

HAMPSHIRE GREENS COMMUNITY (II),

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-10

OPINION

INTRODUCTION

The Appellant challenges here a Resolution concerning a boundary study adopted by the Montgomery County Board of Education (local board). The Appellant requests that this Board strike the Resolution. The local board has filed a Motion to Dismiss the appeal. The Appellant has responded.

FACTUAL BACKGROUND

The Appellant, Hampshire Greens Community, is a collective of parents and residents from Hampshire Greens, a community in Montgomery County. After several years of lobbying, the Appellant's request for a middle school boundary study was granted by the local board. On July 17, 2007, after the completion of the study, the local board reassigned middle school students from Hampshire Greens out of Key Middle School to Briggs Chaney Middle School. This re-assignment was congruent with the Appellant's request.

The local board also passed Resolution 377-07 at that meeting. It states:

Resolved, That the Board of Education directs that there will be no further changes to school assignments for the Hampshire Greens community unless or until there is a comprehensive boundary study either for Dr. Charles Drew Elementary School or the high school assignments within the Northeast Consortium.

(Appeal, Attachment 2).

The Appellants assert that the Resolution is illegal because it is a "restrictive, punitive school boundary action that was enacted arbitrarily and without due process." (Appeal at 4).

They further assert that the local board failed to follow its own internal process. They also assert that there is no just or reasonable cause for the Resolution. They ask this Board to strike the Resolution.

STANDARD OF REVIEW

In this case, the local board's decision to adopt a Resolution concerning future boundary studies is a quasi-legislative act. *See, e.g., Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 476 (1967). This Board will review such acts for legality, but not substitute its judgment for that of the local board. *Citizens for a Responsible Curriculum v. Montgomery County Board of Education*, MSBE Op. No. 07-30.

LEGAL ANALYSIS

The Appellants set forth two legal challenges to the Resolution:

- (1) the local board had no legal authority to adopt such a Resolution; and
- (2) the Resolution violates the procedural or substantive rights of the Appellants.

Legal Authority to Adopt the Resolution

The Appellants argue that the Resolution was not legally adopted because it should have been handled by separate motion as a new item of business. If so, it would have been moved and seconded at the July 17, 2007 meeting but not debated and voted on until the next meeting of the Board. That is local board policy. The Operations Handbook governing Board procedures states the following:

The Board of Education has a policy on policy-setting which includes a definition of "policy" and a uniform format for policy development and implementation, including publication, monitoring of implementation, and review. Discussion of a new policy usually occurs over three meetings: one to discuss the Superintendent's policy analysis, the second to take tentative action, and the third to take final action on the policy.

Any resolution introduced which involves a matter of policy shall lie on the table for at least one week before being voted upon. The presiding officer rules as to whether any proposed resolution is a policy. If there is an emergency, this provision may be waived without notice if all members are present and there is unanimous agreement. (Emphasis added).

Thus, by its own terms, this provision in the Operation Manual applies only to a Resolution establishing “a matter of policy” as defined in the local board’s policy on policy setting - Policy BFA.

Policy is defined as the principles specifically set forth in the MCPS *Policies and Regulations Handbook* and identified as a “policy.” These policies, all of which have a three-letter identifier and are indexed in lettered sections of the MCPS *Policies and Regulations Handbook*, are adopted by resolution of the Board of Education to set forth the vision and goals of the school system, specify the rights and responsibilities of the school community, and guide the development and implementation of educational programs and/or for management of the school system. For purposes of Policy BFA, *Policysetting*, and Regulation BFA-RA, *Policysetting*, the term “policy” refers to only those principles identified as policy in the Policies and Regulations Handbook.

BFA § C(1) (Attached).

It is our view that the Resolution at issue is not a “policy” because it does not meet the local board’s definition of policy. Although the Resolution touches on the management of the school system, it does so only tangentially by explaining a future restriction on a boundary study affecting Hampshire Greens students. Furthermore, this Resolution has no three-letter identifier and has not been identified as a formal policy in the Policy and Regulations Handbook. Thus, while it may be a Board resolution, it is not Board policy.

The policy governing school boundary changes is Policy FAA. (Motion to Dismiss, Exhibit 2 at 3). Under that Policy, using the long-range facilities planning process, the local board provides a process for changing school boundaries. It conducted just such a process here when it changed the school boundaries to reassign Hampshire Greens students to Briggs Chaney Middle School. In the process of doing so, it passed the Resolution which established preconditions to conducting another boundary change process concerning Hampshire Greens. Under Policy FAA, it is our view, that the local board had every legal right to establish those preconditions. Specifically, when the local board considers a boundary change, it may consider four factors:

- (1) Demographic characteristics of student population;
- (2) Geographic proximity of communities to schools;
- (3) Stability of school assignments over time; and
- (4) Facility utilization.

Policy FAA § C(6)(b), (Motion, Exhibit 2 at 3).

Moreover, “[a]t such time as the Board of Education takes action on school boundaries, the Board has the discretion to adopt minor modifications to the superintendent’s recommendation or Board identified alternatives if, by a majority vote, the Board has determined that such action will not have a significant impact on an option that has received public review.” *Id.*

The Resolution herein did not have a significant impact on the instant boundary change; indeed, it had no impact at all. It does, however, take into consideration the issue of stability of school assignments over time and facility utilization concerns - - which are legitimate considerations under Policy FAA.

Therefore, because the Resolution emerged from the boundary change decision of the local board and because it is not a Policy as that term is defined by the local board, it did not need to sit on the table for a week or more before being voted on.

Violation of Procedural or Substantive Rights

The Appellant asserts generally a denial of its procedural due process rights. *See* Appeal at 4-5. The underlying premise of Appellant’s argument is that it had a Constitutional right to notice and an opportunity to be heard before the local board could adopt a Resolution that announced the Board’s intent concerning future changes to school assignments for the Hampshire Greens community.

