

SHERI T.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-25

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to allow her son to remain at Winston Churchill High School (Churchill) rather than returning to his assigned school, Poolesville High School (Poolesville), for the 2008-2009 school year. The Montgomery County Board of Education (local board) has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

On April 27, 2007, Appellant requested a student transfer for her son, S.T., to attend Churchill to be near his father's office where he was planning to work after school in an instructional training program. The Field Office Supervisor denied the request because it did not meet school system guidelines. (Request for Transfer Form).

On appeal to Lawrence Bowers, the Superintendent's Designee, Appellant stated that it would be detrimental to S.T.'s mental health for him to attend Poolesville. She explained that her son was extremely sad and depressed due to the family's move from Pennsylvania to Maryland in the middle of sixth grade. She stated that due to the move, S.T. never felt a part of the Poolesville Middle School community and experienced severe loneliness. For high school, S.T. desired to attend Churchill where he felt he had a support system already in place, including two family members in attendance there, his mentor from Poolesville Middle who was now Churchill's Vice Principal, and his father's office nearby. (Letter of Appeal, 5/9/07). Mr. Bowers approved the transfer request. (Bowers Letter, 5/21/07).

S.T. began attending Churchill at the beginning of the 2007-2008 school year. S.T.'s attendance and academic performance at Churchill, however, were not good from the start. On September 18, 2007, S.T.'s English teacher expressed concern that S.T. was failing English class. (Dreizen E-mail, 9/18/07). The English teacher and Christine Pellicaro, S.T.'s guidance counselor, contacted Appellant and conveyed their concerns. Ms. Pellicaro also spoke to S.T. about it and told him that his change of school assignment could be revoked if he "was not

successful” at Churchill. (Pellicaro E-mail, 9/18/07).

During the first marking period, S.T. was either absent or late from his classes without excuse approximately 18 times. He earned only a 2.42 grade point average. (Attendance History; Student Progress Report).

S.T.’s absenteeism and lateness continued into the second marking period. *Id.* By letter dated February 29, 2008, Stephen M. Zagami, Student Services Director II, advised Appellant that S.T. had “an excessive number of absences for the first semester of the 2007-2008 school year” with S.T. being unlawfully absent for 20% or more of the first semester. He reminded Appellant that regular school attendance is essential to success and a requirement of State law. (Zagami Letter). On March 18, 2008, S.T.’s parents met with Churchill’s Educational Management Team (EMT) to address the serious attendance and academic issues. (Motion for Summary Affirmance, p. 3). Nonetheless, S.T. failed to improve both his attendance and performance. During the second marking period through May 20, 2008, S.T. had a total of 45 unexcused absences from various classes and earned a 1.85 grade point average. (Attendance History; Student Progress Report).

Churchill’s principal, Joan Benz, advised Mr. Bowers of S.T.’s excessive absences and poor grades. She recommended that S.T.’s change of school assignment be discontinued, and that he attend Poolesville High School where it would be easier for him to go to school more regularly and more punctually, and where, in her view, it would be easier for him to stay after school to get extra help in order to improve his grades. (Benz Memorandum, 5/20/08). Ms. Benz also advised Mr. Bowers that S.T. had never worked for his father and did not plan to do so, despite the fact that Appellant provided this reason as one of the bases of the original transfer request. *Id.* Jevoner Adams, Student Services Director I, advised Appellant that S.T.’s assignment to Churchill was rescinded for the 2008-2009 school year due to his lack of academic success at Churchill and his failure to comply with attendance requirements. (Adams Letter, 5/29/08). This decision was based on MCPS Regulation JEE-RA(IV.D.i.) which specifies that students who have been given a student transfer may have that transfer rescinded with “proper cause.”

Appellant appealed the decision to rescind the transfer to Mr. Bowers. Appellant stated that she did not find out about the rescission of the transfer until she received a phone call from Poolesville on June 4, 2008, asking about S.T.’s enrollment for the 2008-2009 school year. She stated that S.T. was unhappy at the middle school in the Poolesville area and that his mental health would suffer if he had to leave the high school he loved where he had friends and felt that he was a part of the school community. (Appellant’s Letter).

