

NIKUNJ AND YOGINI P.,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-38

## OPINION

### INTRODUCTION

Appellants appealed the decision of the Montgomery County Board of Education (“local board”) denying their request to transfer their son from Clopper Mill Elementary School (“Clopper Mill”) to Ronald McNair Elementary School (“McNair”). The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants responded to the motion and the local board replied.

### FACTUAL BACKGROUND

On or about April 4, 2016, Appellants submitted a Request for Change of School Assignment form (“COSA”) for their son, A.P., to attend Ronald McNair rather than his assigned school Clopper Mill. (Motion, Ex. 1). Appellants’ son is beginning Kindergarten this school year. They explained that their son had attended KinderCare Learning Center (“KinderCare”) for the past year, after their move from New Jersey to Maryland. They stated their desire to have him remain at KinderCare for before- and after-school care because the Appellants’ work schedules conflict with the school hours at Clopper Mill and the center provides transportation to and from its site from McNair, but not Clopper Mill. Appellants would also prefer that their son not have to transition to both a new school and day care so soon after their move from New Jersey. (Motion, Ex. 2). They attached to their request a letter from the KinderCare center director who offered that A.P. “made many friends and had bonded with his teachers” at the center. (Motion, Ex. 3). The Division of Pupil Personnel Services denied the transfer request. (Motion, Ex. 1).

By letter dated April 21, 2016, Appellants appealed the decision to Dr. Andrew Zuckerman, the Chief Operating Officer (“COO”), who acts as the superintendent’s designee. (Motion, Ex. 4). They reiterated their concerns about child care stating that they wanted to avoid a “complete environmental change” for A.P. which previously had a “significant emotional impact on him when [they] moved from New Jersey in June 2015.” They added that they have no family in the area to help them with transportation to and from the Clopper Mill bus stop. *Id.*

The COO assigned the matter to a hearing officer for review. (Motion, Attach 5). The hearing officer, Carol LeVine, spoke with Mrs. P who told her that A.P. had a difficult time after moving to Maryland, and that he did not eat or drink until he adjusted. Mrs. P said that she took A.P. to visit the Bar-T daycare program at Clopper Mill and he had a negative reaction. Mrs. P

further conveyed that she was worried about A.P.'s emotional well-being, and wants to avoid another major change in his life by maintaining his same daycare. *Id.*

Based on her review, Mrs. LeVine recommended that the transfer request be denied due to lack of a unique hardship. *Id.* In her memorandum to the COO, she stated as follows:

Although I understand that [Mrs. P] would like [A.P.] to remain at his current daycare to avoid a recurrence of the anxiety he experienced last year, this does not constitute a unique hardship. The transition to kindergarten is challenging for many students and families. All kindergarten students are new to the public school environment and many to new daycare. Teachers and staff are trained to help students and families make a smooth transition to the new school, and counselors are available to provide additional support. Moreover, since [A.P.] will attend Clopper Mill Elementary School for the next six years, he will have an opportunity to build strong friendships and bond with the new school and daycare community.

*Id.* The COO adopted Mrs. LeVine's recommendation and denied the transfer request. (Motion, Ex.6).

By letter dated June 13, 2016, Appellants appealed the COO's decision to the local board. (Motion, Ex. 7). Appellants restated their concerns and provided additional detail about the issues with A.P.'s transportation for school and daycare. They submitted letters to verify their employment and work schedules. (Motion, Exs. 7A &7B). They explained that they are unable to use school bus services because they have to begin work at 7:30 a.m. and do not have anyone to help them. They also pointed out that McNair is closer to their home than Clopper Mill and that KinderCare is on their way to and from work, whereas Clopper Mill is not. (Motion, Ex. 6).

By memorandum dated June 22, 2016, the Interim Superintendent of Schools, Larry Bowers, responded to the appeal and recommended that the local board deny the request due to lack of a unique hardship. (Motion, Ex. 8). He noted that kindergarten students and families have to deal with the challenge of transitioning to a new school environment, staff and community, and that school personnel assist with that transition. He further stated that both schools are in close proximity to the Appellants' home, with Clopper Mill at a distance of 2.4 miles and McNair at a distance of 1.4 miles. He noted that Mrs. P's work is located 2.3 miles from their home and that she usually reports at 7:45 a.m. In addition, he provided that before and after school care is available at Clopper Mill beginning at 6:30 a.m. *Id.*

On July 25, 2016, the local board issued a Decision and Order denying the transfer request based on lack of a unique hardship. (Motion, Ex. 9). The local board explained that childcare, in and of itself, is not a unique hardship under the transfer policy. The board also stated the following:

The Board is sympathetic to the concerns raised by the parents, but agrees with the then interim superintendent that there are other options available to address the concerns related to childcare. As

noted in the then interim superintendent's memorandum, Clopper Mill offers both before- and after-school care and opens at 6:30 a.m., allowing the parents sufficient time to drop off [A.P.] and still arrive at work on time. Although the location of Clopper Mill is not as close to their residence as McNair, the Board has long held that the desire to attend a school for convenience does not constitute a unique hardship. In addition, as the COSA Booklet explains and as the Board has said in many COSA decisions, the desire to attend a particular childcare provider is common to large numbers of families in our community and, without additional extenuating circumstances does not constitute a unique hardship justifying an exception to school assignment based on residence.

