

DAN AND LAUREN T.,

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-34

OPINION

INTRODUCTION

Dan and Lauren T. (“Appellants”) appeal the decision of the Montgomery County Board of Education (“local board”) denying their Change of School Assignment (“COSA”) request for their daughter to attend Winston Churchill High School (“Churchill HS”) for the 2020-2021 school based on lack of a unique hardship. The local board filed a brief maintaining that its decision is not arbitrary, unreasonable, or illegal and should be upheld. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellant’s daughter, [REDACTED], will be entering the ninth grade at the start of the 2020-2021 school year and is assigned to attend [REDACTED] High School (“[REDACTED] HS”). She attended [REDACTED] Middle School (“[REDACTED] MS”) last year.

In early February 2020, Appellants submitted a COSA application seeking to have S.T. attend Churchill HS instead of [REDACTED] HS claiming a unique hardship. (Local Bd. Ex. 2). Appellants provided information about [REDACTED]’s struggles to make friends during elementary school and the success she has had in middle school since attending school with her friends. *Id.* They maintained that [REDACTED] faces social and academic challenges that they believe will be exacerbated if [REDACTED] cannot go to school with her friends who serve as her support system. *Id.* Further, Appellants stated that [REDACTED] suffers from anxiety that has worsened since learning that she will not be entering the same school as her friends. *Id.* Appellants also explained that they are already involved in and have close ties to the Churchill HS community because they live in such close proximity to the school. *Id.* In support of the application, Appellants submitted a letter from [REDACTED]’s pediatrician stating:

It would be a detriment to [REDACTED] to pull her from her entire social network and support system for high school. I have seen how worrying about this potential separation has already caused [REDACTED] loss of sleep and emotional distress, impacting her performance in school. Having the opportunity to move into high school at Churchill with a strong support system already in place will allow

[REDACTED] the ability to make academics her primary focus and have a successful high school experience, which is all we could ever want for a high schooler.

Id. On February 21, 2020, the Division of Pupil Personnel and Attendance Services (“DPPAS”) for Montgomery County Public Schools (“MCPS”) denied the request citing lack of a unique hardship. *Id.*

On March 2, 2020, Appellants appealed the denial of their COSA request to the Chief Operating Officer (“COO”), Andrew M. Zuckerman, the Superintendent’s Designee for COSA appeals, reiterating the reasons for their request. (Local Bd. Ex. 3). They stated that [REDACTED] has had anxiety for years, which has now been heightened by the thought of attending high school without her friends who serve as her support system. *Id.* They stated that [REDACTED]’s fear of being alone in high school keeps her up at night and has impacted her school performance. *Id.*

The Superintendent’s Designee referred the matter to Hearing Officer, Carole C. Goodman, for review. In a Memorandum dated March 11, 2020, Ms. Goodman provided her report and recommendation. As a part of her review, Ms. Goodman communicated with the Appellants, and the Grade 8 counselor at [REDACTED], and reviewed the grade, attendance, and disciplinary data about [REDACTED] (Local Bd. Ex. 4).

The Appellants told Ms. Goodman that their neighborhood is on the line between [REDACTED] HS and Churchill HS and because of this [REDACTED] made friends with children in their neighborhood through religious school, athletics, and dance, all of whom will be attending Churchill. *Id.* Appellants repeated their concern about [REDACTED]’s performance in school without her friends. *Id.* They mentioned that while [REDACTED] had difficulty making friends in elementary school, once she eventually made friends in middle school she had an easier time with the school transition. *Id.* Appellants also stated that [REDACTED] has not received outside mental health counseling beyond the support provided by her pediatrician. *Id.*

The Grade 8 counselor at [REDACTED] MS advised Ms. Goodman that [REDACTED] is a very nice student who has not had disciplinary issues. *Id.* She also indicated that neither the Appellants nor [REDACTED] ever brought concerns regarding [REDACTED]’s anxiety to her attention. *Id.* Aside from the struggles with anxiety shared by Appellants in the appeal, the school system had no documented report that [REDACTED] struggles with anxiety, and she does not have a 504 plan or receive any supplemental support or services. *Id.* Ms. Goodman found that Appellants failed to present evidence of a unique hardship and recommended denial of the COSA request. *Id.* By a letter dated March 13, 2020 the Superintendent’s Designee advised Appellants that he adopted Ms. Goodman’s findings and recommendations and he denied the COSA request. (Local Bd. Ex. 5).

