

HEREFORD WORKS, ET AL.,

Appellant

v.

BOARD OF EDUCATION
OF BALTIMORE COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-64

OPINION

INTRODUCTION

Hereford Works, LLC,¹ and 13 students who attend Hereford High School, along with their parents, (Appellants) appeal the decision of the Baltimore County Board of Education (local board) upholding the local superintendent's decision to establish a uniform schedule for all county schools. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and filed a Cross Motion for Summary Reversal. The local board replied.

FACTUAL BACKGROUND

Baltimore County has approximately 173 schools, 28 of which are high schools. Prior to the current school year, those schools operated on several different bell schedules. On November 5, 2013, Superintendent S. Dallas Dance submitted a report to the local board informing it of his plan to adopt a compatible 8-period bell schedule for high schools and a 7-period bell schedule for middle schools throughout the county. The superintendent explained that an effective master schedule for the school system "affects [a] school's ability to maximize their use of staff and increase course options and continuity for students, especially for those students who move from school to school." He provided several reasons in support of creating a compatible schedule for high schools: "flexibility in creating long blocks and/or short periods; maximizes curriculum options for Tier 1 and Tier 3 students; increases curriculum continuity for high-mobility students; supports magnet programs; and improves staff utilization." (Record, Vol. II, Jt. Ex. 5).

The local superintendent's decision was based on the findings and analysis of Scholastic Scheduling Solutions ("S3"), a consulting group hired by Baltimore County Public Schools ("BCPS") to evaluate multiple bell schedule scenarios. S3 provided several reports to BCPS analyzing the county's current bell schedules and offering positive and negative aspects of various alternative schedules for the county to consider. The reports did not recommend implementing any one particular schedule. (Record, Vol. II, App. Exs. 5, 6, 23; Jt. Ex. 4).

¹ Appellant Hereford Works, LLC, is an organization of parents, students, alumni, and other local residents in the Hereford High School community who oppose a change to their school's schedule.

Prior to the 2014-15 school year, Hereford High School (“Hereford”) operated on a “hybrid four-period-day block schedule.” Students took four courses each day, the majority of which were completed at the end of a semester. The remaining classes were generally held over the course of a year, and divided into A/B blocks, meaning that a student would take one class on the “A” day and another class on the “B” day. The semester-based schedule had been in place at Hereford for approximately 22 years. (Record, Vol. II, T. 583-584).

On December 11, 2013, Hereford Principal Andrew Last sent a letter to students and their parents announcing a change in the school’s schedule, starting in the 2014-15 school year. The principal explained that all high schools in Baltimore County were now required to offer eight credits to students on a year-round basis. To comply with this directive, Principal Last chose a “four period block A/B day” schedule. He explained that this would maintain the school’s schedule of four classes per day, but that the classes would now take place over the course of a year rather than during a single semester. In addition, all classes, rather than just some, would be on the A/B schedule. The principal described the benefits of the schedule change as “increased time to complete homework; more balanced classes; easier to add/drop classes; increased time to recover grades and make up for cancelled school days; core subjects, such as English, Math, and Foreign Language all year.” The principal promised that internships would remain available to students, that the number of advanced placement courses would not decrease, and that the school would continue its use of an enrichment hour, during which students could seek extra help in subjects or participate in student clubs. (Record, Vol. II, T. 354-55; Supt. Ex. 4).

Members of the local parent-teacher-student association voted 256-1 to oppose the change at their January 26, 2014 meeting. (Record, Vol. II, App. Ex. 9). More than 1,700 people signed an online petition against the schedule change at Hereford. (Record, Vol. II, App. Ex. 8). Opponents also protested outside a local board meeting, conducted a protest rally, and held a fundraiser in support of keeping Hereford’s schedule the same. (Record, Vol. II, App. Ex. 9). Local legislators and the County Council subsequently expressed their concern with the superintendent’s decision and asked him to reconsider. (Record, Vol. II, App. Ex. 10A-C).

Appellant Hereford Works LLC and other concerned parents challenged the superintendent’s decision as applied to Hereford. The superintendent met with a representative of the group on February 18, 2014, and sent her a follow-up letter dated February 24, 2014. In the letter, the superintendent explained that his decision to create a uniform schedule came after he learned that high school schedules were not compatible throughout the county, making it “impossible to make sure that all students in the district have equitable access to appropriate educational opportunities.” He based the decision on four factors: staff allocations; class sizes; maximizing student course options; and the effects of student mobility between schools. Although he did not change his decision, he stated that he would allow juniors and seniors at Hereford during the next two school years to take some semester-length courses. (Record, Vol. II, Jt. Ex. 1).

