

PHILIP AND DEBORAH W.,

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-48

OPINION

INTRODUCTION

The Appellants have appealed the decision of the Prince George's County Board of Education (local board) denying their request to have their son transferred to the Robert Goddard Montessori School. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants have responded to that motion and the local board has replied.

FACTUAL BACKGROUND

On February 16, 2011, Appellants submitted a request to have their three year old son, S.W., transferred from the Pre K – 3 year old program at Judith P. Hoyer Montessori School (J.P. Hoyer) to the Robert Goddard Montessori School (Goddard) where their older son was already attending the first grade. The Appellants requested the transfer based on their belief that Goddard could better meet the special health and learning needs of S.W. who Appellants state has a learning disability and speech delay.¹ They also requested the transfer so that their children could be together at the same school so that S.W., who is adopted, would not “feel a disconnect from his family” and would have a level of comfort in school and while traveling on the bus. (Motion, Ex. 1).

After considering the information provided, Ms. Barnes-Shell, Superintendent's Designee, denied Appellants' request. Ms. Barnes-Shell explained that, due to recent boundary changes, S.W. was expected to attend J.P. Hoyer. She advised the Appellants that under the new boundary changes, they could opt to have their older son attend J.P. Hoyer too. (Motion, Ex. 3).

¹ Appellants stated that S.W. receives speech therapy from the County Infants and Toddlers Program. They also stated that S.W. has asthma and experiences febrile seizures with fevers above 102 degrees.

Appellants appealed to the local board reiterating their view that Goddard could better meet S.W.'s needs. They explained that they do not want to remove their older son from the school where he has been successful and has qualified for the Talented and Gifted Program. They also asserted that it would be difficult for them to be actively involved parents if their children were to attend different schools and that transporting the children to two places would be a hardship. Appellants also expressed their view that Goddard has proven that it has above average performance, while J.P. Hoyer has not. They further stated their preference for the Goddard program because it continues through the eighth grade unlike J.P. Hoyer which ends in grade six. (Motion, Ex. 4).

In response to the appeal, the Superintendent's Designee submitted a memorandum to the local board setting forth the bases for her recommendation that the appeal be denied. Among other things, she noted that Goddard was overcrowded and J.P. Hoyer was not, that J.P. Hoyer could meet S.W.'s educational and health needs, and that there was insufficient medical documentation to justify a transfer to Goddard. (Motion, Ex. 6).

On April 28, 2011, the local board affirmed the decision of the Superintendent's Designee, finding that the Appellants had failed to present any evidence that J.P. Hoyer could not meet S.W.'s needs. The local board noted further that Goddard is overcrowded and J.P. Hoyer is underutilized. (Motion, Ex. 8).

This appeal 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.01.05.05A.

LEGAL ANALYSIS

The Prince George's County Public Schools' (PGCPS) student transfer policy is permissive, giving the school system discretion in balancing the interests of the students and the schools. *Mr. & Mrs. Benjamin W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 09-12 (2009). Transfers are limited to schools that are not severely overcrowded as determined by the Office of Pupil Accounting and School Boundaries. (Administrative Procedure 5110.3).

Administrative Procedure 5110.3(IV)(A)(8) provides that "[s]chool-based transfers are limited to schools which are not more than 95% of the State Rated Capacity for the school as determined by the Office of Pupil Accounting and School Boundaries." (Motion, Ex. 11). The local board noted that Goddard was over-enrolled with a utilization rate of 110%, exceeding the identified cut off for a school transfer. Comparatively, J.P. Hoyer was underutilized at 69%. Based on this data, the local board had a reasonable basis to deny the transfer request. *See Julie*

& Kevin D. v. Anne Arundel County Bd. of Educ., MSBE Op. No. 09-39 (2009); *Mr. & Mrs. Benjamin W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 09-12 (2009); *Mr. & Mrs. Richard M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-56 (2008); *Jenai B. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-52 (2008).

Appellants argue that their son's specific educational and health needs can be better met at Goddard. To support this position they provided the local board a recent judgment of adoption, a portion of S.W.'s Individualized Family Services Plan (IFSP), general information from the Bowie Health Center regarding febrile seizures, ear infections and the antibiotic amoxicillin, a copy of an inhaler prescription, and a letter from Rehabilitation Services regarding speech therapy services. (Motion, Ex. 5). Appellants also state that the special education teacher assigned to Goddard for the 2010-2011 school year is familiar with the type of services (speech therapy) S.W. was receiving under his IFSP.

In order to justify a transfer for medical reasons, the Appellants must show that the student has a diagnosed medical condition that cannot be supported by health professionals at the assigned school. To the extent that S.W. may experience a high fever at school that results in a febrile seizure, has an asthma attack, has an ear infection, or needs medication administered, the Appellants have submitted nothing to show that those matters cannot be appropriately handled by the health professionals at J.P. Hoyer. Appellants have failed to establish any link between a diagnosed medical condition and a need to have S.W. attend Goddard. While the Appellants' familiarity with Goddard gives them confidence that the school can meet their son's needs, there is no basis for the claim that J.P. Hoyer cannot.

Moreover, many of the concerns expressed by the Appellants pertain to their belief that Goddard can better meet the special educational needs of their son. These concerns should be addressed through the special education process, and not through an appeal to the State Board. See *Matthew W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-07 (2008); *Brado v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-23 (2006); *Frye v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-30 (2001).


Appellants have also raised concerns about their ability to transport their children to two different schools. PGCPs Administrative Procedure 5110.3 does not permit transfers based on inconvenient transportation arrangements. Nor does it allow transfer so that parents can be more actively involved in a school. Such issues are ones commonly faced by families who have children attending different schools and are, thus, not a basis for a transfer.

We understand that the Appellants prefer Goddard for a variety of reasons. It is well established, however, that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right or privilege to attend a particular school. *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464, 472 (1967). The State Board has held on many occasions that there is no entitlement for a student to attend a particular school or program of study. *Thelma W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-14 (2008); *P.H. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 07-7 (2007); *Slater*

v. Board of Educ. of Montgomery County, 6 Op. MSBE 365 (1992). Appellants have not presented sufficient bases to override the local board's legitimate overcrowding concerns.

CONCLUSION

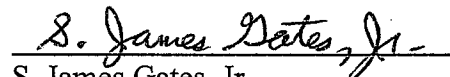
For the reasons stated above, we affirm the local board's decision denying the Appellants' transfer request.

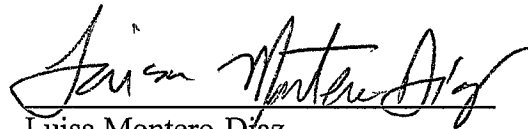

James H. DeGraffenreidt, Jr.
President

Absent

Charlene M. Dukes
Vice President

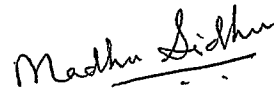

Mary Kay Finan


S. James Gates, Jr.

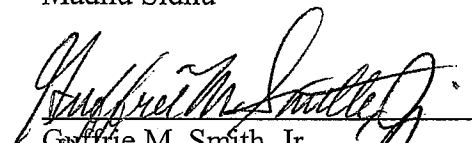

Luisa Montero-Diaz

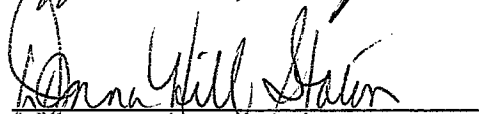
Absent


Sayed M. Naved



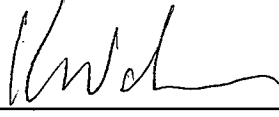
Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

October 25, 2011