

CHARLES I. AND DEBORAH H.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-05

OPINION

INTRODUCTION

Appellants, Mr. I and Dr. H, have appealed the decision of the Montgomery County Board of Education (local board) denying the request to have their son transferred from Rosemary Hills Elementary School (Rosemary Hills) to Bethesda Elementary School (Bethesda). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants have responded to the motion and the local board has replied.

FACTUAL BACKGROUND

Appellants reside in the East Bethesda area of Montgomery County where students are assigned to the Rosemary Hills/Bethesda Elementary School pairing for grades k-5. Students are assigned to Rosemary Hills for kindergarten through grade 2 and Bethesda for grade 3 through grade 5. During the 2011-2012 school year, Appellants' son, JI, attended kindergarten at Rosemary Hills and their older son attended 3rd grade at Bethesda.

Appellants submitted a Request for Change of School Assignment (COSA) form signed January 26, 2012 requesting that JI be transferred from Rosemary Hills to Bethesda to attend the 1st grade there for the 2012-2013 school year.

Appellants listed hardship and attendance of an older sibling at the requested school as the basis for the transfer request. (Motion, Ex.1). In support of hardship, Appellants explained that Dr. H had to rearrange her morning work schedule in order to get the children to their morning bus stops once the kids began attending separate schools. Dr. H no longer sees patients starting at 8:30 a.m. because the bus to Bethesda arrives from 8:00-8:05 a.m. and the bus to Rosemary Hills arrives from 8:30-8:35 a.m. Mr. I's morning work schedule and frequent work related travel prevent him from assisting with the morning drop off. The result of the schedule change is that Dr. H sees fewer patients during the week and, therefore, makes less income.

Appellants also claim hardship because the value they once placed on their home has diminished since the Superintendent changed the application of the transfer policy to the school pairing. Beginning in 2000, there was an understanding between the school system and the East Bethesda community that if seats were available in the kindergarten class at Bethesda, East Bethesda families who requested a transfer from Rosemary Hills to Bethesda would be given approval. If there were more requests than seats available, students would be selected by lottery. The Superintendent changed that policy in 2008 based on misunderstandings that had developed concerning the interpretation of the policy. (Appeal, Weast Memo, July 29, 2008). Now the school system grants requests to transfer from Rosemary Hills to Bethesda if there is a demonstrated unique hardship or if the older sibling attends the 1st or 2nd grade at Bethesda. Appellants maintain that they are not able to move from the attendance area so that their children can change schools because they would suffer financial loss given the downturn in the economy and the real estate market.

Appellants further claimed that their sons were being unnecessarily separated by the transfer policy. It is the Appellants' view that younger siblings attending Rosemary Hills should have their transfer requests automatically approved based on the assignment of the older sibling to Bethesda for Grades 3 through 5. (Motion, Ex. 2).

The Disciplinary Review and School Assignment Unit Supervisor denied the request on February 23, 2012. (Motion, Ex.1).

Appellants appealed the denial of the transfer to the Chief Operating Officer, Mr. Larry A. Bowers. The appeal letter reiterated the three hardships that were previously stated: financial hardship, change in the value of their home, and unnecessary separation of siblings. (Motion, Ex.3).

Acting as the Superintendent's designee, Mr. Bowers referred the matter to a hearing officer for review. The hearing officer spoke to Dr. H, the principals of Rosemary Hills and Bethesda, and the school-age coordinator for Wonders Child Care Center where JI attends after-school care. The hearing officer noted that the Appellants had filed a similar transfer request for the 2011-2012 school year, citing the older sibling's attendance at Bethesda for Grade 3 and their disagreement with the "sibling preference" rule as it applies to the Rosemary Hills/Bethesda pairing. The local board denied that transfer request and JI attended kindergarten at Rosemary Hills and after-school care at Wonders Child Care Center located at Chevy Chase Elementary.¹ (Motion, Ex.4A).

