

WENDY NOVAK,
Appellant
v.
CARROLL COUNTY
BOARD OF EDUCATION
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 22-07

OPINION
INTRODUCTION

This is an appeal challenging the quasi-legislative decision of the Carroll County Board of Education (“local board”) approving the 2022-2023 school year calendar for Carroll County Public Schools (“CCPS”). Appellant argues that the calendar should recognize the Jewish holidays of Rosh Hashanah and Yom Kippur (hereinafter “Jewish holidays”) as official school holidays for which school is closed. The local board filed a Memorandum in Response to the Appeal maintaining that its decision should be upheld. The Appellant responded and the local board replied.

FACTUAL BACKGROUND

At the September 8, 2021 local board meeting, the local Superintendent, Dr. Steven A. Lockard, presented the proposed CCPS 2022-2023 school year calendar to the local board. (Board Ex. 1 at 16). He explained that the main considerations in the proposed calendar were starting the school year after Labor Day, maximizing as many full weeks of instruction as possible, and building in several snow days. (9/8/21 Meeting Video).¹ Dr. Lockard also indicated that CCPS would solicit public input on the calendar and provide that data to the local board prior to its November 10, 2021 meeting. *Id.* The proposed calendar did not recognize the Jewish holidays of Rosh Hashanah and Yom Kippur as official school holidays and school was slated to be open on those days.² (Board Ex. 2).

At the September 8 meeting, the local board engaged in a discussion of the school calendar with regard to the Jewish holidays, as follows:

- The student board member raised the issue of including school holidays for Rosh Hashanah and Yom Kippur, noting that the board had recognized them in years past and that she had received feedback from

¹ Meeting video at <https://www.youtube.com/watch?v=hTPqWJJxCgQ&list=PLIyH4yT3-ysDOduQ8GIBgYhomg4nZcR0j&index=10>. Discussion of school calendar begins at the 3:34:40 mark.

² The days at issue are September 26 for Rosh Hashanah and October 4 for Yom Kippur. Although the holiday of Rosh Hashanah spans two days, the board discussed only the first day of Rosh Hashanah, September 26, 2022, for closure.

students that they would be forced to choose between observing the holidays and attending classes if school were held on those days.

- Board Vice President Battaglia stated that certain factors made it difficult to include the Jewish holidays, such as the community's historical strong support for beginning the school year after Labor Day, State law requiring that school be closed on certain days, and the Governor's mandate that schools be closed by June 15th.
- Board member Sivigny asked whether instruction could occur on what would otherwise be snow days to enable the inclusion of one or both of the Jewish holidays. Dr. Lockard replied that the State Board had not approved virtual instruction under those circumstances. He further stated that even if it were approved, it would be logistically difficult in that snow closure decisions are usually made very early in the morning on the days at issue and teachers and other staff might not be prepared in terms of necessary equipment to deliver instruction virtually on such short notice.
- Board member Dorsey expressed her appreciation for the student member's suggestion regarding including the Jewish holidays. She also expressed her appreciation for the difficulties in adding them to the calendar.
- Board President Kiler asked Dr. Lockard whether the professional day tentatively scheduled for October 14, 2022 could be moved to the date of one of the Jewish holidays. Dr. Lockard explained that the date was deliberately selected because it coincides with the Maryland State Education Association's annual conference, which various CCPS employees attend.
- Ms. Battaglia suggested the possibility of adding one of the Jewish holidays if schools reopened on Monday January 2, 2023, instead of Tuesday, January 3, 2023.
- The student member suggested that schools open before Labor Day. Ms. Battaglia responded that recent overwhelming public feedback led the board to open after Labor Day. She also indicated that both the Governor and Comptroller had urged the school systems to open after Labor Day.

See 9/8/21 Meeting Video.

