

ANGELA S.,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-39

OPINION

INTRODUCTION

Angela S. (“Appellant”) appeals the decision of the Harford County Board of Education (“local board”) denying a boundary exception transfer for her son. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant’s son, S.S., is currently an eighth grade student assigned to Edgewood Middle School, part of Harford County Public Schools (HCPS). On June 7, 2018, Appellant filed a Special Admissions Transfer Application for her son, requesting that he attend Patterson Mill Middle School based on hardship. She explained that her son had been bullied in the past year at Edgewood Middle and been in approximately six or seven fights. She alleged that his grades have suffered as a result and that he had talked about suicide. Appellant stated that her son has depression, anxiety, ADHD, and is bipolar. He also has an Individualized Education Program (IEP) because of learning disabilities. (Motion, Ex. 1).

On June 28, 2018, HCPS denied the request because Patterson Mill was already at 97 percent capacity. HCPS guidelines prohibit boundary exception transfers to schools that are at more than 95 percent capacity. In addition, HCPS officials observed that S.S. had eight disciplinary referrals in the prior year (including five days of out-of-school suspension and three days in-school suspension). School officials disciplined S.S. for engaging in multiple fights, disrupting class, and inappropriate cell phone use. S.S. had 28 absences during the prior school year - 18.5 lawful absences and 9.5 unlawful absences. (Motion, Ex. 3, 9, 9A).

On July 2, 2018, Appellant appealed to the local superintendent. She reiterated her past concerns and stated that S.S.’s psychiatrist recommended that S.S. not return to Edgewood Middle. She also explained that she planned to sell her home and move elsewhere in the county. Appellant suggested that Patterson Mill would be appropriate for S.S. because he plays baseball and many of his teammates and friends already attend Patterson Mill. (Motion, Ex. 5).

On July 17, 2018, the local superintendent denied the transfer request. He explained that Patterson Mill was already beyond its advised capacity of 95 percent and its projected enrollment would put it at 99 percent capacity for the 2018-19 school year. The superintendent concluded it would not be in the best interest of S.S., or other students and staff at Patterson Mill, to add students to an overcapacity school. As an additional reason for the denial, the superintendent referenced S.S.'s disciplinary history and absences. (Motion, Ex. 6).

Appellant appealed to the local board. She explained that S.S.'s absences were due to anxiety and she argued that his disciplinary referrals primarily concerned instances when S.S. was bullied or acted in self-defense, including one fight in which he received a concussion. Appellant ruled out a transfer to three other middle schools in Harford County because of her concerns about drugs, gangs, and fighting. She explained that she had filled out bullying forms and attempted to work with S.S.'s school, but that the problems remained. (Motion, Ex. 7A, 7B, 8). Included with the appeal was a letter from a certified registered nurse practitioner recommending a transfer out of S.S.'s current school, and a letter from a medical doctor recommending a transfer based on bullying and the physical and psychological toll of the incidents on S.S. (Motion, Ex. 9-12).

In response, HCPS disputed Appellant's account of bullying, arguing that the school administration found S.S. was not acting in self-defense in all of the incidents and that he had instigated some physical altercations. The school system stated that Appellant filed only a single bullying complaint, on March 9, 2018, which HCPS officials properly investigated and addressed. (Motion, August 8, 2018 Letter to Local Board).

On August 14, 2018, the local board issued its decision upholding the superintendent's denial. The board concluded that its transfer policy does not permit transfers into schools that are at 95 percent capacity or higher. In addition, the board determined that S.S. had an excessive number of absences and disciplinary referrals. (Motion, Ex. 10).

This appeal followed.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the local board is 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.01.05.05A; *see Ralph and Tremaine N. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-30 (2017).

LEGAL ANALYSIS

HCPS has developed geographic zones for school attendance and created policies aimed at governing transfers within the school system. Students must attend school in the attendance area where they reside, but HCPS permits "boundary exception requests" to transfer to a school outside one's attendance area. (HCPS Procedure – Administrative Guidelines for Evaluating Boundary Exception Requests; Motion, Ex. 11). Among the transfer reasons is "hardship," defined as "a student's welfare, or that of his family, may be substantially adversely impacted if the requested [transfer] was not granted." Documentation to support a transfer request is required under the policy. (*Id.*)

HCPS does not argue that Appellant failed to present a hardship. Rather, the school system applied its guidelines, which prohibit transfers to schools that are overcapacity, defined as being at more than 95 percent utilization. The State Board has previously upheld this policy of denying transfers solely because a requested school is overcapacity. *See David and Kimberly H. v. Harford County Bd. of Educ.*, MSBE Op. No. 12-06 (2012); *Leona V. v. Harford County Bd. of Educ.*, MSBE Op. No. 09-17 (2009). In our view, it is not arbitrary, unreasonable, or illegal to have a policy that limits transfers into a school once it has reached capacity and to apply that policy equally to all students.

There are, however, other concerning issues raised by this case, namely S.S.'s physical and mental health. He suffers from a host of mental and physical ailments, as documented by his mother and two medical professionals, both of whom support a transfer out of S.S.'s current school. S.S. has also apparently mentioned suicide, and his absences and disciplinary record show a student who is clearly at risk.

We note that the superintendent cited disciplinary and absentee history as an alternate reason for denying the transfer. At best we can tell, the school system's transfer policies do not provide for denials of transfers based on discipline and/or absentee history. Therefore, those reasons could not support the denial of the transfer, in the alternative.

While it may be that S.S. cannot attend Patterson Mill because it is over capacity, there are other middle schools in Harford County that may be appropriate for him to attend. In our view, it was unreasonable for the local board to stay silent and not address potential alternatives for S.S. other than Patterson Mill, particularly in light of the medical documentation presented by his mother. A remand is therefore in order so that the school system can address Appellant's concerns and reach an appropriate solution.

In addition to reversing in this particular case, we will be examining transfer policies across the State at a future State Board meeting to determine whether we should adopt regulations concerning student transfers.

CONCLUSION

We reverse and remand this case for the local board to consider alternatives other than a transfer to Patterson Mill that would address S.S.'s physical and mental challenges.

Signatures on File:

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October 23, 2018