

COMMONWEALTH OF PENNSYLVANIA

STATE BOARD OF EDUCATION

In re: Application of Washington Township Independent School District for Transfer from
Dover Area School District to Northern York County School District

**DECISION OF THE STATE BOARD OF EDUCATION ON THE PETITION FOR
RECONSIDERATION FILED BY WASHINGTON TOWNSHIP
INDEPENDENT SCHOOL DISTRICT**

November 19, 2015

INTRODUCTION AND BACKGROUND

Presently pending before the State Board of Education (State Board or Board) is a Petition for Reconsideration filed by the Washington Township Independent School District (WTISD). The Petition asks the State Board to reconsider its September 17, 2015 decision and order, which disapproved the application of WTISD for transfer from the Dover Area School District (Dover) to the Northern York County School District (Northern York) under Section 2-293.1 of the Public School Code of 1949 (Public School Code), *as amended*, 24 P.S. § 2-293.1. The following is a review of the issues raised in WTISD's reconsideration petition. It is also the State Board's final determination on the application of WTISD for transfer from Dover to Northern York pursuant to Section 2-293.1 of the Public School Code. As described in more detail below, while the Board agreed to reconsider the matter following WTISD's petition, and invited and received responses to the petition, upon reconsideration the Board hereby affirms its earlier decision to deny WTISD's application to transfer from Dover to Northern York.

Following a finding of educational merit by the Secretary of Education (Secretary), the Court of Common Pleas of York County issued a decree dated November 10, 2014, creating the Washington Township Independent School District for the sole purpose of its possible transfer

from Dover to Northern York. The decree was issued by the court under Section 2-242.1 of the Public School Code, 24 P.S. § 2-242.1, and transmitted to the State Board under Section 2-292.1 of the Public School Code, 24 P.S. § 2-292.1.¹ The State Board then published public notice of its receipt of the application for transfer and informed the public of the opportunity to submit written petitions to intervene, notices of intervention or protest, and written requests for a public hearing on the application.

On December 11, 2014, Dover submitted a protest to the application and requested a public hearing on the matter. Throughout December 2014, the State Board received petitions to intervene from Northern York; Dover Area Education Association (DAEA), a labor organization representing the professional staff of the Dover Area School District; and Keep Us in Dover Schools (KIDS), an unincorporated association comprised of members of the Dover community. DAEA and KIDS aligned with Dover in opposition to the transfer, while Northern York remained neutral. By a resolution adopted on January 14, 2015, the Chairman of the State Board appointed a Special Committee on the Washington Township Independent School District (Committee) to conduct appropriate proceedings under the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code Part II, and, upon completion of all appropriate proceedings, to recommend the proper action that the State Board should take to dispose of the application for transfer under Section 293.1 of the Public School Code, 24 P.S. §2-293.1.

Pursuant to Section 35.31(b) of GRAPP, on March 11, 2015, the Committee granted Northern York's intervention petition and authorized the limited participation of DAEA and KIDS. 1 Pa. Code § 35.31(b).² In a series of pre-hearing conference calls, on April 8, 2015,

¹ The State Board received a copy of the decree on November 12, 2014.

² GRAPP permits intervention in administrative proceedings by any party claiming an interest that may be directly affected by the proceeding and that is not adequately represented by existing parties. 1 Pa. Code § 35.28.

April 23, 2015, and May 11, 2015, the Committee and all parties developed the timeline and requirements for pre-hearing submissions, including the stipulated pre-hearing record and the structure of the hearing; and the Committee facilitated the compiling of a list of issues by the parties that they deemed relevant to the transfer application and for which evidence would be received at the subsequent hearing.³

Pursuant to Section 504 of the Administrative Agency Law, 2 Pa.C.S. § 504, and GRAPP, and after appropriate public notice, a two-day evidentiary hearing was held on June 3–4, 2015, at the York County Judicial Center. The hearing proceeded under GRAPP, 1 Pa. Code Part II. The parties had the opportunity to stipulate to portions of the record before the hearing and to introduce other evidence during the hearing. WTISD presented evidence in favor of the transfer; Dover, DAEA, and KIDS presented evidence against the transfer; and Northern York presented a brief statement regarding its capacity to accommodate the students of Washington Township. Each party was given the opportunity to call witnesses and experts for direct examination, conduct cross and redirect examinations, submit documentary evidence, including expert reports, and to present opening and closing statements to the Committee. Following the evidentiary portion of the proceedings, members of the community provided public comment. Additional public comment was submitted to the Committee in writing in advance of the hearing.

