

MR. & MS. BENJAMIN W.,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 09-12

OPINION

INTRODUCTION

This is an appeal of the denial of Appellants' request to transfer their daughter from Thomas Johnson Middle School (Thomas Johnson) to Samuel Ogle Middle School (Samuel Ogle). The Prince George's 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.

FACTUAL BACKGROUND

On July 18, 2008, Appellants submitted a request to transfer their daughter, A.W., who was entering the eighth grade, to Samuel Ogle because they were not pleased with the overall environment at Thomas Johnson. (Student Transfer Request). By letter dated July 28, 2008, the Office of Student Records and Transfers denied the transfer request because it did not meet the requisites for approval under local board policy. (Powell Letter, 7/28/08).

Appellants appealed to the Office of Appeals. They requested that the school system transfer their daughter to Samuel Ogle so that she could participate in the arts curriculum offered there. They also expressed their belief that Samuel Ogle would be the best fit for A.W. because its environment is similar to the environment at the private school she had previously attended. In addition, Appellants expressed their dissatisfaction with the academics and the environment at Thomas Johnson. (Appellants' Letters, 7/31/08 & 8/7/08). The Office of Appeals denied the request stating that "transfers are not approved based on anticipated problems." (Brooks Letter, 8/8/08).

On appeal to the local board, Appellants stated that they had actual concerns with Thomas Johnson rather than anticipated ones. They explained their concerns through a comparison of the two schools, stating that Samuel Ogle had a more nurturing environment, had better performance on the Maryland State Assessments, had a more diverse student population, had no uniform requirement, had better library and computer resources, had better control and

structure, and had no incidences of fighting. (Appellants' Letter, 8/11/08). They also pointed out Thomas Johnson's failure to meet Adequate Yearly Progress (AYP). (Appellants' Letters, 8/17/08 & 8/18/08).

The local board denied Appellants' request for a transfer, accepting the recommendations of the superintendent's designee, John W. Brooks, as the basis for its decision. (Thomas Letter, 8/21/08). Mr. Brooks had recommended denial of the transfer request due to overcrowding at Samuel Ogle and the availability of art classes at Thomas Johnson. (Brooks' Recommendation).

This appeal followed.

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

Student transfer Request

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 "[s]chool-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 Samuel Ogle exceeded its state rated capacity, with a utilization rate of 108%. 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.

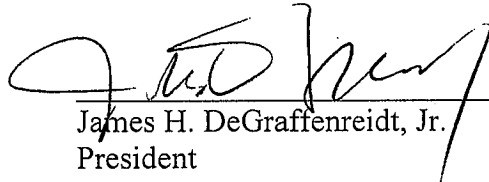
The State Board has long held that there is no right to attend a particular school or a particular class. *See Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464 (1967); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (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.

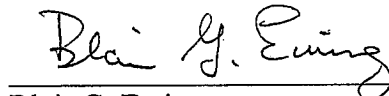
No Child Left Behind Claim

The Appellants raised the issue of Thomas Johnson's failure to achieve AYP as a basis for their transfer request in the appeal before the local board. They raised it again in the appeal to the State Board maintaining that the requirements of No Child Left Behind (NCLB) support the transfer. The NCLB requires local school systems that receive funding under Title I to make school choice available to all students in qualifying schools that are in improvement, corrective action, or restructuring. 34 CFR §200.44. Thomas Johnson is not a Title I school, therefore, the school choice provisions of the NCLB are not applicable here.


CONCLUSION

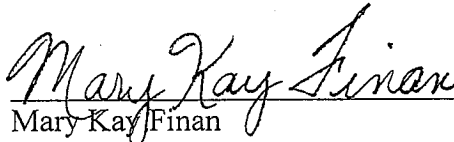
We do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision to deny Appellants' transfer request.


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March 24, 2009