The hearing officer discussed the financial hardship argument and the evidence submitted by the Appellants to support that claim. The documentation showed a decrease in income to Dr. H for December 2010 through March 2011 compared to December 2011 through March 2012. Dr. H maintained that the decrease was due to her shortened work day which begins 30 minutes

¹ The hearing officer erroneously stated that the Appellants had appealed that decision to the State Board.

later than it did previously. The hearing officer also described the Appellants' claim of hardship based on lost value to their home and Appellants' view that having JI attend Bethesda would be a "a significant emotional boost" for their older son who they described as shy and introverted. (*Id.*)²

The hearing officer recommended denial of the transfer finding no unique hardship. She explained that scheduling challenges faced by Appellants are faced by many Montgomery County families. She noted that there was space at the Wonders Child Care Center for morning child care for both children beginning at 7:30 a.m., with bus transportation provided to the respective schools. The before-school child care cost totaled \$440 per month compared to the claimed loss of approximately \$1,250 per month in income.³ She stated that, despite the fact that this arrangement would mitigate the challenges Appellants faced due to their work schedules, Appellants rejected the option because the children already go to Wonders Child Care Center for after-school care and Appellants felt it would make the day unacceptably long on the days they must remain in after-school care until 6:30 p.m. The hearing officer also reported that, per the principal at Bethesda, the older sibling had done well with the transition to the school, had made friends, and was "progressing appropriately." (*Id.*). The Superintendent's designee adopted the hearing officer's recommendation and denied the transfer for lack of a unique hardship. (Motion, Ex.4).

Appellants appealed to the local board reiterating their same concerns. (Motion, Ex.5). The Superintendent responded in a memorandum to the local board. (Motion, Ex.6). In a decision issued August 23, 2012, the local board unanimously affirmed the denial of the transfer request.

This appeal ensued.

STANDARD OF REVIEW

The standard of review in a student transfer case is that the local board's decision 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.

ANALYSIS

It is well settled that there is no right to attend a particular school. *See Bernstein v. Board of Educ. of Prince George's County*, 245 Ms. 464, 472 (1967). MCPS Policy JEE-RA establishes a presumption that students will attend their assigned schools unless the parents can

² The hearing officer also reported that the local board had approved the boundary changes phasing out the Rosemary Hills/Bethesda pairing but that the decision would not impact JI's attendance at Rosemary Hills for 2nd grade during the 2012-2013 school year. (*Id.*).

³ This dollar amount is based on Appellants' claim that Dr. H lost over \$7,500 in pretax income from December 2011 to May 2012.

demonstrate a unique hardship that would justify a transfer. (Motion, Ex.A). Documented hardships do not include problems that are common to large numbers of families absent additional compelling factors. Problems that are common to large numbers of families do not constitute a unique hardship. (*Id.*, COSA Booklet).

Policy JEE-RA, also establishes several exceptions to the transfer policy. Of relevance to this case is the “sibling preference rule” that allows a younger sibling to transfer to the requested school when the older sibling is attending the regular program there. (Motion, Ex.A, JEE-RA(IV)(B)(1). The Policy explains that paired elementary schools are considered one school for transfer purposes. *Id.*, JEE-RA(IV)(D)(1)(a).

In a memorandum dated July 29, 2008, the Superintendent clarified the application of the transfer rules to the Rosemary Hills/Bethesda pairing. In this memorandum, the Superintendent stated that transfers would not be approved for students assigned to the pairing with older siblings in Grades 3 through 5 at Bethesda. Subsequently, the Change of School Assignment (COSA) Booklet was amended to clarify the application of the transfer rules. The COSA booklet states that Rosemary Hills (Grades K-2) is a paired school with Bethesda (Grades 3-5) and that requests to transfer from Rosemary Hills to Bethesda for Grades K-2 will only be approved for unique hardship or if an older sibling is in Grades 1 or 2 at Bethesda.⁴ (Motion, Ex. A). The State Board recently upheld application of this policy in Mr. and Mrs. [X] v. Montgomery County Bd. of Educ., MSBE Op. No. 12-29 (2012).

