

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**JOE PASCALE, BING WU, MARY)
MIRELES, KIM FARRELL, DAVID)
GRAHAM, JOAN GRAHAM, MARIA)
LEBERRE, CHERYL HOWELL, DAN)
CARNEY, WILLIAM BROWNING, and)
CORY EPPERSON,)**

Petitioners,)

v.)

CASE NO. 2008-

FAIRFAX COUNTY SCHOOL BOARD,)

Serve:)

**Pam Goddard,)
Clerk of the Board)
8115 Gatehouse Road)
Suite 5400)
Falls Church, VA 22042)**

Respondent.)

PETITION FOR JUDICIAL REVIEW

NOW COME Petitioners, Joe Pascale, Bing Wu, Mary Mireles, Kim Farrell, David Graham, Joan Graham, Maria LeBerre, Cheryl Howell, Dan Carney, William Browning, Cory Epperson, by counsel, pursuant to Virginia Code § 22.1-87, and petition this Court to review the February 28, 2008 action of Respondent Fairfax County School Board approving boundary adjustments for South Lakes, Oakton, Chantilly, Madison, and Westfield High Schools, Thoreau and Hughes Middle Schools, and Wolftrap and

Sunrise Valley Elementary Schools, the so-called "West County high schools boundary adjustment." In support of the Petition, Petitioners state as follows:

Jurisdiction

1. This Court has jurisdiction of this petition for judicial review pursuant to Virginia Code §§ 17.1-513 and 22.1-87.

Venue

2. Venue is proper in this Court pursuant to Virginia Code §§ 8.01-261 and 22.1-87.

Parties

3. Petitioner Joe Pascale is the parent of a 6th grade student at Wolftrap Elementary School who is aggrieved by the action of the School Board because Petitioner's child will be required to attend Hughes Middle School for 7th grade in the 2008-2009 school year, instead of Thoreau Middle School, where the student would have been assigned absent the challenged boundary adjustment, and the student will be required to attend South Lakes High School for 9th grade in the 2010-2011 school year, instead of Madison High School, where the student would have been assigned absent the challenged boundary adjustment.

4. Petitioner Bing Wu is the parent of a 4th grade student and a kindergarten student at Floris Elementary School who is aggrieved by the action of the School Board because when they reach high school, Petitioner's children will be assigned to attend South Lakes High School, instead of Westfield High School, where they would have been assigned absent the challenged boundary adjustment.

5. Petitioner Mary Mireles is the parent of a kindergarten student at Floris Elementary School who is aggrieved by the action of the School Board because when the student reaches high school, Petitioner's child will be assigned to attend South Lakes High School, instead of Westfield High School, where the student would have been assigned absent the challenged boundary adjustment.

6. Petitioner Kim Farrell is the parent of a 2nd grade student and a 1st grade student at Wolftrap Elementary School who is aggrieved by the action of the School Board because Petitioner's children will be required to attend Sunrise Valley Elementary School for 3rd and 2nd grade in the 2008-2009 school year, instead of Wolftrap Elementary School, where the students would have been assigned absent the challenged boundary adjustment. Thereafter, the students will be assigned to Hughes Middle School, instead of Thoreau Middle School, and then to South Lakes High School, instead of Madison High School, where they would have been assigned absent the challenged boundary adjustment.

7. Petitioners David Graham and Joan Graham are the parents of an 8th grade student at Thoreau Middle School who are aggrieved by the action of the School Board because Petitioners' child will be required to attend South Lakes High School for 9th

grade in the 2008-2009 school year, instead of Madison High School, where the student would have been assigned absent the challenged boundary adjustment.

8. Petitioner Maria LeBerre is the parent of a 4th grade student at Fox Mill Elementary School, an 8th grade student at Rachel Carson Middle School, and a 9th grade student at Oakton High School who is aggrieved by the action of the School Board because when her younger children reach high school Petitioner's children will be required to attend South Lakes High School, instead of Oakton High School, where they would have been assigned absent the challenged boundary adjustment.