Thereafter, the Committee thoroughly reviewed all of the evidence introduced and the testimony provided at the June 3–4 hearing, as well as the written and oral public comment.⁴

³ On May 13, 2015, the Committee met to formally adopt the pre-hearing record related to the application of WTISD. The pre-hearing record approved by the Committee consisted of the documents stipulated to by the parties to the proceedings and the Secretary’s findings of fact and determination of educational merit on the petition.

⁴ At the same time, as described in more detail below, all exhibits that were introduced into evidence during the hearing and all public comments received were made available to all members of the Board through the Board’s

Following that review, pursuant to the January 14 resolution, the Committee drafted a report containing its findings of fact and conclusions of law, which recommended disapproval of the Application of WTISD for transfer from Dover to Northern York. Following public notice, the Committee formally adopted its report at its public meeting on September 16, 2015, transmitting the matter to the full State Board.⁵ At its September 17, 2015 meeting, and pursuant to Section 2-293.1 of the Public School Code, 24 P.S. § 2-293.1, the State Board voted to adopt the Committee's report (hereinafter, the Board's September 17 Report), and issued a final order disapproving the creation and transfer of the WTISD.

By e-mail correspondence dated September 24, 2015, counsel for WTISD inquired about requesting a post decisional hearing pursuant to 24 P.S. § 2-293.1. *See* 24 P.S. § 2-293.1 (stating that if the State Board disapproves the transfer of an independent district, “the board shall state its reasons for such disapproval and the independent district shall be provided a hearing if it so desires”). On September 29, 2015, the State Board responded to this inquiry by informing WTISD that when it considers an application for the transfer of an independent school district where a hearing is requested and parties intervene, a full evidentiary hearing is held pursuant to the Administrative Agency Law and GRAPP *prior to* rendering its final determination. *See* 2 Pa.C.S. § 504 (“No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.”); *see generally* 1 Pa. Code §§ 35.1-35.251 (contemplating a hearing taking place prior to agency action). The Board's September 29 response explained that such a hearing had been held for WTISD's application for transfer on June 3–4 in York, Pennsylvania. In an abundance of

Sharepoint site, and copies of the hearing transcript were made available to all members for review in the Board's office.

⁵ A copy of the Committee's draft report and recommendation on the application of WTISD had been transmitted to the full Board one week earlier.

caution, in the interest of fairness, and to give effect to the post-decisional hearing provision of Section 2-293.1 while reconciling it with the full hearing on June 3–4 conducted pursuant to the pre-adjudication hearing provisions of Section 504 of the Administrative Agency Law and GRAPP, the State Board informed all of the parties that it treats a request for a post-decisional opportunity to be heard under Section 2-293.1 as a request for reconsideration under GRAPP.

In its September 29 response, the State Board advised all of the parties that WTISD could request reconsideration by filing a petition with the State Board within 15 days; and Dover, Northern York, KIDS, and DAEA would have 15 days after service of a reconsideration petition by WTISD to file a response. On October 13, 2015, WTISD filed a Petition for Reconsideration with the State Board. The State Board treated WTISD's October 13 filing as automatically triggering the State Board's grant of WTISD's petition for reconsideration, since the State Board's September 29 correspondence provided the opposing parties with an opportunity to file a response to the reconsideration petition. *See* 1 Pa. Code § 35.241(c) (allowing a response to a petition for reconsideration only when a petition has been granted). On October 26, 2015, Dover filed a response to WTISD's reconsideration petition,⁶ and on October 28, 2015, DAEA also filed a response.

Pursuant to the grant of reconsideration, under Section 2-293.1 of the Public School Code, 24 P.S. § 2-293.1, the State Board now addresses the issues raised in WTISD's October 13 reconsideration petition.

