

BASH PHAROAN,

Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION  
(II),

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-07

## OPINION

### INTRODUCTION

Bash Pharoan (Appellant) appeals the decision of the Baltimore County Board of Education (local board) approving the 2018-19 school calendar. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND

Each year, the Superintendent for Baltimore County Public Schools (BCPS) convenes a calendar committee to make proposals on the upcoming school calendar. Appellant is among the members of this committee. The committee met on April 24, 2017; May 1, 2017; and September 14, 2017. At the end of the process, the committee recommended that the local board adopt a school calendar in which schools are open during the Jewish holidays of Rosh Hashanah and Yom Kippur. BCPS has been closed on those holidays since 1995. (Motion, Ex. 7A-7C).

On September 26, 2017, the local board considered two potential calendars. Option A eliminated the two Jewish holidays while Option B kept schools closed on those days. The calendar committee recommended that the board adopt Option A. The local board heard public comment at its October 10, 2017 meeting, including from Howard Libit, executive director of the Baltimore Jewish Council, who testified that there are significant numbers of Jewish students and teachers in the county. Similarly, State Senator Robert Zirkin testified he had received numerous messages in support of keeping schools closed on the Jewish holidays. (Motion, Ex. 3-5; Board of Education Oct. 10, 2017 video minutes).

On November 7, 2017, the local board discussed the 2018-19 school calendar options. Board member Ann Miller expressed concerns about keeping school open on the Jewish holidays when the school system has long been closed on those days. She also mentioned data provided by the school system about absences on the second day of Rosh Hashanah, when schools have traditionally been open, that supported keeping schools closed on the Jewish holidays. Board member David Uhlfelder emphasized that the decision to close on Jewish holidays was an economic one, based not on religious preference but on the high number of anticipated absences,

increased cost for substitute teachers, and general disruption to the school system. BCPS officials explained that they do not ask teachers or students about their religion and do not have data on how many Jewish students and teachers are in the school system. Mr. Uhlfelder cited, however, to the 2010 Greater Baltimore Jewish Community Study, which found that approximately 9 percent of households in the county have at least one Jewish adult. By comparison, the Pew Research Center estimates that about 1.9 percent of the U.S. population is Jewish. He extrapolated from this information to estimate that it would cost the school system approximately \$320,000 for substitute teachers if schools are open on the Jewish holidays. (Motion, Ex. 8; Board of Education Nov. 7, 2017 video minutes).

Board member Kathleen Causey moved to adopt Option B, but with an amendment that would move a professional development day to June 5, 2019, which is the Muslim holiday of Eid al-Fitr. Schools would be closed to students on that day, but teachers would be required to report. The local board voted to adopt the amendment and voted 9 to 3 in favor of Option B, as amended. (Motion, Ex. 8; Board of Education Nov. 7, 2017 video minutes).

This appeal followed.

## STANDARD OF REVIEW

This case involves a quasi-legislative decision of the local board – the approval of the 2018-19 school calendar. Quasi-legislative decisions include approving, enacting, amending, or repealing a law or other measure to set public policy; and adopting, amending, or repealing a rule, regulation, or bylaw that has the force of law. Md. Ann. Code, Gen. Prov. §3-101(f) & (j). In cases involving a quasi-legislative decision, the State Board will decide only whether the local board acted within the legal boundaries of State and federal law and will not substitute its judgment for that of the local board “as to the wisdom of the administrative action.” *Weiner v. Maryland Insurance Administration*, 337 Md. 181, 190 (1995).

## LEGAL ANALYSIS

Appellant raises two objections to the 2018-19 school calendar.<sup>1</sup> First, he maintains that closing schools on the two Jewish holidays was not done for a secular purpose and was, therefore, illegal. Second, he contends that the school calendar failed to provide equal treatment to other “ethnicities.” We shall address each argument separately.

In *ADC Baltimore v. Baltimore County Bd. of Educ.*, MSBE Op. No. 05-01 (2005), the State Board previously ruled it would be illegal for a local school system to close schools for the purpose of recognizing a religious holiday of one particular faith absent any secular purpose. In reaching this result, we relied on the case of *Koenick v. Felton*, 190 F.3d 259 (4th Cir. 1999), in which a teacher challenged the constitutionality of a Maryland statute providing for a school holiday on Good Friday and the Monday following Easter. The Court found that a secular purpose existed for the school closures, given a high expected rate of absenteeism and anticipated disruption to school activities. *Id.* at 266. Although the teacher argued that establishing the four-day holiday impermissibly endorsed Christianity over other faiths, the Court concluded that the holiday benefitted all students and teachers, not just followers of

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<sup>1</sup> In his response to the local board’s motion, Appellant requests that the State Board appoint an independent attorney, at the local board’s expense, to assist him in his appeal. We decline this request.

