

DELAWARE STATE BOARD OF EDUCATION

IN RE:)
)
NEIGHBORHOOD SCHOOL)
PLAN OF THE CHRISTINA)
SCHOOL DISTRICT)

DECISION

February 21, 2008

The State Board of Education (the “State Board” or “Board”) entered its first *Decision* and Order in this matter on March 28, 2002. (“*Decision I*”). The Board approved several of the Neighborhood School Plans presented to it, but denied approval of the Appoquinimink, Christina, and Red Clay Consolidated School District plans. It directed the Christina and Red Clay Consolidated Districts to resubmit plans in accordance with the *Neighborhood Schools Act of 2000* (“NSA”). The Appoquinimink School District was permitted, but not required, to resubmit a plan to the State Board. All three Districts resubmitted plans. On February 20, 2003, the Board approved the Appoquinimink and Red Clay Consolidated School District plans, but denied approval of the Christina submission as neither plan submitted by the District met the legal requirements of the NSA. (“*Decision II*”). In May, 2007, the Court of Chancery mandated that Christina submit an Act-compliant Neighborhood School Plan to the State Board of Education. Christina resubmitted its plan in November 2007. This is the Board’s Decision and Order approving Christina’s plan.

I. THE PROCESS USED BY THE STATE BOARD.

The State Board is subject to the *Administrative Procedures Act* (“APA”) in exercising its statutory powers. 29 *Del. C.* § 10161(a)(ii). The State Board’s review and approval process under the NSA is a case decision under the APA. 29 *Del. C.* § 10102(3). Accordingly, the proceedings in this matter have been conducted as required by Subchapter III of the APA and its own hearing rules. The Board also determined that its consideration of the plans involved a matter of general public interest, such that formal, public evidentiary hearings should be held. 29 *Del. C.* § 10124.

The Board held public evidentiary hearings on the Christina plans on December

14, 2007. In addition, the Board held two more hearings to receive public comment on Christina's Plan: one was conducted in the City of Wilmington and one in the district, outside the City's boundaries.

Notice of all of the hearings was sent to the parties and published in newspapers as required by the APA. 29 *Del. C.* §§ 10122, 10124. The State Board also posted the District's Plan on its website, along with transcripts of the hearings as they became available. The Board received public comment on Christina's Plan, both at the public hearings and through written submissions.

The Board deliberated and voted on Christina's Plan on January 17, 2008. It reached a unanimous decision approving the Plan.

II. THE REQUIREMENTS OF THE ACT.

The NSA requires that the school boards of the Brandywine, Colonial, Christina, and Red Clay Consolidated School Districts each develop a Neighborhood School Plan for their district. 14 *Del. C.* § 223(a). The NSA requires that each district hold at least five public hearings on their proposed plan before submitting it to the State Board for "review and approval." 14 *Del. C.* § 223(c) and § 223(d). A district's plan must address (1) the grade configurations of its schools; and (2) the way in which the district's students are assigned to attend those schools.

Unless a district has only two school configurations, the NSA requires that a district's plan "consist of the following grade configurations:

- (1) A lower-level school, or elementary school, consisting of either grades K-5 or grades K-6;
- (2) A middle-level school, or junior high school, consisting of either grade 6 or 7 to grade 8 or 9; or [sic]

- (3) An upper-level school, or high school, consisting of either grades 9-12 or grades 10-12.”

14 *Del. C.* § 223(b).

Districts having only two school configurations were permitted to submit a plan with any combination of grade levels. *Id.* The Act also permits a district to submit “an alternative neighborhood school plan” in addition to a plan meeting the specified grade configurations. Alternative plans may be presented to the State Board “[t]o the extent a district concludes that an alternative configuration would better accomplish the goals of this [Act]” *Id.*

In addition to the configuration requirements, a district’s plan must:

“assign[] every student within the district to the grade-appropriate school closest to the student’s residence, without regard to any consideration other than geographic distance and the natural boundaries of neighborhoods. Notwithstanding the above, the Plan may assign students to schools based on factors other than geographic distance and natural neighborhood boundaries if a substantial hardship to a school or school district, student or a student’s family exists; provided, that no student shall be assigned to any school on the basis of race and school assignments shall be made without regard to the racial composition of the schools.”

