

COALITION FOR BALANCED
EXCELLENCE IN EDUCATION, ET AL.,

Appellants

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-24

OPINION

In this appeal, Appellants challenge the local board's unanimous affirmance of the superintendent's decision to implement new scheduling models in all Anne Arundel County middle and high schools beginning in the 2003-2004 school year. Appellants contend that: (1) there was insufficient public participation in the scheduling models' decision; (2) the adoption of the scheduling models in advance of the master plan process violated the intent of the Maryland *Bridge to Excellence in Education Act* (Chapter 288, Acts 2002); and (3) the school system failed to demonstrate that the new scheduling model for the middle schools meets state curriculum requirements as set forth in COMAR. The local board has submitted a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants have submitted a response opposing the local board's motion.

The relief requested by Appellants is twofold. With regard to the high schools, Appellants ask the State Board to require the local board to make scheduling options a meaningful part of the master plan process in the county for the 2004-2005 school year and beyond. With regard to the middle schools, Appellants ask the State Board to require that the middle schools continue on the schedules that were reflected in the plan implemented for the 2002-2003 school year, until any new schedule resulting from the master plan process has been approved for implementation.

FACTUAL BACKGROUND

On December 18, 2002, Eric J. Smith, the Superintendent of Schools for Anne Arundel County, adopted new scheduling models for all middle and high schools to be implemented for the 2003-2004 school year. The new scheduling models are two different forms of block scheduling. The high school model is an A-B day block, with four different 86 minute courses on alternating days with four other 86 minute courses. The middle school model consists of language arts and mathematics, each as an 86 minute course per day. Science and social studies meet for one semester each for 86 minutes per day. Physical education or health, one fine arts

course, and one elective rotate every third day during the remaining 86 minute period each semester.¹

Prior to the adoption of the scheduling models, school system staff studied various models and made recommendations to Dr. Smith based on their work. As part of the process, the local board conducted a workshop on November 22, 2002, which was open to the public and at which school system staff reviewed their work and recommendations on the scheduling models.

Also on November 22, 2002, Kenneth P. Lawson, Associate Superintendent for Instruction and Student Services for the local school system, wrote to Dr. James Foran, Director of High School and Postsecondary Initiatives for the Maryland State Department of Education, requesting a written opinion as to whether the “proposed middle school and high school schedules meet all state requirements.” Dr. Foran had previously met with Mr. Lawson and other representatives of the local school system to review the scheduling models and supporting documents.

Without expressing any opinion as to the relative merits of the scheduling models, Dr. Foran responded by letter dated November 26, 2002, that the models for high schools and middle schools satisfied all of the COMAR requirements. In his letter to Mr. Lawson, Dr. Foran stated the following with regard to the high school schedule:

1. All credit requirements described in COMAR (13A.03.02.03) will be fulfilled by each student.
2. All of the goals and sub goals by discipline are being dealt with in your curriculum documents per your correspondence.
3. The high school schedule will have a four-period A-Day/B-Day format with students able to earn up to 32 credits. Please note that if Anne Arundel County wishes to increase the number of credits required for graduation, you are required to notify the State Superintendent of Schools of that decision.

With regard to the middle school schedule, Dr. Foran stated as follows:

1. All students are provided each year the required courses listed in COMAR (13A Subtitle 4, Chapters 08 - Social Studies, 09 - Science, 12 - Mathematics, 13 - Physical Education, 14 - English Language Arts, 16 - Fine Arts, and 18 - Health Education). Other

¹Unlike the situation in 2001-02 where physical education, health, and fine arts were made electives, each of those subjects is mandatory now and under the 2003-04 scheduling models for all middle school students.

courses are also provided as required. As I understood our conversation, you assured me that all students in middle school are required to take (not as electives) physical education, health education, and fine arts each year regardless of what other courses they take. As you know, that was the primary issue with the middle school schedule last year that came before the State Board of Education.

2. All of the goals and sub goals by discipline are being dealt with in your curriculum documents per your correspondence.

3. The middle school schedule will have a four period day. Science and social studies classes will be taught on a semester basis during one of those blocks. Students who choose a foreign language will have an A-Day/B-Day schedule alternating between that foreign language and English language arts.

4. As you know, COMAR does not require a specific amount of time in each course. Thus, as long as you are meeting the requirements of the other pertinent sections of COMAR, the three-day rotation among the Encore courses as well as semester full block courses meet COMAR requirements.

