

JENAI B.,
Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD

Opinion No. 08-52

OPINION

In this appeal, Appellant challenges the decision of the Prince George's County Board of Education (local board) denying Appellant's request to transfer her daughter from Thomas Johnson Middle School to Benjamin Tasker Middle School. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply to the local board's Motion.

FACTUAL BACKGROUND

On April 22, 2008, the Appellant requested a transfer for her daughter, M.B., from Thomas Johnson Middle School (Thomas Johnson) to Samuel Ogle Middle School (Samuel Ogle) for the 2008-2009 school year. At the time of the transfer request, M.B. attended the sixth grade at Glen Dale Elementary School. She was slated to attend Thomas Johnson the following year.

As the basis for the transfer request, Appellant stated that she wanted M.B., who was an honor roll student at Glen Dale, to be in a structured environment that would allow her to excel in reading and math. She noted that Thomas Johnson scored below the State average in the Adequate Yearly Progress (AYP) Report and the Maryland School Performance (MSP) Report for math and reading and that she had heard that "Thomas Johnson Middle has a bad reputation." (Student Transfer Request).

On June 3, 2008, Diane E. Powell, Acting Director of the Department of Student Services, advised Appellant that the Office of Student Transfers had denied the transfer request because the reasons given for the transfer did not meet the requirements for approval under local board policy. She noted that Samuel Ogle lacked space for additional students. (Powell Letter, 6/3/08).

Appellant appealed to the Office of Appeals, stating that, as a working parent, she relied on her family and friends to pick up her children in an emergency. She explained that it would be a hardship for her family and friends, who live in the Bowie area, to pick M.B. up from school if an emergency were to occur. (Appellant's Letter, 6/5/08). The Director of Appeals, John W.

Brooks, the superintendent's designee, issued a decision on June 17, 2008 denying the transfer request. (Brooks' Letter, 6/17/08).

On appeal to the local board, Appellant explained that she would like M.B. to attend a school that has met Adequate Yearly Progress. Given that the school system had previously denied her request for a transfer to Samuel Ogle due to overcrowding, Appellant requested a transfer to Benjamin Tasker Middle School instead. (Letter of Appeal, 6/27/08).

Because Appellant requested a transfer to Benjamin Tasker for the first time on appeal to the local board, the local board referred the matter to Mr. Brooks for his review and a recommendation. Mr. Brooks provided the local board with enrollment data which showed that Thomas Johnson was operating at a school utilization rate of 98.3% with an enrollment of 914 students and a capacity of 930 students. In contrast, he provided data showing that Benjamin Tasker was operating at a utilization rate of 108.1% with an enrollment of 1112 students and a capacity of 1029 students. Based on this data, Mr. Brooks recommended that the local board deny the request. He also recommended that Appellant meet with Thomas Johnson's new principal to discuss her concerns prior to the start of the school year. (Brooks Memorandum, 7/1/08). The local board accepted Mr. Brooks' recommendations and denied Appellant's request to transfer her daughter to Benjamin Tasker Middle School. (Thomas Letter, 8/18/08).

This appeal to the State Board ensued.

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.01.05.05A.

ANALYSIS

In her appeal, Appellant raises two issues – that the local board failed to provide a reason for its decision and that the State Board should approve a transfer for M.B. to attend either Benjamin Tasker or Samuel Ogle. (Letter of Appeal, 8/19/08).

Basis for Decision

Appellant contends that the local board failed to provide a basis for its decision denying her transfer request. Roger Thomas, counsel to the local board, conveyed the local board's decision to Appellant by letter dated August 18, 2008. In that letter, Mr. Thomas stated that the local board accepted the recommendations of the superintendent's designee, Mr. Brooks, as the basis for its denial of the transfer request. Mr. Thomas referred the Appellant to Mr. Brooks' July 1, 2008 memorandum which was attached to the letter. That memorandum contained the reasons for the denial. Thus, we find that the local board provided a basis for its denial of

Appellant's request.

Denial of Transfer

The Prince George's County Public Schools' (PGCPS) student transfer policy is permissive and not mandatory, giving the school system discretion in balancing the interests of the students and the schools. *See D.D. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 06-35 (2006). Transfers are limited, however, to schools that are not severely overcrowded as determined by the Office of Pupil Accounting and School boundaries. Administrative Procedure 5110.3(IV)(A)(7).

