

LESLIE P.,
Appellant

v.

ANNE ARUNDE COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 19-04

OPINION

INTRODUCTION

This is an appeal of the decision of the Anne Arundel County Board of Education denying the Appellant's request for an out-of-area transfer for her daughter. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant did not respond to the local board's Motion.

FACTUAL BACKGROUND

Appellant's daughter, C.P., was assigned to attend the 9th grade at Annapolis High School ("Annapolis HS") at the start of the 2018-2019 school year. Annapolis HS is C.P.'s home school based on the geographical location of her residence.

On May 1, 2018, while C.P. was still attending middle school, the Appellant submitted a request for an out-of-area transfer seeking to have C.P. attend Southern High School ("Southern HS") instead of Annapolis HS. As the reason for the request, Appellant selected "Professional recommendation (with documentation from medical/mental health provider)." (Transfer Form). Appellant stated that her daughter "has anxiety going to her home school [due] to the violence and other circumstances there. We have spoken to her doctor numerous time (sic) about this situation." She continued, "I feel Southern High School would be a good fit for [C.P.] because it's a much smaller school and she does well in smaller setting[s] and I'm sure she would do better academically." (Appellant 5/1/18 Letter). Appellant attached a March 23, 2018 letter from C.P.'s pediatrician stating that "[C.P.] has been a patient at Chesapeake Pediatrics since birth. [C.P.] would thrive best at a high school that is conducive to learning without an environment prone to violence." (Coyner 3/23/18 Letter).

On May 8, 2018, the school system denied the Appellant's transfer request because the reason for the request was inconsistent with Anne Arundel County Public Schools ("AACPS") Regulation JAB-RA – Assignment and/or Transfer of Students to a School.

On May 17, 2018, Appellant appealed the denial to the Superintendent. She reiterated that C.P. does well in a smaller school environment. She stated that she has "made no alternative arrangements for [C.P.'s] education" and that she does not "consider Annapolis High School an alternative or appropriate school for [her] daughter due to the day to day violence and other circumstances there." She again stated that C.P. has anxiety about going to Annapolis High

School and noted that sometimes C.P. “cries out at night stating I’m scared I don’t want to be in that environment and then we’re up half the night me consoling her.” (Appellant’s 5/17/18 Letter). Appellant resubmitted the March 23, 2018 letter from C.P.’s pediatrician.

On May 18, 2018, Christy Perdomo, a pupil personnel worker (“PPW”) from the Department of Student Services, contacted the Appellant to discuss the transfer request. They reviewed AACPS Policy JAB and Regulation JAB-RA regarding out-of-area transfers. Ms. Perdomo explained that preference for one school over another is not a valid basis for a transfer under the policy and regulation. (PPW 7/25/18 Statement).

On May 24, 2018, Peggy Wheeler, another PPW, conducted a home visit, which is standard for transfer appeals under AACPS requirements. At the home visit, Ms. Wheeler and the Appellant discussed the appeal and C.P.’s anxiety. Appellant disclosed that she was a graduate of Annapolis HS and was looking forward to her daughter attending school there. She also disclosed that her sister is an employee of the Annapolis HS. Also during the visit, the Appellant stated that prior to the 2017-2018 school year C.P. did not suffer from anxiety, but that she has experienced increasing anxiety since learning of her assignment to Annapolis HS and has expressed her desire not to attend school there. According to Appellant, C.P. complains that the school is too large with too many students, that C.P. sometimes cries about the school assignment and sometimes sleeps in the Appellant’s bed when she is upset about it at night. (Home Visit Statement).

While the appeal was still under consideration, the Appellant submitted another letter from C.P.’s pediatrician. The letter, dated June 5, 2018, stated that “[C.P.] has been a patient at Chesapeake Pediatrics since birth. [C.P.] has been diagnosed with anxiety and her recommended treatment is counseling. In the meantime, [C.P.] would thrive best at a high school that is conducting (sic) to learning in an environment not at high risk for violence.” (Coyner 6/5/18 Letter).

By letter dated June 22, 2018, Sarah Egan, Assistant Superintendent for Student Support Services and the Superintendent’s Designee, notified the Appellant that her appeal was denied. Ms. Egan stated the following:

Please be advised that our Board of Education regulation allows for transfers such as yours when space and facilities are available to accommodate the transferring student and the reason for the transfer falls under our guidelines. Anne Arundel County Public Schools does not offer school choice. Additionally, Annapolis High School can meet [C.P.’s] academic and emotional needs. Therefore, your request is denied.¹

(Egan 6/22/18 Letter).

