

BARRY BUDISH, ET AL.,

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-34

### OPINION

In this appeal, some community members in the Dobbin Road neighborhood of Howard County<sup>1</sup> appeal the local board's March 23, 2000 redistricting decision to send approximately 60 students from Waterloo Elementary to Phelps Luck Elementary, and approximately 90 students from Waterloo Elementary to Jeffers Hill Elementary. Appellants challenge both procedural and substantive aspects of the redistricting process and request that the State Board (1) allow the Dobbin Road families to stay at Waterloo Elementary School for the 2000-2001 and 2001-2002 school years; (2) require the local board to reconsider the open enrollment decisions made for the 2000-2001 school year that affect the Jeffers Hill, Phelps Luck and Waterloo Elementary Schools; (3) create a moratorium on elementary school redistricting in the Northeast region until 2003 when the new elementary school is slated to open; and (4) encourage the local board to work more closely with the local PTA's on a regular basis.

The local board has filed a Motion for Summary Affirmance maintaining that its redistricting decision is not arbitrary, unreasonable or illegal. Appellants have filed an opposition to the local board's motion. The parties presented oral argument to the State Board on July 25, 2000.

### FACTUAL BACKGROUND

On March 23, 2000, the local board adopted changes to the geographic attendance area for the Howard County Public Schools ("HCPS") affecting Rockburn, Waterloo, Jeffers Hill and Phelps Luck Elementary Schools.<sup>2</sup> The redistricting decision provided that Waterloo Elementary School would send to Jeffers Hill Elementary School approximately "94 students who are in Grades 1-5 as well as kindergarten students who live east of Snowden River Parkway between

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<sup>1</sup>Appellants are Barry A. Budish, Jordan Leiter, Colleen Dove, and Vitus Ukwuoma.

<sup>2</sup>The local board also made boundary changes with regard to certain high schools. This appeal concerns only the redistricting decision as it pertains to approximately 150 students transferred to Phelps Luck and Jeffers Hill Elementary Schools.

April Brook Circle and Dried Earth Blvd, as well as all streets with sole egress to these roads.” It further provided that Waterloo Elementary School would send to Phelps Luck Elementary School approximately “50 students who are in Grades 1-5 as well as kindergarten students who live on Good Hunters Ride, Little Foxes Run, Quiet Times, Starburn Path, Deep Earth Lane, Honeycomb Court, and Dobbin Road/Old Dobbin Road, as well as streets with sole egress to these roads.”<sup>3</sup>

The redistricting also included the transfer of 180 students from Rockburn Elementary School to Waterloo Elementary School “who are in grades 1-5 as well as kindergarten students who live south and west of Route 100 between Route 95 and Exit 4 on Route 100 as well as Meadow Ridge Road between Exit 4 and Brightfield Road, in the area referred to as Nottingham Village, and to permit those approximately seven 4<sup>th</sup>-grade students who were previously redistricted to Rockburn ES to remain as open-enrolled students without transportation.”

In addition, 50 seats were added to the program capacity at Waterloo to accommodate the 180 students from Rockburn Elementary. The redistricting changes are effective for the 2000-2001 school year.

The redistricting decision was necessitated by overcrowding in the elementary schools in the Northeast region. In particular, Rockburn Elementary was projected to be 69% overcapacity for the 2000 school year. Over the past three years, the local board had reviewed the overcapacity problem in the Northeast region. As early as 1998, the communities at issue in this appeal, Northeast and Columbia East, were identified as areas eligible for redistricting, although no action was taken at that time. The communities were again identified during the 1999 redistricting process, but action was deferred for another year. *See* affidavit of Maurice Kalin, Associate Superintendent for Planning and Support Services for HCPS. Phelps Luck and Jeffers Hill Elementary Schools, which are in the Columbia East region, were specifically designated as receiving schools during those redistricting processes. *See* boundary line adjustment recommendations, 1998 & 1999.

