

DEBORAH M.,  
Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,  
Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 14-58

### OPINION

#### INTRODUCTION

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

#### FACTUAL BACKGROUND

Appellant's son C.M. was a ninth-grade student assigned to Glen Burnie High School for the 2013-14 school year. On February 27, 2013, Appellant filed an out-of-area transfer request form with Anne Arundel County Public Schools (AACPS) requesting that her son be transferred from Glen Burnie to Northeast. On the form, Appellant checked a box indicating that the request was based on a professional recommendation from a medical or mental health care provider, but no such recommendation was attached. On April 30, 2013, a pupil personnel worker denied the request because Northeast is closed to out-of-area students due to school construction. (Motion, Ex. 1; Hearing Examiner's Recommendation at 7).

Appellant appealed the decision on July 22, 2013. She described C.M.'s experience in middle school as "very rough." Appellant explained that her son has had behavioral issues, was undergoing therapy, and taking medication for depression. She added that C.M.'s therapist and a medical doctor agreed that it would help C.M.'s progress if he could attend school at Northeast, where his sister and all of his friends attend school.<sup>1</sup> As an alternative, Appellant and her husband planned to give temporary custody of C.M. to his grandparents, who live in the Northeast attendance area. (Motion, Ex. 2).

Sarah Pelham, assistant superintendent for student support services and the superintendent's designee, denied the transfer request because Northeast was closed to new students. Ms. Pelham explained that AACPS policies allow for an out-of-area transfer only if a

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<sup>1</sup> C.M.'s sister was granted an out-of-area transfer to Northeast prior to the school becoming closed to such transfers.

school has openings and the transfer meets school system guidelines.<sup>2</sup> (Motion, Exs. 3, 5).

On August 26, 2013, Appellant appealed to the local board. In addition to major depression, she described her son as having attention deficit disorder and a behavioral disorder, for which he took medication and underwent therapy. He also had become involved in the juvenile justice system because of an unexplained offense that took place during the previous school year. Appellant explained that her son had made great progress over the summer and she expressed fears that not attending Northeast would have a negative effect on him. (Motion, Ex. 4).

The case was referred to a hearing examiner who held a hearing on October 8, 2013. He heard testimony from Dr. Gayle Cicero, director of student services, as well as Appellant and her husband. Dr. Cicero had been in touch with Appellant and her husband several times during the transfer process and also spoke with C.M.'s therapist. She explained that these conversations were an attempt on her part to assess C.M.'s needs so that AACPS could decide whether he should attend a different school. Although C.M. had been diagnosed with a major depressive order, his parents reported that he was not taking his medication and had stopped attending therapy. In addition, C.M. refused to be tested to see if he could qualify for an individualized education program because of his fear that he would be viewed as mentally challenged. Dr. Cicero concluded that she did not have enough evidence from C.M. and his therapist to fully evaluate C.M.'s needs and that simply moving him to another school would not address his underlying psychological and behavioral problems. She also explained that Appellant could not grant temporary custody to C.M.'s grandparents solely for transfer purposes. Only legal changes of custody are considered. (Hearing Examiner's Recommendation at 2-5).

Appellant testified that C.M. had difficulty adjusting to Glen Burnie because it is a big school and C.M. did not know anyone there. Both parents described him as being withdrawn. Their son could go weeks or even months without speaking to them. His parents did acknowledge, however, that Appellant had done well academically at Glen Burnie in his first few months of attendance. Appellant argued that C.M. would be better off if he could transfer to a school environment where he knew people and would be happier. C.M.'s father agreed that a transfer could be better for his son, but also stated that it might not make a difference. In addition, Appellant explained that having two children in two different high schools was inconvenient and posed transportation difficulties. (Hearing Examiner's Recommendation at 5-6).

On October 31, 2013, the hearing examiner issued his report, recommending that the local board deny the transfer request. The hearing examiner determined that C.M. was "in critical need of testing, evaluation, and probably therapy," but found that Appellant had not provided any medical documentation that would justify transferring C.M. to Northeast. He further found that Northeast was a closed school that could not accept transfer requests. In addition, the hearing examiner found no evidence that transferring C.M. would accomplish Appellant's goal of making things better for her son or that Glen Burnie could not provide C.M. with appropriate treatment and support. The hearing examiner determined that AACPS

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<sup>2</sup> Ms. Pelham also found that Appellant filed her appeal late. AACPS continued, however, to consider the merits of the transfer request and the local board did not dismiss Appellant's appeal as untimely.

appropriately followed its policies in denying the request. (Hearing Examiner's Recommendation at 7-9).

On June 18, 2014, the local board adopted the hearing examiner's recommendation. This appeal followed.

