

PARENTS ORGANIZATIONAL GROUP
OF THE DR. ROLAND N. PATTERSON SR.
ACADEMY

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-25

OPINION

Appellant filed this appeal from the City Board's decision to close the Dr. Roland N. Patterson, Sr. Academy, School #82, through a two year phase out process. The closure was part of an effort by the City Board to reduce the overall square footage of BCPSS facilities which were severely under capacity. At the time of the decision, BCPSS had the capacity to serve approximately 125,000 students while actual enrollment was only at approximately 85,000 students. This Board referred the case to the Office of Administrative Hearings for an Administrative Law Judge (ALJ) to review the case.


On November 9, 2006, the ALJ issued an 18 page Proposed Decision recommending that the State Board deny the City Board's Motion to Dismiss for failure to state a claim for which relief may be granted, grant the City Board's Motion for Summary Affirmance and affirm the City Board's school closure decision. All parties were given the appropriate notice regarding the filing of exceptions to the ALJ's proposed decision with the State Board. No exceptions were filed.

We have reviewed the ALJ's decision. It is comprehensive, well-reasoned, and his recommendation to affirm the City Board is supported by the facts and the law.

Accordingly, we adopt the Administrative Law Judge's Proposed Decision as the opinion of this Board.

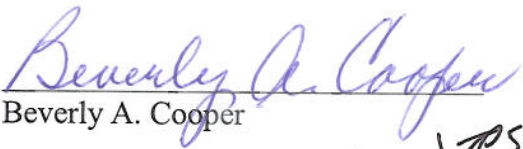


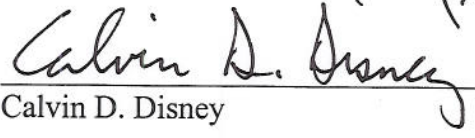
Edward L. Root
President



Dunbar Brooks
Vice President


Lelia T. Allen



J. Henry Butta


Beverly A. Cooper


Calvin D. Disney


Charlene M. Dukes


Richard L. Goodall


Karabelle Pizzigati


Maria C. Torres-Queral


David F. Tufaro

May 30, 2007

PARENTS ORGANIZATIONAL	*	BEFORE JAMES T. MURRAY,
GROUP OF THE DR. ROLAND N.	*	AN ADMINISTRATIVE LAW JUDGE
PATTERSON SR. ACADEMY ¹	*	THE MARYLAND OFFICE OF
v.	*	ADMINISTRATIVE HEARINGS
THE BALTIMORE CITY BOARD	*	OAH CASE NO. MSDE-BE-09-06-28107
OF SCHOOL COMMISSIONERS	*	
* * * *		

PROPOSED ORDER ON MOTION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
ARGUMENTS OF THE PARTIES
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On May 30, 2006, the Baltimore City Board of School Commissioners (the Board) issued a written decision (the Decision) that, *inter alia*, provided that the Dr. Roland N. Patterson, Sr. Academy, school #82 (the Academy), would be closed via a phase-out process over two school years. On or about May 8, 2006, the Parents Organizational Group of the Dr. Roland N. Patterson, Sr. Academy (the Petitioner) filed with the Maryland State Board of Education (State Board) an “Administrative Appeal of the Decision to Phase-Out and Close the Dr. Roland N. Patterson, Sr. Academy” (the Appeal).² The Petitioner takes exception to the Decision for

¹ No members of this organization were identified, so it is unclear as to how the organization has standing to pursue this appeal. Nevertheless, that issue was not raised by the Respondent.

² The appeal in this matter was filed before the decision was issued by the Board. Although that was not mentioned by either party, I will address that circumstance in my decision.

reasons that are be discussed below.