The PGCPS Administrative Procedure provides that "school-based transfers are limited to schools which are not severely overcrowded (defined by the Maryland State Department of Education as 105% or more of the State Rated Capacity) as determined by the Office of Pupil Accounting and School Boundaries." 5110.3(IV)(A)(7). In this case, the projected enrollment for Benjamin Tasker exceeded its state rated capacity, with a utilization rate of 108.1%. This rate exceeds the 105% utilization rate identified as the cut off for overcrowding in the Administrative Procedure. (*Id.*). Based on this data, the local board had a reasonable basis upon which to deny Appellant's transfer request.

In her appeal to the State Board, Appellant requests the State Board to overturn the local board's decision and grant a transfer to either Benjamin Tasker or Samuel Ogle. While Appellant initially requested a transfer to Samuel Ogle, she changed the requested school to Benjamin Tasker on appeal to the local board. The local board considered Appellant's amended choice of school and denied that request. It did not rule on Appellant's initial request to Samuel Ogle.¹

It is the long held position of this Board that it will not review matters that have not been reviewed initially by the local board. *Jan M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-40 (2008); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Craven v. Board of Educ. of Montgomery County*, 7 Ops. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary's County*, 7 Ops. MSBE 740 (1997). Appellant must first raise these concerns with the local board before the State Board can consider them.

The State Board has long held that there is no right to attend a particular school or a particular class. *See Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464 (1967); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (October 26,

¹We note, however, that based on enrollment data provided by the local board in its Motion, Samuel Ogle Middle School's enrollment exceeds its state-rated capacity with a projected school utilization rate of 106.6%. Thus, like Benjamin Tasker, Samuel Ogle is severely overcrowded, thereby precluding a transfer to the school under the PGCPS Administrative Procedure.

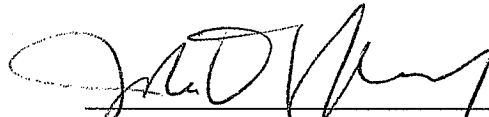
2005); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (December 5, 2001); *Williams v. Board of Educ. of Montgomery County*, 5 Ops. MSBE 507 (1990). Because the local board's decision is consistent with Administrative Procedure 5110.3, we find that the local board's decision is not arbitrary, unreasonable or illegal.

Allegations of Violence at Thomas Johnson

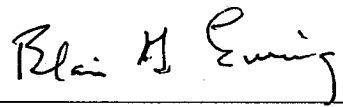
In her reply to the local board's motion, Appellant states for the first time that her daughter is fearful of her safety at Thomas Johnson given that several fights have broken out at school. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997); *Hart v. Bd. of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No 03-22 (June 27, 2003). If Appellant seeks to transfer her daughter out of Thomas Johnson based on safety concerns, she must first raise this issue with the local board.

CONCLUSION

For all of these reasons, we affirm the local board's decision.



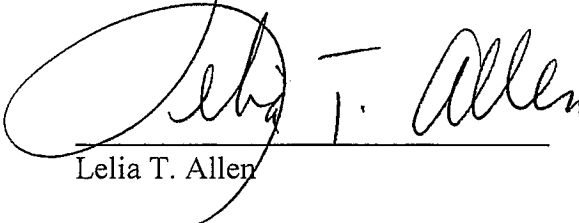
James H. DeGraffenreidt, Jr.
President



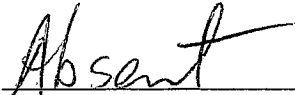
Blair G. Ewing
Vice President



Dunbar Brooks



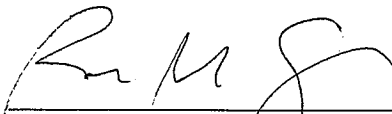
Lelia T. Allen




Charlene M. Dukes



Mary Kay Finan



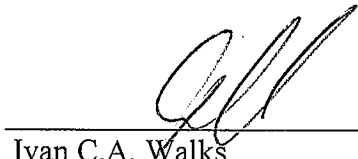
Rosa M. Garcia



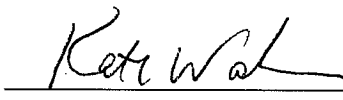
Richard L. Goodall



Karabelle Pizzigati



Ivan C.A. Walks



Kate Walsh

December 17, 2008