

JOAN & MICHAEL TAYLOR, ET AL.

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-32

### OPINION

This is an appeal challenging the Montgomery County Board of Education's approval of the Superintendent's Recommended Fiscal Year 2008 Operating Budget which will result in the phase out of the secondary learning centers (SLCs), the closure of the Kingsley Wilderness Project, and an increase in student fees. The local board has filed a Motion to Dismiss maintaining that Appellants lack standing. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. Appellants have submitted an opposition to the local board's motion. The local board has responded to the opposition.

### FACTUAL BACKGROUND

#### *Secondary Learning Centers*

Montgomery County Public Schools (MCPS) has operated secondary learning centers since the 1970's. These centers provide middle and high school students with disabilities special education services in self contained settings, separate and apart from their peers in regular education classrooms. (Revised Proposal, p.2). There are five middle school learning centers. They are housed in Montgomery Village, Dr. Martin Luther King, Jr., Colonel E. Brooke Lee, White Oak, and Tilden middle schools. There are three high school learning centers housed in Watkins Mill, John F. Kennedy, and Walter Johnson high schools. In schools with secondary learning centers, some students with disabilities receive special education services in learning center classes while others receive services in general education classes. (*Id.*).

In June 2003, the local board formed a plan called "Our Call to Action:Pursuit of Excellence." It is updated annually and provides direction to the school system. The strategic plan includes five goals, one of which is to "provide an effective instruction program." Within this goal, there are two milestones: (1) MCPS will eliminate the disproportionate representation of African American students in special education, and (2) All schools will provide students with disabilities access to general education to the maximum extent appropriate. (2006 Annual Report, p.23).

As of December 1, 2006, MCPS had 295 students in middle school learning centers and

316 students in high school learning centers. (Revised Proposal, p.2). MCPS has reported that its learning center students are typically three years below grade level in reading and usually demonstrate deficits in the areas of decoding, word retrieval, fluency, vocabulary, comprehension, written language and organization. In math, many demonstrate deficits in calculation and problem solving. (*Id.* at 2). Despite these performance deficiencies, the reading and math IEP goals of learning center students and non-learning center students are not significantly different. (*Id.*).

In December 2006, the local Superintendent, Jerry D. Weast, proposed to change the delivery of special education services in MCPS through a three year plan to phase out the secondary learning centers. (*Id.* at 1). The phasing out of the SLCs was reflected in the Superintendent's Recommended FY 2008 Operating Budget and released for public comment in December 2006. At a public hearing on the FY 2008 operating budget, there was testimony from the public concerning the closing of the centers. The Superintendent also received communications regarding the proposal from the local board, parents, and other members of the community. As a result, the Superintendent revisited his initial proposal and developed a revised proposal which was publicized on or about January 18, 2007. (Memorandum to local board, 1/21/07).

The goals for the revised proposal are to improve the academic performance of students with disabilities, increase the number of students with disabilities educated in the least restrictive educational environment, and address the overrepresentation of African American and Hispanic students in the secondary learning centers. (Revised Proposal, p.1).

The proposal includes several key elements to accomplish these goals. They are as follows:

1. All current grades 6–12 students may remain in the secondary learning centers through their graduation.
2. Approximately 45 rising grade 6 students who might be candidates for the secondary learning centers will receive their special education services in their home or consortia schools, according to their IEPs. The progress of these students will be monitored to ensure that they are progressing in accordance with their IEPs.
3. All of the current students in secondary learning centers will have the option of returning to their home or consortia schools to receive services if their families request it, and students who wish to exercise this option will be supported.
4. Additional efforts will be made to improve the quality of instruction at the secondary learning centers for the students

who remain through their high school graduation.

5. Principals and staff will receive additional professional development to help them better support students with disabilities in their home and consortia schools.

While the overall goals of the revised plan remained the same as the originally proposed plan, the major change from the original is that the revised plan would be implemented gradually, allowing grade 6-12 students to remain in the secondary learning centers through graduation, thus minimizing disruptions to the educational experiences of students currently attending secondary learning centers. (*Id.* at 1, 9).

