

CATHERINE H.,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-25

OPINION

INTRODUCTION

Appellant challenges the decision of the Prince George's County Board of Education (local board) denying her request to transfer her son from Thomas Johnson Middle School (Thomas Johnson) to Martin Luther King, Jr. Middle School (MLK). The State Board previously considered this appeal and remanded it to the local board in order for the board to provide a rationale addressing the safety issue raised by the Appellant, which was the primary basis for her transfer request. MSBE Op. No. 17-02. The local board issued an Order in response to the State Board's request. The Appellant has reinstated her appeal.

FACTUAL BACKGROUND

During the 2016-2017 school year, Appellant's son was in the 6th grade. He was slated to attend Thomas Johnson, the school serving the Appellant's geographic attendance area. The Appellant applied for a transfer to MLK. While the transfer request was pending, Appellant's son was admitted to the Chesapeake Math and IT Academy Public Charter School (CMIT) through lottery. He attended school at CMIT for approximately one month, but Appellant removed him after what she believed was a biased school investigation of an incident involving a substitute teacher, who was ultimately fired. (Appeal, 10/19/16). Because the school system had denied her transfer request, Appellant ultimately homeschooled her son for the remainder of the school year. However, her son attended Thomas Johnson for several days while the Appellant set up the homeschooling arrangements. (Appellant's Reply, 4/8/17).

We previously set forth the factual background regarding the transfer case in MSBE Op. No. 17-02. We repeat that information below:

On May 11, 2016, Appellant submitted a student transfer request form asking that her son be permitted to attend MLK instead of Thomas Johnson. MLK was listed under the heading "schools with available seats for FY2016-2017 student transfers" which was part of a school system news release dated May 6, 2016. The Office of Student Records, Transfers and Archival Services denied the request on June 21, 2016 due to a lack of available seats in the grade requested at MLK.

By letter dated July 2, 2016, Appellant appealed the decision of the Office of Student Records and Transfers. (Motion, Ex. 1). She argued that class size should not be the determinative factor in denying the appeal because “there simply is no perfect number of seats” for a class. She also argued that teachers and administrators have made room for students in classrooms in the past for any number of reasons. In addition, she stated, “What concerns us most is that our neighbor, a Thomas Johnson student who would be riding [my son’s] bus, attacked my son a few months ago unprovoked and injured him badly enough to send him to the doctor and dentist.” *Id.*

By letter dated July 5, 2016, Aaron E. Price, Sr., Chief Hearing Officer of the Office of Appeals, acting as the CEO’s designee, advised the Appellant that her transfer request was denied. He explained that, pursuant to Administrative Procedure 5110.3, transfers are granted only if space is available in the requested school and that MLK was already at its State Rated Capacity. (Motion, Ex. 2). The letter did not address the Appellant’s safety concern.

By letter dated July 9, 2016, Appellant appealed Mr. Price’s decision to the local board. (Motion, Ex. 3). In addition to restating her prior arguments, Appellant provided additional detail about the attack on her son by their neighbor. Appellant stated that the then 6th grader told her son he was beating him up because “he wanted to be in a gang,” and that he could “kill one of [the son’s] relatives if he wanted” to do so. She again raised concerns about sending her son to the same school as the child that threatened and beat him. She also noted that Thomas Johnson is a turnaround school, where students have some of the lowest achieving performance on assessments, while MLK is not. *Id.*

Mr. Price responded to the appeal. He recommended that the local board deny the transfer because MLK was at its State-Rated Capacity. He also stated that MLK was “never listed as a school available for transfer.” (Motion, Ex. 4). Appellant responded to Mr. Price’s recommendation, pointing out that a PGCPs news release website contained a document issued May 6, 2016, listing MLK as a school “with available seats for FY2016-2017 student transfers.” (*See* Motion, Ex. 4).

The local board considered the appeal on August 25, 2016, and issued its written decision through a letter from local board counsel dated September 19, 2016. The local board upheld the decision of the CEO’s designee denying the transfer request based on lack of space at MLK. The local board also found that “there were no significant procedural irregularities observed that have prejudiced the child or parents in the process.” (Motion, Ex. 5). The local board’s decision did not address the safety issue raised by the Appellant.

After its initial review, the State Board remanded the case to the local board in order for the board to provide a rationale addressing the safety issue raised by the Appellant, which was the primary basis for her transfer request. *See Id.* In an effort to comply with the State Board's request, counsel for the local board sent a Supplemental Response to Appellant's Appeal to the State Board. It was signed only by counsel. In MSBE OR17-03, this Board again remanded the case to the local board for it to provide a rationale as part of a local board decision based on an affirmative vote of the local board sufficient to take action. We noted that although counsel had filed the Supplemental Response on behalf of the local board, a pleading filed by counsel could not serve as a proxy for the local board's decision.

