ASHLEY F.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 14-54

OPINION

INTRODUCTION

Appellant has appealed the denial of her request to transfer her son from South Lake Elementary School ("South Lake") to Judith A. Resnick Elementary School ("Resnick"). The Montgomery County Board of Education (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal.

FACTUAL BACKGROUND

Appellant and her son, B.E., live in the Montgomery Village area of Gaithersburg. B.E. was slated to begin kindergarten at South Lake at the start of the 2014-2015 school year. (Motion, Ex. 2). On March 6, 2014, Appellant filed a Request for Change of School Assignment form with Montgomery County Public Schools ("MCPS") seeking to transfer her son to Resnick for the 2014-2015 school year based on a unique hardship. *Id.* In a letter accompanying the transfer request, Appellant explained that B.E. had attended HOPE Child Care ("HOPE") since 2012, that HOPE was located in the Resnick cluster, and that she wanted B.E. to remain at HOPE for before and after school care because he was familiar with it and comfortable there. *Id.* Appellant noted that she did not believe that changing child care providers would be in her son's best interest given that he would already have to adjust to attending a new school. *Id.* On March 24, 2014, the Division of Pupil Personnel services denied Appellant's transfer request because it did not meet the transfer guidelines. *Id.*

Appellant appealed the transfer decision to the Chief Operating Officer ("COO"), Larry M. Bowers, by letter dated April 17, 2014. (Motion, Ex. 3). Appellant explained that she needed child care because she was a single parent and worked full time, and that HOPE provided transportation to and from Resnick. *Id.* She described her satisfaction with the child care at HOPE, and expressed concerns about her son's ability to adjust to a new school and new child care at the same time. *Id.*

The COO referred the matter to a hearing officer for review. The hearing officer found that before- and after-school care is available at B.E.'s assigned school, South Lake. She concluded that no unique hardship existed because child care issues are common to many

working parents and recommended that the transfer request be denied. (Motion, Ex. 4A). The COO adopted the hearing officer's recommendation. (Motion, Ex. 4).

On April 30, 2014, Appellant appealed to the local board and stated new reasons for the transfer request. (Motion, Ex. 5). Appellant described HOPE as a "Christian learning facility within the Inter-Denominational Church of God" where she and B.E. are active members. *Id.* She explained that her son has new learning goals every day that include the teaching of Christianity and that is why she chose this particular child care provider. *Id.* The Appellant also stated that, although KidsCo provides before and after school care at South Lake, KidsCo does not meet her "specifications for the Christian learning environment" that she preferred. *Id.*

The Superintendent responded to the appeal by memorandum dated May 8, 2014. (Motion, Ex. 6). He summarized the reasons cited in support of the appeal and concluded that the situation did not arise to the level of a unique hardship. *Id.* The Superintendent reiterated that absent compelling factors, the preference for a particular child care provider does not constitute a unique hardship and recommended that the local board uphold the denial of the transfer. *Id.*

By letter dated May 13, 2014, Appellant wrote to the Superintendent and local board. (Motion, Ex. 7). In this letter, Appellant argued for the first time that her son struggled with behavioral issues and that the staff at HOPE had provided "the best learning environment for him." *Id.* Although Appellant had previously mentioned that she was a single parent working full-time, she provided new information that she was also enrolled in college. *Id.* She also alleged for the first time that she did not have the finances to send B.E. to a different child care facility, stating that she "will not and cannot afford another facility." *Id.* In addition, Appellant accused the Superintendent of discrimination because he did not accept her argument concerning the necessity of a transfer based on the religious instruction program at HOPE. *Id.*

On June 17, 2014, the local board issued a Decision and Order upholding the denial of Appellant's transfer request by the COO based on Appellant's failure to demonstrate a unique hardship. (Motion, Ex. 8). The local board specifically rejected Appellant's contention that the COO's transfer denial was discriminatory or that it demonstrated a disregard for religion. *Id.* The local board noted that the transfer request stemmed more out of a preference and convenience than a hardship. *Id.* According to the local board, there was no indication that the Appellant's son would not be able to successfully adjust to a new school like any other student beginning kindergarten. *Id.*

Appellant filed this appeal to the State Board on June 30, 2014.

