

In the
Supreme Court of Ohio

RICHARD and JOANN BARTCHY,
et al.,

Plaintiffs-Appellees,

v.

STATE BOARD OF EDUCATION,
et al.,

Defendants-Appellants.

CASE NO. 07-411

On Appeal from the
Franklin County Court of Appeals,
Tenth Appellate District

Court of Appeals
Case No. 06AP-697

MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES RICHARD
AND JOANN BARTCHY, ROBERT AND DONNA SALMON, BERNARD AND
MARILYN SCHLAKE, AND WAYNE AND BEVERLY MORRIS

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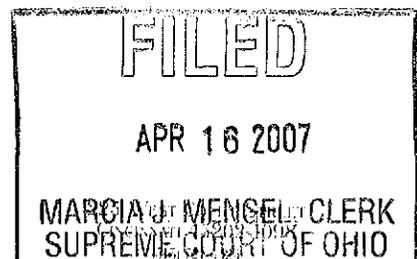


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I. **EXPLANATION OF WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST.**

Contrary to the arguments advanced by the Cincinnati Public School District (“CPSD”) and the Ohio State Board of Education (“State Board”), this decision does not change or expand the law governing the transfer of territory from one school district to another, nor did the Court of Appeals exceed the scope of its judicial review in reversing the decisions of the State Board and the Court of Common Pleas. The Court of Appeals applied long-established precedent in arriving at its unanimous decision. In doing so, the Court correctly found that the State Board’s decision was not supported by reliable, probative, and substantial evidence – because, in fact, there was no evidence whatsoever presented to support the conclusions reached by the Hearing Examiner, which were adopted by the State Board and affirmed by the Court of Common Pleas.

The overruled decisions of the State Board and the Court of Common Pleas in fact impermissibly *narrowed* the law governing the transfer of territory from one school district to another and conflicted with established precedent. As the Court of Appeals decision carefully details, the mere fact that the proposed transfer will not result in a change of schools for any pupils currently living in the proposed transfer area does not halt the inquiry as to whether the transfer should be approved. The hearing examiner was required to apply and balance *all* of the factors set forth in the Ohio Administrative Code in arriving at a decision.

Now CPSD inserts into its Memorandum in Support of Jurisdiction facts that can be found nowhere in the record. This is perhaps the most telling reason as to why this Court should not take jurisdiction over this case. CPSD did not present one witness to testify on its behalf at the evidentiary hearing in this matter and did not even offer any sworn statements by any CPSD officials, but now asks this Court to consider the financial woes of the school district in deciding

whether to hear this case. CPSD elected to offer no evidence on the issue. CPSD now seeks this Court's acquiescence to correct its calculated and strategic decision to not present any evidence.

This case was decided upon specific facts related to these particular properties and owners. The State Board and CPSD argue that this decision will allow property owners to "shop" for school districts. This is simply not the case. The Appellees presented evidence unique to their properties in accordance with the factors that must be weighed in determining whether a transfer of territory should be granted. Because the overwhelming evidence supported the transfer, the Court of Appeals correctly determined that the proposed transfer should be approved.

II. COUNTER-STATEMENT OF THE CASE AND FACTS.

A. Counter-Statement of the Case.

On March 23, 2000, the Appellees, property owners who reside in the City of Madeira, Ohio, filed a petition seeking to transfer their homes from the Cincinnati Public School District to the Madeira School District. For unexplained reasons, the Petition was not forwarded to the Ohio Department of Education ("ODE") by CPSD until August 29, 2000. (R. at B, Ex. 1)¹. The ODE requested the school districts (Madeira and Cincinnati) submit responses to 17 Questions regarding the proposed transfer. (R. at B, Ex. 2). Madeira responded promptly, submitting its responses on October 2, 2000. (R. at B, Ex. 3). CPSD did not submit a response until March 5, 2005. (R. at B, Ex. 24). Meanwhile, CPSD unsuccessfully sought to prohibit the State Board from considering the request by filing lawsuits in federal and state court.

¹ In its Certification of the Record of Administrative Proceedings, the ODE has designated items in the Administrative Record by the letters A through O. Appellees are using these designations in referring to documents and exhibits in the Administrative Record (R), which is found at #25 of the Record on Appeal (RA).

