

IN THE MATTER OF  
EDUCATION ARTICLE §7-104

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 14-29

## OPINION

### INTRODUCTION

The Howard County Board of Education (local board) has requested a Declaratory Ruling on the true intent and meaning of the “moment of silence” statute, Md. Educ. Code Ann. §7-104.

### FACTUAL BACKGROUND

In 1964, the Maryland legislature passed a “moment of silence” law which, since that time, with one non-substantive amendment in 1978, has read as follows:

- (a) Silent meditation. – Principals and teachers in each public elementary and secondary school in this State may require all students to be present and participate in opening exercises on each morning of a school day and to meditate silently for approximately 1 minute.
- (b) Praying or reading holy scripture permitted. – During this period, a student or teacher may read the holy scripture.

On or about September 20, 2007, the local board amended its policy on religious observances. Among the changes to Policy 3000, “Religious Observances,” was the addition of the following language to Section IV.H.:

Regular morning exercises at schools will not include a moment of silence. On an individual basis, a principal may include a moment of silence approximately of one minute as an appropriate response to special circumstances affecting the school community. During the moment of silence, a student or teacher may silently meditate, pray, or read scripture.

On October 7, 2013, members of the local board received an email from Howard County resident, Maureen Rutkowski, alleging that the above-quoted provision was in violation of §7-104 of the *Education Article*. Ms. Rutkowski wrote that Section IV.H. of Policy 3000 “completely removes the rights of teachers to enact a moment of silence” and “completely removes the right of principals to enact a daily moment of silence” in violation of §7-104. She reiterates that position here in response to the local board’s Petition for Declaratory Ruling.

In the Petition, the local board asks this Board to explain the true intent and meaning of §7-104 and to declare whether the local board's policy is inconsistent with State law. We have summarized the local board's request in two questions:

- (1) What is the role of the local board in directing or precluding a moment of silence?
- (2) How should the statute be implemented?

### STANDARD OF REVIEW

On the issue presented here, we exercise our independent judgment in interpreting education law. COMAR 13A.01.05.05E.

### LEGAL ANALYSIS

Basic rules of statutory construction govern our inquiry into the intent of the "moment of silence" statute. First, we look to the words of the statute giving them their plain and natural meaning. *Azarian v. White*, 140 Md. App. 70, 96 (2001). The language of the statute must be viewed as a whole, with reference to the surrounding provisions of law, in an attempt to harmonize the statutes. *Board of Physicians Quality Assurance v. Mullan*, 381 Md. 157, 168-69 (2004). "Ordinarily, when the statutory language is clear and unambiguous, we end our inquiry there...." *Dyer v. Otis Warren Real Estate Co.*, 371 Md. 576, 581 (2002).

The statutory language at issue is "Principals and teachers in each public elementary and secondary school in this State may require all students...to meditate silently..." The local board asserts that the language of the statute makes it unclear who possesses the discretion to require students to meditate each morning. The board asks: what is the role of the local board in the statutory scheme?

We begin our analysis with the question about the local board's role. While it is true, as the local board asserts, that pursuant to Md. Educ. Code Ann. §4-108, the legislature has given a county board the authority to "maintain throughout its county a reasonably uniform system of public schools..." it does not follow that the legislature cannot limit that authority. The "moment of silence" statute does not mention the local board. It mentions only principals and teachers. It gives directly to principals and teachers the discretionary authority to mandate a moment of silent meditation. It is our view that, when the legislature failed to include the local board in the statute, it intended, for whatever reason, to limit the authority of the local board in this area.

We come to this conclusion after reviewing "moment of silence" statutes from 35 states. <http://www.ncsl.org/research/education/momentofsilenceand-schoolprayer.aspx>. Some place the power to require a moment of silence solely with the school board. *See, e.g., Ariz. Rev. Stat.* §15-342; *Conn. Gen. Stat.* §10-16a. Others place that power solely in the hands of the teachers. *See, e.g., GA. Code Ann.* §20-2-1050; *105 Ill. Comp. Stat.*20/1. Some state that teachers and school administrators may or shall permit a moment of silence. *See, e.g., Ala. Code* §16-1-20.4; *NJ Stat.*

*Ann.* §18A-36-4. Given the variation across states, it appears to us that including or excluding local boards from the decision-making process is an intentional act of a legislature, and the general authority of local boards over the uniform administration of the school system does not override that intentional act.

In addition, we have reviewed the statutory provisions within which the Maryland “moment of silence” statute is situated. The “moment of silence” statute is included in the “General Provisions” governing all public schools in Maryland. It precedes the statute governing “patriotic exercises.” That statute gives the authority to direct patriotic exercises in schools directly and solely to the local board . Md. Educ. Code. Ann. §7-105. In another part of the General Provisions section, the statute gives the power to decide who can use public school property to the local board alone. Md. Educ. Code Ann. §7-105. We refer to these sections as evidence that the legislature knows how to apportion power and authority in different ways for different purposes and that it did so in the “moment of silence” statute.