On June 7, 2006, the Board filed a response to the Appeal with the State Board, which included a Motion to Vacate. On June 19, 2006, the State Board referred the matter to the Office of Administrative Hearings (OAH) so that a hearing could be conducted. On September 26, 2006, a prehearing conference in this matter was conducted at OAH. As of that date the Petitioner had not responded to the Motion to Vacate. At the Prehearing conference, the Board indicated that it would be renewing its motion in the form of a Motion to Dismiss or in the Alternative, Motion for Summary Affirmance. In accordance with the Prehearing Order, on September 29, 2006, counsel for the Respondent, Sally A. Robinson, Esquire, Associate Counsel for the Board, filed a Motion to Dismiss or in the Alternative, Motion for Summary Decision (the Motion), along with supporting documentation, with the OAH. On October 16, 2006, Roland N. Patterson, Jr., Esquire, filed a response to the Motion on behalf of the Petitioner. Neither party requested oral argument on the Motion.

ISSUE

The issue is whether the Board's written Decision of May 30, 2006 should be affirmed without a hearing.

SUMMARY OF THE EVIDENCE

I have considered the following documents in reaching my decision on the Motion.

For the Board:

Respondent's Motion to Dismiss, or in the Alternative, Motion for Summary Decision;

Memorandum of Law in Support of Motion to Dismiss, or in the Alternative, for Summary Decision; and

The Board Exhibits, which contained the following:

- Ex. #2 - Facility Solutions: The New Vision for Baltimore City Public Schools, Northwest Area Committee Meeting Schedules, with attachments, pp. 000005 – 000010
- Ex. #3 - Northwest Area Meeting Agenda for September 28, 2005, with attachments, pp. 000011 – 000033
- Ex. #4 - Northwest Area Meeting Agenda for October 19, 2005, with attachments, pp. 000034 – 000051
- Ex. #5 - Northwest Area Meeting Agenda for November 9, 2005, with attachments, pp. 000052 – 000135
- Ex. #6 - Northwest Area Meeting Agenda for November 16, 2005, with attachments, pp. 000136 – 000145
- Ex. #7 - Northwest Area Meeting Notes for November 29 2005, p. 000146
- Ex. #8 - Agenda for Community Meeting #2, December 7, 2005, with attachments, pp. 000147 – 000166
- Ex. #9 - Northwest Area Meeting Agenda for January 4, 2006, with attachments, pp. 000167– 000191
- Ex. #16 - Letter from Benjamin I. Friedman to James Noonam, May 27, 2005, with attachments, pp. 000199 – 000208
- Ex. 21 - Baltimore City Public School System City Wide Facility Statistics, updated January 11, 2006, p. 000223
- Ex. #28 - Notice of December 7 and 8, 2005 Community Meetings, p. 000253
- Ex. #29 - Notice of October 19, 2005 Community Dialogs, p. 000254
- Ex. #30 - Notice of an October 19, 2005 Community Dialog, p. 000255
- Ex. #31 - Notice of October 19 and 20, 2005 Community Dialogs, p. 000256
- Ex. #32 - Notice of an October 19, 2005 Community Dialog, p. 000257
- Ex. #33 - Notice of October 19 and 20, 2005 Community Dialogs (in Spanish), p. 000258
- Ex. #35 - Notice of December 7, 2005 Community Meeting, with attachment, pp. 000263 – 000264
- Ex. #36 - Notice of, and address for, the internet site for Facility Solutions and an on-line survey at the site, p. 000265
- Ex. # 37 - Notice of a November 18, 2005 Student Dialog, p. 000266
- Ex. #42 - Memorandum from Tom Stosur to Elementary & Middle School Principals, with attachments, pp. 000276 – 000279
- Ex. #45 - Facility Utilization Study Initial Recommendations for School Year 2006-2007, Baltimore City Public School System, February 14, 2006, with attachments, pp. 000282 – 000325
- Ex. #55 - Notice of Public Hearing on Proposed School Closings, Reconfigurations, and Rezoning Plan, Baltimore City, pp. 000483 – 000488
- Ex. #56 - Letter from Nancy S. Grasmick to Brian Morris, September 23, 2005, pp. 000489 – 000500