On March 22, 2005, this matter was heard by the Hearing Officer. (R. at A). Appellees presented four witnesses and 10 exhibits. *Id.* CPSD offered no witnesses. *Id.*

The Hearing Officer issued a Report and Recommendation recommending that the Appellees' request to transfer the territory be denied. (R. at G). The Appellees filed Objections to the Report and Recommendations; however the State Board, by a 10-5 decision, adopted the Hearing Officer's recommendation and denied the transfer request. (R. at Q, page 52; R. at M). The State Board's decision was affirmed by the Court of Common Pleas (RA at 43). Subsequently, the Tenth District Court of Appeals unanimously reversed the decision of the trial court and ordered the transfer of territory. CPSD and the State Board have each filed a Memorandum in Support of Jurisdiction, urging this Court to grant a discretionary appeal.

B. Counter-Statement of the Facts.

The Appellees are property owners residing in Madeira, Ohio. They are the sole residents of a cul de sac that was annexed into the City of Madeira in 1996. (R. at C, Ex. P-1). Prior to the annexation, these four lots were the only lots of their subdivision (the "Villages of Kenwood") not located in Madeira. (R. at D, Ex. C). The approval of the transfer makes the boundary lines of Madeira, the Appellees' properties, and the Madeira school district coterminous. (R. at A, Page 71, R. at C, Ex. P-1).

At the hearing, Appellees called four witnesses to testify. Mrs. Donna Salmon testified that she and her husband purchased their home on Windridge Drive in 1996. (R. at A, Page 38). The Salmons have one school age child who attends a private Catholic high school. (R. at A, Pages 38-39). Part of the Salmons' front yard is actually located within the Madeira School District; in fact, the Salmons receive two tax bills for their property; one for part of their

driveway and front yard and the other for the remainder of the property. (R. at A, Pages 39-40; R. at C, Ex. P-1). Another property owner, Bernard Schlake, also testified that he receives two tax bills due to the fact that the school district boundary line passes through part of the Schlakes' property that borders Windridge Drive. (R. at A, Page 91; R. at C, Ex. P-1).

Mrs. Salmon testified at length regarding her family's involvement with the Madeira community. She identified several documents, and newsletters about the City of Madeira and the Madeira School District that Mrs. Salmon receives by virtue of living in Madeira. (R. at A, Pages 44-46). She also testified that she receives a calendar in the mail from Madeira Schools that details some of its special dates and sporting events. (R. at A, Page 44). All of these documents reference and discuss events pertaining to Madeira schools, and are a key means of communication among Madeira citizens. None of the documents introduced make any reference to CPSD. (R. at A, Pages 43-45). Mrs. Salmon also discussed the fact that Madeira students occasionally come to their home seeking donations to support school activities, such as the band. (R. at A, Page 46). However, she had never received any similar documents from the CPSD, nor has she ever been solicited to support any programs for CPSD. (R. at A, Page 46). Likewise, Richard Bartchy and Bernard Schlake testified that they had never received similar communications or solicitations from CPSD or CPSD students. (R. at A, Pages 75-76; 95).

The documents stress the importance of the Madeira school system to Madeira citizens. Mrs. Salmon knows several Madeira school board members, including the school board president, who lives six houses away from the Salmons and a school board member who lives just two houses away from the Salmons. (R. at A, Page 45). Conversely, Mrs. Salmon does not know anyone on the CPSD school board. *Id.* The impact of this division is evident in the

Appellees' civic and political lives. For example, despite the fact that Mrs. Salmon lives on the same street as the school board president and a school board member, she was unable to vote for them at the school board elections. (R. at A, Page 49).

Elections are another example of how the Appellees were segregated from full integration into community life. Mrs. Salmon testified that on Election Day, because they were the only residents of their precinct who did not live in the Madeira School District, she and the other voting residents of the four homes were segregated in a special polling booth used solely by these four households. (R. at A, Pages 46-47). This limited the privacy that these individuals had regarding their individual votes. For example, if only three of the property owners voted on a particular issue, and all voted the same way, the casting of these individual ballots would not have been afforded the secrecy to which each person is entitled. (R. at A, Page 94).

Additionally, Mrs. Salmon testified that these four homes are the only properties in their subdivision, which consists of the roads Windridge and Windsong, which belong to their neighborhood association, but are not part of the Madeira School District. (R. at A, Page 49). The property owners here sought to be fully integrated into the community they are part of, and given that the school district is so entwined with the community functions, that necessarily means being part of the school district as well.

