

DEBBIE MOHABIR, ET AL. AND,
TANYA SPANN ROCHE,

Appellant

v.

HOWARD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 14-57

OPINION

INTRODUCTION

Appellants filed separate appeals challenging the November 21, 2013 redistricting decision of the Howard County Board of Education (local board). The redistricting reconfigured certain attendance boundaries in order to populate the newly constructed Thomas Viaduct Middle School, which opened in August 2014, and to relieve overcrowding at various schools in Howard County. The cases were consolidated at the request of the parties.

We referred this case to the Office of Administrative Hearings (OAH) as required by COMAR 13A.01.05.07A(1). After conducting a hearing on the case, on July 1, 2014 the Administrative Law Judge (ALJ) issued a proposed decision recommending that the State Board affirm the local board's redistricting decision because it was not arbitrary, unreasonable or illegal.

The Appellants did not file any exceptions to the ALJ's proposed decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the ALJ's proposed decision, Findings of Fact, pp. 4 — 9.

STANDARD OF REVIEW

This appeal involves a redistricting decision of the local board. Decisions of a local board involving a local policy or a controversy or dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. *See* COMAR 13A.01.05.05A.

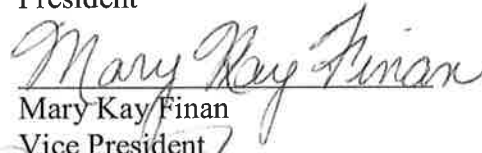
The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov't §10-216.

CONCLUSION

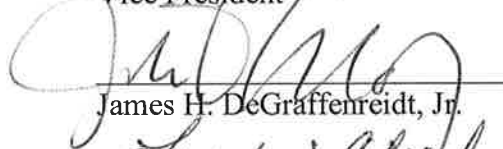
The Appellants offer no exceptions to the ALJ's proposed decision. For the reasons set forth in the ALJ's proposed decision, we concur with the ALJ that the local board's decision is not arbitrary, unreasonable or illegal. We therefore adopt the ALJ's proposed decision and affirm the local board's redistricting decision.



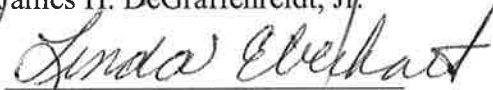
Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



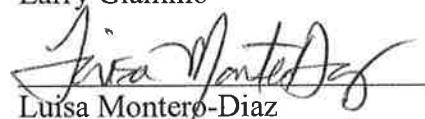
Linda Eberhart



S. James Gates, Jr.

Absent

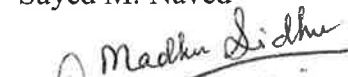
Larry Giammo



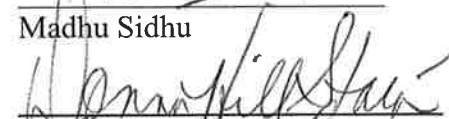
Luisa Montero-Diaz

Absent

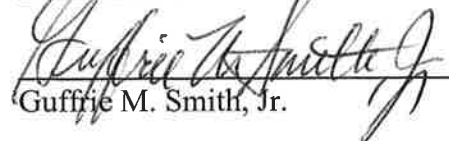
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

September 23, 2014

DEBBIE MOHABIR AND TANYA

* BEFORE MICHAEL J. WALLACE

SPANN ROCHE, et. al

* AN ADMINISTRATIVE LAW JUDGE

APPELLANTS

* OF THE MARYLAND OFFICE

v.

* OF ADMINISTRATIVE HEARINGS

HOWARD COUNTY

* OAH NO: MSDE-BE-09-14-02530

BOARD OF EDUCATION

* MSDE-BE-09-14-02436

RESPONDENT

*

* * * * *

PROPOSED DECISION

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

STATEMENT OF THE CASE

On November 21, 2013, the Howard County Board of Education (Board or HCBE), Respondent, adopted a redistricting plan which, in relevant part, acted to equally redistribute students after the construction of a new middle school (New MS #20). The plan is to go into effect at the beginning of the 2014-2015 school year.

On December 23, 2013, Appellants Tanya Spann Roche and Debbie Mohabir, Howard County residents, filed separate appeals with the Maryland State Board of Education (State Board). Ms. Mohabir's appeal included sixteen other individuals (the Mohabir Appellants).¹

¹ The named Appellants included Debbie and Martin Mohabir, Mary and Saji Abraham, Beresford and Anetra Doherty, Marci and Nigel Isaacs, Brian and Kacey Lee, Charmain Mohammed, Yvonne Perry, Sinna Sucklal, Brenda and Marlon Taylor, Thelma Wright and Tanya Spann Roche. Only Ms. Spann Roche signed her appeal.

