

RESIDENTS OF THE HAMPSHIRE
GREENS COMMUNITY,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-13

OPINION

In this appeal, Appellant¹ challenges the school districting decisions for the Hampshire Greens Community which were made by the local board in 1997 as well as the local board's November 18, 2004 decision not to conduct a middle school boundary study that had been previously approved. The local board has filed a motion to dismiss as untimely any aspect of Appellant's appeal that seeks to challenge the school districting decisions made approximately eight years ago. In addition, the local board requests summary affirmance of its decision to defer the middle school boundary study, maintaining that the record demonstrates sufficient reasonable cause for the deferral action. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

School Districting Decisions

Hampshire Greens is a 286 single-family, detached home community located in the northern Silver Spring area of Montgomery County. Development of the community began in 1996 with the last house being completed in early 2004. Initially, public school students residing in Hampshire Greens were slated to attend the nearby schools of Cloverly Elementary School, Briggs Chaney Middle School, and Paint Branch High School. On March 24, 1997, the local board voted to redistrict elementary-age students residing in Hampshire Greens to Drew Elementary School. Thereafter, on June 23, 1997, the local board voted to change the middle and high school assignments to Francis Scott Key Middle School and Springbrook High School. All three of these schools, Drew Elementary, Francis Scott Key Middle, and Springbrook High are further away from the Hampshire Greens community than were the original school assignments.

¹The Appellant in this case is designated as "Residents of the Hampshire Greens Community," a group consisting of 41 individuals residing in the Hampshire Greens area.

Boundary Study Decision

School boundary decisions in Montgomery County are governed by Policy FAA – Long-Range Educational Facilities Planning. On or about June 15 of each year, the superintendent publishes a summary of all capital and non-capital facility plans adopted by the local board in a document entitled *Master Plan for Educational Facilities* (“Master Plan”). Schools that fail to meet one or more of the facility standards for enrollment and utilization based on projections are identified in the Master Plan. Policy FAA at C.2.b.

In the fall of every year, utilization of all school facilities in Montgomery County is evaluated. Pursuant to Policy FAA, for schools that are projected to have insufficient capacity, excess capacity, or other facility issues in the future, the superintendent is to recommend a capital project, a solution such as a boundary change, no action, or deferral pending further study of enrollment or other factors. Policy FAA at E.1.a.

In the fall of 2003-2004, the superintendent did not identify any planning issue at Farquhar Middle School.² Nevertheless, in the spring of 2004, the local board adopted Resolution No. 173-04 approving “a middle school boundary study to address projected underutilization of William H. Farquhar Middle School, including Farquhar, White Oak, and Francis Scott Key middle schools, to be conducted in accordance with the normal process pursuant to Policy FAA, with a recommendation from the superintendent by November 2004; Board action scheduled for March 2005; and implementation in August 2005.” *See Minutes of Local Board Meeting 3/9/04, p. 34.*

Some members of the affected communities favored the local board’s resolution and others did not. The PTA of Farquhar, the school allegedly in need of a boundary change to address underutilization, did not support the boundary study. Neither did the PTAs at White Oak and Key middle schools. *See 10/29/04 e-mail from Farquhar PTA President Dolan to Daisey.*

On November 18, 2004, the local board passed the following resolution reversing its previous directive to conduct a boundary study:

Resolved, That the Board of Education rescind Resolution 173-04 and determine the necessity of a boundary study to address projected underutilization of William H. Farquhar Middle School after the County Council takes action on the Olney Master Plan and staff is able to evaluate the potential impact of those decisions on student enrollment in the affected area.

²Appellant concedes in its appeal document that Farquhar was not underutilized during the 2003-2004 school year or in the 2004-2005 school year. *See Appellant’s appeal document at p. 20.*

See Minutes of Local Board Meeting 11/18/04, p. 12. The local board also directed the superintendent to “monitor the utilization of [Farquhar, Key, and White Oak] so as to advise the Board if and when any of the three schools are either below 80% or over 100% utilization, with a recommendation regarding the convening of a boundary review.” *See Minutes of Local Board Meeting 11/18/04, p. 12.*

The minutes of the November 18, 2004 rescission vote contain the following discussion points:

- Mr. Lange noted that there had been passionate and articulate expressions of interest in this boundary study from all sides. The issues have been reviewed and the consideration of a boundary study is triggered by overutilization of a school. That is not the case in any of the schools under consideration. Furthermore, the Olney Master Plan has not been finalized, and it could have an impact on a decision by the school system.
- Mrs. O’Neill noted that what triggers a boundary study is a school-related need, not the community’s desire or expectation. Last spring, the Board thought that Farquhar was underutilized. Meanwhile, there is a potential that White Oak Middle School could become overutilized, especially if the opening of a new large federal facility (FDA) in Silver Spring adds population with school-age children. Therefore, any or all of the middle schools could require adjustments in their attendance areas.
- Mr. Romero noted that the resolution and amendment were in concert with Policy FAA–Long-Range Educational Facilities Planning. Mr. Lavorgna stated that the desired range of utilization is 80 to 100 percent. Ms. Cox pointed out that those numbers do not necessitate the convening of a boundary committee.
- Mrs. O’Neill thought it was important to have in the record that the school system monitor the utilization to determine whether or not it triggers a boundary study.
- Dr. Haughey was concerned that the amendment might not be sufficient if the school system monitors only one parameter. He would be pleased if the staff monitored the circumstances with access to all three schools, rather than monitoring utilization only.

See Minutes of Local Board Meeting 11/18/04, pp. 8 – 9.