Mr. Richard Bartchy testified regarding the distances between his home and the Madeira Schools, as well as the distances between his home and the nearest Cincinnati schools. Mr. Bartchy measured the distances with his car's trip odometer. (R. at A, Page 76). The distance from his home to the Madeira junior and senior high schools was 3.3 miles; the distance to the Madeira grade school was 2.1 miles. *Id.* The distance to the nearest Cincinnati high school measured 4.8 miles, and the distance to the nearest grade school measured 2.4 miles. (R.

at A, Page 78). These distances are consistent with the responses the responses to the 17 Questions submitted by the Madeira School District. (R. at A, Page 77; R. at B, Ex. 3). CPSD presented no testimony regarding the distance from the schools. Surprisingly, in its response to the 17 Questions, CPSD indicated that the distance to the nearest CPSD school was only one mile and the distance to the nearest Madeira school was two miles. (R. at B, Ex. 24).² Appellees know of no CPSD school located within one mile of their homes. CPSD did not support this contention with any evidence or testimony at the hearing.³

Additionally, Madeira Schools are safely accessible by bicycle from Appellees' homes while CPSD schools are not. In addition to the fact that the CPSD schools are farther away from the Appellees' homes than the Madeira schools, a geographical barrier also exists. (R. at C, Ex. P-10). Madeira rests atop a plateau. The Appellees' homes are located at the edge of the plateau. The evidence established that in order to get to the nearest Cincinnati high school from Appellees' homes, the bicycling student would make a right hand turn out of their subdivision onto Kenwood Road, leaving Madeira, and then travel down a very steep and winding road with numerous blind spots. (R. at A, Pages 109-111). An alternate road part way down Kenwood Road, Whetsel, likewise is a very steep and dangerous road for a young person. Either road is a drop of approximately 228 feet in elevation over $\frac{3}{4}$ of a mile from Appellees' homes to Madison Road, which must be traveled to the nearest Cincinnati high school. *Id.*

² CPSD's Answers to the 17 Questions was not in any way verified or attested to by affidavit or live testimony. Since CPSD presented no witnesses, Appellees had no opportunity to cross-examine any representative from CPSD regarding its responses.

³ CPSD provided other answers that are not accurate. For example, in CPSD's response regarding the effect of prior transfers, CPSD stated that it lost 125 students in 2001 to Forest Hills School District, and 163 students in 1997 to Madeira City School District. However, as the actual cases indicate, the impact was in fact much smaller. In *Schreiner v. State of Ohio, Dept. of Edu.* (1999), Franklin App. No. 98AP-1251, unreported, the Court indicated that the transfer from CPSD to Forest Hills would only affect 20 students, and in *Cincinnati School District v. State Bd. of Edu.* (1996) 113 Ohio App.3d 305, the Court noted that "none of the subdivision's fourteen school-age children attended any of appellant's schools, except one child who attended an alternative Cincinnati school and was scheduled to graduate in 1994." (Emphasis added).

Neither of these roads have bicycle lanes. (R. at A, Page 113). Both of these routes are entirely too dangerous for a student to take on a bicycle or on foot. A topographical map depicting these substantial drops in elevation was admitted as evidence at the hearing. (R. at C, Ex. P-10). On the other hand, to get to the nearest Madeira school, the student would make a left hand turn out of their subdivision onto Kenwood Road, which has a dedicated, marked and relatively flat bicycle lane to accommodate the students. (R. at A, Page 112). This topographical barrier isolated the Appellees from the Cincinnati school system, while the dedicated bike lanes invite the Appellees safely toward Madeira schools.

In sum, the evidence presented established:

- (1) Madeira Schools are closer to Appellees' homes than the nearest Cincinnati Public School; (R. at A, Pages 76-78; R. at B, Ex. 3);
- (2) The boundaries of the Appellees' property, the City of Madeira, and the Madeira School District would become coterminous with approval of the transfer; (R. at C, Ex. P-1);
- (3) Two of the Appellees' properties were divided by the school district boundary line, resulting in the owners receiving two separate tax bills. (R. at A, Pages 39-40, 90; R. at C, Ex. P-1);
- (4) The transfer would provide greater community identity and access to Madeira activities (R. at A, Pages 44-46, 75-76, 95);
- (5) The Appellees regularly receive information regarding Madeira school fundraisers and activities and have never even been contacted about CPS events (R. at A, Pages 46, 75-76, 94-95);
- (6) The Appellees are the only residents of their voting precinct who must vote separately from the rest of the precinct whenever there is a school-related issue on the ballot. (R. at A, Pages 46-47, 94);

