

JASON J. and TARA P.,

Appellant

v.

CHARLES COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-29

OPINION

INTRODUCTION

Jason J. and Tara P. (“Appellants”) appeal the decision of the Charles County Board of Education (“local board”) denying a transfer for their son from his zoned school. The local board filed a response, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants replied and the local board responded.

FACTUAL BACKGROUND

Appellants’ son, R.J., will be entering the fifth grade this fall. Beginning in kindergarten, R.J. attended his zoned school, Walter J. Mitchell Elementary School (“Mitchell Elementary”), part of Charles County Public Schools (CCPS). During the 2018-19 school year, CCPS changed its school attendance zones and R.J.’s home address no longer fit within the Mitchell Elementary attendance area. Instead, CCPS assigned R.J. to attend Mary H. Matula Elementary School (“Matula Elementary”) for the 2019-20 school year. Both schools are located about three miles from Appellants’ home. (Appeal; Local Board Response).

On February 6, 2019, Appellants filed a “School Change Request” form asking that R.J. remain at Mitchell Elementary for the 2019-20 school year. R.J.’s mother stated that she works in Virginia and has to leave early every day to commute while R.J.’s father works a shift schedule as a corrections officer. R.J.’s grandmother watches him in the mornings and afternoons and she lives within the Mitchell Elementary school zone. In addition, Appellants explained that R.J. was diagnosed with epilepsy and seizures in 2017 and that he had his first seizure at Mitchell Elementary, where school staff were aware of and able to treat his condition. Appellants stated that they knew the school staff at Mitchell Elementary could properly treat R.J.’s medical condition and implement his Section 504 plan.¹ R.J.’s mother indicated that R.J.’s seizures could be triggered by sleep deprivation, which might be brought on by the stress of attending a new school without his regular group of friends. She acknowledged that she did not know whether R.J. would have seizures, but stated she was “very concerned about it.” (Local Board Response, Attachment 4).

¹ Section 504 of the Rehabilitation Act of 1973 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal funding through the U.S. Department of Education.

Appellants attached to the school change request a letter from Kathryn Havens, a certified physician assistant, and Dr. William Gaillard, Chief of the Child Neurology and Comprehensive Pediatric Epilepsy Program at Children’s National Medical Center in Washington, D.C. The letter explained that R.J. began treatment for epilepsy after an episode on a school bus. R.J. receives medication to treat his epilepsy and has not had a seizure since January 2018. “It would be in [R.J.’s] best interest to remain in his current school for his last year of elementary school,” the letter stated. The letter observed that R.J. “is comfortable with the school environment and a change in elementary school for a year would cause unwanted stress.” The letter further stated that school staff at Mitchell Elementary know about R.J.’s seizures and how to respond to keep R.J. safe. Appellants included the minutes of a September 17, 2018 meeting in which the school system found R.J. eligible for a Section 504 plan related to his epilepsy and seizures. (Local Board Response, Attachment 4).

On March 6, 2019, Kathy Kiessling, the CCPS Director of Student Services denied the school change request. She explained that, under CCPS Board Policy 5126 and CCPS Superintendent’s Rule 5126, the school system considers transfers only if the requested school has adequate space to accommodate additional students outside of their attendance zones. Unusual hardship is a reason for a transfer, but the school system does not grant transfers for “issues common to large numbers of families,” including “typical daycare issues.” Ms. Kiessling stated that “all schools are equipped to deal with medical concerns and 504 needs” and that daycare is not a reason for a school change. (Local Board Response, Attachment 4, 5).

Appellants appealed to the superintendent’s designee. Appellants again presented the letter from the medical staff at Children’s National Medical Center. They also included contact information for a clinical coordinator and family counselor in the hospital’s Department of Neurology who agreed to speak with school officials about R.J. (Local Board Response, Attachment 6).

The superintendent’s designee denied the school change request. He found that the request did not meet the school system’s guidelines and encouraged Appellants to meet with the principal at Matula Elementary to discuss R.J.’s needs and transition. (Local Board Response, Attachment 7).

Appellants appealed to the local board, emphasizing that the transfer would be for only one year because R.J. would be entering his final year of elementary school. In addition to the materials previously submitted to the school system, Appellants included articles from Science Daily describing research into the links between stress and increased seizures in epilepsy patients, along with an article from a medical journal describing research on the topic. (Local Board Response, Attachment 8).

