

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1914

September Term, 2015

HEREFORD WORKS, LLC., ET AL.

v.

BOARD OF EDUCATION
OF BALTIMORE COUNTY, ET AL.

Wright,
Arthur,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: February 27, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Appellants, Hereford Works, LLC, and various students it represents (collectively, “Hereford Works”), appeal the decision of Superintendent S. Dallas Dance to implement a uniform bell system in Baltimore County schools, as outside his authority as superintendent and as a decision made without adequate supporting evidence. On appeal, the superintendent’s decision was upheld by appellee, the Board of Education of Baltimore County, the Maryland State Board of Education (“MSBE”), and the Circuit Court for Baltimore County, because it was found not to be arbitrary, unreasonable, or illegal. The issue now comes to this Court for further review of MSBE’s determination.

QUESTIONS PRESENTED

Hereford Works timely appealed and presents three questions for review, which we have condensed and reworded for clarity:¹

- I. Did MSBE err in finding that Hereford Works’s appeal was untimely?

¹ Hereford Works asked:

1. Did the Maryland State Board of Education err in finding that the Superintendent’s February 24, 2014 Letter was the final, appealable decision instead of the Superintendent’s later March 21, 2014 Letter decision, which substantively re-examined and change his earlier decision?
2. Did the Maryland State Board of Education err in finding that the Superintendent’s implementation of a compatible bell schedule complied with state requiring prior Local Board vote when no such vote was held?
3. Did the Maryland State Board of Education err in finding that the Superintendent’s decision to change the status quo at Hereford High was not an abuse of discretion despite the lack of substantial evidence supporting the decision?

- II. Did MSBE err in finding that the decision to implement a compatible bell schedule was within the superintendent's authority and was not arbitrary, unreasonable, or illegal?

FACTS

Prior to the 2014-2015 school year, the 28 high schools in Baltimore County operated on several different bell schedules. Hereford High School operated on a "hybrid four-period-day block schedule," wherein most classes operated on a semester basis, with the remaining classes continued over the course of the school year.

On November 5, 2013, Superintendent Dance submitted a report informing the local school board of his plan to adopt a compatible bell schedule for schools throughout the County. The compatible bell schedule ensured that all schools would operate on the same eight-period bell schedule.

Superintendent Dance's decision was based on the findings and analysis of Scholastic Scheduling Solutions ("S3"), a consulting group hired by Baltimore County Public Schools to evaluate multiple bell schedule scenarios. The study group elicited input from County principals, assistant principals, counselors, and teachers in the County system. Prior to the study, there was no uniformity amongst the County high schools or middle schools with respect to school day periods, and different schools employed different schedules – four, six, seven, or eight periods per day.

On December 11, 2013, Hereford High School Principal Andrew Last sent a letter to students and parents announcing the schedule change for the 2014-2015 school year. To comply with the uniform bell system, Hereford would change to a "four period block

A/B day” schedule and would maintain the four-period day, but classes would run for the course of one year instead of one semester.

Community members were largely against the change: members of Hereford High School’s parent-teacher-student association voted 256-1 in opposition of the change at a January 14, 2016 meeting, more than 1,700 people signed an online petition against the schedule change, and protestors held rallies and fundraisers to maintain Hereford’s hybrid schedule. Hereford Works was formed to spearhead the opposition to the proposed schedule change.

Superintendent Dance met with a representative from Hereford Works on February 18, 2014 to hear the organization’s concerns. Superintendent Dance indicated in a letter dated February 24, 2014, to Wendy Flowers of Hereford Works that he had made some adjustments to the system-wide mandate based on the meeting. The letter read as follows:

. . . this decision is a system wide decision as our high schools have an average 27% mobility rate. In a school system as large as Baltimore County Public Schools, decisions that impact students throughout the [C]ounty cannot be made on a school-by-school basis. We need to allow for all students to be able to move among all of our high schools without any negative impact.

In response to community concerns, Principal Last requested that additional scheduling flexibility continue, and Superintendent Dance responded to the request in a letter dated March 21, 2014, stating:

Findings are mixed on the effectiveness of various scheduling options. The research is mixed primarily because any schedule is all about implementation. I do understand that change is difficult, as I am sure the Hereford High School community experienced it when it went from a

seven-period day to the schedule it currently has. In the end, it is important for us to remember that what makes a high performing school has very little to do with the schedule it implements, but rather the vision of its principal, strength of its teachers, commitment of its students, and support of its community. Hereford High School has all four of these factors in place.

