

MR. AND MRS. T.

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-50

OPINION

INTRODUCTION

Appellants appealed the Prince George's County Board of Education's (local board) denial of their request to allow their son to either opt-out of the mandatory uniform policy of Charles Herbert Flowers High School (Flowers) or to permit him to transfer to Eleanor Roosevelt High School (Roosevelt), which does not have a mandatory uniform policy. The local board filed a Motion for Summary Affirmance which the Appellants replied in opposition. The local board filed a Reply.

FACTUAL BACKGROUND

Appellants' son was accepted into the Science and Technology Program at Flowers on January 26, 2012. His acceptance was based on his application to Flowers, his GPA and standardized test scores. (Appeal, Attach. 2, Brockett letter 1/26/12).¹ Appellants accepted their son's admission to the Flowers Science and Technology Program on February 2, 2012, however, they wrote on the acceptance form, "we request exemption from mandatory uniform policy." (Appeal, Attach. 2, Acceptance Form, 2/2/12). Appellants also submitted a form titled "Application for Exemption from Mandatory School Uniform Program." According to Appellants, "[a] mandatory school uniform policy is not aligned with the values and core beliefs which we strive to instill in our children." Because of their opposition to the uniform policy, Appellants requested a transfer for their son to the Science and Technology Program at Roosevelt, which does not have a mandatory uniform policy. (Appeal, Attach. 2, Application for Exemption Form, 2/2/12).

¹ The PGCPS Science and Technology Programs are four year curriculum programs which provide college level academic experiences in science, math, and technology. The program is offered at three centers - Roosevelt in northern Prince George's County, Oxon Hill High School in southern Prince George's County, and Flowers in central Prince George's County. Students can apply to the center that serves their legal residence. Students are admitted into the program based on three criteria: Grades from four quarters of 7th grade and the first quarter of 8th grade (or four quarters of 8th grade and first quarter of 9th grade) in math, science, English, and social studies; standardized reading comprehension test, and standardized numerical test . <http://www.pgcps.org/~erhs/scitech.htm> (last viewed 8/17/12).

Flowers has a mandatory dress code. Under the dress code male students wear solid color “dress” slacks in charcoal gray. Shirts may be long or short-sleeve, white polo or Oxford style or white turtle neck. Sweaters and blazers are hunter green color. Ties are solid black or gray. Belts are solid black or brown. Shoes are solid black. Pants must be appropriately sized to eliminate any bagging or sagging. No visible labels or logos on any article of clothing are allowed. Shirts are to be tucked into the pants. A belt must be worn if belt loops are on the garment. Slacks are worn at the natural waist. Only Charles Herbert Flowers High logos are permitted. Exemption from the uniform policy is permitted based on religious belief. A review of the Flower’s website shows that the current dress code no longer contains the stay at home consequence for violating the uniform policy. The current Flowers mandatory dress code can be found at http://www1.pgcps.org/charleshflowers/interior_2col.aspx?Pageid=156633&id=154973 (last viewed 8/20/12). Although the Appellants assert that the mandatory school uniform policy included serious disciplinary consequences for students who do not conform to the dress code, we have viewed both the Mandatory School Uniform Policy and the Student Dress Code Policy and find no such disciplinary consequences. (Exs. A & B attached to this Opinion).

On March 26, 2012, Gayle Huggins, Supervisor, Office of Student Records and Transfers, denied Appellants’ request for their son to be transferred to Roosevelt because the school was severely overcrowded. (Appeal, Attach. 2, Huggins Letter, 8/26/12). Appellant’s appealed Ms. Huggin’s decision to the local Superintendent, William Hite. (Appeal Attachment, 3/26/12).

On March 28, 2012, the Superintendent’s designee reviewed Appellants’ appeal of the transfer denial. The Superintendent’s designee also denied the transfer because Roosevelt’s enrollment exceeded the State rated enrollment capacity for the 2012-2013 school year. (Appeal Attachment, Battle letter, 3/28/12).

