

## MAXIMIZING OPPORTUNITIES FOR SUCCESS

The content of Mr. Keigel's response was provided to the Board of Directors at March 19 Committee of Whole.

Errors in Mr. Alexander's interpretations as outline in his blog were presented in Mr. Keigel's response along with guidance for the committee of the whole discussion.

The numbers submitted by Mr. Fox were discussed. The issue of contiguous boundaries was a challenge during the analysis. The consensus was that the regions are configured according to law and as nearly equal as possible.

### Notes of Committee of Whole March 19

On March 13 I contacted the present solicitor, Clarence Keigel, to get direction on Board of Directors responsibility. I sent Mr. Keigel three documents: August 2, 1999 ruling of Chester County Courts, Judge Wood which set in place the three region system, the February 27, 2018 letter from Mr. Jarvis, and the March 12 blog posting of Mr. Alexander.

On March 12 Mr. Alexander posted "Gerrymandering and the Octorara Area School District Election Regions" on two of his blog sites. This was discussed at the open public meeting by the Board of Directors and they discussed the forming of a committee to review the concern. I was asked to get guidance from legal counsel. This same evening Mr. Fox did an analysis of the region numbers which he submitted to all Board Directors.

On or about February 27 I received the court document from Mr. Jarvis.

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Background – In January 2018 Mr. Tim Alexander (Parkesburg) contacted my office to inquire about the Regional election process/plan in the Octorara Area School District. His inquiry was largely around obtaining any documents related to the development of this plan in 1990's time frame and whether the District should have reviewed the plan at any time during the past twenty years. I shared with him that I would look for such documents. I was not able to find the actual court document in school district files and I called Mr. Alexander to inform him that except for a few references in old Board minutes I could find no documents. I informed him that I would be contacting the solicitor for the school district from the time when the plan was developed (Alan Jarvis) to obtain the court ruling. In February 2018 I shared this interaction with the Board of Directors.

Notes from March 19, 2018 and April 9, 2018 Committee of the Whole (COW) discussion on Regional Election Process/Plan. Submitted by Tom Newcome.



I was directed to follow up with Mr. Kegel as to the legal requirements if the Board decided that the three region plan as presently used is to be maintained – does the Board of Directors need to take any action.

Notes of Committee of Whole April 9

The Committee of Whole reviewed Mr. Kegel's response. They decided to create minutes from the Committee of the Whole reflecting the review of this committee and the consensus that the regions are nearly equal as possible and no changes are currently warranted. They determined that the President would report this during an open public meeting with the understanding that the Board of Directors would review this again after the 2020 census.

The Board Directors are in consensus that fair elections and fair representation is important. Board Directors represent all residents in their Region but more importantly they represent all children and the needs of these children for a positive educational experience. We will continue to do this within whatever electoral process is used.

Over the past few months the Board of Directors have discussed briefly in the open public meeting and less briefly in Committee of the Whole the Three Region Plan which was brought into place by a 1999 ruling in the Court of Common Pleas, Chester County, Pennsylvania, Civil Action Law, No. 97-00801. Our present discussion sprang from a concern that the present system is a type of gerrymander that disenfranchises specific entities, specifically Parkesburg Borough. Our discussions have all been centered on the Board of Director's responsibility according to this law and our obligation as elected officials toward the spirit of the law. With clarity provided by our solicitor the Board has found that we have not been negligent in any manner to the exact application of the law and that in fact we are compliant to the law in our present practice. However, we believe that a review of the parameters set within the law is a responsible task for this Board. In that spirit we have discussed in a Committee of the Whole Board on two occasions the population numbers based on the 2010 census and the implications of those numbers. It is our belief that the regions are nearly equal as possible and no change is necessary at this time. We also believe that a review of the census numbers after the 2020 census is a logical and prudent step and we will undertake this task after the 2020 census is published.

