

CITIZENS AGAINST RANDOM  
REDISTRICTING AND JOHN  
GARNER, ET AL.,

Appellants

v.

SAINT MARY'S COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE  
MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-9

OPINION

This case arises from a decision of the Saint Mary's County Board of Education to redistrict students attending certain middle schools and a high school. A hearing was held at the State Office of Administrative Hearings on September 17 and 18, 1998 before an administrative law judge. No exceptions were filed to the administrative law judge's proposed decision and oral argument before the State Board was waived by the parties.

Having reviewed the record in this matter, we adopt the findings of fact and conclusions of law of the administrative law judge as set forth in the proposed decision that is attached as Exhibit 1, with the following notation.

In reviewing the record we learned that the local board does not have a general policy and procedures that apply to school redistrictings. We believe that such a policy would alleviate some of the confusion that occurred in the course of the school boundary changes that are the subject of this appeal. We therefore request that the local board develop a general policy and a set of procedures that will apply to future school redistrictings that occur in the Saint Mary's County Public School System.

For the reasons stated by the administrative law judge, we affirm the decision of the Board of Education of Saint Mary's County.

Walter Sondheim, Jr.  
President

Edward Andrews  
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

George W. Fisher, Sr.

Morris Jones

Marilyn D. Maultsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

February 23, 1999

**EXHIBIT 1**

CITIZENS AGAINST RANDOM	*	BEFORE LINDA GOLDEN,
REDISTRICTING AND	*	AN ADMINISTRATIVE LAW
JUDGE		
JOHN GARNER, et al.,	*	OF THE MARYLAND OFFICE
APPELLANT	*	OF ADMINISTRATIVE HEARINGS
V.	*	
	*	
BOARD OF EDUCATION OF	*	
ST. MARY'S COUNTY	*	CASE NO. 98-MSDE-BE-04-200
* * * * *		

**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 of the St. Mary's Board of Education ("local Board") to redistrict children attending one middle school and one high school in the County. As a result of the Board's decision, twenty-two (22) students were transferred from Esperanza Middle School to Spring Ridge Middle School and forty-nine (49) students were transferred from Leonardtown High School to Great Mills High School. As a result of subsequent Board action, the number of

transferred high school students decreased to thirty-six (36).

The Appellant, Citizens Against Random Redistricting ("CARR"), filed an appeal on or about April 27, 1998, to the State Board of Education ("State Board") from the local Board's decision to redistrict.

Pursuant to the Code of Maryland Regulations ("COMAR") 13A.01.01.03M, on September 17 and 18, 1998, Linda Golden, an Administrative Law Judge ("ALJ"), conducted a hearing at the Carter State Office Building in Leonardtown, Maryland. The local Board was represented by Karen H. Abrams, Esquire. Daniel R. Armitage, Esquire, represented the Appellants.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1995 & Supp. 1997) and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.

### **ISSUE**

The issue on appeal is whether the decision of the Board of Education of St. Mary's County to redistrict children attending middle school and high school was arbitrary, unreasonable or illegal.

### **SUMMARY OF THE EVIDENCE**

#### **A. Exhibits**

The following exhibits were offered by the Appellants and admitted into evidence:

App. Ex. #1 - A list of students by ID number at Great Mills High School, Esperanza Middle School, and Spring Ridge middle School

App. Ex. #2 - Copies of a July 16, 1998, letter to several parents rescinding

transfer approval and several Student Transfer Requests that were denied; several Student Transfer Requests that were approved for one year only; copies of letters with various dates to several parents responding to their appeals from the denial of transfers; and copies of several letters from parents requesting transfers and appealing the denial of transfer

- App. Ex. #3- A letter dated April 10, 1998, from the St. George's Hundred Optimist Club to the Board of Education
- App. Ex. #4 - A packet of documents regarding an out of district transfer for a particular student
- App. Ex. #5 - A list of building permits issued for residential construction from July 1, 1998, through April 30, 1998
- App. Ex. #6 - A Board policy dated March 17, 1987, and entitled Advisory Committees to the Board
- App. Ex. #9<sup>1</sup>- A copy of a Board of Education Update/State Capacity Audit construction at the Leonardtown complex

The local Board introduced the following exhibits which were admitted into evidence:

- Bd. Ex. #1 - A copy of minutes from the Board of Education Meeting on May 28, 1997
- Bd. Ex. #2 - A copy of minutes from the Board of Education Meeting on August 13,

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<sup>1</sup>What had been marked as Appellant's Ex. #7 were two copies of administrative decisions regarding redistricting. These were not offered as evidence but were offered as legal authority. What had been marked as Appellant's Ex. #8 for identification purposes was not moved into evidence. What had been marked as Appellant's Ex. #10 was not moved into evidence but the information was part of the testimony of John Garner.

