

CAROLYN B.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-20

OPINION

INTRODUCTION

Appellant appealed the Anne Arundel County Board of Education's ("local board") denial of her request to transfer her daughter from Annapolis High School ("Annapolis") to South River High School ("South River"). The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant did not respond to the motion.

FACTUAL BACKGROUND

Appellant's daughter, L.B., attended the ninth grade at South River High School during the 2013-2014 school year. On August 26, 2014, Appellant filed an Out-of-Area Transfer Form requesting that L.B. be allowed to remain at South River for the 2014-2015 school year.¹ On the form, the Appellant checked the box for "Student is entering Grade 8, or 12 for the upcoming school year" and added in parenthesis "(medical reason)."² Attached to the request was a letter from L.B.'s pediatrician stating that it would be "beneficial to [L.B.'s] overall well-being and success in school" for her to remain at South River based on "the fact that she has had multiple considerable stressors in her life (i.e. recent death of multiple family members, step father dealing with terminal cancer, and her anxiety)." (Chaney Letter, 8/21/14). On September 5, 2014, a pupil personnel worker denied the request indicating that there was a lack of appropriate documentation because the letter was insufficient, and also that the reason checked on the form did not apply.

On September 11, 2014, Appellant appealed the decision to the Superintendent, explaining that L.B. had been given permission to attend out of area schools in the past and that remaining at South River for the 10th grade was important for her "mental well-being." Appellant stated as follows:

¹ Although not fully explained in the record, L.B. attended South River for her 9th grade year because Appellant resided in the South River attendance area at the time. Appellant moved into the Annapolis attendance zone at some point prior to the start of 10th grade.

² Presumably the Appellant intended to check the next box on the form that states "Professional recommendation (with documentation from medical/mental health provider)".

I went through a divorce a few years ago. [L.B.] is my last child that needs to finish school. She was the closest to her father. Since the divorce her father refuses to have any relationship with her. [L.B.] also has anxiety and a digestion problems. [L.B.] has been through a great deal not knowing what she did wrong and why her father will not come around. [L.B.] has been in counseling and may start again soon. She recently started a new medication for anxiety. She has had a great deal of death in the family as well to deal with. . . .

Appellant referred back to the original letter from the doctor and stated that the doctor agrees that L.B. should remain in school to keep things as normal as possible for her. She indicated that she was waiting on another doctor's note. (Appellant's Letter, 9/11/14).

Sarah Pelham, Assistant Superintendent for Student Support Services, responded to the appeal as the Superintendent's designee. She denied the transfer request because the request was "inconsistent with the regulation." Ms. Pelham explained that the local board regulation allows transfers when space and facilities are available to accommodate the transferring student and the reason for the transfer falls under the guidelines. She added that Annapolis High School is able to meet L.B.'s mental health needs. (Pelham Letter, 9/30/14).

On October 3, 2014, Appellant submitted an appeal to the local board reiterating many of the same issues and adding that L.B. has chronic back issues. She attached another letter from the same doctor, this one dated September 17, 2014. The letter states that the divorce initially prompted L.B.'s need for the transfer request and "it is important or her to have as much stability as possible to lessen her anxiety." The doctor stated that L.B. was last seen for anxiety on August 29, 2014, last seen on April 29, 2014 for chronic back pain which required physical therapy, and was last seen for gastrointestinal ("GI") issues on February 10, 2014. Appellant wrote again to the local board on December 3, 2014, requesting that the transfer be granted.

The local superintendent responded to the appeal in a "Statement of Position" recommending that the local board uphold the determination that the student failed to meet the criteria for a transfer to South River. The Superintendent acknowledged that the Appellant was requesting a transfer under the provision requiring documentation from a professional. The Superintendent also acknowledged that the documentation established that L.B. had been seen by a health professional for anxiety, chronic back pain, and GI issues. The Superintendent maintained, however, that the situation presented did not rise to the level of a medical hardship sufficient to justify a transfer because Appellant's circumstances "are not very different from other parents who have a school-aged child who suffers from anxiety" and the Appellant did not establish that Annapolis High School is unable to handle the student's medical issues. (Position Statement at 5-6).

