

IN THE SUPREME COURT OF OHIO

BRIAN P. SPITZNAGEL, et al.,)	CASE NO. 2009-0015
)	
Appellants)	
)	
v.)	On Appeal from the Franklin County
)	Court of Appeals, Tenth Appellate
STATE BOARD OF EDUCATION,)	District, Case No. 07AP-757
)	
Appellees.)	
)	

**AMICI CURIAE BRIEF OF
EDWARD THELLMANN, KAREN MELLON, RITA CHARSANKO,
DEAN PENIX AND JOANNE PODOJIL, MEMBERS OF THE WALTON
HILLS EDUCATION NETWORK, URGING REVERSAL
IN SUPPORT OF APPELLANTS**

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AMICI STATEMENT OF INTEREST

This *Amicus Curiae* Brief has been filed by Edward Thellmann, Karen Mellon, Rita Charsanko, Dean Penix and Joanne Podojil, original members of W.H.E.N. (Walton Hills Educational Network), an unincorporated association formed to represent the interests of citizens of the Village of Walton Hills and the children of Walton Hills with regard to matters relating to education and the desire of said residents to transfer from the Bedford School District to the Cuyahoga Heights School District. Individually and together, the *amici curiae* have a paramount interest in protecting the interest of the children of the Village of Walton Hills and their parents as they attempt to secure quality education for the children of the Village of Walton Hills. W.H.E.N. was first formed in 1997 and members participated in the original petition drive to place this matter before the State Board of Education. These individuals and others from the Village have continued to support the efforts of the current individuals and the Village in its attempt to transfer from the Bedford City School District to the Cuyahoga Heights School District.

This *amicus* brief has been filed in order to provide the Court with the benefit of understanding the purpose and intent behind the proposed transfer petition and why it is so vital to the education of the children of Walton Hills for the State Board of Education to approve the transfer. Indeed, the included members of W.H.E.N. originally initiated the transfer petition because they believe that state law provided an effective remedy for circumstances, such as this, where a transfer is in the best interest of the pupils concerned. The *amici* in fact have expended hundreds of hours and financial resources to advance the goal of the transfer and very strongly believe that

transfer is a remedy that can and should be granted by the State Board under the proper legal standards. Thus, while this brief will not address all of the State Board's legal errors, it will emphasize some of the more important evidence in the record that fully supports the proposed transfer and was wrongfully ignored by the State Board.

Over 80% of the citizens of Walton Hills signed the petition to request the transfer. The members of W.H.E.N. have been the leaders of this important effort and include the following persons who are joining in this *Amicus* Brief:

- 1. Edward Thellmann** is the former Mayor of the Village of Walton Hills and was Mayor during the initial attempt to separate the Village from the Bedford City School District. The first petition was signed by approximately eighty-seven percent (87%) of the residents of the Village. That attempt failed because the court ruled that the statutory process for petitioning for a school transfer was not applicable to the requested transfer. Mayor Thellmann continued to support the effort and attempted to create a situation where the Village could undertake a second transfer effort. Mayor Thellmann was successful in getting the Ohio Legislature to amend the relevant sections of the Ohio Revised Code to permit Village residents to petition for this school transfer. Mayor Thellmann served as Mayor of the Village from 1988 thru 2000 and continues to be involved in civic activities in the community since leaving the office of Mayor. Though retired, he continues to support the efforts of the current individuals to transfer the Village out of the Bedford City School District. He has lived in the Village for over forty (40) years.

- 2. Karen Mellon** has resided with her family in the Village for over 16 years. She and her husband have one child who attends private school because of their concerns about the low quality of education available in the Bedford City School District.

She is active in community affairs and works outside the village as an occupational therapist. She is an original member of W.H.E.N. and participated in the current petition drive.

