

LEONA V.,

Appellant

v.

HARFORD COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD

Opinion No. 09-17

OPINION

In this appeal, Appellant challenges the decision of the Harford County Board of Education (local board) to uphold the denial of Appellant's request for a boundary exception for her daughter to attend Patterson Mill High School (Patterson Mill High). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellant's daughter, A.V., attended 8th grade at Patterson Mill Middle School on a boundary exception granted for child care reasons. For the 9th grade, A.V. was assigned to Edgewood High School (Edgewood), the high school serving her attendance area.

In May, 2008, Appellant requested a boundary exception for her daughter to attend Patterson Mill High. Appellant cited child care, safety and health reasons as the basis for her request. As to the child care and safety issues, Appellant explained that she needs child care so that her daughter does not have to walk alone to and from the school bus stop approximately one half mile from her residence. Appellant explained that her neighborhood is unsafe and that her house is the last residence off of a dirt road in a wooded area near two major roadways. Appellant is unable to accompany her daughter to and from the bus stop due to her work schedule. She has a child care provider in the Patterson Mill High district, however. Appellant also requested the exception because she believes that A.V. will not reach her educational potential at Edgewood due to fear for her safety within the school.

As to the health reasons, Appellant requested the exception because her daughter suffers from stress induced migraines. Appellant feels that the migraines will decrease if the boundary exception is granted because they decreased when her daughter found out her transfer to Patterson Mill Middle was granted, only to increase again after learning that she was slated to attend Edgewood High. (R-1.e – R-1.h, Special Admission/Transfer Application and attachment).

The Area Pupil Personnel Worker, Pamela Smith, advised Appellant that the Director of Student Services had denied her request. Ms. Smith stated that the request was denied because the enrollment at Patterson Mill was projected to be at 102% capacity for the 2008-2009 school year; that child care at the high school level does not meet the criteria for a boundary exception; and that there was no evidence of a chronic medical problem or condition affected by the school setting. (Smith Letter, 5/27/08).

Appellant appealed the denial to the local Superintendent. (R-1.p – R-1.g, Appellant's Letters). By letter dated June 10, 2008, the Superintendent denied the request. (R-1.t, Haas Letter, 6/10/08). She stated as follows:

The Board of Education annually sets the guidelines for boundary exceptions. With regard to childcare requests the guideline generally only applies to elementary and middle school-age students. Requests involving high school-age students will only be considered if there is clear and compelling evidence substantiating supervision or safety issues. No such evidence has been provided. The guideline also stipulates boundary exceptions will not be granted to a school that is at 95 percent of rated capacity or greater. Based on my examination, I have determined that the student enrollment at Patterson Mill School is projected to be above operational capacity at over 102 percent for the upcoming school year. In applying the guideline, your boundary exception request cannot be approved.

The Appellant asked the Superintendent to reconsider her decision. In addition to the claims Appellant had previously raised in support of the boundary exception, Appellant also requested a transfer under the school choice provisions of No Child Left Behind (NCLB). (R-1.u, Appellant's Letter, 7/7/08). Appellant submitted documents including newspaper articles and various accounts of violence and criminal activity in the Edgewood area to support her claims regarding neighborhood safety. A.V. submitted her own letter expressing how well she had done at Patterson Mill Middle and requesting that she be allowed to transfer to Patterson Mill High with her friends from middle school. (R-1.w – R-1.aal).

The Superintendent denied Appellant's request. She reiterated that Patterson Mill was over capacity and closed to boundary exceptions except in cases of severe hardship. The Superintendent further explained that the school choice transfer option was not applicable here because it applies to low performing Title I schools, and Edgewood is not a Title I school. (R-5, Haas Letter, 1/22/08).

In a subsequent e-mail, Appellant questioned whether Patterson Mill High was overcrowded, and whether a boundary exception would be granted on the basis of income, as well as health and safety issues. (R-1.aan, Appellant's E-mail, 8/13/08). Stephen Lentowski, the Superintendent's Designee, responded, stating the following:

While the physical capacity at Patterson Mill High School may be at 67 percent, this is due to the fact that they are still in the process of phasing in the upper level grades. The school is not yet fully staffed. Considering the number of classrooms and staffing, the school is at capacity and closed to boundary exceptions, except in documented cases involving hardship.