⁶ In its response, Dover asserts that WTISD's reconsideration petition is not authorized because, after the State Board disapproved the proposed transfer of WTISD on September 17, 2015, WTISD's board of directors "did not convene a meeting of its directors or hold deliberations on whether to further pursue this matter." Dover's Response to Petition for Reconsideration, dated October 26, 2015, at 2. This argument is outside the scope of the State Board's review on reconsideration, which is confined to reconsidering its September 17, 2015 decision based on the issues raised in WTISD's petition for reconsideration. Furthermore, to date none of the parties have provided the State Board with an order concerning the appointment of board of directors for WTISD.

ANALYSIS

WTISD asserts in its reconsideration petition that the Board failed to provide for a hearing before the full Board or, alternatively, to provide members with sufficient opportunity to review the testimony and exhibits from the June 3-4 hearing related to the application for transfer prior to the State Board's September 17 vote on the application. WTISD further asserts that the full Board had only 24 hours to review the exhibits and testimony related to this matter between the time that the Board's Special Committee formally adopted its report and the time the Board took action on the application for transfer. *See* WTISD Petition for Reconsideration, dated October 13, 2015 (WTISD Petition), at 1-2.

Section 2-293.1 of the Public School Code concerns the State Board's role in relation to independent school districts and provides:

When a court decree is received creating an independent district for transfer purposes, the State Board of Education shall place such item on its agenda and either approve or disapprove the creation and transfer. If approval is given, the board shall direct the Council of Basic Education to make the necessary changes in the county plan. If disapproved, the board shall state its reasons for such disapproval and the independent district shall be provided a hearing if it so desires.

24 P.S. § 2-293.1.

Upon receipt of WTISD's application for transfer, the Board designated the Committee by resolution to conduct appropriate proceedings related to the application and to prepare a report and recommendation on the application for review by the Board. Neither WTISD or any other party to this matter raised an objection to the Committee or to the responsibilities delegated to it at the time the Committee was appointed, during any of the pre-hearing conference calls, or during the Committee's two-day hearing on June 3 and 4, 2015. In carrying out its

responsibilities, and consistent with past practice of the Board in similar cases where a hearing is requested and parties intervene, a full evidentiary hearing was provided pursuant to GRAPP and the Administrative Agency Law prior to the Board rendering its final determination.

Further, WTISD is incorrect in its assertion that the full Board had only 24 hours to review evidence related to its application for transfer. Following the conclusion of the June 3-4 public hearing, all exhibits that were introduced into evidence during the hearing and all public comments received on this matter were made available to all members of the Board through the Board's Sharepoint site. Following the hearing, copies of the hearing transcript were made available to all members for review in the Board's office. Prior to the hearing, and through Sharepoint, all Board members also were provided access to all documents comprising the pre-hearing record adopted by the Committee on May 13, 2015.

The Committee also kept the Board apprised of its work related to the application by making reports on its proceedings at public meetings of the Board on May 14, 2015, and on July 9, 2015, at which time all Board members had the opportunity to engage in discussion and to ask questions related to the application for transfer. A copy of the Committee's draft report and recommendation on the application of WTISD was transmitted to the full Board one week prior to Board action on the application. Thus, all members of the Board had access to and sufficient opportunity to review evidence related to this matter in advance of the decision rendered by the Board on September 17, 2015.

WTISD next argues that the Board is bound by the Secretary's finding of educational merit per the School Code and *In re Petition for Formation of Indep. Sch. Dist.*, 17 A.3d 977 (Pa. Cmwlth. 2011) (hereinafter, Riegelsville II), and suggests that the Board is precluded from

reversing or re-evaluating the Secretary’s findings. *See* WTISD Petition at 2-3.⁷ The plain language of the relevant provisions of the Public School Code does not support this argument. *Compare* 24 P.S. § 2-242.1 (governing the Secretary’s review), *with* 24 P.S. § 2-293.1 (governing the State Board’s review). The consideration of a petition for the transfer of an independent school district is a multi-tiered process that involves the local Court of Common Pleas, the Secretary and, ultimately, the Board as the body granted final authority. The role of the Secretary and the role of the Board as they pertain to this process are defined in separate and distinct provisions of the School Code.

