

DONALD AND NATALIA C.,

Appellants

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-19

OPINION

INTRODUCTION

In this appeal, the Appellants challenge the decision of the Montgomery County Board of Education (local board) denying their transfer request for their son. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. The Appellants opposed the local board's Motion and the local board filed a response.

FACTUAL BACKGROUND

The Appellants' son, N.C., was assigned to attend Dr. Sally K. Ride Elementary School (Ride) in the Seneca Valley High School Cluster. N.C. previously attended Ride for kindergarten and a portion of the first grade until November 2007. Appellants removed N.C. from Ride and enrolled him in private school because they believed their son was being bullied and intimidated by other students. In February 2009, N.C. returned to Ride while in the second grade. (Motion, Exs. 5A, 3A). Appellants soon felt, however, that the bullying and intimidation had begun again.

On or about April 19, 2010, the Appellants requested that N.C. be transferred to either Darnestown or Woodfield Elementary School based on hardship due to bullying. (Motion, Exs. 3, 3A). The documents submitted with the transfer request described the Appellants' concerns about the pattern of bullying, intimidation, and threats against their son at Ride that dated back to his initial days in Kindergarten and continued to the present. Specific instances of bullying cited by the Appellants included students calling N.C. a "fat pig"; stating "I will eliminate you from the earth" and "I hate you;" threatening to beat him up; pushing and punching him; and demanding money to play on the playground with members of the "gang" or "club." (Motion, Exs. 3C, 5A). The documents also expressed Appellants' dismay with the manner in which the school administration and staff handled the issues. (Motion, Ex. 3A). Appellants also learned that N.C.'s "two main friends" were leaving Ride. The Field Office Director denied the request because it did not meet guidelines. (Motion, Ex. 5A).

Appellants appealed the decision to the Superintendent's Designee, Larry A. Bowers. They reiterated their concerns about safety at Ride and asked that N.C. be transferred to either Darnestown or Woodfield based on their view that these schools have a "better environment" that would allow N.C. to "concentrate on his education without . . . concern for his physical safety. . . ." (Motion, Ex. 4).

Hearing examiner, Sandra S. Walker, investigated the case. She spoke with the Appellants who explained that N.C. does not feel safe at Ride. The Appellants expanded their request to include a transfer to Ronald McNair or Spark M. Matsunaga Elementary Schools. (Motion, Ex. 5A).

As part of her investigation, Ms. Walker obtained 2010-2011 school year data from the principal of each of the four schools requested by the Appellants and learned that none of them had space in their Grade 4 classes for the 2010-2011 school year. (Motion, Ex. 5A). She learned, however, that Lake Seneca Elementary School (Lake Seneca) and S. Christa McAuliffe Elementary School (McAuliffe), both in the same high school cluster as Ride, had space in their Grade 4 classes. Ms. Walker offered to have N.C. transferred to either Lake Seneca or McAuliffe, but the Appellants declined to accept a transfer to either school. Ms. Walker recommended, therefore, that a transfer to the schools requested by the Appellants be denied due to space concerns. (Motion, Ex. 5A). Mr. Bowers adopted the recommendation. (Motion, Ex. 5).

Appellants appealed Mr. Bowers' decision to the local board. They stated that they knew nothing about Lake Seneca or McAuliffe and would only be comfortable with a transfer to one of them if Appellant, Mrs. C., could go to the schools on a daily basis over an extended period of time to assess the school situation. They reiterated their request for assignment to one of the four requested schools where they have confirmed the safety of the schools, know families with children who attend, and have firm commitments from other parents to pick up N.C. and watch him after school. (Motion, Ex. 6). In a separate e-mail to the local board, the Appellants stated that they spoke to the principals at the requested schools and were informed by each that there was space for N.C. to transfer there. (Motion, Ex. 8).

The local Superintendent, Dr. Weast, replied to the appeal by memorandum to the local board. He advised that his staff had been in touch with three of the four principals¹ and none had reported having a conversation with either of the Appellants. He also noted that the hearing officer reported having spoken with the principals of all the requested schools during her investigation, each of whom advised that there was no space for additional students in the 4th grade. (Motion, Ex. 8). In recommending that the local board uphold Mr. Bowers' decision, the Superintendent noted that although a transfer may be warranted in a given case, there is no guarantee that the transfer will be to the school requested. Here, the Appellants' request for a transfer out of Ride was granted, but the Appellants declined to accept the transfer because they

¹One principal was on leave and could not be reached.

did not want either school that was offered. The Superintendent concluded, therefore, that the "request appears to be a preference for one school over another." (*Id.*).

