

MARCO AND ALISON F.,

Appellants

v.

CHARLES COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-01

## OPINION

### INTRODUCTION

Appellants have appealed the denial of their request to transfer their daughter from Dr. Samuel Mudd Elementary School (“Samuel Mudd”) to Arthur Middleton Elementary School (“Arthur Middleton”). The Charles County Board of Education (Local Board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have responded to the local board’s Motion and the Local Board has replied.<sup>1</sup>

### FACTUAL BACKGROUND

When she enrolled in school, Appellants’ daughter, RF, lived in the C. Paul Barnhart Elementary School (“Barnhart”) zone. Due to poor performance by students on state assessments at Barnhart in the previous year, RF was given the option to transfer to Arthur Middleton for the 2011-12 school year. She took advantage of this opportunity and completed her first grade year there. Appellants claim they were told RF would be allowed to continue to attend Arthur Middleton through the fifth grade, even if school assessment results improved at Barnhart. (Memorandum in Support of Motion; Oct. 2 Response).

Prior to the 2012-13 school year, the family moved to the attendance zone for Samuel Mudd. The school district maintains that this move nullified the transfer to Arthur Middleton and required RF to attend Samuel Mudd. (Memorandum in Support of Motion). Appellants claim they were not informed that moving to a new neighborhood could jeopardize their daughter’s transfer to Arthur Middleton. (Aug. 21 Appeal Letter; Oct. 2 Response to Motion). They first learned that RF had been reassigned to Samuel Mudd a week before the start of the 2012-13 school year after they called Arthur Middleton to confirm RF’s enrollment. (*Id.*)

On or about August 20, 2012, Appellants filed a “School Change Request” form with the school district. The request did not list RF’s assigned school or list a requested school.<sup>2</sup> The

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<sup>1</sup> Appellants have requested oral argument. The State Board may decide a Motion for Summary Affirmance without oral argument, COMAR 13A.01.05.04.E(4), and oral argument is not necessary in this case.

<sup>2</sup> Appellants claim that they faxed a request form with this missing information later that same day. (Oct. 2 Response).

request was denied on August 21, 2012 by Dr. Patricia Vaira, director of student services. (Motion, Ex. 5). Handwritten on the form were notations that presumably listed reasons for the denial, including that the form was incomplete and filed late, and that Arthur Middleton was “full.” In a letter to Appellants, Dr. Vaira stated that the request for a transfer had been denied because it did not meet local board guidelines and the Superintendent’s rules for “out-of-zone” transfers.<sup>3</sup> (Motion, Ex. 6). Appellants did not appeal this decision and RF attended Samuel Mudd for the 2012-13 school year.

On or about June 7, 2013, Appellants again filed a “School Change Request” form asking that RF be transferred from Samuel Mudd to Arthur Middleton. (Motion, Ex. 7). In support, Appellants included a letter in which they expressed concerns about RF’s declining performance in school. (Motion, Ex. 8). Appellants stated that RF had been teased by her classmates and was now afraid to read or answer questions in class. They claimed these concerns were brought to the attention of RF’s teacher, who told RF to “defend herself.” They claimed that RF excelled at reading, math, and science at Arthur Middleton, but that they now had to hire a private tutor to help RF read at the appropriate grade level. Appellants acknowledged that the transfer request had been submitted late, but they claimed that the due date had been changed by the school system without their knowledge from June 15 to May 1. They added that because they submitted a request in the previous school year, the new request was simply a reiteration of their previous request and was therefore timely. (*Id.*)

By letter dated June 14, 2013, Dr. Vaira denied the request, explaining that the deadline for school transfer requests was May 1. (Motion, Ex. 9). Appellants appealed. James H. Cornette, superintendent’s designee, stated in a June 21, 2013 letter that he had reviewed the transfer request and decided to uphold Dr. Vaira’s decision. (Motion, Ex. 10). His letter stated the request did not meet local board guidelines and the Superintendent’s rule for “out-of-zone” transfers. (*Id.*).

Appellants appealed to the local board. They claimed that nowhere in the original transfer paperwork to Arthur Middleton did it indicate that RF’s transfer would be void if she moved to another school zone. They argued that the “School Change Request” form stated that the request was “not required to be submitted annually; however, approval will be reviewed annually.” They took this to mean that their original request in 2012 would be reviewed again prior to the start of the 2013 school year. Additionally, Appellants reiterated their claim that the due date for transfer requests was changed. They added that RF had been teased to the point where it “negatively affected her reading abilities” at Samuel Mudd. Appellants requested that she be transferred to Arthur Middleton where she “felt safe,” had friends, and would perform better in school. (Local Board Appeal).

On August 13, 2013, the local board denied the appeal and upheld the Superintendent’s decision. The local board noted that Superintendent’s Rule 5126 requires transfer requests to be

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<sup>3</sup> The letter mistakenly stated that RF was assigned to Arthur Middleton and that Appellants were seeking a transfer to Barnhart. In actuality, RF was assigned to Samuel Mudd and Appellants wanted her to attend Arthur Middleton.

filed by May 1 and allows them to be denied if a school lacks adequate space for additional students. The local board observed that Appellants' request was filed late and Arthur Middleton is not on the list of schools with open space for the 2013-14 school year. Even if the school transfer request had been timely, the local board stated that Appellants had not demonstrated that RF qualified for a transfer. The local board stated that it was too late for Appellants to appeal the 2012 denial and that previous request cannot be used to apply for a 2013 transfer. The local board noted that RF's previous attendance at Arthur Middleton did not give her a continued right to attend school there once she moved to the Samuel Mudd attendance area. (Motion, Ex. 1).