- (7) Madeira is geographically and topographically separated from the nearest Cincinnati schools in such a way as to make it impossible for a school age child to safely walk or ride a bike to school. (R. at A, Pages 109-113; R. at C, Ex. P-10). To travel by car, bike, or on foot to the nearest Cincinnati high school requires using a steep winding road with no bike lane and an elevation drop of 228 feet over $\frac{3}{4}$ of a mile (R. at A, Pages 110-111, 113);
- (8) Dedicated bike lanes allow a student to travel safely from the Appellees' homes to Madeira Schools (R. at A, Page 113);
- (9) Fiscal and human resources exist to support the transfer; (R. at B, Ex. 3);
- (10) Adequate facilities exist to support the transfer; (R. at B, Ex. 3)

III. LAW AND ARGUMENT.

Appellees' Response to CPSD's Proposition of Law No. 1: R.C. 3311.06 is not the Exclusive Means of Transferring School Territory Where the Territory was the Subject of a Previous Annexation

The lower courts correctly determined that the State Board had jurisdiction to consider this transfer request. CPSD asserts that, because this property was at one time the subject of annexation, R.C. 3311.06 was the exclusive means by which a transfer of territory from one school district to another could be accomplished. CPSD also asserts that R.C. 3311.06 requires the approval of one of the school districts involved. CPSD argues that because the Appellees sought the transfer under R.C. 3311.24, the State Board was without jurisdiction to consider the request. Here CPSD misreads and misinterprets the relevant portions of the Ohio Revised Code.

CPSD contends that R.C. 3311.06(C)(2) requires one of the school districts to expressly request the transfer. It does not. R.C. 3311.06(C) provides that:

(C)(2) When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory becomes

part of the city school district or the school district of which the village is a part only upon approval by the state board of education, unless the district in which the territory is located is a party to an annexation agreement with the city school district.

Any school district, except an urban school district, desiring state board approval of a transfer under this division shall make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district, except an urban school district, under this section, it must receive the following:

- (a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;

* * *

(Emphasis added). CPSD reads this section to require approval of one school district in order for annexed property to be transferred. It does not. R.C. 3311.06 requires that the transfer of territory be approved by the State Board unless the district in which the property is located is party to the annexation agreement. It does not require that one of the school districts involved approve the transfer. *If* one of the *school districts* involved, as opposed to individual property owners, seeks State Board approval of a transfer of territory, then it must present the State Board with certain documents evidencing the school district's desire to transfer the territory. The only requirement set forth in R.C. 3311.06(C)(2) is that the State Board approve the transfer, which is also a requirement under R.C. 3311.24. It does not prohibit a property owner whose property was at one time annexed from petitioning to transfer the territory under R.C. 3311.24.

The related provisions of the Ohio Administrative Code also indicate that the two statutes are to be construed together, and that individual property owners may petition to transfer their property even if their property had been annexed. The exact same proceedings must be followed whether the petition is brought under R.C. 3311.06 or R.C. 3311.24. The Hearing Officer is required to consider the same factors, whether the petition is brought under R.C. 3311.06 or R.C.

3311.24, which include factors regarding any existing annexation agreements as well as the time period between an annexation and the request to transfer. OAC 3301-89-03(B)(1) and (3). If annexed property could only be transferred under R.C. 3311.06, these considerations would not be relevant to a petition brought under R.C. 3311.24; however the administrative code provisions make no such distinction.

The lower courts correctly held that R.C. 3311.06 works part and parcel with R.C. 3311.24, which provides the method by which *either* a school district or the property owners can request a transfer from the State Board, including provisions for a hearing and approval by the State Board. Nothing in R.C. 3311.06 prohibits a property owner from seeking to transfer property that was at one time the subject of annexation. In fact, this exact procedure has been used on previous occasions involving annexed property, including in *Cincinnati School District v. State Bd. of Edu.* (1996) 113 Ohio App.3d 305, which also involved property transferred from the CPSD to the Madeira City School District. *See also, Levey v. State Bd. of Edu.* (Feb. 28, 1995), Franklin App. No. 94APE08-1125, unreported. The history of citizen reliance on the R.C. 3311.24 process, even involving formerly annexed property, no doubt explains why the State Board has not joined CPSD in this argument.