3. Joanne Podojil and her family have resided in the Village for over 24 years. They have two children who have attended private schools for their entire elementary and secondary education. She works in the real estate industry as a licensed real estate agent. She is active in community affairs and was an original member of W.H.E.N. She participated in the recent petition drive to put the transfer issue before the State Board of Education. As a professional in the real estate industry, Ms. Podojil is well aware to the importance people place in the education opportunities available for their children when deciding where to live. In her experience, the poor reputation of the Bedford City School system negatively effects the decision of people, especially those with young families, when considering Walton Hills as a place to live and raise their children. She has numerous business experiences with buyers, sellers, landlords and renters who rate Walton Hills low on their choice for location because of the poor reputation of the Bedford City School district and its consistent low rankings academically.

4. Rita Charsanko has been a resident of Walton Hills for over forty-nine (49) years. She is currently retired but works part-time as a receptionist/telephone operator at a major area corporation. She and her husband, who is now deceased, have two (2) children, age 47 and 49, both of whom attended the Bedford City School District for their education. She has been involved in W.H.E.N. and the effort to transfer the school district from the Bedford City School District to the Cuyahoga Heights Local School District since its inception over ten (10) years ago. She remains active in the

Village, and community activities and senior affairs. Her husband was a dentist who practiced in the Village very close to their residence in which she continues to reside. Since her children graduated from Bedford High School, Mrs. Charsanko has observed the decline in quality education in the Bedford City School District and has vigorously supported the efforts to transfer school districts. She has observed the changing demographics of the other communities in the Bedford City School District and has personally observed the isolation of the Village and the separation of social, community and business activities of the Village from the Bedford City School District.

5. **Dean Penix** has been a resident of Walton Hills for over twenty-two (22) years and owned and operated businesses in Walton Hills for in excess of thirty-three (33) years. Mr. Penix is in the construction industry and owns buildings throughout the area. He and his wife have five (5) children ranging in ages from 46 to 51, all of whom attended through high school graduation the Bedford City School District except for the youngest who they transferred to private schools when she moved from elementary to middle school. Mr. Penix has been familiar with the operations and educational opportunities in the Bedford City School System for an excess of forty (40) years. He has been involved in W.H.E.N. and the effort to transfer the school district from the Bedford City School District to the Cuyahoga Heights Local School District since the beginning of the formal effort. Mr. Penix remains active in the Village in community activities and local business activities. He has observed the changing demographics of the other communities in the Bedford City School District and has personally observed the isolation of the Village from the Bedford City School District and its evolution towards the communities in the Cuyahoga Heights Local School District. He has personally observed the continuing decline in educational opportunities of the Bedford

City School District over the last twenty (20) years and strongly supports the effort to transfer the Village to a more comparable and compatible school district offering greater educational opportunities for the Village's children.

STATEMENT OF FACTS

Walton Hills is essentially a rural community. It encompasses approximately 6.9 square miles with a population of less than 3,000. The Village is typified by single family homes with large lots, with little dense development. There are no urban areas within the Village and the Village is truly remote in location and character from the balance of the communities that make up the Bedford City School District. Besides Walton Hills, the Bedford City School District is comprised of the cities of Bedford and Bedford Heights and Oakwood Village. These communities are classic urban suburbs of the City of Cleveland and have evolved in that manner.

The Village of Walton Hills has evolved in a totally different direction from that of the other communities in the school district. Today only thirty-five (35) of the children of Walton Hills from the K-12 population of approximately 300 of that age range in the Village attend the Bedford City School District. The remaining school age children of the Village attend either the Cuyahoga Heights School District (on a tuition basis) or private schools. These thirty-five (35) children amount to only about twelve percent (12%) of the school aged population of the Village. (*Exhibit A*) Thus, at the present time, approximately eighty-eight percent (88%) of the school age children living in the Village and their parents have already transferred out of the Bedford City School District. They have decided, in the interest of their children's education, that the Bedford City School District does not meet their social and educational needs, is not the appropriate place to send their children for an education and, in fact, is not sufficiently related and tied to the Village as to make it the Village's public school district.