Hearing Officer, Laurence Jeweler, investigated the appeal. He spoke to the Appellant, Ms. Pellicaro, and JoAnn LaVay, the pupil personnel worker assigned to Churchill. In response to Appellant’s claims that she had never received any correspondence from the school concerning S.T.’s school attendance problem, Mr. Jeweler noted that Ms. Pellicaro had discussed the

academic and attendance problems with S.T. and his father,¹ that Mr. Zagami sent S.T.'s parents a letter advising them of the attendance and academic problems, that the school system had provided S.T.'s parents with loss of credit notifications,² and that S.T.'s parents had attended the March EMT meeting where the same issues were addressed. Based on S.T.'s attendance issues and lack of academic success at Churchill, Mr. Jeweler recommended that the transfer to Churchill be rescinded. (Bowers Memorandum, 6/16/08). Mr. Bowers adopted the recommendation. (Bowers Letter, 6/20/08).

S.T. requested that Mr. Bowers reconsider his decision. He stated that if he were given a second chance at Churchill he would commit himself to improve his attendance and grades. (S.T. Letter, 6/29/08). Meanwhile Appellant appealed Mr. Bowers' decision to the local board. She included a letter from S.T.'s pediatrician supporting the request. The letter states that Appellant believes that it "would be disastrous" for S.T. to attend Poolesville High and that it would "provoke a return to his unhappy state of mind after moving from Pittsburgh." The doctor strongly urged that S.T. be allowed to remain at Churchill. (Appeal to Local Board with Attachment, 7/14/08).

The Superintendent, Jerry D. Weast, responded to the appeal and recommended that the local board uphold the rescission of the transfer. Dr. Weast stated that S.T. had previously experienced attendance problems at John Poole Middle School, and that the transfer to Churchill was granted to give S.T. the opportunity to try to improve on this problem in a setting he desired.³ He further stated that S.T.'s attendance did not improve despite attempts by school personnel to address the issue. Dr. Weast also noted that although S.T. would like another chance to show that he can improve his performance, S.T. failed to take advantage of the chance he was given through his transfer to Churchill. (Weast Memorandum, 7/29/08).

Subsequent to Dr. Weast's response, Appellant submitted additional documentation in support of the appeal. She submitted a letter from S.T.'s summer school teacher stating that S.T. is a wonderful student who loves Churchill. (Krichinsky Letter, 8/5/08). She also submitted a letter from a psychologist that states that there is a "strong possibility that [S.T.] could make major changes if her were to remain at Churchill, the school he truly values" and that S.T.'s motivation to be at Churchill "could be the catalyst of a life changing experience for him." She also discusses the possible negative consequences of S.T. being forced to attend a school he does not wish to attend. (Webbick Letter, 8/11/08).

¹Appellant stated that S.T.'s father did not relay the information to her due to his medical condition (Alzheimers), and that she had advised Ms. Pellicaro of this fact. (Appeal to local Board).

²S.T. lost credit in Spanish, Algebra, Matter and Energy, and Physical Education.

³This explanation was not provided as a basis for the transfer at the time it was granted.

The local board upheld the decision to rescind the transfer to Churchill finding it a reasonable response to S.T.'s continued attendance and academic problems. The local board stated that S.T. had already been given the opportunity to improve his performance and he had not been successful. The board concluded that, at a minimum, Appellant was fully aware of S.T.'s attendance and academic problems at the March EMT meeting, yet the problems continued after that time. The board also considered S.T.'s letter recommitting himself to his education, but noted that he made similar promises at the EMT meeting and failed to follow through on them.

This appeal to the State Board followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

ANALYSIS

Montgomery County Public Schools' (MCPS) student transfer policy presumes that students will attend their home school or assigned school unless they are granted a transfer. MCPS Policy JEE(B); MCPS Regulation JEE-RA(II). MCPS only grants changes of school assignment in cases of a "documented unique hardship circumstance" unless the student qualifies under one of the three recognized exemptions. The exemptions are: (1) the student has an older sibling attending the requested school at the same time; (2) the student is ready to move from middle school to high school, except for boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. MCPS Policy JEE(C); JEE-RA(IV)(B).

The MCPS Regulation on student transfers also specifies that students who have been given a student transfer may have that transfer rescinded with "proper cause." JEE-RA(IV)(D)(i). The regulation does not explain what constitutes "proper cause" for such a rescission.

