

C.F. AND E.F., ON BEHALF OF MINOR CHILD, G.F.	:	
	:	COMMISSIONER OF EDUCATION
PETITIONER,	:	DECISION
V.	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF PEQUANNOCK, MORRIS COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Pro se petitioners appealed the elementary school assignment of their daughter, G.F., for the 2018-2019 school year, and requested that she be reassigned to the Pequannock elementary school that was closest to the house they were in the process of purchasing. The respondent Board denied petitioner’s request for a transfer based on Board policy governing school placement. The Board filed a motion for summary decision, which was opposed by petitioners. Oral argument on the motion took place on August 23, 2018, at which time the record closed.

The ALJ found, *inter alia*, that: that there were no genuine issues of material fact in this case, and the matter is ripe for summary decision; the Pequannock Township School District (District) began accepting kindergarten registration applications for the 2018-2019 school year in January 2018; initial kindergarten placement decisions were made on May 2, 2018, and parents were subsequently notified; on May 8, 2018, petitioner registered their daughter, G.F., in the District to begin kindergarten in the 2018-2019 school year; petitioners were informed during the registration process that there was no guarantee that G.F. would be placed in the elementary school closest to the house they were purchasing, and that she could be placed in any of the three elementary schools operated by the District; petitioners were notified on May 18, 2018 that G.F. had been placed in one of the other elementary schools, and began the within appeal; students who were registered for kindergarten in the District after initial assignments were made in early May 2018 were placed in the third kindergarten section, including G.F.; the Board indisputably has the management prerogative to adopt policies regarding the assignment of pupils within the District, and presented ample evidence that Board Policy No. 5120 and the Assignment Plan was followed when placing G.F. for the 2018-2019 school year; there is no evidence to support petitioners’ argument that G.F.’s school assignment was based on the fact that she is Hispanic; and the Board did not act in an arbitrary or capricious manner, or with bad intentions, in effectuating G.F.’s placement in accord with established policy. The ALJ granted the Board’s motion for summary decision.

Upon consideration and review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, and the petition was dismissed with prejudice.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 08309-18
AGENCY DKT. NO. 137-6/18

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CHILD, G.F. :
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 :
 RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner adopts the Administrative Law Judge's (ALJ) recommended decision for the reasons thoroughly set forth therein. Accordingly, the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2018

Date of Mailing: November 2, 2018

*This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 08309-18

AGENCY DKT. NO. 137-6/18

**C.F. AND E.F. ON BEHALF OF
MINOR CHILD G.F.,**

Petitioners,

v.

**TOWNSHIP OF PEQUANNOCK BOARD
OF EDUCATION, MORRIS COUNTY,**

Respondent.

C.F. and E.F., petitioners, pro se

Amy E. Canning, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: August 23, 2018

Decided: September 26, 2018

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or around June 8, 2018, C.F. and E.F., parents of minor child G.F, (petitioners) filed a Petition of Appeal with the Commissioner of Education seeking to change the assignment of their daughter, G.F., from one Pequannock elementary school to another.

Respondent Township of Pequannock Board of Education (Board or Respondent) denied petitioners' request for a transfer based on Board policy governing placement.

Petitioners initially requested that the matter be considered on an emergent basis, and an emergent hearing was scheduled for June 20, 2018. Petitioners withdrew their request for emergent relief on that day, and an evidentiary hearing was scheduled.

Respondent subsequently filed a motion for summary decision, which petitioners opposed, and oral argument on the motion took place on August 23, 2018, at which time the record closed.

FACTUAL DISCUSSION

Based on the submissions presented, and oral argument on the motion, I rely on the following **FINDINGS of FACT** in deciding this motion:

On or shortly after May 8, 2018, petitioners presented to register their daughter, G.F., in the Pequannock school district (District), where she would be enrolled in the 2018–2019 kindergarten class. Petitioners were in the process of purchasing a home in Pequannock that was close to Hillview Elementary School (Hillview). The proximity of the house to this school was a factor in their purchase. While enrolling G.F. in the District, petitioners were informed that there was no guarantee that G.F. would be placed at Hillview, and that she could be placed in another elementary schools in the District. Respondent operates three public elementary schools in Pequannock, all of which contain kindergarten classes: Hillview, Stephen J. Gerace Elementary School (SJG), and North Boulevard Elementary.¹ Hillview is generally considered by many in the District to be the “best” and most desirable of the three elementary schools.

