

JOEY AND KRISTIN H.,

Appellant

v.

CHARLES COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-38

OPINION

INTRODUCTION

Appellants appealed the decision of the Charles County Board of Education (“local board”) denying their request to transfer their son from Dr. James Craik Elementary School (“Craik”) to Mary H. Matula Elementary School (“Matula”). The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants did not respond to the local board’s motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance zone served by Craik, where their son, J.H., was assigned to attend kindergarten for the 2018-2019 school year.

In April 2018, the Appellants submitted a request to Charles County Public Schools Office of Student Services requesting that J.H. be transferred from Craik to Matula based on “transportation/daycare reasons” because the daycare they use does not provide transportation to and from Craik. (Mtn. Attach. 4). Appellants explained that when their original daycare provider relocated out of state, they had a short amount of time to find a daycare provider and were unable to find one who provided transportation services to and from Craik who would accept both of their children. They stated that due to their work schedules, neither parent is available to get their son on and off the Craik school bus, and that other daycares that transport to and from Craik are at maximum capacity or cannot take both of their children.¹ Appellants also indicated that they have no family available to help them. *Id.*

On June 29, 2018, Patricia Vaira, Director of Student Services, advised the Appellants that their request was denied. (Mtn. Attach. 5). She stated as follows:

All transfer requests are considered pursuant to Board Policy 5126 and Superintendent’s Rule 5126. Under this Rule, transfers are considered only if the requested school has adequate space to accommodate additional students outside of their attendance zones. In addition, transfers may be granted for an academic course of study not offered within the student’s zoned school or for unusual

¹ Appellants also have a two-year-old son.

hardship cases. Unfortunately, your request does not meet the requirements established by the Board Policy and Superintendent's Rule for out-of-zone transfers and, therefore, must be denied.

Id.

On May 30, 2017, the Appellants appealed the decision to the Office of School Administration maintaining that their situation constituted a hardship sufficient to justify the transfer. (Mtn. Attach. 6). Appellants stated that they have used the current daycare provider for two years and both of their sons currently go there, but the center provides transportation for Matula only, not Craik. They explained that they use that particular daycare center "because it best suits the needs of [their] busy work schedules." *Id.* The Appellants explained their work schedules with specificity to show that they both report to work before the Craik school bus picks up to go to school and that neither is home after school when the school bus drops off. The Appellants also stated that the daycare facilities zoned for Craik are either full or will not take both children. *Id.*

On July 17, 2018, Linda Gill, Executive Director of Schools and the Superintendent's Designee, informed the Appellants that she was upholding Dr. Vaira's decision to deny the transfer request because it does not meet the guidelines for out-of-zone transfers. (Mtn. Attach. 7). She encouraged the Appellants to continue to investigate childcare options in the Craik school zone. She also suggested that they confer with school staff who might prove helpful and could provide them with information regarding AlphaBest, an on-site before and after care service. *Id.*

Appellants appealed the decision to the local board. Appellants made the same arguments regarding daycare and their work schedules to support their claim of unusual hardship. (Mtn. Attach. 8). Appellants also reported that they looked into the AlphaBest program offered at Craik, but that it was not realistic for their family because it does not provide any care on days when the school is closed or over the summer. They claimed that it would cost more overall per child and they would still need to find another daycare for the 110 days that AlphaBest is not open or one of them would have to leave their job, which would place them in a financial hardship. Appellants also explained that, although they have some local family, they are not available to help them with transportation to and from school. *Id.*

In a unanimous decision issued on August 20, 2018, the local board upheld Ms. Gill's decision denying the transfer request. (Mtn. Attach 1). The local board stated that transfer requests are denied when the receiving school lacks adequate space to accommodate additional students, and that the receiving school in this case was deemed overcrowded and closed to transfers. The Board also stated that when space is available at a receiving school, a transfer can be granted based on an unusual hardship, but that an unusual hardship does not include issues common to large numbers of families, such as "typical daycare concerns." In light of that, the local board found that even if there were space at the requested school, it would have denied the transfer request because the Appellant's justification centered on a daycare concern, which is expressly excluded as a reason to grant a transfer. *Id.* at 3.

STANDARD OF REVIEW

In reviewing student transfer cases, 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.*, MSBE Op. No. 13-06 (2013).

LEGAL ANALYSIS

In Charles County Public Schools (“CCPS”), students are required to attend the school to which they are assigned unless they are granted a transfer pursuant to Superintendent Rule 5126. *See* Policy 5126. Superintendent Rule 5126 provides that a transfer request will be considered only if the receiving school has adequate space to accommodate additional students outside of their residence zone. Factors used to determine adequate space are (1) whether the receiving school is at or above state-rated capacity, and (2) whether the enrollment will negatively affect any specific grade or program of studies. *Id.* If the receiving school has adequate space to accommodate additional students, a transfer may be granted to a student seeking an academic course of study not offered at the student’s zoned school, or to a student who has demonstrated an “unusual hardship.” *Id.* Unusual hardship cases are determined on a case-by-case basis and do not include issues that are common to large numbers of families, such as the need for a particular schedule, sibling enrollment, redistricting, or typical daycare issues. *Id.*

In their appeal to the State Board, the Appellants ask the State Board to allow their son to transfer from Craik to Matula, maintaining that they have demonstrated an unusual hardship because their chosen daycare provider cannot transport their son to and from his zoned school and they are unable to find a provider who can do so.

The local board denied the transfer request because Matula is overcrowded and Superintendent Rule 5126 does not permit transfers in such circumstances. The State Board has consistently ruled that overcrowding concerns are a valid justification for denying a transfer request. *See Catherine H. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-25 (2017)(“limiting student transfers based on school utilization and over-capacity concerns is a legitimate and reasonable justification for denying transfer requests”); *Julie and Kevin D. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 09-39(2009)(upholding the denial of a transfer to an over-capacity school in order to “limit crowded conditions that may impact the quality of instruction”); *Denise and Randall M. v. Anne Arundel County Bd. of Educ.*, MSBE Op. 08-52 (2008)(recognizing that the law supports the schools decision to deny the transfer request based on valid reasons related to capacity). In addition, this Board has specifically upheld the local board’s application of the overcrowding prong of Superintendent Rule 5126 to deny a transfer to a closed school. *See Alexandra and Christopher K. v. Charles County Bd. of Educ.*, MSBE Op. No. 13-06 (2013).

Even if Matula had not been overcrowded, the local board would likely have denied the transfer request for failure to demonstrate an unusual hardship because the reasons advanced by the Appellants were typical daycare issues that are specifically excluded as a basis for a hardship transfer under Superintendent Rule 5126. Conflicting work schedules, and finding affordable and available daycare that meets all of the family’s needs are issues many families face. The State Board has repeatedly held that a local board’s policy to deny transfers based on childcare

issues is reasonable. *See Shahla F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 18-22 (2018)(“Childcare issues are common to many families who are faced with balancing the demands of work and children) and cases cited therein.

Although we affirm the local board’s decision in this case, we will be examining transfer policies across the State at a future State Board meeting to determine whether we should adopt regulations concerning student transfers.

CONCLUSION

For the reasons stated above, we do not find the local board’s decision to be arbitrary, unreasonable or illegal. We affirm the local board’s decision denying the transfer request.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Dissent:
Chester E. Finn, Jr.

October 23, 2018