

HARRIET TUBMAN ELEMENTARY  
SCHOOL PARENT TEACHER ORGANIZATION,

Appellant.

v.

BALTIMORE CITY BOARD  
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR10-06

ORDER OF DISMISSAL

The State Board received an appeal from the Harriet Tubman Elementary School Parent Teacher Organization (“PTO”), through Linda Williams, PTO Vice President, challenging the decision of the Baltimore City Board of School Commissioners (local board) to close Harriet Tubman Elementary School. The local board filed a Motion for Summary Affirmance. The Appellant did not file a response.

Because this appeal involved a school closing, the State Board referred the case to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing. COMAR 13A.01.05.07A(1).

On November 24, 2009, OAH mailed notice of a prehearing conference to the Appellant at the address of record. The U.S. Postal Service returned the notice to OAH as undeliverable because the building at that location was vacant and there was no forwarding address. The Appellant’s address of record was the address of Harriet Tubman Elementary School, which had closed at the end of the 2008-2009 school year. The Appellant never provided the State Board with an updated address.

The Administrative Law Judge (“ALJ”) convened the prehearing conference as scheduled, at which time neither the Appellant nor anyone serving as the Appellant’s legal representative appeared. Legal counsel appeared on behalf of the local board.

The ALJ determined that OAH had sent “proper notice” of the prehearing conference to the Appellant’s address of record, and that the Appellant failed to appear. In light of the Appellant’s failure to appear, the ALJ has proposed that the State Board find the Appellant in default. *See* COMAR 20.02.01.20.


We agree that the Appellant is in default. The Appellant has not contacted the State Board since June 2009. Our staff’s efforts to get in touch with the Appellant have failed. OAH sent notice of the prehearing conference to the address of record and the Appellant failed to appear. We therefore adopt the ALJ’s Proposed Order of Dismissal based on default.

Thus, it is this 27<sup>th</sup> day of April, 2010, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed. *See* COMAR 13A.01.05.03C.

MARYLAND STATE BOARD OF EDUCATION

By:



James H. DeGraffenreidt, Jr.

President

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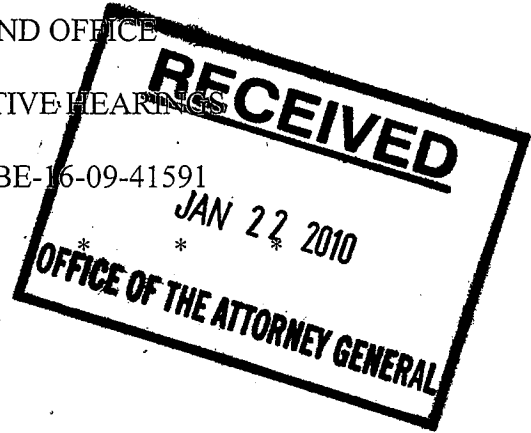
HARRIET TUBMAN ELEMENTARY  
SCHOOL PTO, et al.

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS

\* \* \* \* \*

\* BEFORE NEILE S. FRIEDMAN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-16-09-41591



PROPOSED ORDER

STATEMENT OF THE CASE  
DISCUSSION  
PROPOSED ORDER

STATEMENT OF THE CASE

In the fall of 2008, the Baltimore City Public Schools (BCPS) initiated a review of all existing school programs and buildings, known as "Expanding Great Options" (Options). The purpose of Options was to close programs and buildings deemed to be among BCPS's lowest performing and least suitable, then to strengthen and improve those that remained. In April of 2009 BCPS published its Initial Report and Preliminary Recommendations under Options, which included the closure of Harriet Tubman Elementary School #138 (HTES) and reassignment of HTES students to three nearby elementary schools.

Previously, on March 12, 2009, having learned that HTES was among the schools whose closures were to be proposed, the HTES Parent Teacher Organization (PTO) issued a three-page written Petition to the Baltimore City Board of School Commissioners (City Board) "to reconsider the pending closure" of HTES. Petition at 1. The Petition set forth a number of reasons the PTO was requesting "that the school be given at least one (1) additional school year to show improvement in all areas of concern and the pending proposal to close the school be rescinded at

this time." *Id.* at 3. The Petition was sent on behalf of the HTES PTO by Mr. Emmanuel Rogers, President, and Ms. Linda Williams, Vice-President, under a letterhead listing the school's address.

