

BRENDA F.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-16

### CORRECTED OPINION

#### INTRODUCTION

Appellant challenges the decision of the Montgomery County Board of Education (“local board”) denying her request for a Change of School Assignment (“COSA”) for her daughter to attend ██████ Middle School (“█MS”) instead of her assigned home school based on geographic attendance area. The local board responded to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant responded and the local board replied.

#### FACTUAL BACKGROUND

The Appellants’ daughter, Student X, is a sixth-grade student residing in the attendance area for ██████ Middle School (“█MS”). Student X previously attended ██████ Elementary School (“█ES”) on an approved COSA. (R. 16). FES feeds into █MS, the requested school.

On February 2, 2024, the Appellant submitted a COSA request seeking to change Student X’s school of assignment to █MS maintaining that Student X’s sibling attends the requested school. *Id.* The record shows that Student X’s older sister does not attend TMS. She is enrolled in the 12<sup>th</sup> grade at ██████ High School (“█HS”), which is in the same school cluster as █MS.<sup>1</sup> (R.17). On February 6, 2024, the Division of Pupil Personnel and Attendance Services (“DPPAS”) denied the Appellant’s COSA request for failure to meet the COSA criteria. (R.16).

The Appellant appealed DPPAS’s denial of her COSA Request. (R. 18). The Appellant argued that the COSA should be granted based on sibling priority because the older sibling attends a school within the requested cluster. She also argued that the COSA should be granted based on various hardships, including (1) the Appellant is a single parent working full time at the ██████ (“█”) in Bethesda and driving both children to their respective schools at the same time would cause significant financial hardship; (2) both children have significant medical issues which require them to go to school near the Appellant’s work so that she can transport them to and from doctor’s appointments; (3) the Appellant needs the children

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<sup>1</sup> The older sister previously attended █ES and █MS. (R. 17).

to attend school near her work so she can access them quickly in case of a natural disaster or weather event; (4) the Appellant does not have a significant support system of other adults to assist when she needs to stay late at work; (5) Student X has built strong friendships over the years and not matriculating with her peers to ■MS will cause mental health issues for Student X; (6) Student X is enrolled in aftercare that services ■MS which allows the Appellant to work, and the Appellant is the only income for the family;<sup>2</sup> (7) Student X is in the initial stages of a clinical trial at ■■■ and she will be unable to participate if she does not attend a nearby school; and (8) the Appellant would like a school near her work so that she can volunteer at school as she did previously at ■ES and ■MS, as well as attend school functions and extracurricular activities. *Id.*

The Chief Operating Officer, Brian Hull, acting as the Superintendent's Designee, referred the matter to Deborah Ryan, Hearing Officer, for review. (R. 19-21). As part of her review, Ms. Ryan reviewed the record and communicated with the Appellant and the pupil personnel worker at ■ES. (R. 20-21). The Appellant reiterated the issues she raised in her COSA request, including concerns about the logistics of transporting both children to their respective schools and managing doctor's appointments and emergency events, and concerns about the continuity of Student X remaining with her peer group and the effect on her mental health if she attends a different school. *Id.* The Appellant noted that Student X has not connected with any of the neighborhood children near their residence. *Id.*

Based on her review of the information, Ms. Ryan recommended denial of the COSA request. *Id.* She explained that Student X does not meet the criteria for sibling priority because that policy allows a transfer to a school where the sibling is enrolled, and Student X's sibling is not enrolled at the requested school. *Id.* She also explained that the other concerns raised by the Appellant did not satisfy the unique hardship criteria. *Id.* By letter dated April 2, 2024, the Superintendent's Designee adopted Ms. Ryan's findings and recommendations and denied the COSA request. (R. 19).