The Appellants replied to Dr. Weast's memorandum, followed by a letter from N.C.'s family doctor. The doctor stated:

The parents of [N.C.], my patient, have asked me to comment regarding the bullying [N.C.] has been receiving and particularly to his recovery from these events.

Bullying includes punching, pushing, other physically aggressive actions, malicious teasing, intimidation, physical threats and other actions that can lead to a wide range of social and emotional problems, including insecurity, anxiety, depression, loneliness, low self-esteem, feeling of worthlessness and a general loss of confidence by the victims of bullying.

I was advised by [Appellants] that they have asked for a transfer for [N.C.] from his present school, where he received the bullying, to one of four schools where [N.C.] has made friends he can be with and that will support him, where the parents of his friends are well known to the [Appellants] and where [N.C.] can feel safe and secure.

It is important for [N.C.] to be in a supportive social environment where positive messages about his worth can be gained from his network members, where he can learn how to feel safe again, where he can gain lost self-esteem. I strongly support [N.C.'s] transfer to such a school.

(Motion, Ex, 10).

On September 16, 2010, the local board affirmed Mr. Bowers' decision denying a transfer to one of the four requested schools, acknowledging that the offer to have N.C. transfer to either Lake Seneca or McAuliffe addressed the hardship issue in the case. They stated:

The Board agrees that it is appropriate for [N.C.] to be transferred to another school, which, in the view of the majority, would alleviate the hardship. However, the majority of the Board finds that the [Appellants] have not demonstrated that a hardship exists if [N.C.] is not assigned to one of the four schools they recommended in light of the fact that MCPS identified two schools that [N.C.] may attend. Moreover, the factors cited by the hearing officer are entirely appropriate in determining the school placement. Further, there is no evidence in the record to suggest that [N.C.] will be subjected to inappropriate conduct at either

Lake Seneca or McAuliffe. Similarly, there is no information in the record to indicate that the staff at those two schools will not be entirely welcoming to [N.C.] and assist him in transitioning to a new school.

(Motion, Ex. 12). The local board found nothing in the record to suggest that N.C. would not be safe and productive at Lake Seneca or McAuliffe, or that there was any reason for N.C. to fear for his safety at those two schools. (*Id.*).

This appeal followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision 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.

LEGAL ANALYSIS

The local board has already determined that a transfer out of Ride pursuant to the hardship exception in the MCPS transfer policy is appropriate in this case and has offered the Appellants the option to transfer N.C. to Lake Seneca or McAuliffe. Appellants have declined a transfer to either school because neither one is a school they requested. Thus, the sole issue before the State Board is whether the local board's decision to deny the transfer to one of the schools specifically requested by the Appellants was arbitrary, unreasonable or illegal.

This case is similar to *Charlotte Binakonsky v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-29 (2005). In that case, MCPS found that a transfer pursuant to the hardship exception was warranted based on harassment and bullying that the student was subject to at the assigned school. The school requested by the appellant was over optimal capacity, however, so MCPS offered the appellant a transfer to a different school which the appellant declined. The State Board upheld the local board's decision on appeal, finding that it was reasonable for MCPS to offer the Appellant another option given the capacity issues at the requested school. In so holding, this Board pointed out the long held and oft quoted principle that there is no right to attend a particular school or particular class. See *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464 (1967); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (2001); and *Williams v. Board of Educ. of Montgomery County*, 5 Op. MSBE 507 (1990).

The Appellants maintain that the local board's decision to transfer N.C. to Lake Seneca or McAuliffe rather than to one of the requested schools is arbitrary or unreasonable given the letter from N.C.'s doctor in support of a transfer to one of the requested schools where N.C. has friends who are students and the Appellants know the parents of those students. The doctor supports a transfer where there is a "supportive social environment where positive messages about [N.C.'s] worth can be gained from his network members, where he can learn how to feel safe again, where

he can gain lost self-esteem” and where he can “feel safe and secure.” (Motion, Ex. 10). The Appellants argue, therefore, that N.C. should be placed at a school where he is comfortable and familiar with other students.