Section 2-242.1(a), 24 P.S. § 2-242.1(a), and Riegelsville II both address the role of the Court of Common Pleas and the Secretary in evaluating a petition for the formation of an independent school district. This section bars the Court of Common Pleas from establishing an independent school district unless the Secretary has determined that the petition is meritorious from an educational standpoint and sets forth a specific standard—educational merit—for the Secretary’s review. The Board, however, operates under an entirely different section of the Public School Code that does not place similar constraints upon its review.

As defined in Section 2-293.1, 24 P.S. § 2-293.1, the Board is charged with “either approv[ing] or disapprov[ing] the creation and transfer” of an independent school district. Unlike the standard set forth for the Secretary’s review, the plain language of Section 2-293.1 does not place such constraints upon the Board’s review, nor does it bind the Board to the Secretary’s finding of educational merit or limit the Board’s authority to make its own

⁷ WTISD asserts that the Board has disregarded the standards for transfers set forth in Riegelsville II and has “substitut[ed] its own preferences.” WTISD Petition at 6-7. WTISD, however, misconstrues the import of Riegelsville II, as that case concerned “the scope and meaning of the *Secretary’s* statutory authority to ‘pass’ on the ‘merits from an educational standpoint’ of proper school district transfer,” and did not address the *State Board’s* review of independent school district transfers. *In re Petition for Formation of Indep. Sch. Dist.*, 17 A.3d at 991 (emphasis added).

determination on matters previously passed upon by the Secretary. Indeed, interpreting either the Public School Code or Riegelsville II as binding the Board to the Secretary's finding would effectively render the Board's role in independent school district transfers meaningless.

Such an interpretation also ignores the plain language of the statute that expressly allows for the Board to "either approve *or* disapprove the creation *and* transfer" of an independent school district. 24 P.S. § 2-293.1 (emphasis added). Procedurally, an independent school district cannot be established unless the Secretary has approved the petition from an educational standpoint. Thus, an application for transfer would never be presented for the Board's consideration without the prior approval of the Secretary. However, Section 2-293.1 clearly grants the Board the authority to disapprove a transfer that the Secretary previously concluded had educational merit under Section 2-242.1.

Next, WTISD asserts that the Board disregarded "every single issue" demonstrating educational merit of the transfer to Northern York and instead relied on one educational measurement – the School Performance Profile. *See* WTISD Petition at 3-6.⁸ The Board's September 17 Report expressly provides that it was not intended as a wholesale review of every issue for which evidence was presented at the June 3-4 hearing, but rather reflected the portions of the record that it deemed most relevant and important to the Board's decision in this matter. *See* Board's September 17 Report at 7. In its review of standardized test scores, the Board placed more emphasis on the School Performance Profile—which accounts for both academic

⁸ WTISD contends that *the Board* constructed a list of issues for the June 3-4 hearing and that WTISD presented evidence on every issue the Board decided would be heard. *See* WTISD Petition at 3, 5. The list of issues that WTISD references was not developed by the Board or its Committee. Rather, the Committee facilitated discussion among the parties during a series of pre-hearing conference calls, and *the parties* compiled a list of issues that they deemed to be relevant to the transfer application in preparation for the hearing. The Committee never stated or implied that the Board was bound to consider, or give particular weight to, each of these issues in reaching its ultimate determination.

achievement and academic growth at the school building level—than on aggregate state assessment results alone. The Board did recognize that limited data is available through the School Performance Profile; however, because the School Performance Profile reflects the Commonwealth’s current metric for measuring school effectiveness the Board felt that it should be attributed greater weight.