The proposal is part of MCPS's attempt to address the overrepresentation of African Americans and Hispanics in the SLC's, particularly in light of the data showing that students at secondary learning centers lag far behind their peers with disabilities who are receiving special education services outside of the learning centers. The proposal highlights the federal requirement that local school systems address racial or ethnic disproportionality and discrimination affecting students with disabilities. *See* Individuals With Disabilities Education Act of 2004 (IDEA), 20 U.S.C. 1412(a)(24) & 1418(d); 34 CFR 300.173 & 300.646 (requiring local school districts to have procedures in place to prevent students with particular racial and ethnic backgrounds from being disproportionately identified as students with disabilities or from being placed in particular educational settings).<sup>1</sup>

The proposal is also an attempt by MCPS to achieve the federal mandate to provide children with disabilities an education in the "least restrictive environment." IDEA provides that children with disabilities be educated with children who are not disabled "to the maximum extent appropriate" and that assignments to "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment" should occur "only when the nature or severity of the disability of a child is such that education in regular classes . . . cannot be achieved satisfactorily." 20 U.S.C. 1412(a)(5)(A); 34 CFR 300.114(a)(2). (Revised Proposal, p.6).

On February 13, 2007, the local board adopted the Superintendent's Recommended FY 2008 Operating Budget. (Meeting Minutes, 2/13/07). The budget reflected various staffing changes that will occur during the 2007-2008 school year as the SLC phase out begins. (Superintendent's Recommended FY 2008 Operating Budget, Chapter 4-33). On June 12, 2007,

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<sup>1</sup>The proposal also references the Maryland State Department of Education's (MSDE) monitoring of MCPS's delivery of special education services. Based on the results of that monitoring, MSDE required MCPS to reserve more than \$3.8 million of its federal allocation for special education "to provide comprehensive coordinated Early Intervention Services to students in groups that are significantly over-identified" as needing special education services. MSDE also mandated that MCPS reexamine and revise all policies, procedures, and practices that contribute to these disproportionalities. (Revised Proposal, p.5; Baglin Letter, 6/3/05).

the local board adopted the final FY 2008 Operating Budget. (Meeting Minutes, 6/12/07).

### *Kingsley Wilderness Project*

The Kingsley Wilderness Project is one of ten alternative programs that MCPS operates for at-risk students. It is a countywide program with no attendance boundary. Students are referred to the program by their home schools and receive diplomas from their home schools. (Local Board Motion at 9). There was no appropriation in the FY 2008 Operating Budget for Kingsley. (Superintendent's Recommended FY 2008 Operating Budget, Chapter 4-64). Thus, the local board's adoption of the Superintendent's Recommended FY 2008 Operating Budget on February 13, 2007 resulted in the discontinuation of this program.

### *Student Fee Increase*

The student activity fee was initiated as part of the FY 1997 Operating Budget as a method of supporting an interscholastic athletics program for middle school students. It has been a part of the budget every year since that time. (Meeting Minutes, 6/11/06; 11/12/06). It applies only to those middle and high school students who participate in extracurricular activities. The fee is reduced for lower income families. (Extracurricular Activity Fee Notice).

The student parking fee was previously established as required under MCPS Regulation ECG-RA(III)(D). It applies only to those high school students who park on school grounds. (Regulation ECG-RA(III)(D)). Revenue from the parking fee is used to support interscholastic athletics, or for other uses, as determined by the local board. (*Id.*).

On February 13, 2007, the local board amended the Superintendent's Recommended Operating Budget to provide funding for junior varsity lacrosse by offsetting the cost of this additional program with an increase in the high school parking fee from \$50 to \$75 per year and an increase in the extracurricular activity fee from \$20 to \$30 per year. (Additional Information from local board).