Appellants appealed the Superintendent’s decision to the local board on April 1, 2012. Appellants restated their fundamental opposition to a mandatory uniform policy in public schools. They argue that without an opt-out provision, PGCPS’s policy is “arbitrary, infringes upon the rights of its residents, and promotes a prison to school mentality.” Appellants requested that the local board transfer their son to Roosevelt or change the uniform policies in the PGCPS from mandatory to voluntary. (Appeal, Attach. 2, Appellants’ letter 4/1/12).

On May 2, 2012, the Superintendent recommended that the local board uphold the denial of the transfer request for two reasons: transfers are not approved between specialty programs; and, Roosevelt is not on the transfer list because it is 386 students overcapacity. Flowers, Appellants’ son’s neighborhood school, is also overcapacity by 125 students. (Appeal, Attach. 2, Transfer Appeal to Board of Education, 5/2/12). Appellants responded on April 28, 2012. They maintained their opposition to a mandatory uniform policy and requested that their son continue studying French as a foreign language. Appellants contend that Roosevelt has more advanced level French courses than Flowers. (Appeal, Attach. 2, Response to Appeal Recommendation, 4/28/12).

On May 17, 2012, the local board upheld the Superintendent's denial of the transfer request. On June 1, 2012, the Superintendent offered a more flexible dress code option to the Appellants. He explained that their son "will be expected to wear any shade of gray pants, any style white collared shirt. On Fridays, field trips and for special activities the Science and Technology students wear dark green polo shirts with the Science and Technology logo and black pants." (Appeal, Attach. 2, Hite letter, 6/1/12). This offer was not acceptable to the Appellants.

Appellants appealed the local board's decision to the State Board on June 4, 2012.

STANDARD OF REVIEW

The standard of review in a case that involves a local policy or dispute regarding the rules and regulations of a local board is that the decision of the local board shall be 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. The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D.

ANALYSIS

Transfer Denial Because of Overcrowding

Appellants allege that both Flowers and Roosevelt exceed the building enrollment capacities and that a school's State Rated Capacity is not a sufficient justification to deny a transfer. (Appeal, p. 2). They argue that their fundamental opposition to a mandatory school uniform policy requires their son's transfer from Flowers to Roosevelt. (Appeal, p. 1).

PGCPS Student Transfer Administrative Procedure (AP) 5110.3 (3/15/12) permits a transfer between schools "if space is available in the requested school." AP 5110.3(II). Available space in a school is determined by the school's State Rated Capacity, which is defined as the number of students that can be accommodated for a full time educational program in a school without impairing the delivery of educational services. AP 5110.3(III)(H). The PGCPS maintains a list of available schools that have an enrollment under 95% of the state rated capacity to which students can transfer. AP 5110.3(III)(M) and 5110.3(IV)(A)(1). The policy states that several schools (AVID, Project Lead the Way and Colours Performing Arts Program), secondary school reform academies, lottery-based programs, charter schools, and specialty programs with their own admissions criteria are not covered under the transfer policy. AP 5110.3(II).

The State Board has previously concluded that a local board's student transfer policies are permissive and not mandatory. In *D.D. v. Prince George's County Bd. of Educ.*, 6 Op. MSBE 35 (2006), the State Board explained that the local board's transfer policy gives the school system discretion to balance the interests of the students and schools. Here, the local board denied Appellants' transfer request from Flowers to Roosevelt because of overcapacity. The record shows that Roosevelt was over its State Rated capacity by 386 students, and not on

the approved school transfer list of schools under the State Rated Capacity. Appellants note that Flowers is also overcrowded. This does not affect their son's enrollment in the Flowers science and technology program, since Flowers is their neighborhood school. It only prevents student transfers into the school. Limiting student transfers because of over-enrollment is a legitimate justification for the local board to not grant the transfer request. Overcrowding can adversely impact delivery of educational services and facility requirements for students. Balance is needed to monitor, control and limit student enrollment and assignment to prevent excessive overcrowding in schools. The local board was within its discretion to deny Appellants' transfer request because Roosevelt was significantly over the State Rated Capacity for enrollment. Accordingly, the local board's decision was not arbitrary, unreasonable or illegal.