The record shows that over 260 of approximately 300 Walton Hills children attend other schools than Bedford. They have already been transferred to Cuyahoga

Heights or many different private and parochial schools by their families. This *de facto* transfer of Walton Hills children from the Bedford City School District demonstrates the isolation and separation of the Village from the Bedford City School District. Actually, the fact that such a huge majority of Walton Hills children attend so many different schools also keeps them from having connections with other as students and as residents of Walton Hills and many effectively have no school district they can call their own.

Indeed, the evidence in the record establishes that Walton Hills is both geographically and socially isolated from the rest of the Bedford City School District. It is located on the western side of the district with no direct route to the Bedford City School District buildings in the other communities. (*Petitioners Exhibit W*) It is undisputed that no school buildings of the Bedford City School District are located in the Village. (*1st Hearing Report; Page 16*) Therefore, the children from Walton Hills, if they are to attend the Bedford City School District, are required to travel on buses over multiple routes to attend schools located in other communities (Bedford and Bedford Heights) that are not closely aligned in lifestyle, social activity, recreational activity and other quality of life characteristics with their community. (*Petitioners Exhibits F & W*)

In contrast, the Cuyahoga Heights Local School District is adjacent to the Village of Walton Hills with a central campus that is located only 15-20 minutes away from the Village town hall. It has an excellent academic reputation with lower than average teacher/pupil ratios. Many Walton Hills students in fact currently pay tuition to attend the Cuyahoga Heights schools merely to have the same right to a quality public education as any other student in the State of Ohio. The Village and its business community, small as it is, are members of the same Chamber of Commerce which

includes Cuyahoga Heights, Brooklyn Heights, Valley View and Independence. It makes all the sense in the world, therefore, to grant the proposed transfer as the citizens of Walton Hills are more closely aligned with Cuyahoga Heights than the Bedford City Schools.

In proceedings below, this matter was the subject of two (2) evidentiary hearings and two (2) reports and recommendation by the hearing examiner. The first hearing was held from January 25th through January 27th, 2005 and resulted in a report and recommendation dated May 20, 2005. The second hearing was held on April 6, 2006, and resulted in a report and recommendation dated October 25, 2006. The State Board of Education decided to hold a second hearing as a result of notice brought to the Board by the appellant that significant changes had occurred in Ohio's school funding laws as a result of then recent actions by the Ohio legislature. The hearing examiner in the first report and recommendation found that the main factor weighing against the proposed transfer was the alleged loss of local property tax revenues by the Bedford City School District. Other changes in the law occurred subsequent thereto which dramatically impacted and minimized the financial impact of the transfer, and this factor should not stand in the way of this meritorious transfer.

Indeed, as set forth below, this matter is simply too important to the citizens of Walton Hills to allow any of the alleged financial or racial issues stand in the way of the proposed transfer. Race is a non-issue that should not have been relied upon by the State Board of Education at all. Moreover, the alleged financial issues are not substantial and can be effectively managed and mitigated, if necessary. The future of Walton Hills and its children, therefore, should not be foreclosed by the alleged financial and racial concerns, which would effectively leave the Village of Walton Hills

permanently without a viable public school district. The Court should not allow this situation to continue. The *Amici Curiae* urgently request that the Court reverse the Court of Appeals' judgment and allow this proposed transfer to proceed in accordance with law.

ARGUMENT

Amici Curiae fully support the two propositions of law that have been presented by the Village of Walton Hills and the other appellants in this case. In this *amicus* brief, we set forth additional evidence and case law relating to merits of the proposed transfer and why Petitioners met their burden to prove an entitlement to the transfer under Ohio law. Obviously, the ultimate objective is to provide the best educational opportunity for all of the children involved. Here, it is very clear from the evidence on the record that the social and educational opportunities for the children of Walton Hills will be significantly increased by the proposed transfer, while there will be no negative impact whatsoever on the Bedford City School District. Accordingly, the *Amici Curiae* request that the Court reverse the Court of Appeals' judgment and allow this proposed transfer to proceed in accordance with law.

