

JANIS SARTUCCI, ET AL.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-38

OPINION

This appeal challenges the local board's May 23, 2005 revision to its Long Range Educational Facilities Planning Policy - Policy FAA. Appellants¹ make a variety of procedural and substantive arguments regarding the enactment of revised Policy FAA, including allegations that the local board permitted a student board member to vote on a matter outside the scope of his statutory authority and that the local board violated its Operations Handbook. The local board has filed a Motion to Dismiss maintaining that the appeal process is an inappropriate vehicle for challenging a decision of this nature.² In addition, the local board maintains that it did not commit any procedural violations. Appellants have responded to the local board's motion.³

FACTUAL BACKGROUND

Local board Policy FAA - Long-Range Educational Facilities Planning was originally adopted in 1986 and has been amended periodically since that time. On March 8, 2005, the local board took tentative action to adopt revised Policy FAA. The revised policy was sent out for public comment.

In a memorandum to the local board, Sharon W. Cox, chair of the Board of Education Policy Committee, stated the following:

The Board of Education Policy Committee, in consultation with staff, and in response to state regulatory requirements, identified Policy FAA, *Long-Range Educational Facilities Planning*, for revision. The existing policy had excessive and outdated regulatory language. In addition, there was a lack of a supporting

¹The Appellants in this case are Jud Ashman, Rosanne Hurwitz, and Janis Zink Sartucci.

²We are treating the local board's motion as a motion to dismiss and/or motion for summary affirmance.

³While this appeal was pending, Appellants filed a Motion for Stay of Revised Policy FAA which was denied by Dr. Nancy S. Grasmick on June 27, 2005.

implementing regulation. These factors, combined with state regulatory changes, necessitated the policy revision. The proposed revision delineates the Board's commitment to a long-range educational facilities planning process that addresses changing enrollment patterns and sustains high quality educational programs, while continuing extensive opportunities for input from parents and the public throughout the process.

The Board of Education Policy Committee met on April 21 and May 11, 2005. At those meetings the Committee engaged in discussion of the proposed policy and concerns raised in the public comments. Based on the public comments, the Committee recommended additional revisions to the policy. The additional revisions were posted with the local board's meeting agenda approximately one week before the local board's May 23, 2005 meeting.

At its May 23 meeting, a resolution to approve the Policy Committee's revised policy was placed on the table and was debated by the board members. Several amendments were offered and voted on. Ultimately, the local board adopted Policy FAA as it now exists. The local board also resolved that the superintendent develop a regulation supporting the continuation of the facilities planning process identified in Policy FAA, recodifying the procedures of the superceded policy to serve as an interim regulation. In addition, the local board resolved that the superintendent establish a broad-based representative stakeholder workgroup to review the supporting regulation for Policy FAA.

Standard of Review

Because this appeal involves a decision of the local board involving a local policy, 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.01.05.03E(1).

To the extent that an issue raised in the appeal requires an interpretation of law, however, § 2-205(e) of the Education Article provides that the State Board, without charge and with the advice of the Attorney General, shall explain the true intent and meaning of the provisions of the Education Article that pertain to public schools and public school systems in Maryland and the rules and regulations adopted by the State Board. By regulation found at COMAR 13A.01.05.05E, the standard of review that the State Board applies when it is interpreting school laws and regulations is that:

The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

ANALYSIS

Procedural Allegations

Student Board Member Vote

Appellants argue that the local board permitted its student member to vote on revisions to Policy FAA in violation of §3-901(e)(6) of the Education Article, and that this illegal vote was the tie breaker for passing the revisions. Section 3-901(e)(6) provides that the student member shall vote on all matters except those relating to suspension or dismissal of teachers, principals, and other professional personnel; collective bargaining; capital and operating budgets; and school closings, reopenings, and boundaries.⁴ Appellants maintain that the student board member voted on a matter related to school closings, reopenings, and boundaries. The local board argues in response that the student board member voted on a matter of policy within the category of matters on which the student member shall vote.

