

**DELAWARE STATE BOARD OF EDUCATION**

**IN RE:** )  
 )  
**NEIGHBORHOOD SCHOOL PLANS** )  
**OF DELMAR, SEAFORD,** )  
**APPOQUINIMINK, COLONIAL,** )  
**CHRISTINA, RED CLAY** )  
**CONSOLIDATED AND BRANDYWINE** )  
**SCHOOL DISTRICT.** )

**DECISION AND ORDER**

**Red Clay Consolidated School District  
Neighborhood School Plan  
(Elementary School Assignments)**

**Dated: June 16, 2005**

On August 3, 2004, the Red Clay Consolidated School District requested that the State Board of Education (the “State Board” or “the Board”) review and approve its most recent neighborhood school plan. At the State Board’s direction, the District submitted a comprehensive description of its plan on November 5, 2004. This is the State Board’s Decision and Order approving the District’s plan.

**I. BACKGROUND AND NATURE OF THE PROCEEDINGS.**

The *Neighborhood Schools Act* (the “NSA” or “the Act”) became law in 2000. Since then, the State Board has conducted many evidentiary and public hearings to review plans from several school districts. The State Board has entered three prior decisions and orders in this matter. On March 28, 2003, the Board approved several neighborhood school plans presented to it, but refused to approve the Appoquinimink, Christina and Red Clay Consolidated School Districts’ plans (“*Decision I*”). On March 20, 2003, the Board entered a second decision and order (“*Decision II*”). It approved the alternative neighborhood school plan resubmitted by the Appoquinimink School District, but declined to approve the plans resubmitted by Christina. At that time, the Board also noted that it would enter another decision and order addressing its findings on Red Clay’s resubmission. On April 17, 2003, the Board rejected Red Clay’s neighborhood schools plan for the second time, concluding that the District had failed to show that the plan met the requirements of the Act (“*Decision III*”).<sup>1</sup>

**Change in the Law**

The neighborhood schools law was amended in July 2004. The amendment added a new subsection to Section 223 of the original law.<sup>2</sup> The new subsection provides:

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<sup>1</sup> The legal standards used and factual findings reached in Decisions I, II, and III are incorporated into this Decision to the extent necessary to review the current plan.

<sup>2</sup> 14 *Del.C.* §223.

“(i) Notwithstanding any requirement of this subchapter, no district shall be required to submit or implement any Neighborhood School Plan, for grades 6-12 if the district shall, for the 2002-2003 school year, enroll 40% of more of its students through the School District Enrollment Choice Program (“Choice Program”) established in Chapter 4 of this title. For any district not meeting this test in the 2002-2003 school year, that district may qualify for this exemption by demonstrating that it has enrolled 40% of its students through the Choice Program in the immediately preceding school year.”

14 *Del.C.* §223(i). The amendment also authorized the State Board to “consider a district’s plan up to a maximum of three times.” 74 *Del.Laws*, c.335, section 4.

### **Why Earlier Plans Were Rejected**

The two plans Red Clay previously submitted to the Board were essentially the same. They addressed all schools and grade levels in the District; they emphasized school choice; and they utilized feeder patterns established largely during federal desegregation litigation. The State Board rejected the District’s first submission primarily because it failed to satisfy the student assignment policies required by Section 223(a) of the NSA. (*Decision I, pages 40-41*). The Board rejected the District’s second submission because it continued to assign students to schools on the basis of feeder patterns that unjustifiably reflected considerations other than geographic proximity and natural neighborhood boundaries. (*Decision III, page 15*). The Board also found that the resubmitted plan would permit students to be reassigned to maintain average racial composition in each school, in violation of the NSA. (*Decision III, pages 18-19*).

The plan Red Clay now proposes addresses only grades K-5, as permitted by new Section 223(i). It differs significantly from the District’s earlier submissions in other ways as well, as detailed later in this Decision.

