

M. O.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-19

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to transfer his son from Dr. Charles R. Drew Elementary School to Cloverly Elementary School for the 2006-2007 school year. The local board has submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellant do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a response to the local board's motion.

FACTUAL BACKGROUND

Appellant resides in the attendance area of Dr. Charles Drew Elementary School ("Drew"). On February 6, 2006, Appellant requested that his son, I.O.,¹ be transferred to Cloverly Elementary School ("Cloverly") for the 1st grade in the 2006-2007 school year. Prior to acting on the request, Pupil Personnel Worker Karen Gross contacted Appellant to get more information.

Appellant responded in writing explaining that the earlier dismissal time at Cloverly and Cloverly's proximity to the family's home would benefit I.O.² Appellant stated that the later dismissal time at Drew and the following bus ride gets I.O. home from school at 4:20p.m., thus limiting I.O.'s involvement in after school activities.³ In addition, Appellant stated that he is unable to drop off and pick up his son at school because the demands of his work schedule as an emergency physician do not allow him sufficient time to get to and from Drew, but that he would

¹We will refer to Appellants' son as I.O. throughout this memorandum.

²Cloverly's hours are 8:50-3:05. Drew's hours are 9:15-3:30. (Local board Motion, p.4).

³I.O. no longer takes the bus home as the parents have arranged for their own transportation.

be able to drive I.O. if he were at Cloverly because the school is closer to home.⁴ Appellant emphasized the importance of a father being able to play an active role in building his son's confidence and expressed concern that he is failing his fatherly responsibilities. (Letter to Gross).

Appellant also submitted letters of support from the Medical Director of Trauma Services at Suburban Hospital, the Chair of the Emergency/Shock Trauma Department at Suburban Hospital, and the State Emergency Medical Services Medical Director. These individuals emphasized the stresses and demands on an emergency physician, and explained that Appellant works variable shifts and must report to the emergency room within 30 minutes when "on call". (See Letters from Westerland, Rothstein, and Alcorta). The EMS Medical Director stated that Appellant has informed him that the distance of his son's school from his home has negatively affected his ability to respond to work when he is called to the hospital on an emergency basis. (Letter from Alcorta).

On March 31, 2006, Appellant's transfer request was denied by the field office supervisor who noted that the request did not meet the local guidelines for granting a transfer.

Appellant challenged the field office supervisor's decision reiterating his position. (Letter to COO). In his appeal, Appellant stated that I.O.'s "mental well-being and education is our primary concern. [I.O.] has been under the care of a psychiatrist and it is critical that I be as involved in his life as much as possible." (*Id.*).

The Chief Operating Officer, acting as the Superintendent's designee, assigned the matter to a hearing officer, Elaine Lessenco, to make a recommendation on the transfer request. Ms. Lessenco spoke with the father "who reported that [I.O.] sees a psychiatrist regularly." For the first time since applying for the transfer, Appellant produced a letter from a psychiatrist who reported that I.O. has been "diagnosed with emotional illness, which seems precipitated by feelings of abandonment by his father." (Letter from Attia, 4/10/06). Thereafter, Dr. Attia sent Ms. Lessenco a "Psychiatric Report" dated May 24, 2006, stating that I.O. was seen for evaluation in three sessions, which included the mother, father, and two brothers at times. Dr. Attia recommended that Appellant be more involved in his son's daily life. After discussing with the father the various options to accomplish that goal, Dr. Attia stated that the "only option was that [I.O.] be transferred to Cloverly Elementary School because it is closer to their home and the father could be more involved in transporting [I.O.]. (Letter from Attia, 4/10/06). Decreasing Appellant's work hours was discussed as an option, but they concluded that the long term

⁴Appellant states that Cloverly is six minutes from home and Drew is approximately ten to fifteen minutes past Cloverly. (Letter of Appeal to State Board, 10/06; Letter to State Board, 11/29/06). The Yahoo Map states Cloverly is 2.6 miles from the home with an estimated driving time of 6 and that Drew is 4.8 miles from the home with a driving time of 11 minutes. For purposes of this memorandum, we will assume that it takes approximately 20 minutes to get to Drew from Appellant's home.

solution would be to have I.O. moved to a school closer to home. (May 24 Report).