The NSA does not require that districts build new schools. Districts whose plans are approved by the State Board are eligible for a one-time payment from the State’s General Fund “for transition costs incurred by the district in implementing the Plan.” Section 223(d). Payment of transition costs is subject to annual appropriation and to reimbursement criteria determined by the State Budget Director and Controller General, in consultation with the Department of Education. Districts whose plans are not approved by the State Board must be notified in writing “why the plan was not approved.” 14 *Del. C.* § 223(d). If a plan submitted by one of the northern New Castle County districts (Brandywine, Colonial, Christina and Red Clay) is not approved, it must

be resubmitted to the State Board “in accordance with [the Act]” within sixty days of the notice of the State Board’s denial. *Id.*

III. THE BURDEN AND STANDARD OF PROOF.

The burden of proof in these proceedings is on the district submitting a neighborhood school plan or plans for review. 29 *Del. C.* § 10125(c). The NSA is silent as to the standard of proof required for approval of a plan. Generally, the standard of proof in civil and administrative proceedings is by a preponderance of the evidence.¹ Preponderance of the evidence is evidence that makes it more likely than not that a proposition is true.² The conclusion that the “preponderance of the evidence” rule applies to these hearings is consistent with the standard applied in other administrative settings. The NSA itself is silent on the standard of proof. Absent a statutory directive to the contrary, the Board believes that it should apply the standard of proof commonly used in other civil settings when evidence is first tested. As a consequence, the Board’s factual findings on Christina’s Plan apply the preponderance of the evidence standard, i.e., the Board finds it more likely than not that the facts presented in this Decision are true.

IV. FINDINGS AND CONCLUSIONS.

The Board now turns to a review of the Christina plan.

A. Summary of the Evidence and Public Comment

Christina submitted its Plan to the State Board on November 15, 2007. Dr. Lillian Lowery, Superintendent of the District, testified in support of the Plan at the District’s

¹ *Cathleen C.Q. v. Norman J.Q.*, 452 A.2d 951, 954 (Del. Supr. 1982); *Attix v. Voshell*, 579 A.2d 1125 (Del. Super. 1989) (DMV hearings); *Diamond Fuel Oil v. O’Neal*, 734 A.2d 1060, 1062 (Del. Supr. 1999) (workers compensation hearings).

² *Shipman v. Division of Family Services*, 454 A.2d 767, 768 (Del. Fam.1982).

December 14, 2007 evidentiary hearing and entered several documents into the record, including the District's complete written plan, with supporting documentation; Dr. Lowery's PowerPoint; and letters of support from Christina School District legislators, Mayor Baker and City Council President Theodore Blunt, Jea Street, and City Council Member Hanifa Shabazz. The State Board received considerable public comment on Christina's Plan almost all of which was overwhelming in favor of the Plan. Christina's public comment is summarized in more detail below.

B. Findings of Fact

Christina School District is the only reorganized school district in Delaware containing two large, non-contiguous areas. (Plan-2).³ The District is divided by portions of the Red Clay and Colonial Districts. The two areas are nearly fifteen miles apart and Interstate 95 is the main connection between them. The District's boundaries have been in place since 1981 and are the result of Delaware's federal desegregation litigation. (Plan-2). Christina has twenty-seven schools and out of approximately 29,190 school age children living in the Christina district, the current student enrollment in Christina is 17,292 students. (T-12).⁴ In 2007-2008, 48% of the Christina student population qualified for free and/or reduced lunch. (*Id.*)

The District's schools are currently aligned into sixteen elementary schools serving grades K-4 or K-1; five intermediate schools with grades 4-6; three middle schools containing grades 7-8; and three high schools serving grades 9-12. (Plan-9). Its student assignments are complex and rooted in the "9-3" plan implemented as part of the

³ "Plan-X" refers to page numbers of the Christina School District Neighborhood Schools Plan Submission No.3 dated November 15, 2007, entered at the December 14, 2007 evidentiary hearing as Exhibit 1.