On November 7 and November 13, 2002, local school system staff met with the leadership of the county Parent Teacher Associations and Citizen Advisory Committees (CAC) regarding the proposed scheduling models. Staff provided additional information to CAC representatives on November 21 and December 12, 2002. The local superintendent held forums at Magothy River Middle School on December 2, 2002. In addition, public hearings were conducted to obtain citizen testimony on the proposed scheduling models on December 3 and December 11. The school system also disseminated information about the issue on its website and received feedback on the issue via e-mails, phone calls, and conversations with staff, the superintendent, and board members.

Thereafter, on December 18, 2002, the superintendent adopted the new scheduling models for all middle and high schools. The local board unanimously affirmed that decision on March 5, 2003.

ANALYSIS

Public Participation

As a preliminary matter, Appellants maintain that the school system failed to provide sufficient opportunity for public participation regarding the implementation of the new

scheduling models. Appellants cite local board policies on Citizen Advisory Committees - Policy 501.01, Parental Involvement - Policy 507, and Curriculum Development - Policy 604, as well as corresponding administrative regulations. Contrary to this assertion, however, a review of the record discloses that the school system provided ample opportunity for public participation. Public input and advice was extensive, ranging from contact with local PTA's and CAC's, public meetings of the local board, public forums held by the local superintendent, two public hearings, and dissemination of information through the media.

To the extent Appellants argue that local policy and procedures concerning curriculum development were not followed, we do not find that specific curriculum content decisions were a part of the scheduling model decision. In fact, Appellants indicate that the ensuing curriculum changes in light of the new scheduling models are currently being developed. Therefore, with regard to the adoption of the new scheduling models, we find that none of the above referenced policies has been violated.

Bridge to Excellence in Education Act

The Maryland General Assembly enacted the *Bridge to Excellence in Education Act* which became effective July 1, 2003.² See Md. Code Ann., Educ. §§5-401 *et seq.* The Act establishes a requirement that ties the receipt of State aid to the development and implementation of a comprehensive master plan. Specifically, subsection (b) provides:

Each county board shall develop and implement a comprehensive master plan that describes the goals, objectives, and strategies that will be used to improve student achievement and meet State performance standards and local performance standards in each segment of the student population.

The State Superintendent of Schools must give final approval to the adequacy of the local comprehensive master plans.

Appellants argue that the local superintendent's decision to adopt new scheduling models on December 18, 2002, before comprehensive planning had been undertaken to develop a master plan violated the intent of the *Bridge to Excellence in Education Act* because the middle and high school schedules are a major component of improving student achievement.

We do not interpret the Act's requirement for the development and implementation of a master plan as prohibiting the school system from implementing the new scheduling models prior to completion of the master plan process. Nor do we believe that any other provision of the Act requires decisions about scheduling to be made as part of or subsequent to the development of a

²Because the local board's decision on the scheduling models will be implemented for the 2003-2004 school year, the new provisions of §5-401 are relevant to this appeal.

master plan. The Act imposes no specific scheduling or curricular requirements on a local school system. Further, the fact that the school system has chosen to implement the new scheduling models for the 2003-2004 school year does not preclude it from revisiting the issue at a later time if reevaluation of the decision becomes necessary.³

A review of the lengthy record in this appeal discloses that the Anne Arundel County Public School System has been engaged in an extensive master planning process since January, 2003. A large work group and several smaller work groups have developed a draft plan which has already been commented on by an advisory group consisting of various members of the public. The process has been open to the public and monthly updates from school system staff are provided at the local board meetings. *See* Affidavit of Martha R. Pogonowski. Further, the local board has indicated that its master plan is not dependent on curriculum schedules.

COMAR Requirements for Middle Schools

Appellants also maintain that the local board should be required to demonstrate that the new scheduling models meet all pertinent State curricular standards for the middle schools given the school system's recent history of violating such standards for physical education, fine arts, and health. Appellants indicate that the COMAR requirements for social studies, science, mathematics, language arts, physical education, fine arts, and health education may not be satisfied by the new models. The local board maintains that it is Appellants' burden, as initiators of this appeal, to demonstrate that the scheduling models are illegal.

MSBE Opinion No. 01-29

In support of their contention, Appellants refer to the State Board's decision in *Coalition for Balanced Excellence in Education, et al. v. Anne Arundel County Board of Education*, MSBE Opinion No. 01-29 (September 13, 2001), in which the State Board found that the Middle School Plan adopted by the Anne Arundel County Board of Education beginning in the 2001-2002 school year failed to comply with State Board regulatory requirements for physical education, health education, and fine arts education for students each year in grades 6 through 8. In that opinion, the State Board required the local board to develop a plan "so that all students in grades 6 through 8 in the Anne Arundel County Public School System from this school year forward shall participate in physical education, health education, and fine arts instructional programs." The State Board directed the local board to implement the plan for the second semester or third trimester of the 2001-2002 school year.