On or about April 22, 2009, HTES issued an eight-page "School and Community Proposal" (Proposal) that further set forth reasons why the school should not be closed, including lists of academic improvements already implemented at HTES and initiatives planned for the following academic year. The Proposal similarly requested that HTES be given another year "to demonstrate that our students can perform at a proficient or advanced level." Proposal at 8. The only name on the Proposal was that of Kimberly Sollers, Principal.<sup>1</sup> This document was followed shortly by another, titled "Making HTES Better!" The latter seventeen-page effort was prepared by Louis Fields as "Community Partner, School Improvement Team" on or about April 24, 2009, and it also argued for keeping HTES open.<sup>2</sup>

On April 28, 2009, the City Board met and voted on the BCPS recommendations. Among other decisions made at that time, the Board voted by 5 to 4 to close HTES and reassign its pupils as proposed. The rationale for this decision, and underlying factors that the Board considered, are set forth in a June, 2009, document entitled "Baltimore City Board of School Commissioners Decision Regarding Proposed School Closings and Relocations" (Decision) at pages 14-18.

On or about June 18, 2009, Mr. Fields sent a memo by e-mail to Mayor S. Dixon, asking "on behalf of the HTES community" that she "overrule" the tie-breaking vote to close HTES cast by then-City-Board-Chairman B. Morris, in light of recent news allegedly casting doubt on his

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<sup>1</sup> An unidentified person or persons apparently forwarded the Proposal to the Maryland State Board of Education (MSDE) at a later date, since a copy in the record was stamped as received by MSDE on May 19, 2009.

<sup>2</sup> According to page 17 of this document, captioned Appendix D, a community meeting was held at HTES on April 2, 2009, to discuss the school's proposed closing "before a panel of BCPS administrators." The record does not otherwise disclose such a meeting.

integrity. A June 22, 2009 memo addressed "To Whom It May Concern" from Ms. L. Williams as "PTO Chairperson" also mentions that Mr. Morris had cast the deciding vote on closure, but emphasizes that HTES students achieved the "double digit gains" in 2008-2009 MSA testing that BCPS had indicated were needed, and on the latter and similar grounds requests "consideration to keep [HTES] open and give us the opportunity to prove ourselves."

On or about July 20, 2009, the City Board filed an "Answer and Motion for Summary Affirmance," and accompanying memorandum, with MSDE. MSDE forwarded the matter to the Office of Administrative Hearings (OAH) on November 9, 2009, to be assigned to an administrative law judge for a hearing in accordance with section 2-205(e) of the Education Article. Md. Code Ann., Educ. § 2-205(e) (2008).<sup>3</sup>

The matter was set in for a prehearing conference on January 8, 2010, at the offices of OAH in Hunt Valley, Maryland. On November 24, 2009, notice of the conference and instructions were mailed to the City Board and to Linda Williams, PTO V-P, at the HTES address. The latter mailing was returned to the OAH on November 30, 2009, as undeliverable because the recipient's address—1807 Harlem Avenue, Baltimore, Maryland 21217—was vacant.

The City Board filed its required Pre-Hearing Conference Report on or about January 5, 2009. No Pre-Hearing Conference Report was received from the Appellant(s).

I convened the conference as scheduled at 9:30 a.m. on January 8, 2010. Sally A. Robinson, BCPS Deputy Counsel and Ethan D. Powell, BCPS Assistant Counsel, appeared on behalf of the City Board. I waited a total of 15 minutes after the appointed time, but neither Ms. Williams nor anyone else appeared on behalf of the HTES PTO.

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<sup>3</sup> The original transmittal letter dated 11/5/2009 incorrectly cited a different section of the Education Article. That citation was corrected in an amended transmittal letter filed on 11/9/2009 and dated 11/10/2009.

## DISCUSSION

For the following reasons, I propose that the Appellant(s) in the captioned case be found to have defaulted. In addition, the matter shall be dismissed as not having been properly appealed and/or as being moot.

### Default

Under MSDE regulations, OAH hearing procedures apply to hearings transferred to the OAH by the State Board "[e]xcept as otherwise provided." Code of Maryland Regulations (COMAR) 13A.01.05 07D. The State Board regulations in COMAR 13A.01.05 contain no provisions regarding defaults, but the OAH hearing procedures include the following:

.20 Failure to Attend or Participate in a Hearing, Conference, or Other Proceeding;  
Default.

A. If, after receiving proper notice, a party fails to attend or participate in a . . . hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party.

. . . .  
C. Proposed Default Orders. A proposed default order is reviewable in accordance with the delegating agency's regulations governing review of proposed decisions.

COMAR 28.02.01.20A, C.

On November 24, 2009, the OAH mailed a Notice of Hearing to Ms. Linda Williams, as the head of the HTES PTO, at 1807 Harlem Avenue, Baltimore, Maryland 21217. This is the address indicated for the HTES PTO on materials in the record, and it also was the street address of HTES. Because that school is closed and vacant, the mailing was returned as undeliverable.

When the State Board transmitted the instant matter to OAH, it was captioned as indicated above: "*Harriet Tubman Elementary School PTO, et al. v. Baltimore City Board of School Commissioners.*" The record contains several documents setting forth reasons why the

HTES PTO sought to avoid the school's closure. Assuming that the decision to close HTES was in fact appealed to the State Board,<sup>4</sup> it is reasonable to conclude that the parties initially appealing that decision included the PTO, and no evidence before me indicates that their status as a party was ever withdrawn.

