

SHAHLA F.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-22

OPINION

INTRODUCTION

This is an appeal of the Montgomery County Board of Education's ("local board") decision denying the Appellant's Request for Change of School Assignment for her son. The local board filed a Motion for Summary Affirmance maintaining that its decision to deny the request was not arbitrary, unreasonable, or illegal. The Appellant responded to the local board's Motion. The local board replied.

FACTUAL BACKGROUND

Appellant's son, A.F., will be entering middle school at the start of the 2018-2019 school year. (Appeal, p. 1). Since 2015, A.F. has attended Potomac Elementary School ("Potomac ES"), where he was assigned as a result of a Request for Change of School Assignment ("COSA"). (Appeal, p. 1; Motion, p. 1).

On February 2, 2018, Appellant submitted a new COSA application, asking that A.F. be allowed to attend Hoover Middle School ("Hoover MS"), the middle school to which Potomac ES feeds, instead of his assigned school, Robert Frost Middle School ("Frost MS"). (Motion, Ex. 2). Appellant indicated the reasons for their transfer request was because of a "unique hardship," and to allow A.F. to "continue in [a] feeder pattern" between schools.¹ *Id.* The Division of Pupil Personnel and Attendance Services ("DPPAS") denied the request on February 8, 2018 for lack of documentation regarding a unique hardship. (Motion, p. 2).

On February 23, 2018, Appellant appealed the denial of their request to Andrew Zuckerman, the Montgomery County Public Schools' Chief Operating Officer and the Superintendent's designee, and submitted a new COSA application based on unique hardship. (Motion, Ex. 3). Appellant's letter in support of the COSA stated that the transfer was necessary due to concerns about: (1) A.F.'s safety before and after school due to parental work schedules; (2) the distance between Frost MS and A.F.'s current childcare provider; (3) the effects of changing childcare providers in A.F.'s adolescent years; (4) the social and emotional effects that A.F. would face by attending Frost MS, when many of his friends from Potomac ES would be

¹ Appellant later noted that she mistakenly checked "continue in [a] feeder pattern" as a reason for a transfer request on the COSA form. (Motion, Ex. 3).

attending Hoover MS; and (5) A.F.'s afterschool activities being located in the Hoover MS area. *Id.*

Hearing Officer Laurence E. Jeweler reviewed the appeal on Dr. Zuckerman's behalf. In a Memorandum dated March 13, 2018, Mr. Jeweler summarized Appellant's concerns as set forth in her February 23rd appeal letter, as well as the concerns expressed by her husband during discussion with him. (Motion, Ex. 4). Mr. Jeweler concluded that the several concerns offered in support of the COSA request did not amount to a "unique hardship" sufficient to justify a school transfer. *Id.* He explained as follows:

I understand the family's goal to continue the successful experience [A.F.] enjoyed at Potomac Elementary School, and to remain with his friends who will attend Herbert Hoover Middle School. However, neither of those desires would be considered unique hardships for transfer purposes, as required under Board policy. Likewise, participating in extra-curricular activities in the Herbert Hoover Middle School area would not be considered a unique hardship. Robert Frost Middle School offers a full range of ... extra-curricular activities. Since [Appellant] currently drops her son at child care around 7:30 a.m., and since Robert Frost Middle School is open to students by 7:30 a.m., morning child care would not be an issue. Spending one and two hours at home alone after school until [Appellant] gets home from work would not be considered a unique hardship at the middle school level, especially since Robert Frost offers after school activities three days per week with activity service provided. All of this would preclude the need for child care during the school year. In addition, counselors are available in all of our middle schools to help students who might have any transition issues.

Mr. Jeweler therefore recommended denial of the COSA request. *Id.* On March 14, 2018, Dr. Zuckerman adopted the recommendation. (Motion, Ex. 5).

By letter dated April 6, 2018, Appellant appealed Dr. Zuckerman's decision to the local board. (Motion, Ex. 6). In her letter, Appellant maintained that a transfer was necessary because the location and nature of her and her husband's jobs requires assistance from a childcare provider. She explained that her husband travels a great deal and that she was in the process of changing her job to a location in Virginia and would need to drive there once she receives clearance for the job. She also reiterated her concerns about A.F.'s anxiety which she maintains would be exacerbated by a change in school location and peer groups. *Id.* Appellant stated in her letter that once A.F. learned about possibly having to attend Robert Frost, his anxiety level spiked to the extent that she had to consult a pediatrician and begin looking for a behavior specialist. *Id.*

By Memorandum dated April 23, 2018, Superintendent of Schools, Dr. Jack R. Smith, replied to the appeal. (Motion, Ex. 7). Dr. Smith addressed several of the issues raised by Appellants, including their concerns about childcare and A.F.'s emotional and social wellbeing. *Id.* Dr. Smith concluded that Appellants' circumstances did not amount to a "unique hardship"

sufficient to justify a school transfer. He recommended that the Local Board uphold Dr. Zuckerman's decision, and noted that Frost MS's 7:30 a.m. opening time and its availability of school counselors would address Appellant's concerns about childcare and A.F.'s social and emotional wellbeing. *Id.*

On May 8, 2018, the local board considered the matter in closed session. (Motion, Ex. 8). On May 22, 2018, the local board issued a written Decision and Order agreeing with the findings and recommendation of Dr. Zuckerman and the information provided in the Superintendent's response to the appeal. *Id.* The local board concluded that Appellant failed to demonstrate a unique hardship. *Id.* This appeal followed.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the decision of the local board shall be 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. The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(D).

