

ROSARITA COLEMAN,

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-32

### OPINION

In this appeal, Appellant challenged the decision of the Howard County Board of Education to reassign 9<sup>th</sup> and 10<sup>th</sup> grade students residing in the "Polygon 264" district from Howard High School (HHS) to Long Reach High School (LRHS) for 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, the opening of a new high school in August 2005, and the phasing out of special programs at Long Reach High School which would make more space available for incoming students.

The matter was transferred to the State Office of Administrative Hearings for review. A hearing took place on April 5, 2005. On June 15, 2005, the administrative law judge (ALJ) issued a proposed decision, a copy of which is attached as Exhibit 1. Exceptions were filed and Rosarita Coleman, on her own behalf, and the Howard County Board attorney presented final oral argument to the State Board on August 30, 2005.

In her proposed decision, the ALJ found that the local board's decision regarding Polygon 264 was based on the improved feed from Bonnie Branch Middle School and the possibility that Polygon 264 students could walk to LRHS, and concluded that these reasons were a reasonable basis for the local board's decision.<sup>1</sup> See ALJ Proposed Decision at p. 9-10. 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; overutilization, and lack of cost savings. See ALJ Proposed Decision at pp. 10 – 11. 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. 11 – 14.

Appellant also alleged that the first time that reassignment of Polygon 264 was discussed

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<sup>1</sup> The ALJ did not accept Appellant's unsupported assertion that affected students would be eligible to ride the bus as proof of this allegation, nor did she find any objective evidence that the walking route posed safety hazards. ALJ Proposed Decision at p. 10.

was in the Superintendent's plan of October 28, 2004 and there was insufficient time to prepare her remarks for the first public meeting held on November 9, 2004. The ALJ found that Appellant's Exhibit 1<sup>2</sup> demonstrated that the issue of reassignment was in fact first raised at a September 29, 2004 meeting of the School Boundary Line Committee, which Appellant attended. The ALJ also found that the Appellant was not precluded from testifying about her concerns and that Appellant offered no testimony as to why she did not attend either the November 9 or the November 18, 2004 public meetings. See ALJ Proposed Decision and Order at pp. 12-14.

Based upon our review of the record and with the following modifications, we adopt the Findings of Fact and Conclusions of law of the administrative law judge.

The ALJ's Findings of Fact #16 and #17 state as follows:

16. *Current* enrollment at LRHS (before the county board decision) is 107.8% of capacity. After implementation of the County board decision, enrollment at LRHS will be 110.4% of capacity.
17. *Current* enrollment of HHS is 119.4%.

(Emphasis added). We assume that "current" means the 2005-2006 school year.

The ALJ mistakenly noted as *current* the enrollment figures cited in App. Exh. #14, p. 52. (Proposed Decision, p. 11). However, App. Exh. #14, p. 52 references *projected* enrollment figures for the 2007-2008 school year. That Exhibit demonstrates that for the 2007-2008 school year, LRHS will have a capacity of 107.8% if the superintendent's plan is not adopted. Exhibit 14, p. 55 projects the enrollment for the years 2005 through 2010 under the superintendent's plan. It projects the enrollment at LRHS at a capacity of 115% in 2005, 113.78% in 2006, 110.8% in 2007, and 109.5 in 2008.

The ALJ also mistakenly notes HHS' current enrollment as 119.4%. App. Exhibit 14, p. 55 states that the projected enrollment for HHS under the superintendent's plan is 110.5% in 2005, 99.44% in 2006, 102.3% in 2007 and 106.7% in 2008. App. Exh. 14. p. 52 states that HHS enrollment *in the 2007-2008 school year* would be 119.4% *if* the superintendent's plan is not adopted.

Despite the ALJ's incorrect citation to certain enrollment projections, record evidence shows that the plan adopted by the local board carried out the mission of balancing enrollments at the two high schools. As just stated, under the superintendent's plan LRHS' enrollment is projected at 110.8% and HHS' is projected at 102.3% in 2007, rather than LRHS being at 107.8% and HHS being at 119.4% if the superintendent's plan were not adopted. Under the

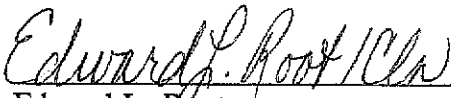
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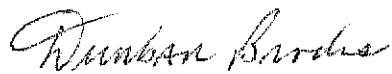
<sup>2</sup> Appellant's Exhibit 1 consists of Summary Notes from meetings of the School Boundary Line Committee Summary Notes.

projected enrollments for the plan, by school year 2008 both schools will have enrollment numbers within local board's target enrollment as set forth in the Boundary Line Adjustments Policy No. 1675. In addition, the record evidence shows that the plan also improved the feed from Bonnie Branch Middle School.