Between September 8 and November 10, 2021, CCPS solicited and received public feedback on the proposed calendar. (Board Ex. 3). Board members also received feedback from the public during that time. *Id.* In October and November 2021, Dr. Lockard provided the board

with summary documents of the feedback received from the public. *Id.* and Board Exs. 4 & 5. He also provided the board with the results of a survey conducted in the summer of 2019 in preparation for creating the 2020-2021 school calendar. (Board Ex. 8).

The local board again considered the proposed 2022-2023 school calendar at its November 10, 2021 meeting. (Board Ex. 7 at 15). The following discussion ensued:

- Dr. Lockard explained that schools cannot open on Monday, January 2, 2023, instead of Tuesday, January 3, 2023, because January 2 is a contractual holiday pursuant to the collective bargaining agreement between the local board and the American Federation of State, County, and Municipal Employees, and that opening and running schools would be difficult if not impossible without those employees.
- Dr. Dorsey expressed her concern that the board was not honoring and showing respect to Jewish staff and students by failing to include the Jewish holidays on the calendar.
- Ms. Battaglia stated that, by law, public schools cannot close for religious purposes, and that the local board does not single out or favor any one religion. She added that teachers could be instructed not to schedule tests or field trips on the Jewish holidays.
- The student member shared feedback that she had received from students regarding the stress associated with long stretches of full instructional weeks following the long summer break.
- Dr. Dorsey reiterated her support for including the Jewish holidays as a means of showing sensitivity to diversity in the school community.

(11/10/21 Meeting Video).³ At the conclusion of the discussion, the board approved the calendar, which does not include either of the Jewish holidays, by a 4-to-1 vote. (Board Ex. 8).

This appeal followed.

STANDARD OF REVIEW

This case involves a quasi-legislative decision of the local board – the approval of the 2022-2023 school year calendar. *See Pharoan v. Baltimore County Bd. of Educ.*, MSBE Op. No. 18-07 (2018). 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.” *See id.*, citing *Weiner v. Maryland Insurance Admin.*, 337 Md. 181, 190 (1995); *Harford County Arts & Culture Alliance, et al. v. Harford County Bd. of Educ.*, MSBE Op. No. 16-48 (2016).

³ Meeting video at <https://www.youtube.com/watch?v=zH4ALxL-8aQ&list=PLIyH4yT3-vsDOduQ8GIBgYhomg4nZcR0j&index=6>. Discussion of the school calendar begins at the 3:15:52 mark.

LEGAL ANALYSIS

Section 7-103 of the Education Article, Annotated Code of Maryland, requires that each Maryland public school “be open for pupil attendance for at least 180 actual school days and a minimum of 1,080 school hours during a 10-month period in each school year.” Section 7-103 also designates certain days as public school holidays on which a public school may not be open in order to meet the school day and hour requirements. These provisions apply to each local school system except for certain emergencies and may only be adjusted with State Board approval. With these basic requirements in mind, each local school system is responsible for developing its own school calendar.

Under the Establishment Clause of the First Amendment of the United States Constitution, a public school system may not close schools for the purpose of recognizing a religious holiday of one particular faith. There must be a secular basis for any such closure. *ADC Baltimore v. Baltimore County Bd. of Educ.*, MSBE Op. No. 05-01 (2005) at 5. In *Pharoan v. Baltimore County Bd. of Educ.*, a case involving a challenge to a school calendar related to inclusion of religious holidays, we explained what constitutes equal treatment for religions under the First Amendment, stating:

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.

MSBE Op. No. 18-07 at 3.

The State Board’s decision in *ADC Baltimore v. Baltimore County Bd. of Educ.* is instructive here. In *ADC Baltimore*, the State Board rejected a challenge to a school calendar because the calendar did not recognize any Muslim holidays. In that case, the Baltimore County Public Schools (“BCPS”) convened a stakeholder group to advise the local board on the development of the next year’s school calendar. MSBE Op. No. 05-01 at 1 (2005). The local board also received input about the calendar from members of the Arab-American community. *Id.* at 2. Although the committee considered including two Muslim holidays, it recommended that they not be added to the school calendar in order to meet the number of days and hours required by law. *Id.* The local board approved the school calendar without any Muslim religious holidays.

