

ALEXANDRA AND CHRISTOPHER K.

Appellant

v.

CHARLES COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-06

OPINION

INTRODUCTION

Appellants appeal the decision of the Charles County Board of Education (local board) denying their request to transfer their daughter to Maurice J. McDonough High School (McDonough) from Henry E. Lackey (Lackey) High School. The Local Board filed a Motion for Summary Affirmance maintaining that the decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellants have two daughters and reside in the geographic attendance area for Lackey. Appellants' neighbors have faced marijuana use charges and weapons and assault charges. Their oldest daughter was permitted to transfer to McDonough in 2009 due to these safety concerns. Appellants' youngest daughter, E.K., was assigned to Lackey for the 2012-2013 school year. Appellants are concerned for the safety of E.K. and request that she be allowed to transfer to McDonough. Appellants have made accommodations with family friends who reside in the McDonough school district for their oldest daughter and wish to do the same for E.K. They request that E.K. be "grandfathered in" to McDonough because her sibling was allowed to transfer there three years before.

On January 3, 2012, the Appellants filed a transfer request for E.K. from Lackey to McDonough for the 2012-2013 school year. They explained that E.K.'s older sibling was currently attending McDonough on a waiver based on neighborhood safety concerns. Appellants requested that E.K. be allowed to do the same.

On June 18, 2012, Appellants' transfer request was denied by the Office of Student Services because it did not meet the standards under the transfer rule. Specifically, McDonough was overcrowded and could no longer admit transferred students. Under the rule, transfers are always subject to the availability of space.

On June 21, 2012, the Appellants appealed this decision. The Office of the Deputy Superintendent/School Administration Operations denied their appeal on July 3, 2012.

Appellants appealed to the Local Board on July 9, 2012. At that time, they also requested that E.K. be allowed to participate in interscholastic athletics at McDonough should the Local Board overturn the Superintendent's transfer denial.

On August 14, 2012, the Local Board denied these requests and upheld the Superintendent's transfer denial. The Local Board stated that because McDonough was overcrowded, it was closed to transfers under the transfer rule.

STANDARD OF REVIEW

The standard of review in a student transfer case is that the State Board will not substitute its judgment for that of the local board. The local board's decision is considered *prima facie* correct unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

ANALYSIS

Local Board Rule 5126 addresses transfer requests. First, transfer requests are always subject to the availability of space. The State Board has consistently ruled that overcrowding concerns are valid justification for denying a transfer request. *Denise and Randall M. v. Anne Arundel County Bd. of Educ.*, MSBE Op. 08-52 (2008). The overcrowding provides a reasonable basis for the denial in this case. The Appellants argue, however, that proof of hardship should trump the overcrowding issue.

A transfer may be granted if the Appellants demonstrate unusual hardship. Issues common to a large number of families are not considered hardship under the rule, particularly redistricting, day care issues, the need for a particular schedule or sibling enrollment. Unusual hardship requests are considered on a case-by-case basis.

The local board ruled that E.K. did not demonstrate unusual hardship under the rule to overcome overcrowding concerns at McDonough.

While we agree with the Appellants that safety is a paramount concern in education, their circumstances are not unique. E.K. resides in a neighborhood where some neighbors have been charged with crimes. This situation is not at all uncommon. Appellants do not contend that E.K.'s safety was jeopardized by attending or riding the bus to Lackey. They argue only that their neighborhood is unsafe. The State Board has declined safety concerns as a justification for transferring students when they pertain to the safety of the student at home or in the neighborhood. *Leona v. Harford County Bd. of Educ.*, MSBE Op. 09-17 (2009). *A.F. v. Prince George's County Bd. of Educ.*, MSBE Op. 09-37 (2009). That concern is not a reason for granting Appellants' transfer request to an overcrowded school.

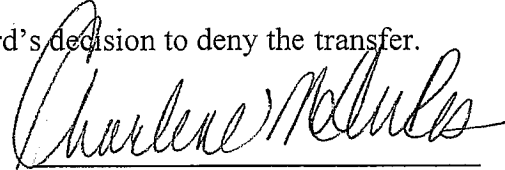
Appellants further argue that E.K. should be "grandfathered in" to McDonough because her older sibling was allowed to transfer outside her school zone based on similar concerns. Rule

5126 states that “[t]he approval of a transfer request is not a guarantee of future approvals.” The local board’s ruling was consistent with this rule.

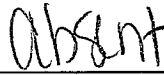
Appellants also argue that allowing E.K. to transfer and attend school with her sister will alleviate financial hardship and help keep the children together in school. Local Board Rule 5126 specifically states exceptions will not be made for sibling enrollment when the school is overcrowded. We have long held that sibling enrollment cannot be used as a justification for transfer. *J. Christopher S. v. Frederick County Bd. of Educ.*, MSBE Op. 11-04 (2011). Moreover, financial hardship arising from unfavorable sibling enrollment arrangements is not a justification for transfer. *Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. 10-14 (2010). Finally, the State Board has long held that there is no right to attend a particular school. *Bernstein v. Board of Educ. of Prince George’s County*, 245 Md. 464 (1966).

CONCLUSION

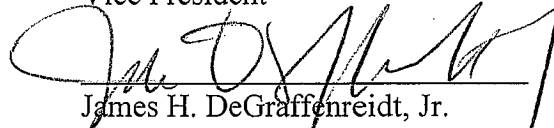
For these reasons, we affirm the local board’s decision to deny the transfer.



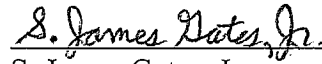
Charlene M. Dukes
President



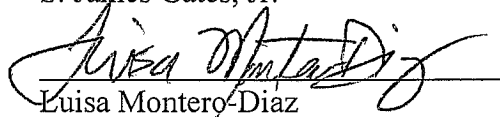
Mary Kay Finan
Vice President



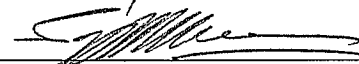
James H. DeGraffenreidt, Jr.



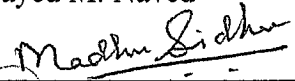
S. James Gates, Jr.



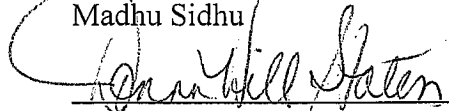
Luisa Montero-Diaz



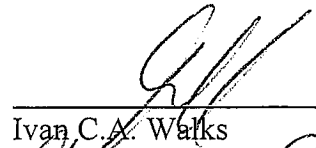
Sayed M. Naved



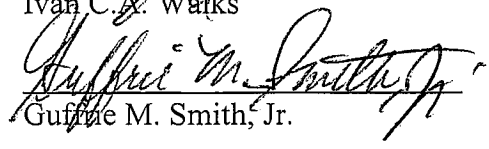
Madhu Sidhu



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.