## STANDARD OF REVIEW

This case involves a quasi-legislative decision of the local board – the approval of the FY 2008 Operating Budget.<sup>2</sup> As this Board recently explained in *Citizens for a Responsible Curriculum, et al. v. Montgomery County Board of Education*, MSBE Opinion No. 07-30, in

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<sup>2</sup>Quasi-legislative decisions include approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy; approving or disapproving an appointment; proposing or ratifying a constitution or constitutional amendment; proposing or ratifying a charter or charter amendment; adopting disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law; approving, disapproving, or amending a budget; and approving, disapproving, or amending a contract. Md. Code Ann., State Gov't § 10-502(f) and (j).

cases involving a quasi-legislative decision of the local board, the State Board will decide only whether the local board acted within the legal boundaries of state or federal law, and will not substitute its judgment for that of the local board “as to the wisdom of the administrative action.” (citing *Weiner v. Maryland Insurance Administration*, 337 Md. 181, 190 (1995)).<sup>3</sup> This standard of review rests on the principles underlying the separation of powers doctrine that the three branches of government are separate and respectful of each others powers. *Id.*

## ANALYSIS

### Preliminary Matters

#### *I. Standing - SLCs*

As a preliminary matter, the local board maintains that the appeal should be dismissed because Appellants lack standing. As the State Board noted in *Adams, et al. v. Montgomery County Board of Education*, 3 Op. MSBE 143, 149 (1983), the general rule on standing is that “for an individual to have standing, even before an administrative agency, he must show some direct interest or ‘injury in fact, economic or otherwise’.” See also *Schwalm v. Montgomery County Board of Education*, MSBE Opinion No. 00-10 (February 23, 2000); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996); *Way v. Howard County Board of Education*, 5 Op. MSBE 349 (1989). This showing of a direct interest or injury in fact requires that the individual be personally and specially affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency. See *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 144 (1967).

Appellants describe themselves as falling within three categories - (1) parents or grandparents of students in MCPS middle school learning centers; (2) parents of students in MCPS elementary learning centers; and (3) parents of MCPS learning center candidates. We will address the standing of each of these groups in turn.

The first group of Appellants are the parents of current middle school learning center students. This group consists of Caroline G. and Tom J., Ed and Sue R.,<sup>4</sup> Maria J. and Tony N., Daniel and Tamara M., Margaret K. and Lawrence W., and Susan and Brad S. (Opposition at p. 7). Because these students are permitted to remain at the SLC’s through graduation, the local board argues that these individuals lack standing because they are in no way affected by the local board’s decision. We disagree with this assertion. Although these students will be permitted to remain at the SLCs, no additional students will be permitted to enroll. Consequently, the

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<sup>3</sup>In cases involving a quasi-judicial decision of the local board, the State Board will review whether that decision is arbitrary, unreasonable or illegal. *Id.*; COMAR 13A.01.05.05.

<sup>4</sup>Appellants list J.E.R. as the grandfather of a middle school learning center student. He shares the same last name as Ed and Sue R. and, presumably, he is the grandfather of their child. Unless he is the legal guardian of his grandchild, he lacks standing to represent the student. (*Id.*).

population at the SLC's will diminish as the years progress. The lower population will necessarily have an effect on the ability of the remaining students to interact socially and academically with students from their peer group, or lack thereof. This is especially true for the younger students who will remain in the SLCs after everyone else is gone. For this reason, we believe that these Appellants have a direct interest in the local board's decision and, therefore, have standing to bring this appeal.

The second group of Appellants are parents of elementary learning center students. This group includes Beth and Tony W. who are parents of a 2nd grade learning center student, and Jeanne and Frank T. who are parents of a 1<sup>st</sup> grade learning center student. (Opposition at p. 6.). Appellants maintain that most of the SLCs' population comes from the elementary learning centers. (*Id.*). The local board does not dispute this. Thus, there is an extremely high probability that this class of students would continue on to the SLCs in middle school. If the SLC's do not exist, that option is foreclosed to them. For this reason, we believe that these Appellants have a direct interest in the local board's decision.

