

DORCHESTER NEIGHBORHOOD
ASSOCIATION, INC., ET AL.,

Appellant

v.

CHARLES COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-10

OPINION

This appeal is from a decision by the Charles County Board of Education to redistrict the geographic attendance areas for several elementary and middle schools in Charles County. A hearing was held at the State Office of Administrative Hearings on August 26, 1998, before an administrative law judge. No exceptions were filed to the administrative law judge's proposed decision and the parties waived oral argument before the State Board.

With the clarifications noted below, 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 to this opinion as Exhibit 1.

On the issue of standing, the administrative law judge determined that the Dorchester Neighborhood Association had an interest in this matter because a portion of the members of the association lived in the affected areas. The judge went on to explain that while economic interests in the area redistricted may be affected, that type of interest is a byproduct of redistricting and not the kind of interest that confers standing on any kind of entity. The administrative law judge therefore ruled that the association itself did not have standing to pursue the appeal, but that a member of the association who had children in the affected schools could bring the appeal.

The State Board in two prior decisions has addressed the issue of standing of a neighborhood association. The first ruling came in *Adams, et al. v. Montgomery County Board of Education*, 3 Op. MSBE 143 (1983) where several unincorporated committees and associations attempted to intervene in a school redistricting. Because the State Board decided the case on the merits, the Board found it unnecessary to actually strike from the appeal the remaining intervenors of unincorporated associations, committees, municipalities, and individuals who did not have elementary school or pre-school children affected by the local board's actions. However, the State Board explained that:

In future appeals concerning school closings and consolidations as well as student redistricting and assignment plans, those individual intervenors residing in a community who do not have elementary school or pre-school children will have the burden of showing some

injury in fact or direct interest in order to participate in the appeal. Similarly, municipalities, committees, and other unincorporated associations will have the burden of showing they have a direct interest of their own - separate and distinct from that of their individual members - which might be affected by the particular appeal.

Id. at 149.

Almost a decade later in *Stratford Woods Home Owners' Association, Inc. v. Montgomery County Board of Education*, 6 Op. MSBE 238 (1992), the State Board expanded the concept of standing as it relates to home owners' associations appealing school redistricting decisions. In that appeal, a motion was made to dismiss the home owners' association for lack of standing in its own right because the organization had not demonstrated an organizational interest in the change of school district boundaries. The administrative law judge denied the motion, explaining that it was demonstrated to his satisfaction that the organization existed to forward the interests of its membership, all of whom lived in the community, and all of whom had children in Stonegate, anticipated having children in the school, or owned property having a value to be affected by the decision. "The total collective interest of this small community was the interest of the organization, and as such, it was found to have standing." 6 Op. MSBE at 239.

The State Board adopted the findings and conclusions of the administrative law judge and on the issue of standing provided additional clarification:

We find that the home owners' association has standing to bring this appeal because it represents the interests of association parents who have elementary school children in, or pre-school children who will be in, the affected schools. To this extent we modify the opinion rendered in *Adams, et al. v. Montgomery County Board of Education*, 3 Op. MSBE 143 (1983).

6 Op. MSBE at 238.

In the pending appeal, the administrative law judge did address the merits of the redistricting. Therefore, we find that the error in the judge's ruling on the lack of standing of the community association is harmless.

On the issue of compliance with local board procedure on school redistrictings, the Charles County Board Policy No. 1920 states that "[t]he Board will hold a minimum of one public hearing to take comments on the Superintendent's recommendation and committee alternatives." Under usual circumstances, if this policy is to have effect, a public hearing on the superintendent's recommendation to the Board would have to be held prior to the Board's adoption of that recommendation.

Here the record discloses that the superintendent made his written recommendation to the board by memorandum dated May 1, 1998 (Tr. at 158), and made his oral recommendation on May 12, 1998, at the local board's regular monthly meeting. (Tr. at 173.) These recommendations were separate from the committee proposals which had been publicized earlier for public comment at the March 24 and April 21 hearings.

It therefore appears that the local board did not strictly comply with its Policy No. 1920. However, there is no dispute that the superintendent's recommendation to the board concerning the middle schools was identical to the committee proposals which never changed throughout the redistricting process. The committee proposals were widely publicized with sufficient opportunity for public comment. Thus, any failure to publicize the superintendent's actual recommendation concerning the middle schools before the public hearings is harmless error. However, we request in future school redistrictings that the local board strictly follow its policy and hold a public hearing on the superintendent's recommendation.