Appellees' Response to CPSD's Proposition of Law No. 2 and the State Board's Proposition of Law No. 1: Where no Evidence is Presented which would Support the State Board's Denial of a Petition to Transfer Territory and Petitioners Present Sufficient Evidence as Set Forth in the Ohio Administrative Code which Supports the Transfer, the Transfer Must be Approved

It is beyond dispute that the decisions of an administrative agency must be supported by substantial, reliable, and probative evidence in record. See *Harris v. Lewis* (1982), 69 Ohio St.2d 577, 579. An agency's findings are presumed to be correct unless the reviewing court determines that the agency's findings are internally inconsistent, impeached by evidence of a

prior inconsistent statement, rest upon improper inferences, or are otherwise unsupportable. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St.3d 466. When reviewing the trial court's determination of whether an administrative order is supported by such evidence, the appellate court must decide if the trial court abused its discretion. *Rossford Exempted Village School Dist. Bd. of Edu. v. State Bd. of Edu.* (1992), 63 Ohio St.3d 705, 707.

In this case, the Court of Appeals correctly found the record to be devoid of any competent evidence to support the State Board's decision. While the Appellees presented reliable, probative, and substantial evidence in favor of the transfer, CPSD presented none whatsoever which would weigh against Appellees' petition. The Hearing Officer's Report and Recommendation relied heavily on the answers to the 17 Questions and the 10 additional factors submitted by CPSD in arriving at the recommendation that the property should not be transferred. Many of the responses to the 17 Questions were shown to be conclusory, incorrect, and unsupported by the evidence. Notably, counsel for CPSD even prefaced his stipulation to the admission of the responses to the 17 Questions submitted by the two school districts by stating that he was not stipulating to the accuracy of the responses contained therein. (R. at A, Page 11.)

The Hearing Officer determined that the transfer would be detrimental to the fiscal and educational operations of CPSD. (R. at G, Pages 26-27). This conclusion was not based on any tax revenue lost to CPSD, but simply the assessed value of the Appellees' properties. It should be noted that CPSD reported its valuation of the entire CPSD district for the year 2003 (the most recent year provided by CPSD) at \$6,283,240,743. (R. at B, Ex. 24). The assessed valuation of the Appellees' combined properties, as reported by CPSD, is only \$373,840. Based upon these figures, the Appellees' properties only make up .00595% of the total CPSD district valuation.

The Court of Appeals, relying on prior precedent, found that CPSD made no showing of how this loss in valuation would be “a ‘factor significant enough to stand in way of the proposed transfer.’” Decision at Page 13, *citing Crowe v. State Board of Edu.* (Oct. 26, 1999), Franklin App. No. 99AP-78. Specifically, the Court in *Crowe* stated:

We do not believe that the purpose of Ohio Adm. Code 3301-89-02(B)(9) is to simply determine whether a relinquishing school district will lose funds. *** The key to Ohio Admin. Code 3301-89-02(B)(9) is whether the loss of funds would be “detrimental to the fiscal or educational operation of the relinquishing school district.” This requires a finding of how the loss of income would affect the relinquishing school district. Simply presenting evidence that the relinquishing school district will lose funds is insufficient to show that the loss of funds would be detrimental to the fiscal or education operation of the school district.

In adhering to this long-standing precedent, the Court of Appeals did not establish new law nor did it usurp its authority as a reviewing court. Rather, the Court merely set forth the standard that must be applied and found that there was no evidence to support the determination that the transfer would be detrimental to the fiscal or educational operation of the CPSD.

The Hearing Officer also found that previous transfers had caused substantial harm to CPSD. The Court of Appeals held that, because Appellees demonstrated that this information submitted by CPSD regarding previous transfers was wrong, the State Board erred in relying this information in denying Appellees’ petition. Again, the Court of Appeals determined that the trial court abused its discretion in affirming the State Board’s decision because the evidence on which the Hearing Officer based his decision was not reliable, probative and substantial as required. Rather the evidence was demonstrated to be entirely wrong and unreliable. Under such circumstances, the Court of Appeals did not err in reversing the decisions below.