Further, WTISD’s contention that the Board relied solely upon the School Performance Profile in its findings related to educational programming is inaccurate. The report issued by the Board also took into account the variety of coursework available to students in each district, including: foreign language and Advanced Placement offerings, and honors and technology education courses; opportunities for students to pursue postsecondary level coursework while in high school, and articulation agreements with postsecondary institutions; the delivery of Career and Technical Education; graduation rates; and drop-out rates. *See* Board’s September 17 Report at 10-12. WTISD contends that the Board also disregarded evidence it presented on more favorable student/teacher and student/staff ratios in Northern York. *See* WTISD petition at 5. The Board did review data from the National Center on Education Statistics supplied by WTISD that showed, during the 2012-13 school year, a 16.43 student/teacher ratio for Dover compared to a 15.03 student/teacher ratio for Northern York and an 8.81 total student/staff ratio for Dover compared to a 7.63 total student/staff ratio for Northern York. *See* WTISD 3044. However, the Board did not find the differential between these measures to be significant in informing its decision. On the whole, and after weighing the evidence presented, the Board did not find one district’s educational program to be superior to the other’s for the vast majority of the district’s students.

WTISD also claims that the Board disregarded school safety data in its findings. *See* WTISD Petition at 6. This assertion is inaccurate. As stated in the Board's September 17 Report, all evidence was given due consideration and the report reflects the matters identified as most pertinent to the Board's decision. *See* Board's September 17 Report at 7. Related to school safety data, the Board observed the prudent concern expressed in the Secretary's findings that such data "should be considered with caution as it is self-reported by school districts and collected for the purposes of providing technical assistance, professional development programs and security-related activities to support school safety." The Secretary expressed further caution related to the data based on the statutory discretion granted to school administrators to determine whether to notify law enforcement of certain incidents identified in Section 1303-A(b)(4.2) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.2)). *See* Secretary's Findings of Fact and Conclusions of Law, dated August 7, 2014, at 34-35. Data related to incidents over which administrators have discretion in notifying law enforcement may not provide an accurate comparison between districts but, rather, may reflect the discretion exercised by administrators either to engage law enforcement or to address certain incidents independently.

WTISD contends that, over a twelve-year period, Dover had a record of higher in-school crime, including an average of seven times more in-school arrests and twice the incidents requiring police involvement. *See* WTISD Petition at 6. During the June 3-4 hearing, however, Dover presented recent data on school safety measures that demonstrated improvements in Dover at the same time that the indicators showed a rise in incidents in Northern York. The evidence presented by Dover showed that the arrest rate in Dover has declined over the past seven years, resulting in a 2014 rate of 0.16% for Dover compared to a rate of 0.03% for

Northern York in that same year⁹. *See* DASD at 4101. Dover presented additional evidence that demonstrated that incidents of misconduct recently have declined in Dover while similar incidents have increased in Northern York, resulting in 88 incidents reported for Dover in 2014 compared to 77 incidents reported for Northern York in that same year. *See* DASD at 4102. Other evidence presented by Dover showed the same circumstance related to the number of offenders, with a recent decline in Dover and an increase in Northern York, resulting in 86 offenders reported by Dover in 2014 compared to 82 offenders reported by Northern York. *See* DASD at 4102. Given this current data, coupled with the caution expressed by the Secretary, the Board did not accord great weight to WTISD's argument in reaching its decision to disapprove WTISD's application for transfer.

WTISD next argues that the Board concluded that “the petitioners are only motivated by tax savings,” and asserts that Riegelsville II prevents the Board from considering such factors as part of the Board's determination.¹⁰ WTISD further argues that the Board may not deny the transfer of an independent school district based on speculation regarding the motives underlying the petition. *See* WTISD Petition at 6. These contentions by WTISD are not supported by the findings presented in the Board's September 17 Report.

The Board did not identify property taxes as the *only* motivation for WTISD's pursuit of an independent school district. Rather, the Board identified lower taxes as one of the major

⁹ The arrest rate represents the total number of arrests divided by total student enrollment. *See* DASD 4101.