Ms. Lessenco spoke with Dr. Attia. According to Ms. Lessenco, in their conversation Dr. Attia reported that there was no treatment plan and that I.O. was not in treatment. Dr. Attia's May 25 report did not specifically identify a diagnosed mental illness, and stated that "[n]o psychotropic intervention is recommended at this time." Ms. Lessenco also spoke with the principal of Drew who reported that the school has seen "no evidence of [I.O.'s] unhappiness."

Finding no unique hardship, Ms. Lessenco recommended denial of the transfer request. She was unconvinced that the thirty minute difference in dismissal times between the two schools would make a significant difference in I.O.'s well being. She noted that he exhibited no emotional problems or unhappiness at school. (Hearing Officer Report). The COO adopted her recommendation and denied the transfer request by letter dated June 1, 2006. (Letter from Bowers).

Appellant appealed the denial to the local board. The letter of appeal takes issue with some of the statements in the hearing officer's report and makes the following points:

- I.O. is "currently in treatment for his violent behavior and his attitude towards his family, under the guidance of Dr. Attia." In order to provide I.O. with more attention at home, the siblings now have fewer activities and the father has reduced his work shifts, resulting in a decrease in salary.⁵
- Cloverly's earlier dismissal and closer proximity to the family's home will allow I.O. to spend time with his father on days that he works late shifts, which is approximately 50% of his total shifts. For those days, this translates into approximately 30 minutes more per day with his father.
- I.O. rides the bus to school in the morning. He no longer takes the bus home from school. Although the secretary at Drew reported that the last bus stop is at 4:02, the bus does not usually arrive before 4:15.
- The principal at Drew has limited interaction with I.O. and is not aware of his overall state of mind and behavior at home.
- The family is implementing all of Dr. Attia's recommendations and have already seen improvements. Transferring I.O. to Cloverly in order for the father to spend more time with him is one of the recommendations.

⁵The Emergency Physician Administrator at Suburban Hospital verified that the father has sustained a 12.5% reduction in pay due to his request to reduce his shifts. (Letter from DiPasquale).

(Letter of Appeal to Haughey).

In response to the appeal, the Superintendent submitted a memorandum recommending that the local board deny the transfer request. He stated that the case appears to be a preference for one school over another, and that 25 minutes several times weekly for the father to spend time with his son does not appear to be sufficient to characterize the request as a compelling hardship. The Superintendent noted that there were 22 requests for transfer to Cloverly, eight of which were approved by the field office on the basis of a documented hardship. In addition, the Superintendent noted that Cloverly will be at 104% capacity for the 2006-2007 school year. (Memorandum to local board).

The local board upheld the decision of the superintendent's designee denying the transfer request based on a lack of hardship.⁶ The local board stated as follows:

The parents have presented evidence to indicate that [I.O.] is experiencing certain emotional and behavioral difficulties. Further, the parents have submitted evidence that [I.O.'s] father works a demanding schedule as an emergency room physician and that job necessitates time away from the family. **However, this Board finds that the link between [I.O.'s] attendance at his assigned school and the concerns presented by the family and Dr. Attia has not been established. The record indicates [Appellant's] schedule rotates, and it is only on a certain subset of days that his opportunity to spend more time with [I.O.] would be affected by a change in [I.O.'s] school assignment. Further, the actual time that [Appellant] would get to spend with [I.O.] as a result of a transfer is minimal and projected benefits for [I.O.] are speculative.** While it appears from the record that it would be more convenient for the family if [I.O.] were to attend Cloverly Elementary School, convenience nor preference for one school over another is a basis for a transfer. Under these circumstances, the Board finds that the evidence does not establish a unique hardship.

(Local Board Decision, p. 2)(Emphasis added).

The dissenting board member found that the unusual circumstances of the appeal established a unique hardship sufficient to grant the transfer request. He stated as follows:

The father's work schedule is particularly demanding, including

⁶One board member dissented and two board members did not participate in the appeal.

not only evening and night shift work but also on-call assignments that require him to arrive at the hospital within a short time frame. Moreover, I believe the evidence indicates that [I.O.] has suffered negative consequences as a result of the father's lack of day-to-day contact with him. While the father has taken some temporary steps to try to address the situation, there is nothing in the record to indicate that he could take any effective permanent steps in light of his commitment to the hospital.