As a result, Hereford High School was still subject to the system-wide mandate but was granted some additional flexibility.

On April 14, 2014, Hereford Works, by letter, filed an appeal to the local board. The local board referred the matter to a hearing examiner who conducted a hearing on June 30 and July 1, 2014. The hearing examiner concluded that the appeal was not timely filed, but went on to reach the merits of the case, deciding that the superintendent had authority to implement the scheduling change based on the needs and best interests of the entire school system. The local board heard oral arguments on August 12, 2014, and adopted the hearing examiner's decision that same day.

Hereford Works appealed the local board's decision to MSBE. On December 16, 2014, MSBE reviewed the record and concluded that the appeal was not timely filed, but also decided the merits of the case. MSBE determined that the County Board's decision was not arbitrary, unreasonable, or illegal.

Hereford Works sought further review of MSBE's affirmation in the Circuit Court for Baltimore County. The circuit court examined the full record of the case, finding that "there exists a clear and plain record demonstrating that the decision to change to a uniform bell schedule was neither arbitrary nor capricious," and the court affirmed the MSBE's decision on October 14, 2014.

Additional facts will be included as they become relevant to our discussion.

DISCUSSION

I. Standard of Review

When MSBE reviews a local board's decision in an appellate capacity, a local board's decision regarding local policy is presumed to be *prima facie* correct, and MSBE will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. A decision may be arbitrary or unreasonable if it is "contrary to sound educational policy" or "a reasoning mind could not have reasonably reached the conclusion the local board or the local superintendent reached." COMAR 13A.01.05.05B.

In reviewing an administrative decision, "[t]his Court looks through the circuit court's decision and evaluates the decision of the agency." *Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 283 (2014) (citations and internal quotations omitted). In *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, the Court of Appeals reiterated the longstanding principle that MSBE:

has very broad statutory authority over the administration of the public school system in this State, [and] that the totality of its statutory authority constitutes a visitorial power of such comprehensive character as to invest the State Board with the last word on any matter concerning educational policy or the administration of the system of public education

400 Md. 324, 342-43 (2007) (citation and footnote omitted).

The Court of Appeals further noted that although "it is the courts that ultimately must decide purely legal questions, the broad statutory mandate given to [M]SBE requires that special deference be given to its interpretation of statutes that it administers .

. . . [M]SBE rulings must be given heightened, not less, deference.” *Id.* at 343. It is under this heightened deference that we review the issues presented on appeal.

II. Timeliness

Hereford Works first argues that MSBE erred in dismissing the appeal as untimely. In fact, MSBE did not dismiss Hereford Works’s appeal, but instead decided the appeal on the merits, *despite* its untimeliness.

On February 24, 2014, after meeting with Hereford Works’s members, Superintendent Dance sent a letter, explaining that the decision to implement a compatible bell schedule was based on four factors: staff allocations, class sizes, maximizing student course options, and the effects of student mobility between schools. On March 21, 2014, in a letter to Principal Last, Superintendent Dance reiterated his decision to implement a compatible bell schedule across all County schools, but allowed for some additional flexibility in Hereford High’s class scheduling. On April 14, 2014, Hereford Works noted its appeal, asserting that the superintendent’s March 21, 2014 letter indicated his final decision.

MSBE has consistently found that a later communication from a school administrator cannot extend the deadline for filing an appeal. *Vend Nat., Inc. v. Montgomery Cty. Bd. of Educ.*, MSBE Op. No. 13-41 (2013). *See also William M. and Corona S. v. Worcester Cty. Bd. of Educ.*, MSBE Op. No. 13-63 (2013); *Smith v. Carroll Cty. Bd. of Educ.*, MSBE Op. No. 08-28 (2008) (timeline for filing an appeal of redistricting decision began with initial decision by local board to approve the plan, not

the later decision by local board to amend the plan by eliminating one school from the redistricting process).