### **The Process Used By The State Board**

The State Board has reviewed Red Clay's current plan using the same process applied to its earlier submissions. The Board conducted an evidentiary hearing on November 18, 2004. Superintendent Dr. Robert J. Andrzejewski, and Dr. Mark Zawislak, Assistant Superintendent for Policy and Planning, testified about the proposed elementary school plan on behalf of the District. Red Clay also submitted detailed and comprehensive documents describing and supporting its proposal.

The State Board also held two hearings to receive public comment, one on November 30, 2004, within the boundaries of the District, and one on December 1, 2004, in the City of Wilmington. All hearings were noticed as required by the *Administrative Procedures Act*, 29 *Del.C.* §10101, *et seq.* The District's plan was posted on the State Board's website and copies were made available to the public at all hearings. The Board received some dozen written comments about Red Clay's elementary school plan. The comments were overwhelmingly in support of the District's proposal.

## **II. FINDINGS OF FACT.**

Red Clay's current neighborhood schools proposal complements and finalizes the District's existing elementary expansion project. (See *Decision I*, page 31). Under the plan, each of the District's thirteen existing elementary schools will contain grades K-5 by the beginning of the 2005-2006 school year. (RC Ex. 2; T-31).<sup>3</sup> The District will also open a new K-5 elementary school, North Star, in the northwest corner of the District in 2005. (RC Ex. 2). In addition, the District's plan will offer K-5 continuity in its programs for English language learners ("ELL") and its special programs for children with disabilities. (RC Ex. 2; T-31).

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<sup>3</sup> References are to exhibits submitted by the District and to pages in the transcript of the November 18, 2004 evidentiary hearing, respectively.

### **The District's Planning Process**

The District engaged in extensive public outreach to develop its neighborhood school plan. It posted proposals on its website, distributed several thousand pamphlets in English and Spanish, published information on local television and radio programs and answered questions by electronic mail. (RC Exs. 6, 8, 9, 10; T-27-30). It conducted several public meetings, some in Spanish, throughout the District and contracted the University of Delaware's Education Research and Development Center to collect and summarize public input. (RC Ex. 7; T-18-20; 74). The public meetings were well attended and the District modified parts of its original proposal based on public reaction. *Id.* Once the plan was final, the District sent letters to all parents, informing them of their attendance zone under the plan and, for those students with a new attendance zone, asking whether they planned to remain at their current school or move to their newly assigned building. (RC Ex. 6; T-29).

### **Geography and School Capacity**

Red Clay's resident school population is concentrated along the Kirkwood Highway and many of its schools are in the Kirkwood corridor. (RC Ex. 3, 13 (maps); T-13). The District also has very dense population centers and significant school capacity in the City of Wilmington. *Id.* (and T-40). While the District's fastest growing segment is in the Route 7 and Limestone Road area, the District's northern and western quadrants remain much less densely populated than areas closer to the City. (T-13).

The District attempted to design its neighborhood school plan to use 75 to 80% of the instructional capacity of each of its elementary schools; this range anticipates future growth and provides some continued choice capacity. (T-12-14,18,38). The plan largely achieves those capacity goals. Two schools will be very near capacity (Baltz at 98% capacity and Marbrook at

97% capacity (RC Ex. 4)).<sup>4</sup> Two schools will be significantly below capacity (Warner at 54% capacity and Richardson Park at 67% capacity).<sup>5</sup> The District's other elementary schools will be in the 70 to 80% capacity range. *Id.*

### **Student Assignments**

In addition to capacity considerations, the District attempted to design its attendance zones to: (1) assign students to schools close to home; (2) avoid dividing residential developments; and (3) minimize changes to existing school assignments for residential developments. (T-10-12). During implementation of its neighborhood school plan, the District's elementary students will be permitted to continue in the school they currently attend through 5<sup>th</sup> grade. (RC Ex. 2; T-27).

The District drew the proposed attendance zones by assigning the neighborhoods nearest a school to the school until the capacity target was reached. (T-13-14). Maps supplied by the District demonstrate that all but one of the proposed attendance zones is contiguous. (RC Exs. 3, 13, maps). For the most part, residential developments are assigned entirely to one school. (RC Ex. 9, list of developments). Attendance zones are smaller in the higher density areas of the City and along Kirkwood Highway and larger in the more sparsely populated areas of the District. Major roads form the boundaries of most of the attendance zones. (RC Exs. 3, 13, maps).