This appeal to the State Board followed. Appellant states in the appeal that I.O. is attending The Barrie School for the 2006-2007 school year while the appeal before the State Board is pending. The Barrie School is a private school located on Appellant's way to work. Appellant claims that this has allowed him to drive I.O. to school and spend additional time with him, thus resulting in positive behavioral changes for his son. (Letter of Appeal to State Board).

STANDARD OF REVIEW

The standard of review in 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.01.05.05; *See e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507(1997).

ANALYSIS

Montgomery County Public Schools ("MCPS") Regulation JEE-RA - Transfer of Students provides that absent qualifying under one of three exemptions, "[o]nly documented hardship situations will be considered for a change in school assignment." The regulation lists the following three exemptions to this policy: (1) an older sibling attending the requested school at the same time; (2) the student is ready to move from middle school to high school, except for boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. Because I.O. does not qualify for any of these exemptions, the only applicable consideration for a transfer in this case is a documented hardship.

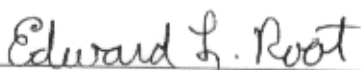
At the outset we acknowledge that the medical documentation reveals that I.O. has mental health issues concerning his relationship with his father which has caused various problems at home. In order to address these problems, I.O.'s psychiatrist has recommended that I.O. and his father spend more time together. In furtherance of this goal, the father temporarily reduced his work schedule as of January 1, 2006, which, despite the monetary loss to the family, has had a positive effect on I.O.'s well being according to Appellant. Because Appellant is unable to continue his reduced shift schedule, he is seeking a more permanent solution in the transfer to Cloverly which he believes will enable him and I.O. to spend more time together because it is closer to their home than Drew.

Nevertheless, the local board found that Appellant did not sufficiently establish the link between I.O.'s attendance at Drew and the concerns presented by the family and Dr. Attia in order to justify a transfer to Cloverly based on hardship. As highlighted by the local board, the record indicates that because Appellant's schedule rotates, he would only have the opportunity to spend extra time with his son on a certain subset of days if the transfer were granted. What seems to be missing is a quantifiable explanation of the difference in the amount of time that Appellant and his son would have together if I.O. attended Cloverly instead of Drew. In addition, what is also lacking is an evaluation of the mental health benefits for the projected time together.

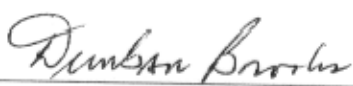
Although Appellant makes various assertions regarding the time issue, we agree with the local board that the actual amount of additional time that the two would have together if I.O. were to attend Cloverly is speculative. Appellant has a variable schedule. He works shifts that begin at 6:30 a.m., 10:00 a.m., 2:00 p.m., 5:00 p.m., and 11:00 p.m. (Letter to State Board, 11/29/06). In a letter to the local board, Appellant's wife states that 50% of Appellant's shifts are late shifts, but there is no explanation as to which of these shifts she is referring. (Letter to Haughey, 6/28/06). In addition, Appellant concludes that he will have 60% more time with I.O. if he is transferred to Cloverly, but fails to further explain how he reaches that percentage given his variable shifts. (Letter to State board, 11/29/06). It is the Appellant's burden to prove that the local board's decision is arbitrary, unreasonable, or illegal. The Appellant has not met that burden.

CONCLUSION

Based on the evidence presented in this case, we find that the decision of the local board is not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of Appellant's transfer request.



Edward L. Root
President

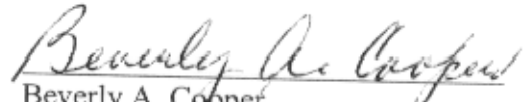


Dunbar Brooks
Vice President

Lelia T. Allen



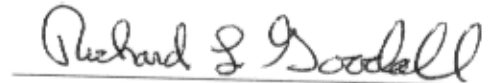
J. Henry Butta



Beverly A. Cooper

absent

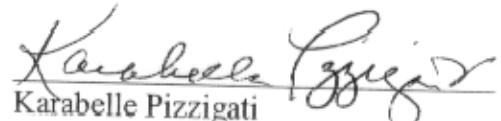
Calvin D. Disney



Richard L. Goodall



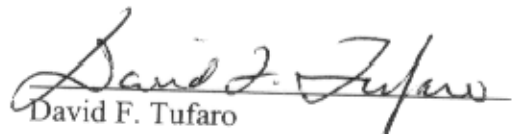
Tonya Miles



Karabelle Pizzigati

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Maria C. Torres-Queral



David F. Tufaro

April 24, 2007