

JOHANNA S.

Appellant

v.

HOWARD COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-26

### OPINION

#### INTRODUCTION

The Appellants, parents of four-year old J.S., have appealed the decision of the Howard County Board of Education (local board) to assign J.S. to the Pre-kindergarten program in Atholton Elementary School after she had begun attending Pre-kindergarten (Pre-K) at Swansfield Elementary School. The local board has filed a Motion to Dismiss or for Summary Affirmance. The Appellants have responded to that Motion.

#### FACTUAL BACKGROUND

On April 27, 2006, the Appellants enrolled J.S. in the Pre-K program at Swansfield Elementary School. At that time, Appellants lived in the Swansfield Elementary School district. In June 2006, however, the Appellants moved into the Clemens Crossing neighborhood. For the 2006-2007 school year, that neighborhood is assigned to Atholton Elementary School for Pre-kindergarten.

The Appellants did not provide the school with their new address. It was not until September 5, 2006, the first day of Pre-K, that Swansfield Elementary School discovered that the Appellants had moved into the Clemens Crossing neighborhood. The Appellants' move was discovered when J.S.'s mother asked the bus driver to pick up J.S. at her new address in the Clemens Crossing neighborhood.

On September 13, 2006, the Principal of Swansfield delivered a written letter to the Appellants informing them that, because they no longer lived in the Swansfield district, J.S. would be withdrawn from Swansfield Elementary School on September 26, 2006. The principal explained that J.S. was eligible to enroll at Atholton Elementary School. (Motion, Ex. 9). The Appellants appealed the principal's decision to the Superintendent's Designee, Ms. Pamela Blackwell. On October 6, 2006, the Superintendent's Designee upheld the principal's decision for the following reasons:

- At registration for Pre-K, in April 2006, Swansfield was the school J.S. was scheduled to attend.

- Registration took place at the Office of International Student Services because English was not J.S.'s first language.
- During the first week of J.S.'s attendance, the parents were informed that J.S. should be attending Atholton Elementary's (AES) Pre-K program.
- The maximum number of students allowed in the Pre-K program at SES is 18 and currently 16 are enrolled. Mr. Davis indicated that two qualifying students were expected to enroll once the paperwork was submitted.
- There is room in the Atholton Elementary Pre-K program for J.S.

(See Motion, Ex. 6).

Based on those facts and local board Policy 3201 which states:

“Students attending public school in Howard County are initially assigned by the Board of Education to schools serving the area in which the parent have bona fide residence. Students are required to attend the schools to which they are assigned unless a special exception is made.” (See Motion, Ex. 1).

Ms. Blackwell concluded that J.S. should be withdrawn from Swansfield on October 13, 2006 and would be eligible to enroll in Atholton. She denied a stay of her decision. (Motion, Ex. 6).

Thereafter, the Appellants appealed to the local board asserting that the assignment to Atholton would not work because Atholton had only an afternoon Pre-kindergarten program which conflicted with J.S.'s ordinary naptimes and with the time her two brothers arrive home on their school bus. (Appeal, Ex. B). They also argued that Swansfield had space for J.S. and that Ms. Blackwell's decision was arbitrary, abusive, and unnecessary for a variety of reasons. (See Appeal, Ex. B).

The local board issued a decision on December 14, 2006 affirming the Superintendent's Designee's decision because the Appellants move to Clemens Crossing placed J.S. in the Atholton Pre-kindergarten assignment area and because there existed no special circumstances to justify a reassignment to Swansfield. (Motion, Ex. 2). This appeal ensued.

#### STANDARD OF REVIEW

This case concerns the application of local board policy regarding attendance zones, building utilization, and program efficiency. Because this appeal concerns a matter of local policy, the local board's decision “shall be considered prima facie correct.” COMAR 13A.01.01.03E(1)(a). “The standard of review of a student transfer appeal is that the State Board will not substitute its judgment for the local board unless the local board decision is shown to be arbitrary, unreasonable, or illegal.” *Sullivan v. Montgomery County Board of Education*, MSBE Opinion No. 00-22.

## LEGAL ANALYSIS

The local board has adopted specific policies governing the assignment of students to particular schools. Students are assigned to schools serving the school attendance areas in which their parents reside. Unless the local board grants a “special exception”, students are required to attend the assigned school. (Motion, Ex.1 at 8). There are 10 types of special exceptions set forth in the local board’s policy, only two of which arguably are applicable here – “Student Relocation” or “Special Circumstances.” (*Id.* at 8 and 10).