- Ex. #64 - Baltimore City Board of School Commissioners Decision Regarding Proposed School Closings, Program Relocations, and Building Reconfigurations, March 28, April 6, 2006 and May 30, 2006, with cover letter, pp. 000579 – 000631
- Ex. #65 - Sunpapers newspaper advertisement, with verification of publication dates, pp. 000632 – 000634
- Ex. #66 - Daily Record Notices dated February 18, 26 and March 18, 2006, pp. 000635 – 000637
- Ex. #67 - The Baltimore African-American newspaper advertisement, February 25 – March 3, 2006, pp. 000638 – 000639.
- Ex. #68 - Transcript of the Baltimore City Board of School Commissioners Public Business Meeting, September 13, 2005, pp. 000640 – 000656
- Ex. #69 - Transcript of the Baltimore City Board of School Commissioners Public Business Meeting, October 3, 2005, pp. 000657 – 000736
- Ex. #70 - Transcript of the Baltimore City Board of School Commissioners Public Business Meeting, March 6, 2006, pp. 000737 – 000872
- Ex. #72 - Transcript of the Baltimore City Board of School Commissioners Public Hearing – Facilities Solutions, March 11, 2006, pp. 001075 – 001208
- Ex. #74 - Transcript of the Baltimore City Board of School Commissioners Public Hearing – Facilities Solutions, April 3, 2006, pp. 001478 – 001556
- Ex. # 75 - Transcript of the Baltimore City Board of School Commissioners Facilities Solutions Hearing – Facilities Solutions, April 6, 2006, pp. 001557 – 001592

For the Petitioner:

Petitioner's Response to Respondent's Motion to Dismiss or for Summary Judgment

ARGUMENTS OF THE PARTIES

The Board

The Respondent contends that it is entitled to have the Appeal dismissed or the Decision affirmed for essentially the following two reasons:

1. There is no genuine dispute as to any material fact; the Petitioner merely disagrees with the decision; and
2. The Petitioner did not present probative evidence to rebut the Board's evidence or generate a genuine dispute that the Decision did not violate COMAR, or any other

law, rule or regulation or that its May 30, 2006 written decision was arbitrary, unreasonable or illegal as defined by State Board and court decisions.

In support of its position, the Respondent relied upon various documents, COMAR 13A.01.01.03, State Board opinions, *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967), other case law and numerous documents relative to Board's decision-making process. The Board, by way of its Motion and documentation, systematically addressed all issues pertinent to an appeal of this nature. The Board maintained that the complaints raised by the Petitioner are mere disagreements with the decision and that the Petitioner did not show that there are any genuine issues of material fact in dispute that might demonstrate that the Respondent violated any of the requirements of COMAR 13A.02.09 and thus, did not show that the decision was arbitrary, unreasonable or illegal.

The Petitioner

In the response, as in its appeal, the Petitioner claims that the Decision was improper because the Decision violated a "fiduciary duty owed to the students of Baltimore City" by the Board. According to the Petitioner, the Decision also violated a "constructive social contract" between the Board and students of Baltimore City Public School System (BCPSS). Each of these alleged violations, in the Petitioner's view, demonstrates that that the Decision was arbitrary.

MATERIAL FACTS

I find that the following material facts are not genuinely disputed:

1. At the time the Decision was issued, the BCPSS had the capacity to serve approximately 125,000 students, but only had an enrollment of approximately 85,000 students. (Bd. Ex. # 16)