The redistricting decision for the 2000-2001 school year was made after the completion of a lengthy process. In December 1999, HCPS officials conducted regional forums to inform the public of the latest pupil projection data, possible redistricting recommendations and to elicit reactions and comments regarding redistricting ideas being considered by staff members.<sup>4</sup> The recommendations of school staff were announced to the community at a public meeting on January 27, 2000. *See* Meeting Minutes. The January 27, 2000 boundary line document containing projected school populations in the Northeast Region and a series of recommendations to adjust

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<sup>3</sup>These school neighborhoods are referred to as the Dobbin Road area.

<sup>4</sup>Written comments and telephone calls were received as a result of the regional meetings.

boundaries<sup>5</sup> was disseminated, and the local board thereafter conducted a series of public meetings and discussions. *See Meeting Minutes.*

The original recommendation made on January 27 was to send all 150 students in the Dobbin Road area from Waterloo Elementary to Jeffers Hill Elementary. *See Meeting Minutes* dated January 27, 2000. At the public hearing on March 14, the concept of splitting the Dobbin Road area students at Waterloo between Jeffers Hill and Phelps Luck was recommended. There was a public work session on March 16, 2000, where board members explored this concept further. The redistricting decision was made on March 23, 2000. Thereafter, on April 27, 2000, the local board placed a moratorium on open enrollment in all schools during the 2000-2001 school year in an attempt to stabilize school populations.

The capacity figures for elementary schools in the Northeastern region, without redistricting, are as follows:

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Deep Run	132%	137%	139%
Elkridge	124%	125%	121%
Ilchester	125%	131%	138%
Rockburn	169%	178%	182%
Waterloo	111%	116%	118%
Worthington	120%	124%	132%

The capacity figures for Jeffers Hill and Phelps Luck after redistricting are as follows:

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Jeffers Hill	108%	109%	109%
Phelps Luck	109%	108%	106%

Given this data, the local board concluded that in its judgment, it was a better educational decision to have lower overcapacity at Phelps Luck and Jeffers Hill than to permit Rockburn, Deep Run, Ilchester and other schools to suffer from greater overcapacity.

## ANALYSIS

### Standard of Review

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<sup>5</sup>The intent of the adjustments was to utilize school facilities in the Northeast and Columbia Regions more uniformly and efficiently.

The standard of review for a school redistricting appeal is that the decision of a 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. See COMAR 13A.01.01.03E(1)(a); *Bushey Drive Elementary School Parents v. Board of Education of Montgomery County*, 1 Op. MSBE 441 (1976). As stated in *Bernstein v. Board of Education*, 245 Md. 464 (1966):

The point is whether the move was reasonable and within the discretion of the Board. The test is not even that there may have been other plans that 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.

### Alleged Procedural Violations

Appellants contend that the local board violated its boundary adjustment policy by failing to hold an additional public hearing when it considered a modification to a redistricting alternative which split the Dobbin Road neighborhood by sending some students to Phelps Luck and some to Jeffers Hill rather than sending the full cohort of students to Jeffers Hill. Appellants also argue that the local board was required to notify involved parties of the change.

Section III of local board Policy 1675-R states, in pertinent part:

In the event the Board chooses to consider an alternative containing geographic attendance areas or implementation dates that differ from those on which citizens have had an opportunity to comment, **an additional hearing may be scheduled** within thirty (30) days but not less than five (5) days of that consideration. (Emphasis added).

We believe that this language does not create a mandatory requirement for an additional hearing. Rather, the policy provides for the local board's discretion in determining whether to schedule additional public hearings when considering an alternative that concerns a different geographic attendance area from one on which citizens have already had an opportunity to comment. Here, the record indicates that the local board did not believe an additional hearing was necessary because the action involved the same geographic attendance area recommended for redistricting and schools and communities in the vicinity were already on notice that they were eligible for redistricting.

