92-22

New Jersey Commissioner of Education

Final Decision

E.P., on behalf of minor children, J.B. and L.P.,

Petitioner,

v.

Board of Education of the City of Burlington, Burlington County,

Respondent.

Synopsis

Pro se petitioner challenged the respondent Board's decision to assign her minor children, J.B. and L.P., to the Captain James Lawrence Elementary School (Lawrence) following her move to a new address in Burlington that falls within the district's attendance area serviced by the Lawrence school. E.P. maintained that J.B. should remain at his previous school, the Samuel Smith Elementary School (Smith), because she asserted that J.B.'s 504 Plan and disability cannot be accommodated at the Lawrence school. Petitioner contended that the transfer has been detrimental to J.B.'s academic and emotional progress, and that the Board's decision was arbitrary, capricious, and unreasonable. Petitioner also challenged L.P.'s reassignment from Smith to the Lawrence school. The Board filed a motion for summary decision, which was opposed by petitioner without any supporting affidavits.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; a school board has discretionary power to determine which school students will attend within its district, so long as the decision is not contrary to law; in this case, the Board presented ample evidence supporting its reasons for reassigning J.B. and L.P. to the Lawrence school based on the relocation of E.P.'s family to a new sending area within the district, and on Board policy; the Board has further shown that J.B.'s disability can be accommodated at the Lawrence school; E.P.'s assertion that an exception should also be made for L.P. is without merit; further, L.P. no longer attends either district elementary school, as she is now a student at the Watts Intermediate School. The ALJ concluded that the Board's decision to transfer petitioner's children to a different elementary school within the district following petitioner's change of residence was not arbitrary, capricious, or unreasonable. Accordingly, summary decision was granted in favor of the Board, and the petition was dismissed.

Upon review of the record, the Commissioner concurred with the ALJ's conclusion that the Board did not act in an arbitrary, capricious or unreasonable manner in assigning petitioner's children to the Lawrence school based on their residency in the school's sending district. Accordingly, summary decision was granted in favor of the Board, and the petition was dismissed.

92-22

OAL Dkt. No. EDU 00721-21
Agency Dkt. No. 258-12/20

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Petitioner,

v.

Board of Education of the City of Burlington,
Burlington County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board's decision to transfer petitioner's children to a different elementary school within the district following petitioner's change of residence was not arbitrary, capricious, or unreasonable. Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 3, 0222
Date of Mailing: May 4, 2022

[1] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 00721-21
AGENCY DKT. NO. 258-12/20

E.P., ON BEHALF OF MINOR CHILDREN, J.B. and L.P.,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF BURLINGTON, BURLINGTON COUNTY,
Respondent.

E.P., petitioner, pro se

Jeffrey R. Caccese, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: February 18, 2022 Decided: March 24, 2022

BEFORE **CARL V. BUCK III, ALJ**:

STATEMENT OF THE CASE

Petitioner E.P., on behalf of her minor child, J.B., challenges the decision of the Burlington City Board of Education, Burlington County (Board) to assign J.B. to attend the Captain James Lawrence Elementary School (Lawrence) due to parent moving to a location in the district serviced by the Lawrence school. Before the move, J.P. had

attended Samuel Smith Elementary School (Smith) school. E.P. maintains that J.B. should remain at Smith to accommodate J.B.'s special needs because J.B.'s 504 Plan and J. B.'s disability cannot be accommodated at Lawrence. Petitioner states that this transfer has been detrimental to J.B.'s academic and emotional progress, and the Board's decision was arbitrary, capricious, and unreasonable.[1] Petitioner, on behalf of her minor child, L.P., challenges the decision of the Board to assign L.P. to attend the Lawrence School due to parent moving to a location in the district serviced by the Lawrence school. Before the move, L.P. had attended Smith School.

PROCEDURAL HISTORY

The pro se petition of appeal was filed with the Commissioner of Education (Commissioner) on or about December 23, 2020. It was transmitted to the Office of Administrative Law (OAL) on January 19, 2021, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On August 3, 2021, the Board filed a motion for summary decision, pursuant to N.J.A.C. 1:1-12.5. On September 1, 2021, E.P. filed opposition to the motion, with no responding affidavits, contrary to N.J.A.C. 1:1-12.5(b). Respondent's response was filed on September 13, 2021. Petitioner filed additional information on September 28, 2021, to which respondent objected as submitted out of time. A number of other documents were submitted and Oral argument on the motion was scheduled for December 15, 2021. Petitioner did not appear on that date, but the Tribunal allowed the parties to submit final documents until December 27, 2021. Additional documents were filed, and the record closed on February 18, 2022.

