

ANDREW K.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-24

OPINION

INTRODUCTION

Andrew K. (Appellant) filed an appeal of the decision of the Baltimore County Board of Education (local board) denying a school transfer to his daughter, C.K. The local board filed a response, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Baltimore County Public Schools (BCPS) assigns students to schools based on the geographic attendance area in which they live, but permits students to obtain a “special permission transfer” to other schools for a variety of reasons. On April 2, 2018, C.K.’s parents filed an application for a transfer for the 2018-19 school year, seeking to have her attend Hereford Middle School for sixth grade, rather than her assigned school, which was Cockeysville Middle School. In support, they provided two reasons for the special permission transfer: (1) C.K. sought a program of study or specific course (listed as “Agriculture”) and (2) she had a sibling who was currently enrolled in Hereford High School. Hereford Middle School and Hereford High School are two separate schools in different locations. On appeal, Appellant has dropped the request to transfer based on C.K. being the sibling of a currently enrolled student. (Local Board Response, Supt. Ex. 2).

On June 14, 2018, the Hereford Middle School principal denied the transfer request based on the transfer being “inconsistent with policy/rule” and because both the school and grade level were overcrowded. (Local Board Response, Supt. Ex. 2). BCPS Superintendent Rule 5140 permits transfers based on pursuing a program of study not offered in one’s regularly assigned school. The Rule defines a program of study as an “academic program in which the student completes a specified sequence of courses” and “does not include electives or extracurricular activities.” BCPS Superintendent Rule 5140. The rule indicates that special permission transfers based on a program of study will be denied if the program or school is overcrowded. *Id.* The Rule defines an overcrowded school as one in which current or projected student enrollment is equivalent to or exceeds state-rated building capacity; average class size is equivalent to or exceeds Board-approved staffing guidelines; or enrollment in the program of study is equivalent to or exceeds staffing guidelines. *Id.* (Local Board Response, Supt. Ex. 4).

Appellant appealed the decision to the BCPS residency liaison. On June 28, 2018, he affirmed the denial of the transfer. The residency liaison explained that the program of study exception for a special permission transfer requires that a student pursue a “curricular, academic, or sequential program of study,” but that “Agriculture” was not a program offered by Hereford Middle School. (Local Board Response, Supt. Ex. 3).

Appellant appealed the decision to the superintendent’s designee, Allyson Huey, who conducted a hearing with Appellant on August 14, 2018. On August 24, 2018, she upheld the transfer denial. During the hearing, the Appellant clarified that C.K. wished to take an elective course in Agricultural Science at the school. That course is not offered at her assigned school. Appellant argued that C.K. is an excellent student and a star athlete with a strong interest in horticulture and veterinary medicine, who would benefit from a course in Agricultural Science. Appellant also argued that other transfer requests had been granted for Agricultural Science. Ms. Huey concluded that a single, elective course does not constitute a program of study that would allow for a transfer. But, even if it did, she found that the enrollment for sixth grade exceeded the staffing allocation. BCPS assigned staff to serve 340 students in the sixth grade and there were already 343 enrolled. In addition, she determined that no other students received a transfer solely in order to take Agricultural Science. (Local Board Response, Supt. Ex. 4).

Appellant appealed to the local board, which assigned the matter to a hearing officer. On October 26, 2018, the hearing examiner conducted a hearing. On November 19, 2018, the hearing officer issued a decision recommending that the transfer denial be upheld. (Local Board Response, Record Extract 5). The hearing examiner found that Appellant had not met the requirements of the BCPS transfer rules and determined that the decision was consistent with prior State Board of Education decisions. The hearing examiner observed, however, that BCPS’s special permission transfer form could cause confusion because it listed a “program of study or specific course” as a basis for requesting a transfer. BCPS officials testified that a “specific course” in that context meant a specific course of study and that the rule clearly prohibited a specific elective course as the basis for a transfer. The hearing examiner also faulted BCPS for not providing enrollment data to Appellant as part of a Public Information Act request he filed. (Local Board Response, Record Extract 5).

Appellant appeared before the local board for oral argument on February 19, 2019. That same day, the local board voted to adopt the hearing examiner’s recommendation and to deny the transfer request. (Local Board Response, Record Extract 9). Appellant filed a timely appeal.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations 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.01.05.06A.

LEGAL ANALYSIS

Prior to addressing Appellant’s arguments, we must address the question of mootness. This appeal requests a transfer for the 2018-19 school year, which recently concluded in Baltimore County. Clearly we can no longer grant a transfer for a school year that is over. We

observe, however, that the course Appellant's daughter wishes to take is also offered as a stand-alone class in seventh grade. A case is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy" to be provided." *State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 455 (2018). Because Appellant could request a transfer on the same basis for the 2019-20 school year, we conclude an existing controversy remains and a potential effective remedy exists in the form of a transfer for the coming school year. Accordingly, we shall not dismiss this appeal as moot and turn to the merits.