For these reasons, we affirm the decision of the Board of Education of Charles 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 I

DORCHESTER NEIGHBORHOOD	*	BEFORE MARY SEELEY KLAIR
ASSOCIATION, INC.	*	ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
BOARD OF EDUCATION OF	*	OF ADMINISTRATIVE HEARINGS
CHARLES COUNTY	*	CASE NO.:98-MSDE-BE-O4-258
* * * * *		

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 May 12, 1998, the Charles County Board of Education ("Board") issued a final decision regarding the redistricting of schools under its jurisdiction. On or about June 15, 1998, Patrick B. Murphy, Esquire, on behalf of the Dorchester County Neighborhood Association, Inc. ("Appellant") filed an appeal with the Maryland State Board of Education ("MSBE") challenging the Board's May 12, 1998 decision. By transmittal dated July 23, 1998, the MSBE requested that an Administrative Law Judge with the Office of Administrative Hearings ("OAH") conduct a hearing and recommend a decision in this matter.

An in-person prehearing conference was conducted on August 26, 1998, at the Hunt Valley Office of the OAH, before Administrative Law Judge Mary Seeley Klair. A Pre-hearing

Report was issued on the same date setting the merits hearing for two consecutive days in October, 1998.

Thus, a merits hearing was conducted on October 13 and 14, 1998, at the Charles County Board of Education on Radiostation Road in La Plata, Maryland. Throughout the proceedings, the Appellants were represented by Patrick B. Murphy, Esquire, and the Board was represented by Edmund J. O'Meally, Esquire.

Prior to the merits hearing the MSBE presented a Motion For Partial Dismissal asking that the appeal be dismissed on the basis of lack of standing of the Appellants: Dorchester Neighborhood Association, Inc. and, Carrie Monaghan, and Larry Carbone. I heard oral argument on the Motion prior to the merits hearing and held that the Dorchester Neighborhood Association and Mr. Carbone had no standing to bring the appeal, but that Mrs. Monaghan did have standing to proceed -- relative to the Middle School only. My ruling on the Motion was fully explained on the record, and therefore, I will not address it further in this decision.

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

ISSUES

The issues are whether:

1. the May 12, 1998, redistricting plan of the Charles County Board of Education, as it relates to the Appellant, was arbitrary, unreasonable, or illegal;
2. the Board held a minimum of one public hearing on

the Superintendent's recommendations and committee alternatives;

3. the make up of the Advisory Committee was as required by the Policy; and
4. the required factors were considered by the Superintendent in the redistricting scheme.

SUMMARY OF THE EVIDENCE

A. Exhibits.

A detailed Exhibit List follows at Appendix 1.

B. Testimony.

The following individuals testified as part of the Appellant's case in chief:

1. Carrie Monaghan
2. Roberta MacFarlane
3. Larry Carbone
4. James Richmond
5. Mary L. Haff

The Board presented the testimony of the following witnesses:

1. Linda Dent-Brown
2. Charles Wineland

Mr. Wineland was offered and accepted as an expert in public school facilities and public school facilities planning, with an emphasis on the creation and modification of school attendance area boundaries/redistricting.

FINDINGS OF FACT

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

1. The process by which Charles County Public Schools responds to demographic and enrollment changes and patterns throughout the County is regulated by rules, procedures, and

policies which provide guidelines to assist the Superintendent and the Board in fulfilling their respective responsibilities, and to promote public understanding and community involvement in the facilities planning process.

2. The Board has numbered Policy statements ("Policy") dealing with School Zone Boundaries which are adopted/amended as deemed necessary by the Board, and currently are numbered beginning with 1900.

3. The stated goals of the Policy are to adjust enrollment boundary lines from time to time in order to promote more uniform and efficient use of school facilities and resources.

4. The Policy requires that the Superintendent identify the schools targeted for redistricting and establish an advisory committee on redistricting to assist him by gathering input from: school system staff, county planning office, affected communities, and the public at large, and developing two or three proposals for redistricting the affected schools, and reporting back to the Superintendent.

5. The Superintendent's role in redistricting is to keep school enrollments balanced and address the need for new schools.

