

CALVERT NEIGHBORS FOR SENSIBLE
SCHOOL REDISTRICTING,

Appellants

v.

CALVERT COUNTY BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

ORDER NO. 08-11

ORDER

On July 24, 2008, Calvert Neighbors for Sensible School Redistricting (Calvert Neighbors) requested this Board to issue a stay of the proposed redistricting affecting several elementary schools in the Calvert County Public School System. The Calvert County Board of Education has opposed the request for stay. For the reasons stated below, this Board denies the request for stay.

In considering a request for stay, this Board would weigh and balance four factors:

- (1) Calvert Neighbors' likelihood of success on the merits of its case;
- (2) Whether greater injury would be done to the local school system by granting the stay than would be done by denying the stay;
- (3) Whether Calvert Neighbors and those it represents will suffer irreparable harm unless the stay is granted; and
- (4) How the public interest would be served by granting or denying the stay.

See, e.g., DMF Leasing, Inc. v. Budget Rent-a-Car of Maryland, Inc., 161 Md. App. 640, 643 (2005).

In this case, those factors have been weighed and balanced twice before. In April, 2008, Calvert Neighbors' first request for a stay was filed with the State Superintendent of Schools.

Dr. Grasmick considered the four factors listed above and denied the request for stay. (Ex. 1).

The second request, a Motion for a Temporary Restraining Order, was filed with the Circuit Court of Calvert County in July 2008. On July 11, 2008, the Circuit Court ruled. It found:

that there is no risk of “immediate, substantial, and irreparable harm” (Md. Rules 15-504 (a)) to the petitioner should this motion not be granted; and it is further,

that granting the proposed Temporary Restraining Order would be unjustified and counter to the public interest; and thus

The petitioner’s motion is **DENIED**.

(Ex. 2).

Less than 15 days after the Circuit Court ruled, Calvert Neighbors filed its Motion requesting this Board to issue a stay. To do so, this Board would consider the same four factors previously and recently applied by the Circuit Court in this case.

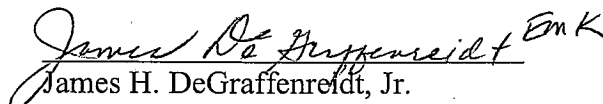
Given the general principles of law that discourage repetitive litigation, we decline to revisit the stay issue. For example, the principle of “law of the case” is instructive. “The ‘law of the case’ refers to the principle that issues once decided in a case that recur in later stages of the same case are not to be redetermined.” *MCR v. Greene*, 148 Md. App. 91, 118 (2002). This principle, while not immutable, is designed to address those instances in which a litigant attempts to get two (or three) bites of the same apple. That is the case here.

When the Calvert County Circuit Court denied the request for a Temporary Restraining Order (TRO) to stop the redistricting process, it looked at all the same factors that this Board would consider in deciding the request for a stay. The Circuit Court did so a mere 20 days ago. It found that the Calvert Neighbors would suffer no irreparable harm if the TRO were denied. It

found that the public interest would not be served by stopping the redistricting process.


Relitigation of the same issues here would be neither efficient nor appropriate under the general legal principles that discourage or preclude repetitive litigation.

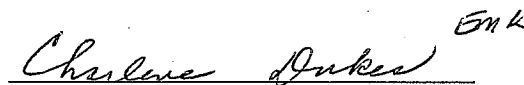
For these reasons, this Board denies the Motion for Stay. It is so Ordered this 5th day of August, 2008.

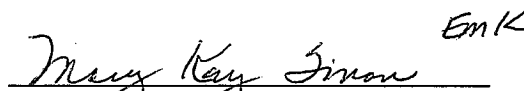

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MARYLAND STATE DEPARTMENT OF EDUCATION

CALVERT NEIGHBORS
FOR SENSIBLE SCHOOL
REDISTRICTING

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ORDER OF STATE

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SUPERINTENDENT

V.

*

OR NO. 08-1

CALVERT COUNTY BOARD
EDUCATION

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* * * * *

ORDER

The Calvert Neighbors for Sensible School Redistricting (Appellants) have filed an appeal with the Maryland State Board of Education in which Appellants challenge the recently adopted redistricting plan. In their appeal, they have requested a stay of the redistricting plan until the State Board can rule on the matter. The Calvert County Board of Education has opposed the request for stay. Pursuant to COMAR 13A.01.02.01(B), I have authority to stay a local board's action for a period not to exceed 60 days. For the reasons set forth below, I decline to issue the stay.