The last group of Appellants are parents whose children do not attend any learning center. This group consists of Joshua P. and Ketaki B., Beth and Toney W., Ellen J. and Mark C., Joan and Michael T., and Marcie R. Some are described as parents of SLC "candidates" without any further explanation, and others are described as parents of children with disabilities. (Opposition at pp. 6-7). Even if we assume that all of these students are special education students, we believe that these Appellants have a more tenuous link to the closing of the SLCs than the previous Appellants discussed. Regardless, the State Board need not determine whether these individuals have standing given that this appeal on the closing of the SLCs will go forward based on the standing of the other Appellants.

## 2. *Standing - Kingsley Wilderness Project*

Appellants do not allege that any of their children participate in the Kingsley Wilderness Project. Because Appellants have not demonstrated any direct interest or injury in fact, we find they lack standing to appeal the elimination of funding for the Kingsley Wilderness Project.

## 3. *Standing - Student Fee Increases*

The student activity fee increase applies to MCPS middle and high school students who participate in extracurricular activities. Some of the Appellants have children who attend MCPS middle schools. They may participate in extracurricular activities and would be subject to the fee. We will address Appellants' claims with regard to this fee. The increase in the parking fee applies to high school students who park on school grounds. None of the Appellants allege that they have children in MCPS high schools or who are subject to the parking fee. Thus, we find that Appellants lack standing to challenge the parking fee because they have not demonstrated a direct interest or injury in fact.

## Merits of Appeal

This appeal centers on two policy statements issued by the local board. The first, DBA, adopted in 1961, addresses “Budget Preparation and Procedures.” The second, BFA, adopted in 2003, addresses “Policyssetting.” The Appellants contend that when the local board adopted the FY 2008 budget, which reflected the phase out of the SLCs and a rise in student fees, it violated the DBA. The local board argues that the DBA is not applicable and that the BFA controls here.

### *1. Policy DBA - Budget Preparation and Procedures*

By its terms, the DBA was established to deal with the fact that many significant policy decisions occurred during the budget process without full opportunity for consideration and comment by the public. Policy DBA states as follows, in its entirety:

WHEREAS, It is important that all policy changes having an effect upon the budget, including, for example, changes in education programs, reorganizations and or expansion of staff, etc., should be decided after full opportunity for consideration and comment by the public and after thorough deliberation by the Board of Education; and

WHEREAS, In the past such policy decision have most often been made a part of the budget process; and

WHEREAS, The budget, of necessity, is presented at a time of year (the Christmas holidays) when it is inconvenient for the public and the various civic organizations to study the budget in detail; and

WHEREAS, The short period of time between the public hearings on the budget and the date the budget must be transmitted to the County Council places the Board of Education under very great pressure of time; now therefore be it

*Resolved*, That the following procedures, designed to allow ample time for the public to comment on, and for the Board to weigh policy changes as defined above be adopted:

1. Insofar as possible, significant policy changes which will be proposed to the Board for action in the next budget should be included in the agenda of Board meetings during the year.
2. In order to accomplish this, not later than September 30 of each year the Superintendent shall present to

the Board a list of such proposed policy changes. This tabulation may include a brief explanation and description of each item, but need not include exact cost data, although where appropriate, order-of-magnitude estimates would be useful.

3. The Board will respond as it deems appropriate, and may take the opportunity to offer suggestions on the proposed changes for the guidance of staff, and to suggest additional changes it may wish to have placed on the agenda.
4. Such policy changes as are adopted by the Board prior to the budget will be considered policy directives and will serve as guidance to the staff regarding the direction in which the Board wishes to move. Such policy directives, however, will not necessarily establish priorities as to the importance of one policy over another; nor will it necessarily establish the extent to which such policies will be carried out in the next year. These later aspects of policy changes may be considered as part of the budget process.
5. To identify the proposed policy changes and to provide a summary of their fiscal implications, the budget document as presented by the Superintendent shall contain a list of said changes and their costs, and a comparison of each of the proposed policies with the cost of existing policy.

## 2. *Policy BFA - Policysetting*

Policy BFA sets forth the process for development and implementation of the formal written policies of the local board. The BFA states as follows, in part:

### A. PURPOSE

To establish a definition of policy and consistent process for development and implementation of formal policies identifying principles 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.