CPSD and the State Board argue that the lack of students living in the transfer area attending public school acts as an absolute bar to approving the transfer. The fact that no pupils

in the proposed transfer area currently attend public school is not determinative of the transfer request. First, this approach attempts to take a snapshot in time of these four homes. The reality is that this request affects more than just the one school age child currently living in the proposed transfer area; the result of this proceeding will run with the land and affect children who inhabit these four homes in the future. The Court of Appeals' decision ensures that these students will have the opportunity to attend a public school that is close to their homes and safely accessible on foot or by bicycle. Second, the criteria set forth in the Ohio Administrative Code upon which the Hearing Officer and State Board must rely in determining whether the transfer should be approved does not draw such a distinction. Rather, the determination rests on more objective and measurable criteria, designed to determine whether, long-term, the transfer makes sense to the organization and operation of the school districts.

Moreover, similar transfers, affecting few or no public school students, have been upheld in the past. In *Cincinnati School District v. State Bd. of Edu.* (1996) 113 Ohio App.3d 305, the Court approved a transfer where all 14 of the children in the transfer area attended parochial school at the time the State Board considered the transfer request. In *Levey v. State Bd. of Edu.* (Feb. 28, 1995), Franklin App. No. 94APE08-1125, unreported, the court approved a transfer of territory where all ten of the school age children living in the transfer area attended parochial school. See also, *In re Proposed Transfer of Territory from Clermont Northeastern Local School Dist.*, Franklin App. No. 02AP-257, 2002-Ohio-5522 (involving one school age child); *Samson v. State of Ohio Bd. of Edu.* (Aug. 13, 1998), Franklin App. No. 97APE12-1702 (involving three school-age children, all of whom moved out of the transfer area after the hearing and before the State Board's decision). The Court of Appeals properly held that the inquiry as to whether the proposed transfer should be approved does not end at a determination that it would be unlikely

that any children currently living in the proposed transfer area would change schools; rather the Hearing Officer was required to examine all the evidence presented and determine whether the evidence presented weighed in favor of the transfer. The Court of Appeals simply affirmed past practice and was neither surprising nor a departure from existing law.

The State Board argues that Appellees should be required to demonstrate that an educational benefit will be accomplished with the transfer in order for Appellees to meet their burden of proof. This heightened standard is not set forth in any statute or regulation. Appellees have no such burden. In fact, the factors that the State Board must take into account rely on much more objective and measurable criteria, such as the distance to the nearest schools, the creation of coterminous boundary lines, and fiscal and human resources available to support the transfer. The State Board's position has no legal foundation, and therefore must be rejected.

The State Board advances a public policy position that the Court of Appeals' decision will lead to "cherry-picking" on the part of property owners. Again, because the decision does not change the law as it previously existed, the State Board's argument does not hold water. The decision certainly does not *lessen* the burden of proof in any way; property owners will still have the burden of showing that they meet the criteria set forth in the Ohio Administrative Code. If the criteria cannot be met, the requested transfer cannot be approved.

IV. CONCLUSION.

The Appellees in this case have simply exercised rights under existing Ohio law to establish their homes in the Madeira School District. It is not surprising or in any way inappropriate that this would be their preference, as Madeira schools are closer, safer to get to, and are an integral part of the city of which Appellees are a part.

The decision of the Court of Appeals, which granted Appellees' petition to transfer territory is consistent with past cases and is not a departure from existing state law. Indeed, all the Court of Appeals did in its decision was acknowledge the complete lack of reliable evidence in support of CPSD's position, while recognizing that Appellees had offered sworn testimony directly addressing the standards required for approving a school district transfer application. As this case involves only four homes it is hard to see this unsurprising decision as being a matter of statewide concern.

Appellees respectfully request that the Court deny jurisdiction.

Respectfully submitted,



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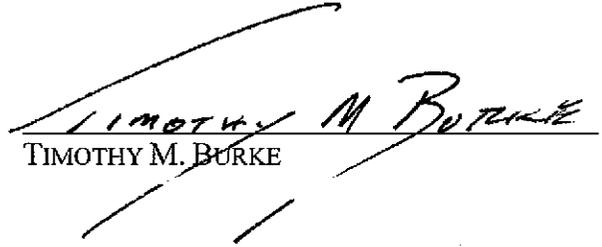
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum in Opposition to Jurisdiction was sent by regular U.S. Mail this 13th day of April, 2007 to David DiMuzio and Jennifer Antaki, 1900 Kroger Building, 1014 Vine Street, Cincinnati, Ohio 45202 and Elise Porter, Stephen Carney, Todd Marti, and Reid Carver, Office of the Ohio Attorney General, 30 East Broad Street 16th Floor, Columbus, Ohio 43215.


TIMOTHY M. BURKE

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