

JANIS ZINK SARTUCCI,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-31

OPINION

INTRODUCTION

On June 15, 2010, Ms. Janis Sartucci filed a Request for Stay with this Board and with the State Superintendent of Schools to delay implementation of an Agreement between Pearson Education, Inc. and the Montgomery County Board of Education (local board). On June 28, 2010, the State Superintendent of Schools recused herself and delegated her authority to decide the stay to Dr. John Smeallie, Deputy State Superintendent of Schools. Thereafter, Dr. Smeallie denied the Request for Stay finding that Ms. Sartucci had failed to show the irreparable harm necessary for a stay to be issued. (Ex. 1 & 2, attached hereto).

Because in her Request for Stay Ms. Sartucci raised various issues concerning the legality of the Agreement, we notified her and the local board that we would treat her Request for Stay as an appeal on the merits.

The local board filed a Motion to Dismiss the appeal. Thereafter, Ms. Sartucci filed a document she entitled "Appeal of Montgomery County Board of Education Decision." Ms. Sartucci followed-up with a Response to the Local Board Motion to Dismiss. The local board responded by letter of July 14, 2010.

FACTUAL BACKGROUND

On June 7, 2010, the local superintendent added Agenda Item 4.4.1 as part of the Consent Agenda for the June 8, 2010 local board meeting. (Appeal, Ex. A). In his memo to the local board explaining Agenda Item 4.4.1, the local superintendent requested approval to enter an agreement with Pearson Education, Inc. to develop jointly an online K-5 integrated elementary curriculum based on the Integrated Kindergarten Curriculum that Montgomery County Public School System (MCPS) had already developed. (Appeal, Ex. B, Memo of Superintendent).

The curriculum will be based on the Common Core Standards and, as the superintendent explained, Pearson will help MCPS develop the curriculum, plan professional development, and “Pearson will . . . bring its considerable assets and expertise to help develop the first generation of Common Core Standards assessments that measure achievement . . .” *Id.* at 2, *see also*, Agreement at §1.

Under the Agreement, MCPS is primarily responsible for “authoring and delivering the integrated curriculum components of the program and the implementation guide.” Pearson is primarily responsible for “authoring and delivery of the assessments, professional development and student material components supporting the integrated curriculum. . . .” (Agreement §4 B).

MCPS and Pearson consider the materials developed to be trade secrets, and proprietary information. *Id.* at §5(E)). MCPS promises under the Agreement except as required by law to “keep confidential and . . . not disclose any information regarding the Program to any person until after initial publication and distribution of the Final Program.” (*Id.* at §17).

Pursuant to the Agreement, Pearson will pay MCPS \$4.5 million in development funds “to pay for positions in the Office of Curriculum and Instructional Programs to accelerate the development of the new curriculum.” (*Id.* §8(A)). MCPS will assign to Pearson its right of ownership in all materials developed. Pearson will market and sell the products nationally and internationally. (*Id.* at §5(B)). MCPS will receive royalties from the sales. (*Id.* at §8D).

The local board approved the contract by a vote of 6 to 2.

This appeal ensued challenging the legality of the Agreement, alleging that the local board violated local board policies and procedures and failed to follow local procurement procedures when it approved the contract. Appellant also alleges that the contract does not contain the necessary Family Educational Rights and Privacy Act (FERPA) protections and that it makes no reference to safeguarding student safety and security. The Appellant also asserts that the Agreement does not represent good educational policy because it cedes all copyrights to Pearson and because it is inconsistent with the State’s Race to the Top initiative to revise the K-12 Maryland State Curriculum, assessment and accountability systems based on Common Core Standards.

STANDARD OF REVIEW

Two standards of review may apply here:

When we review a decision of a local board that involves local policy or a controversy or dispute regarding the rules or regulations of the local board, we refrain from substituting our own judgment for that of the local board’s unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05(A).

When the State Board explains the true intent and meaning of State education law and State Board rules and regulations, we exercise our independent judgment on the law's meaning and effect. COMAR 13A.01.05.05(E).

LEGAL ANALYSIS

Jurisdiction of the State Board

The local board asserts that "there is simply no authority for the State Board to review a contract entered into by a local board of education, under the guise of a quasi-judicial appeal, based on legally unsupportable statements implying violations of law and erroneous, conclusory allegations of fact." (Motion to Dismiss at 4). The local board also asserts that "the decision to enter into a contract is a discretionary decision within the authority of the county board of education and such decision is not appealable under §4-205(c)." (July 14, 2010 Response of Local Board at 2). Those assertions not only challenge the legal and factual basis of the Appellant's case, they also imply that this Board lacks the jurisdictional authority to review the contract approval decision at all. It is important to note that whether an Appellant has an actionable, provable case is an issue different from this Board's jurisdiction to hear a case.

