

T.M.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-23

OPINION

INTRODUCTION

This is an appeal of the Montgomery County Board of Education’s (“local board”) decision denying the Appellant’s request for Change of School Assignment (“COSA”) for her son. The local board responded to the appeal maintaining that its decision to deny the request was not arbitrary, unreasonable, or illegal. The Appellant responded. The local board replied that it is relying on the information and arguments it provided in its initial response to the appeal.

FACTUAL BACKGROUND

Appellant’s son, Student A, attends Montgomery County Public Schools (“MCPS”) and will be entering the sixth grade for the 2023-2024 school year. He previously attended Fairland Elementary School (“FES”) and is assigned to attend his home school, Briggs Chaney Middle School (“BMS”). Appellant wants Student A to attend Silver Creek Middle School (“SMS”) instead of his home school.

On or about February 21, 2023, Appellant submitted a COSA request seeking to have Student A attend SMS instead of BMS based on a unique hardship. (Local Bd. Response, Ex. 1).¹ In Appellant’s letter supporting the request, she explained that it would be easier for her to drop off and pick up her son from SMS because SMS is in closer proximity to her employment than BMS. On February 27, 2023, the Division of Pupil Personnel and Attendance Services (“DPPAS”) denied the request finding that it did not meet the criteria under local board policy and regulation. *Id.*

On March 13, 2023, the Appellant appealed DPPAS’s denial of her COSA request. (Local Bd. Response, Ex. 2). The email communication reiterated that Appellant’s work is close to SMS and that the transfer would make her life a little easier.

The Chief of District Operations, Dana E. Edwards, the Superintendent’s Designee, referred the matter to Heidi J. Balter, Hearing Officer, for review. (Local Bd. Response, Ex. 3). As part of her review, Ms. Balter, communicated with the Appellant; Dr. Lashley, principal at FES; Ms. Hart, pupil personnel worker; and Ms. Dhanmatie Finlay, counselor secretary at BMS. The Appellant stated that SMS is five minutes from her work and that she currently takes Student A (and her niece) to and from FES each day.

¹ The Appellant also discusses a similar COSA request for the Appellant’s niece to attend SMS instead of BMS after previously attending FES. However, the Appellant is not her niece’s guardian, and she does not have authority to seek a COSA request for her niece and no request has been submitted by the niece’s mother. (Local Bd. Response, Ex. 6).

The Appellant also reported that Student A attends before and after school programs for child care. The Appellant indicated that if Student A is transferred to SMS, she will be on time for work due to the proximity of the school. Dr. Lashley reported that Student A has a good attendance record and that both FES and BMS are the same distance from the Appellant's work location. Ms. Hart also indicated that BMS has after school activities for the 2023-2024 school year, Tuesday through Thursday. Bus transportation is provided to and from school and for all extra-curricular activities. *Id.*

In a Memorandum dated April 21, 2023, Ms. Balter provided her report and recommendation to the Superintendent's Designee. (Local Bd. Response, Ex. 3). Based on her review and findings, she concluded, "this appeal does not meet the criteria of a unique hardship as stated in MCPS Regulation JEE-RA, *Transfer of Students and Administrative Placements.*" *Id.* at p. 2. She recommended that the COSA request be denied. On April 21, 2023, the Superintendent's Designee adopted the recommendation and upheld the denial.

On May 10, 2023, Appellant appealed the decision of the Superintendent's Designee to the local board. (Local Bd. Response, Ex. 4). In the appeal, the Appellant reiterated her concern about SMS's closer proximity to her work and stated that she takes both her son and her niece to and from school and this often causes her to be late for work or to leave work early. She stated that if her son and her niece are transferred to SMS it would make life a little easier.

The local board conducted a review on the record on June 6, 2023. (Local Bd. Response, Ex. 6). In a Decision and Order issued on June 27, 2023, the local board agreed with the Superintendent's Designee's decision and affirmed the denial of Appellant's COSA request. *Id.* The local board found that while sympathetic to the concerns raised by Appellant about the possibility that driving her son may sometimes be inconvenient to her work schedule, that her concerns did not rise to the level of a unique hardship as required by board policy. The local board stated that bus transportation to and from school is available and there is no need for the Appellant to drive Student A to and from school. Additionally, three days a week, there are free after school activities offered at BMS with school bus transportation provided. The local board found that many families in Montgomery County face similar challenges in juggling the demands of work, school, and child care. Because these issues are common to a large number of families, they do not constitute a unique hardship justifying an exception to school assignment based on residence pursuant to local board regulation and policy.

This appeal to the State Board followed.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the decision of the local board shall be considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A local board decision is arbitrary or unreasonable if "it is contrary to sound educational policy" or if "a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached." COMAR 13A.01.05.06B. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the MCPS has developed criteria to guide its process for determining which students are eligible to change schools. It is well established that there is no right or privilege to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967); *J.D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 20-32 (2020); *Carolyn B. v. Anne Arundel County Bd.*

of Educ., MSBE Op. No. 15-20 (2015). The State Board has long recognized that student transfer decisions are a matter of local concern, controlled by local policy and regulations. *See Darren v. Suzie L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-53 (2012)(finding that desire for a student to be close to parent’s work and community activities does not demonstrate a unique hardship under local board policy); *see also, I.A. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 23-21 (2023)(finding close proximity to Appellant’s work falls far short of extremely significant extenuating circumstances necessary for child care issues to demonstrate a unique hardship under local board policy).

MCPS Policy JEE-RA – *Student Transfers* requires students to attend their assigned school unless they are granted a special exception to attend a school other than their home school. (Local Bd. Response, Ex. 7). The special exception applicable in this case is unique hardship. Unique hardship requires “extenuating circumstances related to ...their family’s individual or personal situation that could be mitigated by a change of school environment.” *Id.* at Section C.1.a. However, problems that “are common to large numbers of families do not constitute a unique hardship, absent other compelling factors.” *Id.* Furthermore, unique hardship related to child care issues “must be extremely significant for students beyond the elementary level.” The policy further provides that child care issues will only meet the unique hardship standard if the appellant’s “work hours extend significantly beyond the typical hours available for child care programs” or there are “significant financial constraints” that limit the appellant’s ability to access child care. *Id.* Neither of these criteria are applicable in this case.

The basis for Appellant’s request is that SMS is in closer proximity to her work and driving her son to school has in the past made her late to work and the transfer will make things a little easier for her. She acknowledges that bus transportation to and from school is available to her son, but she prefers to drive him to help make the transition to middle school easier for her son. This preference falls far short of meeting the unique hardship standard as defined in the local board policy. *See Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013) (“The matriculation to middle school is an adjustment for all entering students who can be understandably anxious and insecure in the new environment.”). In our view, Appellant has not offered any additional compelling factors to establish a unique hardship because of child care concerns. Moreover, free after school activities with bus transportation home are available at BMS three days a week in which Student A can participate.

Under the local board’s criteria for approving student transfers, the Appellant has not set forth facts that establish a unique hardship in order to support an exception to the generally applicable rule that students attend the school in which they are assigned based on their residence. We find that the local board decision was not arbitrary, unreasonable, or illegal.

CONCLUSION

For all of the foregoing reasons, we affirm the decision of the local board.

Signatures on File:

Clarence C. Crawford
President

Joshua L. Michael
Vice-President

Chuen-Chin Bianca Chang

Susan J. Getty

Monica Goldson

Nick Greer

Irma E. Johnson

Rachel McCusker

Joan Mele-McCarthy

Samir Paul

Warner I. Sumpter

Holly Wilcox

Abstained:
Shawn D. Bartley

September 26, 2023