Red Clay's plan does contain a non-contiguous attendance area for Warner Elementary (RC Ex. 10 (maps)). The northeastern part of Warner's attendance area (where the school building is located) will be separated from Warner's southeastern portion by a peninsula assigned to Highlands Elementary. *Id.* The peninsula is approximately eight blocks wide where it

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<sup>4</sup> Baltz Elementary also houses some of the District's offices and additional student programs (pre-kindergarten, a bilingual assessment center and a Title I program). (T-18; 44) These activities reduce the school's instructional capacity, but can also be easily relocated to increase capacity as necessary in the future. *Id.*

<sup>5</sup> Warner Elementary originally served as both an elementary and middle school and its physical plant is large in comparison to the District's other elementary schools. (T-18)

divides Warner's attendance area, along the Brandywine River in the Trolley Square neighborhood. (RC Ex. 10, "Revision to Highlands Attendance Zone"; T-40) Fewer than fifty students live in the peninsula. (T-42).

The District originally planned to assign the Trolley Square section of the peninsula to Warner Elementary, to make its attendance area geographically contiguous. (T-40). Many district residents objected. They stressed that Trolley Square had always been assigned to Highlands Elementary and was effectively a part of the other neighborhoods assigned to Highlands. *Id.* As a result of public input, Red Clay revised its plan to create the Highlands peninsula between Warner's two main attendance areas. The District concluded that its revision was appropriate in light of existing neighborhood alignments, the geographic proximity of Highlands to Trolley Square and the relatively few students affected by the change. While the revision caused Warner to be slightly further under capacity for instructional purposes, it also makes it easier for the District to maintain an administrative site in the City. (T-41) Red Clay also plans to make Warner's large building the hub of other, non-instructional services for City families. *Id.*

Finally, "Policy JECD" is no longer used in making school assignments. This policy addressed the racial balance in the District's schools. In *Decision III*, the State Board concluded that Policy JECD violated Section 223(a) of the NSA because it would permit the District to reassign students when the racial composition of a particular school varied significantly from District averages. (See *Decision III*, page 19). The District amended its choice policy on October 20, 2004 to remove this provision. (RC Ex. 12, page 4). Nor is there any other evidence suggesting that Red Clay's current neighborhood schools plan would assign any student to a school on the basis of race or the racial composition of its schools.

### **English Language Learner Programs**

Red Clay has a significant, and growing, Hispanic and Latino student population. It currently provides ELL programs at two of its schools: Lewis Elementary (for grades K-3) and Marbrook Elementary (for grades 4 and 5). The District's proposed Neighborhood School plan would double the number of elementary schools offering ELL programs and offer grades K-5 in each program. (T-16) Specifically, Lewis Elementary will continue to provide an ELL program, which will be expanded to include students in grades K-5 who would otherwise attend Lewis, Shortlidge, Warner and Highlands Elementary. Baltz Elementary will offer an ELL program to its students. Forest Oak Elementary will provide ELL services to its own students and students from Richardson Park and Richey Elementary. All other K-5 students in the District who need ELL services will attend Marbrook Elementary. (T-17). The District selected Lewis, Forest Oak, Baltz and Marbrook for ELL programs because concentrations of ELL students live in the geographic areas served by these schools. (T-17)

### **School District Enrollment Choice Program**

As noted, Red Clay's plan applies only to its elementary schools; the plan does not address how students in grades 6-12 will be assigned to schools or which grades will be offered in the District's middle and high schools. The District relies extensively on its school choice policy to make school assignments for its own resident students and for the students it accepts from other districts. (T-12; *see also Decisions I and III*) In the 2002-2003 school year, for example, the District enrolled approximately 44% of its total student enrollment (the number of students enrolled in the District as of the September 30<sup>th</sup> unit count, regardless of their residence) through its school choice program. (RC Ex 5; T-59-60). This percentage rises to 47% when

students assigned to special programs such as ELL sites, intensive learning centers and center-based programs for children with disabilities, are excluded from the calculus. *Id.*