*Id.* The local board found that although A.P. had a hard time transitioning to Maryland when the family first moved here in 2015, there was nothing in the record to indicate that A.P. would be unable to successfully transition to kindergarten or a new childcare provider. *Id.*

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

MCPS has approximately 156,000 students located in 202 schools. (MCPS Website - About, MCPS Highlights). Students are assigned to those schools based on the geographic attendance areas in which they reside within the county. (Motion, Ex.11).

Thousands of students every year seek transfers between MCPS schools. The school system has developed particular criteria to guide its process for determining which students are eligible to change schools. Transfers may be granted for students who meet certain criteria, such as those with an older sibling at the same school or those who have met the criteria for, and been admitted into, countywide programs. *Id.* 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." The MCPS Change of School Assignment Information Booklet states that a unique hardship "depends on the family's individual and personal situation. Problems that are common to large numbers of families, such as issues involving day care or program/course preferences, do not constitute a hardship, absent additional compelling factors." (Motion, Ex. 12). The school system received 4,200 transfer requests during the 2014-15 school year, 86 percent of which were granted. See *Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015).

It is well established that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right to attend a particular school. See *Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015) (citing *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464, 472 (1967)). Accordingly, local school systems may establish geographic attendance areas and establish policies to govern transfers of students between schools.

Appellants argue that they have presented sufficient information to show a unique hardship. As this Board has previously stated, the “very nature of a unique hardship means that there is no standard definition that will apply to each family’s circumstances, nor, in our opinion, should there be.” *Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010). Local board members have discretion to weigh the facts presented to them and issue a decision based on their established policy. *Id.* That exercise of discretion does not itself make a policy arbitrary. *Id.*

Appellants’ transfer request is based on issues related to childcare including conflicts with work schedules and adjustment concerns. The State Board has held on numerous occasions that “absent extenuating circumstances,” child care issues do not constitute a “unique hardship” under the school system’s transfer policy. See *Lindsay and Edward F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-55 (2014) and cases cited therein. The issue of obtaining convenient childcare due to conflicts between work schedules and school schedules is an issue common to large numbers of families. *Id.* Moreover, Clopper Mill has before- and after-school care available beginning at 6:30 a.m. and the school is located only 2.3 miles from the Appellants’ home, giving Appellants sufficient time to drop A.P. off and get to work on time. Appellants have not presented evidence of extenuating circumstances related to child care.

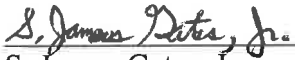
Likewise, Appellants desire to have A.P. attend McNair so that he can remain at KinderCare to avoid any adjustment problems is not an extenuating circumstance. In *Ashley F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-54 (2014), this Board dealt with almost the same factual scenario as presented in this case. The appellant wanted her kindergarten aged child to remain at his current daycare program based on adjustment concerns given that he was transitioning to a new school. The daycare provided transportation to and from the requested school. The local board noted that the transfer request was an issue of preference and convenience rather than unique hardship, and that there was no indication that the child would not be able to successfully adjust like other students beginning kindergarten. The State Board upheld the local board’s decision, finding that no unique hardship had been presented. *Id.*

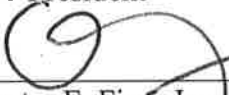
In this case, even though A.P. experienced some adjustment issues when the family moved to Maryland, there is nothing in the record to indicate that he will be unable to successfully make the transition to a new school and childcare program. In fact, the record shows that A.P. was ultimately able to adapt to his new environment after the family’s move last year. The KinderCare center director noted that A.P. grew both socially and academically, made many friends, and bonded with his teachers. (Motion, Ex. 3). It is our view that Appellants have not presented a unique hardship under the MCPS transfer policy.

CONCLUSION

For the reasons stated above, we affirm the decision of the local board denying the Appellants' transfer request.


  
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Andrew R. Smarick  
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Vice-President

  
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Michele Jenkins Guyton

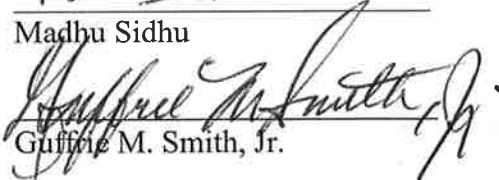
  
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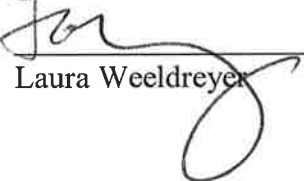
  
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September 27, 2016