

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>CITIZENS FOR FAIR SCHOOLING,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
	:	<b>CASE NO. 1997-42</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
	:	
<b>RICHMOND COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**SUMMARY**

This is an appeal by Citizens for Fair Schooling (Appellants), a group of taxpayers in Richmond County, from a Richmond County Board of Education (Local Board) decision regarding the location for a new high school. Appellants claim that the Local Board’s decision is in violation of State Board of Education regulations regarding where schools can be located. The Local Board’s decision is sustained.

**Factual Background**

Beginning in early 1996, the Local Board began planning the construction of a new high school in South Richmond County to relieve overcrowding in two other high schools located in South Richmond County. One school has 33% more students than it was designed for, and the other has 61% more students. The voters approved a bond issue in November 1996 to support the construction. After a demographic study and review of several sites, the Local Board selected the Goshen site as the location for the new school in February 1997. In March 1997, the site was submitted to and approved by the Georgia Department of Education. Environmental testing of the site was performed and clearance was obtained from the Georgia Floodplain Management office. In September 1997, a contract was let and the site was purchased on September 30, 1997.

Appellants sued in Richmond Superior Court on September 30, 1997 to enjoin the construction of the school. A judge dismissed the suit on October 8, 1997.<sup>1</sup> Thereafter,

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<sup>1</sup> The Judge wrote “[T]his court is unable to find on the record that the local board has ‘clearly’ acted in violation of law or has ‘grossly’ abused its discretion.” Order, *Citizens for Fair Schooling, et al. V. State Board of Education and Richmond County Board of Education, et al.*, Civil Action No. 97-885-RCCV, Richmond County Sup. Ct., Oct. 8, 1997.

Appellants sought a hearing before the Local Board to express their grievances. The Local Board conducted a hearing on October 13, 1997 and received testimony and affidavits from Appellants and personnel from the Local School System. Following the hearing, the Local Board voted not to reconsider their decision regarding the location of the new school. Appellants then filed an appeal with the State Board of Education.

Appellants claimed that the new site violates State regulations governing the construction of new schools because:

1. It is in the flight path of an airport;
2. It is in the flight pattern of an airport and poses an unreasonable risk of falling aircraft;
3. The site does not serve the community to be served;
4. The site is not reasonably convenient to the community to be served and exposes the community to unreasonable risk of traffic hazards, and
5. The site exposes students to unreasonable risk of industrial hazards.

Appellants argued that the new high school should be built to the west of Highway 25, which runs north to south through the area. The new site is in an industrial area and Bush Field Airport is located to the east. Another highway, Highway 56, runs approximately parallel to Highway 25 and is located east of the new site between the new site and the airport.

#### A. Exposure to Airport

Appellants claimed that the Georgia Department of Education's Regional State Facilities Consultant, Charles Reeves, erred when he investigated the site and determined that it was not too close to an airport and is not in the flight pattern of an airport. Appellants contended that the site is within two miles of the end of runway No. 8 of Bush Field Airport in Augusta, Georgia. In support of their contention, Appellants submitted the affidavits of Albert McDill, the Airport director for Bush Field Airport, and Dee Oellerich, an attorney, both of who claimed that the location is less than two miles from the end of runway No. 8 of Bush Field Airport.

The Local Board also received affidavits from the Local Superintendent and Dan Troutman, a pilot and environmental consultant for the Local Board. These affidavits stated that the new site was 2.07 miles from the nearest point of the main runway at Bush Field Airport and 2.0 miles from the auxiliary runway No. 8, and did not violate any provisions concerning the distance from an airport. Additionally, Mr. Troutman stated that the new site was not within the approach or departure path of Bush Field Airport since the main runways point in a different direction.

#### B. Community Service

Appellants also claimed that the proposed location does not serve the population it is designed to serve. Appellants asserted that most of the students will come from an area that is west of Highway 25. The proposed site is east of Highway 25. Additionally, Appellants claimed

that the new site unreasonably exposes students to industrial traffic on Highway 56, which has peak industrial traffic between 7:30 a.m. and 8:30 a.m.

The Local Board conducted demographic studies before selecting the site. Under the terms of a federal court order, the Local Board also considered the potential racial mix of the students who will attend the new school.<sup>2</sup> The Local Board sought and obtained approval for the new site from the plaintiffs in the federal court case. There was also evidence that the location of the school near a major thoroughfare was desirable because easy access was assured. There was also evidence that students would not be exposed to any more industrial traffic than they presently encounter.

### C. Industrial Hazards

Appellants claimed that the new site will expose students to potential harm because the site is located in an area covered by the fallout plume of a chemical plant located northwest of the new site. The Local Board conducted an environmental analysis of the new site. The consultant who performed the analysis concluded that the new site does not pose any environmental hazard. The Local Board also received a risk management report that indicated that the danger posed from any industrial pollutants was negligible. In addition, other schools already located in the area pre-date the industrial plant.

## DISCUSSION

On appeal to the State Board of Education, Appellants make the same claims they presented to the Local Board.

The law has “entrusted the operation of the public schools to the county boards of education, vesting in them wide discretionary powers.” *Boney v. County Board of Education of Telfair County*, 203 Ga. 152, 154, 45 S.E.2d 442, \_ (1947). “[U]nless it is made clearly to appear that they are acting in violation of law or grossly abusing their discretion, their conduct of the schools of the counties will not be enjoined by the courts.” *Id.* at 155. *See, also, Bedingfield v. Parkerson*, 212 Ga. 654, 94 S.E.2d 714 (1956).

“The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board’s

<sup>2</sup>The Local Board is under continuing court supervision of the federal district court to desegregate its schools in the case of *Acree v. County Board of Education of Richmond County*, Case No. 1190 (S.D. Ga.).

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decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).” *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

Although the evidence was conflicting, the Local Board, as the finder of fact, had evidence before it that would permit it to determine that the proposed location is not improper and that it does not violate any standards established by the State Board of Education regarding the proximity of an airport or chemical plant. Additionally, the Local Board had demographic studies that supported the new site. The Local Board also received approval from the plaintiffs in the federal court action to locate the new school at the new site. Additionally, the Georgia Department of Education Area Facilities Consultant reviewed all of Appellants’ allegations and concluded that the Goshen site met state guidelines.

Appellants have not shown that the Local Board violated any law or regulation of the State Board of Education, or acted in an arbitrary or capricious manner.

#### **CONCLUSION**

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence before the Local Board that supports its decision not to change the location of the new high school. Accordingly, the Local Board’s decision is SUSTAINED.

This 12<sup>th</sup> day of February, 1998.

Dr. Bill Grow was not present.

Larry Thompson  
Vice Chairman for Appeals