

KARINA D.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-01

OPINION

INTRODUCTION

This is an appeal of the Montgomery County Board of Education's ("local board") 4-4 split decision which resulted in the denial of Appellant's Request for Change of School Assignment ("COSA") for her daughter. The local board filed a Motion for Summary Affirmance maintaining that its decision of the Superintendent's designee should remain in effect because it was not arbitrary, unreasonable, or illegal. The Appellant responded to the local board's Motion. The local board replied.

FACTUAL BACKGROUND

At the start of this school year (2018-2019), Appellant's daughter, T.D., began the 6th grade at her assigned school, White Oak Middle School ("White Oak MS"). T.D. had previously attended Kemp Mill Elementary School ("Kemp Mill ES") for kindergarten through 5th grade on an approved COSA and had participated in the dual language program there.

On May 6, 2018, while T.D. was still in elementary school, Appellant submitted a COSA application seeking to have T.D. attend Colonel E. Brooke Lee Middle School ("Lee MS") instead of White Oak MS.¹ (Motion, Ex. 2). As the basis for the request, the Appellant checked the box on the form for "intent to continue in feeder pattern for paired elementary schools, or from middle to high school except for boundary change, for previously approved middle school COSA." *Id.* In an attached letter, Appellant stated that she had two daughters attending Northwood High School on a COSA, who had attended Lee MS,² and a younger daughter who will still be attending Kemp Mill ES in the fall, and that it would be easier for Appellant to have T.D. at Lee MS because of its proximity to Kemp Mill ES.³ Because T.D. was not applying to attend a paired elementary school and was not matriculating from middle to high school after a previously approved middle school COSA, the option for continuing in a feeder pattern was not a basis for her transfer under the policy. Nevertheless, the school system considered whether a unique hardship would justify the COSA request.⁴ On May 8, 2018, the Division of Pupil

¹ The school system considered the COSA despite the fact that Appellant submitted it after the April 1, 2018 deadline.

² Lee MS was the family's assigned school when her oldest daughter began middle school.

³ Appellant is a single mother.

⁴ Unique hardship was the only potentially applicable basis for a COSA request in this case.

Personnel and Attendance Services (“DPPAS”) denied the request citing that no unique hardship had been documented. (*Id.*).

On June 5, 2018, Appellant appealed the denial of her COSA request to the Chief Operating Officer, Andrew M. Zuckerman, the Superintendent’s designee for transfer appeals. (Motion, Ex. 3). In her letter of appeal, Appellant again explained that she has two older daughters attending Northwood High School, who had also attended Lee MS, and a younger daughter attending Kemp Mill ES, and that transporting all of the children to their respective schools would be very difficult. She stated that she would have to change the school assignments for all of her children if the transfer were not granted. *Id.* She also stated that she is active in the Lee MS community, familiar with the Lee MS staff, and comfortable with Lee MS. *Id.*

The Superintendent’s Designee referred the matter to Hearing Officer, Sandra S. Walker, for review. (Motion, Ex. 4). In a Memorandum dated July 2, 2018, Ms. Walker provided her report and recommendation. As part of her review, Ms. Walker communicated with the Appellant, the Principal of White Oak MS, and the Principal and Assistant Principal of Lee MS. The Appellant told Ms. Walker that her two older daughters attending Northwood HS went to Lee MS so she is comfortable with the staff there and has been active in the Parent Teacher Association there. She repeated her concern about transporting all of her children to school if the transfer were not granted. She also mentioned that the girls’ grandfather lives with them and helps drive the girls to and from school. *Id.* Appellant mentioned that T.D. participated in the dual language program at Kemp Mill Elementary School.

The Assistant Principal at Lee MS advised Ms. Walker that there is no special class for students who completed that program, but such students could be eligible for placement in a high school level Spanish class. The principal of White Oak MS stated that T.D. would be welcomed at White Oak and recommended that Appellant make an appointment with her and the guidance counselor to discuss appropriate academic programming for T.D. Ms. Walker noted that bus transportation is available to take T.D. to White Oak MS. Ms. Walker found that the Appellant had failed to present evidence of a unique hardship and recommended denial of her COSA request. *Id.* By letter dated July 3, 2018, the Superintendent’s Designee advised the Appellant that he adopted Ms. Walker’s findings and recommendations denied the COSA request. (Motion, Ex. 5).