ADC Baltimore appealed the decision to the State Board claiming failure to close school for at least one Muslim holiday was illegally discriminatory. *Id.* at 3. The State Board affirmed the local board’s decision finding that appellants failed to demonstrate that the calendar was developed and adopted for any purpose other than to support the effective delivery of the instructional program and to meet the statutory day and hour requirements. *Id.* at 5. The State Board relied on the Fourth Circuit’s decision in *Koenick v. Felton*, 190 F.3d 259 (4th Cir. 1999),

in which the Court affirmed the constitutionality of the mandated holiday recognition of the Friday before Easter and the Monday following Easter, per §7-103 of the Education Article, on the reasoning that there was a secular purpose for those holidays (economizing resources wasted on days with high absenteeism) and there was no compulsion to observe Easter or attend religious services. MSBE Op. No. 05-01 at 4-5. The State Board also noted that no student or teacher would be penalized for missing school due to observance of a religious holiday. *Id.* at 4.

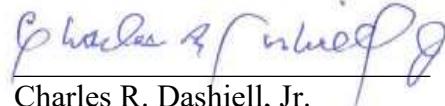
Here, as in *ADC Baltimore*, the local board seriously considered including Jewish holidays and had community input; but it ultimately decided not to include the holidays in its calendar. The record demonstrates that the calendar was developed and adopted for no other purpose other than to support the effective delivery of the instructional program and to meet the statutory day and hour requirements under §7-103. Moreover, the school system will not penalize students and employees for absences related to the observance of religious holidays. COMAR 13A.08.01.03G and .05B set forth religious observance as a lawful absence. As lawful absences, school systems must permit students to make up any missed work so they do not fall behind. Regarding employees, CCPS has a policy granting employees a certain number of paid leave days per year, and as CCPS points out, it is also required under Title VII of the Civil Rights Act of 1964 to make reasonable accommodations to employees for absences for religious holidays unless doing so would constitute an undue hardship. *See* 42 U.S.C. §2000e-2.

Appellant argues that there are many reasons for CCPS to close schools on the Jewish holidays. She maintains that closing on these days would show respect for the holidays and that CCPS is open to diversity; that there was strong community support for being closed on the two days and for starting school before Labor Day; that students absent on the Jewish holidays will be segregated and seen as outsiders; that students will have to choose between attending school and their religion and that it is unfair to expect students to attend school during Yom Kippur which entails fasting; and that the reasons given by the local board members for not granting these days off are inaccurate and inconsiderate of our staff, students, and families.

None of Appellant's arguments allege a violation of federal or State law, which are the only issues this Board considers in reviewing a challenge to a quasi-legislative decision of a local board. Before making its decision, the local board carefully considered whether schools should remain open or closed during Rosh Hashanah and Yom Kippur. The proposed calendar seeks to maximize full weeks of school to support consistency of instruction, close on State and federal holidays, professional development, elections, and to meet the § 7-103 requirements. The board's school calendar does not close schools for any religious observance. Accordingly, because there was no violation of State or federal law, we will not substitute our judgment for that of the local board.

CONCLUSION

For all of the reasons stated above, we affirm the decision of the local board.



Charles R. Dashiell, Jr.
Vice-President



Shawn D. Bartley



Chuen-Chin Bianca Chang



Vermelle Greene



Jean C. Halle



Lori Morrow



Warner I. Sumpter

Absent:

Clarence C. Crawford

Gail H. Bates

Susan J. Getty

Joan Mele-McCarthy

Abstain:

Rachel McCusker

Dissent:

Holly C. Wilcox:

In my view, there should be a statewide school closure for Rosh Hashanah and Yom Kippur.

March 22, 2022