1997

- Bd. Ex. #3 - Copies of two (2) newspaper articles
- Bd. Ex. #4 - Two packets of documents. The first packet is entitled Growth Management Committee/ Outreach Participants for Board of Education approval. The second packet is entitled Growth Management Committee/Community Outreach Participants/Not Submitted for Board of Education approval
- Bd. Ex. #5 - Information and notes pertaining to the Growth Management Committee
- Bd. Ex. #6 - Agenda Item Summary for October 15, 1997
- Bd. Ex. #7 - A copy of the minutes from the Board of Education Meeting of October 15, 1997
- Bd. Ex. #8 - Growth Management Advisory Committee Policy
- Bd. Ex. #9 - A copy of the minutes from the Growth Management Committee meeting of October 23, 1997
- Bd. Ex. #10- A copy of the minutes from the Growth Management Committee meeting of November 6, 1997
- Bd. Ex. #11- A copy of the minutes from the Growth Management Committee meeting of December 4, 1997
- Bd. Ex. #12- News releases and meeting notices
- Bd. Ex. #13- Copies of minutes from the Growth Management Committee meetings for December 16, 1997, through April 16, 1998, and a meeting list
- Bd. Ex. #14- Board of Education Growth Management Advisory Committee/Short and

Long Range Student Accommodation options

Bd. Ex. #15 - Public School Construction Program/ Administrative Procedure Guides

Bd. Ex. #16 - Enrollment Projection for 1998 -2007

Bd. Ex. #17 - Department of Facilities, Maintenance & Operations/Summary Including  
the Proposed FY '99 Capital Improvements Program

Bd. Ex. #18 - Facilities Inventory Matrix - October 1997

Bd. Ex. #19 - Middle School Redistricting

Bd. Ex. #20 - Middle School Approved Redistricting and High School Approved  
Redistricting

Bd. Ex. #21 - A copy of the minutes from the Board of Education Meeting of October  
29, 1997

Bd. Ex. #22 - A copy of a News Release

Bd. Ex. #23 - Two sets of Notes from public hearings on February 26, 1998, and March  
3, 1998

Bd. Ex. #24 - A copy of the minutes from the Board of Education Meeting of March 11,  
1998

Bd. Ex. #25 - A copy of the minutes from the Board of Education Meeting of March 25,  
1998

Bd. Ex. #26 - Four maps showing the pre-redistricting middle school and high school  
districts and the current middle school and high school districts

Bd. Ex. #27 - A News Release

Bd. Ex. #28 - Actual enrollment and projected enrollment figures from 1989 through

1993

Bd. Ex. #29 - A list of the organizations represented at an enrollment projection assessment meeting on January 13, 1997

Bd. Ex. #30 - A copy of an attendance register for the enrollment projection assessment meeting on January 13, 1997

Bd. Ex. #31 - An enrollment projection Based on BRAC/91 & 93

Bd. Ex. #32 - Site plan for construction at the Leonardtown complex

The parties also offered the following joint exhibits which were admitted into evidence:

Joint Ex. #1 - Middle School Proposal 1

Joint Ex. #2 - Middle School Alternate Proposal

Joint Ex. #3 - Middle School Approved Redistricting

Joint Ex. #4 - High School Proposal 1

Joint Ex. #5 - High School Proposal 2

Joint Ex. #6 - High School Proposal 3

B. Testimony

The following witnesses presented testimony on behalf of the Appellant: John Helldorfer, John Garner, Patrick Shields, Pam Latvala, John Brown, Agnes Birch, Lila Hofmeister, and Kimberly Brown. The Appellant presented rebuttal testimony from Patrick Shields and John Helldorfer.

The Board presented the following witnesses: Dr. Lorraine Fulton, the Assistant Superintendent of Schools for St. Mary's County; Michael Whitson, the co-chairman of the Growth Management Advisory Committee; Michael Kane, the chair of the middle school



subcommittee; Brad Clements, Director of Facilities for the local Board; and Michael Hewitt, the Chairman of the local Board. The Board also presented rebuttal testimony from Dr. Lorraine Fulton, Brad Clements, Michael Whitson, Michael Hewitt and Cathy Allen, a member of the Growth Management Committee.

### **FINDINGS OF FACT**

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

1. For many years the local Board had a redistricting committee.
2. At its May 28, 1997 meeting, the local Board created the Growth Management Advisory Committee ("Committee"). The purpose of the Committee was to plan on a short term and long term basis for the placement of students, to develop and review protocols regarding capital improvements, and to examine the use of temporary housing for students because of growth or construction.

The Board also determined that Michael Hewitt, the Chairman of the local Board, would participate on the Committee and would serve as the Board's liaison with the Committee.

3. Dr. Lorraine Fulton, Assistant Superintendent of Schools, co-chaired the Committee.
4. The local Board selected Michael Whitson, a business leader in the community who had served on the Board's Budget Advisory Committee, to co-chair the Growth Management Advisory Committee.
5. The local Board wanted the community members of the Committee to represent the diverse nature of the County. The local Board sought members from all geographical areas,

genders, and ethnic groups. The local Board wanted representatives from long time County residents and newcomers and from parents of children in various grade levels and schools. The local Board also sought a balance between participants with previous redistricting experience and participants with little or no experience.