2. For the past several years, the State of Maryland Public School Construction Program's Interagency Committee on School Construction (IAC) has strongly urged the BCPSS and the Board to reduce overall square footage in the school system. (Bd. Ex. #56)
 3. Projected student enrollment for 2011 is approximately 76,000. (Bd. Ex. #16)
 4. The IAC mandated that BCPSS significantly reduce its square footage or risk losing capital dollars needed to maintain its school buildings in the future. (Bd. Ex. #16)
 5. The BCPSS has the oldest average age (46 years) of school building stock in the State; 74% of BCPSS facilities are in poor condition.
 6. To address this situation, the Facilities Solutions process was began in the summer of 2005. By September 2005, the BCPSS Chief Operating Officer and his staff presented to the Board an agenda for the ensuing months. The agenda included the division of the City into eight planning area committees, a citywide committee and community forums. (Bd. Ex. #68)
 7. The planning area committees were charged with:
 - analyzing school capacity data, building conditions, recent and projected capital investment and enrollment data, as well as targeting capacities for their respective planning areas;
 - aligning academic reform priorities and initiatives with facilities configurations;
 - considering options for future school locations, capacities and configurations, base on these data, and
 - making final recommendations to the Facility Solutions Citywide Steering Committee for school in their planning area.
- (Bd. Ex. #68)
8. The Citywide Steering Committee and the planning area committees were given educational programming factors such as class size targets, integration of special education and

alternative education, early childhood centers, and resource rooms, to consider during their planning. (Bd. Ex. #45)

9. The Citywide Steering Committee was charged with overseeing the entire Facility Solutions process, keeping the eight planning area committees on track and resolving “edge” issues between planning areas. (Bd. Ex. #45)

10. In October 2005, the Board voted to reduce the overall square footage of BCPSS facilities by 15% over the next three years. It also charged the BCPSS staff with engaging the community to develop a ten-year plan that would meet the goal of a 15% reduction in square footage, and to develop a blueprint to modernize all of BCPSS’ school buildings. It was also to make recommendations for each building, including renovations, additions, closures, and new construction. (Bd. Ex. # 69)

11. The Academy is located in the area encompassed by the Northwest Planning Area Committee. The Northwest Area Planning Committee met on numerous occasions, beginning September 2005 and concluding in January 2006. There were two community dialogs specifically for the Northwest Community, one in October 2005 and one in December 2005. (Bd. Exs. #2-9)

12. Flyers announcing these various opportunities to participate in the planning process were given to planning committee members, and to school principals for distribution to parents and students. Questionnaires and surveys were made available at community meetings as well as on the BCPSS website. Responses to the questionnaires were tabulated and used by the planning committees in making their recommendations to the Citywide Steering Committee. (Bd. Exs. #28-33, 35-37, 42)

13. As a result of these various meetings, including public meetings and responses to questionnaires, BCPSS staff created a Facilities Solutions report. That report rated the schools in terms of their building conditions. The condition of the Academy was rated above several other schools; some slated for closing and others not.

14. The building status analysis did not take into account the particular enrollment of each particular school rated.

15. On February 14, 2006, BCPSS staff made a presentation to the Board on behalf of the Citywide Steering Committee and the planning committees. These initial recommendations were for school closures, reconfigurations and program relocations for the 2006-2007 school year, with the understanding that the recommendations were the first phase of implementing a three-year reduction of square footage. One of the schools recommended for closure, effective August 2006, was the Academy. Under this initial recommendation, the Academy's current students were to be reassigned to Pimlico Middle School #122 and the incoming students would have gone to various schools in the area. (Bd. Ex. #45)

16. Following the February 14, 2006 presentation, three formal public hearings and a public forum were held. (Bd. Ex. #21, 70, 72)

17. For at least two weeks in advance of the hearings, newspaper advertisements for them were published in at least two newspapers of general circulation in the geographic attendance area for the schools proposed for closure. (Bd. Exs. #55, 65-67)

18. As a result of comments and testimony at the public hearings, the Board requested that revisions be made to the initial recommendations for two schools, the Academy and Highlandtown Middle #43.