On July 30, 2018, Appellant appealed the decision of the Superintendent’s Designee to the local board. (Motion, Ex. 6). In the appeal, the Appellant discussed her comfort level at Lee MS and her preference that T.D. follow in the footsteps of her older sisters who excelled there. She noted that her oldest daughter was able to skip one level of Spanish instruction upon entry at Lee MS, and she believes that T.D. would be able to do the same in Spanish, as well as in math. The Appellant stated that if T.D. attended Lee MS she would be able to earn her Student Service Learning (“SSL”) hours at Kemp Mill ES, where her older daughters did theirs. The Appellant stated “I have nothing against White Oak Middle School[,] on the contrary I know that they will be more than welcoming to [T.D.]” . . . but “her past, present and future resides at [Lee MS]” and “I just want the best for my daughter to be successful.” *Id.*

By Memorandum dated August 14, 2018, Jack R. Smith, Superintendent, responded to the appeal. He recommended that the local board uphold the decision to deny the Appellant’s

COSA request due to lack of a unique hardship. (Motion, Ex. 7). He explained that White Oak MS offers various levels of Spanish and mathematics and that T.D.'s placement in those classes would depend on her proficiency and performance level. He stated that T.D. could earn SSL hours at Jackson Road Elementary School, which is near White Oak MS. In addition, he noted that although the family is familiar with Lee MS and T.D.'s sisters had success there, that familiarity and prior success does not predict greater success for T.D. at one school over another. *Id.*

In a Decision and Order issued September 11, 2018, the local board was unable to attain the five votes necessary to affirm or reverse the decision of the Superintendent's Designee. (Motion, Ex. 8). The result was that the decision of the Superintendent's Designee to deny the COSA remained in effect. The four members who agreed with the decision found that the Appellant failed to demonstrate a unique hardship sufficient to justify the change of school assignment. The four members who disagreed with the decision believed that it would be helpful to maintain the family ties to Lee MS. *Id.*

This appeal followed. In her appeal to the State Board, the Appellant raises additional issues to support her COSA request. First, she claims that a new work schedule has caused her difficulty picking her children up after school so a family friend picks them up for her and cares for them until 5:00 pm. Because the friend has a daughter who attends Lee MS, the friend does not have enough time to pick up T.D. from White Oak on time. Second, the Appellant states that T.D. is not comfortable at White Oak MS and Appellant is concerned that the discomfort will affect her school performance. (Appeal).

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, 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. A 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.01.05.05 (B)(1) & (2). The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(D). Because the local board did not attain the necessary votes to either affirm or reverse Dr. Zuckerman's denial of the COSA request in this case, we apply this standard to our review of his decision.

LEGAL ANALYSIS

Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the Montgomery County Public Schools ("MCPS") has developed particular 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); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

MCPS permits student transfers in certain situations, one of which is when the family can demonstrate unique hardships "that could be mitigated by a change of school assignment." (MCPS Regulation JEE-RA, Section V.A.1). However, "problems that are common to large

numbers of families, such as day care issues ... do not constitute a unique hardship, absent other compelling factors.” *Id.*

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Appellant would like T.D. to attend Lee MS so that she can achieve the same academic success that her sisters experienced there, particularly with regard to Spanish and mathematics. A COSA based on the desire to participate in particular courses or a program of study runs counter to MCPS policy because it is an issue common to large numbers of families who may prefer the course offerings of one school over another. The State Board has repeatedly upheld cases denying COSA requests based on a desire to participate in particular classes/programs. *See Christine C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-59 (2014)(denial of transfer request based on desire to participate in business and finance course); *Richard and Nadia S. v. Harford County Bd. of Educ.*, MSBE Op. No. 07-41 (2007)(transfer to take advantage of science courses offered at one high school but not another found permissible); *William Wu & Linda Liu v. Montgomery County Bd. of Ed.*, MSBE Op. No. 04-40 (2004)(desire to participate in advanced studies in art and Chinese offered at Quince Orchard High School not a valid basis for transfer); *Warran v. Montgomery County Bd. of Educ.*, MSBE Op. No. 00-25 (2000)(denial of transfer based on desire to participate in high school’s signature program in fine arts and humanities upheld); *Simms v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 00-12 (2000)(desire to participate in sign language program in high school is insufficient to justify transfer request). Moreover, the Appellant has not identified any specific classes that she wants T.D. to take that are not offered at White Oak MS. The Superintendent has indicated that White Oak MS offers various levels of Spanish and mathematics and that T.D.’s placement in those classes would depend on her proficiency and performance level.