6. The local Board actively recruited members for the Committee through the news media. A newspaper release in the *Enterprise* on August 15, 1997, announced that a growth management committee was being appointed and that the committee would "study the districts for all of the schools" and make recommendations for changes. The article also stated that "[s]chool officials are still looking for parents and community volunteers for the committee." A telephone number was included in the article for people who were interested.

7. Volunteers interested in being on the committee were asked to submit resumes and were asked to make a commitment of time.

8. After the first set of resumes were received, there were gaps in representation from the northern and southern ends of the County. Other methods in addition to the media were used to recruit members from areas under-represented. Potential committee members were called and local Board members and school administrators made personal contacts.

9. At the October 15, 1997 Board meeting, a list of recommended community members was presented to the Board and approved. At a subsequent Board meeting a teacher representing the Teachers Association was added to the committee as a community member.

10. John Weiner, whose wife is a public school teacher in St. Mary's County, was on the recommended list and was approved.

11. Some members of the community wanted to be on the Committee and submitted

resumes but were not recommended to the Board for appointment. The reason that some people were not recommended was their qualifications were already represented by a member. An effort was made to avoid duplicative representation and to insure a broad and equitable distribution across the system.

12. There were no representatives on the Committee from Piney Point, Tall Timbers, St. George's Island or Draydon which were areas of the County that were dramatically affected by the ultimate redistricting plan.

13. No one from Piney Point, Tall Timbers, St. George's Island, or Draydon submitted a resume.

14. John Helldorfer, who had been a member of the previous redistricting committee chaired by Sal Raspa and who lives on St. George's Island, wanted to serve on the redistricting committee. Mr. Helldorfer left the previous redistricting committee before it finished its work but after a decision was made not to redistrict the middle schools. When he left he wrote a letter to the chairman, Sal Raspa, expressing a desire to be on the next redistricting committee.

Mr. Helldorfer did not read any of the newspaper releases regarding the formation of the Committee. He was not contacted by anyone requesting he serve. He did not know about the new Committee until the summer when he talked to someone on the Committee.

Mr. Helldorfer then wrote another letter to Sal Raspa indicating his interest in being a member of the Committee.

15. The Committee had twenty-eight (28) members. The Committee was comprised of 60% community members and 40% staff. In addition, representatives from Planning & Zoning, Public Works, Economic & Community Development, and the Health Department

served as consultants to the Committee.

16. Community members came from a variety of vocational backgrounds. There was a nurse, a barber, a newspaper reporter, a lawyer, two engineers, program managers for the Navy, a teacher, business owners, and a person with an MEA in marketing.

17. Mr. Hewitt, Mr. Whitson, Mr. Weiner, and the Teachers, Association representative were community members.

18. Committee meetings were open to the public and the public was invited to attend. There were news releases giving the dates and locations of Committee meetings. There were news releases and notices from October of 1997 through March of 1998.

18. There was a period of time after each Committee work session for public comment and the minutes from the Committee meetings were put on the Internet.

20. The local Board did not formally adopt a policy regarding the Growth Management Advisory Committee until February 10, 1998. The policy as adopted varied little from what was already being done with and in the Committee.

21. The Committee met thirteen times and held two public hearings before making recommendations to the local Board.

22. The Committee formed three subcommittees. The elementary subcommittee was chaired by Cathy Allen. The subcommittee and the Committee recommended to the local Board that no redistricting take place involving the elementary schools. The local Board accepted that recommendation and no redistricting took place on the elementary level.

23. The middle school subcommittee was chaired by Michael Kane and studied the middle school districts. There are four middle schools in St. Mary's County which, from north to

south, are Margaret Brent Middle School, Leonardtown Middle School, Esperanza Middle School, and Spring Ridge Middle School.

24. Margaret Brent Middle School was approximately twelve (12) students over capacity and is located in a growth area of the County. Capital improvements are planned to be completed at Margaret Brent by 2003. The capital improvements will increase capacity by 165 to 170 students. The Board made no changes at Margaret Brent.

25. Leonardtown Middle School had a 125 student capacity but would reach capacity by 2004. The Margaret Brent school boundary and the Leonardtown Middle School boundary are contiguous, so if Margaret Brent exceeds capacity the next closest middle school is Leonardtown Middle School. The Board made no changes At Leonardtown Middle School.

26. Esperanza Middle School was 175-177 students over capacity. Relocatables were being used to accommodate the overcrowding. Construction was planned for the 1999 school year. At the end of construction the school would be at capacity and in a few years would be over capacity. Portions of Esperanza could not be used during the construction period because of the nature of the renovations. The sixth grade at Esperanza was to be moved to a former elementary school during construction.