On January 16, 2014, the State Board transmitted the appeals to the Office of Administrative Hearings (OAH) to conduct contested case hearings and issue a proposed decision for each appeal. Code of Maryland Regulations (COMAR) 13A.01.05.07A(1). The hearings were consolidated at the request of the parties but separate decisions will be issued for each appeal.

On May 19 and 20, 2014, I conducted a hearing at OAH in Hunt Valley, Maryland. COMAR 13A.01.05.07A(1). Each of the Appellants represented themselves. Eric C. Brousaides, Esq., represented the Local Board.

The contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); the procedural regulations for appeals to the State Board of Education, COMAR 13A.01.05; and the Rules of Procedure for the OAH, COMAR 28.02.01, govern the procedure in this case.

ISSUE

Was the Local Board's redistricting decision on November 21, 2013 arbitrary, unreasonable or illegal?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of Appellant Spann-Roche:

- Appellant Ex. 1. Attendance Area Adjustments – Superintendent's Recommendations, October 22, 2013
- Appellant Ex. 2. DVD recording of the HCBE meeting of November 19, 2013
- Appellant Ex. 3. Howard County Public School System Policy 2040
- Appellant Ex. 4. Feasibility Study, June 2013
- Appellant Ex. 5. Board Cluster Assignments 2013-2014

Appellant Ex. 6. Plan BOE 3 Capital Improvement Plan in Use

Appellant Ex. 7. Article from Baltimore Sun, November 22, 2013

Appellant Ex. 8. Agenda for HCBE meeting, November 19, 2013

The Mohabir Appellants did not submit any documents for consideration.

I admitted the following exhibits on behalf of the Board:

Board Ex. 1. Feasibility Study, June 2013, with Supplement

Board Ex. 2. Howard County Public Schools (HCPS) Planning Polygon Summary

Board Ex. 3. Summary, 2013 Attendance Area Committee, Meeting #1, July 9, 2013

Board Ex. 4. Summary, 2013 Attendance Area Committee, Meeting #2, July 16, 2013

Board Ex. 5. Summary, 2013 Attendance Area Committee, Meeting #3, July 23, 2013

Board Ex. 6. Summary, 2013 Attendance Area Committee, Meeting #4, July 30, 2013

Board Ex. 7. Summary, 2013 Attendance Area Committee, Meeting #5, August 6, 2013

Board Ex. 8. Regional Meeting Documents, September 11, and September 12, 2013

Board Ex. 9. 2013 Attendance Area Committee Final Meeting, October 1, 2013

Board Ex. 10. Meeting Summary, Agenda and documents from HCBE, October 22, 2013

Board Ex. 11. Attendance Area Adjustments – Superintendent’s Recommendations, October 22, 2013

Board Ex. 12. Meeting Summary, Agenda and documents from the Board, October 29, 2013

Board Ex. 13. Meeting Summary, Agenda and documents from the Board, October 30, 2013

Board Ex. 14. Meeting Summary, Agenda and documents from the Board, November 4, 2013

Board Ex. 15. Meeting Summary, Agenda and documents from the Board, November 15, 2013

Board Ex. 16. Meeting Summary, Agenda and documents from the Board, November 19, 2013

Board Ex. 17. Meeting Summary, Agenda and documents from the Board, November 21, 2013

Board Ex. 18. 2013-2014 Attendance Area Adjustment Plans Written Testimony

Board Ex. 19. HCPS Policy 6010, School Attendance Areas

Board Ex. 20. Curriculum Vitae of Joel Gallihue

Board Ex. 21. Affidavit of Joel Gallihue, April 17, 2014

Testimony

Appellant Tanya Spann Roche testified and presented the following witnesses:

- Katherine Striegel, Mother of a child in the HCPS System
- Allen Dyer, Former board member, HCBE.

The Mohabir Appellants presented the testimony of Appellant Debbie Mohabir, as well as Co-Appellants Nigel Isaacs, Marci Isaacs, and Charmain Mohammed.

The Local Board presented the testimony of Joel Gallihue, Manager of School Planning, HCPS. Mr. Gallihue testified as an expert in school planning and redistricting.

FINDINGS OF FACT

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

1. The Mohabir Appellants all live in Howard County and have children in elementary and middle school in the HCPS System.
2. Appellant Spann Roche lives in polygon 221² and has children in elementary school.

² A polygon is a unit of measure to describe a specific geographic area.

