

RALPH AND TREMAINE
N.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 17-30

OPINION

INTRODUCTION

This is an appeal of the Montgomery County Board of Education's ("local board") decision denying the Appellants' Request for Change of School Assignment. The local board filed a Motion for Summary Affirmance maintaining that its decision to deny the request was not arbitrary, unreasonable, or illegal. The Appellants filed a response to the local board's motion.¹

FACTUAL BACKGROUND

Appellants' daughter, T.N., will be entering the first grade at the start of the 2017-2018 school year. She attended kindergarten at a private school last year.

On February 1, 2017, Appellants submitted a Request for Change of School Assignment ("COSA") asking that T.N. be allowed to attend Cashell Elementary School ("Cashell") instead of her assigned school, Bel Pre Elementary School ("Bel Pre"). The letter in support of the appeal set forth the following reasons for the request: (1) Education and school data reports for Bel Pre are not acceptable to the Appellants; (2) Many of Appellants' calls to schedule a visit to Bel Pre went unanswered; (3) Appellants were uncomfortable with the school environment when they made an unannounced visit to Bel Pre; (4) A neighbor, who teaches at Bel Pre, informed Appellants that there were "poor organizational and communication skills from top officials" and "constant disciplining of kids for behavioral issues; (5) Neither the assistant principal nor an administrative assistant at Bel Pre send their own children to Bel Pre; (6) Appellants are suffering from financial hardship after being "forced" to enroll their child in a private school due to discontent with Bel Pre; and (7) A neighbor's son was bullied at Bel Pre in 2015. (Motion, Ex. 2). In addition, Appellants expressed concern that T.N. would experience bullying at Bel Pre because she had "experienced this [bullying] behavior in the neighboring communities."² *Id.*

On February 14, 2017, the Montgomery County Public Schools ("MCPS") Division of Pupil Personnel Services denied Appellants' request finding that the Appellants had failed to document a unique hardship. (Motion, Ex. 1).

¹ The local board did not submit a final reply because it did not believe that it was necessary in this case.

² The Appellants provided no further specifics regarding this claim.

On February 23, 2017, Appellants appealed the denial of their request to Andrew Zuckerman, the MCPS Chief Operating Officer and the Superintendent's designee. (Motion, Ex. 3). In their letter, the Appellants repeated many of their original concerns.

Hearing Officer Sandra Walker reviewed the appeal on Dr. Zuckerman's behalf. In a Memorandum dated March 16, 2017, Ms. Walker summarized the Appellant's concerns as set forth in their February 23rd appeal letter and as explained in their conference call with her. In addition to issues previously raised, Ms. Walker noted that Appellants had concerns about test scores at Bel Pre and about bullying by Bel Pre students taking place in a local park (not involving T.N.). Ms. Walker also indicated that the Appellants preferred Cashell because it was on their way to work. (Motion, Ex. 4).

In her Memorandum, Ms. Walker stated that she had shared the Appellants' concerns with the principal of Bel Pre Elementary. Having assumed the role of principal on July 1, 2016, the principal could not address several of the issues raised by the Appellants. However, she offered to call the Appellants and invite them to tour Bel Pre and further discuss their concerns. *Id.* Appellants declined the principal's invitation. *Id.*

Ms. Walker concluded that the several negative incidents offered by the Appellants in support of their request did not amount to a "unique hardship" sufficient to justify a school transfer. She therefore recommended denial of the request. *Id.* On March 22, 2017, Dr. Zuckerman adopted the recommendation. (Motion, Ex. 5).

By letter dated April 6, 2017, Appellants appealed Dr. Zuckerman's decision to the local board. They maintained that the Division of Pupil Services and Dr. Zuckerman did not fully consider their appeal and were dismissive of Appellants' unique hardship. They also maintained that the "unique hardship" standard is ambiguous which results in subjective application. (Motion, Ex. 6). Appellants contended further that the focus of their request should be their "re-occurring dissatisfaction" with Bel Pre; the "financial hardship" they incur in "being forced" to send their daughter to private school; and before and after care accessibility. *Id.* They reiterated that Cashell is the "best fit" for their family because the school provides on site before and after school care and it is on the Appellants' way to and from work. *Id.*

By Memorandum dated April 20, 2017, Superintendent of Schools, Jack R. Smith, replied to the appeal. (Motion, Ex. 7). Dr. Smith addressed several of the issues raised by the Appellants, including their concerns about before and after school childcare. He informed the local board that "Bel Pre Elementary School has several child-care programs that transport children to and from Bel Pre Elementary School." *Id.* He explained that transporting T.N. to one of these locations should not pose a problem because T.N.'s father currently transports T.N. to school before 9:30 a.m. and T.N.'s mother picks T.N. up at the end of the day. *Id.* Since the Appellants had provided no documentation to support their claim of financial hardship, Dr. Smith did not discuss the cost of before and after school care. *Id.*

Dr. Smith also addressed the Appellants' concerns with respect to bullying at Bel Pre. He informed the local board that the bullying incident that the Appellants' cited to Ms. Walker occurred at a local park, and that there was no indication that the school was made aware of it. *Id.* Dr. Smith concluded by asking the Local Board to uphold Dr. Zuckerman's decision because the Appellants' circumstances did not present a unique hardship warranting an approval of their request. *Id.*

On April 25, 2017, the local board considered the matter in closed session. On May 9, 2017, 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. (Motion, Ex. 8). The local board concluded that the Appellants failed to demonstrate a unique hardship. *Id.*

Appellants filed this appeal to the State Board on June 1, 2017.