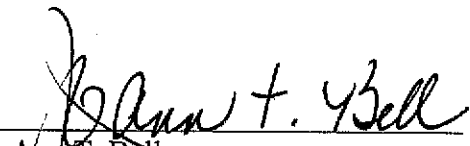
While Appellant may believe that it was not necessary to reassign the 9<sup>th</sup> and 10<sup>th</sup> grade students residing in the "Polygon 264" district to achieve more balanced enrollment and improved feed, the issue is whether the move was reasonable and within the discretion of the local board. As stated by the Court of Appeals in *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464, 479 (1967), "[t]he 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 worked better; the test is whether the action which was taken was arbitrary, capricious or illegal."

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

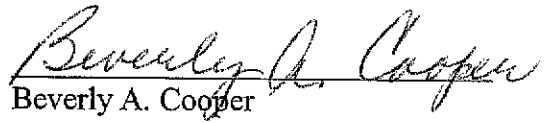
  
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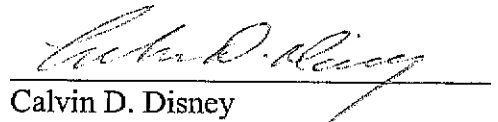
  
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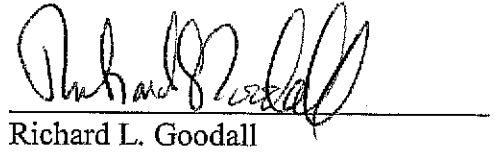
  
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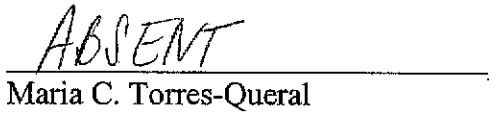
  
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J. Henry Butta

  
Beverly A. Cooper

  
Calvin D. Disney

  
Richard L. Goodall

  
Karabelle Pizzigati

  
Maria C. Torres-Queral

  
David F. Tufaro

September 27, 2005

ROSARITA COLEMAN,

APPELLANT

v.

BOARD OF EDUCATION OF

HOWARD COUNTY

\* BEFORE JUDITH JACOBSON,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-BE-09-05-00878

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE

ISSUE

SUMMARY OF THE EVIDENCE

FINDINGS OF FACT

DISCUSSION

CONCLUSIONS OF LAW

PROPOSED ORDER

**STATEMENT OF THE CASE**

This case arises from a decision by the Board of Education of Howard County ("County Board" or "HCPS") to reassign 9<sup>th</sup> and 10<sup>th</sup> grade students living in the district "Polygon 264," from Howard High School to Long Reach High School, for school year 2005-2006. On December 20, 2004, Rosarita Coleman ("Appellant"), filed an appeal of the HCPS decision to the Maryland State Board of Education.

On April 5, 2005, Judith Jacobson, Administrative Law Judge, conducted a hearing at the HCPS office in Ellicott City, Maryland, pursuant to Code of Maryland Regulations ("COMAR") 13A.01.05.07. HCPS was represented by Mark Blom, Esq. The Appellant represented herself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for the State Board of Education, and the Rules of

Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004); COMAR 13A.01.05.07; COMAR 28.02.01.

### ISSUE

The issue on appeal is whether the decision of the Howard County Board of Education, to reassign 9<sup>th</sup> and 10<sup>th</sup> grade students living in Polygon 264, from Howard High School to Long Reach High School, effective school year 2005-2006, was arbitrary, unreasonable or illegal.