On January 22, 2015, the local board issued an Opinion and Order denying the appeal and affirming the local superintendent, finding the Appellant's justification for the transfer to be inconsistent with the transfer regulation.³

³ The local board allowed L.B. to attend South River while the local board appeal was pending.

This appeal followed.⁴

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 local superintendent reached. COMAR 13A.01.05.05B.

LEGAL ANALYSIS

Anne Arundel County Public Schools' ("AACPS") regulations allow for out-of-area transfers to occur based on several reasons. One of these is a "professional recommendation." Students seeking to transfer based on a professional recommendation "must supply a written recommendation from a physician, a psychiatrist, [or other professional] . . . detailing the necessity of [the] transfer and the intended outcome the professional is seeking for the student." AACPS Regulation JAB-RA(C)(9)(b)(2).

Appellant seeks to have her daughter remain at South River for stability reasons because she suffers from anxiety and other health issues. As stated above, the AACPS regulation requires that the Appellant submit detailed documentation from a professional substantiating the request. The physician stated in his letters that L.B. suffered from anxiety, GI issues, and back pain, and that remaining at South River would provide her with stability and lessen her anxiety. The local board, relying on the Superintendent's Position Statement, found the medical documentation presented to be insufficient. We do not believe that the local board acted arbitrarily or unreasonably in finding that these brief statements fell short of the type of detailed explanation needed regarding the necessity for the transfer and the intended outcome.

In addition, this Board has previously stated that "[i]n order to justify a transfer for medical reasons, the Appellant must show that the student has a diagnosed medical condition that cannot be supported by health professionals at the assigned school." See *Philip and Deborah W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). The Appellant has provided no information establishing that Annapolis High School is unable to handle the anxiety concerns of her daughter. As the Superintendent pointed out, Annapolis High School has counselors and psychologists available to assist students through transitional periods and with other issues. (Position Statement).

We are sympathetic to Appellant's case. It is well established, however, that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is

⁴ Appellant filed this appeal in February 2015. We gave the Appellant the opportunity to submit additional documentation. The briefing process concluded on May 1st, when Appellant's response to the local board's motion was due.

no right or privilege to attend a particular school. *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464, 472 (1967).

Although it is the end of the school year and this appeal is technically moot, we have addressed the merits of the case because the issue is capable of repetition yet evading review. AACPS processes transfer requests on an annual basis and also requires parents annually to request continuation of a transfer by submitting updated documentation demonstrating that the basis for the transfer still persists. Thus, no matter the outcome here, Appellant would have had to submit a new transfer request form for the 2015-2016 school year supported by appropriate medical documentation from a health professional.

CONCLUSION

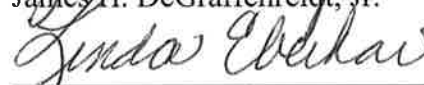
For the reasons stated above, we do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm Anne Arundel County Board of Education's decision to deny Appellant's request for her daughter to transfer to South River High School for the 2014-2015 school year.



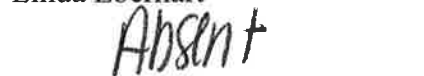
Mary Kay Finan
President



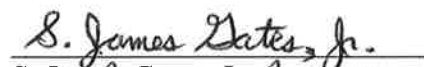
James H. DeGraffenreidt, Jr.



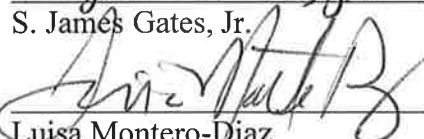
Linda Eberhart



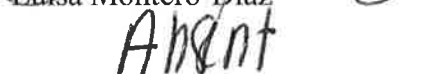
Absent
Chester E. Finn, Jr.




S. James Gates, Jr.




Luisa Montero-Diaz



Absent
Sayed M. Naved



Madhu Sidhu



Andrew R. Smarick

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

June 23, 2015

Dissent:

Larry Giammo/mcp
Larry Giammo