## B. ISSUE

State law provides that the county Board of Education, with the advice of the superintendent, determines the educational policies of the school system. In fulfilling this role, the Board of Education, among other actions, establishes formal policies to identify certain principles. Therefore, there should be comprehensive and consistent process for policy analysis, formulation, implementation, monitoring, and evaluation.

## C. POSITION

### 1. Definition

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*.

The BFA then sets forth a comprehensive process for policy development and implementation of such policies. The process includes the establishment of a Policy Committee; the factors for consideration in drafting a policy; the steps for proposing a policy which includes presentation to the local board and opportunity for public comment; the standard format of a policy; the establishment of implementing regulations; strategies for implementation; and policy review and updating. BFA (C – F).

### 3. *Violation of Policy DBA*

Appellants maintain that the local board failed to follow the DBA when it decreased funding for the SLCs through the budget process and increased student fees without prior separate consideration of the issues with opportunity for public comment. The local board maintains that DBA is no longer in effect due to the later enactment of the BFA, which the local board argues, rescinded DBA by implication.

Under the principles of statutory interpretation, repeals by implication are not preferred. As stated in the Court of Appeals in *Pressman v. Elgin*, 187 Md. 446, 450 (1947):

The law does not favor repeals by implication, unless there is a manifest inconsistency between the earlier and later statutes, or unless their provisions are so repugnant and irreconcilable that they cannot stand together. No Court should ever hold that a statute has been repealed except where the language of a later statute shows plainly that the Legislature intended a repeal. Statutes which relate to the same subject-matter and are not inconsistent with each other are in *pari materia*, and should be construed together so that they will harmonize with each other and be consistent with their general object and scope, even though they were passed at different times and contain no reference to each other. (Citations omitted).

Although the general rule disfavors repeals by implication, the local board argues that this situation constitutes an exception, citing *Hitchcock v. State*, 213 Md. 273 (1957). In *Hitchcock*, the Court of Appeals addressed the question of whether the Medical Practice Act effectively repealed an earlier provision dealing with natural healers which the Court assumed for purposes of the argument had been adopted in Maryland. The Court stated:

The Medical Practice Act belongs to the class of legislation that embraces a complete scheme of regulation for a given subject. In such cases, the courts have taken the view that the new is a substitute for existing laws on the subject, and repeals those earlier laws. Where the Legislature undertakes to deal with the whole subject matter, there is an exception to the general rule that repeal by implication is not favored, although it has been said in such cases the repeal is not really by implication, but is actual, although not expressed. (Citations omitted).

*Id.* at 279. Therefore, we address whether the BFA occupies the entire field of policy making for MCPS.

The BFA governs generally the establishment of the local board's formal written policies and provides a framework for their creation and implementation. The DBA is more specific. It governs only those policies that emerge from budget decisions. It provides a mechanism for public notice and input which is often lacking when such decisions are part of the budget process. In construing BFA and DBA together, we find that they are in *para materia* and can coexist. They work together to keep all policy decisions, whether or not they are formal written policies of the local board or policies that emerge strictly from budget decisions, transparent and open to the public for input. Thus, there is no repeal by implication here and the DBA remains in effect.

Having established that the DBA is still in effect, we turn to whether the local board violated its requirements. The DBA requires the Superintendent to present a list of the proposed policy changes to the local board no later than September 30 of each year. Appellants maintain, and the local board does not dispute, that the phasing out of the SLCs and the imposition of

student fees were not presented to the local board prior to the September 30, 2006 meeting. Thus, a violation of DBA occurred if these are considered to be significant policy changes.

In our view, the phasing out of the SLCs is a significant policy change. It alters the way in which MCPS delivers special education services to its students by moving from a less inclusive educational environment to a more inclusive one. The closing of the SLCs eliminates one of the settings for delivery of special education services. This, we believe, represents a major change in policy – presenting an issue of real significance for the community.