3. Board Policy 6010 sets forth HCBE policy and procedures governing the formation and adjustment of school attendance areas, i.e., the geographic areas from which a school's students are drawn.
4. A new middle school, New MS #20, the Thomas Viaduct Middle School, was built in southern Howard County and is scheduled to open in August 2014.
5. In June 2013, Joel Gallihue, Manager of School Planning for HCBE, along with other HCBE staff, developed a feasibility study (the Feasibility Study).
6. The Feasibility Study included a redistricting proposal necessitated by the opening of New MS #20.
7. The Feasibility Study was presented to HCBE at a public meeting on June 13, 2013.
8. Community input regarding the Feasibility Study was also obtained through meetings of the Attendance Area Committee (AAC),
9. The AAC is comprised of community members appointed by the HCBE superintendent to advise and comment during the planning phase of matters regarding the HCBE capital budget and about redistricting recommendations being developed by staff.
10. The AAC met on July 9, 16, 23, 30, 2013, and on August 6, 2013, to review the Feasibility Study and to make comments and further recommendations on it.
11. Mr. Gallihue, along with HCBE staff, including the Deputy Superintendent, the Chief Facilities Officer, a representative from the Professional and Organizational Development Department, the principal of New MS #20, a planning Specialist, a planning analyst, a school planning intern, and an administrative intern for Professional and Organizational Development, participated in these AAC meetings.

12. In addition to the AAC meetings, regional meetings were held on September 11 and 12, 2013 to obtain further community input from members of the public who signed up to attend and participate in these meetings.
13. During these meetings, participants were assigned to small groups with a neutral HCBE facilitator in order to obtain community feedback regarding a redistricting plan.
14. Additional community input regarding a redistricting plan was obtained through an online survey, email and telephone calls.
15. A final meeting of the AAC was held on October 1, 2013 to consider the additional community input.
16. On October 22, 2013, the HCBE Superintendent's recommendation (Superintendent's Plan) regarding a redistricting plan was presented to the HCBE at a public meeting. This recommendation slightly altered the plan contained in the Feasibility Study.
17. The Feasibility Study proposed that students residing within polygons 7, 8, 221, 1007, 1008, 1221, 1227 and 2221 be redistricted from Hammond Middle School (Hammond) to Lime Kiln Middle School (Lime Kiln).
18. The Superintendent's Plan, as suggested by the AAC, was to redistrict only students from polygons 8, 1008 and 1227 (but not polygons 7, 221, 1007, 1221, and 2221) from Hammond to Lime Kiln.
19. Under the Superintendent's Plan, seventy-two students will be redistricted from Hammond to Lime Kiln, which is approximately one hundred students fewer than those who would be redistricted under the Feasibility Study.

20. In addition, redistricting fewer students from Hammond, under the Superintendent's Plan, will allow the HCBE to move over fifty more students from Mayfield Woods Middle School (Mayfield Woods) to New MS #20 than under the Feasibility Study. This move provides additional relief to Mayfield Woods, which is at 112% of its capacity.
21. Under the Superintendent's Plan, redistricting fewer students from Hammond to Lime Kiln also allows HCBE to move forty students from Mayfield Woods to Bonnie Branch Middle School (Bonnie Branch), thereby providing further relief to Mayfield Woods and eliminates the 4.4% small feed to Mayfield Woods from Phelps Luck Elementary School (Phelps Luck) that existed under the Feasibility Study.
22. Under the Superintendent's Plan, the feed to Hammond from Fulton Elementary School is 19.1%, from Atholton Elementary School to Hammond is 32.2%, and from Hammond Elementary School to Hammond is 48.7%.
23. The Superintendent's Plan eliminates the small feed into Mayfield Woods, reduces the number of small feeds into Bonnie Branch from three to two, creates no changes in feeds into Clarksville, Dunloggin, Harper's Choice and Oakland Mills Middle Schools, increases the feeds into Lake Elkhorn and Lime Kiln Middle Schools by .8 and .9% respectively and creates two small feeds into New MS #20. It is anticipated that the small feeds into New MS #20 will be eliminated once a new elementary school is built in 2019.
24. Under the Superintendent's Plan, the standard deviation in middle school test scores in Howard County decreases from 5.46% to 5.05% on the pass rate for the Reading

portion of the Maryland School Assessment (MSA) and decreases from 5.86% to 5.56% on the pass rate for the Math portion of the MSA.

25. Under the Superintendent's Plan, the standard deviation of the percentage of students receiving free or reduced price meals (FARMS) decreases from 14.36% to 14.04% in Howard County.
26. Under the proposed BOE5e redistricting plan (BOE5e), the percentage of FARM students in Hammond would be 20%, in Lime Kiln, 4%, in Murray Hill, 32%, in Patuxent Valley Middle School (Patuxent Valley) 30%, and in New MS #20, 32%.
27. In the area where the Mohabir Appellants live, the Superintendent's Plan will move 247 students from Murray Hill to Patuxent Valley, while BOE5e would move 205 students. Under BOE5e, none of the children of the Mohabir Appellants would have been redistricted.
28. Before any redistricting, Murray Hill is at 131% capacity and is the most crowded middle school in the Howard County Public School System.
29. BOE5e would create a small feed of 4.8% to Murray Hill from Forest Ridge Elementary School. The Superintendent's Plan creates no small feeds into Murray Hill.
30. Students in the Emerson Community in Howard County will be redistricted under the Superintendent's Plan from Murray Hill to Patuxent Valley. Currently, they live approximately one mile from Murray Hill. Under the Superintendent's Plan, they will be approximately three to four miles away from Patuxent Valley.
31. Under the Superintendent's Plan, New MS #20 will open at 77.5% capacity. It is anticipated that New MS #20 will be at 90.9% capacity by August 2017.

