

GINA F.,

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-36

OPINION

INTRODUCTION

This is an appeal of the Howard County Board of Education’s (“local board”) decision to deny the Appellant’s request to reassign her daughter to ██████ High School (“██████ HS”). Appellant requested the reassignment based on concerns about her daughter’s transition to high school and her daughter having a 504 plan. The local board filed a Memorandum in Response to Appeal maintaining that its decision was not arbitrary, unreasonable, or illegal because the reassignment request did not meet the criteria for reassignment under the school system’s policy. The Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant’s daughter, ██████ is a rising 9th grade student who resides in the geographic attendance area assigned to ██████ High School (“██████ HS”). Prior to the local board’s November 21, 2019 redistricting decision for the Howard County Public School System (“HCPSS”), effective for the 2020-2021 school year, ██████ HS was the assigned high school serving the geographic attendance area where Appellant and ██████ reside. The local board exempted certain categories of students from the redistricting decision allowing those students to remain at their previously assigned schools. Appellant incorrectly believed that ██████ qualified for one of the exemptions, which related to certain students with IEPs and 504 Plans, and that she would be allowed to attend ██████ HS starting with the 2020-2021 school year.

On December 5, 2019, Appellant submitted a School Reassignment Request Form seeking to have ██████ attend ██████ HS instead of ██████ HS based on ██████’s anxiety disorder and the fact that ██████ has had an active 504 plan since 2013 which provides for anxiety reducing accommodations. (Ex. 3). In Appellant’s letter supporting the request, she explained the need to engage in intensive preparation and communication between the sending and receiving school in order for ██████ to successfully transition between schools due to the anxiety disorder. She stated that the family had already begun participating in different activities at ██████ HS, which had enabled ██████ to start making connections in anticipation of her future attendance there. Appellant further stated that the family did not have the time or resources to recreate the same process with ██████ HS and she feared that ██████ would suffer anxiety related issues and lose instructional time. Appellant expressed her confidence that the staff and administration at ██████ HS would be able to meet ██████’s needs based on her positive

experiences with her two older children who attended school there. *Id.* Appellant attached a copy of ■■■'s 504 Plan to support the request.

In an email dated December 26, 2019, Kris Woodson, Specialist for Student Reassignment and Residency, advised Appellant that ■■■ did not qualify for any of the exemptions to the redistricting and that her request for reassignment would be evaluated under the “documented unique hardship” provision set forth in HCPSS Policy 9000 – Student Residency, Eligibility, Enrollment and Assignment. (Ex. 3, p. 21).

By letter dated February 3, 2020, Ms. Woodson advised Appellant that her request for reassignment was denied. She explained that ■■■ did not qualify for any of the exemptions to the redistricting decision since she was in the 8th grade and would be transitioning to high school. While the local board had passed several exemptions that allowed certain students to remain at their previously assigned schools, the local board did not pass exemptions for then current prekindergarten, 5th or 8th grade students who were changing school levels for the 2020-2021 school year. (Ex. 3, p. 46).

On or about February 25, 2020, Appellant appealed Ms. Woodson's decision to the local board. Appellant maintained that information provided by HCPSS regarding the redistricting exemptions was unclear and mislead her into thinking that ■■■ qualified for an exemption to the redistricting because she had a current 504 Plan. She argued that HCPSS should be required to honor the exemption due to the confusion. She also maintained that Ms. Woodson did not address how Appellant failed to establish a unique hardship, and that Ms. Woodson did not consult with ■■■'s school-based administrators in reaching her decision.

