



**Via E-mail only**

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Re: Appeal of the ANSI Board of Standards Review's (BSR) Decision to Approve *S12.60 Acoustical Performance Criteria, Design Requirements and Guidelines for Schools* as an American National Standard

**Dated Notice**

Dear Appeals Participants:

On February 6, 2003, the ANSI Board of Standards Review (BSR) heard the above referenced appeal. The decision of the BSR is attached.

Please be advised that **this transmission via E-mail or facsimile constitutes your official notification of the decision of the BSR.**

Persons who participated in the appeal to the BSR and believe that they have been or will be adversely affected by the results of the subject appeal are hereby notified of their right of further appeal to the ANSI Appeals Board.

Should you choose to appeal to the ANSI Appeals Board, written notice of appeal and all appeals statements and supporting documentation must be filed with the Secretary of the Appeals Board (the office of the undersigned) by **March 21, 2003**. The appeal shall be accompanied by a \$500.00 filing fee. If you require an extension for the filing of appeals materials, you must contact the Secretary of the Appeals Board (the undersigned) on or before **March 21, 2003**, or you will forfeit your right to further appeal. The appeals statement must specify the decision from which the appeal is taken, the ANSI body that made the decision, a short statement of the matter in controversy and the reason(s) why the appellant believes the decision is in error. The appeals statement must also list all other parties that appeared before the ANSI body with respect to the matter being appealed. A copy of the *ANSI Appeals Board Operating Procedures* is attached.

Thank you for your attention to this matter. If you have any questions, or if I may be of further assistance, please contact me at (212) 642-4914 or send an E-mail to [acaldas@ansi.org](mailto:acaldas@ansi.org).

Sincerely,  
Anne Caldas  
Secretary  
ANSI Board of Standards Review

cc: Members of the BSR  
A. Marasco, ANSI VP & General Counsel

## **ANSI BOARD OF STANDARDS REVIEW DECISION**

Relating to the Appeal of the ANSI Board of Standards Review's (BSR) Decision to Approve *S12.60 Acoustical Performance Criteria, Design Requirements and Guidelines for Schools* as an American National Standard

**Appellant:** Air-Conditioning and Refrigeration Institute (ARI)

Speakers: Mark S. Menzer, ARI Vice President of Engineering and Research  
Stephen R. Yurek, ARI General Counsel

**Respondent:** ASC S12 Noise with Acoustical Society of America (ASA), Secretary

Speakers: Susan B. Blaeser, ASA Standards Manager  
Dr. Paul D. Schomer, ASA Standards Director, Schomer and Associates  
Dr. Richard Stern, President of ASA, Pennsylvania State University

**Date of Hearing:** February 6, 2003

### **BSR Appeals Panelists:**

Jim Coffing  
Rick Heath  
Leona Nisbet  
Alan Peterson  
Gary Robinson  
Donald Snyder, Chair, BSR Appeals Panel  
Mike Spanhel  
Brooke Stauffer

### **I. Background**

*ASC S12 Noise* is an ANSI-accredited standards developer. The Acoustical Society of America (ASA) serves as the Secretariat for ASC S12.<sup>1</sup> On June 26, 2002, the ANSI Board of Standards Review (BSR) approved S12.60 as an American National Standard. ARI as the sole objector to the standard and appellant at the developer level was notified of its right to file an appeal of this approval decision with the ANSI BSR. By letter dated July 17, 2002,

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<sup>1</sup> Reference to ASC S12 in this decision implicitly acknowledges ASA's role as Secretariat to the committee.

ARI filed a timely appeal with the ANSI BSR. Due to scheduling conflicts in 2002, the appeals hearing took place on February 6, 2003.<sup>2</sup>

## II. BSR Decision

Upon consideration of the written submittals and oral presentations made by the participants in the appeals process, the BSR voted to deny the appeal before them and uphold their prior decision to approve *S12.60 Acoustical Performance Criteria, Design Requirements and Guidelines for Schools* as an American National Standard. Based on the record before it, the BSR was not persuaded to change their decision. The BSR believes that the consensus process associated with the standard at issue satisfied the overall goals of ANSI's procedural requirements as contained in the *ANSI Procedures for the Development and Coordination of American National Standards* (the *ANSI Procedures*), and that ARI was not unduly prejudiced as a result of ASC S12's procedural actions or inactions.

