

RAJENDRA AND ERIKA P.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-39

OPINION

Appellants appealed the decision of the Montgomery County Board of Education (“local board”) denying their request to transfer their daughter from Hallie Wells Middle School (“Hallie Wells”) to Rocky Hill Middle School (“Rocky Hill”). 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 February 22, 2016, Appellants submitted a Request for Change of School Assignment form (“COSA”) for their daughter, A.P., to remain at Rocky Hill citing hardship concerns. (Motion, Attach. 2). Although A.P. had attended Rocky Hill for the 6th grade, she was slated to attend the new Hallie Wells Middle School for 7th and 8th grades as a result of boundary changes that were made to populate the new school. Appellants stated that the transfer request was based on child care issues because, given her work schedule, Mrs. P is unable to pick up her daughter from Hallie Wells. They stated that Mrs. P is an employee at Rocky Hill and works as a choreographer in the drama department running the rehearsal for the school’s two drama productions after school from 3:00-4:25pm four days a week. Appellants stated that making alternate childcare arrangements or having Mrs. P lose her position at Rocky Hill would place an additional financial hardship on the family. (Motion, Attach. 1). On February 29, 2016, a representative from the Montgomery County Public Schools’ (“MCPS”) Division of Pupil Personnel Services denied the request. (Motion, Attach. 2).

On or about April 1, 2016, Appellants appealed the decision to the Chief Operating Officer (“COO”), acting as the superintendent’s designee. They reiterated their concerns about child care and Mrs. P’s work hours. Mrs. P noted that if the transfer were not granted she would have to stop working at Rocky Hill, ending not only her “employment,” but also her “strong involvement in her daughter’s school.” (Motion, Attach. 3).

The COO assigned the matter to a hearing officer for review. (Motion, Attach 5). Though his investigation, hearing officer, Laurence E. Jeweler, learned from the Rocky Hill secretary that Mrs. P was not a staff member at Rocky Hill, but rather was a long- time volunteer who received a stipend for choreographing theater program productions. Mr. P told Mr. Jeweler that his wife was hoping a job would become available at Rocky Hill so that she could work there for the 2016-2017 school year, but that she presently worked at a preschool two days a week and the schedule for that job had no impact on school pick up. Mr. Jeweler recommended

that the transfer request be denied because of a lack of unique hardship. (Motion, Attach. 4). The COO adopted Mr. Jeweler's recommendation and denied the transfer request. (Motion, Attach. 5).

On May 9, 2016, Appellants appealed the COO's decision. (Motion, Attach 6). Appellants noted their disappointment with the decision and questioned what would qualify as a hardship. They stated that their daughter is gifted and has been deeply involved in the theater, music and drama program at Rocky Hill. They stated that these opportunities will not be available to her at Hallie Wells for the 2016-2107 school year, noting that the school will not have chamber choir or theater arts. They also stated that A.P. is an introverted child who does not handle change well and that she is "stressed out" about the change of schools. They believe that the inability of their daughter to access courses that will benefit her one passion will be "emotionally traumatic" for her. *Id.*

By memorandum dated May 20, 2016, the Interim Superintendent of Schools, Larry Bowers, responded to the appeal. He recommended that the local board deny the request due to lack of a unique hardship. (Motion, Attach. 7). Responding to the Appellants' statement about chamber choir, he explained that not every school offers chorus as an elective because elective offerings are dependent on the number of students who select a particular course. He stated that Hallie Wells would not be offering chorus during the 2016-2017 school year because only 29 students elected to take chorus while more than 150 opted for instrumental music. He stated that there is a possibility that Hallie Wells will offer chorus the following school year when the 8th grade is added to the school because there may be more students who select chorus as an elective.

Mr. Bowers also addressed the "unique hardship" standard. He stated:

The unique hardship standard is set forth in Board Policy JEE, and its application by the Board has been upheld in numerous decisions by the Maryland State Board of Education. A unique hardship depends on the family's individual and personal situation. Problems that are common to large numbers of families do not constitute a hardship unless there are compelling factors. The boundary change for this middle school affects several hundred families. . . . Changes of school assignment for a specific program are not considered a unique hardship.

Mr. Bowers acknowledged that A.P. had the opportunity to participate in the Rocky Mills music and drama program for the one year she was there, and that there is still a possibility that Hallie Mills will offer such a program in the future. He suggested that A.P. might be able to find other music and drama opportunities in the Damascus area. *Id.*

By letter dated May 28, 2016, Appellants requested that Mr. Bowers reconsider his decision. They attached to the reconsideration request a letter from Ms. O'Brien, the treating nurse practitioner at A.P.'s pediatrician's office. In the letter, Ms. O'Brien asked that A.P. be allowed to remain at Rocky Hill to participate in music and drama courses because A.P.'s goal in life is to work in the music and drama field. She stated that if A.P. "is not able to participate in

music and drama, I have concern she will be at risk for psychological issues.” (Motion, Attach. 8).

On June 14, 2016, the local board issued a Decision and Order denying the transfer request based on lack of a unique hardship. The local board explained that a boundary change, in and of itself, is not considered a unique hardship because it affects many families. In addition, it stated that the desire to access a particular program or course has been held not to constitute a unique hardship. The local board also found that the Appellants had not submitted verifiable information about A.P.’s emotional state. (Motion, Attach 9).

This appeal followed. As part of their appeal, Appellants included new evidence in the form of a June 24, 2016 evaluation of A.P. by a psychologist that was not introduced in the proceedings before the local board.