Appellants filed an appeal with the local board, received on March 25, 2020. (Local Bd. Ex. 6). Appellants provided three additional points with their appeal in addition to their prior arguments. First, they stated that when [REDACTED] entered [REDACTED] MS, Appellants were told that COSA requests at split matriculation schools are often granted. Appellants report that several children in their neighborhood have been able to attend Churchill HS instead of [REDACTED] HS. *Id.* Second, Appellants state that Ms. Goodman’s report indicated that [REDACTED] was seeing her pediatrician for her mental health issues, but failed to note that their pediatrician’s office has mental health experts that provide mental health services for patients in need of those supports.

Id. Finally, Appellants note that although [REDACTED] does not have a 504 plan, “that doesn’t mean that [REDACTED] hasn’t struggled.” *Id.*

On May 29, 2020 the local board issued its decision upholding the denial of the COSA request. (Local Bd. Ex. 7). The local board found that Appellants did not demonstrate a unique hardship as required by local board policy. The board noted that the letter provided by the pediatrician did not provide evidence that [REDACTED] had been diagnosed or treated for any emotional or mental health condition which would impact her education.

This appeal followed. We recognize that it is uncertain when in-person school will resume due to the COVID-19 emergency. Nevertheless, we must address the issues raised in this appeal based on the assumption that in-person school will resume at some point.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A decision may be arbitrary or unreasonable if it is (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached. COMAR 13A.01.05.06B. A decision may be found illegal if it is: (1) unconstitutional; (2) exceeds the statutory authority or jurisdiction of the local board; (3) misconstrues the law; (4) results from an unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error or law. COMAR 13A.01.05.06C.

LEGAL ANALYSIS

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). Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the MCPS has developed particular criteria to guide its process for determining which students are eligible to change schools. 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, . . . do not constitute a unique hardship, absent other compelling factors.” *Id.* MCPS policy specifically requires that, “[d]ocumentation that can be independently verified must accompany all hardship requests, or the request will be denied.” JEE-RA, Section V.A.2.

Peer Group

Appellants seek to transfer [REDACTED] to Churchill HS so that she can attend school with her friends who are assigned there. This Board has stated previously and often, the desire to attend school with one’s friends or peer group does not constitute a unique hardship. *Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013); *Mary Ann K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-52 (2010); *Tom & Judy M. v. Montgomery County Bd.*

of Educ., MSBE Op. No. 09-37 (2009); *Iglesias v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-50 (2002). The matriculation from middle to high school is an adjustment for all entering students who can understandably be anxious and insecure in the new environment. It is a time, however, when they meet new people, make new friends, and become involved in new school activities. ■■■ will know many of the students at her assigned school, ■■■ HS, because ■■■ MS has a split matriculation to ■■■ HS and Churchill HS. Thus, in the usual case, ■■■'s desire to attend school with her classmates is a situation common to many students that does not give rise to a unique hardship.

Medical Need

In this case, however, Appellants link their transfer request to ■■■'s alleged anxiety claiming that ■■■ needs to attend Churchill HS with her friends so that she has a support system in place that can help maintain her stability and good mental health. Appellants also claim that ■■■ has already experienced increased anxiety since learning that she will attend a different high school than her friends, and due to the uncertainty about return to school this year as a result of COVID-19. They claim that the anxiety has already had a detrimental effect on her education and that it will continue to do so this school year.

The health, safety and welfare of all students is of paramount importance to this Board. Transfer requests based on medical needs are some of the most difficult transfer cases we review. Through the years, we have developed a framework for review of these types of cases. In order to justify a transfer based on a medical need, an appellant must demonstrate a link between the student's medical condition and the necessity for transfer to the requested school. *Shevron D. v. Howard County Bd. of Educ.*, MSBE Op. No 17-10 (2017); *Philip and Deborah W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). "Brief statements" from medical professionals fall short of "the type of detailed explanation needed regarding the necessity for the transfer and the intended outcome." *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No 15-20 (2015). Further, an appellant must establish that health professionals at the student's assigned school cannot support the medical condition. *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015). The fact that a documented medical condition exists is not itself sufficient to grant approval of a transfer. *Timothy and Michelle W. v. Howard County Bd. of Educ.*, MSBE Op. No. 09-18 (2009).