Thereafter, the local board issued an Order reaffirming its denial of the transfer request based on the requirement that the administrative staff at Thomas Johnson meet with the Appellant to develop a safety plan for her son to attend school there.¹ The Order specified that the safety plan must include and address the following:

- Actions to ensure that Appellant's son and the other student are not assigned to the same class and are not permitted to be in the same class during the school day;
- Actions to ensure that appropriate supervision is provided for the student during lunch recess, recreational periods, and during time when he may be in the common areas of the school building;
- Assignment of a school staff administrator or other staff as a direct report for Appellant and her son, to report any potential safety concerns that arise for Appellant's son;
- Provision of information to Appellant and her son on the school system's policy and regulation for reporting and investigating complaints of bullying, harassment and intimidation;
- Sharing of the student safety plan with all relevant school building staff and Appellant's son's school bus driver;
- Alerting the school bus driver that if the students are both on the school bus, they cannot be seated in close proximity to each other; and
- Requiring the administrative staff at Thomas Johnson to work with the Transportation Office staff to include school bus safety protocol as part of the school safety plan.

The Appellant has reinstated her appeal, maintaining that she has "no faith" in any safety plan or the school's ability to carry it out. In the event the State Board decides in her favor, she asks that the State Board apply the transfer decision to the 2017-2018 school year. (Appellant's Reply, 4/8/17).

Appellant has also provided information regarding the short time her son attended Thomas Johnson at the start of the school year. She states that the student at issue found her son and entered his classroom without reason to be there. School staff required the student to leave class and he did. Appellant indicated that she filed a bullying form to report the incident.² *Id.*

¹ The staff involved must include the school principal, school counselor, pupil personnel worker, investigative counselor, and school resource officer.

² The local board maintains that staff appropriately responded to the incident and there was no further evidence of school based safety concerns between the two students. (Local Board's Supplemental Response).

Appellant also reports that there is roughhousing in the boys' bathrooms at Thomas Johnson, during which kids turn off the lights and try to knock people down. She claims that her son observed the roughhousing during the several days that he attended the school. *Id.*

STANDARD OF REVIEW

When reviewing a student transfer decision, the decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. *Id.*; see *Alexandra and Christopher K. v. Charles County Bd. of Educ.*, MSBE Op. No. 13-06 (2013). A decision may be arbitrary or unreasonable if it is (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached. COMAR 13A.01.05.05B.

LEGAL ANALYSIS

Appellant primarily seeks to transfer her son from Thomas Johnson to MLK based on safety concerns. She has explained that her son was attacked by their neighbor, a student at Thomas Johnson, which resulted in injury and serious threats to her son.³ Appellant maintains that her son and the student would be riding the same school bus to and from school.

Student transfer decisions 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). To that end, Prince George's County Public Schools' (PGCPS) developed Policy 5110.3 and Administrative Procedure 5110.3 to address the process for student transfers. Administrative Procedure (AP) 5110.3 (Student Transfers) allows the school system to grant transfers to students who seek to transfer between schools "if space is available in the requested school."⁴ AP 5110.3(II). Available space at a school is determined by the school's State-Rated Capacity (SRC), which is used by the Maryland Interagency Committee on School Construction and local school systems to determine the maximum number of students that can be accommodated within a school facility without impairing the delivery of education services. See COMAR 23.03.02.04A; AP 5110.3(III.H). In determining available space, PGCPS also considers actual capacity projections for student enrollment and seat availability. Thus, even if a school is below the SRC, a transfer may not be granted due to lack of seats in a specific grade. AP 5110.3(II). The State Board has long recognized that limiting student transfers based on school utilization and over-capacity concerns is a legitimate and reasonable justification for denying transfer requests. See *Mr. and Mrs. T. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 12-50 (2012); *Philip and Deborah W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011).

Consistent with its transfer policy and procedure, the local board denied the Appellant's transfer request due to over-capacity concerns at MLK. It is the local board's view that Appellant's safety concerns arose out of a community-based conflict and that the concerns can

³ Appellant believes the attack was part of a gang initiation for the student.

⁴ PGCPS does not grant transfers in or out of newly constructed/newly opened schools during their first year of operation. AP 5110.3(III)(Q). Nor does it grant transfers to elementary and middle school students to attend a school operated before and aftercare program. AP 5110.3(III)(P).

be properly addressed through the implementation of a safety plan at Thomas Johnson. The safety plan would be developed by school administrative staff in consultation with the Appellant and would essentially prevent interaction between the two students while in school and on the school bus. It would also provide the Appellant and her son a direct contact to deal with any safety concerns that arise. (Local Board's Order). The local board maintains that, if a school-based conflict were to occur between the students, PGCPs would address the matter through student conflict resolution and PGCPs disciplinary procedures. (Local Board's Supplemental Response).

Safety Concerns

Safety of students in school and while riding the school bus is of the utmost importance to this Board. On its face, the local board has responded reasonably to the Appellant's safety concerns by requiring implementation of a safety plan if the Appellant were to enroll her son at Thomas Johnson. The school is to take actions necessary to keep Appellant's son and the student apart and to monitor them closely. The plan will designate a person to whom the Appellant and her son can report any problems that arise. The Appellant, however, does not trust the administration and staff at Thomas Johnson to follow a safety plan based on her experiences with the school not following a doctor's note regarding stair use for her son and attendance recordkeeping issues after her son began homeschooling.