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 MCPS has developed particular criteria to guide its process for determining which students are eligible to change schools. It is well established, however, 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).

Montgomery County Public Schools ("MCPS") Regulation JEE-RA – Transfer of Students provides that absent qualifying under one of three exemptions, "only documented unique hardship situations will be considered" for a change of school assignment. (Motion, Ex. 10. JEE-RA.IV.A). The regulation lists the following three exemptions to this policy: (1) an older sibling attending the requested school at the same time; (2) the student is ready to move from middle school to high school, except for boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. *Id.* at JEE-RA.IV.B. Because Appellants' daughter does not qualify for any of these exemptions, the only applicable consideration for a transfer case is a documented hardship.

Appellants maintain that the "unique hardship" exemption is ambiguous. We disagree. The transfer form instructs parents to carefully review the Change of School Assignment Booklet, which states:

A unique hardship depends on the family's individual and personal situation. Problems that are common to large numbers of families, such as issues involving day or program/course preferences, do not constitute a hardship, absent additional compelling factors. Documentation that can be independently verified must accompany all hardship requests, or the request will be denied.

(Motion, Ex. 11, COSA Information Booklet). As we stated in *Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010), "the very nature of a unique hardship means that there is no standard definition that will apply to each family's circumstances, nor, in our opinion, should there be." In addition, the great body of State Board

Opinions issued by this Board for many years has repeatedly acknowledged the validity of the “unique hardship” standard and has established parameters around its use.

Here, the Appellants have presented several factors to support the request, including concerns about childcare, safety, and financial factors. The Appellants argue that the decision of the local board is arbitrary because it fails to find that the factors presented constitute a documented unique hardship.

Child Care Concerns

In support of their request, Appellants cite concerns about before and after school care at Bel Pre. They request that T.N. attend Cashell because the school is on the Appellants’ route to and from work and before and after school care is provided there. The State Board, however, has held consistently that absent additional compelling factors, childcare issues do not amount to a hardship. See *Raegan and Rick H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62 (2014); *Desbele S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *Mr. and Mrs. 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. Moreover, Dr. Smith has already indicated that there are several childcare programs in the area that transport children to and from Bel Pre. See Motion, Ex. 7. While it might be more convenient for the Appellants to arrange for childcare at Cashell rather than utilize one of Bel Pre’s arrangements, it does not mean that a unique hardship exists. In addition, enrollment at either school would result in similar financial issues related to childcare costs and Appellants did not present evidence of financial hardship in this regard. We thus conclude that with respect to childcare issues, the Appellants have not demonstrated a unique hardship.

Safety Concerns

Appellants raise the issue of alleged bullying at Bel Pre and concern for their daughter’s safety. We agree with the local board that the Appellants have failed to introduce evidence of a safety concern sufficient to justify the transfer. The Appellants have no “firsthand” knowledge of bullying incidents at Bel Pre and none that include T.N. (Motion, Ex. 8). Their concerns arose from an incident at a nearby park for which there is no evidence that the school was involved in any way, or even notified. (*Id.*; Exhibit 7). Generalized allegations of bullying are simply insufficient to establish a unique hardship.³ See *Shervan D. v. Howard County Bd. of Educ.*, MSBE Opinion No. 17-10 (2017).

Financial Hardship

Appellants are unhappy with many aspects of Bel Pre including the quality of education, the school environment, and school personnel. Appellants contend that they “felt forced” to enroll their daughter in a private school because “her assigned school cannot provide what [Appellants] are looking for as parents who want the best for their child’s education.” They claim that placing T.N. in private school has created a financial hardship for them. (Motion, Ex. 6).

It is well settled that there is no right to attend a particular school. *Bernstein v. Bd. of Educ. of Prince George’s County*, 245 MD. 464, 472 (1967). This includes attendance at schools

³ Safety of students is of paramount concern to this Board. We urge the principal of Bel Pre to take seriously any school-related bullying concerns that might arise during the school year and to fully investigate them.

that parents believe are better academically or otherwise than the child's assigned school. Appellants' decision to enroll T.N. in a private school was undertaken voluntarily. The school system did not force them to do so and they could have enrolled T.N. in Bel Pre free of charge. The cost associated with a voluntary decision to bypass the public school system in favor of a private school education is not the type of financial hardship that would justify a transfer request.

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 County Board of Education to deny the Appellants' request to transfer their daughter from Bel Pre Elementary School to Cashell Elementary School.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Irene M. Zoppi Rodriguez

David Steiner

August 22, 2017