

RAJENDRA AND ERIKA P.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-07

OPINION

INTRODUCTION

This is an appeal of a decision by the Montgomery County Board of Education (local board) denying the Appellants' request to transfer their daughter from Hallie Wells Middle School to Rocky Hill Middle School. The local board submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants responded and the local board replied.

FACTUAL BACKGROUND

The Appellants previously filed an appeal challenging the local board's decision denying their transfer request. On September 27, 2016, the State Board issued a decision disposing of several of the Appellants' claims in the case and remanding one issue to the local board for further consideration. *See Rajendra and Erika P. v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 16-39 (2016). The State Board found that the Appellants had failed to present a "documented unique hardship" sufficient to justify the transfer with regard to (1) child care needs; (2) financial hardship; and (3) A.P.'s desire to participate in particular courses or a program of study at Rocky Hill. *Id.*

The State Board remanded the case to the local board for consideration of new evidence related to Appellants' claim that the transfer request was supported by mental health reasons. *Id.* The new evidence consisted of a letter from Ms. Sholtis, a psychotherapist who evaluated Appellants' daughter, A.P., on June 24, 2016. The letter, dated June 30, 2016, stated in pertinent part:

[A.P.] is a young lady who is introverted by nature and thrives on routine and structure. She has a history of difficulties with transitions and becomes emotionally disorganized by abrupt or extensive changes to her routine. [A.P.] does not connect with others easily and has only recently developed close friendships through shared interests of music and theater that she engages in at her current school. She tends to hyper-focus on her areas of interest to include playing a musical instrument, singing, and performing. Her current school has afforded her the opportunity to

engage in these activities and to build friendships around those interests.

[A.P.] has become increasingly more irritable and isolative with her family. She has anxiety relative to moving schools, and this anxiety appears to be impairing her functioning at this time. [A.P.] organizes her life around order, routine, and consistency. Her tendencies to be cognitively rigid are likely to be contributing to her increase in anxious symptoms. It is likely that if she is forced to transition schools, this anxiety will increase and continue to disrupt her functioning. At this time, she is diagnosed with Other Specified Anxiety Disorder (F41; ICD 10). Should her anxiety continue to increase or irritability worsen, it is recommended that she engages in individual psychotherapy targeting these symptoms.

(Motion, Ex. 2).

By letter dated September 29, 2016, Appellants wrote the local board requesting a favorable decision on remand. They stated that A.P.'s anxiety was rising due to the amount of school she was missing and the amount of school work she would need to make up, despite following a homeschool curriculum in the interim. (Motion, Ex 4).

In a memorandum to the local board, dated October 10, 2016, Superintendent, Dr. Jack Smith, recommended that the local board affirm its decision to deny the Appellants' transfer request. (Motion, Ex. 5). Dr. Smith stated:

Although documentation from a psychologist was presented, the observations made were based on a one-time conversation with [A.P.] and her mother. Dr. Sholtis (the evaluating psychologist) ultimately stated that *if* the anxiety were to increase, then therapy would be recommended. It is not uncommon for students to be anxious about attending a new school. All Montgomery County Public Schools, including Hallie Wells Middle School, have staff that is trained and familiar with helping students make new friends and adjust to their new school environment. As remanded by the State Board, this new evidence was reviewed and considered. No evidence of unique hardship has been presented.

(Motion, Ex. 5).

Appellants responded to Dr. Smith's memorandum in a letter dated October 11, 2016. They indicated that they had previously asked the Superintendent's Designee what documentation would suffice to make their case in the appeal, but were given no advice on how to proceed. They now requested that Dr. Smith advise them on the number of visits they should schedule with a licensed psychologist to prove a hardship, stating that "[w]ithout such information, we are shooting in the dark." (Motion, Ex. 6).

On October 20, 2016, Dr. Smith issued a second memorandum to the local board, stating in pertinent part:

It should be noted that documentation to support a [change of school assignment] is not about the number of visits to a mental health care provider, but is about the information provided by the professional, including not only the severity and impact of the student's current emotional state, but also the prescribed plan for ongoing treatment to address the related concerns. Other than the parents now stating that they plan to take [A.P.] back to meet with Dr. Sholtis, there continues to be no documentation of any treatment plan, or need for one, to address what the parents contend is a serious issue warranting the approval of their transfer request.

(Motion, Ex. 7).

On October 26, 2016, the local board unanimously voted to deny the Appellants' transfer request, finding the June 30 evaluation letter insufficient evidence of a unique hardship.