We agree with the local board that the Appellant's preconceptions that the proposed safety plan will not be effective or properly implemented does not render the local board's decision arbitrary or unreasonable. But, implementing a school safety plan will not be an easy undertaking. Thomas Johnson enrolls approximately 1000 students, many of whom have serious learning needs. The Appellant does not trust the school staff. In order to build that trust, the school staff must develop the plan in consultation with the Appellant.

The safety plan developed must be specific, designate by name the person or persons responsible for carrying out the plan and monitoring that it is working, and name the school staff administrator with whom Appellant and her son can communicate safety concerns. The staff at Thomas Johnson must carefully devise the plan to keep the Appellant's son safe, fully considering the culture of the school itself, including any potential gang activity, and the various scenarios that can arise in the school setting and on the school bus. Once devised, the school staff must vigilantly implement the plan according to its requirements. We direct the local board to send a copy of this decision to the school principal and the staff involved in devising the plan.

Space Availability

Appellant maintains that the local board should have granted the transfer because MLK was on the list of schools with space available for transfer during the 2016-2017 school year.⁵ She takes issue with Mr. Price and the local board for not recognizing this fact. Whether or not the school was on the list at one point in time does not guarantee that a transfer will be granted to the school. The list is fluid and subject to change based on changing enrollment figures. This information was communicated in the news release relied upon by the Appellant which specifically states "this list will change as each school's enrollment reaches seating capacity or

⁵ PGCPs places schools on a list of schools available for transfer if the school's enrollment does not exceed 90% of the SRC. AP 511-.3(III.M).

grade-level capacity” and that, even if a school is listed, “seats may not be available at every grade level.” (Local Bd. Reply, Ex.1). In addition, even though the exact enrollment data for MLK was not provided in Mr. Price’s recommendation to the local board, both his decision and his recommendation clearly indicate that MLK was at its SRC. (See Motion, Exs. 2 & 4). The local board’s decision indicates this as well. (Motion, Ex.5).

Appellant also argues that the amount of space in a school or class should not be a consideration in a student transfer request because there “simply is no perfect number of seats.” As already stated above, limiting student transfers based on school utilization and over-capacity concerns is a legitimate and reasonable justification for denying transfer requests. See *Mr. and Mrs. T. v. Prince George’s County Bd. of Educ.*, MSBE Op. No 12-50 (2012); *Philip and Deborah W. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-48 (2011).

Academic Programs

Although the focus of the Appellant’s transfer request is her son’s safety, Appellant has stated that she would like the transfer because MLK has academic programs that are superior to those of Thomas Johnson. Again, lack of space at MLK is a valid justification for denying the request. The State Board has consistently recognized that there is no legal right to attend a particular school or to participate in a particular school program. See *Pamela and Robert M. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 11-46 (2011); *Thelma W. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 08-14 (2008).

Local Board Appeal Process

The Appellant believes that her local board appeal was not properly handled based on the timing and content of communications between her and school system representatives. She indicates that that local board decided her transfer on August 25, but she had not heard anything about it by mid-September. Appellant is correct that the local board initially voted on the transfer appeal on August 25, 2016. It issued its written decision on September 19, 2016. It is not an uncommon practice for boards to vote on a case at one meeting and issue the written decision at a later date. The time frame between the vote and written decision was not unreasonable.

Appellant was also concerned that the local board did not review the documentation she filed based on statements to her by counsel for the local board that he could not locate her July 22, 2016 filing. After the Appellant raised her concern with local board counsel and others, however, he later advised her that the filing was located in a different portal on the computer. (Appellant’s Reply, 4/8/17). The State Board has before it the entire record of the case, which includes the Appellant’s July 22, 2016 letter of appeal to the local board. We do not find any irregularities that would affect the outcome here.

Local Board Vote After Remand

Appellant questions whether or not the local board actually deliberated and voted on the transfer decision after the State Board remanded the case to the local board. This Board remanded the appeal to the local board “for it to provide a rationale addressing the safety issue raised by the Appellant” MSBE Op. No. 17-02. We stated that the rationale must be included in

the local board's decision "based on an affirmative vote sufficient to take action." MSBE Order No. OR17-03. In response, the local board issued a Board Order dated March 16, 2017, signed by the Board President. The Board Order is evidence of the local board's deliberation and vote. We also take notice that the local board held an emergency business meeting and executive session that same day. See <http://www.boarddocs.com/mabe/pgcps/Board.nsf/Public>. We do not find merit to the Appellant's allegations on this issue.

CONCLUSION

For the reasons stated above, we affirm the local board's decision denying the Appellant's request to transfer her son from Thomas Johnson to MLK.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Madhu Sidhu

Guffrie M. Smith, Jr.

David Steiner

June 27, 2017