¹⁰ WTISD's reliance on Riegelsville II in this regard is misplaced and taken out of context, as the “tax concerns” expressed in the transfer petition in that case concerned disparity in taxes paid by residents of the same municipality as a result of being split between two different school districts. *See In re Petition for Formation of Indep. Sch. Dist.*, 17 A.3d at 979, 990. There was no evidence presented at the June 3-4 hearing to demonstrate that the residents of Washington Township suffer from the “tax concerns” that were at issue in Riegelsville II. Furthermore, and as previously discussed, Riegelsville II concerned “the scope and meaning of the Secretary's statutory authority to ‘pass’ on the ‘merits from an educational standpoint’ of proper school district transfer,” and did not address the State Board's review of independent school district transfers, *see id.* at 991, which is of necessarily broader scope.

motivating factors, among other matters discussed in its Report. *See* Board’s September 17 Report at 13-14. Moreover, the Board’s recognition of lower taxes as a major motivating factor was not speculative, but supported by evidence submitted to the Board during the hearing. A communication circulated by the Washington Township Education Coalition (Coalition) seeking support for its petition for transfer emphasized lower taxes at least as much as educational factors, with the heading “Better Education, Lower Taxes.” The document, which solicited support for the transfer petition, also expressly asserted that “Northern taxes are much lower” and asked residents of Washington Township to “consider your tax bill.” In the solicitation document, the Coalition described itself as group “interested in providing a choice for Washington Township children and taxpayers.” DASD 4046-4048.

Next, WTISD contends that the Committee erred in allowing Dr. Carla Claycomb to testify without producing an expert report or providing a description of her testimony, which WTISD claims was contrary to procedures established by the Committee. WTISD further asserts that the Committee also erred in admitting three exhibits (Exhibits 7, 8 and 9) introduced by DAEA as hearsay and in violation of Rule 35.138 of GRAPP. *See* WTISD Petition at 7-9. The Committee convened a series of pre-hearing conference calls to determine logistics and procedures for the June 3 and 4 hearing on WTISD’s application. Through this process, a common deadline was established for exchanging all witness lists and exhibits that the parties planned to introduce at the hearing.

During the April 23, 2015, pre-hearing conference call, Daniel Fennick, counsel for WTISD, asked whether any of the parties would be presenting expert reports and requested that any such documents be exchanged prior to the hearing. In response, the deadline that had already been established for the exchange of other hearing exhibits was applied to the submission

of any expert report that the parties planned to introduce into evidence during the hearing. The procedures set forth by the Committee did not *require* the submission of expert reports. Also during the April 23, 2015, pre-hearing conference call, the parties were directed to prepare witness lists that included a description of the content of each witness's testimony. The materials submitted by DAEA by the deadline established by the Committee did include a description of the anticipated substance of Dr. Claycomb's testimony. Thus, prior to the hearing all parties had knowledge of the potential witnesses and the content of their testimony, as well as of all exhibits, including any expert reports that the parties intended to introduce as evidence.

Moreover, the Board did not rely on, or accord any weight to, either the testimony of Dr. Claycomb or DAEA Exhibits 7 or 8, in reaching its September 17 determination to disapprove WTISD's application for transfer.¹¹ Because the State Board did not rely on any of this evidence in reaching its September 17 decision, WTISD's contention that "its introduction was extremely prejudicial" is without merit. Regarding DAEA Exhibit 9, a 2014 Total Group Profile Report prepared by the College Board, the Board credited this exhibit for the caution: "Since the population of test-takers is self-selected, using aggregate SAT scores to compare or evaluate teachers, schools, districts, states or other educational units is not valid, and the College Board strongly discourages such uses." Board's September 17 Report at 10. Contrary to WTISD's assertion, this document is not inadmissible hearsay, as the 2014 Total Group Profile Report prepared by the College Board falls into the exception to the rule against hearsay for market reports and similar commercial publications. *See* Pa.R.E 803(17). In any event, the Board's

¹¹ The State Board's September 17 Report did cite to one portion of the hearing transcript covering Dr. Claycomb's testimony. *See* Board's September 17 Report at 10 (citing Hearing Transcript at 335). This citation was not to Dr. Claycomb's testimony, but to the portion of the hearing transcript where DAEA Exhibit 9 (Bates "7026"), the 2014 Total Group Profile Report prepared by the College Board, was introduced during the hearing. *See* Hearing Transcript, June 3-4, 2015, at 335.

minimal reliance on DAEA Exhibit 9, *see* Board's September 17 Report at 10, belies WTISD's contention that it was "extremely prejudicial" to the Board's ultimate determination.¹²

WTISD also contends that the Board disregarded harm that will befall Dover if the transfer is not permitted due to projected population growth in the district and facility needs to accommodate that growth. WTISD claims that Dover's school buildings are already at capacity and that many of its classes exceed the district's policy for class size. WTISD asserts that removing Washington Township students will give Dover more time to plan for future facility needs. *See* WTISD Petition at 9-10.