### **Public Comment**

As noted, the State Board received a dozen or more comments about Red Clay's neighborhood schools plan. Most comments favored the plan and urged the State Board to approve it. Most mentioned that the creation of K-5 elementary schools will offer students more continuity and stability than the earlier, more fragmented configurations. Several expressed relief that school assignments would be based primarily on residence rather than choice. One comment praised the District's public outreach and its receptivity to community suggestions in developing, revising and explaining the Plan.

A few comments criticized aspects of the Plan's transportation policies. As part of plan implementation, the District will permit elementary students to stay at their current school even if that school is no longer the student's assigned attendance-area school under the plan; however, parents will be responsible for transporting students to a bus stop for the school the student actually attends. Similarly, families who use day care centers located outside their new attendance area will be responsible for getting their child to a bus stop within the attendance area. The State Board recognizes the difficulty that transportation poses for families of elementary school children, particularly those who use day care centers to provide before and after school care. Parents throughout the State share these difficulties and school districts address them in a variety of ways. The NSA does not include specific transportation requirements and the transportation policies in Red Clay's plan do not impede implementation of the plan's other critical components. The transportation difficulties identified through public comment are mostly

an effect of implementing the new plan and should dissipate as families and community resources adjust to new attendance areas.

### **III. ANALYSIS AND CONCLUSIONS.**

Red Clay's current neighborhood school plan remedies the findings and concerns that prevented the State Board from approving the District's two earlier submissions. Most critically, the District now proposes to assign students to school based primarily on geography, with school choice a secondary, and optional, consideration.

The factual findings in the preceding section largely demonstrate that Red Clay's plan complies with the statutory requirements imposed by the legislature. First, the District has established that more than 40% of its student population for the 2002-2003 school year was enrolled through the School District Choice Program. The Choice Program established in Chapter 4 of the Education Code contemplates both interdistrict and intradistrict choice options. (See, for example, 14 *Del.C.* §405, establishing the criteria for interdistrict choice policies, and 14 *Del.C.* §414, permitting intradistrict choice). Some 44% of the total number of students enrolled in the District use the District's choice program either to change the Red Clay school they would otherwise attend, or to enroll in Red Clay even though they reside in the geographic boundaries of other school districts. Accordingly, the 2004 revision to the NSA relieves Red Clay from submitting a neighborhood school plan for its schools serving grades 6 to 12. (14 *Del.C.* §223(i)).

Second, the District's plan realigns all of its elementary schools so that each offers grades K-5. In addition, the District's special programs for children with disabilities and for ELL students will offer children in those programs K-5 continuity. ELL programs will be offered at

four different schools, chosen for their proximity to concentrations of ELL students. The State Board concludes that Red Clay's plan satisfies the grade configuration requirements imposed by Section 223(b) of the NSA.

The Board also finds that Red Clay's plan meets the student assignment requirements of the Act. The current plan differs from Red Clay's earlier submissions because it *first* assigns students to schools based on geography, neighborhood boundaries and hardship considerations. It *then* permits students to change schools through its choice program. In the current plan, most K-5 students will attend the elementary school geographically closest to their home. Maps submitted by the District demonstrate that the attendance area for each of Red Clay's thirteen elementary schools captures most of the area immediately surrounding the school. (RC Ex. 3). Red Clay also demonstrated that it used the natural boundaries of neighborhoods to further delineate attendance areas. The District has specifically identified the neighborhoods assigned to each school and few developments have been split between schools.

