JOAN TAYLOR, et al.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 08-13

OPINION

INTRODUCTION

The Appellants have requested that this Board reconsider its decision of August 29, 2007 in *Joan & Michael Taylor, et al. v. Montgomery County Board of Education*, MSBE Op. No. 07-32. The Montgomery County Board of Education (local board) has filed a Response to the Motion for Reconsideration.

FACTUAL BACKGROUND

Joan & Michael Taylor, et al. v. Montgomery County Board of Education, MSBE Op. No. 07-32, concerned the Montgomery County Board of Education's decision to approve the Superintendent's Recommended Fiscal Year 2008 Operating Budget. The local board's approval of the recommended budget resulted in a three-year plan to phase out of the secondary learning centers (SLCs),[1] the closure of the Kingsley Wilderness Project, and an increase in student fees.

This request for reconsideration focuses only on the issue involving the phase out of the SLCs.

In affirming the local board, the State Board held that while the local board's approval of the recommended budget violated its own policy, Policy DBA – Budget Preparation and Procedures, that violation did not rise to a level of prejudice to the Appellants that would warrant overturning the local board's decision. The Board stated that there was notice and opportunity to comment on the changes to the secondary learning centers and that the changes were open to

[1]SLCs are learning centers that 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. *Id.* at 1.

public scrutiny. The State Board also found that there was no violation of Policy ABA – Community Involvement, and no violation of the local board Operations Handbook.

In their Motion for Reconsideration, the Appellants make several arguments. Briefly stated, their arguments are as follows:

(1) MCPS used faulty data to support its decision to phase out the SLCs;

(2) The elimination of SLCs helps to hide the disproportionate representation of students from various racial and ethnic groups in the special education population by dispersing the groups more widely throughout the system;

(3) IDEA does not mandate placement in the least restrictive environment and therefore every child with a disability need not be placed in the regular education classroom;

(4) The decision to close the SLCs is illegal under No Child Left Behind (NCLB);

(5) The decision to close the SLCs is illegal under the (Individuals with Disabilities Education Act (IDEA);

(6) Many MCPS staffers support SLCs;

(7) Students have been prejudiced by the decision because there is no longer an appropriate special education placement for them within the school system; and

(8) The local board has evinced an intent to continue to exclude community input into its decisions.

STANDARD OF REVIEW

A decision on a request for reconsideration shall be made in the discretion of the State Board except that a decision may not be disturbed unless there is sufficient indication in the request that:

(1) The decision resulted from a mistake or error of law; or
(2) New facts material to the issues have been discovered or have occurred subsequent to the decision.

The State Board may refuse to consider facts that the party could have produced while the appeal was pending. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10(D).

LEGAL ANALYSIS

1. Arguments Against MCPS Rationales for SLC Phase Out

Three of Appellants arguments for reconsideration attack the rationales given by MCPS for the SLC phase out. First, Appellants attempt to discredit data relied upon by MCPS to support the phase out, stating that MCPS failed to carefully collect and analyze its data in a manner that would show the strengths and weaknesses of the SLC approach. Appellants maintain that learning centers do work, and argue about "hours-based staffing" and comparisons of academic performance between those served in SLCs and those served in more inclusive settings. (Reconsideration at pp. 4-7). Second, Appellants maintain that the phase out tends to hide racial and ethnic disproportionality in special education rather than address it. (Reconsideration at p. 8). Third, Appellants argue that because IDEA does not require that all students be placed in a least restrictive environment, MCPS should consider SLCs as a viable and necessary option for some students, instead of eliminating them altogether. (Reconsideration at pp. 9-11).

Under the standard of review applicable here, the State Board does not substitute its judgment as to the wisdom of the local board's action in its quasi legislative decisionmaking. *See* COMAR 13A.01.05.05A. Each of these arguments is aimed at disputing the wisdom of the local board's decision. These arguments fail to meet the reconsideration standard because they do not demonstrate that the State Board's decision is based on a mistake or error of law, nor do they present new and material facts which have come to light subsequent to the State Board's decision.

2. Alleged Violation of No Child Left Behind

Appellants make a new argument regarding No Child Left Behind in an attempt to show that the State Board's decision resulted from error of law. Appellants argue that because the local board voted to phase out an approach to educating students with disabilities that was research based, the local board has somehow violated the requirement in No Child Left Behind that school systems use research based practices in educating students. As part of this argument, however, Appellants recognized that the inclusion approach, which MCPS aims to strengthen through the phase out of the SLCs, is also research based. (Reconsideration at pp. 12-13).