Appellants appealed the local board's decision to the State Board of Education on August 21, 2013. They reiterated many of the same arguments raised before the local board. Appellants stated they assumed their previous transfer request would be reconsidered. They claimed they did not learn until after they called the school district that they had to submit a new request form and that they had already missed the deadline. Appellants described how their daughter was teased by other students at Samuel Mudd and would be happier at Arthur Middleton. (Aug. 21 Appeal).

### STANDARD OF REVIEW

When reviewing a student transfer decision, the decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *Id.*; see *Alexandra and Christopher K. v. Charles County Bd. of Educ.*, Op. No. 13-06 (2013). The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

### LEGAL ANALYSIS

Pursuant to the Charles County Board of Education's policy, students must attend the school to which they are assigned "unless the Superintendent or designee determines that the student shall be assigned to a different school in the best interests of the school system or the student." (Motion, Ex. 4; Superintendent's Rule 5126). In order to attend a different school, the student must meet one of the listed conditions. These include if a family moves (or anticipates moving) during the school year or if a parent is a full-time employee of the school system. (*Id.*) The remaining two conditions are (1) if a student requests a transfer for a course of study not offered at the zoned school; or (2) unusual hardship cases considered on a "case-by-case basis." (*Id.*) These last two conditions also require that requests be filed by May 1 and that the requested school have adequate space to accommodate additional students. (*Id.*) Unusual hardships are not "issues common to large numbers of families, such as the need for a particular schedule, sibling enrollment, redistricting, or typical day care issues." (*Id.*) Transfer approvals are reviewed annually. (*Id.*) In Appellants' case, they were required to meet three criteria: (1) file a request by May 1; (2) request a school that has adequate space for the 2013-14 school year; and (3) demonstrate an unusual hardship.

As a preliminary matter, Appellants point to the "School Change Request" forms as the primary source of their failure to file a timely request. The "School Change Request" forms used

by the school district changed slightly between 2012 and 2013. On the 2012 form, it states “Applications will be accepted until June 15, 2012. Applications for subsequent school years must be submitted by May 1, unless new to [the school district].” The 2013 form states only that applications will be accepted until May 1 for the 2013-14 school year. Appellants claim that they were unaware that the June 15 date had been changed to May 1. The original request form submitted by them in 2012, however, stated that applications for “subsequent years” must be filed by May 1. This put Appellants on notice that the June 15 deadline would not apply the following year.

In addition, Appellants argue that the forms indicate that a request does not need to be submitted annually. Both forms (for the 2012-13 and 2013-14 school years) state on their first pages that the “Request is not required to be submitted annually; however, approval will be reviewed annually.” The forms also include a second page with instructions that state “The school will review the approval every year . . . .” Both pages must be signed by a student’s parent or guardian. Admittedly, the language on the first page of the form is confusing. The phrase “Request is not required to be submitted annually” could be read to mean that a parent need only submit a school change request form once. When viewed as a whole, however, the forms indicate that only *approved requests* will be reviewed on an annual basis and need not be resubmitted each year. This interpretation is supported by language on the forms that states “*approval* will be reviewed annually” and “The school will review the *approval* every year.” (emphases added). The form does not state that *denied requests* will be reviewed anew each year. The use of the word “approval” put Appellants on notice that their interpretation of the form was not correct.

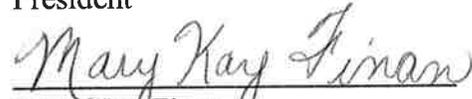
Beyond citing their confusion about the forms, Appellants have offered no reasons to explain their failure to file on time. As the local board notes, even if Appellants had filed on time, the local board policy would have required the transfer be denied because the requested school lacked adequate space. It was for these reasons that the local board upheld the Superintendent’s denial of the school change request. In doing so, the local board did not act in an arbitrary, unreasonable, or illegal fashion. Procedurally, therefore, the State Board need not consider whether the claims about RF’s mistreatment at Samuel Mudd rise to the level of an unusual hardship. We note, however, that bullying, harassment, and intimidation are defined as “any intentional written, verbal, or physical act” that “(1) physically harms an individual; (2) damages an individual’s property; (3) substantially interferes with an individual’s education or learning environment; or (4) places an individual in reasonable fear of harm to the individual’s person or property.” Md. Code Ann., Educ. § 7-424.3. Appellants have alleged that the verbal abuse suffered by RF has substantially interfered with her education, but they have not reported this behavior as bullying to school authorities. We recommend that the school system meet with Appellants to gather additional information about whether RF is being bullied in school, and, if so, how best to address the situation.

## CONCLUSION

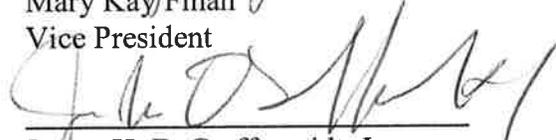
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



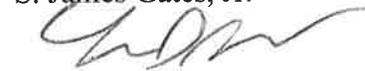
James H. DeGraffenreidt, Jr.



Linda Eberhart



S. James Gates, Jr.



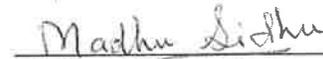
Larry Giammo



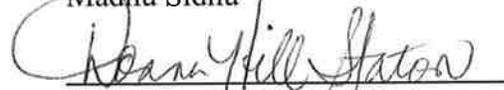
Luisa Montero-Diaz



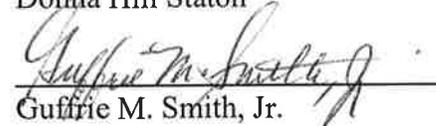
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

January 28, 2014