Statement about Regional Elections Format







Curtis, Jeff <jcurtis@octorara.org>

### Fwd: District / Region spreadsheet

1 message

**Fox, Brian** <bfox@octorara.org>

To: Jeff Curtis <jcurtis@octorara.org>

Hi Jeff,

For the RTR, I have this email from early 2018 as we were talking about it then. If you have any questions, please let me know.

Thanks,

Brian

----- Forwarded message -----

From: **Fox, Brian** <bfox@octorara.org>

Date: Mon, Mar 12, 2018 at 10:50 PM

Subject: District / Region spreadsheet

To: Lisa Bowman <lboman@octorara.org>, Samuel Ganow <sganow@octorara.org>, Anthony Falgatore <afalgatore@octorara.org>, Brian Norris <bnorris@octorara.org>, William Kloss <wkloss@octorara.org>, Charlie Koennecker <ckoennecker@octorara.org>, Jere Zimmerman <jzimmerman@octorara.org>, Mathew Hurley <mhurley@octorara.org>, Tom Newcome <tnewcome@octorara.org>

Hi everyone,

I worked a bit on the spreadsheet and it's attached.

I noted the census data and consistently pulled the 2010 values. Also, I don't have Parkesburg population split values as I couldn't find population by voting district and so assumed a 50/50 split to show our current position (column C). The other 3 columns are a few scenarios that I tried to put Parkesburg together and get us a balanced set of populations yet all of them are not contiguous. I added the last one this evening (column F). This one is interesting in that it puts the Lancaster county municipalities together and puts Parkesburg together. The population variance is stunningly close. Again, though, the problem is it isn't contiguous because of the way Atglen is surrounded by West Sadsbury. In any scenario, to maintain continuity, Atglen must be with either West Sadsbury or West Fallowfield.

If you have any questions, please let me know.

Thanks,

Brian

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Brian P. Fox

Octorara School Board - Region 3

(Highland Twp., Londonderry Twp., Parkesburg-South)

Phone: 717-371-3679

Email: bfox@octorara.org

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Brian P. Fox

Octorara School Board - Region 3

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Phone: 717-371-3679

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**Feb 2018 - Population.xlsx**

13K



BIG ASSUMPTION: Parkesburg population evenly split between North/South. I don't have population by voting district.

	2010 Census Data	Today	Scenario	Scenario	Scenario
Atglen	1406	A			
Christiana	1168	A			
Parkesburg (North)	1796.5	A			
West Sadsbury Twp	2444	A			
	<u>6814.5</u>				
Sadsbury Twp (Lanc Co)	3395	B			
West Fallowfield Twp	2566	B			
	<u>5961</u>				
Londonderry	2149	C			
Highland	1272	C			
Parkesburg (South)	1796.5	C			
	<u>5217.5</u>				
Population source: <a href="http://www.census.gov">www.census.gov</a>					
2010 - <a href="http://factfinder.census.gov">factfinder.census.gov</a>					
Population result by scenario					
Region I (A)	6814.5	6167			6290
Region II (B)	5961	5961			5987
Region III (C)	5217.5	5865			6037
Average	5998	5998			5998
Region I (A)	817	169			-29
Region II (B)	-37	-37			-11
Region III (C)	-780	-133			39
% Variance from average	14%	3%			0%
	-1%	-1%			0%
	-13%	-2%			1%







Curtis, Jeff <jcurtis@octorara.org>

**Fwd: Octorara Regional Election Districts**

1 message

**Hardy, Jill** <jhardy@octorara.org>  
To: "Curtis, Jeff" <jcurtis@octorara.org>

-----Forwarded message-----  
From: **Newcome, Tom** <tnewcome@octorara.org>  
Date: Mon, Mar 19, 2018 at 12:30 PM  
Subject: Fwd: Octorara Regional Election Districts

To: Lisa Bowman <lboman@octorara.org>, Brian Norris <bknorris@comcast.net>, Samuel Ganow <sganow@octorara.org>, William Kloss <wkloss@octorara.org>, Brian Fox <bfox@octorara.org>, Anthony Falgiatore <afalgiatore@octorara.org>, Mathew Hurley <mhurley@octorara.org>, Charlie Koennecker <ckoennecker@octorara.org>, Jere Zimmerman <jzimmerman@octorara.org>  
Cc: Jeff Curtis <jcurtis@octorara.org>, Jill Hardy <jhardy@octorara.org>

All: Please see response from Clarence Kegel. See you tonight. Tom N.