Program of study special transfer

Appellant maintains that Agricultural Science is a special program of study or, alternatively, that it should have qualified as a "special course" as noted on the transfer form. On the first point, Appellant argues that Agricultural Science has been a program of study in the past as evidenced by past school newsletters, websites, and other sources. While that may have been the case previously, the record is clear that Agricultural Science is currently only a single, elective class and does not qualify as a program of study.

As to the second point, the transfer form provides "**Program of Study or Specific Course**" as a reason for a transfer (emphasis added). BCPS Superintendent Rule 5140 indicates that a program of study means "a specified sequence of courses" and does not include electives or extracurricular activities. Although BCPS officials testified that a "specific course" means a "specific course of study," the Rule never uses that phrase.

Although we have long upheld denials of transfer requests to pursue a specific course or program, we have done so only when the transfer policies are clear. Here, the form and the Rule are ambiguous and confusing. The form allows for a transfer based on a "specific course," but nothing in the Rule defines that term. The Rule prohibits elective courses as a reason for a transfer, but it does so in the context of a "program of study," not as applied to a "specific course." While the local board may have mistakenly used the phrase "specific course" on its form, the board cannot penalize parents and guardians for that error.¹ In our view, it was arbitrary and unreasonable for the local board to deny a transfer based on a "specific course" when its own form offers it as a reason for a transfer and the Rule does not explicitly prohibit it.

Overcrowded school

As an alternative ground, the local board relied on overcapacity at Hereford Middle School in order to deny the transfer request. Appellant argues that, based on figures he submitted during his appeal, Hereford Middle School is actually about 100 students under capacity and the school was therefore not crowded. He also maintains that other data he requested was not available because the school system delayed in responding to his Public Information Act request. Finally, he argues that the Rule defines overcrowded using "average class size" and not the total number of students in the grade, which was the figure used by BCPS.

BCPS Superintendent Rule 5140 states that a transfer will be denied "if the requested program is overcrowded or the school is overcrowded." BCPS Superintendent Rule 5140 provides three "conditions" in which an overcrowded school may exist. One is when the

¹ The record indicates that the local school system has since eliminated "specific course" on its form as a reason for a transfer.

“average class size of the requested grade is equivalent to or exceeds Board-approved staffing guidelines.” The other two are when a school is above its state-approved building capacity or when enrollment in a requested program of study or requested course is equivalent to or exceeds the staffing allocation.” BCPS Superintendent Rule 5140.

Based on the information in the record, it appears that Appellant is correct that Hereford Middle School itself is not beyond state-rated capacity. There is nothing in the record about whether the Agricultural Science course is above the school’s “staffing allocation.” That leaves only one reason why the school might be “overcrowded” as defined in the Rule: the “average class size of the requested grade is equivalent to or exceeds Board-approved staffing guidelines.” The record shows that BCPS used the total number of students in sixth grade rather than the “average class size of the requested grade.” In short, BCPS did not follow its Rule in determining the school was overcrowded.

The *Accardi* doctrine requires that a government agency “scrupulously observe rules, regulations, or procedures which it has established.” *Winter v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 16-33 (2016) (citing *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)). In order to strike down an agency’s decision under *Accardi*, a complainant must show that he or she was prejudiced by the agency’s failure to follow its rules, regulations, or procedures. *Id.* Here, the school system provided only the total number of students in the sixth grade and the maximum number of students permitted by its staffing allocation. In our view, BCPS did not “scrupulously” follow its Rule. As for prejudice, without additional information on the average class size, Appellant could not make his case that the school or grade was below capacity. Withholding those figures and using alternative figures prejudiced Appellant’s ability to mount an appeal. Accordingly, we reverse the local board’s decision.

Public Information Act

Appellant argues that he did not receive information requested from BCPS through the Public Information Act and that, had the information been provided, it would have been helpful as part of his appeal. Because we have already reversed the local board’s decision, we need not reach this issue. We point out, though, that other bodies, such as the Public Access Ombudsman and the Public Information Act Compliance Board both have jurisdiction over these matters.

Remedy

As noted previously, the 2018-19 school year is over and Appellant’s daughter has presumably completed the sixth grade. Should Appellant’s daughter still wish to take the Agricultural Science course and transfer schools, the local board must grant her a transfer request for the 2019-20 school year.

CONCLUSION

We reverse the decision of the local board because it was arbitrary, unreasonable, and illegal.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Gail H. Bates

Clarence C. Crawford

Jean C. Halle

Rose Maria Li

Michael Phillips

Warner I. Sumpter

Absent:
Vermelle D. Greene
Joan Mele-McCarthy
David Steiner

June 25, 2019