Appellants have provided documentation from ■■■'s pediatrician regarding their medical concern to support their transfer request. Although the documentation provides the doctor's opinion that there could be negative consequences to ■■■ if she were not transferred to Churchill, it falls short of the type of documentation necessary to support a transfer based on a medical need. The letter provides no evidence of diagnosis or treatment of a mental health condition. *See Shervon D., supra*, at p.3 (Affirming denial of transfer where medical professional failed to offer a clinical diagnosis of medical condition). Although the Appellants note in their appeal that the pediatrician has provided support for the anxiety issues and that the practice has mental health professionals, they have provided no evidence that ■■■ has received any mental health services from the pediatrician, the mental health providers at the pediatrician's office or any other health professional. In addition, although Appellants claim that ■■■ has struggled with anxiety in the past, they never previously informed MCPS of any such concerns, and ■■■ did not have a 504 plan at ■■■ MS for anxiety or any other issues. With regard to any additional anxiety concerns that may be related to COVID-19 and return to school this

year, the Appellants have likewise not provided any evidence sufficient to support a unique hardship on this basis.

Further, the Appellants have failed to establish that the health professionals at [REDACTED]'s assigned school cannot support any anxiety issues she may have. As the Superintendent's Designee pointed out in his memorandum, "there is no reason to believe that [REDACTED] cannot get involved in school life and broaden her social circle at [REDACTED] High School." Approximately 40 percent of the students at [REDACTED] MS will attend [REDACTED] HS, making it likely that [REDACTED] will know other students. (Local Bd. Ex. 7). In addition, all of the students entering [REDACTED] HS for the 9th grade will be adjusting to a new school with students feeding in from multiple middle schools, making it a natural time for all of the students to meet new people and establish new relationships. We agree with the Superintendent's Designee that the Appellants should reach out to [REDACTED] HS and contact [REDACTED]'s new counselor to inform them about their concerns regarding [REDACTED]'s transition to high school and separation from her friends so that the school can provide support to help with the transition. (See Local Bd. Ex. 4).

New Evidence

In their appeal to the State Board, Appellants seek to introduce additional evidence not previously introduced in the appeal before the local board. The State Board may consider the additional evidence or remand the appeal to the local board for consideration of the additional 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 13A.01.05.04C. To be material, the evidence must be "of such a nature that knowledge of the item would affect a person's decision-making." *Shervon D., supra*, at p.3.

The Appellants submitted documents that are supposed to provide support for their claims concerning [REDACTED]'s struggles in school. These include teacher referrals to the MCPS Educational Management Team from November 2019, email communications between the Appellants and [REDACTED] MS personnel dated April 20, 2018, and an Occupational Therapy Evaluation dated July 14, 2010. The teacher referrals were precipitated by a concern about [REDACTED]'s ability to grasp concepts and focus on lessons. The emails were from Appellant, Ms. T, to [REDACTED]'s math teacher and sixth grade school counselor requesting assistance to address difficulties in math. The counselor responded expressing a willingness to discuss Ms. T's concerns. The evaluation, which is nearly ten years old, determined that [REDACTED] experienced some delays in gross and fine motor skills but opined that improvement would be fast once OT sessions began.

All of these documents predate Appellants' original COSA application in February 2020. Appellants have provided no explanation why these documents could not have been included in their original COSA or at any other point during the appeal process. Because the Appellants did not offer any reason why these documents were not presented to the local board even though they were clearly available, the documents do not satisfy the standard for consideration of additional evidence. Furthermore, the additional evidence is not material to the appeal because it fails to link any existing concerns or struggles to anxiety issues, and fails to address a medical need for attendance at Churchill HS. Thus, we will not consider the additional evidence.

CONCLUSION

For the reasons stated above, we find that the local board's decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of the Appellants' COSA request.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Rose Maria Li

August 25, 2020