

KRISTA KURTH, ET AL.,
Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Order No. OR12-03

ORDER

On December 6, 2011, this Board issued Order OR11-12 making certain determinations regarding the contents of the record in this case. Appellants, Curtis B. Uhre and Maria Fusco, have asked for clarification of that order and continue to maintain that the record is incomplete.

OR11-12 (attached) remains in effect with the following clarifications:

The record of proceedings in this matter contains the recording, transcript, and minutes of those portions of the March 8, 2011 local board meeting that were open to the public during which the local board discussed and voted on the lease of the Brickyard Road site to Montgomery County, as well as the public comment portion of the meeting pertaining to the matter. The record also contains any publically available March 8, 2011 closed session minutes or reports pertaining to the discussion and vote on the lease of the Brickyard Road site to Montgomery County. To the extent that the local board has not made closed session recordings, transcripts, minutes, and reports publically available, they are not a part of the record in this case.

Appellants point out that the Open Meetings Act Compliance Board found that the local board violated the Open Meetings Act at its March 8, 2011 meeting. The Compliance Board found that the local board violated the Act by citing the wrong statutory reference for closure, by discussing matters outside the scope of the cited closing reference, and by failing to prepare meaningful minutes of its closed session. 7 OMCB Opinions 245 (2011). The Compliance Board noted, however, that there may have been a valid basis for the closure, which the local board claimed after the fact was to confer with legal counsel. It is not within the purview of the State Board to order the disclosure of closed session items. The provisions for disclosure of closed session recordings and minutes and general enforcement of the Open Meetings Act are set forth in the State Government Article, §10-501 *et seq.*

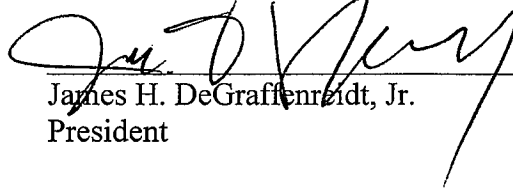
In OR11-12 we stated that the record contains the “non-privileged and non-confidential documents provided to the local board by the school system in preparation of the board’s consideration of action item 4.2.5 – Lease Agreement-Brickyard Road Site at the March 8 meeting.” This speaks for itself and cannot be construed to mean that the record may include any item that a local board member may have seen on the Brickyard Road lease issue over the years.

Appellants maintain that the record should contain a copy of a draft lease between the local board and Montgomery County that was before the local board during the March 8 vote. A draft lease was made available to the local board members, although it was not a part of the initial meeting packet provided to the board members for the March 8 vote. Local board member Berthiaume asked specific questions about the draft lease during the discussion period before the vote and those questions were entertained by a school system staff member. The staff member also made clear that the specific terms of the draft lease were not before the local board for a vote

because the final lease terms had to be negotiated. Rather, the vote before the local board was to give authority to the local board president and the superintendent of schools to execute a lease with Montgomery County for the construction of ball fields at the Brickyard Road site. Given that the lease was available to the board members and was made a part of the discussion, that item is a part of the record of proceedings in this case. Although the Appellants ask that the final lease agreement dated April 19, 2011 be included in the record, the record in this case is limited to what was before the board at the March 8, 2011 meeting.

Appellants express concern that the local board is withholding other unspecified documents, including confidential or privileged documents, and asks the local board to submit them or provide a basis for the withholding. It is our understanding that there are no such documents.

MARYLAND STATE BOARD OF EDUCATION



James H. DeGraffenreid, Jr.
President

Appeals2012/Orders/kurthrecord2

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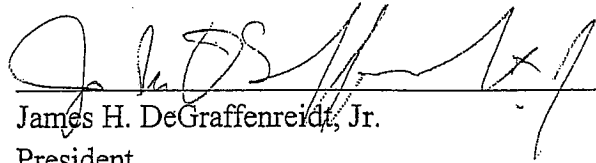
Various Montgomery County citizens have appealed the decision of the Montgomery County Board of Education (local board) to lease a parcel of land, known as the Brickyard Road site, to Montgomery County for the creation of soccer fields. A preliminary issue has arisen pertaining to the record of the case before the State Board. In a State Board appeal, the local board must transmit to the State Board "the record of the local proceedings." COMAR 13A.01.05.03E(1). Appellants dispute that the local board has submitted the entire record in this case.

After carefully reviewing the submissions by the parties on the issue, on this 6th day of December, 2011, we hereby Order that the record of proceedings in this matter contains the following items:

- The recording, transcript, and minutes of those portions of the March 8, 2011 local board meeting during which the local board discussed and voted on the lease of the Brickyard Road site to Montgomery County, as well as the public comment portion of the meeting pertaining to the matter. (We note that Appellant Maravell has provided a transcript of the selected portions of the local board's meeting. The State Board appeal procedures do not require the local board to provide a transcript of the meeting in a case such as this. Rather, COMAR 13A.01.05.03E(2)(a) requires the local board to provide a transcript of a stenographic record of an evidentiary hearing before the local board or its designee. There was no evidentiary hearing in this case.)
- The Resolution that was adopted by the local board regarding the lease on March 8, 2011.

- The non-privileged and non-confidential documents provided to the local board by the school system in preparation of the board's consideration of action item 4.2.5 – Lease Agreement-Brickyard Road Site at the March 8 meeting. The local board represents that this consists of the following: (1) Superintendent's memorandum and proposed resolution; (2) written testimony on the Brickyard Road lease issue submitted by speakers during the public comment portion of the meeting; (3) letter from County Executive regarding site; and (4) the amendment to the Superintendent's proposed resolution distributed by Ms. O'Neil during the meeting.

MARYLAND STATE BOARD OF EDUCATION



James H. DeGraffenreid, Jr.
President