Although Mr. Bowers' letter granting S.T.'s transfer to Churchill did not explain the reason for his decision, we know, based on MCPS policy and regulation, that the transfer could only have been granted based on a documented hardship. We also know that Appellant pled a case of hardship based on S.T.'s mental status. After Appellant's initial request for transfer so that S.T. could work at his father's office near Churchill was denied by the Field Office Supervisor, Mr. Bowers granted the transfer request after receiving Appellant's letter in which she explained S.T.'s unhappiness, depression, and lack of connection to the Poolesville school community.

The school system, however, rescinded that transfer based on S.T.'s failure to comply with attendance requirements and his lack of academic success at Churchill.

Students attending MCPS must demonstrate valid and important reasons in order to receive a transfer based on a documented hardship. The numerous MCPS student transfer cases that have come before the State Board over the years demonstrate that this is a very high standard to meet. Given the high significance of the reasons for these transfers, we believe that it is unreasonable for a school system to grant a student a transfer to a new school and then revoke it without notifying the parent ahead of time that the transfer is contingent on the student's performance in school.

In this case, the record contains no evidence that the school system notified Appellant that S.T. could be returned to his home school for failure to comply with attendance requirements and lack of academic success at Churchill. The letter from Mr. Bowers that initially granted the transfer provided no notice of these consequences. It merely stated that the transfer to Churchill was granted, that Appellant was responsible for S.T.'s transportation to and from school, and that S.T. was ineligible to participate in interscholastic athletics for one year. It did not contain any contingencies for the granting of the transfer. (Bowers Letter, 5/21/07). In addition, Mr. Zagami's February 29, 2008 letter to Appellant merely advised that she is responsible for ensuring that her son attends school, and that failure to do so is a violation of the compulsory attendance law which could result in a misdemeanor penalty. It did not advise her that S.T.'s transfer to Churchill could be revoked.

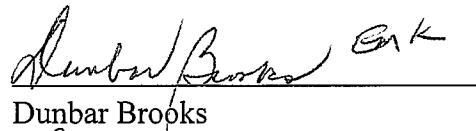
We are aware that S.T.'s guidance counselor told him at the beginning of the school year that his transfer could be rescinded "if he was not successful" at Churchill and that she reminded him of this periodically throughout the school year, but there is no evidence that his parents were similarly advised. The local board has not provided any proof that school staff notified Appellant that the transfer contained contingencies and that it would be revoked if S.T.'s attendance and grades did not improve. Although Appellant attended an EMT meeting to discuss S.T.'s attendance and academic issues, there is nothing in the record that shows school staff advised her at that meeting that her son's transfer would be revoked within a certain period of time if these problems did not improve.

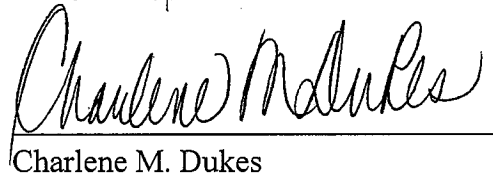
There is simply no evidence here that the school system advised Appellant that the transfer to Churchill was contingent on S.T.'s good attendance and good academic performance. Although the Regulation provides that a transfer can be rescinded for proper cause, there is no explanation of what constitutes "proper cause." S.T. was granted a transfer to Churchill based on reasons related to his mental health. The school system should have notified the parent that the transfer was contingent on S.T.'s performance at Churchill prior to sending him back to an environment where he felt isolated, unhappy, and depressed. At a minimum, the school system should have notified Appellant in writing, either at the time of the transfer or at some point during the school year when there was sufficient time for S.T. improve his performance, that the transfer was contingent on good attendance and academic success.

CONCLUSION

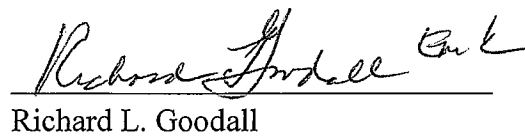
We believe that the school system's decision to revoke S.T.'s transfer was arbitrary and unreasonable. Appellant may have been aware of her son's academic and performance problems, but there is no record evidence that the school system notified her that the transfer to Churchill was contingent on her son improving in these areas before the end of the 2007-2008 school year. Accordingly, we reverse the decision of the local board upholding the rescission of S.T.'s transfer to Churchill.

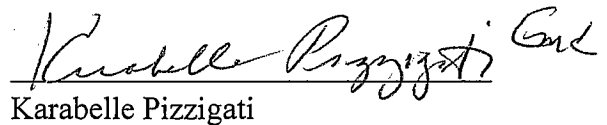

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June 30, 2009