

ADC BALTIMORE,

Appellants

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-01

### OPINION

This appeal was brought by Dr. Bash Pharoan, President of the American Arab Anti-Discrimination Committee Baltimore Chapter (“ADC Baltimore”), on behalf of ADC Baltimore, challenging the Baltimore County Public Schools’ (“BCPS”) 2005-2006 school calendar as approved by the local board which does not recognize any Muslim holiday as an official school holiday.<sup>1</sup> The local board has filed a motion to dismiss based on untimeliness and lack of standing. Alternatively, the local board has filed a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted subsequent letters to the State Board and to the State Superintendent of Schools reiterating his position that the school calendar should recognize at least one Muslim holiday as a school holiday.

### FACTUAL BACKGROUND

Section 7-103 of the Education Article, Annotated Code of Maryland, requires that each Maryland public school “be open for pupil attendance for at least 180 actual school days and a minimum of 1,080 school hours during a 10-month period in each school year”. Section 7-103 also designates certain days as public school holidays on which a public school may not be open in order to meet the school day and hour requirements except for emergencies and only with State Board approval. With these basic requirements in mind, each local school system is responsible for developing its own school calendar.

The Board of Education of Baltimore County has promulgated a policy and Superintendent’s Rule 6111 in order to meet the legal requirements for developing a school calendar which will support the effective delivery of the instructional program for the school system. Since the 1994-95 school year, BCPS has convened a stakeholder group to advise the local board on the development of a systemwide school calendar. This calendar committee assembles representatives from groups such as the PTA Council of Baltimore County, the Area Advisory Council, the Teachers Association of Baltimore County, the Baltimore County Student Council, school principals and administrative staff. Dr. Pharoan was a member of the 2005-2006

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<sup>1</sup>Although the Appellant references the current 2004-2005 school year in his letter of appeal, he states that the appeal is from the June 8, 2004 unanimous vote of the local board which adopted the calendar for 2005-2006.

calendar committee. The calendar committee members are responsible for sharing the proposed school calendar with the stakeholder groups they represent and gathering feedback for developing a final proposal for presentation to the local board. ADC Baltimore and members of the Arab-American community gave input regarding the school calendar. Additionally, a number of Muslim Americans testified concerning the proposed 2005-2006 school calendar at the local board's May 25, 2004 board meeting. *See* 5/25/04 meeting minutes, pp.12-13. Although the calendar committee considered including two Muslim holidays in the 2005-2006 school calendar, the committee ultimately recommended that the superintendent not add the additional holidays in order to meet the number of days and hours required by law.

On June 8, 2004, the local board approved the 2005-2006 school calendar. No Muslim religious holidays were recognized for school closing. The calendar was distributed and made available to the public.<sup>2</sup>

## ANALYSIS

### *Untimeliness*

As a preliminary matter, the local board argues that this matter should be dismissed as untimely. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.05.02B. An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. *Id.* The local board maintains that this is an appeal of the 2004-2005 school calendar which was approved on June 10, 2003, thus more than 30 days had elapsed before this appeal was filed with the State Board on July 6, 2004.

It appears that there is confusion on the part of the local board regarding which school calendar is being appealed here. We believe that this confusion can be traced to Appellant's July 6, 2004 letter which has several typographical errors mistakenly referencing the 2004-2005 school calendar. However, based on our full reading of Appellant's July 6, 2004 letter, as well as other information that has been submitted as part of this appeal, there is no question that this is an appeal of the 2005-2006 school calendar which was approved by the local board on June 8, 2004. *See* 7/6/04 letter from Pharoan to Grasmick (stating "[t]he past 3 weeks were a period of reflection after the June 8, 2004 unfortunate vote of 11/0 against granting the Muslim holidays in BCPS"); *see also*, 7/9/04 letter from Hairston to Pharoan stating "[y]ou have indicated that you wish to appeal the Board of Education's decision of June 8, 2004 concerning the 2005-2006 school calendar." Because Appellant submitted the appeal of the June 8, 2004 board decision

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<sup>2</sup>Pursuant to BCPS Superintendent's Rule 6111, once a calendar for any given year is approved by the local board, the calendar must be shared at least one year prior to the year in which it is to be implemented.

within the statutory time frame, we find that the appeal is timely.<sup>3</sup>

### *Standing*

As another preliminary matter, the local board also argues that the appeal should be dismissed because Appellant has failed to provide evidence that ADC Baltimore has any direct interest in or injury in fact, economic or otherwise, from the school calendar decision, and therefore ADC Baltimore lacks standing to appeal this matter to the State Board.