The District began accepting kindergarten registration applications for the 2018–2019 school year in or around January 2018. On May 3, 2018, initial placement decisions

¹ All three schools are located on the same road. Hillview is located between SJG and North Boulevard, and the distance between Hillview and these schools is approximately one mile.

were made, and parents were subsequently notified. Petitioners' application was received after the initial kindergarten placements had been made.

On or around May 18, 2018, petitioners were informed that G.F. had been placed at SJG. Petitioners contacted Pequannock's Superintendent of Schools to request a change in kindergarten placement based on the location of their home, as it was closest to Hillview. The Superintendent indicated that he was unable to change G.F.'s placement, as her placement was consistent with Board policy, and he referred petitioners to the District's "Elementary School Attendance Plan."

Board Policy No. 5120 and the attendance area plan referenced therein set forth the factors to be considered when assigning students to elementary schools within the District. Policy No. 5120 was adopted by the Board in response to declining enrollment in the District over the past several years. It states in relevant part:

The Board of Education directs the Superintendent to assign elementary students to the schools of the District according to an attendance area plan which shall be approved by the Board. Taken into account for the establishment of attendance areas is the concept of maximum stability over the long range which promotes continuity to a given school, with minimum or no changes. The attendance plan was established for the best utilization of buildings and optimum space provisions for instructional purposes.

Assignment to Elementary School

In the assignment of students to schools, consideration shall be given to the following rank-ordered factors in the following sequence:

1. Special/Mandated Programs – Programs that address individual student needs, such as English-as-a-Second Language and Special Education placements;
2. Siblings – Sisters and brothers shall be assigned to the same school whenever possible; and
3. Class Size – Every reasonable effort shall be made to provide relative equality in class sizes at each grade level throughout the district as determined by the Superintendent of

Schools and regulated by New Jersey QSAC . . . Regulation.

For all enrollment requests made after June 13, 2008 (May 30 of 2009 and for every year thereafter), the student's assignment will be made on a space available basis. The Superintendent of Schools shall assign the student to a school with the most potential room in order to provide relative equality in class sizes across all elementary schools. Once assigned to an elementary school, the student's family will be added to that school's attendance zone, making it the permanent school for all of the student's siblings.

The Superintendent of Schools may make exceptions to this policy for extraordinary reasons. Requests for exceptions to school assignments shall be made in writing to the Superintendent of Schools.

Pequannock's "Elementary School Attendance Plan" (Attendance Plan),² which was referred to by respondent when the Superintendent denied petitioners' transfer request, states that it is "designed to ensure the best utilization of school facilities and optimal space provisions for the enhancement of instruction." The Attendance Plan lists the criteria to be considered in assigning elementary students to their school building:

1. Kindergarten students will be assigned to the school where an older sibling attends.
2. Each school will have two sections of kindergarten in their building.
3. A third section will be added each year in one of the elementary schools on a rotating basis.
4. Kindergarten students who are new to the district will be assigned with the aim of balancing class sizes.
5. Classes will have level enrollment in all three elementary schools. All new students (K-5) will be assigned to the school with the lowest class size for the enrolling grade.

² The "Elementary School Attendance Plan" is the attendance area plan referred to in Policy No. 5120 and therefore incorporated by reference into the Policy.

6. Once a student is assigned to an elementary school, he/she remains in that school until he/she goes to middle school

9. Assignments will not be made based on the geographical location or proximity of the child's residence to an elementary school.

10. The attendance zone for K-5 students will be the total area known as the Pequannock Township.

11. Only exceptions noted in this plan will be considered when assigning students to a particular school. Example: existing sibling in a school.