The most recent document in the record generated by or on behalf of the HTES PTO is a June 22, 2009 memo "To Whom It May Concern" from Ms. Williams, who signed it as "PTO Chairperson." Thus, although earlier material from that organization shows Ms. Williams as Vice-President, in June of 2009 she claimed the ranking title. The June memo contains no address, but as noted above other PTO documents use the Harlem Avenue address. Neither Ms. Williams nor anyone else on behalf of the PTO ever provided an updated address.<sup>5</sup>

The relevant procedural regulation requires "reasonable written notice" of a hearing. COMAR 28.02.01.05A. I find that the first-class mailing on November 24, 2009 to Ms. Williams, on behalf of the PTO, at the Harlem Avenue address constituted reasonable written notice within that regulation. I also conclude that it constituted "proper notice" within COMAR 28.02.01.20A, quoted above in that no updated address was ever provided by anyone on behalf of the PTO after the HTES closed. In light of her failure to appear at the scheduled hearing either in person or by legal representative following reasonable notice, I shall propose that the State Board issue a default order against Ms. Williams as Appellant on behalf of the HTES PTO.

### Dismissal

1. Improper Appeal. Two sets of procedural requirements govern appeals of local

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<sup>4</sup> Whether the school's closure was effectively appealed to the State Board is discussed in the following section.

<sup>5</sup> At a hearing, the ATES PTO would have had to have been represented by counsel. See MD. Code Ann., State Gov't § 9-1607.1 (2009). No attorney ever entered an appearance.

school board decisions to consolidate, redistrict, or close schools: those promulgated for the State Board, and others promulgated by OAH. I address them separately below.

a. State Board Regulations. The relevant portions of the State Board regulation are as follows:

.02 Appeal Contents.

A. Contents. The request for an appeal shall:

- (1) Specify the party or parties taking the appeal;
- (2) Designate the decision or order for which review is requested;
- (3) Contain a statement of the facts necessary to an understanding of the appeal;
- (4) Contain the issues or charges for which the appeal is being taken;
- (5) Contain reasons in support of the appeal;
- (6) Contain a statement of the relief sought;
- (7) Include any supporting documents, exhibits, and affidavits; and
- (8) Include, if possible, a copy of the order and opinion from which the appeal is sought.

B. Deadlines.

(1) Appeals.

(a) An appeal shall be taken within 30 calendar days of the decision of the local board or other individual or entity which issued the decision on appeal.

(b) The 30 days shall run from the later of the date of the order or the opinion reflecting the decision.

(2) The day of the decision of the local board may not be included in computing any period of time prescribed by these regulations.

(3) An appeal shall be deemed to have been transmitted within the 30 day period of time permitted under §B(1) of this regulation if, before the expiration of the time, it has been:



(a) Delivered to the State Board; or

(b) Deposited in the United States mail, as registered or certified mail.

(4) The last day of the period of time prescribed by this chapter shall be included, unless it is a Saturday, Sunday, or a State legal holiday, in which event the period ends on the next day which is not a Saturday, Sunday, or State legal holiday.

(5) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, 3 days shall be added to the prescribed period.

C. Acknowledgment. The State Board shall promptly acknowledge receipt of the appeal in writing and send a copy of an appeal involving a local school system to the local superintendent.

COMAR 13A.01.05.02A-C.

The only material in the record that refers to any "appeal" was generated by the Appellee, the City Board. No PTO or related documents are addressed to the State Board, either expressly or by implication; no such documents indicate an intention to have the matter considered at a higher level than the Mayor of Baltimore and/or the City Board; and none of those documents even mention the possibility of a hearing. I am hard-pressed, therefore, to find anything in the file that constitutes a request for an appeal, let alone a request that "specifies the party or parties taking the appeal" and meets the other requirements of COMAR 13A.01.05.02A.

Under the regulation, moreover, an appeal must be taken within 30 calendar days from the date of the decision "on appeal," or from the date of the opinion reflecting that decision, whichever is later. COMAR 13A.01.05.02B(1)(a),(b). Nothing in the relevant provisions indicates that a decision may be appealed *before* it is made. Yet virtually all the PTO and related materials before me are dated—and presumably were generated—before the City Board voted on April 28, 2009, and thus long before the City Board's published Decision in June of 2009.

Only two PTO-related documents arguably post-date that Decision. The first, a June 17th e-mail from one Louis C. Fields, was explicitly directed not to the State Board but to the Mayor of Baltimore "[o]n Behalf of the HTES Community" as a whole, not the PTO.<sup>6</sup> The second, and most recent PTO-related document in the file, is a memo "To Whom It May Concern" dated June 22, 2009, from Linda Williams as PTO Chairperson. That memo seeks to keep the school open for the 2009-2010 school year as an "opportunity to prove ourselves."

