

BARRY LEBOWITZ,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR25-05

ORDER

Appellant appeals the Montgomery County Board of Education's ("local board's") December 5, 2024, adoption of a resolution authorizing Montgomery County Public Schools ("MCPS") to enter into a contractual agreement with FLO Analytics to conduct and facilitate a school boundary study. (R. 9-12).

The December 5th contract resolution was preceded by local board resolutions on March 28, 2023, authorizing a boundary study to determine the service area for the reopening of Charles W. Woodward High School and on March 19, 2024, authorizing a boundary study to determine the service area for the new Crown High School and the expansion of Damascus High School. The boundary study resolutions included provisions for the school system to hire a consultant to support MCPS staff with the boundary study process. (R. 1-3; 6-7). Both the Woodward reopening and the Damascus expansion experienced delays. (R. 4-5; 67-68).

On September 9, 2024, MCPS issued a Request for Proposal ("RFP") to hire a consultant to facilitate a school boundary review on behalf of the school system.¹ (R. 13-51). The RFP closed on October 31, 2024, and MCPS reviewed the proposals and selected FLO Analytics. (R. 11-12). On December 5, 2024, the local board adopted a resolution authorizing MCPS to enter into a contractual agreement with FLO Analytics to conduct and facilitate a school boundary study. (R. 9-12). This is an appeal of the local board's December 5, 2024, contract resolution.²

Jurisdiction

In the State Board appeal, the Appellant's arguments against the local board's December 5, 2024, contract resolution focus on the arbitrariness of the local board's decision as being contrary to sound educational policy, as well as an alleged violation of local policy. (Appeal and Response). The Appellant maintains as follows:

¹ The parties do not dispute that the scope of work for the RFP included the boundary studies described herein.

² Although the Appellant makes various statements in his appeal concerning the March 19 boundary study resolution, he clearly states in his Appeal and Response that he is appealing the December 5 contract resolution. (Appeal at 1; Response at 1). Thus, the State Board appeal filed on December 19, 2024, is timely. *See* COMAR 13A.01.05.02B.

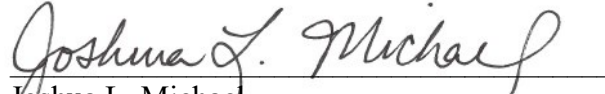
- It is contrary to sound educational policy to base a boundary study consultant contract's scope of work and a board resolution approving the contract on a capital project which has been postponed.
- It is contrary to sound educational policy to include schools in the boundary study, the consultant contract's scope of work and the December 5th resolution based on enrollment projections which are no longer valid.
- It is arbitrary and contrary to sound educational policy to keep Clarksburg and Damascus High Schools in the boundary study resolution after the Damascus High School expansion they were intended to populate was postponed.
- Including Clarksburg and Damascus High Schools in the boundary study to determine the attendance area for the new Crown High School does not comply with MCPS regulation FAA-RA's (*Educational Facilities Planning*) provision for extending the study scope because neither school is located in a cluster adjacent to the new Crown High School.
- It is arbitrary and contrary to sound educational policy to include 50 schools in two boundary studies, the consultant's scope of work, and the December 5th resolution without stating a reason why each school is included.
- The boundary study could adversely affect Jewish students within MCPS and make them more vulnerable to antisemitism and civil rights violations if, based on the results of the boundary study, the local board makes a redistricting decision that moves Jewish students to schools with smaller Jewish populations.

A local board's decision to authorize a resolution for approval of a contract such as the one at issue here is quasi-legislative in nature. *Nash, et al. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 21-35 (2021); *Nash, et al. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 20-41 (2020). *See also Lockwood v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 17-42 (2017); *Hampshire Greens Community (II) v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 08-10 (2008) (citing *Bernstein v. Board of Educ. of Prince George's Cnty.*, 245 Md. 464, 476 (1967)). When a quasi-legislative decision is appealed, the State Board's jurisdiction to hear the case rests on §2-205 of the Education Article. *Id.* Thus, the State Board's review of such quasi-legislative decisions is limited to deciding whether the local board's decision violated State education law or regulation, or a statewide educational policy. *Id.* The State Board does not substitute its judgment for that of the local board as to the wisdom of the administrative action. *Citizens for a Responsible Curriculum v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 07-30 (2007).

None of the Appellant's arguments assert a violation of State education law or regulation, or a violation of statewide educational policy. Rather, the claims attack the "wisdom" of the local board's decision authorizing MCPS to enter into a contract with FLO Analytics to conduct and facilitate a school boundary study or raise a local policy issue lacking statewide implications. This appeal does not fall within the narrow category of cases that the State Board has jurisdiction to review under §2-205 and must be dismissed.

Accordingly, it is this 25th day of March 2025, by the Maryland State Board of Education, ORDERED, that the appeal is hereby dismissed for lack of jurisdiction.³ *See* COMAR 13A.01.05.03B(1)(d).

MARYLAND STATE BOARD OF EDUCATION



Joshua L. Michael
President

³ Because we dismiss for lack of jurisdiction, we decline to address the local board's request to dismiss for lack of standing.