

LINDA C.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-30

OPINION

INTRODUCTION

Appellant has appealed the denial of her request to transfer her son from South Lake Elementary School to William B. Gibbs Elementary School. 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. Appellant has responded and the local board has replied.

FACTUAL BACKGROUND

Appellant's son A.C. was scheduled to begin attending kindergarten during the 2015-16 school year. Based on his home address, he was assigned to South Lake Elementary School (South Lake), part of Montgomery County Public Schools (MCPS). A.C. previously spent three years attending the Pre-School Education Program (PEP) at another MCPS school, William B. Gibbs Elementary School (William Gibbs). The PEP program provides preschool special education services for children ages 3 to 5 with identified disabilities. While in the PEP program, A.C. received speech and occupational therapy at William Gibbs as required by his Individualized Education Program. (Motion, Ex. 1).

On February 3, 2015, Appellant submitted a Change of School Assignment form to MCPS requesting that A.C. be transferred from South Lake to William Gibbs based on a unique hardship. In support, Appellant provided the following reasons: A.C. has severe food allergies and severe asthma, for which he was hospitalized in 2011; the nurse and school staff at William Gibbs are familiar with his needs; A.C. has excelled in the PEP program at William Gibbs; A.C. does not cope well with change; and Appellant works a few minutes away from William Gibbs in case of a medical emergency. Appellant included a letter of support from her employer and from A.C.'s pediatrician. The pediatrician confirmed that A.C. has severe asthma and life-threatening food allergies and recommended that A.C. attend William Gibbs because the staff have been "wonderful to work with in regards to dealing with his allergies and needs." (Motion, Ex. 1).

On February 18, 2015, a pupil personnel worker denied the request, stating that the documentation provided by Appellants did not meet MCPS guidelines for a transfer. (Motion,

Ex. 1). Appellant appealed the decision to the superintendent's designee, arguing that A.C. would benefit from continuing to receive services from the same speech and occupational therapy providers. She maintained that A.C. had shown improvement at William Gibbs and that a change in school environment would be bad for him. (Motion, Ex. 3).

The case was assigned to a hearing officer who contacted the principals of both schools; A.C.'s speech pathologist and PEP teacher; a school health nurse; and Appellant. Appellant explained that the staff at William Gibbs knew A.C.'s medical needs and that she works in Germantown two days a week, making it easy for her to reach William Gibbs in case of an emergency. Because of A.C.'s quiet personality, Appellant worried he would have difficulty at South Lake. Appellant explained that she was looking at private schools but would also consider a transfer to Goshen Elementary School (Goshen), which is approximately 1.4 miles from her home.¹ (Motion, Ex. 4, Attachment A).

The principal for William Gibbs explained that students come to her school from around the county to participate in the PEP program, but they are expected to return to their home schools for kindergarten. The principal for South Lake expressed her willingness to meet with A.C. and Appellant to discuss Appellant's concerns. She explained to the hearing officer that there is a full-time speech language pathologist assigned to South Lake. A.C.'s previous speech language pathologist reported that A.C. had improved significantly in the PEP program, that he was aware of his food allergies and medical condition, and that his needs could be addressed by staff at any school. The school nurse explained that there would be an epi-pen in the health room in case of emergencies and that his new school would create an asthma care plan for him, monitor his food allergies, and create a separate table for him for food safety. (Motion, Ex. 4, Attachment A).

The hearing officer concluded that the goals of A.C.'s IEP could be met at any elementary school and that all MCPS schools are prepared to deal with children who have food allergies and asthma. The hearing officer recommended that the transfer request be denied. (Motion, Ex. 4, Attachment A). On April 14, 2015, the superintendent's designee adopted the recommendation and denied the transfer. (Motion, Ex. 4).

On April 24, 2015, Appellant appealed to the local board. She reiterated her argument that the staff at William Gibbs are familiar with A.C.'s needs and expressed her concern about taking a chance on a new school. She explained that she wanted A.C. to attend the afterschool program at William Gibbs. Appellant provided information from an independent school ranking web site that scored William Gibbs higher than South Lake. She also wondered why Goshen was not her son's home school when it is closer to her home address. (Motion, Ex. 5).