Christianity. *Id.* at 267. The Court observed that no one was required to spend the holiday attending religious services and that the incidental benefit to Christians did not violate the Establishment Clause. *Id.* at 267-68. *See also Granzier v. Middleton*, 173 F.3d 568, 576 (6th Cir. 1999) (observing that closing offices on Jewish holidays is not done to “establish the Jewish religion, but rather as a secular recognition of the practicalities of school or court attendance that might otherwise be disrupted”).

The reasoning behind our decision in *ADC Baltimore* remains sound: schools may close on religious holidays so long as there is a secular purpose behind the decision. Appellant’s primary argument is that there was no evidence to support the local board’s decision, but he acknowledges that Mr. Libit and State Senator Zirkin testified about the significant impact that would occur if schools were open on the Jewish holidays. In addition, board member Uhlfelder cited to the 2010 Greater Baltimore Jewish Community Study for evidence of the size of the county’s Jewish population and board member Miller cited data provided by the school system about absences on the second day of Rosh Hashanah, when schools have traditionally been open. The local board members’ discussion about the school calendar clearly focused on secular reasons for closures and no one expressed a desire to advance a particular religion. For all of these reasons, we conclude that the local board had a secular purpose in closing schools on the Jewish holidays.<sup>2</sup>

Appellant’s second argument is that the school system does not provide “equal” treatment to other ethnicities because the school system does not close for their holidays. Appellant misunderstands, however, what constitutes equal treatment for religions under the First Amendment. No local board may close schools solely to recognize a religious holiday. There must instead be a secular purpose behind the decision to close. Such a practice is religion-neutral in that it applies to all faiths and does not advance one particular religion over another. If a school system decides to close because of a high number of anticipated absences on a religious holiday, it does not mean that a school system is endorsing, recognizing, or otherwise celebrating that particular religion. It also does not mean that a school system must close for all religious holidays. *See ADC Baltimore*, MSBE Op. No. 05-01.

During the local board’s discussion, there was a recognition that Baltimore County has seen an increase in its Muslim population. Appellant was among those who testified about that growing population and how closing schools on Muslim holidays would be beneficial to the community and the school system. Indeed, the board members voted to move a professional development day to June 2019 in order to coincide with the Muslim holiday of Eid al-Fitr.<sup>3</sup> Board members also expressed interest in obtaining additional data about teacher and student

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<sup>2</sup> Appellant offers many other reasons for why the local board’s decision was illegal. He argues that the local board’s decision violates several provision of the Maryland Declaration of Rights. Nearly all of the provisions cited by Appellant fail to relate to his claims. The lone exception is Article 36, which states “That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty . . .” Because BCPS policies permit excused absences for students and staff on religious holidays, the local board has not prohibited anyone from being able to worship as he or she chooses. Additionally, Appellant argues that the local board’s decision violates MSDE’s vision and mission statements. MSDE’s vision and mission statements do not create a legal cause of action on behalf of community members. Finally, Appellant also argues that a number of other entities, such as the Baltimore County government, do not close for the Jewish holidays. While this may be an argument in favor of keeping schools open on those days, it does not render the local board’s decision illegal.

<sup>3</sup> Another Muslim holiday, Eid al-Adha, falls in August in both 2018 and 2019, when schools are already closed.

absences and potential impacts on the school system for all religious holidays. In our view, the board's adoption of the 2018-19 school calendar, which included closures on Jewish, Muslim, and Christian holidays, was based on secular concerns and did not impermissibly endorse or hinder any particular faith.

CONCLUSION

We affirm the decision of the local board because it was not illegal.

Signatures on File:

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Andrew R. Smarick  
President

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Chester E. Finn, Jr.  
Vice-President

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Michele Jenkins Guyton

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Justin M. Hartings

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Stephanie R. Iszard

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Rose Maria Li

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Michael Phillips

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David Steiner

March 20, 2018