Because this issue involves an interpretation of law, we shall exercise our independent judgment in reaching a decision. The starting point in our analysis is interpretation of the relevant statute. In this regard, the cardinal rule of statutory construction is to ascertain and carry out the intent of the legislature. See *McDonald v. State*, 141 Md. App. 372, 377-378 (2001), relying on *Langston v. Langston*, 366 Md. 490, 508 (2001); *Bd. of License Comm'rs v. Toye*, 354 Md. 116 (1999); *Oaks v. Connors*, 339 Md. 24 (1995). Generally, we begin “with the words of the statute, and give those words their plain meaning. *Id.* When “the statute is not ambiguous, we end our inquiry and allow the plain meaning of the statute to govern interpretation.” *Martin v. Beverage Capital Corp.*, 353 Md. 388, 399 (1999). Even where the language of a statute is clear and unambiguous, we can look elsewhere to divine legislative intent. *Blaine v. Blaine*, 226 Md. 49, 64-65 (1994). In ascertaining the purpose of a statute, material that fairly bears on the fundamental issue of legislative purpose or goal may be considered. *Schuman, Kane, Felts & Evergam, Chartered v. Aluisi, et al.*, 341 Md. 115, 119 (1995).

The issue here is whether or not the student member’s vote was a vote on a matter relating to school closings, reopenings, and boundaries. In considering the plain meaning of the statute, we focused on the term “matter.” *Black’s Law Dictionary*, 999 (8th ed. 2004), defines “matter” as “a subject under consideration, esp. involving a dispute or litigation.” Given that definition, we looked to the particularity of the issue on which the student voted. Here, the vote by the student board member was not a vote on a set of specific factual circumstances as there was no live case or controversy at issue and no specific question pertaining to any particular school closing, school reopening or a boundary adjustment. Rather, the vote concerned a generalized policy on the school system’s long-range planning process for school facilities in

⁴Section 3-901(e)(7) allows a local board to determine by majority vote on a case by case basis whether a matter under consideration is covered by the exclusionary provisions of (e)(6). There is no indication that the local board did so in this instance, however.

order to address changing enrollment while sustaining high quality educational programs without application to any set of facts. Certainly, the policy includes the words “closings, reopenings, and boundaries,” but, we conclude that is not dispositive here. Therefore, looking to the plain language of the statute, we find that the student board member’s vote on Policy FAA was permissible.

The legislative history of the statute supports that conclusion. Specifically, it was House Bill 1205, passed by the General Assembly in 1989, that granted limited voting powers to the student member of the Montgomery County Board of Education. In the testimony concerning that bill, the Montgomery County Board of Education stated that the voting rights of the student board member were limited so that the student member would not vote on issues where pressure from the electorate could be intense or where certain personnel matters were involved. (*See* Position Statement of Montgomery County Board of Education, March 1989). Such pressure is more likely where there is a set of specific factual circumstances rather than where a generalized policy is at issue.

That the policy at issue here is a generalized one is beyond question. It is process oriented and generic. For example, the policy states that there will be a “Plan for utilization of schools . . .,” that it will allow “a constructive and collaborative advisory role . . .,” that there will be a “six-year capital improvements program” that will set forth when new schools are needed, when modernization is needed, and when school closures are appropriate. (*See* Policy FAA attached hereto). The policy itself does not define the specific facts and circumstances that would lead to any of those outcomes.

Because we find that pressure related to specific controversies is the type of pressure from which the General Assembly intended to insulate the student board member of the Montgomery County Board of Education, we conclude that a student board member’s vote on a general policy is appropriate. Moreover, in this case, some of the changes to which Appellants object concern procedural matters which the local board intends to place in the regulation implementing the policy. Thus, even if there may be circumstances in which a student board member’s vote on a general policy could make that student member susceptible to undue pressure from third parties, this situation does not rise to that level.

Local Board Operations Handbook

Appellants also maintain that the local board failed to follow various provisions in the local board’s Operations Handbook during its discussion of Policy FAA revisions at its May 23, 2005 meeting. Appellants refer to the Ethics Section of the Operations Handbook which lists several principles adopted by the local board to reflect its commitment to work together as a board. Among the listed factors are (1) respecting individual differences and opinions and being open-minded; (2) disagreeing on issues without making it personal; and (3) maintaining professional decorum during board meetings. Appellants make generalized claims that the board meeting “lacked respect for the individuals and groups that have commented on the proposed

changes to Policy FAA.” Appellants offer no evidentiary support for their claims. Moreover, the fact that Appellants may be unhappy with comments allegedly made by local board members is an insufficient basis for challenging the revisions to Policy FAA.

Appellants further maintain that the local board voted to approve revisions to Policy FAA that it had never seen before its May 23 meeting. Although not explicitly stated, this reference appears to be to the Policy Development and Adoption Section of the Operations Handbook which states that “[a]ny resolution introduced which involves a matter of policy shall lie on the table for at least one week before being voted upon.” In response, the local board maintains that while this provision required the proposed policy to be tabled for at least one week before being voted upon, it did not prohibit a vote on amendments to the draft policy which was already tabled.

