

WALLACE AND
MARLENE D.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-14

OPINION

INTRODUCTION

Wallace and Marlene D. (Appellants) appeal the decision of the Anne Arundel County Board of Education (local board) denying their son's transfer request from Germantown Elementary to West Annapolis Elementary School. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded and the local board replied.

FACTUAL BACKGROUND

This current school year (2017-18), Appellants' son W.D. is a fifth grade student at Germantown Elementary, a feeder school for Annapolis High School and a part of Anne Arundel County Public Schools (AACPS). Last year, during the 2016-17 school year, Appellants wrote to Sarah Egan (née Pelham), Assistant Superintendent for Student Support Services, inquiring about a special placement transfer for their son. In their May 29, 2017 letter, they explained that for the past two years their son (who at the time was in fourth grade) had experienced bullying, suffered from stress and anxiety, and was afraid to come to school. Appellants stated that at some point during the school year, their son had "fallen" and suffered a concussion, suggesting that the incident was not accidental. They requested a transfer to West Annapolis Elementary because of their understanding that the school had a lower rate of bullying incidents and also because friends had spoken highly of the school. If their son transferred, they requested he be allowed to continue his schooling at Severn River Middle School and Broadneck High School. Appellants indicated their willingness to provide transportation. In the letter, Appellants stated that their older daughter previously received a special placement transfer to another AACPS school after she became depressed and suicidal following bullying at her assigned school and that she is now well-adjusted and stable. Appellants explained they hoped for a similar result for their son. (Motion, Superintendent's Position, Ex. 3).

Included with the letter were several documents. These included a list of incidents involving their son, dating back to October 8, 2015 through May 9, 2017. Ten of the incidents involved physical bullying, including punches, kicks, and pushing. There were other incidents of name calling and rude gestures. There was also a May 15, 2017 letter from Dr. James Rice,

W.D.'s pediatrician, which states that W.D. "has struggled with perceived bullying at his current school." Although acknowledging that peer relationships "can be very complex in this age group," Dr. Rice explained that "his family has concluded that a transfer . . . may be the only solution to help [W.D.] at this point" and that he supported the request. (Motion, Superintendent's Position, Ex. 3; May 15, 2017 Dr. Rice Letter).

In early June 2017, Ms. Egan reached out to Appellants by phone. She explained that a special placement transfer would not be appropriate and that they should contact Debbie Wolleyhand, coordinator of Pupil Personnel, to discuss an out-of-area transfer. (Motion, Superintendent's Position, Ex. 4). Both types of transfers allow for students to attend schools other than their geographically-assigned school, but out-of-area transfer requests may only be filed between March 1 and May 1 and must be based on specific reasons, such as a professional recommendation. Special placements are approved by the superintendent "for special circumstances" and may be requested at any time. AACPS Policy JAB-RA.

Throughout the summer, Appellants communicated with Ms. Egan and Ms. Wooleyhand about this process. They learned that West Annapolis was closed to transfers for fifth graders. During one call with Ms. Wooleyhand, Appellants explained that they had concerns about their son's mental health and severe history of absences (67 in the past year, 21 without notes, along with 33 tardy notices and 15 early dismissals). AACPS officials maintain that they repeatedly explained that Appellants would need to file an out-of-area transfer request, but that Appellants never did so. Appellants, meanwhile, argue that AACPS delayed in responding to their numerous calls, emails, and letters seeking a response to their letter. By late August 2017, AACPS decided to treat the May 2017 letter as an out-of-area transfer request. (Motion, Superintendent's Position, Ex. 4).

On August 31, 2017, Laurietta Jones, Coordinator of Pupil Personnel, denied the out-of-area request. Her letter explained that, because Appellants did not file a formal out-of-area transfer request, their letter was not originally treated as one. Ms. Jones determined that the transfer request should be denied because "bullying and/or stress are not reasons" to grant a transfer under the AACPS regulations. In addition, Ms. Jones concluded that W.D.'s home school could handle their concerns. She encouraged them to work with the school principal to address bullying. (Motion, Superintendent's Position, Ex. 6).

Four days earlier, and prior to receiving Ms. Jones' denial, Appellants submitted a transfer request via email directly to the local superintendent. AACPS decided to treat this email as an appeal of Ms. Jones' decision, even though it was sent prior to Ms. Jones issuing her decision. In the email, Appellants reiterated that W.D. suffers from anxiety and depression and that the number of bullying reports and absences over the past two years led them to request a transfer. (Motion, Superintendent's Position, Ex. 5).