19. During a public business meeting on March 28, 2006, the Board voted on other recommendations that had been made at the February 14, 2006 presentation. At that meeting, the Board voted to relocate six programs, reconfigure one school, close one school effective August 2006 and phase-out two schools beginning in August 2006 and ending in summer 2008.
20. On April 3, 2006, the Board conducted a fourth public hearing to receive comments from the community regarding the revised recommendations for the Academy and Highlandtown Middle #43. (Bd. Ex. # 74)
21. For at least two weeks in advance of the April hearing, newspaper advertisements for it were published in at least two newspapers of general circulation in the geographic attendance area for the schools proposed for closure. (Bd. Exs. #65, 66)
22. The Board accepted the revised recommendations for both schools. With regard to the Academy, the Board voted to close the school via a two-year phase-out process instead of making the closure effective in summer 2006. (Bd. Ex. #75)
23. On May 8, 2006, the Petitioner filed the appeal with MSDE.
24. On May 30, 2006, the Board issued the Decision, encompassing both the March 28 and April 6, 2006 meetings. As reflected in the Decision, the Board considered numerous factors, including the eight factors set forth at COMAR 13A.02.09.01B.

DISCUSSION

COMAR 13A.01.01.03E, establishes the standard of review of decisions of county Boards of Education, including Baltimore City, that involve local policy. It provides that the decision of a Board of Education is considered *prima facie* correct. Under certain circumstances, an appeal of a local board decision may be resolved without a hearing. COMAR 13A.01.05.03 provides:

C. Motion to Dismiss.

(1) A motion to dismiss shall specifically state the facts and reasons upon which the motion is based that may include, but are not limited to, the following:

- (a) The county board has not made a final decision;
- (b) The appeal has become moot;
- (c) The appellant lacks standing to bring the appeal;
- (d) The State Board has no jurisdiction over the appeal; or
- (e) The appeal has not been filed within the time prescribed by Regulation .02B of this chapter.

(2) The State Board may, on its own motion, or on motion filed by any party, dismiss an appeal for one or more of the reasons listed in §C(1) of this regulation.

D. Motion for Summary Affirmance.

(1) A motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law.

(2) A memorandum in support of or in opposition to a motion for summary affirmance shall contain the following:

- (a) A statement of the issues presented for review;
- (b) A statement of the facts;
- (c) An argument which includes reference to relevant legal principles and State Board decisions, if any;
- (d) A short conclusion stating the relief sought; and
- (e) Any supporting documents, exhibits, and affidavits.

Likewise, OAH's Rules of Procedure have similar provisions. COMAR 28.02.01.16 states, in pertinent part:

C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

D. Motion for Summary Decision.

- (1) A party may move for summary decision on any appropriate issue in the case.
- (2) A judge may grant a proposed or final summary decision if the judge finds that:
 - (a) There is no genuine issue of material fact; and
 - (b) A party is entitled to prevail as a matter of law.

COMAR 28.02.01.16C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule applies equally to OAH Rule 16C. In a preliminary motion to dismiss, the moving party must establish that it is entitled to relief. *See Lubore v. RPM Assocs., Inc.* 109 Md. App. 312, 674 A.2d 547 (1996); *Rossaki v. NUS Corp.*, 116 Md. App. 11, 695 A.2d 203 (1997). Furthermore, when construing a motion of this nature, the Administrative Law Judge is required to examine the evidence in the light most favorable to the non-moving party. Also, the non-moving party is entitled to all favorable inferences fairly construed from the evidence. *General Mtrs. Corp. v. Lahocki*, 286 Md. 714, 733, 410 A.2d 1039, 1049 (1980); *Sharrow v. State Farm Mutual Insurance Company*, 306 Md. 754, 511 A.2d 492, 499-500 (1986).

In the Motion, the Respondent referenced OAH's rules of procedure. Under COMAR 28.01.01.01, in any case referred to the OAH, OAH's Rules of procedure apply. See, also Md. State Code Ann., State Gov't § 10-206(a) (2004). In any event, substantively the Board's rules pertaining to the Motion and the OAH's Rules are the same. Thus, I will refer only to the OAH's rules in my discussion.

