

JANIS ZINK SARTUCCI,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-31

### OPINION

In this appeal, Appellant challenges the local board's decision to open enrollment into the Chinese Immersion Program at Potomac Elementary School to students outside the Potomac Elementary School attendance area under certain procedures. Specifically, Appellant argues that this action was taken without notice to the community, without a public hearing, and without regard to efficient utilization of an elementary facility, all in violation of local board policy FAA. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a reply in opposition to the motion.

### FACTUAL BACKGROUND

The Chinese Immersion Program began at Potomac Elementary School in September 1996.<sup>1</sup> It is the only program of its kind in Montgomery County. As originally conceived, the program operated for attendance area students who were interested in the immersion program. Students from outside the school's service area who desired to participate in the program had to follow the regular Montgomery County Public Schools ("MCPS") student transfer policy. From 1999 through 2000, fewer than five students each school year from outside the school's service area transferred into the Chinese Immersion Program.

The admission procedure for the Chinese Immersion Program is unlike the admission procedures for the other four language immersion programs in MCPS, in which enrollment is countywide and is based on availability. Transfers into the programs are permitted on availability of space, and on showing of hardship or older sibling in attendance at the school. If more students apply for those programs than there are available spaces, admission is by lottery.

In the fall of the 2001-2002 school year, Herbert Hoover Middle School opened a Chinese Immersion Program that allows students from the Potomac Elementary program to continue studies in the foreign language at the next school level. Interest in participation in the Chinese Immersion Program at Potomac Elementary has grown as a result of this opportunity to continue with Chinese language study.

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<sup>1</sup>Appellant is the parent of a child who attended the second grade at Potomac Elementary during the 2002-2003 school year.

At its February 6, 2003 meeting, the local board adopted a resolution expressing its support for a proposal to open the Chinese Immersion Program at Potomac Elementary School to students outside the Potomac Elementary School attendance area, and requested the superintendent to review the proposal and make recommendations prior to June, 2003. The proposal was as follows:

The Chinese Immersion Program at Potomac Elementary School shall be opened to a lottery-based transfer process beginning in the 2003-2004 school year for any openings in the kindergarten and first grade class not filled by students living in the Potomac Elementary service area. The maximum class size for the Potomac Chinese Immersion Program in both kindergarten and first grade shall be set at 25 students. In addition, transfers into the first grade class shall be open only to students who have passed a kindergarten Chinese-proficiency screening.

Following consultation with community groups and administrators from Potomac and Hoover, and based on the recommendation of the superintendent, at its April 10, 2003 meeting the local board adopted the following resolution:

That open slots in the Chinese Immersion Program in kindergarten and Grade 1 at Potomac Elementary School shall be opened to a lottery-based transfer process beginning in the 2003-2004 school year to students outside the Potomac Elementary School service area, reserving at least two slots at each grade . . .

## ANALYSIS

Because this appeal involves a dispute regarding the rules and regulations of the local board, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1).

Appellant objects to the local board's decision, alleging various violations of local board Policy FAA - Long-Range Educational Facilities Planning. Specifically, Appellant refers to the requirements for a public hearing and the consideration of facility utilization and impact on the educational program, budget requirements, and community. Policy FAA is the local board's policy on long-range facilities' planning which provides a framework for coordinating the planning of capital improvements. It pertains to matters such as school boundary changes and school closings and includes the procedural requirements and substantive factors involved in a school closing/redistricting process. Potomac Elementary School did not undergo a redistricting and the attendance area for the school remains the same. Thus, we do not believe that Policy

FAA is applicable to a decision concerning a change in the admission policy for the Chinese Immersion Program. Nevertheless, we note that the local board heard testimony regarding the Chinese Immersion Program proposal during the public comment portion of the local board's April 10 meeting and school system staff met with stakeholder community groups prior to the superintendent's recommendation on the proposal. *See* local board meeting minutes of 4/10/03.

The proposal adopted by the local board makes a small change to the current admission policy for the program. But for two seats each in kindergarten and Grade 1, any additional seats that might be available for transfer students from outside the Potomac attendance area would be determined by lottery only after attendance area students had completed enrollment in the Program.<sup>2</sup> Thus, Potomac Elementary School students would still retain priority enrollment for the program. In its decision, the local board noted the popularity of the Program; the desire to make the option available to more students; the desire to have a true countywide program like the other language immersion programs in the County and to pursue funding for a second program; and the fact that the middle school program was not filled.

As we understand her argument, Appellant maintains that allowing out of area students by a lottery-based transfer process to fill slots not taken by students in the Potomac attendance area adds to the already overcapacity population at Potomac and perpetuates the over utilization at the school.<sup>3</sup> However, the fact that out of area students will be permitted to transfer into open slots in the program is not an entirely new concept.<sup>4</sup> Transfers into the program were permitted based on hardship or older sibling in attendance at the school. Now such slots will be accessible to those students by random lottery. Although this may result in more students enrolling in the program, there is no indication that program capacity has changed. We believe that it is within the local board's discretion to weigh the impact of expanding the Chinese Immersion Program at Potomac Elementary on the educational facility and community against the benefits of providing a unique educational opportunity for students throughout the County.

## CONCLUSION

For all of the above reasons, we do not find that the local board's decision is arbitrary,

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<sup>2</sup>While Appellant's allegation is technically correct that up to 46 students each year from outside the Potomac Elementary attendance area could enroll in the Chinese Immersion Program, this could only occur in the unlikely circumstance that no service area students enrolled in the Program.

<sup>3</sup>Potomac Elementary has been operating over capacity since the 2001-2002 school year.

<sup>4</sup>Although Appellant suggests that the transfer of students into Potomac Elementary has contributed to the over-enrollment at the school, the evidence indicates that in the past three years more students have transferred out of the school than have transferred into the school. *See* Student Transfer Chart.

unreasonable, or illegal. Accordingly, we affirm the decision of the Montgomery County Board of Education to open the Chinese Immersion Program at Potomac Elementary School to students outside the Potomac Elementary School attendance area.

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August 27, 2003