LINDA MARTIN ET AL.,

Appellant

v.

ALLEGANY COUNTY BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-45

OPINION

INTRODUCTION

Forty three parents of students living in the Little Orleans section of Allegany County appealed the decision of the Allegany County Board of Education (local board) to phase out the option offered to certain students in Little Orleans to attend school over the border in Washington County. The local board filed a Motion for Summary Affirmance. The Appellants filed a Response to the Motion. The local board filed a reply.

After the filing of this appeal, a group called "Save Orleans Students" asked the Circuit Court for Allegany County to issue a temporary restraining order (TRO) and an injunction allowing Little Orleans students to attend school in Washington County. The court denied the TRO and, on August 23, 2011, also denied the request for an injunction. (Court decision attached hereto).

FACTUAL BACKGROUND

In 2000, the local board consolidated some of the schools in Allegany County. During the consolidation process, the parents of students in eastern-most Allegany County expressed their opposition to the consolidation. As the local board explains, "In order to assuage some of the concerns . . ., the Allegany County Board of Education entered into an agreement with Washington County [Board of Education] which permitted middle and high school students [from Little Orleans] to attend school in either . . . Allegany County or . . . Washington County." (Motion at 2-3). The Agreement has been in place for eleven years. If it were to continue unchanged for the 2011-2012 school year, there would be 17 high school students and 20 middle schoolers from Little Orleans attending school in Washington County. (*See* June 1, 2011 Minutes of Local Board, Ex. B attached to Response).

On February 28, 2011, the Superintendent wrote a letter to each parent of a Little Orleans

student attending school in Washington County explaining that the local board was considering termination of the Agreement with the Washington County Board of Education. He explained the budget problem that the school system was likely to face for the 2011-2012 school year. He explained that to send the 40 or so students to school in Washington County cost Allegany County Public Schools (ACPS) about $600,000 per year ($191,000 in direct payments to WCPS and $400,000 in lost State revenue). In that same letter, he invited all parents to a meeting on March 7, 2011 to share their thoughts and concerns. He explained that the final decision would not be made until early May 2011. (*See* Cox Letter, 2/28/11, attached to Appeal).

After hearing from the parents in March and in the months thereafter, on June 1, 2011 the local board met to consider whether to terminate the Agreement. Central to the decision was the budget. In FY 2012, for various reasons, Allegany County Board of Education lost approximately $5.3 million in State Aid. It was level funded by the County Government which was $847,000 less than requested. As the Chief Business Officer explained, the budget reflected, *inter alia*, a 15-20 position reduction; reduced capital outlays, and used 23.5% of the fund balance to offset the reduction in State Aid. (*See* Minutes, June 1, 2011, Ex. B attached to Response). Termination of the Agreement in whole or part would save additional dollars.

After much discussion, the local board voted to allow all the 17 or so students currently attending high school in Washington County to complete their high school experience there "over the next three years, contingent on funding." For the 20 or so middle school students attending school in Washington County, the local board voted that they must return to Allegany County schools. (*See* June 3, 2011 Letter from Cox to parents, Ex. A attached to Motion).

The Appellants appeal that decision to this Board.

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).

ANALYSIS

The Appellants put forth six arguments to support their contention that the local board's decision was arbitrary, unreasonable, and/or illegal. We will address each argument *seriatim*.

A. Is The Decision Illegal Because §4-121 Of The Education Article Mandates Cross-Border School Choice?

The Appellants contend that §4-121 of the Education Article mandates that a local school system allow students to choose to attend school in the neighboring county without paying tuition if they live near the boundaries of an adjacent county and would have to be transported "substantial distances" in order to go to school within their own county borders. (Response at 2

and 8).

While the statute at issue states in part that "a school is in one county and near the boundary of an adjoining county is free to the children of the adjoining county as provided in this section," it is also requires a mutual agreement of both local boards for cross-border school attendance. Specifically,

> (c) (1) The County Boards of the two counties may:
>
> (i) Provide jointly for the maintenance and support of the jointly attended school in the receiving county; and
>
> (ii) Determine the geographical attendance areas and other attendance policies of the two counties for all jointly attended schools in the receiving county.

Md. Educ. Code Ann. §4-121.

We point out that the use of the word "may" in the statute denotes the discretionary nature of the joint agreement. Indeed, this Board has ruled "Section 4-121 is discretionary as there is nothing in the law or regulation which would require local board to enter into such agreements." *Carder, et al v. Garrett County Board of Education*, MSBE Op. No. 05-03.

The statute also includes a dispute resolution device if the two county boards fail to agree on a geographical attendance area or attendance policy. If that occurs, the State Superintendent is authorized to resolve the dispute. *Id.* The statute, however, does not give the State Superintendent the authority to order two local boards to implement cross-border school attendance.

The local board's decision does not violate §4-121 of the Education Article.

