

**BEFORE THE REGIONAL BOARD OF SCHOOL TRUSTEES OF
CLARK, COLES, CUMBERLAND, DOUGLAS, EDGAR, MOULTRIE AND SHELBY
COUNTIES, ILLINOIS**

IN RE: PETITION FOR DETACHMENT OF)
TERRITORY FROM OKAW VALLEY)
COMMUNITY UNIT SCHOOL DISTRICT #302,)
AND ANNEXATION OF SAID TERRITORY)
TO SHELBYVILLE COMMUNITY UNIT)
SCHOOL DISTRICT #4,) Parcel ID No. 17071100300007
)
)
Derek & Marisa Percy,)
)
)
Petitioners.)

PETITION FOR REHEARING

COMES NOW Okaw Valley Community Unit School District No. 302, (hereinafter “OV”), by and through its attorneys Guin Mundorf, LLC, and for its *Petition for Rehearing* states as follows:

Introduction

1. On July 11, 2022, the Regional Board of School Trustees for Clark, Coles, Cumberland, Douglas, Edgar, Moultrie and Shelby Counties, Illinois ("RBST") conducted its hearing on the referenced Petition for detachment and annexation. A transcript of those proceedings, along with the accompanying Exhibits, is attached hereto as Exhibit A and is incorporated herein by this reference as if set out in full. ¹

2. On July 12, 2022, the RBST issued its Order wherein (in summary) it granted the Petitioners' petition. *See* Exhibit B, attached hereto and incorporated herein by this reference as if set out in full.

¹ Kent Stauder, Superintendent for Okaw Valley CUSD No. 302, participated in those proceedings via Zoom conferencing. The Transcript of Proceedings incorrectly identifies Kent Stauder as the "Shelbyville Superintendent" (Tr. 2) though other transcript references and/or Exhibits correctly identify Kent Stauder as Okaw Valley CUSD No. 302's Superintendent.

3. On July 13, 2022, the RBST's *ex officio* Secretary emailed a copy of the Order to the undersigned.

4. *School Code* Section 7-6(n), 105 ILCS 5/7-6(n) explains:

(n) Within 10 days after service of a copy of the order granting or denying the petition, any person so served may petition for a rehearing. The petition for rehearing shall specify the reason for the request. The regional board of school trustees shall first determine whether there is sufficient cause for a rehearing. If so determined, then the regional board of school trustees shall allow the petition to be heard anew in its entirety in accordance with all procedures in this Article. The party requesting a rehearing shall pay the expenses of publishing the notice and of any transcript taken at the hearing. The filing of a petition for rehearing shall operate as a stay of enforcement until the regional board of school trustees or State Superintendent of Education in cases determined under subsection (l) of this Section enters the final order on such petition for rehearing.

5. This *Petition for Rehearing* is being filed with the RBST within the time frame identified in *School Code* 7-6(n) (cited above) and for the reasons set forth therein.

Legal Standards and the Petitioners' Burden of Proof

6. Article 7 of the *School Code*, 105 ILCS 5/Art. 7, establishes the requirements for a Petition seeking boundary changes through detachment and annexation.

7. Petitioners requesting a boundary change have the burden and obligation to prove that they have fulfilled each and every statutory requirement established by the legislature, and failure by the Petitioners to do so requires a Regional Board to deny the Petition. ²

8. “Illinois is a fact-pleading State, and a pleading must contain specific facts to bring the claim within the legally recognized cause of action; otherwise, the pleading must be dismissed.” ³ Additionally, a petition seeking annexation is considered a pleading and, therefore, “must allege specific facts to bring it within the statute.” ⁴

² *Fixmer v. Regional Bd. of School Trustees*, 146 Ill. App. 3d 660, 664 (2d Dist. 1986): Petitioners “have the burden to show that it is in the best interests of the area schools and the pupils’ welfare to allow a change of boundaries. They must be able to show support of their Petition with substantial evidence.”

³ *Matulis v. Montalbano Builders, Inc. (In re Annex Certain Prop. to the City of Wood Dale)*, 244 Ill. App. 3d 820, 834 (2d Dist. 1993).

⁴ *Id.*

9. “A petition in compliance with the statute is a prerequisite to the Board's jurisdiction to act.”⁵

10. Section 7-1 of the *Illinois School Code*, 105 ILCS 5/7-1, requires (among other requirements) that a petition include “facts that support favorable findings for the factors to be considered by the regional board of school trustees pursuant to Section 7-6 of this Code.” Because Illinois a fact-pleading State, the Petition must “allege specific facts to bring it within the statute.”