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Appellant offered the following exhibits which were admitted into evidence:<sup>1</sup>

- App. Ex. # 1 - School Boundary Line Committee Summary Notes, dated June 2, 2004, June 9, 2004, June 16, 2004, June 23, 2004, June 30, 2004, July 7, 2004, August 4, 2004, August 11, 2004, August 25, 2004, and September 29, 2004.
- App. Ex. # 2 - School Boundary Line Committee Summary Notes, dated July 28, 2004 and August 18, 2004; HCSLBC Meeting Notes, dated September 1, 2004; School Boundary Line Committee Summary Notes, dated September 8, 2004.
- App. Ex. # 3 - Howard County Board of Education Board Policy No. 1675, adopted April 15, 2004.
- App. Ex. # 4 - Videotape of HCPS Public Hearing and Work Session, dated November 9, 2004.
- App. Ex. # 5 - Videotape of HCPS Public Hearing, dated November 18, 2004.
- App. Ex. # 6 - Written comments by the Appellant, dated April 4, 2005.
- App. Ex. # 7 - "Howard HS (HoHS)" Excerpt, undated.
- App. Ex. # 8 - E-mail from Mary Jane Barbato-Grauso to PTA Presidents, Exec. Board members, delegates, Growth and Planning Chairs, and Parents, dated January 14, 2005, with attachment.

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<sup>1</sup> App. Ex. # 13 was offered but not admitted into evidence.

- App. Ex. # 9 - Minutes of the Board of Education of Howard County, dated November 4, 2004, November 9, 2004, and November 18, 2004.
- App. Ex. # 10 - "For Your Information, Howard County Board of Education Boundary Line Adjustment Process," undated.
- App. Ex. # 11 - Eight Maps.
- App. Ex. # 12 - Washington Post article, "Divining Enrollment in Howard; County Altered Models After 2000 Blunder, but Skeptics Remain; [Final Edition]," dated November 29, 2004.
- App. Ex. # 14 - Boundary Line Adjustments, Staff Recommendations, Effective Date September 2005, dated October 28, 2004, with attachments.
- App. Ex. # 15 - Large-Scale Map.

HCPS offered the following exhibits which were admitted into evidence:

- HCPS Ex. # 1 - Letter from the Appellant to David Drown, dated October 14, 2004.
- HCPS Ex. # 2 - Letter from the Appellant to Courtney Watson, dated October 14, 2004.
- HCPS Ex. # 3 - E-mail from the Appellant to County Board members, undated; E-mail from Florence Jackson to the Appellant, dated October 19, 2004.
- HCPS Ex. # 4 - E-mail from Christopher Coleman to HCPS, dated November 18, 2004.
- HCPS Ex. # 5 - E-mail from Michelle Coleman to HCPS, dated November 18, 2004.
- HCPS Ex. # 6 - E-mail from Ana Maddox to HCPS, dated November 3, 2004.
- HCPS Ex. # 7 - E-mail from Ana Maddox to HCPS, dated November 17, 2004.
- HCPS Ex. # 8 - E-mail from Courtney Watson to Patty Lyman, dated October 22, 2004; Letter from Patricia Lyman, undated.
- HCPS Ex. # 9 - *Tab 1* - Memorandum from Sydney L. Cousins to County Board, dated October 28, 2004; High School Redistricting Plans School Year 2007-2008 Comparison, dated October 28, 2004; Superintendent's Recommendation, dated October 28, 2004; Boundary Line Adjustments, Staff Recommendations, Effective Date September 2005, dated October 28, 2004, with attachments.  
*Tab 2* - Memorandum from Sydney L. Cousins to County Board, dated October 28, 2004; High School Redistricting Effect on School Year 2007-

2008: Red Final, Green Final, Effect on Feeder Schools, FARM Overview, MSA Overview Plan, Middles School Plan I, Middles School Plan II, Elementary to Middle (K-5); Information pages on specific high schools; Agenda October 26, 2004; School Boundary Line Committee Advisory Report, with attachments.

*Tab 3* - [empty]

*Tab 4* - Work Sheets, Boundary Line Work Session, dated November 18, 2004 and November 23, 2004, with attachments; Memorandum from David Drown to the County Board, dated November 16, 2004, with attachments; E-mail from David Drown to Raymond H. Brown and Sydney L. Cousin, dated November 9, 2004, with attachments; Memorandum from David Drown to County Board (Questions on Boundary Line Adjustments 2005-2006), dated November 3, 2004, with attachments; Memorandum from David Drown to County Board (Feasible Future High School Redistricting Plan), dated November 3, 2004, with attachment.

*Tab 5* - Letter from Worthington Community residents to County Board, dated October 23, 2004, with attachments; Letters to County Board from Lucinda Miller, Gloria and Gary Serrao, Molly Vorce, Diane and Lou Cortina, Mitchell and Janet Donovan, Vanessa Carroll, Alex and Donna Monger, Karen Potter, Jack Speicher, Lucinda Miller and Jeff Miller, "A Concerned Student," Robert and Kimberly Brosmer, Steve and Jennifer Albrecht and Alberto and Jill M. Alli, with additional signatures, and Jennifer Albrecht.