In contrast, the increase to the activity fee is not a significant change in policy. That fee was already in existence prior to the local board's adoption of the Superintendent's Recommended FY 2008 Operating Budget on February 13, 2007. The only change that was made was a minimal increase to the amount of the fee. Therefore, in our view, a violation of the DBA occurred with regard to the phasing out of the SLCs, but not with regard to the increase in the activity fee.

Having found a violation of the DBA, we look to the consequence of that action. The *Accardi* doctrine provides that “[a]n agency of the government must scrupulously observe rules, regulations, or procedures which it has established.” *U.S. ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This doctrine applies to regulations that are intended to “affect individual rights and obligations” or to “confer important procedural benefits upon an individual.” *Pollack v. Patuxent Institution Bd. of Rev.*, 274 Md. 463, 503 (2003). It does not apply to an agency's departure from purely procedural rules that do not invade fundamental constitutional rights or are not mandated by statute, but are adopted primarily for the orderly transaction of agency business. *Id.* Where the *Accardi* doctrine is applicable, a complainant must show that prejudice to him or her resulted from the agency's violation in order for the agency decision to be struck down. *Id.* at 504.

We believe that the DBA is intended to “affect individual rights and obligations” or to “confer important procedural benefits upon an individual.” One of the main reasons for the adoption of DBA was to provide the public the opportunity for consideration and comment on policy changes having an effect on the budget. The concern was that such policy decisions had previously been made a part of the budget process which is not the ideal time for making such decisions. DBA states that the budget “is presented at a time of year (the Christmas holidays) when it is inconvenient for the public and the various civic organizations to study the budget in detail” and that the “short period of time between the public hearings on the budget and the date the budget must be transmitted to the County Council places the Board of Education under very great pressure of time.” These factors led to the adoption of the DBA. Thus we conclude that the *Accardi* doctrine applies because the DBA was adopted to allow ample time for the public to receive notice of and comment on policy changes, and not primarily for the orderly transaction of local board business.

Even though the local board violated the DBA, under the *Accardi* doctrine the State Board will not reverse the local board's decision unless Appellants show they were prejudiced by

the violation. *Pollack*, 274 Md. at 503. In December 2006, the Superintendent initially proposed a three year plan to close the SLCs. The phasing out of the SLCs was reflected in the Superintendent's Recommended FY 2008 Operating Budget which was released for public comment in December 2006. There was testimony during public hearings on the Superintendent's Recommended FY 2008 Operating Budget, as well as communications from the local board, parents, and the community.

Based on the testimony and communications, the Superintendent revisited the proposal on the SLCs and made alterations to it. The revised proposal was publicized on January 18, 2007. On February 13, 2007, the day the local board adopted the recommended budget, six more people commented on the plan, only two of whom were in favor of the Superintendent's phase out plan. (Letter to Praisner, 3/7/07). In fact, Appellants refer to a total of 68 people who testified on the issue, most of whom were not supportive of it. (Opposition to Motion, p.11). Thus, it appears that, although public notice of the phasing out of the SLCs was not given by September 30, 2006 as required by DBA, notice was given two months before the vote on the FY 2008 Operating Budget. There was public comment on the plan, changes were made to the plan based on the public comment, and then there was additional public comment after the revisions and prior to the local board's adoption of the budget. We find, therefore, that because the Appellants had notice and opportunity to comment on the changes to the SLCs, and that the changes were open to public scrutiny, that Appellants have not established that they were prejudiced by the local board's violation of the DBA.<sup>5</sup>

While we recognize that the local board's violation of its own policy did not rise to a level of prejudice that would warrant this Board overturning the local board's decision, the local board's actions here in no way meet the spirit or intent of the DBA. DBA's existence is rooted in concepts of full disclosure and opportunity for meaningful participation by the public. The compression of time that occurred in this instance is precisely what the DBA was intended to protect against. Although there was opportunity for public comment on the phasing out of the SLCs, that compression of time resulted in a diminishment of the opportunity to comment, albeit insufficient to prejudice the Appellants. We believe that the local board should have respected the time frames established by the DBA, especially where the underlying matters at issue are of such a serious nature. We caution the local board to respect the procedural safeguards it has established to avoid future challenges of this nature.