Furthermore, the record discloses that there was sufficient opportunity for public comment on the modified alternative. During the public hearing on March 14, 2000, a representative of Jeffers Hill Parents for Stable Neighborhood Schools ("JHPSNS") proposed the modified alternative of sending some students at Waterloo to Phelps Luck. See Meeting Minutes, March 14, 2000 at 6. Community members then presented testimony in support of and in opposition to the redistricting

of students from Waterloo to Phelps Luck. *See* Meeting Minutes March 14, 2000 at 3, 9.

With regard to Appellants' claim that the local board failed to provide proper notification of the modified alternative to involved parties, we find no provision requiring such notification. The redistricting procedure requires the superintendent to initially report boundary line alternatives and recommendations to the local board, which are then presented to the community at a public hearing. *See* PR 1675 III & IV. As explained above, no additional public hearing was required. Notice was only required at the beginning of the redistricting process and not on the modified alternative which developed during the boundary line adjustment process.<sup>6</sup> As set out in the policy, it is the local board's prerogative to modify any alternatives or recommendations presented to it by the superintendent or through public comment by the residents of Howard County. *See* Policy 1675.

Appellants further claim that the local board violated the implied intent of the boundary adjustment policy by failing to seek input from the principals of Waterloo and Phelps Luck Elementary Schools regarding the redistricting decision. While Policy 1675-R states that the "Board of Education recognizes the value of the school community's consideration of and participation in the boundary line decisions and encourages comments from citizens and groups", we note that it contains no specific requirement that the local board seek input from the principals of the affected school prior to making the redistricting decision. Moreover, in his affidavit, Maurice Kalin indicates that he did meet with the principals of Phelps Luck and Jeffers Hill sometime during the 1998-99 school year or during the fall 1999 as part of the redistricting process. *See* Affidavit of Maurice Kalin. In any event, we find that the local board adequately publicized the required information under the boundary change policy.

#### Alleged Lack of Justification for Redistricting Decision

The redistricting process for HCPS is governed by local board Policy 1675 entitled Boundary Line Adjustments Not Related to School Closings. Policy 1675-R states that "[b]oundary line changes will be considered in elementary . . . schools where student numbers exceed program capacity. Boundary line changes will be considered where overcapacity relief is not evident in the long-range projections contained in the current capital budget or current revised projections." Boundary line changes are to be recommended for over-enrolled schools after due consideration is

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<sup>6</sup>As previously noted, we believe that there was sufficient notice to the public. Communities were informed of the HCPS redistricting process, the January 27, 2000 boundary line adjustment document was disseminated, recommendations and alternatives were announced orally at the local board's public meeting on January 27, 2000, and scheduled public hearings and work sessions were publicized through the media. Citizens were on notice that the redistricting recommendations, alternatives, and modifications could affect their communities. For example, the January 27, 2000 boundary line adjustment document states that "[a]ll communities in the Northeastern, Columbia East, and Columbia West regions should consider themselves eligible for redistricting. Alternatives not contained in this document may be developed during the boundary lines process."

given to, among other things, the anticipated construction of new schools and/or additions; changing of program capacity based on planned use for the upcoming year; return of open-enrollment students to their districted schools; and the educational welfare of the students who are recommended for redistricting and the students who are in the sending school and/or receiving school. *See* Policy 1675-R.

Appellants maintain that the redistricting is unnecessary at this time because overcapacity relief is evident in the long range projections. The projections demonstrate, however, that all elementary schools in the Northeast region are significantly overcapacity and will continue to be significantly overcapacity for the next two years without redistricting, despite the projected opening of a new school in 2003.<sup>7</sup> Given the capacity projections in this case, we believe that the local board's decision to take action to alleviate overcapacity in the county's elementary schools was well founded.

Although Appellants claim that no consideration was given to anticipated construction and changing program capacity, based on the record in this case we find that the local board was well aware of the program capacity at all elementary schools and the projected growth in the region. The January 27, 2000 boundary document reveals that capital projects, including additions to already existing school buildings, the completion of a new elementary school in 2003, and the addition of relocatables to various schools, were taken into consideration from the outset of the redistricting process. The discussions at the local board meetings also support this assertion. *See* Meeting Minutes dated March 2, 2000; March 23, 2000.