A. The Evidence in the Record Establishes That The Village of Walton Hills Is Both Geographically and Socially Isolated From the Bedford City School District And Has More Substantial Ties To The Cuyahoga Heights Local School District.

Ohio courts have consistently held that social and community ties are an important factor in evaluating any school transfer petition. *See Schreiner v. Dept. of Edn.* (Nov. 9, 1999), Franklin App. No. 98AP-1251, slip op. at 17-18 (reversing denial of transfer because the evidence indicates that the students would be better served by the proposed transfer, holding that the goal of "promoting a 'sense of community' is a valid

ground for seeking and granting a transfer”); *Levey v. State Bd. Of Educ.* (Feb. 28, 1995), Franklin App. No. 94APE08-1125, 1995 WL 89703, *6, 1995 Ohio App. LEXIS 765 (holding that “the present and ultimate good of the pupils concerned’ is obtained if the proposed transfer is permitted based on opportunities for participation and involvement in neighborhood schools with neighboring children”).

Here, the undisputed evidence in the record established that Walton Hills is both geographically and socially isolated from the rest of the Bedford City School District. It is located on the western side of the district with no direct route to the Bedford City School District buildings in the other communities. (*Petitioners Exhibit W*) It is undisputed that no school buildings of the Bedford City School District are located in the Village. (*1st Hearing Report; Page 16*). Therefore, the children from Walton Hills, if they are to attend the Bedford City School District, are required to travel on buses over routes to attend schools located in other communities (Bedford and Bedford Heights) that are not closely aligned in lifestyle, social activity, recreational activity and other quality of life characteristics with their community. (*Petitioners Exhibits F & W*)

Indeed, as previously discussed, the vast majority of residents of the Village no longer view themselves as part of the Bedford City School District and no longer share the type of the overlapping cooperative efforts that one normally sees when communities sense togetherness and unity of purpose. With respect to the ordinary business and community activities, the Village has increasingly become separated from the communities that comprise the Bedford City School District (Bedford, Bedford Heights and Oakwood) and identifies more on a daily and continuing basis with similar villages that comprise the Cuyahoga Heights Local School District. (*2005 Transcript, pages 48-50*)

The Cuyahoga Heights Local School District is immediately adjacent to Walton Hills and is comprised of three (3) villages (Cuyahoga Heights, Valley View, and Brooklyn Heights) that are comparable in size, demographics, social make-up. Walton Hills Mayor Anielski testified that the Village is a member of the Cuyahoga Valley Recreational Association, which includes the Villages of Cuyahoga Heights, Valley View, Brooklyn Heights and Newburgh Heights. Over one hundred (100) children from Walton Hills participate in that baseball program and that number far exceeds the number of children from Walton Hills who attend the Bedford City School District. *(2005 Transcript, pages 49 and 51)* Additionally, the business community has joined the Cuyahoga Valley Chamber of Commerce which unites Walton Hills with Cuyahoga Heights, Brooklyn Heights, Valley View and Independence. Thus, the Mayor made it clear at the first hearing that the Village's allegiance and geographical orientation has increasingly shifted to the communities of the Cuyahoga Heights Local School District because more and more of the Village's residents are in more regular social, recreational and business contact with the parents, students and residents of the Cuyahoga Heights School District, rather than Bedford City School District.