#### 4. *Violation of Policy ABA*

Appellants argue that the local board's adoption of the Superintendent's Recommended FY 2008 Operating Budget also violated County Board Policy ABA entitled "Community Involvement." Policy ABA sets forth the position of the school system on community

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<sup>5</sup>We note that, in addition to the compressed opportunity for public comment and the FY 2008 budget implications, the phase out of the SLCs will occur over a two to three year budget cycle which, if proper notice is given, will allow for full and open public comment on the closure of the SLCs.

involvement. It is a general policy which lists various ways by which the school system can gain community input. *See* Policy ABA. It does not, however, create an obligation that the school system use any particular avenue of communication.

##### 5. *Violation of Local Board Operations Handbook*

Appellants claim that when the local board adopted the recommended budget, thereby increasing the extracurricular student activity fee and student parking fee, it violated a provision in its own Operations Handbook that requires all resolutions involving matters of policy “to lie on the table for at least one week before being voted upon.” Appellants refer specifically to the fact that the fee increases were not presented to the public prior to the February 13 meeting.

In order to fully understand this requirement, we look at the cited provision in its entirety. The full provision of the Operations Handbook to which Appellants refer, entitled “Policy Development and Adoption” 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 matter of policy” as defined in the local board’s policy on policy setting - Policy BFA.

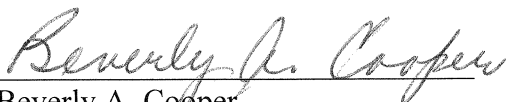
The action of approving the recommended budget, which resulted in an increase to the student activity fee and the student parking fee does, is not an action on a “policy” as specified in the Operations Handbook and Policy BFA. As already discussed above, this definition applies only to the formal written policies of the local board contained in the Policies and Regulations Handbook. Therefore, the provision at issue in the Operations Handbook is not applicable here and there was no violation of that requirement that any resolution involving a matter of policy must be introduced a week before being voted on by the local board.

CONCLUSION

For these reasons, the State Board, by a vote of 10 to 1, affirms the local board’s decision with regard to the phasing out of the SLCs and the student activity fee, and dismisses the claims concerning Kingsley Wilderness Project and the parking fee because the Appellants lack standing to challenge those actions.<sup>6</sup>



Dunbar Brooks  
President



Beverly A. Cooper  
Vice President



Lelia T. Allen



J. Henry Butta

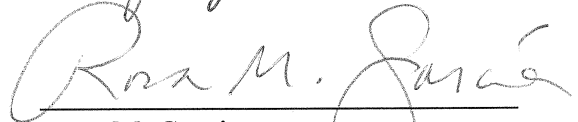


Charlene M. Dukes

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<sup>6</sup>In a consolidated matter, Appellants Jeanne and Frank T. have filed a separate request that the State Board “support [their] request to halt the closing of the Secondary Learning Centers” until the Montgomery County Inspector General has presented the results of his investigation; the Special Education Advisory Committee and the Special Education Staffing Plan Committee have received and reviewed full and complete answers to all questions previously submitted; and the CPA legislative Auditor, under the Office of Legislative Audits, has completed an audit of the Montgomery County Public School system’s financial management practices. This appears to be a request for a stay of the local board’s action for an unspecified period of time, although Appellants have provided little information in this regard. Because we find that there is no basis to disturb the local board’s action with regard to the SLCs, there is no need to consider this request. We note, however, that the authority to stay the action of a local board resides with the State Superintendent of Schools. See COMAR 13A.01.02.01B.

  
Mary Kay Finan

  
Rosa M. Garcia

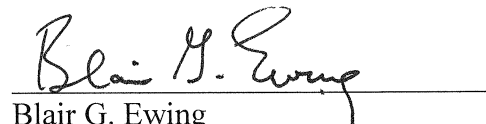
  
Richard L. Goodall

  
Karabelle Pizzigati

  
David F. Tufaro

DISSENT

Mr. Blair Ewing votes to reverse the local board's decision.

  
Blair G. Ewing

August 29, 2007