FACTUAL DISCUSSION AND FINDINGS

From the documentary evidence provided by the parties and information gleaned at the oral argument, I **FIND** the following as **FACT**:

[1] E.P. has also brought a complaint against the Board with the Office of Civil Rights at the U.S. Department of Education alleging the Board has failed to accommodate J.B.'s disability.

1. The City of Burlington Public School District (District) is comprised of four schools, Burlington City High School, which serves students in grades 7-12, Wilbur Watts Intermediate School, which serves students in grades 3-6, Samuel Smith Elementary School and Captain James Lawrence Elementary school, which both serve students up through second grade.

2. All students in grades 3-6 attend Wilbur Watts Intermediate School (Watts) and all students grades 7-12 attend Burlington City High School (BCHS) regardless of where they reside within the District.

3. Students in second grade and younger attend either Samuel Smith Elementary School (Smith) or Captain James Lawrence Elementary School (Lawrence) depending on where they reside within the territorial boundaries of the District.

4. The Board maintains an Elementary Zoning Map identifying the attendance areas of the elementary schools.

5. Petitioner is the mother of three children attending school in the District, J.B., L.P. and C.A.

6. On or about October 14, 2020, a school social worker from Watts who was involved with C.A. was informed that Petitioner may have relocated. That information was referred to the Board's residency officer, James Barnes.

7. After receiving the referral, Mr. Barnes investigated and determined that Petitioner was residing at 2-- C---- Street, which is in the Lawrence sending area. Petitioner previously lived at 9-- S--- Avenue, which is in the Samuel Smith sending area.

8. On October 29, 2020, Mr. Barnes advised the school secretaries at Watts and at Smith of the address change since petitioner had children at each of those schools at that time. That information was passed on to the Administration, who determined that J.B. and L.P. would be transferred to Lawrence due to petitioner's change in residency and in accordance with Board policy.

9. Petitioner was informed through correspondence from Superintendent, John Russell, Ed.D., dated November 30, 2020, that L.P. and J.B. would be transferred to

Lawrence effective January 4, 2021. Dr. Russell's letter explained that petitioner's new address is zoned for Lawrence, rather than Smith, and referred her to Board Policy 5120, which gives the Board the discretion to assign students to schools and affirms that students shall attend school based on the attendance area of their residence.

10. During the 2020-2021 school year, petitioner opted for J.B. and L.P. to attend school all virtually, which was a choice offered to all students due to the COVID-19 pandemic. As such, the transfer from Smith to Lawrence did not require either J.B. or L.P. to physically change buildings.

11. Although mid-year, in District transfers are not tracked by the Administration on a year-to-year basis.

12. C.A. was a fourth-grade student at Watts at the time this appeal was filed. C.A.'s school of attendance was not impacted by the petitioner's change of residence and will not be impacted going forward.

13. L.P. was a second grader at the time this appeal was filed. By virtue of petitioner's change of residence, on January 4, 2021, L.P. was transferred from Smith to Lawrence. However, during the 2021-2022 school year, she will attend Watts, and her school of attendance will no longer be impacted by petitioner's residence.

14. J.B. was a first-grade student at the time this appeal was filed. By virtue of petitioner's change of residence, on January 4, 2021, J.B. was transferred from Smith to Lawrence. During the 2021-2022 school year he will attend Lawrence instead of Smith. Beginning in the 2022-2023 school year he will attend Watts.

15. On December 5, 2020, petitioner wrote a letter expressing her disagreement with J.B. and L.P. being transferred to Lawrence expressing her belief that it was not in J.B.'s best interest to be transferred focusing on her dissatisfaction with the implementation of J.B.'s 504 Plan, rather than any dispute about her residency.

16. Petitioner met with Dr. Russell on December 23, 2020, to discuss additional supports the Board was offering to J.B. in response to petitioner's concerns about the

implementation of the 504 Plan. At the meeting Dr. Russell advised that the transfer would become effective on January 4, 2021, after the winter break.

17. Petitioner filed this appeal on December 23, 2020.

18. Petitioner filed a simultaneous complaint against the Board with the Office for Civil Rights within the U.S. Department of Education alleging the Board has failed to accommodate J.B.'s disability by improperly implementing his 504 Plan. That matter remains pending.

19. The petition lists 2-- C------ Street as petitioner's address, which is in the Lawrence attendance area.

20. Petitioner provided a note from J.B.'s doctor with her petition wherein his doctor opined that a transfer was not in J.B.'s best interest.

21. J.B. was absent for nineteen (19) days prior to the implementation of the transfer, during the first seventy (70) days of school. J.B. missed another ten (10) days after the transfer and did not begin attending school at Lawrence until after she was advised of the Board's obligation to notify DCP&P of his truancy.