Granting a stay, just like granting a preliminary injunction, involves "the exercise of a very far reaching power to be [used] only sparingly and in limited circumstances." *See In Re Microsoft Corp. Antitrust Litigation*, 333 F.3d 517, 524 (4th Cir. 2003). When courts exercise that power, they carefully consider four factors: (1) the likelihood of success on the merits; (2) the balance of convenience which requires the balancing of harms; (3) the likelihood of irreparable harm to the plaintiff if the stay is denied; and (4) the public interest. *Lerner v. Lerner*, 306 Md. 771, 783-85 (1986); *DMF Leasing, Inc. v. Budget Rent-a-Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005).

Ex. 1

FACTUAL BACKGROUND

On Thursday, March 13, 2008, the local board adopted new school attendance boundaries for five existing elementary schools, and one new elementary school, in order to accommodate the opening of the new Barstow Elementary School in the Fall of 2008. Barstow will be ready for occupancy on or about November 5, 2008. Students who will attend Barstow will need to be enrolled in other schools from beginning of the 2008-2009 school year until Barstow is ready for occupancy. The Appellants want the State Board to direct the local board to revise its school transfer policies and to reopen the redistricting process in light of revised transfer policies.

Likelihood of Success on the Merits

The appeal filed in this case, according to the local board, was untimely filed. The local board adopted the redistricting plan on March 13, 2008 and the appeal appears to have been filed on April 15, 2008 -- beyond the 30-day time limit prescribed by law. Although it is not within my purview to resolve that issue, it is one factor in my consideration of the likelihood of Appellants' success on the merits.

Another factor is the standard of review that will govern this case. Specifically, decisions of a local board involving a local policy are considered *prima facie* correct unless the Appellant meets its burden of showing by a preponderance of the evidence that the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05(A). The presumption of correctness of the local board's decision tips the likelihood of success factors away from the Appellants.

Balance of Convenience and Irreparable Harm

In considering the balance of convenience and irreparable harm factors, I must determine whether greater harm would be done by granting the stay than would result from its refusal. I

consider the education of students to be of paramount importance in this matter. If a stay were granted, as the local board points out, the local board would be precluded from taking any action that would advance the redistricting process.

As the local board explains,

Planning is ongoing for both the temporary and permanent opening of Barstow in the fall and requires extensive coordination among all elementary schools to address, among other things, staffing needs (including itinerant staffing for special education students), student learning accommodations and interventions for special education students, class scheduling, space allocation for students, temporary classroom installation along with temporary utility hook-ups, temporary work stations for teachers, moving of materials of instruction and furniture and equipment, coordination of transportation times and routes, and food services planning and coordination based on school population projections for the coming year.

Motion In Opposition to Request for Stay at 2-3.

Delaying such planning, the local board asserts, would cause significant harm. I agree with the local board that greater harm would be done to the school system, the students, and the teachers, than to the Appellants, if planning for this transition to Barstow were stayed even for 60 days. Delay in planning, I believe, would lead to significant impairments in the student enrollment and teacher assignment processes, both of which affect the provision of education in a timely and productive manner.

Moreover, I can perceive no irreparable harm to the Appellants if the stay were not granted. My focus in this inquiry remains on the students and the timely and well-organized opening of the schools in Calvert County in August 2008.

Public Interest

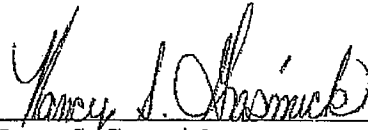
Granting a stay and, thus, precluding the local board from planning the enrollment and class assignment process for the transition to Barstow could impair education opportunities and not be in the best interests of the students and teachers and the school system as a whole.

CONCLUSION

For all the reasons stated, I deny the request for stay.

5.9.08

Date



Nancy S. Grasmick
State Superintendent of Schools

IN THE CIRCUIT COURT FOR CALVERT COUNTY, MARYLAND

IN THE MATTER OF:

CALVERT NEIGHBORS FOR SENSIBLE

SCHOOL REDISTRICTING, ET AL:

Case No. C-08-703

ORDER OF COURT

This matter came before the court on the Defendant's **Motion for a Temporary Restraining Order, and Expedited Hearing on the Preliminary Injunction**. This court met with counsel in chambers on July 8th, 2008. Upon consideration of this motion and review of the file, it is this 11th day of July, 2008, by the Circuit Court for Calvert County, Maryland,

FOUND, that there is no risk of "immediate, substantial, and irreparable harm" (Md. Rules 15-504 (a)) to the petitioner should this motion not be granted; and it is further,

FOUND, that granting the proposed Temporary Restraining Order would be unjustified and counter to the public interest; and thus

The petitioner's motion is **DENIED**.

True Copy Test

Gary P. Smith

Clerk of Circuit Court

Warren J. Krug
WARREN J. KRUG, JUDGE

Copies of this Opinion and Order mailed or faxed to counsel of record this 14th day of July, 2008, by Antoinette O'Connor, Administrative Assistant.

EX. 2