*Tab 6* - School Boundary Line Committee member lists.

*Tab 7* - 2005-2006 School Year Redistricting Plan Strategy & Rationale; Memorandum from David Drown to County Board, dated November 23, 2004, with attachments.

*Tab 8* - Minutes of County Board, dated May 27, 2004, April 29, 2004, and April 15, 2004.

*Tab 9* - Howard County Board of Education Board Policy No. 1675, dated April 15, 2004.

*Tab "Minutes"* - Minutes of County Board dated October 28, 2004, November 4, 2004, November 9, 2004, November 18, 2004 (public work session), November 18, 2004 (public hearing), November 16, 2004, and November 23, 2004.

HCPS Ex. # 10 - SBLC Agenda, dated June 2, 2004; School Boundary Line Committee Summary Notes and agendas, dated June 2, 2004, June 9, 2004, June 16, 2004, June 23, 2004, June 30, 2004, July 7, 2004, July 28, 2004, August 4, 2004, August 11, 2004, August 18, 2004, August 25, 2004, September 1, 2004, September 8, 2004, September 29, 2004, agenda dated October 20, 2004.

HCPS Ex. # 11 - "Questions and Answers, 2004-2005 Redistricting Process, dated September 14, 2004, with attachments.



Testimony

The Appellant testified on her own behalf and presented testimony from Anne Maddox, Parent; and Patricia Lyman, Parent. HCPS presented testimony from Joshua Kaufman, Member, County Board; David Drown, Manager of School Planning, HCPS; and Arlene Conway, Secretarial Office, HCPS.

**FINDINGS OF FACT**

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. In 2004, the County Board embarked on 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 by pupil migration patterns.
2. The redesign of high school boundaries was also prompted by the opening of a new high school in August 2005.
3. Another factor in the redesign of high school boundaries was the phasing out of several special programs at Long Reach High School ("LRHS"), resulting in more space for incoming students.
4. The County Board established a School Boundary Line Committee ("SBLC"), which held two community meetings, on September 21, 2004 and September 22, 2004.
5. On September 29, 2004, David Drown, Manager of School Planning, HCPS, presented a proposal to the SBLC, that high school students of Polygon 264 be reassigned from

Howard High School ("HoHS") to LRHS.

6. The SBLC developed several boundary line adjustment plans. The plans did not recommend a change to the high school assignment of students in Polygon 264. The SBLC presented its plans to the HCPS Superintendent, who forwarded them to the County Board.
7. The Superintendent also prepared recommendations on boundary line adjustments, and presented them to the County Board. The Superintendent recommended moving the 9<sup>th</sup> and 10<sup>th</sup> graders of Polygon 264 from HoHS to LRHS.
8. The SBLC submitted comments to the County Board, indicating that it disagreed with the Superintendent's recommendations on Polygon 264.
9. The County Board held public hearings and public sessions to discuss the proposals, on November 4, 2004, November 9, 2004, November 16, 2004, and November 18, 2004.
10. The Appellant had notice of the public meetings prior to the hearings and sessions.
11. At these public meetings, many comments were made by residents on aspects of the various proposals, including the provisions affecting HoHS and LRHS.
12. On November 23, 2004, the County Board voted to adopt a plan which changed the boundaries of many schools, effective School Year 2005-2006.
13. One of the provisions of the plan was to reassign the entering 9<sup>th</sup> and 10<sup>th</sup> graders of Polygon 264 from HoHS to LRHS.
14. The County Board decision resulted in an improved feed from Bonnie Branch Middle School to its receiving high schools.
15. The County Board decision resulted in the affected Polygon 264 students being able to walk to LRHS, instead of riding the school bus to HoHS.

16. Current enrollment at LRHS (before the County Board decision) is 107.8% of capacity. After implementation of the County Board decision, enrollment at LRHS will be 110.4% of capacity.
17. Current enrollment at HoHS is 119.4% of capacity.

## DISCUSSION

### Legal Framework

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 the superintendent reached.

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

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

- (1) Unconstitutional;
- (2) Exceeds the statutory authority or jurisdiction of the county board;
- (3) Misconstrues the law;
- (4) Results from an unlawful procedure;
- (5) Is an abuse of discretionary powers; or
- (6) Is affected by any other error of law.

### County Board Motion for Judgment

At the close of the Appellant’s evidence, the County 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). For the reasons stated below, I am granting the motion.

