

SEPEIDEH K. AND  
PAUL C.,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-06

## OPINION

### INTRODUCTION

Appellants have appealed the decision of the Anne Arundel County Board of Education (“local board”) denying their request to transfer their children from Annapolis Elementary School (“Annapolis Elementary”) to Germantown Elementary School (“Germantown Elementary”), where they attended school prior to the 2017 redistricting of Germantown. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants did not respond to the local board’s motion.

### FACTUAL BACKGROUND

Appellants’ children are in the 2<sup>nd</sup> and 4<sup>th</sup> grades. They currently attend Annapolis Elementary, which is the zoned school for their residence based on a recent redistricting.<sup>1</sup> Prior to the 2017-2018 school year, the children were zoned for Germantown Elementary and attended school there.

On April 27, 2017, Appellants sought transfers for their children to attend Germantown Elementary for the remainder of their elementary school years, rather than attend Annapolis Elementary, citing “redistricting hardship” as the basis. (Record, Ex. 1). Appellants stated that the children had been part of the International Baccalaureate Primary Years Programme (“IB PYP”) at Germantown Elementary and that they wanted them to continue in the program. They also stated that they were committed to the Germantown community. (Record, Ex. 5). On May 19, 2017, Karen Soneira, Principal of Germantown Elementary, denied the requests citing “redistricted to another school” and “lack of appropriate documentation” as the basis. (Record, Ex. 1).

On May 30, 2017, the Appellants appealed the decisions to the Superintendent’s Designee. (Record, Ex. 6). In their letter, Appellants advised that daycare was a hardship because they no longer had the support or connections that they previously had in the

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<sup>1</sup> In April 2017, the local board approved a redistricting plan that included, among other things, moving some students from Germantown Elementary to Annapolis Elementary. The local board grandfathered in students who were slated to start 5<sup>th</sup> grade at the start of the 2017-2018 school year if they wanted to remain at their school.

Germantown community. The Appellants explained that they work in Virginia and their daycare provider, who lives close to Germantown Elementary, picks the children up after school. *Id.*

Pupil Personnel Worker, Cheryl Schafer, spoke with the Appellants by telephone and Pupil Personnel Worker, Melinda Spence, met with the Appellants on June 13, 2017 for a home visit. (Record, Ex. 7). On June 23, 2017, Sarah S. Egan, the Superintendent's Designee, denied the transfer request because Germantown Elementary is closed to transfers due to its enrollment numbers. She also noted that the Appellants failed to provide evidence of hardship. (Record, Ex. 8).

The Appellants appealed to the local board on June 29, 2017. (Record, Ex. 9). Their letter reiterates the same concerns that they raised previously. The Superintendent responded to the appeal stating that Germantown Elementary is a closed school because it is at capacity and, even if it were not closed, the Appellants failed to provide evidence of hardship. (Position Statement).

In a decision issued August 24, 2017, the local board denied the transfer request. The local board explained that schools in Anne Arundel County are deemed closed to transfers once the student population reaches 90% or greater of the school's State-rated capacity. Germantown Elementary is currently operating at 96% of its State-rated capacity. (Local Board Decision).

#### STANDARD OF REVIEW

In reviewing student transfer cases, the decision of the local board is presumed to be *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.*; See *Alexandra and Christopher K. v. Charles County Bd. of Educ.*, MSBE Op. No. 13-06 (2013).

#### LEGAL ANALYSIS

This case was considered by the State Board at its January 30, 2018 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 five 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 five members was achieved. The following members would vote to affirm the local board's decision: Andrew R. Smarick, Justin Hartings, Stephanie R. Iszard, and Rosa Maria Li. The following members abstained: Chester E. Finn, Jr., Michele Jenkins Guyton, Michael Phillips, and David Steiner.

Appellants are the moving party because they seek to have the local board's decision reversed. To do so in a case such as this, they must convince the requisite number of State Board members that their arguments are correct and that the local board's decision is arbitrary, unreasonable or illegal. Appellants have failed to do so.

Courts, when faced with a lack of majority, recognize that “a conscious non-decision is a form, albeit a rare one, of deciding.” *Lee v. State*, 69 Md. App. 302, 312 (1986). The court in *Lee v. State* explained the effect of the failure to obtain sufficient votes for reversal 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. Lacking the necessary majority votes to either affirm or reverse, this Board is unable to make such a determination. Thus, using the procedure used by the courts, 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.

VOTED TO AFFIRM:

Signatures on File:

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Andrew R. Smarick  
President

\_\_\_\_\_  
Justin M. Hartings

\_\_\_\_\_  
Stephanie R. Iszard

\_\_\_\_\_  
Rose Maria Li

ABSTAINED:

Signatures on File:

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Chester E. Finn, Jr.  
Vice-President

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Michele Jenkins Guyton

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Michael Phillips

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David Steiner

February 27, 2018