On July 2, 2018, Appellant appealed the decision of the Superintendent’s Designee to the local board. In her letter of appeal, Appellant explained that she believes Southern HS is a good fit for her daughter because [C.P.] “is a very introverted child” who “does much better in a smaller setting” and Southern HS is a smaller school than Annapolis HS. She also highlighted Southern HS’s “great” graduation and college attendance rates, as well as the convenient location

¹ Because Southern HS was open for transfers for the 2018-2019 school year, the only issue to be considered was whether the transfer request fell under the school system’s guidelines.

because Appellant has family near the school. Appellant further stated that [C.P.] “has been very emotional lately running back and forth talking to the doctor.” (Appellant’s 7/2/18 Letter).

The Superintendent responded to the appeal, stating as follows:

The Superintendent is sympathetic to the needs of parents and the importance of being advocates for their children. However, the information shared with Anne Arundel County Public Schools demonstrates that while the Appellant’s concerns are real to her and the student, there is no evidence that Annapolis cannot meet the student’s emotional, educational and social needs. Unfortunately for many students, anxiety happens, with or without a medical diagnosis. Every school within [AACPS] is able to meet the needs of students who experience anxiety. [AACPS] takes student safety very seriously and measures are in place at Annapolis as well as other schools to address student safety and security. School choice is not a reason for which an out-of-area transfer would be granted in accordance with Board Policy JAB/900.01, “Assignment and/or Transfer of Students to a School” and its accompanying regulation.

On August 2, 2018, Appellant submitted an additional letter to the local board reiterating what she had previously stated in her other letters. She also highlighted the pediatrician’s anxiety diagnosis from the June 5, 2018 medical documentation.

Thereafter, Appellant submitted a “Collaborative Crisis Plan” dated August 21, 2018 from Arundel Lodge Behavioral Health developed by Katouri Wilson, LCSW-C. The Plan provides an August 10, 2018 diagnosis of “Adjustment Disorder, With Anxiety” and “Generalized Anxiety Disorder” by Ms. Wilson and states that C.P. will be in outpatient therapy until February 2, 2019, with one therapy session per month. The Plan sets various coping goals for C.P. in dealing with anxiety. It mentions the school issue in the manifestation description, which states as follows:

Description: She cries a lot and has a lot of fear around her when she gets anxious. She recently started having anxiety in May 2018, due to her needing to attend a new school. She is currently afraid of the new school Annapolis High School, due to her hearing of the school being a “bad school” and “bad stuff happens there.”

(Collaborative Crisis Plan).

Meanwhile, the 2018-2019 school year began while Appellant’s appeal to the local board was still pending. Appellant did not enroll C.P. at Annapolis HS and homeschooled her instead.

On September 10, 2018, the local board issued its Opinion and Order denying the Appellant’s appeal. The local board reviewed all of the information, including all of the medical documentation submitted by the Appellant, and determined that the Appellant did not present evidence of a medical necessity sufficient to justify the requested transfer.

This appeal followed. As part of her appeal, the Appellant provided a letter from Ms. Wilson, C.P.’s therapist. Ms. Wilson explains that the intent of the letter “is in support of [C.P.]

for an immediate school transfer” and that it is “not in [C.P.’s] best interest to attend Annapolis High School” because doing so will exacerbate C.P.’s symptoms. (Wilson 10/4/18 Letter).

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the decision of the local board shall be 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. A decision is arbitrary or unreasonable if “it is contrary to sound educational policy” or if “a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.05 (B)(1) & (2). The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(D).

LEGAL ANALYSIS

State law vests local boards of education, based on the advice of local superintendents, with the authority to “determine the geographical attendance area for each school.” Md. Code, Educ. § 4-109(c). Decisions about when and how students can transfer between schools require local boards to balance countywide considerations with those of students and family. *See Marbach v. Montgomery County Bd. of Ed.*, 6 Op. MSBE 351, 356 (1992).

AACPS allows out-of-area transfers for health or medical concerns so long as the request is based on a written recommendation from a professional detailing the necessity of the transfer and the intended outcome. Regulation JAB-RA (D.8.b.2). The recommendation must be from a physician, a psychiatrist, a psychologist, other medical professional, a licensed social worker, the Department of Social Services, a licensed pastoral counselor, or other agency recognized by the Division of Student Support Services. *Id.* *See also* Transfer FAQ Document (“The professional providing the recommendation should provide the diagnosis, treatment plan, and anticipated outcomes for the student.”).