In the present case, the Petitioner challenges a school board redistricting plan, but only to the extent that it affects a particular middle school. The Petitioner seeks to block the implementation of the plan set forth in a May 30, 2006 written Decision of the Board to the extent that the Academy will ultimately be closed. The Board contends, however, that it is entitled to summary decision or to have the Appeal dismissed. The Petitioner disagrees.

A motion for summary decision (or affirmance) is the equivalent of a motion for summary judgment or summary decision. As in a motion for summary decision, in a motion for summary affirmance a moving party must demonstrate that no genuine issues exist as to any material fact. COMAR 13A.01.01.03K(1). Of course, it goes without saying that the moving party must also demonstrate that it is entitled to prevail as a matter of law. Because Md. Rule 2-501 and Federal Rule of Civil Procedure 56 set nearly identical standards for summary judgment, the requirements of those rules, as analyzed by appellate courts, are particularly instructive in analyzing the standards for summary decision or affirmance in administrative proceedings.

In *Washington Homes, Inc. v. Interstate Land Development Co.*, 281 Md. 712, 382 A.2d 555 (1978), the Court of Appeals summarized the standards for summary judgment set forth in numerous other Maryland cases:

The summary judgment procedure is not a substitute for a trial, but a means by which the trial court may determine, summarily, whether a trial is necessary.... [I]f there is a genuine dispute as to any material fact, summary judgment would not properly be granted." *Brown v. Suburban Cadillac, Inc.*, 260 Md. 251, 255, 272 A.2d 42, 44 (1971). "(E)ven where the underlying facts are undisputed, if those facts are susceptible of more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact." *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 138, 265 A.2d 256, 258 (1970), and cases therein cited. The function of the trial judge is much the same as that which he performs at the close of all the evidence in a jury trial when motions for directed verdict or requests for peremptory instructions require him to determine whether an issue requires resolution by a jury or is to be

decided by the court as a matter of law. Lynx, Inc. v. Ordnance Products, 273 Md. 1, 8, 327 A.2d 502 (1974); Salisbury Beauty Schools v. St. Bd., 268 Md. 32, 41, 300 A.2d 367 (1973).

A court cannot rule summarily as a matter of law until the parties have supported their respective contentions by placing before the court facts which would be admissible in evidence. Rooney v. Statewide Plumbing, 265 Md. 559, 563-564, 290 A.2d 496 (1972); Shatzer v. Kenilworth Warehouses, 261 Md. 88, 95, 274 A.2d 95 (1971); Brown v. Suburban Cadillac, Inc., 260 Md. at 255, 272 A.2d 42. " '(W)hen the moving party has set forth sufficient grounds for summary judgment, the party opposing the motion must show with some precision that there is a genuine dispute as to a material fact.' " Shatzer, 261 Md. at 95, 274 A.2d at 44 (quoting Brown, 260 Md. at 255, 272 A.2d 42). "A bare allegation in a general way that there is a dispute as to material facts is never sufficient to defeat a motion for summary judgment. ... General allegations which do not show facts in detail and with precision are insufficient to prevent the entry of summary judgment." Lynx, Inc., 273 Md. at 7-8, 327 A.2d at 509. A material fact is one "the resolution of which will somehow affect the outcome of the case." Rooney, 265 Md. at 564, 290 A.2d at 499.

Washington Homes, Inc., 281 Md. at 716-18, 382 A.2d at 557-59 (1978). See also *Dietz v. Moore*, 277 Md. 1, 5, 351 A.2d 428, 431 (1976); *King v. Bankerd*, 303 Md. 98, 111, 492 A.2d 608, 614 (1985); *Hurl v. Howard County Board of Education*, 107 Md. App. 286, 667 A.2d 970 (1995) (involuntary transfer of a teacher); *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995).