32. The HCBE held public hearings and work sessions to consider various redistricting scenarios based on the Feasibility Study, the recommendations of the AAC, the Superintendent's Plan, BOE5e, and Alternative Plan #2 as well as community input and the views of individual HCBE members.
33. These public hearings and work sessions were held on October 29 and 30, 2013 and on November 4, 15, 19, and 21, 2013.
34. At the November 19 and 21, 2013 public work sessions, the HCBE voted to approve the Superintendent's Plan.

DISCUSSION

The Appellants have the burden to prove, by a preponderance of the evidence, that the decision of the 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 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.

In *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967), the Court held that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school. *Bernstein*, 245 Md. at 472. The courts of Maryland will not ordinarily substitute their judgment for the expertise of school boards, acting within the limits of the discretion entrusted to them. *Id.* at 476. Appellants have the burden of showing that a board's action was "illegal or an abuse of discretion." *Id.*

The State Board has applied these principles consistently. For example, in 1974, the State Board adopted this premise: "It is not enough for [appellants] to show that their Plan is better, they must show that the Board's Plan is so totally lacking in merit as to have been adopted without any rational basis." *Concerned Parents of Overlea, et al. v. Bd. of Educ. of Baltimore Cnty.*, Opinions of the MSBE, June 1964 through January 1978 (1979), No. 74-13, December 18, 1974, at 339. In 1992, the State Board upheld a redistricting decision where the evidence showed:

- a systematic approach to developing, evaluating and rejecting various plans;
- the establishment of a committee and the number of times it met;
- the committee fairly debated the alternatives, and fully and adequately documented their deliberations and the process; and
- the committee meetings were advertised and open to the public, community input was "welcomed and invited," and the public had an opportunity to speak.

Green Valley Community Committee on Redistricting v. Frederick Cnty. Bd. of Educ., 6 Opinions of the MSBE 313 (February 26, 1992).

For the reasons that follow, I find for the HCBE.

Appellant Spann-Roche

The Appellant contended that the approved Superintendent's Plan arbitrarily and capriciously altered the initial redistricting plan that was proposed in the Feasibility Study, especially as it pertains to the geographic area south of Maryland Route 216 in Howard County. She contended that the plan contained in the Feasibility Study was preferred by the parents living in this area because it aligned with an earlier elementary school redistricting in 2012. She asserted, however, that the approved Superintendent's Plan was based mainly on feedback from parents who did not want their children redistricted twice in two years. She argued that the end result was redistricting only three of eight polygons in her area and that as a result, students would still be moved twice in three years and smaller feeds for the non-redistricted polygons would be created.

Appellant Spann Roche further contended that the redistricting plan, known as BOE5e was also a workable compromise after a great deal of parental feedback was obtained between October 22, 2013 and November 19, 2013. She contended, however, that at the November 19, 2013 meeting, the HCBE took a short recess then came back and discarded all of the community feedback and the hard work of its members and voted to simply accept the Superintendent's Plan. The Appellant alleged that the Board members were confused, irrational, disoriented and tired and decided to ignore all of the community feedback and, thus, decided "not to decide" on a viable redistricting plan.

The Appellant testified that the Board did not explain why it chose the Superintendent's Plan and theorized that it just took the easy way out and did not consider any of the community feedback provided. The Appellant showed a video of the Board meeting of November 19, 2013 and suggested that various Board members looked confused and could not keep the various proposed

redistricting plans straight. She suggested that several board members did not know what plan they were voting on when they came back and approved the Superintendent's Plan.

The Appellant presented the testimony of Katherine Striegel, who has elementary school children who will eventually be affected by the redistricting plan. Ms. Striegel stated that her son will have to leave his friends and that her daughter is experiencing anxiety and depression issues over the redistricting. Ms. Striegel stated that she did not attend any of the meetings or provide any feedback to the Board but felt that the Board failed to consider community feedback.

The Appellant also presented the testimony of Allen Dyer, a former HCBE Member, who testified that it is important to maintain a viable feeder system when redistricting, but acknowledged that School Board Policy 6010 requires consideration of many factors. He asserted that the Board policies require staggering elementary, middle and high school redistricting decisions.

