

ERIN C.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-21

OPINION

INTRODUCTION

Appellant challenges the decision of the Montgomery County Board of Education (“local board”) denying her request to transfer her daughter from James Hubert Blake High School to Quince Orchard High School. The local board filed a Motion for Summary Affirmance maintaining its denial is not arbitrary, unreasonable, or illegal. Appellant opposed the motion. The local board responded seeking an extension of time to respond to new evidence presented by Appellant or, in the alternative, a remand to the local board to address the new evidence.

FACTUAL BACKGROUND

Appellant’s daughter, S.C., is currently enrolled at James Hubert Blake High School (“Blake”). On December 9, 2016, Montgomery County Public Schools (“MCPS”) received Appellant’s Change of School Assignment (“COSA”) request for S.C.’s transfer to Quince Orchard High School (“Quince Orchard”). A student or their guardian may submit a COSA request only if they are able to show a documented unique hardship or other specified cause. (Motion, Ex. 1, 12).

Appellant requested the transfer because of concerns about S.C.’s safety and well-being. Appellant indicated that the social conditions at Blake caused her daughter to suffer from extreme anxiety and depression which required treatment from a therapist as well as medication. S.C. communicated to Appellant on multiple occasions that the bullying and conflict made her wish she was dead and that she struggled to go on. In response, Appellant enrolled S.C. in an intensive out-patient program for depressed, suicidal teenagers. S.C.’s older sister teaches at Quince Orchard and Appellant maintained that having S.C.’s sister at the school “would provide a safe haven for [S.C.] should she need support.” (Motion, Ex. 2).

Included with the appeal was a letter from S.C.’s therapist dated December 8, 2016. The therapist wrote that S.C.’s depression, anxiety, and impulsivity had worsened over the past two years at Blake. S.C.’s personal relationships at school became more hostile which increased her levels of anxiety and depression and caused her academic performance to suffer. The therapist also observed that S.C. experienced an increase in peer conflict that gave rise to cyber bullying, threats of violence, and false accusations from her peers which impacted her reputation. S.C., an accomplished athlete, elected to disengage from school athletics to avoid additional peer conflict. S.C.’s therapist indicated a transfer from Blake would provide S.C. a fresh start and “intensified treatment” would allow S.C. to better manage her depression and anxiety. (Motion, Exhibit 2, 3).

On December 20, 2016, MCPS's Division of Pupil Personnel Services denied Appellant's transfer request from Blake to Quince Orchard, but indicated that Appellant should meet with the Consortia Office for consideration of different schools. (Motion, Ex. 1). The Consortia Office ultimately provided Appellant with four other options for the requested school transfer: Springbrook High School, Paint Branch High School, Sherwood High School (with transportation provided), and Rockville High School (with no transportation provided). Appellant declined these alternative options. (Motion, Ex. 6).

On January 4, 2017, Appellant appealed the denial to the Superintendent's designee, Dr. Andrew Zuckerman. Appellant again raised the importance of S.C.'s sister being a teacher at Quince Orchard and the importance of S.C. having a strong family support system. S.C.'s sister plans to live in the family home until S.C. graduates and could commute to and from school with her. Appellant promised that S.C. would not bother her sister during the school day. Appellant expressed her fear that if S.C. is not able to transfer from Blake that she could become hopeless enough to take her own life. S.C. wrote her own letter in support of the appeal. In her letter, she explained how she was scared walking into school each day and that she has struggled with depression and anxiety since she was in the fourth grade. She wrote that the "only way [for me] to feel safe...is to be surrounded by family." (Motion, Ex. 4, 5).

Dr. Zuckerman assigned the appeal to a hearing officer who interviewed the Appellant, Blake's Assistant Principal, and Quince Orchard's principal. During the hearing, Appellant explained that she declined an offer to send S.C. to Springbrook or Paint Branch high schools because they were within the Northeast Consortium of schools.¹ Because most students know one another within the consortium, she believed that S.C. would continue to be bullied. She also declined an offer to send S.C. to Sherwood because a former Sherwood student participated in cyberbullying against S.C. and that student continues to have friends at Sherwood. Blake's Assistant Principal asserted that S.C. "needs to make better choices as to which students she chooses to associate [with]," but agreed that the transfer from Blake should be approved. The Assistant Principal additionally stated that the Northeast Consortium schools would not be a good fit for S.C. Quince Orchard's Principal informed the hearing officer that their enrollment was at capacity and class sizes were already being adversely impacted. (Motion, Ex. 6, 8).

On January 23, 2017, the hearing officer provided his final report to Dr. Zuckerman. The report recommended denying Appellant's transfer request to Quince Orchard, but empathized with Appellant and observed that other schools remain a viable option for transfer. On January 24, 2017, Dr. Zuckerman adopted the findings in the report and denied Appellant's request for transfer to Quince Orchard. (Motion, Ex. 6, 7).