Appellant appealed the decision of the Superintendent's Designee to the local board on April 4, 2024, and submitted additional supporting documentation on April 24, 2024. (R. 22-24). In the appeal, Appellant restated her prior concerns and emphasized the demanding nature of her job and varying work hours. She further explained that Student X has had asthma since infancy and had an anaphylactic attack in 2021 that required hospitalization.<sup>3</sup> The Appellant also stated that the previous COSA was based on sibling priority where one of the siblings attended a different school within the same cluster, and that other students were approved under the same circumstances. (R. 22-24). In addition, she claimed that Student X cannot attend her home school due to threats of violence from children in the neighborhood. *Id.*

The Appellant attached medical records, IEP records, a mortgage statement, employment records and other documentation to the appeal. (R. 31-142). The medical records documented office visits for Student X for allergy and asthma dated December 13, 2021, January 25, 2022, and February 21, 2022. (R. 31- 42). As to the clinical trial, the documentation included a letter informing the Appellant of a paid, in-person research opportunity to learn how the brains of

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<sup>2</sup> The assigned home school does not have an on-site aftercare program. (R. 145).

<sup>3</sup> In the appeal, the Appellant included medical and educational documentation regarding her older daughter. This information has minimal relevance to the case. Her older daughter has celiac disease, stereotypic movement disorder, and ADHD, and has been on an IEP since she was admitted to infants and toddler for speech and beginning in the third grade for undiagnosed learning disabilities and ADHD. (R. 28).

children react while performing various tasks and how those reactions relate to anxiety, although the children are not required to show signs of anxiety to participate. (R. 63-65). She also included a letter showing an appointment on June 28, 2024, for Student X at [REDACTED] related to the study. (R.181-183). There was also a letter from the Appellant's employer stating that the Appellant's "work hours vary and can range from 8:00 a.m. to as late as 7:00 p.m." (R. 30). The Appellant included special education documents for Student X from 2020. Student X exited special education in 2022.

The local board considered the appeal at its closed session meeting on May 23, 2024. In a decision issued on June 11, 2024, by a 5-3 vote, the local board upheld the denial of Appellant's COSA request finding a lack of a unique hardship. (R. 145-147). The board explained that Montgomery County Public Schools ("MCPS") has many single parent families who juggle full-time work with transportation of their children to and from school and doctor's appointments. *Id.* The board further explained that the transition from elementary to middle school is challenging for many students and that the staff at the assigned home school is equipped to assist Appellant's child with integration into the new school environment. *Id.* In addition, the board noted that the sibling priority rationale for COSAs under the current policy applies only if the two children would attend the same school; it does not apply if the schools are merely in the same cluster. *Id.*

This appeal followed. In her appeal to the State Board, the Appellant submitted additional documentation from Student X's doctor which she obtained after consulting on "another ailment and [Student X's] upcoming surgery." (App's Resp.). The letter, dated June 6, 2024, states that Student X is a patient under the doctor's care for asthmatic anaphylaxis and that with this diagnosis "it is important for [Student X] to be in a school within close proximity to her mother's work to help care for her if needed as her sole provider." The Appellant did not provide any other information regarding the other ailment or the surgery.

### 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 Cnty.*, 245 Md. 464, 472 (1967); *J.D. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 20-32 (2020); *Carolyn B. v. Anne Arundel Cnty. 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. (R.1-7). Two of the exceptions are relevant to this case: sibling priority and unique hardship.

### *Sibling Priority*

Policy JEE-RA allows COSAs when “a sibling seeks to attend the school where a sibling will be enrolled in the regular/general school program, or a special education program, during the year the sibling seeks to enroll.” (R. 3 at C.1.c). Whether the policy previously allowed such a transfer if the sibling attended a school in the requested cluster is not relevant as the applicable policy in effect at the time of this COSA request requires the older sibling to be enrolled in the requested school. There is no dispute that Student X’s sibling is a senior attending ■■■HS, and not the requested school, ■■■MS. Therefore, the local board properly concluded that Student X did not satisfy the policy criteria for a COSA based on sibling preference.