Two parts of the State statute establishing the State Board's quasi-judicial jurisdiction address the Board's authority to hear and decide cases. They are §4-205 and §2-205. Section 4-205 establishes the State Board's authority to hear and decide appeals from decisions of local boards. That authority arose by statute in 1969. Prior to that date, there was "no appeal . . . to the State Board from the action of a County Board . . ." *Robinson v. Board of Education of St. Mary's County*, 143 F. Supp. 481, 491 (D.MD. 1956) (citing Art. 77 §143, the predecessor to §4-205). Likewise, there was no appeal to the county board from a local superintendent's decision. An appeal would lie from the local superintendent's decision only to the State Board. *Id.* In 1969, an appeal to the county board and a subsequent appeal to the State Board was added to the statute.

But that change did not eliminate the State Board's jurisdiction under §2-205. Under §2-205(e), the State Board is given the power to determine the true intent and meaning of state education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. That authority has existed in statute since 1870.

The Court of Appeals has explained the interplay between §2-205(e) and §4-205. Section 2-205 was intended by the General Assembly as a grant of "original jurisdiction" to the State Board allowing an appellant a direct appeal to the Board "without the need to exhaust any lower administrative remedies", while §4-205 vests the State Board with "appellate jurisdiction" over decisions of local boards. *See Board of Education for Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986), *Board of Education of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982). Section 4-205 requires an appellant to exhaust administrative remedies.

This case involves a challenge to a local board's decision to approve a contract. The Appellant invokes jurisdiction under §2-205 of the Education Article - - the grant of *original* jurisdiction to the State Board. As the Court of Appeals has explained *in dicta*, the category of cases heard under §2-205 "deal primarily with statewide issues (*i.e.* statutes or bylaws applicable to *all* county boards of education)" *Board of Education of Garrett County v. Lendo*, 295 Md. at 65; *see also, Strother v. Board of Education of Howard County*, 96 Md. App. 99, 113-114 (1993). That statute defines the contours of our authority. Specifically, the law confines matters subject to review under §2-205 to those involving State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis.

To assess our jurisdiction over the case presented here, we reviewed the Appellant's allegations.

(1) Local Policies and Rules

The Appellant alleges that the local board violated two local policies governing the timing requirements for local board voting on policy matters. The first states:

Except for policy matter, items that are time sensitive may be voted upon during the same meeting as introduced if the Board members by majority vote so concur. Board member proposals to establish special programs where a substantial amount of staff time is needed to develop the programs must be approved in accordance with Board procedure for establishing and evaluation special programs.

The second one states:

The Board of Education has adopted Policy BFA, Policy setting, which includes a definition of "policy" and uniform format for policy development and implementation, including publication, monitoring of implementation, and review. Discussion of a new policy usually takes place over four meetings-one for the Board's Policy Committee to discuss the superintendent's policy analysis, the second for the Board to take tentative action on the Policy Committee's recommendations, the third for the Policy Committee to review public comments on the policy and any additional staff recommendations, and the fourth for the Board to take final action on the policy.

(2) Procurement Law

The Appellant alleges that the local board violated local procurement law in approving this contract without seeking competitive bids. The Appellant cites Local Board Policy DJA and the Local Procurement Manual pp. 14 and 66 as authority for the requirement of a competitive bid process.

(3) Curriculum Development

The Appellant alleges that the contract fails to include parents and citizens in the development of the public school curriculum. She asserts that the contract thus violates Local Policy IFB which states:

Parent and citizen involvement is essential to fulfillment of the goals of the Montgomery County Public Schools. Since curricular and instructional materials are vital to the teaching and learning of all students, it is appropriate to include citizens, including parents in the review process of these materials.

(4) Copyright and Intellectual Property

The Appellant alleges that under the contract the local board ceded all copyright and intellectual property rights to Pearson.

Each of the four allegations described above are based on local board rules, regulations or policy decisions. Under §2-205, we have jurisdiction over issues based on alleged violations of State education law or regulations, not over issues that are based on violations of local rules.