Accordingly, to contest the truth of a fact attested to or documented in support of a motion for summary decision and render it disputed, the party against whom the motion is directed must respond with specific disputed facts, supported by attestation or documentation. It is also clear that at this point in the proceedings, the Petitioner has no burden to prove anything. Although the Petitioner bears the burden of proof at a hearing, all burdens at this point are borne by the Board. In any event, the Board submitted detailed documentation in support of every aspect of the Motion. The Petitioner offered no documentary evidence and no controlling law in

opposition to the Motion. In fact, it appears that Petitioner merely disagrees with the Board's analysis of the voluminous information that it considered in reaching its decision.

COMAR 28.02.01.16C parallels Md. Rule 2-322(b)(2) (failure to state a claim upon which relief can be granted) and, therefore, case law construing that rule applies equally here.

In a preliminary motion to dismiss, the moving party must establish that it is entitled to relief. *See Lubore v. RPM Assocs., Inc.* 109 Md. App. 312, 674 A.2d 547 (1996); *Rossaki v. NUS Corp.*, 116 Md. App. 11, 695 A.2d 203 (1997). Furthermore, when construing a motion of this nature, the Administrative Law Judge is required to examine the evidence in the light most favorable to the non-moving party. Also, the non-moving party is entitled to all favorable inferences fairly construed from the evidence. *General Mtrs. Corp. v. Lahocki*, 286 Md. 714, 733, 410 A.2d 1039, 1049 (1980); *Sharrow v. State Farm Mutual Insurance Company*, 306 Md. 754, 511 A.2d 492, 499-500 (1986).

As pointed out by the Board, the case that defines the scope of appeals of redistricting matters is *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 226 A.2d. 243 (1967). In *Bernstein*, the Court held that test is not whether there were other plans that would have worked as well or even better than the plan adopted by the local board, but whether the action taken was arbitrary, capricious or illegal. That standard is codified at COMAR 13A.01.05.01. Nevertheless, Petitioner apparently contends that there is a higher "law," that of the social contract.

At least on the issues raised by the Board, the Petitioner's Appeal does state a claim for which relief may be granted. If the Board's decision is arbitrary, unreasonable or illegal, Petitioner is entitled to judgment in its favor. Thus, the Board's Motion to

Dismiss is denied.

In the latter seventeenth century the famous British philosopher and lawyer John Locke, much of whose work is characterized by opposition to authoritarianism, developed the concept of the social contract. Under Lockean principles, from the earliest beginnings of human society, people bound themselves together under a variety of social contracts. In Locke's view, these principles, sort of an extension of natural law, are paramount.

According to some, however, as a legal principle the social contract, like the Law of Nature itself, is one of the great juristic myths of history. See, Henderson, Railway Valuation and the Courts, 33 Harv.L.Rev. 1031, 1051. On the other hand, courts have recognized that there is such a principle as the social contract and that principle is an important concept in this country. As stated by Maryland's intermediate appellate court:

There are many mansions in our law and we look to different ones for different redresses. We are protected from each other's deprivations by the traditional substantive law, civil and criminal, which we have erected over the centuries to regulate man's interrelationships with other men. It was in the very act of ratifying a new social contract in 1788 that we perceived the need for a set of fundamental protections against the proposed new government even as we were already protected against each other by an already venerable substantive law. The Bill of Rights, in response to that felt need, was a set of built-in limitations, of hobbles, upon government as government...

von Lusch v. State, 39 Md. App. 517, 522-23, 387 A. 2d 306,309 (1978).

Within the context of the social contract, men have promulgated rules of behavior for the group and they have provided for the enforcement of those rules. Whenever the tenets of acceptable behavior were transgressed, men bound themselves together as a *posse comitatus* first as families, then as clans, then as tribes, then as nation-states.

Jacobs v. State, 45 Md. App. 634, 644, 415 A. 2d 590, 596 (1980). As is revealed by

case law, these so-called social contracts are, where they exist at all, codified in our system of written laws. See, for instance, *Great Atlantic & Pacific Tea Co., v. Imbraguglio*, 346 Md. 513, 697 A. 2d 885 (1997) (worker's compensation laws).