With regard to child care, he stated that without compelling clinical evidence that A.V. is unable to care for herself, child care is not a valid basis for granting such a request at the high school level. He also explained that the information concerning safety issues had to do with Appellant's neighborhood rather than safety at the school. Furthermore, he stated that the health condition would not warrant a transfer without documentation of the condition and proof that the condition is caused by attendance at the assigned school. Because A.V. never attended Edgewood, there was no evidence that she would continue to suffer migraines if she attended school there. He also explained that neither test scores nor income serve as a basis for granting an exception. (R-1.aam, Lentowski E-mail, 8/14/08).

The 2008-2009 school year began. A.V. attended Edgewood for the first few days of school. Because she suffered an increase in her migraines during this time, Appellant removed her from Edgewood and began home schooling her.

Thereafter, Appellant appealed the denial of the boundary exception to the local board. (R-2.d, R-2.b, Appellant and A.V. Letters, 9/08). She emphasized that A.V.'s migraine condition became worse after attending Edgewood during the first week of school.

The Superintendent's Designee filed a memorandum to the local board in response to the appeal stating that "[n]otwithstanding the capacity issue, no medical or safety hardship has been documented in this case nor has it been demonstrated that [A.V.] cannot receive an appropriate education at Edgewood." (R-1.a, Lentowski Memorandum, 9/18/08). The local board adopted the memorandum and upheld the decision denying Appellant's request. (R-7.a, Spicer Letter, 9/23/08). The board stated that Appellant failed to provide sufficient facts or contentions to overturn the Superintendent's decision. Alternatively, the local board concluded that A.V. was not eligible for a boundary exception because Appellant withdrew her from HCPS and was home schooling her at the time of the appeal before the local board. (*Id.*)

This appeal to the State Board followed. Appellant stated in her appeal that she had re-enrolled her daughter at Edgewood so that she could pursue the boundary exception. (Appeal to State Board).

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.01.05.05.

ANALYSIS

Standing to Appeal to State Board

As a preliminary matter, the local board maintains that Appellant lacks standing to appeal the denial of her request for a boundary exception because A.V. was not enrolled in Harford County Public Schools (HCPS) at the time the local board considered the appeal. Appellant has explained that she withdrew her daughter from Edgewood several days into the 2008-2009 school year because the boundary exception had been denied and she did not want her to attend school there after experiencing an increase in her migraines. Appellant continues to pursue the exception and she states that she re-enrolled her daughter at Edgewood during the pendency of this appeal.

The general rule on standing is that “for an individual to have standing, even before an administrative agency, he must show some direct interest or “injury in fact, economic or otherwise.” *Adams, et al. v. Montgomery County Bd. of Educ.*, 3 Op. MSBE 143, 149 (1983). See also *Schwalm v. Montgomery County Bd. of Educ.*, MSBE Op. No. 00-10 (2000); *Vera v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 251 (1996).

We believe that Appellant has standing to appeal the denial of her request for a boundary exception to the State Board. Appellant resides within the Edgewood attendance area. Her daughter was enrolled in Edgewood at the beginning of the 2008-2009 school year. Appellant removed her from school only because the boundary exception was not granted and she did not want her daughter attending Edgewood. If the exception is granted on appeal, Appellant intends to enroll her daughter at Patterson Mill. In addition, during the pendency of this appeal, Appellant has stated that she re-enrolled her daughter at Edgewood. Thus, we find that Appellant has demonstrated a direct interest in the issue sufficient to have standing to appeal.

Merits

The HCPS Administrative Guidelines for Evaluating Boundary Exception Requests set forth several qualifying reasons for granting a request for a student to attend a school outside of the student’s attendance zone. Of those reasons, only one is potentially relevant to Appellant’s request:

Hardship: These requests pertain to personal and family circumstances of an unusual and adverse nature which precludes the student’s enrollment in his/her home school.

(Guidelines, p.2). There are circumstances, however, that limit the granting of an exception. One such limitation is if a school is at or over 95% of the state-rated capacity based on adjusted enrollment. (Guidelines, p.3). In addition, a factor that is not considered a hardship sufficient to override the utilization concern is the desire for more favorable child care arrangements,

especially at the middle and high school level. (*Id.*). Thus, the local board had to weigh the benefit of granting the exception to the student in light of those existing limitations.