## III. Summary of ARI's Allegations

At the appeals hearing, ARI focused on the following allegations, which they assert compromised the development of S12.60 and resulted in a flawed standard:

- ASC S12 did not submit a PINS<sup>3</sup> form for S12.60 for publication in ANSI's *Standards Action*. Thus, insufficient public notice was provided and, accordingly, stakeholders were excluded from the development process.
- ASC S12 did not follow its accredited procedures. Specifically, ARI alleges that a sub-committee (working group) did not function in accordance with applicable procedural requirements for openness and balance.
- ASA, as Secretariat to ASC S12, substantively amended the document that was approved as an American National Standard (ANS) without subjecting the changes to public review. This change was made as a result of an appeals panel decision in connection with ARI's developer-level appeals hearing.

In addition, as part of their written appeals statement, ARI alleged the following:

"...the Committee, the standards setting body, and the Secretariat committed the following procedural errors:

1. Promulgated a Standard that is contrary to the public interest.

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<sup>2</sup> Neither Claire Ramspeck nor John Sabelli, both BSR members in attendance during the hearing, participated in the question-and-answer session or any deliberations in connection with this appeal.

<sup>3</sup> PINS stands for "Project Initiation Notification System" announcement in ANSI's *Standards Action*. It is defined in clause 1.2.7 of the *ANSI Procedures*, and is required for new and revised American National Standards.

- a) Stakeholder exclusion and lack of balance in the development of the Standard
  - b) Failed to provide public notice
  - c) Standard development process failed to maintain objective neutrality
  - d) Standard imposes a significant financial impact on school systems
  - e) Standard changes made without opportunity to participate
2. Adopted a Standard outside the scope of the Committee”.

In their appeals statement, ARI requested as a remedy, that the ANSI BSR withdraw its approval of S12.60 as an American National Standard.

#### IV. Summary of ASC S12’s Response

In response to ARI’s appeals statement, ASC S12 asserted, in summary, the following:

- S12.60 is clearly in the public interest and the “ANSI Tenets” of openness, due process, balance and consensus were more than met. In terms of financial impact, the standard “is feasible and reasonable”; further, it is voluntary and each school board or relevant oversight body will decide whether or not to use it.
- Since the establishment of the Working Group (WG) related to S12.60 in 1997, extensive outreach to all interested parties has taken place. It was noted that ARI members of ASC S12 voted to establish the project and the working group. ASC S12 submitted evidence of its outreach efforts as part of its response to the appeal, including: Federal Register announcements, seminar notices, press releases and articles. Thus, although a PINS was not submitted due to an administrative issue, “the ‘spirit’ of the PINS [was] fulfilled many times over”.
- “[T]he substance of the standard and due process were open and available to anyone with an interest and that ASC S12 was balanced and reached a consensus”.
- The scope of ASC S12 includes the area of standardization addressed by S12.60: “Standards, *specifications*, and terminology in the field of *acoustical noise* pertaining to methods of measurement, *evaluation*, and *control*; including biological safety, *tolerance*, and comfort, and physical acoustics as related to environmental and occupational noise.”
- In response to the claims of stakeholder exclusion and lack of balance, the following data was submitted:
  - “ASC S12 is balanced with 31 members (20 of which voted on this ballot, including ARI): 5 Consumers, 5 Producers, 4 Government, 6 General Interest

- The WG was very diversified with 56 members. Included experts in: HVAC, audiology, education and parents.
- No stakeholder or applicant denied membership or input to ASC S12 or the WG”.
- With regard to ARI’s claim that ASC S12 failed to maintain objective neutrality:
  - “ARI alleges undue influence by the Access Board
    - Access Board not a member of ASC S12 and could not vote
    - Two qualified members (out of 56) on the WG
    - Wanted more stringent Standard (not upheld by WG)
    - Joined WG in last two years and agreed with original critical path of 3.5 years from inception to ballot
  - ARI says the Secretariat should have opposed the proposal for use of the Standard in a building code
    - The Secretariat cannot abridge the legal rights of others
  - ARI says they were deprived of their right to a technical appeal
    - Full appeal heard and the response of the panel of three *technical* experts speaks for itself”.
- In response to ARI’s concerns in connection with the “substantive changes” made to S12.60 as a result of ARI’s developer-level appeal:
  - “ARI appealed to ASC S12
  - Appeals Panel
    - Three technical experts (ASA gold or silver medallists)
    - All three accepted by ARI
    - Two were former Standards Directors
  - Findings of the Panel required one editorial change
    - In Abstract and Applications clauses
    - Separated one sentence into two sentences for clarity
  - ASC S12 and its Secretariat complied fully with the panel but could revert to the original text”.
- ASC S12 stated that the “ARI Complaint is Defective:
  - Technical changes advocated by ARI would make the Standard *in conflict* with ANSI S12.2
  - ARI took NO active role in the WG
  - During development of the Standard, ARI never:
    - Pointed out errors in procedure
    - Suggested further involvement of the education community or trade associations
    - Complained about the existence of the work effort, the balance of either the WG or the Committee
    - ARI is NOT the ‘appointed’ representative of the education community
    - ARI does not preset any impact information for its members”.