**A Rehearing is Necessary Because the
RBST Order Violates School Code Article 7's Requirements**

11. The RBST Order fails to comply with *School Code* Article 7's requirements, and a rehearing is both proper and necessary, for the following reasons:

a. *The RBST's Order violates School Code Section 7-6(i)(2) because the RBST failed to first determine whether the requested boundary change would result in a "Significant Direct Educational Benefit" before the RBST addressed purported "Community of Interest" and "Whole Child" factors.*

Through legislative in 2017, the *School Code* was changed in a way that restricted how, and even if, regional boards could consider certain types of evidence when presented with a petition for detachment and annexation. Specifically, *School Code* Section 7-6(i)(2) established new restrictions on regional boards, as follows:

The community of interest of the petitioners and their children and the effect detachment will have on the whole child may be considered only if the regional board of school trustees first determines that there would be a significant direct educational benefit to the petitioners' children if the change in boundaries were allowed.

(Emphasis added). The Percy's Petition lists factors such as previous attendance and "healthy relationships" (*see* Petition, Section 4), but these and similar factors cannot be

⁵ *Shapiro v. Regional Bd. of School Trustees*, 116 Ill. App. 3d 397 (1st Dist. 1983). See also *Betts v. Regional Bd. of School Trustees*, 151 Ill. App. 3d 465, 467 (2d Dist. 1986): “A petition in compliance with the School Code is essential to give the RBST jurisdiction over a detachment proceeding.”

considered by the RBST unless and until they have rendered a determination regarding a "significant direct educational benefit." ⁶ In this instance, the RBST Order fails to make any finding of fact or conclusion of law regarding "a significant direct educational benefit," so the RBST Order and the RBST proceedings violate *School Code* Section 7-6(i)(2)'s mandate. ⁷ Because the Petitioners failed to present "significant direct educational benefit" averments in their Petition, because the Petitioners failed to present any testimony regarding the "significant direct educational benefit" requirement, and because the resulting RBST Order lacks any findings of fact or conclusion of law regarding any "significant direct educational benefit" before addressing "community of interest" and "whole child" factors, the Order is contrary to law and a rehearing is required. ⁸

b. The RBST's Order fails to follow even their own "Guidelines for Regional Board of School Trustees Annexation/Detachment Decisions."

Exhibit #8 for the proceedings contains a summary of *School Code* Section 7-6's legal requirements, with Paragraph 2 thereof specifically acknowledging the "significant direct

⁶ See comments by the Petitioners: Transcript 5-10 and 10-14. Other than some comments along the lines of "academically they did fine" and "I've heard great thing" about Okaw Valley, there is nothing in the Petitioners' testimony that the RBST could rely on to make any sort of compliant "significant direct educational benefit" determination.

⁷ The RBST Order list seven (7) enumerated factors that the RBST "used... in granting the Petition." It is unclear whether, or even if, these factors are to be construed as findings of fact or conclusions of law as required by *School Code* Article 7, but none of them satisfy the requirements of *School Code* Section 7-6(i)(2)'s "significant direct educational benefit" requirement. The first 2 relate to current enrollment information. The 3rd discusses "healthy relationships." The 4th discusses "presumptions" of the petitioners when purchasing the residence in question. The 5th discusses uncorroborated allegations regarding "loss of tax revenues." The 6th discusses the petitioners' self-employment, and the 7th speculates about participation in school activities. None of these factors even address the "significant direct educational benefit" requirement established by *School Code* Section 7-6(i)(2), so the Order upon which they are based fails, as a matter of law, to comply with the *School Code's* mandates.

⁸ Petitioners' Petition contains no allegations, information, or facts that relate to any educational benefit available to children at either Okaw Valley CUSD 302 or Shelbyville CUSD 4. It would, therefore, be impossible for Petitioners to prove that a "significant direct educational benefit" would result if the Petition were granted. The petitioners have the burden to prove that a "significant direct educational benefit" would result. Additionally, the petitioners must establish, by a preponderance of the evidence, that "the benefit to the annexing district and the detachment area must clearly outweigh the detriment resulting to the detaching district and the surrounding community as a whole. *Oakdale Community Consolidated School District No. 1 v. County Board of School Trustees*, 12 Ill. 2d 190 (1957). They have failed to do so, and the RBST Order fails to address this requirement.

educational benefit" requirement.⁹ Nevertheless, the RBST and its Order fail to comply with the RBST's own Guidelines in this regard, as discussed in more detail in Paragraph 11.a. (above) of this *Petition for Rehearing*. The RBST's failures in this regard constitute reversible error as a matter of law, and warrant the granting of this *Petition for Rehearing*.