Robert Schoch, an expert witness for WTISD, testified that over the next decade Dover will grow by more than 800 students. *See* Hearing Transcript, June 3-4, 2015, at 48. However, during the hearing Mr. Schoch stated that his analysis of Dover's future capacity needs was based only on the magnitude of projected population growth and that he did not have information available to him on the capacity of Dover's current facilities. *See id.* at 72-74. In direct contradiction of WTISD's claims, Belinda Wallen, Business Manager for Dover, testified that Dover's current facility capacity is approximately 4,380 and that there are currently only 3,400 students enrolled in the district. *See id.* at 223. Ms. Wallen also clarified that modular classroom units available at three schools within Dover (Leib Elementary, Dover Intermediate School, and Dover High School) were not included in the capacity figure she provided. *See id.* at 223. The statistical information provided by Ms. Wallen contradicts Mr. Schoch's testimony that Dover does not have capacity to accommodate the enrollment growth projections; therefore, the Board

¹² The Board's analysis of the comparison of educational programs was based on both standardized test scores, and curriculum and other educational matters. *See* Board's September 17 Report at 7-12. With respect to standardized testing, the Board relied primarily on the School Performance Profile because it reflects the current measure of school effectiveness in Pennsylvania, placing equal weight on indicators of academic achievement and indicators of academic growth. *See id.* at 8-10.

did not credit Mr. Schoch's testimony regarding population growth and capacity issues in Dover. Additionally, Northern York, the district to which WTISD seeks to transfer, indicated that it would need sufficient time to renovate and expand facilities in order to accommodate students from Washington Township, which suggests capacity issues in this district. *See id.* at 206-207.

Finally, WTISD argues that the Board ignored evidence showing the transfer would result in reduced transportation times for elementary school students. *See* WTISD Petition at 10. Mr. Schoch presented a map comparing travel times to all schools in Dover and Northern York based on distance traveled from the geographic center of Washington Township. *See* WTISD at 3042. The map presented two of Northern York's elementary schools within 5-10 minutes of the center of Washington Township, compared to 10-15 minutes for the elementary school Washington Township students currently attend in Dover. At the high school level, the map shows that transportation to Northern York is within 10 minutes of the center of Washington Township and that transportation to Dover is approximately 15 minutes. *See id.* Given the totality of evidence presented, the Board did not find reduced average transportation times for elementary school students to be a significant factor in its determination.

CONCLUSION

Accordingly, for the forgoing reasons, together with the reasons stated in the State Board's report, adopted on September 17, 2015, which is incorporated herein by reference, the State Board **disapproves** the application for the creation of WTISD and its transfer from Dover to Northern York.¹³

¹³ Reconsideration having been granted, this decision together with the attached order constitute the State Board's final order under Pa.R.A.P. 341(a) for purposes of triggering the time for petitioning for review in the Commonwealth Court of Pennsylvania under Pa.R.A.P. 1512(a).

COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

In re: Application of the Washington Township Independent School District for Transfer from the Dover Area School District to the Northern York County School District

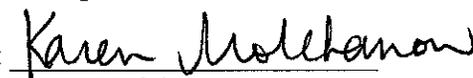
ORDER

AND NOW, this 19th day of November, 2015, upon the affirmative vote of a majority of the members of the State Board of Education, it is hereby ORDERED, pursuant to Section 2-293.1 of the Public School Code of 1949, *as amended*, 24 P.S. § 2-293.1, and for the reasons stated in the attached decision together with the reasons stated in the State Board of Education's report adopted on September 17, 2015, that the creation of the Washington Township Independent School District and its transfer from the Dover Area School District to the Northern York County School District is hereby DISAPPROVED.

Given under my hand and seal this 19th day of November, 2015




Larry Wittig
Chairperson

Attest: 
Karen Molchanow
Executive Director