

DARREN AND SUZIE L.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-53

OPINION

INTRODUCTION

Appellants, parents of ML, have appealed the denial of their request to transfer their daughter from Rocky Hill Middle School (Rocky Hill) to John T. Baker Middle School (Baker). The Montgomery County Board of Education (local board) has filed a Response to the appeal. Appellants have replied to the local board's Response. The local board replied.

FACTUAL BACKGROUND

ML was a 5th grade student at Cedar Grove Elementary School (Cedar Grove), in the Damascus High School cluster. Although Appellants live in the attendance area of Rocky Hill, they oppose ML attending that middle school. On February 1, 2012, Appellants submitted a "Request for Change of School Assignment" seeking to transfer their daughter from Rocky Hill to Baker. As the basis for the transfer, Appellants checked the hardship listed on the form (Appellants' Exh. 15). Their request was based on ML having been bullied in the third grade at Cedar Grove. Appellants wrote:

In third grade there was a boundary change and many of her [ML] friends were sent to a new school. [ML] was devastated. Most of her really close friends were gone. Along with dealing with this stress, [ML] was bullied by some students in her third grade class. Not just once, but several times. It was so awful she didn't want to go to school. . . .

She is now experiencing anxiety over the fact that these same students will be attending Rocky Hill next year and the safety she felt at Cedar Grove won't necessarily transfer with her to Rocky Hill. . . .

It has taken three years for [ML] to develop a new set of friends. These new friends are all going to Baker M.S. . . . This leaves her

feeling isolated and more vulnerable to the bullies from elementary school. We do not want our daughter attending middle school with these students who have bullied her in the past.

Based on this past experience we feel strongly about her being kept away from this bullying element. . . Finally, [Appellant] is an MCPS employee at Damascus H.S. and is more readily available for [ML] during the transition to middle school since Baker M.S. is close.

(Appellants' Exh. 14).

On March 2, 2012, in response to an email from the transfer field office, Appellants wrote about the resolution of the third grade bullying:

[ML] had support from the principal, her teachers, her counselor, her family, and friends so we did not pursue medical care She has had great support at Cedar Grove, however Rocky Hill is a different environment and we don't want to go down that road again. If the school had not properly handled this situation, (and my daughter had withdrawn herself any further), we would have obtained med care.

(Appellants' Exh. 13, Board Exh. 5).

On March 19, 2012, the Disciplinary Review and School Assignment Unit supervisor denied the transfer because it did not meet the guidelines for a change in school assignment.

(Board Exh. 15).

On March 27, 2012, Appellants appealed the transfer denial to Larry Bowers, the Chief Operating Officer and superintendent's designee. Appellants wrote that "We feel very strongly that if she is not granted the [transfer] and is forced to attend Rocky Hill it could be detrimental to her health, and educational success. . . . We are appealing this for all the same reasons as written in our letter." (Board Exh. 6). Appellants supported their appeal with letters written by the Cedar Grove school counselor, ML's third grade teacher, and ML's physician.

Cedar Grove's school counselor wrote in support of the appeal:

During [ML's] 3rd grade year Cedar Grove's population shifted dramatically. We lost a huge portion of our students to the new opening of Gibbs Elementary in Germantown. . . . Unfortunately, it was during this time that [ML] was a target of bullying. The bullying took the form of verbal teasing and name calling and also non-verbal physical bullying. This was traumatic for [ML] and the

stress resulted in her being extremely upset and scared, not wanting to go to school and numerous meetings with her parents and myself, the school counselor. Cedar Grove has no tolerance for bullying and the bullying incidents were taken seriously with consequences from the teacher and principal. However, the experience has stuck with [ML] and is one that she will never forget.

The school counselor commented further that ML continued to attend Cedar Grove for fourth and fifth grade and was student government President of her 5th grade class. (Board Exh. 7 and Appellants' Exh. 3).

ML's third grade teacher recalled in an April 2012 email, that ML was bullied.

[E] sent several threatening notes to [ML] where she was threatening [ML] if [ML] did not do as [E] asked. She was demeaning to [ML] and said cruel things. . . .

As I recall, [E] had a "small group of children" that acted as "leader" and these children were also mean to [ML].

(Board Exh. 9 and Appellants' Exh. 4).

ML's physician wrote a letter on April 23, 2012, supporting ML's transfer to Baker. The physician wrote: "She experienced significant bullying in elementary school by several girls which resulted in anxiety, school avoidance, and separation anxiety." The physician opined that "continuing to attend school with girls who have previously bullied her might lead to worsening anxiety symptoms and school avoidance." (Board Exh. 8 and Appellants' Exh. 5).

After receiving Appellants' appeal, the Chief Operating Officer appointed Hearing Officer, Laurence M. Jeweler, to conduct an investigation. Mr. Jeweler's investigation included interviews with Appellants, the Cedar Grove principal, the Cedar Grove school counselor, and ML's physician. The Cedar Grove principal and school counselor informed Mr. Jeweler that the bullying occurred in the third grade, that there was one main bully, who had since left the school system and that the issue had been resolved. Appellants did not provide the names of the other alleged bullies to Mr. Jeweler. ML's physician told Mr. Jeweler that she first heard about bullying of ML when Appellants requested a letter of support for the transfer on April 20, 2012. Mr. Jeweler concluded his investigation on April 25, 2012, and recommended that the transfer request be denied due to the absence of a unique hardship. (Appellants' Exh.10 and Board Exh. 11A). On April 27, 2012, the local superintendent denied the transfer. (Appellants' Exh. 9 and Board Exh. 11).