22. Subsequent to the filing of this appeal, in a letter written to the Court, petitioner expressed her concern that J.B.'s visual impairment would make it physically challenging for him to switch buildings from Samuel Smith to Captain James Lawrence, as he would have to learn a new building layout.

23. J.B. has not been physically in school since March of 2020, at which time he was in kindergarten.

24. The Board initiated an Orientation and Mobility referral for J.B. through the New Jersey Commission for the Blind and Visually Impaired (Commission) which has provided assistive technology and services.

LEGAL ANALYSIS AND CONCLUSIONS

Summary Decision Standard

A summary decision "may be rendered 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). That rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules. See R. 4:46-2; Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

> "[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'"
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> [Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).]

In evaluating the merits of the motion, "[a]ll inferences of doubt are drawn against the movant and in favor of the opponent of the motion." Judson, 17 N.J. at 75. "When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b) (emphasis added). "If the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious, he[/she] will not be heard to complain if the court grants summary judgment." Judson, 17 N.J. at 75 (internal quotation marks and citations omitted). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252.

Having reviewed the parties' submissions, I **CONCLUDE** that no genuine issues of material fact exist which require an evidentiary hearing, and that this matter is therefore ripe for summary decision.

SUMMARY DECISION

It is long and well established that a school board has discretionary power to determine which school a student will attend within its district, so long as the decision is not contrary to law. State ex rel. Pierce v. Union Dist. School, 46 N.J.L. 76, 77-78 (1884). The law requires that school boards shall "[m]ake, amend and repeal rules, not inconsistent with . . . title [18:A] or with the rules of the state board, for . . . the government and management of the public schools and public school property of the district." N.J.S.A. 18A:11-1c. "Each school district shall provide, for all children who reside in the district . . . suitable educational facilities including proper school buildings and furniture and equipment, [and] convenience of access thereto." N.J.S.A. 18A:33-1.

"Convenience of access" has been construed to be a matter of distance between a student's residence and assigned school, rather than the parents' convenience for personal reasons. See, e.g., Van Note v. Branchburg Bd. of Educ., 2001 N.J. AGEN LEXIS 201 (April 16, 2001) (citing N.J.S.A. 18A:39-1 and concluding that board's decision to limit transportation of child of divorced parents with joint physical custody to the residence of one parent only was not arbitrary, capricious, or unreasonable). It is indisputable that by moving within the district, petitioner's new home places her family in the perimeter of the sending area for the Lawrence school. The contention is that J.B. should remain in the Smith school, which is not only not in the sending area.

An "'action of the local board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.'" Parsippany-Troy Hills Educ. Ass'n v. Bd. of Educ., 188 N.J. Super. 161, 167 (1983) (quoting Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div.1960)). The Board's discretionary decision to assign J.B. to Lawrence "'is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing

that such decision was arbitrary, capricious or unreasonable.'" Ibid. (quoting Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div.1965)).

The arbitrary, capricious, or unreasonable standard of review "is narrow in its scope and consequently imposes a heavy burden on those who challenge actions of boards of education." Piccoli v. Bd. of Educ. of the Ramapo-Indian Hills Reg'l High Sch. Dist., 1999 N.J. AGEN LEXIS 1314 at 11-12 (Mar. 10, 1999).

> In the law, "arbitrary" and "capricious" means having no rational basis. . . . Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling.
>
> [Id. at 12 (quoting Bayshore Sewerage Co. v. Dept. of Envtl. Prot., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973) (internal citations omitted), aff'd o.b., 131 N.J. Super . 37 (App . Div. 1974)).]

In order to defeat the Board's summary decision motion, E.P. must therefore "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. v. Bd. of Educ. of Franklin Lakes, 2014 N.J. AGEN LEXIS 19 (Feb. 24, 2014). There has been no such showing. Indeed, to the contrary, there is no evidence of bad faith, petitioner has assented to the arrangements and accommodations made for J.B. at the Lawrence school.

The Commissioner routinely adopts initial decisions dismissing petitions of appeal when parents object to their child's involuntary assignment to a different school to reduce or equalize class sizes and resources. See, e.g., C.F. v. Bd. of Educ. of Twp. of Pequannock, 2018 N.J. AGEN LEXIS 996 (Sept. 26, 2018), adopted Comm'r, 2018 N.J. AGEN LEXIS 996 (Nov. 2, 2018) (dismissing appeal of kindergartener's school assignment and concluding that school board's approval of students' school assignment