On March 8, 2005, the local board took tentative action to adopt revised Policy FAA. The revised policy was sent out for public comment and seventy-five comments were received. The local board’s Policy Committee discussed changes to the policy based upon the public comments and presented a revised draft to the local board members in advance of the May 23 meeting. Local board members proposed amendments to the revised draft at the May 23 meeting and ultimately adopted the policy with various revisions at the same meeting. We concur with the local board’s interpretation and believe that the above process complies with the Operations Handbook. Appellant’s interpretation of the provision at issue would place the local board in circumstances where any previously tabled policy decision could not be altered in any way without first being tabled again for the specified time period. Such an interpretation would prevent the local board from conducting its business in an efficient manner.

Substantive Allegations

Appellants present a myriad of other claims. These claims are substantive attacks on Policy FAA. For example, Appellants’ substantive allegations include: (1) that the revised policy fails to establish procedures to govern school closings as required by State regulation;⁵ (2) that the local board failed to adequately address citizen and organizational concerns regarding the revisions; (3) that various items in the old policy have been eliminated from the revised policy; and (4) that there is no basis for the local board to transfer portions of the old policy into

⁵Although this matter does not require addressing Appellants’ claim that the revised policy fails to establish school closing procedures, we note that the claim lacks merit. While COMAR 13A.02.09.01 requires each local board to establish school closing procedures which ensure that consideration is given to various listed factors, there is nothing in State law or regulation that requires such procedures to be set forth in any particular written policy of the local board. Nevertheless, Policy FAA states that the long-range facilities planning process will provide a process for closing and consolidating schools that meets COMAR requirements, *see* Revised Policy FAA at C.7, and the local board has indicated that the school closing procedures that were previously included in Policy FAA will be placed in regulation.

regulation.

The State Board has previously held that individuals may not use the administrative appeal process set forth in §4-205 of the Education Article to challenge a policy-making decision of a local board of education. See *Montgomery v. Howard County Board of Education*, MSBE Opinion No. 04-35 (appeal of local board's decision not to adopt age of entry waiver policy is attempt to force policy change which is not appealable to State Board); *Regan v. Montgomery County Board of Education*, MSBE Opinion No. 02-48 (appeal of the presence of a Washington Redskins' marching band member as a guest reader at school seeks to establish or modify curriculum, policies, or procedures used by MCPS and is not appealable under §4-205); *Regan v. Montgomery County Board of Education*, MSBE Opinion No. 02-29 (appeal challenging an instructional activity is not appropriate vehicle for modifying the existing curriculum or adopting a new policy governing the teaching of the curriculum); *Astrove v. Montgomery County Board of Education*, MSBE Opinion No 02-14 (appeal challenging the format of CTBS test result reporting is an attempt to force a policy change and is not appealable under §4-205).

As the State Board explained in *Astrove*:

This is an unusual type of appeal in that Appellant is attempting to use a quasi-judicial process to force a change in policy which is a quasi-legislative decision. As stated by the local board in its decision:

“This does not mean that the Board is unmindful of local educational policy issues raised in connection with this appeal, but only that an individual appeal under § 4-205(c)(4) is not the proper method for establishing or altering local educational policy. In fact, at the Board's public meeting on November 13, 2001, Board members, staff, and consultants discussed the testing and reporting of scores of special education students as part of a lengthy discussion on the needs of special education students. The primary purpose of this appeal is to change the format used to report the results of CTBS; an appeal in an individual case is not an appropriate vehicle for modifying such a policy. Therefore, the appeal must be dismissed.”

Consistent with this reasoning, to the extent that Appellants raise arguments regarding the substance of the Policy FAA, we dismiss such claims as attempts to challenge the quasi-legislative discretion of the local board through a quasi-judicial process.

CONCLUSION

Based on the above reasons, and finding no procedural violations or other illegalities in this appeal, we affirm the local board's decision. Additionally, to the extent Appellants have raised issues that are substantive attacks of Policy FAA, we dismiss those claims as improper attempts to challenge the quasi-legislative discretion of the local board through a quasi-judicial process.

Edward L. Root
President

Dunbar Brooks
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DISSENT

I disagree with the above reasoning concerning the right of the student board member to

vote on this policy. I vote to reverse the local board's decision and to remand this case to the local board for a new vote on the policy.

J. Henry Butta

December 6, 2005