-----Forwarded message-----  
From: **Clarence C. Kegel, Jr.** <kegel@kkallaw.com>  
Date: Fri, Mar 16, 2018 at 10:03 AM  
Subject: Octorara Regional Election Districts

To: "Thomas Newcome II (tnewcome@octorara.org)" <tnewcome@octorara.org>

Dr. Newcome,

You presented me with certain information, including: (1) August 2, 1999 Chester County Court decision approving the current three election districts through which Octorara school directors are elected. (2) 2/27/18 letter from former Octorara solicitor Alan Jarvis. (3) Timothy Alexander blog titled "Gerrymandering and the Octorara Area School District Election Regions." The blog argues that because of the way in which regions are structured, Parkesburg Borough residents are disenfranchised, and then suggests there might be a legal action to force redistricting.

**You asked the question what action, if any, is the school board required to take in order to comply with applicable law?** The short answer to the question is the school board is not legally required to take any action; however, there might be reasons for the school board to consider taking some action.

Additional comments are as follows:

1. My understanding is that Octorara is a third class school district. As such, School Code § 303 governs requirements applicable to establishment of regions from which school directors are elected. This School Code section says that a plan shall provide that each region is as "nearly equal as possible in population," while at the same time being compatible with the boundaries of election districts.

2. Section 303 allows a school board or voters to develop a plan for regional election and present the plan to the court for approval.

3. The August 2, 1999 decision approved the current plan as presented by the then-school board. The court rejected an at-large election plan then advanced by certain voters. The decision noted that the greatest population deviation between regions at that time in the Octorara plan was 18.3%, but that there were sound reasons for this deviation, including developing a plan that allows the Lancaster County voters to elect a director, and also the requirement to have region lines compatible with the boundaries of election districts which creates constraints. The court also concluded that the only possible way to create a 3-region plan with population deviations lower than 18.3% would require shifting of election district lines which is contrary to the School Code.

4. The court in the 1999 decision indicated that it was retaining jurisdiction of the case, and that if the 2000 census figures are significantly different from prior figures, either the school district or the voters who were parties in that case could petition the court to make further adjustments to the regions. Very importantly, the court referred only to the 2000 figures, and did not order monitoring in future years or retention of jurisdiction based on census numbers other than 2000 census numbers.

5. If the school board does nothing, it is possible that voters might file a petition with the court asking for a proposed new plan. In order to do so, this would require a petition signed by a number of voters equal to at least 25% of the highest vote cast for any school director in the last municipal election, namely in 2017. The voters would need to provide a plan that aligns with the boundaries of existing election districts and that also provides regions with population that are more nearly equal than the currently existing plan. We do not know whether Mr. Alexander or some other voters might be able to present such a plan. However, if they were to do so, the school district would need to reply – and might be left scrambling in order to study the issue and gather all necessary numbers. Therefore, there is a possible downside in doing nothing.

6. Mr. Alexander's blog mistakenly states that the School Code requires a reapportionment commission to study and make recommendations concerning regions following each year in which federal census data is officially changed (every 10 years). The provision Mr. Alexander has referenced is School Code § 302.1, which applies only to Pittsburgh School District. This same requirement is not included in § 303 which applies to third class school districts.