9. Petitioner Cheryl Howell is the parent of an 8th grade student at Rachel Carson Middle School who is aggrieved by the School Board's action because Petitioner's child will be required to attend South Lakes High School for 9th grade in the 2008-2009 school year, instead of Oakton High School, where the student would have been assigned absent the challenged boundary adjustment.

10. Petitioner Dan Carney is the parent of a 7th grade student at Rachel Carson Middle School and a 4th grade student and a 1st grade student at Fox Mill Elementary School who is aggrieved by the action of the School Board because when they reach high school Petitioner's children will be required to attend South Lakes High School, instead of Oakton High School, where they would have been assigned absent the challenged boundary adjustment.

11. Petitioner William Browning is the parent of an 8th grade student at Rachel Carson Middle School who is aggrieved by the School Board's action because Petitioner's child will be required to attend South Lakes High School for 9th grade in the

2008-2009 school year, instead of Oakton High School, where the student would have been assigned absent the challenged boundary adjustment.

12. Petitioner Cory Epperson is the parent of a 7th grade student at Rachel Carson Middle School and a 4th grade student at Fox Mill Elementary School who is aggrieved by the action of the School Board because when they reach high school Petitioner's children will be required to attend South Lakes High School, instead of Oakton High School, where they would have been assigned absent the challenged boundary adjustment.

13. Respondent Fairfax County School Board ("School Board") is the duly elected school board of Fairfax County in which is vested the supervision of the Fairfax County Public Schools ("FCPS") as provided by Virginia Code § 22.1-28. Respondent is a body corporate pursuant to Virginia Code § 22.1-71 with powers and duties as set forth at Virginia Code §§ 22.1-71 et seq., including the authority to "[p]rovide for the . . . redistricting of school boundaries . . . whenever such procedure will contribute to the efficiency of the school division[,]" as provided by Virginia Code § 22.1-79(4).

Statement of Facts

14. On February 28, 2008, the School Board voted 10-2 to approve boundary adjustments for South Lakes, Oakton, Chantilly, Madison, and Westfield High Schools, Thoreau and Hughes Middle Schools, and Wolftrap and Sunrise Valley Elementary Schools. The minutes of the February 28, 2008 meeting are attached as Exhibit A.

Minutes relevant to the West County high schools boundary adjustment are found at pages 4-8 of Exhibit A.

15. As a result, several neighborhoods which previously had been assigned to other high schools in the Western part of Fairfax County have been reassigned to South Lakes High School.

16. The February 28, 2008 vote was the culminating act in a boundary study of the West County high schools that the School Board initiated in the late spring/early summer of 2007.

17. In conducting the boundary study and in voting to approve the boundary adjustment, the School Board purported to rely upon its Policy 8130.5, a copy of which is attached as Exhibit B, and Virginia Code § 22.1-79(4) (*see* ¶ 13, *supra*).

18. Policy 8130.5 provides that "[t]he School Board may . . . change a school boundary . . . in order to maintain or improve operating efficiency and/or instructional effectiveness." (Exhibit B § V.) The policy lists "[n]umerous factors [that] may be considered when . . . redistricting school boundaries[.]" (*Id.* § VI.) Policy 8130.5 further states, "The consideration of these factors and such adjustments shall involve affected communities to the extent reasonable." (*Id.*).

19. School Board Regulation 8130.5, a copy of which is attached as Exhibit C and which purports to provide guidance for implementing Policy 8130.5, sets forth a process for obtaining public input on boundary realignment decisions. This process requires a minimum of three facilitated community meetings at which, *inter alia*, participants are randomly assigned work groups. The first task of a work group is to "identify important factors to consider when determining . . . program attendance

assignments and suggest neighborhoods that might be included in new alignment."
(Exhibit C, Attachment.)