There is no evidence that Mr. Fields or Ms. Williams ever mailed or delivered their documents to the State Board, or that the State Board ever considered or acknowledged them as requests for an appeal. COMAR 13A.01.05.02B(3), C. Had the State Board deemed either of them to constitute a request for an appeal, the date of its receipt presumably would appear on the transmittal form sent to OAH; however, the "Date Request for Hearing Received" line on that form is blank.

The State Board "may, on its own motion . . . dismiss an appeal for one or more of the reasons listed in §C (1) of this regulation." COMAR 13A.01.05.03C (2). Among the listed reasons is the conclusion that an appeal was not filed<sup>7</sup> "within the time prescribed by Regulation .02B . . ." COMAR 13A.01.05.03C (1) (e). In light of the preceding discussion, I conclude that any appeal in this case was filed outside the prescribed time.<sup>8</sup> I therefore shall propose that the captioned matter be dismissed under COMAR 13A.01.05.03C (1) (e), (2).

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<sup>6</sup> Mr. Fields elsewhere identified himself as a Community Partner of the School Improvement Team. See cover page, *Making HTES Better!*

<sup>7</sup> See COMAR 13A.01.05.01B(5) (definition of filing).

<sup>8</sup> Under COMAR 13A.01.05.07A(1), the State Board must transfer "[a]n appeal of a school consolidation, school redistricting, or school closing" to the OAH for a hearing pursuant to COMAR 13A.02.09. Prior to any transferal, however, there must be such an appeal. A local school system cannot convert a grass-roots effort to influence a local decision, or to urge reconsideration of a local decision, into an appeal simply by forwarding whatever documents it receives to the State Board.

b. OAH Regulations. The OAH rules of procedure include the following pertinent provisions:

.04 Transmittal of Request for Hearing.

A. Initiation. A hearing may be initiated:

- (1) On transmittal forms provided by the Office and accompanied by copies of all pertinent documents;
- (2) On forms provided by the agency; or
- (3) In any other manner permitted by law.

B. A hearing request shall include and be accompanied by the following:

- (1) The name of the person requesting the hearing;
- (2) The mailing address of the person requesting the hearing;
- (3) The notice of agency action or the name of the person or agency against whom the hearing request has been filed; and
- (4) Any fees, documents, or other information required by law.

COMAR 28.02.01.04A, B. This regulation not only requires that a hearing be requested but also requires that the name(s) and mailing address(es) of the party or parties making the request be included. As noted above, nothing in the file prior to the Answer mentions a hearing, and neither of the two post-Decision documents just discussed contains a mailing address. In light of these deficiencies, I conclude that a hearing was not properly requested in this case and the matter must be dismissed.

The following OAH procedural provision governs such a situation:

C. Dismissal.

- (1) Except for the required dismissal under §C(2) of this regulation, a case may be dismissed if an initial pleading is received without an item required by §B of this regulation.

(2) If a hearing request is received without the address of the person requesting the hearing, the case shall be dismissed. (emphasis added)

COMAR 28.02.01.04C. As an alternative to declaring a default, therefore, I shall propose that the captioned case be dismissed under this provision.

2. Mootness. Supposing that one or more Appellants might be found or assumed to have properly filed an appeal and requested a hearing in this case, the underlying matter nevertheless appears to be moot. All the documents written on behalf of HTES and/or the PTO sought to prevent the school from being closed for the 2009-2010 academic year. The closure took place last summer, however, and former HTES students presently are enrolled in other elementary schools. Because the rationale for objecting to closure—and the sole requested remedy—necessarily required keeping HTES open for at least one more year, I conclude that the captioned action has become moot.

The State Board "may, on its own motion . . . dismiss an appeal for one or more of the reasons listed in §C(1) of this regulation." COMAR 13A.01.05.03C(2). Among the listed reasons is the conclusion that an appeal "has become moot." COMAR 13A.01.05.03C(1)(b). As a second alternative, therefore, I shall propose that the captioned matter be dismissed as moot under COMAR 13A.01.05.03C(1)(b), (2).

#### PROPOSED ORDER

THEREFORE, I propose that it be ORDERED as follows:

1. The Appellant(s) are found to be in DEFAULT under COMAR 28.02.01.20; or, in the alternative;
2. The captioned matter shall be DISMISSED on the basis that an appeal was filed outside the required time under COMAR 13A.01.05.03C (1)(e), (2), a hearing was

improperly requested under COMAR 28.02.01.04B-C, and the underlying dispute is moot under COMAR 13A.01.05.03C(1)(b), (2).

January 22, 2010  
Date Decision Issued

\_\_\_\_\_  
Neile S. Friedman  
Administrative Law Judge

NSF/gr  
#110910

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