Appellants' argument falls woefully short of proving an error of law. In addition to failing to give any legal cite to the NCLB provision at issue, the argument is illogical given that it recognizes that the school system was attempting to strengthen an approach that is also research based – placing students in the least restrictive environment. Furthermore, this is an attempt by the Appellants to raise a new legal argument, which was not raised or decided in the appeal to the State Board, under the guise of a request for reconsideration. The State Board should not

consider this argument given that there is no reason why Appellants could not have made it part of their initial appeal.

3. Alleged Violation of Individuals With Disabilities Education Act

Appellants also claim that the phase out of the SLCs is illegal under IDEA. (Reconsideration at pp. 12-14). Although it is difficult to discern Appellants' precise argument, it seems they are suggesting that IDEA specifically requires SLCs to be a part of the continuum of services available for placement of students in the least restrictive environment. While Appellants cite to the commentary on the IDEA regulations which states that school systems must make a range of placement options available to students with disabilities (71 Fed. Reg. 156, 46587), there is nothing that explicitly requires SLCs to be part of this continuum. Again, no error of law has been shown. Nor should the argument be considered by the State Board since there is no reason why Appellants could not have raised it during the initial appeal to the State Board.

4. Miscellaneous Arguments

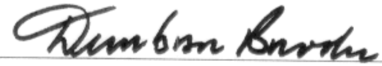
In an attempt to show inconsistent positions within the school system, Appellants make a vague reference to sworn testimony before the Office of Administrative Hearings from MCPS staffers who support the SLC approach (Reconsideration at p.11). Appellants have not developed this argument in support of the reconsideration nor have they provided any specificity on the matter. We fail to see how this information constitutes new and material facts discovered subsequent to the State Board decision or how it demonstrates a mistake of law by the State Board.

Appellants also argue that numerous difficulties have arisen in the implementation of the phase out, which are now coming to light with regard to some of the most vulnerable students. Appellants believe that students have been prejudiced by the local board's decision because there are no longer appropriate special education services available to them. They maintain that the services would still be available if the local board had followed policy DBA and deferred the start of the SLC phase out process until the following budget year. (Reconsideration at pp. 11-12). While problems in the phase out may form a basis for other types of actions, those alleged problems do not form a legal basis for reconsideration of this Board's decision in this case.

Finally, Appellants argue that the reconsideration should be granted because the local board has evinced an intent to continue to exclude community input into its decisions. (Reconsideration at p. 14). Appellants presumably make this argument because this Board's decision noted that there would be further opportunity throughout the phase out process for the public to comment on the closure of the SLCs because it spans a two to three year budget cycle. The basis of Appellants' argument, however, is nothing more than speculation about future actions of the local board. It in no way meets the reconsideration standard.

CONCLUSION

For all these reasons, we deny Appellants' Request for Reconsideration of the State Board's decision in *Joan & Michael Taylor, et al. v. Montgomery County Board of Education*, MSBE Op. No. 07-32 .



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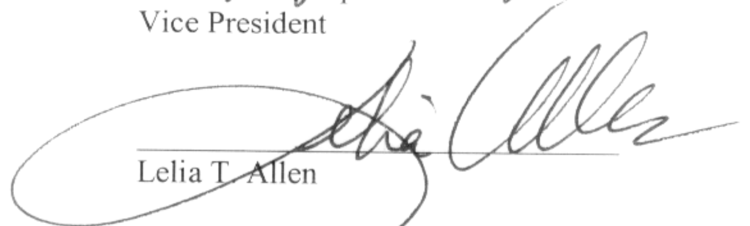

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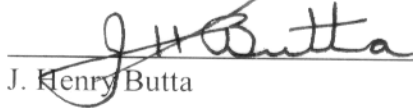

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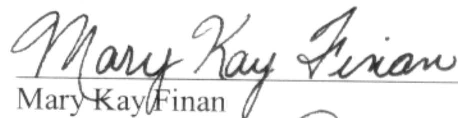

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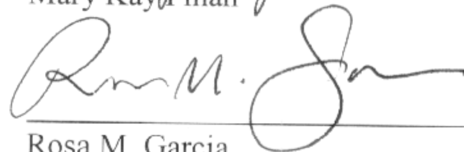

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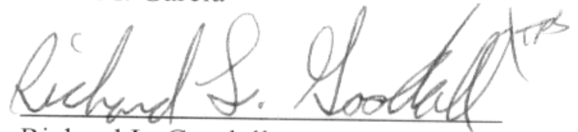

Richard L. Goodall

Karabelle Pizzigati

David F. Tufaro

DISSENT

Because I dissented in this case originally, I dissent again today on the denial of the request for reconsideration because I continue to believe that the local board violated its own rules and in doing so prejudiced the Appellants' rights.

Blair G. Ewing

February 27, 2008