

J.S. AND J.S.,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-07

OPINION

INTRODUCTION

Appellants challenge the decision of the Harford County Board of Education (“local board”) denying their request for a boundary exception for their son to attend the Interactive Media Production program offered at Bel Air High School. The local board responded to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

The Appellants’ son, Student X, is a ninth-grade student residing in the attendance area for [REDACTED] High School in Harford County. Student X was previously enrolled in Harford County Public Schools (“HCPS”) for middle school. Appellants maintain that in December 2022, while trying to determine their son’s educational plan for high school, they spoke to Kyle Benfield, a teacher and football coach at Bel Air High School (“BAHS”), about the Interactive Media Production (“IMP”) program offered there. (Bd. Exs. 7 & 9). Mr. Benfield is also the IMP program coordinator. (Bd. Ex. 14). Appellants ultimately decided to enroll Student X in a private school where he began the 2023-2024 school year. After the first quarter of the school year, however, the Appellants withdrew Student X from the private school on October 30, 2023. (Appeal).

Around this time, the Appellants maintain that they again spoke with Mr. Benfield to inquire about the IMP program at BAHS and he advised them that there was still room in the program and that their son would have no problem getting caught up. Appellants thereafter enrolled Student X in [REDACTED] High School, his home school, and began the process of applying for a boundary exception to attend BAHS to partake in the IMP program. *Id.*

In HCPS, students who desire to attend a school outside of the attendance area where the student would otherwise attend school must obtain approval to do so by obtaining a boundary exception. The HCPS Procedure entitled *Administrative Guidelines for Evaluating Boundary Exception Requests* (“Boundary Exception Procedure”) at III.A.7.a requires boundary exception applications to be submitted no later than June 1 of the school year prior to the year for which the exception is requested. (Bd. Ex. 2 at 3). A parent or guardian completing the application is

required to select a primary reason for seeking the exception that corresponds to one of the qualifying reasons set forth in the Procedure. (*See* Bd. Ex. 1).

The Appellants submitted their application for a boundary exception on October 31, 2023, selecting “Curriculum (program of student for high school)” as the primary reason for the request. (Bd. Ex. 1). They elaborated that Student X wished to participate in the IMP program offered at BAHS. *Id.*

The Pupil Services Office (“PSO”) reviewed the Appellants’ application, which involved communicating with the relevant BAHS staff members, including the BAHS principal. By letter dated November 2, 2023, Vicki Antal, Pupil Personnel Worker, advised the Appellants that their boundary exception request was denied. (Bd. Ex. 6). Ms. Antal’s letter stated that “[i]n reviewing the application, it was found that the parent’s initial inquiry about the boundary exception pertained to the student participating in a sports team at Bel Air High School. Boundary exceptions are not approved for choice of sports teams.” *Id.*

Appellants appealed the denial to Buzz Williams, Supervisor of Pupil Personnel. (Bd. Ex. 7). The Appellants took issue with the denial because the Appellants’ application did not mention sports, but rather sought the exception based on course of study. *Id.*

By letter dated November 6, 2023, Mr. Williams upheld the denial of the boundary exception request. (Bd. Ex. 8). He noted that course of study may serve as a qualifying reason if a program of study is unavailable at the student’s home school and the student is eligible to enroll in the program of study. He explained that after consulting with the principal of BAHS, he determined that the IMP program is only available for enrollment to incoming ninth grade students and that Student X was not eligible for entry into the program because it was the second quarter of the 2023-2024 school year. *Id.* He further stated as follows:

Your appeal letter cites that PPW Antal’s assertion that the boundary exception is motivated by [Student X’s] interest in sports is “patently false.” You requested documentation to show otherwise. PPW Antal cited a firsthand report from [BAHS] counselor Knight which stated that she spoke with you (Mr. [S]) on October 30th, 2023, and you stated that you had been talking with coaches and the coaches advised that if you wanted [Student X] to attend [BAHS], he would need to request a signature program. On 11/06/2023, I called counselor Knight to verify this information. She stated that this was correct, and she had no doubt that the request was motivated by sports participation, which is what she reported to PPW Antal. The preponderance of evidence shows that your request was at least partially based on sports interest as a qualifying reason. Since sports is not a qualifying reason and [Student X] is not eligible for the IMP program, the boundary exception is denied.

Id.

The Appellants appealed Mr. Williams’ decision to Bernard Hennigan, Executive Director of Student Support Services, acting as the Superintendent’s Designee. (Bd. Ex. 9). The

Appellants disputed that it was too late for their son to enroll in the IMP program as Mr. Benfield had told them in October that there was still space in the program and that it was not too late to apply. They also disputed that the request was motivated by a desire to participate in sports at BAHS rather than a legitimate interest in the IMP program simply because they spoke with an individual who is also the BAHS football coach (and also the IMP program coordinator) and Appellants happened to mention that discussion to the BAHS counselor. *Id.* By letter dated November 10, 2023, finding no new evidence to overturn the decision, Mr. Hennigan denied the Appellants' request for a boundary exception for lack of a qualifying reason. (Bd. Ex. 10). He stated that the request failed to meet the criteria under the boundary exception guidelines. *Id.*

The Appellants appealed Mr. Hennigan's decision to the local board. Appellants, through counsel, submitted a written memorandum with exhibits, reiterating the basis for the boundary exception and essentially arguing the same points previously made. (Appeal, Ex. 11).