STANDARD OF REVIEW

When reviewing a student transfer appeal, the decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *Id.*; *see Alexandra and Christopher K. v. Charles County Bd. of Educ.*, Op. No. 13-06 (2013). Appellant has the burden of proof by a preponderance of the evidence. COMAR

13A.01.05.05D.

LEGAL ANALYSIS

In MCPS, students are assigned to schools based on the geographic attendance areas in which they reside within the county. (MCPS Board Policy JEE-RA). A student is allowed to transfer from one school to another when there is a "documented unique hardship." *Id.* Unique hardships depend on each family's individual circumstances. (Motion, Ex. 1). The MCPS policy states that "[p]roblems that are common to large numbers of families do not constitute a unique hardship...absent additional compelling factors." MCPS Board Policy JEE-RA. Appellant raises several issues on appeal that she contends constitute a unique hardship justifying a transfer.

Religious Instruction

Appellant appears to argue that the transfer denial impacts her and her son's ability to practice their religion because HOPE is a "Christian learning facility within the Inter-Denominational Church of God" where B.E. receives religious instruction. We presume for purposes of this appeal that HOPE is the only such day care facility that offers this instruction consistent with Appellant's beliefs.

The First Amendment's Free Exercise of Religion Clause prohibits the government from passing laws designed to suppress religious beliefs or practices. *Booth v. Maryland*, 327 F.3d 377, 380 (4th Cir. 2003). Governmental entities may, however, enact rules and regulations that incidentally interfere with religious practice, as long as such measures are both "neutral" towards religion and "generally applicable" to members of the community. *Id.*; *American Life League, Inc. v. Reno*, 47 F.3d 642, 654 (4th Cir. 1995).

The MCPS transfer policy is religion-neutral. It does not directly target or restrain religion, nor does it treat religious students differently from non-religious students. Rather, it applies to all students in the county the same way, regardless of their religion. In addition, there is no evidence that the policy was motivated by or applied to the Appellant with an anti-religious bias.

The local board denied Appellant's transfer request after finding that no "unusual hardship" existed because the issue of child care is a problem common to many families. The local board's decision had no direct relation to religious activity. Moreover, the denial of the transfer request does not prevent the Appellant from continuing her son's religious studies. Even if this tends to inconvenience the Appellant, convenience itself is not a reason that would justify granting the transfer. In short, the local board's decision did not illegally infringe on Appellant's First Amendment rights.

Financial Concerns

Appellant argues that if her son has to transfer schools she will suffer financially because she is a single mom, in college, and cannot afford the cost of child care offered at B.E.'s assigned

school. We have previously concluded that financial concerns regarding day care do not constitute a unique hardship because they are common to many families. *See Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010).

Behavioral Issues

Another reason Appellant is seeking a unique hardship transfer stems from her son's behavioral issues. She reports that B.E. has problems with listening and paying attention and that HOPE, which he has attended since 2012, understands his issues and has been instrumental in improving his behavior.

We point out that Appellant included in her State Board appeal a letter from her son's pediatrician, dated June 12, 2014, noting that B.E. "has difficulties in retention and is easily distracted" which results in him becoming "frustrated when he is unable to grasp concepts." The doctor recommends that B.E. stay "in the school zone system he is currently in rather than his home school" because he requires the "structured and more one on one environment" that "his mother reports he already receives in his current school system." Because this letter was not presented to the local board, we decline to consider it as part of this appeal. *See Lessie B. v. Caroline County Bd. of Educ.,* MSBE Op. No. 11-16 (2011). Even if we considered it, however, the recommendation appears to confuse the issues of schooling and child care, and relies solely on Appellant's statements.

Appellant's concerns focus not on B.E.' s assigned school South Lake, but on the likely day care arrangements she will make as a result of that school assignment. As such, she has not presented a "unique hardship" because preferred child care arrangements do not suffice to justify a student transfer. *Sandra O v. Montgomery County Bd. Of Educ.,* MSBE Op. No. 09-16 (2009). We encourage Appellant and the school system to work together to ensure B.E. has a smooth transition to kindergarten.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Charlene M. Dukes
President

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Linda Eberhart

S. James Gates, Jr.

Absent

Larry Giammo

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Donna Hill Staton

Guffrie M. Smith, Jr.

September 23, 2014