On February 15, 2017, Appellant appealed the decision to the local board. She reiterated her reasons for declining a transfer to the other schools and explained that she refused the transfer offer to Rockville not only because it would require her to provide transportation for S.C. but because it would be a "random school where she has no support and would be all alone in the middle of a school year." (Motion, Ex. 7, 9).

¹ Northeast Consortium schools are comprised of James Hubert Blake High School, Springbrook High School, and Paint Branch High School.

On March 30, 2017, the local board issued its decision upholding the denial of the transfer request. The local board observed that Quince Orchard's enrollment exceeds its capacity. The board stated that Appellant "may not believe that the other four schools offered by MCPS are ideal for S.C.; however, those schools nonetheless offer S.C. the opportunity to leave Blake and obtain 'a fresh start at a new school' as her therapist recommends." (Motion, Exhibit 11).

This appeal followed on April 22, 2017. Appellant included with her appeal an amended letter from S.C.'s therapist. The letter, still dated December 8, 2016, now states that "the combination of a fresh start at Quince Orchard High School and intensified treatment will allow [S.C.] to improve her academic performance, develop healthy peer relationships and better manage her depression and anxiety." (Appeal).

STANDARD OF REVIEW

When reviewing a student transfer decision, the conclusion of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05(A). 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.*

A decision may be arbitrary or unreasonable if it is (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached. COMAR 13A.01.05.05(B). A decision may be found illegal if it is: (1) unconstitutional; (2) exceeds the statutory authority or jurisdiction of the local board; (3) misconstrues the law; (4) results from an unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error or law. COMAR 13A.01.05.05(C).

LEGAL ANALYSIS

MCPS has developed geographic attendance zones and created policies aimed at governing transfers within the school system. Students who do not meet specific criteria discussed in the policy² may still be granted a school transfer if they are able to prove a "documented unique hardship." A problem that is common to a large number of families does not equal a unique hardship for COSA purposes.

The State Board has previously held that in order to assert a claim for unique hardship based on a medical condition, an appellant must demonstrate a link between the health concern and the necessity of transfer to the requested school. *K.J. v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 14-18 (2014). Appellant and the local board agree that S.C. should be granted a transfer from Blake to another school. Letters from both the Appellant and S.C.'s therapist indicate that S.C.'s clinical diagnosis of depression, anxiety, ADHD, and impulsivity have presented her with problems at school and in her personal life. The local board does not contest this evidence.

² Criteria include but are not limited to: (1) a younger sibling may attend the school of an older sibling in the regular/general program if the older sibling will be attending the requested school the following year; (2) when a family moves within Montgomery County, preference remains for the child to stay in the original school *only* until the school year is completed.

This dispute centers, however, on whether Appellant has demonstrated that S.C. must be sent specifically to Quince Orchard rather than another MCPS school. In her appeal to the State Board, Appellant seeks to introduce a new document that was not presented to the local board: an amended version of the December 8, 2016 letter from S.C.'s therapist. The amended letter states that a fresh start at Quince Orchard would allow S.C. "to improve her academic performance, develop healthy peer relationships and better manage her depression and anxiety." The earlier version of the letter did not mention Quince Orchard, but merely recommended a fresh start at a "new school."

The State Board may consider new evidence or remand the appeal to the local board for consideration of the new evidence if the evidence is material to the case and the Appellant offers good reason for failing to present the information to the local board. COMAR 12A.01.05.04(C). It appears from the record that S.C.'s therapist did not amend her letter until after the local board's decision. The new evidence was not therefore available to Appellant at the time the local board issued its decision. As for materiality, the amended letter recommends a fresh start at a specific school, demonstrating a causal connection to the transfer decision. *See Theresa K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-27 (2006).

We are left with the question of whether to remand the case in light of the therapist's amended letter or consider that new evidence now as part of our decision. In our view, the local board may well have reached a different decision if it had the opportunity to review the therapist's amended letter. We therefore remand this case to the local board to consider the new evidence and issue an amended decision within 30 days. In doing so, we acknowledge that the 2016-17 school year is over. Rather than have Appellant begin the Change of School Assignment process anew, the local board should consider this transfer request as carrying over into the 2017-18 school year and analyze the anticipated capacity at Quince Orchard and other schools accordingly.

CONCLUSION

For the reasons stated above, we remand this case to the local board for consideration of the new evidence and the issuance of a new decision within 30 days.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Guffrie M. Smith, Jr.

Signatures on File:

Dissent:

I would consider the new evidence and grant the transfer to Quince Orchard.

Madhu Sidhu

Abstain:

David Steiner

June 27, 2017