

151-99L

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Dear Parties:

Upon review of the petition and application for emergent relief filed in the matter entitled *Lucille Harrison, et al. v. Board of Education of the Township of Wayne, Passaic County*, Agency Dkt. No. 80-4/99,¹ I have determined to dismiss the Petition of Appeal, pursuant to *N.J.A.C. 6:24-1.9*, for the reasons set forth below.

Petitioners challenge the Board's redistricting plan, which provides that, as of September 1999, students residing in petitioners' neighborhood will attend the Schuyler-Colfax Middle School, and, thereafter, the Wayne Hills High School, rather than the George Washington Middle School and the Wayne Valley High School, as has been the tradition for 25 years. (Petitioners' Motion/Petition at p. 1). According to petitioners, this re-routing affects approximately 25 families in the short term,² ultimately increasing the travel distance for the affected students from 1.3 miles (to Wayne Valley High School) to 3.0 miles (to Wayne Hills High School). Petitioners reason, therefore, that the redistricting will result in increased transportation costs for the Board, and, to the extent their children will be involved in after-school activities which will involve walking home from school, increased risk of harm to students who must traverse four heavily-trafficked roads. Petitioners contend that these consequences outweigh the negligible benefits the Board may realize by reducing the number of students attending the George Washington Middle School, which the Board views as overcrowded.

¹ Petitioners identify their submission as an "Emergent Relief Petition," joining both the allegations required by *N.J.A.C. 6:24-1.3* and the application for emergent relief, as required by *N.J.A.C. 6:24-1.5*. The respondent Board submitted, *inter alia*, an "Emergent Answer" letter and brief, which shall be deemed to satisfy *N.J.A.C. 6:24-1.4*.

² Petitioners acknowledge, however, that this figure will be reduced as the Board has offered parents the opportunity to exercise the "sibling option," which allows children who would be routed to Schuyler-Colfax to attend George Washington Middle School and Wayne Valley High School because their siblings already attend one or both of these schools.

Moreover, petitioners argue that the Board adopted the redistricting plan in haste, failing to address why the plan could not be held in abeyance, pending adoption of a Secondary School Expansion Plan which is anticipated in August 1999. (*Id.*) In this regard, petitioners note that the Board has already established a Secondary School Facility Expansion Committee to study and recommend a plan for middle school and high school expansion, which plan may be included in an April 2000 bond referendum.

In reply, the Board avers that its proposal was adopted in response to “expert reports” conducted in 1990 and 1997 dealing with student population trends. (Board’s Reply Brief at p. 7) The plan addresses the need: (1) to effectuate a “continuity of path” for all students leaving the John F. Kennedy Elementary School; and (2) to balance the student population between the George Washington Middle School and the Schuyler-Colfax Middle School, since the Washington Middle School is over-enrolled and Schuyler-Colfax Middle School is under-enrolled.³ To this end, in September of 1998, a redistricting proposal was brought to the Board. The Board notes that it considered the redistricting issue again in October, November and December of 1998, as well as in January 1999 in its public sessions, with opportunity for public comment. (*Id.* at p. 3) In response to some opposition to the plan, district administrators investigated the concerns expressed by parent groups and evaluated their merits. (Affidavit of Richard Linkh at p. 2 and Exhibit 4) The District Superintendent, Assistant Superintendent and one board member also met with a concerned group of parents at a private meeting in November 1998. (Board’s Reply Brief at p. 3 and Linkh Affidavit at Exhibit 4)

With respect to petitioners’ argument that the plan was adopted in haste, the Board asserts that:

the “Secondary School Expansion Plan” is not expected until after the start of the 1999-2000 school year, and any associated project would take a minimum of two years to complete. As the years pass during the pendency of this “Plan”, the disparate middle school enrollment would continue to increase, thereby increasing the number of students whose attendance path will ultimately have to be disturbed.

Moreover, even if a secondary school expansion project were undertaken, the Board intends to provide JFK students with continuity of path regardless of how the District is reconfigured. The outcome of a Secondary School Expansion Plan will not improve Petitioners’ situation, since it would still be inefficient and illogical to redistrict sixty percent of the JFK students from Schuyler Colfax to an already overcrowded Washington, rather than to redistrict forty percent of JFK students from Washington to Schuyler Colfax (currently under-enrolled). ***

***[I]f the redistricting goes forward, Petitioners’ children will [be] attending secondary school along the path that they will

³ The Board notes that, on April 20, 1999, the voters approved a \$9.6 million bond “to renovate and re-open Fallon [Elementary School, which had been closed since 1982] and to construct additions to two existing elementary schools.” (Board’s Reply Brief at footnote 1) Fallon will re-open in the 2000-2001 school year and, eventually, those students attending Fallon will attend the George Washington Middle School and the Wayne Valley High School. (*Id.*)

ultimately follow, regardless of what the Secondary School Expansion Plan reveals. While they may not be thrilled at the prospect of attending schools they had not originally anticipated attending, at least they will embark on their secondary school [education] with the comfort of knowing that their path will not be disturbed for the remainder of their public school education.*** (Board's Reply Brief. at pp. 8, 9)

Thus, after discussion and debate, the Board adopted the redistricting plan on January 21, 1999.

Upon review of the arguments presented by both parties, and even assuming the facts as alleged by petitioners to be true, I find that the Petition of Appeal must be dismissed, as petitioners cannot demonstrate that the Board acted in a manner which was arbitrary, capricious, unreasonable, or otherwise contrary to law. It is a well-settled rule that when a Board acts within its discretionary authority, its decision "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." *Thomas v. Bd. of Ed. of Morris Tp.*, 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd 46 N.J. 581 (1966). I also note that petitioners do not specifically allege that the Board's action in adopting the plan was taken in bad faith, notwithstanding that they apparently disagree with the Board's management style and its timelines for effectuating the plan's implementation.

In so finding, I recognize that:

In the law, "arbitrary" and "capricious" means having no rational basis ***. Arbitrary and capricious action of administrative bodies means willful and increasing action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. *** Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. *Bayshore Sew. Co. v. Dep't. of Env.*, N.J., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974) (citations omitted).

The documentary evidence brought to the record by the Board demonstrates that it considered its goals and objectives, its redistricting options (Affidavit of Ray V. Kwak at Exhibit B), the attendant costs, including those for transportation (Linkh Affidavit at Exhibit 2), the enrollment projections for the District, and also the public's opposing viewpoints (*Id.* at Exhibit 4) Although petitioners appear to be a conscientious group of citizens who present legitimate concerns with respect to the Board's plan, those concerns do not necessarily suggest that the Board's action was improper, but, rather, that the Board has arrived at a conclusion different from the one urged by them. As the Board correctly notes,

Absent a clear showing of abuse of discretion (i.e. bad faith and an utter failure to consider the consequences), the Commissioner may not substitute his own judgment for that of a school board with respect to a redistricting decision. *** This applies even if the selected redistricting plan is not the best of all available options, or if it is based on erroneous conclusions. (Board's

Reply at p. 7, citing *Piccoli v. Bd. of Education of the Ramapo Indian Hills Regional School District*, Commissioner Decision, March 10, 1999).

Accordingly, the within Petition of Appeal is dismissed and the attendant motion for emergent relief is denied.⁴

Sincerely,

David C. Hespe
Commissioner

c: County Superintendent

⁴ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.