This appeal was filed by Dr. Pharoan on behalf of ADC Baltimore. While Mr. Pharoan has not set forth any evidence that ADC Baltimore members are Baltimore County residents or have children attending Baltimore County public schools, we note that Mr. Pharoan was a member of the 2005-2006 Baltimore County School System calendar committee. Further, a review of the minutes of the board meeting of May 25, 2004 discloses that a number of Muslim Americans testified concerning the proposed calendar for 2005-2006. We therefore find under these circumstances that Appellant does have standing to file this appeal.

### *Merits of Appeal*

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.01.05.05A.

As already mentioned, state law sets forth the requirements for the minimum number of school days and hours required for instruction. The law also sets forth the days that public schools must be closed for designated holidays. The designated holidays are Thanksgiving Day and the day after, Christmas Eve and from then through January 1, Martin Luther King, Jr. Day, Presidents' Day, the Friday before Easter and from then through the Monday after Easter, Memorial Day, and primary and general election days. § 7-103(c)(1).<sup>4</sup> These are the only State required school closings for holidays. The closing of a public school for any other holiday is at the discretion of the local board.

Appellant contends that the failure of the local board to close school for at least one Muslim religious holiday is illegally discriminatory. The local board indicates in its motion that whether the school system closes during a religious holiday is determined by the needs of the school system, and not done to sanction one religious belief or practice over another. Based on

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<sup>3</sup>To the extent that the appeal attempts to challenge the 2004-2005 school calendar, the local board is correct that such an appeal would be untimely.

<sup>4</sup>The statute allows specified school systems to stay open on primary and general election days. §7-103(c)(4).

our review of the record, we find that Appellant's argument is unsupported by any evidence showing that the local board developed and adopted the school calendar for any purpose other than to support the effective delivery of the instructional program and meet the 180 day and 1080 hour requirements. In fact, a review of the record discloses that throughout the whole calendar process the Muslim viewpoint was seriously considered.

We further note that while the local school system will be open for Muslim religious holidays, public school students and employees are not penalized by the school system for their absence from school for observance of a religious holiday. For public school students, State Board regulation provides that the observance of a religious holiday is considered a lawful absence. This includes absence from school for any portion of the day. Students who are lawfully absent are entitled to do make-up work so that they do not fall behind due to being lawfully absent. *See* COMAR 13A.08.01.03F & .05B(5); *see also* Baltimore County Superintendent's Rule 5120. And, for all Baltimore County Board employees, each employee is provided several days of religious observance leave each school year. For example, teachers are given five days of special religious observance leave each year.

The United States Court of Appeals for the Fourth Circuit considered an issue similar to the one raised by Appellant in *Koenick v. Felton, et al.*, 190 F.3d 259 (4<sup>th</sup> Cir. 1999). In *Koenick*, a teacher challenged the constitutionality of the statute providing for a school holiday on Good Friday and the Monday following Easter. Koenick argued that establishing a four day holiday around Easter endorsed Christianity over other faiths. The Court disagreed, stating as follows:

By simply giving students and teachers a school holiday around Easter, § 7-103 does not mention or imply that the holiday is to be spent attending religious services in recognition of this Christian holy day. The statute merely gives people the days off to spend as they like. Although the statute makes it possible for students and teachers to attend services around Easter, it in no way promotes or advances this cause. Similarly, the Board has a policy of granting students and teachers excused absences to attend religious services in recognition of holy days in their own religions; however, by doing so there is no insinuation that such a policy advances any religion over another.

*Id.* at 268. The Court found a secular purpose to closing school for a four day holiday around Easter in order for the school system to economize scarce educational resources that are wasted when classes are held on days with a high rate of absenteeism. *Id.* at 266. *See also Granzeier, et al. v. Middleton, et al.*, 173 F.3d 568, 575-76 (1999) (finding that a school system's decision to close for Jewish holy days due to its large Jewish population does not result in the impermissible establishment of the Jewish religion, but rather constitutes a secular recognition of the practicalities of school attendance).

While we appreciate Appellant's position, we find that it would be illegal for a local school system to close schools for the purpose of recognizing a religious holiday of one particular faith. Rather, as the court in *Koenick* noted, the school system must have some secular purpose for designating school holidays such as economizing educational resources on days with high absenteeism rates for both students and teachers.<sup>5</sup>

CONCLUSION

Accordingly, for the reasons stated above, we do not find that the local board acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the school calendar decision of the Baltimore County Board of Education.

Edward L. Root  
President

Dunbar Brooks  
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

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<sup>5</sup>We note that there are other educational opportunities during the school year to increase awareness and understanding in the community of Muslim and Arab-American culture other than closing public schools for observance of a Muslim holiday.

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

January 26, 2005