On May 24, 2012, Appellants appealed the local superintendent's decision to the local board. In the appeal to the local board, Appellants assert additional hardships. Appellants allege for the first time that ML was constantly bullied over a two year time period, and not just in the

third grade. They also state that ML is suffering psychological impairment and they were in the process of setting up an appointment with a pediatric psychologist. Appellants contend that the bullying students will attend Rocky Hill, including the primary bully who is not currently enrolled in Montgomery County Public Schools (MCPS), and is not living in the United States. Appellants explain that all of ML's extracurricular activities are in the Damascus area where Baker is located. Baker is close to Appellant's work place and if ML needs to be picked up from school, ML's back-up caretaker is in Damascus. Appellants presume that the safety ML experienced in elementary school will not carry over to the middle school. They believe that ML will be isolated and vulnerable to the elementary school bullies and will be an easy target because some of ML's friends from Cedar Grove will be going to Baker. Appellants do not have faith in school officials at Rocky Hill to be able to protect ML. (Appellants' Exh. 11 and Board Exh. 12).

On June 7, 2012, the local superintendent responded to the appeal and argued that the local board should uphold the denial of the transfer due to lack of a unique hardship. The local superintendent acknowledged that ML was bullied in third grade, and that the school counselor stated that it involved only one main bully and that the issue had been resolved. The Cedar Grove principal stated that he was unaware of any serious bullying and that the counselor would have told him if there were constant bullying issues. The principal stated that the girl involved in the third grade bullying incident would not be returning to MCPS. (Board Exh.13). On June 12, 2012, Appellants sent a Reply to the local board, reiterating their concerns. (Board Exh. 14).

The local board issued a divided decision on June 26, 2012. Three members voted to affirm the local superintendent's decision. They agreed with the local superintendent that Appellants' arguments did not constitute a unique hardship under the local board's policy and that no evidence was in the record to support the allegations that the past bullying would be repeated in the middle school. Moreover, there was no evidence that the Rocky Hill staff will not respond appropriately if bullying reoccurred. Two board members voted to reverse the local superintendent's decision. They were influenced by the Cedar Grove counselor's opinion that ML's bullying experience has stuck with her and that she will not forget it. One local board member voted to reverse the local superintendent's decision based on the record that Appellants established that ML has a reasonable fear of being harmed by others at Rocky Hill. One local board member and the student board member did not participate in the adjudication of the appeal. (Board Exh. 15). Because the local board did not attain the five vote majority necessary to affirm or reverse the local superintendent's decision, the local superintendent's decision was permitted to stand.

Appellants appealed the local board decision to the State Board of Education on July 10, 2012.

STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing a student transfer decision is that 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. COMAR 13A.01.05.05A. *See*

Tom & Judy M. v. Bd. of Educ. of Montgomery County, MSBE Op. No. 09-37 (2009). The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

LEGAL ANALYSIS

The State Board has previously concluded that a local board's student transfer policies are permissive and not mandatory. In *D.D. v. Montgomery County Bd. of Educ.*, 6 Op. MSBE 35 (2006), the State Board explained that the local board's transfer policy gives the school system discretion to balance the interests of the students and schools.

Pursuant to the local board's policy, students are assigned to the schools in the areas in which they live. A transfer to a different school must be supported by evidence of a unique hardship, unless an exemption from the hardship rule applies. (Board Exh. 2, MCPS Regulation JEE-RA, IV(A)). There are four exemptions from the unique hardship requirement:

- Where there is an older sibling already attending the requested school at the same time in the regular program
- The student is ready to move from middle school to high school, except for boundary change
- The student has met the criteria for, and been admitted to, and attends a countywide program
- Family relocation in the county and the student prefers to remain in the original school for the current school year

(*Id.*, MCPS Regulation JEE-RA, IV(B) and COSA Information Booklet). None of the listed exemptions apply here. Accordingly, Appellants must demonstrate a unique hardship in order to justify the transfer request.

Appellants want their daughter to attend Baker primarily because of their fears that ML will be bullied at Rocky Hill by the girls who bullied her in third grade. The State Board previously considered whether past incidents of bullying was a unique hardship sufficient to support a transfer. In *Saunders v. Montgomery County Bd. of Educ.*, Op. No. 99-12 (1999), a first grade student was bullied by other students during lunch and on the playground. Dissatisfied with the principal's lack of an adequate response, the parent requested a transfer for the second grade. A physician wrote a letter in support of the transfer and concluded that the student experienced stress due to the school yard environment which was described as violent and unsafe. The local superintendent denied the transfer. The local board failed to reach a unanimous decision and the local superintendent's decision remained in effect. On appeal to the State Board, the State Board requested additional information about the student's well-being and progress in school. The local board reported that the student's adjustment to second grade and his relationships with peers and adults had been good. Moreover, the parent had not made any specific complaints or brought problems to the school's attention that were not handled by school personnel. The State Board concluded that the local board did not act arbitrarily, unreasonably, or illegally and allowed the local board's decision to stand.