The email included an updated letter from Dr. Rice, dated August 11, 2017. The letter reads, in pertinent part:

[W.D.] perceives bullying by other children at the school, especially in the playground environment. Most of this is verbal. He recalls one incident of being hit in the head by a baseball which, while possibly accidental, he attributes to possible bullying. [W.D.] says

‘Every day when I go to school I am scared that I will get hurt.’ There is some school avoidance behavior including feigned illness (putting thermometer in hot water) to try to avoid going to school. His parents see stress, anxiety, and depressed mood in [W.D.] related to school. He has physical symptoms including abdominal pain, poor appetite, headache, and disturbed sleep that may well be stress related. He sustained a concussion last February and had a very prolonged recovery with persistent symptoms. He had 21 visits to our office during the school year last year and a significant number of days absent from school. It is possible that stress is exacerbating and prolonging symptoms of illness for [W.D.]. [W.D.] is much better, with few symptoms, during the summer months. Admittedly, peer relationships are quite complex in this age group. However, [W.D.] clearly feels bullied from his vantage point and feels considerable stress from this situation.

At one point, the family had inquired about home teaching and I discouraged this approach, stressing the importance of school attendance. [W.D.] has been referred for mental health counseling to address the symptoms of anxiety and depression that accompany his adjustment disorder. The family feels, at this point, that in addition to counseling, attending another school in the area is the only solution to addressing the anxiety that [W.D.] feels around school attendance.

[W.D.] was seen most recently for an office visit today August 11, 2017. His presenting problem is Adjustment Disorder with anxiety and depressed mood. Physical symptoms of abdominal pain, headache, [and] sleep disturbance accompany the problem. Additional manifestations have included school avoidance, increased need for medical care and physician visits, and a suspected negative impact of stress in prolonging illness and intensifying symptoms.

The family has been encouraged to work with the school staff to address these concerns. At this point, they have concluded that a transfer to another school is the best recourse. I agree that a school transfer would be greatly preferred to a request for home teaching, which I have not supported. The expected outcome of this transfer would be a decreased absentee rate, fewer medical visits, reduced stress, symptom relief, and improved function. Please consider this request for transfer, which I support as [W.D.’s] pediatrician.

(Motion, Superintendent’s Position, Ex. 5; August 11, 2017 Dr. Rice Letter).

At the start of the new school year, on September 1, 2017, Ms. Egan, as the superintendent’s designee, denied the transfer. She explained that W.D.’s needs could be met at his home school, but did not elaborate on how. (Motion, Superintendent’s Position, Ex. 7).

For the 2017-18 school year, W.D.'s school developed a lunch safety plan and asked fifth grade teachers and the school nurse to closely monitor him in school hallways and at recess. W.D. also had a 504 plan and school emergency action plan related to his asthma and his G6PD, a blood disorder that we shall address later in more detail. Appellants continued to report incidents of perceived bullying and various school officials continued to work with Appellants to address their concerns. (Motion, Superintendent's Position, Ex. 4).

On September 28, 2017, Appellants appealed to the local board. They requested a transfer to West Annapolis Elementary or any other nearby school based on medical recommendations. They explained that W.D. suffers from G6PD Deficiency, "a blood disorder that can cause up to a fatal anemic reaction to various triggers if not quickly responded to." Appellants stated that stress is among the triggers. Appellants stated that W.D. has had a high rate of absenteeism due to his medical conditions and bullying. Appellants explored having W.D. receive home and hospital services during his absences but they were told he did not qualify. They acknowledged that they did not follow the out-of-area transfer request process correctly in May, but asked that the board grant the transfer given the delays and continuing issues W.D. experienced at school. Appellants explained that their daughter experienced similar anxiety that ultimately led to three suicide attempts and a special placement transfer, a situation they hoped not to experience with W.D. (Motion, Appellants' Appeal to Local Board).

Included with the appeal was the August 11, 2017 letter from Dr. Rice, as well as a new letter dated September 27, 2017 from Dr. Amal Abu-Ghosh, Division Chief of Pediatric Hematology and Oncology at Children's Hospital at Sinai. The letter stated:

[W.D.] has been a patient under my care since birth, first at Georgetown University Hospital and since June 2017 as a new patient at The Children's Sinai Hospital, Division of Pediatric Hematology/Oncology. [W.D.] is a 10 year old diagnosed with Glucose-6-phosphate dehydrogenase deficiency at birth. G6PD is an X-linked recessive inborn error of metabolism that predisposes to hemolysis and resultant jaundice in response to a number of triggers, such as certain foods, illness, medication, and stress. The condition is characterized by abnormally low levels of glucose-6-phosphate dehydrogenase. There is no specific treatment, other than avoiding known triggers.