On May 14, 2019, the local board denied the school change request. The board cited CCPS Superintendent’s Rule 5126, which provides that the school system must deny a transfer if the receiving school lacks adequate space. If there is adequate space, the school system may approve a transfer based on an unusual hardship. The board stated that a transfer may not be approved to “undo redistricting, or for daycare concerns.” The board also determined that “there is no reason to conclude that the Appellant’s medical issues would not be properly managed at his new school.” (Local Board Response, Attachment 1).

This appeal followed. In their appeal letter, Appellants emphasize that they are concerned with the stress of switching elementary schools during R.J.'s final year, but believe that he will have sufficient supports in place for middle school and will be prepared for that transition. (Appeal).

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).²

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).

CCPS 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 CCPS permits school transfers outside of one's attendance area. *See* CCPS Local Board Policy 5126; CCPS Superintendent Rule 5126. One of the transfer reasons is “unusual hardship,” which is considered on a case-by-case basis and is not granted for “issues common to large numbers of families, such as the need for a particular schedule, sibling enrollment, redistricting, or typical daycare issues.” CCPS Superintendent Rule 5126.

The local board denied the Appellants' transfer request for two reasons: Appellants do not meet the definition of an unusual hardship and, even if they did, the requested school is overcrowded. We shall take each issue in turn.

We have previously held that in order to justify a transfer for a health-related 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.* 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 Karina D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-01 (2019); *S.G. and D.G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-04 (2015).

Based on our prior cases, Appellants' desire to have R.J. stay at Mitchell Elementary because the staff are trained to address R.J.'s medical needs is not a sufficient hardship to grant a

² The State Board has published proposed regulations that would alter this standard of review in student transfer cases. Because the regulation adoption process is still ongoing, we apply our current standard, not the new proposed regulation standard, in deciding this appeal.

transfer. The school system indicates that it can meet R.J.'s medical needs elsewhere and Appellants do not dispute this claim. But Appellants also raised concerns that the stress of the school change in R.J.'s last year of elementary school would pose a risk of seizures. The medical staff who have treated R.J. at Children's National Medical Center offer support for Appellants' position. Appellants point out that these concerns go beyond the usual stress that any student might face in a new school because increased stress can harm R.J. through an increased chance of seizures.

This is admittedly a rare case in which the medical concern – an increased risk of seizures for R.J. – can be directly tied to the specific school change. The situation is analogous to one we addressed in *Wallace and Marlene D. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 18-14 (2018). In *Wallace and Marlene D.*, medical professionals opined that a student's blood disorder could be triggered by increased anxiety and stress. *Id.* Because the student faced bullying at his assigned school, they recommended a transfer for health reasons in order to reduce his anxiety and stress. *Id.* Although this case involves a request to stay at a previously assigned school, rather than move to a "new" school, the medical concerns are similar. Given that Appellants and R.J.'s doctors have expressed legitimate concerns about his health in light of the school change, it is our view that the unusual hardship criteria has been met. The local board erred by concluding otherwise.

The board also denied the school change request for another reason: the requested school is overcrowded. According to the local board, Mitchell Elementary has a state-rated capacity of 606 students and is projected to have 630 students for the 2019-20 school year. The State Board has previously upheld policies 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).

Although we have long held that having such a transfer policy is not arbitrary, unreasonable, or illegal, we have also expressed the view that school systems must consider the individual circumstances of each case. See *Angela S. v. Harford County Bd. of Educ.*, MSBE Op. No. 18-39 (2018) (remanding case because local board denied a transfer based on overcapacity without considering other alternatives to address a student's physical and mental challenges). Here that would mean balancing the compelling, unusual hardship presented by Appellants against the school system's desire to keep schools from becoming overcrowded. The local board did not conduct this balancing because it did not find that Appellants presented an unusual hardship.

We could remand the case in order for the local board to reevaluate the case in light of Appellants' unusual hardship. But given that the 2019-20 school year is upon us, a remand would only needlessly prolong this case. See *Leslie P. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 19-04 (2019) (ordering a student transfer rather than remanding a case in light of material new evidence presented by Appellants on appeal). Instead, we consider whether any reasoning mind could conclude that the school system's generalized concerns about overcrowding take precedence over the specific danger posed to R.J. by a school transfer. In our view, no reasoning mind could conclude that R.J.'s health and safety should be put at risk under these circumstances. Accordingly, R.J. should remain at Mitchell Elementary for the 2019-20 school year.

CONCLUSION

We reverse the decision of the local board because it is arbitrary and unreasonable.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

August 27, 2019