

CASSANDRA MARSHALL,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-38

OPINION

Appellant appeals the decision of the Baltimore City Board of School Commissioners to move the Fairmount-Harford Alternative High School program to the Francis M. Wood Alternative High School. The local board has submitted a Motion to Dismiss maintaining that Appellant lacks standing to appeal. Alternatively, the local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted an opposition to the Motion.

FACTUAL BACKGROUND

On June 10, 2003, at a regularly scheduled public board meeting, the City Board voted to spend \$3.6 million to repair A & B wings at Lake Clifton High School; move approximately 300 students from Lake Clifton to Fairmount-Harford High School; move the Fairmount-Harford Alternative High School program and its principal to Francis M. Wood High School; and allow the students in the alternative program at Fairmount-Harford one of three options: to move to Francis M. Wood along with their principal; attend the Harbor City Learning Center, or attend their zoned high school. While the vote did not pass the first time it was presented, it did pass after further discussion and a new motion.

The background for this action by the City Board is set out in the affidavit of Mark Smolarz, former Chief Operating Officer of BCPSS:

In October, 2001 the CEO introduced a revised "Blueprint for Baltimore's Neighborhood High Schools." A central, guiding principle in this Blueprint and the reform effort is to downsize our large neighborhood high schools. During this past academic year (2002-2003), there were approximately 1900 to 2000 students at Lake Clifton-Eastern High School. The goal of the CEO and of the Board, as stated in the Blueprint, is to have no more than 800 students at any neighborhood high school.

Earlier this year, prior to the June 10, 2003 Board meeting, the Board voted and decided to create a new neighborhood high

school called Thurgood Marshall High School. This new high school will be located in the unoccupied portion of Thurgood Marshall Middle #170's four-wing building. The students who will attend this new high school will be from surrounding neighborhoods. Prior to the creation of this new high school, these students would have been zoned to attend Lake Clifton. Beginning in September, 2003 approximately 400 ninth and tenth grade students will attend this new high school. Over time, the enrollment will grow to approximately 700 to 800.

Further enrollment deductions at Lake Clifton are necessary, even after the creation of the new Thurgood Marshall High School. Assuming Thurgood Marshall High School grows to 800 students, this would still leave approximately 1,100 students at Lake Clifton.

When the Board voted on June 10, 2003, the latest information indicated that the C and D wings at Lake Clifton could not be used for the upcoming school year.

It would not be feasible to have close to 1,400 to 1,500 students in only two wings (A and B) at Lake Clifton this September. Therefore, we looked at various other schools on the east side of town to determine if there was any flexibility or options available. Some of the schools or locations that we looked at included Lombard Middle #57, Charles Carroll of Carrollton Elementary/Middle #139 (closed in 2001), Northeast Middle #49, Canton Middle #230, and St. Elizabeth. We also looked at Patterson High School #405 and Mergenthaler Vocational-Technical High School #410. These were not viable options because they either lacked the necessary capacity or could not have been made ready to accept students by this September. We even explored the possibility of using Northern High School, but dismissed this option because we have only recently broken-up the old Northern High School into smaller neighborhood schools.

Fairmount-Harford Alternative High School is located a very short distance from Lake Clifton-Eastern High School. The Fairmount-Harford building has a capacity of 700 students. Its enrollment for the 2002-2003 school year was approximately 500, but on any given day the attendance was approximately 100. As such, we advised the Board that this location would provide the best opportunity to establish a separate, new high school within the

existing Lake Clifton “zone” and reduce the enrollment at Lake Clifton to a more appropriate number in accordance with our “Blueprint.” To accomplish this move, we recommended that the alternative program at Fairmount-Harford be moved to another alternative high school. (Affidavit, ¶’s 3-8).

On July 11, 2003, Appellant filed an appeal of the local board’s decision with the State Board.

ANALYSIS

Standing

The local board argues that the State Board should dismiss the appeal because Appellant lacks standing to bring an appeal. An individual’s status as a resident of the community is insufficient to confer standing on that individual. 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 *Regan v. Harford County Board of Education*, MSBE Opinion No. 02-28 (June 26, 2002); *Regan v. Worcester County Board of Education*, MSBE Opinion No. 02-37 (July 23, 2002); *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).

The record discloses that Appellant continuously refers to herself as a concerned citizen. In her opposition document, Ms. Marshall states that she had four children who graduated from high schools in Baltimore City. However, since Ms. Marshall does not now have a child in attendance at any of the schools at issue in this case, she does not meet the requirements for standing. As noted above, Appellant must show some direct interest or injury in fact. She has not done so. Accordingly, the State Board will dismiss the appeal for lack of standing.¹

Merits

Alternatively, on the merits, the standard of review in a case that involves a local policy or dispute regarding the rules and regulations of the a local board is that the decision of the local board shall be 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).