In his first report and recommendation, the Hearing Examiner acknowledged that Walton Hills has significantly different demographics than the other three (3) communities in the Bedford City School District. *(1st Hearing Report; page 23)*. While the hearing officer acknowledged the Village's residents now ... "rely upon other communities' resources for shopping, recreation, worship and the like," he did not give sufficient weight to this evidence. *(1st Hearing Report; page 25)*. The undisputed evidence in the record, however, firmly establishes that the residents of Walton Hills have more social and community ties to the three (3) similar communities in the

Cuyahoga Heights Local School District and that this factor weighs strongly in favor of the petition. Further, given that the Village is located on the western side of the district with no direct route to the Bedford City School District's school buildings in the other communities, the evidence in the record firmly establishes that the Village is both socially and geographically isolated from the Bedford City Schools and that this factor overwhelmingly favors the proposed transfer.

B. The Evidence In The Record Establishes That The Transfer Would Not Result in the Ineffective Utilization of the Bedford City Schools' Facilities.

Interestingly, it was the conclusion of the Hearing Examiner that the proposed transfer of the Village would result in an ineffective utilization of the Bedford City School District's facilities. (*1st Hearing Report, page 22*). The Court of Appeals held that this finding was reversible legal error because it was based upon a presumption that was not warranted by the applicable statute, regulations or case law. Indeed, when viewed in the proper context, any finding that the transfer would result in the ineffective utilization of the BCSD's facilities is truly an amazing conclusion when one considers the facts. There is absolutely no evidence in the record that this transfer would cause the under-utilization of any Bedford City School District facility or the closing of any such facility. (*1st Hearing Report, page 22*). When the original hearing took place, only forty-five (45) students, a handful per grade, from the Village of Walton Hills attended the Bedford City School District. Today that number is down to thirty-five (35). It is illogical to argue or to come to the conclusion that the loss of thirty-five (35) or forty-five (45) students from a School District with a student population of approximately 3,800 students could have any affect on the utilization of facilities in that School District. Thus, there is no evidence in the record to support this conclusion.

C. The Transfer Will Not Cause Any Substantial Upheaval in Long-Held Loyalties.

The Hearing Examiner in the first report also found that there would be substantial upheaval if the long held loyalties between Walton Hills and the Bedford City School District were severed by the proposed transfer. (First Report, Page 21) The facts as disclosed in both hearings clearly show that any loyalties that ever existed between the Village of Walton Hills and the Bedford City School District have evaporated over the past twenty (20) years. Evidence presented by the Village showed that the enrollment of Walton Hills students have significantly declined over the past ten (10) to fifteen (15) years and will continue to decline over time. As we can see from Exhibit A attached, the decline continues as the enrollment for the past school year dropped from forty-five (45), at the time of the hearing, to thirty-five (35). The enrollment likely will continue to decline in the future.

The fact that eighty-eight percent (88%) of school aged children living in the Village of Walton Hills and their parents have decided not to attend the Bedford City Schools speaks volumes about the relationship between the Village and the Bedford City School District. The evidence presented of the remarkably low number of students from the Village attending the Bedford City School District and the continuing decline of that number clearly shows that the Hearing Examiner erred in concluding that proposed transfer would result in a “substantial upheaval” in any “long held loyalties” with the Bedford City School District.

The Hearing Officer seemed to base his findings regarding these factors solely on the fact that the Village of Walton Hills has been part of the Bedford City School District for a number of years; probably since 1918 when Bedford Village first obtained

permission to establish a district separate from the Cuyahoga County school system. This fact alone, however, does not establish a “substantial upheaval” in long-held loyalties, particularly given recent events. As the Hearing Officer acknowledged, the last 15-20 years has shown that the Village has lost its connection to the Bedford City Schools and that there is an “undercurrent of displeasure” with the Bedford City School District by residents of the Village of Walton Hills. (*1st Hearing Report, Page 12*) The record in both hearings is very clear and it is evidenced in the eighty-eight percent (88%) of school aged children of the Village who attend other than the Bedford City School District for their educational opportunities that the residents of the Village of Walton Hills feel no significant connection to the Bedford City School District. In fact, Village residents in a vast majority have long since effectively transferred from the District and have no long held loyalties to the Bedford Schools. It is totally illogical to suggest that the transfer of only thirty-five (35) students (out of a total of 3800) to another school district could effect a “substantial upheaval” in the affairs of the Village or the School District.