Mohabir Appellants

The Mohabir Appellants argued in their appeal that:

- The Superintendent's Plan does not address all of the small feeds that exist throughout the HCPS System and focuses only on selected areas (Murray Hill and Patuxent Valley).
- The Superintendent's Plan provides "no educational relief" and "reshuffles students to lower performing schools from higher performing schools..."
- The Superintendent's Plan does not address existing underutilized schools, facilities and programs.
- Plan BOE5e is "more equitable, distributive and allows students to take advantage of high performing schools in their immediate communities."
- The Superintendent's Plan concentrates "the FARM numbers in certain schools even if it meant displacing students from their community schools."

- New MS #20 will be underutilized because it will open at only at 70% capacity.
- Students will be moved farther away from their neighborhood schools.
- Parents and students at Wilde Lake received preferential treatment over those at Patuxent.

In their appeal, the Mohabir Appellants asserted that HCBE is shuffling students from lower performing schools to higher performing schools and is using the eleven criteria contained in School Board Policy 6010, which they feel to be outdated and contain unworkable criteria, to justify redistricting. They contended that small feeds are only being eliminated in select areas such as Murray Hill and Patuxent, while small feeds continue to exist or increase at other schools, such as Bonnie Branch, Clarksville, Donloggin and others. In addition, they further asserted that redistricting, particularly the Superintendent's Plan, does not eliminate overcrowding and used, as an example, overcrowding issues at Forest Ridge Elementary School. They also contended that a building moratorium was imposed on new homes in the western part of the county, but not the southern part of the county where these Appellants live. They asserted that this moratorium has led to overcrowding in the south part of the county and that other area schools, such as those named in BOE5e, should have been used to relieve the overcrowding in the southern part of the county. The Appellants contended that BOE5e was more equitable, as it distributed the FARM numbers more evenly, allowed students to attend higher performing schools, and would cause underutilized schools and programs to be used more. These Appellants, however, contended that HCBE ignored alternative BOE5e along with community feedback. Finally, the Mohabir Appellants contended that with the adoption of the Superintendent's Plan, children in their area are being forced to travel longer distances, up to 30 minutes and 20 miles away.

At the hearing, Nigel Isaacs spoke for the Mohabir Appellants and testified that residents of the Emerson community in polygons 272 and 1272 want to stay at Murray Hill and do not want

their children to go to Patuxent Valley. He stated that the HCBE used incorrect information in justifying the adoption of the Superintendent's Plan and believes that Patuxent Valley is inferior to Murray Hill in terms of physical condition and academics. He stated that Patuxent Valley was built in 1989 and is in need of repairs whereas Murray Hill is in much better condition. He further believes that Patuxent Valley is inferior to Murray Hill in terms of academics based on MSA math and reading tests. He further indicated that the Superintendent's Plan does not account for approximately one hundred houses because Mr. Gallihue stated at one point that these houses were not yet built when, in fact, they were. He suggested that if this information was inaccurate, that there are probably other inaccuracies as well. Mr. Isaacs further stated that Murray Hill is several miles closer to their community than Patuxent Valley and that children would be able to walk to school rather than ride a bus.

Charmain Mohammad also testified for the Mohabir Appellants. She stated that the HCBE used inaccurate information regarding the number of houses in polygon 272. She stated that she believes that other information used by the Board is inaccurate as well.

Debbie Mohabir testified that the HCBE acted in an arbitrary manner. She focused on the extra distance that children in her community would have to travel to Patuxent Valley as opposed to Murray Hill. She stated that currently, her children travel approximately twenty minutes with seven stops to Murray Hill but that there would be an extra fifteen minutes and three miles to Patuxent Valley. She feels that this is unacceptable and will force families in her community to change their current work schedules because of the extra travel distance and the fact that Patuxent Valley starts almost an hour earlier than Murray Hill. In addition, she contended that there will be an interruption in academics and stated, as an example, that children in 6th grade who need to take Spanish III will not be able to do so at Patuxent Valley because Spanish III is not offered there until 7th grade.

Finally, Marci Isaacs testified that she moved to her community believing that her children would go to school there. With the redistricting, however, her children will be bussed from her community to another school. She contended that community feedback was not considered by HCBE in adopting the Superintendent's Plan.

HCBE presented the testimony of Joel Gallihue, Manager of the School Planning Department within HCPS. He testified as an expert in school planning and redistricting and stated that in making decisions regarding districting, he projects how many students will go from one level, such as elementary school, to another, such as middle school. He stated that he considers State birth records and county development plans to project how many houses will be built in a given area, which in turn allows him to project how many students from a given area will be attending specific schools. He stated that redistricting is necessary under certain conditions, including when a new school is built, and when school capacity utilization projections fall outside of the minimum or maximum target range of 90-110 percent. When redistricting is considered, Policy 6010 becomes relevant and identifies eleven factors to be considered:

1. The Educational welfare of the students impacted.
2. The frequency with which students are impacted
3. The number of students bussed and the distance travelled.
4. Costs.
5. Demographic makeup and academic performance of the schools involved.
6. Number of students redistricted.
7. Maintenance of feeder patterns.
8. Changes in a school's program capacity.
9. Impact on specialized or regional programs.