In 2007, when the local board amended its policy on the “moment of silence”, the board inserted itself into the “moment of silence” decision, ignored the plain language of §7-104 and, in our view, contravened the intent of the statute to allow principals and teachers to make the decision to whether or not observe a “moment of silence”.

With that intent in mind, we agree with the local board that the statute is unclear on how to implement the statutory scheme. The local board raises a myriad of implementation scenarios. The board states:

The statute uses the conjunctive “and” rather than the disjunctive “or.” Therefore, is the true intent and meaning of the statute that an individual school principal and all the teachers in that school must agree in order to require all students in the school to participate in opening exercises or to participate in a moment of silence? Or, is it intended that the school principal or the teachers in a particular school have the discretion to “require all students” to participate? And, if it is intended that the school principal or the teachers have the discretion, do all the teachers have to agree in order to require “all students” to participate or does “all students” refer to all students in each teacher’s classroom so that each teacher is free to exercise his or her discretion independently? In addition, if it is the intent of the statute that either the principal or the teachers may require “all students” to participate and the principal chooses to require or not to require that all students participate, are the teachers bound by the school principal’s decision, as they are in other matters of school administration, or does the principal’s decision violate the statute by depriving teachers, individual or collectively, of discretion granted by the law?

Interpreting the statute in order to implement it in congruence with the statute's intent requires reference to one of the "golden rules" of statutory construction - - the rule of reason. In short, we interpret a statute to produce a reasonable result. Specifically, "we interpret the meaning and effect of the language in light of the objectives and purposes of the provision enacted. Such an interpretation must be reasonable and consonant with logic and common sense. In addition, we seek to avoid construing a statute in a manner that leads to an illogical or untenable outcome." *Noel S. Liverpool v. Baltimore Diamond Exchange, Inc.*, 369 Md. 304, 318-19 (2002).

To decide how the statute should be interpreted as to implementation, we begin with the original bill, HB80, passed in 1964. The bill as introduced would have required each and every principal and teacher to carry out the mandate of a moment of silence. The bill stated:

"Principals and teachers in every public elementary and secondary school in this State SHALL require all students...to meditate silently..." (emphasis added)

The bill was amended to replace "shall" with "may" thus eliminating the mandate and allowing teachers and principals discretion to choose a moment of silence. In doing so, it appears to us that the legislature intended to give that discretion to teachers and principals individually just as it imposed the mandate on them individually.

The local board asks whether a teacher must provide a moment of silence if the principal requires the entire student body to observe a moment of silence. We refer to Ms. Rutkowski's approach here, given that the role of the principal is to establish the operational rules of the school, including the way a school day progresses. Ms. Rutkowski suggests these rules to govern implementation of §7-104:

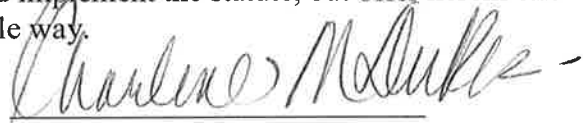
- (1) If the principal requires the entire school body to provide a daily moment of meditation, teachers must comply with their principal and provide it.
- (2) If the principal does not require the entire school body to provide a daily moment of meditation, it is then up to the individual teacher. The teacher may then decide individually to provide the daily "moment of silence" or not.

That is certainly one way, and we believe a reasonable way, to implement and operationalize the statute in concert with the intent of the legislature. There may be other reasonable ways to do so and we leave that to the principals and teachers to decide.

## CONCLUSION

For the reasons stated in this Opinion, we declare that Local Board Policy 3000, Section IV.H violates Md. Educ. Code Ann. §7-104. We decline to issue a definitive declaratory ruling

on how a local school system can operationalize and implement the statute, but offer herein one possible way to implement the statute in a reasonable way.



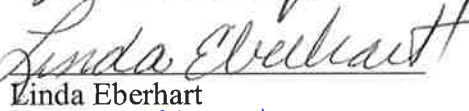
Charlene M. Dukes  
President

*Absent*

Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

*Absent*

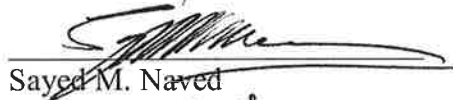
S. James Gates, Jr.

*Absent*

Larry Giammo



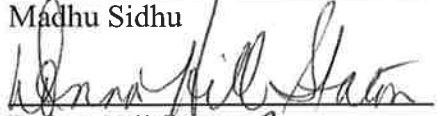
Luisa Montero-Diaz



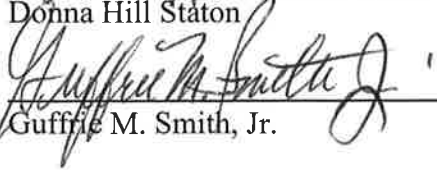
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

May 20, 2014