

BEFORE THE ARKANSAS STATE BOARD OF EDUCATION

IN THE MATTER OF:

OLVEY FAMILY

Docket No.:
School Choice Appeals 2024-001

Order No.: 1

ORDER

On July 11, 2024, during a regular meeting of the Arkansas State Board of Education (“Board”), a hearing was conducted pursuant to the legal authority and jurisdiction vested in the Board by the Public School Choice Act of 2015, Ark. Code Ann. § 6-18-1901 et seq., and the Division of Elementary and Secondary Education Rules Governing Public School Choice. Before the Board was the appeal of the Olvey family (“Petitioner”) challenging the decision of the Harmony Grove School District denying their application for transfer of their child, G.O., to the Harmony Grove School District under the Public School Choice Act of 2015.

RELEVANT LAW AND STANDARD OF REVIEW

The Arkansas Public School Choice Act of 2015 requires that the board of directors of a public school district adopt a resolution with specific standards for acceptance and rejections of school choice applications. Ark. Code Ann. § 6-18-1903(d)(1). These standards may include a claim of lack of capacity by a school district only if the school district has reached the maximum authorized student population in a program, class, grade level, or school building. Ark. Code Ann. § 6-18-1903(d)(2)(B). A nonresident school district shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability. Ark. Code Ann. § 6-18-1903(d)(3). As part of the review process, a

family may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the child. Ark. Code Ann. 6-18-1907(b)(2)(B). If either district denies a petition, Arkansas Code allows the family to appeal the decision of the denying school district to the Board. A hearing on the appeal must be held, where testimony and evidence may be presented.

After all testimony and evidence are taken, the Board may, considering the totality of the evidence presented, move, take a vote, and order one of the following: (a) grant the appeal, overturning the decision of the denying district and allowing the student to transfer; or (b) deny the appeal, affirming the decision of the denying school district. On appeal, the school district bears a heavy burden of justifying its decision to deny a family's petition and must overcome that burden with a clear and convincing reason for that decision. As part of its decision, the Board considers the General Assembly's clear legislative intent favoring a family's choice for their student's education in a fresh era of expanded choices for students and families in Arkansas. The Board also may determine whether the denying school district acted arbitrarily when making its decision to deny a petition for transfer and balance the interests of a family against the interests of a school district.

FINDINGS OF FACT

1. The Petitioner resides in the Hampton School District, and G.O. is enrolled in the Hampton School District. G.O. has a disability and requires special educational services.
2. The Petitioner timely submitted an application for school choice pursuant to Arkansas Code § 6-18-1905 to the Harmony Grove School District on behalf of

G.O. and G.O.'s sibling due to the Hampton School District's decision to switch to a twelve (12) month school calendar.

3. On or about May 8, 2024, the Harmony Grove School District denied the Petitioner's application based on G.O.'s need for a one-on-one paraprofessional, which would require the District to hire additional staff. The Harmony Grove School District accepted G.O.'s sibling, who does not have a disability.
4. On or about May 15, 2024, pursuant to Ark. Code Ann. § 6-18-1907(b)(1), the Petitioner requested a hearing before the Board to appeal the decision of the Harmony Grove School District to deny the school choice application.
5. The appeal was timely filed.
6. The resident district, Hampton School District, did not object to the transfer.
7. On July 11, 2024, the Board heard the Petitioner's appeal.
8. At the hearing, the Petitioner testified that, by denying Petitioner's school choice application, the District was discriminating against G.O. because of G.O.'s disability.
9. The District maintained that it did not deny Petitioner's school choice application because of G.O.'s disability, but rather a denial based on capacity.

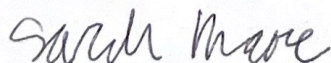
CONCLUSIONS OF LAW

10. The Board acknowledges the balance that school districts aim to maintain in increasing enrollment while participating in school choice.
11. The reasons that the Harmony Grove School District gave for its decision to deny G.O.'s transfer did not meet the statutory exemptions that allow public school districts to deny a school choice application. Additionally, the District's

decision is contrary to two statutory mandates: (1) prohibition of discrimination based on a disability, Ark. Code Ann. § 6-18-1903(d)(3); and (2) a presumption in favor of a public school district accepting siblings where possible to keep families together, Ark. Code Ann. § 6-18-1903(d)(2)(C). In its letter rejecting G.O.'s application, the District did not explicitly state that it was rejecting G.O.'s application based on G.O.'s disability; however, the reality is that when an application for two siblings was submitted to the District, the student with a disability was rejected, while the student without a disability was accepted. In fact, the District admitted at the hearing that if it accepted G.O., it would need to hire additional staff *because* it would "have to accommodate [G.O.'s] needs." While the District maintained that it was rejecting G.O.'s application because accepting G.O. would require the District to hire additional staff, the Board finds the District's reasoning inadequate because the District's burden of hiring additional staff did not extend to G.O.'s sibling.

12. The General Assembly's mandate of empowering parental choice in a student's education is clear. A decision to deny a school choice application should only be made by a school district that has a clear and convincing reason for doing so.

Based on the testimony presented at the hearing, the Petitioner's school choice appeal is hereby **GRANTED**, the Harmony Grove School District's decision to deny the transfer is reversed, and the school choice transfer is approved.



Dr. Sarah Moore, Chair
Arkansas State Board of Education