10. Functional and operational capacity of school infrastructures.

11. Building utilization (90-110 percent where possible).

Mr. Gallihue stated that with the opening of MS #20 in the Oxford Square development located in the eastern part of Howard County, redistricting was necessary to balance capacity utilization county-wide and provide relief to nearby overcrowded schools. He stated that public input began in the spring of 2013 with forums at area high schools as well as input from the AAC, and ultimately, a feasibility study was conducted resulting in a redistricting plan. Later, discussions of alternative plans for redistricting were created in public meetings. Materials considered at these meetings were made available to the public on the HCPS website. A web survey was also made available to the public and ultimately an alternative plan was developed by the AAC. Two regional meetings were then held to allow additional public input regarding the plans and alternative plans that were developed for consideration based on the additional input. Ultimately, after considering the proposed plans developed to this point, input from the regional meetings, the web survey and AAC discussions, the Superintendent's Plan was developed. Mr. Gallihue stated that the Superintendent's Plan considered the Policy 6010 factors including the number of students moved, neighborhood unity, keeping feeds at fifteen percent or better, concentration of students receiving FARM, academic performance and transportation. Mr. Gallihue also stated that while some schools may be immediately underutilized as a result of the redistricting, the capacity utilization in these schools, such as Lake Elkhorn, Mayfield Woods and Patuxent Valley, are expected to increase gradually over the next several years because of proposed new development in these areas. Mr. Gallihue also noted that the Superintendent's Plan deviated from other alternatives, including BOE5e, by moving only polygons 1227, 8, and 1008 but not 221, 1221, 2221, 1007 and 7 to Lime Kiln. He stated that only three and not all eight of these polygons were moved to create a higher

high school feed, to better utilize facilities in the western part of the county, and to minimize the disruption that moving all eight would have caused.

Appellant Spann Roche contended that the HCBE arbitrarily altered alternative plan BOE5e, which she felt to be a workable compromise after a great deal of parental feedback was obtained. She contended, however, that HCBE discarded all of the community feedback and voted to simply accept the Superintendent's Plan on November 19, 2013 at the Board meeting. She asserted that the Board members were confused, irrational, disoriented and tired, and decided to ignore all of the community feedback. Appellant Spann Roche failed to support her contentions, however, with any evidence other than her testimony and the testimony of her witnesses who provided only anecdotal evidence and emotional conjecture. The Appellant presented no expert testimony or any documentation to show that the redistricting of specific middle school students in Howard County was contrary to sound educational policy.

The Mohabir Appellants also made general emotional statements that by approving the Superintendent's Plan, HCBE is causing more travel, disrupting schedules, moving students from lower performing schools to higher performing schools, is eliminating small feeds only in select areas while small feeds continue to exist or increase at other schools, and is not eliminating overcrowding. They further contended that BOE5e is a better plan, distributes the FARM numbers more evenly, allows students to attend higher performing schools, and will cause underutilized schools and programs to be used more. These Appellants, however, contended that HCBE ignored alternative BOE5e along with community feedback.

These Appellants also did not support their contentions with any evidence other than their own self-serving testimony consisting of anecdotal evidence and conjecture. These Appellants also

presented no expert testimony or any documentation to show that the redistricting of specific middle school students in Howard County was contrary to sound educational policy.

The HCBE presented a wealth of evidence to refute the Appellants' contentions. Mr. Gallihue's expert testimony, as well as the documents submitted by HCBE, established that HCBE followed appropriate procedures and involved the community in its deliberations and formation of the various alternate redistricting plans under consideration. The evidence established that the AAC met on July 9, 16, 23, 30, 2013, and on August 6, 2013, to review the Feasibility Study and to make comments and further recommendations on it. The evidence also showed that Mr. Gallihue, along with HCBE staff including the Deputy Superintendent, the Chief Facilities Officer, a representative from the Professional and Organizational Development Department, the principal of New MS #20, a planning specialist, a planning analyst, a school planning intern, and an administrative intern from Professional and Organizational Development participated in these AAC meetings. In addition to the AAC meetings, regional meetings were held on September 11 and 12, 2013 to obtain further community input from members of the public who signed up to attend and participate in these meetings. During these meetings, participants were assigned to small groups with a neutral HCBE facilitator in order to obtain community feedback regarding the formation of redistricting plans. Furthermore, , additional community input regarding the formation of a workable redistricting plan was obtained through an online survey, email and telephone calls.