In her appeal before the local Superintendent and the local board the Appellant claimed that she would be unable to transport all of her children to school if T.D. did not receive the transfer to Lee MS. Now in the State board appeal she states that T.D. has arrived later to school several times because of traffic and the difficulty managing driving all of her children to school given their school start times. It is well-established that the transportation issues associated with having multiple children attend different schools is an issue common to large numbers of families and does not constitute a hardship. *See Mr. and Mrs. X v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-29 (2012); *Marcia A. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-47 (2011); *Pamela M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-04 (2008). Parents often must coordinate getting multiple children to different schools on time. Here, the school system provides bus service that is available for T.D. to ride to and from White Oak MS. The Appellant, however, has indicated that she is unwilling to utilize the bus transportation because “she doesn’t like her daughters riding the bus.” (Appeal). That is certainly the Appellant’s prerogative but her preference to drive her daughter to school is not a basis for a transfer.

Throughout the appeals the Appellant has expressed her desire to have T.D. attend Lee MS based on the family’s history and familiarity with the school, and the success that T.D.’s sisters experienced there. Appellant wants T.D. to follow her sisters’ path from Kemp Mill ES, to Lee MS, to Northwood HS and believes this will give T.D. the greatest chance to excel. The desire to have a child attend a school based on such preferences, however, is not a recognized unique hardship that is sufficient to grant a change of school assignment. *See Slater v.*

Montgomery County Bd. of Educ., 6 MSBE 365 (1992)(Denial of transfer to school alleged to better serve student’s abilities and welfare).

New Evidence in the State Board Appeal

The Appellant now argues that her new work schedule has caused difficulty with after school care for her children, and that a family friend must now pick the girls up after school and watch them until 5:00. The friend has had problems picking up T.D. from White Oak MS on time because her own daughter attends Lee MS and there is a timing issue due to when the schools dismiss. (Appeal). Appellant also maintains that T.D. had been attending White Oak MS since the beginning of the school year and she is uncomfortable there. The Appellant is concerned that the discomfort will affect T.D.’s performance.

The State Board may consider new evidence or remand the appeal to the local board for consideration of the new evidence if the evidence is material to the case and the Appellant offers good reason for failing to present the information to the local board. COMAR 12A.01.05.04(C). The local board conceded that the Appellant likely could not have presented the information to the local board. Given the timing and nature of the information, we agree. We must therefore examine the materiality of it to this case. To be material in the appeal, the evidence must be “of such a nature that knowledge of the item would affect a person’s decision-making.” *Shervon D. v. Howard County Bd. of Educ.*, MSBE Op. No. 17-10 (2017).

With regard to the childcare issue, the State Board has held consistently that absent additional compelling factors, childcare issues do not amount to a hardship. See *Raegan and Rick H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62 (2014); *Desbele S. v. Montgomery Country Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *Mr. and Mr. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010); *A.T. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-08 (2007). Childcare issues are common to many families who are faced with balancing the demands of work and children.

In our view, the Appellant has not offered any additional compelling factors to establish a unique hardship on the basis of childcare concerns. Based on the record, the Appellant has two high school age daughters, one of whom is a senior; T.D. is 12; White Oak dismisses at 3:00 and offers bus transportation; and T.D.’s grandfather lives with the family and assists with transporting the girls to and from school.

The Appellant also claims that T.D. is uncomfortable at school and she is concerned that this feeling will affect T.D.’s performance. She states that T.D. “had a few encounters in which she felt physically uncomfortable, relating with her body. I don’t really want my daughter to be self-conscious but it is happening.” (Appeal). It is difficult to understand precisely what the Appellant is referring to because she has not presented any evidence to further explain or support her position. It is not uncommon for students to experience difficulty when transitioning from elementary to middle school. The local board has stated that White Oak MS has professionals on hand to assist with the transition and deal with whatever issues may arise. (Motion). We take the health, safety and welfare of all students very seriously. We urge the Appellant to seek out the assistance of school professionals to assist T.D. with the transition and, more specifically, to help address the “encounters” T.D. has had at school and her feelings of discomfort.

CONCLUSION

For the reasons stated above, we find that the Decision of the Superintendent’s Designee is not arbitrary, unreasonable or illegal and we affirm his denial of the Appellant’s COSA request to transfer her daughter from White Oak MS to Lee MS.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene (Abstained)

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy (Abstained)

Michael Phillips

David Steiner

Warner I. Sumpter

January 22, 2019