These triggers include, but are not limited to anxiety, stress, and bullying. When [W.D.] experiences such triggers it causes headaches, trouble focusing, and loss of balance. In extreme cases it can result in hemolysis. It has been reported that [W.D.] has experienced bullying and is suffering from anxiety, depression and a fear of school. If [W.D.] continues to be exposed to these kinds of triggers it could have lasting medical and social effects. [W.D.] should not be in a school environment that causes anxiety, and stress nor be the subject of bullying.

It is our recommendation that [W.D.] be considered for an out-of-area transfer to help decrease and eliminate these triggers. It is our hope that we can all work together to resolve these issues, so that [W.D.] can be in a supportive and safe environment. By removing [W.D.] from this stressful school environment, he should be able to excel and attend school on a regular basis.

(Motion, Appellants' Appeal to Local Board, September 27, 2017 Dr. Abu-Ghosh letter).

The appeal also included documents related to W.D.'s 504 plan, records from pediatrician visits, and bullying reports. One of the bullying reports, dated September 11, 2017, indicated that three boys made homophobic slurs and gestures at W.D. Finally, Appellants included 2014 AACPS Bullying Studies that showed the rate of children reporting chronic bullying at Germantown Elementary was 33.8 percent compared to 6.6 percent at West Annapolis Elementary. The AACPS district average was 32 percent during the same time period. (Motion, Appellants' Appeal to Local Board).

On December 20, 2017, the local board issued its decision. It concluded that although "the record contains substantial documentation about [W.D.'s] medical conditions, there is nothing relating directly [to] those conditions that would warrant a transfer." The local board quoted with approval a statement from the local superintendent that "[m]any students in Anne Arundel County Public Schools have health conditions and all schools have a school nurse and health assistant to address any medical needs that students may have during the school day." The board agreed with the superintendent that W.D.'s 504 plan could be implemented at his home school and did not require a transfer to another school. Furthermore, the board concluded there was no other compelling evidence to warrant a transfer and that the bullying concerns likewise did not warrant a transfer. In sum, the board determined that Germantown Elementary could continue to deal effectively with W.D.'s needs and expressed confidence that school staff would be able to address any bullying issues. The opinion did not specifically explain how school staff would address W.D.'s medical condition. (Motion, Local Board Decision).

This appeal followed.

STANDARD OF REVIEW

In reviewing student transfer cases, 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.*; see *Sepeideh K. and Paul C. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 18-06 (2018).

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).

In Anne Arundel County, AACPS requires students to attend the school serving the attendance area of their bona fide residence, absent certain exceptions. These exceptions include transferring groups of students due to overcrowding or construction, “special placement” transfers for individual students “whose particular circumstances or needs warrant it,” and out-of-area transfers for “programmatic reasons, childcare with a documented hardship, on the basis of a professional recommendation,” or because the student or parent/guardian is moving into or out of a district. AACPS Policy JAB.

Out-of-area transfers are requests to attend a school other than one’s bona fide residence. These requests are due to AACPS between March 1 and May 1. In the event of an out-of-area transfer based on a professional recommendation, the parent or guardian must “supply a written recommendation from a physician, a psychiatrist, a psychologist, or other medical professional . . . detailing the necessity of this transfer and the intended outcome the professional is seeking for the student.” “Exceptional requests” for out-of-area transfers will only be considered after May 1 if “the student is new” or there is a “bona fide emergency or event that could not have been foreseen prior to May 1.” AACPS Policy JAB-RA.

By contrast, special placements are approved by the superintendent or designee “for special circumstances” and may be made “as necessary.” AACPS Policy JAB-RA.

Appellants maintain that W.D. should be granted an out-of-area transfer based on the professional medical recommendations. They argue that failing to grant the transfer violated AACPS regulations and amounted to a denial of equal educational opportunity and unconstitutional discrimination, in part because the safety plan put in place for W.D. marginalizes him at school and requires him to be treated differently. The local board counters that Appellants did not meet the requirements of the AACPS out-of-area transfer regulation and that the safety plan is designed for W.D.’s benefit to address his bullying concerns. The local board also observes that Appellants never made a claim of deprivation of equal educational opportunity or unconstitutional discrimination before the board.

Out-of-area transfer vs. special placement

It appears from the outset that there was confusion about whether Appellants should have been seeking an out-of-area transfer (due by May 1) or a special placement, which can be requested at any time out of necessity based on the superintendent’s judgment. Appellants, having received a prior special placement for their daughter, believed they were requesting the same thing for their son. AACPS viewed the request as an attempted out-of-area transfer, which was both untimely and failed to conform to AACPS requirements. This led to a confusing back-and-forth discussion between AACPS and Appellants over the summer of 2017. Ultimately, this procedural confusion is immaterial to our decision, but it does point out how form over substance can be used to delay and obfuscate what should be an easily understood process. The local board confirms on appeal that it considered both whether W.D. qualified for an out-of-area transfer based on a professional recommendation and whether a special placement was warranted. Thus, we consider whether the local board should have granted a transfer under either approach.