The Appellants did not necessarily assert that they were denied the opportunity to participate in this process, but they asserted that any community input was totally disregarded by HCBE and that the Board members "seemed" confused and did not look like they knew what they were voting on at the November 19, 2013 meeting when the Superintendent's Plan was

chosen. The Appellants, however, provided no evidence of confusion but just conjecture that the Board members “seemed” to them to be “confused, irrational, disoriented and tired” and did not want the meeting to go any longer before finalizing a redistricting plan. Ms. Spann Roche submitted a DVD copy of the November 19, 2013 meeting to show that the Board members seemed confused and suggested that their comments reflected their confusion. I am not persuaded that the DVD is definitive proof that the Board members were confused, tired or otherwise forced into making an arbitrary decision on a redistricting plan. While the Appellants feel strongly that the Superintendent’s Plan is not the best plan and that the Board members were somehow predisposed to hastily voting on a plan just to end the meeting, this is simply conjecture on the part of the Appellants and not supported by any of the evidence. In light of these considerations, I cannot find that the HCBE’s November 19, 2013 decision was arbitrary or resulted from an unlawful procedure. COMAR 13A.01.05.05A, B, and C(4).

For purposes of COMAR 13A.01.05.05, arbitrary or unreasonable also means: “a reasoning mind could not have reasonably reached the conclusion the board or local superintendent reached.” Mr. Gallihue testified and stated that redistricting is necessary under certain conditions, including when a new school is built and when school capacity utilization projections fall outside of the minimum or maximum target range of 90-110 percent. In this case, both of these conditions existed. He further stated that when redistricting is considered, Policy 6010 identifies the eleven factors to be considered by the Board and that each of these factors was considered in deciding to adopt the Superintendent’s Plan.

Most of the Appellants’ contentions outlined above suggested that the Superintendent’s Plan does not address all of the small feeds that exist throughout Howard County, it reshuffles students to lower performing schools from higher performing schools, does not address existing

underutilized schools, facilities and programs, it concentrates the FARM numbers in certain schools, that New MS #20 will open only at 70% capacity, that students will be moved farther away from their neighborhood schools, that some parents received preferential treatment and that Plan BOE5e is “more equitable, distributive and allows students to take advantage of high performing schools in their immediate communities. In support of these contentions, however, the Appellants did not offer any support for their positions other than their own testimony, which was based solely on their opinions and feelings. The Board, on the other hand, offered a significant amount of evidence to support its position that the Superintendent’s Plan was based on sound educational policy.

Mr. Gallihue testified and presented documents that established that the Board considered several variations of a redistricting plan and ultimately settled on the Superintendent’s Plan. The Superintendent’s Plan, as suggested by the AAC, was to redistrict only students from polygons 8, 1008 and 1227, but not polygons 7, 221, 1007, 1221, and 2221, from Hammond to Lime Kiln. Under this Plan, seventy-two students will be redistricted from Hammond to Lime Kiln, which is approximately one hundred students fewer than those who would be redistricted under the Feasibility Study. In addition, redistricting fewer students from Hammond, under the Superintendent’s Plan, will allow the HCBE to move over fifty more students from Mayfield Woods to New MS #20 than under the Feasibility Study. Mr. Gallihue stated that this move will provide additional relief to Mayfield Woods, which is at 112% of its capacity. Under the Superintendent’s Plan, redistricting fewer students from Hammond to Lime Kiln also allows HCBE to move forty students from Mayfield Woods to Bonnie Branch, thereby providing further relief to Mayfield Woods and eliminates the 4.4% small feed to Mayfield Woods from Phelps Luck Elementary School that existed under the Feasibility Study. In addition, under the Superintendent’s Plan, the feed to Hammond from Fulton Elementary School is 19.1%, from

Atholton Elementary School to Hammond is 32.2%, and from Hammond Elementary School to Hammond Middle School is 48.7%. While the Appellants contend that 19.1% constitutes a small feed, it is still greater than the 15% mandated as a small feed by Board Policy 6010. In addition, Mr. Gallihue noted that the Superintendent's Plan eliminates the small feed into Mayfield Woods, reduces the number of small feeds into Bonnie Branch from three to two, creates no changes in feeds into Clarksville, Dunloggin, Harper's Choice and Oakland Mills, increases the feeds into Lake Elkhorn and Lime Kiln by .8 and .9% respectively and creates two small feeds into New MS #20. While these two small feeds (under 15%) will occur initially, it is anticipated that the small feeds into New MS #20 will be eliminated once a new elementary school is built in 2019.

With these considerations, the Board clearly considered the small feeds currently existing in the county and addressed the need to use underutilized schools while relieving some overcrowding issues in others.

