

NICOLE B.,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-57

### OPINION

#### INTRODUCTION

The Appellant appealed the decision of the Montgomery County Board of Education (local board) denying her request for a student transfer for her daughter. The local board filed a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant responded to the Motion and the local board replied.

#### FACTUAL BACKGROUND

Appellant and her daughter, KL, live in the geographic attendance area for Gaithersburg Elementary School, Gaithersburg Middle School, and Gaithersburg High School. Appellant's daughter began attending Montgomery County Public Schools (MCPS) at the start of the 2010-2011 school year when she was entering the 3<sup>rd</sup> grade.<sup>1</sup> At the time Appellant enrolled her daughter in MCPS, she requested that KL be allowed to attend Beverly Farms Elementary School rather than her assigned school, Gaithersburg Elementary. She received the transfer for the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> grades.<sup>2</sup> (Motion, Ex.1).

On February 4, 2013, Appellant submitted a Request for Change of School Assignment (COSA) asking that KL be permitted to attend Hoover Middle School (Hoover) rather than Gaithersburg Middle School (Gaithersburg) at the start of the 2013-2014 school year. Appellant cited hardship as the basis for the transfer request explaining that her daughter had done well at Beverly Farms, both academically and socially, and that she wanted her to transition to Hoover, which is the next school in the Beverly Farms cluster. *Id.* The Division of Pupil Personnel Services denied the Appellant's request for failure to meet the transfer policy guidelines. *Id.*

On April 1, 2013, Appellant appealed the determination to the Chief Operating Officer and Superintendent's designee, Larry A. Bowers. (Motion, Ex.2). Appellant explained that her situation was the same as when MCPS granted her transfer request to Beverly Farms in 2010: she resides in Gaithersburg, works in Silver Spring, and has the same child care provider for KL in

---

<sup>1</sup> KL attended private school prior to enrollment in MCPS. (Motion, Ex.1).

<sup>2</sup> The basis for the elementary school transfer is not explained in the record. We followed up with the local board attorney, but she can find no further information. In her appeal, the Appellant alludes to the fact that the earlier transfer was related to child care and work-related issues.

Rockville. Appellant stated that having KL at a school close to where Appellant works and close to the child care provider makes it more manageable in the event KL gets sick or has an emergency at school. *Id.* She also stated that she is financially unable to relocate closer to Hoover and that she would have to find a new and affordable child care provider in the Gaithersburg area if her request was not granted. *Id.*

Mr. Bowers referred the matter to a hearing officer to conduct an investigation. The hearing officer, Laurence E. Jeweler, spoke with the Appellant and the principal of Beverly Farms. Mr. Jeweler explained to Appellant that having to find a new child care provider near school and her desire to have KL be with her friends during the transition to middle school were not considered unique hardships for transfer purposes. (Motion, Ex.3). Mr. Jeweler recommended that Mr. Bowers deny the request for change of school assignment on this basis. Mr. Bowers adopted the recommendation and denied the request to have KL transfer to Hoover. *Id.*

Appellant further appealed to the local board reiterating her reasons for the change of school assignment. In a decision issued May 30, 2013, the local board affirmed Mr. Bowers' decision denying the change of school assignment request. (Motion, Ex.6). The local board explained:

Policy JEE and Regulation JEE-RA both clearly provide that students are permitted continuation from middle school to high school in the same feeder pattern, but not elementary to middle school. If a change of school assignment request is granted for elementary school, parents must request another change of school assignment to attend the middle school in the feeder pattern, and must substantiate that request with a documented unique hardship.

*Id.* at 2. The local board did not find any unique hardship with regard to Appellant's desire to have her daughter remain in the feeder pattern with her friends or with her child care situation. The local board recognized that "after-school arrangements can be challenging," but that "many MCPS families face the same issues and must make appropriate arrangements." *Id.*

#### STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing a local board decision concerning the denial of a transfer request is that the decision of the local board is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

#### LEGAL ANALYSIS

Appellant would like her daughter to attend Hoover so that she can remain in the middle school feeder pattern with her friends and because it is easier for Appellant to have KL attend a school close to Appellant's work and child care provider. Thus, the only applicable basis for the granting of a transfer is if a unique hardship exists.

Appellant believes the local board should have allowed her daughter to continue in the feeder pattern for middle school based on the fact that the school system granted her 2010 transfer request for elementary school. The student transfer regulation JEE-RA and the COSA Booklet are clear, however, that students attending elementary school on an approved change of school assignment must request another change of school assignment for middle school and substantiate the basis for the request anew. (Motion, Ex.6A). Given the policy, Appellant could have no expectation that the transfer would be granted automatically at the middle school level. The unique hardship standard would apply.

As this Board has stated previously and often, the desire to attend school with ones friends or peer group does not constitute a unique hardship. *Mr. and Mrs. Rashad M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-07 (2012); *Paul and Ety E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-05 (2012); *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009); *Iglesias v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-50 (2002); *Skardis v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1055 (1998). The matriculation to middle school is an adjustment for all entering students who can be understandably anxious and insecure in the new environment.


Appellant has indicated that she would like to keep the same child care provider for her daughter and that she will need to find a new affordable provider closer to Gaithersburg if KL is required to attend school there. This is not an uncommon issue for families with working parents. The State Board has opined on numerous occasions that child care issues do not suffice to justify a student transfer. *Mr. and Mrs. G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010); *A.T. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-09 (2007), and cases cited therein.

Appellant raises the issue of the proficiency scores in reading and math at Hoover versus Gaithersburg for the first time in her appeal to the State Board. We will not review matters that were not initially reviewed by the local board. *Paul and Ety E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-05 (2012).

## CONCLUSION

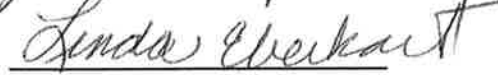
For the reasons stated above, we affirm the local board's decision denying Appellant's request for a change of school assignment.

  
\_\_\_\_\_  
Charlene M. Dukes  
President

  
\_\_\_\_\_  
Mary Kay Finan  
Vice President



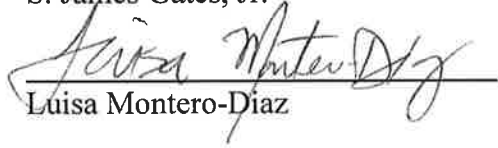
James H. DeGraffenheidt, Jr.



Linda Eberhart



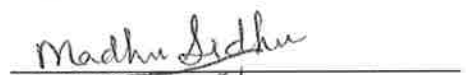
S. James Gates, Jr.



Luisa Montero-Diaz



Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

October 30, 2013