plan to address decreasing enrollment and need to balance class sizes was not arbitrary, unreasonable, or made in bad faith); J.P. v. Bd. of Educ. of S. Brunswick, 2002 N.J. AGEN LEXIS 952 (Dec. 17, 2002), adopted Comm'r, 2003 N.J. AGEN LEXIS 1013 (Feb. 3, 2003) (dismissing appeal of grade schoolers' new school assignment and concluding that redistricting grade schools due to overcrowding, population growth, and acquisition of new elementary school was not arbitrary, capricious, or unreasonable, even if it was not the best of all proposed redistricting plans considered by the board); Piccoli, 1999 N.J. AGEN LEXIS 20 (Jan. 12, 1999), adopted Comm'r, 1999 N.J. AGEN LEXIS 1314 (Mar. 10, 1999) (dismissing appeal of amended high school assignment policy and concluding that school board's amendment of policy was not arbitrary, capricious, or unreasonable, and was a product of issues of overcrowding at one school, under-enrollment at another, and future use of the district's capital resources and further educational programs); G.M. v. Roselle Park Borough Bd. of Educ., 1994 N.J. AGEN LEXIS 1008 (Dec. 15, 1993), adopted Comm'r, (Jan. 26, 1994) (dismissing appeal of school board's change of geographic boundaries for kindergartners and concluding that board's goal of evenly distributing students within the district schools was reasonable exercise of authority, not arbitrary, capricious, or unreasonable, and did not result in child being treated differently than other similarly situated students. "[T]he school board may not look at each individual child and decide whose personal reasons are more compelling for attendance at one school than another. Absent some form of actual impediment to attendance or extraordinary circumstance boards must act in a manner that treats all students equally."); Fullen v. Middletown Twp. Bd. of Educ., 1986 S.L.D. 582, 598, 601 (Jan. 27, 1986), adopted Comm'r, 1986 S.L.D. 603 (dismissing challenge to school redistricting plan to alleviate enrollment imbalances, underutilization of some facilities, and overutilization of other facilities, and concluding that "[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."); Marcewicz v. Bd. of Educ. of Pascack Valley Reg'l High Sch. Dist., 1972 S.L.D 619, 625-26 (Nov. 28, 1972) (dismissing challenge to school redistricting plan to relieve overcrowding of high school and concluding "the Board acted in a reasonable, deliberate and thorough manner to examine the enrollment projections over a period of weeks prior to the time of its final action," as "[i]t is the Board alone which is empowered by N.J.S.A. 18A:11-1 to make rules for its

own 'government' and the 'government' of the public schools entrusted to its supervision"); Rutherford v. Bd. of Educ. of Maywood, 1963 S.L.D. 129, 130 (May 24, 1963) ("Petitioner's claim of personal hardship, however sincere, does not raise a sufficient consideration to outweigh the educational values which respondent considers will emerge from classes limited in size and equalized with respect to the teachers' skills and experience.").

In this case, the Board indisputably has the management prerogative to adopt policies addressing the assignment of students within the District, "which cannot be usurped or assumed by the Commissioner . . . absent a definitive showing of bad faith or arbitrary actions taken in bad faith without a rational basis." C.F., 2018 N.J. AGEN 996 at 15-16. The Board has presented ample evidence supporting its reasons for the establishment of new attendance within the new sending area and has also shown that J.B.'s disability can be accommodated at the --- school.

E.P. in addition to concerns expressed for J.B. also asserts that an exception should be made for L.P. when both children are in the appropriate area for the Lawrence school.

Under these circumstances, I **CONCLUDE** that the Board has met its burden to prove by a preponderance of the credible evidence that its decision to transfer J.B. was not arbitrary, capricious, or unreasonable, and that J.B.'s education, taking into consideration his established disabilities, can be accommodated at the Lawrence school and therefor the Board's motion for summary decision as to J.B. should therefore be **GRANTED** as a matter of law.

Further, I **CONCLUDE** that the Board has met its burden to prove by a preponderance of the credible evidence that its decision to transfer L.P. was not arbitrary, capricious, or unreasonable, and that L.P. as residing in the Lawrence school area is appropriately designated to attend the Lawrence school and therefor the Board's motion for summary decision as to L.P. should therefore be **GRANTED** as a matter of law.

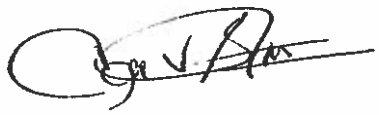
ORDER

It is therefore **ORDERED** that the Board's motion for summary decision is hereby **GRANTED**, and the petition of appeal is hereby **DISMISSED**.

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.



March 24, 2022
DATE

CARL V. BUCK III, ALJ

Date Received at Agency: March 24, 2022

Date Mailed to Parties: March 24, 2022

CVB/lam

APPENDIX

EXHIBITS

For Petitioner:

Documentary Submissions

For Respondent:

Motion for Summary Decision and Order dated August 3, 2021

Additional Documentary Submissions