

ANGELA F.,

Appellant

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-59

OPINION

INTRODUCTION

Appellant (Ms. F.) has appealed the denial of her request to transfer her son from Glen Burnie High School (“Glen Burnie High”) to Chesapeake High School (“Chesapeake High”). The Board of Education of Anne Arundel County (Local Board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has not replied to the local board’s Motion.

FACTUAL BACKGROUND

Appellant’s son, MK, is currently a ninth-grade student assigned to Glen Burnie High. He previously attended Chesapeake Bay Middle School (“Chesapeake Middle”) as an “out of area” transfer student. On or about April 25, 2013, Appellant completed a “Request for an Out of Area Transfer” seeking to transfer her son from Glen Burnie High to Chesapeake High in Pasadena for the coming school year. The request was received by the school district on May 2, 2013. On the request form, Appellant did not select one of the listed rationales for a transfer. Instead, she wrote that the family stayed with relatives from Tuesday afternoon until Friday morning and included the names and address of her aunt and uncle in Pasadena, within the Chesapeake High attendance area. A pupil personnel worker denied the transfer request because the application was filed a day after the required deadline, it did not include appropriate documentation, and the reason provided for the transfer was inconsistent with school district regulations. (Ex. 1).

Appellant appealed the denial. Sarah S. Pelham, assistant superintendent for student support services and superintendent’s designee, rejected the appeal by letter on June 27, 2013. The letter stated the request was inconsistent with school district regulations and noted that MK had failed to maintain a “C” average, as required by his previous transfer. (Regulation JAB-RA C.8; Out of Area Transfer Frequently Asked Questions). Instead, he failed two classes, had a “D” average in two other classes, and was required to attend summer school.¹ (Ex. 3).

¹ Appellant stated that MK’s poor grades were due, in part, to his spending more time with other relatives while she took care of her great uncle who was hospitalized with cancer. She stated that he is aware he made a mistake by allowing his grades to drop, and she asked that he be given a second chance to improve them.

Appellant appealed to the local board, and the local board held a hearing on the transfer request on August 13, 2013. In her appeal letters and during the hearing before the local board, Appellant raised several grounds in support of a transfer for MK.

Foreclosure and economic circumstances

During the board hearing, Appellant testified that her boyfriend's home, which is owned solely in his name and has served as the permanent address for her and her children for about six years, was being foreclosed upon and that he was planning to move out of state. (T.29; T.31-32). Appellant stated that she had "pretty much relocated" her son and daughter from Glen Burnie to stay with her aunt and uncle in Pasadena, spending about "90 percent" of their time there. (T.7, 27). She stated she moved the children's belongings to her aunt and uncle's house so that the children's things would not become inaccessible in the event of a foreclosure. (T.27). Appellant works as a delivery driver, but her hours have been cut back to the point where she now only works for about three hours every Saturday. (T.32). She stated that she planned to live full-time with her aunt and uncle in Pasadena until she could support herself again. (T.32), but she expressed some reluctance to do so because it could negatively affect her uncle's disability payments, as he is legally blind and relies on the payments for support. (T.45-46). She noted that MK's older sister had already been approved for an out of area transfer to Chesapeake High, and asked for the same thing for MK.

At the hearing, Deborah Ritchie, the local board vice president, asked if Appellant could provide the local board with a foreclosure notice for the house and a change of address reflecting her new address in Pasadena. (T.37-38). With this documentation, Ritchie stated the matter could become "null and void," meaning that Chesapeake High could become MK's home school.² (T.38).

Bullying and mental health concerns

Appellant testified that, when MK was 10 years old, he was beaten up badly by a group of other children in their Glen Burnie neighborhood while defending his sister. (T.30). As a result of this incident, she testified that he became withdrawn, gained weight, and spent more time in his room. (T.31). MK received treatment for depression and other psychological issues around the same time, but has "come out of his shell" at Chesapeake Middle and is not currently seeing a therapist. (T.7, 31). Appellant described MK as being "tormented" by the children in their Glen Burnie neighborhood because of his weight, "dorky" interests, abstention from drinking alcohol or smoking, and the fact that he has a curfew, among other things. Appellant stated that the environment was better for her children in Pasadena, and she expressed concerns about MK staying in their Glen Burnie house by himself at night. (Ex. 2, 4). She noted that MK told her he would "rather disappear" than have to attend Glen Burnie High with students who have tormented him. Appellant stated she feared for MK's safety at Glen Burnie High. (Ex. 4).

