

S.G. AND D.G.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-04

### OPINION

#### INTRODUCTION

Appellants have appealed the denial of their request to transfer their daughter from Fields Road Elementary School to Stone Mill 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. Appellants have responded and the local board has replied.

#### FACTUAL BACKGROUND

Appellants' daughter Z.G. was screened and assessed at the request of her parents in April 2014 for early entry into kindergarten. Although Z.G. would not yet be five years old at the start of the 2014-15 school year, Montgomery County Public Schools (MCPS) concluded that Z.G. demonstrated the academic and social skills that would warrant early entry and accepted her into kindergarten starting in the fall of 2014.<sup>1</sup> (Motion, Ex. 1).

Based on Appellants' home address in Gaithersburg, Z.G. was assigned to Fields Road Elementary School (Fields Road) for the 2014-15 school. On May 20, 2014, Appellants filed a Request for Change of School Assignment form asking that Z.G. be transferred from Fields Road to Stone Mill Elementary School (Stone Mill). In a letter attached to the request, Appellants provided four primary reasons for a hardship transfer: Z.G.'s health condition; Appellants' work schedules; Z.G.'s frequent illnesses; and proximity to child care (which would be provided through a cousin). (Motion, Ex. 2).

As to Z.G.'s health condition, Appellants provided the following information:

[Z.G.] has been diagnosed with pneumonia multiple times in the past year, and in order for her to not have repetitive attacks of the same, it is extremely important that she stays in care with my cousin for before and after school care.

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<sup>1</sup> Students must be five years old in order to enroll in kindergarten, but MCPS policy allows for students who will turn five years old between September 2 and October 15 to be assessed for early-entry admission into kindergarten. MCPS Regulation JEB-RB.

In the last two years, she has had multiple X-rays and countless doses of Antibiotics. Her pediatrician has advised us to give her as much comfort as possible and also take care of her diet, since she lost a lot of weight with her repeated sickness. If she stays with my cousin, I could lessen her chances of falling sick repeatedly as [Z.G.] would be at home resting as soon as she comes back from school. My cousin could drive her to and from Stone Mill, which is a convenient drive for her (1 Mile to be exact). My cousin has been a second mother to [Z.G.], and I really do not wish to uproot this support system which [Z.G.] really needs at least for the next few years while she is still young and also recovering. Attached are all the doctor's notes for your reference.

(Motion, Ex. 2).<sup>2</sup>

On June 1, 2014, a pupil personnel worker denied the request, stating that the documentation provided by Appellants did not meet MCPS guidelines for a transfer. (Motion, Ex. 2). Appellants appealed the decision to the superintendent's designee, arguing that if the transfer were not granted, Mrs. G would have to leave her job to care for her daughter, thereby causing the family financial distress. They explained that Stone Mill is closer to the cousin's home in Rockville, making it possible for the cousin to drop-off and pick-up Z.G. "without any extra efforts." Appellants added that Z.G.'s health concerns made it imperative that Z.G. receive before-and-after care from the cousin. (Motion, Ex. 4). The distance between the cousin's home and Stone Mill is one mile; the distance between the cousin's home and Fields Road (the assigned school) is approximately three miles.<sup>3</sup>

The case was assigned to a hearing officer who contacted the principals of both schools and Z.G.'s mother. Z.G.'s mother described her daughter as being "weak" because of her bouts of pneumonia and that she needed to rest after school. She explained that her cousin agreed to take care of Z.G. as a family favor and that they requested Stone Mill so as not to impose on the cousin. The hearing officer found that Fields Road was only two miles further away from the cousin's home than Stone Mill and that both schools could be reached in under 10 minutes. In addition, the hearing officer learned that Fields Road has a smaller class size ratio than Stone Mill (18 to 1 versus 25 to 1). Because Z.G. would likely be the youngest in her class, the hearing officer observed that the smaller class size would likely benefit Z.G. Based on her investigation, the hearing examiner determined that Appellants' request did not meet MCPS transfer guidelines. (Motion, Ex. 5A). On July 2, 2014, the superintendent's designee adopted the hearing officer's report and recommendation.

On July 11, 2014, Appellants appealed to the local board. They argued that Z.G.'s mother would have to quit her job in order to care for Z.G. if the request were not granted. They

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<sup>2</sup> The letter references supporting documents related to Z.G.'s illness. The local board does not contest Z.G.'s medical history and explains that it omitted the doctor's notes supplied by Appellants for reasons of medical privacy. Appellants have also not provided the notes as part of this appeal.