12. All residences in the Township will be considered part of one residential zone for Grade K-5 placement.

After the Superintendent denied petitioners' initial request for a transfer, C.F. researched and compared the performance of Hillview and SJG and concluded that SJG "far underperforms when compared to Hillview." Petitioners reached out to the Superintendent again to appeal G.F.'s placement and the Superintendent again indicated that he was following Board policy concerning placement. Petitioners then researched demographic information for each District elementary school and concluded that there are a greater number of minority students at SJG as compared to the other two elementary schools. According to the Petition of Appeal, C.F. then asked the Superintendent if G.F. was placed at SJG because she is Hispanic, and again the Superintendent responded that placement is determined pursuant to the aforementioned policy. While the Petition does not expressly claim that G.F. was placed at SJG because she is Hispanic, it is suggested that her ethnicity may have played a role in her placement since petitioners identified G.F. as Hispanic on the application. The Petition also asserts that respondent is "not only forbidden to segregate, they are also required to make every effort to ensure racial balance."

For the 2018–2019 school year, two kindergarten classes were assigned to each of the three schools and a third section was assigned to SJG.³ Students who register for kindergarten after the initial assignments were made (on May 3), were placed in the third

³ The third section of kindergarten is assigned on a rotating basis each year. SJG was assigned as the third section for the 2018–2019 school year.

section, at SJG, with the exception of those students assigned to Hillview or North Boulevard because they either require special education services or have an older sibling enrolled in one of those two schools. G.F. does not receive special education services, nor does she have an older sibling in the District.

After placements were announced by the District in May 2018, respondent received multiple requests from District parents to have their children transferred to Hillview from SJG or North Boulevard and those requests were also denied pursuant to Policy No. 5120 and the Attendance Plan.

Respondent's Motion for Summary Decision

Respondent maintains that the District has consistently and carefully followed the requirements set forth in Policy No. 5120 and the Attendance Plan, and did so with respect to G.F.'s placement. Petitioners registered their daughter after the initial student placements had been established, and pursuant to Policy No. 5120 and the Attendance Plan, the District assigns new students to the school with the lowest class size, regardless of the student's proximity to any school. Here, the school with the lowest class size was SJG, where the third (rotating) kindergarten class was assigned that year, and where all new students registering after the initial registration period were assigned since it contained the fewest number of students. The Attendance Plan specifically states that geographical location or proximity of the child's residence to the school is not considered in placement, and the attendance zone for elementary school students is the entire Township of Pequannock.

Pursuant to Policy No. 5120, consideration is given to three "rank-ordered factors" when assigning students to elementary school: (1) the availability and location of special/mandated programs that address individual needs, such as the English Language Learners program and special education services; (2) efforts are made to ensure that registering students are placed in the same school as an older sibling; (3) the size of each class is considered. The Policy requires that every reasonable effort must be made to

provide “relative equality” in class size.⁴ For those who register for kindergarten after the initial school assignments are made (in April or early May of each year), the policy directs that these students’ assignments “will be made on a space available basis.” Specifically, the Superintendent is directed to “assign the students to a school with the most potential room in order to provide relative equality in class sizes across all elementary schools.” Here, the school with the most potential room is SJG since that school was assigned the third kindergarten class for the school year and had the lowest enrollment. According to Policy No. 5120, exceptions to the Policy can only be made for “extraordinary” reasons, which do not exist here.

Respondent denies that G.F.’s assignment was based on any individual characteristic, including her ethnicity, and the Superintendent denies that he was even aware of G.F.’s ethnicity when she was placed at SJG. In response to petitioners’ assertion that SJG houses a disproportionate number of minority students, respondent provided data on the racial and ethnic breakdown in each of the three schools.⁵ Respondent maintains that any discrepancies in these figures is not significant, and certainly not enough to suggest a discriminatory practice, or an arbitrary or unreasonable policy of discrimination against any student.⁶

Respondent maintains that the Board has a legal right to assign and/or transfer its students, and the Attendance Plan expressly states that all Pequannock residences are considered part of one residential zone for kindergarten through fifth grade placement.