6. In compliance with the requirements of Policy 1940, the Superintendent appointed an Advisory Committee For Redistricting which included:

- three parents and three alternates from elementary, middle and high schools (Stump, Diedrich, Cappello; Nevitt, Kline, Simmons)
- three community members (Bilmanis, Krondon, Saunders)
- three principals, one each from elementary, middle and high schools (Trudnak, Petty/Helmecezi, Bowling/Lacy)

- representative from county Planning
(Grant)
- consulting specialist in redistricting
(Wineland)
- key central office staff
((Barrett, DiSabatino, Chafin, Wineland)

(App. Ex. #1; Brd. Ex. #1)

7. The Redistricting Committee appointees were notified by letters of December 2, 1997, from the Superintendent, that they were to develop two or more proposals for establishing new school boundary lines based on the criteria in Board Policy 1900 and submit a report to the Superintendent by March 1, 1998.

8. The Board is required under Policy 1100 through 1135, to keep the public informed and afford opportunity for public participation, public forum, and keep the public advised of public hearings, registration, scheduling and other related meeting information.

9. The Superintendent's office disseminated Redistricting Fact Sheets in February, March, April, and May, 1998, to parents whose children were to be affected by the redistricting, and some to the students themselves; the Fact Sheets also were sent to the Dorchester Neighborhood Association. The Fact Sheets explained the redistricting process including the Middle Schools, the need for redistricting, what schools would be affected, what proposals were on the table, how the decision would be made, and how parents could comment on redistricting.

10. The Superintendent's office also published the School News, a newsletter which goes out once a month to schools, the public, employees; the issues for February 20, March 6, March 20, and April 17, 1998 all discussed the redistricting process relative to the Middle Schools, when public hearings were to be held and what proposals were on the table.

11. The Superintendent's office provided redistricting information along with the

proposals for Middle School redistricting which appeared in the Maryland Independent newspaper, a local paper of general circulation, published in Waldorf, on April 29, 1998.

12. The Board publishes and disseminates to all students in the Charles County Public Schools an annual school calendar which lists the dates and times for Board meetings and public forums for the school year.

13. The Middle School proposal #1, as announced in the Redistricting Fact Sheet of March 1998, prior to the March 24 Board meeting, never changed throughout the entire redistricting process, up to and including the final Board vote on May 12, 1998.

14. Appellant received the Fact Sheets, through her child's school, containing information on redistricting of the Middle Schools and attended the March 24 and April 21 Board meetings; she understood that she had a right and opportunity to be heard on the redistricting matter, and spoke about redistricting at the March 24 Board meeting.

15. The Superintendent attended all Board meetings including, but not limited to, all meetings at which redistricting was discussed and/or voted on by the Board.

16. The Advisory Committee, at the Superintendent's direction and with his approval, presented Middle School Proposal #1 and Proposal #2 to the Board on March 10, 1998.

17. Members of the Superintendent's staff went on the road, before any public hearings on redistricting were held, to meet with the parents at the schools to be affected by the redistricting; a public hearing was held on March 24 to address the Superintendent's Proposal #1 for Middle Schools.

18. The Superintendent's and the Redistricting Committee's recommendations for the Middle School were the same: Proposal #1, and they never changed during the redistricting

process.

19. The Board held public meetings on redistricting proposals on March 10, March 24, April 24, and May 12. The final vote on redistricting was made on May 12; there was public participation at the May 12 meeting prior to the Board's vote.

DISCUSSION

Code of Maryland Regulations ("COMAR") 13A.01.01.03E(1)(a) defines a very narrow scope of review in cases where an affected party challenges a board's redistricting decision; the board's decision, "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."

Further, COMAR directs that a decision is:

a.) arbitrary or unreasonable - if it is, "contrary to sound educational policy," or a, "reasoning mind could not have reasonably reached the conclusion the county board reached."

COMAR 13A.01.01.03E(1)(b); or

b.) illegal - if it is unconstitutional, exceeds the county board's statutory authority or jurisdiction, misconstrues the law, results from unlawful procedure, is an abuse of its discretionary powers, or is affected by any other error of law. COMAR

13A.01.01.03E(1)(c).

The Appellants allege that the Superintendent and the Board failed to provide at least one public hearing on the Superintendent's redistricting proposal which affected Mattawoman Middle School. However, the Appellants admit in their pre-hearing statement, and through the testimony

of their named Appellant (Monaghan), that there were two public comment hearings after the Superintendent's recommendations were made public, prior to the Board's redistricting vote on May 12, 1998, and that the named Appellant spoke out against the Middle School proposal plans at one of those hearings (March 24).