27. Spring Ridge Middle School had an under capacity of 250 students. Spring Ridge Middle School will be under capacity for the next ten years.

28. The subcommittee and the Committee made two redistricting proposals to the local Board: Middle School Proposal I (See Joint Ex. 1) and Middle School Alternate Proposal (See Joint Ex. 2). One proposal would have moved approximately 75 students from Esperanza to Spring Ridge. The other proposal would have moved slightly over 100.

29. Neither the subcommittee nor the Committee recommended moving the northern boundary of Spring Ridge further north to encompass the Pegg Road Area as part of any plan.

30. The Board did not accept either proposal but decided on a plan that resulted in only 22 students being moved from Esperanza Middle School to Spring Ridge Middle School.

31. On March 25, 1998, the Board adopted changes to the existing school districts. The changes to the middle school districts were described in a March 30, 1998, news release as follows:

The approved middle school redistricting plan moves all students on Flat Iron Road beginning at Maryland Route 5 and running south to Maryland Route 244 continuing east on Draydon Road including all of Frog Marsh Road, Cherryfield Road and all of the assorted auxiliary roads, drives, lanes, and courts excluding Happyland Road and St. George's Church Road from Esperanza Middle School to Spring Ridge Middle School, starting in the fall of 1998. All affected seventh grade students currently attending Esperanza Middle School will be grandfathered. Beginning with the school year 1998-1999 all incoming sixth and seventh grade students, as well as all new students residing in the areas described will attend Spring Ridge Middle School with all grades attending Spring Ridge Middle School in the fall of 1999. All new students, regardless of grade level, will be included in the redistricting.

32. In making its decision the local Board considered transportation, the length of time on busses, the overcrowding at Esperanza and the under capacity at Spring Ridge, the socioeconomic

mix, the ethnic and minority mix, the physical structures, the quality of instruction, and the short and long term effects.

33. The local Board's goal was to disrupt the minimum number of middle school students.

34. At the March 25, 1998 meeting, the local Board also instructed staff to make the policy for out of district waivers more stringent. There were more than 60 students on out of district waivers attending Esperanza. The Board set a goal of reducing the number of waivers and sending the children back to their home schools which were primarily Spring Ridge and to a lesser extent Leonardtown.

35. The high school subcommittee was chaired by Michael Whitson. The subcommittee studied the three high school districts which included, from north to south, Chopticon High School, Leonardtown High School, and Great Mills High School.

36. Chopticon was overcrowded but an addition was planned. The closest high school to Chopticon is Leonardtown which was not very close and was also overcrowded. After considering the addition and the distance to either Leonardtown or Great Mills, the subcommittee and Committee decided not to recommend any change at Chopticon and the local Board made no changes to the Chopticon district.

37. Leonardtown High School was over capacity by approximately 277 students. Eleven (11) relocatables were being used to accommodate the over capacity. There were plans to renovate and expand Leonardtown High School. The Leonardtown High School area is experiencing significant growth. Even after the planned renovation and expansion, Leonardtown High School will still be over capacity.

38. An addition and renovations at Great Mills High School were nearly completed when

the Committee was meeting and were completed by the spring of 1998. After the addition and renovations were completed, Great Mills High School had excess capacity. The Great Mills High School area is the fastest growing area of the County.

39. At the March 25, 1998 meeting, the local Board adopted changes to the high school districts. The local Board adopted the geographical boundaries in the Committee's High School Proposal I (See Joint Ex. #4) and approved the grandfathering of students already attending Leonardtown. The changes to the high school districts were described in a March 30, 1998, news release as follows:

The approved high school redistricting plan moves all students on Maryland Route 249 (Piney Point Road) beginning at Maryland Route 5, running to St. George's Island and east to the St. Mary's River, including all associated auxiliary roads, drives, lanes and courts off of Maryland Route 249 excluding Maryland Route 244 (Beach Road) west of Maryland Route 249 from Leonardtown High School to Great Mills High School, starting in the fall of 1998. All existing ninth, tenth, and eleventh grade students currently attending Leonardtown High School will be grandfathered with transportation provided pending adequate funding approval for the FY 1999 operating budget. Beginning with the school year 1998-1999 all incoming ninth grade students, as well as all new students residing in the areas described, will attend Great Mills High School. In school year 1999-2000 all new students and new ninth and tenth grade students will



attend Great Mills and in 2000-2001 all new students and new ninth, tenth, and eleventh grade students will attend Great Mills High School. All new students, regardless of grade level, will be included in the redistricting.

40. At the August 21, 1998 local Board meeting, the local Board amended the high school redistricting plan approved at the March 25, 1998 meeting. The amendment allowed incoming ninth grade students in the redistricted area to go to Leonardtown High school if they had siblings already attending Leonardtown.

41. As a result of the local Board's actions on March 25, 1998, and August 12, 1998, thirty-six (36) students were transferred from Leonardtown to Great Mills.

