

RHIANNON W.,

Appellant

v.

BALTIMORE COUNTY BOARD  
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-15

## OPINION

### INTRODUCTION

Appellant challenges the decision of the Baltimore County Board of Education denying her request to transfer her daughter to Catonsville High School. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant opposed the Motion and the local board replied.

### FACTUAL BACKGROUND

The Appellant's daughter, K.M., is currently a ninth grade student. Her zoned school is Lansdowne High School ("Lansdowne"), but she has not attended Lansdowne this school year due to her placement on home and hospital instruction since the fourth quarter of the 2014-2015 school year. (Tr. at 24-25).

On April 1, 2015, Baltimore County Public Schools ("BCPS") received Appellant's application for a special permission transfer requesting that K.M. be allowed to transfer to Catonsville High School. (Supt. Ex.2). Appellant checked the boxes for participating in a "program of study" indicating Chinese II and for a "medical/student adjustment" transfer indicating concerns about bullying in middle school. On June 19, 2015, Matthew Ames, Principal of Catonsville denied the request on the grounds that Catonsville was overcrowded, the reason for the request was inconsistent with policy, and that there was a lack of appropriate documentation. (Motion, Ex.4, Supt. Ex.2).

Appellant appealed Mr. Ames' decision. By letter dated July 30, 2015, David C. Greenberg, Residency Liaison, denied the appeal. He said that the transfer request was inconsistent with policy because K.M. had not completed the Chinese I program after having been suspended from Arbutus Middle School in the spring of 2015 and, therefore, was not eligible to enroll in Chinese II.<sup>1</sup> *Id.* He also said that there was a lack of appropriate documentation because the Appellant had not completed the residency verification required when a student moves from middle school to high school. *Id.* In addition, he denied the medical/student adjustment transfer request for the bullying claim based on the recommendation of April Lewis, Manager of the Office of School Safety and Security. Mr. Greenberg found that

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<sup>1</sup> As it turns out, K.M. had completed Chinese I and three quarters of Chinese II prior to her suspension, but Mr. Greenberg was not aware of this. Because the Appellant had written in "Chinese II" next to the program of study transfer request, he assumed she was seeking to transfer to participate in Chinese II. (Tr. at 27-28).

the Principal acted reasonably in denying the transfer request and found no basis to overturn his decision. *Id.*

Appellant appealed Mr. Greenberg's decision to the Superintendent. Allyson Huey, the Superintendent's Designee, conducted an appeal conference at which the Appellant; Mary Jo Siebert, Appellant's educational law consultant; Kimberly Lawrence, Administrative Assistant; and Richard Muth, Acting Executive Director of the Office of School Safety and Security were present. (Motion, Ex.4, Supt.Ex.4). At the conference, the Appellant explained that K.M. had been bullied at Arbutus Middle School during the 2012-2013, 2013-2014, and 2014-2015 school years, and that the school system did not sufficiently address it at the time. She provided Ms. Huey documentation of her complaints and exchanges with school system staff and communications between K.M. and the alleged bullies. She stated that some of the same students who engaged in the bullying live in their neighborhood and would be attending Lansdowne. She requested that K.M. be placed at Catonsville where she has friends and would feel safer and more secure.

Ms. Huey considered the transfer request under the medical/student adjustment provision of the policy which allows a transfer when a student demonstrates exceptional hardship for reasons of medical, emotional, or social adjustment.<sup>2</sup> Transfer requests under this provision must be substantiated by independent and detailed documentation attached to the transfer request. Appropriate documentation consists of documentation from physicians, psychologists, social workers or counselors. (Superintendent's Rule 5150).

At the conference, Appellant provided Ms. Huey with psychological evaluations from Kennedy Krieger Institute and Mt. Washington Pediatric Hospital. The evaluations state that K.M. has emotional and social problems related to diagnoses of Attention Deficit Hyperactivity Disorder and Autism Spectrum Disorder. They also note that K.M. has a history of being bullied in school, based on Appellant's representations. The evaluations do not offer specific recommendations on addressing this issue in the school setting. Appellant also provided a July 16, 2014 letter of findings from MSDE in response to a special education complaint she had filed. The letter references the bullying allegations made by the Appellant but does not make a factual finding that K.M. was bullied.

Ms. Huey explained that as part of Mr. Greenberg's prior review, various individuals had weighed in on the transfer request, including the manager of the Office of School Safety and Security, Ms. Lewis. Ms. Lewis concurred with the denial of the transfer request, concluding that none of the complaints dating back to the 5<sup>th</sup> grade supported a finding of bullying. One report involved a student's Facebook page on which he posted about his observation of K.M.'s mother slapping another parent's child. (Tr. at 35). Another report stated that a particular student had "stared down" K.M. on several occasions. (Tr. at 35). Other incidents included a student screaming loudly while behind K.M.; a student calling K.M. "ugly"; a student laughing at K.M.; a student inquiring why another girl was one of K.M.'s friends; a student asking K.M. why a restraining order had been issued against her mother; and a student using "body language" to prevent K.M. from crossing the street. Several reports concerned students discussing an altercation between K.M. and the Appellant that was observed at a restaurant. (Tr. at 36-38).