Red Clay's current plan does contain a non-contiguous attendance area. The area assigned to Warner Elementary is bisected by a peninsula of land assigned to Highlands Elementary, as further detailed in the preceding section. The State Board concludes that Highlands and Warner's attendance areas are consistent with natural neighborhood boundaries, as required by Section 223(a). The State Board has previously recognized that neighborhoods are often distinguished by naturally occurring boundaries (like waterways and tree lines) and by man-made structures. (*Decision I*, page 10). It has also implicitly recognized that planned, usually suburban, residential developments form natural neighborhoods. (*See, e.g., Decision I*, pages 16, 23 and 60). Here, Red Clay has demonstrated that the few homes located in the Highlands peninsula have, by tradition and history, been considered part of the Highlands Park

area of the City. (T-52-55). The Board agrees that residents' perceptions and long standing community affiliations may establish natural neighborhood boundaries between otherwise contiguous land areas. The Board also notes that assigning the peninsula to Highlands Elementary does not increase the distance between Warner students and their school: the peninsula would have been assigned to Warner if not assigned to Highlands. In short, students living in the southwestern portion of the Warner attendance area would have to travel across the eight-block peninsula regardless of which school the students living in the peninsula attend.

Red Clay's plan does not assign students to schools *exclusively* on the basis of geographical proximity and natural neighborhood boundaries. As did most other districts submitting neighborhood school plans, Red Clay considered the capacity of its school buildings when making student assignments. The State Board has previously recognized capacity limitations as a substantial hardship that may justify deviations from strict geographic assignments (*See, e.g.,* Seaford, Colonial and Brandywine plans, *Decision I*, pages 15, 24 and 64). Red Clay's use of any instructional capacity range is consistent with other capacity-based hardships approved by the State Board. Most schools under Red Clay's plan will use 70 to 80% of their instructional capacity. As with Colonial School District, Red Clay's capacity range permits reasonable growth while assuring adequate educational programs and opportunities. (*Decision I*, page 21). Red Clay schools which fall outside the target capacity range generally have physical features or administrative uses that explain the number of students assigned to them. The State Board concludes that Red Clay's neighborhood school plan permissibly considers the instructional capacity of its schools in assigning students to them.

In addition, many of Red Clay's Hispanic and Latino students will not attend the school closest to their home because Red Clay will offer ELL programs at four of its thirteen elementary

schools. While students needing ELL services will usually attend the closest school *offering such services*, that school will not necessarily be the closest school. The State Board finds that Red Clay's departure from strict geographic and neighborhood assignments for ELL students is justified by the intensity of services ELL students require. It would be a substantial hardship on the District and on its schools to require them to replicate ELL services in each building. Red Clay's plan mitigates the effect of its hardship exception by offering ELL services at the schools located closest to high concentration of ELL students. The State Board also notes that the District's plan will offer grades K-5 in each of its ELL programs. This continuity should enhance the school experience of ELL students even though they may attend schools farther from their homes than their English-proficient peers.

Finally, with the elimination of Policy JECD, there is no evidence that any of Red Clay's elementary school assignments are made on the basis of race. The State Board accordingly approves Red Clay's plan because it meets the grade configuration requirements of the NSA and assigns students to schools only on the basis of geographic distance, natural neighborhood boundaries or acceptable hardship considerations.

### **ORDER**

For the reasons set forth in the Decision in this matter of this same date, the State Board of Education hereby *approves* the Neighborhood School Plan presented to it by the Red Clay Consolidated School District on November 5, 2004. A copy of the Decision and this Order shall

be sent to the Budget Director and Controller General as notification of the Neighborhood School Plan approved herein.

**IT IS SO ORDERED** this \_\_\_\_\_ day of June, 2005.

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JOSEPH A. PIKA, Ph.D., *President*

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JEAN W. ALLEN, *Vice-President*

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RICHARD M. FARMER, JR.

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MARY B. GRAHAM, Esquire

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BARBARA RUTT  
(*for authentication purposes*)

\_\_\_\_\_  
DENNIS J. SAVAGE

\_\_\_\_\_  
CLAIBOURNE D. SMITH, Ph.D.

**APPEAL RIGHTS**

29 *Del. C.* § 10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within thirty (30) days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing Date:

Original: State Board of Education File

Copies: District

District Counsel

Louann Vari