Whether an out-of-area or special placement transfer should have been granted

Although local school systems differ on their transfer policies, many allow for transfers to other schools based upon health or medical concerns. AACPS is among them, allowing an out-of-area transfer based on a written recommendation from a medical professional detailing the necessity of the transfer and the intended outcome. Health-related transfers are supported by State Board policy, recognized in many of our past transfer cases as sound educational policy. *See* Md. Code, Educ. § 2-205(b) (State Board has authority to determine educational policies of the State). AACPS's guidelines for out-of-area transfers based on professional recommendations mirror the guidance offered in our prior opinions. Thus, AACPS's transfer policy in this regard is based in sound educational policy. Whether that policy was effectuated in this case is the issue before us.

We have previously held that in order to justify a transfer based on a medical 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).

Not every student with a medical condition is entitled to transfer to another school. We have indicated 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).

Appellants presented two notes from medical professionals – a pediatrician and a pediatric hematologist and oncologist. The letters are not merely brief statements but included a great amount of detail. In particular, the letter from Dr. Abu-Ghosh, W.D.'s hematologist, explains that W.D. has the blood disorder G6PD, that the triggers for this disease include anxiety, stress, and bullying, and that there is no available treatment, aside from reducing exposure to the triggers. Dr. Abu-Ghosh explained that continued exposure to stress, anxiety, and bullying "could have lasting medical and social effects." He opined that W.D. "should not be in a school environment that causes anxiety and stress nor be the subject of bullying." Dr. Abu-Gosh predicted that the outcome of a transfer would be to decrease and eliminate these triggers. Dr. Rice explained his history of treating W.D. and described the numerous visits W.D. made to his office which may be linked to stress. Appellants also presented significant evidence that W.D. has experienced bullying, including incidents of physical violence and verbal harassment. The most recent of these incidents took place shortly before Appellants' appeal to the local board and involved homophobic slurs and gestures. As explained by Dr. Abu-Ghosh,

these types of incidents are triggers for W.D.'s blood disorder and reducing stress and anxiety is the only way to treat the disease.

In our view, the letters from Dr. Abu-Ghosh and Dr. Rice and the evidence of bullying provided by Appellants met their burden to demonstrate the necessity of a transfer based on health concerns. The doctors' notes also explain the intended outcome of a transfer and how it relates to the underlying medical condition. Appellants further linked W.D.'s medical condition to the specific circumstances of his school, namely the incidents of bullying and anxiety he has experienced. Unlike many other medical conditions, which could be treated as well at one school as at another, W.D.'s medical problems are linked to the bullying issue he faces at the particular school he attends. Unless the stress and anxiety caused by bullying is reduced or eliminated, the evidence shows that he would continue to be at risk of complications from his G6PD. Despite the added protections put in place by AACPS, such as a lunch safety plan and extra hallway monitoring, the record indicates that W.D. has not experienced a lessening of anxiety or stress.

The local board's analysis of these letters and the evidence from Appellants was not particularly robust. They put little weight on the professional recommendations despite the strength of those recommendations and their conformance with the AACPS regulations. A local board cannot ignore compelling medical evidence and rely on the belief that a student's health issues can be dealt with by the school nurse and staff. In this case, the evidence was overwhelming that they could not be dealt with at Germantown Elementary. Either an out-of-area transfer or special placement should have been granted.

We are aware that the end of the 2017-18 school year is rapidly approaching. Because Germantown Elementary stops at fifth grade, W.D. will be attending a new school for the 2018-19 school year regardless of our decision. It may be that a transfer to West Annapolis this late in the school year would only exacerbate the stress and anxiety that W.D. experiences. If so, a transfer out of Germantown Elementary would obviously not be appropriate. This is something that Appellants and the local board must consider in determining the appropriate resolution.

Finally, we are mindful that whatever school W.D. attends next year, the school system should avoid placing him in a school with the same students who have physically or verbally bullied him in the past.

CONCLUSION

For all of these reasons, based on the evidence Appellants presented, we conclude that the local board's decision was arbitrary and unreasonable. We direct that W.D. be transferred to West Annapolis if Appellants agree that a late school year transfer is appropriate for their son. We direct the local board to consider W.D.'s placement in middle school for the 2018-19 school year in light of the bullying concerns set forth here.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin M. Hartings

Stephanie R. Iszard

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

April 24, 2018