

TIMOTHY & MICHELLE W.,

Appellant

v.

HOWARD COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 09-18

OPINION

INTRODUCTION

This is an appeal of the denial of Appellants' request to transfer their son to Clemens Crossing Elementary School (Clemens Crossing). The Howard County Board of Education (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have submitted a reply to the local board's Motion. The local board has submitted a surreply.

FACTUAL BACKGROUND

In January, 2008, Appellants requested a transfer for their son, A.W., to attend kindergarten at Clemens Crossing for the 2008-2009 school year, rather than Bryant Woods Elementary School (Bryant Woods). Appellants requested Clemens Crossing "to ensure that [A.W.] receives the best possible educational opportunities." Appellants cited various things they like about the school including its proximity to their home; its later start time; the school being under-capacity; the high level of parental involvement; the low poverty level; and the high reading and math scores. Appellants also raised concerns that Bryant Woods is a Title I school. (Student Reassignment Form with attachment, 1/28/08).

Roger L. Plunkett, the Superintendent's Designee, denied the transfer request because the reasons stated in the request did not constitute eligible reasons for approval under local board policy. (Plunkett letter, 2/7/08)

Appellants then wrote two letters to Mr. Plunkett, requesting that he reconsider his decision. In the first letter, A.W.'s mother requested reconsideration of the decision based on the emotional and physical problems that she was experiencing from the reassignment process. The mother also mentioned in that letter that Appellants' "only concern is getting [A.W.] into a high achieving school so that he can reach his full potential." (Appellant's Letter, 2/13/08). Mr. Plunkett denied the request finding no documentation or compelling reasons to justify granting the transfer. (Plunkett Letter, 2/19/08).

In the second letter, Appellants stated that A.W. has gastroesophageal reflux disease and chronic sleep difficulties that deprive him of sleep and make getting up in the morning hard for him. This makes the later start time at Clemens Crossing more appealing. Appellants included a note from A.W.'s pediatrician referring him for an evaluation of a possible sleep disorder. (Appellants' Letter, 2/20/08). Mr. Plunkett denied the request for reconsideration, stating that the reasons set forth by Appellants did not constitute eligible reasons for approval under local board policy. He urged the Appellants to work with school staff if A.W. exhibited health problems at the start of the school year. (Plunkett Letter, 2/28/08).

Appellants appealed to the local board reiterating their reasons for requesting a transfer. They also asserted that their son's special needs as a gifted child would be better met at Clemens Crossing. Appellants also took issue with the local board's transfer policy, suggesting that it had been unfairly and ineffectively implemented. (Appellants' Letter, 3/4/08). In their letter of appeal, Appellants mentioned their Public Information Act (PIA) request in which they asked the Howard County Public School System (HCPSS) for information about all transfers considered since April 27, 2000. (*Id.*) HCPSS provided information in response to the request. (Local Board Decision).

Although the local board was slated to review Appellants' case on April 8, 2008, Appellants requested and were granted a postponement in order to use the documents they received from the PIA request in the appeal. On May 22, 2008, Appellants submitted over 500 pages of additional documentation to the local board in support of their appeal. Counsel for the Superintendent requested a postponement of the appeal and an extension of time in which to submit the staff's response to the voluminous documentation. The local board rescheduled its review of the case for June 26, 2008.

The local board upheld the denial of the transfer by a unanimous vote, finding that the transfer denial was not arbitrary, unreasonable, or illegal, and that Appellants' reasons did not constitute "special circumstances" justifying a transfer under HCPSS policy. The local board explained that A.W.'s evaluation for a sleep disorder "does not document a medical condition or one that necessarily would be uncommon to other youngsters." The board further explained that although Bryant Woods is a Title I school, it has the same number of teachers for its gifted and talented program as the other elementary schools, and can serve A.W.'s needs. The local board found Appellants' statistical analysis of the implementation of the transfer policy over the past eight years to be irrelevant given that each case is determined based on its own particularized facts. It also found that Appellants presented no factual basis for their assertion that the denial of their request resulted from bias and prejudice. (Local Board Decision).