<sup>3</sup> Appellants live a half mile from Fields Road (the assigned school); they live 2.3 miles from Stone Mill.

explained that Z.G.'s cousin was unwilling to travel to Fields Road to pick up or drop off Z.G. In addition, Appellants argued that MCPS improperly denied the request because the hearing officer's report referred to Z.G.'s cousin as a "babysitter" and noted that she did not have children at Stone Mill. They argued that this was an improper consideration on the part of the hearing officer. Based on the hearing officer's comment about class-size ratios, Appellants argued that MCPS rejected the request "because Stone Mill Elementary School fears that because of the greater student/teacher ratio (25), the school is worried that our child will/can affect the health of other kids and should not be considered." Appellants emphasized that they do not wish Z.G. to be isolated or have psychological problems because of her health issues. (Motion, Ex. 6).

On July 23, 2014, the superintendent responded to the Appellants' letter. Addressing the health concerns, he stated that "every school has the services of a health technician under the guidance of a school health nurse." He maintained that the reference to class size ratios was not a factor in the decision; instead, the information was provided to the parents because parents often prefer schools with smaller class sizes. The superintendent explained that MCPS considered whether the cousin had a child attending Stone Mill because that would have shown a direct connection to that school and impacted the transfer decision. (Motion, Ex. 7).

On September 9, 2014, the local board upheld the superintendent's decision to deny the transfer request. The local board found that a unique hardship had not been demonstrated and that child care concerns are an issue faced by many families. Although the local board was sympathetic to Z.G.'s health concerns, the board noted that both schools were less than 10 minutes away from the cousin's home and that the record did not show that Z.G.'s health would be adversely affected by the denial. The local board concluded that Z.G.'s transfer was not denied based on her health status and that the class size ratio was not a factor in the denial. (Motion, Ex. 8).

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. A student is allowed to transfer from one school to another when there is 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.* Issues involving day care or program/course preferences do

not constitute a hardship, absent additional compelling factors. *See* MCPS 2014-15 Change of School Assignment Information Book.

Appellants primarily focus their transfer request on their concerns about Z.G.'s health. Their appeal filings include a letter dated October 6, 2014 from Z.G.'s pediatrician, which states, in part:

[Z.G.] is slated to attend Fields Road Elementary School as of fall 2015.<sup>4</sup> Her parents have arranged for a family member to be her caregiver (before and after school) who lives near Stone Mill elementary school. Since her parents work and will be unable to attend her health care needs on an urgent basis, I recommend that [Z.G.] be allowed to attend Stone Mill elementary school instead of her home school.


Appellants argue that Z.G. requires rest as part of her health condition and that she could best receive this rest at the cousin's home after school. In addition, the cousin has a flexible work schedule and could pick Z.G. up during the day if an emergency arose. If the transfer is not approved, Mrs. G states that she may have to quit her job in order to care for Z.G.

We have previously held that in order to assert 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). Although Appellants contend that Z.G.'s health "could further deteriorate" and would be adversely affected if she attended Fields Road, they offer no evidence in support of this contention. There are no allegations that the school cannot provide care for Z.G. should her pneumonia reoccur or seek emergency aid for her if it becomes necessary.

Although Appellants present the transfer request as one based on health concerns, this case actually centers on child care. Appellants have an offer of free child care from a relative who will only provide her services if Z.G. attends Stone Mill. MCPS does not generally consider day care concerns to be a "unique hardship" under their policy because those concerns are common to large numbers of families. As we stated in *Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010), "[w]hile the Appellants understandably prefer to utilize free family daycare arrangements to avoid the cost of child care, a family daycare arrangement is a preference common to many families that, absent additional compelling factors, does not amount to a hardship under the local board's policy."

## 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

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<sup>4</sup> It appears that this reference to fall 2015 is in error because the transfer request was for the 2014-15 school year.

Mary Kay Finan

Mary Kay Finan  
Vice President

James H. DeGraffenreidt, Jr. / m.p.

James H. DeGraffenreidt, Jr.

Linda Eberhart

Linda Eberhart

Absent

S. James Gates, Jr.

Larry Giammo / m.p.

Larry Giammo

Luisa Montero-Diaz

Luisa Montero-Diaz

Absent

Sayed M. Nayed

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

January 27, 2015