On November 17, 2023, Mr. Williams provided a responsive memorandum to the local board explaining why the denial should be upheld. (Bd. Ex. 13). He explained that the IMP program is a formal "signature program" at the school for which boundary exceptions are not permitted, as opposed to a less formal "program of study" for which boundary exceptions are allowed. *Id.* Mr. Williams also stated:

[T]his is a clear case of "school choice" via "sports team preference." This is a pervasive problem across all high school sports in the country and State, as well as Harford County. In recent years some of our sports teams have been forced to forfeit games, even seasons, when found to participate in fraudulent enrollment and recruitment efforts. These efforts are not open in plain sight. Participants are not going to openly admit what they are doing. They are carried out under the radar, through backdoor deals, secretive networking, and fraudulent documentation. Our PPWs spend a lot of time investigating sports recruitment and "school choice" cases to help protect our principals and students from forfeits, embarrassment, and lost scholarship opportunities.

Id.

In a decision issued on December 11, 2023, by a 6-1 vote, a panel of the ten-member local board upheld the denial of the boundary exception. (Bd. Ex. 14). The board stated that Mr. Benfield had incorrectly advised the Appellants that there were still openings in the IMP program through a boundary exception. *Id.* The board further stated that while the evidence suggests that there were sports related motivations for the boundary exception request, the evidence also supports the decision that there were applicable requirements for the IMP program that the student could not satisfy in that it is a signature program not subject to boundary exceptions and it involved a four-year course of study with a separate application process and Summer 2023 application deadline. *Id.* As such, the IMP program was closed to boundary exception applications as previously explained by Mr. Williams.

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. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A local board 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 absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right of privilege to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George’s Cnty.*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel Cnty. Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

Pursuant to the HCPS Boundary Exception Procedure, students are required to attend their assigned school unless they are granted a special exception to attend a school outside their geographic attendance area. (Bd. Ex. 2). The exception applicable to this case is the one for curriculum (program of study) which requires the applicant to demonstrate that a high school student has a genuine and sincere desire to pursue a program of study unavailable at the student’s home school. (*Id.* at III.B.2). The Procedure states that for “requests related to specialized programs, requisite skill and program capacity will factor into the decision.” *Id.* It also states that applications will not be accepted to magnet or signature programs as they require a separate application process. (*Id.* III.A).

The Appellants maintain that the boundary exception should have been granted because they sought enrollment of Student X at BAHS for curricular reasons to participate in the IMP program not offered at their home school, which they claim is a qualifying basis for granting the request. The Boundary Exception Procedure, however, excludes enrollment in a signature program as a qualifying basis for a boundary exception. As the local board held in its decision, HCPS considers the IMP program to be a signature program. The decisions of Mr. Williams and the local board also make clear that it was too late for Student X to join the signature program two months into the school year. Although the Appellants dispute the characterization of the IMP program, it is within the discretion of the local board to determine how such programs are classified for boundary exception eligibility.¹ This was a valid basis for denial of the Appellant’s request.²

The Appellants focus greatly on a conversation they claim to have had with Mr. Benfield about space availability and late admission the IMP program. Even if Mr. Benfield told the Appellants that the IMP program was not full and that Student X could submit a late application

¹ We do not find the way in which the various special programs are listed on the HCPS website to be dispositive of the boundary exception issue. Although we recommend that the local board consider a way to provide more transparency to parents about which programs qualify under the program of study boundary exception.

² We also point out that the Boundary Exception Procedure expressly establishes a June 1 deadline for submission of boundary exception applications, which the Appellants missed by several months.

for a boundary exception, those comments do not make the local board’s decision arbitrary or unreasonable. As the local board pointed out, Mr. Benfield was mistaken in his comments. He is not a decision-maker for HCPS’s boundary exception applications and has no authority to grant such an exception. That authority lies with the Pupil Services Office, the Superintendent’s Designee, and the local board. There was no requirement, as Appellants maintain, for Mr. Williams or the local board to engage in further fact finding about the IMP program with Mr. Benfield.³

A good portion of the appeal focuses on the issue of sports participation which is not listed as a qualifying basis for a boundary exception under the Boundary Exception Procedure. There is no dispute that the Appellants did not indicate sports as basis for their request in their application or their appeals, and expressly denied that sports participation was the reason Student X was seeking to attend BAHS. Regardless, there was nothing improper with the decision makers in this case considering information from relevant HCPS staff surrounding the boundary exception and conversations between the Appellants and school system staff on the issue. Given the information gleaned from both the PPW and the BAHS counselor, we do not find the conclusion that the Appellant’s request was partially motivated by sports participation to be arbitrary or unreasonable. Nevertheless, there are other unrelated bases sufficient to support the local board’s decision.

CONCLUSION

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

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty

Monica Goldson

Nick Greer

Irma E. Johnson

Rachel McCusker

Samir Paul

³ Although the Appellants request an evidentiary hearing, there is no requirement for an evidentiary hearing in a case such as this. See *J.L. and Y.L. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 21-52 (2021) citing *Nicole K. v. Charles Cnty. Bd. of Educ.*, MSBE Op. No. 16-14 (2016)(no constitutional or statutory basis for an evidentiary hearing); *Robinson v. Charles Cnty. Bd. of Educ.*, MSBE Op. No. 11-21(due process does not require a hearing when there are no disputes of material fact).

Absent:

Joshua L. Michael, Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Joan Mele-McCarthy

Holly Wilcox

March 26, 2024