Hardship

Appellants argue that the local board should have approved the transfer based on financial hardship due to the fact that the household income decreased once the children began attending the two schools. The claimed income loss is directly related to the bus stop times for Rosemary Hills and Bethesda which are not convenient for the Appellants’ work schedules. To solve the issue, Dr. H reduced her morning work schedule to take the children to their buses, which means she sees fewer patients and makes less money.

⁴ Appellants claim that the school system has not explained why the policy was changed. The Superintendent’s July 29, 2008 memorandum explained that over time different interpretations of the policy had developed throughout the community. He stated:

The eight-year old “agreement” is now a source of contention rather than accommodation. What began as an “understanding” between the school system and the community is no longer understood the same way by all parties. It is contributing to increased enrollment at a school that is already overenrolled. Further, it has generated efforts to override the Board-mandated student assignment patterns.

(App. Resp. to Motion, Ex.6).

We understand the Appellants' desire to have schedules that do not impact their finances or their employment. The reality, however, is that many families with parents who work have to make concessions related to their finances, work schedules, child care options and the like due to school bus schedules, school start times, and multiple children attending different schools. Because these are issues common to many families, they are not recognized as a basis for granting a transfer. *See Jennifer O. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 10-45 (2010). Moreover, in this case, there is a child care option available that would allow Dr. H to keep her preferred work schedule, with a cost less than the alleged monthly financial loss. Appellants have rejected the option because they do not want their children to spend additional time in a child care setting. Working parents regularly balance such issues and decide what they think is best for their families. The consequence of the decision does not translate into a unique hardship.

Appellants also argue that the transfer should be granted based on hardship because they cannot sell their home to move to another attendance area without suffering further financial loss given the decline in the economy and the real estate market. Appellants purchased their home in 2008. They understood the school pairing but had hopes that when the time came, JI would be able to transfer to Bethesda to be with his older brother if seats were available or if he were assigned there by lottery. As Appellants point out, the Superintendent changed the Rosemary Hills/Bethesda transfer policy around the same time they purchased their home. Although we sympathize with Appellants, we do not find that this is a valid basis for granting the transfer. While many individuals purchase homes based on school attendance areas and school policies, such matters are always in flux. School re-districtings and school policy changes are not rare occurrences. Nor was there ever any guarantee that JI would be allowed to attend Bethesda if the policy had remained in effect. The desire to attend a school different from the one assigned is simply not a hardship.

Appellants also argue that the transfer policy unnecessarily separates the siblings who share a very close relationship. They claim that the children have been denied the opportunity to bond and for the older sibling to act as a mentor to the younger. They believe it would be helpful for their shy and introverted older child to have JI at the same school because JI is outgoing. The school principal at Bethesda, however, reported that the older child had adjusted well to the third grade. Although attending the same school has the potential for some benefit, Appellants have not established a hardship on this basis.

Appellants argue that by virtue of the existence of a sibling preference option, the local board has already recognized "an inherent hardship for families whose elementary school children would be required to attend different elementary schools." (Appeal, p.7). As the local board has explained, the sibling preference rule did not result from any recognition of an "inherent hardship." Rather, the rule recognizes that older siblings may be granted hardship transfers to another school and it would be less complicated for a family already dealing with a

hardship to allow the younger sibling to transfer to the same school.⁵ Here, Appellants' older son is attending Bethesda as his assigned school, not on a hardship transfer.

Denial of Equal Access

Appellants argue that they "are not afforded the same sibling transfer privileges as the rest of the county." As stated above, the sibling preference rule allows the younger sibling to attend the requested school if the older sibling is in the regular program there. This situation typically presents itself if the older sibling has been granted a change of school assignment to the requested school on the basis of hardship.