In response to the appeal, Restia Whitaker, Coordinator of Pupil Support Service, and Ms. Woodson provided a report to the local board. They explained that any lack of clarity in the explanation of the redistricting exemptions by HCPSS did not change the fact that the local board did not exempt students moving from 8th grade to 9th grade, and that the Policy 9000 specifically prohibits the reassignment of students to address the impact of redistricting. They further explained that Appellant failed to establish a documented, unique hardship noting that ■■■ is one of 5000 students who were redistricted, many of whom have 504 Plans that can be successfully implemented at their newly assigned school. Moreover, ■■■'s 504 Plan does not speak to transition issues between middle and high school. They also explained that Ms. Woodson did not confer with ■■■'s middle school guidance counselor, as Appellant indicated, because the guidance counselor is not professionally able to make the determination that ■■■'s anxiety disorder prevents her from transitioning to ■■■■■ HS or that ■■■■■ HS is unable to meet ■■■'s needs. Further, the redistricting decision was made in November, 2019, which left sufficient time to engage in transition activities. Ms. Whitaker and Ms. Woodson recommended that the reassignment request be denied because it did not meet the criteria set forth in Policy 9000.

In a Decision issued May 12, 2020, the local board upheld the denial of Appellant's request to reassign her daughter to ■■■■■ HS. The local board explained that the appeal arose out of the November 2019 redistricting decision that reassigned approximately 5000 students to different schools. The board explained that under Policy 9000, student reassignment will not be granted based on the impact of a redistricting decision. In addition, the Board explained that while some students with IEP and 504 plans were exempted from the redistricting, 5th and 8th

grade students with IEP and 504 plans were not exempted because they are transitioning from one school level to another, and the middle and high schools are equipped to deal with transitioning all incoming students. While the local board expressed understanding for Appellant's concern for [REDACTED]'s transition, it found that she had not presented sufficient evidence of a unique hardship and that [REDACTED]'s situation was similar to other 8th grade students with 504 plans. Several local board members noted that there was no evidence to suggest that [REDACTED] HS was unable to meet [REDACTED]'s accommodations, and some noted that [REDACTED] would likely benefit from transitioning to the same school as some of her current classmates. The local board recommended that Appellant reach out to the 504 coordinator and counselor at [REDACTED] HS to help ensure that [REDACTED]'s needs and accommodations are communicated to achieve an effective transition.

This appeal followed. Appellant reiterates her prior arguments. She also adds that due to the COVID-19 school closures the family has been unable to make the same efforts to familiarize [REDACTED] with [REDACTED] HS in order to assist her with her transition as they did with [REDACTED] HS. In addition, Appellant states that the uncertainty regarding how education will be delivered this fall and the legal issues surrounding the redistricting decision has caused additional stress and anxiety for [REDACTED].¹

Although it is unclear when HCPSS will completely resume all in-person school attendance due to the COVID-19 emergency, we must address the issues raised in this appeal based on the assumption that it will resume at some point in the near future.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the decision 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. A decision is arbitrary or unreasonable if “it is contrary to sound educational policy” or if “a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.06B. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

It is well established that there is no right or privilege to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015). In HCPSS, pursuant to Policy 9000, students are required to attend their assigned school unless they are granted a special exception to attend a school outside their geographic attendance area. (Policy 9000.IV.J). There are several types of special exceptions set forth in the policy, only two of which are relevant to this case:

- In rare circumstances, the Superintendent/Designee, in consultation with school-based administrators, may grant parent requests for individual exceptions to the student reassignment standards based on

¹ We note that the HCPSS redistricting decision is the subject of another appeal before this Board.

documented unique hardship situations.

- A resident student has an Individualized Education Program (“IEP”), 504 Plan, or at least one parent who is currently active duty military personnel is reassigned for the purposes of redistricting may request reassignment to remain at their current school until the completion of that school level.

(Policy 9000.IV.K (3) and (5)). Under the unique hardship exception, the parents of the student bear the burden of presenting documented evidence of the unique hardship establishing the need for the reassignment. The Policy states that reassignment will not be granted based on the need for a particular schedule or class; for siblings to remain enrolled in the same school; to accommodate child care arrangements; and to address the impact of redistricting decisions unless they satisfy the IEP/504 Plan exception. (Policy 9000.IV.K.6).