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.01.05.05.

ANALYSIS

Procedural Issues

Appellants argue that the local board improperly granted the Superintendent extra time to respond to the appeal, giving the Superintendent an additional 6 days beyond his previously extended deadline without a formal written request. It is within the local board's discretion to grant extensions of filing times. This one was reasonable in light of the Appellants' voluminous 500 page submission.

Appellants also assert that their rights were violated based on the statement in the Superintendent's response to the appeal offering the local board, upon request, additional information regarding the appeal. Presumably this statement is premised upon the provision in the local board's Rules of Procedure for Appeals that provides that the local board may request additional information from either party on an appeal issue. (Rules of Procedure IX.A.6.b, p.6). The Superintendent did not violate Appellants' rights by including the statement in the materials or act illegally in doing so. Nor is there any evidence that the local board engaged in any *ex parte* communications with the Superintendent or school system staff to seek out additional information.

In their appeal to the State Board, Appellants have submitted a November 6, 2008 letter responding to the local board's Response to Appellants' Answer to Motion for Summary Affirmance. The procedures for appeals to the State Board do not allow for such a filing. Rather, once a local board has filed a motion for summary affirmance, an appellant may file a response to the motion, and the local board may submit a reply to the appellant's response. COMAR 13A.01.05.04E. The acceptance of additional submissions, without the existence of extraordinary circumstances, triggers a potentially endless exchange between the parties. Here, Appellants have had ample opportunity to state their case and respond to the local board. Appellants' November 6 submission does not present any extraordinary circumstance necessitating the additional filing. Accordingly, we strike it from the record.

Substance of Appeal

In this appeal, Appellants ask that the State Board reverse the decision of the local board denying their request for A.W. to transfer to Clemens Crossing.¹

¹Although this is an appeal of the denial of a transfer request, Appellants attempt to challenge past redistricting decisions of the local board and the local board's ten year old

According to the HCPSS student transfer policy, students are required to attend their assigned school unless they are granted a special exception to attend a school outside of their geographic attendance area. (HCPSS Policy 9000). There are several types of special exceptions set forth in the HCPSS policy, only one of which is relevant here – the “Special Circumstances” exception.

The “Special Circumstances” exception states:

In rare circumstance, the Superintendent/designee may grant parent requests for individual exceptions to the student re-assignment standards based on documented needs. Such exceptions will not be granted for issues common to large numbers of families, such as the need for a particular schedule, class/program, sibling enrollment, redistricting, or day care issues. Decisions will be made by the Superintendent/designee.

(HCPSS Policy 9000).

Appellants argue that A.W.’s sleep difficulties justify a transfer under the special circumstances exception because it is beneficial to his health situation to attend a school with a later start time. The sole evidence of the medical problem is a doctor’s note stating that A.W. “is currently being evaluated for a sleep disorder that may be affecting the quality of his sleep. Please consider placing him in a school with a later start time.” (Medical Note, 2/20/08). The fact that A.W. was evaluated for a sleep disorder does not document a medical condition necessitating a transfer to a school with a later start time. The local board concluded that such evidence was not sufficient to meet the “special circumstances” standard. We agree.

Appellants also state that A.W. is gifted, and that his needs cannot be met at Bryant Woods. Appellants base this contention on the fact that Bryant Woods has a lower proportion of gifted and talented students compared to other schools in the country. They conclude therefrom that Bryant Woods is not properly identifying gifted children or that the school is preventing gifted children from expressing their abilities. (Appeal to local board, p.13). These are conclusory statements. Appellants have presented no evidence that A.W.’s needs as a gifted student cannot be met at Bryant Woods. In fact, Bryant Woods has the same number of teachers for gifted and talented programs as do the other elementary schools. (Local Board Decision). Bryant Woods is also slated to provide gifted and talented programming at the kindergarten

decision regarding the moratorium on open enrollment. The time for challenging these decisions has long since passed. In addition, with regard to the open enrollment moratorium, Appellants may not use the appeal process to challenge a policy decision of the local board. *Montgomery v. Howard County Bd. of Educ.*, MSBE Op. No. 04-35 (2004); *Astrove v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-14 (2002).

level. (Administrative Rationale, p.8) Thus, there is no basis for finding a special circumstance to justify a transfer.