c. *The Petition and the RBST Order fail to address the factors to be considered by Regional Boards pursuant to School Code Section 7-6*

Section 7-1 of the *Illinois School Code*, 105 ILCS 5/7-1, explains (among other requirements) that a petition must include "facts that support favorable findings for the factors to be considered by the regional board of school trustees pursuant to Section 7-6 of this Code." Because Illinois a fact-pleading State, the Petition must "allege specific facts to bring it within the statute."¹⁰ Neither the Petition nor the resulting RBST Order address any of the findings required with respect to the factors listed in Section 7-6. Because the Petition does not state any facts sufficient to support any favorable findings under Section 7-6, the Petition does not meet the statutory requirements under Section 7-1. Therefore, the Petitioners have failed to satisfy this statutory requirement. A rehearing is necessary, and the Petition must be denied, accordingly. Moreover, and without the above listed supporting facts, the Petition is "insufficient to provide the facts needed to satisfy the statute"¹¹ and the RBST is without jurisdiction to entertain it.¹²

⁹ In addition, the Regional Superintendent even specifically called the "Guidelines" and the requirements summarized therein to the RBST's attention. *See* Transcript, 31-32. Nevertheless the RBST's Order fails to address the "significant direct educational benefit" factor required by the *School Code* and by the RBST's own Guidelines.

¹⁰ *Wood Dale*, 244 Ill. App. 3d at 834.

¹¹ *In re Annex Certain Prop. to the City of Wood Dale*, 244 Ill. App. 3d at 835.

¹² The requirements of Section 7-1 of the *Illinois School Code*, 105 ILCS 5/7-1, with respect to the detachment of territory from one school district and annexation of the same are mandatory requirements and failure to comply with such mandatory requirements are jurisdictional. *Betts v.*, 151 Ill. App. 3d at 467.

d. The Petition and Its Exhibits fail to adequately reflect or illustrate that the Petition complies with the School Code's "Compact and Contiguous" and Ownership/Voter Requirement, and the resulting RBST Order fails to address those factors.

Section 7-1 of the *School Code*, 105 ILCS 5/7-1, requires (among other mandates) that a petition for detachment and dissolution contain evidence that the detaching or dissolving territory is compact and contiguous with the annexing district or districts or otherwise meets the requirements in *School Code* Section 7-4. Paragraph 1 of the Petition does not constitute “evidence” of any sort. Rather, it is simply a claim without evidentiary support.

¹³ Similarly, neither the Petition nor the Order sufficiently present findings regarding ownership and/or voter records. The RBST Order is entirely silent with respect to these factors. The Order is, accordingly, deficient and a rehearing is required.

WHEREFORE, Okaw Valley Community Unit School District No. 302 respectfully request that the Regional Board of School Trustees grant and conduct a rehearing pursuant to School Code Section 7-6(n), at which time Okaw Valley Community Unit School District No. 302 be afforded an opportunity to be heard with respect to the Petition's deficiencies, its failure to comply with *School Code* requirements, and the RBST's resulting lack of jurisdiction to entertain the Petition.

Respectfully submitted,

OKAW VALLEY COMMUNITY UNIT
SCHOOL DISTRICT NO. 302

By: /s/Eugene J. Hanses, Jr.

¹³ “A petition in compliance with the statute is a prerequisite to the Board's jurisdiction to act.” *Shapiro*, 116 Ill. App. 3d 397. The Transcript contains a discussion regarding properties and property lines, but the insufficient Petition should have prohibited the RBST from conducting those discussions. Moreover, the Order lacks any specific findings of fact or conclusions of law addressing these factors. Accordingly, and for the additional reasons set forth in Paragraphs 11.a., 11.b., and 11.c., above, the Order is defective and a rehearing (wherein the RBST's jurisdiction may be challenged) is necessary. “A petition in compliance with the statute is a prerequisite to the Board's jurisdiction to act.” *Shapiro*, 116 Ill. App. 3d 397.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing is being served upon the parties by placing copies in the United States Mail at Collinsville, Illinois, postage prepaid, and/or by email (as indicated below) on this 20th day of July, 2022, addressed to the following:

Hon. Kyle Thompson
Regional Superintendent of Schools and
Ex-Officio Secretary to the Regional Board of School Trustees
For Clark, Coles, Cumberland, Douglas, Edgar, Moultrie and Shelby Counties
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