42. In making its decision the Board considered short and long term effects, transportation, the physical structures, overcrowding at Leonardtown and the available seats at Great Mills, and the instructional program. The Board also considered the loyalties of the students already attending Leonardtown and the expectation of incoming ninth grade students to attend the high school attended by their older siblings.

43. The local Board's goal was to disrupt the minimum number of high school students.

44. There are not many academic differences between Esperanza Middle School and Spring Ridge Middle School or between Leonardtown High School and Great Mills High School. The quality of curriculum and instruction are about the same in each school. All schools in the system follow the same curriculum. The same criteria is used to hire teachers throughout the system and the same criteria is used to certify teachers. Staff development is the same. Leonardtown High School offers Latin and Great Mills High School does not.

45. The Committee did not tour Leonardtown High School or Esperanza Middle School during school hours. The Committee did not hold any meetings at Leonardtown High School or Esperanza Middle School.

46. The subcommittee, Committee, and Board relied upon Brad Clements, the Director of Facilities Management for St. Mary's County -Public Schools, for information about growth projections, population projections, and capital growth. Mr. Clements' calculations are in accordance with State guidelines. Mr. Clements supplied the numbers to the Committee which indicated that Leonardtown High School was over capacity and that Great Mills High School was under capacity and that Esperanza High School was over capacity and Spring Ridge Middle School was under capacity. He also supplied the information regarding the physical condition of the schools and planned construction and renovations.

47. The birthrate and survival rate method is used to predict school enrollment and to generate enrollment data.

48. St. Mary's County has received an influx of population because of the Base Re-Alignment and Closure Act ("BRAC"). The Navy projected as many as 2,000 additional students in the County within a five year period of time beginning in 1993.

49. The Navy's projection of 2,000 students was not accurate. The local Board no longer simply accepts the Navy's estimate. A committee meets on a regular basis to evaluate the BRAC impact on the school population.

50. The previous local Board redistricting committee recommended some changes to the elementary school districts. The local Board moved students from Banneker-Loveville, Esperanza Elementary School, and Hollywood to Oakville Elementary School. Presently Oakville Elementary

School is the most overcrowded elementary school in the system.

51. Students in the newly redistricted areas have some of the longest bus rides in the County.

52. Leonardtown Middle School is on Route 5. There are at least three ways to bus students out of the redistricted area to Leonardtown Middle School that were not considered by the Committee or the Board. [All three begin by turning left at Valley Lee onto Route 244. One alternative, involved simply staying on Route 244 until reaching Leonardtown Middle School on Route 5. Another alternative involved Route 244 and taking Chingville Road to Route 5 and then to the school. The third alternative involved leaving Route 244 and taking Whirlwind Road to Route 5 to the school.]

53. There was much confusion generated and much emotional turmoil caused by the Board's decisions to redistrict. Students, who were eligible for grandfathering, did not know that they had to apply for waivers. The waiver process was inconvenient. Students were anxious about where they were going to go to school and parents were anxious about what was happening to their children.

54. As a result of redistricting, one family will have each of its four children in a different school. One child will be at Piney Point Elementary School, one child will be in Spring Ridge Middle School, one child will be in Great Mills High School, and one child will be at Leonardtown High School.

### **DISCUSSION**

In a redistricting case, 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.01.01.03E.

Md. Code Ann., Educ. § 4-109(c) (1997) provides:

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

In establishing the standard of review of decisions of a County Board involving local policy, COMAR 13A.01.01.03E provides that the decision of the County Board is considered to be *prima facie* correct and defines arbitrary, unreasonable or illegal as follows:

- (1) Decisions.
  - (a) Decisions of a county board involving a local policy or a controversy and dispute regarding the rules and regulations of the county board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the county board unless the decision is arbitrary, unreasonable, or illegal.
  - (b) A decision may be arbitrary or unreasonable if it is one or more of the following:
    - (i) It is contrary to sound educational policy;
    - (ii) A reasoning mind could not have reasonably reached the conclusion the county board reached.
  - (c) A decision may be illegal if it is one or more of the following:
    - (i) Unconstitutional;
    - (ii) Exceeds the statutory authority or jurisdiction of the county board;
    - (iii) Misconstrues the law;
    - (iv) Results from an unlawful procedure;
    - (v) Is an abuse of discretionary powers; or
    - (vi) Is affected by any other error of law.

The seminal case which defines the scope of local discretion is *Bernstein v. Board of*

*Education of Prince George's County*, 245 Md. 464, 226 A.2d 243 (1967). In *Bernstein*, the Maryland Court of Appeals held: "Absent a claim of deprivation of equal educational opportunity or constitutional discrimination because of race or religion, there is no right or privilege to attend a particular school." The court reasoned, "the test is not ... that there may have been other plans that would have worked equally well, or may, in the opinion of some, have been better, the test is whether the action which was taken was arbitrary, capricious or illegal."

