23, 2007 Summary of Projects Requested
Appellants 103-	September 18, 2007 Board Approval of FY 2009 Capitol Budget
Appellants 104-	Gambrills-Odenton Recreation Council Inc. By-Laws

Appellants 105-	October 3, 2007 Oath by Robert Brandenburger
Appellants 106- Reference Manual	Anne Arundel County Recreation and Parks Guidelines and
Appellants 107-	2006-2007 School Year Facility Use Applications
Appellants 108-	2005-2006 School Year Facility Use Applications
Appellants 109-	2004-2005 School Year Facility Use Applications
Appellants 110-	Blank Youth Player Contract and Release
Appellants 111- 2006 and 2006-2007 School Years	AACPS List of Extended Suspensions and Expulsions for 2005-
Appellants 112-	AACPS 2006-2007 SAT Average Scores[24]
Appellants 113- Schools[25]	Community Crime Statistics for Meade and Arundel High
Appellants 114-	Mediated Agreement between AACPS and The NAACP
Appellants 115- of the Office of Civil Rights Memorandum of Agreement	September 7, 2007 Progress and Challenges in Meeting the Goals
Appellants 116- Tests	School Improvement Plan-High School Senior College Placement
Appellants 117-	Bias Motivated Incident Reports
Appellants 118-	AACPS AVID Pamphlet
Appellants 119-	Informational flyer for STEM
Appellants 120-	Informational flyer for International Baccalaureate Program
Appellants 121- Newsletter	August 2007 AACPS Equity Assurance & Human Relations

[24] The objection to the admission of pages 2 through 6 of Appellant Exhibit 112 was sustained.

[25] The objection to the admission of Appellant Exhibit 113 was sustained.

Appellants 122-	Copy of slides presented at the Fall 2007 presentation of the Office of Civil Rights
Appellants 123-	Listing of incidents reported at Meade High School from October 2005 to October 2007
Appellants 124-	Meade High School Incident Reports from January 2006 to October 2007
Appellants 125-	Listing of incidents reported at Arundel High School from October 2005 to October 2007
Appellants 126-	Meade High School Incident Reports from January 2006 to October 2007
Appellants 127-	Redacted July 2007 School Crisis and Emergency Management Plan
Appellants 128-	Redactions from July 2007 School Crisis and Emergency Management Plan[26]
Appellants 129-	Redacted Meade High School Crisis and Emergency Management Plan
Appellants 130-	Redactions from Meade High School Crisis and Emergency Management Plan[27]
Appellants 131-	Redacted Arundel High School Crisis and Emergency Management Plan
Appellants 132-	Redactions from Arundel High School Crisis and Emergency Management Plan[28]
Appellants 133-	Fort George G. Meade OPLAN[29]
Appellants 134-	Anne Arundel County Police Department Incident Classification List[30]

[26] The objection to the admission of Appellants Exhibit 128 was sustained.

[27] The objection to the admission of Appellants Exhibit 130 was sustained.

[28] The objection to the admission of Appellants Exhibit 132 was sustained

[29] The objection to the admission of Appellants Exhibit 133 was sustained

[30] The objection to the admission of Appellants Exhibit 134 was sustained

Appellants 135- Anne Arundel County Police Department Reports of Incidents at Meade and Arundel High Schools[31]

Appellants 136- AA County Police Department Incidents with reports at Meade and Arundel High Schools[32]

Appellants 137- AA County Police Department demography of arrestees and citees[33]

Appellants 138- Subpoena *Duces Tecum* to Peter Christensen[34]

Appellants 139- November 1, 2007 article from the West County Gazette[35]

Appellants 140- November 1, 2006 article from the Capitol Gazette[36]

Appellants 141- December 1, 2006 article from the Capitol Gazette[37]

Appellants 142- Website material from various County agencies[38]

Appellants 143- Office of Budget AA County Capitol budget pages 273 a and b[39]

Appellants 144- Emails from and to Robin Allen

The County Board submitted the following exhibits which were admitted into evidence as follows:

Board Ex. 1 27th Edition of ADC Anne Arundel County Street Map

Board Ex. 2 Constitution of AA County NAACP Branch

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[31] The objection to the admission of Appellants Exhibit 135 was sustained

[32] The objection to the admission of Appellants Exhibit 136 was sustained

[33] The objection to the admission of Appellants Exhibit 137 was sustained

[34] The objection to the admission of Appellants Exhibit 138 was sustained

[35] The objection to the admission of Appellants Exhibit 139 was sustained

[36] The objection to the admission of Appellants Exhibit 140 was sustained

[37] The objection to the admission of Appellants Exhibit 141 was sustained

[38] The objection to the admission of Appellants Exhibit 142 was sustained

[39] The objection to the admission of Appellants Exhibit 143 was sustained