We agree with MSBE that the latter letter to the Hereford school principal “did not alter the Superintendent’s earlier decision to create uniform schedules across the school system.” The March 21, 2014 letter merely allowed the school to “retain the semesterized A/B Block schedule in math and world languages for [] junior and seniors going forward.” The superintendent did not retract or reverse his planned schedule for all County schools. *United Parcel Serv., Inc. v. People’s Counsel for Balt. Cty.*, 336 Md. 569, 582 (1994). Such a minor concession or modification would not allow the clock to start ticking anew. *Ohio Cas. Ins. Co. v. Ins. Comm’r*, 39 Md. App. 547, 557 (1978). (“The courts have very little leverage in permitting untimely appeals. The most persuasive appeal, ‘if filed late, may prove to be an expensive and professionally embarrassing excuse in futility.’”) (Citation omitted).

We agree with the MSBE that Superintendent Dance’s February 24, 2014 letter was the final decision and that the March 21, 2014 letter did not make substantial changes to that decision. A timely appeal must have been filed within thirty days of the February 24, 2014 letter. Md. Code (1978, 2014 Repl. Vol.), Education Article, § 4-205(c)(3). However, since both MSBE and the local board reached the merits, we too turn to the merits.

III. Superintendent’s Authority

Hereford Works next avers that MSBE erred as a matter of law in concluding that the superintendent did not act outside his authority in enacting a system-wide schedule

change without formal approval by the board. Hereford Works acknowledges that the superintendent may make recommendations to the local board on educational matters, but avers that he cannot act without the board's formal approval.

MSBE has previously ruled that it is within the superintendent's authority to make scheduling decisions. In *Coalition for Balanced Excellence in Education v. Anne Arundel County Board of Education*, MSBE Op. No. 03-24 (2003), the superintendent made scheduling changes, which were affirmed by the local board and subsequently upheld by MSBE. However, the appellants in that case did not contend that the superintendent acted outside his authority, so MSBE never addressed that issue specifically. The opinion found that the superintendent does not need approval from MSBE to make scheduling decisions, but is silent as to the manner in which a local board must approve a decision by the superintendent. In upholding the scheduling change overall, we do not quarrel with the requirement that the superintendent must have acted within his authority.

On November 5, 2013, after two years of research and discussion with experts, community members, and the board, Superintendent Dance reported his compatible bell plan to the local board. The local board provided its approval of the plan by failing to object to the decision after the November 2013 briefing.

Over five months later, on April 14, 2014, when Hereford Works appealed the superintendent's decision, the local board formally affirmed the scheduling change. The local board referred the matter to a hearing examiner who conducted a hearing on June 30 and July 1, 2014. The hearing examiner issued a thorough report, including a statement

of the case, findings of facts, conclusions of law, and a recommendation that the board affirm the superintendent's scheduling change. The board voted to adopt the hearing examiner's recommendation, with ten board members voting affirmatively, and two voting in opposition.

We find no error in MSBE's conclusion that Superintendent Dance had formal approval from the local board.

IV. Substantial Evidence

Finally, Hereford Works avers that MSBE erred in finding that the scheduling change was not an abuse of discretion because there was no substantial evidence to support the decision.

At oral argument before the circuit court, Hereford Works contended that there are two decisions at issue in this case. The first decision was to implement a compatible bell schedule review. The second decision concerned which bell schedule to adopt. Hereford Works avers that the superintendent exceeded his authority in deciding that the district needed to operate on a uniform bell schedule without first obtaining research supporting the necessity of a uniform bell schedule.

Hereford Works cites no authority supporting the assertion that the superintendent needed substantial evidence before deciding the district would benefit from a uniform bell schedule,² other than to say that without a substantial evidence requirement, the

² The powers and duties of the County superintendent are found in Education Article, § 4-205(a). In addition, § 4-205(h) provides:

superintendent acts with unfettered authority. We decline to review this issue because it is insufficiently briefed. *Van Meter v. State*, 30 Md. App. 406, 407-08 (1976).

“[A]ppellant is required to provide argument in his brief to support his position. *Id.* at 407. “We cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position.” *Id.* at 408 (citing *Clarke v. State*, 238 Md. 11, 23 (1965)).

As to the issue that is before this Court, there is ample evidence in the record to support the superintendent’s decision to adopt the proposed uniform bell schedule. S3 completed an extensive review and report detailing the benefits and detriments of various bell schedules. Upon reviewing the report, Superintendent Dance decided that the compatible bell schedule would allow for the maximization of staff, increase course options, and ensure continuity for students.

Hereford Works contends that these findings and considerations were irrelevant to Hereford High School because of its “unique academic success,” low rate of student

(h) *Evaluation of program of instruction.*--In accordance with the applicable rules and regulations of the State Board, the county superintendent periodically shall

(1) Evaluate the program of instruction in the public schools of the county;
and

(2) Report the superintendent’s findings and recommendations to the county board.