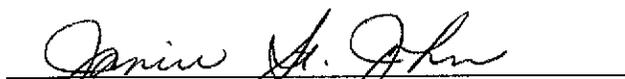
CONCLUSION

Amici Curiae are concerned and committed residents of the Village who, in the interest of the Village and the children of the Village, have long sought to have the Village transferred from the Bedford City School District. These residents urge this Court to consider the impacts on the Village and its children of failing to approve this transfer. There is no doubt that the decline in enrollment by children of the Village in the Bedford City School District will continue in the future. Further, even the Hearing Officer acknowledged that the Village is in all respects a different community both socially, commercially, and in daily life than the other communities in the Bedford City

School District. The Hearing Officer acknowledged the isolation of the Village from the Bedford City School District, the dissatisfaction of the members of the Village with the quality of education in the Bedford City School District, and the *de facto* transfer of the vast majority of the children from the Bedford City School District to other educational opportunities.

The State Board essentially ignored this compelling evidence in its review of the Hearing Officer's Report and failed to effectively review that report and make an objective determination relative to the proposed transfer. Here, the vast majority of the factors set forth in the Administrative Code for the review of proposed transfers in this manner weigh very heavily in favor of the transfer. Therefore, *Amici Curiae*, on behalf of all of the residents of the Village, urge the court to reverse the second decision of the Appellate Court in this matter and to order that the Village of Walton Hills be transferred from the Bedford City School District. It is patently clear that this result is the only result that provides the Village and its children with the kinds of opportunities for education, growth and prosperity in the future that both the children and residents deserve.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2009, a true and correct copy of the foregoing *AMICUS BRIEF* was served via regular U.S. mail, postage pre-paid, to the following counsel of record in this case:

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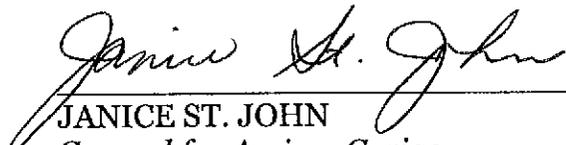
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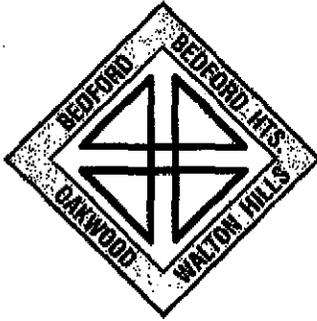
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October 21, 2008

Mayor Mariene B. Anielski, OCPM
Village of Walton Hills
7595 Walton Road
Walton Hills, OH 44146

Dear Mayor Anielski:

Enclosed is the information you requested in your public records request dated 10/20/08.

Sincerely,

Janet Pavlic, Treasurer
Bedford City School District

Enclosed is the information you requested in your public records request dated 10/20/08.

10/21/08

Walton Hills Student Enrollment Data
2008-2009 School Year*

*October 21, 2008

<u>Preschool</u>	<u>1</u>
<u>Kindergarten</u>	<u>3</u>
<u>Grade 1</u>	<u>4</u>
<u>Grade 2</u>	<u>5</u>
<u>Grade 3</u>	<u>2</u>
<u>Grade 4</u>	<u>3</u>
<u>Grade 5</u>	<u>1</u>
<u>Grade 6</u>	<u>3</u>
<u>Grade 7</u>	<u>1</u>
<u>Grade 8</u>	<u>1</u>
<u>Grade 9</u>	<u>2</u>
<u>Grade 10</u>	<u>3</u>
<u>Grade 11</u>	<u>5</u>
<u>Grade 12</u>	<u>2</u>
<u>Special Education</u>	<u>3</u>

9 = African American	23%
1 = Hispanic	3%
2 = Multiracial	5%
27 = Caucasian	69%