#### The Decision of the County Board

On November 23, 2004, the County 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 entering 9<sup>th</sup> and 10<sup>th</sup> graders of Polygon 264<sup>2</sup> from Howard High School (“HoHS”) to Long Reach High School (“LRHS”). The Appellant argued that this decision was arbitrary and unreasonable, and that the process leading up to the decision was unfair.

#### Arbitrary and Unreasonable

Under COMAR 13A.01.05.05B, 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.

#### Sound Educational Policy

The Appellant did not present evidence from anyone qualified as an expert in the field of educational policy. Accordingly, I find that she did not show that the County Board decision was contrary to sound educational policy. COMAR 13A.01.05.05B(1).

#### Reasonableness of County Board Decision

The Appellant’s evidence showed that the County Board 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 by pupil migration patterns. (App. Ex. # 14, page i). The redesign of high school boundaries

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<sup>2</sup> Areas of Howard County are identified as “polygons” for the purposes of school districting.

was also prompted by the opening of a new high school in August 2005. (App. Ex. # 14, pages i and ii). Another factor affecting high school boundary-setting was the phasing out of several special programs at LRHS, resulting in more space for incoming students. (App. Ex. # 7, pages 5 and 6).

The Appellant's evidence does not contain a statement by the County Board indicating its specific reasons for the decision on Polygon 264. However, the Appellant presented an account of the initial proposal to transfer the Polygon 264 students, made to the HCPS School Boundary Line Committee ("SBLC") on September 24, 2004 by David Drown, Manager of School Planning, HCPS. The SBLC had developed a plan which transferred students from Polygon 84 from HoHS to LRHS. Mr. Drown suggested the substitution of Polygon 264 for Polygon 84, for the following reasons:

First, the numbers of the polygons are equal and the two polygons will therefore be interchangeable, and Long Reach will remain at 110% [of capacity]. This will improve the feed from Bonnie Branch Middle to Long Reach High School just as the current plans. However, students in 264 who were bused to Howard would walk to Long Reach. The FARM [Free and Reduced Meals] percentage at Long Reach will increase, but less than 1%.  
(App. Ex. # 1).

These two reasons, the improved feed from Bonnie Branch Middle School and the possibility that Polygon 264 students could walk to LRHS, were reiterated in a written summary of various proposals submitted to the County Board on October 29, 2004 (App. Ex. # 7)<sup>3</sup>, and in the minutes of a County Board meeting on November 9, 2004 (App. Ex. # 9). It is reasonable to assume that the County Board decision regarding Polygon 264 was based on these two reasons.

The Appellant did not present any evidence or argument to show that the County Board's decision did not improve the feed from Bonnie Branch Middle School. Accordingly, I find that

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<sup>3</sup> App. Ex. # 7 is an excerpt from the SBLC Redistricting Plan of October 29, 2004, found in HCPS Ex. # 9, tab 2).

the improved feed from Bonnie Branch Middle School was a reasonable basis for the County Board's decision.

The Appellant disputed that Polygon 264 students would walk to LRHS if the decision were implemented. She asserted that the affected students would ride a school bus to LRHS, based on her calculation of the distance from LRHS to the students' current school bus stop. She did not present any objective evidence in support of this assertion. I do not accept the Appellant's assertion as proof that the affected students would be eligible to ride the school bus to LRHS. Accordingly, I find that the County Board's decision was reasonably based on a determination that the affected students would be able to walk to LRHS.

The Appellant raised several other objections to the County Board decision. She argued that the decision would separate the affected students from school friends, from neighbors, and, in some cases, from siblings in different high school grades. Another parent, Anne Maddox, testified that under the County Board decision, Polygon 264 children would get "swallowed up" with unfamiliar children. A third parent, Patricia Lyman, said that the students wanted to go to school with kids they knew. Separations are inherent in school board redistricting decisions. The fact that the County Board decision causes separations does not render it unreasonable.

The Appellant argued that if the affected students did walk to LRHS, the route is dangerous and passes through a high-crime area. Ms. Maddox testified that the route passed through a "hot spot" area. No objective evidence was presented to support this argument. I find that the County Board decision was not rendered unreasonable because of the safety hazards, if any, of the route to LRHS.