That does not mean, however, that alleged violations of local rules, procedures, and policies are immune from State Board review. Under Education Art. §4-205, the local superintendent "shall decide all controversies and disputes that involve the rules and regulations of the county board" Md. Educ. Code Ann. §4-205(c). In a case like the one at bar it may seem counterintuitive to require the Appellant to exhaust that administrative remedy by first asking the superintendent to determine whether an action he/she recommended to the local board violated local rules and policies. We point out, however, that every local superintendent and local board understand, better than we, the purpose and meaning of their own rules and policies. We trust they would render a thoughtful and fair decision, even when reviewing their own actions for conformance with their own rules. Their decision would be reviewable by the State Board under our §4-205 appellate jurisdiction.¹

¹ The requirements to exhaust those administrative appeal remedies are not immutable, however. The courts in Maryland have established rules that govern when an aggrieved party

Two other assertions contained in the appeal appear to fall within the jurisdiction of this Board under §2-205.

(5) Student Security and Privacy

The Appellant alleges that the contract does not address student security or student privacy rights. That allegation is based, in part, on student privacy law which this Board has codified at COMAR 13A.08.02.

(6) Conflict with State's Reform Effort

The Appellant asserts that the contract is inconsistent with and/or redundant of the changes in curricular materials and assessments that will be developed statewide through the education reform effort in which Maryland is currently engaged. That assertion presents a statewide education policy issue.

Under State education law the State Board:

“has very broad statutory authority over the administration of the public school system in this State,” that the totality of its statutory authority constitutes a “visitation power of such comprehensive character as to invest the State Board ‘with the last word on any matter concerning educational policy or the administration of the system of public education....’ ”

Board of Education of Somerset County v. Somerset Advocates for Education, 189 Md. App. 385,399 (2009) citing *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324,342-43 (2007).

As to the student privacy law issue and the education policy issue, we will assert jurisdiction under §2-205.

can by-pass levels of administrative review. Specifically, courts waive the requirement to exhaust administrative remedies when the remedy available would be inadequate. *See, e.g., Prince George's County v. Blumberg*, 288 Md. 275, 284-85 (1980). The State Board, with our broad powers, would have the authority similar to the courts to determine when requiring review by the local board under §4-205 would provide an inadequate remedy.

Standing

The local board argues that the Appellant has no standing to bring this appeal because there is no harm or injury to her resulting from the contract. The Appellant argues that the requirement for standing to pursue this appeal should be simply that she has an interest like any other Montgomery County citizen in the curriculum used in the public schools. (Appellant's Response to Motion to Dismiss at 2).

The Court of Appeals has recognized that a "generalized interest" in an issue before an administrative agency is sufficient to establish standing before the agency. Under administrative law principles, "the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation . . . [a]bsent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the matter being considered by that agency, thereby becomes a party to the proceeding." *Sugarloaf Citizens Association v. Department of Environment*, 344 Md. 271, 286-87 (1996). For example, testifying at a public hearing asserting a position; submitting one's name as a protestant; identifying oneself on the agency record as a party confers administrative standing and establishes a person as a party before the administrative agency. *Id.* at 287 (citing cases).

For the purposes of this case, the administrative agency at which those administrative standing principles would apply is the local board. It is before that board that persons like the Appellant could assert their positions on approving the Agreement at issue here. The Agreement, however, was not placed on the local board's agenda until the day before the board meeting. It could be that the timing of the vote, just one day after the Agreement was placed on the agenda, essentially precluded Ms. Sartucci from voicing concern about the Agreement either in writing or in person at the board meeting.

We believe it would be inherently unfair to find that Ms. Sartucci had no standing to bring this action to us because of her inability to present her views to the local board due to the local board's actions. But, even if she had established administrative standing below, that does not guarantee standing at further levels of review. As the Court of Appeals has explained, for a person to maintain an action for review of an administrative decision, the person "must be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision." *Id.* at 287. In order to be an aggrieved party, "a person ordinarily must have an interest 'such that he is personally and specifically affected [by the agency's final decision] in a way different from...the general public.'" *Id.* at 288.

This Board has followed that reasoning in creating its own standing policies.² We have considered the issue of standing in a long line of cases and have established that an Appellant before this Board must demonstrate some injury or harm different from a generalized interest in the subject matter of the case. The Board has said:

[T]he general rule on standing is that “for an individual to have standing . . . he must show some direct interest or ‘injury in fact, economic or otherwise’.” See *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 specifically 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).