In conclusion, ASC S12 recommended that the BSR find that ASA and ASC S12 “has fully and completely fulfilled the ANSI tenets of openness, due process, balance and consensus” with regard to S12.60 and that the BSR uphold its original approval of it as an ANS.

## **V. Basis for ANSI Board of Standards Review Decision**

Upon review of the evidence before them, the BSR voted to deny ARI’s appeal and uphold the approval of S12.60 as an American National Standard. The BSR’s decision is explained further in this section.

In general, the BSR finds that insufficient evidence was provided by ARI to support its claim that S12.60 is not in the public interest as a result of alleged procedural violations. Further, the BSR notes that an American National Standard is a voluntary standard and compliance with it is voluntary as well. Any action by a third party, such as a government body, to mandate compliance with the standard would be a separate determination that is independent of the American National Standard approval process.

The BSR acknowledges that, although a PINS form was not submitted to ANSI to prompt an announcement in ANSI’s *Standards Action* to inform the public that ASC S12 was beginning work on the standard due to an administrative error, the extensive evidence of outreach, publicity and solicitations to participate provided comparable notice for materially affected and interested parties to participate. As a member of S12, ARI itself had adequate notice of this intended work (and, indeed, voted to support its initiation). The BSR notes that the standards activity was also announced in the *Federal Register* and many positive comments were received in response to that announcement. ASC S12/Working Group 42 ultimately had 56 members from what appears to be a wide diversity of backgrounds. This said, the BSR reminds ASC S12 that a PINS is required to be submitted in accordance with current procedural requirement.

Further, a call for public comment on a draft of the standard was made in ANSI’s *Standards Action* in November 2001. No evidence was provided to the BSR to indicate that individuals who might have reacted to the PINS announcement and contacted ASC S12 did so in response to this public review opportunity.

With regard to committee membership and balance, the BSR finds that there was no evidence submitted that indicated that the ASC S12 and its Secretariat attempted to exclude one or more applicants. Indeed, no evidence was presented that any party who requested membership on either ASC S12 or the Working Group 42 was denied such an opportunity or ignored. In addition, the BSR acknowledges the extensive mailing list, public outreach, Working Group 42 and list of individual experts established by ASC S12 as part of their efforts to include materially affected and interested parties. The *ANSI Procedures* require that the opportunity to participate be available and the BSR believes that, based on the evidence before them, such an opportunity existed for any interested stakeholder.

At the hearing, the representatives of ASC S12 explained that Working Group 42 was not responsible for the final vote to approve the definitive content of the standard. Unless ASC S12's procedures state otherwise (which they do not), and Working Group 42 was established accordingly, such a Working Group is not considered to be the consensus body and is not subject to the general procedural requirements related to openness, meeting notices, balance and consensus. Thus, the BSR does not agree with ARI's claims that the Working Group was out of compliance with ASC S12's procedures because it should have provided notice of its scheduled meetings in ANSI's *Standards Action* and other media. Moreover, the BSR notes that ARI itself was represented by a member on both ASC S12 and Working Group 42. Neither ARI nor anyone else has alleged that any comments or positions were not given full consideration.

Finally, the BSR will not reverse its earlier decision to approve the standard as a result of ARI's allegation that a substantive change was made to the document after it was approved by the consensus body. It is the BSR's understanding that the change was made as a result of ARI's appeal to ASC S12 and that the changes made to the text were in accordance with explicit instructions issued by the appeals panel. Those instructions described the changes as editorial and not substantive; they further stated that the editorial changes reflected the intent of the consensus body. As the *ANSI Procedures* and the accredited procedures utilized by ASC S12 do not explicitly limit the authority of an appeals panel in this regard and do not explicitly require public review with regard to the outcome of appellate decisions, the BSR will not reverse its decision to approve the standard at issue solely on this ground at this time. Further, the BSR notes that the ANSI Executive Standards Council (ExSC), which is the accrediting body relative to developers of American National Standards, will shortly be undertaking a review of the generic issue of whether and to what extent a body other than a consensus body (*e.g.*, an appellate body) may direct changes to the normative content of an ANS.