Regarding this appeal, the evidence in the record shows that bullying incidents against ML took place when she was in third grade and were resolved by Cedar Grove personnel. ML became a school leader in elementary school and was President of her fifth grade student government. Moreover, the student who was primarily responsible for the third grade bullying is no longer enrolled in MCPS and is not attending either middle school. Although Appellants believe that the student will return to Rocky Hill, it is undisputed that the student is not currently enrolled in the school system.

Following the local superintendent's denial of the appeal, Appellants revised their allegations and state ML was continuously bullied for two years. The record does not indicate continuous bullying. Appellants' initial complaint alleged bullying in the third grade only. The written statements of the Cedar Grove school counselor and third grade teacher submitted in support of the transfer, state that the bullying against ML occurred in the third grade. Neither reported bullying in other grades and Appellants did not submit evidence of bullying in other grades.

The Appellants' concern about their daughter's possible future experience of bullying at Rocky Hills appears to be based on the fear that the ring leader will enroll in Rocky Hills and that Rocky Hills will not be able to provide a safe environment for ML. There is no evidence in the record to demonstrate that Rocky Hill personnel cannot provide ML with a safe school environment. The evidence provided by Appellants demonstrates that the local board has a systematic prevention and intervention program against bullying, harassment and intimidation. (Appellants' Exh. 16). The local board's comprehensive anti-bullying and harassment program demonstrates its commitment to prevent the bullying behaviors and commitment to take corrective action if they occur. Moreover, Appellants did not submit any evidence that shows that Rocky Hill has a bullying problem or that any incidents of bullying have not been appropriately addressed by school officials. Appellants' concern that Rocky Hill will be unable to address bullying should it occur is not supported by any evidence in the record. Accordingly, Appellants have not met their burden of showing that ML's bullying in third grade is a unique hardship to support the transfer for middle school. The local board's decision that allows the local superintendent's decision to stand was not arbitrary, unreasonable or illegal.

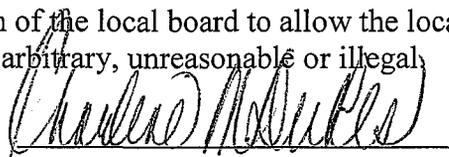
Beyond concerns about ML's safety at Rocky Hill, Appellants' February 1, 2012 transfer application and their August 17, 2012, Response to the State Board, contains non-safety reasons to support a unique hardship. In the February 1, 2012 initial transfer appeal, Appellant argues that she was an MCPS employee at Damascus High School and is more readily available for ML during the transition to middle school since Baker is close. Appellants explain further in their August 17th Response to the Local Board's Motion, that Baker is close to their home and ML's activities and that a large part of their decision to move to Damascus was the school system and school she would attend.

Having ML close to Appellant's work and activities does not demonstrate the unique hardship required to sustain a transfer. The State Board has long held that there is no right to attend a particular school, a particular class, to be close to parents' work, closer to home, closer

to peers or to be close to community activities. See, e.g. *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464 (1967); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (2001); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005). Thus, denial of the transfer for these reasons was not arbitrary, unreasonable, or illegal.

CONCLUSION

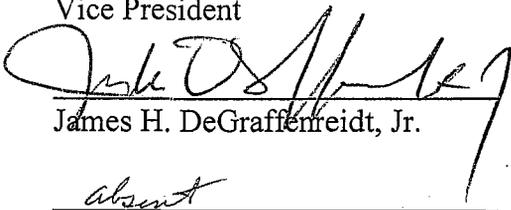
For all these reasons, we affirm the decision of the local board to allow the local superintendent's decision to stand because it is not arbitrary, unreasonable or illegal.



Charlene M. Dukes
President



Mary Kay Finag
Vice President



James H. DeGraffenreidt, Jr.



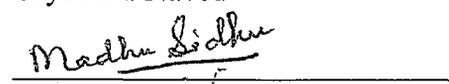
S. James Gates, Jr.



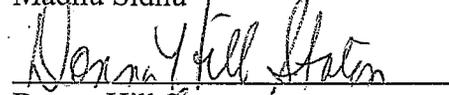
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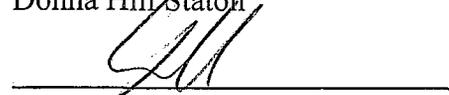
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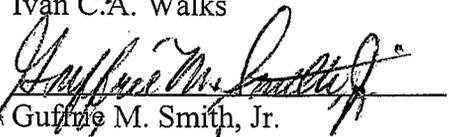
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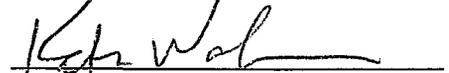
Donna Hill Staton



Ivan C.A. Walks



Guffie M. Smith, Jr.



Kate Walsh

December 17, 2012