The Appellants also contended that the Superintendent's Plan merely reshuffles students to lower performing schools from higher performing schools instead of addressing the issue of low performance, inferior programs, and insufficient support for teachers and instruction at schools that underperform. HCBE established that while academic performance of students in the sending and receiving schools is a consideration under Policy 6010, any redistricting is not intended to resolve educational performance disparities in the county middle schools. In any event, under the Superintendent's Plan, the standard deviation in middle school test scores in Howard County decreases from 5.46% to 5.05% on the pass rate for the Reading portion of the MSA and decreases from 5.86% to 5.56% on the pass rate for the Math portion of the MSA. This evidence

suggests that the Superintendent's Plan actually reduces educational performance disparities in the county middle schools slightly.

The Appellants further argued that the Superintendent's Plan concentrates "the FARM numbers in certain schools even if it means displacing students from their community schools." Under the Superintendent's Plan, however, the standard deviation of the percentage of students receiving FARMS decreases from 14.36% to 14.04% in Howard County. This suggests that the Superintendent's Plan reduces the concentration of FARMS students county-wide. Specifically, there was negligible change in FARMS percentage in fourteen middle schools, four middle schools moved closer to the average percentage and at Patuxent Valley, the FARMS percentage will drop from 32% to 28% and the percentage at Murray Hill will remain at 34. Under BOE5e, favored by many of the Appellants, the percentage of FARMS students in Hammond would be 20%, in Lime Kiln, 4%, Murray Hill, 32%, Patuxent Valley 30%, and in New MS #20, 32%.

The Mohabir Appellants also contended that New MS #20 will open only at 70% capacity but HCBE established that this contention is not accurate. Under the Superintendent's Plan, New MS #20 will open at 77.5% capacity. In addition, HCBE further established that it is anticipated that New MS #20 will be at 90.9% capacity by August 2017 due to proposed development in the area.

The Mohabir Appellants argued that students will be moved farther away from their neighborhood schools under the Superintendent's Plan. In the area where the Mohabir Appellants live, the Superintendent's Plan will move 247 students from Murray Hill to Patuxent Valley, while BOE5e would move 205 students. It is interesting to note that under BOE5e, none of the Mohabir Appellants would have been redistricted, suggesting that these Appellants have a strong interest aside from sound educational policies for favoring BOE5e. In addition, the evidence

further established that the students in the Emerson Community in Howard County will be redistricted under the Superintendent's Plan from Murray Hill to Patuxent Valley. Murray Hill is currently at 131% capacity and is the most crowded middle school in the Howard County Public School System. Currently, the students in the Emerson Community live approximately one mile from Murray Hill. Under the Superintendent's Plan, they will be approximately three to four miles away from Patuxent Valley. I am not persuaded, as the Appellants suggest, that this is a significant distance and reflects poor planning on the part of HCBE. Even assuming for purposes of this discussion that the redistricting plan adopted by the Board has the effect of separating some students who live in the Appellants' communities from classmates or friends who live in or near the same communities, separations, sometimes even of siblings in the same household, are inherent in school board redistricting decisions. The fact that the Board's decision causes some separations does not render it unreasonable.

Finally, the Mohabir Appellants argued that parents and students at Wilde Lake received preferential treatment over those at Patuxent. The Appellants, however, offered no support for this assertion and there is no other support in any of the other evidence presented by either side to support this contention.

While the Appellants may not like the outcome, the evidence presented demonstrates that the Superintendent's and, ultimately, the Board's choice had a rational basis. The Appellants have not shown, by a preponderance of the evidence, that a reasoning mind could not have reached the conclusion the Board reached. They have not shown that the Board's November 21, 2013 decision was contrary to sound educational policy, or was arbitrary or unreasonable. COMAR 13A.01.05.05B(1) and (2). The Appellants have also failed to show that the HCBE redistricting plan adopted by the Board on November 21, 2013 was so totally lacking in merit as to have been

adopted without any rational basis, or was not the product of a systematic approach to developing, evaluating and choosing among alternatives. The exhibits introduced by the HCBE, as well as the testimony of Mr. Gallihue, who was present at the meetings and an active participant throughout the process, clearly demonstrated that HCBE followed its own policies and procedures; the process met all the legal criteria; and the plan recommended to the Superintendent and adopted by the Board had a rational basis and reflected sound educational planning.


CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude that the redistricting plan of the Howard County Board of Education, adopted on November 21, 2013, is not unreasonable, arbitrary, or illegal. Md. Code Ann., Educ. § 4-109(c) (2008); *Bernstein v. Bd. of Educ. of Prince George's Cnty.*, 245 Md. 464 (1967); COMAR 13A.01.05.05.

PROPOSED ORDER

I **RECOMMEND** that the November 21, 2013 redistricting plan of the Board of Education of Howard County be **AFFIRMED**.

July 1, 2014
Date Decision Mailed


Michael J. Wallace
Michael J. Wallace
Administrative Law Judge

MJW/da
#149395

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, 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.

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