In response to parent inquiries, Principal Last requested additional flexibility to allow for semester-long courses in certain subjects beyond the next two school years. In a reply letter to Principal Last dated March 21, 2014, the superintendent granted the request and agreed to allow all future juniors and seniors to take math and world languages as part of a semester block

schedule. He explained that his decision was based, in part, on the fact that less than 1 percent of juniors and seniors move into or out of Hereford. (Record, Vol. II, Jt. Ex. 2).

Appellants filed an appeal to the local board by letter dated April 14, 2014. The local board referred the matter to a hearing examiner who conducted a hearing on June 30 and July 1, 2014. She issued her recommendation on July 30, 2014. (Record, Vol. II, Hearing Examiner Recommendation).

The hearing examiner concluded that the appeal was not timely filed because the superintendent issued his final decision on February 24, 2014 and the appeal letter was dated April 14. The hearing examiner determined that the March 21 letter to Principal Last (from which Appellants claimed they were appealing) did not alter the superintendent's previous decision to implement a uniform schedule for the school system. (Record, Vol. II, Hearing Examiner Recommendation).

Despite finding that the appeal was untimely filed and should be dismissed, the hearing examiner considered the merits of Appellants' claims. Citing State Board precedent, she concluded that the superintendent had the authority to make decisions regarding scheduling. The hearing examiner observed that the superintendent's decision to create uniform schedules throughout the school system was based on the needs of more than just one school. She found that the Hereford parents were sincere in their concerns about their children's education and that their strong level of involvement would likely lead to continued success for Hereford students. She discounted claims that students would not be able to adjust successfully to the schedule change. (Record, Vol. II, Hearing Examiner Recommendation at 22-33).

The local board heard oral argument on August 12, 2014 and adopted the hearing examiner's decision that same day. (Record, Vol. III, Ex. 3). This appeal to the State Board followed.

STANDARD OF REVIEW

A local board's decision regarding a local policy is presumed to be *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Appellants challenge the local board's decision on multiple grounds. They argue that their appeal was timely filed because the March 21 letter was the superintendent's final decision. They also maintain that the local board was required to approve the schedule change; that the schedule change violates federal law; that the schedule change was an abuse of the superintendent's discretion because it was not supported by substantial evidence; and the superintendent's decision was arbitrary and capricious because he relied on irrelevant factors and "grossly inaccurate" data when making his decision.

Timeliness of the appeal

A decision of a county superintendent may be appealed to a local board “if taken in writing within 30 days after the decision of the county superintendent.” Md. Code Ann., Educ. §4-205(c)(3). Appellants assert that the superintendent issued his final decision on March 21, 2014 when he wrote to Principal Last and explained that he would allow all future juniors and seniors to take a semester-based A/B block schedule in math and world languages. Appellants argue that the March 21 letter “substantially modified” his earlier decision and constituted the “final” decision from which they appealed.² The local board contends that the February 24 letter to Appellants constituted the superintendent’s final decision and that the Appellants’ appeal was untimely.

We faced a similar question in *William M. and Corona S. v. Worcester County Bd. of Educ.*, MSBE Op. No. 13-63 (2013), when we had to decide whether a superintendent’s letter delivered after an initial decision had been made was “restating a previous conclusion” rather than “reviewing the case anew.” We found that the superintendent’s letter “although containing new information” was “not a reexamination of the superintendent’s earlier decision.” *Id.*; see also *Vend Natural, Inc. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-41 (2013) (“Appellant cannot extend the deadline for filing an appeal by arguing that it is appealing the latest communication from a school administrator.”).

The March 21 letter modified the earlier decision of the superintendent by allowing all future juniors and seniors, not just current juniors and seniors, to take specific semester-long courses. Despite Appellants’ characterization of this change as a substantial modification, the March letter did not alter the superintendent’s earlier decision to create uniform schedules across the school system. Appellants were put on notice of this change in December 2013 when they first received a letter from Principal Last. (Record, Vol. II, Supt. Ex. 4). After parents protested the decision to the superintendent, he met with them, heard their concerns, and decided to modify his decision as explained in his February 24 letter. That change constituted his reconsideration of the matter and his final decision; as a result, the appeal letter filed April 14, 2014 was untimely.

Despite this untimely filing, the hearing examiner and the local board chose to consider the merits of Appellants’ arguments and upheld the superintendent’s decision. For this reason, we shall examine the remainder of Appellants’ arguments.

Local board approval of a schedule change

Appellants maintain that the superintendent acted outside of his authority by enacting a countywide schedule change without the formal approval of the local board. In support, they cite several provisions of the Education Article that empower the local board to determine the educational policies of the school system, carry out the rules and regulations of the board, and maintain a reasonably uniform system of public schools in the county. Md. Code Ann., Educ.

² During the hearing, an issue arose over whether the appeal was hand-delivered on April 14, 2014 (the date of the letter) or was delivered on April 22, 2014. Because it does not ultimately affect our conclusion that the appeal was untimely, we shall assume that the letter was received on April 14, 2014.

