

DENIS C. AND ELLEN H.

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-12

OPINION

INTRODUCTION

In this appeal, Appellants challenge the Montgomery County Board of Education's (local board) decision upholding the denial of their son's school transfer request from Albert Einstein High School ("Einstein") to Montgomery Blair High School ("Blair") for the 2012-2013 school year. The local board filed an untimely Motion for Summary Affirmance and a Motion for Extension of Time. Appellant opposed the motion.

FACTUAL BACKGROUND

Appellants reside in an area of Montgomery County served by the Downcounty Consortium ("DCC") of schools. The Downcounty Consortium is made up of five high schools and their feeder schools. The high school located in the area in which the student lives is considered the student's "base school." When a student in the Downcounty attendance area reaches eighth grade, he fills out a form ranking his high school of choice preferences. If he ranks his base school as his first preference (or second preference, if the first is not available), he is guaranteed placement in his base school. In this case, the student's base school was John F. Kennedy High School. All other assignments are through a lottery process.

In the lottery process, students receive a school assignment based on a combination of factors including, *inter alia*, student preference, school capacity, and place of residence.

On November 3, 2011, Appellants completed a school enrollment choice form for their son. They ranked Blair as their first choice and Einstein as their second choice.

On January 27, 2012, Montgomery County Public Schools ("MCPS") notified Appellants that their son would be enrolled in Einstein for the 2012-2013 academic year. The notice provided Appellants an opportunity to participate in a second round of the school selection process. Thus, on February 3, 2012, Appellants re-requested that their son be enrolled in Blair.

On March 19, 2012, MCPS notified Appellants that their son would remain enrolled at Einstein. Appellants filed an appeal with the Director of the Division of Consortia Choice. The Director, on May 10, 2012, denied Appellants' appeal, and also noted that in February 2013, Appellants' son would have the opportunity to participate in the Change of Choice process to change schools for the 2013-2014 school year.

On May 25, 2012, Appellants filed a timely appeal with the Chief Operating Officer explaining that their son was the victim of bullying during his middle school years and suffers from Delayed Sleep Phase Syndrome¹ and sleep apnea, sleeping conditions that prevented him from regularly attending middle school. Additionally, they explained that their son thrives in math, science, and computer technology, fields of study that are well-supported at Blair. On June 7, 2012, the Chief Operating Officer denied the Appellants' appeal and provided a right of appeal to the local board.

On July 2, 2012, Appellants filed an appeal with the local board and again provided an explanation of the basis for their appeal. Appellants further argued that should their son be placed at Blair, he would have the motivation he needs to wake up in time to attend school.

On July 24, 2012, the Superintendent recommended that the local board deny Appellants' request for their son's school transfer on the basis that their son's sleep disorders, preference for particular fields of study, and social issues do not constitute a unique hardship that would permit a school transfer. The local board agreed and issued its decision on August 24, 2012.

This appeal ensued.

STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing a local board decision concerning the denial of a transfer request is that the decision of the local board is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

ANALYSIS

Preliminarily, we note that the local board filed its response sixteen days beyond the expedited deadline set by the State Board in this appeal.

When this case was expedited the filing date was set for October 9, 2012 rather than the usual date, which likely would have been October 24, 2012. The local board submitted its Motion for Summary Affirmance on October 24, 2012. In addition, with its late-filed response the local board submitted a motion for extension of time.

¹Delayed Sleep Phase Syndrome is a disorder of the timing of sleep and daily biorhythms, which causes individuals to fall asleep after midnight and experience difficulties waking up at a normal hour.

The Appellants argue that this Board should not grant the motion for extension of time because the deadline for filing a response to the appeal had passed and the late-filed motion cannot reopen the window of time for that response.

We note that there are some deadlines for filing that are immutable. For example, an Appellant must file an appeal to this Board within 30 days of the date of the local board's decision. COMAR 13A.01.05.02(B). We consistently dismiss late-filed appeals. We do not extend the filing deadline except in unusual or extraordinary circumstances. The rule governing the filing of an appeal is immutable because timely filing initiates this Board's jurisdiction to hear the appeal. Failure to file timely deprives the Board of jurisdiction.