³Appellants also maintain that to the extent any requirement of the *No Child Left Behind Act* is to be implemented in Maryland through local comprehensive master plans, the adoption of the scheduling models before comprehensive planning was undertaken violates the intent of the applicable law. We reject this contention for the same reasons we reject the contention that the *Bridge to Excellence in Education Act* was violated.

Thereafter, based on extenuating circumstances, the State Board waived this requirement for the 2001-2002 school year, but required that by March 15, 2002, the local board develop a plan to be implemented beginning with the 2002-2003 school year which complied with the regulatory requirements. MSDE staff was assigned to monitor the development of the plan for compliance with the regulatory requirements. Per the State Board's directive, the local board developed a plan compliant with the regulatory requirements which was implemented for the 2002-2003 school year and provided the State Board with periodic reports on the success of the plan's implementation.

Thus, contrary to Appellant's assertion, the State Board did not place any continuing requirement on the local board for approval of future middle school scheduling decisions as part of the previous appeal. Rather the State Board's directive was for the local board to require all students in grade 6 through 8 to participate in physical education, health education, and fine arts instructional programs each year. The State Board did not bind the local board to continue the model that was implemented as a result of MSBE Opinion No. 01-29 beyond the 2002-2003 school year. Thus, we find the burden again lies with Appellants to prove that the new scheduling models violate COMAR requirements, as they so contend.

New Scheduling Models for 2003-2004

The record discloses that although there was no legal obligation to get MSDE approval, Mr. Lawson contacted Dr. Foran at the State Department of Education for his opinion on whether the proposed scheduling models met the State curricular requirements. Dr. Foran in his capacity as Director of High School and Postsecondary Initiatives responded affirmatively indicating that the proposed models for high school and middle school satisfied all of the COMAR requirements. Although Appellants allege that Dr. Foran's response was not an official response on behalf of MSDE, we find that Dr. Foran was acting in his official capacity as an MSDE representative and was fully qualified in rendering an opinion regarding the adequacy of the scheduling models to satisfy COMAR requirements.

In their argument, Appellants maintain that the scheduling models violate the following COMAR chapters: social studies - COMAR 13A.04.08; science - COMAR 13A.04.09; math - COMAR 13A.04.12; language arts - COMAR 13A.04.14; physical education - COMAR 13A.04.13; fine arts - COMAR 13A.04.16; and health education - COMAR 13A.04.18. These regulations are all structured similarly. Each starts with the mandate that, "The following . . . instructional program shall be required in public schools for grades K – 12." Each regulation requires "comprehensive instructional program[s that] shall provide for the diversity of student needs, abilities, and interests at the early, middle, and high school learning years, and shall include all of the following goals and subgoals." The goals and subgoals are then listed. Each regulation ends with the directive that each student shall have the opportunity to participate in the instructional programs required by the regulation.

While these State curricular standards mandate student exposure to specific instructional programs, they impose no specific time requirements for how and when the subject is taught, nor do they provide specifics as to program content. The regulations are intentionally general in scope to allow local school systems flexibility in determining course content, sequencing, and length of the instructional units.

Appellants have also provided evidence of concerns among some Anne Arundel County teachers over whether they will have adequate staff development time to properly implement the scheduling models and whether they will be able to fit basic information into the curriculum that they believe is crucial to mastery of a subject. *See Appellant's Response to Motion for Summary Affirmance* at 11-12. We find that such opinions are premature and constitute mere speculation until such time that the scheduling models are implemented. While Appellants have demonstrated concerns about the scheduling models, Appellants have presented no affirmative evidence that the models actually violate COMAR requirements.

Based on our review of the record, we do not find any evidence that any COMAR requirements or any provisions of the *Bridge to Excellence Act* or the *No Child Left Behind Act* have been violated by the adoption of the new scheduling models. Appellants have therefore not met their burden of proving that the local board acted arbitrarily, unreasonably, or illegally in this matter.

CONCLUSION

For these reasons we uphold the decision of the Board of Education of Anne Arundel County affirming the superintendent's adoption of new scheduling models for all Anne Arundel County middle and senior high schools for the 2003-2004 school year.

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Calvin Disney and Maria C. Torres-Queral are newly appointed members of the State Board of Education and did not participate in the deliberations of this appeal.

July 23, 2003