² As of mid-September, the school district had received no foreclosure information concerning a move into the Chesapeake High attendance area. (Memorandum in Support of Motion).

Along with her letter appealing the initial denial of an out of area transfer, Appellant included an undated letter from Dr. Salvador Papa, MK's pediatrician. In the letter, apparently written sometime in June, Dr. Papa stated that MK suffered from "social dysfunction" and had previously been withdrawn and isolated. Dr. Papa noted that MK was showing signs of improvement since attending Chesapeake, but warned that changing MK's school or routine could be detrimental to his "current well-being and state of mind." Appellant asked that MK be allowed to continue treatment for his anxiety and social dysfunction in Pasadena.

School system response

Dr. Gayle Cicero, the Director of Student Services, testified at the hearing about the reasons for the denial of the transfer request. She noted that MK failed to maintain a "C" average, as required by his transfer to Chesapeake Middle, and had to attend summer school in order to be promoted to the ninth grade. (T.13, 14). Additionally, Dr. Cicero observed that Dr. Papa's letter did not state a clinical diagnosis, include a treatment plan, or state whether the doctor had seen MK within the past two months, all factors that she would require of a professional recommendation for a transfer.³ (T.16-17). She noted that Dr. Papa's letter inaccurately stated that MK had attended Chesapeake High (rather than Chesapeake Middle) and that he showed significant improvements, when his academic performance was actually quite poor. (T.17). Dr. Cicero related a conversation she had with the guidance counselor at Chesapeake Middle, who told her that MK was not in the guidance office very often and did not appear to need any special services or mental health counseling. (T.13). Although MK's older sister has been approved for an out of area transfer to Chesapeake High, Dr. Cicero stated that having siblings attend the same school is not a reason for a transfer. (T.18). Dr. Cicero stated she was aware of the incident that occurred when MK was 10 and Appellant's overall concerns about MK's safety at Glen Burnie High, but told the local board that these concerns did not warrant sending MK to a different school. (T.20).

The local board denied the appeal on August 22, 2013, finding that the Appellant's circumstances did not meet any of the exceptions in their policy and regulations. The decision stated that, "Once [Appellant] and the children are official residents of [the Pasadena] house, it appears as though the children will, by right, be entitled to attend school at Chesapeake. The local board urged Appellant to provide the school system with proof of her address change and the foreclosure.

Appellant appealed the local board's decision to the State Board of Education. Appellant stated that MK's sister and all of his friends are attending Chesapeake High. She stated that MK realizes he made a mistake by allowing his grades to drop last year. She claimed that MK is

³ The school system posts on its web site a letter to physicians and licensed mental health professionals detailing the type of information required in a recommendation letter. (T.16). This "template" letter, which was not included in the record but was discussed during the hearing, states that physicians must submit their recommendations on letterhead, sign and date the letter, and indicate that the patient was seen within the prior two months. "It is important to include a diagnosis and recommendations about what the student will need upon returning to school," the letter states. See <http://www.aacps.org/outofarea/oatletter.pdf>.

“terrified” by the children at Glen Burnie High and she fears for his safety.⁴ Appellant stated she has had health concerns of her own in the past few years, and that her aunt and uncle have been very supportive of her and her children. She again noted her uncertainty about the future of her boyfriend’s home, and stated that she has often stayed with her aunt and uncle, including during times when power was shut off to her boyfriend’s house.

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.*, Op. No. 13-06 (2013). The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D.