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, Attach.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, Attach. 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.*

Transfer Request

One prong of Appellants’ transfer request is based on child care needs and Mrs. P’s unavailability to pick up A.P. from Hallie Wells due to Mrs. P’s services as a choreographer at Rocky Hill. Appellants originally maintained that the need for alternate child care arrangements would impose a financial burden on the family. The State Board has held on numerous occasions that absent extenuating circumstances, child care issues, including related financial concerns, do not constitute a 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. Appellants have not presented evidence of extenuating circumstances related to child care. The local board properly denied Appellants’ transfer request on this aspect of the appeal.

In addition, the State Board has also long held that a student’s desire to participate in particular courses or a program of study is not considered a unique hardship sufficient to grant a transfer under the policy. *See Christine C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-59 (2014) and cases cited therein. In this case, however, Appellants assert that the failure to grant the transfer in light of their daughter’s passion to study music and drama at Rocky Hill is affecting her emotional well being. Appellants included in their appeal to the local board a letter from a nurse practitioner, Ms. O’Brien. The local board rejected the letter as being insufficient documentation to support the transfer request.

We have previously held that in order to assert a claim for a unique hardship based on a medical condition, an appellant must demonstrate a link between the student’s condition and the necessity for a transfer to the requested school. *K.J. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-18 (2014). In the letter, Ms. O’Brien states A.P.’s “passion and goal in life is to work in the music and drama field” and she is concerned that A.P. “will be at risk for psychological issues” if she is not able to participate in music and drama courses. She asks the A.P. be allowed to remain at Rocky Hill so that she may participate in the music and drama program there. (Motion, Attach. 8). If this were the only evidence of A.P.’s mental health issues, we would make a determination regarding the denial of the transfer request on this information alone. Appellants, however, have submitted new evidence that they ask the State Board to consider.

New Evidence

In addition to the letter from Ms. O’Brien, Appellants ask that we consider a letter from Ms. Sholtis, a psychologist who evaluated A.P. on June 24, 2016. (Motion, Attach. 13). The letter states in part:

[A.P.] has been increasingly more irritable and isolative with her family. She has anxiety relative to moving schools, and this anxiety appears to be impairing her functioning at this time. [A.P.] organizes her life around order, routine, and consistency. Her tendencies to be cognitive rigid are likely to be contributing to her increase in anxious symptoms. It is likely that if she is forced to transition schools, this anxiety will increase and continue to disrupt her functioning. At this time, she is diagnosed with Other Specified Anxiety Disorder (F41.8; ICD 10). Should her anxiety continue to increase or irritability worsen, it is recommended that she engage in individual psychotherapy targeting these symptoms.

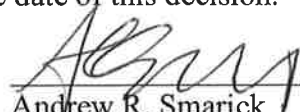
The State Board may consider the new evidence or remand the appeal to the local board for the limited purpose of receiving the additional evidence if we find that the evidence is material to the case and that the Appellants offer good reason for failing to present the information to the local board. COMAR 13A.01.05.04(C). As to the materiality of the new evidence, if the evidence of a student's illness establishes a causal connection to the transfer decision, it is our view that the evidence is material. *See Theresa K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-27 (2006). Thus, we find the letter from Ms. Sholtis material to the case. Of course, such evidence must also be competent and relevant.

With regard to the timing of the evidence, the Appellants have explained that they did not include a psychological evaluation in their appeal to the local board because they did not have the report. Prior to the local board rendering its decision, A.P. had not yet been evaluated by the psychologist and the documentation was not available. In this case, we find that to be sufficient reason for the Appellants' failure to present the information to the local board.

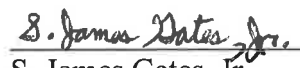
We remand this case to the local board for consideration of the new evidence.

CONCLUSION

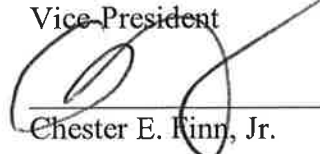
For the reasons stated above, we remand this case to the local board. Because the school year has already begun, we order that the local board conduct an expedited review and issue a decision on this matter within thirty (30) days of the date of this decision.



Andrew R. Smarick
President



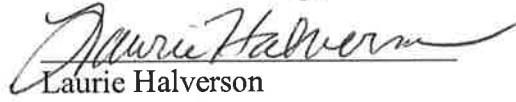
S. James Gates, Jr.
Vice-President



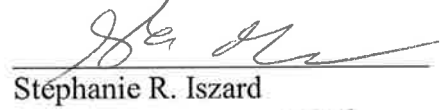
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Michele Jenkins Guyton



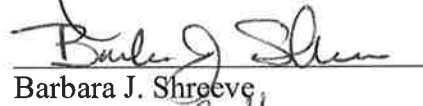
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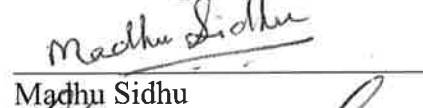
Stephanie R. Iszard



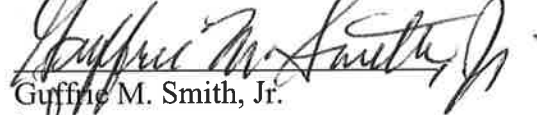
Jannette O'Neill-González



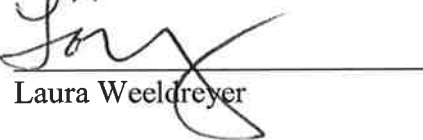
Barbara J. Shreeve



Madhu Sidhu



Guffie M. Smith, Jr.



Laura Weeldreyer

September 27, 2016