⁴ "T" references are to pages of the transcript of the December 14, 2007 evidentiary hearing before the State Board.

desegregation litigation. Briefly, students in grades K-4 living in Newark and its suburbs attend suburban elementary schools. Students in grades K-1 living in Wilmington attend K-1 schools in the City. Wilmington children in grades 2-3 attend suburban (K-4) elementary schools. City students in grades 4-6 are assigned to intermediate school in the City. Suburban students in grades 5-6 also attend school in Wilmington. All students in grades 7-12 attend middle and high school in Newark and its suburbs. (Plan-9; T-14). Currently, students residing in Wilmington can attend up to five different schools and suburban students four schools during their education in Christina. (*Id.*)

Christina submitted NSA plans twice to the State Board: November 2001 and May 2002. Both submissions resulted in plans that were not approved. In 2004, Christina implemented the Transformation Plan. (Plan-4; T-14). This plan was put together to begin to address concerns parents voiced about transitions between schools and long rides for the District's youngest students. The plan created at that time provided the following: (1) limited fifth grade choice seats in some suburban elementary schools to be filled by lottery; (2) limited sixth grade choice seats at Shue to be filled by lottery; (3) limited second and third grade choice seats at three Wilmington Intermediate Schools; and (4) grades K-1 at Elbert Palmer in Wilmington. (T-14).

In 2007, the District adopted a Strategic Plan in which it proposed a Facilities Use Plan that called for completing the 2004 Transformation Plan and reconfiguring schools into K-5 elementary, 6-8 middle, and 9-12 high schools. (Plan-5; T-15-17). The Facilities Use Plan further proposed creating additional elementary and middle school seats in the suburban portion of the District to facilitate the proposed grade configurations and the development of space for full day kindergarten by combining Porter Road

Elementary and Astro Middle schools into a 1200 seat K-8 school. Lastly, the Plan called for the closing of Elbert Palmer School in Wilmington due to falling enrollment. (Plan-5).

In the spring of 2007, concerned parents in the District filed an action in the Court of Chancery requesting an injunction blocking the proposal to close schools in the Wilmington portion of Christina based on the Facilities Use portion of the 2007 Strategic Plan. (T-17-18). In a May 31, 2007 decision, the Court of Chancery granted the requested injunction and ordered the District to submit a third Neighborhood School Plan to the State Board. (Plan-5).

Plan Development

Between July 2, 2007 and September 11, 2007, Christina administrators hosted a series of public design workshops to set parameters for the discussion, identify potential hardships and challenges for the District, review and discuss options and generate plan options to bring back to the Christina Board of Education. (Plan-6; T-19-21). The design workgroup consisted of parents, employees, political leaders, the University of Delaware, and the local business community. (Plan-6; T-23). Over the course of their eight meetings, the design workgroup reviewed current and historic Christina student data, student assignment options, current and historic Christina feeder patterns, facilities and building capacities, Christina construction projects, referendum possibilities and the NSA. (Plan-6).

Christina hired the Center for Applied Demography and Survey Research (CADSR) from the University of Delaware to assist in the analysis of the District's demographic data and to generate the mapping required for designing a NSA compliant

plan. (Plan-6-7; T-22). The design Workgroup initially reviewed “closest to home” maps generated by CADSR using geography only as a method of assigning students to schools. These maps were used as a starting point to development Christina’s Neighborhood School Plan or the “Community Consensus Plan (CCP).” (Plan-7-8; T-43-44).

The CCP was brought to the Christina Board of Education at its regularly scheduled public board meeting on September 11, 2007, along with an alternate plan. (Plan-8). Both plans were approved unanimously. (*Id.*) Christina then held five NSA mandated public hearings presenting both the CCP and the alternate plan to the public and taking feedback. (*Id.*) The public feedback was presented to the Christina Board at its regularly scheduled public meeting on October 9, 2007. (*Id.*) A Special Election for Capital Bond Referendum for Christina was held on November 6, 2007, and with overwhelming public support, the CCP was endorsed by the Christina community. (*Id.*) Thereafter, Christina submitted the CCP to the State Board as its third Neighborhood Schools Plan submission.

