



directors, who are not defendants, voted against reopening the School.

Prior to the 2009-2010 school year, the District maintained four high schools. The District was divided into four attendance areas with one high school designated for each attendance area. In 2008, the Board voted to close the School and create three attendance areas by a vote of five to four. Two of the directors who voted in favor of the closure left the Board in December of 2009 and their places were taken by two new directors, Michael J. Markilinski and Sara J. Yassem, who both favored reopening the School and reverting to the original four attendance areas. On December 14, 2009, the new Board promptly passed a resolution by a vote of six to three to reopen the School for the 2010-2011 school year.

Plaintiffs seek an order vacating the resolution to reopen the School and barring the reopening of the School under the present circumstances. Plaintiffs also seek a finding that the six individually named Directors shall be jointly and severally liable to repay to the District all funds expended as a result of their allegedly illegal activities from December 14, 2009 forward, and to assess all costs of this action against the Directors.

Defendants filed preliminary objections, including an objection that Plaintiffs lacked standing to bring the taxpayer action and an objection that Defendants were absolutely immune from suit as legislators and high public officials. The Court ruled on the preliminary objections on April 23, 2010, finding among other things that Plaintiffs possessed standing to file suit. The Court deferred ruling on the immunity issue, finding that it was more properly raised in new matter. The parties then agreed to conduct discovery and forgo a hearing on the preliminary injunction request in lieu of a prompt trial on Plaintiffs' request for a permanent injunction.

On June 15 and 16, 2010, the Court conducted the trial, at which time the parties introduced a number of documents into evidence. They included the 2003 Ingraham Dancu Associates school facilities master plan final report, the 2006 Hayes Large Architects presentation on an Elderton K-12 complex, the 2007 Hayes Large District facilities master plan, a summary of the 2007 Armstrong Charette community convocation regarding future District options, the 2009 Dancu demographic and enrollment study, a December 9, 2009 cost analysis of closing/opening the School, and a December 14, 2009 memo regarding projected increases in retirement expenditures. Plaintiffs presented only one witness, Dr. William Kerr, the

District superintendent, who had advocated closing the School and who was opposed to reopening it. Defendants presented four witnesses: the two new Board members, Board president Dr. James Sokol, and Scott Palmquist, representative of an architectural and engineering firm hired by the Board to conduct a feasibility study of reopening the School.

#### DISCUSSION

Before reaching the merits of Plaintiffs' injunction request, the Court will first address the question of Director immunity. The Court recognizes the well-established principle that, as high public officials and legislators, the Directors are immune to an action for damages. See *Matson v. Margiotti*, 88 A.2d 892 (Pa. 1952); *Firetree, Ltd. v. Fairchild*, 920 A.2d 913 (Pa.Cmwlth. 2007), appeal denied, 946 A.2d 689 (Pa. April 1, 2008); *Osiris Enterprises v. Borough of Whitehall*, 877 A.2d 560 (Pa.Cmwlth. 2005), appeal denied, 897 A.2d 459 (Pa. Mar. 15, 2006). However, as the court in *Osiris* makes clear, the Directors still can be the subjects of an equity action seeking an injunction directing them to do something in their official capacities.

In *Osiris*, the court found that present and former members of the borough council were immune from a construction

company's defamation and economic interference action seeking damages. The court emphasized, "Our holding is merely that Borough Council members cannot be held individually liable to Plaintiffs for any monetary damages they sustained in connection with the official action by Borough Council. However, as evidenced by Judge O'Reilly's order enjoining Borough Council from declaring Osiris a non-responsible bidder, Borough Council is precluded from acting in violation of the prescribed bidding procedures." *Id.* at 569, n.16. It is apparent that the Directors can be enjoined from taking certain acts or directed to take certain acts, but they cannot be sued for money damages. Therefore, to the degree that the Plaintiffs seek to have the individual Defendants reimburse the district for the costs associated with re-opening the school, their action must fail.<sup>1</sup>

The Court now turns to the merits of Plaintiffs' request for injunctive relief. At trial, Plaintiffs took the position that an injunction was merited because Defendants had acted arbitrarily and capriciously in voting to reopen the School. Specifically, Plaintiffs presented testimony that the individual Defendants, primarily the two new school directors, had not taken the time or made the effort to acquire the

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<sup>1</sup> Although the Defendants continued to raise an objection to the Plaintiffs' standing to maintain this action, this question was decided by the Court in the context of the Defendants' preliminary objections.

information necessary to make an informed and prudent decision concerning the re-opening of the school. More particularly, they maintained that the Defendant Directors had not availed themselves of the written reports or other information concerning the various consequences of reopening which were or could have been readily available. As a result, Plaintiffs argued, Defendants did not have information regarding the cost of operating the School once it was reopened, busing costs, future renovation costs, future costs associated with anticipated increased pension contributions, and enrollment decline patterns throughout the District and in the School attendance area.

In contrast, the Defendants' position was that the Directors had been fully informed of the costs and consequences of reopening the School. They presented testimony that four of the Directors who voted in favor of reopening the School were long-time board members familiar with the issue of school closings from past deliberations, and having discussed the issue of the Elderton school closure for a long time, were well aware of the financial and other issues involved. The testimony suggested that those "holdover" directors had been privy to all the relevant reports and had participated in what, was by the time of the re-opening vote, a long-standing debate.