20. In a July 16, 2007 document entitled "Primary Considerations for the West County High School Boundary Study," a copy of which is attached as Exhibit D, FCPS Facilities staff listed the following factors: (1) projected school enrollment, (2) the distribution of programs and resources, (3) the socioeconomic characteristics of school populations, and (4) contiguous school attendance areas. (*See Exhibit D.*)

21. Notwithstanding the requirement of Regulation 8130.5 that members of the public be allowed to identify important factors to consider when redistricting, the public did not participate in the preparation of "Primary Considerations for the West County High School Boundary Study." Moreover, because the identification of primary factors for considerations pre-ordained the neighborhoods that would be examined in the boundary study, the public was not allowed to "suggest neighborhoods that might be included in new alignment," as required by Regulation 8130.5. (*See Exhibit C, Attachment.*)

22. The public was invited to three town hall meetings in November and December 2007, at which FCPS Facilities staff presented four boundary adjustment options. A copy of a map delineating the West County high school attendance boundary status quo as of November 27, 2007, is attached as Exhibit E. Copies of maps of Options 1 through 4 are attached as Exhibit F1, F2, F3, and F4. In addition to depicting the physical changes in the high school attendance areas for each proposed option, the option maps include projected changes in population and socioeconomic impact, as measured by

changes in the population of students categorized as English for Speakers of Other Languages ("ESOL") and Free and Reduced Lunch ("F&R Lunch").

23. The minutes of the February 28, 2008 meeting state that the West County high schools boundary adjustment is detailed in the agenda item at School Board Appendix B. A copy of School Board Appendix B is attached as Exhibit G. The redistricting option approved by the School Board was not one of the options presented at the town hall meetings. In addition to describing the physical changes in the attendance areas approved by the School Board, the agenda item at School Board Appendix B includes projected changes in population and socioeconomic impact, as measured by changes in the population of students categorized as ESOL and F&R Lunch. (*See Exhibit G.*)

24. The boundary adjustment plan approved by the School Board indicates that starting with the 2008-2009 school year and into the future high school students in the Fox Mill Elementary School attendance area, which previously fed into Oakton High School, high school students in the so-called Madison "island," which previously fed into Madison High school, and high school students from the part of the Floris Elementary School attendance area east of Centreville Road and north of West Ox Road, which previously fed into Westfield High School, would be reassigned to South Lakes High School. In addition, high school students in the Navy Elementary School attendance area east of the Fairfax County Parkway, which previously fed into Chantilly High School, would be reassigned to Oakton High School. (*See Exhibit G.*)

25. The boundary adjustment plan approved by the School Board indicates that starting with the 2008-2009 school year and into the future middle school students in the

so-called Madison "island" (also called the Thoreau attendance island for purposes of middle school attendance), which previously fed into Thoreau Middle School, would be reassigned to Hughes Middle School. (*See Exhibit G.*)

26. The boundary adjustment plan approved by the School Board indicates that starting with the 2008-2009 school year and into the future elementary school students in the so-called Madison "island" (also called the Wolftrap attendance island for purposes of elementary school attendance), which previously fed into Wolftrap Elementary School, would be reassigned to Sunrise Valley Elementary School. (*See Exhibit G.*)

27. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to delay all boundary studies until a comprehensive review of the entire county could be made. (*See Exhibit A at p. 4.*)

28. The School Board refused to delay all boundary studies even though Respondent knew, inter alia, that the West County high school boundary study was flawed and a comprehensive countywide plan could consider time and travel distances, safety issues, traffic, the cost of busing, and programmatic issues. (*See Exhibit A at p. 4.*)

29. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to place a moratorium on all high school boundary changes until February 2010, during which time a complete study of all high school boundaries in Fairfax County would be conducted. (*See Exhibit A at p. 5.*)

30. The School Board refused to place a moratorium on all high school boundary changes until February 2010, even though Respondent knew, inter alia, that the public had lost confidence in the process due to perceived inaccuracies in the boundary

study, and the data did not support a compelling facility need for immediate boundary adjustments in western Fairfax County. (*See Exhibit A at p. 5.*)

31. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to place a moratorium on high school boundary changes for Westfield, Chantilly, Herndon, South Lakes, Oakton, Madison, Marshall, Langley, and McLean High Schools until February 2010, during which time a complete study of these schools' boundaries would have been conducted, with the goal of adjusting the boundaries to improve the enrollment capacity balance at the schools, while making transportation more efficient in terms of safety, time, and cost. (*See Exhibit A at pp. 5-6.*)