Clarksburg Civic Association v. Montgomery County Bd. of Educ., MSBE Op. No. 07-34, pp. 2-3 (August 29, 2007).

Therefore, we turn to the Appellant’s standing to appeal the two issues over which we have jurisdiction.

(1) Student Privacy and Security

Even if the contract failed to contain legal provisions governing student security and student record privacy, we can ascertain no direct harm to the Appellant. To the best of our knowledge, Ms. Sartucci is not the parent of a student affected by the contract. Furthermore, the contract at issue takes nothing from her, adds no burden to her, and places no requirements on her. For standing purposes, therefore, there is no evidence of harm to Ms. Sartucci.

We note, however, that the contract itself in §7(B) addresses student security and privacy rights. Even if it did not specifically do so, all contracts are to be read in the context of the laws that govern them. This contract is no exception. The State and federal laws governing student privacy and school security would be applicable.

² The Court of Appeals has recognized “that administrative agencies have discretion to establish policy either through adoption of regulations or through ad hoc contested case adjudications” *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324, 345 (2007).

(2) Conflict with the State's Education Reform Efforts

Under the contract, MCPS and Pearson will produce a K-5 Integrated Curriculum based on the Common Core Standards and K-5 assessments that are aligned to the Common Core Standards. MCPS and Pearson have agreed that the work they will do together on the K-5 Curriculum and on the assessments is proprietary and will be confidential during the development process. (Appeal, Ex. B, Agreement §E).

That aspect of the Agreement is troubling to us. The State of Maryland, under the leadership of the Governor, State Board, and State Superintendent, has begun a statewide education reform effort, in part, to align the K-12 Maryland State Curriculum to the Common Core Standards and to adopt assessments that are also aligned. All school systems in Maryland must align their curriculum to the Maryland State Curriculum. *See* COMAR 13A.04.08-18. All school systems in Maryland will ultimately be required to assess their students using the new assessments.

To accomplish this work, twenty-two of the twenty-four school systems in Maryland have signed on to participate in Maryland's Race to the Top (RTTT) efforts. Among other things, they have agreed to collaborate with MSDE and with one another to develop the curriculum, assessments, and learning tools that will align to the Common Core Standards. The assessments are intricately and inherently intertwined with the curriculum development process.

Montgomery County Public Schools (MCPS) has not signed on to the RTTT application. But, we never viewed that as a definitive roadblock to collaboration and cooperation on the statewide reform efforts, including statewide curriculum and assessment development. The Agreement, however, with its requirement of confidentiality and the proprietary nature of the work that MCPS and Pearson will do, could negatively impact the collaborative statewide process. That possibility causes us significant concern.

We recognize that our concern does not provide the Appellant with standing to present this issue for review. Given the statewide implications presented here, however, we exercise our broad visitatorial authority to review whether the decision of the Montgomery County Board of Education to approve the contract with Pearson is an arbitrary decision because it does not represent "sound education policy."³

³ This Board has reversed several decisions of local board's after finding, in the context of sound educational policy, that the decision was arbitrary and unreasonable. *See, e.g., Abbott v. Montgomery County Board of Education*, 2 Opinions of MSBE 582 (1982) (school closing case); *Armour v. Board of Education Montgomery County*, 2 Opinions of MSBE 123 (1979) (enrollment and tuition case); *Hall v. Somerset County Board of Education*, 4 Opinions 628 (1986) (redistricting); *Concerned Citizens of Seven Oaks v. Anne Arundel County Board of Education*, 7 Opinions of MSBE 654 (1997)(redistricting).

As recently as May 2007, the Court of Appeals in *Patterson Park Public Charter School v. Baltimore Teachers Union*, 399 Md. 174 (2007), reiterated a long established principle - - that the authority of the State Board is “unique in the annals of administrative agencies.” The appellate courts have long made clear that the State Board has broad statutory authority over the administration of the public school system in this State. The State Board has “the last word on any matter concerning educational policy or the administration of the system of public education.” *Id.* at 195-96. That power, referred to as the visitatorial power of the State Board, is “‘of the most comprehensive character’ one that is ‘in its nature, summary and exclusive.’” *Chesapeake Charter, Inc. v. Anne Arundel County Board of Education*, 358 Md. 129, 137-138 (2000). As the Maryland courts have recognized, the State Board is the final arbiter of what constitutes “sound educational policy” in Maryland.