¹Appellant also argues that her First Amendment right to freedom of speech affords her the right to appeal the local board’s decision. While Ms. Marshall has the constitutional right to free speech, that right does not give rise to this appeal.

Appellant argues that the local board's decision was invalid because the second vote taken on June 10, 2003, should have been postponed and the issue discussed again in a work session to be scheduled for a future meeting; the decision was based on adult issues and not the children's educational needs; eastside students would be harassed and threatened with violence and physical fights as a result of those students being moved to westside schools; the at-risk students at Fairmount-Harford may become "forced drop-outs" which would increase crime; the local board's plan discriminated against alternative schools; students were not notified by mail that they could transfer to other zoned schools until one week before school opened for the 2003-2004 school year; there is not enough space at Francis Wood to accommodate the Fairmount-Harford students; and the removal of the Fairmount-Harford students constituted a closing pursuant to COMAR 13A.02.09.01.²

On the issue of the second vote, Appellant is apparently referencing Robert's Rules of Order although she has not specified the violation of any particular one of Robert's Rules. In any event, Judith Black Donaldson, City School Board Executive, has filed an affidavit in which she states:

The Board has not adopted "Robert's Rules of Order." Instead, the Board Chair conducts the meetings in a reasonable and orderly fashion. Motions are made, seconded, discussed, often amended, and then voted on. Board members occasionally ask for a reconsideration, or another vote. If the Chair allows the Motion, and if there is a second, the Board members may vote the reconsideration up or down.

In this case, at the request of CEO Russo, and because of her concern that two wings of Lake Clifton had to be closed for health and safety reasons, she recommended that the Board reconsider the changes that were proposed to decrease the enrollment at Lake Clifton. Board Member Stringfield made a motion to move the alternative program to Francis M. Wood Alternative High School, and to give the students currently at Fairmount-Harford the choice of attending Francis M. Wood, their zoned high school, or the Harbor City Alternative Learning Center. Commissioner Struever seconded the motion. All board members voted in favor of the motion, with one abstention. Because more than a majority of the board members voted in favor, the recommendation of CEO Russo regarding the move of the alternative program at Fairmount-Harford was approved. *See* 6/10/03 transcript of board meeting at pp. 231-238. Appellant's issue regarding the legality of the board action therefore fails.

With respect to Appellant's policy issues regarding a lack of focus on children's educational needs, perceived harassment, violence with eastside students being moved to the westside, at-risk students being "forced drop-outs"; and discrimination against alternative

²The Appellant questions the timely filing of the local board's motion. We find, however, that the local board's motion was timely filed.

schools, Appellant has offered no substantive evidence; merely conclusory statements. Further, the board's rationale was in fact based on the health and safety needs of the students, in particular the 1900 students at Lake Clifton who would have been squeezed into two wings of the four wing high school. Moreover, the at-risk students in the alternative program at Fairmount-Harford were not forced to go to Francis M. Wood; they were given three options including remaining in their zoned high school on the eastside.

Based upon our review of the record, we find that the Board's action to move the alternative program from Fairmount-Harford to Francis M. Wood was done based upon the recommendations made in the strategic facilities plan with modifications proposed by CEO Russo. The board's final decision was made after a public hearing, the receipt of public comment, and thoughtful consideration by the local board members. The City School Board had a rational basis for its decision and offered reasonable options to the students who were attending the alternative program at Fairmount-Harford.

Appellant also argues that the removal of the Fairmount-Harford students constitutes a closing pursuant to COMAR 13A.02.09 and that the procedures set forth therein were not followed. We do not believe that the action taken by the City School Board represents a school closing pursuant to COMAR 13A.02.09. The action taken by the local board was to move an alternative program and give the students attending the alternative program three choices of schools to attend for the next school year. Moreover, the board did not vote to close any of the schools in question. Rather, the actions were taken for a variety of reasons, in particular the extreme overcrowding at Lake Clifton-Easton because of the condemning of the two wings. Again, we do not view the board's action as a school closing under COMAR 13A.02.09.

For all of the reasons set forth above, if the State Board were to address the merits we would find that Appellant has not met her burden of proving that the local board acted arbitrarily, unreasonably, or illegally in this matter. We would therefore affirm the action on its merits because the board had a rational basis for its actions. *See Catonsville Community Conservation Association, Inc. v. Board of Education of Baltimore County*, 7 Op. MSBE 255 (1996)(local board's reconsideration and reaffirmation of an earlier vote had a rational basis and was therefore not arbitrary, unreasonable, or illegal); and *Bernstein, et al., v. Board of Education of Prince George's County*, 245 Md. 464 (1967)(local board's boundary line adjustment plan was reasonable and within the discretion of the local board; tests is not that there may have been other plans that would have worked equally well or even have been better but whether the action was arbitrary, unreasonable, or illegal.).

CONCLUSION

For the reasons noted above, we dismiss the appeal because Appellant does not have standing. *See* COMAR 13A.01.01.03J.

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December 3, 2003