Appellants argue that the local board did not give due consideration to the return of open-enrollment students to their home schools. Again it is evident from the discussions at the local board meetings and work sessions that serious consideration was given to this issue. *See* Meeting Minutes January 27, 2000; March 16, 2000; March 23, 2000. Local board members were provided with information on the open enrollment of students throughout the redistricting process and contemplated the impact of various options. In April 2000, the local board took action concerning open enrollment, creating a moratorium on open enrollment during the 2000-2001 school year, but allowing all open enrollment students in the Northeast region to remain in their current schools.

Appellants also argue that the local board did not give due consideration to public comments. However, the record in this case is clear that public comments, both oral and written, were received and considered by the local board. In fact, the modification that was eventually

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<sup>7</sup>Appellants suggest that the region's 13.7% overcapacity in 2003 is insufficient to trigger a need for redistricting because the Adequate Public Facilities Ordinance ("APFO") allows regions to be at 15% overcapacity. The APFO is a growth management system designed and implemented by the Howard County government to manage growth in the county. It is not referenced in the local board's policies and we do not believe it is pertinent to this redistricting decision.

adopted was initially suggested to the local board through public testimony.

Additionally, Appellants maintain that the educational welfare of students at both Phelps Luck and Jeffers Hill Elementary School has been unduly placed at risk as a result of the redistricting. However, the record discloses that the educational welfare of the students at these schools was specifically addressed at the local board meeting on March 23, 2000. For example, local board member Stephen C. Bounds indicated his belief that the modified alternative would serve the overall educational welfare of the students by balancing the school populations so that no one school is severely overcrowded. *See Meeting Minutes.*

Our review of the record confirms that the local board did not consider the situation at Phelps Luck and Jeffers Hill in isolation; rather it assessed the circumstances throughout the county and considered the educational needs of students in all elementary schools.<sup>8</sup> After considering the overcrowding in the elementary schools in the county, the local board concluded that it would better meet the educational needs of all students to have lower overcapacity at Phelps Luck and Jeffers Hill than to permit the elementary schools in the Northeast region to remain at a significant overcapacity.

In summary, State law confers upon a local board the power to establish the attendance boundaries for the schools within its jurisdiction. Md. Code Ann., Educ. § 4-108. Here, the local board announced that it was going to conduct its annual redistricting process from January to March 2000 and alerted Northeast area and Columbia East area residents of the potential for redistricting 150 students in the Dobbin Road area from Waterloo to Jeffers Hill. It gave the public, including Appellants, notice of the process and then gave full opportunity for citizens to express their views and offer alternative solutions. In fact, the local board acted on a concept that was proposed during the public comment hearing to shift approximately 60 students to Phelps Luck. Only after conducting public hearings and work sessions and receiving extensive information did the local board make a boundary adjustment that it believed was in the best interest of all the students in the Northeast region.

## CONCLUSION

For these reasons, we find that the Appellants have not met their burden of proving that the local board's decision was arbitrary, unreasonable or illegal. We therefore affirm the redistricting decision made by the Board of Education of Howard County. *See Mussman, et al. v. Montgomery County Board of Education*, 7 Op. MSBE 981 (1998) (upholding school

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<sup>8</sup>Appellants have provided no evidence to support their assertion that the use of relocatables places the educational welfare of students at risk. Additionally, we found nothing in the record to support Appellants' position that "focus schools" such as Phelps Luck and Jeffers Hill are accepted or given special treatment in the redistricting process. We believe that the local board considered the educational interests of all students at all affected schools with full knowledge of the different achievement patterns and program needs.

districting decision); *Glixon & Coyle v. Board of Education of Montgomery County*, 7 Op. MSBE 764 (1997) (upholding school districting); *St. John's Lane Parents v. Board of Education of Howard County*, 7 Op. MSBE 39 (1995) (upholding redistricting decision).

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