Although Locke was a lawyer, philosophy is not law. Thus, unlike what Locke theorized, in our modern society, social contracts are subordinate to our codified system of laws.

What were once important social contracts have been codified. To the extent that certain social contracts have not been codified, society as a whole has not considered them important enough to codify and thus, they have no legal effect. Moreover, as pointed out by the Board, its fiduciary duty (or social contract) regarding the operation of BCPSS runs to all of the citizens of Baltimore City, not just to the students of the BCPSS.

In this case, the Petitioner did not contend that it was shut out of the decision making process, it did not claim or attempt to show that it was not informed of various meetings and forums for airing its views, or that any of the information relied upon by the Board was in appropriate or inaccurate. Petitioner noted that the Academy is in better shape, from a facilities standpoint, than some schools not slated for closing. However, the Board was aware of this as well, along with a host of other issues, including student enrollment at particular schools and overall projected student enrollment in Baltimore City. The Board considered all of these factors and, in fact, all of the COMAR factors; it even reconsidered them. Simply stated, the Petitioner merely disagrees with the Decision. As *Bernstein* teaches, this is not the standard. The information presented on behalf of the Petitioner does not raise any genuine dispute as to any material fact. To the extent that the court decisions regarding funding alluded to by the Petitioner are relevant to the Decision,

they support the Board's conclusion that school closures are necessary to protect scarce fiscal resources. Therefore, the Board's Decision of May 30, 2006 was not arbitrary, unreasonable or illegal.

The Petitioner's social contract argument must fail as well. In summary, any social contract implicit in the decision to close a school is codified at COMAR 13A.02.09. As mentioned above, the Petitioner did not show or attempt to show that any of the factors set forth in that regulation were not considered by the Board in reaching its May 30, 2006 decision.³ Thus, the social contract theory also raises no genuine dispute as to any material fact and the Respondent is entitled to judgment as a matter of law under that theory as well.

Accordingly, for all of the reasons set forth above, I will grant Respondent's Motion for Summary Decision and affirm the Decision.

CONCLUSIONS OF LAW

Based upon the foregoing Discussion and for the reasons stated therein, I conclude as a matter of law that the Respondent's Motion to Dismiss is denied. COMAR 28.02.01.16C, COMAR 13A.01.05.03C. I also conclude as a matter of law that the Respondent's Motion for Summary Decision is granted and the Board's May 30, 2006 written Decision is affirmed.

³ The appeal in this case was filed well before the Board's final decision, the decision of May 30, 2006, was issued. Any prior decision in this matter rendered by the Board was abrogated by the May 30, 2006 decision and is not before me. Thus, the Petitioner's appeal in this matter would seem to be premature and subject to dismissal on that basis as well. COMAR 13A.05.01.03A(1)(a) and (b).

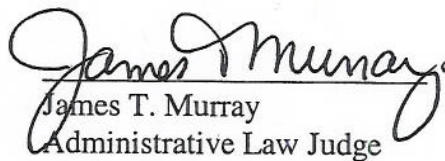
COMAR 28.02.01.16D, COMAR 13A.01.05.03D, *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967).

ORDER

IT IS ORDERED that the written decision of the Baltimore City Board of School Commissioners issued on May 30, 2006 is affirmed; and

IT IS FURTHER ORDERED that the hearing scheduled for December 6 and 7, 2006 is cancelled.

November 9, 2006
Date


James T. Murray
Administrative Law Judge

JTM/gar
#84752

Sally A. Robinson, Esquire
Office of Legal Counsel
200 East North Avenue
Suite 208
Baltimore, Maryland 21202

Roland N. Patterson, Jr., Esquire
Law Office
10451 Mill Run Circle
Suite 400
Owings Mills, Maryland 21117-5577