The Defendants maintained that the two new Board members had run their campaigns on a platform of having community schools, a position that inherently embraced the continued viability of Elderton. They had had access to the information that had previously been provided to the Board by the administration and had reviewed various reports prepared concerning the issue. The new Board members testified that they had discussed the school closing issue with current Board members and others for a long time before coming on the Board and had followed the media's coverage of the issue. Moreover, according to Defendants, the issues of community schools and school closings had been an ongoing controversy in the community for years, so there was little new about the dimensions of the current debate.

The Defendants also took the position that there was good reason to doubt the reliability of the consultants' and administration's data and conclusions, and that they therefore did not feel comfortable relying on that information. For example, while they were aware of the projected costs of renovation, the Defendant Directors doubted the validity of the preliminary estimates and have since sought out a new estimate of the cost of renovations.

In the end, the director Defendants contended that they had been motivated by their belief in the community school concept, including the desire to limit the transportation time students would have to endure when a school such as Elderton was closed and the desire to diminish the possibility that certain portions of the county would seek to be affiliated with another school district if they lost the opportunity to have their children attend Elderton.

We now address the standard the Court is to apply in deciding this case. In order to sustain the requested injunction, the Plaintiffs' right to relief must be clear.

Courts are further restrained, when dealing with matters of school policy, by the long-established and salutary rule that the courts should not function as super school boards. We will not interfere with the discretionary exercise of a school board's power unless the action was based on a "misconception of law, ignorance through lack of inquiry into facts necessary to form an intelligent judgment or the result of arbitrary will or caprice." *Hibbs v. Arensberg*, 276 Pa. 24, 26, 119 A. 727, 728 (1923). "It is only when the board transcends the limits of its legal discretion that it is amenable to the injunctive processes of a court of equity." *Landerman v. Churchill Area School District*, 414 Pa. 530, 534, 200 A.2d 867, 869 (1964); *Detweiler v. Hatfield Borough School District*, 376 Pa. 555, 566, 104 A.2d 110, 116-117 (1954). The burden of showing such an abuse is a heavy one and rests with the party seeking the injunction. *Hibbs v. Arensberg*, 276 Pa. 24, 119 A. 727 (1923).

*Zebra v. School Dist. of City of Pittsburgh*, 296 A.2d 748,

750-751 (Pa. 1972). In *Uniontown Area School District v. Allen*, 285 A.2d 543, 545 (Pa.Cmwlth. 1971), the court discussed the abuse of discretion standard as follows:

"[Courts] are permitted to interfere only where it is made apparent that it is not discretion that is being exercised but arbitrary will or caprice. Discretion involves the exercise of judgment incidental to the proper performance of the duty delegated[.] [W]hen the contention is that the proposed action is unwise, no matter by what consensus of opinion this is shown, the law will refer it to mistaken judgment over which it has no supervision. But if it cannot be so referred, if the facts admit of no other conclusion than that the determination of the board has been influenced by other considerations than the public interest, no matter what these may have been, [t]he law will regard it as an abuse of power, a disregard of duty, and it becomes the duty of the court to interfere for the protection of the public."

*Id.* (quoting *Lamb v. Redding*, 83 A. 362, 363 (Pa. 1912)).

Plaintiffs' burden "'is not properly borne by the act of proving that some alternative avenues of action might be better, or that a proposed plan of plaintiffs was not considered. The burden is not properly borne by showing that taxes will rise. It is not properly borne by the act of proving that the plan is lacking in wisdom, or business sense, or common sense, or any combination of all three." *Schrecengost v. Armstrong School District*, 433 A.2d 72, 74 (Pa.Super. 1981) (quoting *Dochenez v. Bentworth School District*, 6 Pa.Cmwlth. 173, 184 (1972)).

Finally, "[t]he school director's office is important; the director must familiarize himself with the elements of the questions to be solved in order that he may perform his duties intelligently; where the statute vests him with discretion, he must act in good faith and with that diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in their personal business affairs." *McLauthlin v. School Dist. of Borough of Lansford*, 6 A.2d 291 (Pa. 1939).

After reviewing all the evidence, the Court is constrained to conclude that the Plaintiffs have failed to meet their burden. There is almost no evidence to support a conclusion that the individual Defendants were not, in general, informed regarding the pros and cons of reopening the School. While one could debate the degree to which individual members knew about certain aspects of reports or precise issues of concern to the superintendent, it is apparent that the Board as a whole was well acquainted with the issues, including the financial consequences, associated with the opening and closing of the School. In this case, the Plaintiffs have a heavy burden of proof and they have failed to meet it. There is no evidence to show that the Board's decision was made in bad faith and the evidence is otherwise insufficient to demonstrate that the Board's decision was made arbitrarily or capriciously.

The Court emphasizes that the question before it is not whether the Board acted wisely or for that matter correctly. The law is clear that the Court is not free to simply substitute its judgment for that of the community's duly elected school directors. *Zebra*, 296 A.2d at 750-751. It is obvious that the Board was confronted with a complex issue with both important policy and financial implications for the community and if nothing else, it is also apparent that reasonable people could come to very different conclusions. In the circumstances here presented, the Court finds that the Defendants in reaching their decision did not act in violation of the law.

An appropriate Order will be entered.