AACPS’s guidelines for out-of-area transfers based on professional recommendations mirror the guidance offered in our prior opinions. We have previously held that in order to justify a transfer for a health-related condition, an appellant must demonstrate a link between the student’s condition and the necessity for a transfer to the requested school. *See Shervon D. v. Howard County Bd. of Educ.*, MSBE Op. No. 17-10 (2017). In addition, an appellant must show that the medical condition cannot be supported by health professionals at the assigned school. *Id.* “Brief statements” from medical professionals fall short of “the type of detailed explanation needed regarding the necessity for the transfer and the intended outcome.” *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

We have written that transfer requests are not sufficient when a medical professional fails to suggest a change in school setting or fails to show that a student would likely experience medical, emotional or other issues by continuing to attend a specific school. *See Rhiannon W. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 16-15 (2016); *Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015). In addition, we have affirmed transfer denials where a medical professional fails to offer a clinical diagnosis of a medical condition or the appellant fails to offer persuasive evidence that there is a medical reason for a transfer. *See Shervon D.*,

MSBE Op. No. 17-10. Health problems that are too speculative also fail to qualify for transfers. *See S.G. and D.G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-04 (2015).

To support her request for a health-related transfer, the Appellant presented two notes from C.P.'s pediatrician and a Collaborative Crisis Plan from C.P.'s therapist. The local board concluded that the medical documentation failed to provide the type of detail needed to support a transfer on a health-related basis. Upon review, we agree with the local board that the medical evidence the Appellant presented to the local board did not meet the evidentiary standard for granting a transfer.

In her appeal to the State Board, however, the Appellant seeks to introduce a letter from C.P.'s therapist, Ms. Wilson, dated October 4, 2018, which was not a part of the local board record. The State Board may review additional evidence if it is shown that the evidence is material to the issues in the case and there were good reasons for failure to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04C. For evidence to be material, it must be of such a nature that knowledge of the item would affect a person's decision-making. Black's Law Dictionary (10th Ed. 2014). The State Board may consider the additional evidence or remand the appeal to allow the local board to review the additional evidence. *Id.*

The local board maintains that the new evidence should be disregarded because it was dated several weeks after the local board's decision, despite the fact that C.P.'s intake at Arundel Lodge Behavioral Health occurred on August 21, 2018, prior to the local board's decision. The local board argues that there is no reason why the Appellant could not have obtained the letter from Ms. Wilson prior to the local board's decision and that the letter "seems to have been drafted in a manner to address the specific deficiencies the Superintendent noted in the evidence," as compared to the documentation that was submitted by the Appellant prior to the appeal. (Local Board Motion). Although the Appellant did not respond to the local board's motion to specifically address this assertion, the Appellant stated in her letter of appeal to the State Board that Arundel Lodge Behavioral Health has limited access for appointments.

With regard to the materiality of this evidence, even the local board concedes in its Motion that the letter addresses the specific deficiencies in the evidence noted by the Superintendent. Ms. Wilson connects in detail C.P.'s underlying medical condition to the necessity for a transfer out of Annapolis HS. She explains C.P.'s anxiety, how it relates to attending Annapolis HS, and the intended outcome for C.P. by granting the transfer. She states that C.P. "has been engaging in therapy services" and that "[d]espite efforts at using positive coping skills, mindfulness strategies, utilization of positive self-talk, and trigger identification skills, she continues to have extreme anxiety [about] attending Annapolis High School." Ms. Wilson further states that "[f]orcing [C.P.] to attend Annapolis High School will not be beneficial for her emotionally, educationally, or even socially, as she will not be able to function at her highest potential;" that C.P.'s current symptoms would only be exacerbated by attending school there; and that a different school placement "will definitely be the key for her success." The letter provides the level of detail necessary to support the transfer request that was missing from Appellant's prior medical documentation submissions.

We are left with the question of whether to remand the case in light of Ms. Wilson's October 4, 2018 letter or consider the new evidence now as part of our decision. As already stated above, the local board has acknowledged in its Motion that the letter addresses the

deficiencies in the evidence. We agree that the letter closes the evidentiary gap and sufficiently supports the transfer request for health-related reasons. Thus, given our view that the documentation is material and should be considered as new evidence, it seems pointless to remand the matter to the local board for a decision that will only further delay C.P.'s placement in a school. Accordingly, we grant the Appellant's request for a transfer out of Annapolis HS for health-related reasons. We understand that under AACPS practice it is up to the school system to determine the appropriate school placement where the student's needs can best be met (*See* Transfer FAQ Document), but we direct AACPS to work closely with C.P. and her mother to find the appropriate placement.

CONCLUSION

For the reasons stated above, we do not find the local board's decision to deny the transfer request to be arbitrary, unreasonable or illegal based on the evidence that was before it when it made its decision. Nevertheless, based on the new evidence submitted by the Appellant in her appeal to the State Board, we find sufficient support to grant the transfer for health-related reasons. We direct the local board to transfer C.P. from Annapolis High School to another high school that can appropriately serve her needs within 10 days of the issuance of this decision. We note that the Appellant has stated a preference for Southern High School, and we ask the local board to take this preference into consideration in making its decision.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Absent
Chester E. Finn, Jr.

Vermelle D. Greene

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

January 22, 2019