

V.B. AND H.B.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-12

OPINION

INTRODUCTION

Appellants appeal the decision of the Montgomery County Board of Education (“local board”) denying their request for transportation to accompany a granted Change of School Assignment (“COSA”) request for their daughter to attend a middle school other than her assigned middle school. The local board filed a response to the appeal. The Appellants responded, and the local board replied.

FACTUAL BACKGROUND

The Appellants are the parents of Student X, who is a grade 7 student enrolled via an approved COSA request in the autism program at Rosa Parks Middle School (“RPMS”) for the 2023-2024 school year. Student X has an Individualized Education Program (“IEP”) and during the 2021-2022 school year, Student X’s IEP team, including Appellants, convened to consider Student X’s transition from elementary school to middle school and determined that Student X continued to require the autism program. Student X’s home school, Dr. Martin Luther King Middle School (“MLKMS”), does not offer the autism program. (R. 20). There are seven middle schools in Montgomery County Public Schools (“MCPS”) that host the special education program that Student X needs. *Id.*

MCPS staff in the Department of Special Education Services, the Department of Transportation, and the Office of Facilities Management work together to identify school sites and articulation patterns based on the number of students identified as needing the specialized program and where those students reside. *Id.* Articulation patterns are reviewed annually and revised, when necessary, based on patterns of enrollment and changes in facilities. *Id.* According to the articulation patterns developed in the spring of 2022 for the 2022-2023 school year, John Poole Middle School (“JPMS”) was identified as the special program site for all students in the MLKMS catchment zone who required such services. At that time other middle school sites located closer to Student X’s home address were overenrolled. *Id.*

Student X was enrolled in the JPMS during the 2022-2023 school year¹ with door to door transportation services provided. Appellants were unhappy with the placement because of the distance from their home (approximately 15 miles), the early bus pick time of 6:40 a.m., and the commute time (approximately 40 minutes). (R. 20). In December of 2022, the Appellants cancelled the morning bus service and drove Student X to school for the remainder of the year. The Appellants were not always able to deliver Student X to school on time. *Id.*

Based on a change of enrollment and aware of the Appellants' concerns, at some point in the spring of 2023, the special education program specialist at JPMS discussed with the Appellants the possibility of Student X attending the autism program at Montgomery Village Middle School ("MVMS") for the 2023-2024 school year, with transportation services. *Id.* MVMS is approximately 4 miles from Student X's residence and is the closest school that offers the special program. (Local Bd. Response at 3, and R. 20). The Appellants did not want Student X to attend MVMS. (R. 20). The Appellants were informed that there was space at the RPMS, but that there was no transportation from their home to RPMS. *Id.*

On July 17, 2023, the Appellants submitted a COSA request for Student X to transfer from the autism program at JPMS to the program at RPMS which is approximately 11 miles from their residence. (R. 1). The COSA application was signed by the father of Student X acknowledging his understanding that transportation is not provided for students on an approved COSA. However, the Appellants also requested transportation to RPMS. *Id.* Local Board Policy JEE *Student Transfers* provides that parents accepting a COSA assume responsibility for transportation. JEE(C)(2).

By letter dated August 21, 2023, Kia Middleton-Murphy, Acting Director, Department of Special Education Services, informed the Appellants that their request to transfer Student X to RPMS was granted; however, the request for transportation was denied. (R. 3 - 4). The letter states that the COSA will be granted for the 2023-2024 school year, without transportation, provided the Appellants agree to the following:

1. I understand that [MCPS] provides transportation only to students who attend their assigned schools.
2. My request for a COSA is based solely on personal preference. I understand that MCPS has offered an appropriate program for my child at [JPMS]. I concur that accepting a COSA does not constitute a change in educational placement for my child.

(R. 3). Appellants accepted the COSA, without transportation, and Student X began the 2023-2024 school year at RPMS. (R. 20).

