JOHANNA S.,

Appellant

v.

HOWARD COUNTY BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-12

# OPINION

## INTRODUCTION

The Appellants have requested that this Board reconsider its decision of May 31, 2007 in *Johanna S. v. Howard County Board of Education*, MSBE Op. No. 07-26. The local board has filed a Response to the Motion for Reconsideration. The Appellants have filed a Reply.

## FACTUAL BACKGROUND

In *Johanna S. v. Howard County Board of Education*, MSBE Op. No. 07-26, this Board affirmed the decision of the local board denying Appellants' request to transfer their daughter from the Pre-kindergarten program in Atholton Elementary School to the Pre-kindergarten program in Swansfield Elementary School. This Board did so because the requested transfer did not meet any of the special exceptions to the school system's no-transfer rule. The Appellants request reconsideration of that decision.

## STANDARD OF REVIEW

A decision on a request for reconsideration shall be made in the discretion of the State Board except that a decision may not be disturbed unless there is sufficient indication in the request that:

(1) The decision resulted from a mistake or error of law; or
(2) New facts material to the issues have been discovered or have occurred subsequent to the decision.

The State Board may refuse to consider facts that the party could have produced while the appeal was pending. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10(D).

LEGAL ANALYSIS

*Procedural Issue: Mootness*

The local board argues that this appeal is moot because the Appellant's daughter is now in kindergarten and there is no remedy this Board could provide even if it reversed itself. (Response at 1-2). The Appellants assert that, because of the local board's arbitrary, unreasonable, and illegal actions, they incurred costs of $250 per month to send their child to a private Pre-kindergarten program. If this Board reverses its decision, they will seek reimbursement of those costs from the local board. (Reply at 2).

Although this Board does not usually hear and decide arguably moot cases, in this case we do so to remove all doubt that the Board's decision in this matter was the correct one, as was the decision of the local board.

*Substantive Issues:*

(1) Was the Decision to Reassign Appellants' Daughter to Another School An Improper Redistricting Decision?

The Appellants assert that the decision to remove their daughter from Swansfield to Atholton was based on "a redistricting decision that has never been explained or produced by the County Board." We do not agree. Appellants changed neighborhoods (to Clemens Crossings) before school opened. Clemens Crossing pre-kindergarten children go to Atholton. That assignment pattern has been in place since April 29, 2004. (*See* Response, Exhibit 2 at 4). The decision of the local board was merely to assign Appellants' daughter to the school she was supposed to attend. There was no "redistricting" here. There was no mistake of law.

(2) Did the State Board Use An Improper Standard?

The Appellants claim that the State Board used a "unique hardship" standard rather than a "special circumstances" standard to evaluate the basis for the transfer request. We disagree. The main reason the transfer was requested was to accommodate their daughter's naptime.

The State Board said:

> that the local 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.

*See* Opinion at 3.

We applied no higher standard to the Appellants' evidence of "special circumstances" that was required by school policy. The Appellants complain that the local board did not prove that "any other families were faced with the same circumstances." Motion at 2. Appellants fail to recognize that it is and was the Appellants' burden to establish the special circumstances of a four year old's naptime. They did not do so.

(3) Is the Number of Spaces Available at Swansfield Relevant?

The Appellants state that "if slots were available and removal was not required by any policy . . . then the removal decision was arbitrary." Motion at 2. They ignore the fact that it is a policy, Policy 3201, of the local board that:

> 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* Opinion at 2.

The Appellants bona fide address is Clemens Crossing, and pre-kindergarten students from Clemens Crossing go to Atholton. That there may be openings in other pre-kindergarten programs is not a relevant consideration in this school assignment process.

(4) Was The Local Board's Decision Invalid Because It Was Signed By Members After They Left The Board?

At the time this case arose Joshua Kaufman, Mary Kay Sigaty, and Courtney Watson were members of the Board. They, however, did not win reelection on November 7, 2006. They remained valid board members until the new members were sworn in on December 4, 2006.

The local board deliberated, and decided this case at its meeting on November 16, 2006. The opinion was written thereafter and presented for signature to the Board members who actually heard the case. They signed the opinion on December 14, 2006, ten days after they left office.

The Appellant argues that those three board members had no authority to sign the opinion and, therefore, it was illegally issued. Those members, in our view, had the power to sign an opinion on November 16, 2006, the date they heard and decided the case. When they signed the opinion on December 14, 2006, they merely exercised that power *nunc pro tunc*. ("now for

then") It is well settled that courts have the inherent power to issue orders that embody decisions made in the past, making them effective in the past. *See generally* 46 Am. Jr. 2d Judgments § 165. The decision of the local board on November 16, 2006 was a legally valid one then and the opinion signed on December 14, 2006 merely embodies that decision made on November 16, 2006 by a validly constituted board.

(5) Was The Local Board's Decision Illegal Because The Local Board Referenced The "Blue Flyer"?

This Board concluded that the local board's decision did not rest on anything contained in the Blue Flyer. (Opinion at 4). The Appellants' assertions about the evidentiary value of the Blue Flyer have no merit.

(6) Are There Disputes Of Material Fact?

In their request for reconsideration, the Appellants list four "disputes of material fact." They request that this case be referred to the Office of Administrative Hearings for a full evidentiary hearing.

The list of disputed material facts, it is a series of disputed legal issues. The legal issues have been decided. The Appellants do not agree with the decision, but such disagreement does not give rise to disputes of material fact.

CONCLUSION

For all these reasons, we deny the Request for Reconsideration.

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February 27, 2008