Appellants also argue that the local board, as a practice over the past several years, has arbitrarily and illegally applied the student transfer policy. To prove that assertion, Appellants took on a significant task here, attempting to draw legal conclusions about the application of the transfer policy based on non-individualized, generic data they received in response to their PIA request. The information Appellants received from HCPSS in response to their PIA request was the date of each transfer request, the reason given by the parent for the request, the names of the schools involved, and the actions taken on each request by the Superintendent, the Superintendent's Designee and/or the local board. With this information they make three legal arguments.

First, Appellants seem to argue that the local board made wrong decisions in the past and, therefore, those wrong decisions are evidence of a wrong decision in this case. Even assuming that the local board may have made incorrect decisions in other cases, that does not prove that the decision in this case was arbitrary or illegal. Each case is unique on its facts and in the application of the law to the facts. We have found that the local board correctly decided this case based on the facts the Appellants presented.

Second, Appellants attempt to argue that other similarly situated children received transfers for health reasons when their son did not. They hinge this argument on their analysis of the data in which they found that 26 out of the 44 requests citing health reasons were approved and only two of those 26 had a doctor's note. Given these statistics, Appellants believe that their request, which included a medical note, should have been granted. Appellants' argument is problematic, however. In our view, the existence of a medical note is not determinative of special circumstances. Moreover, Appellants have no information about the medical and other issues in any of those cases except for their own. The shorthand reasons listed in support of the transfers do not reflect the totality of the circumstances that were at play in each case. Therefore, Appellants cannot show that A.W. is similarly situated to the children in those cases. We find that the evidence relied on by the Appellants does not support a different treatment argument or any conclusion of illegality.

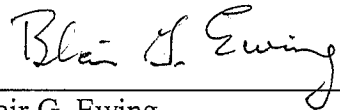
Third, the Appellants assert that their data proves that the transfer policy has been applied in a racially biased manner resulting in Bryant Woods, and other schools with high minority populations, having a lower approval rating for transfers of students out of the school. The only evidence Appellants cite is their finding that seven out of ten schools with the highest minority population had below average transfer approval rates, and that nine out of ten schools with the lowest minority population had above average transfer approval rates. That is not evidence of racial bias because the data analysis done by the Appellants is not statistically valid. As the local board points out, the analysis does not include any probability model that took into consideration other circumstances that might have affected the transfer decisions. Without a reliable statistical methodology to support them, Appellants conclusions about racially biased transfer decisions have no merit. In our view, Appellants have not presented evidence to show that HCPSS applied the policy in an illegal manner here.

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, 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). We do not find that Appellants have satisfied their burden of justifying a transfer in this case.

CONCLUSION

For these reasons, we find that the local board's decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's denial of Appellants' transfer request.

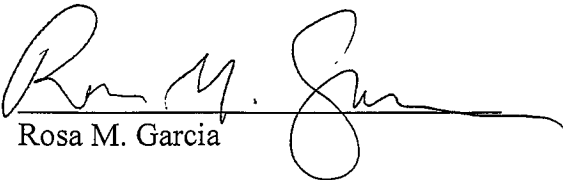

James H. DeGraffenreidt, Jr.
President

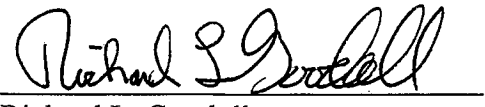

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April 28, 2009