On September 8, 2023, the Appellants filed a Complaint from the Public and appealed the decision to deny transportation to RPMS and requested door to door transportation to RPMS. (R. 5-6). Adrian Charley, Coordinator Division of Appeals, and the hearing officer investigated the

¹ Prior to the start of the 2022-2023 school year, the Appellants submitted a COSA request for Student X to attend another middle school with transportation. It is not clear from the record what school was requested in the Appellants' first COSA. However, the Appellants did not accept this COSA because transportation was not provided. (R. 5).

complaint. Shortly after the appeal was filed Mr. Charley spoke with the Appellants by phone and once again offered to transfer Student X to MVMS with transportation provided from Neelsville Middle School which is approximately 1 mile from the Appellants' residence as there is a bus stop at NMS for transportation to MVMS. (R. 10 and Appellants' Response, Attach. A.) The Appellants indicated that they did not want Student X to have to adjust to another school. *Id.* Ultimately, as this appeal progressed, the Appellants did not agree to a transfer to MVMS, with door to door transportation services. (R. 10).

On October 20, 2023, Mr. Charley recommended to the Chief of District Operations, Dana E. Edwards, that the Complaint be denied as Local Board Policy JEE *Student Transfers* provides that parents accepting a COSA assume responsibility for transportation. (R. 9 – 10). Ms. Edwards, acting as the Superintendent's Designee, after reviewing and adopting the report and recommendation of the hearing officer, also denied the transportation request. (R. 11).

On November 28, 2023,² the Appellants appealed the Superintendent's Designee's decision to the local board. (R. 13 – 16). The Superintendent also reviewed this matter and requested that the local board uphold the denial of transportation. (R. 19 – 22). The local board reviewed this matter based on the written record in closed session on January 11, 2024. (R. 25 – 26). On February 6, 2024, the local board issued its Decision and Order and upheld the decision to deny transportation in accordance with Local Board Policy JEE *Student Transfers* requiring parents accepting a COSA to assume responsibility for transportation. *Id.*

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations 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 may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.06B. The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

Student X attends RPMS through an approved COSA requested by the Appellants. Local Board Policy JEE *Student Transfers* provides that parents accepting a COSA assume responsibility for transportation. JEE(C)(2). They are not entitled to school system transportation. That requirement was set forth in the letter granting the COSA request without transportation. There is no dispute that the Appellants were aware of this requirement. Decisions related to school system policy must be made with consistency and lack of ambiguity to avoid arbitrary decision-making. We do not find that the local board acted arbitrarily, unreasonably, or illegally in following its existing policy. *See D.C. and N.C. v. Carroll Cnty. Bd. of Educ.*, MSBE Op, No. 24-08 (2024).

² Although the Appellants' appeal was submitted two days after the filing deadline, the local board accepted the late filing given the intervening Thanksgiving holiday and related system-wide closure. (R. 17).

The Appellants' arguments concerning transportation in this case confuse transportation requirements under the IDEA with the student transfer policy. These are separate and distinct processes that are not in conflict. As to the issue of transportation under IDEA, that issue is not properly before this Board. The State Board has long declined to extend its jurisdiction to resolve special education disputes because there are other existing forums available. *See Semere D. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 17-09 (2017) (citing cases). These specialized forums exist through the IDEA to resolve these complex and fact-intensive matters in a timely fashion. To the extent that the Appellants believe their child is entitled to transportation as a related service under the IDEA, the Appellants may avail themselves of these dispute resolution options, including the State special education complaint process, mediation, and/or a due process complaint at the Office of Administrative Hearings.

CONCLUSION

For the foregoing reasons, we do not find the local board's decision to be arbitrary, unreasonable, or illegal and we affirm the local board's denial of Appellants' request for the provision of transportation services.

Signatures on File:

Joshua L. Michael
Vice-President

Chuen-Chin Bianca Chang

Susan J. Getty

Monica Goldson

Nick Greer

Rachel McCusker

Joan Mele-McCarthy

Absent:
Clarence C. Crawford, President
Irma Johnson
Samir Paul

Holly Wilcox

Abstained:
Shawn D. Bartley

May 21, 2024