Christina’s Neighborhood Schools Plan

The basic components of Christina’s Plan are: (1) to create grade configurations K-5, 6-8, 9-12 district wide; (2) create space for full day kindergarten district-wide; (3) utilize district facilities and resources as efficiently as possible; (4) minimize transitions for students; and (5) assign students to schools as close to their homes for as many years as possible. (Plan-17; T-28-29). The Plan calls for two major changes to facilities in Christina: (a) the conversion of Bayard to operate as a middle school serving grades 6-8 in Wilmington; and (b) completion of the Porter Road Elementary School on Route 40.

(Plan-17). The local funds and match money required to access the State funding still available for the Porter Road project was raised through the successful Capital Referendum Christina held on November 6, 2007. (*Id.*)

Bayard was constructed in 1973 as a Middle School/Junior High School in the western portions of Wilmington. (Plan-11). Christina has operated Bayard as an elementary/intermediate school serving K-1 and 4-6 grade students for over 20 years. (*Id.*) In order to use Bayard as a “grade-appropriate” assignment for middle school students in Wilmington, renovations will be needed. The District estimates that \$6M in renovations is needed to convert Bayard into a middle school. (Plan-12).

The District contends that utilizing Bayard for middle school students in grades 6-8 will provide Christina’s Wilmington families with the opportunity to attend schools closest to their homes for nine years (K-8). (Plan-12). In addition, using Bayard as a middle school will create capacity in the District’s three remaining middle schools to seat all of the 6-8 graders in those areas of the District. (*Id.*) The Bayard conversion was supported by the November 6, 2007 referendum and the reconfiguration is scheduled to be completed by August 2008. (*Id.*)

Christina’s proposed attendance zones for assigning students to its elementary schools are a function of geographic distance, natural neighborhood boundaries, and capacity of the schools. Most students are assigned to the elementary school closest to their homes. (T-29). Where, however, to do so would result in overcrowding or under-utilization, the District has attempted to balance enrollment to take into consideration these concerns and allow some space for growth at each site. If all students were assigned to the elementary school closest to their home, for example, Leisure and

Marshall Elementary Schools would be at 155% and 215% of capacity respectively while McVey and Jones would be at 41% and 48% respectively. (Plan-12-13). Likewise Pulaski Elementary would be at 97% while Elbert/Palmer would be at 29% of capacity. (*Id.*)

As noted earlier, all students in grades 9-12 attend high school in Newark and its suburbs. Christina has no grade appropriate building for a high school in the Wilmington portion of the District. (Plan-15; T-54). Historically students in Wilmington have attended all three Christina suburban high schools. Under the Plan, all students grades 9-12 district wide will attend one of the three existing high schools grouped by elementary or middle school cohorts wherever possible. (T-30). Again, the District presented data to show that assigning all Wilmington students to the high school closest to their home would result in all Wilmington students being assigned to Christiana High School, creating significant over crowding (136%) while leaving Glasgow High School at only 57% of capacity. (Plan-13; T-54).

The District's Plan does not use race, or the racial makeup of a school, as factors in assigning students to the school. (T-55).

Public Comment

As noted, the State Board received considerable public input on the District's submission. Twelve people spoke at the two public hearings held by the State Board. All, some with reservations which will be discussed below, urged the State Board to approve the Christina Plan.

The common sentiment expressed was the District through Dr. Lowery's leadership engaged the community – both suburban and city - in the development of the

Plan. Most stressed the burden of bussing between the City of Wilmington and Newark, up and down, Interstate 95, on District students and families. Most spoke positively in favor of neighborhood schools and the impact of having their children closer to home will have on their ability to participate more fully in their children's education. One resident spoke of empowerment, noting the strong public participation and ownership of the Plan, the increased ability for students and parents to actively participate in various educational opportunities and the benefits of educational continuity.

Three residents while supporting the Plan did raise questions about its implementation. One questioned the District's decision to split the Scottfield development between Jenny Smith Elementary and Brookside Elementary Schools and urged the District to consider assigning students in the development to one school. The Board's role in these proceedings is limited to reviewing the Plan presented to it by the District and whether the Plan presented meets the requirements of the NSA. The State Board finds the method used to decide a school's capacity was a reasonable one and that the process Christina used to assign students to schools once target capacity was established was also reasonable.