Documented Unique Hardship Exception

With regard to a unique hardship, Appellant maintains that ■■■■■’s anxiety disorder requires her to attend ■■■■■ HS instead of ■■■■■ HS due to the steps necessary to acclimate ■■■■■ to a new school in order to ease her anxiety for transition. Appellant states that the family had already begun familiarizing ■■■■■ with ■■■■■ HS and that there was insufficient time to familiarize her with ■■■■■ HS to appropriately transition her, especially once schools closed down in-person due to COVID-19. Although Appellant submitted ■■■■■’s 504 Plan to support the reassignment request, it does not provide evidence of a unique hardship. The 504 Plan indicates that ■■■■■ has an anxiety disorder, however, there is nothing in the Plan that specifically addresses ■■■■■’s transition to high school, addresses specific transition activities for new school attendance, or requires her attendance at ■■■■■ HS rather than ■■■■■ HS.

Appellant’s request for a reassignment based on ■■■■■’s anxiety disorder is essentially a claim that ■■■■■ has a documented, unique hardship based on a medical need. In order to justify a transfer based on a medical need, an appellant must demonstrate a link between the student’s medical condition and the necessity for transfer to the requested school. *Shevron D. v. Howard County Bd. of Educ.*, MSBE Op. No 17-10 (2017); *Philip and Deborah W. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). Appellants often demonstrate this by providing detailed evidence from medical professionals regarding the necessity for the transfer based on a diagnosed medical condition. The fact that a documented medical condition exists is not itself sufficient to grant approval of a transfer. *See Timothy and Michelle W. v. Howard County Bd. of Educ.*, MSBE Op. No. 09-18 (2009). Here, there is no medical documentation to support the request. Further, with regard to any additional anxiety concerns that may be related to COVID-19 and the uncertainty of return to school, the Appellant has likewise not provided any evidence sufficient to support a unique hardship on this basis.

We recognize, as Appellant points out, that the Policy 9000 gives the superintendent or designee the discretion to grant reassignment requests in consultation with school based administrators, and that there was no such consultation here. The onus, however, is on the Appellant to first provide the evidence of a unique hardship to justify the reassignment. The evidence in this case was insufficient, on its face, to support the request.

The move from middle to high school is one of natural transition for rising 9th grade students. Assisting with this transition is a task that high school administration and staff are uniquely able to handle. Given that the school year is already underway, we encourage the Appellant to maintain regular contact with the counselor and staff at [REDACTED] HS to help ensure a smooth transition for [REDACTED].

IEP/504 Plan Exception

[REDACTED] did not qualify for an exception under the IEP/504 Plan exception set forth in Policy 9000.IV.K.3 because, as an 8th grader, she was completing her middle school level and beginning a new school level in high school. In addition, as part of its redistricting decision, the local board did not make an exception for 8th grade students to remain at the school to which they would have been assigned prior to the redistricting in the event of the existence of an IEP or 504 Plan. Although it appears that some of the communications from HCPSS may have caused confusion on this issue, that does not change the fact that the local board made no exception for students in [REDACTED]'s situation. Thus, [REDACTED] did not satisfy any criteria for a reassignment to [REDACTED] HS based on the fact that she had a 504 Plan.

Other Matters

In her appeal and response to the local board's memorandum, Appellant references several matters that are not relevant to the State Board's decision in this case. Appellant mentions that the Maryland Open Meetings Compliance Board ("OMCB") found that the local board violated the Open Meetings Act during its public meeting on the redistricting. The OMCB concluded there was a violation when two local board members exchanged text messages related to the redistricting, which was under discussion at the time. Appellant refers to another proceeding related to an appeal of the local board's redistricting decision in which Ms. Woodson provided testimony regarding redistricting exemptions. Appellant also refers to the upcoming November 2020 local board election, suggesting that the local board could engage in future redistricting that might affect her daughter, depending on the results of the election. None of these matters are relevant for consideration in this case.

CONCLUSION

For the reasons stated above, we find that the Appellant has failed to show by a preponderance of the evidence that the decision of the local board was arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's denial of the Appellant's request to reassign her daughter from [REDACTED] HS to [REDACTED] HS.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

September 22, 2020