Finally, respondent asserts that petitioners cannot demonstrate that the Board’s decision concerning G.F.’s placement was arbitrary, unreasonable or capricious because they cannot establish that G.F.’s ethnicity influenced her placement. Her placement was

⁴ During the initial registration process, the administration also takes into consideration, to the extent practicable, two additional factors: the gender of each enrolling child (in an effort to ensure a reasonably equal balance of female and male students assigned to each class); and the proximity of each family’s home to the assigned elementary school. This, however, does not apply to G.F. since she registered with the District after the initial kindergarten placements were made.

⁵ Respondent refers to statistics reflecting that Hispanic students compose 11% of the students at SJG, 7.7% at Northern Boulevard, and 6.4% at Hillview.

⁶ Data was provided from the 2016-2017 Demographic NJ School Performance Reports showing 18.5% minority students at SJG; 9.7% at North Boulevard, and 10.5% at Hillview.

made in accordance with Board Policy, and since she was registered after the administration finalized initial enrollment figures on May 3, 2018, her placement, like those of all other students who registered after May 3, was entirely governed by the need to balance class sizes (with the exception of students with older siblings or special education needs), and the District was balancing class sizes by assigning new students to the third kindergarten class at SJG, which contained the fewest students.

Petitioners' Response to the Motion for Summary Decision

Petitioners assert that since Policy No. 5120 was adopted in 2015, there has been an increase of minority students being placed at SJG and that it is “alarming that the minority students are being placed at the lowest performing school rather than the highest performing school.” Petitioners alleged in their written opposition to the motion for summary decision that this amounts to racial discrimination. At oral argument, petitioners testified that while the District may not have intended to discriminate against its students when it adopted Policy No. 5120 and the Attendance Plan, the Policy Plan had a discriminatory effect in the District.

Petitioners provided statistics on the percentage of minority students at SJG over the past three years (where minorities totaled 14% of students for the 2014–2015 school year and increased to 18.4% two years later), and results of State testing at the three District elementary schools. Petitioners assert that the District has an obligation to balance the racial and ethnic composition of students in the three District schools given the current discrepancy of minority students attending these schools and the fact that the school with the highest level of minority students is also the “lowest performing” of the three. This, petitioners suggest, is an “extraordinary reason” for the District to make an exception to Policy No. 5120 and reassign G.F. to Hillview.

Petitioners conceded at oral argument that they have no evidence to support their suggestion that G.F. was intentionally placed at SJG because she is Hispanic, nor that the District deviated from its policies or practice with respect to G.F.'s assignment. At oral argument, C.F. testified that he did not know if his daughter was targeted by the District.

Petitioners also claimed that they were not aware of the District's registration deadlines and timeframes in making placement decisions, and that the District does not appear to follow its policies with respect to the initial placement decisions for kindergarten.

ANALYSIS

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). To survive a summary decision, the opposing party must show that "there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. Failure to do so entitles the moving party to summary judgment/decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995).

It is well settled that actions of local school boards that lie within their discretionary powers may not be disturbed unless they are arbitrary, without rational basis or induced by improper motives. Kopera v. West Orange Board of Educ., 60 N.J. Super. 288 (App. Div. 1960). The management prerogative of boards of education cannot be usurped or assumed by the Commissioner of Education absent a definitive showing of bad faith or arbitrary actions taken in bad faith without a rational basis. G.M. v. Roselle Park Borough Bd. of Educ., 95 N.J.A.R. 2d (EDU) 107, 109, adopted Comm'r. 95 N.J.A.R. 2d (EDU) 110 (citing Paddock v. Board of Educ. of the Borough of Demarest, 1974 S.L.D. 435).

In G.M., the Administrative Law Judge (ALJ) found that the board of education's decision to change geographic boundaries for kindergarten pupil placement, with a goal of evenly distributing the pupils at different schools within the district, was a reasonable exercise of its authority. Fullen v. Middletown Twp. Board of Educ., 1986 S.L.D. 582, adopted Comm'r. 1986 S.L.D. 603, also dealt with the issues of school overcrowding and redistricting plans. In Fullen, the ALJ stated: "A policy or rule of a board of education is reasonable if it is designed to achieve a legitimate goal While pupils have a constitutional right to receive a thorough and efficient program of education, there is no

corollary right to receive such education in a specific schoolhouse in the district.” Fullen, at 598, 601.