32. The School Board refused to place a moratorium on boundary changes for Westfield, Chantilly, Herndon, South Lakes, Oakton, Madison, Marshall, Langley, and McLean High Schools until February 2010, in order to conduct a study to improve the enrollment imbalance and to make transportation more efficient, even though Respondent knew, *inter alia*, that flaws in the existing Western Boundary Study could be corrected by expanding the scope of the study to improve rationalization of the boundaries, reduce traffic congestion, improve safety and transportation and the cost thereof, and improve the delivery of educational programs. (*See Exhibit A at p.6.*)

33. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to place a moratorium on boundary changes for Westfield, Chantilly, Herndon, South Lakes, Oakton, Madison, Marshall, Langley, and McLean High Schools until February 2010, during which time a complete study of these schools' boundaries would have been conducted, with the goal of

comparing the costs, benefits, and risks of the status quo versus alternative options to redistricting in order to increase student enrollment at South Lakes High School, include a magnet school, specialized academies, and other program enhancements. (*See Exhibit A at p.6.*)

34. The School Board refused to place a moratorium on boundary changes for Westfield, Chantilly, Herndon, South Lakes, Oakton, Madison, Marshall, Langley, and McLean High Schools until February 2010, in order to conduct a study to compare the costs, benefits, and risks of the status quo versus alternative options to redistricting in order to increase student enrollment at South Lakes High School, even though Respondent knew, inter alia, that excess capacity at South Lakes High School could be addressed with programmatic enhancements, and FCPS staff were looking at a regional or consortia approach toward high schools. (*See Exhibit A at pp. 6-7.*)

35. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to place a moratorium on boundary changes for Thoreau and Hughes Middle Schools and Wolftrap and Sunrise Valley Elementary Schools until February 2010, during which time a complete boundary study could be conducted with the goal of improving the enrollment capacity balance for all schools in the Madison High School pyramid. (*See Exhibit A at p.7.*)

36. The School Board refused to place a moratorium on boundary changes for Thoreau and Hughes Middle Schools and Wolftrap and Sunrise Valley Elementary Schools until February 2010, even though Respondent knew, inter alia, that the treatment of boundary adjustments for the so-called Madison "island" was unnecessary. (*See Exhibit A at p.7.*)

37. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to remove Navy Elementary School attendance area from the West County high school boundary change, even though Respondent knew that moving students from the Navy attendance would result in no change to the allegedly overcrowded Chantilly High School attendance area. (*See* Exhibit A at p.7.)

38. The School Board refused to remove Navy Elementary School attendance area from the West County high school boundary change, even though Respondent knew, inter alia, that students in the Chantilly attendance area would have to travel farther to any high school other than Chantilly, and removing the Navy Elementary School attendance area from the boundary change would address traffic and transportation issues and keep Navy students at Chantilly High School. (*See* Exhibit A at pp. 7-8.)

39. In making its decision to approve the West County high school boundary adjustment, the School Board rejected a motion to remove the Madison "island" attendance area, including the middle and elementary school levels, from the West County high school boundary change. (*See* Exhibit A at p. 8.)

40. The School Board refused to remove the Madison "island" attendance area, including the middle and elementary school levels, from the West County high school boundary change, even though Respondent knew, inter alia, that a boundary adjustment including the Madison "island" would result in the movement of too few students to significantly impact South Lakes High School programs. (*See* Exhibit A at p. 8.)

41. The School Board approved the West County high school boundary adjustment, even though Oakton, Chantilly, Madison, and Westfield High Schools all

provide Advanced Placement ("AP") courses, but South Lakes High School does not offer any AP courses, instead offering only the International Baccalaureate ("IB") program to interested advanced students. A copy of the Office of Student Services Advanced Placement and International Baccalaureate List is attached as Exhibit H.