B. Is The Decision Illegal Because No Child Left Behind Mandates School Choice?

The Appellants contend that the school-choice provision set forth in No Child Left Behind (NCLB) should apply in this case. Under NCLB, school-choice is available to students in Title I schools when the school is in school improvement, corrective action, or restructuring. The statute requires a school system to "provide all students enrolled in [such] schools with the option to transfer to another public school served by the local education agency...." 20 U.S.C. §6316(b)(1)(E). The Appellants argue that because the middle school that their children would attend in Allegany County is a school in improvement, the NCLB school choice provision is triggered and mandates that they be allowed to choose to attend middle school in Washington County.

Such is not the case. The school choice option is available only in Title I schools. The middle school in Allegany County is not a Title I school. (*See* Affidavit of Janet Wilson, Motion Ex. D). The school choice option simply does not apply here. Moreover, we point out that

NCLB would not provide for cross-border school choice options. It allows choice to attend another public school within the local education agency boarders. *Id.*

C. Is The Decision Illegal Because It Violates Article VIII Of The Maryland Constitution?

The Appellants argue that the local board's decision violates "Article VIII of Maryland's Constitution, requiring the provision of a free public education, [because it] would require the Little Orleans families to pay tuition . . . . to attend the [Washington County] schools." (Response at 8). They assert that it is the "student's" right to attend the Washington County school "free of charge with transportation." (*Id.* at 10).

The right to free public education does not extend so far. As this Board has often stated and specifically pointed out in a similar cross-border case involving Garrett and Allegany County Public Schools, "The State Board has long held that '[a]bsent a claim of deprivation or unconstitutional discrimination of race or religion, there is no right or privilege to attend a particular school." *Carder, et al. v. Garrett County Board of Education*, MSBE Op. No. 05-03 at 6, citing *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1966). In short, the Maryland Constitution does not provide the Little Orleans students with the right to a free public education in Washington County Schools.

D. Is The Decision Illegal Because It Was The Result Of Unlawful Procedures?

The Appellants contend that the local board's decision was actually made several months before the June 1, 2011 meeting - - the public meeting at which the local board voted to terminate the Agreement in part. They point to a March 21, 2011 letter in which the Superintendent of Allegany County gave the Superintendent of Washington County notice of termination of the Agreement. (Cox Letter, 3/21/11, attached to Response, Ex. C). The Appellants state that there was no public board meeting authorizing that letter and thus "the actual March 21, 2011 termination of the Memorandum of Understanding by Dr. Cox was and is invalid and ineffective and that the Allegany Board's decision subject to approval has resulted from an unlawful procedure and is subject to reversal." (Response at 11).

Appellants' view stretches the facts and law too far. The Superintendent's letter merely provided notice to Washington County of the termination. It is clear that it was subject to further consideration by the local board. It was based on the local board's vote on March 8, 2011 to adopt the Superintendent's proposed budget as the board's proposed budget. (Reply, Ex. 5). When the local board adopted the budget as final on June 1, 2011, it fully considered and debated the matter, and interestingly, did not terminate the Agreement in full. It voted to allow the current high school students to finish their education in Washington County. (*See* Minutes June 1, 2011, Response, Ex. B). We find no unlawful procedure in this case.

E. Is The Decision Arbitrary Because It Violates Sound Educational Policy?

The Appellants argue that the decision violates sound educational policy because it will

require the Little Orleans middle school students to be bused over one hour each way to school, beginning at 6:30 in the morning and not returning home until almost 4:00 P.M. (Response at 3). That is indeed a long school day and a long bus ride. It may very well be true, as the Appellants argue, that the transportation issue will preclude students from participation in extracurricular activities.

This Board, however, has considered just such issues in the 2006 cross-border appeal involving Garrett and Allegany County schools. We said:

> While Appellants raise a variety of concerns which they believe substantiate the bases for their request, including travel time, travel distance, road safety, weather conditions, participation in athletics, and ties to the community in which they live, these concerns are not entirely different from the concerns faced by other families throughout Garrett County. Despite Appellants' reasons for desiring a different outcome which would allow their children to attend Westmar High School in Allegany County, we do not find that there is anything arbitrary, unreasonable, or illegal about the board's decision. *Carder v. Garret County Board of Education*, MSBOE Op. No. 05-03 at 6.

We conclude the same here.

F. Is The Decision Arbitrary Because It Was Based On Budgetary Consideration?

The Appellants assert that the local board's consideration of budgetary problems, in the context of their deliberation about considering the cross-border school issue, was an abuse of discretion. We do not agree. It is incumbent on local boards when making decisions to consider the validity of all expenditures and to weigh and balance the needs of all students in these tough fiscal times. It is no abuse of discretion to do so.

CONCLUSION

For all the reasons stated, we affirm the decision of the local board in this matter.

James H. DeGraffenreidt, Jr.
President

Absent

Charlene M. Dukes
Vice President

Mary Kay Finan

S. James Gates, Jr.

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Guffie M. Smith, Jr.

Donna Hill Staton

Ivan C.A. Walks

Kate Walsh

October 25, 2011