Here, there is no genuine issue as to any material fact. There is no dispute that petitioners registered their daughter in the Pequannock School District after the initial period of enrollment had closed, and that Board Policy No. 5120 and the Attendance Plan govern the assignment of kindergarten students in the District following the initial enrollment period. It is also clear that the Policy/Plan indicate that assignments for new students (i.e., those enrolling after the initial enrollment period) in the District will not be made based on proximity of the child’s residence to the school. Instead, according to the Policy/Plan, new students are assigned to the school with the lowest class size for the enrolling grade, with the aim of balancing class size. Petitioners do not dispute that SJG’s third kindergarten class, where G.F. was assigned, had the lowest class size. Respondent provided Certifications from the Superintendent, Dr. Brett Charleston, and the District’s Data Analyst and Administrative Assistant to the Superintendent, that detail how the kindergarten students, including G.F., were assigned to their respective schools. Nothing in the record suggests that respondent deviated from Policy No. 5120 or the Attendance Plan when it assigned G.F. to SJG.

The Board indisputably has the management prerogative to adopt policies addressing the assignment of pupils within the District, and it presented ample evidence to support a legitimate reason to adopt Policy No. 5120 and the Assignment Plan—i.e., to address decreasing enrollment in the District and the need to balance class size. Petitioners do not challenge the Board’s stated reasons for adopting Policy No. 5120. Instead, they assert in their Petition that G.F. should be reassigned from SJG to Hillview because her placement at SJG may have been improperly motivated by the fact that she is Hispanic, and also to “help the balance of minority students within the district.”

Nothing presented in the written record or at oral argument supports the suggestion that G.F. was assigned to SJG because she is Hispanic. Petitioners testified that they do not know whether G.F. was ever “targeted” by respondent for being Hispanic, and they conceded that they have no evidence to support a claim that she was assigned to SJG because she is Hispanic.

Petitioners claim that Policy No. 5120 has had a discriminatory effect because it has resulted in an increase in the number of minority students at SJG when compared to the other two schools, and SJG does not perform as well as the other two schools on the State standardized assessments. Petitioners assert, without offering any legal support, that respondent has a duty to “ensure racial balance,” and as a Hispanic student, G.F. should be reassigned to Hillview to help balance the minority population in the District. At oral argument, petitioners suggest that respondent should make an exception to Policy No. 5120 with respect to G.F. and reassign her to Hillview to balance the racial/ethnic composition of the District schools. This, however, cannot reasonably be considered an “extraordinary reason” to justify an exception to the Policy. Moreover, the Attendance Plan specifically states that “only exceptions noted in this plan will be considered when assigning students to a particular school.”⁷ None of the possible exceptions to the Policy as outlined in the Plan apply to G.F., and assigning, or reassigning, students in the District based on their race/ethnicity is inconsistent with the District’s Policy.

As parents, it is understandable that petitioners want to see their daughter attend the “best” school in the District, and while they have a right to a thorough and efficient education, they do not have a legal right to receive this education in the school of their choosing within the District.

CONCLUSION AND ORDER

As the moving party, respondent Board carries the burden of proof to demonstrate, by a preponderance of the credible evidence, that summary decision should be entered in favor of respondent because there is no dispute as to any genuine material fact and the Board is entitled to judgment as a matter of law. Here, there is no material fact in dispute and respondent has sufficiently established that summary decision is appropriate because G.F. was assigned to SJG in accordance with Board Policy, and the Board did not act arbitrarily, unreasonably or with bad intentions in effectuating this placement. After

⁷ The exceptions noted in the plan are limited to (1) having a sibling in another school; or (2) the need for special education services available at another school.

considering all of the proofs and arguments relative to the motion, I **CONCLUDE** that respondent has met its burden.

Based on the foregoing, I **CONCLUDE** that the respondent's motion for summary decision should be **GRANTED**.

It is, therefore, **ORDERED** that the motion for summary decision filed by the respondent, Pequannock Township Board of Education, is **GRANTED** for the reasons stated herein.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 26, 2018
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb