

MARY BAYLISS & DAWN MANN

Appellant

v.

ALLEGANY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-34

OPINION

In this appeal, Appellants, residents of Allegany County, challenge the local board's decision not to allow their children to return from Hancock Senior High School in Washington County to Fort Hill High School in Allegany County based on a two year written agreement voluntarily entered into by the Appellants. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

In accordance with § 4-121 of the Education Article, on August 1, 2000, the Allegany County Board of Education voted to designate the Little Orleans geographical area in Allegany County as a dual attendance area for students in grades six through twelve. The Allegany and Washington County Boards of Education then entered into a Memorandum of Understanding ("MOU") regarding the provision of education to Allegany County students choosing to attend school in Washington County for two years. Among other things, the MOU addressed the two year period as follows:

Allegany County students who attend Hancock Middle/Senior High School will do so for a minimum two (2) year period. A written agreement to that effect will be signed by the custodial parent or legal guardian, the student and Allegany County. Students will not be permitted to move between Hancock Middle/Senior High School and Fort Hill High School in violation of said agreement.

Pursuant to the MOU, Washington County was to be reimbursed financially for Allegany County students attending school in Washington County. The boards agreed to review the MOU at the end of the 2001-2002 school year to ensure that the conditions set forth were in the best interests of the students and families involved. Either board may terminate the agreement effective July 1, 2002. Any modifications to the agreement must be agreed upon by both boards.

Consistent with the law and the terms of the MOU, beginning in the 2000-2001 school year, students residing in the Little Orleans area had the option of attending school in Allegany

County or in Washington County. The school choices were Hancock Middle/Senior High School in Washington County or Washington Middle School or Fort Hill High School in Allegany County. Students and their parents were required to submit a signed form indicating their choice regarding the school of attendance. Students and parents were advised that the choice of school was a binding commitment for an initial period of two years and could not be changed. The signed form memorialized the understanding of that commitment.

Appellants Mary Bayliss and Dawn Mann opted for their children to attend school in Washington County.¹ Appellants signed a written agreement with Allegany County Board of Education indicating their desire to have their children attend school in Washington County and agreeing to be bound to the selection for a minimum period of two years.

After completing the 2000-2001 school year at Hancock, Appellants apparently requested that their children be permitted to return to Allegany County Public Schools for the 2001-2002 school year rather than attend school in Washington County. At its June 12, 2001 board meeting, the Allegany Board considered and denied the request, thus honoring the terms of the MOU negotiated with the Washington County Board of Education. One board member's comments leading up to the vote were as follows:

I was in favor of the students from Little Orleans going to Hancock last year because that was the . . . seemed to be the wishes of the majority of the parents of students from that area. The school was closer than the school in Allegany County and it seemed like the right thing to do. My opinion is . . . the Board has entered into a contract with Washington County . . . we did it for two years in order to keep kids from coming back and forth. Understanding that . . . sure when we voted to do this we knew this was going to happen . . . at least we should have . . . and, if we had any intention of changing what the agreement was, we should have stuck the codicil in there at that point in time or given ourselves that out. So . . . you know I think if we have an agreement that needs to be honored and it will be addressed, as counselor said, in toto next year . . . and if that's the point in time the Board wants to do something about it, that's the point in time to do something about it. So the motion is on the floor to consider the request for four Little Orleans students to return to Fort Hill High School beginning with the 2001-2002 school year. A vote in favor would be to allow the students to come back. All those in favor of the motion? Opposed? The motion does not carry. . . Dr. Thelen in support; Dr. Truesdell, Ms. Dawson, Mr. Arnone and Mr. Woodring opposed.

¹Sarah was a ninth grade student during the 2000-2001 school year. Dustin was a tenth grade student during the 2000-2001 school year.

Minutes of 6/12/01 Board Meeting. Appellants were not present at the board meeting. This appeal to the State Board followed. Mary Bayliss has indicated in her appeal that she is requesting that Sarah be allowed to attend school at Fort Hill based on mental health concerns. Ms. Bayliss believes that there is a correlation between Sarah's depression and her attending school at Hancock. Included in the appeal materials is a letter dated July 9, 2001, from Sarah's doctor stating that Sarah's "unhappiness at Hancock has had a significant impact in her overall well-being" and that "Sarah would benefit from attending Fort Hill in the coming school year."

Dawn Mann has indicated that she is requesting that her son Justin, a special education student, be allowed to attend Fort Hill because of educational issues concerning implementation of his Individualized Education Plan ("IEP"). She indicates that Justin did not receive the attention he needed from school personnel until several months after school began in the 2000-2001 school year. She is displeased with the educational services at Hancock.

ANALYSIS

Mootness

As a preliminary matter, the Allegany Board claims that Dawn Mann has changed her place of residence and now resides in the Fort Hill jurisdiction rather than the dual jurisdiction area of Little Orleans. Thus, the local board argues that the appeal with regard to Dawn Mann is moot as her son Dustin will be admitted to the Fort Hill High School for the 2001-2002 school year. In response, Dawn Mann argues that the matter is not moot and that her change of residence is merely temporary while the appeal process is ongoing. She intends to return to her "home" in the dual attendance area before the close of the 2001-2002 school year if the decision of the local board is overturned.

It is well established that a question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Walter Chappas v. Montgomery County Board of Education*, MSBE Opinion No. 98-16 (March 25, 1998). Because Appellant indicates that her relocation is a temporary measure pending the outcome of this appeal, we believe that the matter is not moot.

Merits

The local board argues that its decision should be upheld because it is contractually and morally obligated to honor the contract with the Washington County Board of Education. The Memorandum of Understanding between the two boards clearly sets forth that Allegany students attending Hancock must do so for two years and that a change of schools violates the contract. Additionally, Appellants voluntarily selected the Hancock schools and do not dispute that they understood the two year attendance obligation prior to entering into the agreement to send their children to Hancock. Moreover, neither parent raised concerns until after the end of the 2000-

2001 school year. Given these circumstances, we would not find that the local board's decision was arbitrary, unreasonable or illegal.

However, based on the record in this case it is unclear what procedure the local board followed in considering Appellants' requests. It appears that Appellants were never given the opportunity to address the local board either orally or in writing prior to the local board vote on June 12.² Rather, at the June 12 meeting, a local board member raised the issue of allowing several students to return to Allegany County Public Schools. The issue of allowing students to return was addressed collectively, and not on an individual basis to determine if there were extenuating circumstances in any given case. The record also suggests that the Washington County Board of Education may have been willing to entertain the return of the Allegany students so long as there was no loss of compensation to Washington County³. It also appears that at least one Appellant, Dawn Mann, is willing to pay tuition for her son to attend school in Allegany County.

CONCLUSION

Under the circumstances described above, we are remanding the matter to the Allegany County Board of Education and request the local board to grant Appellants the opportunity to present their cases individually for review either orally or in writing as promptly as possible.⁴

Raymond V. Bartlett
President

Marilyn D. Maulsby
Vice President

JoAnn T. Bell

Philip S. Benzil

Reginald L. Dunn

²Dawn Mann's July 2, 2001 letter to the local board regarding her request was written after the local board June 12, 2001 meeting and vote.

³Washington County apparently had to hire additional special education teachers to accommodate some of the students from Allegany County. *See* 2/12/01 Board Minutes.

⁴This remand is based solely on procedural grounds. The State Board has taken no position on the substantive merits of any individual appeal.

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

October 31, 2001