In addition to the arguments she previously raised, Appellant pointed out that her home was once zoned for Northeast, but had since become a part of the Glen Burnie attendance area. She also provided an update on her family's situation. C.M. has completed a full year at Glen Burnie but "missed a lot of time" because he did not like the school. The family faces other challenges, as well: Appellant's home is in foreclosure, she and her husband have separated, and she has had medical problems necessitating surgery.

### 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). Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

### LEGAL ANALYSIS

AACPS regulations allow for out-of-area transfers to occur based on one of six potential reasons. One of these is because of a professional recommendation. Students seeking a transfer based on a professional recommendation "must supply a written recommendation from a physician, a psychiatrist, [or other professional] . . . detailing the necessity of this transfer and the intended outcome the professional is seeking for the student." AACPS Regulation JAB-RA. The local board has determined that any school in which the enrollment exceeds 90 percent of the state capacity (or 80 percent of capacity for Title I schools) "shall be deemed closed to out of area transfers." AACPS Out of Area Transfer FAQ. Specific schools may also be closed "due to individual circumstances." *Id.*

The record indicates that Northeast was a closed school at the start of the 2013-14 school year because of construction. Therefore, C.M. was not allowed to transfer there. Even though Northeast was closed to transfers, Dr. Cicero explained that AACPS would still have considered a transfer if it was medically necessary. Appellant did not, however, provide AACPS with written documentation from a medical professional recommending a transfer, as required under AACPS regulations. Accordingly, we uphold the local board's decision to deny the transfer request.

We cannot, however, overlook the delay that occurred in this case. A hearing examiner issued a recommendation to the local board on October 31, 2013. The local board did not issue its decision until June 18, 2014. There is no explanation for why it took approximately seven and a half months for the local board to issue a two-sentence decision adopting the hearing

examiner's recommendation.

In the intervening time, Appellant's appeal essentially became moot. Her transfer request was for the 2013-14 school year. That school year is now over and the 2014-15 school year has begun. According to Appellant, she still wishes to have her son attend Northeast. Because much could have changed in the intervening year, we believe it is incumbent on the school system to allow Appellant to present a new transfer request, if she so desires, for the 2014-15 school year.

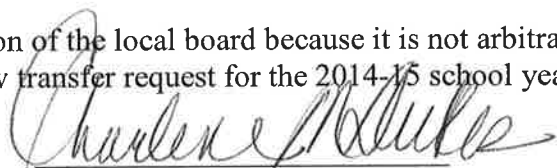
We reach this conclusion for several reasons. First, Northeast is no longer a closed school. *See* AACPS Out of Area Transfer Booklet 2014-2015 (Feb. 7, 2014). Therefore, one of the principal reasons for the local board's denial of the transfer no longer applies. Second, medical and psychological concerns can change over time. Any decision predicated on a professional recommendation should be based on a current diagnosis and treatment plan. Appellant should have the opportunity to submit such a recommendation as part of any new request.

In reaching our conclusion, we are aware that the 2014-15 transfer request deadline of May 1 has passed. AACPS procedures allow for a late transfer request if "there is a bona fide emergency or event that could not have been foreseen prior to May 1." In our view, the local board's decision, issued more than a month after the transfer request deadline, constitutes an unforeseen event requiring the school system to excuse any untimely new request.

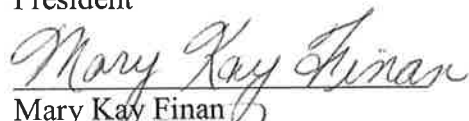
On a final note, Appellant has indicated that her home is in foreclosure. It is possible that this development could lead the family to move into the attendance area for Northeast. It is also possible that the family's housing situation could become uncertain, in which case C.M. might qualify as a homeless student. Regardless of the outcome, we urge the school system to continue to work with Appellant to make sure that C.M.'s needs are met and that any financial struggles the family may face do not imperil his ability to attend school.

#### CONCLUSION

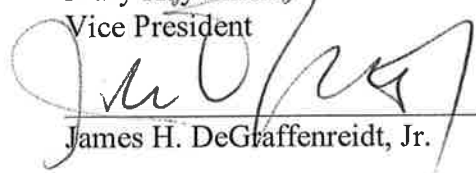
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal. Appellant may file a new transfer request for the 2014-15 school year.



Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.

*Linda Eberhart*  
Linda Eberhart

*S. James Gates, Jr. / MUP*  
S. James Gates, Jr.

*Absent*

Larry Giammo

*Luisa Montero-Diaz*  
Luisa Montero-Diaz

*Absent*

Sayed M. Naved

*Madhu Sidhu*

Madhu Sidhu

*Donna Hill Staton*  
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*Guffie M. Smith, Jr.*  
Guffie M. Smith, Jr.

September 23, 2014