On May 6, 2015, the interim superintendent responded to the Appellant's appeal. He explained that A.C. would have a new speech pathologist and occupational therapist no matter where he attended school and that any MCPS school would create a health plan to monitor his needs. As for why A.C. was assigned to South Lake and not Goshen, the interim superintendent stated that the assigned school is not always the closest to a person's home. Depending on how school boundaries are drawn, sometimes the assigned school will be further away from a

¹ South Lake is located 3.4 miles from her home and William Gibbs is 4.5 miles from her home.

person's home than another school. Transportation is provided if the distance to the school is more than one mile. (Motion, Ex. 6).

On June 16, 2015, the local board upheld the interim superintendent's denial of the transfer request. The local board found that Appellant had not demonstrated a unique hardship, as required by the school transfer policy. The board explained that participation in a preschool program does not guarantee entry to that school for kindergarten. The board acknowledged Appellant's concerns, but found that the staff at South Lake were fully able to meet his needs. The board pointed out that Appellant's willingness to accept a transfer to Goshen demonstrated an understanding that attending William Gibbs was not critical to meeting A.C.'s needs. (Motion, Ex. 7).

This appeal followed.

STANDARD OF REVIEW

When reviewing a student transfer decision, 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. Transfers between schools may be granted for students who meet certain criteria. Students who do not otherwise meet those criteria for a transfer may still be granted one if they are able to present a "documented unique hardship." *Id.* The MCPS policy states that "[p]roblems that are common to large numbers of families do not constitute a unique hardship." *Id.* MCPS received 4,200 transfer requests during the 2014-15 school year, 86 percent of which were granted. (Motion, Ex. 2).


Appellant argues that A.C.'s health needs, specifically his severe allergies and asthma, constitute a unique hardship justifying a transfer. Appellant reasons that A.C. should receive care from people who are familiar with his medical needs, such as the school nurse at William Gibbs. In addition, she points out that William Gibbs is located only a few minutes from her work in case of a medical emergency.

Thousands of students every year seek a transfer between schools in Montgomery County. For this reason, the county has developed particular criteria to guide its process for determining which students are eligible to change schools. It is well established, however, that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right of privilege to attend a particular school. See *Bernstein v. Board 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).

We have previously held that in order to justify a claim for 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. See *K.J. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-18 (2014). Appellant has shown that her son has serious medical conditions in the form of severe asthma and food allergies. She has not shown, however, that only staff at William Gibbs are qualified to meet his needs. Although Appellant may prefer to deal with familiar staff members, rather than educate new ones concerning her son's health needs, there is no guarantee that any particular staff member will remain at the same school from year to year. The principal of South Lake has expressed a willingness to meet with Appellant to discuss her concerns and the record shows that a health plan would be put in place for A.C. that accounts for his asthma and allergies, regardless of which school he attends. Accordingly, it was not unreasonable for the local board to conclude that Appellant had not demonstrated a unique hardship requiring a transfer between schools.

CONCLUSION

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

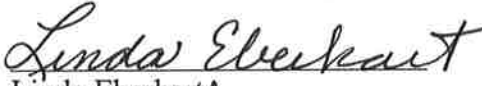

Guffie M. Smith, Jr.
President

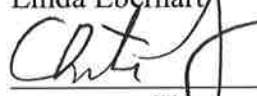
Absent

S. James Gates, Jr.
Vice-President

Absent

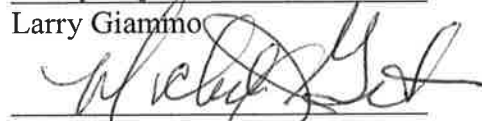
James H. DeGraffenreidt, Jr.


Linda Eberhart


Chester E. Finn, Jr.

Absent

Larry Giammo


Michele Jenkins Guyton


Stephanie R. Iszard

Madhu Sidhu

Madhu Sidhu
Absent

Andrew R. Smarick
Louise

Laura Weeldreyer

September 22, 2015