Transfer Denial between Specialty Programs

The local board also denied Appellants' transfer request because the transfer procedure in AP 5110.3 does not apply to student transfers between Science and Technology specialty programs with admission criteria. PGCPs has three Science and Technology Programs in the county that have eligibility criteria for attendance and students compete for selection to the program offered in the school within their boundary area of legal residence. Local board policy allows only students in the attendance area of a specific school to be accepted into the science and technology programs. Local board policy does not permit students to transfer between the three programs. AP 5110.3(II).

Here, the local board has chosen to limit admission to students who live within the boundary of where the science and technology program is established and to those students who meet academic performance admission criteria. Flowers was Appellants' son's boundary school and his admission was based on his application, a sufficient GPA and sufficient standardized test scores. Appellants' son met the admission requirements to the Flowers program. (Brockett Letter, 1/26/12,). As a result, he can attend the Flowers Science and Technology Program, which has a mandatory uniform policy. He is not required to attend a science and technology program. But by choosing to do so, he is subject to the local board's policy against transferring between specialty programs, and he is subject to the policies of the school. Because the local board's transfer policy is within its discretion, and PGCPs has articulated rational reasons for the policy, the policy is not arbitrary, unreasonable or illegal. For the same reasons, the local board's denial of Appellants' transfer request is not arbitrary, unreasonable or illegal.

Dress Code

Appellants fundamentally oppose a mandatory school uniform policy, and they argue that the local board's decision not to permit them to opt-out of Flower's mandatory school uniform program is arbitrary, infringes on their rights and promotes a school to prison mentality. Despite Appellants' opposition to a mandatory uniform policy, the State Board and courts have upheld mandatory school uniform policies and have found that these types of policies do not violate constitutional freedoms of speech or religion. *See Mattingly v. Prince George's County Bd. of Educ.*, MSBE Op. No. 04-10 (2004). *See also e.g., Levon v. Board of Educ. of Calumet City*

Sch. Dist., 1996 U.S. Dist. Lexis 19378 (1996); *Littlefield v. Forney Independent Sch. Dist.*, 268 F.3d 275 (5th Cir. 2001); *Bar-Navon v. Brevard County Sch. Bd.*, 268 F.3d 275 (11th Cir. 2008).

Section §3-1007 of the Education Article authorizes the Prince George's County Board of Education to implement the use of school uniforms by all students in the public schools in the county. Consistent with this statutory authorization, PGCPs Policy No. 0114 sets forth the basic rationale regarding school uniforms:

Many communities and school officials believe that school uniforms offer a positive and creative method for increasing school safety, reducing discipline problems, and enhancing the learning environment. The potential benefits of school uniforms include decreasing theft, instilling discipline, helping students resist peer pressure, and helping school officials recognize intruders who come to the school. The Board of Education encourages schools and communities to consider the adoption of voluntary or mandatory uniform policies. The Superintendent shall adopt and implement procedures to assist schools and communities in their efforts to transition to school uniforms.

See Board of Education Policy No. 0114 (Policy Adopted as 0600 on 6/19/97; Amended 4/29/2010).

Local board Administrative Procedure 0600 implemented the Board policy 0114 and identified specific procedures for participation for schools to adopt a uniform program. The procedure permits individual schools the discretion to adopt a voluntary or mandatory uniform program and compliance measures. A mandatory school uniform program is initiated by a petition by at least 20% of parents of the school. The principal convenes a school uniform committee. An affirmative vote of 75% of ballots is required to establish a mandatory uniform program. AP 0600(IV)(B). Communication with parents and guardians, incentives and positive reinforcement are encouraged to achieve full compliance with the mandatory uniform program. Repeated violations are subject to discipline in accordance with the Code of Student conduct. AP 0600(VI)(C). The current version of AP 0600 does not include an opt-out provision.