7. As to options and action steps:

a. Preliminarily, if not already done, someone should "eyeball" the apparent population numbers of the current Octorara election regions based on 2010 census data or other available numbers. The purpose of this exercise would be to reach a rough conclusion on two points. First, the overall fairness of the currently designated regions. Second, if a voter court petition is filed, will the court likely reach the conclusion that the regions have population as nearly equal as possible, and that there are appropriate justifications for whatever population deviations exist. If the initial conclusion is that the current regions are appropriate, the district should discuss the conclusion with Mr. Alexander. In this circumstance, the district has the option of continuing as is. Of course, there is still the possibility that Mr. Alexander or some other voter might organize a court petition.

b. Another possible option is for the school board to appoint an ad hoc committee to more formally study the situation using latest available census numbers. The committee might ultimately recommend: (1) keep regions as is; (2) petition the court for a revision based on findings; (3) await 2020 census numbers before making a decision on next steps. The motivation for such a study would be to give the school board the best possible numbers for a decision. Also, if the school board decides to keep regions as is, the school board would have readily available numbers and analysis for presentation to the court in the event of a voter petition.

Please let me know if you wish additional input.

Clarence

--  
Jill Hardy  
Octorara Area School District  
School Board Secretary/Superintendent Secretary  
228 Highland Road, Suite 1  
Atglen, PA 19310  
610-593-8214



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[Alan.jarvislaw@comcast.net](mailto:Alan.jarvislaw@comcast.net)

February 27, 2018

Dr. Thomas L. Newcome, II  
Octorara Area School District  
228 Highland Road, Suite 1  
Atglen, PA 19310

Re: Octorara Area School District Representation Case

Dear Tom:

It was a pleasure speaking with you last Tuesday. I enclose for you a copy of the Opinion and Order of August 2, 1999, that was entered by Judge Wood in the case that we discussed. Please note that copies of the Opinion and Order were faxed to then District Superintendent Thomas W. Scholvin, Ed.D. on August 6, 1999. This was the last judicial Decision in this Case, Judge Wood having entered a Memorandum Opinion on December 1, 1997, that was appealed to the Commonwealth Court of Pennsylvania. The Commonwealth Court vacated Judge Wood's initial Order on January 5, 1999, and remanded it to Judge Wood with the direction that Public Hearings be conducted on the issue of District Representation. As I can recall, at least two, and possibly three, Public Hearings were held, and those Proceedings, which included public comments, were transcribed and presented to Judge Wood, prior to his August 2, 1999, Order.

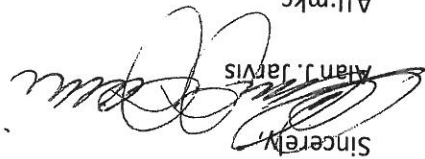
I have not included with this letter Judge Wood's initial Memorandum Opinion or the Commonwealth Court's Decision of January 5, 1999, since I thought they might confuse you. If you would want them, however, please call, and I will be happy to send them along. Judge Wood's enclosed Decision and Order of August 2, 1999, having been unappealed, represents the final word on the case. Please note in the Order that the Court of Common Pleas retained jurisdiction concerning the Decision of Representation. I also believe from a review of the Order that the Court wanted the District to monitor changes in the reputation of its Election Districts according to Census figures, which I doubt the District has been monitoring. Nevertheless, I feel that your recollection of this case, was a "good catch" on your part, and I also feel that the District and your successor should, in the future, be looking at population shifts in the populations of the respective Municipalities. Regions should be realigned if population shifts so dictate. Additionally, I note that Judge Wood was concerned that Lancaster County maintain a voice on the Board, so I would think that Christiana Borough and Sadsbury Township in Lancaster should be within one Region, if necessary with one or more Chester County municipalities (municipalities) to maintain, as nearly as possible, the equality of populations for the District's three (3) regions.

Dr. Thomas L. Newcomb, II  
February 21, 2018  
Page 2

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If you have any further concerns, do not hesitate to give me a call.