42. According to the Fairfax County Public Schools 2008-2009 Pupil Placement Summary, attached as Exhibit I, "[h]igh school students who prefer the International Baccalaureate (IB) or Advanced Placement (AP) program not offered at their base school may request pupil placement." However, transfer opportunities are not unlimited and, according to Policy 2230.8, a copy of which is attached as Exhibit J, transfer will only be made "to the school with the space available that is closest to the student's residence or base school." (Exhibit J § III(A)(5).) Not all West County high schools are available for transfer. For example, Chantilly High School is closed to student transfers. (*See* Exhibit I.) Furthermore, although transportation is provided for School Board approved boundary phase-ins (*see* Exhibit J § II(E)), it is not available for pupil placements in order to take advantage of AP courses (*see* Exhibit J § III(A)(5)).

43. In considering projected enrollment and capacity and trying to balance the populations in overcrowded and under-enrolled schools, the School Board determined that 2,000 students was an ideal student population without regard to actual capacity.

44. In considering distribution of programs and resources, the School Board determined that with a larger population, South Lakes High School would be able to add many new courses, but following redistricting South Lakes High School has added only three new courses. A copy of an e-mail message from South Lakes High School

Principal Bruce Butler to Petitioner Mary Mireles, listing the new courses in response to her inquiry, is attached as Exhibit K.

Count I–Arbitrary and Capricious

45. Petitioners reassert the allegations set forth in ¶¶ 1-44 as if fully set forth herein.

46. The decision of the School Board to approve the West County high school boundary adjustment was arbitrary and capricious and an abuse of discretion because the School Board did not comply with its own Regulation 8130.5 in that it failed to obtain public input on "important factors to consider when determining . . . program attendance assignments and suggest neighborhoods that might be included in new alignment." (*See* Exhibit C, Attachment.)

47. The decision of the School Board to approve the West County high school boundary adjustment was arbitrary and capricious and an abuse of discretion because the School Board did not comply with its own Regulation 8130.5 in that it failed to obtain public input on "suggest[ed] neighborhoods that might be included in new alignment." (*See* Exhibit C, Attachment.)

48. The decision of the School Board to approve the West County high school boundary adjustment was arbitrary and capricious and an abuse of discretion because the decision did not comply with the School Board's own Policy 8130.5, which authorizes redistricting only in order to maintain or improve operating efficiency and/or instructional effectiveness.

49. The decision of the School Board to approve the West County high school boundary adjustment was arbitrary and capricious and an abuse of discretion because, in purporting to carry out Policy 8130.5 the School Board ignored the requirement of Virginia Code § 22.1-79(4) that redistricting of school boundaries be undertaken only "whenever such procedure will contribute to the efficiency of the school division[.]"

50. The decision of the School Board to approve the West County high school boundary adjustment was arbitrary and capricious and an abuse of discretion because, in reaching its decision, the School Board ignored information that demonstrated that the West County high school boundary adjustment did not maintain or improve operating efficiency and/or instructional effectiveness. In particular:

a. the School Board listed reducing overcrowding at area high schools by filling 700-800 student spaces available at South Lakes High School when renovation is complete as one of the primary considerations for the West County high school boundary study (*see* Exhibit D), but Respondent did not consider two adjacent and overcrowded high schools, Langley and Madison, in making its boundary determination;

b. the School Board listed eliminating attendance area "islands" as one of the primary considerations for the West County high school boundary study (*see* Exhibit D), but Respondent considered only one of several so-called "islands" in the western part of Fairfax County, Madison "island," and the so-called Madison "island" is not a true attendance island engulfed by another school attendance area because it lies at the intersection of four high school attendance areas; since 1978, the so-called Madison "island" has been part of a larger land mass set aside under the Comprehensive Plan as a buffer between Tysons and Reston, with the goal of establishing the area as part of the