The same rule does not apply to subsequent responses to the appeal. Failure to respond or respond timely does not deprive this Board of jurisdiction. We retain jurisdiction and the discretion to extend response deadlines. COMAR 13A.01.05.04(E). We will do so in this case because such late-filing is a rare event and may have been caused by failure to read carefully the notice that set the expedited response time. We put all local boards and their counsel on notice, however, that late filing is not acceptable and careful attention to response times is necessary.

We now turn to the merits of the case at hand. Consistently in the appeal process, the Appellants presented three reasons to support their argument that a transfer was appropriate because of "unique hardship." The unique hardship, they assert, is based "on a combination of factors: their son's unique history of a highly unusual health problem, Delayed Sleep Phase Syndrome and social and emotional fragility and the necessity for opportunity to find like-minded peers and a strong academic program in math, science, and computer science to address those deficits." Opposition at 5. They present the same arguments here and have added one new issue - - that their son is being bullied at Einstein. They have filed a Motion to Present New Evidence.

School transfers are evaluated based on the MCPS's policy, Transfer of Students ("the transfer rule"). A transfer may be approved for a documented unique hardship.

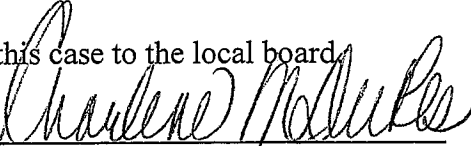
The unique hardship at issue here is the combination of the student's serious sleep disorder, his extraordinary interest and abilities, and his trouble finding peers and establishing relationships. Appellants state that attendance at Blair is a "necessity for their son's physical, social, emotional, and academic well-being." Opposition at 5. They also assert here for the first time that their son is being bullied at this assigned school, Einstein. They filed a Motion to Present Additional Evidence.

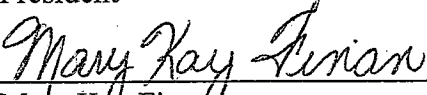
We have reviewed all arguments presented by both parties. We understand these parents want their son to be assigned the most appropriate academic placement for him. The Appellants assert that only Blair fits that bill because only Blair can offer the kind of academic motivation that will help their son overcome his sleep disorder. The local board and the Superintendent assert, but do not explain in any detail, that Einstein (or perhaps Wheaton) is also an appropriate placement. A more detailed explanation would have been helpful to us. In addition to that lack of information, we are concerned about the assignment to Einstein, however, based on the new

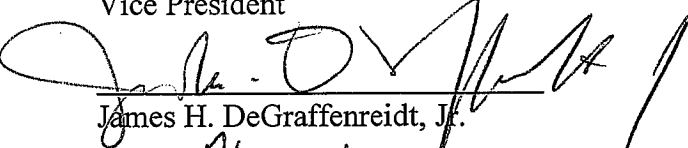
assertion that the student is being bullied there. We decline, however, to admit new evidence on that issue here. It is an issue best investigated and addressed by the local board. Therefore, we remand this case for consideration of new evidence of bullying.

CONCLUSION

For all the reasons stated herein, we remand this case to the local board


Charlene M. Duker
President

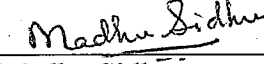

Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.
Absent


S. James Gates, Jr.

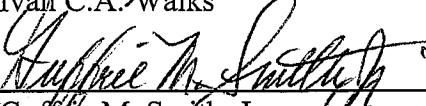

Luisa Montero-Diaz

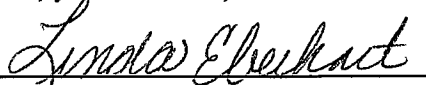

Sayed M. Naved


Madhu Sidhu


Donna Hill Staton


Ivan C.A. Walks


Guffie M. Smith, Jr.


Linda Eberhart

February 26, 2013