Sincerely,



Alan J. Jarvis

All:mkc

Enclosure

(Corres/OASD - T L Newcomb Ltr re District Representation Regions)

This case involves the reapportionment of election districts in the Octorara Area School District. Both parties agree that the current nine-region system of electing School Board members violates the Equal Protection Clause of the Fourteenth Amendment because of the disparity in population among regions. The Petitioner urges that I adopt an at-large plan in order to ensure absolute equality amongst the electorate. The School Board urges that I adopt a three-region plan. In an Order dated December 1, 1997, I adopted the School Board's three-region plan. That Order was appealed to the Commonwealth Court of Pennsylvania. That Court remanded the matter to hold a further hearing and determine whether the three-region plan proposed by the Octorara School Board meets the requirements of section 303 of the Public School Code of 1949, 24 P.S. §1-101, et. seq. I ordered a public hearing to be held so that the public could provide input on the proposed

OPINION

Alan J. Jarvis, Esquire, on behalf of Octorara Area School District  
 Mary R. Auchincloss, Esquire, on behalf of Respondent/Petitioner

IN RE: PETITION TO CHANGE REPRESENTATION PLAN OF THE OCTORARA AREA SCHOOL DISTRICT  
 : CHESTER COUNTY, PENNSYLVANIA : CIVIL ACTION - LAW  
 : IN THE COURT OF COMMON PLEAS : NO. 97-00801

1998-01-23 10:28:58

plans. That hearing was held on April 12, 1999. Thereafter, the matter was scheduled for argument in front of me. At that time, the School Board submitted a revised three-region plan, with a population deviation of 18.3%. Counsel for the petitioner argues that this population deviation is still unconstitutional and that an at-large plan should be adopted.

In Pennsylvania, we have no preference for an at-large plan over a regional plan. Petition of Central Bucks School Dist., In re, 23 Pa. D. & C. 4<sup>th</sup> 53 (1995); Petition to Reapportion the School Director Regions of the Chester School Dist., In re, No. 98-80044 (C.P. of Delaware County March 13, 1998).

The first requirement in selecting a plan is to make sure that the plan satisfies the requirements of the Public School Code. Title 24 P.S. §3-303 (b)(3) of the Public School Code requires that in a regional plan, each region should be "as nearly equal as possible" and that each region should be compatible with election district boundaries. Election districts are townships, boroughs and wards. 25 P. S. §2701. The Public School Code does not provide an answer as to what population deviations qualify under the phrase "as nearly equal as possible". However, the United States Supreme Court has given some guidance on this issue. The U.S. Supreme Court in Brown v. Thomson, 462 U.S. 835, 842, 103 S. Ct. 2690, 77 L.Ed. 2d 214 (1983) held that a population deviation under 10% is minor. Larger population deviations "[create] a prima facie case of discrimination and therefore must be justified by the State": Id. at 843.



Two Supreme Court cases illustrate circumstances in which the State was able to justify population deviations over 10% as being within constitutional limits. In the case of Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L.Ed. 2d 320 (1973), the Virginia General Assembly enacted states to reapportion the State. Opponents of the redistricting argued that the population disparities in the districts were unconstitutional because representation was diluted. Id., 410 U.S. at 317. Under the plan, the maximum population deviation was 16.4%. Id., 410 U.S. at 319. Virginia offered as justifications for the population deviation that it wanted to preserve the integrity of election districts and to provide voters in the smaller districts a voice on local matters. Id., 410 U.S. at 325. The Supreme Court acknowledged Virginia's policy of respecting political boundaries and held that the justification was acceptable and that the deviation did not exceed constitutional limits. Id., 462 U.S. at 329. In Brown v. Thomson, supra, the reapportionment plan resulted in a deviation of 60%. The justification offered by the State was a longstanding policy of preserving county boundaries as representative districts and providing each district with a representative. Id., 462 U.S. at 843. The Supreme Court ruled that the 60% deviation was justified: Id., 462 U.S. at 847.