The Appellants argued that the local Board's redistricting decisions were arbitrary or unreasonable because the decisions are contrary to sound educational policy and because a reasoning mind could not have reasonably reached the conclusions that the local Board reached. The Appellants further argued that the local Board's redistricting decisions were illegal because the local Board used an unlawful procedure and abused its discretionary powers.

I conclude that the redistricting decisions were not illegal and did not result from an unlawful procedure or from an abuse of discretionary powers. The Appellants contended that the decisions were illegal because of the composition of the Committee and essentially made three arguments in support of their contention.

The Appellants argued that the Board did not follow its own policy in establishing the Committee. The local Board did not formally adopt a policy regarding the Growth Management Advisory Committee until February 10, 1998. Committee members had been approved at the October 15, 1997, Board meeting and the Committee had been meeting and conducting business prior to the adoption of the policy. The Appellants argued that prior to February 10, 1998, the applicable policy was the Advisory Committees to the Board policy adopted on March 17, 1987, which encouraged the use of citizens' advisory committees and contained the following statement:

The committees shall be as representative of the community as possible, with their memberships drawn from the different geographic areas, races, sexes, economic levels, religious denominations, and vocational pursuits of the community.

The Appellants argued that by design 40% of the Committee was composed of professional educators and therefore the Committee was not as representative as possible of the vocational pursuits of the community. Appellants further argued that because the local Board violated its own policy that the redistricting decisions are invalid.

Secondly, the Appellants argued that the redistricting decisions were illegal because of the level of staff and local Board involvement. The Appellants contended that there was at least the potential for Dr. Fulton, the co-chair of the Committee, to directly or indirectly intimidate staff members and to directly or indirectly unduly influence the judgment, decisions and votes of other staff members on the Committee. The Appellants also raised the issue of whether Mr. Hewitt, as Board of Education Chairman, might not also directly or indirectly unduly influence the views of staff members and whether Mr. Hewitt, as Board of Education Chairman, should have been given one of the community seats on the Committee. Additionally, the Appellants questioned the participation of John Weiner, the spouse of a County public school teacher as a community member and the participation of the teacher representing the Teachers' Association as a community member.

Thirdly, the Appellants argued that the areas of the County that were redistricted lacked representation on the Committee. Several of the Appellants, witnesses, who are active in their community and in their schools, testified that they would have served on the Committee if they

had known about it. John Helldorfer testified that he had indicated twice in writing to Sal Raspa that he wanted to serve on the redistricting Committee and that no one from St. George's Island was on the Committee. The Appellants also expressed concern that as time went on the 40/60 ratio changed as more community members failed to attend meetings than staff.

The local Board argued that its policy is for committees to be as representative of the community as possible and that staff members on the Committee are also members of the community. Additionally, the local Board argued that given the task the Committee was asked to do, it was essential that staff members be on the Committee to provide essential information and that if they were going to attend Committee meetings it made no sense that they should not be allowed to participate and to vote.

The local Board did not specifically argue the issue of whether Dr. Fulton or Mr. Hewitt intimidated staff members or exerted undue influence over the staff members or whether it was unlawful for Mr. Hewitt, Mr. Weiner, or the Teachers' Association representative to be included as community members. The local Board, throughout the course of the hearing, had developed evidence through direct testimony, cross examination, and rebuttal witnesses regarding the issue of intimidation or undue influence. The local Board did argue that community board committees are composed of volunteers and that the local Board could not compel any member to attend Committee meetings.

The local Board also argued that there was no diabolical scheme to preclude people from the redistricted areas from Committee participation.

The Appellants' arguments lack merit. The local Board did not violate either the 1987 policy or the policy adopted in February of 1998. While the 1987 policy encouraged citizens,

advisory committees and required that the membership be as representative as possible, I conclude that "as possible" gave the local Board some discretion in determining the overall composition of committees. Given the task undertaken by the Committee and the quantity of information and resources needed in order for the Committee to work, I conclude that the inclusion of staff on the Committee was essential and that it would have been impossible for the Committee to function with only community members.

The 1987 policy also provided that membership should be drawn from different vocational pursuits as well as different geographical areas, races, sexes, economic levels, and religious denominations. The membership of the Committee was drawn from different vocational pursuits in the county and, therefore, the policy was not violated. Among the community members were a nurse, a barber, a newspaper reporter, a lawyer, two engineers, program managers, a teacher, and business owners.

The local Board policy entitled Growth Management Advisory Committee was adopted on February 10, 1998. It was adopted after the Committee had already been formed and had already begun meeting and working. It was adopted before the Committee decided upon or presented its recommendations to the local Board. The February 10, 1998 policy was clearly in effect before any final action was taken by the Committee and the local Board. The policy reflected the membership composition of the existing Committee and its purpose. The local Board policy of February 10, 1998, was not violated.

