

JOSE U.,

Appellant

v.

HARFORD COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-36

## OPINION

### INTRODUCTION

This is an appeal of the Harford County Board of Education's ("local board") decision denying the Appellant's request for a boundary exception for his son. The local board filed a Memorandum in Response to Appeal maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant responded to the local board's Memorandum and the local board replied.

### FACTUAL BACKGROUND

Appellant's son, E.U. is currently in the 9<sup>th</sup> grade. On March 4, 2019, Appellant submitted a boundary exception application for his son to attend Edgewood High School (Edgewood) rather than Joppatowne High School (Joppatowne), E.U.'s assigned school. The primary reason stated for the request was curriculum/program of study. E.U. was interested in the countywide academic programs offered at Edgewood, specifically the International Baccalaureate (IB) Program and the Academy of Finance. (Response Ex. 1). By letter dated April 26, 2019, Ms. Antal, Pupil Personnel Worker, advised the Appellant that the boundary exception request was denied for failure to meet the criteria for a boundary exception. (Response Ex. 2).

On April 28, 2019, Appellant requested that Ms. Antal reconsider her decision denying the boundary exception request. In a May 10, 2019 letter, Mr. Hennigan, the Director of Student Services, upheld Ms. Antal's denial. He explained that Appellant's request did not meet the boundary exception criteria because E.U. was not accepted into either the IB Program or the Academy of Finance, a necessary prerequisite to accessing either program at the school. (Response, Ex. 4). Appellant further appealed to the Superintendent on May 18, 2019, who denied the request for the same reason. (Response Exs. 5 & 6).

On June 22, 2019, the Appellant appealed the Superintendent's denial to the local board, adding that E.U.'s brother attends Edgewood and has received a good education there. (Response Ex. 7). In a unanimous decision, a five member panel of the local board denied the Appellant's appeal. The local board panel found that the Appellant failed to state any hardship in the application sufficient to justify a boundary exception. In addition, it found that the specific

curriculum identified in the request (IB Program and Academy of Finance) require admission by selection and E.U. was not selected for either program. (Response Ex. 10).

This appeal followed.

### 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.01.05.06(B)(1) & (2). The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06(D).<sup>1</sup>

### LEGAL ANALYSIS

Harford County Public Schools grants boundary exceptions in certain situations. One of the relevant situations is for the student to pursue a program of study that is unavailable at the student’s home school. (Response Ex. 11, Administrative Guideline III.B.2). However, requisite skills and program capacity are factored into the decision for specialized program requests under this exception. *Id.* The other relevant situation is for hardship if the applicant demonstrates that the student’s welfare, or that of the student’s family, may be substantially adversely impacted if the requested boundary exception is not granted, as supported by documentation. (Response Ex. 11, Administrative Guideline III.B.3).

Appellant filed the boundary exception based on the desire for his son to access the IB Program or the Academy of Finance. Because his son had to first be accepted into those programs in order to access them, the school system denied the request. Appellant argues that his son qualified for those programs, but that he did not gain entry because of a cap on admissions to the programs. The record indicates that the school capped the IB program at 55 students per class because of “limitations of physical space and necessary resources.” The record does not indicate whether Appellant’s son qualified for the program but failed to obtain one of the limited spots, or simply did not meet the program’s qualifications. The difference is immaterial, however, because Appellant’s son did not gain entry to those programs. Even were his transfer to be granted based on the curriculum, he could not access it.

On appeal, Appellant raises two new issues that were not presented before the local board. The State Board has long declined to address arguments that were not first raised before the local board. *See Nikol E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-18 (2019) (citing cases). The reason is that we cannot fault a local board for failing to reach conclusions based on arguments and information that were not presented to it. We consider appeals based on the record presented to the local board and judge the board’s decisions accordingly.

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<sup>1</sup> 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.

In limited circumstances, however, the State Board may review additional evidence if it is shown that the evidence is material to the issues in the case and there were good reasons for failure to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04C. For evidence to be material, it must be of such a nature that knowledge of the item would affect a person's decision-making. Black's Law Dictionary (10th Ed. 2014). The State Board may consider the additional evidence or remand the appeal to allow the local board to review the additional evidence. COMAR 13A.01.05.04C.

The first new issue raised by Appellant is that Joppatowne High School found elevated levels of lead in 30 (out of 206) sinks at the school. In response, the school system sent warning letters to parents and placed signs on the sinks that stated "hand washing only." The local board acknowledges that this information may not have been available to Appellant previously. The board points out, though, that Edgewood High School, the school Appellant's son wishes to attend, has 15 sinks (out of 361) with elevated lead levels and the school system has taken similar precautions there. Assuming that this information is material new evidence, it appears that the local school system has taken reasonable steps in order to mitigate any negative health effects from the elevated lead levels in the sinks. In addition, a transfer would not change the fact that some sinks at both schools have elevated levels of lead. In our view, this new information does not provide a legal basis to overturn the local board's decision.

The second issue is Appellant's concern with fights and bullying at the school, as well as high rates of suspensions and expulsions. Since attending Joppatowne High School, Appellant states that his son has witnessed bullying and a fight and is not excited about school. In *Adele and Nicholas B.*, the State Board addressed a similar question of whether concerns about the potential for bullying, absent any actual incidents involving the specific student at school, required a local board to grant a transfer based on a unique hardship. MSBE Op. No. 13-46 (2013). We upheld the denial of a transfer, but provided the following statement:

We expect that staff at [the assigned school] will keep a very close watch on this issue and maintain regular contact with the Appellants to continuously evaluate the situation. If bullying or harassment incidents arise targeting [the student] at school, [the school] staff must take swift action to remedy the situation, including considering the transfer request anew if appropriate under the circumstances. Likewise, we expect Appellants to keep the school informed of any bullying or harassment incidents they believe are occurring at school. *Id.*

In our view, this statement is appropriate in Appellant's case. Although we deny the boundary exception appeal, we ask the local board to be vigilant regarding bullying and other safety concerns at Joppatowne High School.

## CONCLUSION

For the reasons stated above, we find that the local board's decision was not arbitrary, unreasonable or illegal and we affirm the denial of the Appellant's request for a boundary exception for his son.

Signatures on File:

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Warner I. Sumpter  
President

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Jean C. Halle  
Vice-President

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Gail H. Bates

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Clarence C. Crawford

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Charles R. Dashiell, Jr.

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Vermelle D. Greene

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Justin M. Hartings

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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David Steiner

October 22, 2019