The Student Relocation exception allows a student who changes address within the county “during the school year” to complete the current school year at the school in which he/she is enrolled. (*Id.* at 8-9). The Appellants moved in June 2006. As the local board correctly points out that move did not occur “during the school year” at issue. (Motion, Ex. 2 at 3). That exception is not applicable here.

The “Special Circumstances” exception to the school assignment policy 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. Eligibility for extracurricular activities, including interscholastic athletics, and provision of transportation for students reassigned under this standard will be determined by the Superintendent/designee.

(Motion, Ex. 1 at 10)

The local board concluded that there were no special circumstances in this case to warrant a transfer to Swansfield. The Appellants disagree with that conclusion. They argue that their child’s schedule is important. (Appeal at 2-3). The local board concluded that the desire to accommodate J.S.’s afternoon nap schedule was a hardship common to many families of four year olds. (Motion, Ex. 2 at 3). It was not a “rare circumstance” or as the board explained, “a unique hardship” called for in the policy. We agree. The policy makes very clear the exceptions will not be granted for reasons common to a large number of families. (Motion, Ex. 1 at 10). Certainly sleep schedule conflicts are common to many families.

The Appellants also argue that there were at least two slots open at Swansfield in the Pre-K program and thus, their daughter could and should remain there. The local board concluded that it was irrelevant that there was space at Swansfield for J.S. We agree. Assignments to

schools are based on the fact of residency, not on the fact that there is space available at the school a parent wants his/her child to attend. In this case, the local board notes that Swansfield was a school with high mobility. It was reasonable, they concluded, for the principal to keep a vacancy for a student who moves into the Swansfield area and who is eligible for Pre-kindergarten services. We agree that that is appropriate education planning.

The Appellant challenges the process by which the decision to withdraw their daughter from Swansfield was made, however. First, they argue that they did not have timely notice of J.S.'s withdrawal from Swansfield. We have reviewed the timeline of events here. We note that the Appellants moved in June 2006. They did not inform the school of the move. On September 5, 2006, the Appellants told the school bus driver their new address. Eight days later, September 13, 2006, the principal informed J.S.'s parents in writing that J.S. would be withdrawn from Swansfield on September 26, 2006. The school stayed the withdrawal until the Superintendent's designee made a decision on their request to keep J.S. at Swansfield. That decision, withdrawing J.S. as of October 13, 2006, was made on October 6 and received by Appellants on October 11.

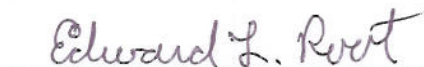
Although the decision provided for a two-day window for the withdrawal, the Appellants were on notice on September 13, 2006 that such withdrawal could occur. It is our view that the timely notice argument is without merit.

Second, the Appellants assert that the local board relied on evidence outside the record, in particular a brochure that describes the specific school locations for the Pre-kindergarten programs. (Appeal at 2-3). The Appellants argue that because they never received such a document, the local board could not refer to it in its decision. We disagree. A local board can take judicial notice of a school system document, even if the Appellant never saw the document. Moreover, the decision here was not based on that document, it was based on a valid assignment policy publically adopted by the local board.

Finally, the Appellants argue that the process was illegal or arbitrary because the Superintendent's designee did not understand that she had the authority to find special circumstances to allow J.S. to remain at Swansfield. (Response at 2). This, they believe, deprived them of their "first opportunity to request an exception". *Id.* We have reviewed the designee's decision. On its face, it shows that the designee considered all the Appellants arguments for a special circumstances exception. (Motion, Ex. 6). Appellant's argument to the contrary is incorrect.

## CONCLUSION

For all the reasons stated, we affirm the decision of the local board.



Edward L. Root  
President

*Dunbar Brooks*

Dunbar Brooks  
Vice President

*Lelia T. Allen*

Lelia T. Allen

*J. Henry Butta*

J. Henry Butta

*Beverly A. Cooper*

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Calvin D. Disney

*Absent*

Charlene M. Dukes

*Richard L. Goodall*

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*Karabelle Pizzigati*

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*Maria C. Torres-Queral*

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*David F. Tufaro*

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May 30, 2007