### *Unique Hardship*

The other special exception applicable in this case is unique hardship. Unique hardship requires “extenuating circumstances related to their specific physical, mental, or emotional well-being or their family’s individual or personal situation that could be mitigated by a change of school environment.” *Id.* at 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.*

### *Medical Issues*

The Appellant maintains that Student X’s significant medical issues require her to attend a school close to the Appellant’s place of work and Student X’s doctors so Appellant can transport her during the school year. The State Board has regularly held that to justify a claim for a unique hardship based on a medical condition, an appellant must demonstrate a link between the student’s medical condition and the necessity for a transfer to the requested school. *Linda C. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 15-30 (2015). Consistent with this, pursuant to Policy JEE-RA, when there are extenuating circumstances involving the physical, mental, or emotional well-being of the student, documentation should include (1) evidence of ongoing treatment by a health care provider of issues related to the student’s physical, mental, or emotional well-being that are directly related to or significantly impacted by the school environment; and/or (2) a significant health issue with unique care requirements, such as frequent medical appointments far from the student’s home school and/or the parent’s work location. (R. 2 at C.1.a.2). Evidence of extenuating circumstances may be obtained through consultation with school staff. *Id.*

The Appellant has explained that Student X suffers from anaphylactic asthma which requires Appellant to take Student X to frequent medical appointments to her doctors near the Appellant’s place of work in the Bethesda area. When it made its decision, the local board had evidence before it of three doctor visit summaries from December 2021 through February 21,

2022. According to the summaries, Student X has allergies and asthma for which she takes daily medication, and, after ingesting something at a non-school social event in December 2021, Student X was treated for asthma and a systemic allergic reaction. The last summary, from the follow-up appointment on February 21, 2022, indicated that Student X had been “doing well” and “has not had any asthma symptoms.”

According to the local board, school records indicate that Student X has intermittent asthma, but that she did not visit the school nurse for asthma concerns during her tenure at ■ES. Although the Appellant disputes the number of health room visits, there is no evidence to support her assertion. While the Appellant keeps albuterol in the health room for Student X, which is typical for students with asthma, there is no school system record of a 504 Plan or a Health Plan which is used to address a student’s severe medical condition, and there is no record of documentation to school administration from the Appellant indicating a significant medical issue. During the last school year, Student X was absent six days and tardy nine times. (Local Bd. Reply at 2).

Based on the information before it, the local board found that the Appellant failed to present sufficient evidence of a unique hardship based on a medical condition to satisfy the criteria required for a COSA under Policy JEE-RA. The evidence demonstrated that Student X suffers from asthma, similar to other students who suffer from asthma and use inhalers or other medications in school during a flare up, and who have a need to see doctors during school hours over the course of the school year. *See Sharon P. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 08-05 (2008). There was no evidence supporting a COSA based on a need for Student X to attend a school near the Appellant’s work for a significant health problem with unique care requirements such as frequent medical appointments, or evidence that the staff at ■MS are uniquely equipped or qualified to meet Student X’s needs based on this type of medical condition.

#### *Medical Issues – New Evidence*

In her State Board appeal, the Appellant included additional information that was not before the local board at the time of its decision. She states that “[a]fter consulting with [Student X’s] doctor about another ailment and her upcoming surgery, her doctor provided documentation that [Student X’s] medical issues require her to attend a school close to [the Appellant’s] work.” (Appellant’s Response). The documentation consists of a doctor’s note stating:

[Student X] is a patient under my care for asthmatic anaphylaxis. With this diagnosis, it is important for [Student X] to be in a school within close proximity to her mother’s work to help care for her if needed as her sole provider.

The State Board may consider 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. v. Howard Cnty Bd. of Educ.*, MSBE Op. No. 17-10 at p. 3 (2017). Given that Policy JEE-RA requires a showing of ongoing treatment

by the health care provider related to the student's physical well-being that is directly related to or significantly impacted by the school environment, and/or a significant health issue with unique care requirements, such as frequent medical appointments far from the student's home school and/or the parent's work location, to be material the new medical information must speak to these matters.