LEGAL ANALYSIS

Pursuant to Anne Arundel County Public Schools policy, students must attend the school that serves the area in the county in which they live. (Regulation JAB-RA B.). There are four primary exceptions to this policy that can warrant an out of area transfer. These are: (1) if the family moves after the first day of school; (2) for a student to complete the final year at a school; (3) a documented hardship that requires a parent to use a daycare provider outside of the designated attendance area (applicable to students in grades K-8 only); and (4) a professional recommendation from a physician or licensed mental health professional. (Regulation JAB-RA C.9; Out of Area Transfer Frequently Asked Questions). The local board upheld the decision of the superintendent’s designee that none of these exceptions applied in the current case.

It may well be that each of the reasons that the Appellant presented for the transfer taken alone would not meet any of the exceptions. Yet taken together, the circumstances that this family faces, in our view, should have given rise to a question – is this student homeless? Under the law, a “homeless student” is a child “who lacks a fixed, regular, or adequate nighttime place of residence.” COMAR 13A.05.09.02.B(4)(a). This category includes children “who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” COMAR 13A.05.09.02.B(4)(b)(i).

Local school districts must have a procedure in place to ensure that homeless students are able to continue their education at their schools of origin, or be enrolled “in any public school that nonhomeless students living in the attendance area in which the child or youth is living are eligible to attend.” COMAR 13A.05.09.04.A. Among the factors school districts must consider in placing a homeless student are the student’s age, where his or her siblings attend school, the student’s experiences at the school of origin, the student’s academic and emotional needs, the

⁴ Attached to her letter, Appellant included print-outs of web sites that contained stories about arrests of students and staff at Glen Burnie and that detailed poor academic performance at the school. She also included links to student fights that had been posted online. These materials were not presented to the local board.

likely location of the family's future permanent housing, and any other special needs of the family. COMAR 13A.05.09.04.B(2).

We understand that the Appellant did not describe herself as homeless in her letters or in the hearing before the local board, but each school system in Maryland has a legal obligation to designate a homeless education coordinator who is responsible for “[i]dentifying homeless children, youth and families in the community,” COMAR 13A.05.09.03A(5)(d), and for “[e]nsuring that homeless children and youth are identified by school personnel...” COMAR 13A.05.09.03A(5)(a). The homeless coordinator is also required to train school personnel on “the policies and procedures to identify...homeless children and youth...” COMAR 13A.05.09.03A(5)(e). It appears that none of the school staff involved consulted with the homeless education coordinator about this case.

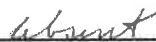
The record suggests that MK could be classified as a “homeless student.” MK lacks a “fixed, regular . . . nighttime place of residence,” splitting time between living with his great aunt and uncle and Appellant’s boyfriend. Appellant’s boyfriend’s house, which has been uninhabitable at times because the power was shut off, may be lost to foreclosure. Appellant does not own either home, and she indicated that her hours as a delivery driver have been cut back to such an extent that she now works for only a few hours one day per week. She stated that all of the children’s belongings are now at the Pasadena home because of the risk of foreclosure to her boyfriend’s house.

It is certainly possible that Appellant may permanently move in with her aunt and uncle (or to another residence) and be able to provide paperwork verifying her new permanent address. But in the meantime, her son’s transient living circumstances may qualify him as a homeless student whose educational needs could best be met at Chesapeake High.

In light of the legal obligation imposed on school systems to identify homeless students and to train the staff to do so, pursuant to COMAR 13A.01.05.04(C)(1), we remand this case in order for the local board to consider any additional evidence necessary to determine whether this family should be considered homeless and if so which school would be in the best interest of the student.

CONCLUSION

For all these reasons, we remand this case to the local board for a determination regarding whether MK qualifies as a homeless student. Pending that determination, the local board shall enroll MK in Chesapeake High. The local board shall report back to the State Board on the status of the student within 30 days of the date of this decision.



Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

James H. DeGraffenreid, Jr.
James H. DeGraffenreid, Jr.

Linda Eberhart
Linda Eberhart

S. James Gates, Jr. - MCP
S. James Gates, Jr.

Luisa Montero-Diaz
Luisa Montero-Diaz

absent
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Donna Hill Staton
Donna Hill Staton

absent
Guffrie M. Smith, Jr.

October 30, 2013