ANALYSIS

1997 School Districting Decisions

Appellant maintains that the 1997 school districting decisions are arbitrary, unreasonable, and illegal and are inconsistent with the local board's school assignment guidelines. Among its various arguments, Appellant claims that the school assignments are within non-contiguous neighborhoods creating an "island zone" school boundary; that the school assignments are inconsistent with the policy goal of minimizing transportation distances and commute times since the assigned schools are further away than most of the alternatives; and that the assignments segregate this group of approximately 75% minority children by bussing them "away from their mostly white neighborhood schools, and into mostly minority schools in far away neighborhoods".³ See letter of appeal at p. 16. Appellant claims in its response to the local board's motion to dismiss that it is not appealing the districting decisions made in 1997. However, our review of the appeal document discloses otherwise.

As a threshold matter, the local board argues that any aspect of this appeal concerning the school assignment decisions made by the local board in 1997 should be dismissed as untimely. State law and regulation require appeals of local board decisions to be filed with the State Board within 30 days of the local board decision. See Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.05.02B(1)(a). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. COMAR 13A.01.05.02B(1)(b). 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. COMAR 13A.01.05.02B(3). Further, COMAR 13A.01.05.04B(2) provides that the time for filing an appeal may not be extended.

The school assignments at issue here pertain to school districting decisions made by the local board in 1997, approximately eight years ago. The State Board has consistently held that time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. See *Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983); see also COMAR 13A.01.01.03G (2). The State Board has strictly applied this rule of law, and has dismissed appeals that have been filed a mere one day late based on untimeliness. See *Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997). There are no extraordinary circumstances in this

³The use of race alone to trigger or to make school boundary changes may be legally suspect. See, e.g., *Eisenberg v. Montgomery County Public Schools*, 197 F. 3d 123, 132 (1999) (non-remedial racial balancing in schools is unconstitutional), citing *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976) (annual readjustment of school attendance zones to counteract changes in the racial makeup of the schools is beyond the remedial authority of the court).

case which would warrant the filing of an appeal nearly eight years after a local board decision. Accordingly, any claims regarding the 1997 school districting decisions must be dismissed for untimeliness.

Boundary Study Decision

Appellant challenges the local board's decision to rescind the boundary study pending completion of the Olney Master Plan, listing a myriad of claims to support its position that the local board's decision was arbitrary, unreasonable, or illegal. Among other things, Appellant maintains that at the time of the local board's vote on the boundary study, Farquhar was projected to fall below the underutilization threshold beginning in the 2008-2009 school year. Therefore Policy FAA requires the superintendent to recommend a capital project, a solution such as a boundary change, or no action or deferral pending further study of enrollment or other factors. See Policy FAA at E.1.a. In addition, Appellant asserts that the Olney Master Plan will not impact Farquhar's projected underutilization status.

The local board maintains that, given the fact that Farquhar was not projected to be underutilized until 2008-2009, it took a cautionary approach by rescinding the boundary study to see how the Olney Master Plan would affect future student enrollment in the area. In the meantime, the local board directed the superintendent to monitor the utilization of Farquhar, Key, and White Oak, and to advise the local board if and when any of the three schools are either below 80% or over 100% utilization, with a recommendation regarding the convening of a boundary review.

In a November 8, 2004 memorandum to the local board, Dr. Jerry D. Weast indicated as follows:

Working with MNCPPS staff, MCPS has learned that the maximum development potential of 2,100 housing units is possible in the Planning Board draft plan. . . . If the maximum development yield were realized, MCPS staff estimates that 610 elementary school students, 200 middle school students, and 225 high school students would be generated. None of these students are in current enrollment projections.

The elementary student generation of the master plan could require the opening of a new elementary school . . . The middle school student generation could be accommodated in the capacity that is projected to be available at William H. Farquhar and Earle B. Wood middle schools. However, the amount of available capacity at William H. Farquhar Middle School would be reduced if a boundary study were to proceed and more students were assigned to this school.

Based on this memorandum, the local board had before it information of the potential for approximately 200 middle school students to be added to the student population in Montgomery County, which would impact Farquhar and other area middle schools in the area.

Although Appellant argues that master plan information is unreliable for use in making enrollment projections, there is nothing which would prohibit the local board from using information in the Olney Master Plan to project future school enrollment. In addition, despite Appellant's allegation that MCPS has never utilized a master plan in this way, Appellant was advised by MCPS staff that MCPS had never had a proposed boundary study coincide so closely with work on a master plan. *See* 11/5/04 e-mail from Crispell to Daisey.

Furthermore, the local board directed the superintendent to monitor the utilization of three middle schools - Farquhar, Key, and White Oak. When actual or projected enrollment at any of the three is below 80% or above 100%, the superintendent must make a recommendation on convening a boundary study.

It is a well established legal principle that there is no right or privilege to attend a particular school. *See Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967). Further, a local board's determination of the geographic attendance area of schools within its jurisdiction is a policy making or quasi-legislative function. *See Elprin v. Howard County Bd. of Ed.*, 57 Md. App. 458, 463 (1984). As such, the decision whether or not to conduct a boundary study which may be helpful to a local board's establishment of geographic attendance areas is also quasi-legislative in nature.

From our review of the record, we find that the local board wanted to have complete and up to date information before engaging in a boundary study. We also note that if and when the local board decides to make changes to the geographic attendance areas of Farquhar and other middle schools in the area, the local board must engage in the appropriate process including public hearings prior to making the redistricting decision. Given the circumstances here, we find that the local board acted within its discretion by deferring a decision on convening a boundary study to address projected underutilization of William H. Farquhar Middle School until after the County Council takes action on the Olney Master Plan so that school staff would be able to evaluate the potential impact of those decisions on student enrollment or until the superintendent through monitoring the utilization of the three middle schools recommends a boundary study.

CONCLUSION

For all of these reasons, we find that the local board did not act arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the boundary study deferral decision made by the

Montgomery County Board of Education.

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April 20, 2005