In the present case, the population deviation of 18.3% is slightly greater than the 16.4% deviation in Mahan, but is significantly less than the 60% deviation in Brown. Since the population deviation is greater than 10%, the Octorara School Board must justify the deviation. The populace of the Octorara School District comes mostly from Chester County, but some of the District covers a small portion

of Lancaster County. The School Board wants that portion to be in a position to send a representative to the Board. The plan submitted by the Octorara School Board utilizes township and borough boundaries and at the same time reasonably affords Lancaster County the possibility of continued representation on the school board. The only possible way to create a three region plan with population deviations lower than 18.3% requires the shifting of election district lines. The Public School Code, §3-303, prohibits this. Thus, the regions created under the proposed regional plan are as nearly equal as possible while still adhering to the limitations imposed by electoral district boundaries.

The at-large plan may equalize the weight of an elector's vote, but the regional plan seems to promote representative democracy by giving people in the smaller districts an opportunity to have their voice heard through an elected regional representative. As I have stated before, under the at-large plan, all nine members of the Board could come from the same electoral district. In a country which was founded on the principle of representative democracy, I conclude that the regional plan gives the best opportunity for diversity of representation and that the at-large plan carries with it the potential to deprive the smaller districts of representation.

Accordingly, I am persuaded that the School Board's plan under the circumstances creates regions as nearly equal as possible and I do not believe that the variation exceeds constitutional limits.

ORDER

AND NOW, Cms 2, 1999, it is hereby

ORDERED and DECREED that the Octorara Area School District will consist of

three regions for the purpose of school board representation. Implementation of

the regional plan shall occur as follows:

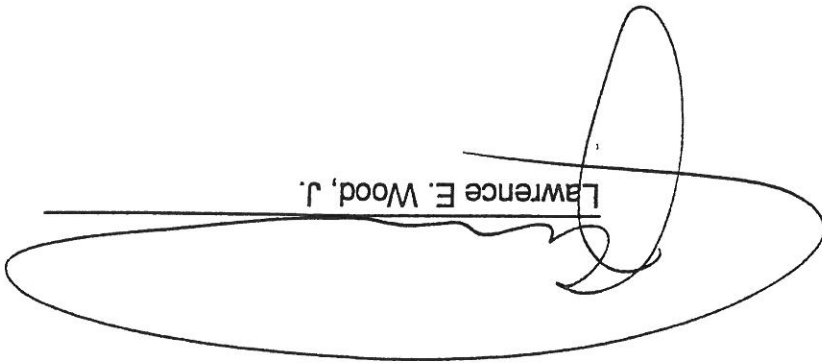
1. Full implementation will be deferred until the municipal elections of 2001, following which each region will then have three representatives. Each person who was nominated in the 1999 primary will stand for election in November. Those persons who are already serving a term will fulfill their obligations as members on the School Board until their present term expires. Three regions shall then be created as follows:

<u>Region 1</u>	Borough of Christiana (Lan.Co.) West Sadsbury Township Atglen Borough Parkeburg, North
<u>Region 2</u>	Sadsbury Township (Lan.Co.) West Fallowfield Township
<u>Region 3</u>	Parkeburg, South Highland Township Londonberry Township

2. The term of the Atglen resident will expire in 2001. At that time, the selection of that seat will shift to Region 2. As of January 1, 2002, Region 1 will have three representatives, all of whose terms will expire in 2003. Region 2 will have one representative whose term will expire in 2003, and two seats open for election in 2001. Region 3 will have one representative whose term expires in 2003, and two seats open for election in 2001.

3. This Court will reserve jurisdiction. If the census figures from the year 2000 census are significantly different from the figures presented to the Court in Exhibit Dist-2, I will adjust districts upon the application of any party.

BY THE COURT:

A handwritten signature in black ink, appearing to be "Lawrence E. Wood, J.", is written over a printed name. The signature is stylized and somewhat illegible. The printed name "Lawrence E. Wood, J." is oriented vertically, reading from bottom to top. The signature itself is written horizontally, crossing over the printed name.

Lawrence E. Wood, J.