Students assigned to the Rosemary Hill/Bethesda pairing attend Rosemary Hills for k-2 and Bethesda for 3-5. This is the normal matriculation pattern and therefore the pairing is considered one school for change of school assignment purposes. Students who attend Rosemary Hills may transfer to grades k-2 at other schools based on sibling preference. Because Rosemary Hills (k-2) and Bethesda (grades 3-5) are considered one school for the pairing, transfers to Bethesda based on sibling preference are granted only when the older sibling is in grades 1 or 2 which are not paired with Rosemary Hills. If the older sibling attends grades 1 or 2 at Bethesda, the older sibling is viewed as attending a school different than the school pairing. Application of the sibling preference rule when the older sibling is attending Bethesda in grades 3-5 would run counter to and undermine the school pairing.

In our view, the sibling preference rule applies the same way to all students. A younger sibling in the Rosemary Hills/Bethesda pairing can only attend Bethesda on sibling preference when the older sibling is attending Bethesda on a transfer. This is the same circumstance in which a younger sibling could request application of the sibling preference rule to a change of school assignment in a non-paired school.

Pairing Phase Out and Impact on Sibling Preference

Appellants maintain that the transfer should be granted based on sibling preference given the phasing out of the Rosemary Hills/Bethesda pairing. On November 17, 2011, the local board adopted a resolution that included the reassignment of the East Bethesda community from Rosemary Hills to Bethesda for Grades k-2. The change will be phased in beginning with grades k-1 at the beginning of the 2013-2014 school year and ending in the 2014-15 school year with grades k-2. (Appeal, Starr Memorandum, 11/17/11). The pairing for grade 2 will continue next year while JJ is at Rosemary Hills. The local board did not make any changes to the sibling preference rule as it applies to the pairing. To the extent that the Appellants believe the local board should have addressed the issue as part of its boundary decision, they should have addressed the issue with the Board at that time. A quasi-judicial appeal such as this is not the

⁵ While there may be unusual exceptions, the local board has stated that nearly all cases where the younger sibling is automatically approved to transfer from his or her assigned school, the older sibling's attendance at the requested school resulted from approval of a hardship transfer.

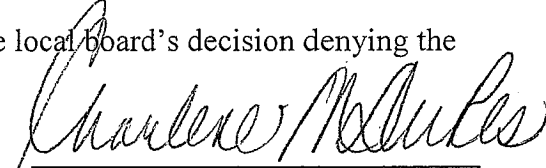
proper avenue to seek a change in a quasi-legislative or policy decision. *See Regan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-48 (2002); *Regan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-29 (2002).

Pairing Rationale is Obsolete

Appellants challenge the continuation of the pairing itself because the issues that drove the creation of the pairing no longer exist given the composition of the student population at Rosemary Hills and Bethesda. This argument is moot. The local board has already taken steps to phase out the pairing.

CONCLUSION

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



Charlene M. Dukes
President

absent

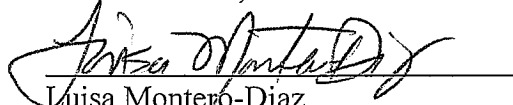
Mary Kay Finan
Vice President



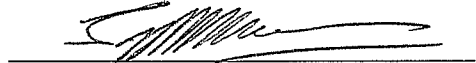
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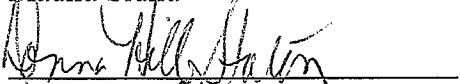
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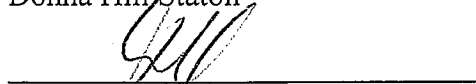
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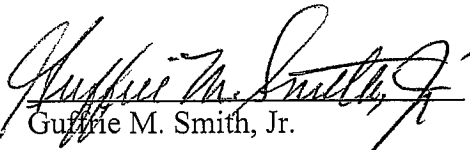
Madhu Sidhu



Donna Hill Staton



Ivan C.A. Walks


Guffie M. Smith, Jr.

Kate Walsh*

January 22, 2013

* Ms. Walsh's term expired on June 30, 2012. She served as a Board Member until her successor was appointed on January 4, 2013.