The failure of the superintendent to commission a study once he became aware that the system did not have a uniform bell system may well have been a dereliction of duty.

mobility,³ and geographical distinction within the larger district. As both the hearing examiner and MSBE recognized, however, “Hereford is not the only school in the system and the superintendent looked at the needs of all students, not just the Hereford zone, which does not exist in isolation, but as part of the larger school system.”

As noted by MSBE, the superintendent, in his February 24, 2014 letter, “offered four primary reasons for the county code schedule change: balanced staffing allocations for all high schools; a review of class sizes among schools based on incompatible schedules; maximizing student course options; and a review of student mobility around the [C]ounty and the effect it had on course completion and access to graduation.”

Hereford Works argues that certain factors are irrelevant to the Hereford school. Taking that as a truism, the superintendent explained his rationale for having a system-wide compatible bell schedule:

. . . this decision is a system wide decision as our high schools have an average 27% mobility rate.^[4] In a school system as large as Baltimore County Public Schools, decisions that impact students throughout the

³ Specifically, Hereford Works points to its mobility rate of somewhere less than 5%, and that it is an unequally rural district of over 233 square miles, where students could move 40 minutes away and still be within the Hereford (School) Zone. In addition, it notes that the Hereford Zone is a special designation for closure because of bad weather.

⁴ The mobility number would include students who transfer from one school to another. If a student lives in Georgia and comes to Maryland, he or she is a mobility number, which would also include students removed for disciplinary problems or sent to an alternative school. Included as well are students who, for a variety of other reasons, such as getting pregnant, leave school. If a student leaves a Baltimore County public school and moves to a private school, he or she would be a withdrawal. If a student comes from a private school into Baltimore County, he or she is an entry. The numbers are added together to reach a percentage, which is then divided by the total student enrollment for a percentage for a specific school.

[C]ounty cannot be made on a school-by-school basis. We need to allow for all students to be able to move among all of our high schools without any negative impact.

Findings are mixed on the effectiveness of various scheduling options. The research is mixed primarily because any schedule is all about implementation. I do understand that change is difficult, as I am sure the Hereford High School community experienced when it went from a seven-period day to the schedule it currently has. In the end, it is important for us to remember that what makes a high performing school has very little to do with the schedule it implements, but rather the vision of its principal, strength of its teachers, commitment of its students, and support of its community. Hereford High School has all four of these factors in place.

MSBE does not review a decision to determine it was the *best* decision, but instead to determine whether it is one that “a reasoning mind could have reasonably reached.” Hereford Works does not dispute that scheduling matters are within the authority of the local school system. As noted by MSBE:

It is clear from the voluminous record and Appellants’ filing that many people in the Hereford community oppose the schedule change. They explained the benefits of the previous schedule and their concern that switching to a new schedule could negatively impact their children and the success of Hereford.

In our view, these reasons fail to demonstrate that the superintendent’s decision to implement a countywide schedule change was one that “a reasoning mind could not have reasonably reached.” The superintendent offered multiple reasons why the change would benefit the school system as a whole, even if the positive effects of that change might be less noticeable at Hereford. As the superintendent acknowledged in his February 24 letter, “[f]indings are mixed on the effectiveness of various scheduling options. The research is mixed primarily because any schedule is all about implementation.” He went on to express his confidence that Hereford would adjust successfully to the schedule change because of “the vision of its principal, strength of its teachers, commitment of its students[,] and support of its community.”

Principal Last testified before the hearing examiner for the Board of Education of Baltimore County that he did not believe the transition to the A/B period schedule would be difficult for Hereford because the school was 98% completed as of the date of the hearing. Principal Last also testified that the new schedule would be an improvement chiefly because high-scoring students will still be high-scoring, whatever schedule, but 40% of the students in the building who would have skipped English, Math, or World Language would now be exposed to these classes all year long and learning would improve. There was also testimony in the record that the change would maximize the staffing allocation, allowing for a smaller class size.

Arguments that Hereford High School should have been exempted from the scheduling change because of its unique character do not suggest arbitrariness, unreasonableness, or illegality in the decision making processes of the superintendent, local school board, or MSBE.

In sum, MSBE did not err in concluding that Superintendent Dance was not acting arbitrarily or capriciously when enacting the schedule change.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**