The Appellant can't concede on the one hand that two public comment hearings were held after the Superintendent's proposals were made public, and prior to the Board's vote, and then, on the other hand, urge that the meetings should not be counted as meeting the requirements of Policy #1920, because the meetings were "chaotic." There was no evidence that chaos reigned at any of the public meetings, only counsel's characterization that such was the case.

The evidence clearly shows that the redistricting process was made public from the beginning and that the Superintendent's office was in full compliance with its duties and responsibilities to involve the public in the process, and also utilized the media to keep the community informed and advised of how to comment. The dissemination of redistricting information through the Superintendent's Office included:

- Redistricting Proposals presented to the Board at the March 10, 1998 regular Board meeting;
- Redistricting Fact Sheets issued by the Superintendent's office, sent through the schools, included the Proposals for the Middle School, how to comment on them, dates and times for public hearings and Board meetings; published February, March, April and May, 1998;
- School News publication from Superintendent's office goes to schools, employees, the public; began advising public of redistricting proposals on February 20, 1998, and continued through March 6, 20, and April 17; advised what the proposals for the Middle School were and how to comment on them, as well as when the Board meetings were held and how to sign up to speak at the public hearings;
- 1997-98 School Calendar, contains dates and times of Board meeting and advises

that the public may speak at the public meeting/public forum portions of the Board meetings; calendars disseminated to all school students in Charles County;

- article in the Maryland Independent newspaper on April 29, 1998, gave details of proposals for Middle School along with a chart; article on redistricting proposals also in the Washington Post, and the Ledger, all newspapers of general circulation in Charles County.

In addition to the above cited information disseminated by the Superintendent's office, he sent members of the Redistricting Advisory Committee around to the affected schools to meet with parents and teachers to discuss the proposals prior to the first public meeting on the proposals on March 24. According to his uncontradicted testimony, the Superintendent also attended every Board meeting during the redistricting process, and discussed the Proposals personally at the April 21, 1998 Board meeting.

The Appellant testified that she was confused about what the proposal for the Middle School actually was. However, Middle School Proposal #1 clearly was identified as the preferred recommendation in Fact Sheet 2, from the Superintendent's office, issued March, 1998, prior to the March 24 Board meeting at which the Appellant spoke. If Appellant was confused there was ample opportunity for her to contact the Superintendent's office between the time she spoke on March 24, and the time the Board voted on May 12, 1998 -- there was another public meeting at which the proposals were discussed on April 21, and at which the appellant chose not to speak.

Appellant argued that the Superintendent did not follow the guidelines for the makeup of the Redistricting Committee found in Policy #1940, since he did not hire, from the outside, a consulting specialist in redistricting. However, Appellant asks that I require more of the Superintendent than the Policy does, as the guidelines do not require that the consultant come from the outside. Uncontradicted testimony showed that the Superintendent asked that Mr.

Wineland serve as the consulting specialist in redistricting since he possessed the requisite experience in redistricting matters. Indeed, counsel accepted Mr. Wineland as an expert in public school facilities and public school facilities planning, with an emphasis on the creation and modification of school attendance area boundaries/redistricting. I find that the makeup of the Committee met the guideline requirements.

The Superintendent clearly followed the procedures as outlined in County Board Policy #1920, and Rules 1940 and 1950, and the redistricting was not the result of his engaging in unlawful procedures. The Appellant presented no evidence in support of the allegation that the redistricting committee failed to consider the relevant factors in making a redistricting decision recommendation to the Superintendent, and therefore I find that claim is without merit.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and discussion, I conclude, as a matter of law that the Appellant failed to sustain her burden of proof by establishing that:

1. the May 12, 1998, redistricting plan of the Charles County Board of Education, as it relates to the Appellant, was arbitrary, unreasonable, or illegal, in violation of COMAR 13A.01.01.03E(1)(a);
2. the Board failed to hold a minimum of one public hearing on the Superintendent's recommendations and committee alternatives, in violation of Policy #1920;
3. the make up of the Advisory Committee was not as required, in violation of Board Rule #1940; and
4. the required factors were not considered by the Superintendent in the redistricting

scheme, in violation of Board Rule #1950.

PROPOSED ORDER

THEREFORE, it is, this **30th** day of **November, 1998**,

PROPOSED, that the Charles County Board of Education's May 12, 1998, redistricting plan relating to the Mattawoman Middle School be **UPHELD**.

Date: November 30, 1999

MARY SEELEY KLAIR
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 Shelia 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).

A ruling on a motion may only be reviewed by exception to the proposed decision or on appeal. COMAR 28.02.16A(11) and B.