Vienna community, not the Reston community to which the island has now been assigned under the boundary decision;

c. the School Board listed balancing the socioeconomic characteristics of the Western Fairfax County schools as one of the primary considerations for the West County high school boundary study (*see* Exhibit D), but some of the transfers make the schools less diverse; for example, transfers from Wolftrap Elementary School to Sunrise Valley Elementary School would make the ESOL and F&R Lunch numbers at Wolftrap Elementary School negligible (*see* Exhibit G);

d. the School Board ignored the importance of the stability in redistricting the Floris attendance area which is experiencing its third change in high school attendance area in 7 years;

e. the School Board misapplied a 2,000 student enrollment limit that was applicable only to new school construction (and not to redistricting existing schools), without reference to the actual capacity of Westfield and Chantilly High Schools, in an effort to justify a change in attendance area to the lesser populated South Lakes High School;

f. the School Board listed contiguous attendance areas as a primary factor to be considered in redistricting (*see* Exhibit D), but the School Board did not conduct a transportation study to determine if its boundary alteration served the criterion of proximity, and it failed to consider other areas contiguous to the South Lakes attendance area, such as the western tier or the Madison attendance area situated south of the Route 267 toll road, Herndon High School, and Langley High School;

g. the School Board listed distribution of programs and resources as a primary factor to be considered in redistricting (*see* Exhibit D) and emphasized the benefits South Lakes High School would enjoy in its program offerings based on redistricting, but the boundary change has gained the school only three additional course offerings (*see* Exhibit K);

h. the School Board failed to perform a cost-benefit analysis before approving the West County high schools boundary adjustment;

i. the School Board based its decision on unreliable enrollment projections in determining that South Lakes High School would be under capacity and Westfield and Chantilly High Schools would be over capacity.

51. Accordingly, the decision of the School Board to approve the West County high school boundary adjustment cannot be sustained.

Count II–Dillon's Rule

52. Petitioners reassert the allegations set forth in ¶¶ 1-51 as if fully set forth herein.

53. Under Dillon's Rule, a school board can exercise only those powers expressly granted by the General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable. *See City of Richmond v. Confrere Club of Richmond, Va., Inc.*, 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990); *School Bd. of Amherst County v. Burley*, 225 Va. 376, 378, 302 S.E.2d 53, 55 (1983).

54. In Virginia Code § 22.1-79(4), the General Assembly has given the School Board explicit authority to "redistrict[] school boundaries . . . whenever such procedure will contribute to the efficiency of the school division[.]"

55. The General Assembly has not given the School Board explicit authority to consider the socioeconomic characteristics of school populations in making decisions to redistrict school boundaries.

56. The authority to consider the socioeconomic characteristics of school populations is not necessarily or fairly implied from the authority to make redistricting decisions, and consideration of the socioeconomic characteristics of school populations is not essential and indispensable to redistricting decisions.

57. Accordingly, the School Board exceeded its authority when it identified socioeconomic characteristics of school populations as a primary consideration for the West County high school boundary study, *see* Exhibit D, and considered socioeconomic characteristics of West County high school populations in making its redistricting decision and, thus, the decision of the School Board to approve the West County high school boundary adjustment cannot be sustained.

58. The General Assembly has not given the School Board explicit authority to consider instructional effectiveness in making decisions to redistrict school boundaries.

59. The authority to consider instructional effectiveness is not necessarily or fairly implied from the authority to make redistricting decisions, and consideration of instructional effectiveness is not essential and indispensable to redistricting decisions.

60. Accordingly, the School Board exceeded its authority when it identified the distribution of programs and resources as a primary consideration for the West County

high school boundary study (*see* Exhibit D), and considered the program needs of South Lakes High School in making its redistricting decision and, thus, the decision of the School Board to approve the West County high school boundary adjustment cannot be sustained.

WHEREFORE, Petitioners respectfully request that this Court review the decision of Respondent to approve boundary adjustments for Western Fairfax County schools and, upon review, declare that the decision was invalid because it was arbitrary and capricious, an abuse of discretion and undertaken in excess of Respondent's authority, and permanently enjoin Respondent from carrying out the West County schools boundary adjustments approved on February 28, 2008.

Respectfully submitted,
Petitioners

Joe Pascale
Bing Wu
Mary Mireles
Kim Farrell
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Joan Graham
Maria LeBerre
Cheryl Howell
Dan Carney
William Browning
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