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<sup>2</sup> At the conference, Appellant indicated that she was no longer pursuing a transfer based on participation in a program of study. (Tr. at 65-66).

Ms. Lewis testified that the school had investigated each reported incident and did not find that any of them rose to the level of bullying. (Tr. at 59). She explained that despite this finding, the school put corrective actions in place to address the student behaviors. (Tr. at 41). In addition, Ms. Lewis identified the home schools of the students involved to determine if K.M. would encounter them at Lansdowne. (Tr. at 34). The home schools are as follows: one student attends Arbutus Middle School, two students attend Lansdowne High School; one student attends Catonsville High School, and one is no longer enrolled in BCPS. (Tr. at 35-38). The student that Appellant described as the worst tormentor is not at Lansdowne. (Tr. at 36).

Margaret Kidder, coordinator of psychological services, also weighed in on the decision and found that Lansdowne could meet K.M.'s needs. This determination included a review of the information from Kennedy Krieger and Mt. Washington Pediatric Hospital that the Appellant provided. (Tr. at 67-68). After considering all of the information before her, Ms. Huey determined that a medical/student adjustment transfer was not appropriate and upheld Mr. Greenberg's decision denying the transfer request. (Motion Ex.4, Supt. Ex. 4).

Appellant appealed the decision to the local board. On November 16, 2015, Hearing Examiner Gregory Szoka conducted a full evidentiary hearing in the case. Appellant attended the hearing with her educational law consultant. In a decision issued December 14, 2015, Mr. Szoka recommended that the local board uphold the decision of the Superintendent's Designee denying the transfer request. Mr. Szoka found that the record lacked evidence that K.M. would be subjected to bullying at Lansdowne, a school K.M. had not yet attended, based on the behavior that occurred in middle school, particularly when several of the students involved in those incidents are not enrolled in Lansdowne.<sup>3</sup> He also pointed out that at least one of the students involved in the incidents was attending Catonsville, where K.M. was seeking to attend school.<sup>4</sup> (Motion, Ex.5, Hearing Officer Decision).

On January 19, 2016, the local board adopted the Hearing Examiner's recommendation and affirmed the decision to deny Appellant's request to transfer K.M. to Catonsville High School. (Motion, Ex.6, Local Bd. Op. and Order).

This appeal followed. In the appeal, Appellant requests to have her daughter attend Catonsville High School because she suffers from fear and anxiety as a result of having to attend Lansdowne High School."<sup>5</sup>

### 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

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<sup>3</sup> Two of the students were attending Lansdowne, however.

<sup>4</sup> Appellant has indicated at the hearing that the child at Catonsville is no longer an issue now that he is away from the other students who were involved in the incidents at issue. (Tr. At 85-86).

<sup>5</sup> Throughout the appeal, Appellant has included information on special education complaints and IEP requests. The State Board has consistently held that it is not the appropriate forum to address special education disputes. Those concerns should be addressed through the special education appeals and complaint process. *See Brado v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-23 (2006); *Frye v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-30 (2001).

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 requested K.M.'s transfer to Catonsville based on the "Medical/Student Adjustment" provision of the policy which allows a transfer when a student demonstrates exceptional hardship for reasons of medical, emotional, or social adjustment as substantiated by independent and detailed documentation. Concerns about bullying can certainly play a part in such a request. The issue is whether K.M. will experience medical, emotional or social adjustment problems as a result of attending Lansdowne.

Whether or not the incidents that occurred in middle school were categorized as bullying or simply as kids being mean, K.M.'s perception was that she was the target of repeated unwanted behaviors from a group of individuals, even if they did not actually act in concert. The record shows that the group of students is no longer together, although two are attending Lansdowne. Any conclusion about how these two students might behave toward K.M. at Lansdowne is supposition at this point.

In a previous case involving bullying concerns, this Board considered the impact of prior bullying on a student at a school not yet attended. We upheld the local board's decision to deny the transfer request stating that "the concerns regarding bullying [were too] speculative" and that there was no evidence that the prior conduct "would translate into a dangerous situation for [the student] at school." See *Adele and Nicholas B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-46 (2013). In addition, although the Appellant submitted medical documentation indicating that K.M. has emotional and social issues, neither evaluator suggests that a change in school setting would benefit her despite Appellant's representations that K.M. was bullied in middle school. Nor does the documentation address stress or anxiety related to K.M. attending school with alleged bullies. Thus, if this were the usual case, in the absence of clear medical documentation that K.M. would likely experience medical, emotional or social adjustment problems if she attends Lansdowne, we would follow the cited precedent and find that the local board's decision was a reasonable one.