Although the local board’s decision did not address the doctor’s letter specifically, it is apparent that it did not consider the doctor’s letter as evidence of a hardship if N.C. was not assigned to one of the four schools requested by the Appellants. While we are sympathetic to the Appellants’ situation, we do not find the local board’s decision to be arbitrary or unreasonable because a reasoning mind could have reasonably reached the same conclusion that the letter did not justify assignment to the requested schools under the local board’s hardship requirement.

The Appellants also maintain that the State Board should use current enrollment figures in determining the reasonableness of the local board’s transfer decision, rather than the projected enrollment numbers used by the local board when it made its decision on September 16, 2010.² (Response to Motion). The local board makes transfer decisions based on the enrollment projections before it at the time it considers the request. There has to be some point of reference for making transfer decisions as enrollment numbers can constantly be in flux. If new enrollment figures were considered in transfer appeals before the State Board, there would be no stability with regard to student transfer decisions at the local level.

The Appellants also raise for the first time in their appeal to the State Board claims that Lake Seneca and McAuliffe are unsafe based on their online review of school safety reports. Before the local board, Appellants did not question the safety at the offered schools. Rather, they had no opinion about the offered schools and merely stated that they knew nothing about them. Now, the Appellants argue that they have reviewed the school safety reports and have found both schools to be worse from a safety perspective than Ride. (Apps’ Opposition to Motion). They therefore ask this Board to grant the transfer request to one of the four requested schools.

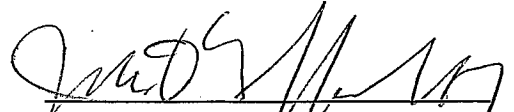
The local board argues that the Appellants’ claims concerning the safety of Lake Seneca and McAuliffe should not be considered by the State Board as they were not presented in the proceedings before the local board. It is a long held position of this Board that it will not review matters that have not been reviewed initially by the local board. *Jenai B. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 08-22 (2008); *Jan M. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 08-40 (2008); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Craven v. Board of Educ. of Montgomery County*, 7 Ops. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary’s County*, 7 Ops. MSBE 740 (1997). Appellants must first raise these concerns with the local board before the State Board can consider them.


In this case, Appellants have not submitted to this Board as evidence in this matter any of the safety reports they reviewed. Therefore, we must decline to consider the issue.

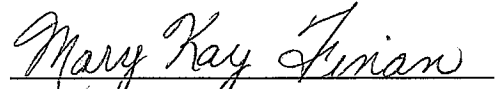
²Appellants do not know what those enrollment figures are or if they would support their request.


CONCLUSION

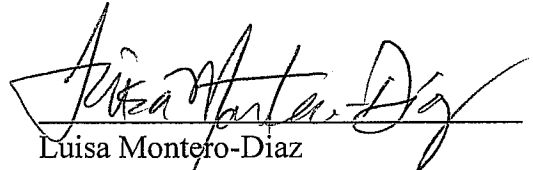
For the reasons stated above, we affirm the local board's decision.



James H. DeGraffenreidt, Jr.
President

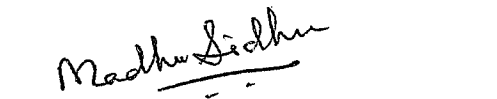

Charlene M. Dukes
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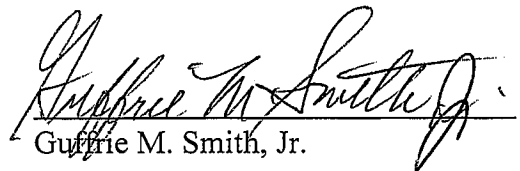

Mary Kay Finan

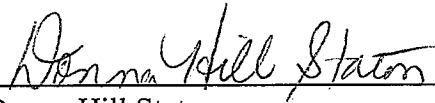

S. James Gates, Jr.


Luisa Montero-Diaz



Sayed M. Naved


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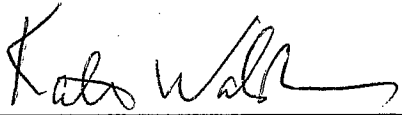

Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

March 22, 2011