§4-108. Appellants argue that the superintendent may make recommendations to the local board on educational matters, but that he cannot act without their formal approval.

We have previously upheld a local board's decision affirming a superintendent's adoption of new school system schedules. *See Coalition for Balanced Excellence in Education v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 03-24 (2003). We conclude that the local board provided its tacit approval of the superintendent's decision after being briefed on the decision in November 2013. The local board later affirmed the superintendent's decision as part of this appeal. Accordingly, we conclude that the superintendent did not overstep his authority by adopting a countywide schedule change.

Schedule change and federal law

Appellants argue that the superintendent's decision violates the No Child Left Behind Act because he did not seek parental input before instituting the schedule change. They cite 20 U.S.C. § 7801(32), which defines "parental involvement" as "the participation of parents in regular, two-way, and meaningful communication involving student academic learning and other school activities." The definition further states "that parents are full partners in their child's education and are included, as appropriate, in decision-making and on advisory committees to assist in the education of their child." *Id.*

The local board directs us to guidance from the U.S. Department of Education, which specifies that the definition of parental involvement cited above is directed specifically towards Title I, Part A programs. *See Parental Involvement, Title I, Part A Non-Regulatory Guidance, United States Department of Education, April 23, 2004* ("The definition of parental involvement sets the parameters, in conjunction with other sections of the law by which SEAs, LEAs and schools will implement programs, activities, and procedures to involve parents in Title I, Part A programs."). We conclude that the provisions of federal law cited by Appellants do not apply to the superintendent's decision to change the school system schedule.

Decision as abuse of discretion

Appellants argue that there was no evidence supporting the superintendent's decision, that it was based on irrelevant factors and inaccurate data on student mobility, and that the superintendent's lack of research, failure to consider the effects on students, and failure to gather input from stakeholders led to an arbitrary and capricious decision.

In his February 24 letter, the superintendent offered four primary reasons for the countywide schedule change: balanced staffing allocations for all high schools; a review of class sizes among schools based on incompatible schedules; maximizing student course options; and a review of student mobility around the county and the effect it had on course completion and access to graduation. Appellants argue that these factors are irrelevant to Hereford because staffing levels and class sizes are unlikely to change at the school; students already had a maximized number of course options; and student mobility rates are low for Hereford.

As the hearing examiner recognized, however, "Hereford is not the only school in the system and the superintendent looked at the needs of all students, not just the Hereford zone, which does not exist in isolation, but as part of the larger school system." A decision may be arbitrary or unreasonable if it is "contrary to sound educational policy" or "a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached." COMAR 13A.01.05.05C. Under our standard of review, we do not decide whether the schedule change was the *best* decision for the school system or whether one schedule would have been preferable to another at Hereford. It is clear from the voluminous record and Appellants' filings that many people in the Hereford community oppose the schedule change. They explained the benefits of the previous schedule and their concern that switching to a new schedule could negatively impact their children and the success of Hereford.

In our view, these reasons fail to demonstrate that the superintendent's decision to implement a countywide schedule change was one that "a reasoning mind could not have reasonably reached." The superintendent offered multiple reasons why the change would benefit the school system as a whole, even if the positive effects of that change might be less noticeable at Hereford. As the superintendent acknowledged in his February 24 letter, "[f]indings are mixed on the effectiveness of various scheduling options. The research is mixed primarily because any schedule is all about implementation." He went on to express his confidence that Hereford would adjust successfully to the schedule change because of "the vision of its principal, strength of its teachers, commitment of its students; and support of its community." (Record, Vol. II, Jt. Ex. 1). Examining the record as a whole, we find sufficient support for the superintendent's decision.

CONCLUSION

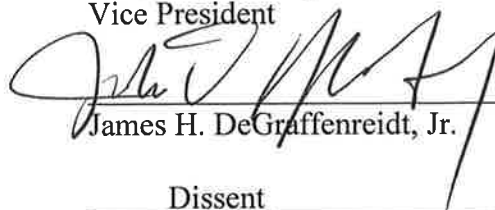
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



Charlene M. Dukes
President



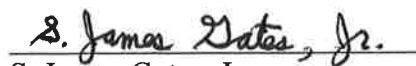
Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.

Dissent

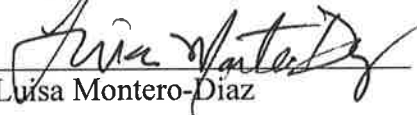
Linda Eberhart



S. James Gates, Jr.



Larry Giammo



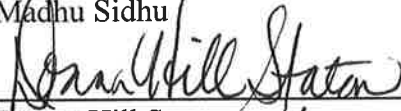
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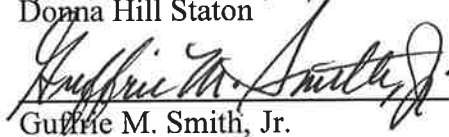
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

December 16, 2014