Another resident, a 6th District City Counsel person representing the area surrounding Bayard, raised reservations about the increase of high poverty concentrations of students in the city of Wilmington. Under the Christina's Plan, the concentration of students eligible for free and reduced lunch will be increased in the four Wilmington elementary schools and one middle school. The percentages increase from just over 50% in the 2006-2007 school year to between 75% and 83% for the 2008-2009 school year. (Plan-22). Christina recognizes this challenge and has committed to working with the

Department of Education to determine if these schools will qualify for the Universal Feeding Program. In addition, Christina is pledged to commit to a significant portion of its Title 1 funding to the five Wilmington schools and to pursue E-rate funding for upgrading technology in Bayard. (Plan-22-23). While the Board shares the concerns expressed about the educational impact of concentrated poverty and socio-economic stratification, the Board's role in these proceedings is limited to reviewing the Plan presented to it by the District. Christina does not ask for relief from the NSA on the basis of socio-economic factors. The District acknowledges the challenges in providing quality education to at-risk students, but believes that it can overcome these challenges through the proper distribution of resources. (T-33-39; 50-51).

The third resident raised concerns over the conversion of Bayard into a Middle School and its affect on the surrounding neighborhood. The State Board notes that the District is committed to addressing the community's security concerns.

C. Analysis and Conclusions

Christina's Plan reorganizes its schools so that elementary schools contain grades K-5, and its middle schools grades 6-8. Its high schools will continue to include grades 9-12. In short, the Plan meets the grade configuration requirements in Section 223(b)(1), (2) and (3) of the NSA.

The State Board also concludes that the Plan satisfies the student assignment requirements in Section 223(a). First, the record demonstrates that most K-8 students in the District are assigned to the elementary or middle school "closest to the student's residence without regard to any consideration other than geographic distance and the natural boundaries of neighborhoods." Dr. Lowery testified that the attendance zones

will result in most children attending the school closest to their residence and the attendance zone maps confirm this.

Christina, however, also considered school capacity in drawings its attendance zones. As a result, some children may be assigned to schools that are not the closest to their homes or within their neighborhoods. Section 223(a) of the NSA acknowledges the necessity of such assignment “if a substantial hardship to a school or school district, student or a student’s family exists.” The District has demonstrated that assignments based strictly on distance and neighborhood boundaries would result in overcrowding in some schools and underutilization of other schools, either immediately or in the near future.

The State Board has previously found that overcrowded schools constitute a substantial hardship to the students in them and possibly the school itself. (*Decision I, Seaford School District, Section IV.B.*) Likewise, the State Board concludes that underutilization of schools constitutes a substantial hardship in that a minimum student enrollment is needed in order for schools to generate the educational units needed to hire administrators, adequate teachers and other academic support. The Board thinks it relatively evident that underutilized schools risk the health and safety of students and may result in an inequitable education for those students attending them. For example, if insufficient units are generated for a principal, the District would need to pull an administrator from another school thereby increasing the difficulty of supervising and monitoring students (a particular concern in elementary schools); and reduction in staff often results in increased class size and an inability to provide special programs to students. This list is not exhaustive, but is sufficient for the State Board to conclude that

underutilization is a substantial hardship for the students and the school as well. As a result, Christina's Neighborhood School Plan meets the requirements of Section 223(a) even though it uses school capacity as a factor in making student assignments.

V. CONCLUSION

The public comment in favor of Christina's Plan was impassioned. It was also articulate, focused and informed. The State Board's indelible impression was of a cohesive community intensely committed to its schools, not the way they once were, but the way they want them to be. The State Board recognizes the unique and difficult challenges that Christina faces. Its non-contiguous boundaries, the lack of building capacity related to its student population in Newark and the suburbs, and the changing demographics of its student population over the last 25 years posed significant impediments to the development of a neighborhood schools plan. District staff, parents, community leaders, and the local business community came together to develop a plan that takes into consideration **all** students district-wide.

Christina's Plan meets all the requirements of the NSA and the State Board approves it as the District's Neighborhood Schools Plan.