LEGAL ANALYSIS

Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the Montgomery County Public Schools ("MCPS") has developed particular criteria to guide its process for determining which students are eligible to change schools. It is well established that there is no right or privilege to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

MCPS permits student transfers in certain situations, one of which is when the family can demonstrate unique hardships "that could be mitigated by a change of school assignment." (Motion, Ex. 1. JEE-RA.V.A). However, "problems that are common to large numbers of families, such as day care issues ... do not constitute a unique hardship, absent other compelling factors." *Id.*

Here, the Appellant maintains that concerns about childcare and work schedules, and A.F.'s mental health, constitute a unique hardship.² We shall consider each of these concerns in turn.

Child Care and Work Schedules

In her appeal, Appellant cites concerns about maintaining A.F.'s current childcare provider. She states that her husband's job requires him to travel frequently and, therefore, he is rarely able to help with child care, essentially leaving the Appellant in the "role of a single mom." (Appeal, p.1). She also states that the new job she has accepted in Virginia will require her to leave in the mornings before her son leaves for school and will result in her returning

²In her submissions at the school and county level, the Appellant also stated as a basis for the transfer her desire for A.F. to remain with his friends who will be attending Hoover MS in the fall, which would help sustain and promote A.F.'s social wellbeing. Because Appellant did not raise the issue in her State Board appeal, we have not addressed it herein.

home in the evenings around 6:00. It is for these reasons that Appellant maintains she requires the continued assistance of her friend and owner of Fox Hill community day care, who has provided care for A.F. since 2015. *Id.* at p.1-2.

The State Board, however, has held consistently that absent additional compelling factors, childcare issues do not amount to a unique hardship. *See Desbele S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *Mr. and Mr. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010); *A.T. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-08 (2007). Childcare issues are common to many families who are faced with balancing the demands of work and children. While the Appellant may have a preference for a particular provider who finds it more convenient for A.F. to attend Hoover MS than Frost MS, it does not mean that a unique hardship exists. *See also, Raegan and Rick H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62 (2014).

The Appellant also maintains that the local board misunderstood her hardship argument because the local board's May 12, 2018 Decision and Order discusses the Appellant's desire to use before and after school care provided at Hoover MS, which is not the case. Although the local board misstated the childcare provider, Appellant clearly seeks to use a provider who resides near Hoover MS and desires to drop off and pick up A.F. at Hoover MS. This detail does not change the analysis explained above. This is particularly true where the difference in travel from the location of the daycare center to Hoover MS versus transporting him from that location to Robert Frost MS is one-half mile in distance and one minute in travel time. (Motion, p. 8). It is the Appellant's choice to continue to use her friend for before and after school care or to make other arrangements such as allowing A.F. to ride the bus to and from Robert Frost MS. With respect to childcare issues, Appellant has not demonstrated a unique hardship.

This case is similar to the *Nicole B.* case. In *Nicole B.*, the appellant wanted "her daughter to attend Hoover [MS] so that she [could] remain in the middle school feeder pattern with her friends and because it [was] easier for Appellant to have [her daughter] attend a school closer to Appellant's work and child care provider." *Nicole B.* at 2. In *Nicole B.*, as here, appellant's child had been granted a transfer for the 3rd, 4th, and 5th grade, meaning, MCPS would have to approve a middle school transfer to allow the student to remain with her peer group. The State Board determined that prior approval of an elementary school transfer does not automatically result in approval of a middle school transfer request, that "a desire to attend school with ones friends or peer group does not constitute a unique hardship[.]" and "child care issues do not suffice to justify a student transfer." The same issues and arguments are present here, and the same outcome should result.³

³ Although the Appellant maintains that she was unaware of the need to submit a COSA request for middle school when one was already granted for elementary school, the local board's policy clearly states that a new COSA request is needed for middle school in such circumstances. *See JEE-RA IV.A.3.* Appellant submitted the request and it was reviewed at the various levels of appeal. Although she does not understand why the outcome of this request is different from the COSA request for elementary school, each COSA request is considered anew. At the very least, A.F. is older now.

Mental Health

Appellant maintains that A.F.'s anxiety would be exacerbated by a drastic change in school location. 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 addition, we have held that the appellant must show that the medical condition cannot be supported by health professionals at the assigned school. *See Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 11-48 (2011).

Appellant does not provide any clinical diagnosis of any medical condition that would require A.F.'s placement at Hoover MS. Thus, there is no evidence to support a health basis for the transfer. As the local superintendent noted, many students experience some level of anxiety and worry over the transition to middle school and the administration at Robert Frost is prepared and equipped to assist students in having a successful transition to the middle school experience. (Motion, Ex.7). While we are sympathetic to the Appellant's concerns about her son, we do not find that she has met her burden of establishing a unique hardship sufficient to justify a transfer in this case. *See Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013) ("The matriculation to middle school is an adjustment for all entering students who can be understandably anxious and insecure in the new environment.").

CONCLUSION

For the reasons stated above, we find that the local board's decision is not arbitrary, unreasonable or illegal. We affirm the decision of the Montgomery Country Board of Education to deny the Appellant's request to transfer her son from Robert Frost Middle School to Herbert Hoover Middle School.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Michele Jenkins Guyton

Jean C. Halle

Michael Phillips

Dissent:

Signatures on File:

Chester E. Finn, Jr.

Joan Mele-McCarthy

Abstain:

Signatures on File:

Vermelle D. Greene

Rose Maria Li

David Steiner

July 24, 2018