Of course, whether a decision represents sound educational policy is often in the eye of the beholder. Local boards have control over the educational matters that affect the county. Md. Educ. Code Ann. §4-101(a). Local boards have the authority determine the educational policies of the county school system. *Id.* §4-108(3). A local board can take a parochial view when it acts. It need only consider its own local education policy goals. It is not difficult to conclude that for MCPS the contract with Pearson represents a sound local education policy decision. It brings \$4.5 million to the school system to provide the resources to expedite the integrated curriculum development MCPS had already started a year or so ago.⁴ It allows MCPS to tailor the curriculum to its own vision and needs. In some respect, the MCPS/Pearson project could be viewed as an incubator for innovative education reform. That is a valid local view.

Our view of what constitutes sound educational policy is necessarily a more universal one. We are mandated by law to consider the statewide implications even of local board decisions. Specifically, local control and autonomy, by law, is subject to State education law and the rules and regulations of the State Board. *Id.* §4-108(3). State law gives this Board the authority to “exercise general control and supervision over the public schools and educational interests of this State.” *Id.* §2-205(g). State law provides this Board with the power to “establish basic policy guidelines for the program of instruction for public schools.” *Id.* §2-205(h). State law directs the Board to “coordinate the overall growth and development of elementary and secondary education in this State.” *Id.* §2-205(g). Finally, we reiterate, State education law gives this Board the authority to determine the “education policies of this State.” *Id.* §2-205(b).

We have been given all those powers, we believe, in order to lead Maryland public education in one coordinated, collaborative direction. In this era of education reform, that

⁴ MCPS and Pearson has also collaborated on and received a \$5 million grant from the federal government to develop K-5 curriculum and assessments aligned to the Common Core Standards.

direction is toward a world-class education system in which all Maryland public school students graduate college and career ready.

We consider it sound educational policy when all 24 school systems pull in the same direction to reform Maryland's public education system. In the K-5 curriculum and assessment arena, however, MCPS and Pearson have drawn a cloak of confidentiality over their work. It will be difficult, if not impossible, for them to come to the table with MSDE and the other school systems to discuss creative, innovative ideas for the K-5 Maryland State Curriculum and assessments. It will be difficult, if not impossible, for MSDE and the other school systems to share ideas with MCPS and Pearson who may, wittingly or not, appropriate them as their own for their K-5 project.

We view the Agreement as essentially separating Pearson and MCPS from the collaborative education reform effort triggered by Maryland's education reform initiative. We believe the Agreement represents an educational policy decision that further balkanizes MCPS from the collaborative process of developing statewide curriculum and assessments.

Moreover, we view the MCPS/Pearson project as essentially duplicative of the State's efforts. MSDE and twenty-two school systems will be spending significant time and money to develop a K-12 curriculum and assessments that will be applicable statewide to all Maryland school systems, including MCPS. Montgomery County/Pearson will be spending almost \$10 million (\$5 million through a recent federal grant and \$4.5 million under the Agreement) to produce a K-5 curriculum and assessments that will not have statewide applicability, but will apparently be marketed nationwide. It appears to us that this duplicative and proprietary effort represents a waste of valuable resources. As we see it, the better course would be for MCPS/Pearson to find a way to collaborate with MSDE on the K-5 curriculum and assessment development so that scarce resources are maximized within the State.

While we question the soundness of the local board's policy decision to approve an Agreement that appears duplicative of State efforts, wasteful of resources, and further balkanizes MCPS from the statewide reform initiative, after considerable deliberation, we have concluded that the effect on Maryland's statewide reform initiative will ultimately be minimal. Twenty-two school systems will work with MSDE to align the K-12 Maryland State Curriculum to the Common Core Standards. Twenty-two school systems will help to design assessments that are aligned with the State Curriculum. We regret that Montgomery County, by agreeing to the confidential, proprietary nature of its K-5 project with Pearson, will have to absent itself from the statewide K-5 curriculum and assessment discussion, but we encourage Montgomery County educators and the local board to be at the table for other aspects of the Maryland education reform initiative.

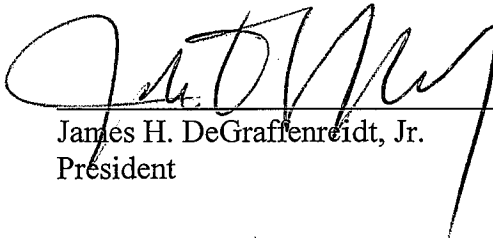
We note that we do not have the full details of the process and product that MCPS/Pearson will develop. We explain, however, that this Board continues to have a role to

play in curriculum alignment and curriculum implementation in local school systems. We reserve the right to exercise our visitatorial power, if necessary, as the development process goes forward.