Neither the Appellant nor the doctor elaborate on the other ailment or surgery referenced in the State Board appeal, and there is no way to know how or if they are connected to Student X's asthmatic anaphylaxis diagnosis. As for the doctor's note, although it provides a diagnosis, it is conclusory and contains no specificity. For example, the documentation fails to draw on information from the student's current or past medical history to connect the diagnosis to the need for Student X to attend a school close to the Appellant's work, such as documentation of Student X's frequent medical appointments or some unique aspect of her diagnosis that is related to or impacted by attending her home school. *Compare Leslie P. v. Anne Arundel Cnty. Bd. of Educ.*, MSBE Op. No 19-04 (2019)(connecting in detail the underlying medical condition to the necessity for transfer). Accordingly, we do not find the new evidence to be material and decline to consider it.

### *Childcare*

The Appellant claims hardship based on childcare concerns because she is a single parent household with no outside support or network, she sometimes works long hours and, as she disclosed to the Superintendent's Designee, Student X attends aftercare at a daycare that services ■MS, and the assigned home school does not have an in-house daycare provider. Appellant provided a letter from her employer that states that her work hours vary and can range from 8am to 7pm. (R. 30). With regard to child care concerns, the parent must demonstrate extenuating circumstances in obtaining age-appropriate supervision of the student before and/or after school hours because (1) the parent's work hours extend significantly beyond the typical hours for available child care programs and activities located within the home school or that are otherwise easily accessible; and/or (2) significant financial constraints limit the family's ability to otherwise access child care. (R. 1-2 at C.1.a.1). The extenuating circumstances must be extremely significant for students beyond the elementary level. *Id.*

The State Board has held that absent additional compelling factors, childcare issues do not amount to a hardship. *See Karina D. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 19-01 (2019)(and cases cited therein). The Appellant has not presented sufficient evidence of extenuating circumstances to demonstrate that her scenario presents a unique hardship. There is sparse information in the record regarding the daycare issue. There is no indication that the Appellant has explored daycare options in the assigned home school area and no indication how often her work hours fluctuate. Dealing with work schedules and transporting students to and from school is a common issue for single parent families and there is nothing in the record demonstrating extremely significant extenuating circumstances concerning childcare in this case.

### *Transportation*

Similarly, it is well established that the transportation issues associated with having multiple children attend multiple schools is an issue common to large numbers of families and

does not constitute a hardship. *See Karina D. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 19-01 (2019). The need to transport students to and from school or to and from various appointments and activities during a school day, even for a full-time working single parent family, is not a unique hardship. *See Ted and Diane G. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 16-36 (2016). Further, although the Appellant maintains that she needs Student X to attend a school close to her work because of the demands of driving her older daughter to medical appointments, the record does not support this assertion. The local board's decision denying the COSA was reasonable based on the documentation provided by the Appellant.

*Additional Claims*

The additional claims of the Appellant do not satisfy the unique hardship standard. The Appellant's claims that Student X is in the initial stages of a clinical trial do not justify a COSA because the evidence shows that participation in the study is simply a discretionary paid opportunity and is not a medical necessity to address a health need of the student. As for the Appellant's desire to have Student X matriculate with her peer group to middle school, the State Board has recognized that this is not a basis for granting a COSA and there is no evidence in the record of a mental health issue related to the transition. *See C.K. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 20-40 (2020). Nor are the Appellant's allegations of violent threats against Student X by children in the neighborhood supported by any evidence in the record. *See Ralph and Tremaine N. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 17-30 (2017).

CONCLUSION

We are sympathetic to the Appellant's situation, but the claims she has raised, even collectively, do not support reversal of the local board's decision given the record in the case. For the reasons stated above, we affirm the local board's denial of the COSA request because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

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Joshua L. Michael  
President

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Monica Goldson  
Vice-President

\_\_\_\_\_  
Chuen-Chin Bianca Chang

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Clarence C. Crawford

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Susan J. Getty

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Nick Greer

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Rachel McCusker

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Samir Paul

Abstained:  
Irma Johnson

August 27, 2024