Neither Dr. Fulton nor Mr. Hewitt intimidated the staff members of the Committee. Dr. Fulton testified that she did not have a motive for influencing the Committee to make any particular decision and that she had not intimidated anyone. Mr. Hewitt also denied intimidating



members or unduly influencing any staff member. Appellants, witness John Garner testified that he did not say that staff members were influenced but that "there was the potential for influence". (Transcript page 243). Appellants' witness Pam Latvala testified that she did not see any evidence that staff members were intimidated by Dr. Fulton (Transcript page 309) and further testified as follows: "I don't think I said Dr. Fulton intimidated anyone, I said it was possible." (Transcript page 310)

Brad Clements, a staff member of the Committee testified that he had no sense from Dr. Fulton that she had a "specific agenda concerning what the committee was to do" and that he did not feel intimidated by her. He also testified that he did not know of any staff person who felt intimidated or "felt they couldn't express themselves as they wanted or vote any way they wanted to." (Transcript page 392).

I conclude that neither Dr. Fulton nor Mr. Hewitt intimidated or unduly influenced staff members of the Committee. They testified that they did not. No witness testified that he or she had observed any intimidation and a staff person specifically testified that he was not intimidated and knows of no staff member who was.

Regarding the Appellants' concern that Mr. Weiner and Mr. Hewitt participated on the Committee as community members, there was no evidence presented that the Board had violated any policy by appointing Mr. Weiner, the spouse of a public school teacher, to participate as a community member. Likewise, there was no evidence presented that appointing Mr. Hewitt, who is not a member of the Board of Education staff but who serves in an elected capacity as Chairman, violated any policy. Additionally, there was not any evidence that appointing a representative from the Teachers' Association as a community representative violated any policy.

I further conclude that the local Board did not intentionally exclude people living in the redistricted area from Committee membership. The local Board advertised for Committee members through the news media and by personal contact. No one from the redistricted area submitted a resume for consideration or contacted Dr. Fulton, who was identified in the releases as the contact person.

Additionally, I conclude that the Committee and the local Board made ongoing efforts to encourage public participation and to publicize the progress of the Committee and the local Board. There were continuing news releases about Committee meetings and the work being done by the Committee. Minutes of Committee meetings were placed on the Internet. The public was invited to attend Committee sessions and there was time for public comment at the end of Committee sessions. Two public hearings were conducted.

I conclude that the local Board did not know of Mr. Helldorfer's interest in being on the Growth Management Advisory Committee when it was being formed because his two letters were misdirected to Sal Raspa and because he did not know to contact Dr. Fulton or to send a resume to Dr. Fulton. The local Board was presented with the names of people who had sent in resumes but who were not recommended for approval so there was not an attempt to secretly exclude people from membership.

The Appellants also argued that the local Board's redistricting decisions were arbitrary and unreasonable. I conclude that the redistricting decisions were not contrary to sound educational policy and that a reasoning mind could have reasonably reached the conclusions that the local Board reached.

There was no evidence introduced to support a contention that the redistricting decisions

were contrary to sound educational policy. In fact evidence was introduced that there are few academic differences between Esperanza Middle School and Spring Ridge Middle School or Leonardtown High School and Great Mills High School. Agnes Birch testified, however, that if her daughter were transferred from Leonardtown High School to Great Mills High School she could not earn a certificate of merit because Great Mills High School does not offer Latin. (Transcript page 337). Dr. Fulton testified that each school has the "same caliber and quality of teaching" and that the curriculum is the same system wide. Since, with the exception of Mrs. Birch's testimony, there was no evidence to support Appellants, argument that the redistricting decisions were contrary to sound educational policy, I conclude that they were not contrary to sound educational policy.

The Appellant's last argument was that a reasoning mind could not have reasonably reached the conclusions that the local Board reached. To support their argument the Appellants relied upon several factors which are as follows: (1) the local Board did not accept the recommendations made by the Committee; (2) the local Board amended its own decision regarding the high school redistricting; (3) the numbers of students finally transferred were so small that no real benefit was derived; (4) Esperanza Middle School and Leonardtown High School were not overcrowded; (5) the population and growth information relied upon by the Committee was not accurate; and (6) there were other options that the local Board did not consider.

The local Board argued that while the ultimate redistricting was different from the recommendations made by the Committee, the redistricting decisions approved by the local Board were the result of the local Board hearing and responding to community concerns. The local

Board explained that its goal was to disrupt as few students and families as possible and still relieve some of the overcrowding for the short and long term. The Board also argued that even though the numbers of students eventually transferred were far less than the numbers envisioned by the Committee and far less than the numbers needed to bring Leonardtown High School and Esperanza Middle School to a number at which they would no longer be over capacity, the local Board's decisions were steps in the right direction. The local Board further argued that while the short term benefit might not be great that there was a short term benefit and that the long term benefit of changing the schools' catchment areas was significant.

The local Board argued that Leonardtown High School and Esperanza Middle School are overcrowded and that it is not appropriate to consider relocatables as part of a school's capacity as urged by the Appellants. The local Board's position is that it is not acceptable to have students in temporary classrooms and it is the local Board's goal to decrease the use of relocatables.

