

LATANYA H.

Appellant

v.

CHARLES COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-04

OPINION

INTRODUCTION

In this appeal, Appellant challenges the local board's decision upholding the denial of her son and daughter's school transfer requests from Benjamin Stoddert Middle High School ("Stoddert") to Piccowaxen Middle School ("Piccowaxen") for the 2012-2013 school year. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant opposed the motion.

FACTUAL BACKGROUND

On May 24, 2012, Appellant filed a request for the transfer of her son and daughter from Stoddert to Piccowaxen.

On June 5, 2012, Appellant submitted a letter in support of her transfer request, explaining that the focus of the transfer request was on her son, and she had included her daughter in the request for the convenience of having both children attend the same school. Appellant explained, "...my sole reason for the transfer is because of my son's performance."

Appellant's son was at the time an 11 year old, seventh grade student at Stoddert. In her transfer request, Appellant described her son as "impressionable" and "distractable," but indicated that his pediatrician had ruled him out for Attention Deficit Hyperactivity Disorder (ADHD). Appellant explained that Stoddert does not offer a structured enough environment for her son, and that he would perform better academically and struggle less socially at Piccowaxen, which was a smaller school.

On June 18, 2012, the Director of Student Services, Charles County Public Schools ("CCPS"), denied Appellant's transfer request, because it did not meet the guidelines established by Board Policy 5126 governing student transfers.

On June 26, 2012, Appellant appealed to the Office of the Deputy Superintendent and School Administration and Operations ("School Administration"). On July 3, 2012, School

Administration upheld the denial request. On July 3, 2012, School Administration upheld the denial request.

On July 30, 2012, Appellant appealed to the Charles County Board of Education. In her appeal, Appellant stated that her son was never eager to go to school at Stoddert because of the "urban environment" and repeatedly saw the school nurse for headaches and chest pains. His pediatrician ruled out any physical ailments, and Appellant asserts that the stress of the Stoddert environment was to blame. Appellant described her son's seventh grade year as "emotional" and noted that his "behavior really changed dramatically....he was on the verge of getting suspended." In addition, Appellant provided the local board with documentation, including a June 2012 diagnostic evaluation with Dr. Michele Balamani Silvera. In the evaluation, Dr. Silvera deferred her diagnosis until further testing and recommended a complete psychological battery and placement in a learning environment with closed classrooms. Dr. Silvera also noted that Appellant's son had endured some bullying, but the bullying had ceased.

On August 15, 2012, the Charles County Board of Education upheld the denial of the transfer request. On September 19, 2012, Appellant appealed to the State Board of Education. Appellant attached to her appeal a letter from Marie Nazzro, LCPC, documenting Devin's recent diagnosis of Attention Deficit Hyperactivity Disorder, predominantly inattentive type.

STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing a local board decision concerning the denial of a transfer request is that the decision of the local board is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

ANALYSIS

Preliminarily we note that we have read the complete file in this case and recognize in it the Appellant's frustration with some of the teachers at Stoddert and her concern that her son receive the education services he needs in the educational environment she believes is best suited to those needs. Within the legal parameters of this transfer appeal, we cannot alleviate that frustration or eliminate that concern. It may be, however, with the new evidence presented in this appeal (that her son has Attention Deficit Hyperactivity Disorder (ADHD)), that the Appellant may wish to pursue special education services thru the Individualized Education Plan (IEP) process. Such services may better meet her son's needs.

We turn now to the denial of the transfer request. The local board has asserted that the Superintendent's decision to deny the transfer request under Board Policy 5126 was not arbitrary, unreasonable, or illegal. The Superintendent has established transfer requirements. Superintendent's Rule 5126 ("the transfer rule"), which was approved by the local board, provides that the Superintendent has the authority to assign students to schools as necessary. *See* Motion, Ex. #4. The transfer rule also provides that a parent may request a student transfer to a school other than the assigned school, but that such a request will be denied if the receiving

school lacks adequate space available to accommodate additional students. Piccowaxen had available space.

The transfer rule states that, if there is adequate space available in the receiving school, a parent may request a transfer only for one of two reasons. First, a parent may request a transfer for an academic course of study not offered within the student's zoned school. And second, a parent may seek a transfer based on an unusual hardship. An unusual hardship under the transfer rule cannot be an issue common to large numbers of families, such as the need for a particular schedule, a desire for sibling enrollment in the same school, a demand to undo a redistricting action, or typical day care concerns.

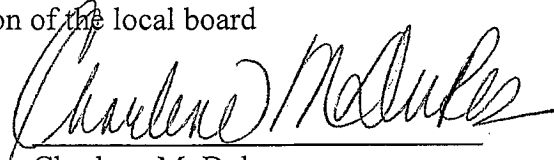
It is clear to us that the Appellant believes that Piccowaxen would be a better school for her son. In her appeal to the State Board she explained, ". . .there is no comparison. Stoddert's enrollment is 725 and Piccowaxen's is 453, not to mention that the demographics/environment are totally different. Even my son would know the difference if he had the opportunity to step on the campus at Piccowaxen. That's why I chose Piccowaxen because of the location and the small enrollment which would ultimately be more positive towards D's learning capabilities, even more now because of his diagnosis." See Appeal at 2. We have repeatedly ruled, however, that the desire to attend a different school, even for good reason, is not sufficient to establish an unusual hardship. See, e.g., *Robert W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-27 (2007), in which the State Board held, "The Appellant wants his son to attend a school closer to home and one, he believes, is smaller and better suited to his son's needs. We return to our previous rulings, 'the desire to . . . attend a particular school that [the parents] feel can better serve [their child's] interest . . . is not a recognized hardship sufficient to grant a transfer request'" [citing *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005)].

Appellant now indicates that her son has a medical diagnosis of ADHD, which she asserts supports his transfer. That issue was not decided by the local board, because the diagnosis had not yet occurred at the time Appellant submitted her appeal to the local board. Since this information was not considered by the local board, we will not use it as a basis to overturn the local board's transfer decision. *Lessie B. v. Caroline County Bd. of Educ.*, MSBE Op. No. 11-16 (2011). Should Appellant wish to have her son's medical diagnosis considered as a basis for a transfer, Appellant could reapply to the Charles County Board of Education, or as we previously stated to seek special education services.

Appellant also asserts that she was entitled to an evidentiary hearing. The concept of due process can, but does not necessarily, include the right to an evidentiary hearing. In transfer request cases like this one, there is no due process right to an evidentiary hearing.

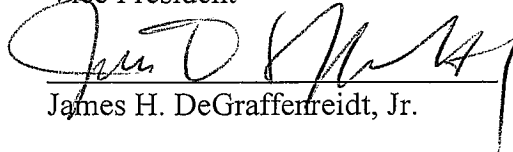
CONCLUSION

For all these reasons, we affirm the decision of the local board

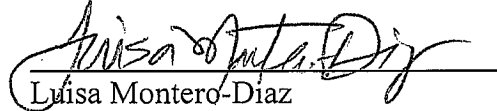

Charlene M. Dukes
President

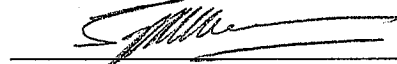
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Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.

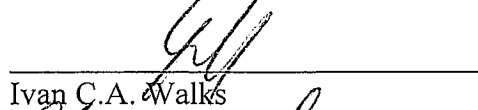
S. James Gates, Jr.
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Luisa Montero-Diaz


Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Donna Hill Staton


Ivan C.A. Walks

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

Kate Walsh*

January 22, 2013

* Ms. Walsh's term expired on June 30, 2012. She served as a Board Member until her successor was appointed on January 4, 2013.