The Appellant argued that the County Board decision would raise LRHS enrollment to 112% of capacity, which she asserted was above the accepted utilization rate for Howard

County. The only statistical evidence submitted by the Appellant was in the October 28, 2004 Boundary Line Adjustments Staff Recommendations (App. Ex. # 14). This evidence showed current enrollment figure for LRHS (before the implementation of the County Board decision) as 107.8%. After implementation of the County Board decision, LRHS enrollment was projected as 110.4%. (App. Ex. # 14, page 53). The Appellant's argument is not supported by the evidence she submitted. The enrollment figures do not render the County Board decision unreasonable.<sup>4</sup>

The Appellant argued that the County Board decision did not result in a cost savings. Cost is not cited as a reason for the proposal affecting Polygon 264, although the budget attached to the Superintendent's recommendation on Polygon 264 indicates a small cost savings (\$384.00 per year). (App. Ex. # 14, pages 48, 62; App. Ex. # 7, App. Ex. # 9). I find that the cost factor does not render the County Board decision unreasonable.

The Appellant has not shown, by a preponderance of the evidence, that a reasoning mind could not have reasonably reached the conclusion the County Board reached. She has not shown that the County Board decision was arbitrary or unreasonable. COMAR 13A.01.05.05B(2).

#### Illegal Decision

The Appellant argued that the County Board's process, resulting in the decision affecting Polygon 264, was unfair to residents of Polygon 264. This argument has merit if the process was an "unlawful procedure" under COMAR 13A.01.05.05C(4).

The Appellant asserted that the County Board failed to comply with its policy on school boundary line adjustments, Policy 1675. (App. Ex. # 3). This policy requires that a School Boundary Line Committee (SBLC) be established, and specifies the composition of the committee. Policy 1675, § C (1)(a). The Appellant did not dispute that the SBLC was

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<sup>4</sup> The data indicates that HoHS has a current utilization rate of 119.4%. (App. Ex. # 14, page 52).

established, nor did she challenge the composition of the committee.

Policy 1675 requires that the SBLC develop a boundary line adjustment plan or plans, to present to the public during two community meetings, and to present to the Superintendent. Policy 1675, § C (1)(b), (c). The SBLC developed plans and held two community meetings, on September 21, 2004 and September 22, 2004. (App. Ex. # 10). The SBLC plans were presented to the Superintendent. (App. Ex. # 7, excerpted from HCPS Ex. # 9, tab 2).

Policy 1675 requires that the Superintendent forward the SBLC recommendation, along with recommended modifications and/or alternative recommendations, to the County Board. The SBLC is given the opportunity so comment on the Superintendent's recommendations. Policy 1675 § C(2)(a). In this case, the Superintendent recommended moving the 9<sup>th</sup> and 10<sup>th</sup> graders of Polygon 264 from HoHS to LRHS. (App. Ex. # 14, page 48). The SBLC submitted comments, indicating that it disagreed with the recommendation. (App. Ex. # 7, page "6 of 13").

Policy 1675 requires that the County Board hold one or more public hearings on the plan or plans submitted by the Superintendent. Policy 1675 § C(2)(b). Public hearings or work sessions were held by the County Board on November 4, 2004, November 9, 2004, November 16, 2004, and on November 18, 2004. (App. Ex. # 10).

Policy 1675 provides that the County Board "may" direct the Superintendent and/or SBLC to develop additional information or plans. Policy 1675 § C(2)(c). This step, which was not mandatory, was apparently not utilized by the County Board.

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



The County Board did not accept the SBLC recommendation regarding Polygon 264. Policy 1675 does not require the County Board to accept SBLC recommendations. The policy 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 County Board complied with the requirements of Policy 1675.

The Appellant argued that the timing of the proposal affecting Polygon 264 was unfair. The proposal was first raised by Mr. Drown at an SBLC meeting on September 29, 2004. (App. Ex. # 1). Under Policy 1675, a proposal may be raised at any time before the final County Board decision. There is no legal basis for the Appellant's argument about the timing of the proposal.

The Appellant argued that she was prevented from testifying at the County Board public meetings. She testified that she called the HCPS Public Information Office on November 9, 2004 to ask about attending the public meetings, and that she was told that the "slots" for testimony were full, that there was no more room for more testimony. The Appellant did not indicate whether she actually attended either of the County Board's meetings, or whether she attempted to testify at either meeting.