Appellants' opposition to a uniform policy and the reasons they give do not support a conclusion that the Flowers mandatory uniform policy is arbitrary, unreasonable or illegal. The mandatory uniform policy is intended to increase school safety, reduce discipline problems, enhance the learning environment, decrease theft, instill discipline, help students resist peer pressure, and help school officials recognize intruders who come to the school. Pursuant to PGCPs policy, Administrative Procedure 0600, Flowers' parents initiated the mandatory uniform program by a petition and voted on adoption of the program. More than a majority of the school's parents were required to vote affirmatively for the uniform policy. The program does not include an opt-out provision for personal opposition. The local board states that an opt-out provision was removed from PGCPs policy in 2006 because a large number of County schools adopted and implemented a mandatory uniform policy. Absence of an opt-out provision

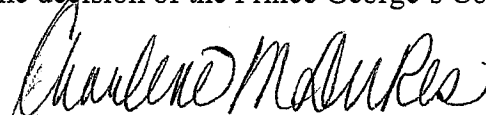
was within the local board's discretion, and they offered a reasonable rationale for not having an opt-out provision. Accordingly, it was not arbitrary, unreasonable or illegal for there not to be an opt-out provision from the Flowers program.²

French Program

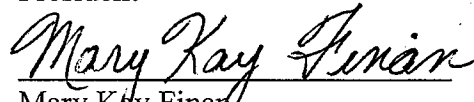
Finally, Appellants argue that their son should be transferred to Roosevelt because Roosevelt offers higher course levels of French than those offered at Flowers. Appellants belatedly raised the French courses issue in their response to the local superintendent's appeal recommendation. Assuming *arguendo* that the local board would not have granted Appellants' son's transfer to Roosevelt to take additional French courses for the same reasons they denied the transfer, we will briefly address this issue. The local board denied Appellants' transfer request because Roosevelt was overenrolled and transfers are not permitted between the Science and Technology specialty programs. Any difference in the levels of French courses between the two schools does not change the fact that Roosevelt was overenrolled and that transfers between specialty programs with admission criteria are not permitted. Accordingly, for the reasons stated above, denying the transfer to Roosevelt because of the availability of higher level of French courses would not be arbitrary, unreasonable, or illegal.

CONCLUSION

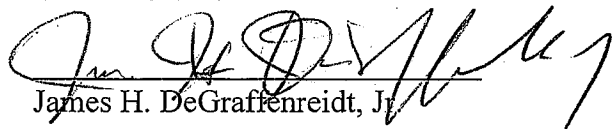
For all the reasons stated herein, we affirm the decision of the Prince George's County Board of Education.



Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



S. James Gates, Jr.

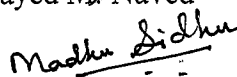
² Although there is no opt-out from the uniform policy, Dr. Hite offered Appellants' son a dress code as an alternative to the mandatory uniform program. As proposed, he would be allowed to wear gray pants in any shade of gray or style, with the exception of cargo pants and jeans. He would be expected to wear a white collared shirt in any style. On Fridays, special occasions and field trips, he would wear dark green polo shirts with the program logo and black slacks. (Appeal, Attach. 2, Hite Letter, 6/1/12).

Absent

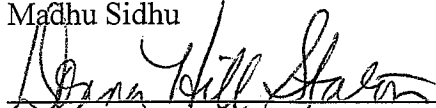
Luisa Montero-Diaz



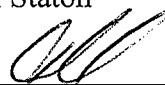
Sayed M. Naved



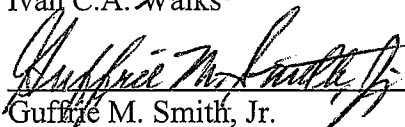
Madhu Sidhu



Donna Hill Staton



Ivan C.A. Walks



Guffie M. Smith, Jr.

Absent

Kate Walsh

October 31, 2012