The Constitution protects a person’s life, liberty and property interests. We can ascertain no such interest belonging to the Hampshire Greens community as a whole or to its separate members. Simply put, there is no property right in a boundary study and clearly, there is no right to be assigned to, or to attend a particular school. *See Bernstein v. Board of Education of Prince George’s County*, 245 Md. 464 (1967); *Chacon v. Montgomery County Board of Education*, Opinions of MSBE No. 01-39 (2001); *Williams v. Board of Education of Montgomery County*, 5 Opinions of MSBE 507 (1990); *Goldberg v. Montgomery County Board of Education*, Opinions of MSBE No. 05-35 (2005).

Substantive Rights

The Appellant asserts that it is being singled out and denied its “right, the same as any other community in the county, to petition the board to be included in . . . a boundary action, without having the burden of first seeking to have this . . . resolution overturned.” (Appeal at 6). It asserts that “When the similar boundary action for the Kensington community was approved in 2000, no such . . . discriminatory policy was passed or even proposed.” (Response at 3). The Appellant apparently believes that because it was treated differently from Kensington community or any other community involved in boundary changes, its equal protection rights have been violated.

The Equal Protection Clause, generally, protects persons from irrational actions of the government. *See, e.g. F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). If a legislative action, like the one at issue here, is rationally related to a legitimate government interest, however, it will be sustained. *See, e.g., Heller v. Doe by Doe*, 509 U.S. 312, 318-19 (1993). Under that standard, there is a strong presumption of validity of the legislative act and the burden is on one attacking the legislative act to negate every conceivable basis to support it. *Id.* at 319-20.

We have concluded previously in this Memorandum that the Resolution arose out of the boundary change process, and that it legitimately embodied concerns about stability of school assignments over time and facility utilization. In short, in our view, the Resolution had a legitimate government purpose. The Appellant has presented nothing to negate that conclusion. They have argued that the Resolution was punitive against the Hampshire Greens community and, thus, so arbitrary that it is illegal. As a basis for this argument the Appellant states:

Obviously a restriction such as this has to be considered punitive. The resolution was introduced by the strongest board opponents to changing our community's middle school assignment, Mrs. O'Neill and Ms. Sharon Cox. When challenged by Mr. Abrams about the need for this resolution, Ms. Cox stated that "while it may be implicit, it does not preclude a board member from introducing a future action. If a board member wants to take an action (after the resolution is passed), it has to go against a previous board directive." Since this additional "barrier" to a future boundary action is unique to Hampshire Greens, it has to be considered punitive.

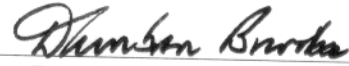
(Appeal at 6).

We do not agree. It may be that the two board members mentioned above fought against the middle school reassignment, but if disagreement on a board would imbue a board action with punitive motives, then almost every board action could be shown to be punitive.


We agree, of course, that the Resolution singles out Hampshire Greens community, but that is, in our view, merely because it was the boundary study affecting the Hampshire Greens middle school students that was at issue at the meeting. It has a legitimate government purpose. For these reasons, we conclude that the Resolution did not violate Appellant's substantive right.

CONCLUSION

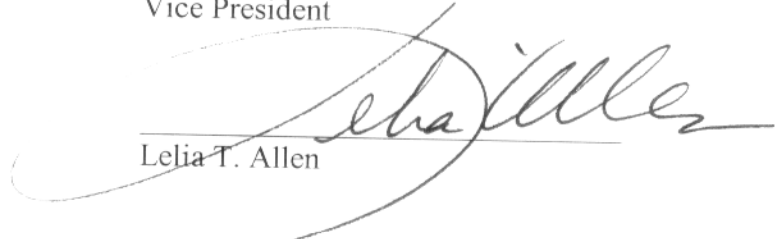
For all the reasons state herein, the local board's motion to dismiss this case is granted.



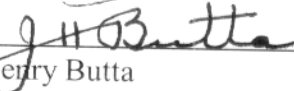
Dunbar Brooks
President



Beverly A. Cooper
Vice President

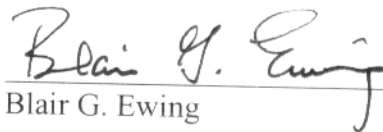


Lelia T. Allen

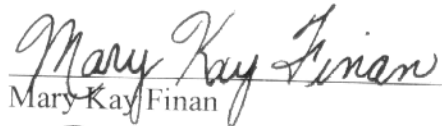


J. Henry Butta

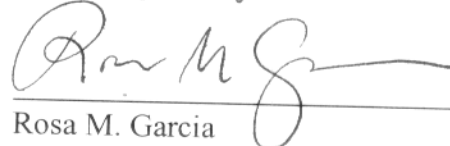
Charlene M. Dukes



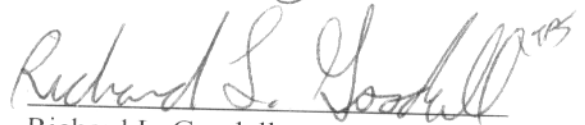
Blair G. Ewing



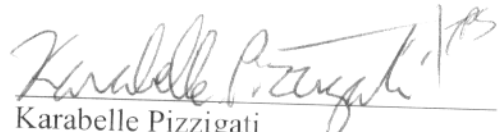
Mary Kay Finan

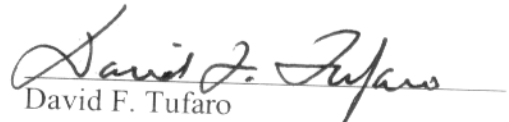


Rosa M. Garcia



Richard L. Goodall


Karabelle Pizzigati


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February 27, 2008