I do not find the Appellant's account of the telephone call to be credible. The Appellant had a notice from HCPS which stated that there would be an opportunity for public testimony at the November 9, 2004 public hearing and at the November 18, 2004 public hearing/work session. (App. Ex. # 10). It was apparent that the Appellant received the notice prior to the public hearings and work sessions. The notice did not indicate that reservations for testimony were needed. The Appellant did not explain why she called to make a reservation. Nor did she

explain why she did not attend either public session, in an effort to have input into the County Board decision. I find that the Appellant was not prevented from presenting testimony at the County Board's public meetings.

The Appellant asserted that inaccurate comments were made by another Howard County resident, about Polygon 264, at the November 9, 2004 public meeting. The minutes of the session<sup>5</sup> indicate that comments were made by many residents, on many aspects of the various proposals, including comments for and against the proposals as they affected HoHS and LRHS. I find that the process was not rendered unfair, based on the Appellant's disagreement with one of the comments made.

I find that the Appellant has not shown that the County Board decision resulted from an unlawful procedure. COMAR 13A.01.05.05C(4). The County Board's motion for judgment in its favor is granted. COMAR 28.02.01.16E(1).

### **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 9<sup>th</sup> and 10<sup>th</sup> grade students living in Polygon 264, from Howard High School to Long Reach 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.

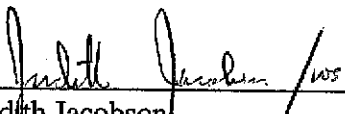
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<sup>5</sup> The Appellant provided videotapes of the public meetings on November 9, 2004 and November 18, 2004 (App. Ex. # 4, App. Ex. # 5), as well as minutes of those sessions. (App. Ex. # 9). Since the Appellant did not dispute the accuracy of the minutes, I have relied on the minutes instead of watching the videotapes.

**PROPOSED ORDER**

I **RECOMMEND** that the decision of the Howard County Board of Education, to reassign 9<sup>th</sup> and 10<sup>th</sup> grade students living in Polygon 264, from Howard High School to Long Reach High School, effective school year 2005-2006 be **AFFIRMED**.

June 15, 2005  
Date

  
\_\_\_\_\_  
Judith Jacobson  
Administrative Law Judge

JJ  
# 73508

**NOTICE OF RIGHT TO FILE OBJECTIONS**

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

ROSARITA COLEMAN,

APPELLANT

v.

BOARD OF EDUCATION OF

HOWARD COUNTY

\* BEFORE JUDITH JACOBSON,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH NO.: MSDE-BE-09-05-00878

\* \* \* \* \*

**FILE EXHIBIT LIST**

The Appellant offered the following exhibits which were admitted into evidence:<sup>6</sup>

- App. Ex. # 1 - School Boundary Line Committee Summary Notes, dated June 2, 2004, June 9, 2004, June 16, 2004, June 23, 2004, June 30, 2004, July 7, 2004, August 4, 2004, August 11, 2004, August 25, 2004, and September 29, 2004.
- App. Ex. # 2 - School Boundary Line Committee Summary Notes, dated July 28, 2004 and August 18, 2004; HCSLBC Meeting Notes, dated September 1, 2004; School Boundary Line Committee Summary Notes, dated September 8, 2004.
- App. Ex. # 3 - Howard County Board of Education Board Policy No. 1675, adopted April 15, 2004.
- App. Ex. # 4 - Videotape of HCPS Public Hearing and Work Session, dated November 9, 2004.
- App. Ex. # 5 - Videotape of HCPS Public Hearing, dated November 18, 2004.
- App. Ex. # 6 - Written comments by the Appellant, dated April 4, 2005.
- App. Ex. # 7 - "Howard HS (HoHS)" Excerpt, undated.
- App. Ex. # 8 - E-mail from Mary Jane Barbato-Grauso to PTA Presidents, Exec. Board members, delegates, Growth and Planning Chairs, and Parents, dated January 14, 2005, with attachment.
- App. Ex. # 9 - Minutes of the Board of Education of Howard County, dated November 4, 2004, November 9, 2004, and November 18, 2004.

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<sup>6</sup> App. Ex. # 13 was offered but not admitted into evidence.

- App. Ex. # 10 - "For Your Information, Howard County Board of Education Boundary Line Adjustment Process," undated.
- App. Ex. # 11 - Eight Maps.
- App. Ex. # 12 - Washington Post article, "Divining Enrollment in Howard; County Altered Models After 2000 Blunder, but Skeptics Remain; [Final Edition]," dated November 29, 2004.
- App. Ex. # 14 - Boundary Line Adjustments, Staff Recommendations, Effective Date September 2005, dated October 28, 2004, with attachments.
- App. Ex. # 15 - Large-Scale Map.