The local Board argued that excluding the variations in student population figures caused by erroneous information supplied by the Navy, the local Board's projections have been accurate and that its system of predicting student population is sound. The local Board did not directly address the Appellants' assertion that the previous redistricting efforts had resulted in Oakville Elementary School being the most overcrowded elementary school in the County.

I conclude that a reasoning mind could have reasonably reached the redistricting decisions made by the local Board. First, I reject the Appellants' argument that the fact that the local Board did not simply accept the Committee Proposals and that the local Board subsequently modified its own redistricting decision regarding the high schools proves that the local Board acted in an unreasonable way. I conclude that the local Board's goal of disrupting as few students as possible

was a reasonable goal. I also conclude that the local Board's decisions to allow present Leonardtown students to complete high school at Leonardtown and to grandfather in the ninth grade siblings of students already at Leonardtown were responsive to the concerns of the community and were reasonable accommodations.

I further conclude that some short term benefit is derived from transferring twenty-two (22) students from Esperanza Middle School and thirty-six (36) students from Leonardtown High School and that a greater benefit will be derived in the future from the change in the catchment areas. The local Board's decision to consider the current redistricting as a step toward long term benefits was a reasonable one.

I further conclude that the local Board's goal to decrease the number of relocatables is a reasonable goal and the local Board's decision not to count the seats provided by relocatables as part of the capacity of a school is a reasonable decision. Relocatables exist because there is not room for all of the students in the school building. Relocatables are the inevitable sign that a school building is over capacity. The use of relocatables does not increase the width of hallways or the number of seats-in the auditorium, in the cafeteria, or in the gymnasium.

Several of the Appellants, witnesses testified that Leonardtown High School and Esperanza Middle School are not overcrowded. Some of the Appellants' witnesses have been in the schools while students have been there and have not observed overcrowding. The appellants further argued that Leonardtown High School was not over capacity if the seats available in relocatables were considered to be part of the school's capacity. The Committee did not tour either Leonardtown High School or Esperanza Middle School while students were there.

The student population projections relied upon by the Committee and the local Board

were primarily supplied by Brad Clements, who is the Director of Facilities for the local Board. Mr. Clements testified that he used the survivor ratio method to make enrollment projections because the Maryland Office of Planning and the school construction program require that method to be used. (Transcript pages 145-146). Mr. Clements also testified that the local Board's enrollment projections in the last several years have been very accurate. He testified that the difference between the local Board's projected total enrollment in 1997 and the actual enrollment at the end of September 1997 was twelve (12) and he testified that the difference at the end of September 1996 was also twelve (12).

Additionally, the local Board has attempted to stay apprised of the BRAC projections by regularly meeting with the Navy and has learned from a five year history to evaluate the accuracy of the Navy's numbers.

While the survivor ratio method may not be the best method for the local Board to use because of the unprecedented growth in St. Mary's County caused by BRAC and the fact that families are moving in with children of all ages, I conclude that it is not unreasonable for the local Board to use that method since it is the method required by State Planning and the school construction program. I reject the Appellant's argument that seats in relocatables should be considered as part of the capacity of Leonardtown High School and conclude that they should be considered as part of the over capacity.

Lastly the Appellants argued that there were other options available to the local Board. The Appellants argued that the local Board was premature in redistricting and that it should have waited for more data. The Appellants also produced witnesses who presented well thought out alternative bus routes that the local Board could have used to achieve different redistricting

results. The Appellants presented alternatives that may have been less expensive to implement.

While other options were available to the local Board and may even have been better than the ones chosen by the local Board, the Court in *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 226 A.2d 243 (1967) set forth the following test regarding additional options: "the test is not . . . that there may have been other plans that would have worked equally well, or may, in the opinion of some, have been better, the test is whether the action which was taken was arbitrary, capricious or illegal." Pursuant to *Bernstein*, I conclude that even if the options advanced by the Appellants were better options that absent proof the local Board's decisions were arbitrary, capricious or illegal the other options have little value. I conclude that the Appellants have failed to produce such proof.

The standard of review in a redistricting case is high. The local Board's actions are to be considered as *prima facie* correct unless the Appellants can prove that the local Board's actions were arbitrary, unreasonable or illegal. The Appellants, in this case, have failed to prove that the redistricting decisions reached by the local Board were arbitrary, unreasonable, or illegal.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the redistricting plan of the St. ~~MARY'S BOARD OF EDUCATION~~ Education is not illegal, arbitrary, or

I **RECOMMEND** that the redistricting plan of the St. Mary's Board of Education be **AFFIRMED**.

Date: November 30, 1998

Linda Golden  
Administrative Law Judge

### NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file objections with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, within ten (10) days of receipt of the Proposed Decision, in accordance with COMAR 13A.01.01.03P(4).