

I.A.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-21

OPINION

INTRODUCTION

This is an appeal of the Montgomery County Board of Education’s (“local board”) decision denying the Appellant’s request for Change in School Assignment (“COSA”) for her daughter. 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 daughter, Student A, attends Montgomery County Public Schools (“MCPS”) and will be entering the ninth grade this school year, 2023-2024. She previously attended ██████████ Middle School and is assigned to attend her home school, ██████████ High School (“██████HS”) in the fall. Appellant wants Student A to attend Thomas S. Wootton High School (“TWHS”) instead of her home school.

On or about March 1, 2023,¹ Appellant submitted a COSA request seeking to have Student A attend TWHS instead of ████████HS based on a unique hardship. (Local Bd. Response, Ex. 1). In Appellant’s letter supporting the request, she explained that she works long hours and will not be home when Student A is dismissed for the day. She explained that due to safety concerns in her neighborhood, she did not want Student A home alone. She explained that Student A’s cousin attends TWHS and Student A could go home with her cousin until the Appellant could pick up Student A. *Id.* On or about March 6, 2023, the Division of Pupil Personnel and Attendance Services (“DPPAS”) denied the request citing lack of a unique hardship.

By letter, Appellant timely appealed DPPAS’s denial of her COSA Request. (Local Bd. Response, Ex. 3). The letter reiterated that Appellant worked long work hours and believed it was unsafe for Student A to be home alone after school. *Id.* Appellant further stated that Student A’s cousin attends TWHS and they could stay together after school. *Id.*

¹ The local board identified the date of March 1, 2022, however, we believe the correct date is March 1, 2023.

The Chief of District Operations, Dana E. Edwards, the Superintendent's Designee, referred the matter to Albert Mangiacapra, Hearing Officer, for review. (Local Bd. Response, Ex. 2). As part of his review, Mr. Mangiacapra reviewed the record and communicated with the Appellant as well as the principal intern at ██████████ Middle School and the principal at TWHS. Appellant advised Mr. Mangiacapra that she is requesting a COSA because of safety concerns. *Id.* She stated that their apartment complex is in a dangerous neighborhood that has a heavy police presence due to drug activity, physical confrontations, and possible gang activity. She further advised that she and Student A's father work hours beyond the typical school day. She stated that Student A's cousin attends TWHS and if Student A is transferred to TWHS, she could remain at her cousin's house until the Appellant was available to collect her. *Id.* Appellant advised Mr. Mangiacapra that Student A is healthy and able to care for herself. *Id.*

In a Memorandum dated April 21, 2023, Mr. Mangiacapra provided his report and recommendation. (Local Bd. Response, Ex. 2). Based on his review and findings of the absence of a unique hardship, Mr. Mangiacapra recommended that the COSA request be denied. He stated that the request was based on the Appellant's concern for Student A's safety and because "alternatives for after school activities are available to" ████████ HS students, the request "does not meet the requirements of a unique hardship as stated in MCPS Regulation JEE-RA, Transfer of Students and Administrative Placements." *Id.* at p. 7. By letter dated April 21, 2023, the Superintendent's Designee advised the Appellant that she adopted Mr. Mangiacapra's findings and recommendations and denied the COSA request. *Id.*

By letter dated May 8, 2023, Appellant timely appealed the decision of the Superintendent's Designee to the local board. (Local Bd. Response, Ex. 3). In the appeal, Appellant reiterated her concern for her daughter's safety if she is home alone after school. She also stated that TWHS is in close proximity to her employer so she would be able to collect Student A after school and Student A could stay with her at her work. She also stated it would be more accessible and convenient for her to attend parent teacher meetings and other school functions if Student A is transferred to TWHS. *Id.*

The local board conducted a review on the record on May 25, 2023. (Local Bd. Response, Ex. 5). In a Decision and Order issued on June 7, 2023, the local board agreed with the Superintendent 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, the generalized concerns for safety do not rise to the level of a unique hardship as required by board policy and that the record does not establish that Student A will be unsafe at home. *Id.*

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 Montgomery County Public Schools (“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).

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. 6. 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, “[d]ocumentation that can be independently verified must accompany all hardship requests, or the request will be denied.” *Id.* The Appellant has presented two factors to support her request: safety and childcare.

Safety Concerns

In support of her request, Appellant raised the issue of safety of Student A because she claims the neighborhood in which they reside is unsafe and has a heavy police presence. The Appellant failed to produce any documentation that could be verified to establish the safety concerns. Also, there is no evidence that Student A faces any specific threats in her neighborhood that would not be common to all students in the neighborhood. The Appellant’s generalized concerns regarding the safety of the neighborhood do not represent a unique hardship to Student A because they are common concerns to all the students residing in the neighborhood. The State Board has consistently declined to find that such generalized safety concerns satisfy the unique hardship standard required to support a transfer request. *See K., Alexandra & Christopher v. Charles County Bd. of Educ.*, MSBE Op. 13-06 (2012); *Leona V. v. Hartford County Bd. of Educ.*, MSBE Op. 09-17 (2009); *A.F. v. Prince George’s County Bd. of Educ.*, MSBE Op. 09-17 (2009). Furthermore, MCPS has identified that Student A has the option to participate in free after-school activities at ■■■HS which could alleviate the concern of Student A being alone at her home without parental supervision.

Childcare Issues

The Appellant’s safety concerns about Student A being at home without parental supervision is essentially a childcare issue. Like many parents, the Appellant and her husband have jobs that prevent them from being home with their children after school. Moreover, local board policy provides “the extenuating circumstances must be extremely significant for students beyond the elementary level.” Local Bd. Response, Ex 6, Section C.1.b. The State Board has consistently held that absent additional compelling factors, childcare issues do not amount to a hardship. *See Raegan and Rich H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62

(2014); *Desbele S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *Mr. and Mrs. 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).

The Appellant requests the transfer to TWHS because it is in close proximity to her work. The Appellants reasons fall far short of extremely significant extenuating circumstances. In our view, Appellant has not offered any additional compelling factors to establish a unique hardship on the basis of childcare concerns. Moreover, free after school activities are available at ■■■HS 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

Monica Goldson

Nick Greer

Irma E. Johnson

Rachel McCusker

Joan Mele-McCarthy

Samir Paul

Warner I. Sumpter

Holly Wilcox

Dissent:
Shawn D. Bartley (demure)
Susan J. Getty

August 22, 2023