Appellants appealed the local board's decision to the State Board. (Motion, Ex. 9). In the appeal, Appellants explain that A.P. had not seen Dr. Sholtis for four months because she was doing fine under the impression that she would be returning to Rocky Hill. Appellants claim that A.P.'s anxiety again escalated once she realized that it might not happen. They scheduled another appointment with Dr. Sholtis and have included in the State Board appeal additional documentation, dated November 3, 2016, from that appointment. *Id.*

The documentation is from a psychological evaluation on November 1, 2016, approximately one week after the local board issued its decision on the remand. Dr. Sholtis states:

The clinical interview was conducted with her mother and with [A.P.] This evaluation was initially prompted by recent concerns about [A.P.'s] psychological well-being in light of circumstances that will result in her transitioning to another middle school for her 7th grade year.

* * *

[A.P.] has been increasingly more irritable and isolative with her family. She has anxiety relative to moving schools, and this anxiety appears to be impairing her functioning at this time. This anxiety has now transferred to being isolated from her friends and having to catch-up on missed work once she does transition back into school (she is currently home-schooled pending a decision). [A.P.] organizes her life around order, routine, and consistency. Her tendencies to be cognitive rigid are likely to be contributing to her increase in anxious symptoms. It is likely that if she is forced to transition schools, this anxiety will increase and continue to disrupt her functioning. Additionally, it is not recommended that homeschooling is a permanent option for [A.P.], as socialization is very important in order not to reinforce isolation. At this time she is diagnosed with Other Specified Anxiety Disorder. (F41.8; ICD

10). Should her anxiety continue to increase or irritability worsen, it is recommended that she engages in individual psychotherapy targeting these symptoms.

(Motion, Ex. 10).

STANDARD OF REVIEW

When reviewing a student transfer decision, the decision of the local board is presumed *prima facie* correct. COMAR 13A.01.05.05A. 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. *Id.*

LEGAL ANALYSIS

This case was considered by the State Board at its January 24, 2017 meeting. After much deliberation, this Board has failed to attain a majority vote to affirm or reverse the local board's decision. In order for the State Board to affirm or reverse a decision of a local board, at least six members must vote in the affirmative to do so. Md. Educ. Art. §2-204(e) ("The affirmative vote of a majority of the members then serving on the State Board is required for any action by the Board."). In this case, no affirmative vote of six members was achieved. The following members would vote to affirm the local board's decision: Laurie Halverson, Stephanie R. Iszard, Rosa Maria Li, and Laura Weeldreyer. The following would vote to reverse the local board's decision: Andrew R. Smarick, Michele Jenkins Guyton, and Madhu Sidhu. The remaining Board members were absent from the January 24, 2017 meeting.

We will follow the same procedure here that we followed previously in *Wrublewski v. Charles County Bd. of Educ.*, MSBE Order No. OR15-11. In *Wrublewski*, this Board recognized that courts and local boards of education in Maryland allow the decision below to stand absent agreement and the necessary affirmative votes to act. We stated that "[c]ourts, when faced with a lack of majority, recognize that 'a conscious non-decision is a form, albeit a rare one, of deciding.'" MSBE Order No. OR15-11 citing *Lee v. State*, 69 Md. App. 302, 312 (1986).

Appellants are the moving party because they seek to have the local board's decision reversed. As the moving party, they have failed to convince the requisite number of State Board members that their arguments are correct. The effect of the failure to garner sufficient votes for reversal is explained in *Lee v. State* as follows:

In cases of appeal or writ of error in this court, the appellant or plaintiff in error is always the moving party. It is affirmative action which he asks. The question presented is, shall the judgment, or decree, be reversed? If the judges are divided, the reversal cannot be had, for no order can be made. The judgment of the court below, therefore stands in full force. . . .

The decision is that the trial court's judgment will not be reversed because the appellant has failed to persuade a majority of the reviewing court that it merits reversal. There is a lack of decisive

impact on the case at hand. What is lacking is an agreed *ratio decidendi* which can serve as binding precedential authority for future decisions.

Id. at 313-314 (citing *Durant v. Essex Co.*, 74 U.S. (7 Wall.) 107, 112 (1868)).

In cases such as this one, the State Board reviews the local board's decision to determine if it acted arbitrarily, unreasonably or illegally. Given the split of opinion among the Board members, it is impossible for this Board to make such a determination. Thus, lacking the necessary votes to either affirm or reverse, we will let the decision below stand.

CONCLUSION

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

Signatures on File:

VOTED TO AFFIRM:

Laurie Halverson

Stephanie R. Iszard

Rose Maria Li

Laura Weeldreyer

VOTED TO REVERSE:

Andrew R. Smarick
President

Michele Jenkins Guyton

Madhu Sidhu

Absent from January 24, 2017 meeting:
Chester E. Finn, Jr., Vice President
Barbara J. Shreeve
Guffrie M. Smith, Jr.

February 28, 2017