

LINDSAY AND EDWARD F.,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-55

## OPINION

### INTRODUCTION

Appellants have appealed the denial of their request to transfer their daughter from Forest Knolls Elementary School (“Forest Knolls”) to Rock Creek Forest Elementary School (“Rock Creek Forest”). 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 not responded.

### FACTUAL BACKGROUND

Appellants’ daughter M.F. was scheduled to begin kindergarten at the start of the 2014-15 school year. Her assigned home school was Forest Knolls. Her mother, however, is a teacher at Rock Creek Forest. On March 7, 2014, her parents filed a change of school assignment form requesting that their daughter attend Rock Creek Forest. In support of the request, Mrs. F. stated that Forest Knolls is a minimum of 25 minutes away from Rock Creek Forest. Her husband has an unpredictable work schedule, making her largely responsible for their daughter’s transportation. Allowing M.F. to attend Rock Creek Forest would ensure that she and her daughter would both be at school on time. Mrs. F. acknowledged that their daughter could be placed in before and after care elsewhere, but that it would be a hardship because M.F. would have to be in childcare and school from 7:45 a.m. until 5 p.m. each day. Montgomery County Public Schools (MCPS) denied the request on March 12, 2014, stating that the information did not meet its guidelines for a student transfer. (Motion, Ex. 1).

On March 24, 2014, Appellants appealed the decision. Along with the appeal request, Appellants attached a chart comparing the cost of child care between Forest Knolls and Rock Creek Forest. According to the Appellants’ calculations, attending Rock Creek Forest would save the family approximately \$150 per month in child care costs. (Motion, Ex. 2).

The case was referred to a hearing officer who interviewed Mrs. F. and the principal at Rock Creek Forest. The principal explained that she does not take a position on change of school assignment requests made by her staff. Mrs. F. argued that she needed to have her daughter in the same school for child care purposes. The hearing officer recommended denying the transfer on the grounds that child care issues are not a unique hardship under the local

board's transfer policy. (Motion, Ex. 3).

On April 11, 2014, Larry Bowers, the superintendent's designee, adopted the hearing officer's recommendation and Appellants appealed to the local board. (Motion, Ex. 3). In the appeal, Mrs. F. asserted that caring for her daughter after school would not conflict with her professional duties because her duty day ends at 4 p.m., the same time that her daughter would be dismissed from her classroom. She argued that child care presented a significant problem for her family because she had only been able to enroll her daughter in after-care at Forest Knolls on two afternoons per week. This would require having M.F. attend another after-care center during the rest of the week. Mrs. F. also provided an additional reason to support the transfer: that she cares for her grandmother, who has Alzheimer's disease and is an invalid. Mrs. F. explained that having M.F. attend Rock Creek Forest would provide her with more flexibility in case her grandmother required her support. (Motion, Ex. 4).

The local superintendent responded that there are four additional child-care providers (besides the one at Forest Knolls) that serve the school and that MCPS provides bus service to and from Forest Knolls for all four of them. The local superintendent explained that Appellants' request was not a unique hardship and asked that it be denied. (Motion, Ex. 5).

On June 17, 2014, the local board issued its decision and concluded, consistent with its prior cases, that child care issues did not present a unique hardship. The local board described child care as an issue "faced by a lot of families who must balance the demands of work and child care." The local board found that Appellants had other options for child care beyond those presented by the Appellants. Although the local board expressed sympathy for the Appellants' situation, it concluded that they had not demonstrated a unique hardship. (Motion, Ex. 6).

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

Appellants challenge the conclusion reached by the local board that the hardships they described were not unique. In addition to the arguments they raised previously, Appellants presented new evidence from M.F.'s doctor.

### *New evidence*

Appellants presented a letter from M.F.'s doctor, dated July 2, 2014, which explains that she "is healthy with the exception of a history of separation anxiety." The doctor wrote that it was in M.F.'s best interest "to be placed in school where her mother works to limit her anxiety and limit her transitions which worsen her anxiety." Appellants argue that, because this would be M.F.'s first experience with full-day academics and she might have to transfer between child care facilities during the week, it will cause her a tremendous amount of stress.

New evidence may be considered on appeal to the State Board if it is material and there were good reasons for failing to offer it to the local board. COMAR 13A.01.05.04C. We are sympathetic to the concerns raised by Appellants, but we note that the doctor's letter is dated after the local board issued its decision. Appellants had not previously raised any health-related concerns as part of their transfer request. We have declined to consider medical evidence that was not initially reviewed by the local board. *See Lessie B. v. Caroline County Bd. of Educ.*, MSBE Op. No. 11-16 (2011). We believe that the local board process is more suitable to hear and consider this type of evidence than the State Board appellate process. Accordingly, we decline to consider the new evidence presented by Appellants, though they are free to present the evidence to MCPS as part of a new transfer request.

### *Unique hardship*

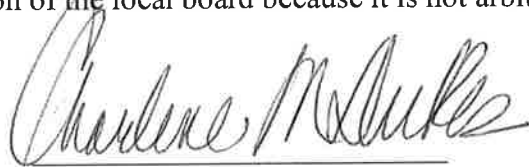
MCPS allows for transfers from one school to another when there is a "documented unique hardship." MCPS Board Policy JEE. The policy states that "[p]roblems that are common to large numbers of families do not constitute a unique hardship." *Id.*; *see also* Board Regulation JEE-RA.

In reviewing Appellants' transfer request, it primarily concerns the difficulties of obtaining convenient child care based on Appellants' work schedules. This is an issue common to large numbers of families and we have held on numerous occasions that child care issues do not constitute a hardship under the school system's transfer policy. *See 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). Another reason offered by Appellants, caring for a relative, is also a hardship faced by many families.


Appellants raise a final argument that, because Mrs. F. is a teacher, the local board should consider granting a transfer request to allow her daughter to attend the same school. This is a policy change that can certainly be considered by the local board, but the appeals process is not the proper avenue to enact such a change. Under the transfer policy as it currently stands, teachers are not treated differently from other parents in the school system.

CONCLUSION

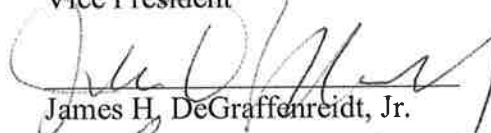
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart



S. James Gates, Jr.

*Absent*

Larry Giammo



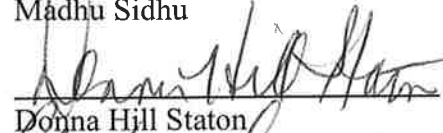
Luisa Montero-Diaz

*Absent*

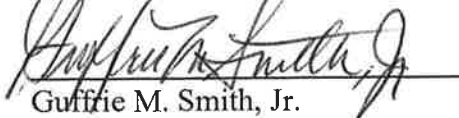
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

September 23, 2014