HCPS offered the following exhibits which were admitted into evidence:

- HCPS Ex. # 1 - Letter from the Appellant to David Drown, dated October 14, 2004.
- HCPS Ex. # 2 - Letter from the Appellant to Courtney Watson, dated October 14, 2004.
- HCPS Ex. # 3 - E-mail from the Appellant to County Board members, undated; E-mail from Florence Jackson to the Appellant, dated October 19, 2004.
- HCPS Ex. # 4 - E-mail from Christopher Coleman to HCPS, dated November 18, 2004.
- HCPS Ex. # 5 - E-mail from Michelle Coleman to HCPS, dated November 18, 2004.
- HCPS Ex. # 6 - E-mail from Ana Maddox to HCPS, dated November 3, 2004.
- HCPS Ex. # 7 - E-mail from Ana Maddox to HCPS, dated November 17, 2004.
- HCPS Ex. # 8 - E-mail from Courtney Watson to Patty Lyman, dated October 22, 2004; Letter from Patricia Lyman, undated.
- HCPS Ex. # 9 - *Tab 1* - Memorandum from Sydney L. Cousins to County Board, dated October 28, 2004; High School Redistricting Plans School Year 2007-2008 Comparison, dated October 28, 2004; Superintendent's Recommendation, dated October 28, 2004; Boundary Line Adjustments, Staff Recommendations, Effective Date September 2005, dated October 28, 2004, with attachments.  
*Tab 2* - Memorandum from Sydney L. Cousins to County Board, dated October 28, 2004; High School Redistricting Effect on School Year 2007-2008: Red Final, Green Final, Effect on Feeder Schools, FARM Overview, MSA Overview Plan, Middles School Plan I, Middles School Plan II,

Elementary to Middle (K-5); Information pages on specific high schools; Agenda October 26, 2004; School Boundary Line Committee Advisory Report, with attachments.

*Tab 3* - [empty]

*Tab 4* - Work Sheets, Boundary Line Work Session, dated November 18, 2004 and November 23, 2004, with attachments; Memorandum from David Drown to the County Board, dated November 16, 2004, with attachments; E-mail from David Drown to Raymond H. Brown and Sydney L. Cousin, dated November 9, 2004, with attachments; Memorandum from David Drown to County Board (Questions on Boundary Line Adjustments 2005-2006), dated November 3, 2004, with attachments; Memorandum from David Drown to County Board (Feasible Future High School Redistricting Plan), dated November 3, 2004, with attachment.

*Tab 5* - Letter from Worthington Community residents to County Board, dated October 23, 2004, with attachments; Letters to County Board from Lucinda Miller, Gloria and Gary Serrao, Molly Vorce, Diane and Lou Cortina, Mitchell and Janet Donovan, Vanessa Carroll, Alex and Donna Monger, Karen Potter, Jack Speicher, Lucinda Miller and Jeff Miller, "A Concerned Student," Robert and Kimberly Brosmer, Steve and Jennifer Albrecht and Alberto and Jill M. Alli, with additional signatures, and Jennifer Albrecht.

*Tab 6* - School Boundary Line Committee member lists.

*Tab 7* - 2005-2006 School Year Redistricting Plan Strategy & Rationale; Memorandum from David Drown to County Board, dated November 23, 2004, with attachments.

*Tab 8* - Minutes of County Board, dated May 27, 2004, April 29, 2004, and April 15, 2004.

*Tab 9* - Howard County Board of Education Board Policy No. 1675, dated April 15, 2004.

*Tab "Minutes"* - Minutes of County Board dated October 28, 2004, November 4, 2004, November 9, 2004, November 18, 2004 (public work session), November 18, 2004 (public hearing), November 16, 2004, and November 23, 2004.

HCPS Ex. # 10 - SBLC Agenda, dated June 2, 2004; School Boundary Line Committee Summary Notes and agendas, dated June 2, 2004, June 9, 2004, June 16, 2004, June 23, 2004, June 30, 2004, July 7, 2004, July 28, 2004, August 4, 2004, August 11, 2004, August 18, 2004, August 25, 2004, September 1, 2004, September 8, 2004, September 29, 2004, agenda dated October 20, 2004.

HCPS Ex. # 11 - "Questions and Answers, 2004-2005 Redistricting Process, dated September 14, 2004, with attachments.

HCPS Ex. # 12 - Large-Scale Map, Board-Approved HS Boundaries.