

GEORGE K.,

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-02

OPINION

INTRODUCTION

George K. (“Appellant”) filed an appeal of the decision made by the Montgomery County Board of Education (“local board”) to deny his request for a Change of School Assignment (“COSA”). After the local board adopted new school boundaries, Appellant’s child, [REDACTED], was assigned to [REDACTED] Middle School. The Appellant contends the local board’s decision to uphold the Superintendent’s designee’s denial of the COSA is arbitrary, unreasonable, and not in the best interest of his child. The local board filed a response to the appeal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

During the 2019-2020 school year, Appellant’s child was a fifth grade student in [REDACTED] Elementary School. On November 26, 2019, the local board adopted boundary changes that impacted the student’s placement for middle school. Before this boundary change, the Appellant’s five older children attended [REDACTED] Middle School. (Answer, Ex. 3). As a result of the boundary reassignments, [REDACTED] was assigned to [REDACTED] Middle School (“[REDACTED] MS”) for the 2020-2021 school year.

On March 11, 2020, pursuant to Policy JEE, *Student Transfers*, and Regulation JEE-RA, *Student Transfers and Administrative Placements*, the Appellant filed a request for a COSA. The Appellant cited unique hardship as the reason for his request, supported by the following concerns: (1) gang-related activities at [REDACTED] MS; (2) personal safety of his child; (3) ability of the teachers to provide effective instruction due to students’ behavior; (4) availability of learning opportunities; (5) safety and distance of travel to [REDACTED] MS from the Appellant’s home; (6) the outdated and overcrowded nature of the [REDACTED] MS building; and (7) the impact of the distance to [REDACTED] MS on the family’s sense of community and ability to be active within the school. The Appellant requested that his child be assigned to [REDACTED] Middle School (“[REDACTED] MS”). (Answer, Ex. 3).

On April 6, 2020, the COSA was denied by Teri Musy, Coordinator at the Division of Pupil Personnel and Attendance Services. Ms. Musy communicated that her office did not find that the request rose to the level of a unique hardship. (Answer, Ex. 4).

On April 13, 2020, the Appellant appealed the COSA decision to Dr. Andrew Zuckerman, Chief Operating Officer. The Appellant attached his original documentation and also expressed concern about the leadership of ██████ MS, as well as projected capacity rates at the school. The Appellant requested ██████ MS for three reasons: (1) projected declining capacity; (2) location within the Appellant's community of Agricultural Reserve of Montgomery County; and (3) quality of the school. The Appellant expressed his frustration with the new boundary decision as he believed it requires students to be bused past several closer and better middle schools to attend a "poor performing school, distant from their home." (Answer, Ex. 4).

The COSA appeal was assigned to Hearing Officer Mary Dempsey. On May 28, 2020, Ms. Dempsey issued a recommendation to Dr. Zuckerman that the COSA denial be upheld. Ms. Dempsey stated that she had spoken at length with the Appellant and his wife. While she respected their advocacy on behalf of their child, she did not find that their negative perception of ██████ MS and strong desire to have their child attend ██████ MS warranted a COSA based on unique hardship under local board policy. (Answer, Ex. 5).

On June 3, 2020, Dr. Zuckerman informed the Appellant and his wife via letter that he had reviewed the Hearing Officer's report, concurred with her findings, and was adopting her recommendation to deny the COSA. (Answer, Ex. 6).

On June 22, 2020, the Appellant filed an appeal with the local board. In his materials, the Appellant shared that many of his concerns about the school had been addressed after speaking with the staff at ██████ MS. While he commended their professionalism, the Appellant remained concerned about the distance of the school from his home and community. The Appellant stated that his neighbors to the east would attend ██████ Middle School and the neighbors to his north would attend ██████ MS. He also shared that ██████ Middle School was only 4 miles from his home and in closer proximity. The Appellant argued that the local board should find unique hardship due to the "extraordinary travel time, lengthy distance and commuter traffic as well as being separated from [his] established community." (Answer, Ex. 7).

On July 14, 2020, Superintendent Jack Smith submitted a memo to the local board wherein he recommended that the decision of the CEO be upheld. The Superintendent stated that while ██████ MS is 8.8 miles from the Appellant's home, ██████ MS is 11.6 miles from the Appellant's residence. The Superintendent noted that according to MapQuest, the drive time to both schools were the same, and the Appellant's child would have access to a local school bus for transportation. (Answer, Ex. 8).

On July 20, 2020, the Appellant followed up with the local board via email. The Appellant agreed that there were other schools closer to his home than ██████ MS, and his family would be receptive to another more closely located school. The Appellant also pointed out that the trip to ██████ MS, while a further distance is a shorter commute as his child would be traveling in the opposite direction of traffic. The Appellant reiterated his family's strong ties to ██████ MS and the ██████ community. (Answer, Ex. 9).

On August 26, 2020, the local board informed the Appellant by letter that it agreed with the CEO's decision and affirmed the COSA denial for the reasons outlined by the Superintendent and his designee – specifically that the Appellant's request did not rise to the level of a unique hardship. (Answer, Ex. 10).

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations 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.01.05.06A. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.06B.

LEGAL ANALYSIS

It is well established that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right of 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). Pursuant to Policy JEE(B), *Student Transfers*, “[s]tudents are expected to attend the school within the established area in which they reside (home school)... Students may submit applications for COSAs from the home school... in cases of documented unique hardship[.]”

Although the Appellant initially argued multiple circumstances that he claimed resulted in a unique hardship warranting a COSA, he confines his current appeal to the “extraordinary travel distance to [REDACTED] school.” (Appeal, p. 2). The Appellant is concerned about the increased time his child may spend traveling to and from school each week when there are other middle schools in closer proximity to his residence.

While the Appellant may prefer that his child attend a school that is in closer proximity to his home, we have consistently held that the increased distance or time it takes to get to a student's school of assignment as compared to the requested school is not a unique hardship. *See A.A. v. Howard County Bd. of Educ.*, MSBE Op. No. 20-39 (2020); *John and Carolann M. v. Charles County Bd. of Educ.*, MSBE Op. No. 14-48 (2014); *Mary Ann K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-52 (2010); *Taryana C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-06 (2010). Thus, Appellant has not presented a justification sufficient to grant the COSA request.

The Appellant has expressed his concern with the new boundary plan; however, the local board's decision to adopt the new boundary plan is not on appeal before this Board. We may only look to the local board's decision regarding the Appellant's request for a COSA. The Appellant has not produced evidence to demonstrate the local board's decision was arbitrary or unreasonable.

CONCLUSION

For the foregoing reasons, we do not find the local board's decision to be arbitrary or unreasonable, and we affirm the local board's denial of Appellant's request for a change of school assignment.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Gail H. Bates

Charles R. Dashiell, Jr.

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Dissent: Shawn Bartley

The parents request for transfer is reasonable. The family legacy established at the school by four family members' prior attendance should provide for an exception.

Susan Getty

Absent: Vermelle Greene

January 26, 2021