In any event, all school systems in Maryland will be subject to the reform agenda as this Board adopts regulations effectuating the reforms, including the adoption of a Maryland State Curriculum and Maryland Assessments aligned to the Common Core Standards.

CONCLUSION

For all the reasons stated, this appeal is dismissed.




James H. DeGraffenreidt, Jr.
President

ABSTAINED

Charlene M. Dukes
Vice President



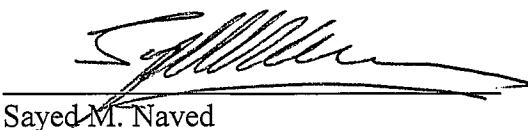
Mary Kay Finan



S. James Gates, Jr.



Luisa Montero Diaz



Sayed M. Naved

Madhu Sidhu

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Guffie M. Smith, Jr.

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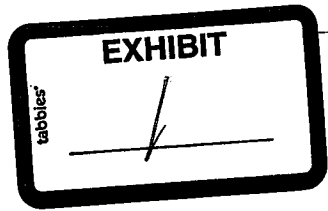
Ivan C.A. Walks ^{IPS}

Ivan C.A. Walks

Kate Walsh

Kate Walsh

August 24, 2010



MARYLAND STATE DEPARTMENT OF EDUCATION

JANIS ZINK SARTUCCI

*
* ORDER OF STATE
* SUPERINTENDENT
* OR NO. 10-2
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V.

MONTGOMERY COUNTY
BOARD OF EDUCATION

* * * * *

ORDER

On June 15, 2010, Ms. Janis Sartucci filed a "Request for Stay" petitioning the State Board or the State Superintendent of Schools to stay a June 8, 2010 action of the Montgomery County Board of Education approving a Partnership Agreement with Pearson Education, Inc. Ms. Sartucci alleges that the local board violated numerous local policies and procedures in approving the Agreement.

The power to stay a county board's decision is delegated to me, the State Superintendent by regulation promulgated by the State Board. See COMAR 13A.01.02.01(B). Because in one conversation on June 17, 2010, I discussed the substance of the Partnership Agreement with Pearson, albeit without any knowledge that this Request for Stay had been filed, I believe in an abundance of caution that I must recuse myself from making a decision on the Request for Stay.

By this Order, I delegate my power to act herein to Deputy State Superintendent, John Smeallie whose decision is attached hereto.

June 29, 2010
Date

Nancy S. Grasmick
Nancy S. Grasmick
State Superintendent of Schools



MARYLAND STATE DEPARTMENT OF EDUCATION

IN RE: MATTER OF STAY

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JANIS ZINK SARTUCCI

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V.

ORDER NO. 10-2

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MONTGOMERY COUNTY
BOARD OF EDUCATION

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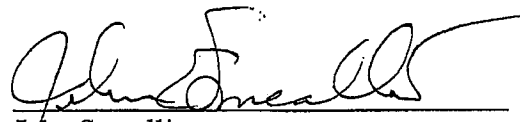
ORDER

The Request for Stay filed herein alleges that the local board violated numerous policies and procedures when it approved the Partnership Agreement with Pearson Education, Inc. One of the factors that weighs heavily in the decision to grant or deny a stay is the irreparable harm factor. The movant must make a clear showing that she is likely to be irreparably harmed absent a stay of the local board's action. See, e.g., *Winter v. Natural Defense Council*, 555 U.S. 365, 374-76 (2008); *The Real Truth About Obama v. The Federal Election Commission*, 575 F.3d. 342, 347 (4th Cir. 2009).

Ms. Sartucci, the movant, makes no showing of any harm to her caused by the local board's action. She does allege that the Agreement "places students in the precarious position of having vendor and vendor's clients in their classroom without any discussion of safeguards to student's identity, likeness, or personal information." The Agreement, however, addresses that concern. It states that Montgomery County School System "may impose reasonable restrictions on [Pearson's] use of its classrooms to avoid disruption of education . . . and to maintain confidentiality of personally identifiable student information (Ex. B at §7B).

Therefore, finding no irreparable harm shown, it is this 28th day of June, 2010, Ordered
that the Request for Stay be and is hereby DENIED.

June 28, 2010
Date


John Smeallie
Deputy State Superintendent of Schools