In this case, the granting of a boundary exception for A.V. to attend Patterson Mill was limited by the fact that Patterson Mill was projected to be over 102% capacity for the 2008-2009 school year. One of the reasons Appellant requested the boundary exception was to use a child care provider in the Patterson Hill district. In light of the projected over capacity at Patterson Mill, however, a transfer at the high school level on this basis is specifically prohibited under the hardship exception. (Guidelines, p.3).

Appellant also requested the exception based on a safety hardship because she does not want her daughter going alone to and from the bus stop in her neighborhood. We do not believe that Appellant's safety concerns demonstrate unusual and adverse family circumstances precluding A.V.'s enrollment at Edgewood. The safety of children going to and from school and bus stops is a common concern for parents of students. Appellant is responsible for the safety of her daughter when she is not in the charge of the school system.

The only viable reason to consider here is A.V.'s medical condition. However, the only clinical evidence of the migraine condition that was before the school system is an undated medical note from Dr. Yuval Shafir describing the treatment of a migraine condition related to an incident of sexual harassment by classmates in elementary school. The note appears to be several years old. (R-1.aab, Shafir Note). The local board did not have any current evidence before it of a migraine condition caused by A.V.'s assignment to Edgewood. (Lentowski Memorandum). Therefore, there was no basis for the local board to find that A.V.'s medical condition was a hardship that would preclude her from attending Edgewood.

The Court of Appeals has ruled that there is no right to attend a particular school. See *Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967); *Goldberg v. Montgomery County Bd. of Educ.*, Ops. MSBE, No. 05-35 (2005); *Chacon v. Montgomery County Bd. of Educ.*, Ops. MSBE, No. 01-39 (2001); *Williams v. Bd. of Educ. of Montgomery County*, 5 Ops. MSBE 507 (1990).

For the reasons set forth above, we do not believe that the local board's decision was arbitrary, unreasonable or illegal.

New Evidence

In the appeal before the State Board, Appellant has submitted new documentation from Dr. Shafir - an October 14, 2008 letter, a September 15, 2008 medication schedule, and a June 14, 2007 letter. The September and October 2008 documents are new evidence related to A.V.'s September 2008 visit to Dr. Shafir that were not reviewed by the local board.

COMAR 13A.01.05.04C provides that, if the Appellant can show to the satisfaction of the State Board that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board, the State Board may

receive the additional evidence or remand the appeal to the local board for the limited purpose of receiving the additional evidence.

As to the materiality of the new evidence, it is our view that, evidence that a student's attendance at an assigned school causes an illness or condition, is material. *See Theresa K. v. Montgomery County Bd. of Educ.*, MSBE Op. NO. 06-27 (2006). The question, of course, is whether the new evidence is sufficient to establish cause and effect.

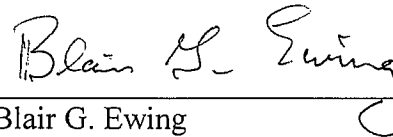
The September 15, 2008 medication schedule shows that Dr. Shafrir prescribed medication for A.V. in September 2008, but taking medication is not a basis for granting a transfer. In the October 2008 letter, Dr. Shafrir states his belief that if A.V. attends Patterson Mill her stress level will decrease, thereby decreasing the frequency of her migraines, but his belief is based, in part, on his report that A.V. suffered severe social problems at Edgewood when she was there for only a few days. Dr. Shafrir also mentions A.V.'s fear of gangs and drugs at Edgewood, but there is no evidence of any such problems while A.V. was at school. In addition, Dr. Shafrir provides no treatment plan for management of A.V.'s stress. It is our view that the new evidence is insufficient to justify a transfer request.¹

CONCLUSION

For all these reasons, we find that the local board's decision was not arbitrary, unreasonable or illegal. We, therefore, affirm the local board's decision denying Appellant's request for a boundary exception for her daughter to attend Patterson Mill High.



James H. DeGraffenreidt, Jr.
President



Blair G. Ewing
Vice President

¹As for Dr. Shafrir's June 14, 2007 letter, contrary to Appellant's claim that it was made a part of the record in this case, we find that it is new evidence as Appellant is unable to identify to whom or when it was submitted in the proceedings below. We do not find this letter material because it discusses an incident of bullying at her old school and appears to refer to the need to keep A.V. at her middle school. In addition, Appellant has not demonstrated good reason for failing to present it to the local board given that it predated the appeal.

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April 28, 2009