But this is not the usual case. We note that K.M. has been out of school on home and hospital instruction for almost a year. Home and hospital instruction is the provision of instructional services to a public school student who is unable to participate in the school of enrollment due to a physical or emotional condition of the student. COMAR 13A.03.05.01A. Home and hospital instruction has verification procedures. For example, to qualify for home and hospital for an emotional condition, a parent must submit a written statement by a certified school psychologist, licensed psychologist, or licensed psychiatrist verifying the student's condition. COMAR 13A.03.05.04. Presumably the school system has verification from one such provider documenting an emotional condition that prevented K.M. from attending her prior middle school and then Lansdowne since the fourth quarter of the 2014-2015 school year.<sup>6</sup>

Throughout all levels of review in this case there is little information in the record about K.M.'s placement on home and hospital instruction. In fact, Mr. Greenberg and Ms. Huey admittedly knew very little about it at the time they rendered their decisions. (Tr. at 47-48, 74-

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<sup>6</sup>Appellant represented at the hearing that the school had a release of records for the school to contact the clinician handling K.M.'s case. (Tr.74)

75). Appellant has represented, however, that K.M. is suffering from severe stress and anxiety about attending Lansdowne with at least two of her named “bullies” and that this emotional condition is preventing her school attendance. (Appeal; Tr. at 10-12). Appellant has even stated that K.M. has made threats to harm herself before she would ever attend Lansdowne. *Id.*

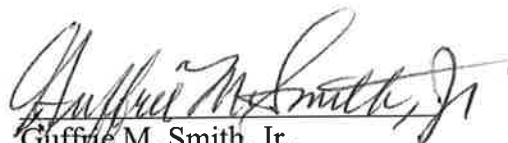
If there is documentation sufficient to place K.M. on home and hospital instruction due to an emotional condition preventing her from attending Lansdowne, that same information should have been considered in the appeal. This issue is not addressed by the Hearing Examiner other than his reference to Ms. Huey’s testimony that placement on home and hospital does not, in and of itself, meet the criteria for a medical/student adjustment transfer. While that may be true, in this particular case it is difficult to understand how the two are not inextricably interrelated. If K.M.’s emotional condition preventing her from attending school at Lansdowne is the basis for home and hospital instruction, it would seem that it should be sufficient to justify a medical/student adjustment transfer to Catonsville, which in turn would end the need for home and hospital and get K.M. back in school. Thus, we are remanding the matter to the local board to take further evidence on this issue and render a decision thereafter.

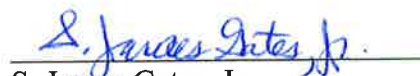
Additional Documents Submitted By Appellant

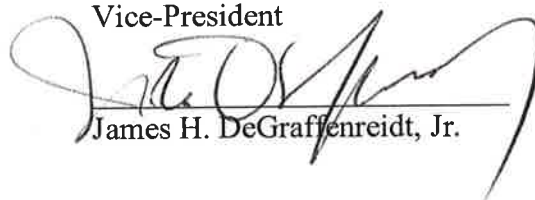
As part of the appeal, the Appellant has provided the State Board with documents that were not provided to the local board as part of the transfer appeal. The local board has identified those documents as those submitted on February 16, 2016 that include special education complaints to the MSDE, complaints to politicians, transfer requests and denials from 2012, and six CDs of conversations between K.M.’s mother and BCPS staff members that Appellant recorded, none of which pertain to the current transfer request.<sup>7</sup> We have disregarded the specific categories of documents referenced by the local board because they are not relevant to the transfer appeal. The other documents in the packet received on February 16, such as the bullying complaints and the medical evaluations, appear relevant to the transfer appeal and the local board should consider them on remand.

CONCLUSION

For all of these reasons, we remand this case to the local board to consider additional evidence on the interrelation of the medical/student adjustment transfer request and K.M.’s home and hospital placement. The local board shall provide the State Board with its determination on or before June 15, 2016.

  
Guffie M. Smith, Jr.  
President

  
S. James Gates, Jr.  
Vice-President

  
James H. DeGraffenreidt, Jr.

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<sup>7</sup> The Appellant did not provide a transcript of the CDs.

Absent


Linda Eberhart

Chester E. Finn, Jr. / mcp

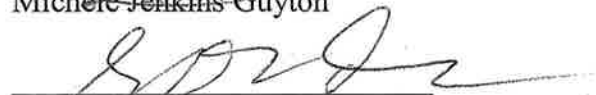
Chester E. Finn, Jr.

Absent

Larry Giammo



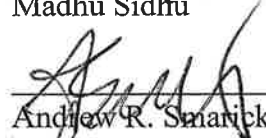
Michele Jenkins Guyton



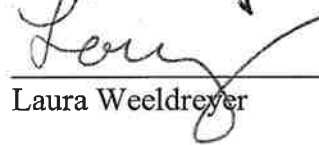
Stephanie R. Iszard

Madhu Sidhu

Madhu Sidhu



Andrew R. Smarick



Laura Weeldreyer

April 26, 2016